**Minutes**

**Special Council Meeting**

**29 March 2022**

**Attention**

**These Minutes are subject to confirmation.**

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

**Information**

Special Council Meetings are run in accordance with the City of Nedlands Standing Orders Local Law. If you have any questions in relation to items on the agenda, procedural matters, public question time, addressing Council or attending meetings please contact the Executive Officer on 9273 3500 or [council@nedlands.wa.gov.au](mailto:council@nedlands.wa.gov.au)

**Public Question Time**

Public question time at a Special Council Meeting is available for members of the public to ask a question about items on the agenda. Questions asked by members of the public are not to be accompanied by any statement reflecting adversely upon any Council Member or Employee.

Questions should be submitted as early as possible via the online form available on the City’s website: [Public question time | City of Nedlands](https://www.nedlands.wa.gov.au/public-question-time)

Questions may be taken on notice to allow adequate time to prepare a response and all answers will be published in the minutes of the meeting.

**Addresses by Members of the Public**

Members of the public wishing to address Council in relation to an item on the agenda must complete the online registration form available on the City’s website: [Public Address Registration Form | City of Nedlands](https://www.nedlands.wa.gov.au/public-address-registration-form)

The Presiding Member will determine the order of speakers to address the Council and the number of speakers is to be limited to 2 in support and 2 against any particular item on a Special Council Meeting Agenda. The Public address session will be restricted to 15 minutes unless the Council, by resolution decides otherwise.

**Disclaimer**

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

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# Declaration of Opening

The Presiding Member declared the meeting open at 6.00pm and drew attention to the disclaimer on page 2.

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

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 (from 6.02pm) Hollywood Ward

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

Mr M R Cole Director Corporate Services

Mr T G Free Director Planning & Development

Mr A D Melville Acting Technical Services

Mrs N M Ceric Executive Officer

Mr J D Kennedy-Stiff Manager City Projects and Programs

Mr D Thomason Coordinator Land and Property

**Public Gallery** There were 16 members of the public present and 9 online.

**Press** Nil.

**Leave of Absence** Nil.

**(Previously Approved)**

**Apologies** Councillor J D Wetherall Hollywood Ward

# Public Question Time

Public questions submitted to be read at this point.

Nil.

# Addresses by Members of the Public

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

Mr Andrew Edwards, spoke in opposition to the recommendation for item 8, CPS12.03.22 Lease and Sublease of Lot 502 on Deposited Plan 418496 (‘Tawarri’).

Councillor Hodsdon joined the meeting at 6.02 pm.

Dr Robin Collin, spoke in opposition to the recommendation for item 8, CPS12.03.22 Lease and Sublease of Lot 502 on Deposited Plan 418496 (‘Tawarri’).

Suspension of Standing Orders

Moved - Councillor Coghlan

Seconded - Councillor Bennett

**That Standing Order No. 3.4 (4) be suspended for the purpose of allowing additional public addresses in opposition to item 8.**

**CARRIED UNANIMOUSLY 12/-**

Ms Irene Tan, spoke in opposition to the recommendation for item 8, CPS12.03.22 Lease and Sublease of Lot 502 on Deposited Plan 418496 (‘Tawarri’).

Dr Dorothy Collin, spoke in opposition to the recommendation for item 8, CPS12.03.22 Lease and Sublease of Lot 502 on Deposited Plan 418496 (‘Tawarri’).

Suspension of Standing Orders

Moved - Councillor Coghlan

Seconded - Councillor Bennett

**That Standing Order No. 3.4 (5) be suspended for the purpose of extending the public address session longer than 15 minutes to permit the following public addresses.**

**CARRIED UNANIMOUSLY 12/-**

Mr Jon Bennett, spoke in opposition to the recommendation for item 8, CPS12.03.22 Lease and Sublease of Lot 502 on Deposited Plan 418496 (‘Tawarri’).

Professor Matt Hipsey, spoke in opposition to the recommendation for item 8, CPS12.03.22 Lease and Sublease of Lot 502 on Deposited Plan 418496 (‘Tawarri’).

Mrs Frances Shaw, spoke in opposition to the recommendation for item 8, CPS12.03.22 Lease and Sublease of Lot 502 on Deposited Plan 418496 (‘Tawarri’).

Mr Chris Zelestis, spoke in opposition to the recommendation for item 8, CPS12.03.22 Lease and Sublease of Lot 502 on Deposited Plan 418496 (‘Tawarri’).

Dr Louise Sparrow, spoke in opposition to the recommendation for item 8, CPS12.03.22 Lease and Sublease of Lot 502 on Deposited Plan 418496 (‘Tawarri’).

# 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*.

There were no disclosures affecting impartiality.

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

Nil.

# CPS12.03.22 Lease and Sublease of Lot 502 on Deposited Plan 418496 (‘Tawarri’)

|  |  |
| --- | --- |
| **Meeting & Date** | Special Council Meeting – 29 March 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil |
| **Report Author** | David Thomason – Coordinator Land & Property |
| **Director/CEO** | Mike Cole – Director Corporate & Strategy |
| **Attachments** | 1. Letter from Minister for Lands dated 25 October 2021 2. Excerpt of Section 3.59 of the *Local Government Act 1995* 3. Copy of Publicly Advertised Business Plan – Major Land Transaction 4. Net Estimates – Tawarri Head Lease and Sublease Rental Projections over 42-years 5. **CONFIDENTIAL** Draft Head Lease Agreement 6. **CONFIDENTIAL** Draft Sublease Agreement 7. **CONFIDENTIAL** Draft Limited Scope Financial Due Diligence of Tawarri Hot Springs – Moore Australia 8. **CONFIDENTIAL** Public Submissions – Collated 9. **CONFIDENTIAL** SecondaryLegal Advice – Requests for Further Information |

**Regulation 11(da) – Council agreed not to proceed for the following reasons - Commercial Risk, inappropriate use of public land, cost of carparking and location inappropriate for such an enterprise.**

Moved – Mayor Argyle

Seconded – Councillor Mangano

**Council Resolution**

**Council:**

1. **in accordance with section 3.59 of the *Local Government Act 1995*, notes that each of the public submissions received during the statutory advertising period of the major land transaction has been considered; and** 
   1. **requests the Chief Executive Officer not proceed with the major land transaction as proposed; and**
   2. **requests the Chief Executive Officer to promptly notify in writing both Tawarri Hot Springs Pty Ltd and the Department of Planning, Lands and Heritage of Council’s decision.**
2. **requests the CEO to commence investigation of alternative options for the Tawarri site; with the primary objective being that the Class A Reserve that constitutes the site remains in the full care and control of the City.**

**CARRIED 7/5**

**(Against: Crs. Senathirajah McManus Youngman Combes & Hodsdon)**

Recommendation

Council:

1. in accordance with section 3.59 of the *Local Government Act 1995*, notes that each of the public submissions received during the statutory advertising period of the major land transaction has been considered; and
   1. requests the Chief Executive Officer proceed with the major land transaction as proposed; and
   2. endorses the Draft Head Lease agreement between the State of Western Australia and City of Nedlands; and
   3. endorses the Draft Sublease agreement between the City of Nedlands and Tawarri Hot Springs Pty Ltd, subject to the following amendments:
      * 1. clause 5.1(2)(b) and 5.3(2) to remedy inconsistencies between notice provisions; and
        2. clause 26 to include a 6-month timeframe for a contract for demolition to be awarded; and
        3. clause 26 to address circumstances as contemplated by clauses 24.1, 24.2 and 27.2; and
        4. clause 27 to include the amended clause 26 (above) within the Essential Terms.
   4. subject to the Minister for Lands’ consent, authorises the Chief Executive Officer and Mayor to execute the agreements and apply the City’s Common Seal.

**Purpose**

Following Council’s previous resolution on this matter on 21 April 2021, this report is presented so elected members can consider the public submissions received relating to the proposed major land transaction and to therefore make a final decision on whether the City will proceed with the transaction as proposed.

**Voting Requirement**

Absolute Majority.

**Background**

The Tawarri Hot Springs Site (‘Site’) is located at Lot 253, 120 Esplanade, Dalkeith and is a Class A Reserve vested to the City for care and control. Currently occupying the site is the facility better known as ‘The Dome’. The Dome was built in 1957 and operated as the Tawarri Function Centre until 2018 when the previous lease was terminated due to safety concerns with the asset.

The Site was first identified in the Strategic Community Plan 2013-2023 as a prime location for a public private partnership. The appetite to identify a future for the Site was reaffirmed in the Nedlands 2018-2028 Strategic Community Plan (‘SCP’). During this time, the Site has been subject to six resolutions of Council with the first being in February 2016 and most recent being in April 2021. For Council’s benefit, a summary of each resolution is chronologically detailed below. Also included within the timeline is any detail on where elected members were formally briefed on the project.

|  |  |  |
| --- | --- | --- |
| **Date of Update** | **Update Type** | **Update Given** |
| 23 February 2016 | Report | In consideration of item TS01.16, Council authorised administration to commence an investigation into future options for the Tawarri site. |
| 27 September 2016 | Report | In consideration of item 13.5, Council instructed the CEO to call for Expressions of Interest (‘EOI’) for the future development of the Tawarri site. |
| 7 February 2017 | Briefing | The City’s Project and Policies Officer gave a verbal update on the submissions received following the EOI process. The briefing included an evaluation matrix and a summary of each submission for elected members. |
| 7 March 2017 | Briefing | An on-site briefing was then held on 7 March 2017 by the then City’s CEO. Prior to the briefing, arrangements had been made to peg out the site to indicate the boundaries of the existing Tawarri Function Centre Lease Area and also to overlay the extent of the proposed new boundaries for each of the submissions received. |
| 27 February 2018 | Report | In consideration of item 13.8, Council appointed a panel for the purpose of assessing formal proposals for the future development and lease of the Tawarri Site. |
| 26 June 2018 | Report | In consideration of item 11.1, Council approved Tawarri Hot Springs Pty Ltd (‘THS’) as the ‘Preferred Proponent’ subject to Lease and Agreement of Sublease negotiations and instructed the then CEO to undertake relative actions to progress the project including a Business Case for submission to Department of Planning, Lands and Heritage (‘DPLH’) seeking an amendment to the Class A Reserve |
| 5 February 2019 | Briefing | A briefing was held by the then City’s Director Corporate and Strategy who gave a verbal update on the progress of agreement negotiations with THS. Elected members were advised of changes to the original design of the proposed development and that arrangements were being made for the preferred proponent and its representatives to present their designs to the original evaluation panel |
| 2 April 2019 | Briefing | A briefing was held by the then City’s Director Corporate and Strategy and consultant from Adroit Consulting (who was engaged by the City to undertake negotiations with THS). At this briefing, elected members were provided with an update on negotiations with the key components of the Heads of Agreement being discussed. |
| 21 May 2019 | Briefing | A further briefing was held with the consultant Adroit Consulting presenting the final draft of the non-binding Heads of Agreement. |
| 27 August 2019 | Report | In consideration of item CPS13.19, Council approved the conditions as contained in the non-binding Heads of Agreement relating to the Tawarri Site Redevelopment with a minor amendment to the term and instructed the then CEO to undertake further actions to progress the project which included a Due Diligence Report and negotiations on a draft Head Lease and Sublease document with the State and Tawarri Hot Springs Pty Ltd. |
| 30 June 2020 | Briefing | A briefing was held by the then City’s Director Corporate and Strategy who provided a verbal update on the project noting that COVID had significantly halted the negotiations process. |
| 15 September 2020 | Briefing | A further briefing held by the then City’s Director Corporate and Strategy who provided a verbal update on the project with the key point being the difficulty negotiating with the DPLH on the rent which may be payable to the State under the Head Lease. |
| 13 April 2021 | Briefing | Prior to the Committee meeting, a briefing was held with THS and its representatives providing elected members with an update on the project. |
| 27 April 2021 | Report | In consideration of item 17.1, Council noted the updated due-diligence report from Moore Australia and requested the then CEO secure financial and personal guarantees from each of the Directors of Tawarri Hot Springs Pty Ltd. Council also approved the Key Terms of the Head Lease and Sublease draft documents and requested the then CEO to commence advertising of the Major Land Transaction in accordance with the *Local Government Act 1995*. Confidential copies of the draft Head Lease, draft Sublease and financial due-diligence report by Moore Australia documents can be viewed in confidential attachments 5, 6 & 7 |
| 26 October 2021 | Briefing | A briefing was held with THS providing Council with an opportunity to ask any final questions they may have to address any concerns with the development. |

**Discussion**

Following Council’s most recent resolution of 27 April 2021 (Item 17.1), Council requested the then CEO to commence all statutory advertising of the Major Land Transaction in accordance with the *Local Government Act 1995.*

During the Major Land Transaction advertising period, the City received a total of 43 submissions from the public. These submissions have been provided to Elected members in full in confidential attachment 8.

Of the 43 submissions received, 37 were in objection to the development, 5 were in support and 1 was undecided. In addition, only 1 submission was received without any explanation for their support or objection.

The table below shows a breakdown of the types of comments received within each of the submissions.

In order to address each of the concerns within the submissions received, Administration have provided the table below:

|  |  |
| --- | --- |
| **Issue Raised** | **Officer Comment** |
| **Commercial risk to the City:**   1. Risk of the proponent defaulting on its lease and leaving the City with annual rent payable to the State 2. Risk of the proponent not finishing the development, leaving the City with a half-built facility. 3. Risk of the business not succeeding, leaving the City with a ‘white elephant’ facility 4. Rent is too low 5. Business Plan has no details about financial guarantees on an inexperienced operator 6. Possible future mandated rent relief due to the pandemic has not been considered | Issues relating to a ‘Commercial risk to the City’ was raised within 37 submissions  With any commercial transaction, there is risk. By having a strong Sublease in place which largely mirrors the conditions imposed upon the City in the Head Lease, the City can mitigate as much risk as possible to itself.   1. Should the proponent default on the sublease and the sublease is terminated, the rent payable under the Head Lease would remain only until such time as the City has surrendered the Head Lease (using clause 10 of the Draft Head Lease – see confidential attachment 5). This clause was added to the agreement following the Minister for Lands’ letter of assurance as per attachment 1.   Should the City swiftly terminate the Head Lease, there will be no cost to the City in this event.   1. Should the proponent’s development not proceed part way through construction, the City may choose to have the proponent remove the facility and return the site so that it is clear and level. This mitigation strategy has been included as a provision within the Sublease through the ‘Construction Bank Guarantee’ (clause 5) to ensure there will be no cost to the City in this event. 2. Should the proponent’s development not be successful after the construction has been completed and the business becomes operational, and the Sublease is terminated, the City may choose to either have the proponent remove the facility and return the site so that it is clean and level or peacefully surrender the facility to the City for its ownership (clause 26). In addition to this clause, the City also may rely upon clause 21 which relates to an unconditional and irrevocable Bank Guarantee being provided to the City. Both of these clauses mitigate any financial risk to the City in this event. 3. The rent has been negotiated with both the proponent and the State under two separate agreements with the rent payable under the Head Lease being dictated by the State in accordance with the Valuer General’s Assessment. In order to minimise risk to the City, the City has therefore included the same rental calculation methods within the Sublease to ensure the City is always in receipt of a profit from the arrangements. Any other methodology would leave the City exposed to possible deficits in rent collected/payable. 4. Further to Council’s resolution of 27 April 2021, personal financial guarantees from each Director of Tawarri Hot Springs Pty Ltd were requested by the then CEO. However, the Directors of THS have declined this request on the basis that the proposed Sublease already has numerous onerous protective mechanisms including the Construction Bank Guarantee and the further Bank Guarantee.   The Construction Bank Guarantee is a financial guarantee that runs for the duration the construction is being undertaken on the Site. It is set at a dollar amount equivalent to the cost of demolishing all construction works and bringing the Site back to a clean and clear condition.  The Bank Guarantee is a financial guarantee that runs for the entire term of the sublease period and is equivalent to 6-months gross rent. The Bank Guarantee may be drawn upon by the City to cover costs or losses incurred.  Noting the above and given the City also has negotiated the inclusion of the Early Termination clause within the proposed Head Lease, it is reasonable to assume the City is adequately protected and the personal financial guarantees are not necessary.   1. This is a risk that can neither be predicted, nor mitigated as any rent relief will be legislated and the imposition would be out of the City’s control. Should the rent payable under the Sublease ever be reduced due to legislation, it would be in the City’s best interests to attempt to negotiate similar reductions with the State under the Head Lease |
| **Inappropriate use of public land:**   1. Loss of natural hot springs and ambience on the foreshore | Issues relating to ‘Inappropriate use of public land’ was raised within 24 submissions  The use of this land is governed by the State as ‘landowner’ for Crown Reserves. Following the parliamentary process required to propose an excision of the land, (in which statewide advertising occurred), no objections were received, and the State has provisionally agreed to the proposed use of this portion of land for commercial purposes. |
| **Traffic/Cost of carpark:**   1. Traffic impact has not been considered 2. Cost of potential upgrades to the carpark have not been considered | Issues relating to ‘Traffic/Cost of carpark’ was raised within 20 submissions  The carpark is not part of the proposed Head Lease and Sublease premises. However, it is acknowledged potential traffic and carparking issues could be considered as ‘knock on’ effect of the development. The purpose of the Development Application process is to ensure these types of effects are considered. A further report will be presented which relates specifically to the Development Application.   1. As noted above, traffic will be considered as part of the Development Application process. 2. Within the initial negotiation phases, the City identified that development (through the application or its operations) may trigger a requirement for more bays sometime in the future. Should this be the case, the City and proponent have agreed to the proponent contributing an amount up to $200,000 towards the additional bays. The City agreed to this contribution as part of the non-binding Heads of Agreement in the report to Council of 27 August 2019. This mitigation strategy has also been included as a provision within the Sublease. |
| **Location inappropriate:**   1. The type of development does not suit the location 2. The development should not be located next to a children’s playground. | Issues relating to the ‘Location being inappropriate’ was raised within 17 submissions  The use of this land is governed by the State as ‘landowner’ for Crown Reserves. Following the parliamentary process required to propose an excision of the land, (in which statewide advertising occurred), no objections were received, and the State has provisionally agreed to the proposed use of this portion of land for commercial purposes. |
| **Business Plan lacks detail/compliance:** | Issues relating to the ‘Business Plan lacking detail/compliance’ was raised within 14 submissions  Amongst the submissions received, there were numerous comments about the Business Plan which was advertised, its detail (or perceived lack thereof) and whether it complied with obligations under the *Local Government Act 1995.*  Prior to the City advertising the Business Plan, the City’s Solicitors reviewed the document to ensure its compliance with sections 3.58 & 3.59 of the *Local Government Act 1995.*  Following submissions received from members of the public questioning the validity of the Business Plan and relative process, the City engaged a second opinion from its Solicitors to comprehensively review the Business Plan and surrounding process. The resultant advice received was that the document and process satisfied the requirements of the *Local Government Act 1995.*  In addition, it is worth noting that a common misconception amongst the submissions was that this document was the business plan for the operations of the proponent’s business - this is incorrect. As described within the ‘Statutory Implications’ section of this report, the Business Plan that the City has advertised relates to the Major Land Transaction and has the sole purpose of satisfying the requirements of the *Local Government Act 1995.* |
| **Development too big:** | Issues relating to the ‘Development being too big’ was raised within 13 submissions  The size of the development within the proposed sublease area will be subject to the Development Application process |
| **Lack of planning approval and comments:**   1. Planning approval has not been given 2. Planning approval comments have not been included within the business plan | Issues relating to the ‘Lack of planning approval and comments’ was raised within 6 submissions  As mentioned previously within this report, the Development Application or planning approval part of this project is subject to further consideration by Council and thus no planning approval comments were included within the Business Plan. |
| **Flooding/Fire has not been considered:**   1. Has flooding been considered? 2. Has fire risk been considered? | Issues relating to the ‘Risk of fire/flooding’ was raised within 6 submissions  The consideration of fire and flooding will be assessed along with the Development Application and planning approval process. |
| **Café/function centre would have been more appropriate:** | Issues relating to a ‘Café/function centre being more appropriate’ was raised within 6 submissions  A café and restaurant are part of the proposed development. This inclusion was made at the request of the City through the process to select the preferred proponent. |
| **Lack of aboriginal consultation:** | Issues relating to a ‘Lack of Aboriginal consultation’ was raised within 6 submissions  Any consultation surrounding aboriginal interests in the land is a responsibility of the Department of Planning, Lands and Heritage (‘DPLH’) within the Development Application and planning approval process. |
| **Various other objections:**   1. How the pandemic has affected the potential business operations has not been considered (4) 2. Removal of tree canopy is inappropriate (2) 3. Proponents business plan should be made available to the public (2) 4. The City of Nedlands should not be involved in running a commercial business (2) 5. Development does not match with the sites historical significance (2) 6. This proposal is a flawed interpretation of the Strategic Community Plan requirements 7. There has been no advertising of the Class A land excision 8. The financial benefits of the development have been put ahead of community benefits of the space 9. Has damage to the seawall by increased boating traffic been considered? 10. There is no scientific evidence of medical benefits of hot spring treatment 11. The City is not resourced to run such a business 12. Head Lease and Sublease terms are too long 13. The profits realised will only lead to higher salaries for CEO and other staff 14. The valuation carried out over 12-months ago is invalid. 15. Has the Audit and Risk Committee vetted the Business Plan? 16. The Tawarri Subcommittee of Councillors no longer exists. 17. Is Mark Jones a Director of Tawarri Hot Springs Pty Ltd. 18. There is no risk assessment included within the Business Plan. | There were 26 various other issues identified within the submissions   1. The Business Plan that the City has advertised relates to the Major Land Transaction with the purpose of satisfying the requirements of section 3.59 of the *Local Government Act 1995*. This business plan is not the business plan for the proponents business. 2. Council are aware that some removal of tree canopy will be required during the construction phase. However, as part of the Development Application and planning approval process, the landscape and tree canopy will be considered – including details of numbers of new trees to be planted. 3. The proponents business plan is commercial in confidence and cannot be made available to the public by the City. 4. The City is not running the business, the City is proposing to lease and sublease the land. 5. The proposed development is a result of previous Council decisions and subsequent negotiations between the City and preferred proponent. 6. The proposed development is a public private partnership with the result being a new facility to utilise the site. 7. The land is governed by the State as ‘landowner’ for Crown Reserves. Statewide advertising was required as part the State’s process to propose an excision of the land. The DPLH have confirmed that no objections were received throughout this process. 8. Whilst the City will receive a financial benefit through the rental income and rate revenue, the facility and the proponents business will also offer a benefit to the community. 9. The riverwall is considered an asset of the City. The City has insurances in place for any damage to public property 10. The City is not running the business, the City is proposing to lease and sublease the land. 11. The City is not running the business, the City is proposing to lease and sublease the land. 12. The term of the Head Lease and Sublease have been negotiated in order for the proponent to have adequate time to recoup capital costs associated with building the facility. On 27 August 2019 as part of the non-binding Heads of Agreement, the City had actually previously agreed to a term 50-years, however, the term has since been reduced to 21-years plus a further 21-years (42-years) as dictated by the State 13. There is no correlation between the rental income the City receives and CEO or staff salaries. 14. The City has undertaken 2x market valuations. The first was undertaken in August 2018 as part of negotiating a fair rental value with the proponent. The second was undertaken in May 2021, immediately prior to the advertisement of the Business Plan (June-July 2021). As it was undertaken within 12-months of the proposed disposition, this second valuation is considered compliant with the *Local Government Act 1995* 15. The Business Plan was not vetted by the Audit and Risk Committee because there was no requirement to do so. 16. Noted. 17. Mark Jones has been listed as a Director of Tawarri Hot Springs Pty Ltd. 18. As described above, amongst the submissions received, there were numerous comments about the Business Plan which was advertised, its detail and whether it complied with obligations under section 3.59 of the *Local Government Act 1995.*   A common misconception is that this is the business plan for the operations of the proponent’s business - this is incorrect.  As described previously within this report, the Business Plan that the City has advertised relates to the Major Land Transaction and has the sole purpose of satisfying the requirements under section 3.59 of the *Local Government Act 1995.*  Prior to the City advertising the Business Plan, the City’s Solicitors reviewed the document to ensure its compliance with the act. This action was also repeated after the advertisement of the Business Plan with the same outcome. |

**Explanation – Financial Predictions**

Amongst the submissions received, there were a few queries in relation to how the rental projections were calculated. Therefore, the dialogue below details the methodology for each year of rent expected.

The rent has been negotiated with both the proponent and the State under two separate agreements with the rent payable under the Head Lease being dictated by the State (i.e. VG Assessment).

In order to minimise risk to the City, the City has therefore included the same rental calculation methods within the Sublease to ensure the City is always in receipt of a profit from the arrangements. Any other methodology would have left the City exposed to possible deficits in rent collected/payable.

On 27 April 2021, in consideration of confidential item 17.1, Council agreed to the Key Terms of the proposed Head Lease and Sublease agreements. As part of that endorsement was an agreeance to the methodology for both the collection of rent from the proponent and payment of rent to the State.

Council will note the complexities of the proposed arrangements lie solely within the first 3-years of the agreement, known as the ‘Construction Period’.

Year 1 (Construction Period):

* In year 1, there is no rent payable to the City, as the proponent has negotiated a 22-month rent free period.
* In year 1, there is no rent payable to the State, as the City has negotiated a 24-month rent free period
* The Net Result is $0

Year 2 (Construction Period):

* In year 2, there is no rent payable to the City for the first 10-months, as the proponent has negotiated a 22-month rent free period.

For months 11 & 12, the rent payable will commence at $120,000pa + Turnover Rent of 1% of the gross sales in excess of $2,000,000 per annum up to $8,000,000 per annum. However, given the unlikelihood of the development being completed within 24-months, it is realistic to expect there will be $0 turnover during this period.

This results in rent payable being estimated at $20,000 (i.e. 2-months of a 12-month total sum of $120,000)

* In year 2, there is no rent payable to the State, as the City has negotiated a 24-month rent free period
* The Net Result is an estimated $20,000 income

Year 3 (Construction Period):

* In year 3, the rent payable will continue to be $120,000pa + Turnover Rent of 1% of the gross sales in excess of $2,000,000 per annum up to $8,000,000 per annum.

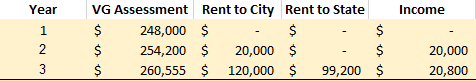
However, given the unlikelihood of the development being completed within 36-months, it is realistic to expect\* there will be $0 turnover during this period.

\*This realistic expectation was revised once the pandemic had taken toll on Perth. There is a real expectation that tradespeople and materials will be harder to procure as a result of the pandemic. This has pushed out the estimated construction time for the development to 36+ months. Should the development be finished faster than anticipated, then the City would be entitled to more rent, based on the Turnover of the business.

This results in rent payable being estimated at $120,000

* In year 3, the rent payable will commence at $99,200pa
* The Net Result is an estimated $20,800 income

The table below shows the rental projections for Year 1, 2 and 3.

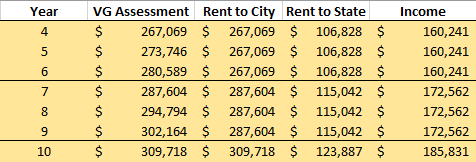


As the methodology of determining the rent payable to the State under the Head Lease was not negotiable, at the commencement of Year 4, the City has negotiated the same rental calculation methods within the Sublease to ensure the City is always in receipt of income for the arrangements.

From Year 4, the projected calculations are much simpler with the City to receive 100% of the Valuer General (‘VG’) Assessment from the proponent, with the City obliged to pay 40% of that revenue to the State under the Head Lease.

The rent on both agreements will then be subject to a Market Review (based on VG Assessment) every 3-years thereafter. For the purposes of the projection, the VG has been increased each year by a value of 2.5%.

As a visual, the table below shows the rental projections for Years 4-10



The City’s long-term financial plan details budget implications over a 10-year cycle. Should elected members approve the recommendation as contained within this report, the projected impact to the budget shows the City realising an estimated net profit of $1.1 million\* over the first 10-year cycle of the arrangement.

*\*This $1.1 million includes all costs to the City incurred at the time of writing this report. These include costs for solicitors, auditors, surveyors, commercial property experts and valuers totalling approximately $127,200.*

Extended over the lifetime of the agreement, the City estimates rental revenue of approximately $10 million. For the complete rental projections table over the 42-year life of the proposed agreements, please see attachment 4.

**Explanation – Estimated Rate Revenue**

The Business Plan notes the City is able to collect rate revenue. Elected members are advised that rate revenue is very difficult to project over 42-year life. The reasons for this are because the Gross Rental Value (‘GRV’) has not been determined yet and the GRV can fluctuate greatly throughout the lifetime of an agreement.

However, for the purposes of projection, the City has investigated other venues on either riverfront or beachfront sites and averaged a dollar per square meter rate ($/sqm).

Based on an average $21.95/sqm for the 5560sqm site, the estimated rate revenue for Year 1 would be $122,000. Using a 2% increase annually, the City could best estimate rate revenue of approximately $7.8 million for the lifetime of the agreement (42-years).

**Explanation – Carpark**

As described earlier in this report, the carpark is not part of the proposed Head Lease and Sublease premises. The carpark is located on land which is vested to the City for care and control and will remain so regardless of the situation regarding the leasing arrangements.

However, noting the elected members keen interest in the carpark, the City’s Technical Services Directorate have provided the below information for consideration;

* The Esplanade was assessed as part of a Road Condition Audit, undertaken at the beginning of 2021. As part of this audit the road was assessed as being in generally average condition, with approx. six years of life remaining.
* As an interim measure the Road Condition Audit recommended the Esplanade be crack sealed within one year, which will be undertaken in the 21/22 Financial Year.
* The City is responsible for rehabilitating this road as part of its annual Capital Works Program, whether any development proceeds or not.
* The road drainage in the immediate vicinity of the All Abilities Playspace and Tawarri Site have been subject to flooding on high tide and high rain fall events. These flooding events damage the road and impact on road user experience. The City will need to rectify the drainage issues in this area to ensure ongoing quality of the road pavement and improve the road user experience.
* Given the complexities and impact to users of undertaking either the road rehabilitation or remediation of the drainage issues, Administration recommends constructing these at the same time to reduce abortive works and minimise construction time. The cost estimate to undertake these works is $995,000 (±50%).
* The image below shows in magenta, the areas of the carpark and road which require rehabilitation (due to age of the asset) or remediation (due to drainage issues).



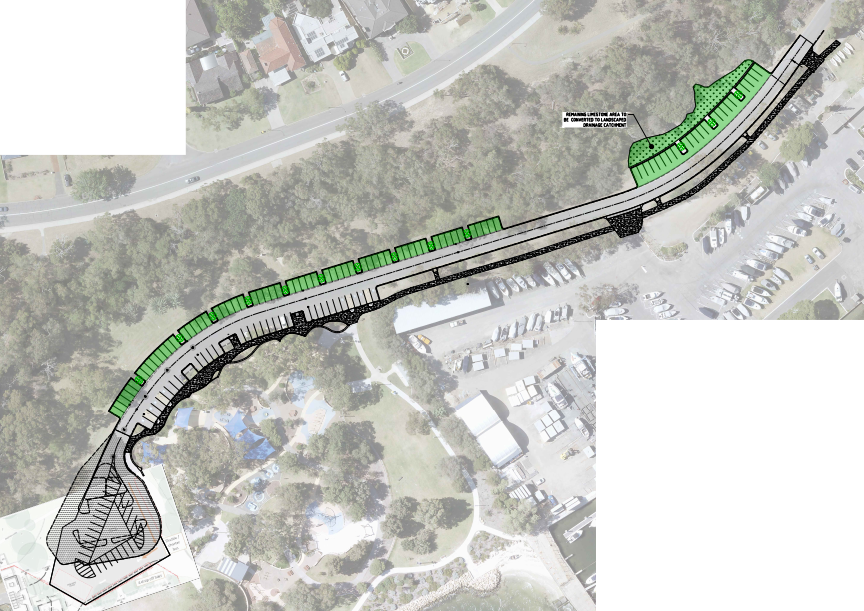
Whilst the carpark is the City’s responsibility, it is acknowledged potential traffic and carparking issues could be considered as ‘knock on’ effect of the development. The purpose of the Development Application process is to ensure these types of effects are considered.

The City’s Urban Planning Team have advised that there is adequate existing parking to cater for the projected demand. However, should nearby parking areas become full during peak times, the development proposes a range of parking management solutions and that it will be recommended through the Development Application process that a parking management plan acceptable to the City of Nedlands be prepared in the event of development approval.

In addition, as noted previously within this report – in the event the carpark does require additional capacity sometime in the future, the City and proponent have agreed to the proponent contributing an amount up to $200,000 towards the additional bays. The City agreed to this contribution as part of the non-binding Heads of Agreement in the report to Council of 27 August 2019. The City’s Technical Services Team have estimated the cost to formalise any additional bays (if/when required) would be $225,000\* (±50%).

*\*estimate was made on the assumption the formalisation of those car bays occurs at the same time as the remediation of the drainage issues and rehabilitation of the current carpark.*

The image below shows in green, the car bays that will be formalised in the event additional bays are required.



In conclusion, the rehabilitation and ongoing maintenance of the carpark and road is the City’s responsibility, regardless of the proposed leasing arrangements. The asset is nearing the end of its life and there are documented issues with the drainage – combining to be an estimated cost of $995,000 (±50%) to repair/rectify.

**Consultation**

The Business Plan for the Major Land Transaction was available on the City’s website, at the City’s Administration Building and at both the City’s libraries for the period 4 June 2021 – 23 July 2021, a total of 7-weeks. The length of the availability was extended to ensure greater transparency to the City’s ratepayers.

In addition, to ensure as many public members as possible were aware of the proposed transaction, the City engaged in social media advertising of the transaction and placed numerous adverts in the West Australian and The Post – details of which are below.

* The Post - 5 June 2021
* The West Australian - 8 June 2021
* The Post - 12 June 2021
* A reminder in The Post - 26 June 2021
* A final reminder in The Post - 10 July 2021

**Social Media Reach**

Social media reach is defined as *‘a media analytics metric that refers to the number of users who have come across a particular content on a social platform’.*

Throughout the Major Land Transaction advertising period, the City’s ‘Your Voice’, Facebook and Instagram platforms were used to generate interest in the development. Shown below is a summary of each platform’s performance in terms of public members engaged.

1. Your Voice

* 225 total visitors to the page
* 83 downloads of the Business Plan

1. Facebook

* 2x posts, reaching a total of 2160 readers
* 35 readers engaging with the post (like, comment or share)

1. Instagram

* 2x posts, reaching a total of 387 readers
* 22 readers engaging with the post (like or comment).

In addition, significant consultation has taken place throughout the life of this project. See below for detail.

* As noted in the previous report to Council on 27 August 2019 (CPS13.19), Administration advised that the City had published information about Tawarri on its community engagement page, ‘Your Voice Nedlands’ for over a year and released a public media release including information in the Nedlands full page POST advert. One response in objection was received.
* Elected Members have also been kept up to date on the progression of the project through a combination of formal reports, CEO updates and briefings, with determining the future of Tawarri having been identified as a priority in the City Strategic Community Plans since the first Plan was developed and published in 2013.
* As noted in this report, the DPLH have also completed the statutory advertisement for the transfer of tenure in which no objections were received.

**Indicative Timeline**

The following indicative timeline shows some key milestones.

* Endorsement of Major Land Transaction – March 2022
* Consideration of Development Application – March 2022
* Execution of Head Lease and Sublease Agreements – Estimated mid-late 2022
* Head Lease, Sublease and Construction commencement – Estimated mid-late 2022

**Strategic Implications**

**Values** **Great Natural and Built Environment**

We protect our enhanced, engaging community spaces, heritage, the natural environment and our biodiversity through well-planned and managed development.

**Great for Business**

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

**Budget/Financial Implications**

Should elected members choose not to support the recommendation as contained within this report, the following financial position would apply:

Current Costs Associated with the Project: - $127,200

Estimated Cost for Carpark and Drainage Remediation: - $995,000 (±50%)

Estimated Cost for Demolition of Facility: - $45,000 (±50%)

**TOTAL NET COST TO CITY: - $1,167,200**

Should elected members support the recommendation as contained within this report, the City would realise a financial benefit over the course of the leasing arrangements. Shown below are the various factors which define that position:

Current Costs Associated with the Project: - $127,200

Estimated Cost for Carpark and Drainage Remediation: - $995,000 (±50%)

Estimated Rent Revenue (42-years): $10,166,459

Estimated Rate Revenue (42-years): $7,791,191

Estimated Cost for Additional Car Bays (if required): - $225,000 (±50%)

Carpark Contribution from THS (if required): $200,000

Estimated Cost Saved for Demolition of Facility: $45,000 (±50%)

**TOTAL NET BENEFIT: $16,855,450**

**Legislative and Policy Implications**

Section 3.59 of the *Local Government Act 1995* details the process governing ‘commercial enterprises’ by Local Governments, including ‘Major Land Transactions’ (‘MLT’). An MLT means the acquisition, disposal (sell, lease or otherwise dispose of, whether absolutely or not) or development of land that is not exempt under the Act and where the total value of:

* The consideration under the transaction; or
* Anything done by the Local Government for achieving the purposes of the transaction;

Is more, or is worth more, than either $10,000,000 or 10% of the operating revenue of the local government in the last completed financial year.

In accordance with Section 3.59, before a Local Government enters into an MLT, the local government is required to prepare a Business Plan. The Business Plan is to include an overall assessment of the major land transaction and is to include details of:

* Expected Effect on the Provision of Facilities and Services by the City of Nedlands
* Expected Effect on Other Persons Providing Facilities and Services in the City of Nedlands
* Expected Financial Effect on the City of Nedlands
* Expected Effect on Matters Referred to in the City of Nedlands Strategic Community Plan.
* Ability of the City of Nedlands to Manage the Disposal and Ongoing Arrangement
* Any other matter prescribed for the purposes of the subsection.

The *Local Government Act 1995* also requires the Local Government to give statewide public notice that:

* The Local Government proposes to enter into the major land transaction described in the notice;
* A copy of the Business Plan may be inspected or obtained at any place specified in the notice; and
* Submissions about the proposed undertaking or transaction may be made to the Local Government before a day to be specified in the notice, being a day that is not less than 6-weeks after the notice is given.

After all submissions have been received and before entering into any Major Land Transaction, Council is now required to consider all submissions made before deciding by absolute majority whether to proceed (or not) with the transaction.

An excerpt of section 3.59 of the *Local Government Act 1995* is shown in attachment 2

As the Tawarri Hot Springs development is considered a ‘Major Land Transaction’ under the *Local Government Act 1995*, following Council’s resolution of 27 April 2021, in June and July 2021, the City’s administration arranged the necessary documents and advertisements to satisfy the City’s statutory obligations. Attachment 3 shows a copy of the Business Plan which was made available to the public for examination.

**Decision Implications**

Should elected members choose to support the recommendation as contained within this report, the following position would apply:

* The City would enter into a Head Lease with the State of WA for the Site
* The City would then Sublease the Site to THS
* The City would realise a net financial return of approximately $16.85 million throughout the lifetime of the arrangements

Should elected members choose not to support the recommendation as contained within this report, the following position would apply:

* The project would not go ahead
* The City would remain responsible for the remediation of the carpark and drainage issues at a cost of $995,000 (±50%)
* The City would be required to demolish the current derelict facility at an estimated cost of $45,000 (±50%)

In addition, should elected members choose not to support the recommendation as contained within this report, elected members must be aware the following may occur:

* The State of WA may choose to lease the land directly to THS (and claim 100% of the rent revenue)
  + In this instance, the City may be able to claim rate revenue only
* However, the City would remain responsible for the remediation of the carpark and drainage issues at a cost of $995,000 (±50%)

**Conclusion**

The Site was first identified in the Strategic Community Plan 2013-2023 (‘SCP’) as a prime location for further investigation. Since then, the Site has been subject to an EOI process, RFP process, and seven (7) reports to Council with the first being in February 2016 and most recent being this report. Council have also been briefed on the matter a total of ten (10) times. In addition to Officers time, the City has spent a total of $127,200 on the project. It is evident from this information the elected members have long considered this project as a real opportunity for the rate payer.

From 2016 to early 2021, following various media releases, publicly available reports to Council, and extensive information available on its website, the City has not received any negative feedback on the project in any form. However, following the statutory advertising period for the proposed Major Land Transaction, the City received a total of 43 submissions from the public. Of the 43 submissions received, 37 were in objection to the development, 5 were in support and 1 was undecided. In addition, only 1 submission was received without any explanation for their support or objection. It is evident that a small percentage of the City’s population have voiced their disapproval of the project.

In terms of the 43 submissions from the public received, and as described in the Discussion section of this report, elected members will need to consider the ‘weight’ of the comments received. Elected members will note that the City had in place significant mitigation strategies to ensure this commercial arrangement was as risk-free as possible. Elected members will also note that following the statutory period, the City has also strengthened its position with the inclusion of clauses within the Head Lease which allow the City to terminate the Head Lease in the event the Sublease is terminated. It is evident from the above that whilst it is impossible to mitigate all risk in every circumstance, the City is in the strongest position possible with the proposed arrangement.

As described in the Decision Implications section of this report, should elected members choose to support the recommendation as contained within this report, the City would realise a net financial return of approximately $16.85 million throughout the lifetime of the arrangements.

Should elected members choose not to support the recommendation as contained within this report, the project would not go ahead and the City would be facing costs of $1,040,000 (±50%) to remediate the carpark and drainage issues and remove the derelict facility.

There is no doubt the Tawarri project has been an extremely lengthy journey for all stakeholders. However, in that time, the City has given itself the best opportunity to allow this project to be successful and financially beneficial for the rate payer. Elected members are now requested to make a final decision on whether the City will proceed with the major land transaction as proposed.

**Further Details**

Following the Concept Forum relating to this item held on 1 March 2022, eight (8) questions were raised by elected members. Those questions are detailed below, along with further Officer comment.

**Request:**

Elected members requested a second legal opinion on early termination clause as contained within the proposed Head Lease.

**Officer Response:**

Following the request for further information by elected members, Officers have obtained independent legal advice – refer confidential attachment 9.

In response to Further Information request 1, elected members are directed to paragraphs 4.1 – 4.5 which detail how the City would invoke the Early Termination Clause as contained within the proposed Head Lease and what effects this would have.

Notably, the immediate outcome would be the cessation of rent payable to the State of WA upon the expiry of the 30-day notice period providing the Sublease was terminated.

**Request:**

Elected members queried whether the City’s drainage design of the carpark has accounted for storm surge.

**Officer Response:**

The City’s Technical Services Team have advised the design provided is at an early concept stage only and no detailed hydrological modelling has been conducted. When the project enters detailed planning and design a hydrological study will be undertaken that will ensure the ultimate design caters for all river conditions including storm surges. Detailed planning and design is programmed to commence no later than 2026, with construction commencing by 2026.

**Request:**

Elected members requested further information on the draw down/top up mechanism within the bank guarantee clauses as contained within the proposed Sublease.

**Officer Response:**

Following the request for further information by elected members, Officers have obtained independent legal advice – refer confidential attachment 9.

In response to Further Information request 3, elected members are directed to paragraphs 6.1 – 6.12 which detail how the City would invoke the Bank Guarantee and Construction Bank Guarantee Clauses as contained within the proposed Sublease.

**Request:**

Elected members requested legal advice as to whether the City can insist on personal guarantees being provided by the proponent.

**Officer Response:**

Following the request for further information by elected members, Officers have obtained independent legal advice – refer confidential attachment 9.

In response to Further Information request 4, elected members are directed to paragraphs 7.1 and 7.2 in which advice on whether the City can insist on personal guarantees being provided by the proponent

In short, the answer to the question is no, the City cannot extract such guarantees from the proponent if the Directors of the company do not wish to provide them.

**Request:**

Elected members requested further information on implications for the City under the proposed Head Lease and Sublease if the proponent was to default and the proposed development required demolition.

**Officer Response:**

Following the request for further information by elected members, Officers have obtained independent legal advice – refer confidential attachment 9.

In response to Further Information request 5, elected members are directed to paragraphs 5.1 – 5.7 which detail how the City could proceed should the proponent default and the proposed development required demolition.

Noting the issues raised within the further observations of the secondary legal opinion (10.4 – 10.13), the City has requested the proponent consider amendments to clauses 5, 26, 27 and Item 9 of the Schedule (being the amount of the Bank Guarantee).

On 18 March 2022, the proponent advised;

* + - Proposed amendments in line with the secondary legal advice to clauses 5 and 27 were acceptable.
    - Amendments to clause 26 by way of including a timeframe for demolition to be completed and also addressing circumstances contemplated in clauses 24.1, 24.2 and 27.2 were acceptable.
    - However, the proponent did not agree to any amendments to clause 26 addressing a default provision or contamination.
    - The proponent also did not agree to the extension of the bank guarantee under Item 9 of the Schedule as it was considered commercially unacceptable.

In conclusion, the agreed amendments to the Sublease by the proponent will add a further layer of protection for the City, however, it is evident there is still some commercial risk.

**Request:**

Elected members queried whether a Specified Area Rate could be applied to the proposed development.

**Officer Response:**

Following the request for further information on Specified Area Rates by elected members, Officers have obtained advice from the Department of Local Government, Sport and Cultural Industries (‘DLGSC’)

In response to Further Information request 6, in advice provided of a general nature, DLGSC have advised the following:

‘Specified Area Rates under s6.37 of the *Local Government Act 1995* (the Act) are imposed on a defined area within a portion of the district which includes multiple property owners to pay for a specific work, service or facility that it is considered they will benefit from. Based on the information provided, the Department’s view is that the proposal would not fit into that category.

**Request:**

Elected members asked how many major land transactions the City has previously undertaken.

**Officer Response:**

Following this request, Officers have investigated records as far back as 2008/09, and in this time the City has not undertaken any other major land transactions.

**Request:**

Elected members queried whether rate revenue could still be received by the City if the State of WA chose to lease the Site directly to Tawarri Hot Springs Pty Ltd.

**Officer Response:**

Following the request for further information on Rate Revenue by elected members, Officers have obtained advice from the Department of Local Government, Sport and Cultural Industries (‘DLGSC’).

In response to Further Information request 8 in advice provided of a general nature, DLGSC have advised the following:

‘With regard to a rates exemption under s6.27(4) of the *Local Government Act 1995* (the Act), if the use is commercial, all land is rateable land in the district. Commercial land is not listed under section 6.26(2) as an exemption. It is unlikely that the Minister would grant an exemption if used for that purpose.’

# PD17.03.22 Comment on State Development Assessment Unit Application for Tawarri Hot Springs Development at 120 Esplanade, Dalkeith

|  |  |
| --- | --- |
| **Meeting & Date** | Special Council – 29 March 2022 |
| **Applicant** | Western Australian Planning Commission |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff and the proponents or their consultants. |
| **Report Author** | Roy Winslow, Manager Urban Planning |
| **Director/CEO** | Tony Free, Director Planning and Development |
| **Attachments** | 1. Location Plan 2. Development Plans 3. City of Nedlands Car Parking Plan 4. Landscaping Plan |

**PLEASE NOTE THIS ITEM WAS NOTE CONSIDERED FOR THE FOLLOWING REASONS:**

**Council decided not to deal with the report relating to the State Development Assessment Unit Planning application for Tawarri Hot Springs on the basis that as the lease had not been supported by Council, the applicant had no tenure over the land and thus the planning application is not complete and should not be considered at this time.**

Recommendation

That Council advises the State Development Assessment Unit that it supports the proposed Tawarri Hot Springs at 120 Esplanade, Dalkeith as outlined in the development plans date stamped 10 November 2021 (Attachment 2) and recommends the following conditions be considered for any approval granted by the Western Australian Planning Commission:

Traffic and Parking

1. The City of Nedlands car parking plan (Attachment 3) form part of the application/approval. The parking area as shown being constructed and maintained by the City of Nedlands using water sensitive design principles.
2. A traffic and car parking management plan to be prepared by the proponent and approved by the City of Nedlands prior to issue of a building permit and thereafter implemented at all times.
3. A minimum of 10 visitor bike parking bays and 2 bike parking bays for staff and associated end of trip facilities are to be provided prior to occupation to the satisfaction of the City of Nedlands.

Waste Management

1. A detailed waste management plan is to be prepared by the proponent and approved by the City of Nedlands prior to issue of a building permit and thereafter implemented at all times.

Noise

1. An acoustic report is to be prepared by a suitably-qualified and licensed acoustic consultant prior to issue of a building permit demonstrating compliance of the development with the requirements of the Environmental Protection (Noise) Regulations 1997.

Landscaping

1. A landscaping plan for the development site, entry plaza and Esplanade "triangle" is to be prepared by the proponent and approved by the City of Nedlands prior to issue of a building permit and thereafter implemented and maintained at all times to the satisfaction of the City of Nedlands. The landscaping plan is to incorporate landscape screening of the foreshore interface area rather than the proposed bunding and “haha wall”. The landscaping plan is to limit sedge selection to: Baumea juncea, Juncus krausii, Lepidosperma gladiatum and Ficinia nodosa.

Building Form

1. Walls and/or fencing of the pool areas/terraces facing the river and foreshore are to be glazed or otherwise visually permeable in a manner that reduces the visual impact when viewed from the river.

Demolition and Construction

1. Prior to the issue of a Demolition Permit and/or a Building Permit, a Demolition and Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Demolition and Construction Management Plans shall be observed at all times throughout the demolition and construction process to the satisfaction of the City.
2. The development site is to be fenced at all times during demolition and construction.
3. All trees that are to be retained on the development site are to be protected by fencing or other method approved by the City of Nedlands during demolition and construction.
4. A cliff face geotechnical report is to be prepared by the proponent and approved by the City of Nedlands prior to issue of a building permit. The geotechnical report is to confirm the stability of the cliff face and steep bank to the north and west of the development site and identify the use of appropriate construction techniques to minimise impacts on the cliff/bank stability.
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’ stormwater drainage system unless otherwise approved.

Other Matters

1. A lease for the development site being finalised prior to a building permit being issued.
2. Appropriate measures being taken to the satisfaction of the City of Nedlands for the management of those portions of the development located outside of the lease area (Lot 253) prior to occupation.

**Purpose**

The purpose of this report is for Council to provide its comments to the State Development Assessment Unit (SDAU) of the Western Australian Planning Commission (WAPC) on a development application at 120 Esplanade, Dalkeith (Tawarri site). The application proposes the development of a private recreation facility (wellness/spa) and incidental restaurant/café.

**Voting Requirement**

Simple Majority.

**Background**

**Background to Application**

In 1957 a community facility was built which in the 1960s became the Tawarri Reception Centre. This operated until 2018 when the current lease expired. The building has remained vacant since then.

The City of Nedlands called for expressions of interest for future use of the site in late 2016 and undertook a tender process in 2018. In July 2019 a Heads of Agreement was executed between the proponent for the development and the City. This provided for a range of matters, including the provision of car parking for the development on land managed by the City. A long-term lease of the site is currently being finalised as a separate process to this development application.

In order to provide public road access to the site, Esplanade is currently subject to dedication as a road reserve through excise from Reserve 17391.

As leasing arrangements progressed, a development application was lodged with the WAPC for assessment by the SDAU as a ‘significant development’. Notwithstanding the application was lodged with the SDAU and not the City, the decision maker remains as the WAPC given the site is located on land reserved by the Metropolitan Region Scheme. The City of Nedlands is acting as a referral body in this instance.

**Development Proposal**

The application seeks development approval for a wellness/spa facility and incidental restaurant/café. The development plans are included in **Attachment 2**.

The development site is subject to lease negotiations between the proponent and the City of Nedlands. Whilst the lease and planning processes are separate, the proposed development is consistent with the original intent for the site that is subject to the lease arrangements.

The development will rely on car parking provided within the surrounding City-managed reserve and future Esplanade road reserve. This approach is consistent with the Heads of Agreement the City has entered into with the future Sub Lessee.

The building is architecturally designed and has been subject to review by the State Design Review Panel on a number of occasions.

**Discussion**

**Planning and Development (Local Planning Schemes) Regulations 2015**

Schedule 2, Clause 67(2) (Consideration of application by Local Government) identifies those matters that are required to be given due regard to the extent relevant to the application. Where relevant, these matters are discussed in the following sections. Overall, the development is considered to meet these objectives and the impact on the local amenity will be minimal.

**City of Nedlands Foreshore Enhancement and Management Plan.**

The proposed development complies with the City of Nedlands Foreshore Enhancement and Management Plan. The key element is to redevelop Tawarri site *“in similar style incorporating heritage features”*. The development does this by retaining use of the site as a wellness spa utilising the hot springs water. It also proposes detailed design and elements that reflects the history of the site, as well as landscaping that reflects the history.

**Car Parking**

The Tawarri Redevelopment Heads of Agreement states in terms of car parking there will be a maximum of 115 car bays provided by the City within the vicinity of the premises, serving all nearby uses. If through the DA process or subsequent operation of the business it is deemed that more car parking is required, then additional car parks can be created with payment to be made by the Sub-Lessee in lieu of the number of car parks required by the Planning Approval.

The Sub-Lessee will contribute an amount of up to $200,000 towards the cost incurred by the City of constructing additional car parking bays.

Should nearby parking areas become full during peak times, the development proposes a range of parking management solutions, including staff parking being located approximately 500m from the site, bicycle parking and the possibility of a valet parking service. Visitation will be managed through a booking system by allocating a fixed number of sessions every half hour for an anticipated average stay of 3 hours. It is recommended that a parking management plan be prepared in the event of approval (refer Condition 2).

There is adequate existing parking in the vicinity to cater for this projected demand. In order to allow for the potential to upgrade the existing parking areas along Esplanade, it is recommended that the car parking plan included at **Attachment 3** is incorporated into the development application. This will allow for the car parking areas to have development approval and avoid the need to obtain a fresh approval at a later date should the City determine the upgrades are required (refer Condition 1).

**Design**

The design is well-considered and generally indicative of high-quality built form which enables the form of the facility to present as a series of smaller buildings rather than a single mass. This reduces the perception of scale from the river and from the foreshore and allows for views through the site from the car park to the river.

The development is primarily single storied, with two small upper storey portions setback farther from the river. The topography of the escarpment at the rear means the nearby vegetation on the escarpment sits well above the roofline when viewed from the river. The development will be noticeable and prominent but does not dominate or overwhelm the landscape.

The scale steps up gently from the foreshore, with landscaping and the open-aired pools drawing the scale further from the river. A low height, balustrade-level wall fronting the foreshore is largely protected by adjacent vegetation and enables privacy for pool users whilst allowing for passive surveillance of the foreshore footpath.

The overall result is a clear delineation of public realm and the boundary of the facility, with the edges blurred by landscape and building form. The development establishes a new form for the area and will set a new standard for Perth’s limited examples of sensitive and well considered riverside development.

The design is considered appropriate for the site and is supported. In addition, the design has been reviewed by the State Design Review Panel on a number of occasions.

**Landscape Concept**

The landscape concept has been prepared by ASPECT Studios (**Attachment 4**). The design responds to the local context and scale, form and function of the architecture in order to create a dynamic and engaging sequence of landscape spaces. The design develops a series of public landscape spaces that work to unite this project with the Jo Wheatley All Abilities Play Space and the future redevelopment of the Sunset Hospital site to create a foreshore precinct that meets the needs of residents, visitors and the broader community.

The site is divided into 3 distinct areas:

* Arrival court – planting references conceptually the Tamala limestone and deep waters of the subterranean Aquifiers.
* Foreshore promenade – referencing the meandering nature and undulating riverbed of the Swan River.
* Parklands – existing copses of Casuarina and open turfed areas.

Where appropriate Australian native and exotic plant species will create and support an aesthetic and high-quality landscape response. The grassed area and bushland to the north of the development site is contained within the City’s river foreshore greenway corridor and the bushland is subject to a bushland management plan that aims to protect and enhance the native vegetation.

A total of 15 trees are proposed to be removed from the development site and 5 trees retained abutting the foreshore reserve. One tree is proposed to be removed for construction of the substation.

The river interface proposes bunding (referred to as “haha wall”) to screen the raised terraces and pool areas. The cross section shows a 2m height difference and a 1m high wall above the pool levels. Administration recommends that the visual impact of the area should be addressed by landscape screening rather than the proposed bunding and the “haha wall”. The proposed balustrade wall adjoining the pool should also be visually permeable so as to further reduce visual impact. It is also recommended that the landscaping plan be amended to limit sedges to: *Baumea juncea*, *Juncus krausii,* *Lepidosperma gladiatum* and *Ficinia nodosa* as this is consistent with the species the City uses along foreshore and river wall restoration areas nearby (refer Condition 6).

**Development Levels**

The development proposes finished floor levels as follows:

* 1.16 AHD Café
* 1.85 AHD Plant and Bin Store
* 2.80 AHD Wellness Centre/Spa and Restaurant
* 3.22 AHD Substation

The Department of Water and Environmental Regulation (DWER) advise that to year 2110 an allowance of 0.9 metres for mean sea level rise should be considered in accordance with State Coastal Planning Policy (SPP2.6)

The Swan and Helena River Flood Study shows the general area affected during major events with the following floor levels expected:

* 1 in 10 (10%) Annual Exceedance Probability (AEP) 2.0m AHD
* 1 in 100 (1%) AEP 2.2m AHD

Based on the floodplain management strategy for the area, the proposed development (ie filling, building etc) is considered acceptable with respect to major flooding. A minimum habitable floor level of 2.7m AHD is recommended to ensure adequate flood protection against the 1 in 100 Annual Exceedance Probability event in the future. This is achieved by the development with the exception of the café area, which will be constructed to accommodate flooding. This is considered to be appropriate as it will allow for the café to be at the same level as the adjacent playground, rather than require external steps, ramps and retaining.

A report was prepared on the river walls west of Perth Flying Squadron Yacht Club (PFSYC) by M P Rogers and Associates in 2015. A new wall was constructed in accordance with this report. Sea level has been factored in for the wall and thus nothing further is required from the development in terms of river wall construction.

**Bushfire Management**

Bushfire risk on the land surrounding the site will be managed through the City’s bushfire management plan. There is no requirement for conditions to be placed on the development relating to bushfire management.

**Cliff Stability**

An assessment of the cliff stability behind the subject site was undertaken by Golder Associates in June 2015.

It is recommended that a geotechnical assessment be undertaken of the cliff/bank immediately behind the subject site prior to any development on the site. This assessment could be prepared as an addendum to the 2015 report. This will identify any appropriate action and construction methods necessary to minimise impact on the cliff stability. Given that the development is potentially increasing the risk it is considered appropriate for the developer to undertake this assessment prior to any development on site (refer Condition 11).

**Use of Reserves Outside of Development Site**

The Development Site is being fully developed and the development spills into the surrounding reserved land. These areas include the “triangle” car park that is proposed to be redeveloped as the entry statement to Tawarri Hot Springs and the substation site.

These areas benefit the development but are outside the lease area. Special arrangement should be made with the applicant concerning these areas, including construction and maintenance. A condition is recommended requiring appropriate measures to the satisfaction of the City to manage parts of the development located outside of the lease areas.

The main entrance signage – 5.4m x 2m is proposed in the “triangle”. The proposed signage is designed to be sympathetic to the development and as such can be supported.

**Consultation**

The City was not required to conduct consultation for this development application. Public consultation in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 was conducted by the State Development Assessment Unit. All submissions received will be considered by the Unit when making its recommendation to the Western Australian Planning Commission as the decision maker.

**Strategic Implications**

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

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

**Values** **Great Natural and Built Environment**

We protect our enhanced, engaging community spaces, heritage, the natural environment and our biodiversity through well-planned and managed development.

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

**Budget/Financial Implications**

There are no direct financial implications associated with the provision of planning comment on this development application. All financial implications of the leasing of the site is contained in a separate report to Council.

**Legislative and Policy Implications**

The City is not required to make a quasi-judicial decision in this case. The decision maker is the WAPC as the land is reserved by the [Metropolitan Region Scheme](https://www.wa.gov.au/government/publications/metropolitan-region-scheme-text-and-maps) and the application has been made through the [State Development Assessment Unit](https://www.wa.gov.au/organisation/department-of-planning-lands-and-heritage/state-development-assessment-unit) pathway.

**Decision Implications**

Council is providing non-binding comments to the State Development Assessment Unit. The Unit will prepare a planning assessment and recommendation to the Western Australian Planning Commission for a final determination. As Council is not the decision-maker, it will not be party to any future State Administrative Tribunal matter, should the proponent be aggrieved by the decision.

**Conclusion**

Council is requested to provide comment to the WAPC on the proposed redevelopment of Tawarri Hot Springs. The application seeks development approval for a wellness/spa facility and incidental restaurant/café on the subject site.

Administration recommends that Council provides support to the development application, subject to conditions. Matters related to the leasing of the site are contained in a separate report to Council.

**Further Information**

N/A.

# Declaration of Closure

There being no further business, the Presiding Member declared the meeting closed at 7.42pm.