

Community and Organisational Development Report


Committee Consideration – 12 June 2012
Council Resolution – 26 June 2012

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CM03.12	Accessible Parking Bay for Tresillian Community Centre
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Committee	12 June 2012
Council	26 June 2012

Applicant	City of Nedlands
Owner	City of Nedlands
Officer	Marion Granich – Manager Community Development
Director	Darla Blake – Director Community and Organisational Development
Director Signature	
File ref.	CMS/505
Previous Item No's	
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

This item is being considered by Council in response to a recent petition from Tresillian members requesting an accessible parking bay at Tresillian.

Recommendation to Committee

Council notes funding for an accessible parking bay at the Tresillian Community Centre has been included for consideration in the Draft 2012/13 budget.

Strategic Plan

- KFA 1: Infrastructure
 - 1.2 Design and construct infrastructure in accordance with Australian standards and guidelines.
 - 1.4 Develop and implement an integrated transport strategy for the City which promotes access to safe and integrated transport options.
- KFA 4: Community Wellbeing
 - 4.1 Provide and facilitate access to services and facilities required by the broader community, clubs and community groups.

Background

Tresillian is a City-owned facility with limited on-site parking (1 bay only). Therefore Tresillian members must park on nearby streets. This

arrangement has worked reasonably well since Tresillian members have been given temporary permits for the duration of their course enrolment (usually 8 weeks). These permits exempt them from the 2 hour parking restriction that applies on most streets surrounding Tresillian.

There is currently no provision for accessible parking either on-site or on any street adjacent to Tresillian.

Disability directly affects one third of the Western Australian population.

An Australian Bureau of Statistics (ABS) survey found that in 2003 an estimated 20.6% of the WA population reported having a disability. A further 12.6% are carers for people with disabilities. Allowing for some overlap between these two groups (i.e. because some of the carers also have a disability) it is estimated that approximately 30% of the WA population are profoundly affected on a daily basis by disability, either by having a disability or being a carer.

While the City does not have access to disability statistics for City of Nedlands residents, this being private health information, the percentage of people affected by disability can be reasonably assumed to be the same in the City of Nedlands as for WA as a whole. Therefore approximately 6,500 (30%) of City of Nedlands residents are estimated to be profoundly affected on a daily basis by disability, either because of having a disability or as a carer.

While age is not in itself a disability, the incidence of disability increases with age. Around 75% of Tresillian members are 60+ years of age. Therefore Tresillian members are likely to have a higher than average incidence of disability.

According to the ABS, the percentage of Western Australians with a disability is expected to increase significantly in the future, as a result of the aging population.

Proposal Detail

Prior to Council receiving the petition from Tresillian members requesting accessible parking, the City's Administration had already included in the draft budget for 2012/13 provision for installing an accessible parking bay on Tyrell Street. This location allows convenient access to the wheel-chair accessible entrance to Tresillian on Tyrell Street.

Consultation

Required by legislation: Yes No

Required by City of Nedlands policy: Yes No

Although no specific consultation has been undertaken on this issue, receipt of the petition from Tresillian members supports the need for an accessible parking bay.

Legislation

While there is no specific legislation mandating the provision of accessible parking bays, the City is required by statute to ensure that all services and facilities are available to people with disabilities. In order to do this, it would be reasonable to expect Tresillian to have at least one accessible parking bay.

The WA Disability Services Act 1993 requires public authorities to maintain a planned approach to ensuring that people with disabilities can access services and facilities.

The Commonwealth Disability Discrimination Act 1992 and the WA Equal Opportunities Act (1984) outlaw discrimination of various types including discrimination against people with disabilities.

Budget/financial implications

Budget:

Within current approved budget: Yes No

Requires further budget consideration: Yes No

\$8,000 has been included in the draft budget for 2012/13 (Technical Services section) to provide one accessible parking bay. This will allow for line marking as well as some path and curb modification.

Risk Management

There is a risk of legal action being taken against the City if there is no provision for accessible parking for Tresillian users.

Discussion

Installing an accessible parking bay on Tyrell Street will improve access to Tresillian services.

Conclusion


It is therefore recommended that Councillors approve \$8,000 for an accessible parking bay on Tyrell Street adjacent to the wheelchair accessible entrance to Tresillian, when considering the Draft 2012/13 Budget.

Attachments

Nil.

CM04.12	Nedlands Aged Persons Homes Trust Inc. (Lisle Villages Inc)
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Committee	12 June 2012
Council	26 June 2012

Applicant	Nedlands Aged Persons Homes Trust Inc. (Lisle Villages Inc)
Owner	Nedlands Aged Persons Homes Trust Inc. (Lisle Villages Inc)
Director	Darla Blake – Director Community and Organisational Development
Director Signature	
File ref.	CMS/155-05
Previous Item No's	CM11.11 – Item 7.3 - 8 November 2011 C10/133 – Item 13.3 – 26 October 2010 C10/65 - Item 14.5 – 27 July 2010 C73.04 – Item 14.5 – 14 December 2004
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

The Nedlands Aged Persons Homes Trust Inc (Lisle Villages) wishes to make changes to their Constitution. In accordance with clause 21 of their Constitution, no amendments to the Constitution are of any effect until approved by the City of Nedlands.

Recommendation to Committee

Council approves “in principle” the following changes and inclusion of new clauses into the proposed Lisle Villages Inc Constitution (formerly Nedlands Aged Persons Homes Trust Inc Constitution):

1. approves clause 1 – the name of the Association will change from Nedlands Aged Persons Homes Trust Inc to Lisle Villages Inc;
2. approves changed wording of the Objects of the Association clause 3 noting that the requirement in clause 3(a) of the current Constitution “to first meet the needs of residents and past residents of the City of Nedlands and then the needs of the residents of the western suburbs” is to be removed and replaced with a requirement to ‘give preference to the residents and past residents of the City of Nedlands’;

3. **approves a change to clause 5(b) – the removal of a compulsory \$10 fees for Ordinary Members of the Association and be replaced as clause 5(d) of the proposed Constitution stating, “the membership or joining fee (if any) payable to the Association by any Other Member shall be determined at the Annual General Meeting”;**
4. **approves a change to clause 8(a) – “an Annual General Meeting must be held each year within four (4) months of the end of the Association’s financial year”, as required by the Associations Incorporations Act 1987;**
5. **approves a change to clause 9(a) on the composition of the Board of Management from the existing minimum of eleven (11) and maximum of fourteen (14) to be replaced as clause 9(b) in the proposed Constitution, “The Board of Management will comprise of a minimum of six (6) and a maximum of ten (10) persons...”;**
6. **agrees to rescind the Council resolution of December 2004, as it is no longer relevant following negotiations with the Lisle Villages Inc:**

“That the Nedlands Aged Persons Homes Trust (Inc) be advised, the Council no longer wishes to have a Councillor representative on its Management Committee and would support an amendment to the Nedlands Aged Persons Homes Trust (Inc) constitution to put this change into effect.”
7. **The City of Nedlands confirms they wish to continue with a representative being appointed to the Board of Management as per clause 9(b)(ii) of the proposed Constitution and clause 9(a)(v) of the current Constitution;**
8. **approves the addition in clause 9(g)(v) of the proposed Constitution to state, “This clause does not apply to Board Members appointed pursuant to clause 9(b)(ii) by the City of Nedlands”;**
9. **approves clause 11 – removing the requirement of the Board of Management to appoint employees, as this will be the responsibility of the Chief Executive Officer;**
10. **approves the addition of the following words to clause 20(c) in the proposed Constitution, after the word ‘Alterations’ and before the word ‘passed; in the first line: ‘approved by the Council of the City of Nedlands; and**

11. delegates authority to the Mayor and CEO to grant City of Nedlands approval to the Constitutional changes, as required under clause 21 of the current Constitution, provided the Special General Meeting of Members of the Association gives its assent to the proposed changes and these are consistent with those approved “in principle” by the Council.

Strategic Plan

- KFA 4: Community Wellbeing
- 4.1 Provide and facilitate access to services and facilities required by the broader community, clubs and community groups.
- KFA 5: Governance
- 5.6 Ensure compliance with statutory requirements and guidelines.
 - 5.8 Establish and actively manage a range of partnerships with government, private and not-for-profit sectors.

Background

The City of Nedlands has a long historical connection with the Nedlands Aged Persons Homes Trust Inc going back to 1974, when it is thought the Nedlands Aged Persons Homes Trust Inc (NAPHT) Constitution may have been created.

Between 1974 and 1990, pieces of land owned by the City were transferred to the Nedlands Aged Persons Homes Trust Inc, this included:

- the land known as Melvista Lodge (Lot 25) 20 Betty Street, Nedlands was transferred and registered on 16 December 1974. The consideration for transfer was \$1;
- 125 (Lot 93) Alfred Road was transferred by the City on 19 June 1980. The consideration for transfer was \$120,000;
- 57 (Lot 105) Lisle Street was transferred by the City on 19 September 1986. The consideration for the transfer was \$315,000;
- 53 (Lot 104) Lisle Street was transferred by the City on 26 January 1990. The consideration for the transfer was \$142,000.

The three properties (Lots 93, 105 and 104) comprising of Lisle Lodge and Leaweena Lodge were subject to a Memorial lodged pursuant to the *Retirement Villages Act*, registered in 3 September 1972. The purpose of the Memorial is to “protect the rights of the residents” of the accommodation units under their residence contracts.

A search of certificate of title for Melvista Lodge property (Lot 25) revealed that it is subject to a caveat lodged by the City on 30 June 1975, “protecting the land as aged person’s accommodation” and to ensure that if the land ceased to be used for aged person’s accommodation the City would at least have the option to re-purchase the land.

It should be noted, there has been ongoing concerns by both Council and NAPHT residents in relation to ensuring all the land would always remain aged person's accommodation.

On 26 May 1986, the Mayor and Councilors of the City of Nedlands were made ex officio members of the Nedlands Aged Persons Homes Trust Inc, with the Constitution reflecting that no amendments to the Constitution were of any effect until approved by the Council of the City.

However, on 14 December 2004, Council resolved:

That the Nedlands Aged Persons Homes Trust (Inc) be advised that the Council no longer wishes to have a Councillor representative on its Management Committee and would support an amendment to the Nedlands Aged Persons Homes Trust (Inc) constitution to put this change into effect.

This decision was not implemented as legal advice, at the time, indicated that the City should retain a member on the Board of Management until such time as the constitution was changed, which has not occurred to date.

Nedlands Aged Persons Homes Trust Inc (NAPHT) Inc registered the business name of Lisle Villages Inc on 24 February 2005.

Nedlands Aged Persons Homes Trust Inc (also known as Lisle Villages Inc) resolved in April 2007 to conduct a review of its constitution under which the organisation operates. The prime objective of the review was to provide a constitution that recognised both the current operation of Lisle Villages and the legal/legislation framework under which it is required to operate.

Proposed changes were approved by Nedlands Aged Persons Homes Trust Inc (Lisle Villages) Board of Management, circa 25 March 2010 and a revised draft constitution was sent through to City's solicitors for comments.

However, the proposed changes were never given assent at a Special General Meeting of the Members of the Association as per clause 21 of the Constitution which states:

"Proposed alterations to this Constitution must receive the assent of not less than three-quarters of those Members of the Trust present and voting at a duly convened General Meeting. Notice in the manner provided in Clause 8 hereof must be given of the proposed alterations. Alterations assented to shall be submitted to the Council of the City of Nedlands for approval and shall be of no effect until so approved, provided further that should the Council of the City of Nedlands withhold assent and disagreement continues the Trust may submit the alter for Court Judgement. Further the Commissioner of Taxation shall be advised of any proposed amendments to the Constitution."

The City received additional comments from its solicitors in March 2011. Further investigation and background research was undertaken and a report went to Council's November 2011 meeting.

Council recommended the matter be deferred until Councillor Collins (Council's representative on the NAPHT Board of Management) had the opportunity to discuss various issues directly with the Board.

Since November 2011, a number of meetings have been held to clarify outstanding matters:

- December 2011, Councillor Collins met with the Chairperson of the Nedlands Aged Persons Homes Trust Inc (Lisle Villages);
- January 2012, both the Mayor and Councillor Collins met the Lisle Villages Chairperson and their CEO; and
- Mayor and Director Community & Organisational Development met with the Lisle Villages Chairperson and their CEO, 28 February 2012, to finalize any outstanding issues requiring more discussion.

A letter from Lisle Villages was received 23 March 2012, with a formal request from their Board of Management seeking Council approval for proposed changes to the NAPHT Constitution.

Issues

Lisle Villages have formally requested approval to the following revisions to their current Nedlands Aged Persons Homes Trust (Inc) Constitution, and incorporate these changes into the proposed Lisle Villages Inc Constitution:

1. Clause 1 – The name of the Trust will be changed to Lisle Villages Inc;
2. Clause 3 – The wording of the objects of the Trust has been modernized;
3. Clause 5(b) – The removal of a compulsory \$10 fees for Ordinary Members of the Trust. A fee, if any, is to be determined at the AGM;
4. Clause 8(a) – The AGM must be held within 4 months of the end of the Trust's financial year as per requirements set in the Associations Act;
5. Clause 9(a) – the Board will comprise of a minimum of 6 and maximum of 10 persons, as opposed to the existing minimum of 11 and maximum of 14 members;

6. Clause 9(a)(v) – Lisle Villages Inc confirm they wish to continue with a City of Nedlands representative being appointed to the Board of Management;
7. Clause 11 – Removal of the requirement of the Board to appoint employees. This will be the responsibility of the Chief Executive Officer.

April 2012, Administration sought advice on the proposed changes and in particular the need for any restrictive covenant to protect the land, which has been an issue of concern to Council.

Included in the proposed constitution, are a few other minor matters raised by our solicitors and these have been included in the recommendation that goes before Council for approval.

The matter of Clause 21 was raised with the CEO of Lisle Villages as Administration has not received Members of the Association assent to the proposed Constitution. To date, no Special General Meeting of the Association has been held. Council cannot give its final approval without the Members of the Association's assent.

Lisle Villages CEO advised, if a Special General Meeting of Members was held and assent given, there is a requirement to meet a one month limit for lodging the revised Constitution with the WA Department of Commerce. It would be necessary to get a decision from Council as soon as possible and with the Council meeting schedule it is likely further delays would occur thus missing the required timeframe.

Administration has been working with Lisle Villages to ensure alignment between the proposed changes and additions to the NAPHT Constitution and our respective recommendations to Members of the Association and Council.

To that end, Administration are seeking an "in principle" approval from Council and delegated authority for the Mayor and CEO to grant the final approval, in order to resolve the issue of timing.

Hence, this would enable Lisle Villages to complete the requirement to register their new constitution with the Department of Commerce within 30 days; with assent from the Association Members and final approvals from the Mayor and CEO on behalf of the City of Nedlands.

Consultation

Required by legislation:	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Required by City of Nedlands policy:	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

Meetings were held with the Board of Management Chairman and CEO of Lisle Village during December 2011, January 2012 and February 2012 to discuss and negotiate outstanding issues requiring decisions to move forward.

Legislation

1. Retirement Villages Act 1992
2. Associations Incorporations Act 1987

Neither the *Local Government Act* nor any other legislation requires the Council to have a role in the affairs of the Association. Any role the City plays arises through the terms of the Nedlands Aged Persons Homes Trust Inc (Lisle Villages) Constitution.

Budget/financial implications

Budget:

Within current approved budget: Yes No

Requires further budget consideration: Yes No

Financial:

Lisle Villages Inc has no dependence on the City financially, administratively or in any other way.

Risk Management

Council's had ongoing concerns to ensure that the NAPHT Inc (Lisle Villages Inc) remains aged person accommodation, into the future. Previously, it has been suggested, Council should impose some kind of restrictive covenant, deed or caveat on the Lisle Villages Inc properties, not currently covered by such mechanisms, to minimize the potential risk the land could not be protected long term to remain as aged person's accommodation.

It should be noted, different legal documents protect for different purposes. The purpose of the Memorial is to "protect the rights of the residents" of the accommodation units under their residence contracts, not "protecting the land as aged person's accommodation" as covered by a restrictive covenant.

Discussion with the Board of Management on introducing such a restrictive covenant, deed or caveat on the three properties (Lots 93, 105 and 104) comprising of Lisle Lodge and Leaweena Lodge which are subject to a Memorial lodged pursuant to the *Retirement Villages Act*, have met with strong opposition.

Another option for further control over the use of the land may be through the planning scheme through the introduction of a “special use” zone - although even this is not fail-safe, as the Minister has the authority to override.

Our legal advice, however, suggests that under clauses 3, 9(b)(ii), clause 20(c) of the proposed Constitution, can give Council have a high degree of confidence the land will continue for the foreseeable future to be used for aged persons accommodation, even though the Board of Management is not prepared to sign a registered restrictive covenant to that effect.

Discussion

- Change of name – Constitution:
Although Nedlands Aged Persons Homes Trust (Inc) has the word “trust” in its name; Nedlands Aged Persons Homes Trust Inc (NAPHT) is not actually a “trust”.

While NAPHT created a business name of Lisle Villages in the February 2005, the change of name for the organisation has not occurred through the Constitution, or on the land titles.

The name changed on the proposed Constitution and any other necessary document from Nedlands Aged Persons Homes Trust Inc to Lisle Villages Inc will be changed following assent by the Members of the Association and Council approval.

- Preference to be given to City of Nedlands residents and past residents:
The Board of Management have indicated they are willing to change the wording of the Objects of the Association in clause 3(a) of the current Constitution: *“to first meet the needs of residents and past residents of the City of Nedlands and then the needs of the residents of the western suburbs”* and replace this in the proposed Constitution with a requirement to *‘give preference to the residents and past residents of the City of Nedlands’*.
- Removal of compulsory \$10 fees:
The Board of Management have requested Council approval to change clause 5(b) of the current Constitution, removing the compulsory \$10 fees for Ordinary Members of the Association and this be replaced as clause 5(d) of the proposed Constitution stating, *“the membership or joining fee (if any) payable to the Association by any Other Member shall be determined at the Annual General Meeting”*.
- Change AGM date to align with *Association Incorporation Act 1987*:
The current Constitution requires an Annual General Meeting of the Association to be held in the month of October. In order to align with the requirements under the *Associations Incorporations Act 1987*,

Council are asked to approve the change to clause 8(a) – *“an Annual General Meeting must be held each year within four (4) months of the end of the Association’s financial year”*.

- **Change in the minimum and maximum Board of Management:**
The Board of Management has requested approval to change clause 9(a) on the composition of the Board of Management from the existing minimum of eleven (11) and maximum of fourteen (14) to be replaced as clause 9(b) in the proposed Constitution, *“The Board of Management will comprise of a minimum of six (6) and a maximum of ten (10) persons...”*. This would help to overcome the difficulties associated with filling positions.
- **City of Nedlands rescinds former resolution and confirms its place on the Board of Management:**
There is an outstanding resolution from 14 December 2004, were Council resolved: *That the Nedlands Aged Persons Homes Trust (Inc) be advised that the Council no longer wishes to have a Councillor representative on its Management Committee and would support an amendment to the Nedlands Aged Persons Homes Trust (Inc) constitution to put this change into effect.*

This recommendation has never been implemented due to ongoing discussion and concerns.

There is no requirement under the *Local Government Act* for the City to be part of the process involving the constitution process or to have an Elected Member on the Nedlands Aged Persons Homes Trust Inc’s Board of Management.

The previous Council had indicated they wished to uphold the 14 December 2004 decision and that Administration investigate further Council’s involvement with respect to giving “approval” to Constitutional changes.

This Council, conversely, has given an indication they wish to remain on the Board of Management and retain their “approval rights” to the Constitution. There is a desire to be involved and to protect the rights of residents through such an ongoing involvement.

To do so, Council will be required to rescind its earlier decision of 14 December 2004 and confirm it wishes to continue with a representative being appointed to the Board of Management as per clause 9(b) (ii) of the proposed Constitution and clause 9(a) (v) of the current Constitution.

To ensure only one Council representative serves on the Board of Management, there is a proposed addition in clause 9(g)(v) of the proposed Constitution which states, *“This clause does not apply to*

Board Members appointed pursuant to clause 9(b)(ii) by the City of Nedlands”.

- Chief Executive Officer to appoint employees:
Approval of clause 11 is an administrative matter for Lisle Villages Inc to change the current arrangement of the Board of Management appointing employees, to become the responsibility of the Chief Executive Officer.
- For clarity on alterations:
Administration and legal advice, are requesting approval of the addition of the following words to clause 20(c) in the proposed Constitution, after the word ‘Alterations’ and before the word ‘passed; in the first line: ‘approved by the Council of the City of Nedlands for the purpose of clarity on who is responsible for approvals to changes in the Lisle Villages Inc Constitution prior to being submitted to the Department of Commerce.

Conclusion

Nedlands Aged Persons Homes Trust Inc (also known as Lisle Villages Inc) resolved in April 2007 to conduct a review of its constitution under which the organisation operates. The prime objective of the review was to provide a constitution that recognised both the current operation of Lisle Villages and the legal/legislation framework under which it is required to operate.

Proposed changes were approved by Nedlands Aged Persons Homes Trust Inc (Lisle Villages) Board of Management, circa 25 March 2010 and a revised draft constitution was sent through to City’s solicitors for comments.

It is noted, there has been ongoing concerns by both Council and NAPHT residents in relation to ensuring all the land would always remain aged person’s accommodation.

Our legal advice suggests, while Council retains control over the form of the Constitution and continues to annually nominate a Councillor to the Board of Management, Council could have a high degree of confidence the land will continue for the foreseeable future to be used for aged persons accommodation, particularly given even though the Board of Management is not prepared to sign a registered restrictive covenant to that effect.

The current Council has indicated to Administration a desire to remain on the Board of Management and control over the form of the Constitution.

With the proposed changes to the Constitution, Council’s outstanding resolution from 14 December 2004 will need to be rescinded:

That the Nedlands Aged Persons Homes Trust (Inc) be advised that the Council no longer wishes to have a Councillor representative on its Management Committee and would support an amendment to the

Nedlands Aged Persons Homes Trust (Inc) constitution to put this change into effect.

The Committee in November 2011 considered a report on the matter and recommended it be deferred until Councillor Collins (the current Council representative on the NAPHT Board of Management) had the opportunity to discuss various issues directly with the Board.

Since the 22 November 2011 decision, three (3) meetings have been held with Nedlands Aged Persons Homes Trust Inc (Lisle Villages) Chairman and CEO to clarify and resolved outstanding matters.

A formal letter from Lisle Villages was received 23 March 2012, with a request from their Board of Management seeking Council approval for proposed changes to the NAPHT Constitution to be incorporated into the Lisle Villages Inc Constitution.

In accordance with clause 21 of the NAPHT Constitution, no amendments to the Constitution are of any effect until assent is given by the Members of the Association at a Special General Meeting and then approval given by the City of Nedlands.

At this point in time, no Special General Meeting of the Members of the Association as per clause 21 of the Constitution has been held; therefore no assent has been given. There is also an issue of timing and the WA Department of Commerce's one month requirement for registration of the new Constitution, following assent by the Association.

In order to continue progressing the matter, Administration are seeking Council "in principle" approval to the proposed changes of the Constitution and delegates authority to the Mayor and CEO to grant final approval. This would enable Lisle Villages to complete the requirement to hold a Special General Meeting of the Association to gain Members assent to the changed Constitution, then gain final approval from Council and, finally, register their new constitution with the Department of Commerce within 30 days following a Special General Meeting.

Attachments

1. Current Nedlands Aged Persons Homes Trust (Inc) Constitution
2. Proposed Lisle Villages (Inc) Constitution