**AGENDA**

**Council Meeting Agenda Forum**

**14 March 2023**

**Notice of Meeting**

**To Mayor & Councillors**

A Council Meeting Agenda Forum of the City of Nedlands is to be held on Tuesday, 14 March 2023 in the Council chambers at 71 Stirling Highway Nedlands commencing at 6pm.

This meeting will be livestreamed [Livestreaming Council & Committee Meetings » City of Nedlands](https://www.nedlands.wa.gov.au/council/council-meetings/livestreaming-council-committee-meetings.aspx)



Bill Parker

Chief Executive Officer

9 March 2023

**Information**

Council Meeting Agenda Forum are run in accordance with the City of Nedlands Governance Framework Policy. If you have any questions in relation to the agenda, procedural matters, addressing the Council or attending these meetings please contact the Executive Officer on 9273 3500 or [council@nedlands.wa.gov.au](mailto:council@nedlands.wa.gov.au)

**Public Question Time**

Public Questions are dealt with at the Ordinary Council Meeting.

**Deputations**

Members of the public may make presentations or ask questions on items contained within the agenda. Presentations are limited to 5 minutes. Members of the public must complete the online registration form available on the City’s website: [Public Address Registration Form | City of Nedlands](https://www.nedlands.wa.gov.au/public-address-registration-form)

**Disclaimer**

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

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# Declaration of Opening

The Presiding Member will declare the meeting open at 6.00 pm and will draw attention to the disclaimer on page 2.

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

**Leave of Absence** Councillor B G Hodsdon Hollywood Ward

**(Previously Approved)**

**Apologies** Councillor B Brackenridge Melvista Ward

# Public Question Time

Public questions will be dealt with at the Ordinary Council Meeting.

# Deputations

Deputations by members of the public who have completed Public Address Registration Forms.

# Requests for Leave of Absence

Any requests from Council Members for leave of absence will be dealt with at the Ordinary Council Meeting.

# Petitions

Petitions will be dealt with at the Ordinary Council Meeting.

# Disclosures of Financial Interest

The Presiding Member to remind Council Members and Staff of the requirements of Section 5.65 of the Local Government Act to disclose any interest during the meeting when the matter is discussed.

A declaration under this section requires that the nature of the interest must be disclosed. Consequently, a member who has made a declaration must not preside, participate in, or be present during any discussion or decision-making procedure relating to the matter the subject of the declaration.

However, other members may allow participation of the declarant if the member further discloses the extent of the interest. Any such declarant who wishes to participate in the meeting on the matter, shall leave the meeting, after making their declaration and request to participate, while other members consider and decide upon whether the interest is trivial or insignificant or is common to a significant number of electors or ratepayers.

# Disclosures of Interests Affecting Impartiality

The Presiding Member to remind Council Members and Staff of the requirements of Council’s Code of Conduct in accordance with Section 5.103 of the Local Government Act.

Council Members and staff are required, in addition to declaring any financial interests to declare any interest that may affect their impartiality in considering a matter. This declaration does not restrict any right to participate in or be present during the decision-making procedure.

The following pro forma declaration is provided to assist in making the disclosure.

"With regard to the matter in item x ….. I disclose that I have an association with the applicant (or person seeking a decision). This association is ….. (nature of the interest).

As a consequence, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly."

The member or employee is encouraged to disclose the nature of the association.

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

This item will be dealt with at the Ordinary Council Meeting.

# Confirmation of Minutes

This item will be dealt with at the Ordinary Council Meeting.

# Announcements of the Presiding Member without discussion.

This item will be dealt with at the Ordinary Council Meeting.

# Members Announcements without discussion.

This item will be dealt with at the Ordinary Council Meeting.

# Matters for Which the Meeting May Be Closed

For the convenience of the public, the following Confidential items are identified to be discussed behind closed doors, as the last items of business at this meeting.

Nil.

# En Bloc Items

This item will be dealt with at the Ordinary Council Meeting.

# Minutes of Council Committees and Administrative Liaison Working Groups

# Minutes of the following Committee Meetings (in date order) are to be received:

This is an information item only to receive the minutes of the various meetings held by the Council appointed Committees (N.B. This should not be confused with Council resolving to accept the recommendations of a particular Committee. Committee recommendations that require Council’s approval should be presented to Council for resolution via the relevant departmental reports).

This item will be dealt with at the Ordinary Council Meeting.

# Divisional Reports - Planning & Development Report No’s PD06.03.23 to PD12.03.23

# PD06.03.23 Reconsideration of Development Application – Partial change of use to “Small bar” and additions to an existing commercial tenancy (patio) – 161 Broadway, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 28 March 2023 |
| **Applicant** | TJ Holdings Pty Ltd 'ATF' Cg Stott Family Trust |
| **Information Provided** | All relevant information required for this assessment has been provided by the applicant. |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Extract of 27 September 2022 Ordinary Council Minutes 3. Amended Development Plans dated 9 February 2023 4. Amended Noise Management Plan dated 9 February 2023 5. CONFIDENTIAL ATTACHMENT - Submissions |

**Purpose**

The purpose of this report is for Council to reconsider its refusal of a development application for a partial change of use to “Small bar” and additions to an existing commercial tenancy (patio) at 161 Broadway, Nedlands (“The Little Way”), pursuant to the orders set by the State Administrative Tribunal (SAT).

**Recommendation**

**That Council:**

**In accordance with section 31(2)(c) of the State Administrative Tribunal Act 2004, sets aside the 27 September 2022 refusal to grant development approval for Partial change of use to “Small bar” and additions to an existing commercial tenancy (patio) at 161 Broadway, Nedlands and substitutes the following new decision:**

**That Council in accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the information date stamped 9 February 2023 for a partial change of use to “Small bar” and additions to an existing commercial tenancy (patio and boundary wall) at 161 Broadway, Nedlands, subject to the following conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 17 January 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.**
2. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**
3. **Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:**
4. **Face brick;**
5. **Painted render;**
6. **Painted brickwork; or**
7. **Other clean finish as specified on the approved plans.**

**And are to be thereafter maintained to the satisfaction of the City of Nedlands.**

1. **The Noise Management Plan date stamped 9 February 2023 forms part of this development approval and shall be complied with at all times, to the satisfaction of the City of Nedlands.**
2. **Functions at the site are limited to the following:**
3. **“Small” informal functions are permitted subject to:**

* **Maximum 60 persons (within the total 120 person limit).**
* **May include sectioning off an area to the general public, but not the entire restaurant/small bar. The restaurant/small bar must remain open to the public during small functions.**

1. **“Large” functions are permitted subject to:**

* **A maximum of 12 large functions in any given calendar year.**

1. **All trees on adjoining properties are to be protected and maintained through the duration of the construction process to the satisfaction of the City of Nedlands.**
2. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.**

**Voting Requirement**

Simple Majority

This report is of a quasi-judicial nature as it is a matter that directly affects a person’s rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications and other decisions that may be appealable to the State Administrative Tribunal.

The decision must be made in a manner that is impartial, free from bias, and in accordance with the principles of natural justice. The decision must be made in having regard to the facts of the matter under consideration, and in accordance with the relevant laws and policies as they apply to that matter.

Discretionary considerations and judgments in the decision must be confined to those permitted to be considered under the laws and polices applicable to the matter and given such weight in making the decision as the relevant laws and polices permit them to be given.

**Background**

**Land Details**

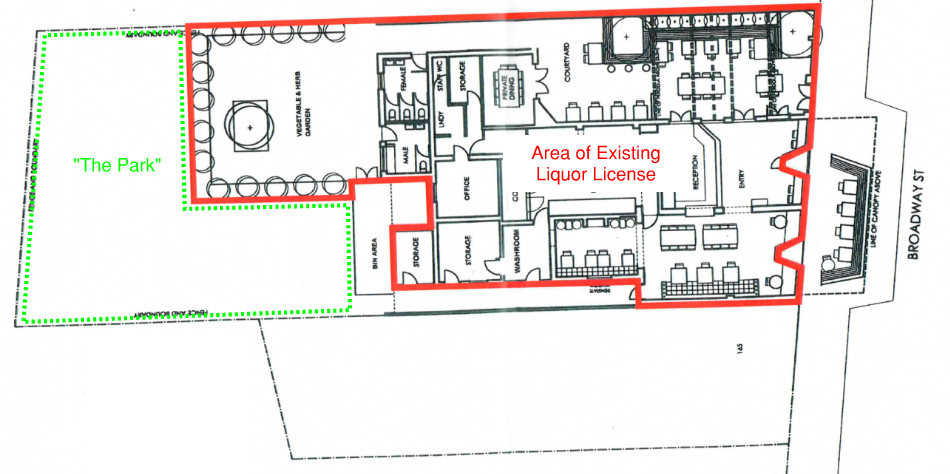
|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Mixed Use |
| **R-Code** | R-AC3 |
| **Land area** | 769m2 |
| **Existing Land Use** | Restaurant/café |
| **Proposed Land Use** | Restaurant/café and Small bar |
| **Use Class** | ‘A’ Use |

The site is located towards the south end of Broadway within the street block bounded by Hillway to the north and The Avenue to the south (**Attachment 1**) The site is zoned Mixed Use R-AC3. The lots directly abutting the site to the west are zoned Residential R60. On the eastern side of Broadway is the City of Perth Local Government Area which is zoned Residential R80.

The site currently operates as a “Restaurant/café” known as “The Little Way”.

**Previous Decision**

The original development sought a partial change of use to “Small bar” and a patio addition to the existing “restaurant/café” at 161 Broadway, Nedlands. The application relates to the new 168m2 outdoor area called “The Park” located to the rear of the site, which does not fall under the existing “Small bar” liquor license (**Figure 1**). Refer to the 27 September 2022 Council report for the full background of the site.



**Figure 1:** Boundary of existing “Small bar” liquor license and proposed area “The Park”

At its meeting of 27 September 2022 (**Attachment 2**) Council resolved to refuse the application for the following reasons:

1. The proposed partial change of use to “Small bar” does not meet the objectives of the Local Planning Scheme No. 3 Mixed Use zone in that it is likely to generate parking and noise nuisances detrimental to the amenity of the locality and adjoining residents.
2. The proposal is inconsistent with the City’s Parking Local Planning Policy and has the potential to exacerbate existing parking problems within the locality. The proposed patio addition will limit the future ability for the property to provide parking within the rear of the site.
3. The proposal provides inadequate access to the site, and no arrangement for loading, unloading, maneuvering and parking of vehicles.
4. The application has not adequality demonstrated that noise from the premises will achieve compliance with the Environmental Protection (Noise) Regulations 1997.

**SAT Application**

Subsequent to Council’s 27 September 2022 decision, the applicant exercised their right for a review of the decision by the State Administrative Tribunal (SAT). Subsequent to orders being set out by SAT and amended development plans being received by the City in January 2023, the application is presented to Council to reconsider the proposal and make a determination. Reconsideration is enabled by section 31 of the SAT Act (see legislative and policy implications section of this report).

**Amended Plans**

The applicants are seeking Council reconsideration of its decision based on amended development plans (**Attachment 3**) and a revised Nose Management Plan (NMP) (**Attachment 4**). The revised development plans propose the following works:

* 2.1m high colorbond fencing with 0.9m high sound reduction panels on top, along the entire rear boundary and 8.9m of the northern side boundary.
* A skillion roof patio measuring 6.5m x 11.5m and a maximum height 3.2m. The patio includes 0.9m effective sound diffusive vertical drop panels to the western edge.

**Discussion**

**Local Planning Scheme No. 3**

A “Small bar” is an ‘A’ use within the Mixed-Use zone in accordance with LPS 3 Clause 17 Zoning Table. This means that the use is not permitted unless the Local Government has exercised its discretion by granting approval and after conducting public consultation. In considering approving a discretionary land use, the proposal must be consistent with the objectives of the zone.

As detailed in this report, the revised information adequately demonstrates that noise from the premises will achieve compliance with *the Environmental Protection (Noise) Regulations 1997,* and that the proposed change of use will not adversely impact on the residential amenity of the locality. In light of the revised information, it is considered that the application meets the objectives of the Mixed-Use zone.

**Revised Noise Management Plan**

The applicant has provided a revised NMP to demonstrate how compliance with the *Environmental Protection (Noise) Regulations 1997* will be achieved. The revised NMP stipulates the following key restrictions on the premises:

* No live music is permitted throughout the venue unless otherwise approved by the City.
* House speaker volumes will be controlled by management and will not be adjusted based on customer requests.
* After 10pm each day or before 7am (or 9am on a Sunday or Public Holiday), powered speakers are not to be used in “The Park” area.
* Occupancy is limited to 120 persons maximum, excluding staff, with no more than 24 being in the verge area adjacent to the subject property.
* “The Park” is not to be occupied by patrons outside of the hours stated in **Table 1**.

|  |  |  |  |
| --- | --- | --- | --- |
| **Table 1: Times that ‘The Park’ can be occupied.** | | | |
| Number of patrons at any one time | Start time | Finishing time | Days |
| 60 (12 simultaneous conversations) | 7am | 7pm | Monday to Saturday, except public holiday |
| 30 (6 simultaneous conversations) | 7pm | 10pm | Monday to Saturday, except public holiday |
| 30 (6 simultaneous conversations) | 9am | 10pm | Sunday and public holiday |
| 0 | 10pm | 7am | Monday to Sunday |

The key differences between the revised NMP and the NMP provided as part of the original application are:

* The implementation of a solid and effective noise barrier with a height of 3 meters, with sound absorptive facings.
* Construction of a patio with 0.9m effective sound diffusive vertical panels at the rear, to provide effective acoustic screening in conjunction with the perimeter wall. The patio roof must provide an airtight seal to the vertical panels and itself be airtight when required.

By including the works component within the NMP, the site cannot comply with recommended Condition 4, and operate in accordance with the approved NMP, without the construction of the required works. This provides a safeguard for the City, whereby should the applicant, or a future business owner, operate ‘The Park’ as a small bar without the construction of the sound absorptive walls and patio, this would be a breach of the planning approval.

The revised NMP has been reviewed by both the City and an external Acoustic consultant and is considered satisfactory for the purpose of compliance with the *Environmental Protection (Noise) Regulations 1997*.

**Local Planning Policy - Parking**

The site does not have any existing on-site parking bays and has a technical parking shortfall of 180 car bays in accordance with the City’s Local Planning Policy – Parking. The 27 September 2022 Council report contains a comprehensive background as to how this parking situation has occurred over time. The existing building and alfresco on site occupy the entire 17m street frontage of the lot, and it is acknowledged that the site has no ability to gain vehicle access without negotiating with adjoining landowners.

Whilst it is acknowledged that parking is an ongoing issue for the current business and the greater locality, there is no proposed increase in the patron numbers as part of this application. In this regard, the proposed change of use is unlikely to have additional impact on parking demand within the area beyond the existing situation. It is accepted that the existing parking issues are unlikely to be resolved via this development application process.

**Consultation**

The original application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to owners and occupiers within a 100m radius of the site. The application was advertised for a period of 14 days from 10 May to 24 May 2022. At the close of the advertising period, four objections and three submissions of support were received. Objections to the application related primarily to noise, parking and land use. No submissions raised concerns with the works (patio) proposed.

Upon receipt of the plans for reconsideration, these were advertised to adjoining neighbours in relation to the works component only. The plans were advertised for a period of 14 days from 24 January to 7 February 2023. At the close of the advertising period, two objections were received.

The following is a summary of the concerns/comments raised and the Officer response in relation to each issue:

1. Concerns with the lack of onsite parking and customers parking on private property of neighbouring businesses.

It is acknowledged that parking is an ongoing issue for the site (refer to 27 September 2022 Council report for background). However, there is no proposed increase in the patron numbers as part of this application. Thereby the proposed change of use is likely to have little additional impact on parking demand within the area.

1. Concerns that the proposed fencing and sound panels will damage the trees on the adjoining property.

A condition has been recommended to ensure the trees on the adjoining property are protected during the installation of the fencing and sound absorptive panels.

1. Concerns with increased noise from functions and music.

The applicant has provided a revised NMP to demonstrate how compliance with the *Environmental Protection (Noise) Regulations 1997* will be achieved. The revised NMP has been reviewed by City officers and an external Acoustic consultant and is considered satisfactory.

**Strategic Implications**

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

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

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

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

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

**Budget/Financial Implications**

In the event that this matter is considered at a formal hearing of the SAT, the City may require the services of a planning consultant experienced in SAT representation. Costs associated with a full hearing are anticipated at between $30,000-$50,000, depending on the complexity.

Should Council resolve to grant development approval, no further costs are anticipated.

**Legislative and Policy Implications**

The reconsideration is being conducted in accordance with section 31 of the [SAT Act](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_37049.pdf/$FILE/State%20Administrative%20Tribunal%20Act%202004%20-%20%5B04-d0-01%5D.pdf?OpenElement). This section allows for the SAT to invite a decision-maker to reconsider the initial decision. Upon being invited to reconsider the decision the decision-maker may:

* Affirm the decision
* Vary the decision or
* Set aside the decision and substitute a new decision.

**Decision Implications**

Council is acting as the decision-maker for the purposes of section 31 of the SAT Act. Should Council affirm the original decision, the matter will be subject to further directions. The applicant will then have the ability to request the SAT conduct a formal hearing and make a decision to either dismiss or uphold the application for review. In this event, the SAT will become the decision-maker and effectively either approve or refuse the development.

In the event Council resolves to grant development approval, the SAT matter will only continue in the event the applicant is aggrieved by the decision. Resolving to grant development approval will likely result in the withdrawal of the SAT review and the development can proceed after a building permit is granted.

**Conclusion**

The revised information provided is considered to adequately demonstrate that noise from the premises will achieve compliance with *the Environmental Protection (Noise) Regulations 1997,* and that the proposed change of use will not adversely impact on the residential amenity of the locality. This satisfies reasons 1 and 4 of the Council’s reasons for refusal. In relation to reasons 2 and 3 of the Council’s reasons for refusal, it is acknowledged that parking is an ongoing issue in the locality, however, is unlikely to be resolved via this development application process.

It is recommended that the previous refusal determination be set aside and replaced with an approval with conditions based on the revised development plans and NMP.

**Further Information**

Nil.

# PD07.03.23 Consideration of Development Application – Addition of a Short-Term Accommodation land use (‘Holiday House’) to existing Residential (‘Single House’) development at 76 (Lot 676) Kingsway, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 28 March 2023 |
| **Applicant** | M Wood |
| **Information Provided** | All relevant information required for this assessment has been provided by the applicant. |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development and Management Plan dated 22 January 2023 3. CONFIDENTIAL ATTACHMENT – Submissions and applicant response |

**Purpose**

The purpose of this report is for Council to consider a development application for the addition of a Short-Term Accommodation land use (‘Holiday House’) to existing Residential (‘Single House’) development at 76 (Lot 676) Kingsway, Nedlands.

**Recommendation**

**That Council:**

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, APPROVE the development application in accordance with the plans date stamped 22 January 2023 for addition of a Short-Term Accommodation land use (‘Holiday House’) to existing Residential (‘Single House’) development at 76 (Lot 676) Kingsway, Nedlands, subject to the following conditions:**

1. **The approval period for the Holiday House is limited to 12 months (1 year) from the date of this decision letter.**
2. **The Management Plan prepared by M Wood date stamped 22 January 2023 forms part of this development approval and shall be complied with at all times, to the satisfaction of the City of Nedlands.**
3. **A copy of the approved management plan for the Holiday House shall be provided to residents of adjoining and abutting properties prior to the commencement of operations.**
4. **A maximum of four (4) guests are permitted to reside at the Holiday House at any one time.**
5. **All vehicles (for the owners of the property and the guests of the Holiday House) shall be parked within the property boundaries of the subject site.**

**Voting Requirement**

Simple Majority.

This report is of a quasi judicial nature as it is a matter that directly affects a person’s rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications and other decisions that may be appealable to the State Administrative Tribunal.

The decision must be made in a manner that is impartial, free from bias, and in accordance with the principles of natural justice. The decision must be made in having regard to the facts of the matter under consideration, and in accordance with the relevant laws and policies as they apply to that matter.

Discretionary considerations and judgments in the decision must be confined to those permitted to be considered under the laws and polices applicable to the matter and given such weight in making the decision as the relevant laws and polices permit them to be given.

**Background**

**Land Details**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R60 |
| **Land area** | 910m2 |
| **Land Use** | Existing – Residential  Proposed – Residential and Holiday House |
| **Use Class** | Proposed – ‘A’ use class for Holiday house in the Residential zone. |

The subject site is 76 Kingsway, Nedlands, located within the street block bound by Princess Road to the north and Melvista Avenue to the south (**Attachment 1**). The lot is regular in shape, zoned R60 and has an area of 910m². The site contains an existing two storey single house.

**Application Details**

The application seeks development approval for the addition of a Short-Term Accommodation land use (‘Holiday House’) to existing Residential (‘Single House’) development. No works component is proposed as part of this application. As per the City of Nedlands Local Planning Scheme No. 3, a ‘Holiday House’ is defined as:

“a single dwelling on one lot used to provide short-term accommodation but does not include a bed and breakfast.”

The City of Nedlands Local Planning Scheme No. 3 defines a Short-Term Accommodation as:

“temporary accommodation provided either continuously or from time-to-time with no guest/s accommodated for periods totalling more than 3 months in any 12-month period.”

The applicant, who is also the owner of the property, is seeking to operate the Holiday House at the subject property and the owners of the property will reside on site and manage the holiday house.

**Discussion**

**Local Planning Scheme No. 3**

The proposal has been assessed and is considered consistent with the objectives of the “Residential” zone with the City’s Local Planning Scheme No.3, as detailed below.

Objective: To provide for a range of housing and a choice of residential densities to meet the needs of the community*.*

Assessment: The existing landowner of the property will continue to reside in the dwelling, in addition to the ‘Holiday House’ land use being applied for. The application has been applied for to meet the needs of the existing landowner and resident and will provide for diversity in the type of housing stock within the area.

Objective: To facilitate and encourage high quality design, built form and streetscapes throughout residential areas.

Assessment: There are no works proposed as part of this application, and the dwelling maintains it role as part of the existing high quality streetscape.

Objective: To provide for a range of non-residential uses, which are compatible with and complementary to residential development.

Assessment: As per the City’s Local Planning Policy – Short-Term Accommodation, where a keeper resides on-site, Holiday House land uses are generally supported within all zones, including the residential zone. Further the applicant has provided a Management Plan to detail the operation of the business, as detailed below. In this regard the application is considered to provide a suitable non-residential use which is compatible with and complementary to the locality.

Objective: To ensure development maintains compatibility with the desired streetscape in terms of bulk, scale, height, street alignment and setbacks.

Assessment: As above, there are no works proposed as part of this application, and the proposal will have no impact in terms of bulk, scale, height, street alignment and setbacks.

**Local Planning Policy – Short-Term Accommodation**

The City’s Local Planning Policy – Short-Term Accommodation provides guidance and development provisions for operators seeking to establish short-term accommodation within the City. In accordance with Part 4.1 of the Policy, development applications for the ‘Holiday House’ land use where a keeper resides on-site, are to be generally supported in all zones.

The applicant has provided a Management Plan in support of their application (**Attachment 2**), which adequately addresses the relevant criteria stipulated in Part 8 of the Short-Term Accommodation Policy, as detailed in **Table 1** below. As per recommended Condition 2, the Management Plan will form part of any approval granted and is to be complied with at all times to the City’s satisfaction.

|  |  |  |
| --- | --- | --- |
| **Table 1: Management Plan Assessment** | | |
| **LPP provision** | **Proposed** | **Officer comment** |
| * 1. Establishing the maximum number of guests which will stay, in addition to (if applicable) those which reside at the property on a permanent basis. | A maximum of four guests proposed at any one time. No visitors will be allowed to stay at the property overnight. Two owners reside at the property on a permanent basis. | Acceptable - Condition 4 recommended to limit the total number of guests to four at any one time. |
| * 1. Establishing a code of conduct detailing the expected behaviour and obligations of guests. The code of conduct shall be displayed in a prominent position within the premises. | Code of conduct for guests has been provided for in the Management Plan. This is to be provided both in electronic and hard copy format to guests. | Acceptable. |
| * 1. Details of how complaints regarding anti-social behaviour, car parking and noise, amongst other matters, will be managed by the landowner(s). | The owners/manager of the short-term rental property will investigate all complaints and will advise the complainant of the outcome of the investigation in writing or by email. If a breach of the Management Plan or the rules listed in the Guests Manual is found to have occurred, the manager will instruct the guest to immediately cease the breach. If the manager is aware of a subsequent breach of the rules, the guest will be instructed to vacate the premises and may be banned. | Acceptable. |
| * 1. The contact details of the landowner(s) if a neighbour wants to lodge a complaint. | Should neighbours have a complaint, an email and postal address for the owner have been provided within the Management Plan. | Acceptable. |
| * 1. Details regarding guest check-in and check-out procedures (i.e. days and times). | Check in time is between 2:00 pm and 5:00 pm. Check out time is 10:00 am. Check In and Check Out will be a discreet process. Where it is not practical for guests to arrive or depart between the above hours, they will be requested to do so in a manner that will not impact on neighbouring properties. | Acceptable. |
| * 1. Details of how car parking for those staying at the property and (if applicable) those residing at the property on a permanent basis, will be managed by the landowner(s). The measures proposed are to ensure vehicles will always have easy access to on site car parking spaces. | Parking will be onsite and will not impinge on street parking. On site there is more than enough car bays for all guests (see Parking LPP assessment below). | Acceptable - Condition 5 recommended to ensure that all vehicles, both for the owners of the property and the guests of the Holiday House, are parked on site, as opposed to the street. |
| * 1. Details of how the guests will be informed of the requirements for parking. | There will be a Guest Manual, House Rules and Local Guidebook provided both in electronic and hard copy format to all guests. These Manuals and Guides contain all the information, including parking information. | Acceptable. |
| * 1. Details regarding how guests are expected to maintain the property. | Maintenance of the gardens and building will be provided by the owners. Guests must follow the rules as per the house rule policy this includes a no smoking policy. | Acceptable. |

In accordance with the Short-Term Accommodation Policy, the City may grant temporary development approval for short-term accommodation uses for an initial 12-month period. Following this initial 12-month period, a subsequent development approval will be required for the renewal of the approval on a permanent basis. Condition 1 is recommended to this effect.

It should be noted that in the matter of *Joseph and City of Nedlands* [2002] WASAT 13, the State Administrative Tribunal (SAT) determined that due to the existence of the City's Short Term Accommodation Policy and the guidance it provides, that the Policy ought to be afforded the most weight in determining the proposal. The subject application is wholly compliant with the Local Planning Policy – Short-Term Accommodation and thereby it would be inconsistent with orderly and proper planning to consider the application unfavourably.

**Local Planning Policy – Parking**

The City’s Local Planning Policy – Parking prescribes one car bay per guest bedroom, in addition to any bays required under the R-Codes for the dwelling, for the ‘Holiday house’ land use. The application proposes two guest bedrooms. As per the requirements of the R-Codes, two car parking bays are required for the dwelling. Therefore, a total of four car parking bays are required for this proposal.

The site is serviced by two existing crossovers, one which leads to an existing double carport and single garage, and one which leads to a paved area suitable for parking at least one car. Thereby the site can accommodate four car bays and satisfies the requirements of the City’s Local Planning Policy – Parking.

**Consultation**

A Holiday House is an ‘A’ Use in a Residential Zone, meaning that the use is not permitted unless the local government has exercised its discretion by granting development approval after giving notice in accordance with clause 64 of the deemed provisions.

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to landowners and occupants within a 100m radius of the site. The application was advertised for a period of 14 days from 24 January to 8 February 2023. At the close of the advertising period, three objections were received.

The following is a summary of the concerns/comments raised and the Officer response in relation to each issue:

1. Concerns with anti-social behaviour.

No evidence has been provided to substantiate that any existing anti-social behaviour has been associated with this property. The applicants Management Plan contains a complaints response procedure should any anti-social behaviour arise in the future as a result of the land use. In addition, as the management of the Holiday House will reside on site, any potential issues can be immediately addressed. In considering any renewal of the development application after the initial 12-month period, the City will give regard to any substantiated complaints against the operation of the short-term accommodation.

1. Concerns with increased traffic / parking management issues.

The proposal complies with the parking requirements of the City’s Local Planning Policy – Parking. Further, a condition of approval has been recommended to ensure that all vehicles, both for the owners of the property and the guests of the Holiday House, are parked on site, as opposed to the street. The proposal is a small-scale operation and is not expected to generate additional traffic beyond the capacity of the existing road network.

1. Concerns with impact on property values.

Property values are not a valid planning consideration.

1. Oversupply of short-term accommodation within locality.

Supply and demand of varying land uses are driven by market forces. This concern is outside of the scope of the City’s planning framework.

**Strategic Implications**

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

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

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

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

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

**Budget/Financial Implications**

Nil.

**Legislative and Policy Implications**

Council is requested to make a decision in accordance with clause 68(2) of the [Deemed Provisions](https://www.dplh.wa.gov.au/getmedia/6e4785e3-d40f-45cd-95e8-85d3115ee32e/PD_LPS_Deemed_Provisions). Council may determine to approve the development without conditions (cl.68(2)(a)), approve with development with conditions (cl.68(2)(b)), or refuse the development (cl.68(2)(c)).

**Decision Implications**

If Council resolves to approve the proposal, the development can proceed.

In the event of a refusal, the applicant will have a right of review to the State Administrative Tribunal. Similarly, should an applicant be aggrieved by one or more conditions of approval, this can be reviewed by the Tribunal.

This application is comparable to *Joseph and City of Nedlands* [2002] WASAT 13 (37 Strickland Street, Mt Claremont), being an application for a Holiday House where the manger also resides onsite. This site is arguably even more appropriate for a Holiday House land use given the R60 zoning, and the proximity to the Mixed Use R-AC3 zone and high frequency bus routes. In *Joseph and City of Nedlands,* the SAT set aside the City's decision to refuse the application and granted approval subject to conditions. Given this precedent, in the event of a SAT appeal it is highly likely that any refusal determination would be overturned by the SAT. The *Joseph and City of Nedlands* SAT matter cost the City approximately $34,200.

**Conclusion**

The application for the addition of a Short-Term Accommodation land use (‘Holiday House’) to existing Residential (‘Single House’) development has been presented for Council consideration due to objections being received. The proposal is considered to meet the development provisions of the City’s local planning framework and, as such, is unlikely to have a significant adverse impact on the local amenity of the area.

Accordingly, it is recommended that the application be approved by Council, subject to conditions of Administration’s recommendation.

**Further Information**

Nil.

# PD08.03.23 Section 31 Reconsideration of Development Application – Single House at 78 Wood Street, Swanbourne

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 28 March 2023 |
| **Applicant** | Robeson Architects |
| **Information Provided** | All relevant information required for this assessment has been provided by the applicant. |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans 3. Architectural Perspective 4. Applicants’ Supplementary Justification 5. CONFIDENTIAL ATTACHMENT - Submissions |

**Purpose**

The purpose of this report is for Council to reconsider a development application for a single house at 78 Wood Street, Swanbourne.

At the 13 December 2022 Ordinary Council Meeting (Refer item PD80.12.22), the application was refused by Council. Subsequent to Orders made by the State Administrative Tribunal (SAT) and amended development plans submitted to the City, this application is presented to Council to reconsider the proposal under section 31 of the SAT Act 2004 and make a determination.

**Recommendation**

**That Council in accordance with Section 31(2)(c) of the State Administrative Tribunal Act 2004, set aside its refusal to grant development approval for a single house at 78 Wood Street, Swanbourne dated 13 December 2022 and substitutes the previous decision as follows:**

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, development approval is granted in accordance with the plans date stamped 20 January 2023 for a single house at 78 Wood Street, Swanbourne, subject to the following conditions:**

1. **The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
2. **All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.**
3. **Prior to occupation, landscaping shall be installed and maintained in accordance with the approved plans, including the planting of one (1) tree with a minimum planting area of 2m x 2m. All landscaping shall be maintained for the lifetime of the development thereafter, to the satisfaction of the City.**
4. **Prior to occupation, the screening to the Theatre window on the western elevation as annotated on the approved plans shall be provided in accordance with the Residential Design Codes (Volume 1) by either:**
5. **Fixed and obscured glass to a height of 1.6 metres above finished floor level;**
6. **Fixed screening devices to a height of 1.6 meters above finished floor level that are at least 75% obscure and made of a durable material;**
7. **A minimum sill height of 1.6 metres as above the finished floor level; or**
8. **An alternative method of screening approved by the City.**

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

1. **Prior to occupation of the development the external finish of the parapet walls is to be the same standard as the rest of the development in:**

**a. Face brick;**

**b. Painted render;**

**c. Painted brickwork; or**

**d. Other clean material as specified on the approved plans and maintained thereafter to the satisfaction of the City of Nedlands.**

1. **All building works to be carried out under this development approval are required to be contained within the boundaries of the subject lot.**

**Voting Requirement**

Simple Majority.

This report is of a quasi judicial nature as it is a matter that directly affects a person’s rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications and other decisions that may be appealable to the State Administrative Tribunal.

The decision must be made in a manner that is impartial, free from bias, and in accordance with the principles of natural justice. The decision must be made in having regard to the facts of the matter under consideration, and in accordance with the relevant laws and policies as they apply to that matter.

Discretionary considerations and judgments in the decision must be confined to those permitted to be considered under the laws and polices applicable to the matter and given such weight in making the decision as the relevant laws and polices permit them to be given.

**Background**

**Land Details**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R15 |
| **Land area** | 485m2 |
| **Land Use** | Residential – Single House |
| **Use Class** | ‘P’ – Permitted Use |

The site is located at 78 Wood Street, Swanbourne, south of the Swanbourne Bushland across the street. The site is irregular in shape with a curved 13.8m frontage and an area of 485m2. The land is sloping with a 0.7m fall from east to west. The site is currently occupied by a single storey single house.

The lot has density coding of R15. The site originally featured 2 grouped dwellings in a ‘built strata’ scheme configuration. The grouped dwellings were demolished in approximately 2000 and the site was converted to a survey strata scheme, resulting in two lots (78 and 80 Wood Street). In accordance with State Planning Policy 7.3 Residential Design Codes (R-Codes), the minimum size for an R15 lot is 580m2. Consequently, the lot is undersized for the R15 code, being 485m2, which is more typical of the R20 density code.

**Previous Decision**

At the Ordinary Council Meeting on 13 December 2022, Council considered a proposal for a single house at 78 Wood Street, Swanbourne. Council resolved to refuse the application for the following reasons:

1. The development does not satisfy the design principles of Clause 5.1.2 (Street setback) of the Residential Design Codes as the primary street setback is not consistent with and does not contribute to the established streetscape.

2. The development does not satisfy the design principles of Clause 5.1.3 (Lot boundary setback) of the Residential Design Codes as the height, bulk and scale of the proposed west-facing boundary wall will have an adverse impact on the amenity of the neighbouring property to the west.

**SAT Application**

In December 2022, the applicant lodged an application with the SAT to review the decision. Subsequent to orders being set out by SAT and amended development plans being received by the City in January 2023, the application is presented to Council to reconsider the proposal and make a determination. Reconsideration is enabled by section 31 of the SAT Act (see legislative and policy implications section of this report).

**Amended Plans**

The application seeks development approval for the construction of a new two storey single house at 78 Wood Street, Swanbourne. Pursuant to the order made by the SAT, amended plans were prepared which make the following changes from the original proposal:

The dwelling setback on the ground floor has been increased from 4m to 4.7m.

The garage setback on the ground floor has been increased from 6m to 6.7m.

The dwelling setback on the upper floor has been increased from 4.8m to 5.5m.

The dwelling setback from the rear southern boundary has been reduced from 5.4m to 5.1m.

An opening to the western side wall of the porch has been created.

**Discussion**

**Assessment of Statutory Provisions**

If a proposal does not satisfy the deemed to-comply provisions of the R-Codes, Council is required to exercise a judgement of merit to determine the proposal against the design principles of the R-Codes. It is recommended that the application be approved by Council as it is considered to satisfy the design principles of the R-Codes. Further, it is considered unlikely that the development will have a significant adverse impact on the local amenity and character of the locality.

**Local Planning Scheme No. 3**

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

**State Planning Policy 7.3 - Residential Design Codes – Volume 1**

The R-Codes apply to all single and grouped dwelling developments. An approval under the R-Codes can be obtained in one of two ways. This is by either meeting the deemed-to-comply provisions or via a design principle assessment pathway.

The proposed development is seeking a design principle assessment pathway for primary street setback, lot boundary setback, landscaping and visual privacy. As required by the R-Codes, Council, in assessing the proposal against the design principles, should not apply the corresponding deemed-to-comply provisions.

**Street setback**

The dwelling proposes a minimum primary street setback of 4.7m on the ground floor and 5.5m on the upper floor. The design principles require the development to be consistent with the established streetscape, provide sufficient space for landscaping and parking, and not be visually imposing from the street. The application satisfies the design principles as:

* The primary street boundary is curved. Whilst the minimum street setback on the ground floor and upper floor is 4.7m and 5.5m respectively, the maximum setback is 7.1m and 7.9m. As a result, the average street setback of the dwelling as perceived from Wood Street is 5.9m on the ground floor and 6.7m on the upper floor. The varying setback for the length of the street boundary reduces the dominance of the dwelling compared to a conventional rectangular lot with a straight lot boundary.
* The building uses design features that minimise its impact on the street. The 4.7m ground floor setback is measured from the enclosed porch. The northern aspect of the porch which faces the street is not comprised of solid building material which creates a sense of permeability and reduces the perception of bulk when viewed from the street. The substantive wall of the house is setback a minimum of 6.2m from the primary street.
* Overall, the street setback achieves a balance in responding to the constraints of the site relating to its shape and size and contributing to the established development pattern along Wood Street.

**Lot boundary setbacks**

The following lot boundary setbacks seek a design principle assessment:

* The eastern (side) garage wall on the ground floor proposes a nil setback (boundary wall).
* The western (side) wall on the ground floor proposes a nil setback (boundary wall).
* The western (side) Theatre to Bed 2 wall on the upper floor proposes a nil setback (boundary wall).
* The southern (rear) wall on the ground floor proposes a minimum 5.1m setback.

The design principles for lot boundary setbacks consider the impact of building bulk on adjoining properties, providing adequate sun and ventilation, minimising overlooking and allowing effective use of space for privacy and outdoor living areas.

West side

The western side setbacks achieve the design principles as:

* The impact of building bulk is minimised on the ground floor as the porch wall features an opening that provides a visual outlook and access to natural light for the occupants of the western adjoining lot. The opening will not result in reduced privacy for adjoining lots as it has a minimum sill height of 1.6m to satisfy visual privacy screening provisions.
* Any bulk from the double storey boundary wall will not be perceived by the adjoining occupants as the eastern wall of the house on 80 Wood Street is setback less than 1m from the boundary on the ground floor and does not feature any eastern facing major openings across the ground or upper floors.
* Due to the constraints of the site, the boundary wall makes more effective use of the space available to allow for an adequately sized outdoor living area at the rear of the lot.
* The boundary wall is adjacent to the eastern boundary so does not comprise solar access for the adjoining lot. The wall does not feature any major openings and does not overlook neighbouring properties.

East side

The application proposes a garage built up to the eastern boundary. The development achieves the design principles as:

* The majority of the boundary wall is located behind the front setback area with only 2.5m of the wall protruding forward of the average 9m front setback observable in the street.
* The boundary wall makes more efficient use of space by providing for a double car garage on the constrained site, reducing the need to build further into the site and reduce the outdoor living area.
* The boundary wall is adjacent to the western boundary so does not comprise solar access for the adjoining lot. The wall does not feature any major openings and does not overlook neighbouring properties.
* The boundary wall is a typical size for a garage, being 7.3m in length and 3.5m in height. If the residential density coding of the lot were commensurate with its size, this aspect of the proposal would be deemed-to-comply.

South rear

The southern setback achieves the design principles as:

* The impact of the solid wall’s bulk is minimised as the wall is a single storey and is 1.8m in length, comprising 12% of the lot boundary length. At a setback distance of 5.1m, the wall is adequately separated from the outdoor living area of the adjoining lot to the rear.
* The shadow cast by the wall falls onto the subject lot and does not result in overshadowing of the adjoining southern property.
* The wall does not permit overlooking of the adjoining lots as it does contain any major openings.

**Landscaping**

The application proposes 36% landscaping within the front setback area. The design principles provide for retention or planting of vegetation and a positive contribution to the streetscape.

The proposal meets the design principles as the landscaping provided is sufficient and contributes to the existing streetscape. Wood Street is partly characterised by full height solid front fences - approximately half the lots along the relevant street block of Wood Street feature solid fences that obscure any landscaping within the front setback area. Conversely, the proposal includes a front fence that is visually permeable for its entire height which allows for views of the landscaping at 78 Wood Street. Further, the front setback area creates visual interest as it consists of a diversity of landscaping which includes a small garden, a tree and a water feature.

**Visual privacy**

Bed 2 on the upper floor overlooks the neighbouring lot to the west and is seeking a design principle assessment.

The design principles for visual privacy consider the minimal overlooking of active habitable spaces and outdoor living areas of adjacent dwellings. The application meets the design principles as:

* The cone of vision from the bedroom window is reduced by fixed privacy louvres.
* The overlooking from the window avoids the adjoining lot’s outdoor living area and falls over the dwelling’s ground floor roof and an upper floor wall without openings.
* Any overlooking will be further minimised as the window is perpendicular to the lot boundary, so overlooking is oblique rather than direct.

**Consultation**

No additional formal consultation has occurred since Council’s 13 December 2022 decision.

The City engaged directly with the adjoining western landowner to seek comment on the amended development proposal. The landowner made a new submission related to the amended plans.

The following is a summary of the concerns raised and the Officer response in relation to each issue:

1. The street setback is still not consistent with the established streetscape.

Officer comment: The street setback achieves a balance in responding to the constraints of the site and contributing to the established development pattern along Wood Street.

1. The opening in the ground floor western porch wall may result in overlooking of the neighbouring property.

Officer comment: The opening has a minimum sill height of 1.6m to satisfy visual privacy screening provisions.

1. The height of the western wall will be visually obtrusive for approaching vehicles and pedestrians.

Officer comment: The height of the western wall achieves the deemed-to-comply provisions for building height.

To allow for the submissions from properties affected by this reconsideration to be considered as part of this decision, confidential copies have been included as an attachment.

**Strategic Implications**

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

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

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

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

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

**Budget/Financial Implications**

In the event that this matter is considered at a formal hearing of the SAT, the City may require the services of a planning consultant experienced in SAT representation. Costs associated with a full hearing are anticipated at between $30,000-$50,000, depending on the complexity.

Should Council resolve to grant development approval, no further costs are anticipated.

**Legislative and Policy Implications**

The reconsideration is being conducted in accordance with section 31 of the [SAT Act](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_37049.pdf/$FILE/State%20Administrative%20Tribunal%20Act%202004%20-%20%5B04-d0-01%5D.pdf?OpenElement). This section allows for the SAT to invite a decision-maker to reconsider the initial decision. Upon being invited to reconsider the decision the decision-maker may:

* Affirm the decision
* Vary the decision or
* Set aside the decision and substitute a new decision.

**Decision Implications**

Council is acting as the decision-maker for the purposes of section 31 of the SAT Act. Should Council affirm the original decision, the matter will be subject to further directions. The applicant will then have the ability to request the SAT conduct a formal hearing and make a decision to either dismiss or uphold the application for review. In this event, the SAT will become the decision-maker and effectively either approve or refuse the development.

In the event Council resolves to grant development approval, the SAT matter will only continue in the event the applicant is aggrieved by the decision. Resolving to grant development approval will likely result in the withdrawal of the SAT review and the development can proceed after a building permit is granted.

**Conclusion**

The application for a two-storey single house at 78 Wood Street, Swanbourne has been presented to Council for reconsideration by section 31 of the *State Administrative Tribunal Act 2004 (WA).* With the updated development plans and supporting information, the proposal is considered to meet the key amenity related elements of R-Codes Volume 1 and as such is unlikely to have a significant adverse impact on the local amenity of the area. The proposal has been assessed and satisfies the design principles of the R-Codes and is consistent with the immediate locality and streetscape character.

Accordingly, it is recommended that the application be approved by Council, subject to conditions of Administration’s recommendation.

**Further Information**

Nil.

# PD09.03.23 Adoption for Referral to WAPC – Scheme Amendment 12 and Local Planning Policy – Trees on Private Land

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| --- | --- |
| **Meeting & Date** | Council Meeting – 28 March 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning & Development |
| **Attachments** | 1. Draft Local Planning Policy – Trees on Private Land 2. Schedule of Submissions |

**Purpose**

The purpose of this report is for Council to adopt for a referral to the Western Australian Planning Commission (WAPC) the draft Local Planning Policy – Trees on Private Land (the Policy) included as Attachment 1, and Scheme Amendment 12 (the Amendment) included as set out below.

**Recommendation**

**That Council:**

* + - 1. **Pursuant to section 75 of the *Planning and Development Act 2005* and in accordance with regulation 41(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015* supports Scheme Amendment No. 12 to amend Local Planning Scheme No. 3 by inserting the following provisions into Schedule 1 – Supplemental Provisions:**

**60. Requirement for development approval**

**60A. No person shall cause or permit the removal, destruction, or damage to any tree that meets the following criteria on a lot zoned Residential with a density code of R20 or below unless development approval has been granted in accordance with Part 8 of the Deemed Provisions:**

1. **Canopy diameter of 6m or greater; or**
2. **Height of 8m or greater; or**
3. **In the case of a tree with a single trunk, a trunk circumference of 1.5m or greater, measured 1.4m above the ground; or**
4. **In the case of a tree with multiple trunks, a total trunk circumference of 1.5m or greater, with an average trunk circumference of 625 millimeters or greater, measured 1.4m above the ground.**

**61. Development for which development approval is not required**

|  |  |  |
| --- | --- | --- |
|  | **Column 1**  **Works** | **Column 2**  **Conditions** |
| **22.** | **The removal, destruction or damage to a tree which meets the criteria set out in Clause 60A.** | **Either -**   1. **The tree is identified in a local planning policy as an unwanted species; or** 2. **Tree pruning in accordance with Australian Standards for Pruning of Amenity Trees (AS4373); or** 3. **Tree pruning or removal required for bushfire management purposes, in accordance with the Bush Fires Act 1954; or** 4. **Tree pruning or removal to achieve necessary clearances from utilities.** |

* + - 1. **Authorise the Mayor and CEO to sign the relevant documents necessary to refer the Policy and Amendment to the Western Australian Planning Commission.**
      2. **In accordance with regulation 44 of the Planning and Development (Local Planning Schemes) Regulations 2015 submit the proposed Scheme Amendment No. 12 and all relevant documentation to the Western Australian Planning Commission for approval.**
      3. **In accordance with regulations 4(3)(b)(i) and 4(3A) of the Deemed Provisions of Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015, proceed with the Policy without modifications, and submit the proposed Local Planning Policy – Trees on Private Land to the Western Australian Planning Commission for approval.**

**Voting Requirement**

Simple Majority.

**Background**

**Draft Scheme Amendment**

At its Ordinary Meeting held on 28 June 2022, Council resolved to adopt Scheme Amendment 12 for advertising purposes.

In accordance with the above, the Amendment was referred to the Environmental Protection Authority, which determined it was not required to be assessed under part IV of the Environmental Protection Act.

The Amendment was referred to the 30 August 2022 WAPC Statutory Planning Committee for a review where it was resolved:

1. That the preferred approach regarding tree retention on private land is through the implementation of a significant tree register under Local Planning Schemes;
2. To acknowledge the intent of the City of Nedlands to provide protection for existing trees on private land within the local government area;
3. To advise the City of Nedlands that it is strongly encouraged to modify Amendment No. 12 to facilitate the preparation of a significant tree register, consistent with the City of Subiaco and Town of Mosman Park local planning schemes and to achieve consistency in local planning scheme content responding to the retention of trees on private land; and
4. To advise Council that Amendment No. 12 to the City of Nedlands Local Planning Scheme No. 3 is suitable for advertising in accordance with regulation 38 of the Planning and Development (Local Planning Schemes) Regulations 2015.

The Commission’s resolution is discussed below.

**Draft Local Planning Policy**

At the 23 August 2022 Ordinary Council Meeting, Council resolved to adopt the Policy for advertising purposes.

**Discussion**

**WAPC Response**

The WAPC has taken the position that the City should be encouraged to adopt a significant tree register, consistent with other local governments, rather than the Amendment. The WAPC resolution acknowledging that the City is attempting to provide protection for trees on private land is welcome. However, there is a discrepancy between the City’s intent and the WAPC’s interpretation of the Amendment’s purpose. The City is attempting to maintain an urban forest over a large area, not just retain individual trees. This is an important distinction that necessitates a different method from a tree register.

Preparation of the Amendment was informed by research into the tree retention approaches of other local governments within the State and across Australia. A major finding from this research was that mechanisms which rely on voluntary nominations of trees from the public, such as significant tree registers, do little to maintain and enhance tree canopy at a City-wide level. This can be seen in the table below, which demonstrates that this mechanism results in a relatively small number of trees being protected on private land, irrespective of whether landowner consent is required.

|  |  |  |
| --- | --- | --- |
| **Significant Tree Registers** | | |
| **Description:** The significant tree register approach involves establishing the criteria of a significant tree, the process for nominating a tree for the register, and the statutory protections for those trees. The criteria typically focus on trees which are considered exceptional for reasons of rarity, aesthetics, ecology or cultural/social significance. Some local governments require consent from the affected landowner for a tree to be nominated and placed on the list, while others allow nominations without landowner consent. | | |
| **Local government** | **Landowner consent required** | **Number of listed trees on private land** |
| Bassendean | No | 16 |
| Bayswater | No | 0 |
| Cockburn | No | 3 |
| Fremantle | Yes | 7 |
| Mandurah | No | 25 |
| South Perth | Yes | 2 |
| Victoria Park | No | 10 |
| Vincent | Yes | 6 |

Significant tree registers are designed to capture outstanding specimens rather than maintain an overall urban canopy. To retain urban forest on a City-wide level, a planning mechanism is required which takes a broader approach to tree protection, rather than prioritising a small list of exceptional specimens. By applying to all trees which fit the outlined criteria, the Amendment achieves this requirement.

A significant tree register may be an appropriate method for local government to identify vegetation on reserved land which they control, but it is not adequate to halt or slow the wholesale removal of trees that occurs through development.

**Comments received**

There was a high level of support (91%) from the community, most of which voiced their support with no further comments. Of the submissions from landowners that would be directly impacted, there was also strong support (79%). Refer to **Attachment 2** for a schedule of submissions. Some concerns were raised by objectors (and a small percentage of supporters) which are addressed below.

1. The policy should go further and include land zoned higher than R20.

It is acknowledged that there is a Council resolution in relation to land zoned R25 to R80.

However, it is recommended that Council wait for the Minister for Planning to make her decision on the current amendment before a similar approach is tried on higher density codes.

2. Requiring trees to be trimmed in accordance with Australian Standards is onerous.

The Australian Standards for tree trimming are a set of national standards that can be adhered to and promote trimming procedures that facilitate healthy tree growth. The Standards are comprehensive and include diagrams for ease of reference.

It should be acknowledged that the trimming of a tree only relates to trees that meet the following criteria:

* + On a lot coded R20 or less
  + Canopy diameter of 6m or greater; or
  + Height of 8m or greater; or
  + In the case of a tree with a single trunk, a trunk circumference of 1.5m or greater, measured 1.4m above the ground; or
  + In the case of a tree with multiple trunks, a total trunk circumference of 1.5m or greater, with an average trunk circumference of 625 millimeters or greater, measured 1.4m above the ground.

3. The policy should provide incentives in addition to/instead of regulations.

Several submissions in opposition and some in support raised the concept that the policy should be focused more on incentives than further ‘red tape’ or restrictions to private landowner property rights.

Some incentives that have been proposed include reduced development application fees, part or full payment of arboricultural reports for maintaining trees or the ability for City staff to provide expert advice to landowners regarding the overall health of trees on private land.

The policy proposed is framed in a statutory and regulatory sense due to the nature and function of the planning framework. Any incentivisation will be enabled outside of the planning framework.

4. This is Council overreach of powers.

A local planning scheme is expressly authorised to deal with the preservation of trees under Schedule 7 of the Planning and Development Act 2005. The Amendment and Policy have been written in such a way as to permit discretion to remove trees, thereby remaining consistent with established case law and the principles of policy making that would aid in upholding any decision through the State Administrative Tribunal. Therefore, Council has the ability (subject to approval by the WAPC and/or Minister) of regulating trees on private land in this manner.

The submissions may suggest that the community at large and, more specifically, those landowners directly affected by the proposed policy measures, have a desire for a policy response that deals with the matter of tree retention on lots coded R20 and lower.

5. The City should focus more on their land (i.e. parks and verges) than pursue regulations to private land.

Retention of public trees is not, in itself, sufficient to replace trees lost on private land. The City has a tree retention and replacement policy that regulates trees on public property. Both the public and private spheres need to work together to protect urban forest and these approaches can occur simultaneously.

6. The City should focus more on replanting for new developments over protecting existing trees.

The current Volume 1 of the R-Codes includes minimum numbers of tree plantings for new development, though it is silent on the retention of existing trees, as well as the size and species of new trees. In order to provide long-term protection of urban forest canopy, it is necessary to incorporate both tree retention and tree replacement measures.

7. This will increase rates, as the implementation of the policy and compliance will cost time and money.

Assessment and compliance of the Amendment and Policy is not expected to significantly increase City costs. Such assessments will largely fall within the existing development application process and be included as part of the overall development application for a given lot. For example, removal of a tree will often be proposed concurrently with a new house and assessed within the same application. The City already has a qualified arborist and other technical specialists for trees on City property that can also provide input into matters regarding trees on private property.

Cost implications for landowners are not anticipated to be onerous. Many arborists will be familiar with the Australian Standards, thereby mitigating the need for a development application for tree trimming. Noting that there would be no planning approval required provided the cutting or trimming is carried out in accordance with the Australian Standards. That document goes into detail about how and where to cut limbs, how to make proper cuts that won’t harm the tree.

Officers anticipate that the majority of applications for a tree removal will be associated with an application for a new house or extensions to a house.

In the case of a new house an applicant already has to have a feature survey and the additional cost will come only for the arborist report. The arborist report is to cover only the trees on the lot and the neighbouring lots which may be affected and which meet the criteria of the Amendment for height, canopy, or diameter, etc.

In the case of an extension to a house, if it’s only a minor extension an applicant may not necessarily need a whole feature survey. They at least need a site plan notating where any trees that meet the Amendment criteria are located. This would be a standard development application cost for an extension with the additional costs incurred for the arborist report.

If an application is solely for removal of a tree with no other works it would be the cost of a standard Development Application being $147, plus the cost of an arborist report.

**Consultation**

In accordance with the City’s Local Planning Policy – Consultation, the Amendment and Policy were advertised for 60 days, from 10 October 2022 to 11 December 2022.

There were a total of 790 submissions received by the City. The overall level of support was 91%.

Of the submissions received, 247 were submitted by persons directly affected by the Amendment and Policy (i.e., properties within the City that were zoned either R20 or lower). The level of support among this sub-group was 79%.

**Matters raised at the Concept Forum of 21 February**

1. Other local Governments Approach

The Shire of Serpentine-Jarrahdale has a long-standing clause in their scheme that a DA is required for removal of trees meeting certain criteria (height, canopy, diameter).

The City of South Perth and the City of Bassendean are undergoing scheme reviews and attempted to put some tree protections into their scheme. The WAPC required that those provisions be removed prior to the Scheme being advertising.

A number of local governments have policies associated with tree retention, however, a policy does not have the same level of enforcement as a provision within the Planning Scheme.

1. Details on how the ‘unwanted tree’ list was developed?

The City engaged the services of the Arbor Centre to provide guidance on an appropriate list of unwanted species for Nedlands. Advice was also solicited from Professor Hans Lambers of UWA. The list includes tree species that are considered weeds or invasive species.

A lemon scented gum is not detrimental to the local ecology and thus was not included on the list of unwanted species.

1. Can consideration be given within the policy for solar access?

Clause 5.2 of the Policy refers to consideration given to when a tree would be considered for removal, which Clause 5.2.1b stating *“Redesign of the development to support tree retention is not feasible”.* A situation of an existing tree and existing solar panels would be assessed under this clause.

1. What fines would apply for removing a tree without development approval?

Removal of a tree without development approval would be considered an offence under section 218(a) of the Planning and Development Act 2005 as the provisions of a local planning scheme would be been contravened.

Section 223 of the Act provides for a general penalty for an offence. This penalty is $200,000 and in the case of a continuing offence, an additional fine of $25,000 per day. Prosecution under section 218 requires action in the Magistrate’s Court.

An alternative to prosecution is to give a Planning Infringement Notice under section 228 of the Act. The modified penalty for an infringement of section 218 of the Act is $500 (as set out in regulation 42 of the Planning and Development Regulations 2009). This is a once-off fine for an ‘infringement’, in this case contravening a local planning scheme. Payment of the modified payment is considered to be payment of any penalty that may have been applied should the matter have been determined by a Court. Therefore, payment of the modified penalty within the specified due date negates any further penalty from being applied for the offence.

**Strategic Implications**

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

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

**Values** **Healthy and Safe**

Our City has clean, safe neighbourhoods where public health is protected and promoted.

**Great Natural and Built Environment**

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

**Reflects Identities**

We value our precinct character and charm. Our neighbourhoods are family-friendly with a strong sense of place.

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

**Budget/Financial Implications**

It is anticipated that this change will incur a minor increase in Administration costs to assess trees. Most assessments will take place in the context of a development application that includes other development rather than as an additional stand-alone application.

**Legislative and Policy Implications**

The Policy and the Amendment have been prepared in accordance with the [Planning and Development (Local Planning Schemes) Regulations 2015](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_s46246.html). Under the Regulations, Scheme Amendments, and policies that seek to modify certain aspects of the R-Codes, must be approved by the Western Australian Planning Commission.

**Decision Implications**

Under Regulation 41(3) the local government must pass a resolution to: support the Amendment, to support the Amendment with proposed modifications to address issues raised in the submissions, or to not support the Amendment.

If Council adopts the recommendation to support the Amendment, the Amendment and Policy will be referred to the Western Australian Planning Commission for a final decision by the Minister. Clause 5.5 of the Policy seeks to modify the R-Codes provisions for landscaping, which also requires Commission approval. The remaining Policy provisions are structured such that they will only come into effect should the Commission approve the Amendment.

If Council does not wish to adopt the Amendment and Policy then Council will need to resolve to not support the Amendment and Policy. The recommendation and required documentation will then be sent to the WAPC for a final decision by the Minister.

If Council modifies the Amendment or the Policy it will be referred to the WAPC. However, if the local government is of the opinion that the modification is significant, the Amendment will also have to be readvertised before once again being considered by Council. That final Amendment will then be referred to the WAPC for a final decision.

**Conclusion**

Officers recommend that Council adopt both the Amendment and associated Policy with these being referred to the WAPC for further consideration.

**Further Information**

Nil.

# PD10.03.23 Consideration of Adoption of draft Hampden-Hollywood Precinct Local Planning Policy

|  |  |
| --- | --- |
| **Meeting & Date** | Council – 28 March 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest in this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Draft Hampden-Hollywood Precinct Local Planning Policy 2. Summary of Submissions and Officer Responses |

**Purpose**

The purpose of this report is for Council to consider final adoption of the draft Hampden-Hollywood Precinct Local Planning Policy (the Policy), found in **Attachment 1.**

**Recommendation**

**That Council:**

1. **adopts those elements of the draft Hampden-Hollywood Precinct Local Planning Policy (Attachment 1) that do not require Western Australian Planning Commission approval in accordance with regulation 4(3) of the Deemed Provisions of Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015; and**
2. **requests the CEO to give notice to the Western Australian Planning Commission (WAPC) requesting approval to amend elements of the Residential Design Codes Volumes 1 and 2 within the draft Hampden-Hollywood Precinct Local Planning Policy (Attachment 1) and adopts these elements in the event of WAPC approval.**

**Voting Requirement**

Simple Majority.

**Background**

Currently, the only built form controls in place for the Hampden-Hollywood precinct are the Residential Design Codes (R-Codes). The Policy seeks to provide an appropriate response to built form controls within the Hampden-Hollywood precinct, acknowledging the role it plays in the UWA/QEII Specialised Activity Centre as well as the future growth of the City. It is not seeking to make changes to the zoning and R-coding gazetted in the City’s Local Planning Scheme 3.

The Policy has been developed as a result of extensive research and consultation with community and industry experts to provide appropriate built form outcomes for the Hampden-Hollywood Precinct.

In June 2021 the City engaged consultants to undertake built form modelling work for the Hampden-Hollywood Precinct. Using elements of the built form modelling, Community Reference Groups were convened, and broader community engagements where conducted. This community engagement allowed residents to provide input on the desired future character of the precinct.

Provisions within the Policy are a combined result of the built form modelling, community engagement outcomes and technical input. The Policy was adopted for advertising at the Ordinary Council Meeting of 28 June 2022. The Policy was advertised from 15 August 2022 to 25 September 2022 and the community were invited to comment on the draft Policy. The submissions received have been taken into consideration in the preparation of the Policy and a summary is included in **Attachment 2**.

**Discussion**

Most of the Policy will come into effect once Council adopts the Policy and gives public notice. However, the Policy seeks to amend some elements of the R-Codes Volumes 1 and 2 that require the additional approval of the Western Australian Planning Commission (WAPC).

The following elements of the Policy require WAPC approval before they will come into effect and are highlighted in the Policy within **Attachment 1**:

**General Provisions**

Clause 4.2: Sustainability

Clause 4.4: Landscaping

Clause 4.7: Vehicle Access (Volume 1 - Single houses and grouped dwellings only)

Clause 4.8: Car and Bicycle Parking

Clause 4.10: Noise Mitigation

**5.1.3 Primary Controls**

Side and rear setbacks for Single and Grouped Dwellings Residential R40 / R60 / R160 being the following clauses:

Clauses DC 1.4 and 1.5

Clauses DC 2.4, 2.5 and 2.6

Clauses DC 3.4 and 3.5

**Tree Canopy and Deep Soil Areas**

5.1.4 Residential Precinct – Multiple Dwellings – Clause 3.3

5.2.3 Mixed Use – Clause 3.3

**Lot Boundary Setbacks**

5.1.5 (b) Residential Precincts – Single and Grouped Dwellings

**Landscaping**

5.1.5 Single Houses and Grouped Dwellings

**Communal Open Space**

5.2.3 Mixed Use Zone

**Car and Bicycle Parking**

5.2.3 Mixed Use Zone

**Mixed Use**

5.2.3 Mixed Use Zone

In the event of the WAPC approving the elements listed above, they will come into effect at that point in time.

Notwithstanding the elements of the Policy which require WAPC approval, there are significant elements within the Policy which strengthen the Council position when determining applications or providing a recommendation to other bodies such as JDAP. These include:

* Desired Future Character Statements
* Building heights
* Front setbacks
* Façade design

**Modifications to the Policy**

The following modifications have been made to the Policy following advertising:

* The Precinct maps contained in the advertised Policy were inconsistent with the Scheme. This has been rectified.
* Maximum solar absorptance ratings were added to Clause 4.5.2 to strengthen the Policy provision to avoid dark roof materials and reduce the urban heat island effect.
* The land-use “Tavern” as a preferred active land use has been removed from the Policy (Section 5.2.3 Clause 4.14 Mixed Use). A tavern is still a use that can be considered in this location. However, given the nearby residential land uses, it is not considered appropriate to identify it in the Policy as a “preferred” land use.
* Several general provisions relating to landscaping have been moved to the applicable sub-precinct acceptable outcomes and deemed-to-comply provisions sections of the Policy.
* The urban design and materiality provisions have been moved from the general provisions section to form Appendix 2 – Facades and Materials. The content of the provisions remains the same as advertised.
* Minor formatting changes have been made to the Policy post advertising to establish clarity and consistency in Policy wording and structure.

**Consultation**

Following adoption for advertising at the Ordinary Council Meeting of June 2022 the Policy was advertised in accordance with the City’s Consultation of Planning Proposals Local Planning Policy, which involved the following:

* 42-day advertising period
* Letters to notify owners and occupiers within the precinct
* Notice in the ‘Post’ newspaper on the 13 August 2022
* Notice on the City’s Notice Board
* Notice on the City’s Your Voice engagement portal
* Social media
* Community engagement session held on 1 September 2022

The community engagement session was attended by six people. During this session the community had the opportunity to view the Policy and supporting documents. There were officers from the City available to address any questions community members had.

During the 42-day advertising period nine submissions were received by the City. Four opposed the Policy, three supported the Policy and two submissions neither opposed nor supported the Policy but provided comment. A summary of the submissions along with officer comments can be found at **Attachment 2**.

The following are the key issues raised during the advertising period:

1. Concerns with the density and R-Code designations within the Precinct.

Officer Response

The Policy does not propose to alter the zoning or R-Coding under the City’s Local Planning Scheme No. 3. It is beyond the scope of a Policy to change the R-Coding applied to a property; a Scheme Amendment would be required to implement such a change.

1. Lack of Public Open Space

Officer Response

The City is currently preparing a Public Open Space Strategy and associated Policy. Ahead of that work this Policy highlights the potential requirement for new developments to make a contribution to additional public open space, potentially via a cash-in-lieu contribution. This informational clause will be strengthened by the adoption of a Public Open Space Strategy and Policy.

1. Traffic and parking congestion will increase

Officer Response

Submissions referenced existing traffic and parking congestion which would be exacerbated by further high density development. The mix of transport modes being encouraged within the Precinct was also challenged, where it was suggested by several submitters that provision for motorcycle and scooter parking was needed in the Policy.

The Policy introduces the requirement for the provision of bicycle parking for non-residential land use as well as upgrading the car parking requirements for such land uses. Residential parking provisions are to be in accordance with the R-Codes, with the additional requirement that 50 per cent of the residential parking bays be electrical vehicle charging stations (subject to WAPC approval).

1. Standard of laneways

Officer Response

Comments were received in relation to the standard and safety of laneways within the precinct. With increased traffic and services using the laneways suggestions were made that the laneways should be paved and lit. Infrastructure in the public domain, such as laneways and lighting, is an asset management consideration undertaken by Council during the budget process. Through the subdivision process, lots fronting the laneway will be required to have a pedestrian access leg to the main street frontage.

**Matters raised at the Concept Forum of 21 February**

1. Can the City limit roof terraces via these policies in response to noise concerns?

Noise is regulated by the Environmental Protection (Noise Regulations) 1997. The provision of the communal space on the roof can be an appropriate outcome with some designs. In the event of a roof terrace being provided, the requirements of the Noise regulations will need to be complied with.

1. Can the definition for a large tree be provided?

A large tree has been defined in the Precinct Policy (Clause 4.4.5) and the R-Codes Vol. 2 as having the following at maturity: an indicative canopy diameter of greater than 9m and nominal height of greater than 12m.

1. Can future provision of sustainability initiatives be included in the policies e.g. car charging?

The wording of Clause 4.2.5 of the Policy has been amended to the following, in order to make it clear that the desired outcome is 50 per cent of bays are to have charging points and the infrastructure is to be provided so that in the future, the balance of the bays can easily be converted to bays with charging points:

For all Mixed Use, Group Dwelling and Multiple Dwelling development applications, electrical vehicle charging are to be provided at a minimum rate of 50 per cent of total residential bays.

Where this charging infrastructure has not be provided, electrical supply and car park distribution boards are to allow for future capacity to supply electric vehicle charging points to the remainder of the car parking bays.

1. Can the City quantify the changes to commercial parking requirements from the status quo?

Clause 4.9.3 within the Policy addresses non-residential parking provisions, with reference to Appendix 3. The parking requirements in the Policy seek to simplify and modernise the parking policy provisions for preferred land uses, as well as include requirements for bicycle bays.

Parking requirements contained within the Policy for office land uses is proposed to be 1 car bay per 40m2 of Net Lettable Area (NLA) with the addition of 1 bicycle space per 200m2 of NLA. This is a change from the current parking policy provisions of 4.75 per 100m2 of NLA, with 2 spaces in every 3 to be set aside for employees.

Requirements for a Restaurant or Café is proposed to change from 1 per 2.6m2 of restaurant seating area or 1 per 2 persons (whichever is greater) and for a shop, requirements in the current parking policy is 8.3 per 100m2 of NLA, with 1 space in every 4 to be set aside for employees. The Policy seeks to simplify these requirements by requiring 1 car bay per 30m2 of NLA and 1 bicycle space per 30m2 of NLA.

1. Consideration of excluding solar panels from being included as dark roofing

The opening sentence of Clause 4.5.2 has been modified to read:

To reduce the urban heat island effect and to integrate with the prevailing streetscape, roof materials are to have the following maximum solar absorptance ratings (photovoltaic panels or similar are excluded from this provision):

**Discussions with WAPC**

Officers from the City met with representatives from the Department of Planning, Lands and Heritage (DPLH) on two occasions to discuss the Policy and proposed amendments to R-Code provisions requiring their approval, as outlined in the discussion above. The draft Policy proposes general provisions relating to sustainability which seek to exceed the R-Codes and National Construction Code provisions. These provisions echo community input from the engagement process during Policy development and in accordance with Council’s direction. As outlined above in the Discussion, these elements (General Provisions 4.2) will come into effect should approval be granted by the WAPC.

In line with Council’s resolution of 24 May 2022, a discussion paper on the merits and implications of the Policy’s proposed green star rating for building sustainability will be prepared to strengthen the City’s position. Conversations with DPLH have indicated that the WAPC is unlikely to support sustainability initiatives for residential development that go beyond the existing R-Codes provisions and the National Construction Codes.

Provisions for landscaping, tree canopy and deep soil areas are other significant elements which will require WAPC approval. The position of the WAPC on these provisions is unknown. The Policy proposes a minimum of 20% of each site area to be provided as landscaping. A minimum 15% of the total site area is to be deep soil area. The required deep soil areas may be reduced by 5% where a significant existing tree is retained on site or a large tree is planted on site. This is a significant increase on the acceptable outcomes outlined in the R-Codes Vol. 2, which requires a minimum 10% deep soil area or 7% if existing tree(s) are retained on site. The requirements within the Policy are linked to the front and rear setback provisions and consistent with community feedback received.

While the Council, via the Policy, controls the front setback settings the WAPC is required to approve amendments to the side and rear setbacks for single and grouped dwellings (Clause 5.1.3 Primary Controls within the Policy). If the WAPC does not approve the proposed rear setbacks outlined in the Policy it may impact upon the landscaping provisions.

**Strategic Implications**

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

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

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

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

**Reflects Identities**

We value our precinct character and charm. Our neighbourhoods are family-friendly with a strong sense of place.

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

Encouraging sustainable building

**Budget/Financial Implications**

Minor expense will be attributed to typesetting of the Policy. This expense will be accommodated by the adopted Urban Planning budget.

**Legislative and Policy Implications**

The preparation and adoption of a built form local planning policy provides for clearer guidance on built form requirements for the Hampden-Hollywood Precinct.

Regulation 4(3) of the Deemed Provisions of Schedule 2 of the [*Planning and Development (Local Planning Schemes) Regulations 2015*](https://www.wa.gov.au/government/document-collections/planning-and-development-local-planning-schemes-regulations-2015) allows the City to prepare a local planning policy in respect to any matter related to the planning and development of the Scheme area. Following the advertising period, the policy is to be presented back to Council to consider any submissions received and to:

1. Proceed with the Policy without modification; or
2. Proceed with the Policy with modification; or
3. Not proceed with the Policy.

Regulation 4(3A) of the Deemed provisions has the effect that elements of the Policy requiring WAPC approval will not come into effect unless and until the WAPC has granted approval.

**Decision Implications**

If Council resolves to endorse the recommendation, then elements of the Policy not requiring WAPC approval will come into effect immediately upon giving public notice. Those elements requiring approval by the WAPC will not come into effect until the WAPC has granted approval. If the WAPC requires substantial amendments, those amendments will be referred back to Council for review before taking effect.

If Council does not endorse the recommendation the Policy will not progress.

Therefore, if Council resolves not to endorse the recommendation of this report, there will be no Policy in place with specific built form controls for the Hampden-Hollywood Precinct. All built form controls will remain as per the existing R-Codes.

**Conclusion**

After significant research and consultation with the community, the resulting Hampden-Hollywood Precinct Local Planning Policy provides a contextually appropriate and nuanced built form guide for the growth of the precinct. As such, it is recommended that Council adopt the recommendation to endorse the Policy.

**Further Information**

Nil.

# PD11.03.23 Consideration of Adoption of draft Broadway Precinct Local Planning Policy

|  |  |
| --- | --- |
| **Meeting & Date** | Council – 28 March 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest in this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Draft Broadway Precinct – Local Planning Policy 2. Summary of Submissions and Officer Responses |

**Purpose**

The purpose of this report is for Council to consider final adoption of the draft Broadway Precinct Local Planning Policy (the Policy), found in **Attachment 1.**

**Recommendation**

**That Council:**

1. **adopts those elements of the draft Broadway Precinct Local Planning Policy (Attachment 1) that do not require Western Australian Planning Commission approval in accordance with regulation 4(3) of the Deemed Provisions of Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015;**
2. **requests the CEO to give notice to the Western Australian Planning Commission (WAPC) requesting approval to amend elements of the Residential Design Codes Volumes 1 and 2 within the Policy the draft Broadway Precinct Local Planning Policy (Attachment 1) and adopts these elements in the event of the WAPC approval; and**
3. **revokes the Local Planning Policy – Interim Built Form Design Guidelines – Broadway Mixed Use Zone.**

**Voting Requirement**

Simple Majority.

**Background**

This Policy will replace the existing Interim Built Form Design Guidelines – Broadway Mixed Use Zone Policy. The new Policy seeks to provide an appropriate response to built form controls within the Broadway Precinct acknowledging the role it plays in the UWA/QEII Specialised Activity Centre, as well as the future growth of the City. It is not seeking to make changes to the zoning and R-coding gazette in the City’s Local Planning Scheme 3.

The Policy has been developed as a result of extensive research and consultation with community and industry experts to provide appropriate built form outcomes for the Broadway Precinct.

In January 2020 the City engaged consultants to undertake built form modelling for the Broadway Precinct. This work produced a local distinctiveness study, context analysis, modelling and built form controls. Using elements of the built form modelling, Community Reference Groups were convened and broader community engagements where conducted. This community engagement allowed residents to provide input on the desired future character of the Broadway Precinct.

Provisions within the Policy are a combined result of the built form modelling, character and context study, community engagement outcomes and technical input. The Policy was adopted for advertising at the Ordinary Council Meeting of 28 June 2022. The Policy was advertised from 15 August 2022 to 25 September 2022 and the community were invited to comment on the draft Policy. The submissions received have been taken into consideration in the preparation of the Policy and a summary is included in **Attachment 2**.

**Discussion**

Most of the Policy will come into effect once Council adopts the Policy and gives public notice. However, the Policy seeks to amend some elements of the R-Codes Volumes 1 and 2 that require Western Australian Planning Commission (WAPC) approval.

The following elements of the Policy require WAPC approval to come into effect and are highlighted in the Policy within **Attachment 1**:

**General Provisions**

Clause 4.2: Sustainability

Clause 4.4: Landscaping

Clause 4.7: Vehicle Access (Volume 1 – Single houses and grouped dwellings only)

Clause 4.8: Car and Bicycle Parking

**5.1.3 Primary Controls**

Side and rear setbacks for Single and Grouped Dwellings Residential R40 / R60 / R160 being the following clauses:

Clauses DC 1.4 and 1.5

Clauses DC 2.4 and 2.5

Clauses DC 3.4 and 3.5

**Tree Canopy and Deep Soil Areas**

5.1.4 Residential Precinct – Multiple Dwellings

5.2.4 Stirling Highway

5.3.4 Broadway

**Landscaping**

5.1.5 Single Houses and Grouped Dwellings

**5.2.4 – Stirling Highway**

4.14 Mixed Use

**5.3.4 – Broadway Main Street**

3.9 Car and bicycle parking

4.14 Mixed Use

In the event of the WAPC approving the elements listed above, they will come into effect at that point in time.

Notwithstanding the elements of the Policy which require WAPC approval, there are significant elements within the Policy which strengthens the Council position when determining applications or proving a recommendation to other bodies such as JDAP. These include:

* Desired Future Character Statements
* Building heights
* Front setbacks
* Façade design (Stirling Highway and Broadway)
* Vehicle access (Stirling Highway and Broadway)

**Modifications to the Policy**

The following modifications have been made to the Policy following advertising:

* Maximum solar absorptance ratings were added to Clause 4.5.2 to strengthen the Policy provision to avoid dark roof materials and reduce the urban heat island effect.

* The land-use “Tavern” as a preferred active land use has been removed from the Policy (Section 5.2.3 Clause 4.14 Mixed Use). A tavern is still a use that can be considered in this location, given the nearby residential land uses, it is not considered appropriate to identify it in the Policy as a “preferred” land use.
* Minor formatting changes have been made to the Policy post advertising to establish clarity and consistency in Policy wording and structure.

**Consultation**

Following adoption for advertising at the Ordinary Council Meeting of June 2022 the Policy was advertised in accordance with the City’s Consultation of Planning Proposals Local Planning Policy, which involved the following:

* 42-day advertising period
* Letters to notify owners and occupiers within the precinct
* Notice in the ‘Post’ newspaper on the 13 August 2022
* Notice on the City’s Notice Board
* Notice on the City’s Your Voice engagement portal
* Social media
* Community engagement session held on 31 August 2022

The community engagement session was attended by twelve people. During this session the community had the opportunity to view the Policy and supporting documents. There were officers from the City available to address any questions community members had.

During the 42-day advertising period seven submissions were received by the City. Three opposed the Policy, one supported the Policy and three submissions neither opposed nor supported the Policy but provided comment. A summary of the submissions along with officer comments can be found at **Attachment 2.**

The following are the key issues raised during the advertising period:

1. Insufficient transition between R-AC3 on Broadway and adjoining properties on Kingsway – density on Kingsway should be increased from R60 to R80 or R160.

Officer Response

Changes to the densities contained in LPS3 are beyond the scope of this Policy. Built form transition between Broadway and Kingsway has been a key consideration in Policy development, with increased rear setbacks and provision for deep soil areas and trees in the rear setback area. Policy provisions for apartments have been developed to contribute to the desired future character of the precinct while respecting the existing character by limiting apartment building heights to 3 storeys and increase the rear setback to an average of 4m as opposed to the current acceptable outcome of 3m.

Density changes can only be achieved through a Scheme Amendment, not a Policy.

1. Apartments are not supported on Kingsway. Single houses and grouped dwellings are more appropriate and should be increased to 3 storeys.

Officer response

Provisions for 3 storey grouped dwellings were not supported by Council when the draft Policy was adopted for advertising due to the concern that they would not be consistent with the existing character of the area. Given the Policy has been advertised with the 2 storey element, it is not proposed that this provision be modified at this point in time. When the State Government’s Medium Density Codes are released, it may be necessary for this provision to be reviewed.

**Matters raised at the Concept Forum of 21 February**

1. Can the City limit roof terraces via these policies in response to noise concerns?

Noise is regulated by the Environmental Protection (Noise Regulations) 1997. The provision of the communal space on the roof can be an appropriate outcome with some designs. In the event of a roof terrace being provided, the requirements of the Noise regulations will need to be complied with.

1. Can the definition for a large tree be provided?

A large tree has been defined in the Precinct Policy (Clause 4.4.5) and the R-Codes Vol. 2 as having the following at maturity: an indicative canopy diameter of greater than 9m and nominal height of greater than 12m.

1. Can future provision of sustainability initiatives be included in the policies e.g. car charging?

The wording of Clause 4.2.5 of the Policy has been amended to the following, in order to make it clear that the desired outcome is 50 per cent of bays are to have charging points and the infrastructure is to be provided so that in the future, the balance of the bays can easily be converted to bays with charging points:

For all Mixed Use, Group Dwelling and Multiple Dwelling development applications, electrical vehicle charging are to be provided at a minimum rate of 50 per cent of total residential bays.

Where this charging infrastructure has not be provided, electrical supply and car park distribution boards are to allow for future capacity to supply electric vehicle charging points to the remainder of the car parking bays.

1. Can the City quantify the changes to commercial parking requirements from the status quo?

Clause 4.8.3 within the Policy addresses non-residential parking provisions, with reference to Appendix 3. The parking requirements in the Policy seek to simplify and modernise the parking policy provisions for preferred land uses, as well as include requirements for bicycle bays.

Parking requirements contained within the Policy for office land uses is proposed to be 1 car bay per 40m2 of Net Lettable Area (NLA) with the addition of 1 bicycle space per 200m2 of NLA. This is a change from the current parking policy provisions of 4.75 per 100m2 of NLA, with 2 spaces in every 3 to be set aside for employees.

Requirements for a Restaurant or Café is proposed to change from 1 per 2.6m2 of restaurant seating area or 1 per 2 persons (whichever is greater) and for a shop, requirements in the current parking policy is 8.3 per 100m2 of NLA, with 1 space in every 4 to be set aside for employees. The Policy seeks to simplify these requirements by requiring 1 car bay per 30m2 of NLA and 1 bicycle space per 30m2 of NLA.

1. Consideration of excluding solar panels from being included as dark roofing

The opening sentence of Clause 4.5.2 has been modified to read:

To reduce the urban heat island effect and to integrate with the prevailing streetscape, roof materials are to have the following maximum solar absorptance ratings (photovoltaic panels or similar are excluded from this provision):

**Discussions with WAPC**

Officers from the City met with representatives from the Department of Planning, Lands and Heritage (DPLH) on two occasions to discuss the Policy and proposed amendments to R-Code provisions requiring their approval, as outlined in the discussion above. The draft Policy proposes general provisions relating to sustainability which seek to exceed the R-Codes and National Construction Code provisions. These provisions echo community input from the engagement process during Policy development and in accordance with Council’s direction. As outlined above in the Discussion, these elements (General Provisions 4.2) will come into effect should approval be granted by the WAPC.

In line with Council’s resolution of 24 May 2022 a discussion paper on the merits and implications of the Policy’s proposed star rating for building sustainability will be prepared to strengthen the City’s position. Conversations with DPLH have indicated that the WAPC is unlikely to support sustainability initiatives for residential development that go beyond the existing R-Codes provisions and the National Construction Codes.

Provisions for landscaping, tree canopy and deep soil areas are other significant elements which will require WAPC approval. The position of the WAPC on these provisions are unknown. The policy proposes a minimum of 20% of each site area to be provided as landscaping. A minimum 15% of the total site area is to be deep soil area. The required deep soil areas may be reduced by 5% where a significant existing tree is retained on site or a large tree is planted on site. This is a significant increase on the acceptable outcomes outlined in the R-Codes Vol. 2, which requires a minimum 10% deep soil area or 7% if existing tree(s) are retained on site.

The requirements within the Policy are linked to the front and rear setback provisions and consistent with community feedback received. While the Council, via the Policy, controls the front setback, the WAPC is required to approve amendments to the side and rear setbacks for single and grouped dwellings (Clause 5.1.3 Primary Controls within the Policy). If the WAPC does not approve the proposed rear setbacks outlined in the Policy it may impact upon the landscaping provisions.

**Strategic Implications**

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

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

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

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

**Reflects Identities**

We value our precinct character and charm. Our neighbourhoods are family-friendly with a strong sense of place.

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

Encouraging sustainable building

**Budget/Financial Implications**

Minor expense will be attributed to typesetting of the Policy. This expense will be accommodated by the adopted Urban Planning budget.

**Legislative and Policy Implications**

The preparation and adoption of a built form local planning policy provides for clearer guidance for on built form requirements for the Broadway Precinct area.

Clause 3(1) of the Deemed Provisions of Schedule 2 of the [*Planning and Development (Local Planning Schemes) Regulations 2015*](https://www.wa.gov.au/government/document-collections/planning-and-development-local-planning-schemes-regulations-2015) allows the City to prepare a local planning policy in respect to any matter related to the planning and development of the Scheme area. Following the advertising period, the Policy is to be presented back to Council to consider any submissions received and to:

1. Proceed with the Policy without modification; or
2. Proceed with the Policy with modification; or
3. Not proceed with the Policy.

Regulation 4(3A) of the Deemed provisions has the effect that elements of the Policy requiring WAPC approval will not come into effect unless and until the WAPC has granted approval.

**Decision Implications**

If Council resolves to endorse recommendation elements of the Policy not requiring WAPC approval will come into effect immediately. Those elements requiring approval by the WAPC will not come into effect upon receiving the approval. If the WAPC requires substantial amendments, those amendments will be referred back to Council for review before taking effect.

If Council doesn’t endorse the recommendation the Policy will not progress.

Local Planning Policy – Interim Built Form Design Guidelines – Broadway Mixed Use Zone

At the 26 May 2020 Ordinary Council Meeting (Item PD18.20), Council adopted the Local Planning Policy – Interim Built Form Design Guidelines – Broadway Mixed Use Zone. Though the policy was adopted, it is not currently being given weight in the assessment of development applications on Broadway, because:

* The City has received legal advice casting significant doubt over many aspects of the Policy and whether they can be upheld through an appeal.
* The Policy was not based on built form modelling, as recommended by the State Design Review Panel.
* The Policy is considered to be inconsistent with the Scheme as it undermines the intent of the Mixed Use zone and is inconsistent with the Scheme provisions and density coding.

Therefore, if Council resolves not to endorse the recommendation of this report, there will be no Policy in place with specific built form controls for the Broadway Precinct that could be given weight in a planning assessment. Effectively, all built form controls will remain as per the existing R-Codes.

**Conclusion**

After significant research and consultation with the community, the resulting Broadway Precinct Local Planning Policy provides a contextually appropriate and nuanced built form guide for the growth of the Broadway Precinct. As such, it is recommended that Council adopt the recommendation to endorse the Policy.

**Further Information**

Nil.

# PD12.03.23 Consideration of Development Application – Residential - Four Grouped Dwellings at 10 Louise Street, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 March 2023 |
| **Applicant** | Sincerity Development Pty Ltd |
| **Information Provided** | All relevant information required for this assessment has been provided by the applicant. |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans dated 23 February 2023 3. Architectural Perspective 4. CONFIDENTIAL ATTACHMENT - Submissions |

**Purpose**

The purpose of this report is for Council to consider a development application for four grouped dwellings at 10 Louise Street, Nedlands. This proposal is being presented to Council for consideration due to the proposal receiving objections within the consultation period.

**Recommendation**

**That Council in accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 23 February 2023 for four grouped dwellings at 10 Louise Street, Nedlands, subject to the following conditions:**

**General Conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 23 February 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.**
2. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**
3. **Prior to occupation of the development, a notification pursuant to Section 70A of the Transfer of Land Act 1893 shall be prepared at the expense of the owner and registered against the Certificate of Title to the land the subject of the proposed development advising the owners and subsequent owners of the land of the following matter(s):**

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

1. **Prior to the issue of a building permit, a Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction process to the satisfaction of the City.**
2. **Prior to occupation, the screening on terraces for Unit 2 and Unit 3 shall be screened in accordance with the Residential Design Codes by either;** 
   1. **fixed and obscured glass to a height of 1.6 metres above finished floor level; or**
   2. **fixed screening devices to a height of 1.6 meters above finished floor level that are at least 75% obscure and made of a durable material; or**
   3. **a minimum sill height of 1.6 metres above the finished floor level; or**
   4. **an alternative method of screening approved by the City of Nedlands.**

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

1. **Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:**
   1. **Face brick;**
   2. **Painted render;**
   3. **Painted brickwork; or**
   4. **Other clean finish as specified on the approved plans.**

**And are to be thereafter maintained to the satisfaction of the City of Nedlands**

1. **Prior to occupation, landscaping shall be completed in accordance with the approved plans dated 23 February 2023 or any approved modifications to the satisfaction of the City of Nedlands. All landscaped areas are to be maintained on an ongoing basis for the life of the development on the site to the satisfaction of the City of Nedlands.**
2. **The street tree(s) within the verge in front of the lot are to be protected and maintained through the duration of the demolition and construction process to the satisfaction of the City of Nedlands. Should the tree(s) die or be damaged, they are to be replaced with a specified species at the owner’s expense and to the satisfaction of the City of Nedlands.**
3. **Prior to occupation, the applicant is to plant one tree, with a minimum size of 35L, located on the Louise Street verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.**
4. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.**

**Voting Requirement**

Simple Majority.

This report is of a quasi judicial nature as it is a matter that directly affects a person’s rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications and other decisions that may be appealable to the State Administrative Tribunal.

The decision must be made in a manner that is impartial, free from bias, and in accordance with the principles of natural justice. The decision must be made in having regard to the facts of the matter under consideration, and in accordance with the relevant laws and policies as they apply to that matter.

Discretionary considerations and judgments in the decision must be confined to those permitted to be considered under the laws and polices applicable to the matter and given such weight in making the decision as the relevant laws and polices permit them to be given.

**Background**

**Land Details**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R160 |
| **Land area** | Parent Lot: 1,012m2  Strata Lot 1: 214 m2  Strata Lot 2: 216 m2  Strata Lot 3: 217 m2  Strata Lot 4: 213 m2 |
| **Land Use** | Residential  (Grouped Dwellings) |
| **Use Class** | ‘P’ – Permitted Use |

The site is located at 10 Louise Street, Nedlands and is 90m south of Stirling Highway (**Attachment 1**). The site has been recently subdivided into four strata lots and a common property driveway. The site is relatively flat with a slight fall of 0.6m from west (front) to east (rear).

The locality is predominantly characterised by single residential houses between one to two storeys. The properties in this area are coded R60 or R160 and are expected to undergo a gradual transition to a higher density and scale of development.

**Application Details**

The application seeks development approval for the construction of four grouped dwellings as follows:

Units 1 and 4 are two storey, contain four bedrooms and five bathrooms and have pedestrian entries directly accessed from Louise Street.

Units 2 and 3 are three storey, contain four bedrooms and four bathrooms and a rooftop terrace.

All units have vehicle access via a central driveway, which has been previously created as common property by subdivision of the land into 4 strata lots.

Following the public consultation period, amended plans were submitted to the City on 7 February 2023 (**Attachment 2**) to address concerns raised. The amendments to the development proposal include:

Reduction in roof pitch to Units 1 and 4 to increase views from the rear units to the Rose Gardens.

Unit 2 window to stairwell on the third floor along the northern elevation amended to a highlight window.

Unit 3 window to stairwell on the second and third floors along the southern elevation amended to a highlight window.

Amended landscaping plan to increase landscaping in common property and use more native plant species.

**Discussion**

**Assessment of Statutory Provisions**

If a proposal does not satisfy the deemed to-comply provisions of the State Planning Policy 7.3: Residential Design Codes (R-Codes), Council is required to exercise a judgement of merit to determine the proposal against the design principles of the R-Codes. The R-Codes require the assessment to consider the relevant design principle only and to not apply the corresponding deemed-to-comply provisions. It is recommended that the application be approved by Council as it is considered to satisfy the design principles of the R-Codes. Further, it is considered unlikely that the development will have a significant adverse impact on the local amenity and character of the locality.

**Local Planning Scheme No. 3**

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

**Design Review Panel**

The application was reviewed by the City’s Design Review Panel (DRP) on 6 December 2021 and 7 November 2022. A summary of the DRP advise is provided in the table below.

|  |  |  |
| --- | --- | --- |
| **DRP Design Quality Evaluation** | | |
|  | Supported | |
|  | Further Information Required | |
|  | Not supported | |
| SPP 7.0 Principles | 6 December 2021 | 7 November 2022 |
| 1. Context and Character |  |  |
| 1. Landscape Quality |  |  |
| 1. Built Form and Scale |  |  |
| 1. Functionality and Built Quality |  |  |
| 1. Sustainability |  |  |
| 1. Amenity |  |  |
| 1. Legibility |  |  |
| 1. Safety |  |  |
| 1. Community |  |  |
| 1. Aesthetics |  |  |

The proposal is considered to satisfy the outstanding SPP 7.0 design principles for the following reasons:

**Context and Character**

The surrounding locality is comprised of properties with an R160 code. The proposal appropriately responds to the characteristics typical of this density code. Additionally, the proposal features an increased primary street setback to respond to the existing character and development pattern of the street.

**Landscape Quality**

An amended landscape plan was provided following the DRP meeting to respond to the comments from the panel. Additional greenery was provided on site and along the common property driveway as well as the use of more native plant species. The proposal provides a balance of hard and soft landscaping features and meets the deemed-to-comply landscaping provisions of the R-Codes.

**Built Form and Scale**

The DRP comments on this principle noted that the development pushes building bulk to the external lot boundaries due to a centralised common property driveway. Given that the lot is already subdivided into this arrangement, it is acknowledged that this is difficult to mitigate. The elevations of the proposal have been designed with multiple articulations and openings to each storey which aids in the impact of building bulk. The three storey units are located to the rear of the site to minimise the impact of bulk and scale on the streetscape. The scale of the development does not adversely impact adjoining neighbours in terms of overshadowing or overlooking. On balance the proposal presents a built form and scale which is appropriate to the R160 code.

**Sustainability**

It is important to note that there are no specific sustainability requirements for grouped dwellings in accordance with the R-Codes. Notwithstanding, the development proposes that all dwellings will have a minimum energy rating of 7 stars as per the Nationwide House Energy Rating Scheme. Additionally waterwise plants are proposed to be installed throughout the development, with use of Australian native tree and plant species.

**Amenity**

The DRP comments on this principle noted concerns with the upper floor windows to habitable rooms which rely on highlight windows or opaque glazing, as this affects natural light, access to ventilation and outlook. Concerns were also noted regarding access to northern sunlight. Whilst the City acknowledges the validity of these concerns, there are currently no provisions in the currently operating R-Codes Volume 1 which address natural ventilation and solar access for residents of the development. The applicant has responded to some comments of the DRP by increasing the landscaping along the common property driveway to create an attractive view for occupants and from the streetscape. The roof pitch to Units 1 and 4 has also been decreased from 25 degrees to 18 degrees to increase views from the rear units to the Rose Gardens.

**Aesthetics**

The proposal is a contemporary design with contrasting renders and varying materials throughout the site. The design complements other approved developments in the immediate vicinity

**State Planning Policy 7.3 - Residential Design Codes – Volume 1**

The R-Codes apply to all single and grouped dwelling developments. An approval under the R-Codes can be obtained in one of two ways. This is by either meeting the deemed-to-comply provisions or via a design principle assessment pathway.

The proposed development is seeking a design principle assessment pathway for parts of this proposal relating to street setbacks, lot boundary setbacks, outdoor living areas and parking. As required by the R-Codes, Council, in assessing the proposal against the design principles, should not apply the corresponding deemed-to-comply provisions.

**Clause 5.1.2 – Street Setback**

Units 2 and 3 propose a 1.0m – 1.1m setback to the common property. The design principles for communal street setbacks consider the streetscape, privacy site planning requirements and building mass. The development meets the design principles as:

* The setback is internal to the lot and has no adverse impact on any external lots or the streetscape.
* Open space achieves the deemed-to-comply provisions of the R-Codes.
* The proposal responds to site planning requirements, including vehicle access, parking, landscaping and utility services. These site planning requirements are appropriately screened from the street interface where possible.

**Clause 5.1.3 – Lot Boundary Setback**

Units 1 and 4 propose a 1.7m lot boundary setback on the first floor, whilst Units 2 and 3 propose a 2.0m setback on the first floor and 2.7m setback on the second floor to both the northern and southern lots. The design principles for lot boundary setbacks consider the impact of building bulk on adjoining properties, providing adequate sun and ventilation and minimising overlooking. The proposed northern lot boundary setbacks are considered to meet the design principles for the following reasons:

* The proposed lot boundary setbacks do not impede on any adjoining lot’s solar access or ventilation. Solar access achieves the deemed-to-comply provisions of the R-Codes.
* The external walls feature multiple articulations along the length of the boundary, across all storeys which reduces the impact of building bulk by breaking up the mass of built form addressing the northern and southern lots.
* The proposed setbacks do not impact adjoining properties in terms of overlooking. The development satisfies the deemed-to-comply provisions of the R-Codes.
* The proposed lot boundary setbacks and boundary walls are consistent with the site’s density code and a grouped dwelling proposal.

**Clause 5.3.1 Outdoor Living Areas**

The outdoor living areas of Units 1 and 4 are fully covered by roof. The design principles for outdoor living areas considers the space to be functional and usable, allow for winter sun and natural ventilation, the provision of landscaping and to facilitate street surveillance when in the front setback area. The development meets the design principles for the following reasons:

* The outdoor living areas for both Units 1 and 4 are directly accessible from the primary living areas of the dwellings via bi-fold doors to the living rooms.
* There is sufficient space for Unit 1 and 4 to provide for landscaping, entertaining and connection to the outdoors. There is an additional outdoor living area located on the ground floor of both units. This space is both functional and usable and consists of a covered alfresco area, along with grassed open space.
* The additional outdoor living areas positively contribute to the streetscape by enhancing the landscaping and providing passive surveillance and aids with streetscape interaction.

**Clause 5.3.3 Parking**

The development proposes no visitor bays. The design principles for parking consider the availability of on-street parking and the proximity of the site to public transport. The proposed parking is considered to meet the design principles for the following reasons:

* The subdivision for four lots with common property was approved by the Western Australian Planning Commission on 1 October 2021 without provision for a visitor bay in common property.
* The development exceeds the number of on-site car parking spaces to be provided per dwelling. The site is within 250m of several high frequency bus routes. Therefore, only one car parking space is required per dwelling. Each unit has been designed with the provision of two car parking bays internal to the garage. The development has proposed 8 on-site car parking bays (2 for each dwelling), resulting in a surplus of 4 bays above deemed-to-comply.
* It is noted that after 1 September 2023, with the adoption of the new State Planning Policy 7.3 Residential Design Codes Volume 1, there will be no deemed to comply requirement for a visitor bay for four grouped dwellings.

It is considered that the combination of the provision of the 2 car parking bays per dwelling, on-street parking, and the sites proximity to high frequency public transport that sufficient on-site car parking is provided for the development.

**Consultation**

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to five adjoining properties. The application was advertised for a period of 14 days from 16 January 2023 to 30 January 2023. At the close of the advertising period, two objections were received.

The following is a summary of the concerns/comments raised and the Administration’s response and action taken in relation to each issue:

1. Lot boundary setbacks should be increased to the southern lot boundary

The proposed setbacks to the south are consistent with the immediate development context and are unlikely to negatively impact the amenity of adjoining landowners or the streetscape. Refer to discussion on Clause 5.1.3 – Lot Boundary Setback.

1. Unit 3 terrace screening should be increased to 1.9m to prevent overlooking.

The terrace of Unit 3 is provided with a 1.6m high screen and meets the deemed-to-comply provisions of the R-Codes relating to visual privacy. The screening will be conditioned to ensure compliance.

1. Unit 2 first storey and Unit 3 second and third storey stairwell openings should be obscured to prevent overlooking.

The openings to the stairwell of Unit 2 and Unit 3 meet the deemed-to-comply provision of the R-Codes as they are not openings to habitable rooms. However, the applicant submitted amended plans after the advertising process to make these openings highlight windows to address this concern.

1. Concerns regarding the lack of a designated visitor car parking bay within the site.

The development proposal is seeking a judgement of merit for the visitor car parking. Refer to discussion on Clause 5.3.3 – Parking. It is noted that the WAPC approved the subdivision without the provision of a visitor car parking bay. As the lots and common property have been previously created, it is difficult to retrofit a visitor bay that is located within common property and available to all lots.

**Strategic Implications**

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

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

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

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

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

**Budget/Financial Implications**

Nil.

**Legislative and Policy Implications**

Council is requested to make a decision in accordance with clause 68(2) of the [Deemed Provisions](https://www.dplh.wa.gov.au/getmedia/6e4785e3-d40f-45cd-95e8-85d3115ee32e/PD_LPS_Deemed_Provisions). Council may determine to approve the development without conditions (cl.68(2)(a)), approve with development with conditions (cl.68(2)(b)), or refuse the development (cl.68(2)(c)).

**Decision Implications**

If Council resolves to approve the proposal, development can proceed after receiving a Building Permit and necessary clearances.

In the event of a refusal, the applicant will have a right of review to the State Administrative Tribunal. The Tribunal will have regard to the R-Codes as a State Planning Policy. Similarly, should an applicant be aggrieved by one or more conditions of approval, this can be reviewed by the Tribunal.

**Conclusion**

The application for four grouped dwellings has been presented for Council consideration due to objections being received. The proposal is considered to meet the key amenity related elements of R-Codes Volume 1 and, as such, is unlikely to have a significant adverse impact on the local amenity of the area. The proposal has been assessed and satisfies the design principles of the R-Codes in relation to being consistent with the immediate locality and streetscape character.

Accordingly, it is recommended that the application be approved by Council, subject to conditions of Administration’s recommendation.

**Further Information**

Nil.

# Divisional Reports - Corporate & Strategy Report No’s CPS11.03.23 to CPS15.03.23

# CPS11.03.23 City of Nedlands Long Term Financial Plan 2023 - 2028

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 28 March 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Stuart Billingham – Manager Financial Services |
| **Director** | Michael Cole – Director Corporate Services |
| **Attachments** | 1. Draft Long Term Financial Plan 2023-2038. |

**Purpose**

To present to Council the Draft Long Term Financial Plan 2023-2038 for consideration.

**Recommendation**

**That Council adopts the City of Nedlands Long Term Financial Plan 2023-2038 as presented in attachment 1.**

**Voting Requirement**

Simple Majority.

**Background**

The City of Nedlands Draft Long-Term Financial Plan (LTFP) 2023-2038 has been prepared as required by s5.56 ‘Planning for the future’ of the *Local Government Act 1995.* The Draft LTFP 2023-2038 has been preparedbased on a number of assumptions and objectives, that are outlined in this report and supporting attachments.

The LTFP is a 15-year rolling plan that informs the Council, assisting to plan and allocate the necessary resources to ensure that the City’s priorities are achieved. From these planning processes, annual budgets that are aligned with strategic objectives can be developed. It provides the basis for the preparation of the annual budget and reflects the known impacts of projects included in the informing plans and strategies.

The LTFP takes into account known economic factors and will be reviewed every 12 months to reflect the prevailing economic conditions and impacts from factors such as COVID19 and changing community expectations placed on the City. Consideration has been given to the economic drivers that will influence the future cost of providing infrastructure, facilities and services for the period 2023 to 2038. Strategies, priorities, issues, and risks are all dynamic influences in relation to any planning and as such the LTFP is reviewed and adjusted annually to reflect material changes.

**Discussion**

The draft LTFP includes the major significant item of Underground powering of the remaining three project areas within the City of Nedlands in three stages over 4 years. The three stages loans for underground power also included over a 4 years repayment term. Service charges for underground power also included for affected ratepayers’ contribution to their share of the costs.

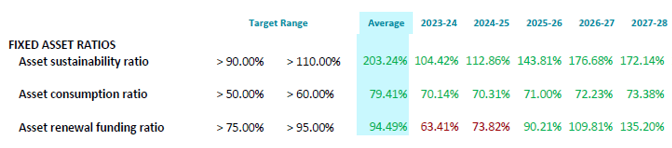
The impact of planned delivery of underground power stages in four years, in the LTFP, is demonstrated by a single line-item of a reduction in available funding for Roads Infrastructure renewal in the first 4 years. Approximately a $4 million reduction in available funding over the first four (4) years of the LTFP. In reality this reduction in available funding will be spread over several different classes of infrastructure assets.

Figures from the City’s Draft Long Term Financial Plan were entered into WATC’s Indicative Additional Debt Capacity Calculator. The calculations show that, in addition to the loans raised for the underground power projects, the City would have the capacity to borrow:

* $5,281,018 in the 2023/24 financial year
* $2,260,726 in the 2024/25 financial year

In the 2025/26 financial year, the City reaches borrowing capacity. This means that WATC may not approve the 2025/26 year requested loan amount of $4.115M as this loan amount would put the City at capacity. If this happened, the project may need to be cancelled or postponed leading to financial loss related to having started but not completed the project and very high levels of community dissatisfaction.

It is worth noting here that the City currently has an estimated infrastructure backlog of $43 million. The City’s asset renewal funding gap/challenges best represented in the LTFP by the Asset renewal ratio as shown below, with the first two years of the LTFP not meeting the minimum acceptable benchmark of 75% and improving in years 3 – 5.



The values disclosed in this plan represent estimated average future prices and costs. The LTFP is a modelling tool to project the City’s financial commitments over the next fifteen years as a means of helping to ensure long term financial sustainability. It is a dynamic tool which analyses financial trends over a fifteen-year period on a range of assumptions and provides information to assess the impacts of current decisions and budgets on future financial sustainability.

The Draft LTFP constructed an operating baseline by using the 2022/23 budget and removing one off expenditure and carry-overs to obtain a minimum level of revenue and expenditure that the City requires to operate at current service levels.

Capital and new operating initiatives with accompanying funding sources were then incorporated with key consideration for renewal requirements and meeting the initiatives of the recently revised Council Plan.

Strategic decisions have been made to distribute funds to new capital and operating projects or changes to existing services, repayment of loan debt or transfers to/from reserves., with particular focus on the significant item, completion of the three remaining Underground Power projects areas in the City of Nedlands, commencing in FY 2023/24.

The future years of the LTFP estimates the future impacts of current decisions and identify the available options to close the gap between revenues and expenditure. Forecasting informs decision making and priority setting and assists in the management of the local government’s response to community growth or contraction. It will also assist in the management of cash flows and funding requirements, community assets and risk.

There is a high level of accuracy in the forecasts for the first 2 – 3 years, a good level of accuracy for years 4 and 5 and a reasonable level of accuracy for the following 10 years of the plan.

This LTFP indicates our long-term financial sustainability, allowing for early identification of financial issues and their longer-term impacts, shows the linkages between specific plans and strategies, and enhances the transparency and accountability of the Council to the community.

**Assumptions**

In preparing the LTFP the following assumptions and variables have been applied:

* Unless otherwise indicated through new proposals, service delivery levels are maintained at current levels
* All income and expenditures throughout the LTFP have been escalated based on relevant index rate of 2.5%
* Rate revenue is proposed to increase by 4.5%pa, ie 2.5% inflation plus 2% growth for each year over the 15 years of the plan,
* Superannuation Guarantee is budgeted at 10.5% for 2022/23 with annual increments of 0.5% until reaching a rate of 12% on 1 July 2025 for the life of the plan.
* Perth Consumer Price Index (CPI) and Local Government Cost Index (LGCI) have been estimated conservatively and used for the remainder of the costs.

**Employment Expenses**

Employment expenses have four main elements. These are:

* Reduction in staff numbers as identified in the Workforce Plan adopted by Council in June 2022
* Increases contained in the enterprise agreement
* Increases and movements of levels within the current workforce and;
* Additional positions that may be required to meet the strategic direction of the Council and the growth of the community.

Employee costs for the first three years of the Plan are in line with Workforce Plan (Organisation Review) changes then costs are estimated to increase in line with the relevant employment awards and any new enterprise agreement at 2.50% inflation index. Factors affecting this decision include the difficulties of attracting and retaining staff; and the challenges associated with of one of the lowest rates of unemployment experienced in the state. The employment market is still tightening.

**Materials and Contracts**

Increases in Materials and contracts are forecast at an average of 2.5% inflation index each year and does not take into consideration the Local Government Cost Index (LGCI). It is worth noting Perth CPI Dec qtr 2022 at 8.3%.

However, certain materials have increased well above the LGCI inflation rate. For example, the increase in world oil prices and fuel prices escalated plant operating costs by 20%, and the supply of bitumen for road works has risen by 50%.

This puts pressure on the City’s ability to maintain service delivery standards and the extent of capital works within the predicted funding levels. A conservative approach has been taken that this is a transitional situation which will correct in future years. Material and Contracts rates will be closely monitored in future reviews of the plan.

**Utility Charges**

Utility charges have been factored in to increase by an average of 2.5% for the life of the plan. Western power confirming a 5.9% increase in Street Lighting in the 2022/23 year.

A conservative approach has been taken that this is a transitional situation which will correct in future years. Utility rates will be closely monitored in future reviews of the plan.

**Loan Borrowings and Repayments**

Loan repayments are calculated on loan schedules that are currently in existence and the estimation of any future loan borrowings.

The LTFP has proposed loan borrowings of:

* $1.409M for Stage 1 Nedlands North UGP project (Floreat), (City share $691,757/Resident Share $717,408) and
* $3.767M for Stage 2 Hollywood West UGP project (Mt Claremont) (City share $2,078,859/Resident Share $1,688,235) and
* $4.748M for Stage 3 Hollywood West UGP project (Hollywood) (City share $2,748,435/Resident Share $1,999,866).

The ratepayer’s portion is also being raised but is treated similar to a self-supporting loan with ratepayer contributions being recovered over a four-year period by way of service charges.

These loans effectively limit the ability of the City to borrow for any other projects as the City will be at its borrowing capacity in year 3 (2025/26) of the Long-Term Financial Plan.

**Reserve Transfers**

Transfer to Reserves is in line with existing reserve calculations that are contained within the 2022/23 budget and increased by 2.5% to take into account inflation factors. In areas such as waste management these transfers could change if their net operating results changed. Continual scrutiny and review of the fees being charged in these areas are essential to ensure sufficient money is being captured in the reserves to pay for large capital expenditure in future years. Interest on Reserve holdings has been calculated at 2.5% and interest is reinvested back into the reserve fund.

**Rate Revenue**

Rate revenue increases are forecast for 4.5% per annum (2.5% plus 2% growth) for each year of the plan. It is estimated that the additional income that is generated that is higher than normal operational requirements will be spent on increased material costs of new capital and reducing the asset management funding gap challenges.

**Operating Grants**

Operating grants, subsidies and contributions indexed at 2.5% for the life of the LTFP. Although this funding source is somewhat unknown as political and economic factors can influence any increases that the different levels of government may offer, a small increase has been assumed to cater for general inflation increases.

**Fees and Charges**

Fees and Charges that Council has discretion over are indexed by inflation at an average of 2.5% over the life of the plan.

**Capital Grants**

Road grants from the Metropolitan Regional Roads Group have been estimated at the existing levels, averaged from the past two years. Regional Road Group is a competitive process and application must be made each year for specific projects; the allocations can therefore fluctuate significantly. Roads to Recovery grants have been maintained for the life of this plan.

A large number of the capital projects are reliant upon grants from external sources. If the funding from these sources does not eventuate the projects may need to be reviewed or alternate funding sourced.

**Capital Expenditure**

Capital Expenditure is in line with existing City Asset Management Plans and has been increased by 2.5% in line with depreciation estimates.

Road expenditure is in line with existing annual allocations and increased by 2.5% in line with expected inflation. Additional expenditure is expected to be increased over the life of the plan to help address the asset renewal gap in the transport area.

The 10-year capital works program has been developed with consideration to the funding source and if the asset is renewal, upgrade or new. As identified in the capital grants section a number of key infrastructure projects are heavily reliant upon external grant funds. If external funding from these projects does not eventuate to the amounts as indicated in the plan then the scope of each capital project will need to be revisited or the project postponed until further funding is sourced.

**Consultation**

The Draft Long Term Financial Plan 2023-2038 has been developed in consultation with City Staff and Elected Members.

The Draft Long Term Financial Plan was informed by City of Nedlands Integrated Planning and Reporting Framework (IPRF) documents :

* City of Nedlands - Asset Management Plans 2022
* City of Nedlands - Workforce Plan 2022 (Incl Organisational Review)
* City of Nedlands - Strategic Community Plan Nedlands 2028
* City of Nedlands – Nedlands 2023 ‘Making it Happen’ - Corporate Business Plan
* City of Nedlands – Asset Management Strategy 2019-2029
* City of Nedlands – Urban Forest Strategy 2018-2023
* City of Nedlands – Disability Access Inclusion Plan 2018-19 - 2023-24

Consideration was given to other IPRF documents.

A number of Long-Term Financial Plan concept forums were held with Council to go through a number of scenarios and assumptions.

**Strategic Implications**

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

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

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

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

**High standard of services**

We have local services delivered to a high standard that take the needs of our diverse community into account.

**Great Governance and Civic Leadership**

We value our Council’s quality decision-making, effective and innovative leadership, transparency, accountability, equity, integrity and wise stewardship of the community’s assets and resources. We have an involved community and collaborate with others, valuing respectful debate and deliberation.

**Great Communities**

We enjoy places, events and facilities that bring people together. We are inclusive and connected, caring and support volunteers. We are strong for culture, arts, sport and recreation. We have protected amenity, respect our history and have strong community leadership.

**Reflects Identities**

We value our precinct character and charm. Our neighbourhoods are family-friendly with a strong sense of place.

**Priority Area**

* Renewal of community infrastructure such as roads, footpaths, community and sports facilities
* Underground power
* Retaining remnant bushland and cultural heritage
* Providing for sport and recreation

**Budget/Financial Implications**

The adoption of the Long-Term Financial Plan does not have any immediate direct financial implications; however, the 2023/24 annual budget will be drafted , firstly giving consideration to the appropriate year of the Long-Term Financial Plan.

The LTFP also documents the implications of sustainability for the City over a 15-year period and the implications from a financial perspective of the assumptions that underpin the plan.

The draft LTFP includes the major significant item of underground power to the remaining three project areas within the City of Nedlands in three stages over 4 years. The three stages loans for underground power also included over a 4 years repayment term. Service charges for underground power also included for affected ratepayers’ contribution to their share of the costs.

The Impact of planned delivery of underground power stages in four years, in the LTFP, is demonstrated by a single line-item of a reduction in available funding for Roads Infrastructure renewal in the first 4 years. Approximately a $4 million reduction in available funding over the first four (4) years of the LTFP. In reality this reduction in available funding will be spread over several different classes of infrastructure assets.

**Legislative and Policy Implications**

Section 5.56(1) and (2) of the *Local Government Act 1995* requires that each local government is ‘to plan for the future of the district’, by developing plans in accordance with the regulations. *Local Government (Administration) Regulations 1996*, Regulation 19 outlines what is required of planning for future documents.

**Decision Implications**

It is a statutory requirement that local governments ‘plan for the future’

Council adopts or rejects the Draft City of Nedlands Long-Term Financial Plan 2023-2038 review. Accepting the LTFP review will allow the City to plan and progress with its service delivery across multiple operational and infrastructure areas.

Council not adopting the long-term financial plan 2023-2038 review would affect the City planning and forecasting abilities to ensure long term sustainability of the City finances.

TREAT risk by Council Adopting the Draft City of Nedlands Long-Term Financial Plan 2023-2038.

**Conclusion**

It is recommended Council adopts the Draft City of Nedlands Long Term Financial Plan 2023-2038 as presented.

**Further Information**

Nil.

# CPS12.03.23 City of Nedlands Underground Power Business Case

|  |  |
| --- | --- |
| **Meeting & Date** | Council – 28 March 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Stuart Billingham – Manager Financial Services |
| **Director** | Michael Cole – Director Corporate Services |
| **Attachments** | 1. Underground Power Program - Business Case 2. Underground Power Cost Benefit Analysis |

**Purpose**

To present Council with the City of Nedlands Underground Power Business Case and to proceed to community engagement with affected ratepayers.

**Recommendation**

**That Council:**

1. **receives the City of Nedlands Underground Power Business Case as presented; and**
2. **authorises the CEO to undertake community engagement with affected ratepayers and to report the results back to Council.**

**Voting Requirement**

Simple Majority.

**Background**

At its Ordinary Meeting of 22 November 2022, Council received designs and cost estimates for underground power for Hollywood East, Nedlands North and Nedlands West. In addition, Council endorsed the preparation of business case for these projects.

**Discussion**

The City of Nedlands commenced the installation of underground power in its local government area in 1997 and since then, 78% of the City’s residences have been converted to underground power through the delivery of five staged projects.

However, the City still has 1,701 residences in Nedlands North, Nedlands West and Hollywood East that are connected to overhead power.

Underground power is specified in the City’s Strategic Community Plan (2018-2028) as one of eight strategic priorities, with Council having passed a resolution for all Underground Power to be completed by June 20260F[[1]](#footnote-2).

The City engaged the services of Whitney Consulting to prepare the business case and ACIL ALLEN Consulting to prepare the Cost Benefit Analysis.

The business case identified the numerous benefits underground power brings to a range of stakeholder groups.

* Benefits to Property Owners (ratepayers)
  + Increased property valuations (research reflects that higher value properties benefit more than properties with lower starting values), as an outcome of
    - Improved visual amenity values
    - Safer local communities due to the installation of new, more energy efficient street lighting
  + Improved reliability of the electricity network
  + Improved quality of the electricity supply
  + Other benefits, such as reduced short term vegetation management costs
* Benefits to Western Power
  + Avoiding costly and complex pole replacement
  + Reduced operating and maintenance costs
  + Reduced costs associated with power interruptions
* Benefits to Local Governments
  + Reduced short term maintenance of streetscapes and verges (tree lopping costs for trees under overhead power lines)
* Benefits to the Wider Community
  + Improved reliability of electricity supply during severe weather events
  + Improved amenity to non-residents
  + Health and safety benefits – reduced electrical contact injuries, reduced motor vehicle and power pole collisions
  + Reduced environmental impact – reduction in use of herbicides (weed control) and pesticides (termite control) around wooden power poles,
  + Improved street lighting – when an area is converted to underground power, new streetlights are designed and installed to meet Australian Standards. These new streetlights have more efficient fixtures and optimized spacing, which delivers brighter and more evenly lit streets, providing up to 15% more efficient street lighting. This may also enhance the local security of an area.

However, the business case also identified that undergrounding of power also comes at a significant financial cost to the City and affected residents.

City staff have worked with Western Power over the past several years to investigate and design a final underground power project to connect all remaining City of Nedlands’ residences to underground power (the project).

The latest project cost estimates indicate the required contribution from the City to complete this underground power project is $19,038,101 (exclusive of the $940,500 for the design phase that has already been funded by the City). In addition, the City would also need to employ a dedicated delivery Project Manager for the life of the project, at an additional cost to the City.

The City has $2.5 million in a reserve account but would need to secure the remaining amount through future earnings and borrowings. Doing so comes with a number of implications, which need to be considered before the City commits to such a large budget expense. Implications and required considerations include:

1. Asset ownership – by completing this project, the City will be investing in assets they do not own. Power infrastructure ownership will be maintained by Western Power.
2. Other city assets – to complete this project, the City will need to utilise funds which would normally be used to maintain City assets. This presents a risk to those assets.
3. Ability to secure borrowings – based on the amount of funding required, the City of Nedlands is expected to reach their borrowing capacity in the 2025/26 financial year. It is therefore possible that the WA Treasury Corporation (WATC) and other lenders may not approve that year’s loan amount. If that occurred, the project may need to be cancelled or postponed partway through, at significant financial loss and reputational damage to the City of Nedlands.
4. Opportunity cost – through funding the underground power project, the City will likely be unable to fund any other projects for a number of years, due to a lack of funds and borrowing capacity.
5. Impost on ratepayers. Under the City’s Underground Power Policy, up to 50% of the City’s contribution is recoverable from ratepayers. However, the City would initially pay the full amount, with householder contribution being repaid by affected residents through service charges raised as part of their annual rates notices. The City of Nedlands Finance team have undertaken modelling and based on the latest estimates, the resident’s share for each property with existing overhead power would be approximately:
6. Nedlands North - $6,569,68
7. Nedlands West - $5,771.74
8. Hollywood East - $5,712,27

An independent Cost Benefit Analysis (CBA) of this project completed by ACIL Allen in 2023 found there is a significant benefit for the ratepayers receiving underground power, well in excess of the financial and other costs they incur as a collective. However, the City of Nedlands and non-affected ratepayers are left with meeting the net economic and social cost of the program. The CBA identifies that the City of Nedlands and its ratepayers realise a substantial economic and social loss, with a Benefit Cost Ratio of 0.43. This means for every $1 of resources the City is contributing to the project, it – and non-benefitting ratepayers – realise just $0.43 of benefits. By contrast, ratepayers receiving underground power realise a Benefit Cost Ratio of 7.53, on account of higher property values.

As part of its CBA, ACIL Allen sought to replicate the City’s financial modelling of the project. ACIL Allen’s analysis confirmed the net financial cost to the City of Nedlands of its central case scenario (completing the project within four years, borrowing funds for four years, and recovering a portion of costs from affected ratepayers over four years) $10.93 million – including the $4 million proposed to be funded via City of Nedlands cash reserves.

The financial cost of other options (borrowing over seven years and borrowing over ten years) results in a larger financial impact of $11.65 million and $12.41 million respectively, due to the increase in interest expenses owing to longer termed loans.

The City considered a number of options in the development of this project. The options were required to align to the agreed planning principles for the City, as well as suiting community needs. Each option comes with a number of benefits, costs and implications, which are discussed in great detail in the Options Assessment section of this business case.

The project has been included in Western Power’s current program of works, with the first stage of the project to be commenced in the 2023/24 financial year (pending City of Nedlands approval).

In order to progress this project into the implementation stage, Council needs to give the direction to proceed to community consultation with the residents in the affected area. Following this, the City will provide Western Power with approval to proceed to a construction Request for Quotation process.”

**Consultation**

The City has updated Elected Members on the progress of the remaining underground power project and in November 2022 Council endorsed the preparation of a Underground Power business case.

In preparing the business case, the City engaged the services of Whitney Consulting and ACIL ALLEN to prepare the CBA. City staff have been consulted and input received also from WA Treasury Corporation and Moore Australia (WA) Pty Ltd.

Subject to Council endorsement, further community consultation will be undertaken with residents in the specific project areas. Successful community engagement is based on a framework of principles that respect the right of all community members to be informed, consulted, involved and empowered.

**Strategic Implications**

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

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

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

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

**High standard of services**

We have local services delivered to a high standard that take the needs of our diverse community into account.

**Great Governance and Civic Leadership**

We value our Council’s quality decision-making, effective and innovative leadership, transparency, accountability, equity, integrity and wise stewardship of the community’s assets and resources. We have an involved community and collaborate with others, valuing respectful debate and deliberation.

**Great Communities**

We enjoy places, events and facilities that bring people together. We are inclusive and connected, caring and support volunteers. We are strong for culture, arts, sport and recreation. We have protected amenity, respect our history and have strong community leadership.

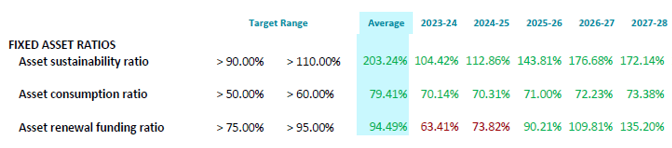
**Priority Area**

* Underground power

**Budget/Financial Implications**

The business case identified the significant impact the three underground power projects will have on the Draft Long-Term Financial Plan 2023-2038. The draft LTFP proposes the delivery of underground power over the first four (4) years of the plan. New loans are proposed to be raised for underground power over a 4-year term for the city and residents portions. The net cashflow impact on the City is a reduction of available funding of approximately $4 million for Road Infrastructure Renewals in the first 4 years of the Plan.

It is worth noting here that the City currently has an estimated infrastructure backlog of $43 million. The City’s asset renewal funding gap/challenges best represented in the LTFP by the Asset renewal ratio as shown below, with the first two years of the LTFP not meeting the minimum acceptable benchmark of 75% and improving in years 3 – 5.



**UGP vs no UGP**

If the proposed underground power program, delivered over 4 years, was not to proceed it would free up approximately $4 million of Municipal funding to go towards other items such as Infrastructure Asset renewals and any associated infrastructure backlogs.

In years 2023/24 to 2030/31 there would also be net saving in loan repayments for all three stages for the City’s share of the total costs not covered by UGP service charges approximately $5.5 million plus loan interest charges. These increases in available funding could also go towards other items such as Infrastructure Asset renewals and any associated Infrastructure backlogs.

**Legislative and Policy Implications**

[*Local Government Act 1995* Section 6.38(1)](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43454.pdf/$FILE/Local%20Government%20Act%201995%20-%20%5B07-t0-00%5D.pdf?OpenElement)

[*Local Government (Financial Management) Regulations 1996* Reg 54(c)](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_45568.pdf/$FILE/Local%20Government%20(Financial%20Management)%20Regulations%201996%20-%20%5B03-k0-00%5D.pdf?OpenElement)

[Underground Power Policy](https://www.nedlands.wa.gov.au/documents/242/underground-power)

Underground Power Procedure

**Decision Implications**

Should Council endorse this recommendation, the City will proceed with community engagment with affected ratepayers and will report the results back to Council. At that time, after considering feedback from affected ratepayers, Council will then need to decide whether to proceed with the project or not.

If Council does not endorse the recommendations in this report, feedback from Council will determine the next course of action to be taken for the remaining underground power projects areas.

**Conclusion**

It is recommended Council receives the City of Nedlands Underground Power Business Case as presented. The City Administration will then progress the community engagement and report the results back to Council.

**Further Information**

Nil.

# CPS13.03.23 Monthly Financial Report – February 2023

This item will be dealt with at the Ordinary Council Meeting.

# CPS14.03.23 Monthly Investment Report – February 2023

This item will be dealt with at the Ordinary Council Meeting.

# CPS15.03.23 List of Accounts Paid – February 2023

This item will be dealt with at the Ordinary Council Meeting.

# Divisional Reports – Reports from the Audit & Risk Committee Report No’s AR02.23 to AR04.02.23 & ARC05.03.23

# ARC02.02.23 Internal Audit – Financial Management Review

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 28 March 2023  Audit & Risk Committee – 20 February 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Stuart Billingham – Manager Financial Services |
| **Director** | Michael Cole Director Corporate Services |
| **Attachments** | 1. Financial Management Review 2023 - See appendix 2 of Item ARC01.02.23 Moore Aust Report |

**Purpose**

To present to the Auditor’s report on the appropriateness and effectiveness of the financial management systems and procedures at the City of Nedlands.

**Committee Recommendation / Recommendation**

**That the Audit & Risk Committee recommends that Council:**

1. **notes the auditors report on the review of the City’s financial management and procedures; and**
2. **notes the management responses to those comments and recommendations.**

**Purpose**

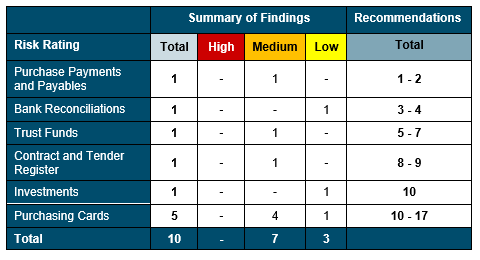
To present to the Audit & Risk Committee the Auditor’s report on the appropriateness and effectiveness of the financial management systems and procedures at the City of Nedlands.

**Voting Requirement**

Simple Majority.

**Background**

1. The *Local Government (Financial Management) Regulations 1996* regulation 5(2)(c), requires the Chief Executive Officer to undertake Financial Management Reviews regularly (and not less than once in every three years). The main purpose of a Financial Management Review (FMR) is to examine the appropriateness and effectiveness of the financial management systems and procedures of the City.
2. Through a formal request for quote process, Moore Australia (WA) Pty Ltd was appointed to undertake the financial management audit. The audit covered the period ending December 2022.
3. The Auditors report did not find any major issues with processes however matters for improvement were identified as shown in the table below:



**Consultation**

Moore Australia (WA) Pty Ltd, Director Corporate Services, Manager Financial Services, Senior Project Accountant, Coordinator Revenue, Finance Officer Revenue, Finance Officer Accounts Payable and Coordinator Procurement and Contracts.

**Strategic Implications**

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

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

**Values** **High standard of services**

We have local services delivered to a high standard that take the needs of our diverse community into account.

**Great Governance and Civic Leadership**

We value our Council’s quality decision-making, effective and innovative leadership, transparency, accountability, equity, integrity and wise stewardship of the community’s assets and resources. We have an involved community and collaborate with others, valuing respectful debate and deliberation.

**Budget/Financial Implications**

There are no budget or financial implications to this report.

**Legislative and Policy Implications**

The following legislation is adhered to:

[*Regulation 5(2)(c) of the Local Government (Financial Management) Regulations 1996*](https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/wa/consol_reg/lgmr1996434/)

**Decision Implications**

Nil.

**Conclusion**

That the Audit & Risk Committee recommends that Council:

1. notes the auditors report on the review of the City’s financial management and procedures.
2. notes the management responses to those comments and recommendations.

**Further Information**

Nil.

# ARC03.02.23 Internal Audit – Regulation 17 Review

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 28 February 2023  Audit & Risk Committee – 20 February 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Stuart Billingham – Manager Financial Services |
| **Director** | Michael Cole Director Corporate Services |
| **Attachments** | 1. Regulation 17 Report 2022 - See appendix 3 of Item ARC01.02.23 Moore Aust Report |

**Purpose**

The purpose of this report is to present to the Auditor’s report on the appropriateness and effectiveness of the City’s systems and procedures in relation risk management, internal controls and legislative compliance.

**Committee Recommendation / Recommendation**

**That the Audit & Risk Committee recommends that Council:**

* + 1. **notes the auditors report on the review of the City’s systems and procedures in relation to risk management, internal controls and legislative compliance; and**
    2. **notes the management responses to those comments and recommendations.**

**Voting Requirement**

Simple Majority.

**Background**

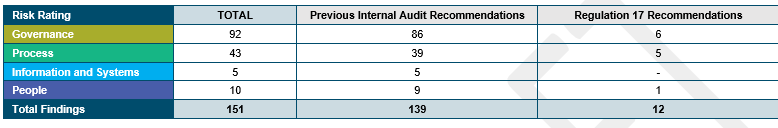
The *Local Government (Audit) Regulations 1996* regulation 17, requires the Chief Executive Officer is to review the appropriateness and effectiveness of a local government’s systems and procedures in relation to:

* 1. Risk management; and
  2. Internal control; and
  3. Legislative compliance

not less than once every 3 financial years and report any findings to the audit committee.

Through a formal request for quote process, Moore Australia (WA) Pty Ltd was appointed to undertake the Regulation 17 review report. The audit covered the period ending December 2022.

The auditors Regulation 17 report made 12 recommendations as summarised in the table below:



**Consultation**

Moore Australia (WA) Pty Ltd, Director Corporate Services, Manager Financial Services, Manager ICT, Executive Officer and Senior Project Accountant.

**Strategic Implications**

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

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

**Values** **High standard of services**

We have local services delivered to a high standard that take the needs of our diverse community into account.

**Great Governance and Civic Leadership**

We value our Council’s quality decision-making, effective and innovative leadership, transparency, accountability, equity, integrity and wise stewardship of the community’s assets and resources. We have an involved community and collaborate with others, valuing respectful debate and deliberation.

**Budget/Financial Implications**

There are no budget or financial implications to this report.

**Legislative and Policy Implications**

The following legislation is adhered to: [*Regulation 17 of the Local Government (Audit) Regulations 1996*](https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/wa/consol_reg/lgr1996341/)

**Decision Implications**

Nil.

**Conclusion**

That the Audit & Risk Committee recommends that Council:

1. notes the auditors report on the review of the City’s systems and procedures in relation to risk management, internal controls and legislative compliance; and
2. notes the Management responses to those comments and recommendations.

**Further Information**

Nil.

# ARC04.02.23 Internal Audit – Asset Management Review

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 28 February 2023  Audit & Risk Committee – 20 February 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Stuart Billingham – Manager Financial Services |
| **Director** | Michael Cole – Director Corporate Services |
| **Attachments** | 1. Internal Audit Asset Management - See appendix 4 of Item ARC01.02.23 Moore Australia Report |

**Purpose**

To present to the Audit & Risk Committee the Internal Auditor’s report on City of Nedlands Asset Management.

**Committee Recommendation / Recommendation**

**That the Audit & Risk Committee recommends that Council:**

**1. notes the internal auditors report on the review of the City’s Asset Management; and**

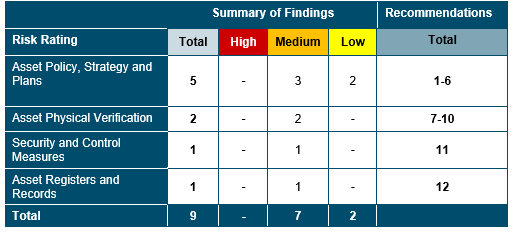
**2. notes the management responses to those comments and recommendations.**

**Voting Requirement**

Simple Majority.

**Background**

In November 2022 Moore Australia (WA) Pty Ltd were engaged to undertake the internal audit of Asset Management at the City of Nedlands with nine matters raised as shown in the table following:

****

**Consultation**

Moore Australia (WA) Pty Ltd, Director Corporate Services, Manager Financial Services, Finance Officer (AR, Assets & Insurance), Manager ICT, Information Technology (IT) Governance Officer, Manager City Projects and Programs, Manager Assets, Coordinator Land and Property, Coordinator Fleet, Building Maintenance Officer, Coordinator Civil Maintenance.

**Strategic Implications**

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

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

**Values** **High standard of services**

We have local services delivered to a high standard that take the needs of our diverse community into account.

**Great Governance and Civic Leadership**

We value our Council’s quality decision-making, effective and innovative leadership, transparency, accountability, equity, integrity and wise stewardship of the community’s assets and resources. We have an involved community and collaborate with others, valuing respectful debate and deliberation.

**Budget/Financial Implications**

There are no budget or financial implications to this report.

**Legislative and Policy Implications**

Nil.

**Decision Implications**

Nil.

**Conclusion**

That the Audit & Risk Committee recommends that Council:

1. notes the internal auditors report on the review of the City’s Asset Management and;
2. notes the management responses to those comments and recommendations.

**Further Information**

Nil.

# ARC05.03.23 City of Nedlands Compliance Audit Return 2022

|  |  |
| --- | --- |
| **Meeting & Date** | Special Audit & Risk Committee Meeting – 7 March 2023  Council Meeting – 28 March 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Libby Kania – Co-ordinator Governance and Risk |
| **Director/CEO** | Bill Parker – Chief Executive Officer |
| **Attachments** | 1. Compliance Audit Return 2022 – Audit and Risk Committee   Attachment dated 7 March 2023 (Unformatted).   1. Compliance Audit Return 2022 – Council Formatted Copy. |

**Purpose**

The purpose of this report is for Council to review and adopt the City of Nedlands 2022 Annual Compliance Return required for submission to the to the Department of Local Government, Sport and Cultural Industries by 31 March 2023. The Audit & Risk Committee has reviewed the Audit Return.

**Recommendation**

**That Council adopts the 2022 Compliance Audit Return for the City of Nedlands for the period 1 January 2022 to 31 January 2022 as contained in Attachment 2 to this report.**

**Voting Requirement**

Simple Majority

**Background**

All Local Governments are required to submit an annual Compliance Audit Return (CAR) to the Department of Local Government, Sport and Cultural Industries by 31 March each year for the previous calendar year. The CAR is used to measure the level of compliance with the *Local Government Act 1995* and associated Regulations.

On 7 March 2023, the Audit and Risk Committee resolved the following recommendation –

Committee Recommendation / Recommendation

“That the Committee recommends that Council adopts the Local Government 2022 Compliance Audit Return for the City of Nedlands for the period 1 January 2022 to 31 December 2022, as attached to this report.”

**Discussion**

The City’s 2022 Compliance Audit Return was completed in February by Management following a review and assessment of:

* Council meeting agendas and minutes;
* Performance plans, media advertisements, procedures and policies, registers, delegation records, local laws; and
* Interviews with responsible officers.

Each Local Government Authority is required to complete a CAR for the period 1 January 2022 to 31 December 2022. The CAR must be submitted to the Director General of the Department by 31 March 2023. The return is one of the tools that allows Council to monitor how the organisation is functioning. It places emphasis on the need to bring to Council’s attention issues of noncompliance, or issues where full compliance was not achieved. In addition to explaining or qualifying cases of noncompliance, the return also requires Council to endorse any remedial action taken or proposed to be taken in regard to instances of non-compliance. The document contains over 100 questions in order to assess a local government’s compliance with the legislative framework. Under regulation 14 of the *Local Government (Audit) Regulations 1996*, sub regulation (3A) the audit committee is to review the CAR and report to council the results of that review. The CAR is then to be presented to the Council and adopted by Council and the resolution recorded in the minutes. The compliance areas include:

|  |  |
| --- | --- |
| **TOPIC** | **NUMBER OF QUESTIONS** |
| Commercial Enterprises by Local Governments | 5 |
| Delegation of Power / Duty | 13 |
| Disclosure of Interest | 22 |
| Disposal of Property | 2 |
| Elections | 3 |
| Finance | 7 |
| Integrated Planning & Reporting | 3 |
| Local Government Employees | 5 |
| Official Conduct | 4 |
| Optional Questions | 9 |
| Tenders for Providing Goods and Services | 22 |

In the reporting period the City identified areas of non-compliance.

These refer to the following –

**1.** **Delegation of Power/Duty – Question 5**

**5.** **Has Council reviewed delegations to its committees in the 2021/2022 financial year?**

An audit was conducted of the City’s Delegations Register to ascertain any delegation that had been provided to a committee of Council pursuant to s. 5.16 of the Act.  The following committees include in their terms of reference a delegation from Council:

* Audit and Risk Committee under Part 7

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

* Public Arts Committee

The Committee has delegated authority to implement public artworks of not more than $10,000 each to the value of up to, in all, the budget allocation approved by Council within the current financial year’s budget. Artworks over $10,000 shall be recommended to Council for approval.

* The CEO Performance Review Committee acting under delegated authority

Under delegated authority to manage the performance appraisal process of the Chief Executive Officer in order to meet both Council’s statutory obligations in accordance with the provisions of Section 5.38(1) of the Local Government Act 1995 and any terms and conditions of the employment contract of the Chief Executive Officer.

Council considered the delegations to its Committees on 22 June 2021 (2020/2021 financial year) when it reviewed its Register of Delegations.  This was outside the reporting period stated in Q5.

Council next considered its Delegations Register on 22 September 2022 (2022/2023 financial year).  The Register did not include the delegations to the Committees and as a consequence did not form part of the review.

Notwithstanding, on 22 September 2022 the delegation to the Audit and Risk Committee was considered by Council when it reviewed the Terms of Reference of the Committee.  On 13 December 2022 the delegation to the CEO Performance Review Committee was reviewed when Council considered the terms of reference of that Committee.

The delegation to the Public Arts Committee has not been reviewed in the 2022/2023 financial year.  This will need to be considered by Council prior to the end of the current financial year and it is intended that a report will be provided to Council prior to June 2023.

**2.** **Disclosure of Interest – Questions 4 and 11**

**4.** **Was a primary return in the prescribed form lodged by all relevant persons within three months of their start day?**

There was one officer who did not submit their primary return on time, being one day late.  The officer was not a senior officer. There are email exchanges between members of governance and the officer to indicate that the officer attempted to do so but was unable to provide the document.  This matter will be reported to the CCC by the CEO due to the fact that s. 5.75 is a reportable offence.

**11.** **Did the CEO keep a register of gifts which contained a record of disclosures made under sections 5.87A and 5.87B of the Local Government Act 1995, in the form prescribed in the Local Government (Administration) Regulations 1996, regulation 28A?**

The City does have a gift register on the website but it is not a cumulative register and is slightly modified from form 4.  The register also includes notifiable gifts by an officer other than the CEO.  This is not required under the Act.

While the City is compliant with the legislation in that it has a publicly disclosed gift register, it is considered prudent to amend the gift register to reflect form 4 and to remove the officer notifiable gifts and place those onto another register, so that there is no ambiguity with the content of the legislation.

**3.** **Elections – Question 3**

**3.** **Did the CEO publish an up-to-date version of the electoral gift register on the local government’s official website in accordance with regulation 30G(5) of the Local Government (Elections) Regulations 1997?**

The gift register was removed from the City’s website in July 2022 when the website was upgraded and does not appear to have been reloaded.  The electoral gift register will be reloaded to the website, along with the cumulative gift register.

**4.** **Finance - Question 3**

**3.** **Was the auditor’s report for the financial year ended 30 June 2022 received by the local government by 31 December 2022?**

The auditor’s report was not received prior to 31 December 2022.  This has impacted the City’s ability to answer Question 4, 5, 6 and 7 of the CAR.  Those questions could not be answered as they required the auditor’s report, and although the City supplied the information to the auditor in the reporting period, there was insufficient time for the auditor to complete the audit report prior to 31 December.

**5.** **Integrated Planning and Reporting – Questions 2 and 3**

**2.** **Has the local government adopted by absolute majority a corporate business plan?**

The City does not have a current CBP in place as the previous CBP 2013 – 2017 was never reviewed or updated.  Further, the CBP does not reflect the SCP adopted by Council.  The City does not meet its compliance obligations under the legislation.

**3.** **Does the corporate business plan comply with the requirements of Local Government (Administration) Regulations 1996 19DA(2) & (3)?**

The City does not have a CBP, refer response above.

**6.** **Official Conduct - Question 4**

**4.** **Has the CEO published an up-to-date version of the register of the complaints on the local government’s official website?**

While the City has a register in accordance with the legislation, there have been no reportable complaints that resulted in a finding.  A copy of the register will be uploaded to the website.

**7.** **Other - Question 7**

**7.** **Did the local government prepare a report on the training completed by council members in the 2021/2022 financial year and publish it on the local government’s official website by 31 July 2022?**

While the City maintains a register of the training completed by Council members, it was not placed on the City’s website.  A copy of the register will be uploaded to the website.

The City has taken the following steps to deal with the non-compliance:

1. Gift registers – s. 5.87A and electoral will be uploaded to the website.

2. Training register will be uploaded to the website.

3. Statutory complaints register to be uploaded to the website.

4. Delegation to the Public Arts committee and other delegation matters to be brought to Council prior to the end of the financial year.

5. Report to the CCC on the non-compliance with the primary return disclosure.

**Consultation**

Relevant staff were requested to complete those questions of the CAR that related to their service areas. All responses were then collated and incorporated into the CAR by the designated officer. The CAR was then tabled at the 22 February 2022 Executive Management Team meeting for consideration and approval.

The Audit and Risk Committee has reviewed the return (Attachment 1 – unformatted CAR) at its meeting held on Tuesday 7 March 2023 and is now submitting the results of that review to Council.

Council has been provided with the formatted CAR (Attachment 2) in accordance with the Department’s requirement.

**Strategic Implications**

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

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

**Values** **Great Governance and Civic Leadership**

We value our Council’s quality decision-making, effective and innovative leadership, transparency, accountability, equity, integrity and wise stewardship of the community’s assets and resources. We have an involved community and collaborate with others, valuing respectful debate and deliberation.

**Budget/Financial Implications**

The 2022 Compliance Audit Return has been conducted using internal resources and there are no other financial impacts.

**Legislative and Policy Implications**

[*Local Government (Audit) Regulations 1996*](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_45249.pdf/$FILE/Local%20Government%20(Audit)%20Regulations%201996%20-%20%5B02-k0-00%5D.pdf?OpenElement)

Regulation 14

(1) A local government is to carry out a compliance audit for the period 1 January to 31 December in each year.

(2) After carrying out a compliance audit the local government is to prepare a compliance audit return in a form approved by the Minister.

(3A) The local government’s audit committee is to review the compliance audit return and is to report to the council the results of that review.

(3) After the audit committee has reported to the council under subregulation (3A), the compliance audit return is to be -

(a) presented to the council at a meeting of the council; and

(b) adopted by the council; and

(c) recorded in the minutes of the meeting at which it is adopted.

15. Certified copy of compliance audit return and other documents to be given to Departmental CEO 

(1) After the compliance audit return has been presented to the council in accordance with regulation 14(3) a certified copy of the return together with —

(a) a copy of the relevant section of the minutes referred to in regulation 14(3)(c); and

(b) any additional information explaining or qualifying the compliance audit, is to be submitted to the Departmental CEO by 31 March next following the period to which the return relates.

(2) In this regulation — certified in relation to a compliance audit return means signed by:

(a) the mayor or president; and

(b) the CEO.

In accordance with [Regulation 14 and 15 of the Local Government (Audit) Regulations 1996](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43668.pdf/$FILE/Local%20Government%20(Audit)%20Regulations%201996%20-%20%5B02-i0-00%5D.pdf?OpenElement) the 2022 Annual Compliance Audit Return must be:

1. Presented to the Audit and Risk Committee for review and then presented to Council;
2. Adopted by Council;
3. Recorded in the minutes of the meeting at which it was adopted; and
4. A certified copy of the return, along with a copy of the minutes recording its adoption, to be submitted to the Department by 31 March 2023.

**Decision Implications**

Should Council choose to adopt the 2022 Compliance Audit Return for submission to the Department of Local Government Sport and Cultural Industries the City would fulfil its prescribed statutory requirements in [regulation 13 of the Local Government (Audit) Regulations 1996.](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43668.pdf/$FILE/Local%20Government%20(Audit)%20Regulations%201996%20-%20%5B02-i0-00%5D.pdf?OpenElement)

Should Council choose not to adopt the 2022 Compliance Audit Return for submission to the Department of Local Government Sport and Cultural Industries Council would be in breach the prescribed statutory requirements in [regulation 13 of the Local Government (Audit) Regulations 1996.](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43668.pdf/$FILE/Local%20Government%20(Audit)%20Regulations%201996%20-%20%5B02-i0-00%5D.pdf?OpenElement)

**Conclusion**

That Council adopt the Compliance Audit Return 2022 as contained in Attachment 2, in accordance with the recommendation of the Audit and Risk Committee dated 7 March 2023.

**Further Information**

Nil.

# Reports by the Chief Executive Officer CEO03.03.23 to CEO08.03.23 (copy attached)

# CEO03.03.23 Proposed Repeal Local Law

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 28 March 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Sam Curulli - Governance Officer |
| **CEO** | Bill Parker |
| **Attachments** | 1. Draft City of Nedlands Repeal Local Law 2023 |

**Purpose**

To repeal outdated or unused local laws.

**Recommendation**

**That Council pursuant to Section 3.12 of the Local Government Act 1995 resolves to:**

1. **in accordance with sections 3.12(3)(a) and (3a) of the Local Government Act 1995, give local public notice stating that:**
   1. **It is proposed to make a *City of Nedlands Repeal Local Law*, and a summary of its purpose and effect;**
      1. **The purpose of the local law is to repeal a number of local laws that have been superseded by other legislation or no longer have effect.**
      2. **The effect the local laws are repealed.**
   2. **Copies of the proposed local law may be inspected at the City offices;**
   3. **Submissions about the proposed local law may be made to the City within a period of not less than 6 weeks after the notice is given;**
2. **in accordance with s3.12(3)(b) of the Act, as soon as the notice is given, send a copy of the proposed local law to the Minister for Local Government;**
3. **in accordance with s3.12(3)(c) of the Act, supply a copy of the proposed local law to any person requesting it; and**
4. **note that the results of the public consultation will be presented to Council for consideration of any submissions received.**

**Voting Requirement**

Simple Majority.

**Background**

A recent review of local laws under s3.16 of the Local Government Act 1995 has highlighted that the City has a number of local laws in place that can be repealed.

These are:

* 1. The *Municipality of the City of Nedlands By-laws Relating to Stalls* published in the Government Gazette on 2 March 1990;
  2. The *City of Nedlands By-laws Relating to Eating Areas in Streets and other Public Areas* published in the *Government Gazette* on 5 February 1988;
  3. The *Municipality of the City of Nedlands Bylaws Relating to the Removal of Refuse No 15* published in the Government Gazette on 4 June 1982;
  4. The *Municipality of the City of Nedlands By-Law Relating to Old Refrigerators and Cabinets* published in the Government Gazette on 15 January 1982;
  5. The *Municipality of the City of Nedlands By-laws Relating to Amusements* published in the *Government Gazette* on 8 November 1974;
  6. The *Municipality of the City of Nedlands By-law No 5 Relating to Long Service Leave* published in the *Government Gazette* on 13 January 1971;
  7. The *Municipality of the* *City of Nedlands By-law Relating to Fees to be Charged for Admission to Point Resolution Reserve* published in the *Government Gazette* on 29 November 1962;
  8. The *Municipality of the City of Nedlands By-Laws Relating to Prevention of Damage to Footpaths - No. 21* published in the Government Gazette on 4 May 1971;
  9. The *City of Nedlands Adoption of Draft Local Government Model By-law (Old Refrigerators and Cabinets) No. 8* published in the Government Gazette on 12 October 1962;
  10. The *City of Nedlands By-law No. 15 Removal of Refuse, etc.* published in the *Government Gazette* on 17 August 1960;
  11. The *City of Nedlands By-law No. 10 By-law to Regulate the Erection and use of Liquid Petroleum Products Pumps* published in the *Government Gazette* on 11 December 1959;
  12. The *City Of Nedlands By-law No. 9 re Signs, Blinds, Awnings, Advertisement Hoardings and Bill Posting* published in the *Government Gazette* on 11 December 1959;
  13. The *Municipality of Nedlands By-law No. 2 Adoption of XI Schedule of the Municipal Corporations Act 1906-*1954, published in the *Government Gazette* on 3 August 1956;
  14. The *City of Nedlands Amendment to Reserves, Foreshores And Beaches Local Law*, published in the *Government Gazette* on 20 November 2001;
  15. The *Municipality of the City of Nedlands By-law Relating to Street Lawns and Gardens and Laying of Pipes Under Carriageways* published in the *Government Gazette* on 23 December 1994;
  16. The *Municipality of the City of Nedlands By-laws Relating to Stalls* published in the *Government Gazette* on 15 April 1983;
  17. The *Municipality of the City of Nedlands By-laws Relating to Prevention of Damage to Footpaths No. 21* published in the *Government Gazette on* 4 July 1980;
  18. The *Municipality of the City of Nedlands Amendment to By-law No. 9, Relating to Signs, Blinds, Awnings, Advertisement Hoardings and Bill-Posting* published in the *Government Gazette* on 29 November 1962.

There are also a number of other local laws that can also be repealed as part of making a new local law and which are dealt with separately.

**Discussion**

The local laws listed above are no longer required and can be repealed. A draft *City of Nedlands Repeal Local law 2023* is attached.

**Consultation**

The process to repeal a local law is the same as making one under s3.12 of the *Local Government Act 1995*.

Amongst other things this requires a local government to give local public notice stating that it proposes to make a local law, the purpose and effect of which is summarized in the notice for a period of 6 weeks after it first appears. A copy is also to be given to the Minister for Local Government.

The purpose and effect of the proposed *City of Nedlands Repeal Local Law* is:

**Purpose**

To repeal a number of local laws that have been superseded by other legislation or no longer have any effect.

**Effect**

The local laws are repealed.

The results of the community consultation and feedback from the Minister are to be considered by Council before it makes the local law.

**Strategic Implications**

**Great Governance and Civic Leadership**

We value our Council’s quality decision-making, effective and innovative leadership, transparency, accountability, equity, integrity and wise stewardship of the community’s assets and resources. We have an involved community and collaborate with others, valuing respectful debate and deliberation.

**Priority Area**

Nil.

**Budget/Financial Implications**

There are financial and resource implications associated with the advertisement, processing of the proposed local law, and its eventual Gazettal on final adoption.

**Legislative and Policy Implications**

The process to make a Repeal local law is set out in section 3.12(3) of the [*Local Government Act 1995*](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43454.pdf/$FILE/Local%20Government%20Act%201995%20-%20%5B07-t0-00%5D.pdf?OpenElement).

**Decision Implications**

If adopted, the proposed Repeal local law will remove a number of unused and outdated local laws. If not, there is a slight risk that an out of date provision may be mistakenly applied.

**Conclusion**

The proposed Repeal local law will remove a number of old bylaws that no longer apply.

**Further Information**

Nil.

# CEO04.03.23 Proposed Dogs Local Law

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 28 March 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Sam Curulli - Governance Officer |
| **CEO** | Bill Parker |
| **Attachments** | 1. Proposed new City of Nedlands Dogs Local Law; 2. Proposed areas where dogs are prohibited and where dogs may be exercised off lead 3. List of Prohibited and off Leash Exercise Areas 4. Draft Dogs in Public Places Council Policy |

**Purpose**

A review of local laws as required by s3.16 of the Local Government Act 1995 has recently been completed.

Amongst other things, the *City of Nedlands Dogs Local Law 2012* requires amendment, to the extent that it is more efficient to make a new local law. A draft is attached.

Local governments must also now give local public notice of areas where dogs are prohibited from being, and where dogs may be exercised off lead instead of including them in a local law.

**Recommendation**

**That Council:**

1. **in accordance with sections 3.12(3)(a) and (3a) of the Local Government Act 1995, give local public notice stating that:**
   1. **It is proposed to make a *City of Nedlands Dogs Local Law*, and a summary of its purpose and effect**
      1. **The purpose is to make provisions about the confinement of dogs, control the number of dogs that can be kept on premises in the district, and to require removal of dog excreta;**
      2. **The effect is to extend the controls over dogs which exist under the Dog Act 1976 and Regulations;**
   2. **Copies of the proposed local law may be inspected at the City offices during normal opening hours; and**
   3. **Submissions about the proposed local law may be made to the City within a period of not less than 6 weeks after the notice is given;**
2. **in accordance with s3.12(3)(b) of the Act, as soon as the notice is given sends a copy of the proposed local law to the Minister for Local Government;**
3. **in accordance with s3.12(3)(c) of the Act, a copy of the proposed local law be supplied to any person requesting it;**
4. **the results of the public consultation be presented to Council for consideration of any submissions received;**
5. **in accordance with s3.6 of the Local Government Act, an application be made to the Governor to extend application of the local law 100m outside the district into the Swan River in the vicinity of the Sunset Foreshore Reserve as detailed in the report of the CEO; and**
6. **gives local public notice under s31(3A) of the Dog Act 1976 of the areas where dogs are prohibited and where dogs may be exercised off leash as listed in Attachment 2 to this report .**

**Voting Requirement**

Simple Majority.

**Background**

The *City of Nedlands Dogs Local Law* was published in the Government Gazette on 11 October 2012 and last amended in 2013.

A number of activities dealt with by this local law have been affected by changes to other legislation, and in particular changes to the *Dog Act 1976* and the *Dogs Regulations 2013*. This includes:

* Registration of dogs;
* ‘Dangerous dogs’ as defined by the Act;
* Operation of dog management facilities (pounds), including:
  + Issues in relation to the impounding of dogs;
  + Attendance of a pound keeper at the pound;, and
  + Release of impounded dogs is dealt with by the Dog Act 1976, and in particular section 29.
* Registration fees (although fees for the seizure and impounding of a dog may be set by a local government in its annual budget under section 6.16 of the Local Government Act 1995);
* How off leash dog exercise areas are established;
* Dogs wandering at large;
* Dogs not under control;
* Dog attacks;
* Provisions about assistance animals such as guide dogs; and
* Modified penalties applicable for minor offences.

**Discussion**

The only matters that a local government may now make local laws about are listed in section 51 of the Dog Act:

***51. Local law making powers***

*A local government may so make local laws —*

1. providing for the registration of dogs;

[(b) deleted]

1. specifying areas within which it shall be an offence (unless the excreta are removed) for any person liable for the control of a dog to permit that dog to excrete on any street or public place or on any land without the consent of the occupier;
2. requiring that in specified areas a portion of the premises where a dog is kept must be fenced in a manner capable of confining the dog;
3. providing for the establishment and maintenance of dog management facilities and other services and facilities necessary or expedient for the purposes of this Act;
4. providing for the detention, maintenance, care and release or disposal of dogs seized;
5. as to the destruction of dogs pursuant to the powers hereinbefore conferred;
6. providing for the licensing, regulating, construction, use, and inspection of approved kennel establishments.

[(h) deleted]

In reality it is only necessary to make a local law that deals with confinement, the requirement to pick up dog excreta, and kennels.

Given the extent of amendments that will be required to the current Dogs local law, it will be simpler to make a new one. A draft *City of Nedlands Dogs Local Law 2023* is attached. It contains an index, notes and page numbers to assist with its use that will not form part of the official version to be Gazetted but which can be used for day to day purposes.

Through this new local law, the City will also address an irregularity with ‘Sandy Beach’ adjacent Iris Avenue, Dalkeith. The boundary of the City does not follow the shoreline of the Swan River in the vicinity of Sunset Reserve:



A local government may apply under s3.6 of the Local Government Act to the State Governor to apply a local law outside its boundary. In this instance it would be appropriate to seek approval to extend the draft Dogs Local Law for a distance of 100m into the Swan River, between the westernmost alignment of the Adelma Place Road reserve and the easternmost alignment of the Iris Avenue Road reserve as shown above. If approved, notice of the extension will appear in the Gazette and cross referenced in the proposed local law.

In addition, areas where dogs are prohibited and where dogs may be exercised off leash are now set by Council resolution and by the giving of local public notice under s31(3A) of the Dog Act 1976.

The following are proposed to be places where dogs are prohibited, with changes to those listed in the old local law shown in red:

1. where so indicated by a sign, a public building;
2. a theatre, picture gardens, or a playground;
3. all premises or vehicles classified as food premises or food vehicles under the *Health (Food Hygiene) Regulations 1993* except for a portion of a food premise that may be used for alfresco dining providing:
   1. There is no evidence of a present risk of unsafe or unsuitable food being sold;
   2. The owner or occupier of the premises permits the dog to be present; and
   3. The dog must be on a leash at all times no longer than 2.0m and held by a person capable of controlling it.
4. Swanbourne Beach Reserve No. 23729, being the sand and area adjacent to the Swanbourne Beach development as indicated by signs.
5. Infant Health Centre Playground, Lot 254 Strickland Street, Mt Claremont;
6. Hollywood Reserve Tennis Courts area and surrounds, Reserve A20838, Hollywood ;
7. Karella Street Playground, Lot 164 Smyth Road, Nedlands;
8. Leura Street Playground, Lot 300 Leura Street, Nedlands;
9. Campsie Street Playground, Lot 46 Campsie Street, Nedlands;
10. Jo Wheatley All Abilities Play Space, Lot 501 The Esplanade, Nedlands; and
11. a public swimming pool.

The following are proposed to be dog exercise areas, and are the same as listed in the current local law except that it is proposed to:

* Delete:
  + ‘Foreshore 3, The Esplanade, Dalkeith; and
  + Asquith Park, Lot: 251 Rochdale Rd My Claremont.
* Add:
  + Sunset Foreshore Reserve, Reserve 29174, Dalkeith;
  + White Beach, Bishop Road, Dalkeith, and
  + Sandy Beach Reserve: 24457

| **Current local law** | **Proposed Exercise Areas** |
| --- | --- |
| 1. Allen Park, Clement St Swanbourne | 1. Allen Park Ovals, Clement St, Swanbourne; |
| 1. Asquith Park, Lot: 251 Rochdale Rd Mt Claremont | 1. Not proposed |
| 1. Baines Park, Lot: 300 Driftwood Pl Swanbourne | 1. Baines Park, Lot 300 Driftwood Pl, Swanbourne; |
| 1. Beaton Park, The Esplanade Nedlands | 1. Beaton Park, The Esplanade, Nedlands; |
| 1. Beatrice Road Reserve, Loc: 58367 Beatrice Rd Dalkeith | 1. Beatrice Road Reserve, Location 58367 Beatrice Rd, Dalkeith; |
| 1. Birdwood Parade Reserve, Reserve: 17391 Birdwood Parade Dalkeith | 1. Birdwood Parade Reserve, Reserve 17391 Birdwood Parade, Dalkeith; |
| 1. Bishop Road Reserve, Lot: 1627 Bishop Rd Dalkeith | 1. Bishop Road Reserve, Lot 1627 Bishop Rd, Dalkeith; |
| 1. Blain Park, Lot: 825 Genesta Cr Dalkeith | 1. Blain Park, Lot 825 Genesta Cr, Dalkeith; |
| 1. Brockman Reserve, 150 Wavell Rd Dalkeith | 1. Brockman Reserve, 150 Wavell Rd, Dalkeith; |
| 1. Carrington Park, Lot 325: Broome St Nedlands | 1. Carrington Park, Lot 325 Broome St, Nedlands; |
| 1. Cavendish Gardens, Lot: 342 Gainsford Lane Mt Claremont | 1. Cavendish Gardens, Lot: 342 Gainsford Lane, Mt Claremont; |
| 1. Charles Court Reserve, Esplanade Dalkeith | 1. Charles Court Reserve, The Esplanade Dalkeith; |
| 1. College Green, Lot: 435 Mimosa Ave Mt Claremont | 1. College Green, Lot: 435 Mimosa Ave, Mt Claremont; |
| 1. College Park, Princess Rd Dalkeith | 1. College Park, Princess Rd, Dalkeith |
| 1. Dalkeith Mews, Adelma Rd Dalkeith | 1. Dalkeith Mews, Adelma Rd Dalkeith; |
| 1. Daran Park, Reserve: 45730 Montgomery Ave Mt Claremont | 1. Daran Park, Reserve 45730 Montgomery Ave, Mt Claremont; |
| 1. David Cruickshank Reserve, 84 Beatrice Rd Dalkeith | 1. David Cruickshank Reserve, 84 Beatrice Rd, Dalkeith; |
| 1. Directors Gardens, Grainger Drive Mt Claremont | 1. Directors Gardens, Grainger Drive, Mt Claremont; |
| 1. Dot Bennett Park, Lot: 1 Smyth Rd Nedlands | 1. Dot Bennett Park, Lot 1 Smyth Rd, Nedlands; |
| 1. Foreshore 3, The Esplanade Dalkeith | 1. Not proposed |
| 1. Genesta Park, Lot: 824 Genesta Cr Dalkeith | 1. Genesta Park, Lot 824 Genesta Cr, Dalkeith; |
| 1. Goldsmith Reserve, Lot: 3857 Garland Rd Dalkeith | 1. Goldsmith Reserve, Lot: 3857 Garland Rd, Dalkeith; |
| 1. Grainger Reserve, Grainger Drive Mt Claremont | 1. Grainger Reserve, Grainger Drive, Mt Claremont; |
| 1. Granby Park, Granby Cr Dalkeith | 1. Granby Park, Granby Cr, Dalkeith; |
| 1. Hamilton Park, Hamilton Gardens, Mt Claremont | 1. Hamilton Park, Hamilton Gardens, Mt Claremont; |
| 1. Harris Park, Lot 304 Tide Court Swanbourne | 1. Harris Park, Lot 304 Tide Court, Swanbourne; |
| 1. Highview Park, Verdun St Nedlands | 1. Highview Park, Verdun St, Nedlands; |
| 1. Jones Park, Reserve No 47257 Jameson St Swanbourne | 1. Jones Park, Reserve No 47257 Jameson St, Swanbourne; |
| 1. Lawler Park, Draper St Floreat | 1. Lawler Park, Draper St, Floreat; |
| 1. Leslie Graham Reserve, Corner Bromilow Green & Camelia Ave Mt Claremont | 1. Leslie Graham Reserve, Corner Bromilow Green & Camelia Ave, Mt Claremont; |
| 1. Limekiln Field, Reserve: 30403 North St Swanbourne | 1. Limekiln Field, Reserve 30403 North St, Swanbourne |
| 1. Melvista Park, Reserve: 1669 Melvista Ave Dalkeith | 1. Melvista Park, Reserve 1669 Melvista Ave, Dalkeith; |
| 1. Mooro Park, Corner Heritage Lane & Mooro Drive Mt Claremont | 1. Mooro Park, Corner Heritage Lane & Mooro Drive, Mt Claremont; |
| 1. Mossvale Gardens, Moss Vale Floreat | 1. Mossvale Gardens, Moss Vale, Floreat; |
| 1. Mt Claremont Oval, Corner Alfred Rd & Montgomery Ave Mt Claremont | 1. Mt Claremont Oval, Corner Alfred Rd & Montgomery Ave, Mt Claremont; |
| 1. Mt Claremont Reserve, Haldane St Mt Claremont | 1. Mt Claremont Reserve, Haldane St, Mt Claremont; |
| 1. Nardina Crescent Reserve, Corner Nardina Cr & Beatrice Rd Dalkeith | 1. Nardina Crescent Reserve, Corner Nardina Cr & Beatrice Rd, Dalkeith; |
| 1. New Court Gardens, Reserve: 43380 New Court Gardens Mt Claremont | 1. New Court Gardens, Reserve 43380 New Court Gardens, Mt Claremont; |
| 1. Paiera Park, Reserve: 47367 Van Kleef Circuit, Mt Claremont | 1. Paiera Park, Reserve 47367 Van Kleef Circuit, Mt Claremont; |
| 1. Paul Hasluck Reserve, Esplanade Nedlands | 1. Paul Hasluck Reserve, The Esplanade, Nedlands; |
| 1. Peace Memorial Rose Gardens, Lots: 1-16, 76-78 Stirling Highway Nedlands | 1. Peace Memorial Rose Gardens, Lots 1-16, 76-78 Stirling Highway, Nedlands; |
| 1. Pine Tree Park, Reserve 41549 Pine Tree Lane Mt Claremont | 1. Pine Tree Park, Reserve 41549 Pine Tree Lane, Mt Claremont; |
| 1. Poplar Gardens, Reserve: 42253 Godetia Gardens Mt Claremont | 1. Poplar Gardens, Reserve 42253 Godetia Gardens, Mt Claremont; |
| 1. Point Resolution Reserve, Reserve: 1624 Corner Jutland Parade & Victoria Avenue Dalkeith | 1. Point Resolution Reserve, Reserve 1624 Corner Jutland Parade & Victoria Avenue, Dalkeith; |
| 1. Rogerson Gardens, Reserve: 39653 Underwood Avenue Floreat | 1. Rogerson Gardens, Reserve 39653 Underwood Avenue, Floreat; |
|  | 1. Sandy Beach Reserve: 24457 |
| 1. Shirley Fyfe Park, Lot: 823 Cygnet Cr Dalkeith | 1. Shirley Fyfe Park, Lot 823 Cygnet Cr, Dalkeith; |
| 1. St Peters Square Gardens, Reserve: 46178 Caladenia Parade Mt Claremont | 1. St Peters Square Gardens, Reserve 46178 Caladenia Parade, Mt Claremont; |
| 1. Stubbs Terrace Reserves (3), Stubbs Tce Mt Claremont | 1. Stubbs Terrace Reserves (3), Stubbs Tce, Mt Claremont; |
|  | 1. Sunset Foreshore, Reserve 29174, Dalkeith; |
| 1. Swanbourne Beach Reserve North, Lot : 279 Reserve: 27250 | 1. Swanbourne Beach, Lot 500 Marine Parade, Swanbourne; |
| 1. Swanbourne Oval, Lot: 282 | 1. Swanbourne Oval, Lot 282, Swanbourne; |
| 1. Terrace Gardens, 49 Caladenia Pde Mt Claremont | 1. Terrace Gardens, 49 Caladenia Pde, Mt Claremont |
| 1. Vankleef Walkway, Vankleef Circuit Mt Claremont | 1. Vankleef Walkway, Vankleef Circuit, Mt Claremont; |
|  | 1. White Beach, Bishop Road, Dalkeith; |
| 1. Zamia Park, Corner Zamia St And Nandina Ave Mt Claremont | 1. Zamia Park, Corner Zamia St and Nandina Ave, Mt Claremont. |

**Consultation**

Section 51 of the *Dog Act 1976* provides that a local government may make local laws about dogs using the process set out in section 3.12 of the *Local Government Act 1995*.

Amongst other things this requires a local government to give local public notice stating that it proposes to make a local law, the purpose and effect of which is summarized in the notice for a period of 6 weeks after it first appears. A copy is also to be sent to the Minister for Local Government.

The purpose and effect of the proposed City of Nedlands Dogs Local Law is:

**Purpose**

To make provisions about the confinement of dogs, control the number of dogs that can be kept on premises in the district, and to require removal of dog excreta.

**Effect**

To extend the controls over dogs which exist under the Dog Act 1976 and Regulations.

The results of the community consultation and feedback from the Minister are to be considered by Council before it makes the local law.

In addition, as noted above local public notice is required of areas where dogs are prohibited and where they may be exercised off leash under s 31(3A) of the Dog Act is also required**.** There is no requirement to receive feedback, simply the giving of notice.

**Strategic Implications**

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

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

**Values** **Healthy and Safe**

Our City has clean, safe neighborhoods where public health is protected and promoted.

**Great Natural and Built Environment**

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

**Priority Area**

* Urban form - protecting our quality living environment

**Budget/Financial Implications**

The draft local law is based on a model prepared by the WA Local Government Association modified to suit the City, and in use by a number of local governments.

There are costs associated with its preparation, the giving of local public notice and if adopted, publication in the Government Gazette.

**Legislative and Policy Implications**

[City of Nedlands Dogs Local Law](https://www.nedlands.wa.gov.au/documents/34/local-laws-dogs)

**Decision Implications**

If adopted, the proposed Dogs local law will remove outdated local laws and provide transparency with respect to the City’s local laws.

**Conclusion**

The City should seek to keep its local laws as up to date as it reasonably can. In this instance, given the number of amendments required to the existing dogs local law, it is more efficient to make a new one based on one in use by a number of other local governments.

The results of community feedback and the Minister will be reported to council before the proposed local law is adopted.

**Further Information**

Nil.

# CEO05.03.23 Proposed Parking Amendment Local Law

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 28 March 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Sam Curulli- Governance Officer |
| **CEO** | Bill Parker |
| **Attachments** | 1. Draft City of Nedlands Parking Amendment Local Law 2. Draft City of Nedlands Parking and Facilities Local Law |

**Purpose**

A review of local laws as required by s3.16 of the Local Government Act 1995 has recently been completed.

Amongst other things, there are a number of amendments required to the *City of Nedlands Parking and Parking Facilities Local Law 2013* to reflect the passage of time and changes to other legislation such as the Road Traffic Code.

A draft is attached.

**Recommendation**

**That Council:**

1. **in accordance with sections 3.12(3)(a) and (3a) of the Local Government Act 1995, give local public notice stating that:**
   1. **It is proposed to make a *City of Nedlands Parking Amendment Local Law*, and a summary of its purpose and effect;**
      1. **The purpose of the local law is to amend the City of Nedlands Parking and Parking Facilities Local Law 2013 to ensure definitions reflect those in the Road Traffic Code 2000, add provisions preventing parking in culs de sac heads, add provisions about parking on or near painted traffic islands, clarify provisions relating to the parking of vehicles that may be abandoned, unregistered or disused, clarify provisions relating to stopping or parking in clearways when in operation; and increase penalties.**
      2. **The effect is that the*****City of Nedlands Parking and Parking Facilities Local Law 2013* is amended.**
   2. **Copies of the proposed local law may be inspected at the City offices during normal opening hours;**
   3. **Submissions about the proposed local law may be made to the City within a period of not less than 6 weeks after the notice is given;**
2. **in accordance with s3.12(3)(b) of the Act, as soon as the notice is given sends a copy of the proposed local law to the Minister for Local Government;**
3. **in accordance with s3.12(3)(c) of the Act, a copy of the proposed local law be supplied to any person requesting it; and**
4. **the results of the public consultation be presented to Council for consideration of any submissions received.**

**Voting Requirement**

Simple Majority.

**Background**

The *City of Nedlands Parking and Parking Facilities Local Law 2013* was published in the Government Gazette on 23 October 2013 and last amended in 2017.

There are a number of changes required to the local law. In summary, these are:

* Amendments to definitions to reflect those in the *Road Traffic Code 2000*;
* Added provisions preventing parking in cul de sac heads;
* Added provisions about parking on or near painted traffic islands;
* Clarification of provisions relating to the parking of vehicles that may be abandoned, unregistered or disused;
* Provisions clarifying stopping or parking in clearways when in operation; and
* Increased penalties reflecting the passage of time since the local law was made in 2013:
  + The minimum penalty that may be imposed by a court has been increased from $250 to $500 to better provide for the City to recover expenses when undertaking a prosecution under the local law;
  + Increased modified penalties (‘modified penalties’ are an alternate to a court hearing, whereby an alleged offence is dealt with without a court hearing) have been increased from $60-$80 to $100-120 for what are considered minor offences, and higher risk offences from $90 to $150.
  + These increased amounts align similarly to neighbouring local governments including the Town of Claremont and the City’s of Vincent and Perth.

**Discussion**

The changes to the City of Nedlands parking penalties would be of assistance to the City and bring us inline with similar sized local governments.

**Consultation**

Parking local laws may be amended using the process set out in section 3.12 of the *Local Government Act 1995*.

Amongst other things this requires a local government to give local public notice stating that it proposes to make a local law, the purpose and effect of which is summarized in the notice for a period of 6 weeks after it first appears. A copy is also to be sent to the Minister for Local Government.

The purpose and effect of the proposed City of Nedlands Parking Amendment Local Law is:

**Purpose**

To amend the *City of Nedlands Parking and Parking Facilities Local Law 2013* to ensure definitions reflect those in the *Road Traffic Code 2000*, add provisions preventing parking in culs de sac heads, add provisions about parking on or near painted traffic islands, clarify provisions relating to the parking of vehicles that may be abandoned, unregistered or disused, clarify provisions relating to stopping or parking in clearways when in operation; and increase penalties.

**Effect**

The *City of Nedlands Parking and Parking Facilities Local Law 2013* is amended.

The results of the community consultation and feedback from the Minister are to be considered by Council before it makes the local law.

**Strategic Implications**

**Great Governance and Civic Leadership**

We value our Council’s quality decision-making, effective and innovative leadership, transparency, accountability, equity, integrity and wise stewardship of the community’s assets and resources. We have an involved community and collaborate with others, valuing respectful debate and deliberation.

**Priority Area**

Nil.

**Budget/Financial Implications**

There are costs associated with the preparation of the Amendment local law, the giving of local public notice and if adopted, publication in the Government Gazette.

**Legislative and Policy Implications**

The process to edit current local laws is set out in section 3.12(3) of the [*Local Government Act 1995*](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43454.pdf/$FILE/Local%20Government%20Act%201995%20-%20%5B07-t0-00%5D.pdf?OpenElement).

**Decision Implications**

If adopted, the proposed changes will benefit the City and align us with similar size local governments.

**Conclusion**

The City should seek to keep its local laws as up to date as it reasonably can. As well as amendments required that arise from its application, the City should amend penalties at the same time.

The results of community feedback and the Minister will be reported to council before the proposed Amendment local law is adopted. If adopted, it will take effect 14 days after Gazettal and the principal local law will be amended.

**Further Information**

Nil.

# CEO06.03.23 Proposed Public Places and Local Government Property Local Law

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 28 March 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Sam Curulli- Governance Officer |
| **CEO** | Bill Parker |
| **Attachments** | 1. Draft City of Nedlands Public Places and Local Government Property Local Law 2023. |

**Purpose**

As part of a review of the City’s local laws, it is proposed to combine four local laws that deal with property under the City’s care, control and management.

**Recommendation**

**That Council pursuant to Section 3.12 of the Local Government Act 1995 resolves to:**

1. **in accordance with sections 3.12(3)(a) and (3a) of the Local Government Act 1995, give Statewide and local public notice stating that:**
   1. **It is proposed to make a *City of Nedlands Public Places and Local Government Property Local Law*, and a summary of its purpose and effect;**
      1. **The purpose of the local law is to regulate the care, control and management of property of and under the care, control and management of the City including thoroughfares.**
      2. **The effect some City property is set aside for particular uses, some activities are allowed only under a permit or under a determination, and others are restricted or prohibited. The local law also establishes offences for inappropriate behaviour in or on City property.**
   2. **Copies of the proposed local law may be inspected at the City offices;**
   3. **Submissions about the proposed local law may be made to the City within a period of not less than 6 weeks after the notice is given;**
2. **in accordance with s3.12(3)(b) of the Act, as soon as the notice is given, send a copy of the proposed local law to the Minister for Local Government;**
3. **in accordance with s3.12(3)(c) of the Act, supply a copy of the proposed local law to any person requesting it;**
4. **in accordance with s3.6 of the Local Government Act, an application be made to the Governor to extend application of the local law:**
   1. **200m outside the district into the Indian Ocean; and**
   2. **100m into the Swan River in the vicinity of the Sunset Foreshore Reserve between the westernmost alignment of the Adelma Place Road reserve and the easternmost alignment of the Iris Avenue road reserve, Dalkeith.; and**
5. **note that the results of the public consultation will be presented to Council for consideration of any submissions received.**

**Voting Requirement**

Simple Majority.

**Background**

The City has in force a number of local laws deal with regulating activities on property under its care, control and management:

1. *Trading in Public Places Local Law 2000*,
2. *Local Law Relating to Council Halls* published in the *Government Gazette* on 1 September 2000;
3. *Local Law Relating to Thoroughfares* published in the Government Gazette on 10 November 2000; and
4. *Local Law Relating to Reserves, Foreshores and Beaches,* as published in the Government Gazette on 19 March 2001.

Combining these local laws will remove duplication and different provisions that could be made uniform.

**Discussion**

Attached is a draft City of Nedlands draft Public Places and Local Government Property Local Law. Rather than devising a set of rules for each type of property, its provisions apply across all areas with specific provisions about particular locations that might be unique.

Common items like definitions, modified penalties, notices and enforcement provisions apply to all areas of the local law, regardless of where a matter might physically be located or the subject dealt with.

In summary it reflects the provisions of the local laws it is intended to replace, and deals with:

* A process to make ‘determinations’ about particular properties in terms of what they may or may not be used for (an initial list appears in Schedule 1 of the draft local law);
* Activities that are prohibited;
* Activities where a permit is required, including street stalls, alfresco dining and the like;
* Placing of advertising signs;
* Behaviour on all property on the City’s care, control and management;
* Matters that relate to particular City property such as:
  + Where functions are being held;
  + Golf courses;
  + Beaches; and
  + Jetties and boat launching ramps.
* Activities in streets such as verge treatments, removal of crossovers, property numbering and the like;
* Leaving animals and shopping trolleys in public places;
* Permits and conditions that could be applied;
* Enforcement provisions such as:
  + Notices to do certain things (including removal of items from a thoroughfare, repair damage);
  + Modified penalties or ‘on the spot’ fines; and
  + Penalties that might apply where the City prosecutes a person for an offence or fails to comply with a notice.

The draft local law also contains text boxes where other legislation is referenced or referred to. They do not form part of the draft local law and will be removed from the official version to be Gazetted but retained in administrative versions, with a disclaimer reflecting their status on the front page of the local law.

**Consultation**

The process to make a local law is set out in section 3.12(3) of the *Local Government Act 1995*. Amongst other things this requires a local government to give local public notice stating that it proposes to make a local law, the purpose and effect of which is summarized in the notice for a period of 6 weeks after it first appears. A copy is also to be given to the Minister for Local Government.

The purpose and effect of the proposed *City of Nedlands Public Places and Local Government Property Law* is:

**Purpose**

To regulate the care, control and management of property of and under the care, control and management of the City including thoroughfares.

**Effect**

Some City property is set aside for particular uses, some activities are allowed only under a permit or under a determination, and others are restricted or prohibited. The local law also establishes offences for inappropriate behaviour in or on City property.

The results of the community consultation and feedback from the Minister are to be considered by Council before it makes the local law.

In addition, some of the local laws proposed to be replaced by the draft new local law apply outside the district into the Indian Ocean. There is also a portion of the boundary of the City that does not follow the shoreline of the Swan River in the vicinity of Sunset Reserve:



A local government may apply under s3.6 of the Local Government Act to the State Governor to apply a local law outside its boundary. In this instance it would be appropriate to seek approval to extend the draft Public Places and Local Government Property Local Law for:

1. 200m outside the district into the Indian Ocean; and
2. 100m into the Swan River in the vicinity of the Sunset Foreshore Reserve between the westernmost alignment of the Adelma Place road reserve and the easternmost alignment of the Iris Avenue road reserve, Dalkeith

If approved, notice of the extension will appear in the Gazette and cross referenced in the proposed local law.

**Strategic Implications**

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

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

**Values** **Healthy and Safe**

Our City has clean, safe neighbourhoods where public health is protected and promoted.

**High standard of services**

We have local services delivered to a high standard that take the needs of our diverse community into account.

**Great Governance and Civic Leadership**

We value our Council’s quality decision-making, effective and innovative leadership, transparency, accountability, equity, integrity and wise stewardship of the community’s assets and resources. We have an involved community and collaborate with others, valuing respectful debate and deliberation.

**Great for Business**

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

**Priority Area**

* Renewal of community infrastructure such as roads, footpaths, community and sports facilities
* Retaining remnant bushland and cultural heritage
* Providing for sport and recreation

**Budget/Financial Implications**

There are financial and resource implications associated with the advertisement, processing of the proposed local law, and its eventual Gazettal on final adoption.

**Legislative and Policy Implications**

The process to make a local law is set out in section 3.12(3) of the [Local Government Act 1995.](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43454.pdf/$FILE/Local%20Government%20Act%201995%20-%20%5B07-t0-00%5D.pdf?OpenElement)

**Decision Implications**

There are four local laws that will be repealed if this local law is made. The subject matter is wide ranging and the proposed new local law is relatively large but reduces the overall impact of the subject matter.

It also updates those provisions that have may have become outdated since the majority of local laws being replaced were made in 2000 – 2001.

If not replaced or updated, there is a minor risk that the City may not comply with ‘higher’ legislation or regulation.

**Conclusion**

The proposed new local law updates and streamlines a wide ranging area, being regulation of activities in public places and on property under the City’s care, control and management.

Enforcement options have also been enhanced.

The draft local law is very similar to those used by a number of local governments.

**Further Information**

Nil.

# CEO07.03.23 Review of Local Laws under s3.16 of the Local Government Act 1995

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 28 March 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Sam Curulli- Governance Officer |
| **CEO** | Bill Parker |
| **Attachments** | Nil. |

**Purpose**

Section 3.16 of the *Local Government Act 1995* requires local governments to undertake a review of their local laws every eight years.

Council has previously resolved to initiate the review and call for comments from the public as required by the Act. None were received but there are a number of local laws that should be repealed and others updated.

Reports about the individual local laws are presented today.

**Recommendation**

**That Council:**

1. **adopts the outcome of the review of local laws undertaken pursuant to s3.16 of the Local Government Act 1995; and**
2. **notes that proposals to amend and/or repeal local laws of the City will be presented for consideration in due course pursuant to s3.12.**

**Voting Requirement**

Absolute Majority.

**Background**

Section 3.16 of the *Local Government Act 1995* (the Act) requires local governments to undertake a review of their local laws at least once every eight (8) years.

A list of the local laws currently in place, when they were made / gazetted, and comments regarding them were reported to Council at its meeting held on 28 June 2022 (Item 18.1 refers). Council resolved to initiate the review and call for comments by members of the public for a six week period as required by s3.16. The period for comments closed on 31 August 2022; no comments were received.

Although there were no comments from the public it is considered good practice to keep local laws as up to date and as contemporary as they reasonably can be, while others can simply be left as is.

A summary of proposed action was presented to council on 28 June 2022. Reports are now presented with respect to each local law, and those proposed for repeal.

**Discussion**

At its meeting held on 28 June 2022, Council resolved to initiate the review as required by s3.16 of the Act.

**Consultation**

As part of a review of local laws under section 3.16 of the *Local Government Act* *1995*, a local government is required to give local public notice, inviting submissions for a period of not less than 6 weeks. The City gave the required notice, which closed on 31 August 2022.

No comments were received.

**Strategic Implications**

**Great Governance and Civic Leadership**

We value our Council’s quality decision-making, effective and innovative leadership, transparency, accountability, equity, integrity and wise stewardship of the community’s assets and resources. We have an involved community and collaborate with others, valuing respectful debate and deliberation.

**Priority Area**

Nil.

**Budget/Financial Implications**

There are costs associated with the amendments to existing local laws and to repeal those no longer relevant.

To reduce these costs, local laws used by local governments of a similar nature to the City or models developed by the WA Local Government Association are being used.

**Legislative and Policy Implications**

Pertinent to s3.16 of the [*Local Government Act 1995*](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43454.pdf/$FILE/Local%20Government%20Act%201995%20-%20%5B07-t0-00%5D.pdf?OpenElement)*.*

**Decision Implications**

If adopted, the s3.16 process will officially be closed off as is required in the implementation and review of the Local Laws process.

**Conclusion**

The City has now fulfilled its statutory obligation under the Act to regularly review local laws but is now required to use the process under s3.12 to actually amend those that require updating and to make a Repeal Local Law to repeal those that are no longer relevant.

Keeping local laws up to date ensures the City is well placed to deal with any issues that may arise, as well as the community benefit of removing redundant or unnecessary regulation.

**Further Information**

Nil.

# CEO08.03.23 Register of Outstanding Council Resolutions

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 28 March 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | No officer involved in the preparation of this report has a declarable interest. |
| **Report Author** | Libby Kania – Coordinator Governance and Risk |
| **CEO** | Bill Parker |
| **Attachments** | 1. Register of Outstanding Council Resolutions |

**Purpose**

For Council to consider the Register of Outstanding Council Resolutions (OCR) and the actions taken by Administration in progressing these items.

**Recommendation**

**That Council receives the Register of Outstanding Council Resolutions dated March 2023.**

**Voting Requirement**

Simple Majority.

**Background**

At its Ordinary meeting in August 2022, Cr Mangano submitted the following notice of motion which was adopted by Council:

“Council Resolution / Officer Recommendation

Council instructs the CEO to:

1. provide Council monthly with a table of all outstanding Council Resolutions, the date they were resolved by Council, and their current status;

2. include this information in all future Ordinary Council Meeting Agendas from 1st February 2023; and

3. implement a process by which Council can endorse the status of completion for Resolutions.

CARRIED UNANIMOUSLY 11/-“

Due to the delay in commencement of the governance resource, the Administration was unable to commence the process in time for the February Council Meeting. The process has now been documented and put in place for the March Council Meeting.

**Discussion**

To date, Administration has provided to Council a progress report on outstanding Council resolutions, through the Councillor portal. Notwithstanding, Council has requested that the OCR’s be considered as a standing item each month on the Council agenda.

Attached to the Council report is the register of OCRs for Council’s noting and consideration.

The majority of the OCRs in any given group are the result of a Councillor notice of motion. This is not surprising due in part to the fact that notices of motion are in most instances unplanned and require unbudgeted funding and resource allocation. In terms of progressing these types of resolutions, they will usually take longer as they require the diversion of resources. Resource allocation may include officer time in, for example, the preparation of a report or investigation of an issue, or the need to wait until mid-year reviews or the annual budgeting cycle to adequately fund a project. This is not to argue against the practice of notices of motion, but simply to provide reasoning for why some resolutions may take longer to complete.

Councillors should note that in regard to paragraph 3 of the Council resolution, formal endorsement of a completed Council resolution has no status under legislation and is inconsistent with the Act. It is not a function of Council to endorse the status of completion of resolutions. It is a function of the CEO to ensure that Council resolutions are implemented (s. 5.41(c)) and to manage the day to day operations of the local government.

Once a resolution is made by Council, it is the CEO’s function to see that it is implemented.

Requesting that Council endorse the status of completion of resolutions is inconsistent with the practices at other local governments and is considered to be contrary to the Local Government Act 1995, which prescribes that the implementation of Council decisions is a function of the CEO. Should the CEO fail to implement the decisions of Council this is a matter to be dealt with during the CEO Performance Appraisal process.

Information will be periodically provided to Councillors on previous resolutions of Council that:

(i) have been completed since the last update and

(ii) have not yet been fully implemented. Reasons for any delays or unforeseen challenges could be included.

Councillors could seek an update on any particular project or resolution outside of the reporting period, by contacting the CEO directly for information.

Further, the register could be uploaded to the City’s website for greater transparency to the community.

**Consultation**

Nil.

**Strategic Implications**

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

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

**Values** **Great Governance and Civic Leadership**

We value our Council’s quality decision-making, effective and innovative leadership, transparency, accountability, equity, integrity and wise stewardship of the community’s assets and resources. We have an involved community and collaborate with others, valuing respectful debate and deliberation.

**Budget/Financial Implications**

Nil.

**Legislative and Policy Implications**

[*Local Government Act 1995*.](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43454.pdf/$FILE/Local%20Government%20Act%201995%20-%20%5B07-t0-00%5D.pdf?OpenElement)

**Decision Implications**

If Council considers it appropriate to implement a sign-off on all outstanding resolutions, there is a risk that Council may be contravening Section 5.41(c) of the Act. Whilst there may be a perceived risk that Councillors will lose oversight of the implementation of previous Council decisions, this is appropriately mitigated by way of the provision of relevant information via the CEO Weekly update, direct request to the CEO and the CEO Performance Review Process. The City may include the register on the website which provides transparency to the community.

**Conclusion**

That the Council receives the Register of Outstanding Council Resolutions for noting.

**Further Information**

Nil.

# Council Members Notice of Motions of Which Previous Notice Has Been Given

The following item was deferred from the 28 February 2023 Ordinary Council Meeting to be considered at this meeting.

# Councillor Youngman – Cul-de-sac on Florence Road and Stanley Street

In accordance with Clause 3.9 of the *City of Nedlands Standing Orders Local Law* on the 15 February 2023, Councillor Youngman gave notice of his intention to move the following motion.

Moved – Councillor Youngman

Seconded – Councillor Mangano

**That Council:**

* + 1. **direct the CEO to begin undertaking the statutory road closure process in accordance with the Local Government Act 1995 Section 3.50, and report back to Council for the July Council Meeting for a partial road closure permitting north bound vehicles only on:**
  1. **Florence Road, between Stirling Highway and Edward Street, Nedlands; and**
  2. **Stanley Street, between Stirling Highway and Edward Street, Nedlands;** 
     1. **by absolute majority, allocate:**
  3. **$5,000 for traffic modelling to determine the impacts of 1. Above; and**
  4. **$20,000 for the preliminary site investigation and concept development of 1. above;** 
     1. **consider as part of the development of the 2023-24 financial year budget a capital item for the detailed design and construction of suitable cul-de-sacs and one-way arrangements on:**
  5. **Florence Road, between Stirling Highway and Edward Street, Nedlands; and**
  6. **Stanley Street, between Stirling Highway and Edward Street, Nedlands;**

**In the vicinity of the southern boundary of the development at 80 Stirling Highway, Nedlands.**

**Justification**

There are five reasons for the motion:

1. Numerous examples of cul-de-sacs around large developments exist in Perth. At Chelsea Village traffic flow was modified to reduce vehicle movements through the adjoining streets. In Fremantle when the Trade Winds Hotel was developed from the original Jack Sheedy Hotel the adjoining roads were cul-de-saced with a one way exits from the residential area.
2. 3,205 residents signed a petition because of their concern about the knock on effect of vehicle traffic through the neighbourhood, particularly along, Florence Road, Stanley Street, Edwards Street, Dalkeith Road and Bruce Street.
3. Main Roads and the JDAP recognised the issues with vehicle traffic moving to and from the development.
4. Controlling the traffic movements prior to construction will give some piece of mind to surrounding residents, most of whom never expected a large development to be approved in the car park of the Captain Stirling Hotel.
5. Where the residents felt let down by the JDAP decision the City of Nedlands has the right to ameliorate their concern by controlling traffic on local Access Roads.

**Administration Comment**

Any closure of roadway, complete or partial should be considered amongst the impacts of the broader network and decided upon noting the extended implications of isolated treatments.

At the 30 August 2022 OCM, as part of consideration for a proposed laneway between Stanley Street and Florence Road, it was resolved that Council:

1. requests the CEO to begin investigations to create one-way cul-de-sacs on both Florence Road, from the north side of properties number 1 on the west side to property number 8 on the east side, and Stanley Street from the north side of properties number 11 on the west side to property number 12 on the east side.

Work on this motion was deferred due to both staff vacancies and progress outcomes regarding the nearby developments which would subsequently be required as part of any proper traffic investigation.

Further, to address community concerns of the impact of developments, a proposed recommendation put forward by Council was considered by the North-Inner Metro Joint Development Assessment Panel pertaining to the creation of a Local Area Traffic Treatment Plan. The final condition adopted for approval was:

**“Condition 25**

Within 12 months of occupancy of the development, the proponent is to undertake analysis of the impact of the development on the local road network to the specifications and satisfaction of the City of Nedlands. The outcomes of the analysis are to inform the preparation of a Local Area Traffic Treatment Plan by the applicant, if deemed necessary by the analysis.”

This would give opportunity for the real impacts of the development to be determined and for a broader area plan of potential treatments considered. However, this does not help address the community’s immediate concerns regarding traffic.

Now that approval has been given to at least one of the sites in the area, some investigation and modelling can occur for various scenarios, i.e. cul-de-sacs. Whilst the opportunity exists for Council to integrate consideration of cul-de-sacs as an option to be considered within the Local Area Traffic Treatment Plan undertaken by the applicant at their cost – nothing prevents the City doing this work and modifying the road network in advance.

The City has information pertaining to the development around traffic impacts and the potential impacts of cul-de-sacs could be determined through updated modelling against the broader network within the City’s Nedlands Area Traffic Impact Model (NATIM) which is in development. The cost for this would be estimated to be **$5,000**, and likely critical to inform parties such as Main Roads Western Australia who will need to be engaged regarding any road closure.

**Road Closure Process**

The road closure requirements under the local government act prescribe the extent of notification and engagement required to enact a decision. Previous experience of City staff in this have outlined the following process and relevant timelines:

|  |  |
| --- | --- |
| **Road Closure Process** | **138 working days** |
| Undertake traffic impact modelling to determine preferred direction | 20 days |
| Review modelling and finalise | 10 days |
| Review site implications and required works | 3 days |
| Report to Council to undertake initial consultation with community | 30 days |
| Undertake formal notice under 3.50A of the act | 5 weeks |
| Return results to Council to formally order the partial road closure | 30 days |

These dates and timelines are on the basis of the resourcing of another, larger, local government and thus the timelines for the City of Nedlands will likely be a number of weeks longer.

**Cul-de-sac design and construction**

As no formal engineering design has been undertaken, nor associated costings, this will need to be undertaken prior to any capital works but started concurrently to any road closure process so that concept designs can be developed for use in stakeholder engagement.

Similarly, a timeline has been developed for this, on the assumption that all design work would be required to be undertaken by consultants.

|  |  |
| --- | --- |
| **Cul-de-sac Design and Construct** | **183 days** |
| Undertake survey of roads | 10 days |
| Undertake service locations | 10 days |
| Concept design roads | 4 wks |
| City review of design | 2 wks |
| Detail design roads | 4 wks |
| Gain approval for service adjustments | 2 wks |
| Procure Contractor | 12 wks |
| Mobilise contractor | 2 wks |
| Construction | 6 wks |

It is noted that some of these tasks will run concurrently with the closure process. This assumes the availability of all funds and does not account for financial budget implications/ timing – i.e. as part of the annual year budget process or via separate absolute majority resolution during the financial year.

As the extent of design and construction is yet to be determined as well as expected finish and quality, an estimate of sufficient detail cannot be provided.

However, on the basis of an opinion of probable costs using the proposed timeframe presented and a typical consultant hourly rate, the cost to design and scope the project(s) would be estimated to be $38,000. Provisionally, approximately half, or $20,000 of this would be required for preliminary work and concept development.

**Alternative officer wording**

While it is understood the importance of the issue to the community, undertaking the cul-de-sac work prior to the actual development’s impacts being realised may take options off the table for consideration, or require re-work. Council may wish to adopt a stance whereby:

1. Cul-de-sacs are adopted positions for consideration in any traffic treatment for the area, including a LATTP.
2. Choose to enact such works when a threshold has been triggered. This is not uncommon in many local governments with strategic direction over their road network whereby treatments are identified years in advance and implemented when performance or capacity reaches a certain point so as to not spend prematurely.

Should Council consider this, a possible motion would be:

**That Council:**

1. **adopt the position of cul-de-sacs including partial or full closures as the preferred treatment to limit traffic impacts on:**
   1. **Florence Road, between Stirling Highway and Edward Street, Nedlands; and**
   2. **Stanley Street, between Stirling Highway and Edward Street, Nedlands;**
2. **instruct the CEO to include cul-de-sacs as referenced in resolution 1 above in any future traffic modelling or Local Area Traffic Treatment Plans for the vicinity for Council consideration to implement.**

# Urgent Business Approved By the Presiding Member or By Decision

This item will be dealt with at the Ordinary Council Meeting.

# Confidential Items

Confidential items to be discussed at this point.

# Declaration of Closure

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

1. https://yourvoice.nedlands.wa.gov.au/underground-power/news\_feed/update-on-underground-power [↑](#footnote-ref-2)