**AGENDA**

**Council Meeting Agenda Forum**

**9 May 2023**

**Notice of Meeting**

**To Mayor & Councillors**

A Council Meeting Agenda Forum of the City of Nedlands is to be held on Tuesday 9 May 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

4 May 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 L J McManus Coastal District Ward

**(Previously Approved)**

**Apologies** None as at distribution of this agenda.

# 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 PD19.05.23 to PD21.05.23

# PD19.05.23 Adoption for Advertising – Nedlands Stirling Highway Activity Corridor (NSHAC) Strategy and Scheme Amendment

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 May 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 and Development |
| **Attachments** | 1. NSHAC Strategy 2. Scheme Amendment Report 3. Proposed Schedule 4: Building Heights 4. Proposed Schedule 5: Access Network 5. Proposed zoning map |

**Purpose**

This report is being presented to Council to initiate public consultation on a strategy (**Attachment 1**) and associated Scheme Amendment 13 (**Attachments 2-5**) for new development controls affecting lots within the Mixed Use zone along Stirling Highway. The report also recommends that Council not proceed with the Nedlands Town Centre Precinct Plan.

**Recommendation**

**That Council:**

1. **Pursuant to section 75 of the Planning and Development Act 2005 adopts Scheme Amendment No. 13 to amend Local Planning Scheme No. 3 as follows:**
2. **Delete existing clause 26(3).**
3. **Insert new clause 26(3) as follows:**

**“26(3). In relation to land coded R-AC1:**

1. **For the purposes of Acceptable Outcome A2.2.1 of the R-Codes, the building heights shall be the base heights shown on the map in Schedule 4, exclusive of plant and equipment such as lift overruns, air conditioning units and the like; and**
2. **The local government may grant development approval beyond the base height and up to the maximum discretionary building heights shown in Schedule 4 only where it is satisfied that all of the following are achieved:**
3. **The development demonstrates high quality design;**
4. **The development exceeds Acceptable Outcomes with regard to the number of medium and/or large trees provided and which have sufficient dimension to promote healthy growth, and**
5. **The development incorporates at least two significant energy efficiency initiatives that exceed minimum practice.**
6. **The local government shall not grant development approval beyond the discretionary heights shown in Schedule 4 of the scheme.”**
7. **Insert the following into Table 6 of clause 32:**

|  |  |  |
| --- | --- | --- |
| **No.** | **Description of land** | **Requirement** |
| **32.7** | **All land coded R-AC1** | 1. **All development is to ensure a minimum 25 per cent of the northern elevation of the maximum building envelope on the adjacent lot(s) receives more than 2 hours of direct sunlight between 9.00am and 3pm on 21 June.** |
| **32.8** | **All land having a frontage to Stirling Highway** | 1. **All new development shall provide 1 medium or 1 large tree as defined by the R-Codes located adjacent to and outside of the Stirling Highway road reservation per 12 metres of Stirling Highway street frontage, measured at the future street boundary post-road widening.** 2. **Sub-clause (1) does not apply to an application for:**   **(a) a change of use that does not involve works;**  **(b) minor additions or alterations to an existing building or buildings that do not significantly alter the scale of the building; or**  **(c) additions or alterations to single houses or grouped dwellings.** |
| **32.9** | **All land having a frontage to Stirling Highway** | **Development shall not be granted vehicle access to Stirling Highway where the lot has legal access to a public street or right-of-way other than Stirling Highway.** |
| **32.10** | **All land having a frontage to Stirling Highway and adjoining the access network shown in Schedule 5** | **In this clause ‘street block’ means a length of land fronting Stirling Highway, between a public street or public right-of-way and the next public street or public right-of-way.**  **Where there is no approved structure plan, local development plan and/or activity centre plan:**   1. **All development and subdivision is to allow a boundary setback sufficient to facilitate a minimum 6m wide carriageway in the location shown in Schedule 5.** 2. **All development and subdivision is to take vehicle access from the carriageway shown in Schedule 5 where it connects, either directly or via another carriageway, to a public street other than Stirling Highway.** 3. **Where the access network for the street block shown in Schedule 5 does not yet connect to a public street other than Stirling Highway, the development is to be designed to be modified in the future to take vehicle access from a rear carriageway once it connects to a public street other than Stirling Highway.** 4. **The local government shall not approve development or support subdivision that:** 5. **prevents any new or existing lot within the same street block from obtaining access from a public street or carriageway other than Stirling Highway; or** 6. **prevents any new or existing lot within the same street block from obtaining access to the access network shown in Schedule 5; or** 7. **creates a new lot with sole vehicle access to Stirling Highway.** 8. **All development must account for any ground level differences in order to facilitate a carriageway across a street block.** 9. **The total 6m width may include portions of any existing public right-of-way.** 10. **Prior to issue of a building permit or subdivision clearance, suitable arrangements are to be made with the local government ensuring the 6m wide carriageway described in the above subclauses is burdened with public access rights in perpetuity.** 11. **The above clauses do not apply to an application for:**   **(a) a change of use that does not involve works;**  **(b) minor alterations or minor additions to an existing building or buildings where, in the opinion of the local government, the works do not impede an existing or future carriageway shown in Schedule 5; or**  **(c) alterations and additions to single houses or grouped dwellings where, in the opinion of the local government, the works do not impede an existing or future carriageway shown in Schedule 5.** |

1. **Insert Schedule 4: Nedlands Stirling Highway Activity Centre (NSHAC) Area Height as shown in Attachment 3.**
2. **Insert Schedule 5: Nedlands Stirling Highway Activity Centre (NSHAC) Access Network as shown in Attachment 4.**
3. **Rezone the following lots from Mixed Use zone to Neighbourhood Centre zone, and amend the Scheme Map accordingly:**
   1. **Odd street numbers 81 through 105 Stirling Highway, Nedlands (inclusive);**
   2. **Even street numbers 80 through 104 Stirling Highway, Nedlands (inclusive);**
   3. **Even street numbers 2 through 6 Florence Road, Nedlands (inclusive);**
   4. **Street numbers 7 and 9 Stanley Street, Nedlands;**
   5. **Street number 4 Mountjoy Road, Nedlands; and**
   6. **Street number 56 Dalkeith Road, Nedlands.**
4. **Rezone the following lots from Mixed Use zone to Residential zone and amend the Scheme Map accordingly:**
   1. **Street numbers 128A through 134C Stirling Highway, Nedlands (inclusive);**
   2. **Street numbers 1A, 1B and 3 Vincent Street, Nedlands;**
   3. **Street numbers 108, 109, 110, 111, 112, 114, 115, 117, 119, 125 Stirling Highway, Nedlands;**
   4. **Street number 26 Broome Street, Nedlands;**
   5. **Street numbers 34 and 35 Martin Avenue, Nedlands;**
   6. **Street number 33 Baird Avenue, Nedlands;**
   7. **Even street numbers 36 through 56 Stirling Highway, Nedlands (inclusive)**
   8. **Even street numbers 68 through 74 Stirling Highway, Nedlands (inclusive);**
   9. **Odd street numbers 57 through 67 Stirling Highway, Nedlands (inclusive);**
   10. **Odd street numbers 73 through 77A Stirling Highway, Nedlands (inclusive);**
   11. **Street numbers 50 through 60 Kinninmont Avenue, Nedlands (inclusive);**
   12. **Street number 103 Smyth Road, Nedlands;**
   13. **Street number 2 Stanley Street, Nedlands;**
   14. **Street numbers 2 Webster Street, Nedlands;**
   15. **Street numbers 1A, 1B, 2D and 2E Thomas Street, Nedlands; and**
   16. **Street numbers 2B and 2C Tyrell Street, Nedlands.**
5. **In accordance with Regulation 35(2) of the Planning and Development (Local Planning Schemes) Regulations 2015, the local government is of the opinion that the amendment is a Complex Amendment as it is an amendment relating to development that is of a scale, or will have an impact, that is significant relative to development in the locality.**
6. **Pursuant to Section 81 of the Planning and Development Act 2005, refers Scheme Amendment 13 to the Environmental Protection Authority.**
7. **Authorises the Chief Executive Officer to sign relevant documents in accordance with Regulation 37(2) of the Planning and Development (Local Planning Schemes) Regulations 2015 and submit 2 copies of proposed Scheme Amendment 13 and any other relevant documents to the Western Australian Planning Commission.**
8. **Subject to Section 84 of the Planning and Development Act 2005 advertises Scheme Amendment 13 in accordance with Regulation 38 of the Planning and Development (Local Planning Schemes) Regulations 2015.**
9. **Advertises the Nedlands Stirling Highway Activity Corridor (NSHAC) strategy concurrently with Scheme Amendment 13.**
10. **In accordance with Schedule 2, Regulation 4(3) of the Planning and Development (Local Planning Schemes) Regulations 2015, does not proceed with the Nedlands Town Centre Precinct Plan.**

**Voting Requirement**

Simple Majority.

**Background**

The Nedlands Stirling Highway Activity Corridor (NSHAC) area includes the Mixed Use R-AC1 lots and the Residential R60 and R160 lots surrounding Stirling Highway as shown in Figure 1 below:

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*Figure 1: NSHAC area*

The City has recently developed a local planning policy creating built form development controls for the Residential zones within the NSHAC area. However, there are currently no precinct-specific development controls for the Mixed Use R-AC1 lots along Stirling Highway (excepting the easternmost portion of the area which was covered under the recently adopted Broadway Precinct Local Planning Policy).

**Height**

Clause 26(3) of the City of Nedlands Local Planning Scheme No. 3 (LPS3) removes the Residential Design Codes (R-Codes) Volume 2 Acceptable Outcomes for building height from applying to land coded R-AC1. This means that there is little guidance for assessing what building height is appropriate on these lots. This has resulted in considerable community concern and an inconsistency in the scale of proposed development, with various developments proposing heights ranging from 9 to 24 storeys within the area.

**Vehicle Access**

City Officers have also identified issues with vehicle access to Stirling Highway, in that many lots within the NSHAC area cannot be accessed except directly from the Highway. This has potential to cause traffic safety and congestion issues and is inconsistent with recommendations from Main Roads that direct access from individual lots to the Highway should be limited.

**Discussion**

The process for amending the Scheme could take at least 12 months or longer and needs consideration by the Western Australian Planning Commission (WAPC) followed by a final decision from the Minister for Planning. Due to the length of time before controls can be embedded into Local Planning Scheme No. 3 (LPS3), officers propose adopting a Strategy document for the NSHAC area. The Strategy creates a desired future character for the area and will assist the City in the short term in assessing development along Stirling Highway, particularly in regard to building height.

**The NSHAC Strategy**

Overall, the proposed NSHAC strategy document (**Attachment 1**) sets broad objectives for the area based on the vision and values created by the reference groups. It also incorporates a range of contextual analysis and background work carried out by the City over a number of years. The strategy intends to set a long-term direction to do the following:

* Address the lack of building height consistency and controls
* Improve the amenity of Stirling Highway through provision of shade and easier pedestrian crossings
* Require the creation of carriageways that reduce or remove direct vehicle access from individual lots to Stirling Highway
* Change the zoning of land to create a critical mass of non-residential uses through the provision of three separate “hubs” along the Highway
* Prevent proliferation of low density land uses along Stirling Highway
* Improve built form outcomes and promote site-responsive design.

There is no official procedure or way to adopt such a localised strategy. To give it the most weight for decision-makers, officers recommend that the Strategy be put out for public consultation concurrently with the Scheme Amendment. It can then be adopted directly after advertising without needing approval from the WAPC. When LPS3 and the City’s regulatory Local Planning Strategy are next reviewed, elements of the NSHAC Strategy can also be incorporated into the Local Planning Strategy (subject to WAPC approval) to give these more weight.

**Scheme Amendment 13**

Scheme Amendment 13 initiates some of the proposals set out in the draft Strategy. The specific items are set out below.

**Building height**

The amendment introduces a base maximum building height and a discretionary maximum building height (**Attachment 3**) for lots as set out in the scheme amendment report (**Attachment 2**). Building heights are structured around three main nodes (east, central and west) the logic of which is based on community consultation outcomes and set out within the Strategy (**Attachment 1**). Building heights are generally lower south of the Highway due to potential impacts on solar access to adjoining sites. Large lots and adjoining lots with the same landowner that could easily be amalgamated have also been granted higher heights in some locations.

Discretionary building height is allowable where a development exhibits high quality design and includes additional trees and energy efficiency criteria beyond the minimum Acceptable Outcomes within the R-Codes. The discretionary height is designed to be achievable while resulting in outcomes that are a step beyond current minimum criteria. High quality design should be defined with reference to the State Design Review Panel (SDRP) or the City’s Design Review Panel (DRP) rating system of the development against the 10 principles of design within State Planning Policy 7.0.

Importantly, it is proposed that the discretionary height be included in Clause 26 of LPS3. This will render the clause unable to be varied under the scheme by any decision-maker, including JDAP or SAT, thereby making the building heights an absolute maximum.

**Solar Access**

The Amendment includes a requirement that buildings demonstrate that adjoining development can achieve adequate solar access during mid-winter for the potential built form envelope. This does not mean that existing single houses will have further protections but will ensure that future large-scale development will be able to take some advantage of the northern aspect for light and ventilation.

**Trees**

The Amendment imposes a requirement for one tree to be provided along the Stirling Highway road frontage and within the development lot per 12 metres of boundary length. This will improve the pedestrian experience along the Highway while also increasing the urban canopy.

**Vehicle Access**

A requirement for 6 metre rear setbacks to lots identified in the Scheme Amendment Report (**Attachment 4**) is proposed in order to create vehicle laneways for lots that only have a frontage to Stirling Highway. This will rationalise vehicle access away from the Highway and provide opportunities for landscaping and improved street frontages to the Highway.

As per discussions with the Department of Planning, Lands and Heritage the clause does not prevent development from occurring on a lot if the access network does not yet extend to that lot (ie: lots in the middle of a street block). In those instances, it requires that the building be set back to create the future access way, and that the building be designed so that when the accessway is created the access arrangements can be modified to take access off of it. The clause also prohibits subdivision of properties that result in new lots with sole vehicle access to Stirling Highway.

The Scheme via Clause 34 includes some flexibility should owners within a street block agree on a different proposal that allows those lots to have access to a street other than Stirling Highway. Should that occur, there is ability for a Local Development Plan to be submitted by affected owners and approved by the City. Alternately, an amalgamation across the block may mitigate the need for formal laneway access.

**Zoning**

A series of zoning changes are proposed as shown in **Attachment 5**. The changes designate the lots between Dalkeith Road and Stanley Street as a Neighbourhood Centre, befitting its strategically important location and its identification within the Local Planning Strategy as the Town Centre. The lots to either side are proposed to be rezoned from Mixed use to Residential so that they will create residents to support the nearby non-residential uses.

**Nedlands Town Centre Precinct Plan**

The Nedlands Town Centre Precinct Plan was advertised in 2019 and subsequently referred to Council in 2020, where it was further amended. During this time, the planning regulations changed and altered the process for how a structure plan such as this should be presented. In any event, this plan has been overtaken by the proposed Strategy and Scheme Amendments and will no longer be proceeding as proposed. The background work and some elements of the proposal may be able to be repurposed into future policies at a later date. It is recommended that Council formally resolve not to proceed with the Precinct Plan

**Consultation**

In response to the lack of controls, the City has carried out numerous consultation exercises and background research for short sections of the NSHAC area. Most recently, in 2021-22 the City completed contextual studies and community consultation for the entire NSHAC area. The first stage of this work was carried out on the City’s behalf by Fairplace and involved three workshops with a Community Reference Group of volunteers selected by the City. The three workshops had the following aims:

* Workshop 1: Inform
  + Upskill participants in how local governments control development through planning legislation and provide an overview of the existing planning framework.
  + Discuss community expectations and local perspectives for the NSHAC area including what is valued and what could be improved.
* Workshop 2: Collaborate
  + The general statements from Workshop 1 were translated into value statements.
  + The group was broken into smaller groups and development scenarios were investigated through the use of physical maps
  + The group reviewed the way developers were translating existing planning controls into buildings and identified what worked and what did not.
* Workshop 3: Convey
  + Results of the previous workshops were compiled into sets of values and principles, with feedback obtained on this summary.

Following these workshops, the values and principles were further tested and refined through wider public consultation that included an online survey and an open house where anyone could participate and add to the findings. The final work was compiled into a set of principles and value statements that led to a vision statement for the NSHAC area.

The consultation work was then translated into built form modelling by Taylor Burrell Barnett (TBB). The Community Reference Group was reconvened for two further workshops where the proposed built form controls (including height) were modelled and refined in an iterative process based on the group’s feedback.

All of the above work forms the basis for the proposed NSHAC Strategy and Scheme Amendment 13, which will be subject to further community consultation.

**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

**Budget/Financial Implications**

Nil.

**Legislative and Policy Implications**

The local government may amend a local planning scheme under the [Planning and Development (Local Planning Schemes) Regulations 2015](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_s46246.html) (the Regulations). Under Regulation 37 in respect to a complex amendment, Council must resolve:

1. to proceed to advertise the amendment to the local planning scheme without modification; or
2. to proceed to advertise the amendment to the local planning scheme with modifications; or
3. not to proceed to advertise the amendment to the local planning scheme.

There is no provision for adopting a strategy for a sub-area as proposed. However, the strategy can act as a visioning document and assist in the assessment of development applications in the short term while the Scheme Amendment is progressed. Elements of the Strategy may be incorporated into the Local Planning Strategy and endorsed by the WAPC upon the 5 yearly scheme review intended to commence next year.

**Decision Implications**

If Council resolves to proceed either with or without modifications, the documentation will be referred to the WAPC and the Environmental Protection Authority (EPA) for review. The WAPC will make a decision that may or may not require amending the proposal prior to advertising. Should the WAPC and the EPA provide approval to proceed, the scheme amendment will be advertised in accordance with the Regulations. The NSHAC Strategy will be advertised concurrently. After advertising, the Amendment and Strategy will be referred back to Council for a further review.

If Council resolves not to proceed with the Amendments, they will not be progressed and the existing controls and scheme provisions regarding building height will remain in effect.

If Council resolves not to proceed with the Strategy, there will be no short-term guidance for the NSHAC area while the Amendment progresses. Existing uncertainty about the desired future scale and character of the area will remain.

**Conclusion**

It is recommended that Council adopt the Amendment and Strategy as proposed to begin the process of creating locality-specific controls for development along Stirling Highway and within the NSHAC area.

**Further Information**

Nil.

# PD20.05.23 Consideration of Development Application – Residential - Five Grouped Dwellings at 63 Dalkeith Road, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 May 2023 |
| **Applicant** | Pinnacle Planning |
| **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 21 March 2023 3. Architectural Perspectives 4. CONFIDENTIAL ATTACHMENT - Submissions |

**Purpose**

The purpose of this report is for Council to consider a development application for five grouped dwellings at 63 Dalkeith Road, Nedlands. This proposal is being presented to Council for consideration due to the number of dwellings exceeding four and the proposal receiving objections within the consultation period.

Council is requested to exercise its judgement in considering the merits of the application against the design principles of Volume 1 of the Residential Planning Codes for the following aspects of the proposal:

* Street setback (Dalkeith Road and common property)
* Lot boundary setback (from the northern boundary)
* Outdoor living area (Unit 1)
* Visitor parking

**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 21 March 2023 for five grouped dwellings at 63 Dalkeith Road, Nedlands, subject to the following conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 21 March 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 the issue of a demolition permit and building permit, a Demolition or Construction Management Plan (as appropriate) 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.**
4. **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 Landscaping Plan dated 11 April 2023. 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 a minimum of one (1) x 30L tree located on the Dalkeith Road 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.**
5. **The recommendations contained within the Sustainable Design Assessment report dated 19 April 2023 are to be carried out and maintained for the lifetime of the development to the satisfaction of the City of Nedlands.**
6. **Prior to the issuing of a Building Permit, an acoustic report and noise management plan shall be prepared by a suitably qualified acoustic engineer certifying that the proposal incorporates sufficient sound attenuation measures in accordance with the quiet house design requirements as identified in State Planning Policy 5.4 – Road and Rail Noise.**
7. **All recommendations contained within the acoustic report shall be implemented and adhered to for the lifetime of the development to the satisfaction of the City of Nedlands. Any changes to the assumptions, recommendations, or acoustic solutions require assessment by an acoustic consultant to confirm compliance with Environmental Protection (Noise) Regulations 1997.**
8. **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.”**

**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 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** | Parent Lot: 1,012m2  Strata Lot 1: 163m2  Strata Lot 2: 150m2  Strata Lot 3: 150m2  Strata Lot 4: 150m2  Strata Lot 5: 199m2 |
| **Land Use** | Residential  (Grouped Dwellings) |
| **Use Class** | ‘P’ – Permitted Use |

The site is located at 63 Dalkeith Road, Nedlands and is 120m south of Stirling Highway (**Attachment 1**). The site is currently occupied by a single storey, single house with a pool. The site is the subject of a subdivision application for five strata lots and a common property driveway. The site slopes upward from front to back with a fall of 1.7m from west (rear) to east (front).

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.

The property to the south (65 Dalkeith Road) has approval for five grouped dwellings, which are nearing completion. The property diagonally opposite at 66 Dalkeith Road has been previously subdivided into three lots with houses now completed on each.

**Nedlands Stirling Highway Activity Corridor – Residential Precinct Local Planning Policy**

The Nedlands Stirling Highway Activity Corridor – Residential Precinct Local Planning Policy was adopted by Council on 26 April 2023. The development application for 63 Dalkeith Road, Nedlands was subject to pre-lodgement discussion with the City in March 2022, was lodged in August 2022 and had been designed, assessed and amended several times prior to the adoption of the Policy. As such, the provisions of the newly adopted Policy have not been given full weight in this assessment.

**Application Details**

The application seeks development approval for the construction of five grouped dwellings, two storeys in height, containing three bedrooms and two bathrooms each.

Unit 1 is proposed to have independent pedestrian access directly from Dalkeith Road and vehicle access from the common property driveway. The remaining four units obtain vehicle and pedestrian access from the common property driveway.

The development includes a single visitor parking bay located behind Lot 1. The visitor bay has been located behind the front unit to reduce the visual impact of parking on the streetscape.

The proposal has been subject to refinement over time as a result of design review and consultation. The current version of plans dated 17 March 2023 are included at **Attachment 2** and form the basis of Council’s consideration of this application. Architectural perspectives of the development are included at **Attachment 3**.

**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 13 February 2023. A final review of revised plans was conducted by the DRP Chair on 17 April 2023.

A summary of the DRP advice is provided in the table below.

|  |  |  |
| --- | --- | --- |
| **DRP Design Quality Evaluation** | | |
|  | Supported  Further Information Required  Not supported | |
|  |
|  |
| SPP 7.0 Principles | 13 February 2023  DR1 | 17 April 2023 (Chair Review) |
| 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 |  |  |

There was notable improvement in the overall design of the development between the two reviews, including the following:

* Reduction in overall site cover.
* Reduction in the length of the internal boundary wall abutting the outdoor living area of Lot 4.
* An increase in outdoor living area size for Lots 2-5.
* An amended landscaping plan to increase landscaping over the entire site.
* Reduced projections from buildings to improve vehicle manoeuvrability.

In relation to sustainability, a report prepared by Sustainability WA assessed the design and has identified aspects which contribute to, and made recommendations that will further ensure, the sustainability of the proposal. Details of the report include:

* Solar passive design is achieved through north facing living areas and appropriate eastern and western window shading.
* Provision has been made for future solar collectors.
* All appliances will achieve a 5 or 6 star WELS rating.
* Landscaping irrigation will be ‘drip fed’ with moisture sensors.

A condition is recommended that requires the sustainability initiatives in the sustainable design assessment report dated 19 April 2023 to be implemented.

The DRP Chairs final assessment included:

**Landscape Quality**

A comprehensive landscape plan has been prepared by a landscape consultant. Landscape quality is greatly improved and increased outdoor living areas provided. Each unit is now articulated by landscape.

**Amenity**

Many small amendments have improved the amenity of the units, in particular the kitchen and scullery areas.

**Safety**

Sweep paths have been included to establish safe vehicle movements while pedestrian entries are now better articulated.

**Aesthetics**

Greatly improved by following the advice of the DRP. Noteworthy are the improved north and west elevations.

**State Planning Policy 5.4 Road and Rail Noise**

The objective of State Planning Policy 5.4 is to protect the community from unreasonable levels of transport noise and ensure transport infrastructure and land use can mutually exist within urban corridors. The subject site is within the policy “trigger distance” of Stirling Highway, which is an “other significant freight/traffic route”. Where a site is located within or partly within a trigger distance, an assessment against the state planning policy is required to determine the likely level of transport noise and management/mitigation required.

The state planning policy provides a noise target for noise-sensitive land use, such as dwellings. These targets recommend a maximum daytime and night-time decibel of 55dB and 50dB respectively for outdoors. For indoors the daytime recommendation is 40dB for living and work areas. At night in bedrooms the recommendation is 35dB. It is recommended that a condition be placed on any approval granted by Council that the dwellings be constructed to meet the noise targets of the state planning policy.

**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 setback, lot boundary setback, outdoor living area and parking.

A new version of the Codes for low and medium density development will come into effect on 1 September 2023 (R-Codes 2023). Consistent with Western Australian Planning Commission advice to local government, the City has assessed the development against the deemed-to-comply provisions of the R-Codes 2021. Where a design principle assessment has been required, due regard has been made to the relevant design principle of the R-Codes 2023.

**Clause 5.1.2 - Street Setback**

Unit 1 proposes an upper floor setback of 1.0m from Dalkeith Road. Units 2 to 5 propose a nil or 1.3m setback to the common property. The design principles for street setbacks consider the immediate and future streetscape, privacy, site planning requirements and building mass. The development meets the design principles as:

* The minimum upper floor setback of 1.0m from Dalkeith Road responds to the future intended high density character of the area, which is informed by immediately adjacent lots coded R160 and the nearby RAC-1 areas of Stirling Highway.
* The impact of bulk from the upper floor wall on lot 1 is ameliorated by articulation and design features. The front façade provides a varied setback to Dalkeith Road ranging from 1.0m to 1.6m and incorporates several design elements to create visual interest including timber screen battens and an inset window to the upper floor living area.
* The internal street setbacks have no adverse impact on any external lots or the streetscape.
* The street setbacks do not compromise open space across the lots as the open space achieves the deemed-to-comply provisions of the R-Codes.
* The proposal responds to site planning requirements, including vehicle access, parking, and utility services. These site planning requirements are appropriately screened from the street interface where possible.

**Clause 5.1.3 - Lot Boundary Setback**

Unit 1 proposes a 3.0m setback from the northern side lot boundary on the first floor. 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 setback is considered to meet the design principles for the following reasons:

* The proposed lot boundary setbacks do not impede on the northern adjoining lot’s solar access or ventilation. Solar access achieves the deemed-to-comply provisions of the R-Codes.
* Setback at 3.0m, the wall is a sufficient distance from the boundary to minimise the adverse impact of building bulk on the adjoining lot.
* The proposed setback does not impact adjoining properties in terms of overlooking as the major opening from the master bedroom achieves the visual privacy deemed-to-comply provisions of the R-Codes.
* The proposed lot boundary setback is consistent with the site’s density code and is typical for a grouped dwelling proposal.

**Clause 5.3.1 - Outdoor Living Areas**

The outdoor living area of Unit 1 is partially located within the front setback area. The design principles for outdoor living area consider 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 area for Unit 1 is directly accessible from the primary living area of the dwelling via triple framed sliding doors from the dining room.
* There is sufficient space in Unit 1 to provide for landscaping, entertaining and connection to the outdoors. This space is both functional and usable and consists of a covered alfresco area, along with space for two small trees and shrubbery.
* The outdoor living area is bounded by a front fence that is visually permeable above 0.7m. This allows for views of the lot’s landscaping from the street and provides passive surveillance.

**Clause 5.3.3 - Parking**

The development proposes one visitor parking bay. 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 as outlined below.

**Availability of On-Street Parking**

Street parking to a limit of 3 hours is available on both sides of Dalkeith Road.

**Proximity to High Frequency Public Transport**

The subject site is located 130m from Stirling Highway, on which there are two ‘900 series’ high frequency bus routes – the 995 (Perth-Claremont) and 998/999 (Circle Route). The 900 series routes provide a daytime off-peak service frequency of 15 minutes in each direction, seven days a week. This exceeds the R-Codes definition of a ‘high frequency route’, which requires a 15-minute frequency only during the weekday morning and afternoon peaks of 7am-9am and 5pm-7pm respectively.

The nearest bus stops are located approximately 190m (towards Claremont/Fremantle) and 240m (towards Perth/Stirling) from the site. The service frequency on Stirling Highway is high given the combination of routes.

It is considered that the combination of the provision of the two car parking bays per dwelling and one visitor parking bay is sufficient given the availability of on-street parking and the site’s proximity to high frequency public transport.

**Upcoming Visitor Parking Changes**

The deemed-to-comply provision for visitor parking in grouped dwellings required 5 lot proposals to provide one visitor parking space before 2 July 2021. From this date, the deemed-to-comply provision was modified to require two spaces.

The WAPC has recently released a revised version of the R-Codes Volume 1, which will become effective on 1 September 2023. From this date, visitor parking will revert to one space for 5-8 units sharing a common driveway. It is noted that the visitor parking for this development will be deemed-to-comply on 1 September 2023.

**Consultation**

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to five adjoining properties and for a period of 14 days from 21 February 2023 to 8 March 2023. At the close of the advertising period, one objection was 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. The development will result in a loss of significant trees and vegetation and does not provide sufficient landscaping.

The development provides 4 new medium trees, 4 new small trees and small shrubs to landscaped areas. The landscaping meets the deemed-to-comply provisions of the R-Codes Volume 1.

1. The development will result in an increase in traffic.

A Traffic Impact Statement has been provided which outlines that the dwelling will generate 0.8 vehicle trips per dwelling in peak hour. This equates to 4 total vehicle trips per hour in the peak, which is considered low impact and does not result in an adverse increase in traffic or failure of the road network.

**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 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 five grouped dwellings has been presented for Council consideration due to the number of dwellings and a received objection. 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.

# PD21.05.23 Consideration of Development Application – Single House at 66 Clifton Street, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 May 2023 |
| **Applicant** | Coast Homes |
| **Information Provided** | All relevant information required has been provided. |
| **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. CONFIDENTIAL ATTACHMENT - Submissions 4. CONFIDENTIAL ATTACHMENT – Shadow Diagram |

**Purpose**

The purpose of this report is for Council to consider a development application for a single house at 66 Clifton Street, Nedlands. The proposal is being presented to Council for consideration due to the proposal receiving an objection within the consultation period.

Council is requested to exercise its judgement in considering the merits of the application against the design principles of Volume 1 of the Residential Planning Codes for the following aspects of the proposal:

* Lot boundary setback (from the northern boundary)
* Open space
* Garage width
* Site works
* Solar access for adjoining sites

**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 20 March 2023 for a single house at 66 Clifton Street, Nedlands, subject to the following conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 20 March 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. **Prior to occupation, one tree shall be planted within the lot and shall have a minimum planting area of 2m x 2m, to the satisfaction of the City of Nedlands. The tree is to be maintained for the life of the development.**
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 processes 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 the issue of a demolition permit and a building permit, a Demolition or Construction Management Plan (as appropriate) shall be submitted and approved to the satisfaction of the City. The approved Demolition and Construction Management Plans shall be observed at all times throughout the construction and demolition processes to the satisfaction of the City.**
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 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** | R40 |
| **Land area** | 319m2 |
| **Land Use** | Residential – Single House |
| **Use Class** | ‘P’ – Permitted Use |

The site is located at 66 Clifton Street, Nedlands. The site is on the eastern side of Clifton Street. The site recently underwent a 2-lot subdivision with the adjoining southern property 66A Clifton Street, Nedlands. The lot is rectangular in shape with an 8.1m frontage and an area of 319m2. The lot is sloping, with a 1m fall from west to east. The lot is currently vacant, as is the neighbouring lot to the south (66A Clifton Street)

The immediate streetscape is surrounded by existing single houses, ranging between one and two storeys in height.

**Application Details**

The application seeks development approval for the construction of a two-storey single house at 66 Clifton Street, Nedlands. The southern adjoining property at 66A Clifton Street has recent planning approval for a single storey single house. The below assessment has considered these plans where appropriate.

**Hampden-Hollywood Precinct Local Planning Policy**

The Hampden-Hollywood local planning policy was adopted by Council on 28 March 2023. The subject development application was submitted in November 2022 and had been designed and largely assessed prior to the adoption of the Policy.

**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.

**State Planning Policy 5.4 – Road and Rail Noise**

The objective of State Planning Policy 5.4 is to protect the community from unreasonable levels of transport noise and ensure transport infrastructure and land use can mutually exist within urban corridors. The subject site is located approximately 275m north of Stirling Highway, which is an “other significant freight/traffic route”. As the subject site is not located within the 250m buffer zone, an assessment against the policy is not required.

**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 lot boundary setbacks, open space, garage width, site works and solar access to adjoining sites.

A new version of the Codes for low and medium density development will come into effect on 1 September 2023 (R-Codes 2023). Consistent with Western Australian Planning Commission advice to local government, the City has assessed the development against the deemed-to-comply provisions of the R-Codes 2021. Where a design principle assessment has been required, due regard has been made to the relevant design principle of the R-Codes 2023.

**Clause 5.1.3 - Lot Boundary Setback**

The development proposes a minimum 1.2m upper floor setback facing the northern lot boundary. 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 setback is considered to meet the design principles for the following reasons:

* The upper floor elevation incorporates three wall articulations along the entire length. The provided setbacks, varying from 1.2m to 1.7m, will allow the perception of building bulk to be broken up.
* Any bulk from the upper floor wall is unlikely to be perceived by the adjoining property as the main portion of the adjoining house is setback to the north. Additionally, the upper floor wall is bounded to the north by a carport on the adjoining property, therefore reducing the impacts of building bulk as experienced from the neighbouring property.
* Ventilation is maintained through the varied setback on the upper floor.
* The wall is to the northern boundary so does not result in overshadowing.
* There is no overlooking proposed as there are no major openings on the upper floor along the northern elevation.

**Clause 5.1.4 - Open Space**

The development proposes 42% open space. The design principles for open space consider the impact of building bulk, provision of adequate sun and ventilation and ability to use external spaces for outdoor pursuits and recreation. The proposed open space is considered to meet the design principles for the following reasons:

* The development’s scale is considered to reflect the existing and desired future character of Clifton Street, being two storey in design and matching the established street setbacks with a range of single and two storey houses along the block.
* It is expected to see more subdivision along Clifton Street and the surrounding area with all lots being coded R40 or R60. In this context, the proposed development will be consistent with the future streetscape that is likely to develop over time.
* The proposed dwelling is considered to maximise access to natural light through the northern aspect of the site through the outdoor living area at the rear, north facing courtyard, and major opening to the north.
* Building bulk has been reduced through the design of the upper floor limited to the front half of the lot. This has mitigated the overall bulk of the dwelling when viewed from neighbouring properties.
* The primary street frontage is appropriately landscaped through the use of soft landscaping and the addition of a tree.
* The proposed outdoor living area provides opportunities for residents to use external space for outdoor pursuits, including covered and uncovered entertaining areas in the courtyard and alfresco.

**Clause 5.2.2 - Garage width**

The subject site has an 8.1m wide frontage. The development proposes a garage width of 79% of the lot frontage (6.4m). The garage width has been assessed against the design principles which considers sightlines and visual connectivity to maintained on the streetscape. The proposed garage width is considered to meet the design principles for the following reasons:

* The site is constrained in regards to lot width and frontage being limited to 8.1m. There is no alternative vehicular access such as a rear right-of-way present on site. Additionally, it is likely that when narrow frontage single house lots are created, with no alternate vehicular access, there is likely to be a prevalence of double garages and significant garage width at ground level.
* Visual connectivity is maintained between the dwelling and the street by the major opening from the study on the upper floor. The entry path to the house is located along the southern side of the site and is clearly defined through the use of a portico and paved access.
* The impact of the garage door is reduced through the use of the 5.0m setback from the boundary.
* The impact of the garage door is reduced as the upper floor is projected 1.0m forwards of the garage door. This provides articulation and reduces the visual dominance of the garage door on the streetscape.
* A reduced driveway width of 3.3m at the lot boundary and tapers out to provide access for vehicle manouverability. Additional landscaping has been provided on either side of the driveway, with the addition of a tree in the south-western corner to achieve the deemed-to-comply provisions for landscaping.

**Clause 5.3.7 - Site Works**

The development proposes retaining walls to a maximum height of 0.7m (cut) within the front setback area. The house features one continuous finished floor level through the dwelling. The lot slopes 1m from west to east, with the finished floor level of the dwelling consistent with the average level across the site. The cut at the front of the lot is necessary for providing vehicular access to the garage. The retaining meets the design principles as it responds to the natural slope of the site, only exceeding a height of 0.5m for a small portion and does not create undue building bulk or over-height walls.

**Clause 5.4.2 - Solar access for adjoining sites**

The development proposes 64% overshadowing to 66A Clifton Street at the winter solstice. The design principles consider effective solar access for the subject development, and the protection of solar access for neighbouring properties.

Given the site’s narrow lot width and east-west orientation, it is acknowledged that achieving deemed-to-comply overshadowing is unlikely to occur. For example, an otherwise deemed-to-comply single storey house would still result in approximately 43% overshadowing. In this regard, particular consideration needs to be given to the protection of solar access to the adjoining property’s outdoor living areas, major openings to habitable rooms and solar collectors.

The application meets the design principles as:

* In relation to outdoor living areas, 66A Clifton has two courtyards positioned to the north of the lot. The primary outdoor living area is in the middle of the lot adjacent to the northern boundary. The proposed development has positioned the upper floor to the front of the site to avoid impacting this outdoor living area as much as possible. It is acknowledged that given the central positioning of 66A Clifton’s outdoor living area, it is impractical to design a two-storey dwelling that avoids overshadowing this area entirely.
* In relation to major openings, 66A Clifton has two north facing major openings to the master bedroom at the rear of the lot. These are unaffected by the two-storey portion of the proposal. The shadow cast onto these major openings is from the dining room and alfresco, which are single storey and meet deemed-to-comply lot boundary setbacks. All other openings facing north are minor openings, largely into hallways.
* In relation to solar collectors, there are no roof mounted solar collectors proposed on the adjoining southern lot.

**Consultation**

The application is seeking assessment under the design principles of the R-Codes for lot boundary setbacks, open space, garage width, site works and solar access.

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to 25 adjoining properties. The application was advertised for a period of 14 days from 3 February 2023 to 17 February 2023. At the close of the advertising period, one objection was 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. Restricted natural solar access to the outdoor living areas of the southern lot from increased overshadow.

Given the lot constraints this site faces, including the narrow width and orientation, administration supports the proposed overshadowing, and the solar access is considered to achieve the design principles. See Clause 5.4.2 assessment above.

1. The southern boundary walls of the development reduce northern light to the southern lot.

The proposed southern boundary wall satisfies the deemed-to-comply provision in relation to lot boundary setback. The solar access is considered to achieve the design principles. See discussion on overshadowing assessment above.

**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 a single house 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 Services Report No’s CPS19.05.23 to CPS25.05.23

# CPS19.05.23 Lease at the Tresillian Arts Centre – Delegation of Authority to the Chief Executive Officer

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 May 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Peter Scasserra – Coordinator Land and Property |
| **Director** | Michael Cole – Director Corporate Services |
| **Attachments** | Nil. |

**Purpose**

This report seeks delegation of authority from Council to authorise the Chief Executive Officer (CEO) to accept and vary leases negotiated at Tresillian in accordance with the *Local Government Act 1995*. This delegation was not included in the last review of the Delegated Authority Manual endorsed by Council in September 2022 (CEO101.09.22 refers).

**Recommendation**

**That Council:**

1. **approves the following delegation of authority relating to Tresillian Arts Centre leases:**

**The CEO is authorised to accept and vary leases negotiated at Tresillian Arts Centre in accordance with Section 3.58 of the *Local Government Act 1995*, up to an annual rental income of $10,000; and**

1. **delegates authority to the Chief Executive Officer to sign the associated Deeds of Lease as a deed following a negotiation process in accordance with that noted in (1) above.**

**Voting Requirement**

Absolute Majority.

**Background**

The City is required to review its Register of Delegations annually in accordance with section 5.46(2) of the Local Government Act 1995. The last review was endorsed by Council at its meeting of 27 September 2022. Due to an administrative oversight, this review did not include a previously endorsed delegation to the CEO to accept or vary leases negotiated at Tresillian Arts Centre.

**Discussion**

By resolution of Council on 23 March 1999 Council delegated authority to the CEO to accept leases negotiated at the Tresillian Arts Centre on the basis of direct negotiation in accordance with Sections 3.58(3) and (4) of the Local Government Act and up to an annual rental income of $5,000.

A draft template for a standard lease agreement for the City to use for each artist studio lease was developed and has been used since that time. The amount for each lease is determined by individual market valuations with CPI based increases applicable in intervening years. In 2015 Council increased the amount to $10,000 to reflect changes to market conditions.

While this delegation is required to be reviewed annually, due to an administrative oversight, was not reviewed by Council in September 2022.

To facilitate the ongoing management of leases at Tresillian, Administration requests this previous delegation to be re-affirmed.

Additionally, to give effect to a variation of lease or early surrender of lease during the term should either the City’s or the Tenant’s circumstances change, this delegation seeks to provide the CEO with authority to vary the lease terms within the constraints of the Use of Council Facilities for Community Purposes Policy.

**Consultation**

In reviewing the Register of Delegations in 2022, the CEO consulted with the Executive Officer, Governance Officer, Directors and relevant staff members to ensure the register complied with the requirements under the Local Government Act 1995, and the City’s daily operational requirements. In reviewing this delegation the CEO has consulted with the Coordinator Land and Property and the Tresillian Arts Centre Coordinator.

**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.

**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.

**Budget/Financial Implications**

There are no financial or budget implications with this report. Income for each lease at Tresillian is initially determined by market valuation with CPI based increases applying thereafter until the next market valuation is required.

**Legislative and Policy Implications**

Leases at Tresillian are a disposition of local government property under section 3.58 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).

The Tresillian Café lease is deemed a commercial tenancy agreement under the [*Commercial Tenancy (Retail Shops) Agreements Act 1985*](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43944.pdf/$FILE/Commercial%20Tenancy%20(Retail%20Shops)%20Agreements%20Act%201985%20-%20%5B04-g0-00%5D.pdf?OpenElement) and must be prepared in accordance with the provisions of this Act.

The [Use of Council Facilities for Community Purposes Policy](https://www.nedlands.wa.gov.au/documents/245/use-of-council-facilities-for-community-purposes) addresses requirements for all leases of Council facilities, including Tresillian Arts Centre.

**Decision Implications**

Endorsement of this recommendation will maintain consistency in process. More for the purpose of administrative efficiency, this prior delegated authority with minor amendments to reflect current market conditions is now presented to Council with a recommendation to retain and re-affirm.

By delegating this authority Council is requiring the City to continue to adhere to the legislated process of leasing of local government property but at the same time recognising the efficiency of Administration to fulfil this obligation. It also affords Council more time to consider more substantive matters. The process by which Tresillian leases have been negotiated for at least the last decade and a half has been improved. Each submission for lease is assessed by a panel against compliance and qualitative criteria to provide for a consistent and equitable evaluation and align outcomes with the City’s strategic vision. The legislation has remained the same regarding requirements for the process of leasing local government property such as at the Tresillian Arts Centre so it follows that internal processes would do the same.

Should Council not endorse the recommendation or pursues an alternative option, each lease at Tresillian may be required to be presented to Council.

**Conclusion**

This proposed retention of previous delegation of authority is to maintain processes considered to be assisting administrative efficiency. Through the recommendation for delegation of authority legislated processes are consistent and integrity of City of Nedlands procedures preserved.

**Further Information**

Nil.

# CPS20.05.23 New Lease to St John Ambulance WA Ltd

|  |  |
| --- | --- |
| **Meeting & Date** | Council – 23 May 2023 |
| **Applicant** | St John Ambulance WA Ltd |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Peter Scasserra – Coordinator Land and Property |
| **Director** | Michael Cole – Director Corporate Services |
| **Attachments** | 1. CONFIDENTIAL – St John Lease Request |

**Purpose**

The purpose of this report is for Council to consider a new lease for St John Ambulance WA Ltd for a portion of the Nedlands Community Care Office and adjacent carpark at 97-99 Waratah Avenue Dalkeith.

**Recommendation**

**That Council:**

1. **approves the lease for a 465 m² (approx.) portion of the Nedlands Community Care Office and adjacent carpark at 97-99 Waratah Avenue Dalkeith (Part Lots 386 and 387 on Deposited Plan 3395) to St John Ambulance WA Ltd consistent with the key terms noted within this report;**
2. **approves an exemption to section 3.58 of the *Local Government Act 1995* pursuant to Regulation 30 of the *Local Government (Functions and General) Regulations 1996* for the lease of a 465 m² (approx.) portion of the Nedlands Community Care Office and adjacent carpark at 97-99 Waratah Avenue Dalkeith (Part Lots 386 and 387 on Deposited Plan 3395); and**
3. **authorises the Chief Executive Officer and Mayor to execute all documents necessary to give effect to a lease and apply the City’s Common Seal.**

**Voting Requirement**

Simple Majority.

**Background**

97-99 Waratah Avenue Dalkeith comprises Lots 385, 386 and 387 on Deposited Plan 3395 and is unencumbered freehold land owned by the City of Nedlands (City).

The improvements on the land include Dalkeith Hall, the Nedlands Community Care Office (NCC) and a carpark.

Dalkeith Hall was originally constructed in 1956 and spans Lots 385 and 386. This building is used by various community groups pursuant to hire terms, as well as the City’s Positive Ageing program team.

The adjoining NCC office was constructed early to mid-1990’s and spans Lots 386 and 387. It is currently used by the City’s NCC team to provide both in-home support activities and group social support services for senior residents in the community.

On the 29th of August 2022, St John Ambulance WA Ltd (St John) contacted the City seeking assistance with finding a suitable premises to use as a training facility and office for their Event Health Service (EHS) team that meets the following requirements:

* Exclusive use.
* 24hr access.
* Space to accommodate up to 50 people.
* Bathroom and kitchen facilities.
* Capacity to garage an EHS ambulance vehicle.
* Move in date 1st July 2023.

Following subsequent discussions with the City, St John requested to view the rear section of the NCC office to determine whether it would provide for a suitable premises. After their site visit on the 6th of December 2022, St John advised they would like progress negotiations for a lease for a portion of the NCC office.

St John is a charitable, not-for-profit organisation that established itself in Western Australia during 1891 for the provision of first aid, ambulance services and primary and ancillary care to the community.

In May 1965, St John secured a site in Claremont to establish a division in the western suburbs. This site was located at 282 Stirling Highway Claremont and comprised a building that was constructed for St John by the Apex Club of Claremont with the assistance of the district residents, the State Government and Local Government bodies.

St John leased the premises at 282 Stirling Highway from the Town of Claremont pursuant to a peppercorn lease until the end of their lease term. The local government resolved not to renew the lease following a local planning scheme amendment that resulted in the zoning of the land accommodating the premises at 282 Stirling Highway changing to allow for future redevelopment.

The proposal seeks approval from the Council to lease a 465 m² (approx.) portion of the NCC office and adjacent carpark at 97-99 Waratah Avenue Dalkeith to St John for the purpose of a training facility and an office for their Event Health Service team.

**Discussion**

97-99 Waratah Avenue Dalkeith is zoned ‘Mixed Use’ by the City of Nedlands Local Planning Scheme No. 3.

Notwithstanding the current zoning, the existing use of the building is defined as a ‘Community Purpose’, being premises designed or adapted primarily for the provision of educational, social or recreational facilities or services by organisations involved in activities for community benefit.

Considering the proposed use of the building aligns with the definition of community purpose, there is no fundamental change to the underlying use of the building as a result of the proposed lease to St John. Therefore, a use that continues to satisfy the objectives of a community purpose can be considered.

At present, the entire NCC office is used by the City’s NCC team to facilitate the delivery of Commonwealth Home Support Program (CHSP) services.

At the Ordinary Council Meeting of the 28th of February 2023, the Administration recommended the City transition out of providing government funded CHSP services to eligible residents, (currently delivered from NCC) by the 30th of June 2023 to coincide with the cessation of government funding. The Council, at a subsequent Ordinary Council Meeting, resolved to discontinue NCC services on the 30th of December 2023.

The NCC office layout is divided into two main sections. The front section consists of offices for the City’s NCC team and Positive Ageing program team whilst the rear section is where on-site services are provided, as well as staff work areas.

Notwithstanding NCC services will discontinue on the 30th of December 2023, services delivered through the City’s Positive Aging Program will continue. Therefore, Officers investigated whether the NCC office could accommodate a separate tenancy based on a collocation scenario with view to maximizing the utilisation of the City’s building asset.

Evidently, the NCC office floor plan allows for a division of space (front and rear) and possible collocation opportunity. The division of space involves isolating the front section from the rear section by installing a door or similar type barrier in the corridor connecting the two sections of the building.

To allow for a feasible collocation scenario between the City and St John, the front section of the NCC office needs to be retained to accommodate the City’s Positive Ageing program team with consideration to the following:

* NCC office exclusive car bays and adjoining public car bays cannot be monopolised by people attending the lease area during normal business hours.
* General public access including access of clients attending Positive Ageing program activities cannot be restricted.
* Access to Dalkeith Hall or any portion of the NCC office outside the lease area is not permitted.
* Any signage promoting the purpose of the lease area would not over-ride/affect the required signage for the City’s Positive Ageing program.

The proposed lease area captures the remaining rear section of the NCC office and includes a separate entry foyer, a single office, two kitchens, male toilets, female toilets, disabled toilet, a function room, a conference room, two storerooms, and a covered enclosed courtyard. Additionally, the proposed lease area seeks to incorporate a 40 m² portion of the car park behind the courtyard for the purpose of constructing a shed required to garage an EHS ambulance vehicle, as well as 5 exclusive car bays for the St John EHS team.

As of July 2022, EHS had approximately 1,024 volunteers, this included volunteers waiting to be trained. During the 2021/2022 financial year these volunteers attended 3,475 events, from these events 13,984 patients required EHS attention. From EHS’s overall volunteers, 81 of these were from the Western Suburbs Division, they provided 2,380 hours of volunteering in 2021/2022.

EHS community services involve volunteers safeguarding the public at all types of events including:

* Major venues such as RAC Arena
* Numerous sporting events including obstacle courses and fun runs
* Concerts, dance and music festivals
* Community fairs, festivals and parades
* School fetes, fairs and sporting carnivals
* Exhibitions, conferences
* Agricultural shows including the Perth Royal Show
* Government initiatives and Commemorative services
* Motorsports and racing
* Horse jumping/racing
* Charity and not-for-profit events, gala dinners and balls such as Telethon
* Filming movies and TV shows
* State emergency call outs

EHS volunteers are also active when needed to support St John operational on-road paramedics for fire call outs and other mass emergency situations (Volunteers assisted with on road paramedics during peak COVID periods).

The recommendation makes provision for the key terms of the lease to be reviewed and authorised by the Council, the intent being to accommodate reasonable and sensible negotiation of the proposed lease relationship.

Notwithstanding St John’s move in date requirement of the 1st of July 2023, a commencement date of the 1st of September 2023 has been negotiated. Officers believe the Operations of NCC can be confined to the remaining part of the NCC office by the lease commencement date to avoid impacting on timeframes.

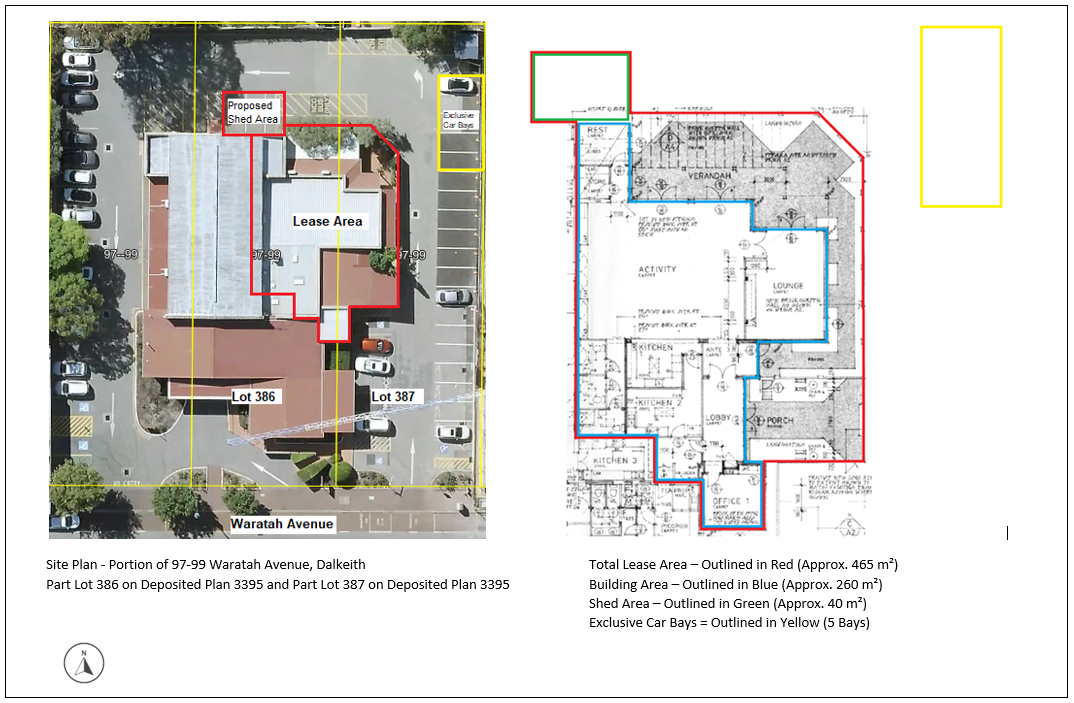
**Key Terms and Special Conditions**

On the 9th of February 2023, St John agreed to all the key terms noted within the report below to facilitate a lease.

|  |  |
| --- | --- |
| **Proposed Lease - St John Ambulance WA Ltd** | |
|  |
| **Key Terms** | |  |
| **Lease Term** | **Details** |  |
| Land | Portion of 97-99 Waratah Avenue, Dalkeith – Part Lot 387 on Deposited Plan 3395 and Part Lot 386 on Deposited Plan 3395. |  |
| Lease Area | 465 m² (approx.). |  |
| Lessor | City of Nedlands |  |
| Lessee | St John Ambulance WA Ltd |  |
| Commencement Date | Upon execution by both parties (1 September 2023) |  |
| Permitted Purpose | Training Facility, Event Health Services Headquarters (Western Suburbs Division) and uses ancillary thereto. |  |
| Market Rental Valuation Assessment | Completed 12 January 2023. |  |
| Annual Rent | $64,000 net per annum excluding GST and variable outgoings. Inclusive of 5 exclusive car bays. |  |
| Rent Reviews | 3% Fixed Annual Increase |  |
| Outgoings | Proportionate outgoings payable by Lessee. |  |
| Term | 5 years. |  |
| Further Term Option 1 | 3 years. |  |
| Further Term Option 2 | 3 years. |  |
| Operating/Access | Monday to Friday and Weekends. |  |
| Public Liability Insurance | The Lessee is responsible for Public Liability and will hold $20M minimum cover, however the Lessor will continue to hold its policy. |  |
| Building Insurance | The Lessor will in sure its interests in the building and the shed, however, will recover the payment of the annual insurance premium (proportionate to the lease area) from the Lessee. |  |
| Contents Insurance | The Lessee will hold adequate contents insurance cover. |  |
| Workers Compensation | The Lessee will hold adequate workers compensation cover. |  |
| Indemnity | The Lessee will indemnify the Lessor against any liability and all claims in connection with the lease. |  |
| Preventative Maintenance | The Lessee will be responsible for the following preventative maintenance items: |  |
| * Mechanical Services  (servicing of air conditioning units and auto doors) * Fire Services  (operational compliance check for smoke alarms, fire extinguishers and fire reels) * Electrical Services (operational compliance check for RCD, emergency lighting, fire panels, defibrillators and alarm/security system) * Hydraulic Services (servicing of sewer pump, grease trap and septic system- if applicable) * Pest Treatment * Gutter Clean * Carpet Clean * Painting (external and internal every 8-10 years or as required) |  |
| Non-Structural Maintenance | The Lessee will be responsible for all non-structural maintenance. |  |
| Structural Maintenance | The Lessor will be responsible for all structural maintenance. |  |
| Fit Out | The Lessee is responsible for all fit out works |  |
| Alteration/Additions | The Lessee will be responsible to any alterations or additions at their cost subject to all necessary approvals. |  |
| Capital Improvements | The Lessee will be responsible to any capital improvements and connection to services at their cost subject to all necessary approvals- detailed plans and certifications to be provided prior to any construction**.** |  |
| Signage | Prior written consent from the Lessor is required. |  |
| Lease Preparation Costs | The Lessee will be responsible for lease preparation costs |  |
| Special Conditions | * Lease is subject to City of Nedlands Council approval. * Lease is subject to the approval of the Board of St John Ambulance WA Ltd. * Lease is subject to a redevelopment clause with a 2 year notice period. * Entrance to shed must always remain unobstructed. |  |
| Annexures | Lease area sketch |  |

**Lease Area Sketch**

The proposed lease area sketch is displayed following.



**Market Rental Valuation Assessment**

A market rental valuation assessment as defined by the International Valuation Standards Council was undertaken by an independent licensed valuer on the 12th of January 2023. The assessment considered various economic factors as well as market rental evidence including community based rental evidence with consideration to the following two scenarios:

* Scenario 1, assumes the following:
  + Variable outgoings for the tenancy fall within general market parameters.
  + If a single garage space is allocated to the subject tenancy.
  + If 5 open car bays are allocated to the subject tenancy.
* Scenario 2, assumes the following:
  + Variable outgoings for the tenancy fall within general market parameters.
  + If a single garage space is allocated to the subject tenancy.

The adopted market rental valuation methodology utilised the Direct Comparison approach as the primary and only method of rental valuation, and has determined the following rental:

* Scenario 1 - $64,000 net per annum, ex GST and variable outgoings.
* Scenario 2 - $61,000 net per annum, ex GST and variable outgoings.

Scenario 1 is preferred by St John.

**Consultation**

The City has carried out engagement with internal stakeholders and their feedback has been incorporated within the report.

**Strategic Implications**

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

**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 lease as proposed would be at no cost to Council. Should Council agree to the recommendation as proposed, the new lease would be prepared by a solicitor and full costs would be on-charged to the proponent.

Additionally, the proponent will be responsible for but not limited to all fit out and capital improvement costs.

The City currently does not receive revenue from the subject portion of 97-99 Waratah Avenue Dalkeith. Should Council resolve to endorse the recommendation, the proposed lease (based on Scenario 1) will provide for an income to the City of $64,000 per annum (ex GST and variable outgoings) in revenue over a term of 5 years and any further term.

**Legislative and Policy Implications**

The City is bound by specific conditions under the *Local Government Act 1995* with regard to the disposal of property. Section 3.58 of the Act enables a local government to dispose of a property to the highest bidder at a public auction, by way of a public tender process or by giving local public notice of the proposed disposition and following the public consultation process as prescribed by sub-section section 3.58 (3) of the Act. In this context, disposing of a property means to ‘sell, lease or otherwise dispose of, whether absolutely or not’.

Considering St John Ambulance WA Ltd are a registered charitable not-for-profit association, they are eligible for an exemption to section 3.58 of the *Local Government Act 1995* pursuant to Regulation 30 of the *Local Government (Functions and General) Regulations 1996*, therefore the proposed disposal of land is not required to be advertised.

**Decision Implications**

Should Council resolve to approve a lease for a 465 m² (approx.) portion of the NCC office and adjacent carpark at 97-99 Waratah Avenue Dalkeith, Officers will instruct the City’s solicitor to prepare a lease in accordance with the key terms contained within this report at the full cost of the Lessee.

If Council do not resolve to approve a lease for a 465 m² (approx.) portion of the NCC office and adjacent carpark at 97-99 Waratah Avenue Dalkeith, the proponent will not be able to secure tenure within the City and will have to consider their future elsewhere.

**Conclusion**

St John have established a presence within the western suburbs since 1965. Their integrated model of service involves a high level of volunteerism and participation to enable the provision of the following services:

* Ambulance service.
* Community First Responder program.
* First Aid training for school students.
* First Aid training for community groups and at community events.
* Volunteer support.
* Community transport.
* State-wide defibrillator network.
* Ambulance education.
* Charitable programs that provide areas of vulnerability with equipment, education and training to overcome medical challenges.

Volunteer members are required to maintain a high standard of training to continue to keep a strong skill set for the delivery of services.

To support this skill set St John are seeking assistance from the City to secure long term tenure for a suitable premises within the western suburbs locality to allow their operations and services to continue.

Officers believe this request can be accommodated by way of a lease for a 465 m² (approx.) portion of the NCC office and adjacent carpark at 97-99 Waratah Avenue Dalkeith. Additionally, the proposal presents an opportunity for additional revenue for the City and the retention of EHS community services for the western suburbs community.

**Further Information**

Nil.

# CPS21.05.23 New Lease to ADHD WA

|  |  |
| --- | --- |
| **Meeting & Date** | Council – 23 May 2023 |
| **Applicant** | ADHD WA |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil |
| **Report Author** | Peter Scasserra – Coordinator Land and Property |
| **Director** | Michael Cole – Director Corporate Services |
| **Attachments** | 1. CONFIDENTIAL – ADHD WA Social Impact Proposal |

**Purpose**

The purpose of this report is for Council to consider a new lease for ADHD WA for Haldane House at 109 Montgomery Avenue, Mount Claremont.

**Recommendation**

**That Council:**

1. **approves the lease for Haldane House at 109 Montgomery Avenue, Mount Claremont (Part Lot 6987 on Deposited Plan 167276) to ADHD WA Inc consistent with the key terms noted within this report;**
2. **consider the community benefits delivered by ADHA WA Inc and approve an annual rent of $28,000 p.a. excluding GST and outgoings;**
3. **approves an exemption to section 3.58 of the *Local Government Act 1995* pursuant to Regulation 30 of the *Local Government (Functions and General) Regulations 1996* for the lease of Haldane House at 109 Montgomery Avenue, Mount Claremont (Part Lot 6987 on Deposited Plan 167276); and**
4. **subject to the Minister for Lands’ Consent, authorises the Chief Executive Officer and Mayor to execute all documents necessary to give effect to a lease and apply the City’s Common Seal.**

**Voting Requirement**

Simple Majority.

**Background**

109 Montgomery Avenue Mount Claremont comprises Lot 6987 on Deposited Plan 167276. The land is conditional freehold owned by the City of Nedlands (City), reserved for ‘Civic and Community’ purposes and constrained by Crown Grant in Trust conditions.

It is considered that a use that is within the definition of “Civic use” and/or “Community purpose” under the City’s Local Planning Scheme No. 3 and that is permissible within the Deed of Trust can continue to operate on the site.

The improvements on the land include Tennis Courts, Playground, Mt Claremont Library, Mt Claremont Community Centre, Two Carparks and Haldane House.

Haldane House is a 268 m² (approx.) brick and tile detached building constructed in the 1990’s as a community purpose facility. The layout consists of a front lounge, three smaller office areas with one incorporating an ensuite, an open plan function area which incorporates a kitchen and disabled bathroom and separate toilet, a rear washing room, and a double garage.

This building was historically leased to the Bethanie Group in January 2010 for the purpose of providing a young disabled respite service, or such other appropriate service agreed between the Lessee, Lessor and Minister for Lands. The lease came to an end in December 2019 and the City has subsequently been using the building on occasion to provide services from its Positive Aging Program.

In January 2023, the City received a request from ADHD WA, to view Haldane House to enable to determine whether it would be a suitable premises to occupy exclusively under a lease arrangement for the purpose of offices and consulting rooms.

ADHD WA operates as a not-for-profit organisation within a social enterprise model providing research-based support and information services that assist and empower individuals, families and carers with ADHD. They also provide training and education to partners, co-workers, teachers, or anyone who is connected to someone living with ADHD.

Historically based within the City of Nedlands, ADHD WA have been working alongside the ADHD community since 1993 and are currently operating from the Niche building within the QEII Health Campus. Due to a significant increase in growth driven by demand for their services, the current premises is no longer suitable, prompting a search for alternative office accommodation that meets space requirements.

Following a site visit to Haldane House on the 8th of February 2023 and subsequent discussions, ADHD WA advised they would like progress negotiations for a lease.

The proposal seeks approval from the Council to lease Haldane House and a portion of the adjacent carpark (1,033 m² approx. total lease area) at 109 Montgomery Avenue Mt Claremont (Part Lot 6987 on Deposited Plan 167276) for the purpose of an office and consulting rooms and uses ancillary thereto.

**Discussion**

Haldane House is located on the western side of Montgomery Avenue Mt Claremont, approximately 8kms west of the Perth city centre, and to the immediate north of the Mount Claremont Community Centre and Library. Development surrounding the site comprises established single residential housing situated either side of Montgomery Avenue.

Haldane House is within a local town planning scheme Reserve for Civic and Community purposes. Considering the existing use of the building is defined as a ‘community purpose’ and the proposed use is also a ‘community purpose’ without a requirement for external works there is effectively no change to the underlying use of the building as a result of the proposed lease to ADHD WA, from a town planning perspective.

**Land Tenure**

Before the introduction of the *Land Administration Act 1997*, the Minister for Lands may have issued a freehold title over a reserve, otherwise known as a Crown Grant in Trust for a particular purpose or any ancillary or beneficial purpose.

In these instances, the land was granted in fee simple free of cost but could only be used for a designated purpose. Leases may be registered but the Lessee may only use the land for the same designated purpose as the original Proprietor or Lessor.

Since the implementation of the *Land Administration Act 1997*, Crown Grants in Trust are referred to as conditional tenure land.

Conditional tenure land is fee simple land subject to conditions of use of the land registered against the title. The conditions are such conditions determined by the Minister for Lands for the use of the land, usually requiring that the land be used only for a designated purpose.

Lot 6987 on Deposited Plan 167276 was transferred to the City as a Crown Grant in Trust subject to conditions that require the land to be held and used for the purpose of a Civic Centre. Alternative uses that provide a community benefit may be considered, however, approval of the Minister for Lands is necessary, and a lease may not take effect until such consent has been obtained.

A preliminary assessment by the Department of Planning Lands and Heritage confirms they support the proposal because it falls within the land use category captured by a Civic Centre purpose and believe it will also support members of the community that use the facility.

**Utilisation**

At present, Haldane is used occasionally by the City’s Positive Ageing Team to deliver services associated with their Positive Ageing Program. Considering these services are now predominantly being delivered from the Mt Claremont Community Centre, Officers assessed whether Haldane House could accommodate a tenancy for office use and consulting rooms.

The assessment determined Haldane House is under-utilised and identified the following matters in support of the proposal:

1. Increases the level of passive surveillance of 109 Montgomery Avenue, thereby contributing to improved safety outcomes and reduced propensity for antisocial activity to occur while the space is being utilised by the lessee/visitors.
2. Provides a space for community-based activities.
3. Promotes increased activation or the precinct and adjacent reserve.
4. A lessee is responsible for non-structural maintenance, preventative maintenance and the payment of utility costs and outgoings effectively reducing the financial burden on the City to maintain the building.
5. Provides for maximizing building asset utilisation.
6. A lease will facilitate the appropriate management and responsible use of the City’s facilities for the benefit of the community and ensure managed properties are appropriately maintained. Well maintained and managed property assets present a significant benefit to the Council and the community.

Furthermore, Haldane House will allow ADHD WA to increase their services significantly to meet the increase in demand for people seeking their support and will facilitate the following:

* 100% increase in assessments and 34% increase in therapy sessions;
* increasing the phone support service for community members;
* provision of new health and wellness programs; and
* tailored services to best support children, teenagers and adults.

ADHD WA services contribute to the delivery of community benefits that improve the health and well-being of the community and meets a community need. The recommendation proposes approving a lease for Haldane House with consideration for a rent reduction and an exemption to section 3.58 of the *Local Government Act 1995* for advertising pursuant to regulation 30 of the *Local Government (Functions and General) Regulations 1996.*

The recommendation also makes provision for the key terms of the lease to be reviewed and authorised by the Council, the intent being to accommodate reasonable and sensible negotiation of the proposed lease relationship.

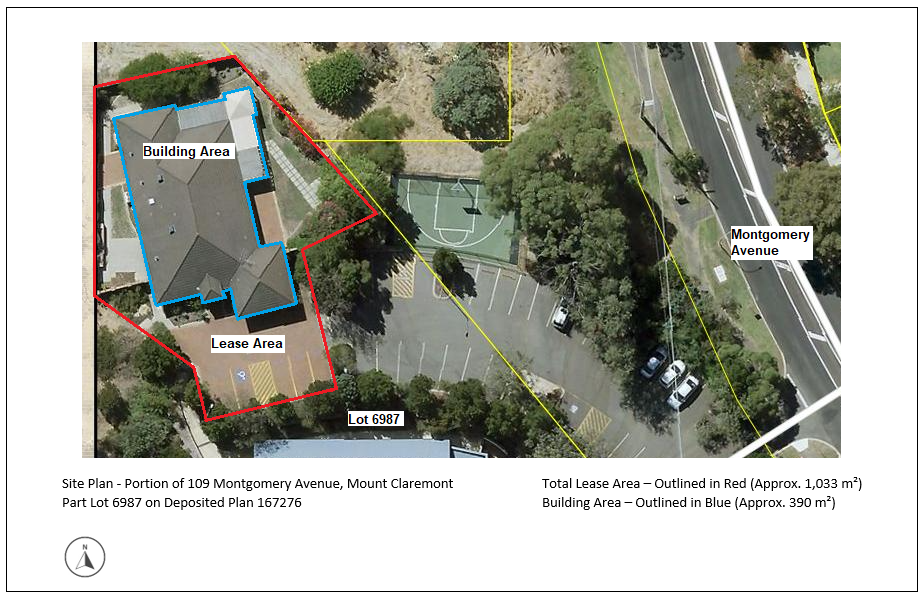
**Key Terms and Special Conditions**

On the 2nd of March 2023, ADHD WA agreed to all the key terms noted within the table following to facilitate a lease.

|  |  |
| --- | --- |
| **Proposed Lease - ADHD WA** | |
|  |
| **Key Terms** | |  |
| **Lease Term** | **Details** |  |
| Land | 109 Montgomery Avenue, Mount Claremont – Part Lot 6987 on Deposited Plan 167276. |  |
| Lease Area | 1,033 m² (approx.). |  |
| Lessor | City of Nedlands |  |
| Lessee | ADHD WA Inc. |  |
| Commencement Date | Upon execution by both parties |  |
| Permitted Purpose | Office Headquarters and uses ancillary thereto. |  |
| Market Rental Valuation Assessment Date | Completed 21 February 2023. |  |
| Market Rental Valuation Assessment Annual Rent | $56,000 net per annum excluding GST and variable outgoings. Inclusive of 6 open car bays and 2 under cover car bays. |  |
| Proposed Annual Rent | $28,000 excluding GST and variable outgoings. Inclusive of 6 open car bays and 2 under cover car bays. |  |
| Proposed Discount | 50% |  |
| Social Return | Community benefits provided via the delivery of services, initiatives and activities that align with the City's strategic objectives. |  |
| Rent Reviews | CPI |  |
| Outgoings | Outgoings payable by Lessee. |  |
| Term | 10 years |  |
| Further Term Option 1 | 10 years |  |
| Further Term Option 2 | 5 years |  |
| Operating/Access | Monday to Friday and Weekends. |  |
| Public Liability Insurance | The Lessee is responsible for Public Liability and will hold $20M minimum cover, however the Lessor will continue to hold its policy. |  |
| Building Insurance | The Lessor will insure its interests in the building, however will recover the payment of the annual insurance premium from the Lessee. |  |
| Contents Insurance | The Lessee will hold adequate contents insurance cover. |  |
| Workers Compensation | The Lessee will hold adequate workers compensation cover. |  |
| Indemnity | ADHD WA will indemnify the City of Nedlands against any liability and all claims in connection with the lease. |  |
| Preventative Maintenance | The Lessee will be responsible for the following preventative maintenance items: |  |
| * Mechanical Services  (servicing of air conditioning units and auto doors) * Fire Services  (operational compliance check for smoke alarms, fire extinguishers and fire reels) * Electrical Services (operational compliance check for RCD, emergency lighting, fire panels, defibrillators and alarm/security system) * Hydraulic Services (servicing of sewer pump, grease trap and septic system- if applicable) * Pest Treatment * Gutter Clean * Carpet Clean * Painting (external and internal every 8-10 years or as required) |  |
| Non-Structural Maintenance | The Lessee will be responsible for all non-structural maintenance. |  |
| Structural Maintenance | The Lessor will be responsible for all structural maintenance. |  |
| Fit Out | The Lessee is responsible for all fit out works |  |
| Alteration/Additions | The Lessee will be responsible to any alterations or additions at their cost subject to all necessary approvals. |  |
| Capital Improvements | The Lessee will be responsible to any capital improvements and connection to services at their cost subject to all necessary approvals- detailed plans and certifications to be provided prior to any construction**.** |  |
| Signage | Prior written consent from the City of Nedlands is required. |  |
| Lease Preparation Costs | The Lessee will be responsible for lease preparation costs. |  |
| Special Conditions | * Lease is subject to the Minister for Lands consent. * Lease is subject to City of Nedlands Council approval. * Lease is subject to the approval of the Board of ADHD WA Inc. * Lease is subject to a redevelopment clause with a 2-year notice period. |  |
| Annexures | Lease area sketch |  |

**Lease Area Sketch**

The proposed lease area sketch displayed following captures a total site area of 1,033m², encompassing Haldane House and immediate surrounds within the perimeter wall, as well as six open car bays and two undercover car bays in front of the building.



**Market Rental Valuation Assessment**

A market rental valuation assessment as defined by the International Valuation Standards Council was undertaken by an independent licensed valuer on the 21st February 2023. The assessment analysed various economic factors as well as comparable market rental evidence including community based rental evidence and suburban commercial office rents.

Additional factors were also considered, including but not limited to:

* The tenancy’s size, location, quality of improvements and level of fit out;
* Variable outgoings for the tenancy fall within the general market parameters; and
* Six open car bays and two undercover car bays in the garage are allocated to the subject tenancy and are included within the rent at no additional charge.

The adopted market rental valuation methodology utilised the Direct Comparison approach as the primary and only method of rental valuation and has determined a rental of $56,000 net per annum, ex GST and variable outgoings.

**Proposed Rent**

In lieu of the full rental value, ADHD WA are seeking a 50% rent reduction in recognition for the social impact of the services they provide, and how the services make a significant impact to individuals, families and carers impacted by ADHD providing direct positive outcomes.

Considering ADHD affects people across the lifespan, ADHD WA services are deemed incredibly valuable because they also address a community need. These services include:

1. Clinical service programs including:
   1. ADHD assessments
   2. ADHD therapy
   3. Group therapy for adults
   4. Group training for children, and
   5. Coaching
2. Non-Clinical service programs including:
   1. Events and networking
      1. Annual conference
      2. Family picnics
      3. Walk and Talk
      4. HBF Run for a reason
   2. Peer support groups
   3. In person parent support group
   4. Education and training for Teachers and School Psychologists
   5. Health and wellness programs, and
   6. Information and telephone helpline

Given the likely investment by ADHD WA in bringing forward the concept and associated benefits their services provide to the community, Officers believe a rent reduction is justified.

Should Council approve a discount it is recommended the rent review mechanism in the lease include a market rent review increase set at 5-year intervals to enable the rent to be reset in accordance with current market rates. This method will not preclude ADHD WA from applying for another discount which may be considered by Council before the start of the following term.

**Consultation**

The City has carried out engagement with internal stakeholders and feedback has been incorporated within the report.

**Strategic Implications**

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

**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 lease as proposed would be at no cost to Council. Should Council agree to the recommendation as proposed, the new lease would be prepared by a solicitor and full costs would be on-charged to the Lessee.

Additionally, the Lessee will be responsible for but not limited to all fit out and capital improvement costs.

The City currently does not receive revenue from Haldane House Mt Claremont. Should Council resolve to endorse the recommendation, the proposed lease will provide for an income to the City in rent revenue over a term of 10 years and any further term. Additionally, all outgoings, preventative maintenance and no-structural maintenance items will become the responsibility of the Lessee.

**Legislative and Policy Implications**

The City is bound by specific conditions under the *Local Government Act 1995* with regard to the disposal of property. Section 3.58 of the Act enables a local government to dispose of a property to the highest bidder at a public auction, by way of a public tender process or by giving local public notice of the proposed disposition and following the public consultation process as prescribed by sub-section section 3.58 (3) of the Act. In this context, disposing of a property means to ‘sell, lease or otherwise dispose of, whether absolutely or not’.

Considering ADHD WA are a registered charitable not-for-profit association, they are eligible for an exemption to section 3.58 of the *Local Government Act 1995* pursuant to Regulation 30 of the *Local Government (Functions and General) Regulations 1996*, therefore the proposed disposal of land is not required to be advertised.

Pursuant to section 75 of the *Land Administration Act 1997,* consent of the Minister for Lands is required for conditional freehold land tenure or land subject to a Crown Grant in Trust that is being leased.

**Decision Implications**

Should Council resolve to approve a lease for Haldane House at 109 Montgomery Avenue Mt Claremont, Officers will instruct the City’s solicitor to prepare a lease in accordance with the key terms and adopted recommendation contained within this report at the full cost of the Lessee.

If Council do not resolve to approve a lease for Haldane House at 109 Montgomery Avenue Mt Claremont, the proponent will not be able to secure tenure within the City and will have to consider their future elsewhere.

**Conclusion**

ADHD WA are regarded as the peek body for providing specialized services to those directly and indirectly impacted by ADHD in WA. They have been actively servicing the community for 30 years, partnering with tertiary institutions, as well as working with schools and community groups. Since its inception, ADHD WA has also become the one stop shop for information and services for those seeking guidance and support.

The organisation is also recognised for the convenience and efficiency of being able to address the needs of the community within one place. To allow their operations and services to continue from a centralised location under one roof, ADHD WA are seeking a lease from the City to secure long term tenure for a suitable premises that will also support the growth of the organisation.

Officers believe this proposal can be accommodated by way of a lease for Haldane House, 109 Montgomery Avenue Mt Claremont (Part Lot 6987 on Deposited Plan 167276).

**Further Information**

Nil.

# CPS22.05.23 Differential Rates 2023/24 – Approval for Advertisement

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 May 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. Statement of Objects and Reasons for imposing the Differential Rates for 2023/24 |

**Purpose**

The purpose of this report is to seek Council approval for the advertising of the proposed differential rates and minimum rates for the 2023/24 financial year in accordance with *Section 6.36 of the Local Government Act 1995*.

**Recommendation**

**That Council:**

1. **approves the advertising of the proposed differential rates for 2023/24 for:**
   1. **for a period of 21 days by local public notice, in accordance with *Section 6.36(1)* of the *Local Government Act 1995*; and**
   2. **post on the City’s website, in accordance with *Section 6.36(3)(c)(ii)* of the *Local Government Act 1995*; and**
2. **endorses the Statement of Objects and Reasons for each differential rate and minimum rate as detailed in Attachment 1.**

**Voting Requirement**

Simple Majority.

**Background**

Each year where the City of Nedlands seeks to impose differential rates, it is required under section 6.36 of the *Local Government Act 1995* to advertise the proposed differential rates by local public notice for a period of at least 21 days, seeking submissions. Any submissions received to be considered by Council.

This year is also the year for the triennial Gross Rental Valuation (GRV) review by the Office of the Valuer General with the new GRVs effective from 1 July 2023. A comparison of City GRV over the previous two years is as follows:

Change in City of Nedlands Landgate Valuations

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **GRV Category** | **2021/22** | **2022/23** | **2023/24** | **% change** |
| Residential | $299,553,429 | $301,771,849 | $352,673,430 | 16.87 |
| Residential Vacant | $9,964,800 | $10,859,650 | $15,740,900 | 44.95 |
| Non-Residential | $53,129,577 | $55,994,977 | $59,629,673 | 6.49 |
| **Total** | **$362,647,806** | **$368,626,476** | **$428,044,003** | **16.12** |

Number of assessments

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **GRV Category** | **2021/22** | **2022/23** | **2023/24** | **% change** |
| Residential | 8,304 | 8,301 | 8,332 | 0.37 |
| Residential Vacant | 275 | 331 | 364 | 9.97 |
| Non-Residential | 554 | 558 | 558 | 0.00 |

**Discussion**

The City imposes differential rates based on the purpose for which the land is zoned or for which the land is held or used. This allows the City the opportunity to levy different rates in the dollar on the Gross Rental Value (GRV) of different property classifications to reflect the differing levels of demand placed on City services and infrastructure in each differential category. Currently, the City uses 3 differential rate classifications as detailed following:

1. Residential

2. Residential Vacant

3. Non-Residential

The City also establishes a minimum rate for each differential rating classification to ensure that all ratepayers make a reasonable contribution to the cost of providing services and infrastructure by the City.

Proposed increase represents a 2.5% increase in rates from the 2022/23 Budget. In addition, the City expects a 2% growth in the rates base as a result of the completion of new dwellings and other additions.

The revaluation of GRVs saw an overall 16% increase in GRV for the City of Nedlands.

In a GRV revaluation year, the City’s Rates in the Dollar are adjusted to achieve the same pre GRV revaluation rate income. Rates modelling was undertaken to reduce the rates in the dollar. These revised rates in the dollars for all categories were then increased by 2.5%. Minimum rates for Residential and Non-residential categories have been increased by 2.5%. Minimum for Residential Vacant adjusted down to ensure compliance with less than 50% of the Residential Vacant Land category are on a minimum rate.

The City proposes the following differential rates to be advertised for public comment:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Differential Rate** | **Adopted Minimum Rate 2022/23** | **Minimum Rate Proposed 2023/24** | **Adopted Rate in the**  **Dollar ($) 2022/23** | **Rate in the Dollar ($) Proposed 2023/24** |
| Residential | $1,484 | $1,521 | 0.06558 | 0.05844 |
| Non-Residential | $1,957 | $2,006 | 0.07314 | 0.07211 |
| Residential Vacant | $1,950 | $1,849 | 0.09268 | 0.07732 |

The proposed rates have been achieved through a critical review of operational costs to continue delivering services and achieving a capital program that matches delivery capacity and City of Nedlands adopted Long-Term Financial Plan forecast expectations 2.5% inflation plus 2% growth.

In accordance with *Section 6.36 of the Local Government Act 1995*, the City is required to give local public notice of its intention to impose differential rates prior to adopting its budget for the 2023/24 financial year.

**Consultation**

The Council was presented with the draft budget and rates information at a series of Councillor Briefings held during March, April and May 2023.

**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**

The proposed differential rates for 2023/24 budget total rates ($26,711,364) will provide additional revenue of $891,971 compared to the 2022- 23 budget total rates ($25,819,393) to the City. The amounts to a 2.5% increase in rates plus 2% growth in the rates base due to the completion of new dwellings and additions. These projections are in line with the recently adopted Long-Term Financial Plan

**Legislative and Policy Implications**

[*Section 6.36 of the Local Government Act 1995*](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_44720.pdf/$FILE/Local%20Government%20Act%201995%20-%20%5B07-y0-00%5D.pdf?OpenElement)

**Decision Implications**

Should Council endorse the recommendation then the City will fulfill its Statutory obligations under *s6.36 of the Local Government Act 1995* to advertise proposed differential rates for 2023/24 by giving Local Public Notice for 21 days and consider any submissions received.

Should council not endorse the recommendation, this would result in delays to the adoption of the final budget for 2023/24.

**Conclusion**

Council’s approval of the proposed differential rates and the supporting Statement of Objects and Reasons for Differential Rates will allow the City to meet its statutory obligation to advertise the proposed rate in the dollar and minimum rates for 21 days for public comments.

**Further Information**

Nil.

# CPS23.05.23 Monthly Financial Report – April 2023

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

# CPS24.05.23 Monthly Investment Report – April 2023

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

# CPS25.05.23 List of Accounts Paid – April 2023

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

# Reports by the Chief Executive Officer CEO11.05.23

# CEO11.05.23 Election to fill the Elected Member Vacancy – Hollywood Ward

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 May 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Libby Kania – Coordinator Governance and Risk |
| **CEO** | Bill Parker |
| **Attachments** | 1. Letter from the Electoral Commissioner dated 28 April 2023. |

**Purpose**

This report is provided for Council to consider making a request to the Western Australian Electoral Commission to leave the Hollywood Ward Council Member Vacancy unfilled until the October 2023 Ordinary Election.

**Recommendation**

**That Council requests the Chief Executive Officer to write to the Electoral Commissioner of the Western Australian Electoral Commission requesting the Council Member vacancy for the Hollywood Ward remain unfilled until the October 2023 Ordinary Election.**

**Voting Requirement**

Absolute Majority.

**Background**

On 26 April 2023, Mr Basson tendered his resignation from Council to the Chief Executive Officer (CEO) effective on that date. This has left a vacancy in the Hollywood Ward. Mr Basson’s term of office was due to expire at the October 2023 Local Government Elections.

Any Extraordinary Election held now to fill this vacancy would only be for the balance of this term.

**Discussion**

Section 4.16(4) of the *Local Government Act 1995* provides that a Council may apply to the Electoral Commissioner to have an election for an Extraordinary Vacancy that occurs between the first Saturday in January and the first Saturday in July prior to an Ordinary Election, deferred until that Ordinary Election. Therefore, Council can seek approval from the Western Australian Electoral Commission requesting that this vacancy remain unfilled until the October 2023 Ordinary Election which would be the most cost effective and appropriate course of action.

Advice from the Western Australian Electoral Commission is that the Electoral Commissioner would agree to the vacancy remaining unfilled until the October 2023 Ordinary Election if requested by the City of Nedlands.

Should Council determine that it wants to fill the position, it will need to call an extraordinary election with the Electoral Commissioner conducting the election in accordance with the current Council resolution.

Extract Council Minutes – 23 April 2019 – Item 13.5 Future Elections and Polls to 2023

“Council:

1. declares, in accordance with section 4.20(4) of the Local Government Act 1995, the Western Australian Electoral Commissioner to be responsible for the conduct of all future elections and polls until the end of 2023; and

2. decides, in accordance with section 4.61(2) of the Local Government Act 1995 that the method of conducting all future elections or polls will be as a postal election.”

Please note that the earliest date that an extraordinary election may be held is 28 July 2023. On that basis, the term would be for approximately 3 months.

The costs associated with conducting the Extraordinary Election would be approximately $20,000.

In determining whether to proceed to an extraordinary election or to request the Electoral Commissioner to allow the vacancy to remain unfilled until the October 2023 Ordinary Election, Council needs to be aware that a resolution to its Wards and Representation Review submission has not yet been received from the Local Government Advisory Board.

At the Special Council Meeting dated 13 February 2023, Council resolved the following –

That the City of Nedlands Council recommends to the Local Government Advisory Board, in accordance with Schedule 2.2(9) that:

1. The current four ward structure at the City of Nedlands be retained;

2. An order be made that the name of the Coastal Districts Ward be amended to the Coastal Ward, all other ward names be retained;

3. An order be made under s. 2.2(1) for a boundary adjustment between the Coastal and Hollywood Wards as follows:

a. The area bounded by Camelia Avenue to the North, Lantana Avenue to the West, Brockway Road to the East and Alfred Road to the South is moved from the current Coastal Ward to the Hollywood Ward.

4. An order be made under s. 2.18(3) to reduce the number of offices of Elected Member from 13 to 9 – comprised of a Mayor and 8 Councillors, and designates the following number of offices of councillor for each ward: Melvista (2), Hollywood (2), Dalkeith (2) and Coastal (2);

5. Authorises the Chief Executive Officer to prepare a report to be presented to the Local Government Advisory Board proposing that the orders resolved above be made under section 2.2(1) and s. 2.18(3) of the Local Government Act 1995; and

6. In the event that the Minister’s proposed reforms to the Local Government Act 1995 to reduce the number of Council positions for local governments with populations between 5,000 to 75,000, to a maximum number of 9 elected members is not passed by State Parliament in time for the October 2023 Ordinary Local Government Elections, the City of Nedlands withdraws its application to the Local Government Advisory Board in respect to recommendation 4 of the Council resolution dated 13 February 2023, and retains the current representation of 13 elected members with 3 Councillors per each of the 4 wards for the 2023 election.

CARRIED BY ABSOLUTE MAJORITY 8/4

(Against: Mayor Argyle Crs. Bennett Mangano Youngman)

As the City did not provide a method on how the number of Council offices was to be reduced, it is open for the Minister to consider a complete spill at the 2023 Ordinary Election or that the number of council positions be reduced over one or two election cycles. As the term for this vacancy ends in October 2023 and it is the only expected vacancy in the Hollywood Ward at the October Ordinary election, it may be open to the Minister to recommend the office be permanently vacated, thereby achieving a reduction in the number of council positions for that Ward from three to two. This aligns with the Council resolution above. This is based on an assumption that the Minister does not recommend a complete spill of council offices.

Officers have contacted the Local Government Advisory Board as to the likely date for a determination on the City’s submission. It is expected that this will occur once the legislation has passed through Parliament.

It is deemed appropriate for Council to determine not to fill the vacancy based on the considerations provided above. Council should note that there is less than 6 months until the Ordinary Elections, and an extraordinary election held in July would be for the remainder of the term, which would be three (3) months. The conduct of an extraordinary election for this period might be considered by the community as an unnecessary expenditure. Further, the City has a precedence for allowing vacancies to remain unfilled for a period of time, and indeed, this has occurred in the Hollywood Ward in the past.

**Consultation**

As this is a requirement under the *Local Government Act 1995* the decision only requires consultation with the Western Australian Electoral Commission (WAEC) and Council.

Administration have consulted with the Western Australian Electoral Commission who have advised that the Commissioner will grant approval for the Hollywood Ward Council Member vacancy to remain unfilled until the October 2023 Ordinary Election.

The necessary consultation and advertising required to run the election is set out in Part 4 of the Act and will be the responsibility of the returning officer appointed by the Western Australian Electoral Commission.

**Strategic Implications**

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

**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**

Holding an extraordinary election in the next financial year 2023/24 would mean that approximately $20,000 would need to be included in the Annual Budget for 2023/24 in addition to the costs for the Ordinary Election which is to be held in October 2023. Should Council resolve to request the vacancy remain unfilled until the Ordinary Election in October 2023 then this would already be included in the 2023/24 annual budget as the vacancy formed part of the WAEC’s costings for the Ordinary Election.

**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)

4.9. Election day for extraordinary election

1. Any poll needed for an extraordinary election is to be held on a day decided on and fixed —

(a) by the mayor or president, in writing, if a day has not already been fixed under paragraph (b); or

(b) by the council at a meeting held within one month after the vacancy occurs, if a day has not already been fixed under paragraph (a).

1. The election day fixed for an extraordinary election is to be a day that allows enough time for the electoral requirements to be complied with but, unless the Electoral Commissioner approves or section 4.10(b) applies, it cannot be later than 4 months after the vacancy occurs.
2. If at the end of one month after the vacancy occurs an election day has not been fixed, the CEO is to notify the Electoral Commissioner and the Electoral Commissioner is to —

(a) fix a day for the holding of the poll that allows enough time for the electoral requirements to be complied with; and

(b) advise the CEO of the day fixed.

6.8. Expenditure from municipal fund not included in annual budget

1. A local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure —
2. is incurred in a financial year before the adoption of the annual budget by the local government; or
3. is authorised in advance by resolution\*; or
4. is authorised in advance by the mayor or president in an emergency.

**Decision Implications**

The holding of elections is highly regulated by the *Local Government Act 1995*, consequently, there is a risk of the City being non-compliant if it does not act expediently to arrange the extraordinary election or request for the vacancy to remain unfilled until the October 2023 Ordinary Election.

**Conclusion**

In conclusion, there is under six (6) months until the October 2023 Ordinary Election therefore, due to the extremely tight timeframes and advice from the Western Australian Electoral Commission, Administration is recommending that Council make a request to the Electoral Commission to leave the Council Member Vacancy in the Hollywood Ward unfilled until the October 2023 Ordinary Election.

**Further Information**

Nil.

# Council Members Notice of Motions of Which Previous Notice Has Been Given

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

# 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.