



SHAPING THE FUTURE OF WESTERN AUSTRALIA



Western Australian Planning Commission  
(Part 17 Significant development)

## Agenda

Notice is hereby given the next meeting of the Western Australian Planning Commission (Part 17 Significant Development) will be:

**Meeting No. 29**

**Thursday, 27 July, 2023, 2:00 pm**

**Bendat Basketball Centre**

**Ellis Room**

**201 Underwood Avenue, Floreat**

**or via Zoom: <https://us06web.zoom.us/j/86299829060>**

1. **Declaration of opening**
2. **Apologies**

Michelle Andrews - Director General, Department of Water and Environmental Regulation

Jane Bennett - Professions Representative

Lynne Craigie - Nominee of the Minister for Regional Development

Mike Rowe - Director General, Department of Communities
3. **Disclosure of interests**

Jane Bennett - Actual Direct Pecuniary Interest - Item 10.1
4. **Declaration of due consideration**
5. **Deputations and presentations (Item 7.1)**
  - 5.1 **SAT Section 31 Review - Reconsideration of Extension of Time - Melvista Residential Aged Care Facility** 9 - 12

Presenters: Matthew McNeilly, Belinda Moharich – Moharich and More, Kylie and Jurgen Passage, Jane and Tony Leaversuch, Mario and Rebecca Faugno, Anna and Ross Lee and Rudolf Boeddinghaus
  - 5.2 **SAT Section 31 Review - Reconsideration of Extension of Time - Melvista Residential Aged Care Facility** 13 - 23

Presenters: Murray Jones – Verum, Tayne Evershed – Planning Solutions, Paul McQueen and Isabella Mosole - Lavan and Toby Browne-Copper – Oryx
6. **Presentation of key issues by the Department of Planning, Lands and Heritage (Item 7.1)**

Presenters: Ryan Shaw - Principal Planning Officer and Sally Grebe - Director Planning Appeals, Reform, Design and State Assessment
7. **Item for decision**
  - 7.1 **SAT Section 31 Review - Reconsideration of Extension of Time - Melvista Residential Aged Care Facility** 24 - 78
8. **Deputations and presentations (Item 10.1)**
  - 8.1 **Significant Development Application - Western Australia's Children's Hospice - Portion of 61 (Lots 503 and 504) Clement Street,** 79 - 84

## **Swanbourne**

Presenter: Peter Taranto

- |            |   |                |
|------------|---|----------------|
| <b>8.2</b> | <b>Significant Development Application - Western Australia's Children's Hospice - Portion of 61 (Lots 503 and 504) Clement Street, Swanbourne</b> | <b>85 - 86</b> |
|------------|---|----------------|

Presenter: Dr Denzil McCotter

- |            |   |                |
|------------|---|----------------|
| <b>8.3</b> | <b>Significant Development Application - Western Australia's Children's Hospice - Portion of 61 (Lots 503 and 504) Clement Street, Swanbourne</b> | <b>87 - 90</b> |
|------------|---|----------------|

Presenters: Denise and Malcolm Murray

- |            |   |                |
|------------|---|----------------|
| <b>8.4</b> | <b>Significant Development Application - Western Australia's Children's Hospice - Portion of 61 (Lots 503 and 504) Clement Street, Swanbourne</b> | <b>91 - 92</b> |
|------------|---|----------------|

Presenter: Tracy McLaren

- |            |   |                 |
|------------|---|-----------------|
| <b>8.5</b> | <b>Significant Development Application - Western Australia's Children's Hospice - Portion of 61 (Lots 503 and 504) Clement Street, Swanbourne</b> | <b>93 - 104</b> |
|------------|---|-----------------|

Presenters: Lesley Shaw, James Shaw and Anne Casson - Melon Hill Bushland Group

- |            |   |                  |
|------------|---|------------------|
| <b>8.6</b> | <b>Significant Development Application - Western Australia's Children's Hospice - Portion of 61 (Lots 503 and 504) Clement Street, Swanbourne</b> | <b>105 - 111</b> |
|------------|---|------------------|

Presenters: Cr Hengameh Amiry and Cr Kerry Smyth - City of Nedlands

- |            |   |                  |
|------------|---|------------------|
| <b>8.7</b> | <b>Significant Development Application - Western Australia's Children's Hospice - Portion of 61 (Lots 503 and 504) Clement Street, Swanbourne</b> | <b>112 - 113</b> |
|------------|---|------------------|

Presenters: Alex Watson - CLE Town Planning + Design, Ian Campbell - PCH Foundation and Kyle Jeavons - Hesperia

## **9. Presentation of key issues by the Department of Planning, Lands and Heritage (Item 10.1)**

Presenter: Paola Di Perna - Planning Director, State Development Assessment Unit

## **10. Item for decision**

- |             |   |                  |
|-------------|---|------------------|
| <b>10.1</b> | <b>Significant Development Application - Western Australia's Children's</b> | <b>114 - 148</b> |
|-------------|---|------------------|

**Hospice - Portion of 61 (Lots 503 and 504) Clement Street,  
Swanbourne**

***NB:** the attachments associated with this report are linked on Page 1  
of the report.*

- 11. State Administrative Tribunal applications**
  - 11.1 Tawarri Hot Springs (Recreation Facility, Restaurant and Cafe) - 120  
(Lot 502) Esplanade, Dalkeith**
  - 11.2 Proposed 19-Storey Mixed Use Development - Lot 50 St Quentin  
Avenue, Claremont**
- 12. General business**
- 13. Meeting closure**



## Information for WAPC members (Part 17 Significant Development) *Quorum: 7 of 14 members*

*Representation in accordance with the Planning and Development Act 2005*

	<b>Mr David CADDY</b> WAPC Chairman <i>Section 10(1)(a)</i>		<b>Mr Anthony KANNIS</b> Director General, Department of Planning, Lands and Heritage <i>Section 10(1)(c)(i)</i>
	<b>Mayor Emma COLE</b> Metropolitan Local Government Representative (nominated by WALGA) <i>Section 10(1)(b)(i)</i>		<b>Ms Michelle ANDREWS</b> Director General, Department of Water and Environmental Regulation <i>Section 10(1)(c)(ii) and 10(1)(c)(iv)</i>
	<b>Cr Caroline KNIGHT</b> Non-Metropolitan Local Government Representative (nominated by WALGA) <i>Section 10(1)(b)(ii)</i>		<b>Mr Peter WORONZOW</b> Director General, Department of Transport <i>Section 10(1)(c)(iii)</i>
	<b>Ms Helen BROOKES</b> Coastal Planning and Management Representative <i>Section 10(1)(b)(iii)</i>		<b>Ms Rebecca BROWN</b> Director General, Department of Jobs, Tourism, Science and Innovation <i>Section 10(1)(c)(v)</i>
	<b>Ms Jane BENNETT</b> Professions Representative <i>Section 10(1)(b)(iv)</i>		<b>Mr Mike ROWE</b> Director General, Department of Communities <i>Section 10(1)(c)(vi)</i>
	<b>VACANT</b> Professions Representative <i>Section 10(1)(b)(v)</i>		<b>VACANT</b> Portfolio Agency Representative <i>Section 10(1)(c)(vii)</i>
	<b>Mr Barry McGUIRE</b> Professions Representative <i>Section 10(1)(b)(vi)</i>		<b>Ms Lynne CRAIGIE</b> Nominee of the Minister for Regional Development <i>Section 10(1)(c)(viii)</i>
	<b>Cr Liam GOBBERT</b> Metropolitan Local Government Representative (Deputy) (nominated by WALGA) <i>Schedule 1 clause 7(1)</i>		<b>Mr Leigh BALLARD</b> Non-Metropolitan Local Government Representative (Deputy) (nominated by WALGA) <i>Schedule 1 clause 7(1)</i>

Current Vacancies:

- Associate Member, *Section 11*
- Professions Representative, *Section 10(1)(b)(v)*
- Portfolio Agency Representative, *Section 10(1)(c)(vii)*

## **Role of the Western Australian Planning Commission (WAPC) (Part 17 Significant Development)**

In accordance with Part 17 of the *Planning and Development Act 2005* (as amended by the *Planning and Development Amendment Act 2020*), the Western Australian Planning Commission is granted temporary decision-making powers to determine development applications over \$20 million in metropolitan Perth, and over \$5 million in regional areas.

### **Membership (extract from PD Act)**

The composition of the Board is in accordance with Section 10(1) of the *Planning and Development Act 2005*:

#### **10. Membership of board**

(1) The board is to consist of the following members —

- (a) a chairperson appointed by the Governor on the nomination of the Minister; and
- (b) 6 members appointed by the Governor, of whom —
  - (i) one is to be a person nominated by the Minister from a list of the names of 4 persons representing the interests of local governments within the metropolitan region submitted to the Minister by WALGA; and
  - (ii) one is to be a person nominated by the Minister from a list of the names of 4 persons representing the interests of the local governments outside the metropolitan region submitted to the Minister by WALGA; and
  - (iii) one is to be a person nominated by the Minister as having experience of the field of coastal planning and management; and
  - (iv) one is to be a person nominated by the Minister as having practical knowledge of and experience in one or more of the fields of urban and regional planning, property development, commerce and industry, business management, financial management, engineering, surveying, valuation, transport or urban design; and
  - (v) one is to be a person nominated by the Minister as having practical knowledge of and experience in one or more of the fields of environmental conservation, natural resource management or heritage interests; and
  - (vi) one is to be a person nominated by the Minister as having practical knowledge of and experience in one or more of the fields of planning and provision of community services, community affairs or indigenous interests;

and

- (c) the least number of other members who include —
  - (i) the chief executive officer of the department principally assisting in the administration of this Act; and
  - (ii) the chief executive officer of the Water and Rivers Commission established by the Water and Rivers Commission Act 1995 3; and
  - (iii) the chief executive officer of the department principally assisting in the administration of the Transport Co-ordination Act 1966; and
  - (iv) the chief executive officer of the department principally assisting in the administration of the Environmental Protection Act 1986; and
  - (v) the chief executive officer of the department principally assisting in the administration of the Government Agreements Act 1979; and
  - (vi) the chief executive officer of the department principally assisting in the administration of the Housing Act 1980; and

- (vii) a person, whether a member under another subparagraph or another person nominated by the Minister, who has experience in the field of urban and regional planning and is employed in an agency, as defined in the Public Sector Management Act 1994, for which the Minister is responsible; and
- (viii) a person nominated by the Regional Minister”.

In accordance with Section 11(2) of the *Planning and Development Act 2005*, “The Governor may, on the nomination of the Minister, appoint an associate member for a region referred to in Schedule 4”.

On 13 December 2011, the Governor appointed an Associate Member for a region referred to in Schedule 4.

### Quorum for meetings

In accordance with Clause 8(5) of Schedule 1 of the *Planning and Development Act 2005*, the quorum for board meetings is as follows: *At any meeting of the board a number of members equal to at least one half of the number of members provided for by Section 10 constitute a quorum.*

### Disclosure of interests

In accordance with the *Planning and Development Act 2005* and Section 4 of the Western Australian Planning Commission (WAPC), Governance Guide – Standing Orders, members of Committees (and certain employees) are required to disclose the following types of interests that they have or persons closely associated to them, have:

- direct and indirect pecuniary interests (financial);
- proximity interests (location); and
- impartiality interests (relationship).

A “**direct pecuniary interest**” is one where a member has an interest in a matter where it is reasonable to expect that the matter if dealt with by the Board or a Committee, or an employee in a particular way, will result in a financial gain, loss, benefit or detriment for the member.

An “**indirect pecuniary interest**” refers to an interest in a matter where a financial relationship exists between a member and another person who requires a WAPC decision in relation to the matter.

A “**proximity interest**” refers to an interest of a member, or close associate of the member, in a matter if the matter concerns –

- (a) a proposed change to a planning scheme affecting land that adjoins the person’s land;
- (b) a proposed change to the zoning or use of land that adjoins the person’s land; or
- (c) a proposed development, maintenance or management of the land or of services or facilities on the land that adjoins the person’s land.

An “**Impartiality interest**” means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the member having the interest and includes an interest arising from kinship, friendship, partnership or membership of an organisation or an association with any decision-making process relating to a matter for discussion before the Board or a Committee.

Members disclosing any pecuniary or proximity interests for an item cannot participate in discussion or the decision making procedure relating to the item and must leave the meeting room during the discussion of the item. Members disclosing an impartiality interest in an item must also leave the room during the discussion or the decision making procedure relating to the item unless the Committee, by formal resolution, allows the member to remain. The reason to allow a member to remain must be stated in the formal resolution and will be minuted.

### Disclosure of representations

Where a member has had verbal communication with or on behalf of a person with an interest in a matter which is before a meeting, the member is to disclose the interest.

Where a member is in receipt of relevant written material (including email) from or on behalf of a person with an interest in a matter which is before a meeting, the member is to table the material at the meeting for the information of members.

# Request for Deputation / Presentation

## Western Australian Planning Commission

### Part 17 Significant Development Meeting

**Meeting Date:** Thursday, 27 July 2023

#### Presentation Request Guidelines

Persons interested in presenting at a WAPC Part 17 Significant Development Meeting must first consider whether their concern has been adequately addressed in the report recommendation or other submissions. Your request will be determined by the WAPC Chairman based on individual merit and likely contribution to assist the Commission's consideration and determination of the application.

Presentations are not to exceed **3 minutes**. It is important to note that the presentation content will be **published on the WAPC website** as part of the meeting agenda. **Your PowerPoint must be submitted with this request.**

**Requests close at 2pm, three (3) working days, prior to the meeting date.** Please complete and submit this form, your PowerPoint and any additional written documents to [committees@dplh.wa.gov.au](mailto:committees@dplh.wa.gov.au) no later than this time. **Late requests will not be accepted.**

Handouts or PowerPoints will not be accepted on the day of the meeting.

<b>Name of Presenter:</b>	Matthew McNeilly	
<b>Organisation:</b>		
<b>Email*:</b>		
<b>Mobile Number*:</b>		
<b>Additional Attendees:</b>	Kylie & Jurgen Passage Jane & Tony Leaversuch Mario & Rebecca Fugno Anna & Ross Lee Rudolf Boeddinghaus	
<b>PowerPoint:</b>	No	
	Your PowerPoint presentation <u>must</u> be accompanied with a written document detailing the content of your presentation for the purpose of the agenda.	
<b>Special Requirements:</b>	In the interest of accessibility and inclusion for people with disabilities, please identify if you have any special requirements: No  <i>If yes, please detail below:</i>	
In submitting this request, you acknowledge that your request form and presentation content will be published to the WAPC website as part of the agenda.		Yes

\* Contact details will be redacted prior to this form being published online

<b>Is the presentation in support or against the <u>report recommendation</u>? (contained within the agenda)</b>	Against
<b>Is the presentation in support or against the <u>proposed development</u>?</b>	Against
<b><u>Brief Outline of Presentation:</u></b>	
<p>I am speaking on behalf of a total of 6 directly impacted households/property owners in Doonan Road, Betty St, and Granby Crt AGAINST the report recommendation and will require a total allocation of 18 minutes to present.</p> <p>Our deputation will present new evidence that the Applicant has not only been “warehousing” the development approval it was granted in March 2021, but that it also knowingly mislead the WAPC and community in its original development approval.</p> <p>Since the development approval was granted, the Applicant has not actively and relatively conscientiously pursued its development approval and the planning framework has substantively changed.</p> <p>Given this, the Applicant should not be granted any further extensions of time to substantially commence the proposed project.</p>	

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<b>Name of Presenter:</b>	Belinda Moharich	
<b>Organisation:</b>	Moharich and More	
<b>Email*:</b>		
<b>Mobile Number*:</b>		
<b>Additional Attendees:</b>	(You may have up to 3 attendees, including the Presenter)	
	Matthew McNeilly	
<b>PowerPoint:</b>	No	
	Your PowerPoint presentation <u>must</u> be accompanied with a written document detailing the content of your presentation for the purpose of the agenda.	
<b>Special Requirements:</b>	In the interest of accessibility and inclusion for people with disabilities, please identify if you have any special requirements: No  <i>If yes, please detail below:</i>	
<i>In submitting this request, you acknowledge that your request form and presentation content will be published to the WAPC website as part of the agenda.</i>		Yes
<b>Is the presentation in support or against the <u>report recommendation</u>? (contained within the agenda)</b>		Against

\* Contact details will be redacted prior to this form being published online

Is the presentation in support or against the <u>proposed development</u> ?	Against
<p><b><u>Brief Outline of Presentation:</u></b></p> <p>The presentation will focus on the Applicant's failure to meet the standards set out in the State Administrative Tribunal's test for determining whether an extension to the period of substantial commencement should be granted.</p> <p>Mr McNeilly will be speaking to the conduct of the Applicant in terms of its assertions of being 'shovel ready', and the impact the proposed development will have on his amenity.</p>	



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<b>Name of Presenter:</b>	Murray Johns	
<b>Organisation:</b>	Verum	
<b>Additional Attendees:</b>	(You may have up to 3 attendees, including the Presenter)	
	Toby Browne-Cooper (Oryx – Proponent and care provider)	
<b>PowerPoint:</b>	No	
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In submitting this request, you acknowledge that your request form and presentation content will be published to the WAPC website as part of the agenda.		Yes
<b>Is the presentation in support or against the <u>report recommendation</u>? (contained within the agenda)</b>		Support
<b>Is the presentation in support or against the <u>proposed development</u>?</b>		Support

**Brief Outline of Presentation:**

1. Provide an update to the WAPC on additional actions taken since our letter dated 12 April 2023 to progress the development to substantial commencement.
2. Answer any questions.

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## Western Australian Planning Commission

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<b>Name of Presenter:</b>	Tayne Evershed	
<b>Organisation:</b>	Planning Solutions	
<b>Additional Attendees:</b>	(You may have up to 3 attendees, including the Presenter)	
<b>PowerPoint:</b>	No	
	Your PowerPoint presentation <u>must</u> be accompanied with a written document detailing the content of your presentation for the purpose of the agenda.	
<b>Special Requirements:</b>	In the interest of accessibility and inclusion for people with disabilities, please identify if you have any special requirements: No  <i>If yes, please detail below:</i>	
<i>In submitting this request, you acknowledge that your request form and presentation content will be published to the WAPC website as part of the agenda.</i>		Yes
<b>Is the presentation in support or against the <u>report recommendation</u>? (contained within the agenda)</b>		Support
<b>Is the presentation in support or against the <u>proposed development</u>?</b>		Support

**Brief Outline of Presentation:**

1. Changes to the planning framework have already been considered by the WAPC.
2. The applicant has demonstrated it has actively pursued the implementation of the development.
3. We support the SDAU's recommendation to extend the substantial commencement period.

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## Western Australian Planning Commission

### Part 17 Significant Development Meeting

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<b>Name of Presenter:</b>	Paul McQueen	
<b>Organisation:</b>	Lavan	
<b>Additional Attendees:</b>	(You may have up to 3 attendees, including the Presenter)	
	Isabella Mosole (Lavan)	
<b>PowerPoint:</b>	No	
	Your PowerPoint presentation <u>must</u> be accompanied with a written document detailing the content of your presentation for the purpose of the agenda.	
<b>Special Requirements:</b>	In the interest of accessibility and inclusion for people with disabilities, please identify if you have any special requirements: No  <i>If yes, please detail below:</i>	
In submitting this request, you acknowledge that your request form and presentation content will be published to the WAPC website as part of the agenda.		Yes
<b>Is the presentation in support or against the <u>report recommendation</u>? (contained within the agenda)</b>		Support
<b>Is the presentation in support or against the <u>proposed development</u>?</b>		Support

**Brief Outline of Presentation:**

1. Legal submissions addressing the key considerations to be taken into account when considering an extension of time application.
2. Answer any questions.



Our ref: IAM:PMQ:1175343  
Your ref: SDAU-004-20 (DR 237 of 2022)

Contact: Isabella Mosole  
Direct Line: (08) 9288 6963  
Email: Isabella.mosole@lavan.com.au  
Partner: Paul McQueen  
Direct Line: (08) 9288 6943  
Email: paul.mcqueen@lavan.com.au

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24 July 2023

Mr David Caddy  
Chairman  
Western Australian Planning Commission  
140 William Street  
PERTH WA 6000

**By Email: [committees@dplh.wa.gov.au](mailto:committees@dplh.wa.gov.au)**

Dear Mr Caddy

## **SDAU-004-20 – Legal submission in support of reconsideration of amendment to development application**

### **Background**

- 1 I refer to Item 7.1 to the agenda for the upcoming meeting of the Western Australian Planning Commission (**WAPC**) on Thursday, 27 July 2023.
- 2 Lavan acts for Deuke Investments Pty Ltd who is the applicant in State Administrative Tribunal (**SAT**) proceeding DR 237 of 2022, which is an application for review of a condition to an existing development approval made in respect of Lots 10 & 11 (16 & 18) Betty Street and Lots 18 & 19 (75) Doonan Road, Nedlands (**Subject Site**).
- 3 I provide this legal submission on behalf of my client in support of the recommendation made by officers of the Department of Planning, Lands and Heritage (**DPLH**) in its report to the WAPC to approve my client's application.

### **Factual background**

- 4 At its meeting on 11 March 2021, the WAPC granted development approval for a proposed development at the Subject Site (**Development Approval**) in accordance

#### **A full service Western Australian law firm:**

Aged Care, Seniors Living & Disability  
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Asian Investment  
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Corporate, Commercial & Tax  
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Education, Employment & Safety  
Energy, Oil & Gas  
Family Law

First Nations  
Intellectual Property & Technology  
Liquor Licensing  
Litigation & Dispute Resolution  
Mining & Resources

Planning & Environment  
Private Clients  
Property & Leasing  
Reconstruction & Insolvency  
Wills & Estates

#### **Our Values:**

Excellence  
Courage  
Collaboration  
Fulfillment  
Integrity

Lavan respectfully acknowledges the traditional owners of the land on which we live and work.

with the temporary decision-making powers conferred on it under Part 17 of the *Planning and Development Act 2005* (WA) (**PD Act**).

- 5 Condition 1 of the Development Approval required the development to be substantially commenced within 18 months.
- 6 On 25 July 2022, the Applicant applied under Part 17 of the PD Act to extend the substantial commencement period for the Development Approval by a period of 24 months (**Amendment Application**).
- 7 The Amendment Application was considered by the WAPC at its meeting on 8 December 2022 and despite the recommendation made by officers of DPLH to approve 24 month extension sought by the Amendment Application, the WAPC resolved to approve an alternative motion to amend Condition 1 of the Development Approval, such that it reads:

*This decision constitutes planning approval only and is valid for a period of 12 months (our emphasis) from the date the approved notice is given. If the development is not substantially commenced within the specified period, the approval shall lapse and be of no further effect.*

- 8 On 23 December 2022, my client commenced an application for review in the SAT.
- 9 Following 2 mediations between representatives of the WAPC and my client, the SAT made orders:
  - 9.1 inviting my client to submit additional information in support of the Amendment Application; and
  - 9.2 inviting the WAPC, pursuant to section 31 of the *State Administrative Tribunal Act 2004* (WA), to reconsider Condition 1 to the Amendment Application, based upon the additional information.

### **Evidence in support of the Amendment Application**

- 10 A comprehensive list of the actions taken by the Applicant to actively pursue the Development Approval has been provided to the WAPC for consideration in support of this application in a letter dated 1 May 2023 from Murray Johns of VERUM Group Pty Ltd, who is the development director appointed by the Applicant in respect of the Development Application (**Verum Letter**).
- 11 The actions described in the Verum Letter have been the subject of discussions with representatives of the WAPC and made available to the public for comment.
- 12 I am also instructed that Mr Johns (VERUM Group) will speak to additional actions which the Applicant has taken since the date of the Verum Letter and the WAPC's reconsideration of this application in his oral deputation to the WAPC.



## Officer recommendation

13 As demonstrated by officers of DPLH in its report to the WAPC, the Verum Letter addresses the steps undertaken by the Applicant to implement the development and clarify earlier actions and assurances given.

14 On this basis, DPLH officers have recommended that Condition 1 to the Development Approval be amended to read:

*This decision constitutes planning approval only. If the development is not substantially commenced on or before 8 December 2024, the approval shall lapse and be of no further effect.*

15 This support from officers of DPLH reflects the amount of work that has gone into both the preparation and consideration of the merit of the extension of time sought by the Applicant to Condition 1 of the Development Approval.

16 It is observed that in its advice to the WAPC, the City of Nedlands (being the relevant local authority to the Development Application) did not seek to comment on the actions described in the Verum Letter or the length of the extension to the substantial commencement period sought by the Applicant. In that regard, the City only reiterated its comments on the Amendment Application the subject of the WAPC's initial consideration on 8 December 2022.

## Opinion

17 In my opinion, it is clear that the WAPC has the legal ability to consider and approve the variation sought to Condition 1 to the Development Approval.

18 In re-enlivening Part 17 of the PD Act following the expiry of the COVID-19 State of Emergency, it was the intention of Parliament to address material supply challenges and labour shortages in the residential and commercial constitution markets and enable extensions of time to existing approvals issued under the Part 17 pathway, that have been impacted by these challenges.

19 Part 17 of the PD Act does not require a decision maker, in exercising its discretion, to determine what period of extension would be appropriate or proportionate to address the nature and extent of the commercial challenges faced by a proponent.

20 Rather, the considerations to be taken into account in an application to extend a substantial commencement period have been set out in a body of cases decided by the SAT, including:

20.1 *Kapila and City of Stirling* [2016] WASAT 59 (**Kapila**);

20.2 *Georgiou Property 2 Pty Ltd and Presiding Member of the Metro West Joint Development Assessment Panel* [2017] WASAT 138; and

20.3 *ALH Group Property Holdings Pty Ltd and Presiding Member of the Metro Central Joint Development Assessment Panel* [2018] WASAT 63.

- 21 In *Kapila* at [39] the SAT identified that the three primary considerations to be taken into account in an extension application are:
- 21.1 whether the planning framework has changed substantially since the development approval was granted;
  - 21.2 whether the development would likely receive approval now; and
  - 21.3 whether the holder of the development approval has actively and relatively conscientiously pursued the implementation of the development approval.
- 22 Relevantly, as demonstrated by the SAT's decision in *Kapila*, the SAT does not set a particularly high threshold in relation to the consideration of commercial challenges and generally seeks a degree of comfort in that a proponent has in fact taken some steps towards implementation and is not simply "warehousing" a development approval to increase the value of land.
- 23 Although it is not explicitly stated in the minutes of the WAPC's meeting on 8 December 2022, it is my opinion that in approving the Amendment Application, the WAPC accepts that the Applicant has satisfied each of the three primary considerations from *Kapila*.
- 24 By reference to the WAPC's decision dated 8 December 2022, it is my opinion that Condition 1 should be amended to extend the substantial commencement period of the Development Approval to 8 December 2024 for the following reasons:
- 24.1 this application does not propose any changes or modifications to the development approved;
  - 24.2 a thorough planning assessment of the development approved was undertaken by the State Development Assessment Unit and considered by the WAPC, informing its approval. In particular, that assessment included consideration of all planning controls pertaining to the Subject Site and relevant planning considerations listed in clause 67(2) of Schedule 2 to the *Planning and Development (Local Planning Schemes) Regulations 2015* (WA) and the requirement for due regard (that is, active and positive consideration) to be given to the existing and future intent of the locality contemplated by the City's planning framework;
  - 24.3 the planning framework pertaining to the Development Approval has not substantially changed such that the development approved would not be capable of approval today;
  - 24.4 the Applicant has been transparent in its communication with the WAPC and the City (respectively) in relation to its position regarding implementation of the Development Approval throughout the assessment of this application. This is demonstrated by the level of detail provided by the Applicant in its progress reports and engagement with consultants and relevant stakeholders; and
  - 24.5 it has been open to the WAPC and the community (respectively) to verify the information provided, noting that the Applicant has not concealed the

details of any stakeholders or external processes it has engaged with (notwithstanding the commercial sensitivity of such information).

## Summary

- 25 For the reasons outlined above, it is my opinion that the application for reconsideration by the WAPC:
- 25.1 does not propose any changes or modifications to the Development Approval;
  - 25.2 does not invite an assessment of the planning merit of the Development Approval; and
  - 25.3 is limited only to considerations which relate to Condition 1 of the Development Approval only.
- 26 On that basis, the Applicant respectfully submits that Condition 1 should be amended to provide that the Development Approval be valid for a period of 24 months from the date of the decision under review, consistent with the default extension period of 2 years contemplated by Part 17 of the PD Act.
- 27 I plan to attend the upcoming WAPC meeting and would be glad to answer any questions in relation to the points raised in this submission.

Please contact me or Isabella Mosole if you have any questions.

Yours sincerely

A handwritten signature in black ink, appearing to be "Craig Wallace", written over a horizontal line.

Signed for and on behalf of Paul McQueen (General Counsel, Partner), by  
Craig Wallace  
Partner

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Please notify us if this communication has been sent to you by mistake. If it has been, any privilege between solicitor and client is not waived or lost and you are not entitled to use it in any way.

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## ITEM NO: 7.1

### LOTS 10 & 11 (16 & 18) BETTY STREET & LOTS 18 & 19 (75) DOONAN ROAD, NEDLANDS – SAT SECTION 31 RECONSIDERATION OF AMENDMENT TO APPROVED RESIDENTIAL AGED CARE DEVELOPMENT

<b>Applicant:</b>	Planning Solutions
<b>Owner:</b>	Deuke Investments
<b>Value of Development:</b>	\$35 million
<b>Local Government Area:</b>	Town of Nedlands
<b>Referral Pathway:</b>	Applicant opt-in
<b>Authorising Officer:</b>	Ryan Shaw, Principal Planning Officer Planning Appeals
<b>WAPC File No:</b>	SDAU-004-20 (DR 237/2022)
<b>Application Received Date:</b>	Amendment date: 25 July 2022 SAT application date: 23 December 2022
<b>Attachments:</b>	<ol style="list-style-type: none"> <li>1. Location and Zoning Plan</li> <li>2. Original DA approval decision notice</li> <li>3. Applicant's section 31 information</li> <li>4. Extension of time decision notice</li> <li>5. 8 December 2022 Commission meeting minutes</li> <li>6. Applicant's response to submissions</li> </ol>

#### Officer Recommendation:

Pursuant to section 31 of the *State Administrative Tribunal Act 2004* (WA) that the Western Australian Planning Commission resolves to vary its decision dated 16 December 2023 (SDUA-004-20 ; DR 237/2022) and **APPROVE** the application to amend development approval at Lots 10 & 11 (16 & 18) Betty Street & Lots 18 & 19 (75) Doonan Road, Nedlands, in accordance with section 279 of the *Planning and Development Act 2005*, with the following amended condition:

#### Amended Condition:

Condition 1 of the Approved Form 17B Significant Development Application dated 29 March 2021 (SDAU-004-020) is amended to read:

1. This decision constitutes planning approval only. If the development is not substantially commenced on or before 8 December 2024, the approval shall lapse and be of no further effect.

#### Summary:

The application on review relates to an approved four-storey residential aged care facility at Lots 10 & 11 (16 & 18) Betty Street & Lots 18 & 19 (75) Doonan Road, Nedlands (subject land) (**Attachment 1**). The development approval was granted on 29 March 2021 under Part 17 of the *Planning and Development Act 2005* (PD Act).

In December 2022, the Western Australian Planning Commission (Commission) approved a 12-month extension to the substantial commencement period of the development to 16 December 2023.

The applicant subsequently applied to the State Administrative Tribunal (SAT) for a review of the decision seeking an extension of 24-months which is to be back-dated to 8 December 2022. Following mediation, new information was provided by the applicant to demonstrate steps undertaken to implement the development and clarify earlier actions and assurances.

The additional information was advertised in May 2023 and community objections were received in respect to the extension. Notwithstanding this, the additional information submitted by the applicant addresses the Commission's most recent comments by demonstrating active implementation of the development approval and clarifying preceding events.

Accordingly, the application is recommended for approval pursuant to section 31 of the *State Administrative Tribunal Act 2004* (WA).

### **Background:**

At its meeting on 11 March 2021, the Commission granted development approval (DA approval) for a residential aged care facility at the subject land under Part 17 of the PD Act. Condition 1 of the approval reads as follows:

- 1. This decision constitutes planning approval only and is valid for a period of 18 months from the date of approval. If the development is not substantially commenced within the specified period, the approval shall lapse and be of no further effect.*

The decision notice was received by the applicant on 29 March 2021 and is included in full as **Attachment 2**.

In June and July 2022, the Commission (under delegation) issued clearance approval of conditions 2, 8, 9, 15, 16, 20 and 21. This comprised Stage 1 forward works approval, which was issued as a precursor to applying for a building permit. Specifically, it involved design changes to the basement of the development resulting in an increase of 8m<sup>2</sup> and rationalisation of the storage and plant equipment areas to enable additional car bays and the repositioning of the ambulance bay. It also included the preparation of technical reports relating to built form, construction, engineering, geotechnical, landscaping, and road and traffic.

On 25 July 2022, the applicant applied to amend Condition 1 to extend the approval period by 24-months pursuant to section 279(2)(aa) of the PD Act. No changes to the development plans were proposed, however an increase to the estimated cost of development was outlined, rising from an initial figure of \$30 million to \$35 million. The applicant's rationale behind the cost escalation centred on labour shortages and supply chain issues.

At its meeting on 8 December 2022, the Commission approved a 12-month extension to the substantial commencement period. Under the terms of this approval, the development is to be substantially commenced by 16 December 2023 (**Attachment 3** – Extension of time decision notice) (**Attachment 4** - 8 December 2022 Commission meeting minutes).

On 23 December 2022, the applicant applied to the SAT for a review of the Commission's decision. Following mediation, the applicant submitted a revised package of information (**Attachment 5**) seeking a 24-month extension that is supported by the following -

- Letter from Verum Project Direction dated 1 May 2023, which outlines a chronology of events to demonstrate the steps undertaken by the applicant to implement the development.
- Letter from PS Structures dated 15 February 2023, which outlines its reasons behind withdrawing from the development.

The SAT has invited the Commission to reconsider the application pursuant to section 31 of the *State Administrative Tribunal Act 2004* (WA).

### **Legislation:**

#### Section 31 process

The source of the Commission's decision-making power is section 31(2) of the SAT Act which states:

*Upon being invited by the Tribunal to reconsider the reviewable decision, the decision-maker may —*  
*(a) affirm the decision; or*  
*(b) vary the decision; or*  
*(c) set aside the decision and substitute its new decision.*

Pursuant to section 279(2)(aa) of the PD Act, the decision of the Commission on 16 December 2022 to which the SAT application relates was an application to extend the substantial commencement period. Therefore, it is not open to the Commission to reconsider any other aspects of the original approval other than Condition 1.

In this regard, it is open for the Commission to exercise its discretion to reconsider the terms of the extension request.

#### Part 17

The introduction of Part 17 into the PD Act has temporarily established the Commission as the decision-making authority for applications for significant development to support the State's economic recovery from the COVID-19 pandemic. Part 17 provides the Commission with enhanced decision-making powers that will enable more strategic assessment of significant developments that deliver broad economic, social, and environmental benefits for the State.

In June 2022, the WA Parliament passed legislation to allow the Commission to consider applications to extend the substantial commencement period for approved proposals. The legislation was introduced to assist in addressing material supply challenges and labour shortages in the residential and commercial construction markets and enable consideration to an extension of time to existing approvals issued under the Part 17 pathway that have been impacted by these challenges.

Pursuant to section 279(6A) of the PD Act, no more than one application can be made for an extension of the substantial commencement period of a development approval. Therefore no further application beyond this subject application can be made in respect to the development approval. However, as set out above, the Commission has the power to reconsider its decision in respect to this application pursuant to section 31 of the SAT Act.

### **Consultation:**

#### Minister for Planning

Section 283(5) of the PD Act requires the SAT to give the Minister for Planning an opportunity to make submissions on any matter relating to the review. In this regard, the Minister did not wish to provide any submission in relation to mediation and/or section 31 reconsideration. However, should the matter proceed to a final SAT Hearing, the Minister would be provided opportunity to be heard.

#### Local Government

The SAT reconsideration was referred to the City of Nedlands (the City) for comment. The City's advice acknowledged the Commission's decision to approve a 12-month extension, and therefore did not weigh in on the length of the approval period. As it follows, the City reiterated its comments from its 25 October 2022 Council meeting by advising that it does not support the extension of time to the substantial commencement date for the following reasons:

1. *There has been a significant change to the planning framework that affects the ability for the development to be approved as follows:*
  - a. *The introduction of the R80 primary controls to the development by City of Nedlands Local Planning Scheme No.3 has identified an inability for plot ratio to meet Element Objective 2.5.1 of the Residential Design Codes Volume 2; and*
  - b. *City of Nedlands Local Planning Scheme requires a local development plan to be prepared. The development as proposed does not meet the requirements of clause 56(2) of the Deemed Provisions to allow waiving of this requirement.*
2. *The proponent has not demonstrated a justification for a 24-month extension of time, with this considered excessive by the City given the objective of the Part 17 development approval process to facilitate 'shovel ready' projects: and*

3. *The proponent has not actively and relatively conscientiously pursued the approval.*

At the time of submission, the City advised that the applicant had applied for a building permit on 22 May 2023. The building permit was approved on 7 July 2023.

Public Consultation

The application was advertised for public comment for a period of 14 days between 8 May and 22 May 2023. 121 letters were sent to residents and property owners that abut the site and to those who made submissions on the original application. The updated documents were also made available on the Department of Planning, Lands and Heritage's Consultation Hub website.

127 submissions were received, which included two late submissions. In total, one submission supported the application, with the remaining 126 submissions objecting. The key concerns raised by submitters were -

- The planning framework has substantially changed since the approval was issued in March 2021, and consequently the application should not be approved.
- The applicant has not undertaken the necessary steps to demonstrate that the development has been actively pursued, and therefore the extension request should not be approved.
- The development does not satisfy the relevant planning framework and therefore the application should not be approved.

A consolidated package of submissions, which outlines full details of submissions and includes submission attachments is provided to the Commission members for their consideration. Summarised submitter concerns are included in **Attachment 6**, which includes the applicant's response to such issues.

Planning matters, including those raised by submitters, are discussed in further detail under the Assessment section of this report.

**Assessment:**

The assessment relates to the applicant's latest request to extend the substantial commencement period by 24-months. This involves having regard to all circumstances of the case, including the original information before the Commission, together with the events that have occurred since the decision under review.

Pursuant to s 269 of the PD Act, the term 'substantially commenced' means:

*“... that some substantial part of work in respect of a development approved under a planning scheme or under an interim development order has been performed”.*



The applicant has advised that to reach substantial commencement the following activities are required to be completed prior to the current expiry date of the approval being 16 December 2023 -

- The City to issue a building permit (since been approved).
- Nominated Builder (EMCO) to finalise trade letting contracts.
- Mobilise to site and undertake piling.
- Complete the excavation and siteworks.
- Commence construction, and complete Stage 1 works which include construction of the basement and associated constructed columns, walls and slabs, battered fill zones, in ground services, and a section of constructed slab at ground level which runs the length of building along the northern side, one third of the full depth of the building.

Under the terms of the current approval, the applicant has some 5 months remaining to complete the above works which is further discussed below.

Decisions of SAT provide the below general guidance factors for the assessment of applications seeking to extend the substantial commencement period.

1. Has the planning framework changed substantially since the development approval was granted?
2. Is the development likely to receive approval now?
3. Has the applicant actively and relatively conscientiously pursued the implementation of the development approval?
4. Has the applicant sought to 'warehouse' the development approval?
5. Was the original period for substantial commencement originally imposed adequate?

The above five factors are not exhaustive. Instead, they provide guidance for the Commission's consideration and are to be weighed in the balance, having regard to the merits of the application as a whole. A similar approach was taken by the Commission at its meeting on 8 December 2022.

1) Has the planning framework changed substantially since the development approval was granted?

and

2) Is the development likely to receive approval now?

Factors 1) and 2) are considered in parallel because for the Commission to determine whether the development is likely to receive approval now, it is required to consider LPS 3 and any recent changes to the planning framework.

If the planning framework has changed, it is also necessary to first determine whether the change is substantial in nature. If so, the Commission is to determine whether this alters the decision to approve the development.

The above considerations are to be balanced in the context of Section 275(6) of the PD Act, which relates to Part 17 applications and requires due regard to:

- a) the purpose and intent of any planning scheme that has effect in the locality to which the development application relates; and
- b) the need to ensure the orderly and proper planning, and the preservation of amenity, of that locality; and
- c) the need to facilitate development in response to the economic effects of the COVID-19 pandemic; and
- d) any relevant State planning policies and any other relevant policies of the Commission.

There has been no change to the planning framework since the Commission's most-recent decision on the extension of approval application (the subject of the SAT proceeding). However, changes have occurred since the original decision in March 2021, and for completeness, these are outlined below -

- Amendment 10 to the City Local Planning Scheme No. 3 (LPS 3); and
- City of Nedlands' Local Planning Policy Design Review Panel (DRP Policy).

The main change to the planning framework was Amendment 10 to LPS 3. This was gazetted on 4 February 2022 and introduced additional use 'A9' (A9) over the subject land and immediate neighbour to the south (Lot 25), with the following development provisions:

1. *Residential aged care facility is a 'P' use.*
2. *A local development plan to be prepared in accordance with Part 6 of the Planning and Development (Local Planning Schemes) Regulations 2015.*
3. *In relation to Lot 25 (69) Melvista Avenue: - A maximum plot ratio of 1.0 applies.*
4. *In relation to Lots 10 (16) and 11 (18) Betty Street, and Lots 19 (73) and 18 (75) Doonan Road:*
  - *Development to be in accordance with the R80 density code and associated primary controls prescribed in State Planning Policy 7.3 Residential Design Codes Volume 2 – Apartments (R-Codes Volume 2).*

Amendment 10 to LPS 3 enshrines the Residential Aged Care Facility 'land use' on the subject land as a permitted land use and introduces new development standards. In this regard, submissions outlined concerns as to the consistency of the development with the R80 primary controls of the R-Codes Volume 2, and questioned the absence of a local development plan (LDP) to guide future development. In this respect, submitters did not support the application based on orderly and proper planning principles.

Amendment 10 may be considered a substantial change to the planning framework. However, for the reasons which follow, the change does not alter the decision to approve the development.

- In respect to A9's requirement for an LDP, clause 46, schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (LPS Regulations) establishes LDPs for the purposes of providing guidance on site and development standards. In this respect, site and development standards are addressed in more detail in a development application setting than an LDP, which is typically a precursor to a development application.

Furthermore, clause 56(2), schedule 2 of the LPS Regulations provides decision-makers with discretion to approve a development application in an area for which an LDP is required, but for which no LDP has been approved. In exercising discretion, clause 56(2)(a) and (b) requires decision-makers to be satisfied that the development does not -

- (a) conflict with the principles of orderly and proper planning, and
- (b) prejudice the overall development potential of the area.

Subclause 56(a)

With respect to the principles of orderly and proper planning, A9's introduction of the R80 primary control includes development standards relating to building height, setbacks, plot ratio, building depth and building separation.

Similar development standards were considered by the Commission in its original DA decision. This decision involved a performance-based assessment of the relevant R-Codes Volume 2, having regard to the context and setting of the development. It was also informed by three independent State Design Review Panel (SDRP) evaluations, which provides judgement on the 10 'good design' principles.

The original DA decision also considered the broader planning framework, which included the City's *Local Planning Policy 2.4: Residential Aged Care Facilities* (LPP 2.4), which at the time was in draft form. The latest version of LPP 2.4 (September 2022) is to be considered to the extent that it is consistent with LPS 3. In this regard, clause 4.3.2 of LPP 2.4 applies the R-Codes to development for land coded R10, R12.5, R15, R20, R30, and R35.

While the subject land is coded R12.5 on LPS 3 scheme map, A9 applies the R80 primary controls of R-Codes Volume 2, which pursuant to clause 3(2), schedule 2 of the LPS Regulations prevails in the circumstances. Noting this, LPP 2.4 general requirements relating to streetscape character, building and roof form, visual privacy, landscaping, traffic impact and pedestrian access, together with Table 5.1 controls (which reflects Table 2.1 primary controls of the R-Codes Volume 2) would form relevant considerations.

Having regard to the purpose of an LDP, which is to provide for site and development standards, the need for an LDP is unnecessary given it would duplicate planning controls as required in A9 of LPS 3, and to a lesser extent, LPP 2.4.

Having regard to the above, an LDP is not required for the purposes of orderly and proper planning. Therefore clause 56(a), schedule 2 of the LPS Regulations is satisfied.

Subclause 56(b)

Having regard to the overall development potential of the area, there is a low likelihood of any imminent redevelopment on the adjacent retirement village on Lot 25 (no. 69) Melvista Avenue, Nedlands.

In this regard, the site-characteristics of Lot 25 offer frontage to three different roads. Any large-scale redevelopment of the property is therefore unlikely to be unnecessarily disadvantaged by the actions of approving development on the subject land without an LDP that covers the two development areas. Noting this, the absence of an LDP is unlikely to prejudice the overall development potential of the area, as framed by A9 in LPS 3. Clause 56(b), schedule 2 of the LPS Regulations is therefore satisfied.

Whilst A9's new requirement for an LDP may be considered a substantial change to the planning framework, for the reasons set out in the points above, this change does not alter the decision to approve the development.

- The next question is whether the introduction of the R80 primary controls is a substantial change to the planning framework.

The Commission's original DA decision considered a number of planning matters, including the purpose and intent of LPS 3 and the need to maintain the orderly and proper planning, and the preservation of amenity of the locality. This involved, in part, an assessment of built form against the element objectives of the R-Codes Volume 2 and considered the local character and amenity of the locality.

The introduction of the R80 primary controls has since clarified the planning framework for the subject land, and now requires assessment against the following development controls:

- Building height of 4 storeys.
- Boundary wall height of 2 storeys<sup>1</sup>
- Minimum primary and secondary street setback of 2m.
- Minimum side setback of 3m.
- Minimum rear setback of 3m.
- Average side setback of 3.5m (where exceeds 16m).
- Plot ratio of 1:1.0.

The approved development generally satisfies the above R80 primary controls, with the exception of plot ratio. The development's plot ratio was raised as a concern in submissions, with claims that the plot ratio exceeds previous calculations, being upwards of 1:1.96.

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<sup>1</sup> Does not apply in this instance, given the development is setback from side boundaries.

By way of background, the Commission's original DA decision was informed by two plot ratio calculations of 1:2.1 and 1:1.4. The most-recent decision on the extension of time application considered a plot ratio of 1:1.055.

While the original method of calculation varied due to changing definitions in the planning framework, both calculations of 1:2.1 and 1:1.4 exceeded the *at the time* requirement of 1:1.0. Despite this, the Commission's original DA decision found that the higher plot ratio was acceptable and discretion was exercised. This was based on an assessment of the bulk and scale, having regard to the context and setting of the subject land.

The same level of assessment, and plot ratio limit is required by the current planning framework. In this respect, it is open to the Commission to assess the merits of the application under the R-Codes Volume 2 performance-based approach, which directs decision-makers to a more qualitative assessment against clause 2.5 element objective.

While the introduction of the R80 primary controls may be considered a substantial change to the planning framework, for the reasons outlined above, this change does not alter the decision to approve the development.

The change to the City's DRP policy is not considered a substantial change to warrant a different decision. This is because the SDRP reviewed the original development, which performs a similar function to the City's local design review panel.

In conclusion, there have been two occasions where the development has been assessed and approved and it is likely that the development would receive approval again based on a merit assessment against the planning framework, including LPS 3, R-Codes Volume 2 and LPP 2.4.

3) Has the applicant actively and relatively conscientiously pursued the implementation of the development approval?

and

4) Has the applicant sought to 'warehouse' the development approval?

Factors 3) and 4) are interrelated because the practical effect of demonstrating active implementation would demonstrate that the applicant has not sought to warehouse the development approval.

To date, the applicant has committed more than \$13 million to advance the development. Key aspects include:

- the purchase of four properties valued at over \$10 million and associated landholding costs.
- expenditure of \$90,000 on demolition works.

- expenditure of in excess \$2.93 million on consultant team, previous builder and various ancillary fees relating to regulatory, legal, project management, surveying and application services.

While the above figure mostly reflects the purchase and demolition of four properties, it represents a significant financial undertaking which proportionally speaking, reflects some 37% of the development's total estimated construction cost at \$35 million. This point is to highlight the applicant's capital spend to date and does not seek to blend the estimated cost of construction with the overall development cost, which are two separate and distinct financial outlays.

Expenses aside, the applicant's actions which include the events that have occurred before the Commission's decision on the extension of time are to be weighed in the context of the overall approval period from the date of the original approval of the development. This period reflects some 28 months to date.

The applicant's chronology of events, which form the basis of Verum's letter dated 1 May 2023, indicates that the development's design phase was downscaled for the duration of the approval's first 6 months. This period reflects one-third of the original approval's 18-month substantial commencement period. The applicant submits the delay was because of the uncertainty and risk of a Supreme Court challenge and the implications arising from the COVID-19 pandemic on Oryx's established aged care operations (being The Richardson and The Queenslea facilities). As outlined by the applicant -

*"The core business of Oryx is ensuring the wellbeing and safety of its residents at its facilities. Whilst the development of a new aged care facility remained a priority, because of COVID-19, it became highly challenging during the first half of 2021.*

*..*  
*At the time of receiving the Approval, a group of landowners who publicly objected to the development application for the Project stated to the local press that they intended to legally challenge the Approval by lodging an application for judicial review to the Supreme Court of Western Australia...*

*Oryx was hesitant about committing to the expenditure of a full consultant team due to the risk of the Approval being challenged... a degree of design progress was achieved in the first 6 months of the Approval with the Project architect being instructed to proceed with design development tasks."*

Following this period, the applicant states it has progressed towards site works by engaging a full consultant team comprised of 11 speciality firms offering acoustic, architectural, compliance, communication, construction, design, engineering, planning, project management, traffic and waste services. This work culminated in the Commission's approval of Stage 1 forward works in June and July 2022, which was required to progress a building permit and involved the clearance of conditions 2, 8, 9, 15, 16, 20 and 21. The applicant was not notified of all approvals until October 2022.

The applicant suggests construction work was further delayed by 5 months to account for the Commission's determination of the extension of time request, which is the subject of this SAT proceeding. While the consultant team remained on hold between August-December 2022, the applicant states it continued to undertake steps to implement the development by engaging its interior design team to confirm design outputs and applying for subdivision approval to amalgamate the four properties into a single landholding. The subdivision was approved in late November 2022.

The applicant also submits that it has had to overcome regulatory changes to the aged care sector, and more recently in February 2023, the withdrawal of its builder PS Structures. In its letter to the applicant, dated 15 February 2023, PS Structures states -

*"... In the current over heated market, aged care projects have proven to be more complex to manage and are a higher order of cost and time risk than other forms of construction, compared with the projects on our book and currently available to us for tendering ...*

*..*

*If we could see a trend back towards normal market conditions, then we assure you that would (sic) not have made this decision..."*

Since the withdrawal of its builder, the applicant has undertaken additional tendering and approached five builders. Of these builders, three accepted the invitation, with Broad Construction ultimately withdrawing due to tendering commitments. The applicant notes -

*"... there is only a small field of builders who have the capacity and willingness to undertake projects that involve the construction of an aged care facility in Perth. Aged care construction is a highly specialised area with complex technical, mechanical, electrical and hydraulic requirements similar to hospitals".*

On 27 February 2023, EMCO was appointed as the preferred builder. At the time of their submission, the applicant advised that EMCO were finalising market pricing and nearing the submission of a building permit, with demolition of the two remaining dwellings expected to occur in early May 2023.

A site visit on 6 July 2023 confirms demolition works have occurred and the City has advised that a building permit was approved on 7 July 2023 (45 days post lodgement, which is some 35 days after the City's 10-day assessment period). These actions validate the applicant's latest commitments to the project, as outlined in their latest information.

Notwithstanding the above, public submissions question the veracity of the applicant's claims and historical time frames and query why the new information was not provided earlier. Submitters raise concerns on the previous assurances given to the Commission when the application was first considered, with claims that the applicant misrepresented the development's standing, including financial status.

As an example, the applicant's original development application stated that project funding was in place. This position was reflected in the original officer report which outlined the *"... project has secured finance and the applicant has advised that construction will be able to commence within a 24-month period"*. While the applicant submits that finance is secured, the new information suggests that work with the development's finance broker is ongoing. The weight of this point is tempered by the applicant's accounts, which reveals a number of unforeseen challenges that may have impacted the financial terms of the development. These are summarised as follows -

- March 2021 - development approval granted.
- February 2022 - the applicant engages PS Structures as builder.
- May 2022 - the WA Government announces the reopening of the Part 17 process and allows proponents to apply for a 'one-off' extension. The financier's position changes, prompting the applicant to investigate an alternative finance partner.
- July 2022 - the applicant applies to extend the substantial commencement period.
- August 2022 - the applicant concludes negotiations with bridging financiers.
- December 2022 - the Commission approves a 12-month extension. The applicant acquires a new aged care valuation due to the passage of time and cost escalations in the construction industry.
- February 2023 - the applicant is notified of PS Structures withdrawal. The applicant subsequently engages EMCO.
- April 2023 - EMCO finalising market pricing.

It is recognised that the project has been subject to a number of delays, however these have largely been outside of the applicant's control. Aside from the applicant's decision to downscale work because of the risk of a Supreme Court challenge, COVID-19 and the Commission's assessment time frames, the revised information demonstrates that reasonable steps to implement the development over the course of the approval period were undertaken.

Based on the information available, it is considered that the applicant has actively and relatively conscientiously pursued the implementation of the development to justify a 24-month extension.

As it reasonably follows, the applicant has not sought to 'warehouse' the approval.

5) Was the original period for substantial commencement originally imposed adequate?

The Commission's meeting minutes from 11 March 2021 outlines the development's initial 18-month substantial commencement period was reasonable in the context of encouraging early development, and in recognition of Part 17, which at time did not allow applicants to apply for extensions to time frames.



Part 17 has since changed with the introduction of the *Planning and Development Amendment Bill 2022* (WA) which reopened the decision-making pathway and allowed applicants to apply for a one-off extension to the substantial commencement date.

In announcing the change, the accompanying May 2022 WA Government Ministerial Statement acknowledged the delays to the construction and development industries due to significant supply chain pressures and price escalations.

The Commission's most recent decision to grant a 12-month extension recognised the above changes to Part 17. It also noted the difficulties in assessing what steps towards substantial commencement have occurred and the uncertainties surrounding the applicant's [then] revised works program.

These comments are addressed by the new information submitted by the applicant which sets out a detailed chronology of events. The applicant's decision to back-date the 24-month extension request to 8 December 2022 is also seen to, in part, support their commitment to implement the development - noting should the request be supported, the extension in practical terms would reflect an extension period of 1 year and 4 months. This equates to an overall substantial commencement period of approximately 3 years and 8 months from the date of the original DA approval.

Submissions also state that the latest request proves that the development is not 'shovel ready'. Submitters also claim that given the lack of activity; the development should not be determined under the SDAU pathway.

As set out above, changes to the Part 17 framework have occurred in response to external market factors and labour shortages, which continue to impact the development industry. The power to apply for a one-off extension responds directly to these challenges, and the applicant is entitled to apply for an extension which is to be determined on merit. What is more, in recent times, the Commission has approved longer initial periods for substantial commencement period, including up to three years.

In the circumstances and having regard to the need to facilitate development in response to the COVID-19 pandemic, the requested 24-month extension is considered reasonable as it will provide the applicant with further opportunity to finalise financing, together with additional time to account for any further unforeseen construction delays. These include potential labour shortages, insolvencies and inclement weather which has the potential to further delay site works.

#### *Other considerations raised in submissions*

Submissions raise a number of concerns relating to -

- the development's impact on the amenity of the locality arising from the bulk and scale and transition of the development and its future aged care operations. Amenity impacts include the likely increase to traffic, congestion,

- light spill, noise and general nuisance.
- a lack of demand for aged care facilities to support the development. Submitters contend that there are new aged care developments in the broader locality which provides for future supply.
- a lack of transparency from the applicant and the City in the early project stages. Specifically, submissions raised concerns on the City's historical sale of Lot 19 Doonan Road, and claim the applicant misrepresented the development concept during the initial consultation phase. Submissions raise a general concern in relation to community trust and confidence in future decision making.
- the risk of establishing an undesirable precedent for future Part 17 applications.
- the need to review the design and daily operations of the approved development to address the recommendations of the Royal Commission into Aged Care Quality and Safety.

These matters have been considered by the Commission. The application before the Commission relates to section 279(2)(aa) of the PD Act, which on review under section 31 of the SAT Act, limits the scope of decision-making to decide whether an extension of time should be approved. No change to the built form, approved land use or other conditions of approval are proposed.

Furthermore to address operational concerns relating to the Royal Commission into the Aged Care sector, the applicant must follow other legislative processes, including the Aged Care Act, outside of the planning regime. This requirement will address operational matters, including those that relate to the health and well-being of future occupants.

Concerns about the unkempt nature of the subject land were raised as part of submissions. This is a matter for the local government and can be addressed through the building permit process and the requirement to prepare and implement a construction management plan during the construction phase (existing condition 8).

### **Conclusion:**

The application seeks to vary the Commission's most recent decision to grant a 12-month extension to the substantial commencement period by changing Condition 1 to extend the substantial commencement period by 24 months.

Most of the local community, including the City, object to the proposed 24-month extension. However, despite the strong opposition, the above assessment demonstrates that the applicant has actively pursued implementation of the development approval through its actions in the wake of supply chain issues, cost escalations, labour shortages and the withdrawal of its builder. The applicant's demonstrated steps to -

- finance the development;
- gain clearance of Stage 1 forward works;
- engage a new builder on short notice,
- undertake demolition works; and

- gain approval for a builder permit

weighed in the balance with the planning framework, which has substantially changed since the Commission's original decision, albeit not to the extent to warrant refusal, are meaningful considerations in support of the application.

On balance, pursuant to section 31 of the SAT Act it is recommended that the Commission varies its decision to approve the application and extend the substantial commencement period until 8 December 2024, which is a 24-month period from the date of the latest Commission meeting.

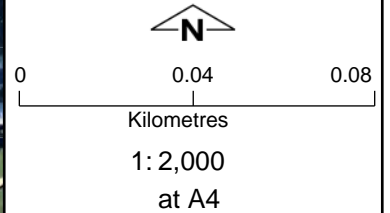




Department of Planning,  
Lands and Heritage

### Legend

- Subject land
- LPS 3 'A9' extent



### Notes:

\* The data that appears on the map may be out of date, not intended to be used at the scale displayed, or subject to license agreements. The map should only be used in matters related to Department of Planning, Lands and Heritage business.

\* This map is not intended to be used for measurement purposes.

Map was produced using DPLH's InQuery.

Date produced: 07-Jul-2023



## Location plan

### DPLH BUSINESS USE ONLY

Internal Spatial Viewer  
Projection: WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere  
Graticules (if visible): GDA 1994 Latitude/Longitude

- LPS Restricted and Additional Use
- LPS Zones and Reserves Public open space
- LPS R-Code Boundary
- Residential





WAPC Ref: SDAU-004-20  
Enquiries: [REDACTED]

Dear [REDACTED]

## APPROVAL OF FORM 17B SIGNIFICANT DEVELOPMENT APPLICATION

WAPC Ref:	SDAU-004-20
Property Location:	Lots 10 and 11 (16-18) Betty Street, and Lots 18 and 19 (73-75) Doonan Road, Nedlands
Application Details:	Residential Aged Care Facility and Consulting Rooms

Thank you for your Form 17B Application for Development Approval and plans submitted to the Department of Planning, Lands and Heritage on 29 July 2020 for the above-mentioned development.

This application was considered by the Western Australian Planning Commission at its meeting held on **11 March 2021**, where in accordance with Section 274(2) of the *Planning and Development Act 2005*, it was resolved to **approve** the application as per the attached notice of determination.

Should the applicant not be satisfied by this decision, an application may be made to amend or cancel this development approval in accordance with Section 279 of the *Planning and Development Act 2005*. Please also be advised that there is a right of review by the State Administrative Tribunal in accordance with Section 283 of the *Planning and Development Act 2005*. Such an application must be made within 28 days of the determination, in accordance with the *State Administrative Tribunal Act 2004*.

The Western Australian Planning Commission is responsible for the clearance of any conditions of approval. The Commission's clearance will be required prior to an application being made to a permit authority for a building permit. Should you have any queries with respect to the conditions of approval, or the process for the clearance of conditions, please contact [REDACTED], on [REDACTED] or via email at [REDACTED].

Yours sincerely,

[REDACTED]

[REDACTED]

Secretary  
Western Australian Planning Commission  
29 March 2021

Encl. WAPC Determination Notice  
Approved Plans

***Planning and Development Act 2005***

**Section 274(2)**

**APPROVAL of Form 17B Significant Development Application**

**WAPC Ref:** SDAU-004-20  
**Property Location:** Lots 10 and 11 (16-18) Betty Street, and Lots 18 and 19 (73-75) Doonan Road, Nedlands  
**Application Details:** Residential Aged Care Facility and Consulting Rooms

In accordance with Section 274(2) *Planning and Development Act 2005*, the above application for development approval was **APPROVED** on 11 March 2021, subject to the following conditions:

**Conditions**

Approval Timeframe

1. This decision constitutes planning approval only and is valid for a period of 18 months from the date of approval. If the development is not substantially commenced within the specified period, the approval shall lapse and be of no further effect.

Conformity with Plans

2. The development shall be undertaken in accordance with the approved plans and documents date-stamped 25 February 2021 attached to this approval, final details of which are to be provided at working drawings stage to the satisfaction of the Western Australian Planning Commission with the following modification:
  - a. A 1.6m high privacy screen shall be erected to the northern side of the Level 3 balconies.

Clearance of Conditions of Approval

3. A covering letter and a copy of the final working drawings (prepared for submission of an application for a building permit) and all associated reports and information that address the conditions of approval shall be submitted to, and cleared by, the Western Australian Planning Commission.

Land Use

4. The wellness centre (consulting rooms) shall be used by a maximum of two fulltime-equivalent health practitioners at any one time.
5. Use of the wellness centre (consulting rooms) by people/patients who are not residents of the Aged Care facility shall not exceed 30% of the daily appointments. A wellness centre management plan addressing but not limited to: the extent of external referrals to health practitioners reflected in this condition and hours of operation shall be submitted to, and approved by, the Western Australian Planning Commission and thereafter implemented.

6. The cafe and hairdresser activities, as depicted on the approved plan, shall be operated as incidental uses to the Residential Aged Care Facility use and shall be limited to use by residents and staff of the Residential Aged Care Facility and their visitors.

### Construction

7. Arrangements being made prior to the occupation of the development, for Lots 10 and 11 Betty Street, Nedlands and Lots 18 and 19 Doonan Road, Nedlands to be legally amalgamated on one Certificate of Title, or such other alternative, at the expense of the owner, to the satisfaction of the Western Australian Planning Commission.
8. Prior to the submission of the relevant building permit application, a Construction Management Plan for the proposed development shall be submitted to, and approved by, the Western Australian Planning Commission on advice from the City of Nedlands, addressing but not limited to: the control of vibration, dust, noise, waste, dewatering, sand and sediment; temporary fencing; hoardings and gantries; site access/egress; deliveries of construction materials; heavy construction machinery; parking for contractors and tradespersons; and traffic control. The approved Plan shall be implemented and adhered to at all times during the construction phase, unless otherwise approved by the Western Australian Planning Commission on advice from the City of Nedlands.
9. Prior to the submission of the relevant building permit application, the applicant shall submit a geotechnical engineering report certifying that the land is physically capable of accommodating the development, to the satisfaction of the Western Australian Planning Commission, on advice from the City of Nedlands.
10. Prior to the commencement of development, a dilapidation report prepared by a suitably qualified professional shall be submitted to, and approved by, the Western Australian Planning Commission on advice from the City of Nedlands, detailing the current condition and status of all buildings, surrounding paved areas and ancillary structures located on, but not limited to, the following properties:
  - a. 14 Betty Street
  - b. 71 Doonan Road
  - c. 69 Melvista Avenue and No. 20 Betty Street

In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant must demonstrate in writing to the satisfaction of the Western Australian Planning Commission that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Dilapidation reports shall be prepared to the satisfaction of the Western Australian Planning Commission.

### Parking

11. The on-site car parking bays shall be marked on site as indicated on the approved plans and such marking shall be subsequently maintained so that the delineation of parking bays remains clearly visible. Hard-stand areas approved for the purpose of car parking or vehicle access shall be maintained in good condition to the satisfaction of the Western Australian Planning Commission.
12. Prior to the occupation of the development, the applicant shall supply certification of compliance by an architect or engineer confirming that the constructed design of all car parks, vehicle access-ways, ramps and bicycle bays complies with Australian Standards AS2890.1 and AS2890.3 and is consistent with the approved plans, to the satisfaction of the Western Australian Planning Commission.
13. Prior to the occupation of the development, a Parking and Access Management Plan shall be submitted to, and approved by, the Western Australian Planning Commission on advice from the City of Nedlands. The Parking and Access Management Plan is to include detailed management measures for the location of staff bays, visitor parking, basement vehicular entry gate and service and/or deliveries times to ensure vehicle access is readily available and safe at all times. The approved Parking and Access Management Plan shall be implemented by the owners/occupiers/strata managers of the development to the satisfaction of the Western Australian Planning Commission.

### Lighting

14. Prior to the submission of the relevant building permit application, an external lighting plan shall be submitted to, and approved by, the Western Australian Planning Commission on advice from the City of Nedlands. The lighting is to be designed and located to ensure light spill is considered appropriate in a residential context.

### Waste Management

15. Prior to submission of the relevant building permit application, the Waste Management Plan by Talis (ref. TW20019 dated 1 October 2020) shall be amended on advice from the City of Nedlands and shall be submitted to, and approved by, the Western Australian Planning Commission. The approved Waste Management Plan shall be implemented and adhered to at all times by the owners and/or operators of the development, to the satisfaction of the Western Australian Planning Commission.

### Water Management

16. Prior to the submission of the relevant building permit application, a Stormwater Management Plan shall be submitted to and approved by the Western Australian Planning Commission, on advice from the City of Nedlands, and thereafter implemented.



### Acoustic Report

17. Prior to the submission of the relevant building permit application, all of the recommended measures included in the Acoustic Report prepared by Gabriels Hearne Farrell, dated 15 October 2020 (Rev: 3), shall be implemented in full unless otherwise approved by the Western Australian Planning Commission, on advice from the City of Nedlands.
18. Prior to the occupation of the development, the final plans shall be certified by a qualified acoustic consultant confirming the development incorporates the recommendations outlined in the approved Acoustic Report.
19. Prior to the submission of the relevant building permit application, the landowner shall provide a detailed acoustic assessment on the chosen mechanical plant equipment which demonstrates compliance with the requirements of the Environmental Protection (Noise) Regulations 1997.

### Landscaping

20. The four existing trees located adjacent to the northern boundary of the site shall be retained and protected during development works with a tree protection zone being established and maintained during the construction period to the satisfaction of the Western Australian Planning Commission, on advice from the City of Nedlands.
21. Prior to the submission of the relevant building permit application, an Arboriculture Report shall be prepared by a suitably qualified professional, at the developer/owners' cost, providing details of the required tree protection zone and demonstrating how the development will be undertaken to mitigate impacts to the retained trees, with the report being submitted to, and approved by, the Western Australian Planning Commission on advice from the City of Nedlands.
22. Prior to the occupation of the development, all landscaping areas shall be installed in accordance with the approved landscaping plan stamped 25 February 2021. All landscaping areas shall be maintained thereafter to the satisfaction of the Western Australia Planning Commission.
23. Prior to the occupation of the development, the portion of the road verge adjacent to the development site shall be made good, to the satisfaction of the Western Australian Planning Commission on advice from the City of Nedlands.

### Materials and Finishes

24. The development being constructed with high quality and durable materials and finishes and to a level of detailing that is consistent with the elevations and perspectives date stamped 25 February 2021. Prior to the submission of the relevant building permit application, the applicant is to submit final details, including a sample board, of the materials, colours and finishes of the exterior of the building to the satisfaction of the Western Australian Planning Commission, on advice from the State Design Review Panel.

### Utilities and Facilities

25. Any proposed external fixtures including, but not limited to television and radio antennae, satellite dishes, plumbing vents and pipes, solar panels, air conditioners, hot water systems and lift overruns shall be integrated into the design of the building and located or screened to minimise any visual and noise impact on the residents of the neighbouring properties and public realm, with details of the location and screening of such plant and services being submitted to, and approved by, the Western Australian Planning Commission prior to applying for the relevant building permit;

### **Advice Notes**

- a. With regard to condition 1, and in accordance with s.279(4) of the Planning and Development Act 2005, the Commission cannot do anything that would have the effect of extending the period within which the development must be substantially commenced.
- b. This is a development approval only. The applicant/owner is advised that it is their responsibility to ensure that the proposed development complies with all other applicable legislation, local laws and/or licence/permit requirements that may relate to the development.
- c. A demolition permit from the City of Nedlands is required prior to demolition works occurring. All works are required to comply with relevant statutory provisions
- d. With regard to condition 3, working drawings are to comply with all of the relevant conditions of development approval, as confirmed by the Western Australian Planning Commission, and any variations from the approved plans are required to be clearly identified. Following satisfactory assessment of the working drawings, the Western Australian Planning Commission will provide a clearance letter and copies of the plans to the City of Nedlands to assist with building permit assessment. Where works and/or building permits are proposed to be staged, the Commission may agree to a staged clearance of working drawings and associated conditions of approval.
- e. The final plans and details submitted to the Western Australian Planning Commission to satisfy the conditions of this approval will be verified by the Department of Planning, Lands and Heritage officers, and any other Local or State government agency where applicable. Approval for any substantial changes to the approved plans will need to be obtained in writing from the Commission, made via an amended application process (Form 17C).
- f. Where building works proposes a “notifiable event” or are likely to affect neighbouring land or property, then the ‘Work affecting other land’ provisions of the Building Act 2011 will apply. This information sets out the requirements for managing building work on or close to a boundary. This process is used to confirm agreement with the work and with the effects it may have on neighbouring land or property.

- g. With regards to condition 8, in the event that that dewatering is required at the site during construction the applicant is to prepare a Dewatering Management Plan with advice provided by the Department of Biodiversity, Conservation and Attractions and the City of Nedlands.
- h. With regards to condition 13, the management of parking bays 14-17 and the associated loading/ambulance area is to be addressed to ensure that the bays are designated as all day parking bays and/or staff bays to manage the impact of when manoeuvring is temporarily obstructed due to the use of loading/ambulance area.
- i. With regard to condition 13, the parking and access management plan is to address and provide suitable arrangements for staff and visitors accessing the site by private vehicle, particularly in the evenings and early mornings, to use the basement car parking rather than any available on-street parking, to minimise noise and disturbance for surrounding residents and occupants of the development.
- j. With regard to condition 15, further information including details of bins storage layout, management of FOGO and medical waste and the type and movement of waste collection vehicles (including swept path analysis) is to be incorporated into the updated waste management plan.
- k. With regard to condition 16, all downpipes from guttering are required to discharge into drains that empty into a soak-well on-site. Each soak-well must be located at least 1.8m from any building and lot boundary. Soak-wells are required to have a minimum capacity of 1.0m<sup>3</sup> for every 80m<sup>2</sup> of calculated surface area of the development and should have capacity to contain runoff from a 20-year recurrent storm event.
- l. In relation to conditions 17 to 19, the Acoustic Report outlines that the condenser units are to operate in night mode during the overnight period (10pm to 7am) in order to comply with the applicable requirements. This mode is to be programmed onsite by the installer and shall not be altered by the building occupants or maintenance staff.
- m. Prior to commencement of site works, a Nature Strip Works Permit shall be submitted to and approved by the City of Nedlands, to the City's satisfaction. The application shall include a detailed infrastructure plan to the City's satisfaction. The landowner shall be liable for any ongoing maintenance and cost of the works.
- n. The existing crossover is to be removed and the nature-strip / verge reinstated in accordance with the City of Nedlands' Nature Strip Improvement Guidelines. A new crossover, temporary crossover or modification to an existing crossover will require a separate Vehicle Crossover Permit to be obtained from the City of Nedlands prior to construction commencing.
- o. Prior to commencement of site works, a Nature Strip Works Permit shall be submitted to and approved by the City of Nedlands, to the City's satisfaction. The application shall include a detailed infrastructure plan to the City's satisfaction. The landowner shall be liable for any ongoing maintenance and cost of the works.

- p. The existing crossover is to be removed and the nature-strip / verge reinstated in accordance with the City of Nedlands' Nature Strip Improvement Guidelines. A new crossover, temporary crossover or modification to an existing crossover will require a separate Vehicle Crossover Permit to be obtained from the City of Nedlands prior to construction commencing.
- q. The development is required to provide access to buildings for people with disabilities in accordance with the National Construction Code Building Code of Australia, AS1428.1 and Disability (Access to Premises – Buildings) Standards 2010. Detailed drawings are to be submitted with the Building Permit application identifying means of access from carparking areas to the entrance of the building and throughout the building, as required by AS1428.1 and the Disability (Access to Premises – Buildings) Standards 2010.
- r. The existing verge levels at the front property boundary and verge assets (inclusive of street trees) shall not be altered without prior approval of the City of Nedlands.
- s. If an applicant or owner is aggrieved by this determination, there is a right of review by the State Administrative Tribunal in accordance with Part 17 of the Planning and Development Act 2005.

**Reasons for determination:**

Commission members resolved that the application met the criteria to be determined as a significant development, as prescribed under Part 17 of the Planning and Development Act 2005 (as amended by the Planning and Development Act 2020) and approved the application.

Ref: SDAU-004-20-R7

1 May 2023

LAVAN  
1 William Street  
PERTH WA 6000  
Attention: Ms Isabella Mosole –  
Associate

**By Email:**

isabella.mosole@lavan.com.au

Dear Isabella,

**SDAU-004-20 – DA Approval Extension for The Melvista Aged Care Project - Lots 10 & 11 Betty Street and Lots 18 & 19 Doonan Road, Nedlands**

**Background**

- 1 VERUM Group Pty Ltd (**Development Director**) is appointed by Deuke Investments Pty Ltd (**Client**) as its consultant Development Director assisting with the design and construction delivery phase for the Melvista Aged Care project (**Project**). The Client has also appointed Total Project Management (**TPM**) as its consultant Project Manager.
- 2 The Client is the landowner and the development entity for the Project. Oryx Communities (**Oryx**) is the parent company and is the Project's intended aged care operator. Oryx operates two aged care properties in Perth: The Richardson in West Perth (**The Richardson**) and The Queenslea in Claremont (**The Queenslea**).
- 3 The purpose of this advice is to provide clarification of the steps taken by the Client to progress and commence construction of the Project, following its approval by the Western Australian Planning Commission (**WAPC**) on the 29<sup>th</sup> of March 2021 (**Approval**). The Approval was granted with a substantial commencement period of 18 months.
- 4 As everyone should be aware, the aged care industry has been at the front line of the COVID-19 epidemic (**COVID-19**). At the time of receiving the Approval for the Project, and since that time, Oryx (like other aged care providers) grappled with an unprecedented situation of rolling shutdowns, changing State and Federal policies,

evolving infection prevention protocols, new compliance rules and highly challenging staffing shortages.

- 5 The core business of Oryx is ensuring the wellbeing and safety of its residents at its facilities. Whilst the development of a new aged care facility remained a priority, as a consequence of COVID-19, it became highly challenging during the first half of 2021.
- 6 At the time of receiving the Approval, a group of landowners who publicly objected to the development application for the Project stated to the local press that they intended to legally challenge the Approval by lodging an application for judicial review to the Supreme Court of Western Australia. The Client received legal advice from Lavan confirming that the Approval could be the subject of a legal challenge during the initial six (6) months of the 18-month substantial commencement period.
- 7 Oryx was hesitant about committing to the expenditure of a full consultant team due to the risk of the Approval being legally challenged. This notwithstanding, a degree of design progress was achieved in the first 6 months of the Approval with the Project architect being instructed to proceed with design development tasks.
- 8 Once the risk period for the foreshadowed legal challenge lapsed in mid-September 2021, Oryx gave instructions for the full consultant team to proceed with the design development phase and the preparation of all Information For Construction (IFC) documentation. As is customary for the construction industry, very little work was undertaken from mid-December to the end of January. This lack of resourcing over the Christmas shutdown added to time lost.
- 9 The financial commitment made by Oryx to advance the Project to date has been significant. In summary, the Client has:
  - 9.1 purchased the 4 lots to create the site valued at over \$10M, and continues to absorb the land holding costs;
  - 9.2 expended more than \$1,800,000 (plus GST) on its consultant team for design, documentation and advice in order to progress the Project towards construction;
  - 9.3 expended \$280,000 (plus GST) to PS Structures for its early input and involvement;
  - 9.4 expending \$90,000 (plus GST) on demolition; and
  - 9.5 expended circa \$850,000 (plus GST) on ancillary expenditure for planning fees, project management fees, legal fees, quantity surveyor fees, geotechnical costs, environmental investigation fees, community consultation and communication fees, and authority fees.

### **Consultant Team**

- 10 The Client has appointed the following consultant team:
  - 10.1 Architectural – Hassell;

- 10.2 Interior Design – Hassell;
- 10.3 Project Manager/ Superintendent – TPM;
- 10.4 Structural Engineer – Pritchard Francis;
- 10.5 Civil Engineer - Pritchard Francis;
- 10.6 Mechanical Engineer – DSA Consulting;
- 10.7 Electrical Engineer – ETC Solutions;
- 10.8 Hydraulic Engineer – Hydraulic Designs Australia;
- 10.9 Fire Engineer – Wood & Grieve;
- 10.10 Landscape Architect – Plan E;
- 10.11 Kitchen & Laundry Design – Sangster;
- 10.12 BCA Compliance – Resolve Group;
- 10.13 Geotechnical Engineer – Galt Geotechnics;
- 10.14 Sustainability/ ESD – Full Circle Design Services;
- 10.15 Acoustics – Gabriels Hearne Farrell;
- 10.16 Traffic – KCTT;
- 10.17 Arborist – Civica;
- 10.18 Waste Consultant – Talis Consultants;
- 10.19 Town Planner – Planning Solutions;
- 10.20 Quantity Surveyor – Ralph Beattie Bosworth; and
- 10.21 Communications – Creating Communities Australia,

(collectively, the **Consultant Team**).

- 11 Whilst the Client has retained the same Consultant Team that delivered The Richardson and The Queenslea, it has done so following careful consideration of the Project requirements. This is consistent with the Client's approach to engaging consultants in the context of other projects, the requirements of each being assessed on a case-by-case basis. For example:

- 11.1 The Richardson: Oryx appointed FIRM Constructions (**FIRM**) to complete the project as it had the required experience and capability. At the time the contractor had to be selected for The Richardson, the Client's finance broker advised that FIRM's financial capability would not satisfy more stringent requirements imposed by banks during the COVID-19 pandemic. Subsequently, FIRM has become insolvent.



- 11.2 The Queenslea: Oryx appointed Multiplex as the Queenslea was of sufficient scale to attract a Tier 1 builder at the time, however the smaller scale of the Project is insufficient to attract a builder such as Multiplex.

## **Progress Report**

- 12 From September 2021 the Consultant Team advanced the design of the development and commenced preparation of working drawings towards a preliminary pricing package. During this period the following tasks were completed:

### **October 2021**

- 12.1 A contractor selection process was initiated with seven (7) capable contractors approached, three (3) declined due to their current workload and some expressed a preference to be engaged in projects other than aged care developments.
- 12.2 The Consultant Team undertook a series of design workshops to incorporate learnings from The Richardson and The Queenslea and continued to progress the design documentation.
- 12.3 Steps to clear conditions of the Approval were progressed, with each application for clearance being reviewed by the State Development Assessment Unit (**SDAU**).

### **November 2021**

- 12.4 A meeting was held with the City of Nedlands (**City**) to review the Approval conditions for the building permit and obtain agreement for a two-step building permit approach.
- 12.5 Discussions were initiated with Lisle Villages with respect to the potential demolition of Melvista Lodge Nursing Home for an auxiliary site area to facilitate the builder's activities.
- 12.6 Ongoing work was conducted by the finance broker on the development and construction of finance for the Project.
- 12.7 The Consultant Team continued to progress the design documentation.

### **December 2021**

- 12.8 The contractor selection process was progressed with the three (3) shortlisted contractors being PS Structures, Australian Building Construction Company (**ADCO**) and EMCO. Each contractor was then required to submit a preliminary pricing offer, terms for appointment, and capability statement. These were assessed by the Client, its finance broker and finance partner. PS Structures was selected as the preferred contractor based on its balance sheet, capability, capacity, expertise and experience with aged care projects.
- 12.9 Oryx and the Consultant Team undertook a series of design review workshops.



- 12.10 Negotiations with Lisle Villages progressed.
- 12.11 Ongoing work was conducted by the finance broker on the finance for the development and construction of the Project.
- 12.12 The Consultant Team progressed work on satisfying conditions of the Approval and the design documentation, finalising the pricing package.
- 12.13 The IFC documentation package was completed (Stage 1) prior to the Christmas break ready for the first building permit to be issued.

#### **January 2022**

- 12.14 Contract terms were negotiated with PS Structures.
- 12.15 Quotes for demolition were requested.
- 12.16** Quotes for a dilapidation consultant were requested.
- 12.17 Ongoing work was progressed by the finance broker on finance for the development and construction of the Project.
- 12.18 The Consultant Team continued to work on satisfying the Approval conditions.
- 12.19 The Consultant Team continued to progress the design documentation.
- 12.20 The interior design team commenced work on the design phase with a series of user workshops and reviews.

#### **February 2022**

- 12.21 The Consultant Team completed a preliminary pricing package of documentation.
- 12.22 PS Structures was appointed as the contractor. PS Structures joined the team and assisted in the finalisation of the design documentation.
- 12.23 PS Structures initiated the pricing process.
- 12.24 The project team met with the City to review the Approval conditions for a building permit.
- 12.25 The dilapidation consultant undertook the work required for clearance of Approval condition number 10.
- 12.26 The finance broker continued to work on finance for the development and construction of the Project.
- 12.27 The interior design team progressed their work on the design aspects of the Project and presented their initial thematic concepts.
- 12.28 The Consultant Team continued to progress the design documentation with buildability inputs from PS Structures.

**March 2022**

- 12.29 Galt Geosciences undertook site probe testing investigations to provide design data to the structural engineer and piling subcontractor.
- 12.30 Quotes were received from demolition contractors.
- 12.31 An arborist survey was received of the existing trees and the tree protection zones and monitoring was commenced by Civica.
- 12.32 The State Emergency Services (**SES**) undertook hazmat/asbestos investigations.
- 12.33 PS Structures continued with the pricing process.
- 12.34 The dilapidation consultant commenced neighbour inspections for clearance of Approval condition number 10.
- 12.35 Ongoing work was conducted by the finance broker on the finance for development and construction of the Project.
- 12.36 The interior design team progressed work on the design for the Project and presented their initial thematic concepts.
- 12.37 The Consultant Team continued to progress the design documentation with buildability inputs from PS Structures.

**April 2022**

- 12.38 Brajkovich Demolition was appointed with a start date pending the SDAU's clearance of Approval condition number 10.
- 12.39 The Consultant Team continued to progress the required documentation.
- 12.40 On 4 April 2022, the City advised that it was satisfied that conditions 6, 15 and 16 of the Approval were completed and could therefore be cleared.
- 12.41 On 14 April 2022, documentation was submitted to the City that conditions 2, 20 and 21 of the Approval were satisfied.
- 12.42 Ongoing work was conducted by the finance broker on finance for the development and construction of the Project.
- 12.43 PS Structures completed and issued their pricing offer.

**May 2022**

- 12.44 The interior design team progressed their design outputs.
- 12.45 On 3 May 2022, documentation was submitted to the City and the SDAU that conditions 8 and 9 of the Approval were satisfied for clearance.
- 12.46 On 9 May 2022, the dilapidation report was issued to the City and SDAU for clearance of condition 10 of the Approval.

12.47 On 18 May 2022, the City confirmed it was satisfied that the requirements for condition 10 of the Approval were met.

12.48 On 10 May 2022, the WA Government introduced legislation to facilitate an ongoing pathway for projects such as the Project to be approved under the SDAU protocol:

*“The McGowan Government is introducing the Planning and Development Amendment Bill 2022 into Parliament to help address the significant economic challenges in the residential and commercial construction market.*

*The Bill to be introduced into Parliament will:*

- (a) reopen the Part 17 pathway for significant projects until December 2023; and*
- (b) allow proponents of approved developments to apply for a one-off extension to the substantial commencement date”.*

12.49 The Client’s finance broker advised the Client should hold off on commencing construction until the legislation is in place and an extension to the Approval is secured.

12.50 Oryx worked with the finance broker to investigate an alternate finance partner to provide bridging finance for the land component due to delays in the approval and development process.

12.51 Oryx determined that given the finance partner’s position that they need to lodge an application under the *Planning and Development Amendment Bill 2022* (WA). The Project delivery process needed to go on hold, although other aspects of the Project could be continued.

### **June 2022**

12.52 The WAPC approval the clearance of condition 10 of the Approval (dilapidation report).

12.53 Brajkovich Demolition provided a start date of September.

12.54 The Consultant Team completed Stage 2 and the IFC documentation package was completed with the exception of the specialist piling design due to resourcing issues.

12.55 The interior design team progressed design outputs.

12.56 The selection of the preferred bridging financiers and associated negotiations commenced.

**July 2022**

- 12.57 The Consultant Team was put on hold pending the WAPC's decision on whether to grant an extension of time.
- 12.58 On 13 July 2022, an application to extend the substantial commencement period of the Approval was submitted to the WAPC under Part 17 of the *Planning and Development Act 2005* (WA).
- 12.59 On 25 July 2022, the WAPC confirmed that the extension application has been accepted for assessment.

**August 2022**

- 12.60 The Consultant Team remained on hold pending the WAPC's decision on whether to grant an extension of time.
- 12.61 The interior design team confirmed design outputs and the relevant documentation was initiated.
- 12.62 Negotiations with bridging financiers concluded.

**September 2022**

- 12.63 The Consultant Team remained on hold pending the WAPC's decision on whether to grant an extension of time.
- 12.64 The interior design team continued to finalise the documentation package.
- 12.65 The WAPC meeting to hand down their decision on whether to grant the extension to the Approval was scheduled for October.
- 12.66 Brajkovich Demolition advised that it could not commit to start the Project until December.

**October 2022**

- 12.67 The Consultant Team remained on hold pending the WAPC's decision on whether to grant an extension of time.
- 12.68 A lot amalgamation application was submitted to and confirmed by the WAPC.
- 12.69 The WAPC meeting to determine the application for an extension to the Approval was rescheduled to November.
- 12.70 The SDAU and WAPC provided a letter confirming that all conditions of the Approval to be cleared prior to the issuance of a building permit had been satisfied. It therefore took 5 months for this approval to be confirmed.

**November 2022**

- 12.71 Approval for lot amalgamation was granted by WAPC.
- 12.72 The Consultant Team remained on hold pending the WAPC's decision on whether to grant an extension of time.

**December 2022**

- 12.73 The WAPC on whether to grant an extension of time was held on 8 December 2022.
- 12.74 The WAPC Officers recommended that a 24-month extension of time should be granted. The WAPC resolved to grant a 12-month extension of time instead.
- 12.75 PS Structures were advised of the WAPC's decision and were instructed to plan for the first building permit with the intention to submit the application in February and for Stage 1 site remobilisation to commence in March 2023.
- 12.76 The Client instructed Lavan to lodge an application for review of the WAPC's decision to extend the substantial commencement period of the Approval by 12-months to State Administrative Tribunal.
- 12.77 The Consultant Team were advised to plan resourcing for the Project with an anticipated start date in March 2023.
- 12.78 Brajkovich Demolition mobilised to the site and commenced the following activities:
- 12.78.1 site strip on the houses located at 16 and 18 Betty Street, however, Brajkovich lacked resourcing to complete mechanical demolition of Betty St houses;
  - 12.78.2 strip and remove asbestos at 73 Doonan Road;
  - 12.78.3 mechanical demolition occurred removing the buildings located at 73 and 75 Doonan Road; and
  - 12.78.4 the lots were cleared.
- 12.79 The finance broker continued to work on finance for the development and construction of the Project.
- 12.80 The finance broker advised the client that a new aged care valuation was required due to the lapse of time and the unprecedented cost escalation in the construction industry. I note that there is only a handful of credible aged care valuers in Australia who can provide valuations that are bankable.
- 12.81 Oryx approaches valuers and only one was able to provide a commitment to commence work at the end of January 2023.

**January 2023**

- 12.82 The lots located at 73 and 75 Doonan Road were secured with temporary cyclone wire fencing boundary along the boundary, hydromulch stabilisation, mesh screening and CCTV security was installed.
- 12.83 The Consultant Team were instructed to finalise CDC to submit the application for the first building permit.
- 12.84 Ongoing work was undertaken by the finance broker on finance for the development and construction of the Project.
- 12.85 The piling contractor advised the Client that design completion and certification would be delayed until March due to resourcing constraints. The original date for completion was January 2023 so this caused a 3-month delay.

**February 2023**

- 12.86 On 2 February 2023, PS Structures called a meeting to advise the Client that it was withdrawing from the project citing a change of strategy and cost risks of aged care projects to its business:

*"Under our contract arrangement we provide this letter as Notice that we are exercising our rights not to proceed with the construction delivery and hereby rescind our pricing offer dated 29<sup>th</sup> April 2022, and all subsequent pricing and programme updates. We confirm that all payments due to us have been received".*

- 12.87 We emphasise that the decision for PS Structures, a highly experienced builder, to withdraw from constructing aged care projects altogether due to the cost risks and complexity of building in this sector raises serious concerns with an aging population and lack of facilities to cater for them.
- 12.88 Following PS Structures decision to withdraw, the Client immediately made contact with a second builder on the selection shortlist. This builder advised the Client that they did not have the capacity to undertake the Project.
- 12.89 On 2 February 2023, an email was received from James Prattent, WA State Manager of ADCO Construction which said:

*"Thanks for the email and Happy New Year. We have a lot of tenders that appear to have landed this year and will struggle to service a tender on this one for the next couple of months".*

- 12.90 On 3 February 2023, the Client initiated a new contractor selection process. Five (5) builders were approached, two (2) declined the invitation citing resourcing capacity issues.

- 12.91 The Client subsequently met with each of the following three (3) builders who have provided capability, experience, capacity and financial submissions:
- 12.91.1 Broad Construction;
  - 12.91.2 Cooper & Oxley Builders; and
  - 12.91.3 EMCO Construction.
- 12.92 The Client's finance broker and the Client's development team conducted due diligence on the three (3) builders above as the selected builder needed to be approved by the finance partner.
- 12.93 It is important to note that there is only a small field of builders who have the capability and willingness to undertake projects that involve the construction of an aged care facility in Perth. Aged care construction is a highly specialised area with complex technical, mechanical, electrical, and hydraulic requirements similar to a hospital. The Client, based on its own experience with builders and my advice, only approached builders who could demonstrate the following:
- 12.93.1 a strong balance sheet (due to the large number of builders currently suffering financial distress and risk of insolvency due to the market pressures created by COVID-19 and world events);
  - 12.93.2 experience and expertise with recent successful delivery of aged care facilities in Perth; and
  - 12.93.3 a genuine interest, enthusiasm, and capacity to complete the project for Oryx.
- 12.94 On 21 February 2023, Broad Construction advised the Client that due to *'current and imminent tendering commitments we are going to have to decline this tendering opportunity'*.
- 12.95 On 23 February 2023, the finance broker confirmed that the due diligence on the two remaining builders was acceptable, noting that; *'EMCO will likely be more readily accepted by financiers based on specific and current aged care experience'*.
- 12.96 On the same day Oryx informed EMCO that it was selected as the preferred contractor and invited them to submit pricing terms and conditions by the 27<sup>th</sup> February, noting that: *'If the preliminaries and margins terms proposed are acceptable to the Client, then the intention is for EMCO to proceed to confirm a pricing programme, negotiate the Contract terms, agree the target price and pricing structure, then go to market to prove up the Contract Sum'*

**March 2023**

12.97 On 1 March 2023, the Client confirmed that the pricing terms and conditions submitted by EMCO were acceptable and requested that EMCO commence market pricing processes. The following was issued:

12.97.1 an IFC package;

12.97.2 a draft contract; and

12.97.3 introduction to the Consultant Team.

12.98 On 3 March 2023:

12.98.1 PS Structures obliged a request to handover their market pricing and subcontractor lists to assist EMCO.

12.98.2 The Consultants were informed to assist EMCO, and they immediately progressed the application for the first building permit for submission.

12.98.3 The demolition contractor was notified that they need to prepare for demolition works to Melvista Lodge Nursing Home to create a builder's yard to facilitate construction.

**April 2023**

12.99 EMCO are finalising market pricing, and their final pricing offer is pending a few trades.

12.100 The Piling design is nearing completion, being the final component of the Building Licence package.

12.101 The CDC is ready for the WAPC submission for final clearance, which will then be issued to the City.

12.102 The demolition contractor is completing the clearing of the final two lots, which is anticipated to be completed on 5 May 2023.

**Summary**

13 For the reasons summarised below, Oryx has demonstrated the significant delays faced by the Consultant Team, despite best efforts at progressing the Project.

14 When the extension to the substantial period of the Approval was granted by the WAPC for 12-months, the Project was poised to submit for a building permit in February and for construction works to commence thereafter, yet the withdrawal of the incumbent builder has added further delay. Within 20 working days, the Client had a new builder in place and is currently pricing the project. Given the limited extension of time to Approval granted by the WAPC, the preferred method of traditional tender was not open to the Client.



- 15 The 12-month extension to the Approval requires substantial commencement to be achieved by December 2023. Despite the Client's best efforts, the market conditions remain dire and unpredictable, with multiple issues outside of the Client's control that could still negatively impact the construction programme. The above chronology cites several examples of unforeseen delays to the programme due to the foreshadowed legal challenge, direct COVID-19 impacts to the core aged care business, resourcing shortages, approval timeframes and contractor performance.
- 16 The extension to the Approval was granted in December 2022 at a time when the construction industry is winding down and does not gear up until the end of January. Therefore, the extension was effectively less than 11 months.
- 17 The statutory timeframe imposed on local governments to process and issue building permit applications is only 10 working days. The SDAU / WAPC involvement in clearing conditions prior to the local government the statutory process has added significantly to this timeframe. The Approval conditions applicable to the Stage 1 building permit have been approved in principle by the WAPC however a final clearance process still applies. The resourcing ability of the WAPC to turn-around a building permit application within a reasonable timeframe is a concern.
- 18 The Client and its Consultant Team have continued working swiftly with the selected builder, however, it will still require until at least early May 2024 to confirm market coverage, vet trades and lock in the agreed contract sum. Under the limited extension to the Approval this leaves barely 7 months for:
  - 18.1 the SDAU to clear the Building Permit conditions;
  - 18.2 the City to issue the Building Permit;
  - 18.3 the EMCO to finalise trade letting contracts;
  - 18.4 mobilise to site;
  - 18.5 undertake the piling;
  - 18.6 complete the excavation and siteworks;
  - 18.7 commence building construction; and
  - 18.8 complete the Stage 1 works to achieve 'substantial commencement' all prior to the cut-off date in December 2023.
- 19 With all the best intentions to progress the construction of the Project and to achieve substantial commencement, there are multiple potential roadblocks that could still delay progress, including:
  - 19.1 statutory authority timely performance (for building permit issue the Local Govt mandatory timeframe is 10 working days, the SDAU clearance process is adding months);
  - 19.2 availability of piling contractors;

- 19.3 latent site conditions;
  - 19.4 inclement weather;
  - 19.5 material and labour shortages;
  - 19.6 subcontractor performance failure or insolvency; and
  - 19.7 main contractor insolvency.
- 20 Inclement weather is a significant risk to the Project due to the extent of siteworks and basement construction required. It is worth noting that inclement weather caused delays in the Perth construction industry during the 2021 winter period that was amongst the highest on record. By way of comparison, on a project that was half the value of the Project, I certified 40.5 working days (approximately 2-months) of delay between May 2021 – December 2021.
- 21 Construction financiers are extremely conservative, and this caution is now heightened in a sensitive sector like aged care and with the current heated market conditions. The limited extension of 12-months to the Approval presents a problem for finalising financing approval. A 24-month extension of the Approval, as recommended by officers of the Department of Planning Lands and Heritage to the WAPC in December 2022, would provide the Project stakeholders with sufficient confidence to deal with the unforeseen circumstances and keep the Project moving forward.
- 22 Please contact me if you have any questions arising from this explanation.

Regards,



Murray Johns – Director

# PS STRUCTURES

Oryx Communities Pty Ltd  
C/- The Richardson Aged Care  
32 Richardson Street  
WEST PERTH WA 6005

15 February 2023

Attention: Mr Toby Browne-Cooper, Managing Director

**Ref: Oryx RACF – The Melvista Aged Care Project Nedlands – Withdrawal from Project Team**

Dear Toby,

We write further to our meeting on the 2<sup>nd</sup> February, to formally confirm our verbal advice that PS Structures has reluctantly withdrawn from The Melvista project. Under our contract arrangement we provide this letter as Notice that we are exercising our rights not to proceed with the construction delivery and hereby rescind our pricing offer dated 29<sup>th</sup> April 2022, and all subsequent pricing and programme updates. We confirm that all payments due to us have been received.

As discussed with yourself and Murray, this decision has not been an easy one to arrive at, and we regret this change of heart, please accept our sincere apologies.

The impact of the Covid epidemic and ongoing world events continues to impact negatively on the local construction industry. Over the Christmas break, we had the opportunity to closely evaluate the overall risk position of the entire business and decided to make some strategic choices with regards to our project profile for the next few years. In the current over heated market, aged care projects have proven to be more complex to manage and are a higher order of cost and time risk than other forms of construction, compared with the projects on our books and currently available to us for tendering. We have taken this conservative position for the sake of our business, which means avoiding complicated projects in favour of more simple projects like education, industrial, distribution warehouses, etc.

We certainly understand that this creates an additional burden on the project, putting Oryx Communities in a difficult position given the revised programme intention to commence construction with piling in March-April for a practical completion in late-2024. The Melvista aged care project is a benchmark design for aged care that ideally suits the experience and expertise of the PS Structures' team, however we had assumed that by this time there would have some signs of correction to the volatility and uncertainty in the local construction market. If we could see a trend back toward normal market conditions, then we assure you that would not have made this decision.

We believe that PS Structures' direct involvement with your consultant team throughout the design development and documentation phases provided significant value to the IFC resolution, design efficiency, and buildability of the project. We trust that Oryx feels the same way.

Once again, please accept our apologies and we wish Oryx all the best with this exciting project.

Yours Sincerely,

  
Royle Godwin

Managing Director

cc : Murray Johns [murray@verumgroup.com.au](mailto:murray@verumgroup.com.au)

18 APR 2023

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STATE ADMINISTRATIVE  
TRIBUNAL





SDAU Ref: SDAU-004-20C.1  
Enquiries: [REDACTED]



Dear [REDACTED],

#### APPROVAL OF FORM 17C AMENDMENT APPLICATION

WAPC Ref:	SDAU-004-20
Property Location:	Lots 10 and 11 (16 and 18) Betty Street, and Lots 18 and 19 (73 and 75) Doonan Road, Nedlands
Amendment Details:	Residential Aged Care Facility and Consulting Rooms

Thank you for your Form 17C Application for Development Approval, plans and technical documents submitted to the Department of Planning, Lands and Heritage on 25 July 2022 for the above-mentioned proposed development.

This application was considered by the Western Australian Planning Commission (the Commission) at its meeting held on **8 December 2022**, where in accordance with section 279(5) of the *Planning and Development Act 2005*, it was resolved to **approve** the application subject to conditions, as per the attached Notice of Determination.

Should the applicant not be satisfied by this decision, an application can be made to the Commission to amend or remove any of the conditions imposed on the approval; or to cancel this development approval in accordance with section 279 of the *Planning and Development Act 2005*. Please also be advised that there is a right of review through the State Administrative Tribunal in accordance with section 283 of the *Planning and Development Act 2005*. Such an application must be made within 28 days of the determination, in accordance with the *State Administrative Tribunal Act 2004*.

The Commission is responsible for the clearance of any conditions of approval. The Commission's clearance may be required before any site works commence and will be required prior to an application being made to a permit authority for a demolition or building permit. Should you have any queries with respect to the conditions of approval, or the process for the clearance of conditions, please contact [REDACTED] on [REDACTED] or via email [REDACTED]@dplh.wa.gov.au.

Yours sincerely



Secretary  
Western Australian Planning Commission

16 December 2022

Att. Notice of Determination

*Planning and Development Act 2005*

**Section 279(5)**

**APPROVAL of Form 17C Significant Development Application**

**WAPC Ref:** SDAU-004-20C.1

**Property Location:** Lots 10 and 11 Betty St and Lots 18 and 19 Doonan Rd, Nedlands

**Amendment Details:** Amend the condition to extend specified period for substantial commencement

In accordance with Section 279(5) of the *Planning and Development Act 2005*, the above application for development approval was **APPROVED** by the Western Australian Planning Commission at its meeting held on 8 December 2022, subject to the following conditions:

Condition 1 of the Approved Form 17B Significant Development Application dated 29 March 2021 (SDAU-004-020) is amended to read:

1. This decision constitutes planning approval only and is valid for a period of 12 months from the date the approval notice is given. If the development is not substantially commenced within the specified period, the approval shall lapse and be of no further effect.





**Western Australian Planning Commission**

**Part 17 Significant Development**

**Minutes**

Meeting No. 22  
Thursday, 8 December, 2022

- Members: David Caddy - Chairman WAPC  
Anne Arnold - Professions Representative  
Helen Brookes - Coastal Planning and Management Representative  
Lynne Craigie - Nominee of the Regional Minister  
Emma Cole - Metropolitan Local Government Representative  
Anthony Kannis - Director General, Department of Planning, Lands and Heritage  
Caroline Knight - Local government representative – non-metropolitan  
Barry McGuire - Professions Representative  
Justin McKirdy - Urban and Regional Planning Representative
- Observers: Damien Hills - Department of Water and Environmental Regulation
- Apologies: Michelle Andrews - Director General, Department of Water and Environmental Regulation  
Jane Bennett - Professions Representative  
Rebecca Brown - Director General, Department of Jobs, Tourism, Science and Innovation  
Mike Rowe - Director General, Department of Communities  
Peter Woronzow - Director General, Department of Transport
- Others Present: Kathy Bonus - Chief Planning Advisor, Reform, Design and State Assessment  
Inga Butefisch - Principal Media Advisor, Communications  
Alex Campbell - Senior Planning Officer, Reform, Design and State Assessment  
Zoe Davidson - Commission Support Officer  
Michael Daymond - Strategic Advisor WAPC  
Paola Di Perna - Planning Director, State Development Assessment Unit  
Sam Fagan - Manager Commission Business  
Stephen Ferguson - Director Legal Services, Legal Services  
Michelle King - Senior Commission Support Officer  
Michelle Sanfilippo - Commission Support Team Leader  
Rebecca Waghorne - Director Communications and Engagement, Corporate Communications

Applicants and Michael Cahill  
Submitters: Tayne Evershed - Planning Solutions  
Jeremy Hofland - Rowe Group  
Matthew McNeilly - Resident  
Belinda Moharich - Moharich and More Planning and  
Environmental Law  
Isabella Mosole - Lavan  
Paul McQueen - Lavan  
Craig Slarke - McLeods Lawyers

There were 29 members of the public in attendance.

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## 1. Declaration of opening

The Chairman declared the meeting open at 2:11pm, acknowledged the peoples of the Noongar nation as the traditional owners and custodians of the land on which the meeting is taking place and welcomed members. The Chairman paid respect to elders past and present, and extended solidarity and hope for a just and dignified future for us all.

The Chairman provided an introductory statement as follows:

In opening today's meeting, I wish to make a brief statement.

This meeting of the Commission is to determine a request to amend an application previously considered and approved by the Commission as a **significant development** under Part 17 of the *Planning and Development Act 2005*.

The application under consideration today is a Form 17C application seeking to amend an aspect of the approval issued by the Commission on 11 March 2021.

Part 17 grants the Commission temporary decision-making powers to determine proposals that can generate investment in the State to assist with economic recovery as we respond to the global COVID-19 pandemic.

A major premise of Part 17 of the legislation is that it bestows upon the Commission a perceived unlimited level of discretion with respect to an application. I wish to point out that today, the Commission is not being asked to exercise a discretion that would not normally be available to a decision maker.

As with any planning application, the Commission has the option to:

- approve the application;
- defer determination pending further information; or
- refuse the application.

The SDAU has formed the view that the applicant has demonstrated that steps have been taken to progress the development, and as such addresses any potential concerns whether the developer was attempting to "warehouse" the approval which would be inconsistent with the intent of the Part 17



pathway. It is however up to the Commission to form a similar or contrary view in determining the application.

I wish to advise observers that Commission members may refer to technical devices, such as phones and laptops, throughout the meeting to assist them in considering the information before them.

This meeting is not being recorded and I advise all participants that you are not permitted to use any electronic, visual or audio recording device or instrument to record this meeting.

On behalf of the Commission, the Department of Planning, Lands and Heritage will respond to any media enquiries relating to this application, or the process, in consultation with the Minister for Planning's office.

## **2. Apologies**

Michelle Andrews - Director General, Department of Water and Environmental Regulation. Damien Hills observing.

Jane Bennett - Professions Representative

Rebecca Brown - Director General, Department of Jobs, Tourism, Science and Innovation

Mike Rowe - Director General, Department of Communities

Peter Woronzow - Director General, Department of Transport

## **3. Disclosure of interests**

Ms Bennett declared a Potential Direct Pecuniary Interest on Item 7.1 - Amendment to Approved Residential Aged Care Development - Lots 10 and 11 Betty St and Lots 18 and 19 Doonan Rd, Nedlands. Ms Bennett stated that her employer, CLE Town Planning + Urban Design, has a potential future commercial relationship with Sirona Urban, of which Mr McNeilly presenting at Item 5.4 is the Managing Director.

Mr McKirdy declared a Perceived Impartiality Interest on Item 7.1 - Amendment to Approved Residential Aged Care Development - Lots 10 and 11 Betty St and Lots 18 and 19 Doonan Rd, Nedlands. Mr McKirdy stated that Mr McNeilly, who is presenting at Item 5.4, is known to him and was a previous teammate and member of the same hockey club. Members agreed that Mr McKirdy is permitted to be present during the discussion and/or decision-making procedure on the item as Mr McKirdy's interest is unlikely to influence her conduct in relation to the matter.

## **4. Declaration of due consideration**

All members indicated that they had received and considered the agenda items and report addendum prior to the Western Australian Planning Commission Part 17 meeting.



## **5. Deputations and presentations**

### **5.1 Amendment to Approved Residential Aged Care Development - Lots 10 and 11 Betty St and Lots 18 and 19 Doonan Rd, Nedlands (Item 7.1)**

**Presenter: Michael Cahill**

Mr Cahill addressed the Western Australian Planning Commission speaking against the recommendation at Item 7.1.

### **5.2 Amendment to Approved Residential Aged Care Development - Lots 10 and 11 Betty St and Lots 18 and 19 Doonan Rd, Nedlands (Item 7.1)**

**Presenter: Jeremy Hofland - Rowe Group**

Mr Hofland addressed the Western Australian Planning Commission speaking against the recommendation at Item 7.1.

### **5.3 Amendment to Approved Residential Aged Care Development - Lots 10 and 11 Betty St and Lots 18 and 19 Doonan Rd, Nedlands (Item 7.1)**

**Presenter: Craig Slarke - McLeods Lawyers**

Mr Slarke addressed the Western Australian Planning Commission speaking against the recommendation at Item 7.1, on behalf of the City of Nedlands. Mr Slarke stated that the City's position is for a 6-month substantial commencement timeframe which is more in line with the purpose of Part 17.

### **5.4 Amendment to Approved Residential Aged Care Development - Lots 10 and 11 Betty St and Lots 18 and 19 Doonan Rd, Nedlands (Item 7.1)**

**Presenter: Matthew McNeilly - Resident**

**Representing: Kylie and Jurgen Passage, Rebecca and Mario Faugno and Rudolf Boeddinghaus**

Mr McNeilly addressed the Western Australian Planning Commission speaking against the recommendation at Item 7.1, on behalf of residents Mr and Mrs Passage, Mr and Mrs Faugno and Mr Boeddinghaus.

### **5.5 Amendment to Approved Residential Aged Care Development - Lots 10 and 11 Betty St and Lots 18 and 19 Doonan Rd, Nedlands (Item 7.1)**

**Presenter: Belinda Moharich - Moharich and More Planning and Environmental Law**

Ms Moharich addressed the Western Australian Planning Commission speaking against the recommendation at Item 7.1, acting on behalf of Mr and Mrs McNeilly.

**5.6 Amendment to Approved Residential Aged Care Development - Lots 10 and 11 Betty St and Lots 18 and 19 Doonan Rd, Nedlands (Item 7.1)**

**Presenters: Tayne Evershed - Planning Solutions and Paul McQueen and Isabella Mosole - Lavan**

Mr Evershed and Mr McQueen addressed the Western Australian Planning Commission in support of the recommendation at Item 7.1, on behalf of Oryx Communities and Deuke Investments Pty Ltd.

Mr Evershed and Mr McQueen responded to questions from members relating to the revised works program, apparent limitations of activity, construction contracts, plot ratio, requirements for a local development plan, building licence lodgement and project finance.

**6. Presentation of key issues by the Department of Planning, Lands and Heritage**

**Presenter: Paola Di Perna - Planning Director, State Development Assessment Unit**

Ms Di Perna, Planning Director of the State Development Assessment Unit presented the key issues and considerations of the recommendation at Item 7.1, and clarified the report addendum.

Ms Di Perna responded to questions from members on the compliancy of the development application, the R80 zoning, plot ratio and the alignment with planning framework.

**ITEM/S FOR DECISION**

**7.1 Amendment to Approved Residential Aged Care Development - Lots 10 and 11 Betty St and Lots 18 and 19 Doonan Rd, Nedlands**

The Chairman invited discussion on the application presented at Item 7.1.

Members acknowledged the significant and sustained public and community interest in the Residential Aged Care Development and acknowledged the time and effort of the deputations presented at the meeting. Members noted the legislative change that has occurred since the development application was first considered and subsequently approved by the WAPC on 11 March 2021, which allows for applications for extension of time and allows for the commercial reality of matters with particular consideration to the construction industry. Members acknowledged the deputations and the commentary on what constitutes substantial commencement and noted that the applicant has advised that lodgement of the building licence is imminent. Members addressed the importance of Amendment No. 10, which has brought the development into further alignment with planning framework, with the exception of the plot ratio.

Members acknowledged the opinions and information presented by the legal professions who addressed the WAPC. Members identified the difficulty in assessing what steps towards substantial commencement



have occurred and the appearance of significant gaps in the revised works program. Members acknowledged that consideration of the matter is complex in that there is no measurement of how this can be assessed and discussed the assurances given when the development application was first considered that substantial commencement would occur within an 18 month period.

## **REPORT RECOMMENDATION**

**Moved by Ms Brookes**

**Seconded by Mayor Cole**

### ***Amended Condition:***

*Condition 1 of the Approved Form 17B Significant Development Application dated 29 March 2021 (SDAU-004-020) is amended to read:*

- 1. This decision constitutes planning approval only. If the development is not substantially commenced on or before 31 December 2024, the approval shall lapse and be of no further effect.*

## **AMENDING MOTION**

### **REASON:**

Members discussed their concerns in supporting a motion to approve a 24 month time extension, despite the known current context of the construction industry, noting that there is uncertainty whether the development will be progressed as rapidly as advised. Members considered the weight given to the different considerations of the application and queried the level of activity which does not strictly demonstrate that it has been caused by shortages within the construction industry.

Members noted the proponent's advice that suggests the development would be substantially commenced in May or June of 2023 and therefore moved an amendment to the Amended Condition that the development be substantially commenced within 12 months from the date the notice is given.

**Moved by Ms Arnold**

**Seconded by Ms Craigie**

### ***Amended Condition:***

*Condition 1 of the Approved Form 17B Significant Development Application dated 29 March 2021 (SDAU-004-020) is amended to read:*

- 1. This decision constitutes planning approval only and is valid for a period of 12 months from the date the approval notice is given. If the development is not substantially commenced within the specified period, the approval shall lapse and be of no further effect.*

**The amending motion was put and carried**

## **SUBSTANTIVE RESOLUTION**

The Commission considered the application to amend the development approval for Residential Aged Care Development at Lots 10 and 11 (16 and 18) Betty Street and Lots 18 and 19 (75) Doonan Road, Nedlands in accordance with s.279 of the *Planning and Development Act 2005* (as amended by the *Planning and Development Act 2020*) and resolved to approve the application.

**Amended Condition:**

*Condition 1 of the Approved Form 17B Significant Development Application dated 29 March 2021 (SDAU-004-020) is amended to read:*

1. *This decision constitutes planning approval only and is valid for a period of 12 months from the date the approval notice is given. If the development is not substantially commenced within the specified period, the approval shall lapse and be of no further effect.*

**The motion was put and carried**

**8. State Administrative Tribunal applications**

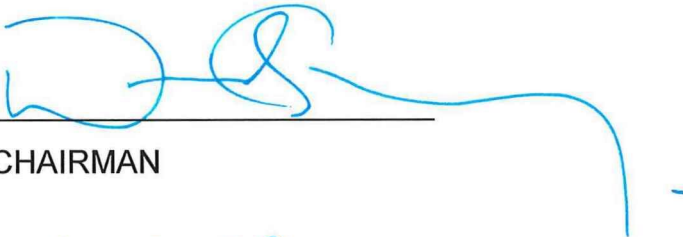
Nil.

**9. General business**

Nil.

**10. Meeting closure**

There being no further business before the Board, the Chairman thanked members for their attendance and declared the meeting closed at 3:47pm.



CHAIRMAN



DATE

**DR237/2022 - DUEKE INVESTMENTS PTY LTD v WESTERN AUSTRALIAN PLANNING COMMISSION**  
**SDAU-004-20 - 16 & 18 Betty Street and 73 & 74 Doonan Road, Nedlands**

Key issue	Summary of issues raised	Applicant's comments
The planning framework has substantially changed since approval was granted, and the application is unlikely to receive approval now.	<ul style="list-style-type: none"> <li>• Contend that the Western Australian Planning Commission's (WAPC) decision to extend the development's substantial commencement period failed the test for granting an extension, namely the planning framework has changed substantially through the introduction of Amendment 10 to the City of Nedlands (City) Local Planning Scheme No. 3 (LPS3), which includes the requirement for a local development plan to be approved to guide future development and a plot ratio of 1.0.</li> <li>• Considers that it is inappropriate to grant approval to the development in the absence of an approved local development plan, citing concern with orderly and proper planning principles.</li> <li>• Contend that the applicant's and WAPC's assessment of plot ratio was incorrect, and that the approval should be overturned.</li> <li>• Claim that under the new planning framework the development should not be supported.</li> <li>• Contend the development is inconsistent with the City's Residential Aged Care Facilities Local Planning Policy.</li> <li>• Suggests that the City's Design Review Panel Local Planning Policy (adopted in March 2021) is relevant, and demonstrates a shift in the planning framework which needs to be considered.</li> <li>• Claim that the development has not addressed the outcomes and recommendations of the Royal Commission into Aged Care Quality and Safety.</li> </ul>	<p><b>Nature of the application</b></p> <ul style="list-style-type: none"> <li>• This application seeks an extension to the substantial commencement period prescribed by condition 1 of the development approval granted by the Western Australian Planning Commission (<b>WAPC</b>) on 11 March 2021 for a residential aged care facility (<b>Development Approval</b>).</li> <li>• Pursuant to section 31(1) of the <i>State Administrative Tribunal Act 2004</i> (WA) the WAPC is invited to reconsider its decision of 8 December 2022 to approve the Applicant's application for an extension to the substantial commencement period prescribed by condition 1 of the Development Approval.</li> <li>• The Applicant submits that this application: <ul style="list-style-type: none"> <li>○ does not propose any changes or modifications to the Development Approval;</li> <li>○ does not invite an assessment of the planning merit of the Development Approval;</li> <li>○ is limited to considerations which relate to condition 1 of the Development Approval only.</li> </ul> </li> <li>• The considerations to be taken into account in an application to extend a substantial commencement period is well understood in this jurisdiction to be: <ul style="list-style-type: none"> <li>○ firstly, whether the planning framework has changed substantially since the development approval was granted;</li> <li>○ secondly, whether the development would likely receive approval now; and</li> <li>○ lastly, whether the holder of the development approval has actively and relatively conscientiously pursued the implementation of the development approval.</li> </ul> </li> <li>• By reference to the WAPC's decision dated 8 December 2022, the Applicant submits that it has satisfied each of the considerations listed above.</li> <li>• In the absence of any evidence to suggest that there have been any changes to the planning framework since the WAPC's decision dated 8 December 2022, the Applicant submits that it continues to satisfy the relevant considerations listed above and the WAPC is not required to re-assess this application against those relevant considerations.</li> </ul>
Applicant has not undertaken necessary steps to determine application	<ul style="list-style-type: none"> <li>• Contend that the applicant has not adequately demonstrated extenuating circumstances, or evidence of actively progressing the development approval.</li> <li>• Concern with the lack of development activity on site within the substantial commencement time frames.</li> <li>• Asserts that the applicant's commitment of resourcing the development demonstrates that it has not 'actively and relatively conscientiously' progressed its implementation.</li> <li>• Claim the failure to meet deadlines was actually a lack of urgency on applicants behalf, despite pursuing a pathway designed to stimulate the construction industry with immediate effect.</li> <li>• Claim the applicant's latest information attempts to shift the blame to third parties, including the WAPC.</li> <li>• Questions the applicant's assertion that delays directly arose from the perceived threat of a Supreme Court challenge, labelling such claims as unsubstantiated, and further supporting the view that the applicant was not "shovel ready".</li> </ul>	<p><b>Pursuing the approval</b></p> <ul style="list-style-type: none"> <li>• The Applicant submits that concerns suggesting that it has failed to demonstrate "extenuating circumstances" to warrant an extension to the substantial commencement period described by condition 1 to the Development Approval are not justified.</li> <li>• A comprehensive list of the actions taken by the Applicant to actively pursue the Development Approval has been provided to the WAPC, and made available to the public, with the application. These matters have also been the subject of extensive discussions with representatives of the WAPC throughout the mediation process.</li> <li>• At the outset, the Applicant rejects the assertion that it: is not "shovel ready"; has "withheld information"; and "lacks integrity". The Applicant has been transparent in its communication with the WAPC and the City (respectively) regarding its standing throughout the assessment of this application. This is demonstrated by the level of detail provided by the Applicant in its progress reports and engagement with consultants and</li> </ul>

	<ul style="list-style-type: none"> <li>• Contend that the numerous developments occurring throughout Nedlands and Dalkeith, and through the broader SDAU pathway, demonstrate there is no excuse for the applicant's failure to commence development within the approved timeframe, and any argument that suggests covid impacts and labour and supply shortages as reasons for construction delays should be disregarded.</li> <li>• Contend that the applicant's s.31 information presents inconsistencies and raises questions on the applicant's commitment and contractual/financial means to advance development.</li> <li>• Queries the legitimacy of updated information given the applicant's previous commitments to the WAPC on progressing development within certain time frames, and previous claim that it had secured finance.</li> <li>• Asserts the applicant's claim that latent site conditions and inclement weather as potential complications to progressing development were foreseeable issues, and therefore should have been planned for.</li> <li>• Claim the latest information cannot be verified, and therefore should not be relied upon.</li> <li>• Queries the relevancy of the applicant's s.31 information, and claim that it should be given minimal to no weight, as the WAPC is to only consider the applicant's steps to actively and relatively conscientiously progress development <i>as at the time when the approval would otherwise have lapsed</i>, being the WAPC's decision in December 2022.</li> </ul>	<p>relevant stakeholders. It has been open to the WAPC and the community (respectively) to verify the information provided, noting that the Applicant has not concealed the details of any stakeholders or external processes it has engaged with (notwithstanding the commercial sensitivity of such information).</p> <ul style="list-style-type: none"> <li>• The Applicant cannot be criticised or held accountable for decisions of third parties which have significantly impacted the trajectory of the implementation of the project, including PS Structures decision to withdraw from engaging in construction across the aged care industry altogether or the Applicant's decision to act on professional advice in the context of a foreshadowed legal challenge. In that regard, the Applicant observes that it is not novel for proponents to obtain and rely on such advice given the significant risk and uncertainty associated with litigation.</li> <li>• The Applicant has committed significant resources to the implementation of this project to date. It submits that whilst the rigorous due diligence processes, amongst other protocols, it is required by its financier to satisfy are not unusual in the context of an aged care development of this scale, the unprecedented impact of COVID-19, industry wide resourcing shortages, contractor performance and statutory authority timeframes have together, significantly constrained the Applicant's ability to substantially commence development, which is already an exceeding difficult milestone for many proponents to meet across the development industry.</li> </ul> <p><b>Other developments in the locality</b></p> <ul style="list-style-type: none"> <li>• The Applicant rejects the assertions regarding the commencement of other subsequently approved developments through the Development Assessment Panel and State Development Assessment Unit pathway as without justification or relevance this application.</li> <li>• The Applicant contends that the basis of the assertions made by the community in relation to this application are largely the same as those articulated by the community to the WAPC at its meeting on 8 December 2022. In that regard, the Applicant repeats its submission that the assertions are irrelevant in the context this application as they do not relate to the WAPC's assessment of the three primary considerations to be satisfied by the Applicant in making this extension of time calculation. The Applicant submits that in approving the Applicant's extension of time application on 8 December 2022, the WAPC acknowledged that the Applicant has satisfied each of the three primary considerations required to approve this extension of time application.</li> </ul>
Planning Framework	<ul style="list-style-type: none"> <li>• Concern that the development is not compliant with LPS3.</li> <li>• Claim that the development does not comply with the plot ratio requirement of 1.0, and therefore should not have been approved.</li> <li>• Challenges the appropriateness of historical planning decisions, and contend an R80 density does not provide an appropriate transition between the subject site and the adjoining R12.5 zoned land.</li> <li>• Contend that interface issues should be addressed through a local development plan, as required by LPS3.</li> </ul>	<ul style="list-style-type: none"> <li>• The Applicant repeats its submission in relation to the nature of this application. This application for determination by the WAPC is for an extension of time to the substantial commencement date prescribed by condition 1 of the Development Approval <u>only</u>. This application does not propose any changes or modifications to the development approved.</li> <li>• The Applicant submits that the WAPC has the legal ability to consider and approve this application. The WAPC, in approving the Applicant's extension of time application on 8 December 2022, has acknowledged that the Applicant has satisfied each of the three primary considerations required to approve this extension of time application.</li> </ul>
Part 17 pathway requirements and process	<ul style="list-style-type: none"> <li>• Acknowledges the WAPC's previous decisions, however rejects the latest extension request.</li> <li>• Concern that information was misrepresented, and the development was not "shovel-ready" when the development was approved despite the applicant giving the WAPC assurances that it was.</li> </ul>	<p><b>Requirements of Part 17 to the <i>Planning and Development Act 2005</i> (PD Act)</b></p> <ul style="list-style-type: none"> <li>• The State government introduced Part 17 to the PD Act to assist proponents such as the Applicant during the State of Emergency.</li> </ul>

	<ul style="list-style-type: none"> <li>Concern that it's been 26 months since the applicant's advised the WAPC that the development was "fully funded". Submissions claim the applicant misled the WAPC in respect of financing the project given the development was not fully funded at the time of the previous approvals.</li> <li>Concern the WAPC is not holding applicants to their time frames, and the application should not be further extended.</li> <li>Claim that the developer has not progressed the development with no builder on site or construction occurring, bar the recent demolition of dwellings and erection of boundary fencing. Given the lack of activity, asserts the development should not be determined under the SDAU pathway.</li> <li>Claim that the applicant has failed to substantially commence its development within the required timeframe and therefore failed to satisfy a significant condition of its approval.</li> <li>Contend the granting of the original 18 months substantial commencement date was already an amendment to the WAPC reporting officer's recommendation of 12 months.</li> <li>Concern that the proposed extension will be used to bank / 'warehouse' the approval which is contrary to the intent of the pathway, relevant legislation and orderly and proper planning principles.</li> <li>Claim the SDAU process for extending a development's substantial commencement period is not transparent.</li> <li>Queries why the applicant's latest information was not provided as part of the WAPC's December 2022 decision.</li> <li>Questions the applicant's track record of providing accurate up to date information, and requests third party validation to ensure information is truthful.</li> <li>Implores the WAPC to give weight to what the "on the ground" evidence shows, and not to what the applicant says it has done.</li> </ul>	<ul style="list-style-type: none"> <li>The Applicant contends that the State of Emergency is, in and of itself, an extenuating circumstance supporting this application and relies on the comments of the Minister for Planning in relation to the legislative purpose and intention of Part 17 to that effect, including: <ul style="list-style-type: none"> <li><i>"the legislative changes allowing an extension to the substantial commencement date of approvals are required in response to a range of factors, including the very heated construction market... labour shortages, supply chain issues and cost escalations"</i>.</li> </ul> </li> </ul>
Height, Bulk and Scale	<ul style="list-style-type: none"> <li>Contend the development is inconsistent with the planning framework of the area, and will lead to adverse amenity impacts.</li> <li>Claim the development is too large for its setting and does not provide adequate green space and landscaping.</li> <li>Concern with the bulk and scale of the development, claiming it is out of character in the locality, which is characterised by low density (R12.5) residential development.</li> <li>Contend the scale of the building is reminiscent of an industrial development and is not sympathetic to its surroundings.</li> </ul>	<p><b>Concerns with the overall development</b></p> <ul style="list-style-type: none"> <li>The Applicant contends that considerations relating to height, bulk and scale; parking, traffic and access; impact on amenity; and housing diversity amount to concerns with the overall Development Approval.</li> <li>In that regard, the Applicant repeats its submission that: <ul style="list-style-type: none"> <li>This application for determination by the WAPC is for an extension of time to the substantial commencement date prescribed by condition 1 of the Development Approval <u>only</u>. This application does not propose any changes or modifications to the development approved.</li> <li>A thorough planning assessment of the development approved was undertaken by the SDAU and considered by the WAPC, informing its approval.</li> <li>Consideration of all planning controls pertaining to the subject site and relevant planning matters listed in cl. 67(2) of the Deemed Provisions were appropriately considered with due regard (that is, active and positive consideration) to the existing and future intent of the locality contemplated by the City of Nedland's (<b>City</b>) planning framework.</li> <li>Considerations relating to: height, bulk and scale; parking, traffic and access; impact on amenity; and housing diversity are not relevant considerations to the assessment of this application.</li> <li>Notwithstanding the above, the Applicant rejects the assertion that the plot ratio of the development approved was incorrectly measured. The development approved remains capable of approval under the existing planning framework and in any event, the WAPC is not bound by the provisions of the City's Local Planning Scheme No. 3 and other documents comprising the City's planning framework in approving this application.</li> </ul> </li> </ul>
Parking, Traffic and Access	<ul style="list-style-type: none"> <li>Concern with the increased traffic and parking on the local road network.</li> <li>Contend that the development's parking requirements are not commensurate to the size and purpose of the use.</li> <li>Concern regarding traffic impacts on the broader locality and a nearby childcare centre.</li> </ul>	
Impact on amenity	<ul style="list-style-type: none"> <li>Concern the development is not compatible with the existing amenity surrounding and abutting the development due to the impact of height, scale and bulk of the development.</li> <li>Concern on the vacant nature of the site, and removal of gum trees and onsite vegetation.</li> <li>Concern regarding the impact of daily-business operations on neighbours and surrounding community, arising from visitors, food and medical services and waste management.</li> <li>Claim the community will benefit from residential housing at the subject site instead of the proposed development.</li> <li>Concern with the management of noise from the facility.</li> <li>Concern for the amenity of future occupants.</li> </ul>	
Housing diversity	<ul style="list-style-type: none"> <li>Claim the proposed development will provide much needed aged care services for the area and provide opportunity for local residents to 'down-size'.</li> <li>Claim there is now an oversupply of aged care places in Perth's inner sector, thereby dismissing the need for a new residential aged care facilities; citing a lack of community demand.</li> </ul>	



	<ul style="list-style-type: none"> <li>Claim that there is less demand and funding models for residential aged care facilities, including high care premises, and that this will present a major barrier to the applicant's ability to secure finance for the development.</li> </ul>	<ul style="list-style-type: none"> <li>The basis of the assertions made by the community in relation to this application are largely the same as those articulated by the community to the WAPC at its meeting on 8 December 2022. In that regard, the Applicant repeats its submission that the assertions are irrelevant in the context this application as they do not relate to the WAPC's assessment of the three primary considerations to be satisfied by the Applicant in making this extension of time calculation. The Applicant submits that in approving the Applicant's extension of time application on 8 December 2022, the WAPC acknowledged that the Applicant has satisfied each of the three primary considerations required to approve this extension of time application.</li> </ul>
Other Considerations	<ul style="list-style-type: none"> <li>Claim the Council should not have sold the site in the first place.</li> <li>Claim the applicant has never had the necessary funding in which to commence development.</li> <li>Concern that the proposed accommodation is not suitable for residents' physical, emotional and medical needs as outlined in the findings of the Royal Commission to Aged Care Quality and Safety.</li> <li>Claim the development does not appropriately reflect the operational and wellbeing needs of the vulnerable aged-community.</li> <li>Questions the applicant's capacity to operate an aged care facility of this size, querying its business model and track record to retain staff and maintain operational standards in its other established aged care facilities.</li> <li>Contend that extending the approval of the development will establish an undesirable precedent.</li> <li>Concern with the lack of transparency from what was originally presented to the community, including nearby neighbours, to what was ultimately determined by authority.</li> <li>Concern that the further extension will create uncertainty for surrounding residents.</li> <li>Claim that the applicant has been given an unfair advantage to extend time frames, and that the community has not been afforded equal opportunity to be heard and voice concerns.</li> </ul>	<p><b>Precedent</b></p> <ul style="list-style-type: none"> <li>Planning precedent in the context of decision making has the potential to be inherently problematic, particularly when planning framework considerations (as outlined in cl. 67(2) of the Deemed Provisions) require a consideration of the planning merits of a specific proposal. To this end, the Applicant reiterates its submission that this application for determination by the WAPC is for an extension of time to the substantial commencement date prescribed by condition 1 of the Development Approval <u>only</u>. This application does not propose any changes or modifications to the development approved.</li> <li>The Applicant observes that nothing in cl. 67(2) of the Deemed Provisions requires a consideration of planning precedent. Further, the State Administrative Tribunal has confirmed that precedent is not of itself a valid reason for the refusal of an application; each matter needs to be treated on its merits, and regard given to the particular circumstances of the subject site: see <i>Thio and WAPC</i> [2008] WASAT 265 at [48] and <i>Smith and WAPC</i> [2007] WASAT 261 at [67].</li> </ul> <p><b>Irrelevant planning considerations</b></p> <ul style="list-style-type: none"> <li>The Applicant submits that the 'other considerations' are not relevant considerations to the assessment of this application, or development generally, prescribed by the relevant planning framework.</li> <li>As alluded to above, the basis of the assertions made by the community in relation to this application are largely the same as those articulated by the community to the WAPC at its meeting on 8 December 2022. In that regard, the Applicant repeats its submission that the assertions are irrelevant in the context this application as they do not relate to the WAPC's assessment of the three primary considerations to be satisfied by the Applicant in making this extension of time calculation. The Applicant submits that in approving the Applicant's extension of time application on 8 December 2022, the WAPC acknowledged that the Applicant has satisfied each of the three primary considerations required to approve this extension of time application.</li> </ul>



File Number: SDAU-004-20 (DR 237/2022)

## Addendum to the Western Australian Planning Commission

The Western Australian Planning Commission will at its 27 July 2023 meeting consider a Part 17 application to amend condition 1 of its approval for the residential aged care development at Lots 10 & 11 (16 & 18) Betty Street & Lots 18 & 19 (75) Doonan Road, Nedlands, seeking an extension of time for substantial commencement.

### WAPC Report Updates

The following relates to a correction to the plot ratio figure quoted in the report as published.

In Agenda Item 7.1, the report includes commentary on the historical plot ratio assessment of the approved development. On page 17 of the agenda the report states that -

*'... By way of background, the Commission's original DA decision was informed by two plot ratio calculations of 1:2.1 and **1:1.4** (emphasis added). The most-recent decision on the extension of time application considered a plot ratio of 1:1.055.*

*While the original method of calculation varied due to changing definitions in the planning framework, both calculations of 1:2.1 and **1:1.4** (emphasis added) exceeded the at the time requirement of 1:1.0...*

An error was identified with the original stated plot ratio calculation of 1:1.4, which was corrected to be **1:1.64**. This was corrected through an addendum to the original officer's report of 11 March 2021.

The figure of 1:1.64 was not carried through in the report currently under consideration. No other part of the report is affected, and the change has no material effect on the officer assessment and/or recommendation.

The following should replace the corresponding section as outlined in the report (commencing on page 16 of the agenda).

- The next question is whether the introduction of the R80 primary controls is a substantial change to the planning framework.

The Commission's original DA decision considered a number of planning matters, including the purpose and intent of LPS 3 and the need to maintain the orderly and proper planning, and the preservation of amenity of the locality. This involved, in part, an assessment of built form against the element objectives of the R-Codes Volume 2 and considered the local character and amenity of the locality.

The introduction of the R80 primary controls has since clarified the planning

framework for the subject land, and now requires assessment against the following development controls:

- Building height of 4 storeys.
- Boundary wall height of 2 storeys<sup>1</sup>
- Minimum primary and secondary street setback of 2m.
- Minimum side setback of 3m. o Minimum rear setback of 3m.
- Average side setback of 3.5m (where exceeds 16m).
- Plot ratio of 1:1.0.

The approved development generally satisfies the above R80 primary controls, with the exception of plot ratio. The development's plot ratio was raised as a concern in submissions, with claims that the plot ratio exceeds previous calculations, being upwards of 1:1.96.

By way of background, the Commission's original DA decision was informed by two plot ratio calculations of 1:2.1 and **1:1.64**. The most-recent decision on the extension of time application considered a plot ratio of 1:1.055.

While the original method of calculation varied due to changing definitions in the planning framework, both calculations of 1:2.1 and **1:1.64** exceeded the *at the time* requirement of 1:1.0. Despite this, the Commission's original DA decision found that the higher plot ratio was acceptable and discretion was exercised. This was based on an assessment of the bulk and scale, having regard to the context and setting of the subject land.

The same level of assessment, and plot ratio limit is required by the current planning framework. In this respect, it is open to the Commission to assess the merits of the application under the R-Codes Volume 2 performance-based approach, which directs decision-makers to a more qualitative assessment against clause 2.5 element objective.

While the introduction of the R80 primary controls may be considered a substantial change to the planning framework, for the reasons outlined above, this change does not alter the decision to approve the development.

The change to the City's DRP policy is not considered a substantial change to warrant a different decision. This is because the SDRP reviewed the original development, which performs a similar function to the City's local design review panel.

In conclusion, there have been two occasions where the development has been assessed and approved and it is likely that the development would receive approval again based on a merit assessment against the planning framework, including LPS 3, R-Codes Volume 2 and LPP 2.4.

25 July 2023

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<sup>1</sup> Does not apply in this instance, given the development is setback from side boundaries.

# Request for ~~Deputation~~/ Presentation

## Western Australian Planning Commission

### Part 17 Significant Development Meeting

**Meeting Date:** Click or tap to enter a date. **THURSDAY JULY 27, 2023**

#### Presentation Request Guidelines

Persons interested in presenting at a WAPC Part 17 Significant Development Meeting must first consider whether their concern has been adequately addressed in the report recommendation or other submissions. Your request will be determined by the WAPC Chairman based on individual merit and likely contribution to assist the Commission's consideration and determination of the application.

Presentations are not to exceed **3 minutes**. It is important to note that the presentation content will be **published on the WAPC website** as part of the meeting agenda. **Your PowerPoint must be submitted with this request.**

**Requests close at 2pm, three (3) working days, prior to the meeting date.** Please complete and submit this form, your PowerPoint and any additional written documents to [committees@dplh.wa.gov.au](mailto:committees@dplh.wa.gov.au) no later than this time. **Late requests will not be accepted.**

Handouts or PowerPoints will not be accepted on the day of the meeting.

<b>Name of Presenter:</b>	Peter Taranto	
<b>Organisation:</b>		
<b>Email*:</b>		
<b>Mobile Number*:</b>		
<b>Additional Attendees:</b>	(You may have up to 3 attendees, including the Presenter)	
<b>PowerPoint:</b>	Choose an item. <b>NO</b>	
	Your PowerPoint presentation <u>must</u> be accompanied with a written document detailing the content of your presentation for the purpose of the agenda.	
<b>Special Requirements:</b>	<p>In the interest of accessibility and inclusion for people with disabilities, please identify if you have any special requirements: Choose an item.</p> <p><i>If yes, please detail below:</i></p>	
<p><i>In submitting this request, you acknowledge that your request form and presentation content will be published to the WAPC website as part of the agenda.</i></p>		<p>10.1 Proposed WA Children's Hospice <b>YES</b></p>
<p><b>Is the presentation in support or against the <u>report recommendation</u>? (contained within the agenda)</b></p>		<p>Click on item. <b>ITEM 10.1 AGAINST</b></p>

Is the presentation in support or against the proposed development?

Choose an item  
**ITEM 10.1**  
AGAINST

**Brief Outline of Presentation:**

My presentation will address the impact of the proposed development on the **amenity** of Allen Park. It will particularly focus on the **unstudied** incompatibility between the development of Lot 504 (hospice public access), the operation of the already heavily used 'carpark south of the hospice site', and the explicit development requirement that Lot 504 (hospice access) remain unobstructed at all times.

I have attached ~~three~~ <sup>FOUR</sup> photos of the carpark south of the hospice site. The photos show what that carpark looks like on a 'rugby day'.

The attached photos also serve to explain why the Rugby Club and the Bridge Club do not hold events on the same day.

Kindly note that the number of Rugby Club patrons and spectators will expand significantly once the planned expansion of the Rugby Club (which will include two licenced function rooms) has been constructed.

Existing problems with the already heavily used carpark south of the hospice are even worse during the warmer months. With the imminent closure of the 'Ocean Beach Hotel' and 'Cottlesloe Carpark Number 1', even more beachgoers will use the carpark south of the hospice site for beach parking.

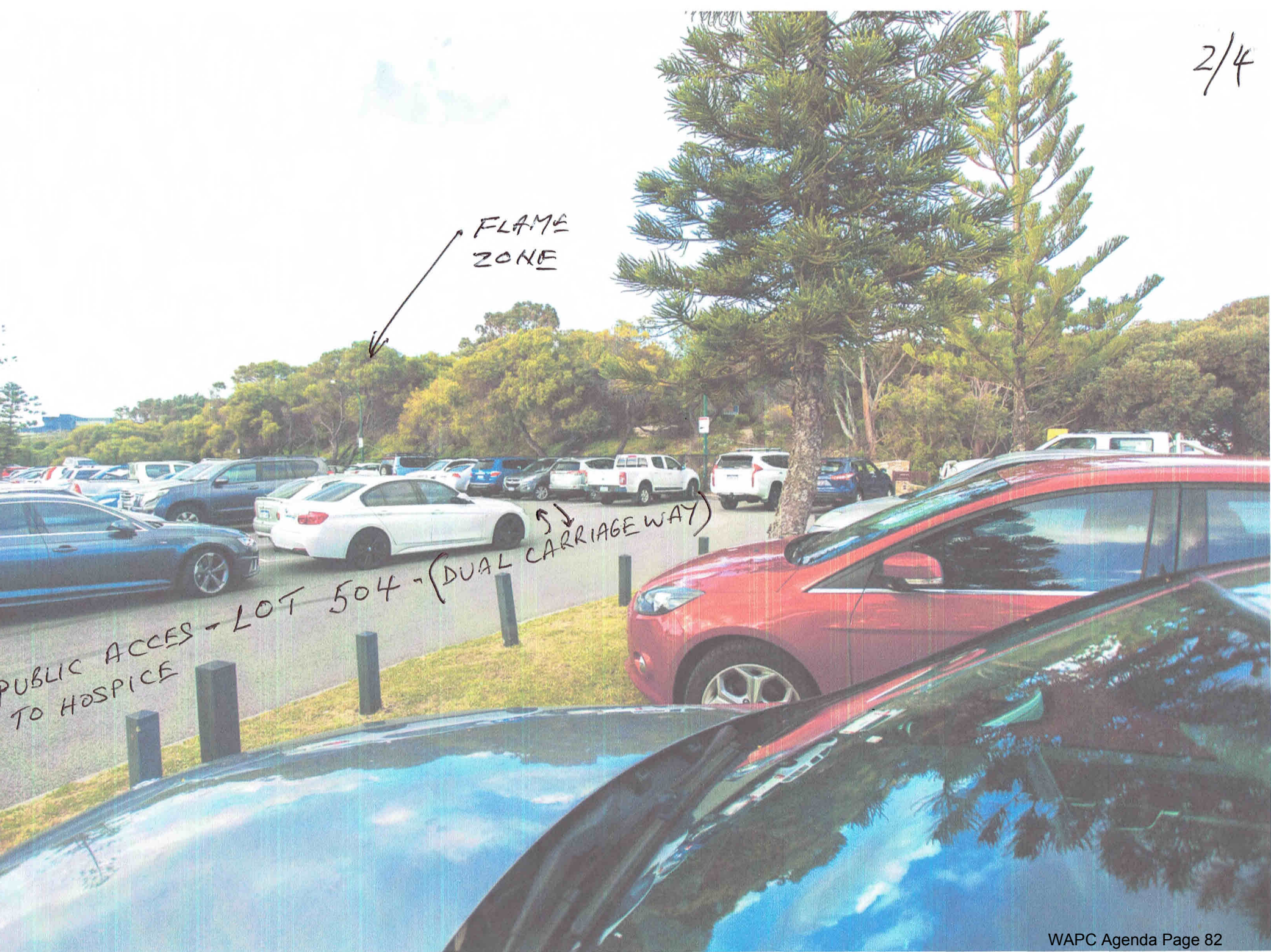
My presentation will also include the unstudied impact on other purposes for which Allen Park is used, including active and passive recreation and beachgoers.



1/4









FLAME  
ZONE

HOSPICE  
ACCESS/  
EGRESS  
(LOT 504)

(THIS IS NOT THE  
HOSPICE ACCESS)



4/4

OVERFLOW  
CARPARK

FLAME  
ZONE





## Request for Deputation / Presentation

### Western Australian Planning Commission

#### Part 17 Significant Development Meeting

**Meeting Date:** Click or tap to enter a date.

##### Presentation Request Guidelines

Persons interested in presenting at a WAPC Part 17 Significant Development Meeting must first consider whether their concern has been adequately addressed in the report recommendation or other submissions. Your request will be determined by the WAPC Chairman based on individual merit and likely contribution to assist the Commission's consideration and determination of the application.

Presentations are not to exceed **3 minutes**. It is important to note that the presentation content will be **published on the WAPC website** as part of the meeting agenda. **Your PowerPoint must be submitted with this request.**

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Handouts or PowerPoints will not be accepted on the day of the meeting.

<b>Name of Presenter:</b>	Click or tap here to enter text. <i>Dr Denzil McCotter</i>	
<b>Organisation:</b>		
<b>Email:</b>		
<b>Mobile Number:</b>		
<b>Additional Attendees:</b>		
<b>PowerPoint:</b>	Choose an item.	
	Your PowerPoint presentation <u>must</u> be accompanied with a written document detailing the content of your presentation for the purpose of the agenda.	
<b>Special Requirements:</b>	In the interest of accessibility and inclusion for people with disabilities, please identify if you have any special requirements: Choose an item.  <i>If yes, please detail below:</i>	
In submitting this request, you acknowledge that your request form and presentation content will be published to the WAPC website as part of the agenda.		Choose an item. <i>YES</i>
<b>Is the presentation in support or against the <u>report recommendation</u>? (contained within the agenda)</b>		Choose an item. <i>AGAINST</i>

\* Contact details will be redacted prior to this form being published online



Is the presentation in support or against the proposed development?

Choose an item.

Brief Outline of Presentation:

That WA needs a modern state of the art facility for Hospice & respite care for children is indisputable. This project should have been properly developed with the needs of an expanding WA population in mind. How a small building on a small limited site costing \$32m in a Western Suburb location can service a potential 2000 children with life-shortening conditions is questionable. The absence of compelling clinical support from professionals in paediatric oncology, neurology

or developmental disorders in the planning of this facility is negligent as is the unwillingness to use the \$32m for a properly planned, metro & regional service. Medical & clinical factors should have been given significant weight.



# Request for Deputation / Presentation

## Western Australian Planning Commission

### Part 17 Significant Development Meeting

**Meeting Date:** Click or tap to enter a date.

#### Presentation Request Guidelines

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<b>Name of Presenter:</b>	Malcolm Murray
<b>Organisation:</b>	Private submission
<b>Email*:</b>	
<b>Mobile Number*:</b>	
<b>Additional Attendees:</b>	(You may have up to 3 attendees, including the Presenter)
	Nil
<b>PowerPoint:</b>	No
	Your PowerPoint presentation <u>must</u> be accompanied with a written document detailing the content of your presentation for the purpose of the agenda.
<b>Special Requirements:</b>	In the interest of accessibility and inclusion for people with disabilities, please identify if you have any special requirements: No  <i>If yes, please detail below:</i>
<i>In submitting this request, you acknowledge that your request form and presentation content will be published to the WAPC website as part of the agenda.</i>	Yes
<b>Is the presentation in support or against the <u>report recommendation</u>? (contained within the agenda)</b>	Against

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Is the presentation in support or against the <u>proposed development?</u>	Against
<p><b><u>Brief Outline of Presentation:</u></b></p> <p><b>27th July 2023</b></p> <p><b>Item 10.1 PORTION OF 61 (LOTS 503 &amp; 504) CLEMENT STREET, SWANBOURNE – WESTERN AUSTRALIA’S CHILDREN’S HOSPICE (CHILDREN’S HOSPICE)</b></p> <p>Below please find a brief outline of matters that I consider have not been adequately addressed in the Development Application and responses to submissions regarding the above item.</p> <p><b>Right Project, Wrong Location!</b></p> <p>Effective town planning demands comprehensive, genuine, research, consultation and transparent evaluation to achieve the appropriate planning for our evolving society. These qualities are not clearly evident in the Children’s Hospice Proposal.</p> <p>Analysis of the Proposal reveals major and unacceptable missteps and risks that, if not addressed are likely to constrain the viability of the facility, allow critical weakness in its service to the community and waste significant public resources.</p> <p>It is essential that the above key matters are put squarely before the WA Planning Commission to ensure it makes the best possible decision for the community.</p>	

# Request for Deputation / Presentation

## Western Australian Planning Commission

### Part 17 Significant Development Meeting

**Meeting Date:** Thursday, 27 July 2023

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<b>Name of Presenter:</b>	Denise Murray	
<b>Organisation:</b>		
<b>Email*:</b>		
<b>Mobile Number*:</b>		
<b>Additional Attendees:</b>	(You may have up to 3 attendees, including the Presenter)	
<b>PowerPoint:</b>	No	
	Your PowerPoint presentation <u>must</u> be accompanied with a written document detailing the content of your presentation for the purpose of the agenda.	
<b>Special Requirements:</b>	In the interest of accessibility and inclusion for people with disabilities, please identify if you have any special requirements: No  <i>If yes, please detail below:</i>	
<i>In submitting this request, you acknowledge that your request form and presentation content will be published to the WAPC website as part of the agenda.</i>		Yes
<b>Is the presentation in support or against the <u>report recommendation</u>? (contained within the agenda)</b>		Against

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Is the presentation in support or against the <u>proposed development?</u>	Against
<b><u>Brief Outline of Presentation:</u></b>	
<p>10.1 Significant Development Application - Western Australia's Children's Hospice - Portion of 61 (Lots 503 and 504) Clement Street, Swanbourne</p> <p>Concerns about the bushfire risk and emergency access for this development proposal have not been adequately addressed in the Development Application. This is considered to be a vulnerable proposal under the State Policy Guidelines for developments in areas at risk of bushfire (SPP 3.7). The development appears to contravene the SPP 3.7 policy guidelines. I ask the WAPC to consider carefully whether this development has been planned in a location that can be made safe enough for children with life limiting conditions, their families and the health workers who will be caring for them.</p> <p>The Development Application has failed to satisfy the Department of Fire and Emergency Services in the areas of fire mitigation and the emergency access. There is one shared driveway in and out of the development which traverses a public carpark that is often congested and could become hazardous in the event of an emergency.</p> <p>Until the bushfire risk and the emergency access issues have been addressed to the complete satisfaction of WA's Department of Fire and Emergency Services, the Development Application should not be approved. A health facility, especially for children, should be developed in the safest location possible and while there is any doubt whatsoever, this Development Application should not be approved.</p>	

# Request for Presentation

## Western Australian Planning Commission

### Part 17 Significant Development Meeting

**Meeting Date:** Thursday, 27 July 2023

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<b>Name of Presenter:</b>	Tracy McLaren	
<b>Organisation:</b>		
<b>Email*:</b>		
<b>Mobile Number*:</b>		
<b>Additional Attendees:</b>	(You may have up to 3 attendees, including the Presenter)	
<b>PowerPoint:</b>	No	
	Your PowerPoint presentation <u>must</u> be accompanied with a written document detailing the content of your presentation for the purpose of the agenda.	
<b>Special Requirements:</b>	In the interest of accessibility and inclusion for people with disabilities, please identify if you have any special requirements: No  <i>If yes, please detail below:</i>	
<i>In submitting this request, you acknowledge that your request form and presentation content will be published to the WAPC website as part of the agenda.</i>		Yes
<b>Is the presentation in support or against the <u>report recommendation</u>? (contained within the agenda)</b>		Against

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Is the presentation in support or against the <u>proposed development?</u>	Against
<b><u>Brief Outline of Presentation:</u></b>	
<p><b>10.1 PORTION OF 61 (LOTS 503 &amp; 504) CLEMENT STREET, SWANBOURNE – WESTERN AUSTRALIA’S CHILDREN’S HOSPICE (CHILDREN’S HOSPICE)</b></p> <p>Outline of the serious flaws in the site selection process.</p> <ul style="list-style-type: none"> <li>• An important Criteria used in the site selection process was omitted from Development Application 17B and has not been addressed;</li> <li>• Less than 1% of the metropolitan area included in the site selection process;</li> <li>• The Health Department’s Child and Adolescent Health Service (CAHS) has categorically recommended that a paediatric palliative care facility should be located in the northern suburbs of Perth – this has been completely ignored;</li> <li>• Public statement at a media conference (evidence can be provided) revealed the project was agreed to by a senior government representative on a mere handshake - no prior research or consultation;</li> <li>• WA Parliament not informed of the bushfire risk to life of the site prior to excision.</li> </ul>	



# Request for Deputation / Presentation

## Western Australian Planning Commission

### Part 17 Significant Development Meeting

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<b>Name of Presenter:</b>	Lesley Shaw	
<b>Organisation:</b>	Melon Hill Bushland Group	
<b>Email*:</b>		
<b>Mobile Number*:</b>		
<b>Additional Attendees:</b>	(You may have up to 3 attendees, including the Presenter) James Shaw, Anne Casson	
	James Shaw	
	Anne Casson	
<b>PowerPoint:</b>	Yes	
	Your PowerPoint presentation <u>must</u> be accompanied with a written document detailing the content of your presentation for the purpose of the agenda.	
<b>Special Requirements:</b>	In the interest of accessibility and inclusion for people with disabilities, please identify if you have any special requirements: No  <i>If yes, please detail below:</i>	
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<b>Is the presentation in support or against the <u>report recommendation</u>? (contained within the agenda)</b>		Support if conditions are met

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Is the presentation in support or against the <u>proposed development?</u>	Support if concerns are addressed
<p><b><u>Brief Outline of Presentation:</u></b></p> <p>Notes accompanying slides. Some slides have dot points  MHBG recognise that sick children benefit from being close to nature and why this site has merit. BUT this project puts these very vulnerable children in harm's way unless concerns are addressed.  <b>Public consultation.</b> There was inadequate public consultation. Lockdown in Perth in April 2020 was very restrictive – no community gatherings were permissible.  We were not invited to Stakeholder Reference Group.  Proponent's presentation August 2020 to Council and Councillors was a big shock to the community. No design had been shared before that time. Exact location was still unknown.  Site Assessment Working Group meetings only began in October 2020 and excision already in progress. Only then did we see the exact location for excision from the A Class Reserve.  Public consultation in May 2021 was too late - Parliament had excised the portions of land</p> <p><b>Allen Park Master Plan 2017</b>  City of Nedlands invested time &amp; expense to get outcome – brought community together to create a vision and inform budget for future needs.  A Class Reserve/Parks &amp; Recreation critical to be retained for future generations.</p> <p><b>Location of design</b>  Site area is fixed by reason of the pre-determined land tenure arrangements. If building occupies half the site, in a bushfire zone, why position it so close to bushland in the north and east?  Will the Asset Protection Zone play area and carpark serve as the firebreak?  The Bushfire Management Plan (obtained through FOI) in section 3.1.1 and Table 5 refers to <b><i>"an ongoing assumption that vegetation external to the site will be managed to a low threat state under XXXXXXXX (deleted) firebreak notice."</i></b>  <b><i>The proponent is to provide a performance principle-based solution to achieve the required APZ should the APZ rely on the management of vegetation on adjoining land."</i></b>  This needs clarification.</p> <p><b>Expectations</b>  Public consultation was unsatisfactory – we want to have more input to ensure location of building does not impact on remnant native vegetation.  MHBG want certainty that no bushland north and east will be required to be cleared as part of ongoing vegetation management.  Develop a biodiversity management plan to factor in lighting, snake management, bird nest management, weed control.  The Whadjuk Trail network Norn Bidi section due for completion to integrate with landscape design.  Other issues still of concern not addressed in this presentation– more work to be done to satisfy the community.  In reference to light pollution National guidelines should apply best practise to ensure suitable artificial light intensity measures are applied adjacent to conservation areas.</p> <p><b>Conclusion</b>  MHBG would like better collaboration and consultation to ensure a future relationship that enhances and protects the rich biodiversity in the Allen Park Bushland.</p>	





WAPC Part 17 Significant Development  
Portion of 61 (Lots 503 & 504) Clement Street Swanbourne  
Western Australia's Children's Hospice at Allen Park

Presentation  
Lesley Shaw  
President MHBG  
27/7/2023



# Site Selection

Old bowling greens

Abutting tuart  
woodland

conservation area

North and East Melon  
Hill



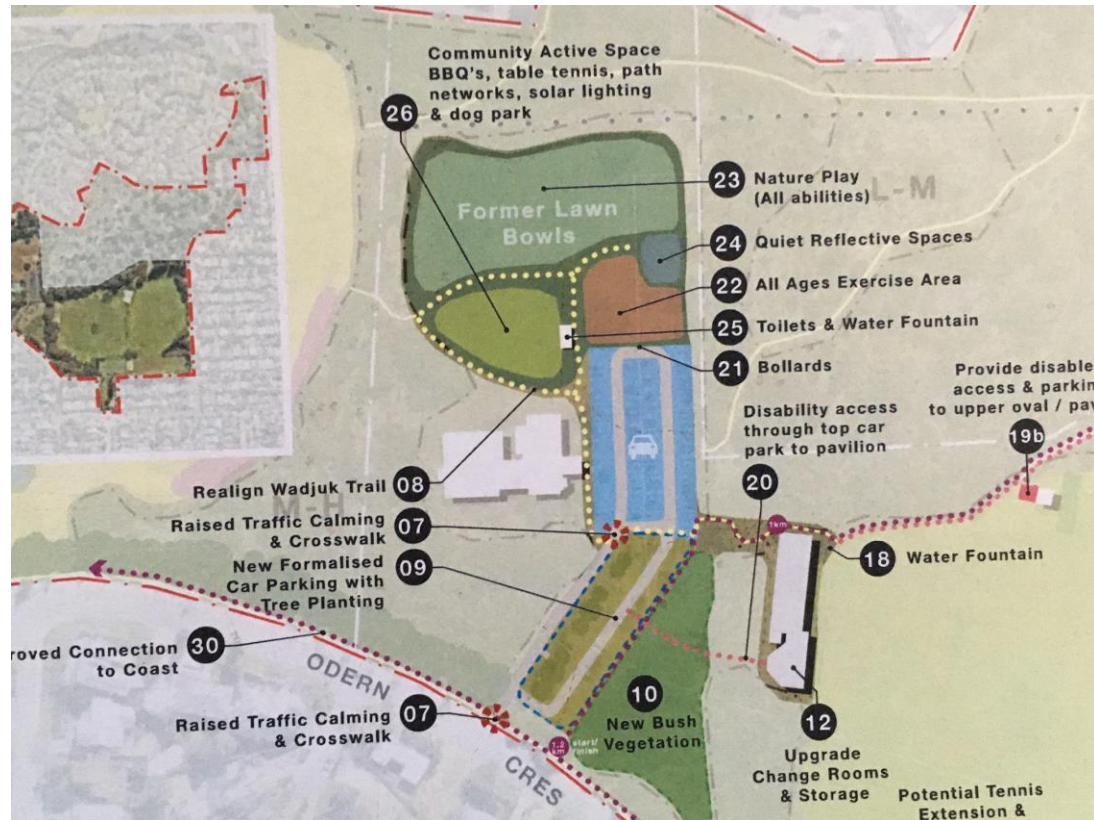
# Integrity & Transparency

- Limited public consultation due to Covid-19
- MHBG asked to provide a submission with limited information
- WAPC's duty is to consider orderly and proper planning of the locality and
- The preservation of the amenities of the locality

# Main concerns unresolved

- LAND USE HAS CHANGED WITHOUT PROPER CONSULTATION
- ALLEN PARK MASTER PLAN– NO BUILT FORM INTENDED FOR THIS PRECINCT
- ADVERSE IMPACTS ON BUSHLAND

# Land use “Vacant land”



- Was A-Class Reserve
- APMP developed with the community behind it
- Hospice in Sports Precinct
- Proposal inconsistent with the purpose of the area – whether historically or in response to use of open space for future trends eg. womens' sport

Source: Allen Park Master Plan Report 2017



# Seaward Corridor

## VIEW FROM MELON HILL TO OCEAN IN 1999

- Natural Heritage Funds granted to connect “Melon Hill” with Swanbourne Reserve Bush Forever site 315
- Swanbourne Primary School and community began revegetation
- All tuart trees planted by teachers
- 1000s of plants introduced over 2 decades to **create corridor to provide important linkages for flora and fauna**





# Seaward Corridor

## VIEW FROM MELON HILL TO OCEAN TODAY

- 25 years of effort to establish wildlife corridor in partnership with City of Nedlands and Department of Defence
- Tuart tree canopy expected to expand further
- Corridors are critical for wildlife in event of fire
- We're proud of our efforts as a community of volunteers





# Adverse Impacts on Bushland

- 5000m excised. Building footprint 2500m.
- Why sited so close to bushland?
- Ongoing management of proposed external APZ to control radiant heat lacks detail – onus on City of Nedlands that remnant vegetation would have to be ‘managed’ outside the envelope to address bushfire threats to a building that could have been located at a more appropriate distance from the bushland
- City of Nedlands explicit that no clearing of native vegetation outside lot boundaries.
- Asset Protection Zone is playground on north and parking on east, is this the firebreak around that side of the development?
- Light pollution: reduce intensity of lighting abutting bushland
- DFES concerns siting building in BAL/FZ Designated Bushfire Zone





# EXPECTATIONS

- Public consultation was unsatisfactory – we want to have more input to ensure location of building does not impact on native vegetation
- MHBG want certainty that no bushland north and east will be required to be cleared as part of ongoing vegetation management
- Develop a biodiversity management plan to factor in lighting, snake management, bird nest management, weed control
- The Whadjuk Trail network due for completion to integrate with landscape design.
- Other issues still of concern not addressed in this presentation– more work to be done to satisfy the community





MHBG would like better collaboration and consultation to ensure a future relationship that enhances and protects the rich biodiversity in the Allen Park Bushland



# Request for Deputation / Presentation

## Western Australian Planning Commission

### Part 17 Significant Development Meeting

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<b>Name of Presenter:</b>	Councillor Kerry Smyth
<b>Organisation:</b>	City of Nedlands
<b>Email*:</b>	
<b>Mobile Number*:</b>	
<b>Additional Attendees:</b>	(You may have up to 3 attendees, including the Presenter)
	Councillor Hengameh Amiry
<b>PowerPoint:</b>	No
	Your PowerPoint presentation <u>must</u> be accompanied with a written document detailing the content of your presentation for the purpose of the agenda.
<b>Special Requirements:</b>	In the interest of accessibility and inclusion for people with disabilities, please identify if you have any special requirements: No  <i>If yes, please detail below:</i>
<i>In submitting this request, you acknowledge that your request form and presentation content will be published to the WAPC website as part of the agenda.</i>	Yes
<b>Is the presentation in support or against the <u>report recommendation</u>? (contained within the agenda)</b>	Against

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Is the presentation in support or against the <u>proposed development?</u>	Against
<p><b><u>Brief Outline of Presentation:</u></b></p> <p>That following the Council resolution 16.2 (PD.36.06.22) of 28 June 2022 Cr Smyth will speak to the Significant Development Application - Western Australia's Children's Hospice - Portion of 61 (Lots 503 and 504) Clement Street, Swanbourne.</p>	

# Request for Deputation / Presentation

## Western Australian Planning Commission

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<b>Name of Presenter:</b>	Cr Hengameh Amiry	
<b>Organisation:</b>	City of Nedlands	
<b>Email*:</b>		
<b>Mobile Number*:</b>		
<b>Additional Attendees:</b>	(You may have up to 3 attendees, including the Presenter)	
	Councillor Kerry Smyth	
<b>PowerPoint:</b>	No	
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<p><b><u>Brief Outline of Presentation:</u></b></p> <p>That following the Council resolution 16.2 (PD.36.06.22) of 28 June 2022 Cr Amiry will speak to the Significant Development Application - Western Australia's Children's Hospice - Portion of 61 (Lots 503 and 504) Clement Street, Swanbourne.</p> <p>.</p>	



### Brief Outline of Presentations

Cr Hengameh Amiry:

1. The council fully supports the concept of a children's hospice, but the proposed site is not an acceptable one, for several reasons.
2. The location chosen for the hospice fails to meet the Child and Adolescent Health Service's critical criterion of a central metropolitan location for the hospice.
3. The proposed site is intrinsically unsuitable for a children's hospice, for a number of reasons.

Cr Kerry Smyth:

1. The proposed use is contrary to the long-standing legally designated, planned and community use of the land.
2. The proposed use and development are inimical to the character of the locality.
3. The proposed use and development would create a damaging precedent, in effect break a promise and destroy trust with the community

### Submissions of Councillor Amiry

#### **Submission1: The Council fully supports the concept of a children's hospice, but not on this site.**

The Council fully supports the establishment of a children's hospice, noting that, remarkably, none such exists in the State at present. However, the very modest scale proposed – a mere seven patient rooms and three family suites - could not possibly satisfy the demand generated by the whole population. There will inevitably be a need for a larger and better-located facility. More probably, there will arise a need for two or more, better-located, children's hospices

#### **Submission 2: The chosen site fails to meet the Child and Adolescent Health Services' critical requirement for a central metropolitan location**

The Council contends that the site is not an acceptable, let alone the best, site for a children's hospice. The evidence shows that this is also the view of ***the professional experts who will operate the facility***, the Child and Adolescent Health Service (CAHS) of the Department of Health, as opposed to ***the non-expert proponent***, the Perth Children's Hospital Foundation (PCHF) who chose the site.

The Memorandum of Understanding (MOU) between PCHF and CAHS signed in February 2020 gave the responsibility for securing the site to CAHS. Yet the CLE application report states that this was done by the PCHF, not CAHS.

The CLE Report at Section 1.2 lists seven criteria for the site *sought by the PCHF*. This conveniently - arguably dishonestly - omits the second, the most fundamental, of the eight criteria set by the CAHS: that the site should be ***"Central to the metropolitan region, optimising accessibility"***. None of the five sites considered meets this criterion: all are in the Western Suburbs.

The application was fundamentally unsound right from the start, with a flawed site selection, contrary to the expressed advice of CAHS, which will be responsible for the operation of the hospice.

Incidentally, the MOU, very properly, gave responsibility for the design and construction of the facility (and, by implication, the obtaining of approvals also) to CAHS but, contrary to this, the documentation suggests that these roles have, improperly, been abrogated to the PCHF.

**Submission3: The site is intrinsically unsuitable for a hospice**

Aside from the above the site itself is intrinsically unsuitable for the proposed hospice for several reasons, most notably:

- The site lacks good and safe access to public transport. The nearest bus stop is 450m away and the local service is infrequent. Worse, visitors from outside the Western Suburbs will require up to four changes of public transport service, taking up to two or more hours of travel time each way.
- The pedestrian approach to the site – through a car park - is also potentially dangerous, especially at night, aside from being unattractive.
- Despite denials to the contrary, the site is subject to infrequent, but loud, noises from the rugby ground (and clubrooms?) and from the military establishment close by.
- The site is necessarily confined, and unsuitable to meet an inevitable demand for expansion.
- The site is rated BAL FZ (Bushfire Attack Level Flame Zone) by the Department of Fire & Emergency services (DFES). There will be an unavoidable a risk to the life of patients and staff in the event of a bushfire, with limited and potentially congested escape routes. This information was not available to the Parliament when it approved the alienation of the site
- To provide a safe western escape and building protection the development will require more bushland clearance than claimed, outside the designated site and so imposing an unreasonable burden on the City for protection of a property not under its control .
- The isolated site lacks a friendly face to the community: it sends an unfortunate social message that, despite the intent to provide comfort for both patients and caring parents and others, these kids are to be shunted away, out of site, no longer part of the community: we don't want to be reminded that these kids are likely going to die.

It is impossible to escape the conclusion that the site choice was a matter of pure opportunism, not the outcome of a proper search for the best site to serve the needs of patients.

**Submissions of Councillor Smyth****Submission 1: The proposed use is contrary to the long-standing legally designated, planned and valued use of the site.**

The site has been historically part of a Class A reserve, subject to the management and control of the City of Nedlands. However, it has been excised from the reserve by the State government for the sole purpose of enabling the proposed development to proceed. There are no other causes for this action.

The site remains - for now - reserved for "Parks and Recreation" under the Metropolitan Region Scheme (MRS). It has probably had this status since the inception of the MRS in 1963.

The proposed hospice bears no discernible relationship to the intended purposes of the reservations. Excision of the site from both the Class A reserve and from the MRS reservation for the purposes of an alien use cannot be seen otherwise than as a violation of the intent of those reservations.

The site lies within Allen Park, which is highly valued and used by the local, and indeed regional, community. Allen Park has been the subject of extensive public consultation and deep consideration as to its best use and development, recognised in the Allen Park Master Plan, adopted as recently as 2017. The excision of the site by the State government was not subject to such a thorough and proper process.

The proposed development demonstrates a clear violation of the principle of orderly planning, one half of the universally accepted legal planning phrase “orderly and proper planning”.

**Submission 2: The proposed use and development are inimical to the character of the locality**

Compliance with the second principle in the phrase quoted - “proper planning” - demands that both the character of the use and its development be fitting to the surroundings in which it sits. Context, as planners and architects universally assert and the community instinctively understands, is critical to the use and development of land.

The proposed use of a hospice, and the attributes that necessarily come with it, do not fit with the proper uses and character of its context, Allen Park and the adjoining residential areas. Allen Park is dedicated to recreational uses, both active (Associates Rugby Club) and passive (walking in and simply viewing the natural environment, even a bridge club). The hospice would not relate to the Park in the same way, and in fact would inhibit public use..

On the evidence presented the hospice would generate significant and regular traffic movements. Because traffic movements would include many visitors many, probably most, would occur outside ordinary hours for traffic. The problem is that the location of the site dictates that all traffic movements must utilise local, quiet, residential streets - Odern Crescent, Clement Street and four minor streets connecting to North Street.

Mitigation of bushfire risk to the development would demand further clearing of native vegetation, contrary to the character and enjoyment of the adjacent park.

Development of this site would also limit possibilities for the legitimate expansion of the Associates Rugby Union Football Club.

The CLE report somewhat disingenuously claims that the proposed building is “homely” and “respectfully integrated with the surrounding natural landscape”. In fact the design of the building is neither “homely” in scale or character nor, more relevantly, integrated with its surroundings.

**Submission 3: This development would create a damaging precedent, breaking trust with the community**

The excision of a parcel of land from a Class A reserve, long reserved for “Parks and Recreation” under the MRS and widely loved and used by the community, in order to allow a development which is both alien in nature and detrimental to the intended and publicly supported use of that land creates an extremely damaging precedent. In effect it breaks a promise to the community, destroying trust. If the proper legal designation of the status and use of land can be so easily dismissed, as in this case, how much protection of land can the public expect in other cases?

The proposed development erodes confidence in the MRS and the system of Class A reservation of land, and erodes public confidence in State planning processes.

FOR CONSIDERATION BY THE SDAU



# Request for Deputation / Presentation

## Western Australian Planning Commission

### Part 17 Significant Development Meeting

**Meeting Date:** Thursday, 27 July 2023

#### Presentation Request Guidelines

Persons interested in presenting at a WAPC Part 17 Significant Development Meeting must first consider whether their concern has been adequately addressed in the report recommendation or other submissions. Your request will be determined by the WAPC Chairman based on individual merit and likely contribution to assist the Commission's consideration and determination of the application.

Presentations are not to exceed **3 minutes**. It is important to note that the presentation content will be **published on the WAPC website** as part of the meeting agenda. **Your PowerPoint must be submitted with this request.**

**Requests close at 2pm, three (3) working days, prior to the meeting date.** Please complete and submit this form, your PowerPoint and any additional written documents to [committees@dplh.wa.gov.au](mailto:committees@dplh.wa.gov.au) no later than this time. **Late requests will not be accepted.**

Handouts or PowerPoints will not be accepted on the day of the meeting.

<b>Name of Presenter:</b>	Alex Watson	
<b>Organisation:</b>	CLE Town Planning + Design	
<b>Email*:</b>		
<b>Mobile Number*:</b>		
<b>Additional Attendees:</b>	(You may have up to 3 attendees, including the Presenter)	
	Mr Ian Campbell, PCH Foundation	
	Mr Kyle Jeavons, Hesperia	
<b>PowerPoint:</b>	No	
	Your PowerPoint presentation <u>must</u> be accompanied with a written document detailing the content of your presentation for the purpose of the agenda.	
<b>Special Requirements:</b>	In the interest of accessibility and inclusion for people with disabilities, please identify if you have any special requirements: No  <i>If yes, please detail below:</i>	
In submitting this request, you acknowledge that your request form and presentation content will be published to the WAPC website as part of the agenda.		Yes
<b>Is the presentation in support or against the <u>report recommendation</u>? (contained within the agenda)</b>		Support

\* Contact details will be redacted prior to this form being published online

Is the presentation in support or against the <u>proposed development?</u>	Support
<p><b><u>Brief Outline of Presentation:</u></b></p> <p>The presenters will speak in support of the officer's recommendation that the WA Children's Hospice be approved subject to conditions. The presenters will advise the Members of the purpose of the Project, outline the process undertaken so far, and advise on the intended construction schedule.</p>	

**ITEM NO: 10.1**

**PORTION OF 61 (LOTS 503 & 504) CLEMENT STREET, SWANBOURNE –  
WESTERN AUSTRALIA'S CHILDREN'S HOSPICE (CHILDREN'S HOSPICE)**

<b>Applicant</b>	Perth Children's Hospital Foundation and Child and Adolescent Health Service (c/- CLE Town Planning & Design)
<b>Owner</b>	Child and Adolescent Health Service
<b>Value of Development</b>	\$25.5 million
<b>Local Government Area</b>	City of Nedlands
<b>Referral Pathway</b>	Applicant opt-in
<b>Authorising Officer</b>	Paola Di Perna, Director State Development Assessment Unit
<b>WAPC File No</b>	SDAU-051-21
<b>Application Received Date</b>	23 December 2021
<b>Attachment(s)</b>	<ol style="list-style-type: none"> <li>1. <a href="#">Development Plans dated 10 November 2022</a></li> <li>2. <a href="#">Landscape Plans dated 3 February 2023</a></li> <li>3. <a href="#">Aerial and Location Plan dated 17 July 2023</a></li> <li>4. <a href="#">Extract of Minutes of City of Nedlands dated 28 June 2022</a></li> <li>5. <a href="#">Summary of public submissions and applicant's response</a></li> <li>6. <a href="#">Revised Transport Impact Statement dated 18 October 2022</a></li> <li>7. <a href="#">Waste Management Plan dated 18 October 2022</a></li> <li>8. <a href="#">Revised Bushfire Management Plan dated 11 January 2023</a></li> <li>9. <a href="#">Bushfire Management Peer Review report dated 3 April 2023</a></li> <li>10. <a href="#">State Design Review Report dated November 2022</a></li> </ol>

**Officer Recommendation:**

That the Western Australian Planning Commission resolves to **APPROVE** application reference SDAU-051-21 and accompanying plans (date-stamped 10 November 2022) for the Perth's Children's Hospice development, described as a Children's Hospice, on a portion of 61 (Lots 503 and 504) Clement Street, Swanbourne, in accordance with s.274 of the *Planning and Development Act 2005*, subject to the following conditions.

**Conditions**

Approval Timeframe

1. This decision constitutes development approval only and is valid for a period of 24 months from the date of approval. If the development is not substantially



commenced within the specified period, the approval shall lapse and be of no further effect.

#### Conformity with Plans

2. The development is to be undertaken in accordance with the approved plans (date-stamped 10 November 2022) and documents attached to this approval, subject to modifications required by any condition of this approval, final details of which are to be submitted at working drawings stage (condition clearance stage) to the satisfaction of the Western Australian Planning Commission.

#### Clearance of Conditions of Approval

3. A copy of the final working drawings (prepared for submission of a building permit application) and all associated plans, reports and information that address the conditions of approval are to be submitted to and approved by the Western Australian Planning Commission.

#### Construction

4. Prior to submission of the relevant building permit application, a Construction and Environmental Management Plan/s is to be submitted to and approved by the Western Australian Planning Commission, on advice from the City of Nedlands, addressing but not limited to:
  - a. addressing any unexpected finds during excavation and other soil disturbing works;
  - b. implementation of an unexpected finds protocol to manage any remnant asbestos fragments should they emerge from garden soil in the future;
  - c. consideration of ground gases for the underground car park;
  - d. demonstrate that no native vegetation outside of Lots 503 and 504 will be cleared or impacted upon by the development, unless previous approval granted by the City of Nedlands;
  - e. illustrate conservation fencing, matching the existing fencing to the east of the site, to be erected to the north boundary to demarcate the bushland to be protected;
  - f. arrangements with the City of Nedlands to maintain parking and pedestrian access to the adjacent WA Bridge Club during works;
  - g. management of construction traffic, including potential impacts on the local road network;
  - h. deliveries and storage of construction materials and machinery;
  - i. management of construction vibration, dust and erosion;
  - j. management of construction noise and other site generated noise;
  - k. investigation and management of acid sulphate soils;
  - l. management of any site dewatering or stormwater discharge;
  - m. temporary fencing, hoardings, gantries and signage;
  - n. protection of remnant vegetation adjacent to the site; and
  - o. public communication and complaint handling procedures.

The approved Construction and Environmental Management Plan/s is to be adhered to for the duration of the construction works.

5. Prior to submission of the relevant building permit application, the applicant shall submit:

- a. a geotechnical engineering report certifying that the land is physically capable of accommodating the development; and
  - b. in the event remediation works are required, the landowner/applicant is to provide a post-works geotechnical report certifying that all works have been carried out in accordance with the pre-works geotechnical report to the satisfaction of the Western Australian Planning Commission, on advice from the City of Nedlands.
6. Prior to occupation of the development, all waste and temporary construction materials, including temporary access tracks, shall be removed from the Parks and Recreation reserve and the site cleaned-up and remediated, to the satisfaction of the Western Australian Planning Commission, on advice from the City of Nedlands.

#### Design and Materials

7. The development is to be constructed with high quality and durable external materials and finishes, consistent with the approved development plans date-stamped 10 November 2022 (other than as amended by conditions of approval). Final details are to be submitted to and approved by the Western Australian Planning Commission, prior to submission of the relevant building permit application/s.

#### Landscaping

8. Prior to submission of the relevant building permit application, detailed Landscape Plans, including hard and soft landscape specifications and reticulation details, aligned with the Landscape Strategy prepared by Hassell (date-stamped 3 February 2023) and the approved Development Plans, are to be submitted to and approved by the Western Australian Planning Commission, on advice from the City of Nedlands.
9. Prior to occupation of the development, certification that all landscaping and reticulation has been established in accordance with the approved landscaping plans to Australian Standards shall be submitted to the Western Australian Planning Commission, on advice from the City of Nedlands. The landscaping shall thereafter be maintained to the satisfaction of the Western Australian Planning Commission.

#### Universal Access

10. The development is to accord with the National Construction Code (NCC) Building Code of Australia (BCA), Australian Standards AS1428.1 and Disability (Access to Premises – Buildings) Standards 2010. Prior to submission of the relevant building permit application, detailed drawings are to be submitted identifying access from carparking areas to the entrance of the building and throughout the building, as required by AS1428.1 and the Disability Standards.

#### Traffic, Parking and Access

11. All carparking spaces, access aisles and bicycle parking spaces shall be constructed in accordance with Australian Standards AS2890.1 and AS2890.3 and thereafter maintained by the operators of the development, to the

satisfaction of the Western Australian Planning Commission, on advice from the City of Nedlands.

12. Prior to occupation of the development, all bicycle parking spaces, and associated end-of-trip facilities shall be installed and operational. The provision of bicycle parking bays, associated bicycle infrastructure and end-of-trip facilities (including showers and clothes lockers) for staff and visitors shall be provided as indicated on the approved development plans and retained in perpetuity and maintained for the life of the development, to the satisfaction of the Western Australian Planning Commission, on advice from the City of Nedlands.
13. Prior to submission of the relevant building permit application, a Parking Management Plan which incorporates the Transport Impact Statement prepared by flyt (date-stamped 18 October 2022) as well as any changes that may be required as part of the final Travel Plan, is to be submitted to and approved by the Western Australian Planning Commission, on advice from the City of Nedlands and Department of Transport. Once operational, all parking on site shall be managed in accordance with the approved Parking Management Plan.
14. Prior to occupation or use of the development, the owner/s of Lot 503 must register an easement over that lot and an easement over the adjoining lot [Lot 504], each securing a reciprocal right of carriageway over the other lot in relation to the access way(s) shown on the approved plans.
15. Prior to occupation of the development a Deed of Agreement (or similar) is to be entered into between the Child and Adolescent Health Services (vesting agency of Lot 503, Reserve 53745) and the City of Nedlands to the satisfaction of the Western Australian Planning Commission for the provision of adequate cost sharing for maintenance and upgrading of Lot 504 (Access Lot) in perpetuity of use of Lot 503 for the Perth's Children's Hospice.

#### Bushfire Management

16. Prior to occupation of the development, the owner shall register on the Certificate of Title(s), a notification pursuant to Section 70A of the Transfer of Land Act 1893. The notification is to be included on the diagram or plan of survey (deposited plan) and state:

*"This land is within a bushfire prone area as designated by an Order made by the Fire and Emergency Services Commissioner and is subject to a Bushfire Management Plan. Additional planning and building requirements may apply to development on this land".*

The notification is to be registered at the applicant/owner's expense, to the satisfaction of the Western Australian Planning Commission.

17. Prior to submission of a relevant building permit application, the bushfire management plan prepared by Emerge Associates date-stamped 11 January 2023 is to be updated to the satisfaction of the Western Australian Planning Commission, on advice from the City of Nedlands, and include:



- a. recommendations from the JBS&G peer review report date-stamped 3 April 2023, and
  - b. the revised Bushfire Emergency Evacuation Plan
18. Prior to occupation of the development, certification by a Bushfire Consultant is to be provided to demonstrate that the measures included in the updated bushfire management plan have been implemented in full to the satisfaction of the Western Australian Planning Commission, on advice from the City of Nedlands.
19. Prior to occupation of the development, certification is required stating the building has been constructed to a standard consistent with the Design and Construction of Community Bushfire Refuges (2014) handbook.

#### Stormwater Management

20. Prior to submission of the relevant building permit, a Stormwater Management Plan shall be submitted to and approved by the Western Australia Planning Commission, on advice from the City of Nedlands demonstrating that all stormwater can be retained on site.

#### Sustainability

21. The development is designed and constructed to achieve a 5 Star Green Star design rating by the Green Building Council of Australia or a demonstrated equivalent as recommended within the Sustainable Design Strategy prepared by Norman Disney & Young and date-stamped 18 October 2022. Prior to submission of the relevant building permit application, an updated sustainability report which demonstrates the development will achieve an equivalent sustainability design rating of 5 Star Green Star and which clearly commits to the provision by the proponent of the EV infrastructure referenced in the Sustainable Design Strategy, is to be submitted to the satisfaction of the Western Australian Planning Commission.
22. Prior to occupation of the development, documentation from a suitably qualified professional is to be provided certifying that all applicable sustainability initiatives identified in the approved Sustainability Report(s) have been implemented in the construction, to the satisfaction of the Western Australian Planning Commission.

#### Wastewater

23. No wastewater/backwash from the pool/facility is to be discharged onto the reserve or the City of Nedlands stormwater drainage system unless otherwise approved by the Western Australian Planning Commission, on advice from the City of Nedlands.

#### Noise Management

24. Prior to submission of the relevant building permit application, the Acoustic Report prepared by Marshall Day Acoustics (date-stamped 18 October 2022) is to be updated to reflect the approved development plans, and detail effective management of noise ingress and egress for the proposed Children's Hospice.

The final report is to be submitted to and approved by the Western Australian Planning Commission, on advice from the City of Nedlands.

25. Prior to occupation of the development, documentation from a qualified acoustic consultant is to be provided certifying that the acoustic treatments recommended in the final Acoustic Report/s have been implemented in construction of that stage, to the satisfaction of the Western Australian Planning Commission, on advice from the City of Nedlands.

#### Waste Management

26. The Waste Management Plan prepared by Encycle Consulting, date-stamped 18 October 2022, shall be implemented to the satisfaction of the Western Australian Planning Commission, on advice from the City of Nedlands. The approved Waste Management Plan shall be adhered to for the perpetuity of the development.

#### Utilities and Facilities

27. Prior to submission of the relevant building permit application, all external-facing service infrastructure, service area doors, electrical transformers, air-conditioning condensers, piping, ducting, and building plant are to be integrated into the design of the development or screened to minimise any visual or noise impacts on surrounding land uses, with final details being submitted to and approved by the Western Australian Planning Commission, on advice from the City of Nedlands.

#### Lighting

28. Prior to submission of the relevant building permit application(s), a lighting strategy and an external lighting plan that refers to Australian Standard AS4282 Control of the Obtrusive Effects of Outdoor Lighting and other relevant lighting standards, must be submitted to and approved by the Western Australian Planning Commission, on advice from the City of Nedlands.

All security, building signage, and carpark lighting is to be located, designed, and installed to prevent excess light spillage from the development.

29. Prior to occupation of the development, the specifications and measures contained in the lighting strategy and external lighting plan shall be installed and maintained thereafter by the owners or operators of the development, to the satisfaction of the Western Australian Planning Commission, on advice from the City of Nedlands.

30. Prior to occupation of the development, a CCTV network system designed by a suitably qualified consultant with a Class 2A licence under the Security Industry Act 1997 is to be installed and thereafter maintained by the Child and Adolescent Health Services, to the satisfaction of the Western Australian Planning Commission.

#### Signage

31. Prior to submission of the relevant building permit application, a Signage Strategy identifying the various areas of the facility and wayfinding and details

of its ongoing maintenance, shall be submitted to and approved by the Western Australian Planning Commission, on advice from the City of Nedlands and thereafter maintained by the Child and Adolescent Health Services to the satisfaction of the Western Australian Planning Commission.

### Public Art

32. Prior to occupation of the development, the public art strategy by Artify date-stamped 18 October 2022 and the Noongar Cultural Framework by Soft Earth date-stamped 18 October 2022, are to be implemented and maintained thereafter to the satisfaction of the Western Australian Planning Commission.

### **Advice Notes**

- a. With regard to condition 1, the term “substantially commenced” has the meaning given to it in the Planning and Development (Local Planning Schemes) Regulations 2015 as amended from time to time.
- b. This is a development approval only. The applicants/owners are advised that it is their responsibility to ensure that the proposed development complies with all other applicable legislation, local laws and licence or permit requirements that may relate to the development. The City of Nedlands should be contacted for further advice on building, health, engineering and road reserve requirements and the Department of Fire and Emergency Services (DFES) for further advice on achieving the Fire and Emergency Services Commissioner’s Operational Requirements.
- c. It is the responsibility of the applicant/owners to be aware of their obligations under the Aboriginal Cultural Heritage Act 2021. This may require additional an approval for the proposed activity and the applicant/owners are advised to undertake a due diligence assessment in accordance with the Aboriginal Cultural Heritage Management Code. Further information is available at the Aboriginal Cultural Heritage Act 2021 website ([www.wa.gov.au](http://www.wa.gov.au)) or by contacting [Aboriginalheritage@Dplh.Wa.Gov.Au](mailto:Aboriginalheritage@Dplh.Wa.Gov.Au).
- d. With regard to condition 3, the final working drawings are to comply with all of the relevant conditions of development approval, as confirmed by the Western Australian Planning Commission, and any variations from the approved plans are required to be clearly identified. Once the Commission is satisfied that the working drawings and information are consistent with the approved development plans and conditions of approval, the Commission will provide a clearance letter and copies of the working drawings to the City of Nedlands to assist with the issuing of a building permit(s).

Where works and/or building permits are proposed to be staged, the Western Australian Planning Commission may agree to a staged clearance of working drawings and associated conditions of approval. In such cases, a Conditions Staging Matrix will need to be completed and submitted for the Commission’s approval.

Interim documentation may be acceptable for the clearance of some conditions for the initial stages of the development, in accordance with an approved Conditions Staging Matrix. In any instance where interim documents or plans are



accepted by the Commission, the documentation is required to identify the time or stage for the delivery of the final documents and/or plans.

- e. With regard to condition 8, the Landscaping plans are to align with the approved Landscape Plans and Development Plans (date-stamped 3 February 2023). Any proposed landscape works outside the development lot boundaries will require consent from the City of Nedlands prior to the commencement of any works.
- f. With regard to condition 10, the development is required to provide access to buildings for people with disabilities in accordance with the National Construction Code Building Code of Australia, AS1428.1 and Disability (Access to Premises – Buildings) Standards 2010.
- g. With regard to condition 21, where relevant, elements of the Sustainability Report should be clearly reflected in documentation and plans submitted with the building permit application.
- h. With regard to condition 30, the CCTV network system is to be combined with the internal and external lighting strategy.
- i. Where new or modified crossovers are proposed as part of this development, applicants are required to submit a Crossover Application Form with or prior to application for a Building Permit. Refer to the City of Nedlands website (Infrastructure) for standards and specifications, and to download the Crossover Application Form.
- j. Approval for any substantial changes to the approved plans will need to be obtained in writing from the Western Australian Planning Commission, via an Amended Application process (Form 17C).
- k. If an applicant or owner is aggrieved by this determination, there is a right of review by the State Administrative Tribunal in accordance with Part 17 of the *Planning and Development Act 2005*.

#### **Details: Outline of development application**

Region Scheme	Metropolitan Region Scheme – Parks and Recreation reservation
Local Planning Scheme	City of Nedlands Local Planning Scheme No. 3 (LPS3)
Local Planning Scheme - Zone	Region Scheme Reserve – Parks and Recreation reservation
Use Class	Use Not Listed
Lot Size	'Hospice' (Lot 503) - 5,000m <sup>2</sup> 'Access Lot' (Lot 504) – 945m <sup>2</sup>
Existing Land Use	Vacant – former Bowling Club site
State Heritage Register	No
Local Heritage	<input checked="" type="checkbox"/> N/A <input type="checkbox"/> Heritage List <input type="checkbox"/> Heritage Area
Design Review	<input type="checkbox"/> N/A

	<input type="checkbox"/> Local Design Review Panel <input checked="" type="checkbox"/> State Design Review Panel <input type="checkbox"/> Other
Bushfire Prone Area	Yes
Contaminated site	The site was classified on 10 March 2022 as <b>decontaminated</b> under the <i>Contaminated Sites Act 2003</i> (CS Act). This classification means the site is suitable for all uses including the proposed children's hospice. No condition required.

### Proposal:

Approval is sought for the construction of a two-storey building and basement parking for a Children's Hospice, on Lot 503 Clement Street Swanbourne with access via Lot 504 Clement Street, Swanbourne. The development includes the following:

- 11 suites comprising of:
  - Seven single guest bedrooms with en-suite;
  - A two-bedroom family suite with en-suite (with connection to a guest bedroom);
  - Two two-bedroom family suites with en-suite and private terraces; and
  - One bereavement suite with private car bay.
- Communal living spaces, dining spaces, therapy spaces, meeting rooms, play areas, clinical workstations and a nurse station;
- A hydrotherapy pool, fenced playground areas and garden spaces including a memorial garden;
- 47 parking spaces located at basement and ground levels including 4 future car bays, 3 motorcycle bays, 2 service bays, 1 bus bay, 2 ambulance bays and 1 bereavement bay; and
- Staff facilities and amenities.

The proposed Children's Hospice (the Hospice) will be the first purpose-built paediatric hospice in Western Australia (WA) and will operate as a place of care for children with life-limiting illnesses who require 24/7 care, end-of-life care within a safe clinical environment and respite accommodation for families.

In addition to providing respite accommodation on site, the Children's Hospice will provide outreach care and support services where children living in the regions will be able to access medical specialists and care workers.

Following consultation and external stakeholder feedback the applicant submitted supplementary documentation as follows:

- A sustainability report, traffic impact statement (TIS), acoustic report, waste management plan, certified stormwater plan, public art plan, Noongar cultural framework report, and a universal access strategy (all date-stamped 18 October 2022);
- Revised plans date-stamped 10 November 2022 (refer **Attachment 1**);
- Revised bushfire management plan (BMP) and bushfire emergency evacuation plan (BEEP) date-stamped 11 January 2023;
- Revised landscape plan date-stamped 3 February 2023 (refer **Attachment 2**); and
- A building certification statement date-stamped 13 June 2023.

These documents have formed the basis of the assessment for this report.

## **Summary:**

The key points relating to this report are as follows:

- The proposed Children's Hospice will be the first purpose-built paediatric hospice in WA and will operate as a place of care for children with life limiting illnesses who require 24/7 care, end-of-life care within a safe clinical environment, respite accommodation for families, and outreach care and support services for children and their families.
- There is no clear land use classification for the Children's Hospice under the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*, or *Health Services Act 2016*, or the City of Nedlands local planning scheme.
- As the proposed development does not fit into the City of Nedlands local planning scheme land use classification definitions of 'Residential Aged Care Facility' or 'Hospital', land use is treated as 'Use Not Listed'.
- A total of 74 submissions were received in response to the proposal, of which 17 supported the application, 4 were supportive with changes, and 53 objected to the proposal. Concerns related to the use of a public reserve for a hospice, compatibility with surrounding land uses, bushfire safety, environmental impacts, sufficiency of parking, traffic impacts, possible limited benefit and limited potential to expand to cater for demand. Comments in favour of the proposal supported the need for a well-designed purpose-built hospice facility for children that was sited appropriately on underutilised land with minimal environmental impacts.
- The City of Nedlands (City) advised it does not support the application on the basis that the use is inconsistent with the purpose of the reserve, impacts on the amenity of the local community, and that surrounding land uses would impact the residents of the Hospice.
- The State Design Review Panel (SDRP) supported the design approach, pending resolution of issues noted. Recommendations included softening of retaining wall edges, provision of deep soil landscaping within internal courtyards to support trees, and further development of the sustainability strategy. These matters are now considered to have been resolved via updated information and the inclusion of a condition regarding sustainability.
- The proposed development has an estimated construction value of \$25.5 million financed through fundraising efforts led by the Perth Children's Hospital Foundation (PCHF). The construction phase would support approximately 100-120 jobs and 25 on-going jobs through operation of the facility. The Hospice would contribute to the State's palliative care sector as a component of a wider system that incorporates in-home care, outreach services and hospital care.
- The development has been reviewed in the context of Part 17 of the *Planning and Development Act 2005* (PD Act) and, overall, is considered acceptable having regard to the intent and objectives of the planning framework.

## **Background:**

### *Site Context*

The development site consists of two lots being the Hospice Lot (Lot 503) which has an area of 5,000m<sup>2</sup>, and an Access Lot (Lot 504) which extends approximately 164



metres, providing access to the Hospice from Odern Crescent (refer **Attachment 3**). The Hospice Lot is rectangular in shape and located within the larger regional reserve of Allen Park. It was created through a separate excision process which is detailed later in the report. The development site is largely cleared and vacant having been the site of the former Swanbourne Bowling Club. It is located within the City of Nedlands and approximately 5 kilometres from the Perth Children's Hospital.

The Access Lot transects the car park area to the south of the Hospice Lot which is required to remain unobstructed for public access. Approximately 50m south of the site is the WA Bridge Club and approximately 100m south-east of the site is the Associates Rugby Union Football Club, whose home ground lies to the east. These clubs both have access to the existing carpark. The eastern boundary abuts remnant bushland, which is under the management of the City and is also maintained by active volunteer groups.

Land to the north of the site, separated by bushland, has been developed as a low-density residential area by Defence Housing Australia. To the west is Swanbourne Oval and, beyond the flat grassed oval area, is an existing carpark, the Shorehouse restaurant, and the Swanbourne-Nedlands Surf Lifesaving Club, all with outlooks to the ocean.

Clement Street and Odern Crescent are classified as access roads under Main Roads Functional Roads Hierarchy. Both are constructed as single carriageway two lane roads. The roadway width of Odern Crescent between Walba Way and the Access Lot is wider and provides opportunity for on-street parking on the northern side of Odern Crescent. Transperth bus services operate bus route 102, running from Claremont Station to Cottesloe Station, with the nearest bus service on North Street being approximately 450 metres from the edge of the Hospice Lot.

### *Land Tenure*

The subject site was part of Allen Park, which is managed by the City, and comprises two Class A Reserves set aside for the purpose of 'Parks and Recreation'.

Following public consultation in May 2021, Parliament excised a portion of land from Allen Park to create Cown Lot 503 on Deposited Plan 410572 for the purpose of a 'Children's Hospice', subject to the following:

- The facility is to be managed by the Child and Adolescent Health Service (CAHS);
- Access to Lot 503 from Odern Crescent is provided via a separate Crown land title, Lot 504; and
- Lot 504 is subject to a separate management order to the City for the purpose of 'public access'. The management order states the management body will provide unrestricted access to adjoining Lot 503, except in situations which warrant temporary closure for emergency purposes.

While it is noted that some public submissions have expressed concern that public land should not have been excised from Allen Park for the purpose of creating a 'Children's Hospice', the Commission is unable to 'undo' this decision of Parliament.

The Crown land title originally included a Memorial under the *Contaminated Sites Act 2003* (CS Act), however this did not relate to the development site but rather the larger portion of Allen Park from which the development was excised. On 10 March 2022,

the site was reclassified as decontaminated under the CS Act and is considered suitable for all uses including the proposed Children's Hospice.

### *Site History*

Allen Park is a mixture of sports grounds and bush areas with a prominent natural landmark, known as Melon Hill. It is bordered by Campbell Barracks to the north, Swanbourne Beach to the west, and the Town of Cottesloe local government area to the south. The National Trust has classified areas of bushland within the park for high conservation value, and the park holds a number of buildings of varying styles, including two State heritage-listed buildings. The listed buildings are located toward the north-east corner of the reserve, away from the subject site, therefore a heritage impact assessment has not been required.

The reserve, including the site of the proposed Hospice, is recognised as Whadjuk Country, and although Allen Park is not registered as an Aboriginal site, there are a series of Whadjuk walking trails which intersect the development site. The applicant provided a Noongar Cultural Framework to align with the Public Art Plan which is reflected throughout the proposed development in the artwork, walkways and play areas and discussed further in the assessment section of this report.

### *Project History*

The Child and Adolescent Health Service (CAHS) and Perth Children's Hospital Foundation (PCHF) partnered in a project to establish the first paediatric hospice in Western Australia (WA), in response to evolving industry and community expectations and the needs of children with life-limiting illnesses around end-of-life care. The facility will be owned and operated by the CAHS through a funding partnership with PCHF.

The applicant has outlined that a site selection process was undertaken for the location of the proposed Hospice facility based on consultation with stakeholders from the Bear Cottage (NSW Palliative Care House) experience.

The following project history is taken from various reports presented to the City, as well as the submission from the applicant:

- In February 2020, the City was advised by PCHF of its intention to build and operate a paediatric hospice and that it was considering some sites in its municipality, providing a broad proposal to the City's Chief Executive Officer (CEO).
- In April 2020, the Chairman of PCHF and the City's CEO met with the President of the Friends of Allen Park to discuss the proposal of the Hospice.
- On 4 August 2020, the Chairman of PCHF gave a presentation to the City's Mayor, Councillors and local residents about the preferred location for the hospice at the former Swanbourne Lawn Bowls Club site as well as outlining the need for the facility and the project concept.
- On 25 August 2020, the City referred a report to Council to undertake community engagement on the Hospice proposal in Allen Park, and to advertise for expressions of interest to Swanbourne residents, for a site assessment working group (SAWG) to commence in October 2020.
- Public engagement commenced which allowed the community the opportunity to view the proposal and location of the proposed hospice and provide comments. The information on the website included:

- an aerial view of the proposed site;
  - the location on the Allen Park masterplan; and
  - four images of artist impressions of the building and landscaped gardens.
- Following consultation, a report was presented to Council at its Ordinary Meeting on 27 October 2020, noting the results from advertising. In summary, 114 responses were received with 111 submissions supporting “the project in principle”, and of these, 92 supported the project at Allen Park (82.9%). Council resolved to note the results of the community engagement and to endorse and formally establish the SAWG with Councillor Horley appointed to chair the working group. The SAWG comprised of community members and stakeholders who provided recommendations on the proposed development for the subject site.
- On 28 June 2022, a report was referred to the City of Nedlands Council which included recommendations from SAWG that are addressed in the assessment section of this report.
- In parallel to the efforts of the SAWG, and on behalf of PCHF and the CAHS, CLE Town Planning + Design (CLE) convened a Stakeholder Reference Group (SRG) for input into the appearance of the proposed hospice, the building’s siting within its context, and the layout and landscaping of the facility’s gardens. SRG did not provide input on the functions, facilities or technical inputs as these elements are managed by the CAHS. The SRG included representatives from the City, specialist practitioners, parents of children with life-limiting conditions, Hannah’s House, Bethesda House, Bear Cottage, the nearby Special Air Service Regiment, and selection of six independently nominated community representatives.
- The SRG met twice, once in November 2020 and then in March 2021, the key outcomes of the SRG meetings were:
  - The need for the facility to serve all of WA and not just the metropolitan region.
  - The need for the Hospice to interact with local community groups and residents.
  - To recognise potential impacts such as Campbell Barracks, bushfire risks, and traffic when parking areas are in use by sporting clubs.
  - The need to provide for all faiths with the provision of a quiet room for prayer.
  - The need for the bereavement suite to provide for mortuary services with private courtyard and a discrete access point.
  - The need for family suites to have spaces for siblings; and
  - Agreement that connection to nature is important to improve environmental psychology.
- In July 2021, the CAHS and PCHF arranged a community day on the site of the proposed Hospice to provide the local community and other interested parties an opportunity to ask questions. Approximately 50 residents attended, and it was noted from the consultation that the community was supportive of the information provided and would like to receive ongoing updates of the development.

The development application for a Children’s Hospice was lodged on 23 December 2021 under Part 17 of the PD Act. Consultation with the City continued whilst progressing assessment of the proposed hospice.

### Planning Context



### *Allen Park Master Plan*

On 19 December 2017, the Allen Park Master Plan (APMP) was endorsed by Council. The APMP is a guiding document to aid in the long-term sustainable development of the Allen Park Precinct. Feedback from the community helped to develop the plan, however it was noted by the City in its report to Council that the delivery of the APMP's recommendations would be dependent on a number of factors such as community need, financial resources, as well as any State or Council proposals.

The report on the APMP identifies that Allen Park is used in a way reflective of a district level open space with some sports operating at a regional level, and emphasis is on facility sharing to promote affordable and sustainable facilities to obtain funding from the Department of Local Government, Sport, and Cultural Industries (DLGSCI).

The APMP is sectioned into three precincts, with the proposed Hospice located within the Sports Precinct. Community feedback identified the site, formerly the Swanbourne Bowling site, as being underutilised, difficult to access through the existing path network, and only used to move between Allen Park and Melon Hill to the beach. The recommendation was to improve connectivity and consider development that activates the community. Three options were put forward for the Sports Precinct which included the area of the former Swanbourne Bowls Club site:

- Option 1 – reinstatement of the surface to a good condition for overflow training and village green;
- Option 2 – to construct a water polo pool and stadium; and
- Option 3 – to create a fenced dog park and village green.

There was a strong objection for the water polo option however support for realignment of the informal Whadjuk trails, traffic calming measures, creation of a village green with preference of a nature play area, improved accessibility to the upper oval and the rugby pavilion, formalisation of the WA Bridge Club car park, rehabilitation of vegetation, upgrade to existing facilities, a tennis hit-up wall, and improvements to playground areas.

Relevantly, recommendations for the area of the former Swanbourne Bowling site, included a nature play area, all ages exercise area, community active space, provision of a dog exercise area, solar lighting to enhance viability of the area, and Whadjuk Trail realignment. The applicant outlined that the recommendations for the Sports Precinct area of the APMP impacted by the Hospice development would be the nature play area, and the all-ages exercise area, however these areas could be relocated to shared complementary spaces such as the area for the community active space.

### *Metropolitan Region Scheme (MRS) Amendment*

On 20 April 2022, an MRS amendment to modify the reservation of Lot 503 Clement Street, Swanbourne from 'Parks and Recreation' reservation to 'Public Purposes – Hospital Reservation' was lodged. The proposal is currently being assessed for suitability to initiate an amendment and has been referred to the City and other referral agencies for preliminary comments. It is understood that the City and Public Transport Authority are yet to provide any preliminary referral comments and have been requested to provide those comments no later than July 2023.

Following the conclusion of the preliminary comment period as outlined above, the Commission will determine whether the application to amend the MRS should be initiated.

Town planning case law, including decisions by the State Administrative Tribunal (SAT), provides some guidance for the assessment of development proposals that are affected by changes to the planning framework, and how much weight can be placed on the draft planning instrument once it becomes “seriously entertained”. Seriously entertained status usually occurs after advertising is completed. The principles applied include consideration of:

- The weight afforded to a draft planning instrument, including the degree the instrument applies to the specific application;
- Whether the instrument was prepared based on sound town planning principles; and
- Whether the ultimate approval of the draft instrument could be regarded as “certain” and “imminent.”

Whilst it is noted that the request to initiate an MRS amendment aligns with the proposed use, this has not been initiated or publicly advertised and thus not considered to be seriously entertained. As such no weight should be afforded to the proposed MRS amendment.

#### **Legislation:**

The introduction of Part 17 into the PD Act has temporarily established the Commission as the decision-making authority for applications for significant development to support the State’s economic recovery from COVID-19. Part 17 provides the Commission with enhanced approval powers that will enable more strategic assessment of significant developments that deliver broad economic, social and environmental benefits for the State.

Other than the *Environmental Protection Act 1986* (the ‘EP Act’), the Commission is not bound by any planning or non-planning law, rule or other requirement when determining this application. However, in making its decision, the Commission must have due regard to the purpose and intent of any applicable planning scheme, orderly and proper planning, the preservation of amenity, the need to facilitate development in response to the economic effects of the COVID-19 pandemic and any relevant State planning policies or policies of the Commission.

#### **Consultation:**

##### Consultation with the Minister for Planning

In accordance with s.276(2) of the PD Act, the Minister for Planning was consulted regarding the subject development application. On 21 June 2022, the following comment was received from the former Planning Minister:

*“Life limiting child illness is distressing and a traumatic experience for parents and family members. There is a well-known gap in the provision of children’s respite and end of life service in Western Australia.”*

*The children's hospice will provide all the care of a hospital with the feel of a home for some of WA's sickest children and their families giving them much needed respite and care in what is an incredibly difficult time in their lives.*

*As well as providing respite accommodation, the hospice will provide a range of important ancillary services such as bereavement counselling to help families via a network of health and care professionals, away from a clinical hospital setting.*

*This children's hospice will offer WA families the choice of accessing care away from a hospital environment for their sick child.*

*I encourage the SDAU to consider this proposal favourably."*

Under Part 17 of the PD Act, the Commission is required to give due regard to any submission made by the Minister.

#### State Government Agencies

The development application (including the revised plans) was referred to the Department of Biodiversity, Conservation and Attractions; Department of Fire and Emergency Services; Department of Mines, Industry Regulation and Safety; Department of Defence; Department of Local Government, Sport and Cultural Industries; Department of Transport; Public Transport Authority; Department of Water and Environmental Regulation; Water Corporation, and Utility referral agencies. The following is a summary of the responses from these referral agencies:

##### *Department of Biodiversity, Conservation and Attractions (DBCA)*

DBCA advised that as the development site falls outside the area of 'Bush Forever' and is located within an area with minimal native vegetation, it had no comment to make. However, DBCA advised that as the City manages the surrounding reserves, the City should be able to provide advice regarding the suitability of the landscape plantings.

##### *Department of Fire and Emergency Services (DFES)*

DFES initially provided comments on the applicant's Bushfire Management Plan (BMP) version B, on 1 March 2022 outlining concerns including location, siting, design, vegetation classification and management, vehicle access and use within a BAL40/FZ area. On 27 May 2022 following the submission of revised BMP versions C and D and supporting information from Emerge, the applicant's bushfire consultant, DFES provided a revised response commenting that only part of the original concerns had been addressed and that the development did not demonstrate compliance with location, siting and design, and vehicle access.

On 17 February 2023, after a further revision (Version F) of the applicants BMP including supplementary information/response, DFES provided final comments outlining that the BMP was not supported due to non-compliance with location, siting and design, and vehicle access.

To address DFES comments on non-compliance, and to ensure the BMP could respond to the requirements of the National Construction Code (NCC) in terms of bushfire management risk, a Level 3 Bushfire Planning Practitioner was requested to peer review the submitted BMP and BEEP. The outcomes of the peer review and

assessment of bushfire risk is addressed in the assessment section of the report and recommended conditions where appropriate.

*Department of Mines, Industry Regulation and Safety (DMIRS)*

DMIRS advised that as the proposal does not raise any access concerns regarding mineral or petroleum resources, geothermal energy, or basic raw materials it has no objections to the development.

*Department of Defence (DoD)*

DoD raised no objections to the proposed development however advised given the proximity to the Campbell Barracks, that appropriate design measures should be incorporated into the proposed Hospice to help moderate the noise generated by DoD operations.

It is understood that the SRG liaised with DoD prior to lodgement of the application, and this engagement established that the sources of noise from the Campbell Barracks is from the firing ranges, explosives ranges and helicopter movements. An acoustic report has been submitted to inform the level of noise and any noise mitigation solutions necessary to provide a suitable environment for the residents of the Hospice. The assessment of noise impacts on the proposed development and the comments provided by DoD has been addressed in the assessment section of this report, and should the Commission approve the development, conditions are recommended where appropriate.

*Department of Local Government, Sport, and Cultural Industries (DLGSCI)*

The DLGSCI provided no comments.

*Department of Transport (DoT)*

The DoT provided no objection to the development and supported the proposed vehicular parking provision subject to the preparation and implementation of a Travel Plan. However, DoT did not support the proposed shared access ramp, to the end-of-trip (EOT) facilities, was through a shared access ramp and recommended that a dedicated (segregated) space or lane be provided for bike riders on vehicle ramps. The revised plans have addressed this objection by illustrating a dedicated lane for bike riders within the access ramp, and should the Commission approve the development, a condition addressing implementation of the Travel Plan is recommended.

*Public Transport Authority (PTA)*

The PTA noted that whilst some use of the local bus service is anticipated from staff and visitors, the proposed Hospice is unlikely to have a major impact on the public transport network. The applicant's TIS noted that no footpath exists along the accessway between Odern Crescent, and that pedestrian access to the facility would be through the formalised carpark or along the grassed verge. The PTA considered pedestrian access from Odern Crescent to be poor and not conducive to supporting pedestrian and public transport journeys to the Hospice. The applicant has supported the comments by PTA for a formalised footpath into Allen Park from Odern Crescent,



however as the location of the pathway would extend beyond the Hospice Lot believes the pathway should be the responsibility of all users of the proposed pathway including the adjacent Clubs and the City. As the proposed pathway is to be maintained within Lots 503 and 504, the area the subject of the development application, should the Commission approve the development a suitable condition regarding the construction of a pedestrian path is recommended.

#### *Department of Water and Environmental Regulation (DWER)*

DWER advised that as the Hospice Lot is classified as decontaminated under the CS Act, the site is suitable for all land uses including the proposed Children's Hospice, and that no conditions were required in this regard.

#### *Water Corporation (WC)*

WC had no objections to the proposed development however provided information for the water supply, wastewater, servicing demands and general conditions, with the following advice:

*Water Supply - although water supply is available to the site any water mains extensions, if required, will be required to be laid in existing or proposed road reserve.*

*Wastewater - reticulated sewerage is not immediately available to serve subject area, and all sewer main extensions required for the development site will be required to be laid within existing and proposed road reserves.*

*Service Demands – WC have no allowance for water and wastewater demands to development site, therefore will need to liaise with the applicant's engineers to determine water and wastewater capacity and demands as proposed yields become available.*

*General – the developer is to provide all water and sewer reticulation and a contribution for water, sewerage, and drainage headworks may be required. WC may require the developer to provide funding for new works and upgrading of existing works, as well as providing land for works.*

The applicant advised that their consultant engineers liaised with WC prior to lodgement of the development application to assess the servicing environment for the Hospice Lot. The applicant confirmed that there are no constraints to existing reticulated networks being extended, including the water and sewer network and provided a plan illustrating the location of these services. Should the Commission approve the development, these conditions have been integrated into the recommended conditions and advice notes where appropriate.

#### Local Government

In accordance with s.276(4) of the PD Act, the Commission must give any local government to whose district the development application relates an opportunity to make a submission. The application was referred to the City of Nedlands on 29 April 2022 for a period of 42 days to 10 June 2022. The timeframe for comment was subsequently extended to 1 July 2022 to accommodate the Council reporting cycle.

The City considered the development application at its Ordinary Meeting on 28 June 2022 where Council resolved to advise the WAPC that it does not support the proposal and recommends the application be refused for the following reasons:

1. *The proposed restricted-access use is inconsistent with the regional reservation of the site as Parks and Recreation;*
2. *The development as proposed extends beyond the development site onto surrounding public lands in a manner inconsistent with orderly and proper planning;*
3. *The development will inappropriately restrict public access to this portion of the Allen Park reserve;*
4. *The development will have an undesirable effect on the amenity of the locality in relation to visual, traffic and environmental impacts;*
5. *Insufficient provision for car parking has been provided to accommodate the development;*
6. *Fire risk – much of the site is BAL-FZ and lives will be at risk by placing in a designated bushfire zone and advises the State Development Assessment Unit that the City of Nedlands does not support clearance of native vegetation outside the lot boundaries.*
7. *Proximity to SAS Campbell Barracks – the site has 24 hour operations including helicopter operations, use of munitions and explosives;.*
8. *Not easily accessible by public transport – very infrequent public transport in the vicinity;*
9. *Impacts on rugby club expansion – plans are currently processing for the Associates Rugby Club to expand to twice its current size; and*
10. *The use of the site has changed since it was originally proposed from a small hospice to a much larger complex with offices.*

The City also provided further rationale for their submission, as well as a list of without-prejudice draft conditions in the event that the application is approved by the Commission (refer **Attachment 4** for Council report).

The issues raised in the Council's response must be given due regard by the Commission and are discussed in further detail under the assessment section of this report. It is noted that, since receiving Council's response, the applicant has submitted revised development plans and documents and the following is noted:

- The Hospice site is Crown land covered by a management order held by the Child and Adolescent Health Service (CAHS). The condition of the management order includes (relevantly) that it is *"To be utilised for the designated purpose of a Children's Hospice only"*.
- The extent of the development does not extend beyond the limits of the site boundaries and a revised landscape plan addresses concerns relating to impact on adjacent remnant vegetation.
- The application progressed through two State Design Review Panel meetings, and the applicant addressed a number of recommendations including the reduction of the first-floor area (primarily office space), to make more efficient use of space and reduce building bulk and scale.
- A revised BMP and BEEP was submitted addressing the bushfire rating of the site and management of the Asset Protection Zone (APZ) outside the boundary of the site.
- A revised Traffic Impact Statement (TIS) was submitted addressing the functional brief of the CAHS including required number of parking bays.
- An acoustic report was submitted outlining what noise will impact the proposed Hospice and how the noise impacts can be mitigated.
- A Noongar Cultural framework was submitted addressing the Aboriginal context of the site through the integration of a Public Art strategy.

Clarification was sought and received from the City's technical officers in relation to the maintenance and management of the reserve surrounding the Hospice Lot. It was confirmed that management of the bushland and the grassed area surrounding the Hospice site included fire risk management programs. Other matters are addressed through recommended conditions or are otherwise addressed in the assessment section of this report.

### Public Consultation

In accordance with s.276(6) of the PD Act, the application was advertised for public comment for a period of 30 days, from 29 April to 27 May 2022. Notification letters were sent to all landowners and residents/occupants within 200m of the site boundary, plus some additional sites, as agreed with the City. Two signs, one fronting Odern Crescent on the boundary of Access Lot 504, and one fronting the WA Bridge Club carpark on the boundary of Access Lot 504 and 503 were installed on site for the duration of the consultation period and a notice was placed in The Post local newspaper, and on the Department's website and social media channels inviting submissions from members of the public. Copies of plans were also made available for review at 140 William Street, Perth.

In total, 74 submissions were received during the consultation period. Of these, 17 (23%) were in support, 4 (5%) were supportive with changes and 53 (72%) objected to the proposed development. The key themes and issues identified from the submissions were summarised and the applicant was provided with a summary of the matters raised during public consultation. Refer **Attachment 5** for the applicant's responses.

The matters raised in the public submissions must be given due consideration by the Commission in determining the development application. The key planning matters raised are discussed further in the assessment section of this report.

### **Assessment:**

The proposal has been assessed against the key considerations for the determination of this application under Part 17 of the PD Act, as follows:

### The Purpose and Intent of the Local Planning Scheme

#### *City of Nedlands Local Planning Scheme 3*

The key purpose of the City of Nedlands Local Planning Scheme 3 (LPS 3) is to set out the local government's planning aims and intentions for the Scheme area. The relevant aims of LPS 3 include:

- (a) *Protect and enhance local character and amenity; ...*
- (e) *To integrate land use and transport systems;*
- (g) *Maintain and enhance the network of open space;*
- (h) *Facilitate good public health outcomes; ...*
- (j) *Encourage local economic development and employment opportunities;*
- (k) *To maintain and enhance natural resources;*
- (l) *Respond to the physical and climatic conditions ...*

The Hospice and Access Lots are identified in the MRS as region reserve for the purposes of 'Park and Recreation'. As the land is reserved, rather than zoned under the City's LPS 3, there are no specific development standards that apply to it, and therefore LPS 3 has limited application to the proposed development. Notwithstanding this, having regard to the objectives of the scheme, the development is considered to be generally consistent with these aims for the following reasons:

- The proposed development is the first of its kind in Western Australia (WA) and provides a valuable and necessary health service to WA children with life limiting illnesses as well as respite for families with children facing end of life circumstances.
- The proposed design responds to the context of the natural landscape.
- The development has limited impact on the transport systems, as proposed parking satisfies requirement, which is mostly contained in the basement level and therefore is not visually obtrusive to the locale.
- The proposed landscape plan integrates with the surrounding natural open space, and pedestrian pathways are formalised to provide better access to areas of Allen Park and the beach.
- The development proposes employment through the construction phase as well as on-going jobs in the operation of the facility, with opportunity for local employment in health and construction.
- Proposed water wise landscaping integrated and complementary to native remnant vegetation.
- The Environmentally Sustainable Design (ESD) strategy applied to the built-form and operational phase of the development promotes a reduction in the use of energy and potable water, sustainable building materials and construction practices, waste avoidance, and enhanced indoor quality for residents of the Hospice. The applicant proposes the development at completion will be formally benchmarked using GBCA Green Star tool achieving 5-Star Green Star.

### *Land Use*

The Hospice is the first of its kind in WA and has unique characteristics which make it difficult to assign a land use classification under LPS 3. In planning terms, as defined under LPS 3, the facility could be classed as a 'Residential Aged Care Facility', although residents of the facility are under the age of 18, or 'Hospital,' although the nature, services and functions proposed are somewhat different from those offered at a traditional hospital.

Under LPS 3 'Residential Aged Care Facility' is defined as meaning:

*a residential facility providing personal and/or nursing care primarily to people who are frail and aged and which, as well as accommodation, includes appropriate staffing to meet the nursing and personal care needs of residents; meals and cleaning services; furnishings, furniture and equipment. May also include residential respite (short term) care but does not include a hospital or psychiatric facility.*

It is noted that the Commission's *Planning Position Statement – Residential Accommodation for Ageing Persons* provides a more contemporary definition which recognises that Residential Aged Care Facilities also provide care for dependent persons of other ages.



Under LPS 3, 'Hospital' is given the same meaning as in the *Hospitals and Health Services Act 1927* section 2(1):

*means an institution for the reception and treatment of persons suffering from illness or injury, or in need of medical, surgical or dental treatment or assistance, and includes a maternity home or maternity hospital, day hospital facility, nursing home or nursing post.*

Aside from LPS 3, there is no land use classification that the Children's Hospice clearly fits within the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*, or *Health Services Act 2016*. As mentioned earlier in the report, the land subject to the management order is for the purpose of a Children's Hospice. The land use prescribed on the management order is 'Health Purposes'. 'Health Purposes' is not a land use classification found under LPS 3 or the deemed provisions however, as land tenure arrangements are already in place to facilitate the development of a Children's Hospice only, it is considered for the purpose of this planning assessment to classify the land use as "Use Not Listed".

The City of Nedlands Council and public submissions raised concerns about the proposed land use, questioning whether it was consistent with the purpose of the regional reserve. The applicant provided legal advice which outlined that there is relevance between the proposed use in the context of the management order over Lot 503:

*"In a property law sense, the proposed children's hospice would clearly be consistent with the terms of the management order, which expressly authorises the use of the Property for the purpose of a children's hospice (and indeed for no other purpose).*

*The management order does not contain any definition of the term "children's hospice", but if a plain and ordinary meaning is given to that term, then it is abundantly clear that the proposed development is consistent with what is envisaged by the management order."*

The purpose and use of a reserve over the course of time can change without the need for the reservation use to be modified. The intended use of the reserved land can be reasonably informed through the land management order. Typically, the land management order would be consistent with the use and functions of the land. On this occasion, recent tenure changes to the land and its management order now align with the intent of the land use, and these have been considered in the assessment of this application.

#### *Metropolitan Region Scheme*

The *Planning and Development Act 2005* (PD Act) makes provisions for regional planning schemes in Part 4, therefore, a region scheme may take effect as if enacted by the PD Act. Clause 30(1) of the MRS provides that, in respect of any application for approval to commence development, the Commission will consider three matters:

- regard to the purpose for which the land is reserved under the MRS;
- the orderly and proper planning of the locality; and
- the preservation of the amenities of the locality.

The latter two matters are addressed separately in this report as they are also considerations to be afforded under Part 17 of the PD Act for significant development proposals.

The Council feedback and some public submissions objected to the Hospice proposal citing inconsistency with the regional reservation of the site as 'Parks and Recreation'.

There are established principles regarding the purpose of the MRS. It is intended to provide a broad general blueprint to guide and coordinate the overall planning and development of the Perth metropolitan region. It does not provide guidance about zones/reservations as it does not set out any objectives or detail any purpose. The MRS does not state that certain uses are not permitted in certain MRS zones and/or reserves.

It is understood that Clause 30 (1) requires the three matters listed above to be considered when exercising discretion. It does not list these as "conditions" that must be met before approval may be given. It is considered that, while the purpose of the planning framework is to control development on land, it is not intended to be so prescriptive as to remove any room for discretion.

*Development Control Policy 1.2 – Development Control – General Principles (DCP 1.2) and Development Control Policy 5.3 – Use of Land Reserved for Parks and Recreation and Regional Open Space (DCP 5.3) sets out the circumstances where the Commission, although not bound by the policy, may approve the use and development of land reserved for Parks and Recreation.*

DCP 1.2 states the Commission must have regard to the purpose for which the land is reserved. DCP 5.3 states that the use and development of land reserved Parks and Recreation is that which is consistent with enhancing the reserve and facilitating its use for recreational or conservation purposes. DCP 1.2 identifies the Commission will have regard to the following relevant planning considerations:

- *compatibility with relevant planning policies, strategies, and development control criteria;*
- *integration of development into the site and its surroundings;*
- *transport and traffic impacts;*
- *vehicular and non-vehicular access, circulation, and car parking;*
- *relevant environmental, economic, and social factors;*
- *relevant factors of amenity and sustainability.*

In addition to this, DCP 5.3 states that land reserved for Parks and Recreation may be used for:

- *passive recreation;*
- *active sporting pursuits;*
- *cultural and or community activities;*
- *activities promoting community education of the environment; and/or*
- *uses that are compatible with and or support the amenity of the reservation (i.e. cafe, restaurant) ...*

DCP 5.3 sets out the following considerations where the Commission may grant approval for the use and development of a Parks and Recreation reserve by a private business:

- The proposal is consistent with the planning framework;
- The activity is compatible with the surrounding land and purpose of the reserve;

- The proposal is suitably designed (built form, landscaping and car parking);
- The use is appropriate (identified in a management plan, open to the public, ancillary to the primary purpose of the reserve);
- The proposal meets a community need; and
- The proposal is supported by the community and local government.

The proposed development has been assessed against the considerations of MRS Clause 30(1) and the provisions in DCP 1.2 and DCP 5.3 and is considered to be generally consistent for the reasons outlined below.

#### *Community Activity/Facility and Community Need*

Community facilities can include a range of activities/facilities and can reasonably include health and social facilities and accommodation as well as services by organisations involved in activities for community benefit. The planning framework recognises that community facilities may be located on reserved land in cases where it would meet a community need.

The Hospice is the first purpose-built Children's Hospice facility in WA and will provide services to a discrete cohort of patients under the age of 18 with a life limiting illness and their families. The four service areas of the Hospice include:

- In-hospice care, including respite care, symptom management, end of life care, and post death care;
- Family support services;
- Bereavement care; and
- Outreach services (rural and remote) to allow children and families to be able to access the hospice experience wherever they live in Western Australia.

The development is therefore considered to deliver a service that has the potential to benefit the local and wider WA community.

#### *Private Business in Regional Reserve*

Public submissions raised concerns about the private use of public open space and that the development would result in a loss of public open space.

The APMP identifies the site as the vacant cleared land of the former Swanbourne bowling club which is currently underutilised. From recommendations of the APMP outlined earlier in the report, the impact to public access would be to the proposed nature play area and all-ages exercise area. It is considered that these functions could be integrated into unoccupied space adjacent to the Hospice site and therefore the small portion of land to be used by the Hospice is not a significant imposition to the useability of the reserve by the local community.

#### *Design and layout*

Areas to the north and south of the Hospice site include low-density residential built-form development zoned 'Urban', and the Campbell Barracks which is zoned 'Public Purposes-Commonwealth Government'. The scale and form of the proposed two storey Hospice is consistent with the surrounding existing low-density residential built

form in height and is comparable in design to other contemporary homes in the locality, whilst also incorporating the natural setting of Allen Park.

The visual impact of the development has been considered and minimised by siting it lower in the landscape than the surrounding land, and by reducing the footprint of the upper level, whilst incorporating a landscape strategy that complements the natural characteristics of the reserve.

The design of the building reflects the sensitivities and purpose of the development. The building layout has been designed so that the main living areas are oriented to have views of the ocean and surrounding bushland. The offices and administration areas are primarily located on the upper level with services contained within the basement to ensure the ground plane is well connected to its landscape and provides an inclusive and restorative environment, shifting focus away from clinical processes and onto the child, family, and community. The central courtyard spaces provide natural light and ventilation into the internal building environment which connects spaces for reflection and play to the outside environment.

The internal layout has softened wall edges and adequate space between all internal walls to ensure optimum moveability, accessibility and legibility to move patients to key areas. The softened wall edges add to the sense of a homely environment which was outlined as a requirement in the functional brief. Internal spaces include soft playrooms, multi-sensory rooms, an adolescent room, music therapy space and a multi-faith room to ensure the facility is inclusive to all children and adolescents, and all cultures.

Additional to areas of the administrative, clinical and residential component of the facility, there is a reception area with entry lounge, a hydrotherapy pool and a therapy room for allied health therapies.

The proposed colour and material palette, as illustrated in the coloured renders of the applicant's submission and in revised documentation, reflects the natural landscape setting of Allen Park, and a high level of design amenity. The landscape strategy, colour and materials palette, and high design amenity is intended to improve the psychological wellbeing of patients and provide respite to their families.

The Hospice proposal was subject to two reviews by the State Design Review Panel which ultimately supported the siting, design and landscaping strategy. The outcomes of the design reviews are discussed in detail later in the report.

#### *Transport and traffic impacts*

The applicant submitted a Transport Impact Statement (TIS) in accordance with *WAPC Transport Impact Assessment Guidelines 2016 (Guidelines) for individual developments* which provides guidance on the transport implications of development. The level of information required is relative to the scale of the development and complexity of the transport implications. Subsequent to public and stakeholder consultation, the TIS was revised to provide further clarification on a number of elements such as how trip generation related to the facility was developed (refer **Attachment 6**).

The Council and a number of submitters objected to the proposed Hospice due to the access arrangements and traffic impacts on the adjacent clubs and broader



community. The applicant submitted a Functional Brief developed by the CAHS which provides an outline of the requirements for the proposed Hospice. The brief was used to develop trip generation to the facility which aided in assessing transport, access and traffic implications. The TIS outlined that, as the development would generate approximately 40 trips in the morning or afternoon peak, it is considered to not have any impact on the surrounding road network and this was supported by PTA.

### *Parking and Access*

The functional brief developed by the CAHS for the purpose of the operation of the Hospice outlined the parking requirements needed, which included bays for up to 7 families and up to 27 staff members, as well as visitors. The height and size of car bays needs to allow for disabled van access, as well as funeral cars, and service vehicles. It was acknowledged that the parking should be underground and discrete so the approach to the Children's Hospice did not look like a hospital facility.

A total of 47 parking spaces are proposed for the development. On the basement level there are 37 parking bays, of which 7 are family bays, 23 staff bays and 4 future bays for staff changeover, 2 service bays and 1 bus bay. On the ground level there is provision for 7 parking bays comprising of 2 ambulance bays, 1 bereavement bay and 4 visitor bays. In addition to the proposed parking bays, there is provision for up to 16 bicycle spaces and end-of-trip facilities, and 3 motorcycle bays proposed within the basement car park.

The Council's feedback and some public submissions cited concerns with the provision of parking for the development. To assess the impact of the development on parking provision, the City's parking policy *Local Planning Policy 4.1: Parking (LPP 4.1)* has been used as a guide to assess the development against. To assess parking under LPP 4.1, 'Residential Aged Care Facility' land use is used as the most intense parking land use ratio for the purpose of calculating the parking rate based on the types of services provided within the development. Under LPP 4.1, the parking ratio for a 'Residential Aged Care Facility' requires either 12 bays or one bay for every 2 beds (whichever is greater). The Children's Hospice will have 7 beds, translating to a maximum requirement of 12 bays. The development application exceeds this requirement, with 47 parking bays, additional motorcycle bays and bicycle parking with end-of-trip facilities.

The DoT had no objection to the provision of parking for the proposed development, however recommended submission of a Travel Plan. Given the parking surplus and no objections from DoT it is considered that the development satisfies parking provisions for the proposed development. Should the Commission approve the development, a condition is recommended for a Travel Plan to be submitted which includes parking management details and end-of-trip facilities to be marked out appropriately.

As mentioned earlier in the report, access to the Hospice site is provided through Lot 504 which has a separate Crown land title and management order vested in the City, to provide 'public access' to the Hospice site.

The applicant has identified that separate temporary access may be required through an easement to ensure that construction traffic does not disrupt access to the adjacent community clubs. This can be achieved and detailed through the Construction Management Plan.

The City advised there needed to be a mechanism by which the operator of the Hospice contributes to additional maintenance required to the access road as a result of the additional traffic using a roadway that was originally designed and built as a lightly used recreation reserve car park. Should the Commission approve the application, a condition is recommended to address maintenance of Access Lot 504, which would reflect each stakeholder's contribution to the use.

### Orderly and Proper Planning

Preservation of amenity is a consideration under Part 17 of the PD Act. It is also a policy measure of DCP 5.3.

Amenity is defined in Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015 as:

*...all those factors which combine to form the character of an area and include the present and likely future amenity.*

The assessment of the proposal and its potential impacts on the amenity of the reserve locality have been addressed as part of the various elements outlined throughout this report.

### *Land Use Compatibility and Noise*

The applicant submitted an Acoustic Report which concluded that noise level measurements taken at the site indicate typical ambient noise levels which are acceptable for such a facility and that compliance with the relevant noise regulations can be achieved using common practice noise attenuation measures. The acoustic report notes that noise mitigation measures will be further refined during detailed design to ensure that compliance is achieved.

The report recommends the venue operator should prepare a Noise Management Plan to address waste collection procedures, goods deliveries, and testing of the backup generator and fire pumps. Should the Commission approve the application, a condition is recommended where appropriate.

### *Sustainability*

A Sustainability Services report was provided setting out key sustainability targets and initiatives to be achieved for the development:

- Commitment to achieving an equivalent 5-star Green Star Building rating representing Australian Excellence.
- Minimise energy consumption through specification of high-performance building fabric and glazing, building services and controls in line with best practice.
- Electrification of the development and the inclusion of renewable energy generation through the specification of Solar PV, ensuring fossil fuel free energy generation for the site.
- Minimise potable water consumption through specification of water-efficient fixtures and controls.

- Landscaping plants selected as predominantly native and suited to the local climate, with minimal ongoing irrigation requirements.
- Stormwater retained onsite via retention and treated via bioswales. The specification of rainwater harvesting to be reviewed in detailed design stage.
- Reduction of construction and demolition waste with a target of 90% diversion from landfill. Operational waste facilities provided in line with best practice guidelines ensuring the separation of waste streams on site.
- Reduction of overall materials impact and enhance occupant wellbeing through specification of building materials that promote health and wellbeing, and are sustainably sourced, minimising the environmental impact and embodied carbon for the development; and
- Enhanced indoor environmental quality through passive design ensuring adequate daylight levels to all primary spaces are balanced with energy consumption and thermal comfort.

The Sustainability Services report can be considered to provide an appropriate strategy for achieving sustainable design, construction, and operation of the development. Should the Commission approve the development application, conditions of approval are recommended requiring a detailed sustainability report and certification that initiatives have been implemented.

#### *Extent of development and impact to extant vegetation*

The Hospice site is located in a natural setting with remnant vegetation close to its boundaries. The natural setting was one of the considerations of the suitability of the site to achieve a homely facility for sick children and adolescents. As the extent of development is contained within the boundary of Lot 503, there is no clearing or impact to Bush Forever sites or upon sensitive ecological vegetation adjacent to the development. A landscape plan has been prepared which demonstrates how the development has been integrated with its landscape, and how bushfire risks are managed. Any requirement of the local government to maintain remnant bushland in the vicinity has been addressed through liaison with the City and included in recommended conditions as discussed further in the report under the bushfire assessment.

#### *Aboriginal Heritage and pedestrian connectivity*

A key concern raised in public submissions was the loss of connectivity from the reserve to the beach. The landscape plan illustrates formalised pathways that connect to the beach and surrounding area with a focus on formalisation of the proposed Aboriginal walking trails. This is supported by a Noongar Cultural framework provided by the applicant which identified trails around and intersecting the site. Through engagement with Noongar cultural consultancy services, a thematic framework was developed to help connect the development to the place through various design elements and artwork, as well as ensuring the Aboriginal trails are appropriately aligned.

The landscape plan illustrates possible formalisation of the Whadjuk walking trail connecting to existing pathways and ensures the reserve has improved connectivity through the open spaces.

#### *Servicing*

All essential services including water, sewer, electricity, gas and telecommunications infrastructure are available in the vicinity of the development site and can be extended to the proposed development. Drainage will be resolved through an Urban Water Management Plan (or similar) prepared pursuant to a condition to be imposed on the development approval. For all service infrastructure, separate approvals from service authorities and the City will be needed for the Hospice site to be connected which is a typical process for most developments.

### *Waste and Recycling*

The City's *Local Planning Policy 3.2: Waste Management Guidelines (LPP 3.2)* specifies that a Waste Management Plan (WMP) is required for all non-residential development that will generate waste, which includes the Children's Hospice. The objectives of LPP 3.2 are to:

- Provide for waste management and minimisation in a manner that protects the environment, with a greater emphasis on higher levels of resource recovery and increased recycling;
- Minimise the impacts of waste storage and collection facilities on the streetscape, public realm, building entries and the amenity for residents;
- Allow for occupants to have convenient, safe, and equitable access to both waste and recycling facilities on site; and
- Ensure industry best practice waste management design and operation for high-quality developments.

LPP 3.2 requires the WMP to cover the following matters:

- Land use type and built form (including but not limited to number of dwellings, bedrooms and storeys, size of commercial tenancy);
- Bin Access and storage;
- Waste generation/capacity;
- Truck accessibility and manoeuvring;
- Internal service collection arrangements (including swept path analysis where applicable);
- Waste systems;
- Signage;
- Collection/placement options; and
- Additional waste requirements.

The applicant provided a WMP prepared by Encycle Consulting (refer **Attachment 7**) which confirmed the development will be serviced by a waste collection service provider under the State Government's Common Use Agreement. The technical officer report that was referred to Council confirmed the WMP is capable of meeting the City's guidelines subject to confirmation or upgrading of the plan to address:

- Waste truck entry and exit diagram;
- Waste truck height clearance is sufficient, including sectional demonstrating vertical clearance; and
- Risk assessment of the waste collection demonstrating safety due to the waste truck blocking traffic from entering and exiting during collection.

The revised plans illustrate the waste truck manoeuvring and location of the loading bay, which are supported by the City. If the Commission approves the development, it is recommended that a condition requiring implementation of the Waste Management Plan date-stamped 18 October 2022 is imposed.



## State Planning Policies and Policies of the Commission

### *State Planning Policy 3.7: Planning in Bushfire Prone Areas (SPP 3.7)*

SPP 3.7 provides the foundation for making decisions on land use planning to address bushfire risk in Western Australia and helps to inform and guide decision makers when approving acceptable bushfire protection strategies. SPP 3.7 is to be read in conjunction with the deemed provisions of the *Planning and Development Act 2005 Regulations* (the Regulations), the *Guidelines for Planning in bushfire prone areas v1.4 2021 (the Guidelines)*, and *AS3959: Construction of Buildings in bushfire prone areas* (AS3959).

As set out in the Guidelines, the performance-based system of assessing bushfire risk management measures includes five criteria which must be satisfied either through compliance with the intent of the acceptable solution or via performance principles. Any development in a bushfire prone area identified on the Map of Bush Fire Prone Areas which exceeds low bushfire hazard area level must provide a Bushfire Management Plan (BMP).

The proposed development is located within a bushfire prone area as identified on the Map of Bush Fire Prone Areas and is considered a Class 9a building under the National Construction Code (NCC), being a healthcare building of a public nature. Therefore, the proposed development is considered to be a 'vulnerable' land use and as a result requires a BMP and Bushfire Emergency Evacuation Plan (BEEP), due to the medical needs and mobility impairments of young patients at the facility.

A BMP and BEEP was prepared by Emerge for the Children's Hospice and either revised and/or supplemented with additional information on several occasions following consultation with DFES (refer **Attachment 8**). The BMP included a Bushfire Attack Level (BAL) assessment, the extent of the classified vegetation post-development and the effective slope beneath the vegetation within 150m of the site. A BAL contour plan was prepared based on post-development vegetation, concluding that the building and site would be subject to a maximum BAL-29 rating, and outlined the Asset Protection Zone (APZ).

A number of public submissions raised concerns with bushfire safety, noting that the BMP may not adequately mitigate bushfire risks or that safe egress from site would not be provided for vulnerable patients in the event of an emergency. Concerns were also raised that bushfire requirements would require more clearing of the surrounding bushland than is proposed. As outlined earlier in this report, DFES was not supportive of the BMP after reviewing the final version of the plan and supplementary information. DFES outlined that the BMP and BEEP did not demonstrate compliance with Element 1: Location, Element 2: Siting and Design, and Element 3: Vehicle Access of the Guidelines.

The applicant responded to DFES's recommendation, and the key issues raised in public submissions by outlining that the BMP and BEEP achieve acceptable solutions for all elements of the relevant bushfire protection criteria detailed in the Guidelines. In particular, shelter-in-place has been assigned as the primary action if evacuation is not safe and the building satisfies NCC requirements for this purpose. To ensure compliance with this method, a condition is recommended prior to submission of relevant building permit/s. The nominated evacuation point is the 'Ambulance' collection/drop-off point which could be relabelled if necessary to improve the

transparency of the BEEP location. The applicant provided the following in response, to demonstrate compliance with the criteria set out in the Guidelines:

- **Element 1: Location - Compliant**  
*Acceptable Solution: development located so as to achieve a maximum exposure of BAL-29 on completion.*
- **Element 2: Siting and Design - Compliant**  
*Acceptable Solution: APZ proposed to ensure that BAL-29 is not exceeded for the building. APZ standards achieved through internal site management, and formal agreement regarding continuation of existing land management practices in defined areas outside of the site. Note: Siting and design has also ensured that BAL-10 (i.e., radiant heat exposure of 10 kW/m<sup>2</sup>) is not exceeded for the evacuation point of the building, which is over and above the Guidelines' compliance requirements.*
- **Element 3: Vehicular access - Compliant**  
*Acceptable Solutions: Odean Crescent is a compliant existing public road. Access from Odean Crescent is provided via a compliant private driveway (from Odean Crescent to hospice site).  
Note: If the private driveway was considered a public road (from Odean Crescent to the end of the existing carpark), and then a private driveway from the end of the carpark into the hospice (development site) then access would still comply with the Acceptable Solutions A3.1 and A3.3 as this 'public road' (which excludes the hospice internal driveways) would be less than 200m.*

The Department of Planning, Lands and Heritage engaged an independent accredited Level 3 bushfire assessor to undertake a peer review (independent assessment) of the revised plans, BMP, BEEP and supporting documentation to ensure concerns raised by DFES were considered by a suitably qualified consultant. The scope of the independent review included:

- Review of the BMP assumptions, findings and recommendations including identification of any gaps or shortcomings;
- Advice on potential circumstances where adequate bushfire mitigation may be unable to be achieved with respect to the design of the facility for the site, and
- Recommendation of additional technical information that may be required to adequately demonstrate achievement of Elements 1 – 3 of SPP 3.7 Guidelines, and the ability to meet Class 9 provisions of the NCC.

The independent assessor undertook a site visit and assessed all documentation from the applicant's bushfire consultant and DFES and submitted recommendations in a final report (refer **Attachment 9**). The independent assessment report outlined that the playground location and access to site was compliant with SPP 3.7 and, although a portion of the APZ is on the adjoining reserve, the APZ would achieve a BAL-29 rating post-development. The report also found that, although the methodology used to assign a 10 kw/m<sup>2</sup> radiant heat level to the proposed exit of the Hospice to be used in the event of emergency evacuation needed further clarification, it was over and above the requirements of the Guidelines.

In context of the bushfire risk, the independent assessment outlined that:

*A bushfire approaching from the southwest through vegetation bordering Clement Street and under predominant summer afternoon south-westerly wind conditions has*

*potential to impact the proposed development; however, the large areas of managed grass and APZ between this vegetation and proposed development will act as a buffer to reduce impact to the building. In addition, this area of bushland is relatively small and isolated and not capable of supporting extended fire behaviour.*

*A bushfire approaching the project area from any direction is most likely to be the result of point-source ignition due to isolation of the various bushland fragments from any significantly large areas of bushfire prone vegetation within the wider area. Bushfire behaviour experienced in the vicinity of the project area is therefore expected to be tempered in comparison to a landscape-scale bushfire.*

*A rapid bushfire suppression response is anticipated for the facility given the Claremont DFES Fire and Rescue Station is located just 2.2 km (5 mins drive) away, with other local career stations able to provide additional support. In addition, the facility will be provided with defensible space in the form of an APZ, on-site vehicular access (including a turnaround area) and an on-site fire water supply to assist the bushfire response.*

*The project area is accessible from the existing public road network, which provides access to multiple suitable destinations to the south, east and north.*

In summary, the independent assessment did not identify any significant gaps or shortcomings of the BMP or BEEP however made some recommendations to be addressed either at the planning or building stage which included:

- Clarification of the on-going management of the APZ, including the vegetation within the adjoining reserve;
- Minor amendment to mapping of the plot areas, although not impacting the calculated BAL, and landscaping designed to demonstrate compliance with the BMP;
- Demonstration that the proposal can achieve the provisions of both NCC 2019 and NCC 2022 through a building certification.

With regard to the management of the APZ area, clarification was sought from the City for the area between the proposed Children's Hospice and the Bridge Club. Following discussions with the City, officers provided a technical response confirming that the City manages the grassed area surrounding the proposed Children's Hospice site and undertakes an on-going management program that includes weed and feral animal control, seed collection, revegetation of degraded areas, erosion control, and fire risk management programs.

With regards to the grassed area to the south of the Hospice site, the City holds the Management Order for this area being Reserve 7804 and has a contractor that maintains this open space. Mowing and general maintenance is dependent on seasonal conditions however includes six to eight services annually. The City confirmed its commitment to maintaining the bushland in accordance with the City's Natural Area Management Policy, and to the ongoing maintenance of low threat vegetation within the Asset Protection Zone south of the Hospice within Reserve 7804 in accordance with the Guidelines for Planning in Bushfire Prone Areas.

With regards to demonstrating compliance with the NCC requirements, the applicant provided a summary of the building methodology to comply with NCC 2019 and NCC 2022 from the applicant's Building Certifier.

Considering the information above it has been assessed that the BMP and BEEP satisfy the requirements of SPP 3.7. If the Commission approves the application, then a condition for a revised BMP to include minor amendments and recommendations of the peer review report are integrated into the recommended conditions.

#### *State Planning Policy 7.0 - Design of the Built Environment (SPP 7.0)*

SPP 7.0 includes design quality, built form, landscape, sustainability and amenity outcomes, seeking to deliver the broad economic, environmental, social and cultural benefits that derive from good design. SPP 7.0 sets out the objectives, measures, principles and processes which apply to the design and assessment of built environment proposals through the planning system.

The State Design Review Panel (SDRP) provides independent advice to the Commission on the design quality of major development proposals guided by SPP 7.0. The SDRP reviewed the Children's Hospice on two occasions, with interim design review advice issued for each session:

- 3 March 2022 (Design Review 1): The SDRP generally supported the design approach, acknowledging the rigour and detailed information provided at the meeting, with a recommendation for further development and follow up review.
- 10 November 2022 (Design Review 2): The SDRP was supportive of the overall design approach, pending resolution of a few key issues (refer **Attachment 10**).
- Substantial progress had been achieved since Design Review 1, with the report summary outlining those improvements made with regard to the landscape design, sustainability strategy, transition between the public realm and surrounding landscape and overall massing, with a reduction of upper storey built form achieved. The SDRP praised the Aboriginal cultural engagement undertaken and considered this to be a positive initiative that can inform the public art and landscape strategies.
- Key recommendations pertained to softening of retaining wall edges, provision of deep soil within internal courtyards to support trees, and further development of the sustainability strategy.
- A follow up review of the project was recommended.

On 11 January and 13 February 2023, the applicant provided additional documentation addressing the key issues and findings of the Design Review 2 Interim Advice report. It was subsequently agreed that a further Design Review was no longer required as recommendations, if not already addressed in the revised plans, could be captured in recommended conditions.

#### Response to the Economic Effects of the COVID-19 Pandemic

The applicant has advised that the project will deliver the following benefits to the Western Australian economy:

- The injection of approximately \$25.5 million of upfront investment;
- The creation of approximately 100-120 direct jobs during site works and throughout the construction phase; and approximately 25 jobs anticipated once the Hospice is operational; and
- In addition to jobs on-site, the Hospice will contribute to employment across the palliative care sector. The Hospice will be one component of a wider system that



incorporates in-home care, outreach services and hospital care. The creation of a dedicated facility presents Western Australia with a focal point for the palliative care sector and an opportunity to enhance the State's capabilities in terms of training and research locally, nationally and internationally.

The applicant has indicated they have sufficient funds to proceed to construction as fundraising efforts led by the PCHF have already raised enough equity to proceed with construction, with further fundraising to go towards the operational costs associated with the facility.

The applicant has not provided a works program, however indicated in the development application submission that the construction will be for 24 months.

The Part 17 development assessment pathway is aimed at proposals that can commence as soon as possible. Having regard to the decisions of the Commission regarding other Part 17 proposals, if approved, a condition requiring substantial commencement within 24 months is recommended. This will provide investment and jobs within a timeframe that would better assist in aiding the State's economic recovery from the effects of the COVID-19 pandemic.

#### Conclusion:

The Hospice is a State-significant facility that, on completion, will be one of only a small number of dedicated children's hospices in Australia, and will deliver Western Australia a recognisable focal point for children's palliative care.

The land that is subject to the Hospice proposal is cleared vacant land within Allen Park that was excised from the City of Nedlands. It is now a standalone lot with a management order to the CAHS for the purpose of a Children's Hospice, which makes the use consistent with the intent of the reserve. An MRS amendment is not necessary for the development to be approved on the subject site.

The City of Nedlands' feedback and some public submissions identified key concerns including use of a public reserve for private use, impacts on remnant vegetation adjacent to the site, visual impact, noise impacts on the facility from surrounding land uses, impacts to local transport networks and bushfire risk. It is considered that these concerns have been appropriately addressed in the applicant's revised plans and documentation, and as outlined in this report, can be adequately resolved through recommended conditions where needed.

The proposed development is generally consistent with the current planning framework. The proposal has undergone comprehensive design review, and conditions of approval have been recommended to ensure that the high-quality design and integration with the reserve and sustainability targets are carried through to the construction and operation of the facility.

The SDRP supported the design approach during both design review meetings, and improvements in the design were noted. The key recommendations outlined in the final report for Design Review 2 are considered to have been addressed in subsequent information provided and via the inclusion of a condition regarding sustainability.

The development represents approximately \$25.5 million in investment and would support approximately 100-120 direct jobs through the construction stage, as well as facilitate approximately 25 ongoing jobs through operation of the facility. Importantly, the Hospice will make a significant contribution to the WA palliative care sector as the first facility dedicated to children.

The application is considered to have adequately responded to the key considerations of Part 17 of the PD Act, and subject to the recommended conditions, also addresses matters raised in public and stakeholder submissions. The application is therefore recommended for approval subject to conditions.