**AGENDA**

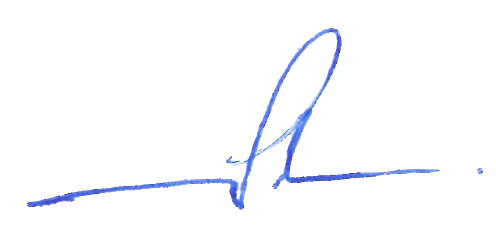
**Council Meeting Agenda Forum**

**12 April 2022**

**Notice of Meeting**

**To Mayor & Councillors**

A Council Meeting Agenda Forum of the City of Nedlands is to be held on Tuesday 12 April 2022 in the Council chambers at 71 Stirling Highway Nedlands commencing at 6pm.



Bill Parker

Chief Executive Officer

7 April 2022

**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.

Any plans or documents in agendas and minutes may be subject to copyright. The express permission of the copyright owner must be obtained before copying any copyright material.

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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 J D Wetherall Hollywood 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.

20.1 CONFIDENTIAL TS05.04.22 Payment for Use of Car Parking Bays at Dalkeith Hall

20.2 CONFIDENTIAL CEO04.04.22 Risk & Reporting Update

# 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.

# Minutes of the 2021 Annual General Meeting of Electors

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

# Motion Passed at the 2021 Annual General Meeting of Electors

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

# Divisional Reports - Planning & Development Report No’s PD19.04.22 to PD23.04.22

# PD19.04.22 Consideration of Development Application – 4 Grouped Dwellings at No. 7 Florence Rd, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting - 26 April 2022 |
| **Applicant** | H Zhang |
| **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/CEO** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Development Plans 2. Landscaping Plan 3. 3D Render 4. Aerial Image and Zoning Map 5. CONFIDENTIAL ATTACHMENT - Submissions |

**Purpose**

The purpose of this report is for Council to consider a development application for four grouped dwellings at 7 Florence Rd, Nedlands.

**Recommendation**

**That Council, in accordance with Clause 68(2)(b) of the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015,* approves the development application received on 30 November 2021 in accordance with the plans date stamped 10 March 2022 for 4 grouped dwellings at 7 Florence Rd, Nedlands, subject to the following conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 10 March 2022. 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 the lodgement 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 Plan/s shall be observed at all times throughout the construction and demolition processes to the satisfaction of the City.**
2. **Prior to occupation, the balconies located on the northern elevation as annotated in red on the approved plans shall be screened in accordance with the Residential Design Codes by either;**
3. **fixed and obscured glass to a height of 1.6 metres above finished floor level; or**
4. **fixed screening devices to a height of 1.6 meters above finished floor level that are at least 75% obscure and made of a durable material; or**
5. **a minimum sill height of 1.6 metres above the finished floor level; or**
6. **an alternative method of screening approved by the City of Nedlands.**

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

1. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by 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, landscaping shall be completed in accordance with the approved plans or any approved modifications to the satisfaction of the City of Nedlands. All landscaped areas are to be maintained on an ongoing basis for the life of the development on the site to the satisfaction of the City of Nedlands.**

**Voting Requirement**

Simple Majority.

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

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

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

**Background**

**Land Details**

|  |  |
| --- | --- |
| Metropolitan Region Scheme Zone | Urban |
| Local Planning Scheme Zone | Residential |
| R-Code | R60 |
| Land area | 1,012m2 |
| Land Use | Residential Single House |
| Use Class | ‘P’ Permitted Use |

The site is located at 7 Florence Rd, Nedlands, 150m south of Stirling Highway. The site is located on the western side of Florence Rd and has an existing single storey single house on the lot which is to be demolished. The lot is rectangular in shape, has a 20m frontage and a total area of 1,012m2.

Amended plans were provided 10 March 2022 increasing the volume of landscaping within the site.

The application seeks development approval for the construction of four, two-storey grouped dwellings served by a single common driveway, located on the south side of the subject site.

**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) of LPS3 – identifies those matters that are required to be given due regard to the extent relevant to the application.  Where relevant, these matters are discussed in the following sections. Overall, the development is considered to meet these objectives, particularly in regard to height, scale, bulk and appearance, and the potential impact it will have on the local amenity.

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

State Planning Policy 7.3 Residential Design Codes Volume 1 (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. Council is asked to consider the design principles relating to lot boundary setbacks and visitor car parking. As required by the R-Codes, Council in assessing the proposal against the design principles, should not apply the corresponding deemed-to-comply provisions.

**Clause 5.1.3 – Lot Boundary Setback**

Unit 4 - Western First Floor Setback

The development proposes a 1.5m setback to 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 western lot boundary setback is considered to meet the design principles as:

* The proposed western lot boundary setback does not prejudice the western lot’s solar access or ventilation. Shadow cast from the western wall is contained wholly within the confines of the subject site. The development satisfies the deemed-to-comply provisions of the R-Codes in relation to solar access for adjoining lots.
* The development satisfies the deemed-to-comply provisions of the R-Codes in relation to visual privacy addressing the western neighbouring lot. The development proposes the use of larger than minimum setbacks and screening addressing adjoining lot boundaries to alleviate any perceived visual privacy intrusions.

**Clause 5.3.3 – Parking**

The development proposes 8 onsite parking bays, by means of a double garage for each dwelling. No dedicated visitor bay has been provided within the development. Consideration may be given, under the design principles of the R-Codes, for a reduction in the minimum number of on-site car parking spaces for grouped and multiple dwellings provided:

* available street parking in the vicinity is controlled by the local government; and
* the decision-maker is of the opinion that a sufficient equivalent number of on-street spaces are available near the development.
* The site is located less than 250m from a high frequency bus route serving multiple destinations located near the intersection of Stirling Highway and Florence Road. This allows ample opportunities for use of public transport.
* The development does not propose the inclusion of a visitor bay. It is noted that the deemed-to-comply provisions of the R-Codes requires 5 onsite parking bays, being 1 for each house plus 1 visitor bay. The development has proposed 8 onsite parking bays (2 for each house), resulting in a surplus of 3 bays.
* There is no permitted parking on the west side of Florence Road, and 3-hour parking restrictions on the east side during business hours. There is un-restricted street parking on the east side of Florence Road outside of business hours. This enables sufficient on-street parking for visitors.
* Should the development proposal be modified to include a visitor parking bay, this would likely be installed within the front setback area of the development. Installation of a visitor parking bay would result in the removal of landscaping within the front setback area, currently including 4 medium trees, and result in approximately 24m2 additional hardstand addressing the street. The additional landscaping is more consistent with the local context and character.
* Provision of landscaping results in a positive streetscape outcome that attempts to better place a development within the ‘leafy green’ context and character of the locality.

**Consultation**

The application is seeking assessment under the design principles of the R-Codes for lot boundary setbacks and visitor parking.

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to 13 adjoining properties. The application was advertised for a period of 14 days from 17 January 2022 to 31 January 2022. 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. Lot boundary setbacks should be increased to the northern lot boundary.

Following receipt of the submission, amendments have been made to the northern elevation (removal of major openings). These amendments have resulted in the proposed northern lot boundary setbacks satisfying the deemed-to-comply provisions of the R-Codes. The application is no longer seeking discretion for setbacks to the northern lot boundary.

1. The north facing balconies should be removed to protect privacy and reduce noise.

The development is considered to satisfy the deemed-to-comply provisions of the R-Codes in relation to visual privacy addressing the northern lot boundary. The proposed balconies include screening to a minimum height of 1.8m above the finished floor level of the balcony.

Noise is regulated by the *Environmental Protection Act 1986* (Environmental Protection (Noise) Regulations 1997).

1. The verge tree should be retained along with trees within the site.

Whilst there is no planning mechanism to require the retention of trees within private property, Officers have negotiated the retention of a significant tree located in the south-western corner of the site. In addition, a total of 12 new trees are proposed to be planted within the subject site.

**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**

N/A

**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 4 grouped dwellings has been presented for Council consideration due to objections being received. The proposal is considered to meet the key amenity related elements of R-Codes Volume 1 and as such is unlikely to have a significant adverse impact on the local amenity of the area. The proposal has been assessed and satisfies the design principles of the R-Codes and 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**

N/A

# PD20.04.22 Consideration of Development Application – 4 Grouped Dwellings at 24 Clark Street, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 26 April 2022 |
| **Applicant** | Z Liaoliang & L Lixin |
| **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/CEO** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans 3. Architectural Perspective Drawings 4. CONFIDENTIAL ATTACHMENT – Submissions |

**Purpose**

The purpose of this report is for Council to consider a development application for four grouped dwellings at 24 Clark Street, Nedlands.

**Recommendation**

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, Council approves the development application in accordance with the plans date stamped 21 March 2022 for four (4) grouped dwellings at 24 Clark Street, Nedlands, subject to the following conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 1 March 2022. 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:**
   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 the issue of a building permit, a Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction process to the satisfaction of the City.**
2. **The Arborist Report dated 25 February 2022 prepared by CIVICA forms part of this approval. The recommendations contained within the report must be adhered to at all times to the satisfaction of the City of Nedlands.**
3. **Prior to the issue of a building permit, amended plans and documentation are to be submitted demonstrating that the recommendations within the Arborist Report dated 25 February 2022 prepared by CIVICA have been implemented and will be maintained for the duration of the construction process 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. **Prior to occupation, landscaping shall be completed in accordance with the approved plans or any approved modifications to the satisfaction of the City of Nedlands. All landscaped areas are to be maintained on an ongoing basis for the life of the development on the site to the satisfaction of the City of Nedlands.**
6. **The street tree proposed to be retained within the verge in front of the lot is 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 die or be damaged, it is to be replaced with a specified species at the landowner’s expense and to the satisfaction of the City of Nedlands.**

**Voting Requirement**

Simple Majority.

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

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

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

**Background**

**Land Details**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R60 |
| **Land area** | 911m2 |
| **Land Use** | Residential – Grouped Dwellings |
| **Use Class** | ‘P’ – Permitted Use |

The site is located at 24 Clark Street, Nedlands, 200m south of Stirling Highway and 170m west of Broadway. The site is located on the southern side of Clark Street. The lot is rectangular in shape, has a 20m frontage and a total area of 911m2. The site slopes 1.5m from south-west to the north-east.

**History**

An application for 10 multiple dwellings at the subject site was previously considered at the Joint Development Assessment Panel (JDAP) meeting held on 23 June 2021. The multiple dwellings are three storeys, with a roof terrace. The JDAP resolved to approve the application, subject to conditions. This application is still valid but has not been acted upon.

The site has also received conditional subdivision approval from the Western Australian Planning Commission (WAPC) for four lots with common property for vehicle access. This application reflects the subdivision approval for the four lots with common property.

**Application Details**

The application seeks development approval for the construction of four grouped dwellings. All dwellings are two storey and obtain vehicle access from the communal driveway to the west of the site.

**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 the potential impact it will have on the local amenity.

**Sustainability**

It is noted that there are no sustainability initiative requirements for this development at the current time. However, the development proposes the following initiatives for sustainability:

* All dwellings will have a minimum energy rating of 7 stars.
* Dwellings will be provided with solar panels at the building permit stage.
* The landscape plant species are Australian natives which will require less watering.

**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. Council is requested to consider the design principles relating to visitor parking and site works (retaining walls). As required by the R-Codes, Council, in assessing the proposal against the design principles, should not apply the corresponding deemed-to-comply provisions.

**Clause 5.3.3 – Parking**

The design principles provide for adequate on-site parking, with consideration given to a reduction in parking based on the site’s proximity to public transport and available street parking. The development does not propose any visitor parking spaces due to the following reasons:

* The land has been previously subdivided into the four strata lots and common property that is reflected in the current development plans. The Western Australian Planning Commission granted conditional subdivision approval on 24 November 2020. No provision was made in the common property area for visitor parking.
* At the time of subdivision approval, the R-Codes did not require a visitor parking space where up to four dwellings were served by a single driveway. The current requirement for 1 visitor parking space was implemented on 2 July 2021, after the subdivision was approved.
* There is no ability to retrospectively apply a visitor parking requirement given subdivision approval has been granted to the subdivision and common property arrangements shown on the development plans.
* A total of 8 car parking spaces are provided in the development (2 spaces per dwelling). The deemed-to-comply provisions of the R-Codes require 5 spaces (1 per dwelling plus 1 visitor space).
* The site is located approximately 200m from multiple high frequency bus routes, including the Purple CAT, which operates on a 10-minute frequency 7am-7pm Monday-Friday along Broadway. Given UWA and the QEII Medical Centre are located in close proximity, the overall level of public transport coverage and frequency is excellent in relative terms.

**Clause 5.3.7 – Site Works**

The development proposes a maximum 0.95m high retaining wall along the eastern side and front lot boundaries. The design principles provide for retaining walls which allow the land to be effectively used for the benefit of the residents, without detrimentally affecting adjoining properties. The retaining proposed meets the design principles for the reasons outlined below:

* The site slopes 1.5m from south-west (rear) to the north-east (front). The design of the development considers this slope, with all the finished floor levels of the units being stepped to respond to the natural slope of the land.
* Towards the front of the site (north and north-east), where the land is at the lowest point, retaining is proposed to a height of 0.95m. The remainder of the retaining along the eastern lot boundary ranges from 0.5m to 0.65m in height, following the natural ground level of the site.
* The retaining walls which range from 0.5m to 0.65m along the eastern lot boundary allow the land to be effectively used for outdoor living areas for Units 2, 3 and 4.
* The portion of retaining at 0.95m in height, being proposed at the lowest portion of the site in the north-eastern corner at the front allows for the effective use of the land for landscaping.
* The retaining walls are unlikely to detrimentally affect the adjoining properties. The development proposes 2.1m high Colourbond fencing on top of the retaining walls. Following the consultation period, amended plans were received to provide higher dividing fencing at the request of the adjoining owners. The dividing fencing is subject to an agreement between the landowners and is not governed under planning legislation. The proposed fencing on top of the retaining is likely to improve the amenity of the neighbouring properties by providing additional privacy.
* The retaining wall along the northern boundary (primary street) is unlikely to detrimentally affect the streetscape. Landscaping within the front setback area will improve the streetscape amenity of the development.

**Consultation**

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to 34 adjoining properties. The application was advertised for a period of 14 days from 21 January 2022 to 4 February 2022. At the close of the advertising period, three submissions were received. Two submissions stated objections and one submission stated no objections to the proposal.

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

1. Concerns regarding the height of the retaining

The development proposal is seeking a judgement of merit for the retaining. Please see above for the Design Principles assessment on retaining.

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

The development proposal is seeking a judgement of merit for the visitor car parking. Please see above for the Design Principles assessment on visitor car parking. It is noted that the WAPC approved the subdivision without the provision of a visitor carparking bay as there was no requirement for one to be provided at the time of the decision.

1. Concerns regarding the setbacks proposed to Clark Street

Amended plans were received on 1 March 2022 to provide increased setbacks to Clark Street. The proposal now meets the deemed-to-comply provisions of the R-Codes relating to street setbacks.

1. Request for additional landscaping to be provided within the rear setback area.

Amended plans were received on 1 March 2022 to provide additional landscaping within the rear setback area, including 1x Kanooka Gum Tree, 2x Magnolia Teddy Bear Trees and 5x Dwarf Magnolias. The proposal exceeds the deemed-to-comply provisions of the R-Codes relating to landscaping, which only calls for 1 tree per dwelling.

1. The existing fences are low and will result in impacts upon privacy and request to provide higher fencing to assist with privacy.

Amended plans were received on 1 March 2022 to provide higher fencing to a height of 2.1m above the proposed retaining. Following the receipt of amended plans, the City emailed the adjoining landowners to the south and east to advise that the plans propose dividing fencing to a height of 2.1m. No concerns have been received by the City in relation to the 2.1m height of the dividing fence.

1. Concerns about the loss of privacy and amenity from the alfresco of Unit 4 as the alfresco is close to the lot boundary.

The alfresco of Unit 4 is not elevated more than 0.5m above natural ground level and therefore meets the deemed-to-comply provisions of the R-Codes relating to setbacks and visual privacy. The amended plans with higher dividing fencing will provide additional privacy to adjoining residents.

1. Request for an arborist report to be prepared for the proposed development.

The applicant submitted an arborist report on 25 February 2022 as requested by adjoining landowners through the consultation process. The City has no legislative ability to require or approve an arborist report for applications under Volume 1 of the R-Codes. In this instance, the landowner of the subject site has agreed for the City to condition that the arborist report forms part of the determination materials of the proposal.

**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**

N/A

**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.

If Council resolves to refuse the proposal, the site still holds a valid approval for the development of 10 multiple dwellings.

**Conclusion**

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

The objections received relate primarily to street setbacks, landscaping, visitor parking and retaining. Amended plans have addressed the street setbacks and landscaping. An assessment against the design principles for visitor parking and retaining has identified that the proposal can be supported given the characteristics and location of the site.

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

**Further Information**

N/A

# PD21.04.22 Review of Local Planning Policy – Design Review Panel

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 26 April 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Roy Winslow, Manager Urban Planning |
| **Director/CEO** | Tony Free, Director Planning and Development |
| **Attachments** | 1. Reviewed Local Planning Policy – Design Review Panel |

**Purpose**

The purpose of this report is for Council to consider the review of the Local Planning Policy – Design Review Panel first adopted on 21 March 2021.

**Recommendation**

**That Council in accordance with clause 5 of the Deemed Provisions makes minor amendments to the Local Planning Policy – Design Review Panel, first adopted on 21 March 2021 as per Attachment 1, effective from the adoption of the 2022-2023 Annual Budget.**

**Voting Requirement**

Simple Majority.

**Background**

Council adopted the current Local Planning Policy relating to the Design Review Panel in March 2021. The Panel has operated since June 2021 and has met 13 times and reviewed a total of 19 individual proposals. A total of 24 separate reviews have taken place in this time, with a small number of proposals reviewed multiple times.

The design review process has quickly established its value in the City’s development assessment framework. The expertise of the Panel has led to the improvement of the overall design outcomes in all proposals that have been considered. In some cases, the early input of the Panel has led to fundamental changes in the design approach, allowing for a more streamlined assessment once the application is lodged. It is recommended that the City encourage more proposals to have follow up reviews to further improve outcomes.

Design elements are expected to become progressively more of a focus in planning assessments over time. The likely advent of the medium density codes in late 2022 will extend to grouped dwellings many of the design elements currently considered for multiple dwellings.

An opportunity to simplify the collection of review fees has been identified, that will have benefits from both increasing the level of participation in the review process, as well as administratively.

**Discussion**

The operation of the Design Review Panel Local Planning Policy is considered to be generally effective. Two changes of note are recommended:

1. Reduction in threshold for grouped dwellings from 10 to 5.

Currently, grouped dwelling applications are required to be reviewed by the Panel where ten of more units are proposed. Whilst there have been a number of grouped dwelling developments with less than 10 units reviewed, this has been due in the main to there being a three-storey element to the design. The policy requires any proposal with three or more storeys to be reviewed by the Panel.

The nature of development in the City creates a relatively large number of grouped dwelling developments proposing between 5 and 10 units. The level of development intensity proposed creates a strong desire to fully consider design elements in the assessment. In order for this to take place, it is recommended that the threshold for grouped dwelling developments requiring design review be reduced from 10 to 5. The new threshold is considered appropriate given a 5-9 unit development is determined by Council, which may wish to have regard to design review.

1. Simplification of fees and charges.

The policy currently incorporates details of fees and charges, including the Council’s resolved position that all costs of a review are borne by the applicant. It is recommended that the policy continue to enshrine the objective that the applicant pays the full cost of the review. In practice, this has been accepted in the main by applicants without any concern.

In order to normalise how Council sets the fees and charges for design review, it is recommended that the schedule of fees be removed from the policy. It is proposed that review fees and panel member reimbursements are contained in the City’s annual Schedule of Fees and Charges, which is set as part of the budget process. This is preferred as it allows for annual review without the need to amend the policy. This also brings the design review panel fees and charges into line with other services provided by the City.

A copy of the proposed policy is **attached**.

**Consultation**

The changes to the policy that are proposed by this report are minor in nature. The effect is to remove the fees and charges from the Policy (with replacement in Council’s Schedule of Fees and Charges) and to reduce the trigger for grouped dwellings requiring design review from 10 to 5. There is no change proposed to the policy intent or objectives. Given this, the officer advice is that Council make the changes to the policy without advertising on the grounds that the amendments proposed are minor.

**Strategic Implications**

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

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

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

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

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

**Budget/Financial Implications**

There will be no budgetary impact of removing the fees and charges from the policy and placing these into the City’s annual Schedule of Fees and Charges. This change is recommended as it will allow for annual review of fees without the need to formally amend the policy. This will provide Council greater flexibility and ensure the annual review of fees and charges for the DRP can occur simultaneously with the review of all City fees and charges.

It is recommended that the current meeting charge methodology be changed to a simpler model that reduces administration time. Currently, the charge for each application is calculated on a per meeting basis and is dependent on the estimated length of meeting and the number of panel members. This requires individual calculations for each application and a degree of “guess work”. It also requires the process to be done multiple times where an application returns to the Panel for subsequent reviews. This creates additional administration costs as officers are required to create and follow up payments each time an application comes back to the Panel. There is also an inherent disincentive in this approach as applicants may be less inclined to come back for subsequent reviews.

The alternative charging method recommended will simplify the process and have a positive impact on Council’s budget. It is recommended that a flat fee of $5,000 plus GST be charged prior to the first review for each application. This will provide for two reviews by the Panel and a third review by the Panel Chair. The purpose of the third review is to confirm any outstanding matters from the second review have been appropriately addressed without the need for a full Panel review. It is expected that this model will be appropriate for the majority of applications reviewed by the Panel. The advantages of this model are it is simpler to administer, provides certainty to applicants and will encourage follow up reviews.

**Legislative and Policy Implications**

Clause 5 of the [Deemed Provisions](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_s46246.html) for Local Planning Schemes (Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015) relates to the amending of local planning policies. The clause provides for the local government to amend a policy using the procedure set out for making a new policy, including advertising. However, the clause also allows for a local government to make minor amendments to an existing policy without advertising.

**Decision Implications**

Should Council resolve to accept the amendments to the policy as proposed, the changes to the referral triggers and fees and charges will take place immediately. In the event Council resolves not to amend the policy the current arrangements will continue in place.

The most notable change proposed relates to the inclusion of a larger number grouped dwelling developments in the formal review process. This is likely to have a positive effect on the design quality of grouped dwellings development of between 5 and 9 units, which are relatively prevalent in the City.

**Conclusion**

The Design Review Panel has been operating effectively since June 2021. It is recommended that the Local Planning Policy governing the Panel be amended to remove the setting of fees and charges from the policy, with this function incorporated into the annual Schedule of Fees and Charges. It is further recommended to reduce the threshold for grouped dwellings to be considered by the Panel from 10 to 5. This will allow for a greater number of developments considered by Council to have design review input.

Officers recommend that the review fee model be simplified to a single fee of $5,000 plus GST for up to two Panel reviews, plus a third review by the Panel Chair only. This will reduce administration of the collection of fees, as well as encourage follow up reviews to further develop the design elements of proposals.

As the modifications to the Policy are considered administrative and minor in nature, advertising is not required in this case.

**Further Information**

N/A

# PD22.04.22 Consideration of Adoption of Local Planning Policy for Advertising – Draft Waratah Precinct Design Response

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 26 April 2022 |
| **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/CEO** | Tony Free–Director Planning & Development/ Bill Parker-CEO |
| **Attachments** | 1. Draft Waratah Precinct Design Response Local Planning Policy 2. Summary of changes – Waratah Precinct Design Response LPP Relationship to SPP 7.3 R-Codes |

**Purpose**

The purpose of this report is for Council to adopt for advertising the draft Waratah Design Response Local Planning Policy (the Policy), found in **Attachment 1**.

**Recommendation**

**That Council:**

1. **adopts the Draft Waratah Design Response Local Planning Policy for advertising in accordance with Clause 4 of the Deemed Provisions of Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015 the Waratah Precinct Design Response Local Planning Policy;**
2. **notes that the advertising period will be for a minimum of 28 days; and**
3. **requests the Chief Executive Officer prepare a Discussion Paper to consider the merits of the laneway route and specification, which is to be discussed at a Concept Forum prior to the Policy being further considered.**

**Voting Requirement**

Simple Majority

**Executive Summary**

The Policy seeks to nuance the built form guidance of State Planning Policy 7.3 - Residential Design Codes (R-Codes), providing localised and contextually appropriate built form controls and design guidance for the Waratah precinct. This report provides an overview of the process the City undertook to create the Policy, a breakdown of the Policy structure and its strategic intent.

The Policy process began with research into the context and character of the precinct and built form modelling for future development provisions in consideration of this character and context. Key character drivers for the Waratah precinct were identified as generous front and rear setbacks to dwellings, large areas of mature landscaping in the private and public realm, and an open streetscape feel.

The research and modelling phase was followed by an extensive community engagement program and review of the Policy provisions by industry experts. This report provides detail on the results of community engagement, and how the outcomes of this engagement have influenced the provisions of the Policy.

The Policy breaks the Waratah precinct into four sub-precinct areas, with each having their own existing and desired future character statement. The sub-precincts are detailed in a Precinct map included as Figure 1 at the end of this report. Each sub-precinct also has provisions written specifically for them that are consistent with these character statements, as well as their density code, zoning and lot orientation. The report discusses the specific aspects of the character and context research, built form modelling and engagement outcomes that have influenced these provisions.

Each modification to the planning framework is justified and assessed against the provisions of the R-Codes. This report includes information on the state planning documentation, and how this Policy interrelates with these documents. This report also details the legislative requirements of creating and processing the Policy, which aspects of the Policy require approval from the WAPC, and guides Council on the next steps in the policy adoption process.

**Background**

**Built Form Modelling**

In accordance with State Planning Policy 7.2 – Precinct Design Guidelines (SPP 7.2), the intent of precinct planning policies is to promote the contextually appropriate development of the areas identified for an increase in density under the Scheme. In January 2020 the City engaged consultants to undertake built form modelling for the Broadway, Nedlands Town Centre, and Waratah precincts.

The built form modelling work included the following deliverables:

1. Local distinctiveness study
2. Context analysis
3. Modelling and built form controls

The local distinctiveness study and context analysis for the Waratah precinct were presented to Council at the 25 August 2020 Ordinary Council Meeting. At this meeting, Council resolved that the local distinctiveness studies should be referenced in the assessment of Development Applications, and that they would assist in informing the development of built form modelling.

**Community Engagement**

The final deliverables of the built form modelling work were provided to the City in April 2021. The City then proceeded to the community engagement phase of the precinct planning work, using key elements of the built form modelling completed to engage with the Community Reference Group (CRG) at workshops. Broader community engagement was also carried out via an Open House (drop-in session) and a community survey. These methods allowed all residents within the City to comment on the desired future character of the Waratah Precinct area. Further details of community engagement activities for this project are outlined below in the Consultation section.

The provisions within the Policy have been formulated by incorporating the outcomes of the built form modelling work and character study, community engagement outcomes, and technical input. Taking on board the community’s feedback, the provisions also align with the strategic intent of the R-Codes, SPP 7.2 and the State Government’s strategic plan for population growth, Perth and Peel@ 3.5 million. The Policy has been reviewed internally and externally, to ensure that the provisions translate effectively into quality built form outcomes.

**Discussion**

**State Planning Policy 7.2 – Precinct Design Guidelines**

SPP 7.2 sets out the criteria an area should meet to require precinct planning work, and the process a local government should follow to prepare the precinct plan or policy. Under SPP 7.2, the Waratah Precinct is an example of a precinct in a well-established urban area that is in transition. The Waratah Precinct is identified as a Residential/Mixed Use Precinct. The precinct plan or policy for a Residential/Mixed Use Precinct should focus on the following key objectives:

* Guide subdivisions, amalgamation, and development to increase density and high-quality outcomes;
* Enhance urban amenity by detailing lot/building orientation and access arrangements;
* Strengthening green networks through the enhancement of urban tree canopy and improved interfaces between the public and private realm; and
* Ensure the design supports safe access and encourages public transport, walking and cycling.

The City followed the process set out in SPP 7.2 to create the Policy, including identifying the precinct area, engaging with the local community, creating a vision, ensuring the development proposal is feasible, and investigating how the precinct plans can result in benefit to the communities they are developed within.

**Local Planning Strategy**

The Strategy identifies that future development in the Dalkeith area should protect the established residential character of the Precinct, while also facilitating increased dwelling diversity. The Strategy states that development within Dalkeith should contribute to the Dalkeith neighbourhood centre on Waratah Avenue realizing its potential, and the increase of residential and non-residential development in this area.

The Policy responds to the Strategy’s vision for Dalkeith by promoting the desired future character of the area through the retention of large setbacks and the provision of significant landscaping. The Policy also promotes the revitalisation and continued development of the Dalkeith neighbourhood centre on Waratah Avenue, correlating with the Strategy’s priorities for the area.

The gazettal of the City’s Local Planning Scheme No. 3 resulted in an increase in the density coding of the area surrounding the Waratah Avenue mixed-use zone. The City considered it appropriate to prepare a precinct policy for the area to ensure that development is guided in a contextually appropriate manner. In accordance with the Scheme and the Strategy, the Policy highlights the importance of quality urban design that interacts with the streetscape, protects the amenity of existing properties, and provides high quality living environments for the residents of the new developments.

The Policy identifies that the area’s character is defined by large setbacks, mature landscaping and an open streetscape feel. The Policy encourages the preservation of the Waratah Precinct’s character and heritage through the maintenance of large setbacks and mature landscaping, whilst still allowing designers and homeowners the freedom to create homes using materials and styles that are mixed. This promotes new development that is respectful of the existing character of the area, whilst integrating the flexibility that was highlighted as crucial in feedback provided during community engagement.

**Local Planning Scheme No. 3**

The Scheme identifies the Waratah Avenue commercial sites as being within the Mixed-Use zone. This strip forms the centre of the precinct area and is one of two areas of the precinct that isn’t zoned Residential. The Local Centre, which consists of four lots at the corner of Waratah Avenue and Robert Street, is the second non-Residential zoned area.

The City’s Local Planning Scheme No. 3 increased the density coding of the Waratah Avenue mixed-use sites and the surrounding residential streets. This increase in density and changes in zoning promotes a bustling village centre in the heart of Dalkeith that will provide restaurants, cafes, shops, consulting rooms and other land uses that provide for the everyday needs of the local community.

The Policy has been prepared in accordance with clause 9 – Aims of the Scheme, in particular:

(a) Protects and enhances local character and amenity;

(b) Respect the community vision for the development of the district;

(c) Achieve quality residential outcomes for the growing population; and

(d) To develop and support a hierarchy of activity centres.

The Policy is consistent with the objectives of the relevant Zones:

**Residential Zone**

* Encourages a range of housing types to meet the changing needs of the community;
* Encourages high quality design and streetscapes;
* Proposes preferred land uses that are complimentary to the surrounding residential development;
* Provides street specific requirements for development to be compatible with the future desired character of the area in terms of bulk, height, scale and setbacks.

**Mixed Use Zone**

* Residential development preferred at all levels above ground level;
* Encourages well-designed, high-quality development that considers the existing new development, and the future desired character of the area;
* Includes a list of preferred active uses, to be located at ground level, which also provides for a mix of varied but compatible land uses that will assist in activating the streetscape.

**Local Centre Zone**

* Includes a list of preferred land uses, with active land uses required to be at the ground floor;
* By focusing on active land uses at ground floor, and nil setbacks and awnings at ground level, the Policy encourages high quality, pedestrian friendly development;
* Encourages a mix of varied land uses, focusing on the daily needs of the community including shop, convenience store and medical centre or consulting rooms.

**Draft Waratah Precinct Design Response – Local Planning Policy**

**Informing Studies**

The drafting of the Policy is the culmination of the findings of the Context and Character and Built Form Modelling studies, which have provided a sound basis for the creation of the existing future character statements. The Built Form Modelling studies have provided examples of forms of development, detailing them in manner that informs the choices made for appropriate setbacks massing.

The outcomes of the Community Reference Group and broader community engagement undertaken as part of this project have directly influenced and guided the built form provisions included in the Policy. These provisions have then undergone thorough testing by internal and external stakeholders to ensure that they are able to be applied effectively in a real-world development scenario.

**Strategic Intent**

The intent of the Policy is to nuance the requirements of the R-Codes so that they are more contextually appropriate to the existing and desired future character of the Waratah Precinct. The Policy seeks to:

* Define the future character of the area
* Facilitate high-quality design
* Promote key landscape and streetscape elements from the established character
* Maintain the amenity of the area, consistent with the relevant density code
* Manage density interfaces

**Character Statements**

An existing character statement has been provided for each sub-precinct within the Policy. Building on these existing character statements and community vision from the pre-engagement workshops, and further refined by outcomes from the CRG, survey and Open House, the Policy also defines the desired future character statement for the sub-precincts. The Design WA policy suite refers to ‘desired future character’ as an important aspect of determining whether a development meets certain objectives and, therefore, whether a development should be approved. The Policy’s character statement outlines the strategic intent of the Policy, and the expectations for new development.

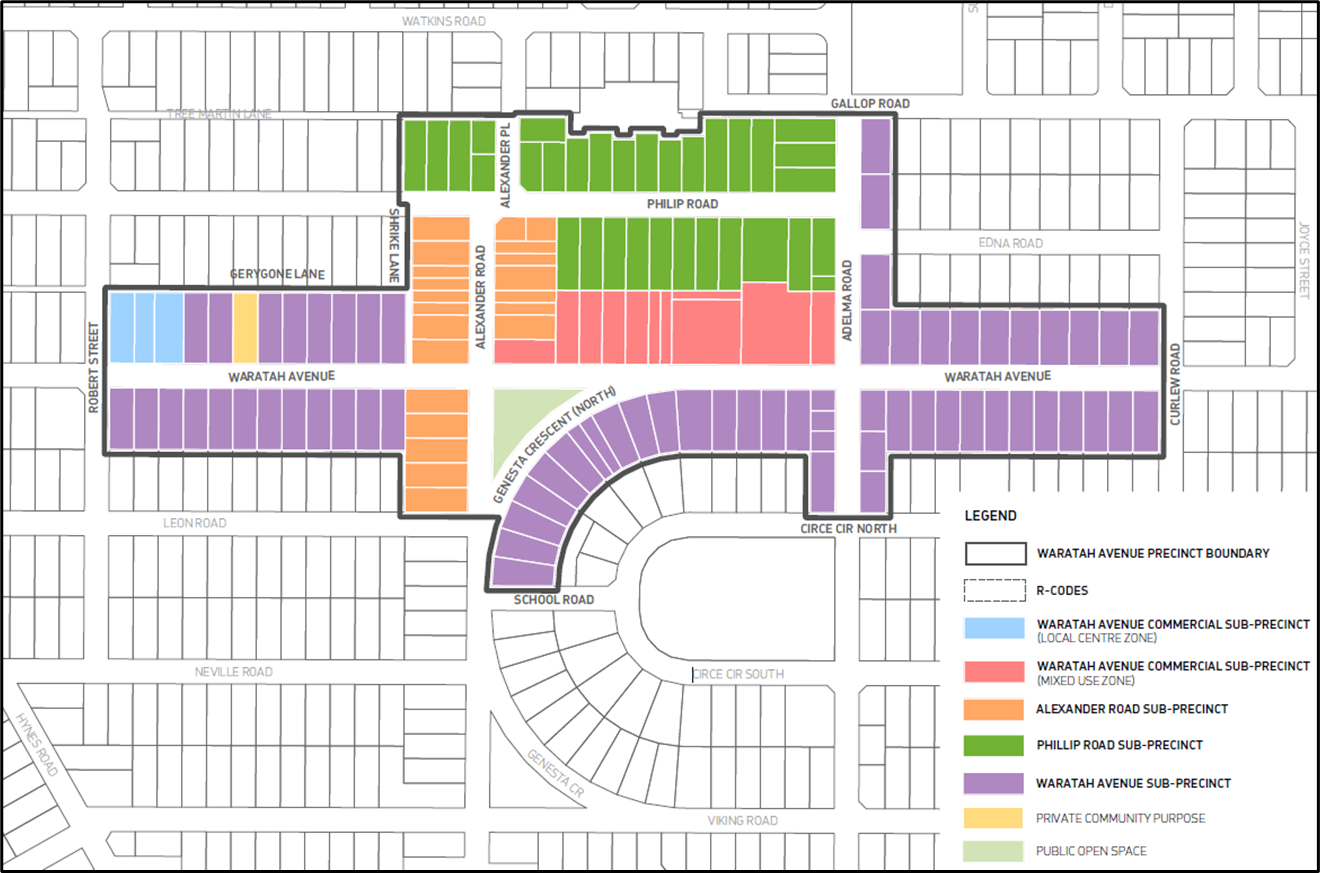
**Sub-Precincts**

The precinct has been analysed on a street-by-street basis. Considering the zoning, density coding, lot orientation and existing landscape and streetscape characteristics, the City identified four distinct sub-precincts within Waratah Precinct. The Policy includes a map that breaks the precinct into:

* Alexander Road Sub-Precinct
* Philip Road Sub-Precinct
* Waratah Avenue Sub-Precinct
* Mixed Use and Local Centre Sub-Precinct

These sub-precincts are detailed in **Figure 1**, shown following:

**Figure 1 – Waratah Precinct and Sub-Precincts**



By combining the extensive background work noted previously, as well as lot size and key existing character elements (including setbacks, landscape character, building heights, density transition and typology), contextually appropriate provisions for individual streets have been developed.

**Policy Scope**

Single House and Grouped Dwellings

Pursuant to clause 7.3.1(a) of the R-Codes Volume 1, the Policy amends:

* c5.1.2 – Street setbacks
* c5.1.3 – Lot boundary setback (C3.2-3.3)
* c5.1.6 – Building height

The City will also seek approval from the WAPC for amendments to the deemed to comply provisions for lot boundary setbacks, vehicle access and landscaping. The Policy provides further Design Guidance, which are intended to act as Housing Objectives, for developments within the Waratah Precinct.

**Multiple Dwellings**

In accordance with clause 1.2.2 of the R-Codes Volume 2 the Policy amends:

* Element 2.2 - Building Height
* Element 2.3 - Street setback
* Element 2.4 – Side and rear setback

The City will also seek approval from the WAPC for amendments to the Acceptable Outcomes for Element 3.3 – Tree Canopy and Deep Soil Areas and Element 3.8 Vehicle Access. Design Guidance has been developed for each modified element.

**Alexander Road Sub-Precinct**

Alexander Road serves as a transition precinct from the higher density Mixed Use R-AC3 sites. The eastern side of Alexander Road is Residential R80, which contemplates a building height of four storeys. However, the ability for this section of the precinct to transition the built form down is impeded by the extent of recent redevelopment that has occurred under the previous Scheme and the recent down-coding of the western side of the sub-precinct to Residential R40. On 13 February 2022, Council endorsed a notice of motion proposing that Council adopt the height limits as per the R-Codes Volume 1 for single and grouped dwelling development. The Policy does not propose to adopt deemed to comply height requirements as per the R-Codes for single and grouped dwellings. The single and grouped dwellings within Dalkeith are generally of large proportions, above the average height and size of dwellings prescribed as per the R-Codes. To require new single and grouped dwellings to comply with a lower height would be out of context and scale with the large existing homes in the local area.

It is considered contextually appropriate to allow single and grouped dwellings to continue to develop to a larger size, as per the previously identified desire of the community through development applications and community engagement. The community considered streetscape, built form and amenity as being the key considerations for this sub-precinct. The City also considered the very strong built form and streetscape characteristics that define this sub-precinct when nuancing the street and rear setbacks, building height, deep soil and tree canopy provisions.

**Philip Road Sub-Precinct**

Philip Road also serves as a transition precinct from the higher density Mixed Use R-AC3 sites. The key character drivers for this precinct include the large front setbacks that accommodate expansive, heavily vegetated gardens with significant tree canopy. The character of the street is further defined by the density changes between the southern and northern sides of the street, the north-south orientation of the lots and general design quality. Street and rear setbacks, vehicle access, deep soil area and tree canopy have been nuanced to ensure new development is consistent with the existing landscape character, to minimise the amenity impact of higher density development on lower density codes and to take advantage of the northern aspect of these lots.

**Waratah Avenue Sub-Precinct**

Waratah Avenue sub-precinct frames the Mixed-Use R-AC3 sub-precinct with Residential R40 and R60. Extensive subdivision has already occurred within the R60 portions of the sub-precinct, to the extent that there now exists limited opportunity for further redevelopment. The main character driver in this precinct is the strong existing two storey built form, mature landscape and streetscape characteristics that include relatively large setbacks. Street, side and rear setbacks, as well as deep soil and tree canopy have been nuanced to respect the prevailing streetscape and to manage the interface between higher and lower density development.

The key character drivers in the Residential R40 portion of the sub-precinct are the strong streetscape and landscape characteristics, consisting of large street setbacks and considerable amount of mature landscaping. Street, side, rear and deep soil and tree canopy provisions have been nuanced to ensure future development is consistent with the existing character.

**Mixed Use and Local Centre Sub-Precinct**

The Mixed-Use (R-AC3) and Local Centre (R60) sub-precincts on Waratah Avenue are the commercial centres for the precinct area. The community identified that it would like to see the commercial centres activated, but that it does not want to see commercial uses spreading into the residential sub-precincts. These sub-precincts are compact commercial areas, characterised by a mix of architectural styles and materials, with the original low-rise, fine grain commercial buildings creating a contrast with newer, larger developments in the precinct. Setbacks in these sub-precincts have been nuanced to enhance the built form of the area, and consideration is being given to the provision of a laneway to the rear of the Mixed-Use sites.

**General Provisions**

**Development**

The Policy includes General Provisions to guide development that uses high quality materials and promotes the use of a varied palate of natural materials. Blank or unarticulated imposing facades are discouraged. The use of traditional design elements that create interest such as eaves, balconies and verandahs are encouraged. These design elements serve an additional purpose, as they enhance the solar passive design of the building’s elevations. These General Provisions encourage developments to reflect the desired future character of the precinct, as stipulated within the Policy.

**Sustainability**

The outcomes of community engagement suggested that the community expects all built form policies to incorporate sustainability measures. This outcome relates directly to a motion of Council from the 28 September 2021, when Council endorsed a Notice of Motion relating to the instigation of planning instruments that can reduce the use of non-renewable energy sources through development approvals. The Policy is a planning instrument that can be utilised to reduce non-renewable energy use via development approvals. The Policy’s General Provisions include the requirement for all multiple, grouped and mixed-use developments to provide a sustainability report that exhibits water and energy efficiency measures. All developments must also demonstrate that they exceed the minimum NATHERS or Green Star requirements. The Policy also proposes to exceed the number of electric vehicle charging stations required by the R-Codes and provides incentives for the provision of electric vehicles for shared use. Design elements that encourage sustainability have also been included, such as discouraging dark roofs and encouraging elements including eaves and verandahs that contribute to passive cooling.

A second motion of Council was made on the 21 October 2021, where Council endorsed a Notice of Motion relating to the protection of existing and future solar panels. The R-Codes have existing provisions that protect solar panels. Under R-Codes Volume 1 (Single and Grouped dwellings), there is a maximum proportion of overshadowing that is permitted for each density code. The calculation is based on a worst-case scenario, being 12pm June 21st. Further, Design Principle P2.2 considers the impact of development on solar collectors. Under the R-Codes Volume 2 (Apartments), the form of development is constrained by its impact on adjoining properties’ solar panels via Element Objective 3.2.2. There is also a maximum proportion of overshadowing permitted for each density code, under Acceptable Outcome 3.2.3. Collectively, these provisions have been thoroughly tested by SAT cases, most recently involving the refusal of a four-storey multiple dwelling development at No. 6 Alexander Road, Dalkeith (2021/WASAT 41). Given this, the City has not identified a need, specific to the Waratah Precinct, that would reasonably require provisions relating to solar panels, over and above those in the R-Codes.

**Waratah Village Laneway Requirements Local Planning Policy**

The City’s Waratah Village Laneway Requirements Local Planning Policy was adopted in March 2020 and outlines the provision of a vehicle access laneway to the rear of the lots fronting Waratah Avenue.

The provisions of the Waratah Village Laneway Requirements Local Planning Policy have been incorporated into the Draft Precinct Policy, with amendments to the location of the laneway. It is recommended that, if the City resolves to adopt the Policy post advertising, the City also revokes the Waratah Village Laneway Requirements Local Planning Policy, as it will be superseded. In the City’s view, there are further concerns to be addressed in terms of the viability of the route of the Waratah laneway. For this reason, it is recommended that the laneway be discussed further at a future Concept Forum following the preparation of a Discussion Paper, prior to the Policy being considered by Council post advertising.

**Consultation**

**Community Engagement Program**

The City has completed a comprehensive community pre-engagement program to inform the Policy. In November 2019, three workshops were undertaken with the broader Waratah Community to capture a broad vision for the Precinct. Following built form modelling, the City needed to engage on the key outputs of that project. The City established a focussed Community Reference Group (CRG), after Expressions of Interest were sent to all properties within 400m of the precinct. Fifteen people responded and all were selected to participate in three workshops held between June and August 2021.

The CRG program was designed to provide participants with additional knowledge and skills relating to town planning, so that they could provide meaningful feedback on built form, landscaping and tree canopy, streetscape, land use and movement (laneway). The workshop structure is detailed below.

**Workshop 1:** Background to the planning system, key urban design concepts, parameters of a policy and vision.

**Workshop 2:** CRG rotated through activities on each theme (built form, landscaping and tree canopy, streetscape, land use and movement (laneway)) to provide informed and detailed feedback on their desired future character for the precinct.

**Workshop 3:** Communicating the collated feedback from the previous CRG workshops and ensuring that the CRG agreed with the summarised version of the feedback.

A summary of the key outcomes of the CRG workshops is provided below.

**Built Form**

* Each street requires individual, localised built form controls that respond to the specific context, including lot orientation, existing setbacks and landscaping, movement of vehicles and pedestrians, and potential future development.
* High quality design and use of quality materials was emphasised.
* Retention of open streetscape feel through increased street and rear setbacks was important.
* Limiting overshadowing and impact on privacy expected.

**Landscaping**

* Mature landscaping and tree canopy are considered fundamental components of the existing Nedlands character.
* Building design and site orientation are important considerations in the choice of landscaping options. Landscaping is an important element for buffering and privacy between developments.
* Landscaping in the public realm is considered important in greening the City.
* Lawn, although not environmentally friendly, is good for recreation. Lawn should be broken up with water wise plants. A preference for native plant species was expressed.

**Amenity**

* Concerns regarding the impacts on neighbouring privacy and amenity from overshadowing, therefore size of setbacks is important.
* Privacy should be considered where there is a change in typography and at harsh interfaces (i.e., between R60 / R10 and activity centre).
* Support for the opportunity to create an even greater village feel in the Precinct. Creating a destination with new offerings of retail and commercial including a small bar establishment, that could be supported through increased density that is well designed.
* New development has the potential to increase housing diversity, such as opportunities for ageing in place.

**Movement**

* Support to explore options for accessing and utilising the laneway more effectively in creating a more pedestrian friendly Waratah Avenue through:
* pedestrian friendly streetscape including increased alfresco dining;
* to alleviate parking and traffic pressures within the Precinct;
* increasing the number of street trees; and
* making it more accessible for people with disabilities;
* There was also concern the laneway could become a hot spot for anti-social behaviour, and so there was less support for exploring the functionality of laneways for place activation.
* Community split on car parking being a barrier to encouraging and supporting new active uses in the Precinct such as a small bar or dining options.

**Land Use**

* A balance between active and inactive uses at ground level with a preference for active uses at ground level, rather than above.
* Future proof ground floor tenancies by requiring them to have a minimum ceiling height of 4 metres, so they can change use throughout time.
* Support for Dalkeith Hall to retain its community/civic function, but desire expressed for a new larger building with improved connectivity to the street.

**Sustainability**

Although not a previously identified topic from the built form modelling work, sustainability was a theme that proved to be embedded within each of the key topics of community engagement. Consideration of sustainable elements within the Policy includes:

* Sustainable building design
* Encouragement of passive modes of transport such as walking and cycling,
* Consideration of water wise principles and endemic plant species in landscaping plans.

These elements were identified as being part of an important theme running through the Waratah engagement program and have been incorporated into the Policy to provide an aspect of future proofing to the design guidelines for the precinct.

**Survey and Open House**

To understand the wider community’s vison for the precinct, residents within 400 metres of the precinct were invited to respond to a survey that was available between 23 August – 6 September. In total, 17 surveys were completed by residents and business owners.

The community were also invited to attend a Community Open House on 25 August 2021 from 5.00pm – 7.00pm. Attendees were provided the opportunity to review feedback gathered from the CRG and provide their own input on key design considerations. In total, 36 community members and 6 Councillors attended the information session.

The following documents will be made publicly available during the advertising period, to support the Policy’s proposed provisions:

* Waratah Precinct Context and Character Report;
* Waratah Precinct Built Form Modelling Report;
* Community Engagement Outcomes Report; and
* Justification Table – providing detailed analysis of the changes that were made to the R-Codes provisions, and why;

**Community consultation**

If Council resolve to advertise the Policy, it will be advertised in accordance with the City’s Consultation of Planning Proposals Local Planning Policy, which involves the following methods of consultation:

* 28 Day Advertising period
* Letters to notify owners and occupiers within the precinct of the draft Policy and to make a submission
* Notice in the local newspaper
* A notice on the City’s Notice board
* A notice on the City’s Your Voice engagement portal
* Social media
* Community engagement session

**Strategic Implications**

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

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

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

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

**Reflects Identities**

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

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

Encouraging sustainable building

**Budget/Financial Implications**

The remaining expenses for the Precinct Policy work relate to public advertising. No additional budget is required to complete the work for the Policy.

The Policy will facilitate infill development within the Waratah precinct. This is likely to result in a rating revenue increase.

**Legislative and Policy Implications**

Clause 3(1) of the Deemed Provisions of Schedule 2 of the [*Planning and Development (Local Planning Schemes) Regulations 2015*](https://www.wa.gov.au/government/document-collections/planning-and-development-local-planning-schemes-regulations-2015)allows the City to prepare a local planning policy in respect to any matter related to the planning and development of the Scheme area. Once Council resolves to prepare an LPP, in accordance with Clause 4 of the Deemed Provisions it must publish a notice of the proposed policy in a newspaper circulating the area for a period of not less than 21 days and seek submissions. Advertising will also include details being posted on the City’s website and Your Voice engagement portal. Following the advertising period, the policy will be presented back to Council to consider any submissions received and to:

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

**Decision Implications**

If Council resolves to prepare the Policy, it will be advertised in accordance with the process above.

If Council resolves not to endorse the recommendation, the Policy will not be advertised, or progressed. There will be no Policy in place with specific built form controls for the Waratah precinct.

**Conclusion**

As a result of extensive research and consultation, the Waratah Precinct Design Response Local Planning Policy provides contextually appropriate built form outcomes for the Waratah Precinct. The Policy is the most appropriate planning instrument for influencing the built form outcomes in the Waratah Precinct. It is recommended that Council adopt the recommendation and formally advertise the Policy.

**Further Information**

N/A

# PD23.04.22 Development Assessment Panel Reform

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 26 April 2022 |
| **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.  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/CEO** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Reform Submission 2. DAP Reforms Overview and Submission Form |

**Purpose**

The purpose of this report is for Council to consider a submission in relation to a proposed series of reforms regarding the *Planning and Development (Development Assessment Panel) Regulations 2011*.

**Recommendation**

**That Council endorses the City of Nedlands Development Assessment Panel System Reforms Submission at Attachment 1.**

**Voting Requirement**

Simple Majority.

**Background**

In 2020 the State Government set out an Action Plan for Reform through the implementation of the *Planning and Development Amendment Act 2020.* This Plan outlined the staged introduction of a number of reforms to the development assessment panel process. The first stage of these reforms saw the reduction in the number of Joint Development Assessment Panels (JDAPs) from 9 to 5, occurring in April 2020. Other changes foreshadowed at the time included a further reduction in the number of panels and the creation of a ‘special matters’ DAP.

The second stage of the proposed changes to development assessment panels forms has now been released for public comment.

The public consultation period concludes on 22 April 2022. However, the City has been granted an extension of time until 29 April 2022 in order to give an opportunity for Council to consider and endorse a response.

**Discussion**

**Overview of Proposed Changes**

Details of the proposed changes are included at **Attachment 2**. The proposed changes comprise the following key components:

1. The reduction of the number of JDAPs from five (5) to three (3), to be known as District Development Assessment Panels.
2. Fixed term and full time Presiding Members and Deputy Presiding Members (3 to 5 years) for the District DAPs to be employed by the Department of Planning, Lands and Heritage (DPLH). No changes are proposed to local government representation.
3. Creation of a Special Matters DAP to consider projects of State or regional importance, or certain types of applications in precincts of State or regional importance.
4. Process and administrative reforms including:
   1. Ability for meetings to occur outside of business hours in certain instances;
   2. Scheduling DAP meetings at regular dates and times at DPLH;
   3. All meetings being made available for electronic attendance; and
   4. Removing mandatory monetary thresholds, meaning all District DAPs will be opt-in only (Note: This does not change the DAP eligibility requirements for minimum $2 million dollar value and 10 or more dwellings.)

Items 1, 2 and 4 above are straightforward, and City Officers have no concerns. It is noted that meetings would no longer be held within the local government to which an application relates given that multiple applications are likely to be considered in a single meeting.

**Special Matters DAP**

Item 3 proposes creation of a Special Matters DAP, which would operate separately from the consolidated DAPs and be reserved for projects that are considered or are within areas of state or regional significance and which meet a certain threshold.

Special Matters DAPs are proposed to be run in a similar manner as the current State Development Assessment Unit (SDAU). This will see applications managed and assessed by the Department of Planning, Lands and Heritage, rather than the relevant local government. One area of difference is that it is understood that Special Matters DAPs will be bound by the relevant local planning scheme. The City would provide comment during the application and would then be responsible for clearing final conditions. There is currently no indication that the City would receive any fees for applications considered by the Special Matters DAP.

The Special Matters DAP will consider applications of a state or regional importance, or larger developments in nominated precincts. This Panel is proposed to affect the City of Nedlands by considering all applications within the Stirling Highway Mixed Use Zone proposing 21 dwellings or more, or more than 3,000m² of commercial floor space.

In addition to the Stirling Highway Precinct, other applications that meet the following thresholds are proposed to be dealt with by the Special Matters DAP:

* State significant proposals that are managed by the Lead Agency Framework (such as those proposed for the Swan River foreshore).
* The following development types where the value is greater than $50 million:
  + Renewable energy proposals (unlikely in Nedlands)
  + Non-residential developments with an NLA of more than 20,000m² (limited potential in Nedlands)
  + Multiple dwelling developments with more than 100 units (this yield is most likely limited to the Stirling Highway R-AC1 mixed use zone, which is already proposed to be included in the Special Matters DAP).
  + Private hospitals or educational establishments (Hollywood Hospital and a small number of private schools are located within the City).
  + Ports, marinas and airports (unlikely in Nedlands, any large development on the Swan River is likely to be included as a state significant proposal).

The Special Matters DAP is proposed to have seven members made up as follows:

* A presiding member nominated by the WAPC.
* A local government representative from a list of people nominated by WALGA (will not necessarily be representative of the local government in which the development is situated).
* An architect nominated by the Australian Institute of Architects.
* A person nominated by the Environmental Protection Authority.
* An urban and regional planner nominated by the Planning Institute of Australia.
* A person nominated by the Department of Transport.
* A person with experience in property economics, commerce and industry, business management, financial management, engineering, surveying, valuation or transport.

**Consultation**

Public consultation is being conducted by the Department of Planning, Lands and Heritage. Public comment is invited until 22 April 2022.

**Strategic Implications**

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

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

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

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

**Priority Area** Working with neighbouring Councils to achieve the best outcomes for the western suburbs as a whole.

**Budget/Financial Implications**

The proposed Special Matters DAP will see applications that would have been lodged with the City of Nedlands diverted to the Department of Planning, Lands and Heritage. Whilst the Department will be responsible for processing and assessing applications, it is likely that the City’s technical expertise will continue to be required. This input will include at the time of assessment and at the time of condition clearance. This expertise will include input into matters relating to traffic, engineering and assets, environmental health, building, waste management, conservation and building. The City’s comments on the planning merits of the proposal are also likely to be sought by the Department.

Under the proposed model, the City would not be reimbursed for costs associated with the above activities.

**Legislative and Policy Implications**

The State Government’s reform package would seek to amend the existing legislation applicable to Development Assessment Panels in Western Australia.

**Decision Implications**

If Council accepts the recommendation (with or without amendments), the City’s submission will be sent to the Department of Planning, Lands and Heritage by 29 April 2022.

If Council resolves not to make a submission, no correspondence will be sent to the Department.

**Conclusion**

The proposed changes contained in the Reform Action Plan will have a significant impact on the operation of the City of Nedlands’ planning functions. It is recommended that Council make a submission on the proposals as included in Attachment 1.

**Further Information**

Nil.

# Divisional Reports - Corporate & Strategy Report No’s CPS13.02.22 to CPS17.04.22

# CPS13.04.22 New Lease to Kidz Galore – 64-66 Melvista Avenue, Dalkeith

|  |  |
| --- | --- |
| **Meeting & Date** | Council – 26 April 2022 |
| **Applicant** | Kidz Galore Pty Ltd |
| **Employee Disclosure under section 5.70 *Local Government Act 1995*** | Nil. |
| **Report Author** | David Thomason – Coordinator Land & Property |
| **Director/CEO** | Michael Cole –Director Corporate Services |
| **Attachments** | 1. CONFIDENTIAL – Kidz Galore New Lease Proposal 2. CONFIDENTIAL – Kidz Galore Lease (Acoustic) Management Plan |

**Purpose**

Kidz Galore Pty Ltd lease the 64-66 Melvista Avenue, Dalkeith site from the City. Kidz Galore Pty Ltd have approached the City seeking a new lease.

Following a deferral of the report in February 2022, this report is re-presented to allow elected members consideration of that request.

**Recommendation**

**Council:**

1. **approves the Key Terms for a new lease with Kidz Galore Pty Ltd as contained within this report, noting the specific inclusion of the Lease (Acoustic) Management Plan;**
2. **requests the Chief Executive Officer commence the statutory public advertising of the disposition by negotiation in accordance with section 3.58(3) of the *Local Government Act 1995***
3. **following the statutory public advertising period, requests a further report be presented to Council outlining details of any public submissions received.**

**Voting Requirement**

Simple Majority.

**Background**

The City of Nedlands owns two freehold lots of land at 64-66 Melvista Avenue, Dalkeith (‘Site’). Each lot is 1012m2 in area being a total of 2024m2. Currently zoned R10, the two lots are adjacent large regular shaped lots located on Melvista Avenue, a thoroughfare road within Dalkeith. The Site is located opposite Mason Gardens on the corner of Melvista Avenue and Hackett Road. The Site includes a circa 1970’s constructed building which previously served as the Melvista Pre-School, a facility leased to and operated by the Department of Education. The Department surrendered the lease on 24 September 2012.

In 2013, the City reviewed its provision of childcare services and moved to conduct a public process inviting submissions for the provision of childcare services and associated leases of the property at 64-66 Melvista Avenue, Dalkeith. In this process seven submissions were received and Kidz Galore Pty Ltd (‘Kidz Galore’) were the successful respondent.

Kidz Galore commenced a lease of the Site on 20 December 2013. The lease arrangement is for a term of 10 years, expiring on 19 December 2023 (‘the Lease’).

**Previous Council Decisions:**

* On 26 March 2013, in Confidential Item 17.1, Council considered City provided childcare service and resolved to call for expressions of interest for an external provider to run a childcare service at 64-66 Melvista Avenue, Dalkeith and/ or PRCC.
* On 22 October 2013, in Item 13.5, Council considered the ‘Provision of Child Care Services’ and resolved to approve the lease of 64-66 Melvista Avenue, Dalkeith to Kidz Galore for the purpose of a child care service.
* On 30 June 2020, Council approved the Annual Budget 2020/21 with provision to include the asset disposition of the site.
* On 22 September 2020, in item CPS21.20, Council considered the sale of the Site and decided to defer any decision, subject to a review of childcare services ‘south of Stirling Highway’.
* On 23 February 2021, in item CPS04.21, Council then approved the deferral of any decision on the Site to be made in line with the Land Investment Strategy. That Strategy will be presented to Council later this year.
* On 22 February 2022, in item CPS08.02.22, Council deferred considering an approach from Kidz Galore for a new lease until April 2022 following receipt of a new noise complaint.

**Discussion**

As part of the City’s Annual Budget process 2020/21, Council agreed that the Site be investigated for potential disposal subject to a sound business case being developed and final approval by Council.

In September 2020, when considering the sale of the Site, Council decided to defer any decision, subject to a review of childcare services ‘south of Stirling Highway’.

In February 2021, Council then approved the deferral of any decision on the Site to be made in line with the Land Investment Strategy. As mentioned above, that Strategy will be presented to Council later this year.

Kidz Galore have now written to the City formally requesting a new lease agreement (see confidential attachment 1). The request is based upon providing security and certainty to their clients who have enrolled their children at the centre.

**Kidz Galore Current Performance and Proposal**

**Current Performance Under Lease Provisions**

As noted earlier within this report, Kidz Galore Pty Ltd have been in lease of the Site since 20 December 2013.

In that time, Kidz Galore has not received a breach notice under the current lease conditions.

* Kidz Galore is noted by the City’s Finance Services Team to pay it’s rent regularly and on time.
* The City’s Ranger Services Team have advised the Site has not been subject to any car-parking complaints. There is a large amount of parking available on the Hackett Road verge adjacent to Masons Gardens which alleviates any parking issues at this location
* The City’s Environmental Health Team have advised that the City has received four (4) noise complaints since against Kidz Galore during the current lease term.
* Two (2) complaints were received in 2018 resulting in written correspondence being sent to Kidz Galore requesting the alteration of operations as a result to address alleged noise issues upon receival of the initial allegation.

As no further comments were received from the complainants, both complaints were considered closed pending further information or complaint.

* The third noise complaint was received in December 2020, whereby the City's Environmental Health Team contacted Kidz Galore requesting they undertake further noise mitigation strategies to address the noise concerns. To further ascertain the level of noise from the childcare, a noise assessment from the complainant’s property was required in accordance with *Environmental Protection (Noise) Regulations 1997* (the Regulations). The purpose of a noise assessment is to determine the ‘true’ noise as per the assigned levels in the Regulations. Any measurements would be done without Kidz Galore being notified to ensure an accurate reflection of the childcare noise activities. At the time, arrangements for a noise assessment did not occur in response to COVID-19 lockdown and restrictions, weather, and the complainant’s unavailability.

Further correspondence regarding noise from Kidz Galore was received in June 2021. A noise assessment was still required to proceed with enforcement action under the Regulations however, the City was unable to progress this with the complainant. The complainant was advised to contact the City to organise an appropriate time for a noise assessment.

As the City received no further correspondences regarding noise issues at Kidz Galore and because the Environmental Health Team have been unable to complete a noise assessment from the complainant’s property, the case was closed pending further information or complaint.

* The fourth complaint was received by the City on 16 February 2022 whereby the City's Environmental Health Team again contacted Kidz Galore reminding them of their obligations under the Regulations. Officers have also responded to the complainant advising the City had contacted Kidz Galore to remind them of their obligations and have provided contact details should a noise assessment from the complainant’s property be required. At the time of writing this report, no further correspondence had been received from the complainant.

**Proposal**

On 8 October 2021, Kidz Galore submitted a proposal to the City requesting a new lease (see confidential attachment 1).

Elected members will note on page 2 of the confidential document that the requested new lease agreement is for the same terms and conditions as per the current arrangement.

Confidential Attachment 2 - Lease (Acoustic) Management Plan, has also been provided by Kidz Galore and it has been proposed that this would form part of a new lease with Kidz Galore. This management plan is essentially an acoustic management plan intended to mitigate with confidence, any potential noise complaints.

**Negotiation of Key Terms and Special Conditions**

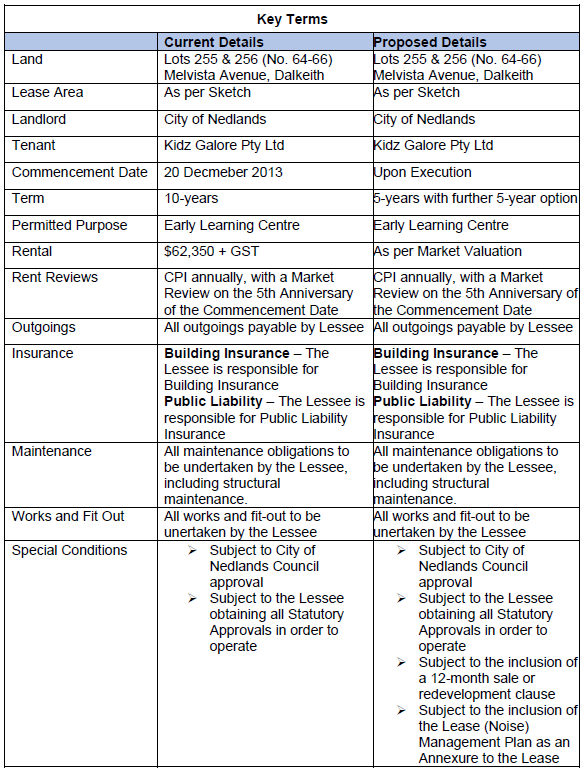
Following receipt of the Kidz Galore Proposal, the City considered the request and noted all details surrounding the Site including the return on investment the arrangement is currently realising, the performance of the tenant under the lease, and also the alleged noise complaints.

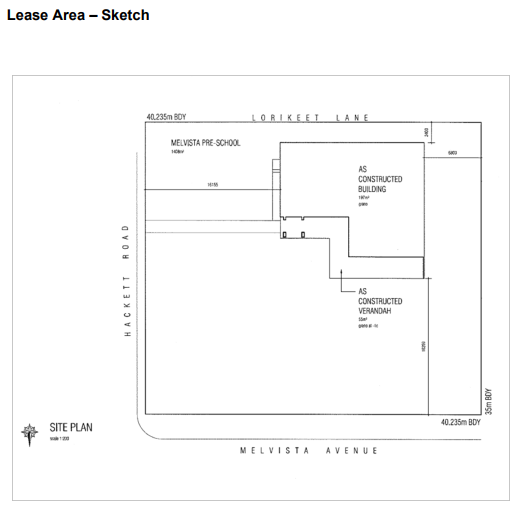
Over the last few months, officers worked with Kidz Galore to negotiate a new lease for the elected members’ consideration.

For reference to the current arrangement, Officers have included those Key Terms for comparison. Elected Members will note the inclusion of as 12-month sale or redevelopment clause. This clause is the same as what has been endorsed by elected members for inclusion within the City’s lease to Floreat Community Pre-Kindy. The inclusion of the clause within the Key Terms provides the City with flexibility should it choose to make any significant changes to the site in the future whilst also provides Kidz Galore with a greater sense of security. Kidz Galore have agreed to the insertion of this clause on the proviso the City cannot trigger the clause until the end of year 5 of the lease.

Given the City does not have an endorsed Land Investment Strategy the request by Kidz Galore is considered reasonable.

Following the February 2022 noise complaint (ongoing), amended Key Terms were sent to Kidz Galore with the amendment being the formal inclusion of the Lease (Acoustic) Management Plan as an Annexure to the proposed lease. The amended Key Terms were agreed to by Kidz Galore on 17 March 2022.





**Land Investment Strategy**

As noted earlier within this report, the City does not have an endorsed strategic approach towards land investment. Officers are currently working on this strategy and anticipate it will be ready for consideration later in 2022.

**Consultation**

Since the deferment of this matter in February 2022 and following the recent noise complaint lodged, the City’s Chief Executive Officer and two Councillors met with the complainant to discuss the concerns with the proposed lease.

In summary, the complainant advised they have significant concerns regarding noise. While their preference would be for the service to be relocated, as a minimum and if the disposal was approved by Council they would expect a noise management plan or similar with additional measures such as triple glazing to their bedroom window.

Given the above, options for Council’s consideration are listed below.

**Sale of the Site**

An option could be to dispose of the site. Council has already determined that such a decision on the site would be deferred until the City has a Council endorsed Land Investment Strategy. As such, selling the Site would not be considered appropriate at this time.

**Noise Management Plans and Conditions**

The tenants have proposed a Lease (Acoustic) Noise Management Plan which imposes on themselves noise mitigation conditions over and above what is required under the noise Regulations. The inclusion of this document as an annexure to the lease should address any potential noise issues at the site.

Further noise mitigation measures could be considered, such as triple glazing to the complainant’s bedroom window.

**Relocation of Kidz Galore Service**

Other than Point Resolution Child Care, which the City has recently decided to continue with, the City has two (2) other alternate sites which could be considered for relocation;

1. Nedlands Child Health Clinic

Following Council’s resolution on 23 March 2021, Department of Health accepted a Management Licence Fee of $10,000 per annum. This Management Licence, which runs for a period of 5-years, plus an additional 5-year period was then finalised in accordance with the terms as discussed within the report and was duly executed on 25 October 2021.

This arrangement deems the Nedlands Child Health Clinic site as unsuitable for an alternate location for Kidz Galore Pty Ltd at this time.

1. College Park Family Centre

The College Park Family Centre is currently used by both Nedlands Playgroup and Nedlands Toy Library who pay a combined annual fee of $2,500 per annum under a historical licence agreement executed in 2013. Any change to this arrangement may require the relocation of both groups.

The land which College Park Family Centre sits upon is vested to the City for care and control for the purposes of ‘Recreation’. In order to consider relocating Kidz Galore Pty Ltd to the site, the City would need to seek support from the Minister for Lands as Commercial Child Care would not fit the vested purpose. It is unlikely without a strong demonstrated justification; the Minister would support such a request. In addition, to accommodate Kidz Galore Pty Ltd at the site, the facility itself is likely to require significant alterations to allow the operations under the Education and Care Regulatory Unit’s guidelines.

Noting the difficulties as explained above, relocation would not be considered reasonable.

There has been no other consultation required, however if Council resolve to progress this arrangement for its asset at 64-66 Melvista Avenue, Dalkeith in accordance with the recommendation, there is required a public advertising process where submissions from the public are invited.

**Strategic Implications**

**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 Site currently generates approximately $62,350 of rental revenue per year. Should elected members endorse the recommendation as contained within this report and no public submissions are received - subject to a market review (statutory obligation), it is likely the City will receive a similar rate of return.

**Legislative and Policy Implications**

Section 3.58 of the *Local Government Act 1995* (‘Act’) governs how Local Governments can dispose of property.

Should Council agree to the recommendation as contained within this report, it is proposed that in accordance with s3.58(3) of the Act, the City publicly advertise a pre-negotiated lease.

To ensure this process is open and transparent, there is a requirement the City give public notice with specific details of the proposed transaction (market price, rental consideration, name of proposed tenant) and invite submissions from the public, giving at least two (2) weeks for submissions to be received.

The City would then need to consider the submissions before the proposed lease is completed. This would be undertaken in a secondary report to Council.

**Decision Implications**

Should elected members choose to support the recommendation, in accordance with s3.58(3) of the Act, the City will publicly advertise a pre-negotiated lease and invite public submissions only.

Following the statutory advertising period, the City would then need to consider the submissions before the proposed lease is completed. As described above, this would be undertaken in a secondary report to Council.

Should elected members choose not to support the recommendation, Kidz Galore will not secure tenure and will have to consider the future of their business within the City. The lease with Kidz Galore will expire on 19 December 2023 and from that date, the City will have to consider the future of the Site.

**Conclusion**

Kidz Galore has not received a breach notice under the current lease conditions and is therefore considered a good tenant.

Following advice received of alleged noise issues, Kidz Galore have agreed to the inclusion of a Lease (Acoustic) Management Plan within the proposed lease.

Noting the feedback received, other locations have been considered, however none are considered suitable.

It is evident Kidz Galore is a viable business as they are seeking to extend tenure at the Site. Kidz Galore have noted as part of their new lease proposal (confidential attachment 1) that they estimate 75% of the families who currently use their service are City of Nedlands residents with a further 2.5% being those who work within the City.

The City has not endorsed a strategic approach to land investment and therefore opportunities for investment in alternate assets to increase yield have not been identified. It would not be recommended to sell or redevelop the Site without investigations into opportunities with a higher yield.

While the City’s administration progresses the drafting of a Land Investment Strategy for Council’s consideration, the current lease is providing some financial benefits to the City.

Should Council choose to endorse the recommendation as contained within this report, and no public submissions are received, it is effectively allowing itself time to work towards a strategic approach to land investment for the community. The inclusion of a 12-month sale or redevelopment clause would allow elected members the time to make an informed decision on the future for the Site whilst it would continue to realise some revenue, albeit at a modest rate of return.

**Further Information**

Since the deferment of this matter in February 2022 and following the recent noise complaint lodged, the following areas of this report have been amended:

1. Recommendation – Amended to include specific mention of the proposed Lease (Acoustic) Management Plan.
2. Previous Council Decisions – Amended to include detail of the February 2022 deferment.
3. Kidz Galore Current Performance – Amended to include details of the recent alleged noise issue.
4. Key Terms – Amended to formally include the proposed Lease (Acoustic) Management Plan as an Annexure to the proposed lease.
5. Consultation - Amended to include details of the Chief Executive Officers consultation with the complainant.

Conclusion - Amended to formally include the proposed Lease (Acoustic) Management Plan as an Annexure to the proposed lease.

# CPS14.02.22 Lease to Heaney Pty Ltd

|  |  |
| --- | --- |
| **Meeting & Date** | Council – 26 April 2022 |
| **Applicant** | Leo Heaney Pty Ltd |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil |
| **Report Author** | David Thomason – Coordinator Land & Property |
| **Director/CEO** | Michael Cole – Director Corporate Services |
| **Attachments** | Nil |

**Purpose**

This report is being presented to Council in order to consider a lease to Leo Heaney Pty Ltd for portion of the currently vacant area within the City’s John XXIII Depot in Mount Claremont.

**Recommendation**

**That Council**

1. **requests the Chief Executive Officer to commence the statutory advertising of the pre-negotiated lease in accordance with section 3.58 of the *Local Government Act 1995;***
2. **if no public submissions are received during the statutory advertising period, approves a lease for portion of Reserve 45054 between the City of Nedlands and Leo Heaney Pty Ltd consistent with the key terms as noted within this report; and**
3. **subject to the Minister for Lands’ Consent, authorises the Chief Executive Officer and Mayor to execute the lease and apply the City’s Common Seal.**

**Voting Requirement**

Simple Majority.

**Background**

On 17 February 2022 the City was contacted by Leo Heaney Pty Ltd (‘Applicant’) about potentially leasing the vacant portion of the City’s Mount Claremont Depot (‘Site’).

Reserve 45054 is vested to the City for care, control and management for the purposes of ‘Depot Site’.

The portion of the Site that the Applicant seeks to lease was formally leased by the Town of Claremont until the arrangement was terminated in 2020. The Site has been vacant and unused since.

The Applicants are a street tree watering, planting and water cartage company who currently hold contracts with the City of Vincent and Town of Cambridge. The Applicant seeks a short-term lease on portion the Site for the purposes of storing the company vehicles and uses ancillary thereto.

In order to formalise the tenure which would allow the Applicant’s request to be progressed, Council are now asked to consider offering a lease based on the Key Terms as noted within this report.

**Discussion**

Reserve 45054 (‘Reserve’) is located on John XXIII Avenue, Mount Claremont and is part of the Site known as the ‘Mount Claremont Depot’. The Reserve is vested to the City for care, control and management for the purposes of ‘Depot Site’. A visual representation of the Reserve is shown below:



Following a resolution of Council on 28 July 2020, portion of the Reserve was formally vacated by the Town of Claremont. That portion of the Reserve has remained vacant and unused since.

The Applicant is seeking to lease 600sqm of the vacant site for a short-term only. The proposed lease area is shown below:



**Key Terms and Special Conditions**

Should Council choose to support the recommendation, solicitors engaged by the City can be asked to prepare a lease agreement based on the Key Terms below.

With regard to the Special Conditions as noted within the Key Terms, Officers would like to highlight the following sections.

**Term**

In order to obtain the exemption as described in the Statutory Implications section of this report, the Term of the lease is required to be less than 24-months. In this instance, the proposed term is 3x 6-month terms and a further 5-month term

**Lease Rental**

The rental will be set following a Market Valuation. It is expected the valuation will show an annual rental value of approximately $20-$25/sqm.

**Works and Fit-Out**

The Applicant is aware that no works or fit out will be approved and that the Site is to be used for storage purposes only. This will be reflected in the draft lease, should Council endorse the arrangement.

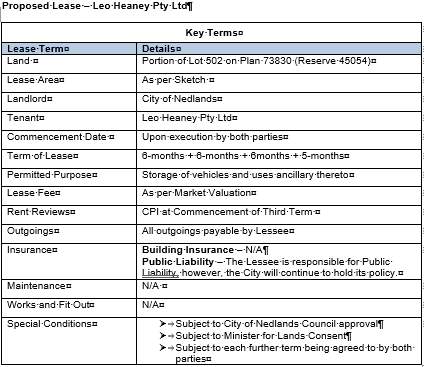
**Subject to the lease being at no-cost to Council**

The Applicant would be responsible for all costs associated with this arrangement. These include but are not limited to; Legal costs associated with preparation of the lease, all Outgoings and Insurances.

**Subject to Further Terms being agreed to by City**

To ensure the City can remain flexible for future decisions relating to the Site, the Applicant has agreed to each further term being agreed to by both parties. This essentially means the City is locked into the arrangement for no more than 6-months at a time.

The Applicant has agreed to all Key Terms as described below on 18 March 2022.



**Consultation**

Upon being contacted by the Applicant to consider the lease of the Site, the following teams were consulted with;

**Planning Services**

The City’s Planning Services Team advised they have no objections to land tenure arrangement, but suggested clauses be included within the agreement to ensure the Applicant understands no structures are to be erected on the property.

**Technical Services**

The City’s Technical Services Team advised they have no objections to land tenure arrangement as the portion of the Site proposed to be leased is currently not being utilised. However, noting that space may be needed in the future, suggested clauses be included within the agreement to ensure the City can remain flexible for future decision making.

**Land & Property**

The City’s Land & Property Team advised they have no objections to land tenure arrangement. The arrangement generates a small amount of income for the City and utilises a currently unoccupied and vacant site. The Key Terms as proposed within this report mitigate all risk to Council and do not have any cost implications either.

**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 elected members agree to the recommendation as proposed and the lease runs for the full 23-months, the City is expected to realise estimated revenue of between $23,000 and $29,000.

**Legislative and Policy Implications**

Section 3.58 of the *Local Government Act 1995* (‘Act’) governs how Local Governments can dispose of property.

Given the Reserve is under the City’s care and control, consistent with s3.58 of the Act, an agreement of tenure is required to formalise the disposal of the land. This will be the lease agreement.

As the Applicant is a commercial entity, there are advertising and market valuation requirements that need to be undertaken in accordance with the Act.

Should elected members choose to endorse the recommendation as contained within this report, it is proposed the City advertise a pre-negotiated lease and invite submissions from the public.

Should the City receive submissions from the public, a secondary report to Council would be required.

**Decision Implications**

Should elected members choose to endorse the recommendation as contained within this report, and no public submissions are received through the statutory advertising period, the Applicant would lease the Site in accordance with the Key Terms as noted above. Should the arrangement run for the full 23-months, the City would realise estimated revenue of between $23,000 and $29,000.

Should elected members choose to endorse the recommendation as contained within this report, and public submissions are received through the statutory advertising period, a secondary report to Council would be required to consider those submissions.

Should elected members choose not to endorse the recommendation as contained within this report, the Site would remain vacant and/or available for the City’s depot activities.

**Conclusion**

The Applicant is proposing to lease a part of the Site which is currently vacant and unused.

The City has negotiated clauses to ensure it is not locked into the arrangement for any more than 6-months at a time. This allows it to remain flexible for future decision making.

The lease as proposed would be at no cost to Council and if endorsed, and runs for the full 23-months, would realise estimated revenue of between $23,000 and $29,000.

**Further Information**

Nil.

# CPS15.04.22 List of Accounts

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

# 17.4 CPS16.04.22 Monthly Financial Report

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

# 17.5 CPS17.04.22 Monthly Investment Report

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

# 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.

# CONFIDENTIAL TS05.04.22 Payment for Use of Car Parking Bays at Dalkeith Hall

# CONFIDENTIAL CEO04.04.22 Risk & Reporting Update

# Declaration of Closure

There being no further business, the Presiding Member will declare the meeting closed.