



City of Nedlands

# ***Minutes***

## ***Special Council Meeting***

***27 January 2021***

### **Attention**

**These Minutes are subject to confirmation.**

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

## Table of Contents

Declaration of Opening .....	3
Present and Apologies and Leave of Absence (Previously Approved) .....	3
1. Public Question Time .....	4
2. Addresses by Members of the Public.....	4
3. Disclosures of Financial Interest .....	4
4. Disclosures of Interests Affecting Impartiality.....	4
4.2 Councillor Bennett – Item 6 - Responsible Authority Report - 97 - 105 Stirling Highway, Nedlands - S31 Reconsideration of a refused JDAP application - Mixed Use Development Comprising Multiple Dwellings, Office, Motor Vehicle Sales, Restaurant, Community Purpose .....	5
4.3 Councillor Youngman – Item 6 - Responsible Authority Report - 97 - 105 Stirling Highway, Nedlands - S31 Reconsideration of a refused JDAP application - Mixed Use Development Comprising Multiple Dwellings, Office, Motor Vehicle Sales, Restaurant, Community Purpose .....	6
4.4 Councillor Hodsdon – Item 6 - Responsible Authority Report - 97 - 105 Stirling Highway, Nedlands - S31 Reconsideration of a refused JDAP application - Mixed Use Development Comprising Multiple Dwellings, Office, Motor Vehicle Sales, Restaurant, Community Purpose .....	6
5. Declarations by Members That They Have Not Given Due Consideration to Papers.....	6
6. Responsible Authority Report - 97 - 105 Stirling Highway, Nedlands - S31 Reconsideration of a refused JDAP application - Mixed Use Development Comprising Multiple Dwellings, Office, Motor Vehicle Sales, Restaurant, Community Purpose.....	7
Declaration of Closure .....	30

## City of Nedlands

**Minutes of a Special Meeting of Council held in the Adam Armstrong Pavilion, Beatrice Road, Dalkeith on Wednesday 27 January 2021 at 7 pm for the purpose of considering a Responsible Authority Report - 97 - 105 Stirling Highway, Nedlands - S31 Reconsideration of a refused JDAP application - Mixed Use Development Comprising Multiple Dwellings, Office, Motor Vehicle Sales, Restaurant, Community Purpose.**

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### **Declaration of Opening**

The Presiding Member declared the meeting open at 7.00 pm and drew attention to the disclaimer below.

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

<b>Councillors</b>	Deputy Mayor L J McManus	(Presiding Member)
	Councillor F J O Bennett	Dalkeith Ward
	Councillor A W Mangano	Dalkeith Ward
	Councillor N R Youngman	Dalkeith Ward
	Councillor B G Hodsdon	Hollywood Ward
	Councillor P N Poliwka	Hollywood Ward
	Councillor J D Wetherall	Hollywood Ward
	Councillor R A Coghlan	Melvista Ward
	Vacant	Melvista Ward
	Councillor R Senathirajah	Melvista Ward
	Councillor N B J Horley	Coastal Districts Ward
	Councillor K A Smyth (online)	Coastal Districts Ward

<b>Staff</b>	Mr M A Goodlet	Chief Executive Officer
	Mr E Herne	Director Corporate & Strategy
	Mr T Free	Director Planning & Development
	Mr J Duff	Director Technical Services
	Mrs N M Ceric	Executive Assistant to CEO & Mayor

**Public** There were 14 members of the public present and 6 online.

**Press** The POST Newspaper Representative.

**Leave of Absence (Previously Approved)** Her Worship the Mayor, C M de Lacy

**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.

### **1. 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.

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

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

Mr Michael Somerville-Brown, 8 Dalkeith Road, Nedlands  
(spoke in support of the recommendation)

Item 6

### **3. Disclosures of Financial Interest**

The Presiding Member reminded Councillors 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.

### **4. Disclosures of Interests Affecting Impartiality**

The Presiding Member reminded Councillors and Staff of the requirements of Council's Code of Conduct in accordance with Section 5.103 of the *Local Government Act*.

**4.1 Councillor Smyth – Item 6 - Responsible Authority Report - 97 - 105 Stirling Highway, Nedlands - S31 Reconsideration of a refused JDAP application - Mixed Use Development Comprising Multiple Dwellings, Office, Motor Vehicle Sales, Restaurant, Community Purpose**

Councillor Smyth disclosed an impartiality interest in Item 6 - Responsible Authority Report - 97 - 105 Stirling Highway, Nedlands - S31 Reconsideration of a refused JDAP application - Mixed Use Development Comprising Multiple Dwellings, Office, Motor Vehicle Sales, Restaurant, Community Purpose. Councillor Smyth disclosed that she is a Ministerial appointee and paid member of the MINJDAP that will be considering this item at a meeting scheduled for 8<sup>th</sup> February 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 McLeod's released to the local government sector in relation to a recent Supreme Court ruling, Councillor Smyth advised she would leave the room and would not debate the item or vote on the matter.

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

**4.2 Councillor Bennett – Item 6 - Responsible Authority Report - 97 - 105 Stirling Highway, Nedlands - S31 Reconsideration of a refused JDAP application - Mixed Use Development Comprising Multiple Dwellings, Office, Motor Vehicle Sales, Restaurant, Community Purpose**

Councillor Bennett disclosed an impartiality interest in Item 6 - Responsible Authority Report - 97 - 105 Stirling Highway, Nedlands - S31 Reconsideration of a refused JDAP application - Mixed Use Development Comprising Multiple Dwellings, Office, Motor Vehicle Sales, Restaurant, Community Purpose. 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 8<sup>th</sup> February 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 McLeod's released to the local government sector in relation to a recent Supreme Court ruling, Councillor Bennett advised he would leave the room and would not debate the item or vote on the matter.

Please note that although not participating in the debate Councillor Bennett 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.

**4.3 Councillor Youngman – Item 6 - Responsible Authority Report - 97 - 105 Stirling Highway, Nedlands - S31 Reconsideration of a refused JDAP application - Mixed Use Development Comprising Multiple Dwellings, Office, Motor Vehicle Sales, Restaurant, Community Purpose**

Councillor Youngman disclosed an impartiality interest in Item 6 - Responsible Authority Report - 97 - 105 Stirling Highway, Nedlands - S31 Reconsideration of a refused JDAP application - Mixed Use Development Comprising Multiple Dwellings, Office, Motor Vehicle Sales, Restaurant, Community Purpose. Councillor Youngman disclosed that his mother lives on Baird Avenue, and as a consequence, there may be a perception that his impartiality on the matter may be affected. Councillor Youngman declared that he would consider this matter on its merits and vote accordingly.

**4.4 Councillor Hodsdon – Item 6 - Responsible Authority Report - 97 - 105 Stirling Highway, Nedlands - S31 Reconsideration of a refused JDAP application - Mixed Use Development Comprising Multiple Dwellings, Office, Motor Vehicle Sales, Restaurant, Community Purpose**

Councillor Hodsdon disclosed an impartiality interest in Item 6 - Responsible Authority Report - 97 - 105 Stirling Highway, Nedlands - S31 Reconsideration of a refused JDAP application - Mixed Use Development Comprising Multiple Dwellings, Office, Motor Vehicle Sales, Restaurant, Community Purpose. Councillor Hodsdon disclosed that he owns a property on the south side of the highway with overshadowing for 1 hour, and as a consequence, there may be a perception that his impartiality on the matter may be affected. Councillor Hodsdon declared that he would consider this matter on its merits and vote accordingly.

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

Nil.

**6. Responsible Authority Report - 97 - 105 Stirling Highway, Nedlands - S31 Reconsideration of a refused JDAP application - Mixed Use Development Comprising Multiple Dwellings, Office, Motor Vehicle Sales, Restaurant, Community Purpose**

<b>Council</b>	27 January 2021
<b>Applicant</b>	Urbanista Town Planning
<b>Employee Disclosure under section 5.70 Local Government Act 1995 and section 10 of the City of Nedlands Code of Conduct for Impartiality.</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 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.
<b>CEO</b>	Mark Goodlet
<b>Attachments</b>	1. Responsible Authority Report and Attachments
<b>Confidential Attachments</b>	1. Submissions

**Councillor Smyth – Impartiality Interest**

Councillor Smyth disclosed that she is a Ministerial appointee and paid member of the MINJDAP that will be considering this item at a meeting scheduled for 8<sup>th</sup> February 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 McLeod's released to the local government sector in relation to a recent Supreme Court ruling, Councillor Smyth advised she would leave the room and would not debate the item or vote on the matter.

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

**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 8<sup>th</sup> February 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 McLeod's released to the local government sector in relation to a recent Supreme Court ruling, Councillor Bennett advised he would leave the room and would not debate the item or vote on the matter.

Please note that although not participating in the debate Councillor Bennett 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.

### **Councillor Youngman – Impartiality Interest**

Councillor Youngman disclosed that his mother lives on Baird Avenue, and as a consequence, there may be a perception that his impartiality on the matter may be affected. Councillor Youngman declared that he would consider this matter on its merits and vote accordingly.

### **Councillor Hodsdon – Impartiality Interest**

Councillor Hodsdon disclosed that he owns a property on the south side of the highway with overshadowing for 1 hour, and as a consequence, there may be a perception that his impartiality on the matter may be affected. Councillor Hodsdon declared that he would consider this matter on its merits and vote accordingly.

Councilor Smyth & Councillor Bennett left the meeting at 7.15 pm.

**Regulation 11(da) – Council wished to strengthen the reasons for refusal but including further information regarding traffic impacts of the development and to provide further expertise to support Council's recommendation for refusal and the presentation to the Metro Inner-North Joint Development Assessment Panel Meeting.**

Moved – Councillor Youngman  
Seconded – Councillor Hodsdon

### **Council Resolution**

#### **Council:**

- 1. notes Administration's recommendation that the proposed mixed use development at 97-105 Stirling Highway, Nedlands be refused by the Metro Inner-North Joint Development Assessment Panel in the Responsible Authority Report (Attachment 1);**
- 2. considers the information in Attachment 1 relating to the proposed mixed use development at 97-105 Stirling Highway, Nedlands and makes its recommendation to the Metro Inner-North Joint Development Assessment Panel as the Responsible Authority;**
- 3. incorporates its recommendation into the Responsible Authority Report (Attachment 1) for the proposed mixed use development at 97-105 Stirling Highway, Nedlands;**



4. **agrees to appoint Mayor de Lacy and Councillor Poliwka to coordinate Council's submission and presentation to the Metro Inner-North JDAP;**
5. **includes the following as an additional reason for refusal:**

**Traffic**

**The proposal is inconsistent with clause 67(t) of the Deemed Provisions given that it has not demonstrated that the amount of traffic likely to be generated by the development relative to the capacity of the road system in the locality will not cause an unreasonable adverse impact on traffic flow and safety;**

6. **requests the CEO appoint an external town planning expert to assist with Council's submission and presentation to the Metro Inner-North JDAP; and**
7. **requests the CEO appoint an external traffic engineer to provide a report in respect to clause 5 using the City's raw data to substantiate the reasons listed in clause 5.**

**CARRIED UNANIMOUSLY 9/-**

**Recommendation to Council**

**Council:**

1. **notes Administration's recommendation that the proposed mixed use development at 97-105 Stirling Highway, Nedlands be refused by the Metro Inner-North Joint Development Assessment Panel in the Responsible Authority Report (Attachment 1);**
2. **considers the information in Attachment 1 relating to the proposed mixed use development at 97-105 Stirling Highway, Nedlands and makes its recommendation to the Metro Inner-North Joint Development Assessment Panel as the Responsible Authority;**
3. **incorporates its recommendation into the Responsible Authority Report (Attachment 1) for the proposed mixed use development at 97-105 Stirling Highway, Nedlands; and**
4. **agrees to appoint Councillor (insert name) and Councillor (insert name) to coordinate Council's submission and presentation to the Metro Inner-North JDAP.**

**Executive Summary**

**The purpose of this report is for Council to consider the proposed mixed use development at 97-105 Stirling Highway, Nedlands and make its**

recommendation to the JDAP as the Responsible Authority. Council's recommendation will be incorporated into the Responsible Authority Report and lodged with the DAP Secretariat on 28 January 2021.

In accordance with the *Planning and Development (Development Assessment Panels) Regulations 2011*, and Section 31 of the *State Administrative Tribunal Act 2005*, Administration has prepared a Responsible Authority Report (RAR) in relation to the revised plans for a mixed use development comprising multiple dwellings, office, motor vehicle sales, restaurant, community purpose at the subject site.

The plans being considered by Council were received on 14 January 2021. The amended plans seek to address the Metro Inner West Joint Development Assessment Panel's (MINJDAP) reasons for refusal with respect to the previously refused application.

Some improvements have been made and multiple reasons for refusal have been adequately addressed. However, the changes made do not go far enough to make the proposal supportable. Administration is recommending Council do not support approval of the application.

## **Discussion/Overview**

### **History of Application**

This application was first considered by the Metro Inner-North JDAP on 17 July 2020. The Panel resolved to refuse the application on the following grounds:

1. The proposed development on a major landmark site with significant street frontage to Stirling Highway across the full width of a street block from Baird Avenue to Dalkeith Road within the core of the new Nedlands Town Centre:
  - a. fails to meet the vision for a new activated and vibrant Nedlands Town Centre; and
  - b. will result in an undesirable precedent for other development which will in turn fail to activate or meet the vision of a new vibrant Town Centre for Nedlands.
2. The proposed Plot Ratio of 5.8:1 will result in excessive building bulk contrary to the amenity of the areas which includes "the present and likely future amenity" of the area having regard to the vision for the development of a new Nedlands Town Centre. 'Amenity' as defined under Schedule 2 of the deemed provisions for Local Planning Schemes inserted into LPS 3.
3. The proposed Plot Ratio of 5.8:1 will result in excessive building bulk contrary to the orderly and proper planning of the area as envisioned in a new activated Nedlands Town Centre.

4. The parking shortfall will result in an overspill of cars searching for car parking spaces in the surrounding residential streets contrary to:
  - a. the amenity of the area;
  - b. the amenity of the existing and future residents; and
  - c. contrary to the orderly and proper planning of the area.
5. The proposed development fails to satisfy the clause 9 'Aims' of the City's LPS3 to:
  - a. protect and enhance local character and amenity;
  - b. respect the community vision for the development of the district;
  - c. achieve quality residential built form outcomes for the growing population; and
  - d. develop and support a hierarchy of activity centres.
6. Building Envelope
  - a. The development does not meet element objective O2.2.1 for Building Height as the proposed height is inconsistent with the future scale and character of the street and local area.
  - b. The development does not meet element objective O2.3.1 for Street Setbacks as there is insufficient setback to the secondary streets of Dalkeith Road and Baird Avenue for the residential (tower) components of the development.
  - c. The development does not meet element objective O2.4.1 for Side and Rear Setbacks as the development does not provide an adequate separation to neighbouring properties, in particular the rear setback to the East and Inner East Towers.
  - d. The development does not meet element objective O2.4.2 for Side and Rear Setbacks as the development does not provide a rear setback that is consistent with the desired streetscape character.
  - e. The development does not meet element objective O2.4.3 for Side and Rear Setbacks as the development does not accommodate an appropriate deep soil area that reinforces the landscape character of the area.
  - f. The development does not meet element objective O2.4.4 for Side and Rear Setbacks as the development does not achieve an appropriate transitional scale with adjoining areas.
7. Building Massing
  - a. The development does not meet element objective O2.5.1 for Plot Ratio as the proposal does not fit comfortably within the building envelope (to the extent this can be determined); that the massing of the buildings is not suitable, and as such the proposal is considered to represent over development of the site. Consequently, it is considered that the overall bulk and scale of development is not appropriate for the existing or planned character of the area.

- b. The development does not meet element objective O2.7.1 for Building Separation as it is considered that the proposed building mass of the East and Inner East towers are insufficiently set back from the northern boundary and are not stepped back further up the building in proportion to building height.
- c. The development does not meet element objective O2.7.2 for Building Separation as building separation for the Inner East and East towers does not adequately respond to and is not in proportion to the proposed building height.

8. Internal and External Amenity

- a. The development does not meet element objective O2.6.1 for Building Depth as the apartment layouts do not support optimisation of daylight and solar access and natural ventilation to the single aspect apartments (33% of total units).
- b. The development does not meet element objective O2.6.2 for Building Depth as the articulation of building form to allow adequate access to daylight and natural ventilation where greater building depths are proposed is limited for apartments in storeys 4-10.
- c. The development does not meet element objective O3.2.1 for Orientation as solar and daylight access within the development is not optimised, particularly for storeys 4-10.
- d. The development does not meet element objective O4.1.1 for Solar and Daylight Access as the development is not considered to optimise the number of apartments which received winter sunlight.
- e. The development does not meet element objective O4.1.2 for Solar and Daylight Access as windows have not been positioned to optimise daylight access for habitable rooms on south facing apartments.
- f. The development does not meet element objective O4.2.1 for Natural Ventilation as the number of apartments that are naturally ventilated is not maximised (38% not naturally ventilated).
- g. The development does not meet element objective O4.2.2 for Natural Ventilation as 38% of all apartments do not optimise natural ventilation of habitable rooms.
- h. The development does not meet element objective O4.2.3 for Natural Ventilation as single aspect apartments do not maximise and benefit from natural ventilation.

9. Parking Provision

- a. The development does not comply with clause 32.1(1) of City of Nedlands Local Planning Scheme No.3 and City of Nedlands Local Planning Policy – Car Parking as there is a shortfall of 165 car parking spaces.
- b. The development does not comply with clause 32.2(2) and (3) in that shared car parking provision has not been justified against the Scheme requirements.

- c. No provision has been made for residential visitor parking in accordance with Element 3.9 of SPP7.3 Residential Design Codes Volume 2.

## 10. Planning

- a. The development does not adequately satisfy clause 67 of Schedule 2 'Deemed Provisions' of the Planning and Development (Local Planning Schemes) Regulations 2015 with respect to:
  - i. Subclause (a) as the development does not:
    - 1. Achieve the aims or provisions of the City's LPS3 pursuant to clause 9 as the development does not:
      - 1. Protect and enhance local character and amenity as the proposed scale (varying between 11 and 26 storeys), bulk and massing of the podium/tower form exceeds the existing low height built form character.
      - 2. Respect the community vision for the development of the district as the development does not reflect the currently-endorsed community vision for the district (Local Planning Strategy 2017);
      - 3. Integrate land use and transport systems as it does not demonstrate sufficient car parking provision to cater for the development.
  - ii. Adequately satisfy all objectives of the Mixed Use zone pursuant to clause 16 of the City's Local Planning Scheme No. 3 as the development does not facilitate well-designed development of an appropriate scale which is sympathetic to the desired character of the area.
  - iii. R-Codes Vol. 2 Elements 2.2 (Building Height), 2.3 (Street Setback), 2.4 (Side and Rear Setbacks), 2.5 (Plot Ratio), 2.6 (Building Depth), 2.7 (Building Separation), 3.2 (Orientation), 4.1 (Solar and Daylight Access) and 4.2 (Natural Ventilation).
- ii. Subclause (b): the proposal is inconsistent with the requirements of orderly and proper planning with respect to the building height, setbacks, plot ratio, building depth, building separation, orientation, solar and daylight access and natural ventilation, and potential for unreasonable adverse impacts on car parking provision in the locality;
- iii. Subclause (c): the proposal does not adequately address:
  - i. State Planning Policy 7.0 (Principle 3 Built Form and Scale and Principle 6 Amenity)

- ii. State Planning Policy 7.3 Residential Design Codes Volume 2 Elements 2.2 (Building Height), 2.3 (Street Setback), 2.4 (Side and Rear Setbacks), 2.5 (Plot Ratio), 2.6 (Building Depth), 2.7 (Building Separation), 3.2 (Orientation), 4.1 (Solar and Daylight Access) and 4.2 (Natural Ventilation);
- iv. Subclause (g): the proposal is not generally consistent with the Car Parking Local Planning Policy in that there is a shortfall of non-residential car parking;
- v. Subclause (m): the proposal does not appropriately respond to the physical and strategic site context or the built form expectations applicable under LPS3 and as guided by the R-AC1 code, having regard to the building envelope and building massing;
- vi. Subclause (n): the proposal will adversely impact the amenity of the locality as the proposal is wholly disproportionate to the existing suburban character of Stirling Highway and given the application site is not located in the CBD, a metropolitan centre, major tourism node, a transit oriented development, or adjacent to a high amenity resource (e.g. frontage to a river, coast or regional open space)
- vii. Subclause (s): the provision of non-residential car parking is insufficient to meet the likely demand created by the proposed uses;
- viii. Subclause (zc): the State Design Review Panel does not support the development as it does not meet the criteria of good design for the majority of the Design WA design principles and does not provide sufficient amenity for future residents of the development or the greater community who will engage with the development as part of the emerging Neighbourhood Centre.

A copy of the decision, including the plans as refused by the JDAP are included in **Attachment 1**.

Application to the State Administrative Tribunal

Subsequent to the refusal determined by the JDAP, the proponent lodged an application for review of the decision on 23 July 2020. A series of mediation sessions took place on 18 September, 2 October, 23 October and 4 November 2020.

The State Administrative Tribunal (SAT) has made orders inviting the decision-maker, under Section 31 of the *State Administrative Tribunal Act 2004* (SAT Act) to reconsider its decision. The decision-maker may:

- affirm the previous decision,
- vary the decision, or

- set aside the decision and substitute a new decision.

Revised plans for the development were received by the City on 18 November 2020 and form the basis of this assessment report.

#### Summary of changes

There are a range of changes to the development proposal since it was last considered by the Panel. The most significant of these are summarised below. The proponent has prepared a Comparison Report highlighting the changes. This is included at **Appendix 3**.

#### Reduction in number of apartments

The original proposal included 301 apartments. This has since been reduced to 231, comprising 29 single bedroom, 110 two bedroom, 84 three bedroom and 4 four bedroom.

#### Reduction in height

The overall height of the development has been reduced from a maximum of 26 storeys to 24 storeys. The measurement of 'storeys' is based upon the definition contained in the Residential Design Codes Volume 2 and differs from the 'levels' used by the proponent.

The east tower will be 23 storeys plus roof top and a maximum of 83.3m above the natural ground level. This is a reduction of 2 storeys and 5.5m in height.

The inner tower will be 16 storeys plus roof top and a maximum of 58.7m above the natural ground level. This is a reduction of 2 storeys and 5.1m in height.

The west tower will be 21 storeys plus roof top and a maximum of 77.0m above the natural ground level. This is a reduction of 2 storeys and 2.1m in height.

#### Increase in number of car parking spaces

The number of car parking spaces has been increased from 455 to 504. This has been achieved through the creation of a fourth basement level. The previously-proposed car stackers have been removed from the application.

#### Reduced plot ratio

The proponent has advised that the plot ratio for the development has reduced from 5.8 to 5.2. The officer assessment has identified a plot ratio of 5.5.

#### Removal of inner east tower and reorientation of east tower

The 11 storey inner east tower included in the original proposal has been removed. This has allowed the east tower to be reoriented to be parallel with Stirling Highway. A separation distance of 14.3m – 17.8m is now provided between the east and inner towers.

#### Changes in setbacks

The Baird Avenue setback has been increased from a minimum of 1.1m to a minimum of 2.1m.

The northern (rear) setback has been increased as follows:

- West tower – from 14.6m to 15m (to balconies).
- Inner tower – from 18m to 18.5m (to balconies).
- East tower – from 7.0m to 7.5m – 13.5m (average 11m) (to balconies).

The Dalkeith Road setback has been increased for Levels 2 and above from 0.9m to 3.6m – 9.5m. The podium levels remain with a nil setback.

The reorientation of the east tower so that it is parallel to Stirling Highway has required the minimum setback to the future road widening boundary to be reduced. The east tower will now be 1.8m from the future lot boundary instead of ranging from 2.1m – 7.3m.

#### Changes in commercial uses

There has been a reduction in the number of restaurant/café tenancies from 6 to 4. The footprint of the motor vehicle sales tenancies has been reduced from 1,080m<sup>2</sup> to 641m<sup>2</sup>. A total of 295m<sup>2</sup> of shop space in 4 tenancies is to be provided on the ground floor.

The community purpose space originally located on the mezzanine level is now located on the ground floor. The area of community purpose has reduced from 166m<sup>2</sup> to 164m<sup>2</sup>.

The number of office tenancies has increased from 9 to 11. Total office floor space has increased from 2,104m<sup>2</sup> to 3,434m<sup>2</sup>.

#### Changes in facades

The facades for the development have been further refined, particularly for the east tower. Each of the three towers present an individual façade treatment.

#### Site Description, Development Context and Landscape Features

##### Site Description

The site is 6,044m<sup>2</sup> in area, is relatively flat and currently comprises two freehold lots. The eastern lot (Strata Lots 1-4 on Lot 100) is 2,017m<sup>2</sup>. Cancellation of the strata plan and amalgamation of the two freehold lots will be required to accommodate the development. The western lot (Lot 500) is 4,027m<sup>2</sup> and is not strata titled.

##### Current Development



The site is currently developed for commercial purposes. The eastern lot is currently occupied by a bicycle sales store (shop). The western lot and portion of the eastern lot is occupied by a motor vehicle sales showroom and yard (motor vehicle, boat and caravan sales). The buildings on the property are relatively modern in construction and are 'fit for purpose' for the current commercial operations. All buildings and improvements on the site are proposed to be demolished to accommodate the development.

#### Access

The site fronts Stirling Highway with additional frontage to Dalkeith Road (east) and Baird Avenue (west). Vehicle access is predominantly from the side roads, although a crossover onto Stirling Highway provides bollard access/egress into the car yard.

#### Surrounding Development

The site is located within the street block bounded by Stirling Highway to the south, Dalkeith Road to the east, Bedford Street to the north and Baird Avenue to the west. An aerial locality plan is provided in **Attachment 1**. All other properties within the street block are residential. The properties immediately to the north of the site are currently developed for grouped dwellings.

The opposite side of Stirling Highway is developed with a range of commercial properties, including the Windsor Cinema complex. A mix of commercial and residential development is found on the northern side of Stirling Highway to the east and west of the site.

#### Existing Landscaping / Vegetation

There is no significant landscaping or vegetation on the site due to its predominant use as a motor vehicle sales business. There is an existing landscaping strip along the Stirling Highway frontage of the site that incorporates low shrubs.

#### Heritage

There are two places currently listed on the State Register of Heritage Places that are located relatively close to the site. The first is the Peace Memorial Rose Garden located on Stirling Highway approximately 130m to the southwest of the site. The second place is the Captain Stirling Hotel located on Stirling Highway approximately 100m to the east of the site.

#### Zoning

The site is zoned Mixed Use by City of Nedlands Local Planning Scheme No.3 (the Scheme) with a density code of R-AC1. This zoning and density is in place on all properties fronting Stirling Highway in the locality. Properties immediately to the rear (north) of the site are zoned R160. Zonings in the vicinity are shown on **Attachment 1**.

## Existing Character

The applicant has prepared a context and character analysis at **Attachment 1**.

The properties fronting Stirling Highway are characterised by a trapezoidal shape caused by the highway being on a northeast-southwest axis with intersecting roads remaining on a north-south axis. This has caused buildings fronting the highway to utilise a range of rectilinear and non-rectilinear forms to address the lot shape. This has created the opportunity for serration both within a building and also within a street block. Front setbacks to the highway also vary throughout the streetscape.

Stirling Highway properties provide a range of uses including retail, showroom, residential, entertainment, hospitality, and office. Baird Avenue and Dalkeith Road are both residential in nature except for the corner properties on Stirling Highway. The scope of development remains modest in nature with building height limited in most cases to two storeys. The largest buildings currently in the vicinity are the Windsor Cinema and Cullen McLeod building with an approximate height of 4 storeys. Both of these buildings are located opposite the site.

There is a wide range of architectural styles given many properties have been redeveloped over time. Examples of 'Art Deco' or similar-era architecture are found on commercial buildings on the southern side of Stirling Highway. The current buildings on the site are of more modern construction with the dominant building being the car showroom. Residential properties in the vicinity present a wide range of architectural styles with examples of original housing, refurbished/expanded original housing and newer housing. Residential development remains at relatively low density given previous low density Scheme controls that remained in place until 2019.

Landscaping of commercial properties is relatively limited due to the generally larger buildings and need for on-site car parking. Relatively large front setbacks for residential properties on the side streets provides for landscaping that presents a 'leafy green' streetscape. This is supplemented by landscaping of backyards. An exception to the landscaped front and rear yards is found with the grouped dwelling developments that immediately abut the site to the north. These developments have smaller front and rear setbacks with a resultant reduction in landscaped area.

## Future Character

At the time of finalising this report policy work is underway to define the desired future character. Administration has prepared draft Local Planning Policy – Town Centre Context, which defines future character and is to be considered by Council at its February meeting.

In addition, the City has adopted for advertising the Nedlands Town Centre Precinct Plan Local Planning Policy (NTCPP) which has been advertised. The City has engaged consultants to undertake a Local Character and Distinctiveness study and to undertake built form modelling to test the provisions of the Draft NTCPP and the R-Codes Volume 2. Once this work is complete it will be presented back to Council for further consideration, which may involve substantial amendments to the NTCPP. The built form modelling currently underway is testing built form scenarios which relate to context, character as well as built form and scale against the existing R Code and Scheme Controls, that of the current draft NTCPP and a medium intensity scenario which will assist the City in testing and evaluating building envelope options and to determine the desired future character of the Nedlands Town Centre. This will assist the City in defining the appropriate built form responses to create a local planning framework which will be robust whilst providing an evidence-based approach to the establishment of any augmentation to the R Codes or the Scheme.

The NTCPP as advertised provides a number of cues to the future character of the precinct. The plan identifies the site as part of the Town Core sub-precinct, which will be a residential core with ground and first floors activated (cafes / offices). The objectives of the Town Core are:

- Require ground and first floors to be activated with restaurants, offices and cafes on the corner away from the noise of Stirling Highway;
- Support multi-purpose spaces to be used for small business hubs;
- Require increased densities above ground and first floors; and
- Relocate bus stops to be within Town Heart and Town Core.

It is anticipated that the Town Core sub-precinct would be the optimal location for density along the Stirling Highway Activity Corridor as prescribed as an RAC1 zone for the length of Stirling Highway. There is currently no clearly defined node and the NTCPP seeks to establish a local planning framework to support the development of a specific 'City Centre' for Nedlands with the Captain Stirling Hotel and Windsor Cinema buildings being clearly iconic and representative of Nedlands and its historic character. In context of LPS3 and designation of an Activity Centre Corridor, the defining of future desired character has formed an integral component of the development of a Precinct Plan LPP.

Through consultation with the community and the City's Council it was agreed that the Town Centre would be the ideal place for density and given that the subject site is at the lowest topographical point in the town centre, that a larger building would be more suitable on the northern side of Stirling Highway and at the lowest point in topography.

As such, through development of the NTCPP it was identified that the site of Chellingworth Motors had strategic importance given it is afforded three street frontages and access to a signalised intersection. The plan therefore includes provisions that support a higher and more dense development for this site than the rest of the Town Centre.

## Consultation

### Public Consultation

Advertising of the application was required by clause 64 of the Deemed Provisions (Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015). In accordance with the City's Local Planning Policy – Consultation of Planning Proposals, the development proposal is considered a Complex Application. Given the limited assessment period provided for the revised plans, the normal 21 day advertising period was reduced to a total of 19 days from 21 November 2020 until 10 December 2020. Advertising consisted of:

- Mail drop to all City of Nedlands properties;
- An advertisement was published on the City's website with all documents relevant to the application made available for viewing during the advertising period;
- An advertisement was placed in *The Post* newspaper published on 21 November 2020;
- A notice was affixed to the City's noticeboard at the City's Administration Offices;
- A community information session was held by City Officers on 3 December 2020, where approximately 30 residents attended.

Administration received a total of 223 submissions during the public consultation period, of which 10 submissions were in support of the application and the remaining 213 submissions objected to the proposal. A total of 13 submissions were received from within a 200m radius of the site. A total of 118 submissions were received from within a 1km radius of the site. It is noted that 51 of the submissions received were based on a 'pro forma' submission.

A summary of submissions is provided as **Attachment 1**. The key issues raised by more than 10% of submissions are summarised below. Other issues are included in the summary of submissions. An updated version of a detailed submission that was provided to the JDAP in full as part of the initial consideration has been provided at **Attachment 1**. The applicant's response to this submission is included at **Attachment 1**.

Issue raised in Objection	Officer Response
<p><b>Traffic</b>  <i>Will generate unmanageable traffic pressure</i>  <i>Impacts on residential streets to the north.</i>  <i>Risk to safety and amenity of surrounding streets.</i>  <i>Stirling Hwy and intersections already too congested.</i>  <i>Cumulative impact with other new developments not taken into account.</i>  <i>Traffic Impact Assessment inadequate / not using correct guidelines.</i>  <i>Need for a City-wide traffic assessment / modelling</i>  <i>Need to cul-de-sac Baird Avenue</i>  <i>Will impact on surrounding bicycle network</i></p>	<p>It is noted that traffic is a significant concern for the community.</p> <p>Stirling Highway is currently a busy road with impacts on side streets leading into it. The impact of this development on traffic has been outlined by the applicant in a Traffic Impact Assessment. This assessment has been reviewed by the City and Main Roads.</p> <p>The traffic impact of the development will be a significant factor in the assessment.</p> <p>The traffic impacts of the development are outlined in the RAR.</p>
<p><b>Building height</b>  Excessive height  Will be tallest along entire Stirling Highway  Out of context, not appropriate to its setting  Does not warrant bonus height  Maximum heights of 4-10 storeys cited.</p>	<p>It is noted that building height is a significant concern for the community.</p> <p>The Scheme provides for the acceptable outcomes of the R-Codes Volume 2 relating to building height to not be applied in the R-AC1 density area. This in effect removes a default building height limit for development on this site. However, the development will still be assessed against the element objectives for building height (O2.2.1-O2.2.4).</p> <p>An assessment of building height is outlined in the RAR and the R-Codes Assessment.</p>
<p><b>Character, Context and Amenity</b>  No relation to, or not in keeping with local context and character.  Overwhelms neighbouring and adjoining properties.  Not aesthetic</p>	<p>It is noted that the development being out of character or context with the locality is a significant concern for the community.</p> <p>Context and character is a key consideration of the development</p>

Issue raised in Objection	Officer Response
<p>Not in keeping with the existing context and character Impacts on amenity of locality Impacts on streetscape Will create an undesirable precedent Referencing UWA architecture is out of immediate context More appropriate for a CBD or train station location.</p>	<p>against the 10 principles contained in State Planning Policy 7.0 Design of the Built Environment.</p> <p>An assessment of context and character and character is included in the RAR and also considered in the R-Codes assessment.</p> <p>Consideration of amenity is enshrined in the R-Codes assessment.</p>
<p><b>Bulk and Scale</b> The bulk and scale is inconsistent with the surrounding locality. Does not demonstrate Good Design Amendments do not reduce the overall bulk and scale of the development Undesirable, out of context, insensitive to existing or possible built form Scale more appropriate in a CBD area The bulk and scale is excessive.</p>	<p>The overall bulk of the building has been reduced by the deletion of the inner east tower and provision of a gap between towers. However, the overall scale of the development remains considerable due to the relatively low reduction in tower height of 2 storeys. The bulk and scale of the development will be the largest seen on Stirling Highway to this date.</p> <p>This element is closely aligned with community concerns regarding building height and plot ratio.</p> <p>The appropriateness of the bulk and scale is considered in both the assessment against SPP 7.3 and the R-Codes.</p>
<p><b>Plot ratio</b> Exceeds plot ratio allowance of 3.0 Community benefit not proven to support 5.2 plot ratio.</p>	<p>The current acceptable outcome for plot ratio for the site is 3.0. Whilst a development can be considered with a higher plot ratio, it is assessed against the element objective. This requires the bulk and scale of the development to be appropriate for the existing or planned character of the area.</p> <p>The calculated plot ratio taking into account the current site area is 5.5 (applicants state 5.2). The element objective for plot ratio has not been met for this proposal.</p>

Issue raised in Objection	Officer Response
	Refer to the R-Code assessment for further discussion on compliance with the element objectives for plot ratio (Element 2.5).
<p><b>Car parking and bicycle parking insufficient</b>  Insufficient on site parking  Insufficient off site parking on surrounding roads and car parks  Will increase traffic congestion in surrounding streets  Construction parking will impact on neighbours</p>	<p>The number of car parking spaces has been increased from 464 to 504. This increase, as well as the decrease in the number of apartments by 70 has allowed a greater number of commercial car parking spaces than was previously proposed. There remains a number of technical shortfalls in parking when assessed against the R-Codes and Car Parking Policy. In particular, residential visitor parking is to be shared with commercial visitor parking and the number of bays provided for the restaurant uses is lower than policy requirements.</p> <p>Car parking is explored further in this report.</p>
<p><b>Visual privacy and Overlooking</b>  Overlooks surrounding properties  Direct views into private areas of neighbouring properties  Insufficient visual privacy setbacks</p>	<p>Visual privacy is assessed against Element 3.5 of the R-Codes Volume 2.</p> <p>The West and Inner Towers comply with the relevant acceptable outcome setbacks contained in Table 3.5 and Table 2.7 of the R-Codes Volume 2. The visual privacy setbacks for the East Tower do not meet the acceptable outcomes for Storeys 4-21.</p> <p>The visual privacy arrangements for the development have been assessed against element objective O3.5.1 in lieu of the acceptable outcomes and are considered to meet the objective, with conditions. Refer to the R-Code assessment for further discussion on compliance with the element objectives for visual privacy (Element 3.5).</p>
<p><b>Tree canopy and deep soil areas / Lack of green space / open space</b></p>	<p>The tree canopy and deep soil areas proposed have been assessed as</p>

Issue raised in Objection	Officer Response
<p>Does not meet requirements of Element 3.3 of the R-Codes. No ability for mature tree canopies and high quality landscaping. Lack of vegetation / open space Vegetation on the buildings is likely to fail Relies on road widening area for deep soil areas</p>	<p>compliant with the element objectives of Element 3.3 of the R-Codes Volume 2. It is noted that there is currently minimal landscaping on the site, with the proposed landscaping to expand the amount of vegetation.</p> <p>Refer to the R-Code assessment for further discussion on compliance with the element objectives for tree canopy and deep soil areas (Element 3.3) and landscape design (Element 4.12).</p>
<p><b>Noise</b> Public areas, Level 1 terraces and apartment balconies present a source of noise. External dining areas, pedestrian traffic and waste collection vehicles compromises neighbouring property's expectations of peace, comfort and amenity. Ambient noise from air-conditioners, rubbish trucks, more people Noise from traffic and cars</p>	<p>Noise from the proposed food and beverage tenancies and public plaza will be a particular consideration. A revised Acoustic Report has been provided that will form the basis of a more detailed noise management plan in the event of approval.</p> <p>A more detailed assessment of noise can be found at Element 4.7 of the R-Codes Volume 2. The development has been found to be able to meet this element, subject to conditions relating to noise management.</p>
<p><b>Setbacks / Building Separation</b> Too close to the highway Lack of building separation to northern neighbours</p>	<p>Issues relating to setbacks and building separation are discussed in Elements 2.3, 2.4 and 2.7 of the R-Codes Volume 2.</p> <p>The assessment has concluded that a number of element objectives relating to street setback, side and rear setback and building separation have not been met by this proposal.</p> <p>Refer to the R-Code assessment for further discussion on compliance with the element objectives for street setback (Element 2.3), side and rear setback (Element 2.4) and building separation (Element 2.7).</p>
<p><b>Overshadowing</b> The development will overshadow surrounding residential properties and businesses.</p>	<p>The development has been assessed as meeting the overshadowing provisions of Acceptable Outcome A3.2.3.</p>



Issue raised in Objection	Officer Response
<p>Inappropriate amount of overshadowing. Impact of overshadowing on the Peace Memorial Rose Garden</p>	<p>It is noted that the properties most affected are located immediately south of the site and are commercial. Whilst overshadowing extends further than the immediately neighbouring properties to the south, shading remains consistent with the acceptable outcome limits. It is noted that the closest residential properties to the site are located to the north and are not affected by overshadowing.</p> <p>Partial overshadowing of the Peace Memorial Rose Garden is limited to a relatively short period of time in the morning during winter. Advice from the City's parks and gardens section indicates that the amount of shading will not impact on the plantings within the garden.</p>
<p><b>Insufficient / minimal changes</b> There are minimal or insufficient changes from the initial proposal</p>	<p>The revised application has been assessed against the Scheme and relevant State Planning Policies and Local Planning Policies. This assessment is not limited to the changes made between the initial and revised proposals. Rather, the assessment considers the revised development in its entirety.</p>

### Key Issues of Assessment

Despite changes made by the Applicant, the following issues have not yet been resolved:

- Building height;
- Plot ratio;
- Side setbacks;
- Building Separation;
- Traffic;
- Design Principle 1 of SPP 7.0 - Context and character
- Design Principle 3 of SPP7.0 - Built Form

The assessment of the issues is provided in the RAR contained as **Attachment 1**. Given that the 27 January 2021 was the first available Council meeting and the deadline for that meeting occurred shortly after further information was

provided by the applicant, and the SDRP minutes were finalised it is likely that Administration will make minor wording and formatting changes to the RAR whilst Council is considering it. The Officer recommendation and key issues will remain the same. The final version of the RAR will be provided to Council in time for the 27 January 2021 Special Council Meeting.

### **Administration Recommendation**

The following is the Officer Recommendation that has been included at the back of the RAR. Should it consider not supporting the development, it is recommended that Council use this recommendation as a basis of its own advice to the JDAP.

It is recommended that the Metro Inner-North Joint Development Assessment Panel, pursuant to section 31 of the *State Administrative Tribunal Act 2004* in respect of SAT application DR161 of 2020, resolves to:

**Reconsider** its decision dated 17 July 2020 and **VARY its** decision for DAP Application reference DAP/20/01770 and accompanying plans date stamped 14 January 2021 (Attachments 1 and 4) in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015* and the provisions of the City of Nedlands Local Planning Scheme No. 3, for the following reasons:

### **Reasons**

1. The proposed Plot Ratio of 5.5 will result in excessive building bulk contrary to the amenity of the areas which includes “the present and likely future amenity” of the area having regard to the vision for the development of a new Nedlands Town Centre. ‘Amenity’ as defined under Schedule 2 of the deemed provisions for Local Planning Schemes inserted into LPS 3.
2. The proposed Plot Ratio of 5.5 will result in excessive building bulk contrary to the orderly and proper planning of the area as envisioned in a new activated Nedlands Town Centre.
3. The proposed development fails to satisfy the clause 9 ‘Aims’ of the City’s LPS3 to:
  - a. protect and enhance local character and amenity;
  - b. respect the community vision for the development of the district;
4. Building Envelope
  - a. The development does not meet element objective O2.2.1 for Building Height as the proposed height is inconsistent with the future scale and character of the street and local area.
  - b. The development does not meet element objective O2.4.1 for Side and Rear Setbacks as the development does not provide an

adequate separation to neighbouring properties, in particular the rear setback to the east tower.

- c. The development does not meet element objective O2.4.2 for Side and Rear Setbacks as the development does not provide a rear setback that is consistent with the desired streetscape character.
- d. The development does not meet element objective O2.4.4 for Side and Rear Setbacks as the development does not achieve an appropriate transitional scale with adjoining areas.

5. Building Massing

- a. The development does not meet element objective O2.5.1 for Plot Ratio as the proposal does not fit comfortably within the building envelope (to the extent this can be determined); that the massing of the buildings is not suitable, and as such the proposal is considered to represent over development of the site. Consequently, it is considered that the overall bulk and scale of development is not appropriate for the existing or planned character of the area.
- b. The development does not meet element objective O2.7.1 for Building Separation as it is considered that the proposed building mass of the east tower is insufficiently set back from the northern boundary and is not stepped back further up the building in proportion to building height.
- c. The development does not meet element objective O2.7.2 for Building Separation as building separation for the east tower does not adequately respond to and is not in proportion to the proposed building height.

6. Planning

The development does not adequately satisfy clause 67 of Schedule 2 'Deemed Provisions' of the Planning and Development (Local Planning Schemes) Regulations 2015 with respect to:

- a. Subclause (a) as the development does not:
  - i. Achieve the aims or provisions of the City's LPS3 pursuant to clause 9 as the development does not:
    - 1. Protect and enhance local character and amenity as the proposed scale (three towers varying between 16 and 23 storeys), bulk and massing of the podium/tower form exceeds the existing low height built form character.
    - 2. Respect the community vision for the development of the district as the development does not reflect the currently-endorsed community vision for the district (Local Planning Strategy 2017).
  - ii. Adequately satisfy all objectives of the Mixed Use zone pursuant to clause 16 of the City's Local Planning Scheme No. 3 as the development does not facilitate well-designed development of an

appropriate scale which is sympathetic to the desired character of the area.

- iii. Achieve element objectives of R-Codes Vol. 2 Elements 2.2 (Building Height), 2.4 (Side and Rear Setbacks), 2.5 (Plot Ratio) and 2.7 (Building Separation).
- b. Subclause (b): the proposal is inconsistent with the requirements of orderly and proper planning with respect to the building height, setbacks, plot ratio and building separation.
- c. Subclause (c): the proposal does not adequately address:
  - i. State Planning Policy 7.0 (Principle 1 Context and Character and Principle 3 Built Form and Scale)
  - ii. State Planning Policy 7.3 Residential Design Codes Volume 2 Elements 2.2 (Building Height), 2.4 (Side and Rear Setbacks), 2.5 (Plot Ratio), 2.7 (Building Separation).
- d. Subclause (m): the proposal does not appropriately respond to the physical and strategic site context or the built form expectations applicable under LPS3 and as guided by the R-AC1 code, having regard to the building envelope and building massing.
- e. Subclause (n): the proposal will adversely impact the amenity of the locality as the proposal is wholly disproportionate to the existing suburban character of Stirling Highway and given the application site is not located in the CBD, a metropolitan centre, major tourism node, a transit-oriented development, or adjacent to a high amenity resource (e.g. frontage to a river, coast or regional open space)
- f. Subclause (zc): the State Design Review Panel does not support the development as it does not meet the criteria of good design for the majority of the Design WA design principles and does not provide sufficient amenity for future residents of the development or the greater community who will engage with the development as part of the emerging Neighbourhood Centre.

## **Strategic Implications**

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

The approval of the development application in its current form will prejudice the strategic planning undertaken thus far by the City and more generally, the orderly and proper planning of this locality.

### **Who benefits?**

Although there are some community benefits noted in the applicant's submission, SDRP noted that the application does not provide enough tangible benefit to proposed such a large building.

**Does it involve a tolerable risk?**

Not applicable.

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

The majority of the RAR and SPP 7.3 assessment are complete, however, the SDRP minutes were not finalised at the time of writing this report and so the City will continue to work on the RAR consistent with that advice. Council will have a copy of the final RAR when making its recommendation at the 27 January 2021 Special Council Meeting.

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

Not applicable.

**Budget/Financial Implications**

Not applicable.

**Can we afford it?**

Not applicable.

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

If constructed, the development will generate greater rates for the City.

**Conclusion**

The application in its current form would prejudice the orderly and proper planning of this Town Centre and potentially undermine the strategic planning work undertaken by the City thus far.

The key issues of building height, plot ratio, building separation, side setbacks and traffic have not been resolved. The applicant removed 0.3-0.6 in plot ratio from the development (depending on whether the Administration or the Applicant's calculation is considered). Proper justification for a such a high and large development has not been provided. Development of this scale is generally suited to areas proximate to a train station, located in an ocean or river setting, or located in the Central Business District. The existing and future character of Stirling Highway has none of these features. The City is progressing its plan for high-density development in this strategically important location, however, significant changes to the height, bulk and scale are needed to make the development capable of support.

Councilor Smyth & Councillor Bennett left the meeting at 8.02 pm.

**Declaration of Closure**

There being no further business, the Presiding Member declared the meeting closed at 8.03 pm.