

Community and Strategy Reports


Committee Consideration – 8 November 2011
Council Resolution – 22 November 2011

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CM10.11	Policy Review
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Committee	8 November 2011
Council	22 November 2011

Applicant	City of Nedlands
Owner	City of Nedlands
Director	Carlie Eldridge – Director Development Services and Ian Hamilton – Director Technical Services
Director Authorising	Darla Blake - Director Community and Strategy
Director Signature	
File ref.	CRS/065
Previous Item No's	Nil
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

All Council policies are required to be reviewed and approved by Council.

Recommendation to Committee

Council approves the following policies:

1. **Trading in Public Places**
2. **Elected Members – Entitlements**
3. **Graffiti Management**
4. **Underground Power – Council Schemes**

Strategic Plan

KFA 5: Governance

To ensure that the processes of Local Government are delivered responsibly and in a transparent, consistent and accountable manner.

- 5.1 Manage the City's resources in a sustainable and responsible manner.
- 5.4 Monitor and review business processes, systems, structure and policies to ensure effective service delivery and organisational performance.

Background

Under the Local Government Act (1995) 2.7 one of the roles of Council is to:

(2b) Determine the local government's policies.

Council commenced the review in December 2009. Key policies will continue to be discussed by Council at workshops and in committee meetings throughout the course of the year.

Key Relevant Previous Decisions:

Council policies have been reviewed periodically.

Proposal Detail

Council is asked to consider the approval of four policies discussed at its Policy Review Workshop on 20 September 2011, these include:

1. Trading in Public Places
2. Elected Members – Entitlements
3. Graffiti Management
4. Underground Power – Council Schemes

Following discussion, all amendments as proposed at the workshops have been included into the policies.

Consultation

Required by legislation: Yes ☐ No ☒

Required by City of Nedlands policy: Yes ☐ No ☒

Legislation

- Health Local Law
- Trading in Public Places Local Law
- Local Government Act 1995 and Regulations
- Litter Act and Regulations
- Local Government Amendment Act 2004
- Local Government (Administration) Regulations 1996
- Police Act 1998 – S65
- Local Government (Financial Management) Regulations 1996

Budget/financial implications

Budget:

Within current approved budget: Yes ☒ No ☐

Requires further budget consideration: Yes ☐ No ☒

Financial:

Nil

Risk Management

Risk Management processes are built into operational guidelines where appropriate.

Discussion

Policy statements should provide guidance for decision making by Council and to demonstrate the transparency of the decision making process.

Council policies are undergoing a major review to ensure that the policies reflect the strategic nature and responsibilities of Council.

At its 20th September 2011 Policy Workshop, elected members requested a few minor changes to some of the policies, including being put into the new corporate templates.

The reviewed Trading in Public Places policy aims to reduce risks with outdoor dining and display of goods by providing clear parameters particularly regarding footpath clearance widths for pedestrian access and safety.

At the councillors workshop the existing policy content was supported subject to the new policy formatting. The issues of vans and stalls was raised, these are governed by the Trading in Public Places Local Law.

The Elected Members – Entitlements policy required some minor amendments to ensure the information was up to date and relevant. The parameters for requests to approve training or conference, where no specific budget has been allocated was reviewed and subsequently increased. Included into the policy is the requirement for the Chief Executive to include in his report a summary of elected member trainings and conferences approved and attended. Additionally, guidelines relating attendance at conferences by partners was clarified.

Included in the reviewed Graffiti Management policy is a two working day timeframe for actioning graffiti removal. As such Council's policy will state that Council will actively progress its strategy to control graffiti on public and

private property within two working days based upon community involvement, prevention, removal and enforcement.

A statement regarding the maintenance of a reliable power service to residents has been included in the objective of the Underground Power – Council Schemes policy, in line with workshop discussion.

Additionally, to assist residents pay for underground power services in the future, where it is not available, Council has requested the opportunity of payment options be made available to suit individual financial circumstances of a resident.

Conclusion

Administration recommends that Council approve the

- Trading in Public Places,
- Elected Members – Entitlements,
- Graffiti Management,
- Underground Power – Council Schemes,

as amendments to these policies have been minor in nature and do not change the context or the intent of the old policies.

Once approved by Council, appropriate procedures/guidelines will be developed or updated by Administration to reflect the new policies.

Approval ensures Council policies are current and effective service delivery and organisational performance is maintained, in accordance with the City of Nedlands Strategic Plan.

Attachments

1. Trading in Public Places
2. Elected Members – Entitlements
3. Graffiti Management
4. Underground Power – Council Schemes

Trading in Public Places

KFA	KFA 3 Built Environment
Status	Council
Responsible Division	Development Services
Objective	To allow for the operation of trading activities in public places in such a manner that they do not conflict with or prejudice the City's permanent retail and service base, or other normal functions of the City.

Context

The City encourages vibrant local centres which deliver local services to community. Outdoor dining and the display of goods associated with a shop may be allowed in accordance with this policy.

Statement

General

- Council will consider applications to trade in public places, including outdoor dining and the display of goods upon the footpath.
- Applications will be assessed in a way similar to applications for the use of private land made under the Town Planning Scheme.
- The ways in which any proposal will impact upon the following will be given particular attention.
- The appropriateness of any activity to the character and function of the area
- The movement of pedestrians and vehicular traffic
- The safety and accessibility of proposed trading locations

Outdoor Dining

- Approval will only be given to proposals for outdoor dining that is part of an eating establishment in an adjacent building.
- The use of any item of equipment including, tables and chairs, planters, umbrellas and railings will be subject to conditions that will facilitate the safe movement of pedestrians and protect access to facilities such as parking and bus stops.
- Any approval for outdoor dining on footpaths will require a minimum clear footpath width of 1.5 metres.

Goods on Footpaths

- Approval will only be given to display goods on footpaths directly in front of the premises from which the goods are being offered for sale and where no obstruction is caused to adjacent premises.
 - Any approval for the display of goods on footpaths will require a minimum clear footpath width of 1.8 metres.
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Related documentation

Nil

Related Local Law/legislation

- Health Local Law
- Trading in Public Places Local Law

Related delegation

Nil

Issued

Date approved by Council

Amendments

Dates amendments approved by Council

Elected Members – Entitlements

KFA	KFA 5 Governance
Status	Council
Responsible division	Corporate Services
Objective	To provide a clear outline of the support and allowances available to Elected Members in the performance of their duties.

Context

Upon election Elected Members are entitled to receive the appropriate facilities, equipment, material and information to support them in performing their duties of office.

All elected members will be paid annual allowances for attending meetings and as a contribution to communication costs incurred in their role as Elected Members.

The amount of allowance entitlements will be reviewed each year by Council as part of the annual budget development process and the revised amount will then be set by a resolution of Council made by an absolute majority.

Statement

Induction

Newly Elected Members are strongly urged to undertake a comprehensive induction process conducted by Administration. This may involve evening and weekend sessions.

Following the election relevant materials and reports will be provided electronically, where possible to Elected Members. Hard copies can be provided upon request by the Elected Member. Existing Elected Members will also have electronic access to induction materials.

Seats in Council Chambers

Elected Members will occupy the seats in the Council Chambers allocated to them based on the ward represented and alphabetical placement. In exceptional circumstances, by resolution of Council, an Elected Member may be allowed to occupy another seat.

Documentation

The following documentation will be issued to Elected Members as part of their induction process:

- Elected Members Induction Manual

- Local Government Act 1995 and Regulations
- Governance Manual
- Local Laws Manual
- Code of Conduct
- Standing Orders Local Law
- Other City of Nedlands Local Laws
- Western Australian Local Government Association – Elected Member Manual
- Planning Scheme text and report
- Budget
- Annual Report

Other items

The following items will be issued to Elected Members:

- Two name badges for the members
- Business Cards
- Appropriate stationery

Payment of Fees and Allowances

The Mayor and Deputy Mayor will be paid an allowance and all Elected Members shall receive an annual fee (paid monthly) for attending meetings.

Information Technology Allowance

Elected members will be provided with an allowance to cover the costs of having the correct capital (computer) equipment to be effective based on minimum operating requirements as provided by Administration. The IT allowance is expected to cover the purchase of a computer, appropriate software or printer/fax.

The value of the IT Allowance is set by the Local Government (Administration) Regulations, to a maximum of \$1,000 per annum. Council allocated \$825.00 (per annum) for the IT Allowance in the current 2011/12 Budget.

Elected Members will be able to salary sacrifice the purchase of this equipment from the IT Allowance.

Telecommunications Allowance

Elected Members shall receive an annual communication allowance to cover the costs of telephone and other communication expenses. This will be paid as part of the annual fee for attending meetings.

Both the setup and annual communication allowance will be as determined each year by Council as part of its budget deliberations. If the communication expenses of any Elected Member exceed the allowance they may make application for reimbursement.

Other Allowances

The Council will reimburse the cost of childcare, travel and any other relevant expenses incurred by an Elected Member in the performance of their duties.

The amount of any allowances and fees paid to Elected Members shall be determined by Council each year as part of its Budget Deliberations and is subject to the provisions under regulation 32 (2) of the *Local Government (Administration) Regulations 1996*.

The extent to which an expense of this kind may be reimbursed is the actual amount, verified by sufficient documentation. Council may approve reimbursement of the expenses in accordance with *Local Government Act, s5.98(3) & (4)*.

Gift at conclusion of term of office

Council may recognise the service given by Elected Members when they retire or are unsuccessful in seeking re-election, by presenting them with a gift up to the value of \$50 per year of office, as a guide.

Elected Member training and conference attendance

The City of Nedlands recognises the importance of Elected Members participating in relevant training and development opportunities.

The usual number of delegates to attend conference or training is one (1) Elected Member and where appropriate one (1) staff member. The Elected Member on return will provide a detailed report back to Council on the conference.

The number of delegates to attend the Western Australian Local Government Week conference will be up to six (6).

Funding for all Elected Members to attend Western Australian Local Government Association (WALGA) training will be budgeted, particularly for induction purposes.

If funds have been specifically provided in the budget for an Elected Member to attend a particular training course or conference then the Chief Executive Officer may approve attendance and make any necessary arrangements.

If an Elected Member requests approval to attend a training course or conference for which no specific budget allocation has been made and there are sufficient unallocated funds within the budget the following can be applied:

- within Western Australia and total cost is no more than \$1500, CEO can approve.
- within Western Australia and total cost is between \$1501 and \$2500 then the CEO in consultation with the Mayor may approve attendance if there are sufficient unallocated funds within the budget.
- If the training or conference costs more than \$2500 or requires travel interstate, must be referred to Council for its deliberation.

Any Elected Member refused permission by the Chief Executive Officer or Mayor to attend training course or conference may refer the matter to Council, for determination.

When considering any application by an Elected Member to attend a training course or conference, the Chief Executive Officer, the Mayor or Council should take into account the training needs of the Elected Member and any issues of equity between Elected Members concerning access to training.

Air fares (economy only), conference registration fees, accommodation, meals in the hotel where registered if these are not provided during the course of the conference will be organised and paid directly by the City. Minor incidentals such as travel to and from the conference venue, and travel to and from all airport destinations can be reimbursed through a claim process.

All costs and expenses for any conference or training are for the Elected Member/delegate only. If an Elected Member/delegate wishes to be accompanied by a partner or spouse, all such costs and expenses will be borne by the Elected Member/delegate.

All conference expenses are subject to certification by the CEO, and conference delegates are to be given the opportunity to substantiate any expenditure outside this policy. In the event that a delegate's expenditure for attendance at a conference, seminar, lecture or course exceeds the budgetary provision, the itinerary and receipts are to be given to the CEO for confirmation and re-allocation of funds. Council will be advised of the re-allocation.

The Chief Executive will include in his/her report, the names of Elected Members who have attended courses, training or conferences.

Related documentation

Nil

Related Local Law/legislation

- Local Government Act 1995
- Local Government Amendment Act 2004
- Local Government (Administration) Regulations 1996

Related delegation

Nil

Issued

25 May 2010 (Report CM10.10)

Amendments

Dates amendments approved by Council

Graffiti Management Policy

KFA KFA 1 Infrastructure

Status Council

Responsible Division Technical Services
Community Services

Objective To provide an approved set of strategies for the prevention and control of graffiti

Context

To engage and educate the community and businesses within the city to facilitate the implementation of these strategies.

Statement

Council will actively progress its strategy to control graffiti on public and private property within two working days based upon community involvement, prevention, removal and enforcement.

Related documentation

- Graffiti Management procedure

Related Local Law/legislation

- Section 65 Police Act 1998

Related delegation

Nil

Issued

Date approved by Council

Amendments

Nil

Underground Power – Council Schemes

KFA KFA 3 Built Environment

Status Council

Responsible Division Technical Services

Objective To enhance streetscapes and amenities and maintain the reliability of power to residents from outages

Context

To establish ways in which the costs associated with the installation of underground power shall be recovered from property lines.

Statement

1. The Council supports a programme for the undergrounding of power in the City of Nedlands and will share the cost with property owners.
 2. A schedule of contributions required from property owners forms part of the procedures associated with this policy.
 3. Investigation of payment options to suit different financial circumstances.
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Related documentation

- Underground Power – Council Schemes Policy

Related Local Law/legislation

- Local Government Act 1995 – Section 6.38(1)
- Local Government Regulations 1996 – Section 54c

Related delegation

Nil

Issued

Date approved by Council


Amendments

Dates amendments approved by Council

DRAFT

CM11.11	Nedlands Aged Persons Homes Trust Inc. (Lisle Villages) – Proposed Change to Constitution
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Committee	8 November 2011
Council	22 November 2011

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

Purpose

The purpose of this report is to discuss and progress two Council decisions with respect to the Nedlands Aged Persons Homes Trust Inc. (Lisle Villages); specifically the decisions of 14 December 2004 (C73.04) and 26 October 2010 (C10/133).

Recommendation to Committee

- Council approves the withdrawal of the section of the Nedlands Aged Persons Home Trust Inc (Lisle Villages) Constitution requiring City of Nedlands approval for any changes to the constitution (Clause 21) subject to:**

A restrictive covenant first being registered against the certificates of title to:

- 125 (Lot 93) Alfred Road, Mount Claremont;**
- 53-57 (Lots 104 and 105) Lisle Street, Mount Claremont;**

pursuant to section 129BA of the *Transfer of Land Act 1893*, in which the owner of that land agrees that the land may not be used for any purpose other than accommodation for aged persons; to which, the

Council agrees that the Rules of the Association (Constitution) for the Nedlands Aged Persons Home Trust (Inc) may be amended accordingly.

- 2. In the event the Chief Executive Officer forms the opinion that the registration of the restrictive covenant required by the preceding resolution is not possible or is impractical, as an alternative a deed between the owner of the land and the City of Nedlands may be prepared, in which the owner covenants to use the land only for aged persons accommodation, and charges the land in favour of the City of Nedlands to allow the lodgement of an absolute caveat against the certificates of title.**
- 3. The restrictive covenant (or the deed and caveat if required) is to be prepared to the satisfaction of the Chief Executive Officer by the City's solicitors. All costs associated with the preparation and registration of the documents, are to be borne by Nedlands Aged Persons Homes Trust Inc (Lisle Villages).**
- 4. Once a restrictive covenant or other mechanism is in place to ensure that the land remains as aged persons accommodation, Council agrees to activate the Council resolution of 14 December 2004 (relevant to Clause 9 (v) of the Nedlands Aged Persons Home Trust Inc (Lisle Villages) Constitution), that resolved:**

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

Strategic Plan

KFA 4: Community Wellbeing

- 4.1 Provide and facilitate access to services and facilities required by the broader community, clubs and community groups.

KFA 5: Governance

- 5.6 Ensure compliance with statutory requirements and guidelines.
- 5.8 Establish and actively manage a range of partnerships with government, private and not-for-profit sectors.

Background

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

Between 1974 and 1990, pieces of land owned by the City were transferred to the Nedlands Aged Persons Home Trust Inc (Lisle Villages). This included, the land known as Melvista Lodge (Lot 25) 20 Betty Street, Nedlands which was transferred and registered on 16 December 1974; consideration for the transfer was \$1, 125 (Lot 93) Alfred Road was transferred by the City on 19 June 1980, consideration for the transfer was \$120,000; 57 (Lot 105) Lisle Street was transferred by the City on 19 September 1986, consideration for the transfer was \$315,000 and on 26 January 1990, 53 (Lot 104) Lisle Street was transferred by the City, consideration for the transfer was \$142,000.

A caveat was placed on the Melvista Lodge property, in 1975, protecting the land as aged person's accommodation. The other three properties which comprise of Lisle Lodge and Leaweena Lodge have no covenants or caveat encumbrances on the properties. However, it should be noted that, land owned by the Nedlands Aged Persons Home Trust (Inc) is subject to a Memorial lodged pursuant to the *Retirement Villages Act*. The purpose of the Memorial is to protect the rights of the residents of the accommodation units under their residence contracts.

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

On 14 December 2004, Council resolved:

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

That decision was not implemented as legal advice, at the time, indicated that the City should retain a member on the Management Committee until such time as the constitution was changed, which it hasn't to date. (Attachment 1 – current constitution Clause 9 (v)).

Additionally, there have been ongoing concerns by Council in relation to ensuring the land would always remain aged person's accommodation.

Nedlands Aged Persons Home Trust Inc registered the business name of Lisle Villages on 24 February 2005, to better reflect the perceptions of modern society.

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

Their proposed changes were approved by Lisle Villages Management Committee, circa 25 March 2010. Their draft revised constitution was sent through to the City's solicitors (McLeods Barristers and Solicitors) for comments. (Attachment 2 – proposed constitution).

At its 26 October 2010 Council meeting, consideration was given to a report and recommendation to withdraw the section of their Nedlands Aged Persons Home Trust Inc (Lisle Villages) Constitution requiring City of Nedlands approval for any changes to the constitution, subject to the Nedlands Aged Persons Home Trust Inc (Lisle Villages) agreeing to a restrictive covenant or other mechanism to ensure that the land remains as aged persons accommodation.

After discussion, the Council resolved:

That this item lay on the table until Council has had the opportunity to discuss the matter further and seek legal advice on the matter.

A Council Workshop was held to 30 August 2011 to discuss proposed amendments to Nedlands Aged Persons Home Trust Inc Constitution and other options, following legal advice being provided, as per Council's 26 October 2010 resolution.

Issue Definition

Lisle Villages operates independently of the City, with no dependence financially or administratively. Any role the City plays arises through the terms of the constitution. Clauses 9(v) and 21, in particular, require one Councillor to be nominated annually by the City of Nedlands to serve on the Management Committee; and that any alterations to the Constitution require submission to the Council for approval. No proposed amendments will have any effect until so approved.

Council has queried the need to continue on the Management Committee or any involvement with Lisle Villages, while being mindful of the ongoing concern to ensure the land at 125 (Lot 93) Alfred Road, 57 (Lot 105) Lisle Street, 53 (Lot 104) Lisle Street and 20 Betty Street, Nedlands always remains as aged person's accommodation.

Concern has also been raised that should Council decide to continue its involvement, with a Councillor remaining on the Management Committee, there may be potential personal liability incurred, should any mismanagement by the Management Committee of the Nedlands Aged Persons Home Trust Inc (Lisle Villages) take place.

These three issues have been the subject of a number of legal opinions, and Council workshop discussions.

Consultation

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

Legislation

- Retirement Villages Act 1992
- Associations Incorporations Act 1987

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

Budget/financial implications

Budget:

Within current approved budget:	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Requires further budget consideration:	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

Financial:

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

Risk Management

There is a potential risk, the three properties not covered by a restrictive covenant, deed or caveat may not remain as aged person's accommodation.

Discussion

There is no requirement under the Local Government Act for the City to be part of the process involving the constitution process or to have an Elected Member on the Nedlands Aged Persons Home Trust Inc, Management Committee.

Legal advice suggests Council does not have any legal obligation to appoint a Councillor to the Management Committee. However, while Council retains control over the form of the Constitution and while the Constitution states that Council shall annually nominate a Councillor to the Management Committee, Council at the very least has a moral or ethical obligation to do so.

If the City no longer wishes to participate in the affairs of the Management Committee it should take steps to ensure the Constitution is amended in an appropriate way.

It should be noted any decision of Council that impacts on the Nedlands Aged Persons Home Trust Inc Constitution, will necessitate other steps before those changes can be given effect:

- (a) The support of 75% of the members of the Nedlands Aged Persons Home Trust Inc (not just 75% of the Management Committee) present and voting at a general meeting. Under section 17 (1) of the *Associations Incorporation Act 1987*, an incorporated association may alter its rules by special resolution but not otherwise;
- (b) Under section 17(2) within one month of the passing of a special resolution altering its rules, or such further time as the Commissioner under the Act may in a special case allow, an incorporated association is to lodge with the Commissioner notice of the special resolution setting out particulars of the alteration together with a certificate given by a member of the committee certifying that the resolution was duly passed as a special resolution and that the rules of the Association as so altered conform to the requirements of the *Associations Incorporation Act*. An alteration to the rules of the Association does not take effect until the requirements of section 17(2) have been complied with (section 17(3)).

By way of further explanation, under section 24 of the *Associations Incorporation Act*, a resolution is a special resolution if it is passed by the majority of not less than three fourths of the members of the Association who are entitled under the rules of the Association to vote and who vote in person or, where proxies or postal votes are allowed by the Constitution, by proxy or postal vote, at a general meeting on which notice specifying the intention to propose the resolution as a special resolution was given in accordance with the Constitution

Under clause 8 of the current Constitution of the Association (Attachment 1) voting is to be by a show of hands. No provision is made for proxy or postal votes. The meeting may so decide, a ballot may be taken, that does not allow for the possibility of postal or proxy votes.

The recommendation to Council within this report, should it be approved, will complete the process as previously endorsed by Council on 14 December 2004.

Advice to ensure that Lisle Villages remains as aged person's accommodation into the future, suggests that control of future use of the land should be via a restrictive covenant as it binds successive owners of the land. The only option that does not require the agreement of Lisle Villages is through the planning scheme, although this is not fail-safe either as the Minister can override this.

The proposed constitution for Nedlands Aged Persons Home Trust Inc (Lisle Villages) (Attachment 2) protects the rights of the residents and provides the operational framework for the homes into future years.

However, consideration still needs to be given to whether the City no longer wishes to have a Councillor representative on the Management Committee, and if not, a further amendment to the Constitution would be required. Until such time as the City is satisfied the properties will always remain as aged person's accommodation, then Council could comfortably approve appropriate constitutional changes.

Lisle Villages consists of Leaweena and Melvista Lodges. A search of certificate of title for Melvista Lodge revealed that it is subject to a caveat lodged by the City on 30 June 1975, to ensure that if the land ceased to be used for aged person's accommodation the City would at least have the option to re-purchase the land.

The City may consider that a restrictive covenant is not necessary to be registered over the Melvista Lodge land if the caveat is deemed to give adequate protections to the interests of the City.

Administration would recommend that, once a restrictive covenant or other mechanism is in place to ensure that the land remains as aged persons accommodation, Council agrees to activate the Council resolution of December 2004, that resolved:

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

Conclusion

Nedlands Aged Persons Trust Inc (Lisle Villages) consists of Leaweena and Melvista Lodges and operates independent of the City, with no dependence financially or administratively.

Under the current constitution the City of Nedlands has a member on the Management Committee and any alterations to the constitution must be approved by the City.

There is no requirement under the Act for the City to be part of the process involving the constitution process or to have an elected member on the Management Committee.

Council's ongoing concerns have been to ensure that the Lisle Villages remain aged person accommodation, into the future.

Based on legal advice for the control of future use of the land, a restrictive covenant should be drawn up to bind successive owners of the land. This will require agreement by the Nedlands Aged Persons Trust Inc (Lisle Villages). The only option that does not require the agreement would be through a planning scheme, although this is not fail-safe as the Minister can override this.

Constitution amendments are timely for both Council and Nedlands Aged Persons Home Trust Inc (Lisle Villages).

If approved the City will initiate the withdrawal process from any further involvement on the Management Committee, or any requirement to approve any constitution changes, in exchange for Nedlands Aged Persons Home Trust Inc (Lisle Villages) agreeing to a restrictive covenant or another mechanism that ensures the future use of the land remains as aged accommodation. If approved, such an agreement will also mean requirements under the Act will be met and Nedlands Aged Persons Trust Inc (Lisle Villages) will be able to act as a totally independent body.

Administration therefore recommends that Council approves the withdrawal of the section of the Nedlands Aged Persons Home Trust Inc (Lisle Villages) Constitution requiring City of Nedlands approval for any changes to the constitution (Clauses 21), as per the recommendation.

Attachments

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

NEDLANDS AGED PERSONS HOMES TRUST (INC.)
CONSTITUTION

CITY OF NEDLANDS

Name

13 JUN 2005

1. The name of the Association is "NEDLANDS AGED PERSONS HOMES TRUST (INCORPORATED)".

RECEIVED

Interpretation

2. In this Constitution the word "Resident" means a person (and the singular shall include the plural) who is in occupation of any of the Homes owned by or under the care, control and management of the Trust. "Trust" means the Nedlands Aged Persons Homes Trust (Inc.).

Objects

3. The Objects of the Trust shall be:

- (a) To build, accept by way of purchase, lease or deed, and care, control and manage Homes constructed for elderly persons and to allocate those Homes to elderly persons in a manner which ensures first that the needs of the residents of the City of Nedlands and past residents thereof are met and thereafter the needs of residents of the western suburbs generally are met.
- (b) To maintain and operate those Homes in accordance with the Constitution so as to provide the Residents with a natural, home environment.
- (c) To maintain, operate and control an Aged Care Facility or Facilities (with Government assistance) whose clients shall not be members of the Trust, unless they qualify under Clause 2 hereof.
- (d) To promote and assist the general good of all Residents and to pursue any objects which are of benefit to the well-being of the Residents.
- (e) To promote the physical and mental well-being of Residents by supporting and assisting in activities to encourage recreational, cultural and social interaction between Residents themselves and between Residents and their families and between Residents and the community.
- (f) To encourage Residents to remain independent in their living and assist them to remain in their home for as long as possible if they so desire.

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Non-Profit

4. The income and property of the Trust shall be applied towards the promotion of its objects and no portion thereof shall be paid or transferred directly or indirectly to its Members provided that nothing herein shall prevent the payment in good faith of reasonable and proper remuneration to any officer or employee of the Trust in return for any services rendered to the Trust or expenses incurred on behalf of the Trust.

Membership

5. (a) Resident Members: Every Resident shall be a Member of the Trust as shall any person who has signed a Lease Agreement over a Unit in any of the Trust's Homes or Lodges already built or to be built but who is not yet in occupation.
- (b) Ordinary Members: Any person may become an Ordinary Member of the Trust by making written application to the Management Committee and by making an annual contribution of \$10 provided that the Management Committee may in its absolute discretion and without assigning a reason therefor refuse membership to any person.
- (c) Life Members: May be awarded to a person or persons in recognition of outstanding services to the Trust and such membership shall be limited to the election of no more than two in any one year. A nomination for Life Membership must be in the hands of the Manager at least two months prior to the Annual General Meeting and must be in writing seconded by another Member. A Life Member shall have the same status and voting rights as a Resident Member and like Resident Members shall not be liable for membership fees.

Entitlements of Membership

6. Every Resident Member (which includes those having signed a Lease Agreement over a Unit but not yet a Resident) shall be entitled to full voting rights at all General and Special Meetings of the Trust. Every Ordinary and Life Member shall have the same voting rights except in the matter of dissolution of the Trust. Such Members may hold executive office on the Management Committee.

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Register of Members

7. A Register of Members of the Trust by name and address and date of commencement of membership shall be kept. The Register shall show the class of membership of each member.

CITY OF NEDLANDS

13 JUN 2005

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General Meetings

8. (a) Annual General Meeting: The Annual General Meeting of the Trust shall be held in the month of October. The order of business at the Annual General Meeting shall be:

- (i) Confirmation of Minutes of previous meeting.
- (ii) Business arising from Minutes of previous meeting.
- (iii) Manager's report.
- (iv) Chairman's report.
- (v) Treasurer's report.
- (vi) Auditor's report and financial statements.
- (vii) Report of Melvista Nursing Home Sub-Committee.
- (viii) Election of members of the Management Committee.
- (ix) Special Business of which notice has been given.
- (x) General Business.

- (b) Other General Meetings: A General Meeting of the Trust:

- (i) May be called by the Management of the Trust at any time it thinks fit.
- (ii) Shall be called by the Management Committee having received a written request signed by at least twenty Members.

- (c) Conditions Applying to General Meetings:

- (i) **Notice**: At least fourteen days notice of all meetings shall be given by posting or delivering notices (stating the purpose for which the meeting is called) to all Members at the address appearing in the records of the Trust.
- (ii) **Quorum**: The quorum of a General Meeting is fifty members.
- (iii) **Chairman**: The Chairman or in his absence the Deputy Chairman or if both are absent then the member of the Management Committee elected by the meeting shall preside at all General Meetings.
- (iv) **Voting**: Voting shall generally be by a show of hands. However, if the meeting so decides, a ballot may be taken. Each member shall have one vote. In the case of equality of votes the motion shall be defeated.

Management Committee

9. (a) **Composition:** Subject to sub-clause (vi) hereof, the affairs of the Trust shall be managed by a Management Committee which shall consist of a minimum of eleven members and a maximum of fourteen members while the Trust remains at its present size of the three Lodges consisting of 135 Units available for tenancy.
- (i) Two members shall be Residents of Melvista Lodge to be nominated by the majority of Residents of the Lodge.
 - (ii) Two shall be Residents of Leaweena Lodge to be nominated by the majority of Residents of that Lodge.
 - (iii) Three shall be Residents of Lisle Lodge, two of whom shall be nominated by the majority of Residents of Units 1 to 49 and one shall be nominated by the majority of Residents of Units 51 to 71 of that Lodge.
 - (iv) Three other persons who may or may not be Residents.
 - (v) One Councillor who shall be nominated annually by the City of Nedlands.
 - (vi) Notwithstanding the aforesaid the Management Committee may co-opt up to three persons having in the opinion of the Management Committee special knowledge and interest in the activities of the Trust. The term of office of the co-opted Members shall expire immediately following closure of the Annual General Meeting of the Trust next following their appointment. Co-opted Members of the Management Committee may vote but shall not hold Executive Office on the Management Committee unless such person or persons be a Resident as defined in Clause 2 of this Constitution or a Life Member or Ordinary Member.
 - (vii) The representative Members of each Lodge on the Management Committee shall have the power to appoint another person from the same Lodge to act as a deputy during the absence of that Member from a meeting of the Management Committee. Such appointment by a Resident Member shall be authorised in writing to the Manager on each occasion a deputy acts on behalf of the Resident Member.
- (b) **Procedures:**
- (i) The Management Committee shall at its first meeting after the Annual General Meeting elect among its members a Chairman, a Deputy Chairman and a Treasurer who shall be the Office

Bearers of the Trust and act as Executive Committee of the Trust when required. Retiring Office Bearers shall be eligible for re-election.

- (ii) The Management Committee shall meet as frequently as is necessary to properly carry out its functions and responsibilities and in any event once every month unless the Chairman shall direct otherwise, in which case the meeting shall not be deferred for more than two months.**
- (iii) Notices of meetings of the Management Committee shall be given to all members of the Management Committee and may be given in writing or verbally.**
- (iv) The Chairman or in his absence the Deputy Chairman or in the absence of both, a member elected by the meeting, shall preside at all meetings of the Management Committee.**
- (v) The quorum of the Management Committee shall be one half of the members thereof where the total number of members is an even number and is the integer nearest to but greater than one half of that total where the total is an odd number.**
- (vi) At all meetings of the Management Committee each of its members shall be entitled to one vote and in the case of equality of voting, the Chairman shall have a casting vote.**
- (vii) The Management Committee may appoint a person to fill a casual vacancy occurring in the elected members of the Management Committee, the appointee to fill the casual vacancy shall hold office only until the closure of the next Annual General Meeting of the Trust.**

Manager

- 10. The Management Committee shall appoint a Manager at such remuneration and on such terms and conditions and with such powers and authorities as it thinks fit and may terminate the appointment of any Manager appointed by it. The Manager shall attend all meetings of the Management Committee and any Sub-Committee Meeting and shall be entitled to be heard on any question but shall not vote.**

Employees

- 11. The Management Committee shall employ such persons on such terms and conditions as it considers necessary and shall insure all such persons employed by it in the usual Workers Compensation Policy.**

Sub-Committees

12. The Management Committee may appoint and terminate the appointment of Sub-Committees of the Management Committee and such Sub-Committees have the same powers to co-opt and delegate as are held by the Management Committee.

Minutes and Records

13. Detailed Minutes shall be made of all business at all General Meetings and all meetings of the Management Committee. Detailed Minutes shall be made of all business at meetings of Sub-Committees when directed. A Member may inspect the books, documents, records and securities of the Trust at any reasonable time without charge.

Finance

14. (a) The Trust may accept, borrow and raise money by any lawful means for the purpose of fulfilling its objects, but land owned by the Trust on which the Units or related buildings are already constructed shall not be offered or used as security for any purpose.
(b) All monies received by the Trust shall be banked in one or more accounts with a bank nominated by the Management Committee. Cheques and other documents relating to the said accounts shall be signed by any two of the following: The Chairman, Deputy Chairman, Treasurer, Manager and one other member of the Management Committee appointed by the Committee.
(c) The Trust may invest in short term investments of a class mentioned in paragraph (d), (e), (f) or (o) of Section 16 (1) of the Trustees Act, 1962.
(d) All accounts shall be presented to and passed for payment at meetings of the Management Committee or of any Sub-Committee to which this function may be delegated and a proper record of such approvals shall be included in the Minutes.

Audit

15. The Trust's financial year shall be from 1st July to 30th June the following year. Once in every year the Trust shall cause its accounts to be audited by a person or persons appointed by the Management

Committee who shall be a member of The Institute of Chartered Accountants in Australia or the Australian Society of Certified Practising Accountants and the audited accounts for the year shall be presented for consideration of the Management Committee as soon as possible after the close of the financial year.

Common Seal and Sealholders

- 16. The Management Committee shall provide for safe custody of the Seal of the Trust which shall be used by authority of the Management Committee or of a Sub-Committee authorised in that behalf and every instrument to which the seal is affixed shall be countersigned by two Sealholders. The Sealholders shall be the Chairman, Deputy Chairman and Manager.**

Acts of Management Committee and Sub-Committee

- 17. All acts of the Management Committee and Sub-Committee or any member thereof or of any Officer of the Trust shall be deemed valid notwithstanding that it may be afterwards discovered that some defect existed in the appointment of the Management Committee or Sub-Committee or any member thereof or the Officer in question.**

Indemnity

- 18. The members of the Management Committee and of Sub-Committees and other Officers of the Trust shall be indemnified and saved harmless out of the funds of the Trust from and against all charges, costs, losses and damages and expenses which they or any of them shall or may incur or sustain in or about the execution of their respective offices except as may be occasioned by or through their own wilful default or negligence and none of them shall be answerable for the acts of others.**

Dissolution of Trust

- 19. The Trust may be dissolved at any General Meeting by a resolution passed by three-quarters majority of the Resident Members of the Trust.**

Satisfaction of Liabilities and Distribution of Assets

20. If upon dissolution or winding up of the Trust there remains, after satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to, transferred or distributed amongst the Members of the Trust. It shall be given to some other association, institution or body incorporated under the Associations Incorporation Act, 1987 having objects similar, wholly or in part to the objects of the Trust, provided that the association, institution or body shall prohibit the distribution of its income and property amongst its members in a manner similar to that embodied in this Clause, and further provided that the association, institution or body is approved under provisions of item 78 (4)(4.1.1) of the Income Tax Assessment Act. The Commissioner of Taxation shall be notified of the date of the Trust's dissolution. In default of any resolution on satisfaction of liabilities and distribution of assets, such payment, transfer or distribution shall be determined by a Judge of the Supreme Court.

Alteration to the Constitution

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

NEDLANDS AGED PERSONS HOMES TRUST (INC.)

CONSTITUTION

1. Name

The name of the Association is "NEDLANDS AGED PERSONS HOMES TRUST (INC.)".

2. Interpretation

In this Constitution -

- (a) "Act" means the *Associations Incorporation Act 1987*;
- (b) "Annual General Meeting" means a General Meeting held under clause 8(a);
- (c) "Association" means the Nedlands Aged Persons Homes Trust (Inc.);
- (d) "Board" means the Board of Management as defined in clause 9;
- (e) "Board Member" means a member of the Board;
- (f) "Chairperson" means the chairperson of the Board elected under clause 9(g)(ii)(A);
- (g) "Chief Executive Officer" means the chief executive officer employed under clause 10;
- (h) "Commissioner" has the same meaning as it does in the Act;
- (i) "Constitution" means this document;
- (j) "Extraordinary General Meeting" means a General Meeting held under clause 8(b);
- (k) "General Meeting" means a meeting of the Association that is open to all Members;
- (l) "Life Member" means a Member under clause 5(b);
- (m) "Lodge" means any of the Lisle, Leaweena and Melvista Lodges and "Lodges" is to be construed accordingly;
- (n) "Member" means a member of the Association and includes Resident Members, Life Members and other Members;

- (o) "Officer" means a member of the Board, the Chief Executive Officer or a member of the finance sub-committee or any of these as appropriate;
- (p) "Other Member" means a Member under clause 5(c)
- (q) "Residence Contract" has the same meaning as it does in the *Retirement Villages Act 1992*;
- (r) "Resident" means a person who is in occupation of any of the Residential Units owned by or under the care, control and management of the Association;
- (s) "Resident Member" means a Member under clause 5(a);
- (t) Residential Unit" means a home unit situated within a Lodge owned by or under the care, control and management of the Association and includes any land or facility that is provided for the exclusive use of the Resident occupying the unit; and
- (u) Words expressed in the singular include the plural and vice versa.

3. Objects of the Association

The objects of the Association are:

- (a) To provide Residential Units for Residents or potential Residents under a 'retirement village scheme' as defined in the *Retirement Villages Act 1992*.
- (b) To build new Residential Units.
- (c) To repair and maintain Residential Units, the grounds surrounding such units, and any other areas provided for the common use of Residents.
- (d) To provide common areas for Resident recreation.
- (e) To maintain and operate Residential Units in accordance with the Constitution and all relevant legislation and regulations.

4. Not For Profit Status

The income and property of the Association shall be applied solely to the promotion of its objects. No part of that income or property may be paid or otherwise distributed directly or indirectly to Members. This provision does not apply to the payment of reasonable and proper remuneration to any officer or employee of the Association in return for any services rendered to the Association or expenses incurred on behalf of the Association, nor to the provision of a Residential Unit to a Member.

5. Membership

(a) Resident Members

Every Resident who has signed a Residence Contract for and occupies a Residential Unit is entitled to be a Member and shall not be liable to pay any membership fee.

(b) Life Members

(i) Life Membership may be awarded to a person in recognition of outstanding service to the Association. Life Membership will be limited to the election of no more than two (2) Life Members in any one year.

(ii) A nomination for Life Membership must be delivered to the Chief Executive Officer at least two months prior to the Annual General Meeting. The nomination must be made by a Member in writing, seconded by another Member and recommended by the Board. Any such nomination must be put to Members and a person so nominated will only become a Life Member if the Members vote to award Life Membership to the person at an Annual General Meeting.

(iii) A Life Member shall not be liable to pay any membership fee.

(c) Other Members

Any person, not a Resident but having an interest in the welfare of the Residents and the Lodges, may become a Member of the Association, by making a written submission to the Board applying for Membership. The Board may in its absolute discretion refuse any such application for Membership. At no time shall the number of Other Members exceed one half of the Resident Members.

(d) Fees

The membership or joining fee (if any) payable to the Association by any Other Member shall be determined at the Annual General Meeting.

(e) Cessation of membership

A person ceases to be a Member if the person:

- (i) dies;
- (ii) resigns membership by giving written notice to the Board;
- (iii) is a Resident Member that ceases to occupy a Residential Unit or whose Residence Contract is terminated; or

- (iv) does not pay any membership fee determined under paragraph (d) within the time period allowed for such payment.

6. Entitlements of Membership

Every Member or Member's proxy will have full voting rights and be entitled to attend all General Meetings of the Association.

7. Register of Members and Officers

- (a) An up to date register of Members, showing the name and address of each Member must be maintained. Upon the request of a Member, the register of Members is to be made available for inspection by that Member.
- (b) An up to date register of Officers, showing the name and address of each Officer must be maintained. Upon the request of a Member, the register of Officers is to be made available for inspection by that Member.

8. General Meetings

- (a) Annual General Meeting

An Annual General Meeting must be held each year within four (4) months of the end of the Association's financial year.

- (b) Extraordinary General Meetings

- (i) The Board may convene an Extraordinary General Meeting at any time it sees fit; and
- (ii) the Board must, within thirty (30) days of receiving a request in writing to do so from not less than twenty (20) Members, convene an Extraordinary General Meeting for the purpose specified in that request.

- (c) Notice

Members must be given not less than fourteen (14) days notice of any General Meeting and that notice must specify:

- (i) when and where the General Meeting is to be held; and
- (ii) particulars of the business to be transacted at the General Meeting and the order in which that business is to be conducted.

(d) Procedure

- (i) Proxies must be lodged with the Chief Executive Officer 24 hours prior to the holding of any General Meeting. Any proxies must be reported by the Chief Executive Officer at the commencement of the meeting
- (ii) No business can be conducted at any General Meeting unless there is a quorum of twenty (20) Members present in person or proxy.
- (iii) Unless the Board directs otherwise, only Members may attend any General Meeting. Any other attendee shall attend as an observer only, and may address the meeting if invited by the Chairperson, or if resolved by an ordinary motion of the meeting. Employees of the Association may attend but not vote.
- (iv)
 - (A) Voting at any General Meeting will be by a show of hands with each Member (with the exception of any Member who is also a current employee of the Association) being entitled to one vote.
 - (B) If the meeting or Chairpersons decides, a secret ballot may be taken.
 - (C) An ordinary motion will be defeated in the case of equal votes for and against.
 - (D) If a decision requires a special resolution, the resolution must be passed by not less than three fourths of Members present in person or by proxy.

9. Board of Management

- (a) The affairs of the Association will be managed by a Board of Management.
- (b) The Board will comprise a minimum of six (6) and a maximum of ten (10) persons made up of:
 - (i) a minimum of five (5) and a maximum of eight (8) Members elected at each Annual General Meeting;
 - (ii) a Councillor nominated by the City of Nedlands;
 - (iii) if the existing Board chooses to make such a recommendation, a maximum of three (3) other persons recommended by the existing Board as having a special knowledge of, and interest in the activities of the Association, and who may in addition have accounting, legal, financial or business expertise.

- (c) Board Members elected under (b)(i) must include a minimum of one (1) and a maximum of two (2) representatives from each of the Lodges.
- (d) A person recommended under paragraph (b)(iii) cannot be appointed to the Board unless the appointment is ratified at the relevant Annual General Meeting.
- (e) No Member who is an employee of the Association may be nominated as a Lodge representative on the Board.
- (f) The term of office of each Board Member will expire at the closure of the Annual General Meeting in the year immediately following appointment to the Board.
- (g) The functional arrangements for the Board will be as follows:

- (i) Chairperson

The Chairperson or in his absence, a Board Member elected by the other Board Members present, must preside at all Board and General Meetings.

- (ii) Positions

- (A) At its first meeting after the Annual General Meeting the Board must elect from its members a Chairperson and a Treasurer.

- (B) Subject to paragraph (iii), a previous Chairperson or Treasurer is eligible for re-election.

- (iii) Chairperson

- (A) The Chairperson shall not be a Resident

- (B) The Chairperson shall not generally serve in that position for more than five (5) consecutive annual terms. However, if a nomination for Chairperson is not received at the first meeting of the Board after an Annual General Meeting and the previous Chairperson has served in that position for five (5) consecutive years or more immediately preceding the Annual General Meeting in question, the Chairperson may continue in the position until the next Annual General Meeting, and for other consecutive terms, for as long as no other person is nominated for the position.

- (iv) Meetings

- (A) The Board must meet once every month unless the Chairperson directs otherwise, but no more than two (2) months must transpire without a meeting.

- (B) A quorum of the Board shall be one half of the Board Members where the total number of the members is an even number and is the integer nearest to, but greater than one half of the Board Members, where the total number is an odd number.
 - (C) Each Board Member has a vote.
 - (D) Resolutions at a Board Meeting must be made by a majority of votes but if there is no majority the Chairperson will have a casting vote in addition to his or her deliberative vote.
 - (E) A Board Member with a direct or indirect pecuniary interest in a matter to be considered by the Board must:
 - (1) as soon as he or she becomes aware of the interest, disclose the nature and extent of the interest to the Board; and
 - (2) not take part in any deliberations or decisions of the Board with respect to the matter.
 - (F) A Board Member does not have a pecuniary interest in a matter for the purposes of paragraph (E), if the interest exists only because the Board Member is a Resident.
- (v) Casual vacancies in membership of the Board
- A casual vacancy occurs if a Board Member:
- (A) dies;
 - (B) resigns by notice in writing given to the Chief Executive Officer;
 - (C) is convicted of an offence under the Act or any indictable offence;
 - (D) is permanently incapacitated by mental or physical ill health;
 - (E) is absent for more than:
 - (1) three (3) consecutive Board meetings; or
 - (2) three (3) Board meetings in the same financial year without tendering an apology to the person presiding at each of those Board meetings, the Board Member having received due notice thereof and the Board having resolved to declare the office vacant.

- (F) with the exception of a Board Member pursuant to clause 9(b)(iii), ceases to be a Member.

When a casual vacancy occurs the Board may appoint a Member to fill that vacancy. The appointee will hold office until the next Annual General Meeting when he or she will be eligible for election.

10. Chief Executive Officer

- (a) The Board shall employ a Chief Executive Officer and, subject to and without limiting (b), will determine the terms and conditions of service applicable to the position as well as the powers and authority delegated to the Chief Executive Officer.
- (b) The Chief Executive Officer will be employed to manage the financial, business, operational, asset and human resources of the Association, and to ensure that the Association complies with all legislation and regulations applicable to its operation.
- (c) The Chief Executive Officer will attend all Board meetings and meetings of any sub-committee appointed under clause 11 and is entitled to be heard on any matter but will not have a vote.
- (d) The Chief Executive Officer will be responsible for engaging staff on such terms and conditions as are necessary, subject to the approval of the Board.

11. Sub-Committees

The Board may appoint and terminate standing or specific purpose sub-committees and may delegate to such sub-committees the exercise of such functions as the Board sees fit, and impose such conditions or limits on any such delegation as it sees fit. Sub-committees may be comprised of Members or non-Members as the Board sees fit. Sub-committees may make recommendations to the Board.

12. Minutes and Records

- (a) Proper minutes of proceedings of all General Meetings, Board meetings and sub-committee meetings are to be taken and filed in a minute book kept for that purpose.
- (b) A Member may at any reasonable time inspect without charge the books of account, documents, records and securities of the Association.

13. Finance and Operations

- (a) The Board may do all things necessary or convenient for carrying out the objects of the Association and in particular may:

- (i) establish a finance sub-committee of up to five (5) members including the Chairperson, the Treasurer, and one other Board Member together with the Chief Executive Officer;
 - (ii) acquire, hold, deal with and dispose of any real or personal property;
 - (iii) open and operate bank accounts;
 - (iv) invest money in any security in which Association monies may be lawfully invested; and
 - (v) borrow money upon terms and conditions approved by the Board.
- (b) Cheques and other documents relating to the accounts must be signed by two of the following Officers -
- (i) Chief Executive Officer;
 - (ii) Chairperson; or
 - (iii) Treasurer,
- and any one of three (3) other Board Members appointed by the Board for that purpose.
- (c) Investments including rollovers, extensions and re-investments must be signed by the Chief Executive Officer and one of (2) two Board Members appointed by the Board for that purpose.

14. Audit

- (a) The financial year of the Association will be from 1 July to 30 June of the following year.
- (b) The accounts of the Association must be audited annually by a person
 - (i) appointed by the Board;
 - (ii) holding the necessary audit qualification to conduct such an audit; and
 - (iii) who is a member of either the Institute of Chartered Accountants in Australia or the Australian Society of Certified Practicing Accountants.
- (c) The audited accounts for the year must be presented to the Board for consideration as soon as possible after the close of the financial year together with a statement that the Association has complied with all legislation and regulations pertaining to the operation of the Association.

15. Common seal

The Board will provide for safe custody of the seal of the Association which will be used only by authority of the Board, and every instrument to which the seal is affixed must be countersigned by two seal holders. The seal holders will be the Chairman, the Treasurer and any other Board Member appointed by the Board for that purpose.

16. Acts of the Board and sub-committees

All acts of the Board, any sub-committee appointed under clause 11 and any Officer of the Association, will be deemed valid notwithstanding that afterwards it may be discovered that some defect existed in the appointment of the Board, sub-committee or Officer in question.

17. Indemnity

The Board Members, members of any sub-committee appointed under clause 11 and other Officers of the Association will be indemnified and saved harmless out of the funds of the Association from and against all charges, costs, losses and damages and expenses which they or any of them may incur or sustain in executing their duties for the Association except where the act is a result of their own wilful default or negligence. No Member or Officer will be answerable for the acts of others.

18. Dissolution of Association

The Association may, if solvent, be wound up voluntarily if the Members resolve to do so by passing a special resolution at a General Meeting, of which notice specifying the intention to propose the resolution as a special resolution is given under clause 8(c).

19. Satisfaction of liabilities and distribution of assets

If upon the winding up of the Association there remains, after satisfaction of all its debts and liabilities, any property, no part of that property shall be paid to or distributed amongst the Members or former Members. Any such surplus property must be given or transferred, subject to the rights of Residents under their Residence Contracts and the *Retirement Villages Act*, to another association incorporated under the Act, which has similar objects and which is not carried out for the purposes of profit or gain to its individual members and which association is determined by resolution of the Members at a General Meeting.

20. Alteration to the Constitution

- (a) This Constitution may only be altered in accordance with a special resolution passed at a General Meeting. Notice of any such resolution, specifying the proposed alterations to the Constitution and the intentions or reasons for the proposed changes, must be given under clause 8(c).

- (b) Proposed alterations to the Constitution must be submitted to the Council of the City of Nedlands for approval prior to notice of a special resolution under paragraph (a) being given to Members. If the City refuses to approve a proposed alteration to the Constitution, it is open to the Association to challenge that refusal in a court of appropriate jurisdiction.
- (c) Alterations passed by special resolution must be submitted to the Commissioner within one (1) month of the passing of the special resolution or such further time as the Commissioner may allow. The Association must lodge with the Commissioner notice of the special resolution setting out particulars of the alterations together with a certificate given by the Chairperson of the Board certifying that the resolution was duly passed as a special resolution and that the Constitution as so altered conforms to the requirements of the Act.
- (d) An alteration of the Constitution does not take effect until compliance with the above.

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