**MINUTES**

**Council Meeting**

**23 August 2022**

**Attention**

**These Minutes are subject to confirmation.**

Prior to acting on any resolution of the Council contained in these minutes, a check should be made of the Ordinary Meeting of Council following this meeting to ensure that there has not been a correction made to any resolution.

**Information**

Council Meetings are run in accordance with the City of Nedlands Standing Orders Local Law. If you have any questions in relation to items on the agenda, procedural matters, public question time, addressing Council or attending 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 question time at a Council Meeting is available for members of the public to ask a question about items on the agenda. Questions asked by members of the public are not to be accompanied by any statement reflecting adversely upon any Council Member or Employee.

Questions should be submitted as early as possible via the online form available on the City’s website: [Public question time | City of Nedlands](https://www.nedlands.wa.gov.au/public-question-time)

Questions may be taken on notice to allow adequate time to prepare a response and all answers will be published in the minutes of the meeting.

**Addresses by Members of the Public**

Members of the public wishing to address Council in relation to an item on the agenda 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)

The Presiding Member will determine the order of speakers to address the Council and the number of speakers is to be limited to 2 in support and 2 against any particular item on a Special Council Meeting Agenda. The Public address session will be restricted to 15 minutes unless the Council, by resolution decides otherwise.

**Disclaimer**

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

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# Declaration of Opening

The Presiding Member declared the meeting open at 6.00 pm and drew attention to the disclaimer on page 2.

* 1. **Councillor McManus – Online Participation**

Councillor McManus requested to participate in this Special Council Meeting online.

In order for Councillor McManus to participate, three conditions must be met in accordance with regulation 14A(1) of the Local Government (Administration) Regulations 1996.

a) the person is simultaneously in audio contact, by telephone or other means of instantaneous communication, with each other person present at the meeting; and

b) the person is in a suitable place; and

c) the council has approved of the arrangement.

Councillor McManus has advised that he will be situated in a private room at 48 Adderley Street, Mt Claremont for the duration of the meeting.

To fulfil this request, Council consideration is required as follows:

Moved – Councillor Mangano

Seconded – Councillor Combes

**That Council:**

1. **approves a private room at 48 Adderley Street, Mt Claremont as a suitable place for the purposes of Regulations 14A(l)(b) and 14A(4); and**

**2. approves the participation of Councillor McManus at the Ordinary Council Meeting held 23 August 2022 online via teams pursuant to Regulation 14A(l)(c).**

**CARRIED UNANIMOUSLY 11/-**

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

**Councillors** Mayor F E M Argyle (Presiding Member)

Councillor B Brackenridge Melvista Ward

Councillor R A Coghlan Melvista Ward

Councillor R Senathirajah Melvista Ward

Councillor H Amiry Coastal Districts Ward

Councillor K A Smyth Coastal Districts Ward

Councillor F J O Bennett Dalkeith Ward

Councillor A W Mangano Dalkeith Ward

Councillor N R Youngman Dalkeith Ward

Councillor O Combes Hollywood Ward

Councillor B G Hodsdon Hollywood Ward

Vacant Hollywood Ward

**Staff** Mr W R Parker Chief Executive Officer

Mr M R Cole Director Corporate Services

Mr T G Free Director Planning & Development

Mr A D Melville Acting Director Technical Services

Mrs N M Ceric Executive Officer

**Public** There were 17 members of the public present and 7 online.

**Press** Nil.

**Leave of Absence** Nil.

**(Previously Approved)**

**Apologies** Councillor L J McManus Coastal Districts Ward

**(Due to technical difficulties Councillor McManus was unable to join the meeting online)**

# Public Question Time

Questions received from members of the public will be read at this point.

The order in which the CEO receives questions shall determine the order of questions unless the Mayor determines otherwise. Questions must relate to a matter affecting the City of Nedlands.

Nil.

# Addresses by Members of the Public

Addresses by members of the public who had completed Public Address Registration Forms were made at this point.

Mr Max Hipkins, Spoke in relation to the following items:

* PD52.08.22 Consideration of Local Planning Policy – Primary Controls for Apartment Development.
* PD53.08.22 Adoption for Advertising of Local Planning Policy – Trees on Private Land.
* PD54.08.22 Review of Aberdare Road Concept Design and Corridor Requirements. and Consideration of Repeal of By-law Relating to New Street Alignment (Aberdare Roads By-law).
* PD55.08.22 Process to implement a Payment in Lieu of Parking Plan.
* PD57.08.22 Request to utilise City-owned land for public laneway between Dalkeith Road and Florence Road.

Mr Geoff Nathan, spoke in support of the recommendation for item 16.5 - PD49.08.22 Consideration of Development Application – Removal of Approval Condition at 13, 15, 17 and 19 Jenkins Avenue, Nedlands.

Mr Liam Bartlett, spoke in opposition to the recommendation for item 16.5 - PD49.08.22 Consideration of Development Application – Removal of Approval Condition at 13, 15, 17 and 19 Jenkins Avenue, Nedlands.

Mr Peter Robins, spoke in opposition to the recommendation for item 16.8 - PD52.08.22 Consideration of Local Planning Policy – Primary Controls for Apartment Development.

Councillor Hodsdon left the room at 6.16pm and returned to the room at 6.17 pm.

Mr Stephen Langsford, spoke in opposition to the recommendation for item 16.8 - PD52.08.22 Consideration of Local Planning Policy – Primary Controls for Apartment Development.

Mr Heidar Koning, spoke in relation to item 16.10 - PD54.08.22 Review of Aberdare Road Concept Design and Corridor Requirements and Consideration of Repeal of By-law Relating to New Street Alignment (Aberdare Roads By-law).

Mr Ryan Djanegara, spoke in opposition to the recommendation for item 16.12 – PD56.08.22 Section 31 Reconsideration of Development Application for Temporary Change of Use (Display House) and Signage at 20 Curlew Road, Dalkeith.

Mr Simon Brady, spoke in support of the recommendation for item 16.12 – PD56.08.22 Section 31 Reconsideration of Development Application for Temporary Change of Use (Display House) and Signage at 20 Curlew Road, Dalkeith.

Mr Kris Nolan, Urbis spoke in support to the recommendation for item 16.13 - PD57.08.22 Request to utilise City-owned land for public laneway between Dalkeith Road and Florence Road.

Mr Robert Adam, spoke in opposition to the recommendation for item 16.13 - PD57.08.22 Request to utilise City-owned land for public laneway between Dalkeith Road and Florence Road.

Ms Chrystal Desange, spoke in relation to Waratah Avenue rehabilitation works.

# Requests for Leave of Absence

Any requests from Council Members for leave of absence will be dealt with at this point.

Nil.

# Petitions

Petitions to be tabled at this point.

Nil.

# Disclosures of Financial / Proximity Interest

The Presiding Member reminded 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.



There were no disclosures of financial interest.

# Disclosures of Interests Affecting Impartiality

The Presiding Member reminded 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.

3. 1. **Councillor Youngman – Item 23.1 - CEO09.08.22 Confidential Final Determination Report (03621Iv-01)**

Councillor Youngman disclosed an impartiality interest in Item 23.1 - CEO09.08.22 Confidential Final Determination Report (03621Iv-01). Councillor Youngman disclosed that he is a party in the process, and as a consequence, there may be a perception that his impartiality on the matter may be affected. Councillor Youngman declared that he would leave the room during this item.

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

Nil.

# Confirmation of Minutes

2. 1. **Ordinary Council Meeting Minutes – 26 July 2022**

Moved – Councillor Youngman

Seconded – Councillor Senathirajah

**The minutes of the Ordinary Council Meeting held 26 July 2022 be confirmed.**

**CARRIED UNANIMOUSLY 11/-**

* 1. **Special Council Meeting Minutes – 11 August 2022**

Moved – Councillor Youngman

Seconded – Councillor Smyth

**The minutes of the Special Council Meeting held 11 August 2022 be confirmed.**

**CARRIED UNANIMOUSLY 11/-**

# Announcements of the Presiding Member without discussion.

The Presiding Member made the following announcement:

Good evening Ladies and Gentlemen,

What a joy it is to be back here at the City of Nedlands.

Following my trip to the World Cities Summit in Singapore. I would like to update you all.

At the WCS, I joined 100 mayors from around the world, in a three-day intense conference “Liveable and sustainable cities emerging stronger.”

I funded myself and shared the room with community leaders from Bilbao to Lisbon, to Colombo and Boston. Community leaders from around the globe, facing similar challenges to Nedlands.

I was one of the only mayors to travel solo, and the only mayor to pay his or her own way.

The good news is… it does not matter what city we live in anywhere on the planet, we all face the same problems!

Cities are the drivers of future change. Currently 50% of the world’s population lives in cities, it is here where the rubber hits the road. Nedlands is an example of this, there will be friction with change. This is very normal.

Yet, Cities are having their time in the sun. Cities face real problems head on, plagues, pollution, infill. How can we be more resilient, sustainable, stronger and better?

One thing was clear, this is an exciting time.  There is nothing to be feared. Our cities will no longer be able to survive traditional growth models. We must prepare our cities, and community for the challenges of the future.

The Conference spoke of the four c’s.

Climate Change, COVID - 19, Crisis, Capital.

Climate Change- Cities are in the front line. Food shortages, unemployment, housing, infrastructure challenges, transport shifts, heat.

We must understand and be more prepared for the impact of Climate Change. We need to maintain existing infrastructure, this is critical.

We must lead by example, in order to do this, we will need partnerships moving into the future, with the people, the public and private sector.

Cities are also critical in reducing carbon emissions. By 2050, 70% of the population will live in cities, which is only 3% of the global land mass. We will need more green space, more green infrastructure, we must protect our trees and support smart planning, more parks, walking to work and home.

Now is the time for rethinking and preserving.

Planning and designing a liveable and sustainable city are paramount. City leaders must be prepared for the unreliability of Climate Change. Planning is crucial. Decarbonisation is critical. Air quality challenges will need to be solved. Decarbonising is also about encouraging people to take hold of more sustainable lifestyles.

We must go back to the community; we must consult with the community. As a local government we must be transparent.

The impact of future challenges will be felt by the community, so they need to be part of the solution.

Covid 19 and other future disease threats, it will be the cities again at the front line.

The recent pandemic has exposed the weakness of a city. It has revised the blueprint of planning, …. we have infill, but is putting everyone together, the right idea?! The blueprint for development is changing, together but apart, greater greenspace, correct design, adherence to the codes. Privacy. Dense urban cities are making us more vulnerable to the onslaught of a virus. Dealing with the isolation of cities. The pandemic created isolation; we need connectivity. No one must be left behind in digitalisation.

Crisis - Geopolitical. War in the Ukraine…

CAPITAL: A lack of it.

A few lessons, we must build and take pride in…

Urban Resilience…

Not making short term decisions which will cost us in the long run. Cities have always attracted a diverse range of people. Govt and City leaders can't do everything….so we have to work together. May we encourage the community to step up.  To achieve a city we would all like to see.

Part of this is …. Community Resilience: As new challenges come our way, we need to harness, change, and innovate. Citizen groups are the fundamental here. Educate our people. Let us co- create with the community.

Can we achieve growth? Can we create a sustainable and liveable city? We must get the economics right. The simple answer is YES.

Evidently, we have just 7 years and four months, to achieve our goals for a greener and cleaner future. Can we, do it? No more talking. It is action time. Greed must go, replaced with less is more and sustainability on all fronts. Technology is an ally, but no one must be left behind in this transition.

I would like to sincerely convey my heartfelt gratitude to the city of Singapore, for hosting an event, in challenging times. It left one with a feeling of optimism and opportunity for the times ahead.

It was Winston Churchill who said, “NEVER Let a good crisis go to waste.” Let us work together with the community, the private and public sector, to be a world leading city.

“Lets do this together and lets do this today.”

# Members Announcements without discussion.

Written announcements by Council Members were tabled at this point.

2. 1. **Councillor Hodsdon**

Councillor Hodsdon advsied that he had requested a meeting with the Minister of Local Government, John Carey in regard to discuss the following items:

1. Use of Parliamentary privilege to criticise the city over his annexation of two A class reserves.
2. How we could build bridges and build meaningful communications between the City and himself for the benefit of the community and his effective management of his portfolio.

He did not aval himself of an opportunity to meet a Councillor that has supported him and someone he is purportedly meant be representing. Hence, he allocated one of his aids to meet with me. The “Senior Advisor” and myself had a phone call after two failed meeting attempts.

The discussions covered the placement of the Children’s Hospice. We all agreed this is a very worthwhile project and Nedlands was an idea spot. There was disagreement over the best place to have this Hospice. For example, it seems the Sunset site is a much better location.

1. Like The Swanbourne site has sweeping vistas of water;
2. Is very calm and peaceful;
3. Has a multimillion dollar all abilities playground at its doorstep;
4. Much closer to medical services;
5. Far far better transport links; and
6. And half the traveling time to world class medical facilities should there be an emergency.

It was amazing that this site was not given the “Serious” consideration it deserved.

Anyway, in the discussions that seem not to get past point 1 we dealt mainly with how one deals with facts. I contented the minister needs to be careful not to be:

1. selective with the fact he presents that may mislead the public and his fellow politicians
2. Not to agitate the community and people with sick children with statement when taken out of context could be mis-interpreted.

The advisor kept claiming that his boss did not lie. I agreed with him but as a responsible minister I saw a need to be balance in one’s delivery of facts. The advisor did not see this as his responsibility as John told the truth and that was that. However, I have a higher expectation of a minister of the crown. That facts need to be contextualised and complete to ensure an honest evaluation of the behaviours of local members is fully understood. One should avoid politically point scoring especial over sensitive issues such as sick children. I repeat that I and council want the Hospice but maybe they question the process and these issues should have been addressed in a civil manner and not through the media.

* 1. **Councillor McManus**

The Mayor read the following on behalf of Councillor McManus:

Councillor McManus would like to pay tribute tonight to Dr Ken Collins, a former Councillor and Deputy Mayor of the City of Nedlands who passed away a couple of weeks ago.

Dr Collins was a colleague of Councillor McManus in the Costal Ward when he first joined the Council. Ken was a gentleman with a fine intellect and great common sense. However he did find Council somewhat frustrating and restrictive and he really wanted to devote his time to the community and his international roles particularly in Rotary, rather than continue in Council.

Dr Collins had a distinguished career in private General Practice having extensive medical practises in Cloverdale and Thornlie. Many patients of his remained firm friends throughout his life.

Ken personally survived polio which only made him commit even more to Rotary's polio eradication programmes overseas particularly in Hong Kong, Indonesia and the Phillipines.

Ken is a Rotary legend.

In 1991 Dr Collins received the Most Exemplary Rotarian International Award. He is also a member of the Order of Australia and won the WA Citizen of the Year award.

Dr Ken Collins really lived the Rotary motto, "Service above self".

Vale Dr Ken Collin.

# 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.

**23.1 CEO09.08.22 Confidential Final Determination Report (03621Iv-01)**

# En Bloc Items

En Bloc

Moved - Councillor Youngman

Seconded – Councillor Amiry

**That the officer recommendations for Items 15.1, 18.1, 19.1, 19.3, 19.5 and 20.1 be adopted en bloc and the remaining items 16.1, 16.2, 16.3, 16.4, 16.5, 16.6, 16.7, 16.8, 16.9, 16.10, 16.11, 16.12, 16.13, 17.1, 17.2, 19.2, 19.4 and 19.6 be dealt with separately.**

**CARRIED UNANIMOUSLY 11/-**

# Minutes of Council Committees and Administrative Liaison Working Groups

Moved – Councillor Youngman

Seconded – Councillor Amiry

# 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).

**The Minutes of the following Committee Meetings & Working Group Meetings (in date order) are to be received:**

**Foreshore Management Steering Committee Meeting 8 August 2022**

Unconfirmed, circulated to Councillors on 12 August 2022

**CARRIED UNANIMOUSLY EN BLOC 11/-**

# Divisional Reports - Planning & Development Report No’s PD45.08.22 to PD57.08.22

# 16.1 PD45.08.22 Consideration of Development Application – Partial change of use to “Small bar” and additions to an existing commercial tenancy (patio) – 161 Broadway, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 August 2022 |
| **Applicant** | Peter Webb & Associates |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans and Planning Report 3. CONFIDENTIAL ATTACHMENT - Submissions |

**Regulation 11(da) - Council considered it appropriate to defer consideration of the matter to allow for noise management issues to be further addressed prior to Council making a decision.**

Moved – Councillor Youngman

Seconded – Councillor Mangano

**Council Resolution**

**That Council defer consideration of the partial change of use to “Small bar” and additions to an existing commercial tenancy (patio) at 161 (Lot 735) Broadway, Nedlands to allow for additional noise management measures to be presented to Council for consideration.**

**CARRIED 9/2**

**(Against: Mayor Argyle & Cr. Bennett)**

Recommendation

In accordance with Clause 68(2)(c) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, Council refuses the development application in accordance with the plans date stamped 20 June 2022 for a partial change of use to “Small bar” and additions to an existing commercial tenancy (patio) at 161 (Lot 735) Broadway, Nedlands, for the following reasons:

1. The proposed partial change of use to “Small bar” does not meet the objectives of the Local Planning Scheme No. 3 Mixed Use zone in that it is likely to generate parking and noise nuisances detrimental to the amenity of the locality and adjoining residents.
2. The application has not adequately demonstrated that noise from the premises will achieve compliance with the *Environmental Protection (Noise) Regulations 1997.*
3. The proposal is inconsistent with the City’s Parking Local Planning Policy.

**Purpose**

The purpose of this report is for Council to consider a development application for a partial change of use to “Small bar” and additions to an existing commercial tenancy (patio) at 161 Broadway, Nedlands (“The Little Way”).

**Voting Requirement**

Simple Majority.

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

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

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

**Background**

**Land Details**

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

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

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

**History**

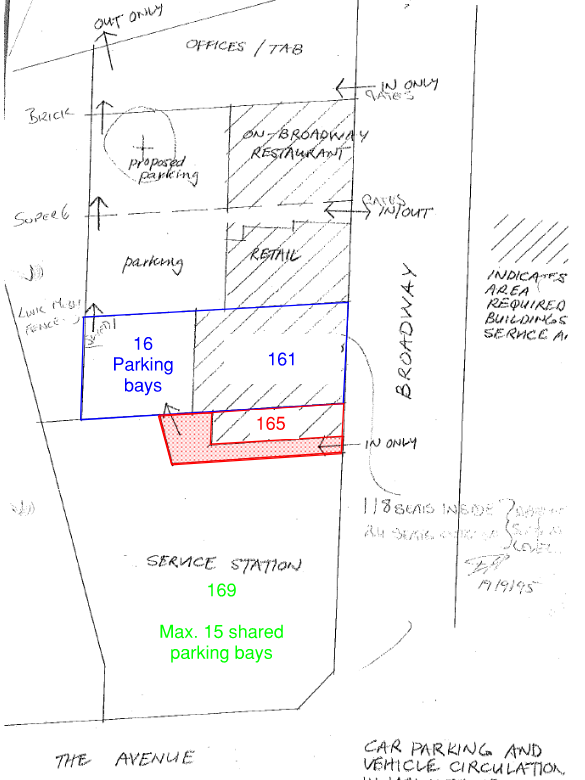
**1985 - 1991**

The City’s records of the subject site begin circa 1985, and the property had a complex history between 1985-1991. During this time, the premises was operating as “Caffe Greco”. The City’s records contain various correspondence detailing approved seating numbers and car parking arrangements.

**1991 Approval**

On 7 March 1991, a Change of Use approval for ‘restaurant’ was granted, subject to a condition of a maximum of 142 seats and minimum 16 car bays on site.

This application required 23 car parking bays, however a reduction to 16 was approved. The 16 parking bays were accommodated at the rear of the lot, with access via 165 (Lot 736) Broadway (**Figure 1**). The City’s records show that there was an informal License Agreement in place dated 1992, between the owners of 165 Broadway and 161 Broadway to allow for access over a portion of 165 Broadway to access the parking.



**Figure 1:** 1991 approval - 16 car bays at the rear of 161 Broadway accessed via a License Agreement over the red shaded portion of 165 Broadway.

1993 approval - maximum of 15 car bays shared between Service Station (165 Broadway) and 161 Broadway.

A further application was approved on 29 July 1993 to “extend the car parking for Cafe Greco at 161 Broadway onto the adjoining Shell Service Station property at 169 Broadway” (**Figure 1**). This approval was subject to a satisfactory agreement being negotiated between the two landowners and a maximum of 15 car bays being provided for within 169 Broadway.

**2015/16 Approvals**

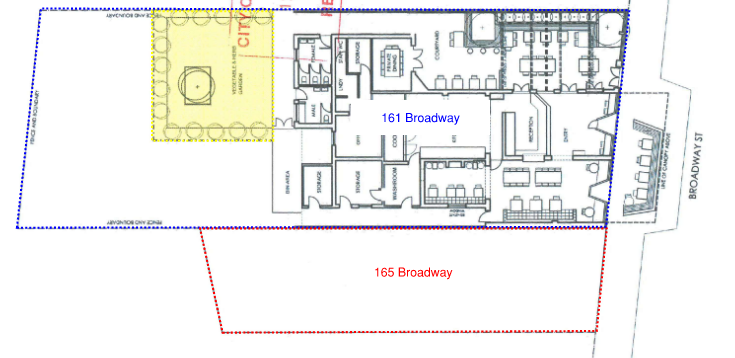
On 25 January 2000 the Council approved a Mixed Use development at 169 Broadway (now 29 The Avenue), the old Service Station site. It is assumed that the redevelopment of this site in effect removed the previous reciprocal parking arrangements with the landowner of 161 Broadway. In August 2000, the informal License Agreement with 165 Broadway was terminated due to a “breach”. The combination of these two factors effectively removed all onsite and offsite parking from 161 Broadway.

In 2015, to address this, the City requested that the applicant lodge a retrospective development application to consider the continuation of the restaurant land use without any onsite parking. At the 27 October 2015 Ordinary Council Meeting, Council resolved to approve the development application for the continuation of the restaurant land use. The approval contained conditions which limited the capacity to 120 seats in total, and restricted opening hours from Monday to Sunday 7:30am - midnight. The approval of this application effectively revoked the 1991 condition for 16 bays to be provided on site. At the Council meeting, it was moved that the following advice note be included on the determination notice:

1. The landowner/applicants are advised that in the event of any future change to the premise being proposed it is unlikely that the approval will be granted unless access to the rear of the property is restored and parking provided in the rear open area.

A second development application was approved at the 27 September 2016 Ordinary Council Meeting for a new 65m2 outdoor seating area (**Figure 2**). This approval also conditioned the operating hours and 120 seating capacity consistent with the 2015 approval. The application resulted in an increase in the existing car parking shortfall from 60 to 83 bays. A further advice note was placed on the determination notice stating:

1. The landowners/applicants are advised that should any further seats or seating be proposed to the restaurant, there will be a requirement for on-site car bays to be provided.



**Figure 2:** 2016 approval – 65m2 new outdoor seating area highlighted in yellow

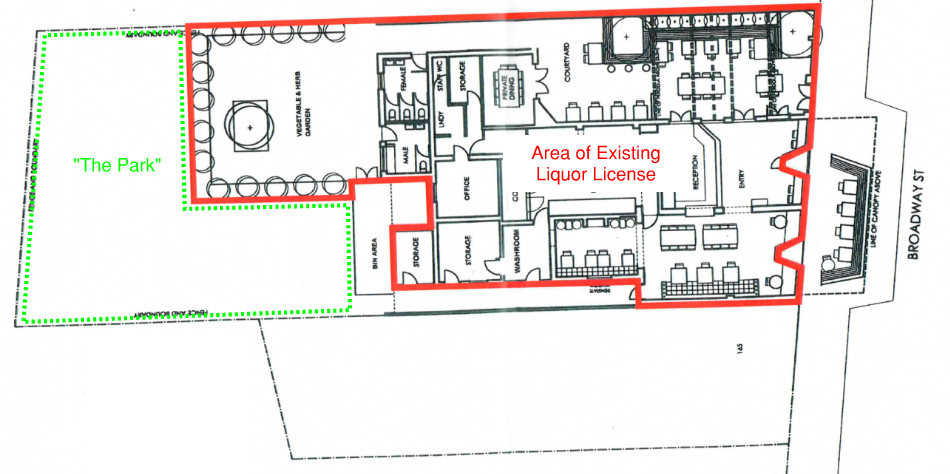
**Current Application**

161 Broadway currently holds a small bar liquor license for part of the premises. On 23 October 2021, the Little Way applied for a Section 40 Certificate to extend the Small bar liquor license into a new 168m2 outdoor area called “The Park” (**Figure 3**). Upon lodgement of the Section 40 the City became aware that unauthorised works had been undertaken within “The Park” area. A retrospective development application was approved on 14 January 2022 for the following works:

* 1.5m high breezeblock wall;
* 0.8m high limestone planter;
* two x 0.42m high limestone planters; and
* various paving and landscaping works.

Note that car parking was not assessed as part of this application as there was no proposed change to the land use. The land use approval of “Restaurant/café” granted in 2015 currently applies to the whole of the lot.

On 18 November 2021 the City advised that it was not in a position to support the Section 40 application for a “Small bar” as it was inconsistent with the approved ‘Restaurant/café’ land use. The applicant was advised that for the City to issue a Section 40 for The Park area, a development application for a change of use, or partial change of use, to “Small bar” would have to be applied for and approved by the City.



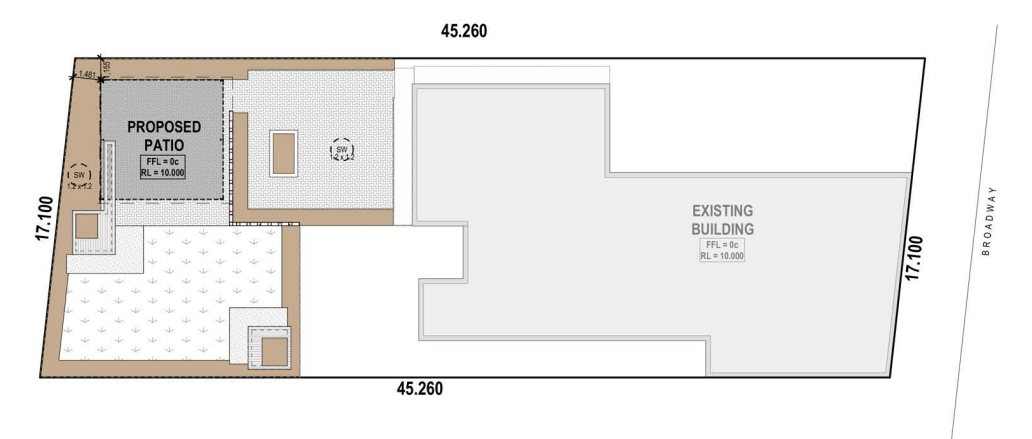
**Figure 3:** Boundary of existing “Small bar” liquor license and proposed area “The Park”

**Application Details**

This development application seeks approval for a partial change of use to “Small bar” and a patio addition to the existing “restaurant/café” at 161 Broadway, Nedlands (“The Little Way”), as detailed below.

**Works**

The application proposes a skillion roof patio in the rear of the lot in the new outdoor area known as “The Park” (**Figure 4**). The patio measures 6.5m x 6.4m and is a maximum height 3.2m.



**Figure 4:** Patio as proposed by current application.

**Land Use**

The application seeks to add a “Small bar” land use to the existing approved land use of “Restaurant/café”. “Small bar” is defined in Local Planning Scheme No. 3 (LPS 3) as being a premises subject of a small bar license granted under the *Liquor Control Act 1988.* The small bar license limits the number of persons who may be on the licensed premises to 120. Should the application be approved, both land uses would apply to the entirety of the lot.

The trading hours approved via the 2015 approval are Monday to Sunday 7.30am – midnight. The application states that there are no proposed changes to the current operating hours which are as follows:

* Monday – Saturday: 7.30am – 10pm.
* Sunday: 7.30am – 3.30pm.

The application proposes a maximum occupancy of 120 people. This is consistent with the 2015 approval (“120 seats”), and the definitions of the “Small bar” land use. There is no proposed increase to the maximum patronage as part of this application.

**Discussion**

**Local Planning Scheme No. 3**

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

The proposed partial change of use to “Small bar” in this case is not considered to meet the following objective of the Mixed-Use zone:

“To allow for the development of a mix of varied but compatible land uses such as housing, offices, showrooms, amusement centres and eating establishments which do not generate nuisances detrimental to the amenity of the district or to the health, welfare and safety of its residents.”

The proposed “Small bar” land use is not considered appropriate given the proximity of the site to residential properties and potential noise concerns, and the lack of parking on site, as further detailed in this report.

**Noise**

The applicant has provided an Acoustic Assessment to consider the potential noise impact of the “Small bar” land use on adjacent areas. Of particular concern is the impact on the immediately adjoining Residential R60 properties. The site has a history of receiving noise complaints, mostly in relation to live music and private functions. It is acknowledged that the City has not received any noise complaints regarding the venue since 2019. However, adding a patio into the rear of the lot is likely to extend potential noise generating activities closer to the residential lots to the rear.

The premises must comply with *Environmental Protection (Noise) Regulations 1997* (Noise Regulations). To adequately address and control noise emissions from a development, an approach based on the hierarchy of control method should be used, this being:

* Elimination – remove the noise source
* Substitution – use quieter alternatives
* Isolation/Engineering Control - solutions that do not require human interference e.g., permanent barriers, enclosures etc
* Administration – operational measures/noise management plan

Best practice is the use of a combination of control methods. However, the applicant’s Acoustic assessment relies solely on management measures to control noise from the premises, including the proposed rear outdoor area, rather than any engineering solutions. Officers are not supportive of relying solely on management to actively mitigate noise impacts, and an engineering solution should be implemented should the application be considered for approval.

The applicant’s acoustic report notes “there is reasonable risk of exceeding Assigned Noise Levels, particularly in the context of the rear outdoor area and residences to the immediate southwest”, and that “the outdoor garden areas would further benefit from sound absorptive panels”. Despite this advice from the applicant’s Acoustic consultants, no acoustic absorptive panels or similar have been proposed as part of this application.

The acoustic report notes that a 3.2m high wall with sound absorptive material facings would be effective towards achieving compliance with the Noise Regulations assigned noise limits. Should the application be considered for approval, the City would recommend that the application be deferred to facilitate further discussions with the applicant in relation to noise management. The provision of a sound absorptive wall is considered a sub-optimal measure.

Further, the sound modelling of the proposed wall is based only on the existing surrounding development. The abutting R60 coded properties may accommodate residential development up to three storeys. Should these properties choose to redevelop to this extent, the 3.2m high sound absorptive wall would likely be inadequate to ensure the top floors are protected from noise.

Wholistically it is not appropriate to entertain a “Small bar” land use in an unenclosed space which abuts residential properties.

**Parking Local Planning Policy**

Car parking requirements for commercial development are defined within the City’s Parking Local Planning Policy (Parking LPP). The Parking LPP is not clearly applied where a single tenancy contains multiple land uses. For the purposes of this assessment, only the additional 168m2 of seating/public area proposed as ‘The Park’ has been considered, and an average of the ‘Restaurant/café’ and ‘Small bar’ land uses has been regarded, as detailed in **Table 1**.

|  |  |  |  |
| --- | --- | --- | --- |
| Table 1: Parking LPP Assessment | | | |
| Land Use | LPP provisions | Required | Available on Site |
| Restaurant/Cafe | 1 per 2.6m2 of restaurant seating area or 1 per 2 persons (whichever is greater) | 65 bays | Nil |
| Small Bar | 1 per 1.3m2 of bar and public areas (excluding toilets); and 1 per employee. | 129 bays |
| Average | | 1. bays |

It is important to note that the 2016 approval approved a shortfall of 83 car bays. In considering the entire site, this application seeks to increase the overall parking shortfall to 180 bays.

It is acknowledged that it would not be feasible to provide 180 car bays on the site. Given the planning approval limits the patrons to 120, it may be appropriate, given the limitations of the Parking LPP to consider that maximum parking shortfall as 120 bays.

Along Broadway there is one hour street parking available, time limited between 8am-5pm weekdays. Whilst this can be used by customers of the Little Way, the street parking is not plentiful, having only 7 bays available on the western side of Broadway between Hillway and The Avenue. Further, the street parking does not cater to staff, who require parking for extended periods of time.

The City’s records show that staff and owners of the subject site have previously contacted the City with complaints about the lack of street parking available and requesting parking permits. The City does not offer parking permits for business proprietors. Other businesses in the area utilise a combination of both on-site parking and street parking.

There are some public transport options available including the No. 24 Bus to Claremont station with a stop approximately 130m from the site and the Purple CAT bus with a stop 210m from the site.

It is acknowledged that there is no proposed increase in the patron numbers as a result of this application. Thus, the proposed use of The Park as part of the “Small bar” use, may have little, if any additional impact on parking demand within the area. The proposal is contrary to the Council’s advice of 2015 and 2016, being that any change to the premise would require the provision of car parking on site. Practically, parking being provided on site will require the formal agreement of adjacent landowner, with No. 153 Broadway providing the most practical access, to facilitate the provision of 4 bays on No. 161 Broadway, the loss of bays on No. 153 and the inability of the proposed patio to go ahead. Further modifications at No. 161 could facilitate up to 12 car parking spaces on site. Other access options would require further modifications at No.161 and/or agreement with other landowners.

**Consultation**

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to owners and occupiers within a 100m radius of the site. The application was advertised for a period of 14 days from 10 May to 24 May 2022. At the close of the advertising period, four objections and three submissions of support were received.

**Table 2** provides a summary of the objections raised and the Administration’s responses.

|  |  |
| --- | --- |
| Table 2: Summary of Submissions | |
| Concern | Response |
| Noise   1. Noted history of the premises receiving noise complaints. 2. Concerns with the open-air area resulting in excessive noise. | This concern is upheld and is one of the reasons refusal is recommended. Should Council approve the application it is recommended that a 3.2m high sound absorptive panels be installed to partially mitigate potential noise issues. |
| Parking   1. Oppose no on-site parking. 2. Existing customers parking on private property of neighbouring businesses. | This concern is upheld and is one of the reasons refusal is recommended. It is considered that the applicant should provide evidence demonstrating that the possibility of rear access, or alternate parking arrangements, have been thoroughly investigated prior to any further parking shortfall being granted. |
| Land Use   * Concerns regarding the potential use as a function centre. | The application is for a partial change of use to “Small bar” and does not seek any “Reception Centre” land use. A “Reception Centre” is an ‘X’ use in the Mixed Use Zone.  It is acknowledged that the City has previously provided advice to The Little Way in 2019 that informal functions can occur ancillary to the existing ‘Restaurant/café’ land use subject to the following:   * Maximum 50 persons (within the total 120 person seating limit); and * May include sectioning off an area from the general public, but not the entire restaurant.   This advice remains unchanged. |

**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 give regard to the City of Nedlands Local Planning Scheme No. 3 and the *Deemed Provisions*. Similarly, should an applicant be aggrieved by one or more conditions of approval, this can be reviewed by the Tribunal

**Conclusion**

The application for a development description has been presented for Council consideration due to being an ‘A’ use class permissibility and objections being received. The proposal is not considered to achieve the objectives of the Mixed Use zone and may result in adverse impact to the amenity of the area and neighbouring properties in relation to noise and parking.

Though the total number of 120 patrons is not proposed to increase, the addition of a covered structure to the rear of the site will increase the use of this area. This brings sustained noise generating activities closer to the residential zones to the rear, which will impact residential amenity. Further, the extended use of the rear of the site and the patio will preclude any potential for future car parking and vehicle access. Accordingly, it is recommended that the application be refused by Council.

**Further Information**

**Question**

Councillor Mangano – Is the patio compliant with the setback requirements?

**Officer Response**

There are no stipulated compliant setbacks for commercial development. In terms of bulk and scale, the patio is considered to be an acceptable transition to the residential properties.

**Question**

Councillor Amiry – can clarity please be provided on consultation done with immediate neighbours and trading hours.

**Officer Response**

The development application was advertised to landowners and occupiers within a 100m radius of the site. No submissions were receieved from the residential properties in close proxmity to the rear of the site.

The applicant has stated that their current trading hours are:

Monday – Saturday 7:30am – 10:00pm

Sunday: 7:30am – 3:30pm

The existing “Restaurant/Café” planning approval for the site limits operating hours to Monday to Sunday 7:30 – 12 midnight.

The Small Bar liquor license restricts liquor services to the following hours:

Monday – Saturday 6:00am – 12 midnight

Sunday: 10:00am – 12 midnight

# PD46.08.22 Consideration of Development Application – for Eight Grouped Dwellings at 10-12 Taylor Road, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 August 2022 |
| **Applicant** | X Space Architects |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Neighbouring Development Context Map 3. Development Plans 4. Verge Landscaping Plan 5. CONFIDENTIAL ATTACHMENT - Submissions |

**Regulation 11(da) – Not Applicable – Recommendation Adopted**

Moved – Councillor Senathirajah

Seconded – Councillor Youngman

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED 9/2**

**(Against: Crs. Bennett & Mangano)**

**Council Resolution / 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 13 June 2022 for 8 grouped dwellings at 10 and 12 Taylor Road, Nedlands, subject to the following conditions:**

**General Conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 13 June 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 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.**
4. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.**
5. **All car parking dimensions (including associated wheel stops and headroom clearance), manoeuvring areas, ramps, crossovers and driveways shall comply with Australian Standard 2890.1-2004 - Off-street car parking and Australian Standard 2890.6:2009 - Off-street parking for people with disabilities (where applicable) to the satisfaction of the City of Nedlands.**
6. **Prior to occupation of the development, all car parking bays are to be clearly line marked, drained and with visitor parking clearly marked or signage provided, and maintained thereafter by the landowner to the satisfaction of the City of Nedlands**
7. **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**

**Landscaping Conditions:**

1. **Prior to occupation, landscaping shall be completed in accordance with the approved plans dated 13 June 2022, 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.**

**Verge Conditions:**

1. **Prior to occupation, new or modified vehicle crossovers shall be constructed to the City’s specification and thereafter maintained to the satisfaction of the City of Nedlands.**
2. **The street tree(s) within the verge in front of the lot are to be protected and maintained through the duration of the demolition and construction process to the satisfaction of the City of Nedlands. Should the tree(s) die or be damaged, they are to be replaced with a specified species at the owner’s expense and to the satisfaction of the City of Nedlands.**

**Titles Conditions:**

1. **Prior to occupation, 10 and 12 Taylor Road are to be legally amalgamated or alternatively the owner may enter into a legal agreement with the City of Nedlands, drafted by the City’s solicitors at the expense of the owner and be executed by all parties concerned prior to the commencement of the works, to ensure that that the development and use approved on the lots operate concurrently at all times, with reciprocal access rights present across both parent lots.**
2. **Prior to occupation, a notification, pursuant to section 70A of the Transfer of Land Act 1893, shall be placed on the certificate of title for the subject lot. The notification shall be created at the owner/applicants’ expense and lodged with the Registrar of Titles for endorsement. The notification is to state as follows:**

**‘This lot is in the vicinity of a transport corridor and is affected, or may in the future be affected, by road and rail transport noise. Road and rail transport noise levels may rise or fall over time depending on the type and volume of traffic.’**

**The above requirement is a provision outlined in the State Planning Policy 5.4 ‘Road and Rail Noise.’**

**Purpose**

The purpose of this report is for Council to consider a development application for 8 grouped dwellings at 10 and 12 Taylor Road, Nedlands. The development proposal is being presented to Council for consideration due to the number of dwellings exceeding 4 and the proposal receiving an objection within the consultation period.

**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 | 1846m2 (total across 2 lots) |
| Land Use | Grouped Dwellings (8) |
| Use Class | ‘P’ – Permitted Use |

The development is split between two residential lots to the east of Taylor Road. The subject sites are located approximately 100m south of Stirling Highway, each with a 20m lot frontage. The subject sites are east west in orientation, regular in shape and are topographically flat. The subject sites have been cleared of all buildings, structures and vegetation.

The northern neighbouring lot of the development is coded higher than the subject site (R60), having a R160 density code.

To the immediate north of the subject site at 8 Taylor Road (Residential R160), a four-storey, 9 multiple dwellings (apartments) development was approved by Council at the 24 May 2022 Ordinary Council Meeting.

To the immediate south of the subject sites at 14 Taylor Road, a subdivision application for 4 lots has been lodged with the Western Australian Planning Commission.

**Application Details**

The proposed 8 grouped dwellings are two-stories in height and contain three bedrooms and two bathrooms each. The dwellings have been designed to meet the Silver Level Liveable Housing Design standard, with each dwelling containing a lift.

Units 10A and 12A of the proposal are proposed to have independent pedestrian and vehicle access directly from Taylor Road, with the remaining 6 units obtaining access through a common property central driveway. The development proposes a total of three driveways and crossovers to Taylor Road, with a total width of 9.0m across the two original parent lots.

The development includes 2 on-site visitor parking bays located off the central common property access leg and installation of three new street trees within the verge fronting the sites.

Due to the fact that the development is across two lots and each requires reciprocal right of access across the other for vehicle entry, a condition has been included to ensure this access will be put in place in some manner.

**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 an adverse impact on the local amenity and character of the locality.

**Local Planning Scheme No. 3**

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

**Sustainability**

The development proposes multiple sustainability initiatives including:

* Each dwelling will be constructed to exceed a 6 Star NatHERS rating.
* Each dwelling will be provided with a minimum 4.56kw photovoltaic system.
* Waterwise plants are proposed to be installed throughout the development, with extensive use of Australian native tree and plant species.
* Each dwelling will be provided with a 15amp power supply to each garage to accommodate electric vehicle charging infrastructure.

It is important to note that the above exceed the planning framework for R-Codes Volume 1 and can’t be ‘required’ but are welcomed.

**Landscaping**

The landscaping requirements for grouped housing have been largely exceeded throughout the development. The Residential Design Codes require the designation of a single tree planting zone for each residential lot, which would result in a minimum 8 trees being installed across the development. The development proposes a landscaping outcome including the following:

* 10 trees, installed at 2.0m minimum height.
* 16 trees, installed at 1.5m minimum height.
* Various shrubs and smaller plants installed throughout the development site.
* 3 trees proposed to be planted within the verge immediately to the west of the subject site.

Landscaping comprises 12% of the development area.

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

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

The proposed development is seeking a design principle assessment pathway for parts of this proposal relating to lot boundary setbacks, setback of garages and carports and vehicle access. 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 12D of the development proposes a boundary wall to the south, to a maximum height of 3.6m and a first floor with a minimum lot boundary setback of 1.4m. These lot boundary setbacks address the external southern lot boundary of 12 Taylor Road. The neighbouring southern lot, 14 Taylor Road, has received conditional WAPC approval for a 4-lot subdivision.

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 southern boundary wall and first floor southern lot boundary setback are considered to meet the design principles for the following reasons:

* The development satisfies the deemed-to-comply provisions in relation to solar access.
* The proposed ground floor and first floor southern walls feature articulations along their length. The use of articulations within the wall’s design reduces the impact of building bulk by breaking up the mass of built form addressing the southern lot.
* The development satisfies the deemed-to-comply provisions in relation to visual privacy.
* The use of boundary walls on the ground floor makes effective use of the lot’s area, allowing for a uniform terraced housing development outcome fronting the common property driveway. Boundary walls also allow for a functional outdoor living area to the east, inclusive of a significant landscaping component facing external lot boundaries.
* The adjoining southern lot is likely to be re-developed within the immediate future as a subdivision application has been submitted and approved for the creation of 4 lots. The redevelopment of the southern lot will have regard to the buildings on 12 Taylor Road and can design dwellings to respond to the window placement and outdoor living areas of the subject site.
* The proposed lot boundary setbacks and boundary walls are consistent with the site’s density code and a grouped dwelling proposal.

**Clause 5.2.1 – Setback of Garages and Carports**

Units 10A and 12A of the development propose a minimum garage primary street setback of 2.3m to Taylor Road. The garage is proposed to be located in front of the dwelling alignment.

The design principles for the setback of garages consider the impact of garages as viewed along the streetscape, the impact of the proposed garage locations in restricting views of neighbouring dwellings, the appearance of dwellings and the impact of driveways on pedestrian or cycle paths. The proposed garage setbacks of Units 10A and 12A meet the design principles for the following reasons:

* The proposed garage setbacks are consistent with the future streetscape of Taylor Road. Taylor Road has a R-Code of R60, permitting a minimum 2.0m primary street setback. The proposed garage setback of 2.3m responds to the site’s density code and likely future streetscape, considering the approved 4 storey multiple dwelling to the north of the subject site and 4 lot subdivision to the south of the subject site.
* The first floor of Units 10A and 12A are set forward and cantilever over the garage. The vertical articulation of the first floor forward of the garage provides visual interest to the development and reduces the impact of the garages to the streetscape.
* The garages and supporting structures are proposed to be faced with a dark render/materials
* The garages are proposed to occupy a maximum 6.2m (38%) of the lot frontages of Units 10A and 12A. The garages are proposed to be a functional minimum width to provide the parking of two vehicles.
* The impact of the proposed garages to the streetscape is further reduced by tapering the proposed driveway and crossovers to a functional minimum width of 3.0m.
* The development proposes inclusion of heavily landscaped front setback areas immediately adjacent to the proposed garages. These landscaped areas include provision for the installation of two new trees per lot, to be installed at a minimum 2.0m height at the time of installation in addition to smaller trees at the front of each lot. The inclusion of a heavily landscaped front setback area adjacent to the proposed garages reduces the impact of the garages and the development as viewed from the street.

**Clause 5.3.5 – Vehicle Access**

The development proposes independent vehicle access for Units 10A and 12A in addition to a common property driveway located at the centre of the development.

The design principles for vehicle access consider vehicle safety, the impact of the access points on the streetscape, legible access and landscape features. The proposed vehicle access arrangements meet the design principles for the following reasons:

* The development has kept driveways and crossovers to a functional minimum width of 3.0m per lot, with the total combined access width of 9.0m fronting to Taylor Road, across a 40m frontage.
* The development proposes the inclusion of significant landscaping within the front setback area of the front units and common property. Seven new trees are proposed to be planted at the front of the development in addition to three new street trees being installed within the verge to the west of the subject sites. The inclusion of significant landscaping at the front of the development and additional street trees assists in minimising the impacts of additional vehicle access points from the development and softens the development’s interface to the street.
* The design of the development presents as two single houses as viewed from the street, with Units 10A and 12A having independent vehicle and pedestrian access from Taylor Road. The remaining units are serviced by a single access leg located in the middle of the development and are obscured from Taylor Road by the front two units. Provision of individual access for the front units assists in providing a consistent streetscape and legible access for the development.

**Consultation**

The application is seeking assessment under the design principles of the R-Codes for lot boundary setbacks, setback of garages and carports and vehicle access.

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to 20 adjoining properties. The application was advertised for a period of 14 days from 26 April 2022 to 10 May 2022. At the close of the advertising period, one objection was received.

The objection received raised concerns regarding the number of vehicle crossovers proposed as part of the development.

Administration supports the proposed vehicle access arrangements, as the development proposal is consistent with the immediate development context and is unlikely to negatively impact the amenity of adjoining landowners or the streetscape. The use of individual crossovers for Units 10A and 12A allows the development to present as two single houses, which is in keeping with the streetscape. The crossovers and vehicle access points have been restricted to a functional minimum width, not exceeding 9m in total across the whole of the development’s street frontage. The development also proposes significant landscaping within the front setback, and additional trees within the verge. Please see the full assessment under the Discussion section above.

**Strategic Implications**

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

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

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

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

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

**Budget/Financial Implications**

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 8 grouped dwellings has been presented for Council consideration due to the number of dwellings exceeding 4 and the application receiving objections during the consultation period. 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 appropriately interfaces with two other development sites to the north and south of the development sites. The proposal has been assessed and satisfies the design principles of the R-Codes in relation to being consistent with the immediate locality, and future streetscape character.

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

**Further Information**

Nil.

# PD47.08.22 Consideration of Development Application – Single House Additions (Carport) at 14 Waroonga Road, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting - 23 August 2022 |
| **Applicant** | A Ciprian |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Development Plans 2. Aerial Image & Zoning Map 3. CONFIDENTIAL ATTACHMENT – Submission |

**Regulation 11(da) – Not Applicable – Recommendation Adopted**

Moved – Councillor Youngman

Seconded – Councillor Combes

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED 10/1**

**(Against: Cr. Mangano)**

**Council Resolution / 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 1 December 2021 for a carport at 14 Waroonga Road, Nedlands, subject to the following conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 1 December 2021. 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. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.**

**Purpose**

The purpose of this report is for Council to consider a development application for a carport at 14 Waroonga Road, 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 | R12.5 |
| Land area | 923m2 |
| Land Use | Residential – Single House |
| Use Class | ‘P’ Permitted Use |

The site is located at 14 Waroonga Road, Nedlands. The site is relatively flat and features a single storey, single house. The carport is proposed to be erected over an existing uncovered paved car bay.

**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 Volume 1 (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 and contributes to the retention of a mature on-site tree.

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

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

The R-Codes applies 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 relating to setback of carports. As required by the R-Codes, Council when assessing the proposal against the design principles, should not apply the corresponding deemed-to-comply provisions. All other areas meet the deemed-to-comply provisions.

**Clause 5.2.1 Setback of garages and carports**

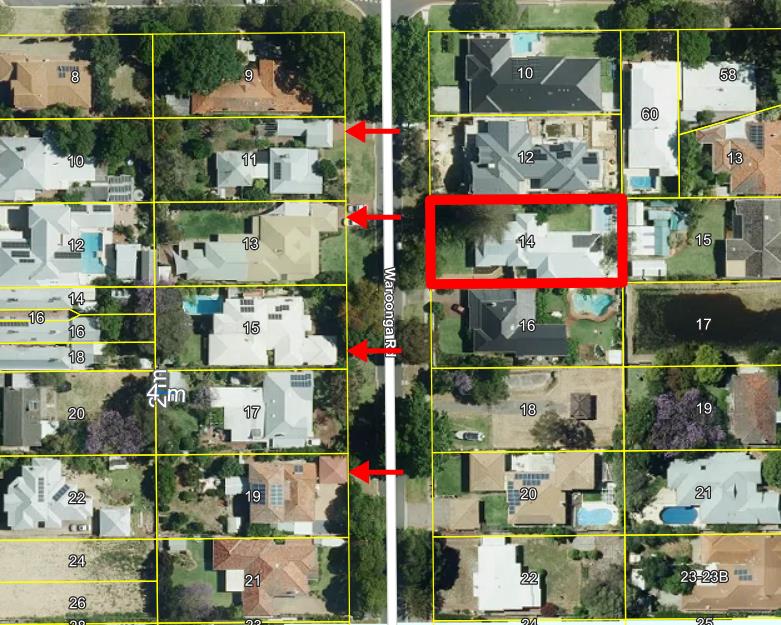
The design principles for carport setbacks include that they maintain clear sightlines along the street, not obstruct views of the dwelling and contribute positively to the streetscape. The carport is supported for the following reasons:

* The carport is setback 2.0m from the front lot boundary in order to retain a large pine tree on site. This mature tree (Figure 1) can be seen from the street and contributes positively to the character of the area. The carport maintains a distance of 2.2m from the base of the tree which is consistent with the general recommendation that structures are setback 2.0m from trees to protect their health.



***Figure 1*** *: Existing crossover and tree*

* The carport is consistent with the established streetscape (Figure 2). There are several lots in the vicinity with roofed structures set closer to the street than the 3.5m provision. These setbacks range from nil to 3.0m. Most notably, the lot directly across the road at 13 Waroonga Road features a carport set back 2.0m from the street.



**Figure 2**: Aerial image indicating existing roofed structures within the street setback along the street

* The carport is set back sufficiently to maintain sightlines along the street. The proposed setback and the 6.5m verge between the property and the road ensures vehicles and pedestrians have a clear view.
* The carport will not obscure the view of the dwelling from the street. The carport comprises only 30% of the lot frontage, has no wall or door, and will be placed along the northern boundary, allowing an unobstructed view of the house from Waroonga Road.

**Consultation**

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to 17 adjoining owners and occupiers. The application was advertised for a period of 14 days from 9 February 2022 to 23 February 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. The carport’s setback from the street should achieve the deemed-to-comply provision.

Development can either achieve the deemed-to-comply provisions or satisfy the design principles of the R-Codes Volume 1. The design principles for the carport are discussed above.

1. The carport’s street setback will negatively impact the street and adjoining properties.

The development proposal is seeking a judgement of merit for street setback. Please see above for the assessment. It should be noted that there are other roofed structures less than 3.5m from the front boundary in Waroonga Road.

**Strategic Implications**

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

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

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

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

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

**Budget/Financial Implications**

Nil.

**Legislative and Policy Implications**

Council is requested to make a decision in accordance with clause 68(2) of the [Deemed Provisions](https://www.wa.gov.au/system/files/2021-09/PD-Planning-and-Development-Local-Planning-Schemes-Regulations-2015-00-i0-01_0.pdf). Council may determine to approve the development without conditions (cl.68(2)(a)), approve with development with conditions (cl.68(2)(b)), or refuse the development (cl.68(2)(c)).

**Decision Implications**

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

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

**Conclusion**

The application for a carport at 14 Waroonga Road, Nedlands has been presented for Council consideration due to an objection being received. The proposal has been assessed and satisfies the design principles of the R-Codes and is consistent with the immediate locality and streetscape character.

The objection received contends that the carport will have a negative impact on the street. An assessment against the design principles has identified that the proposal can be supported given it does not detract from the street, facilitates the retention of an on-site tree and is consistent with an established streetscape that features roofed structures with minimal setbacks from the front boundary.

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

**Further Information**

Nil.

# PD48.08.22 Consideration of Development Application – Removal of Approval Condition and Change to Approved Plans at 22 Vincent Street, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 August 2022 |
| **Applicant** | R Dawson |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans |

**Regulation 11(da) – Not Applicable – Recommendation Adopted**

Moved – Councillor Smyth

Seconded – Councillor Combes

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED 8/3**

**(Against: Crs. Bennett Mangano & Youngman)**

**Council Resolution / Recommendation**

**In accordance with Clause 77(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, Council approves the amendment to 5 grouped dwellings at Lot 206 (No. 22) Vincent Avenue, as shown in red on plans dated 9 June 2022, subject to the same conditions as the original approval except where modified below:**

**A. Condition 14 be amended as follows:**

**14. All balcony balustrades, except for those on House 01 (Lot 206), shall be either opaque material or frosted glass.**

**All other conditions will remain as per the original determination.**

**Purpose**

The purpose of this report is for Council to consider an amendment to a previous development approval at 22 Vincent Street, Nedlands for 5 grouped dwellings. The applicant seeks amendments only to the house on the corner (shown on plans as House 01 - Lot 206) Vincent Street, for the following:

* Street fencing along the Jenkins Avenue and Vincent Street elevation.
* Removal of the requirement to have opaque glazing or frosted glass on the balcony balustrades, which was imposed as part of condition 14 of the original approval.

**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 | 234m2 |
| Land Use | Residential – Single House |
| Use Class | ‘P’ – Permitted Use |

The site is located at Lot 206 (No. 22) Vincent Street, Nedlands, which is a corner lot. The site has a primary frontage to Jenkins Avenue and a secondary frontage to Vincent Street.

The site has a fall of 1.5m from the north-eastern corner to the south-western corner of the lot.

**History**

The original application (Ref DA20-55087) included five grouped dwellings on one development application. At the 25 May 2021 Ordinary Council Meeting, Council resolved to approve the development subject to a number of conditions. Condition 14 states:

14. All balcony balustrades shall be either opaque material or frosted glass.

The balcony balustrades of all five houses front Jenkins Avenue to the south. House 01 (Lot 206), the subject site, also has a small portion of balcony balustrade facing Vincent Street to the west.

Since the original approval, the lot has been subdivided into five lots (one per dwelling). All dwellings are currently under construction.

**Application Details**

The application seeks an amendment to the design of the primary and secondary street fencing along Jenkins Avenue and Vincent Street. The fencing meets the deemed-to-comply provisions of the R-Codes and the City’s Residential Development Policy and is not the subject of this report as it does not require development approval.

The application also seeks the modification of Condition 14, which relates to the balcony balustrading having either an opaque glazing or frosted glass. The application seeks to modify the condition as it relates to House 01 (Lot 206) only as no other lots are party to this application.

Houses 02-05 (Lots 207-210) are the subject of a separate application (Reference DA22-79513).

**Discussion**

**Assessment of Statutory Provisions**

It is recommended that the application be approved by Council as it is considered to satisfy the deemed-to-comply provisions of the State Planning Policy 7.3: Residential Design Codes (R-Codes), relating to street fencing and visual privacy. There is no discretion being sought by this application to the deemed to-comply provisions 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 the streetscape and visual privacy.

**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. This application meets all the relevant deemed to-comply provisions relating to street fencing and visual privacy. Therefore, a design principle assessment is not required.

**Condition 14**

The application proposes the modification of condition 14 to make it not relate to House 01 (Lot 206). The condition states: “All balcony balustrades shall be either opaque material or frosted glass.”

The removal of Condition 14 from House 01 (Lot 206) is supported for the following reasons:

* The balustrades directly front Jenkins Avenue and Vincent Street and overlook the public realm.
* The cone of vision will be confined to the street and there is no overlooking into any other residential property behind the street setback area. The nearest residential lot across the street is more than 23 metres from the balcony of Lot 206.
* Passive surveillance from the balcony onto Jenkins Avenue is a positive outcome, as it is generally a good planning principle to promote safety through providing opportunities for ‘eyes on the street’.
* The intent of Condition 14 was to protect privacy of the lot across the street to the south. This intent would be unaffected by this amendment given the large separation distance between the balcony and the next closest residential lot across the street.
* There is already an existing condition on the approval (Condition 7) which addresses visual privacy screening and requires screening and obscure glass when required by the R-Codes directly facing residential properties.

**Consultation**

The application is not seeking assessment under the design principles of the R-Codes. All relevant deemed to-comply provisions of the R-Codes have been met by this application. In accordance with the City’s Consultation Policy, no advertising was conducted as there is no discretion being sought by the proposed amendments.

**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**

Should Council refuse to amend Condition 14 and the applicant seeks review from the State Administrative Tribunal, the City may be responsible for legal fees to defend its decision. Based on recent State Administrative Tribunal cases, costs of $30,000 to $50,000 can be anticipated depending on the complexity of the matter.

**Legislative and Policy Implications**

Council is requested to make a decision in accordance with clause 77(4) 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.77(4)(a)), approve with development with conditions (cl.77(4)(b)), or refuse the development (cl.77(4)(c)).

**Decision Implications**

If Council resolves to approve the proposal, development can proceed after receiving an amended 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. In this case, the application is not seeking any discretion to the deemed-to-comply provisions of the R-Codes.

**Conclusion**

The application for amendments to the street fencing and the modification of Condition 14 at 22 Vincent Street, Nedlands, has been presented for Council consideration due to the proposal being an amendment to a previous application which was determined by Council.

The proposal satisfies all the relevant deemed-to-comply provisions of the R-Codes relating to street fencing and visual privacy. There is no discretion being sought by the proposal. Moreover, street surveillance is seen as a positive outcome by the R-Codes and visual privacy meets the deemed-to-comply provisions of the R-Codes.

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

**Further Information**

Nil.

# PD49.08.22 Consideration of Development Application – Removal of Approval Condition at 13, 15, 17 and 19 Jenkins Avenue, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 August 2022 |
| **Applicant** | Coastview Australia Pty Ltd |
| **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 |

Moved – Councillor Senathirajah

Seconded – Councillor Amiry

In accordance with Clause 77(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, Council approves the amendment to 5 grouped dwellings at Lots 207-210 (Nos. 13-19) Jenkins Avenue dated 25 May 2021 (DA20-55087) as shown on the plans dated 19 July 2022 subject to the same conditions as the original approval except where modified below:

A. Condition 14 be amended as follows:

14. All balcony balustrades, except for Balcony 1 on the ground floor on Houses 02-05 (Lots 207-210), shall be either opaque material or frosted glass.

Lost 4/7

(Against: Mayor Argyle Crs. Brackenridge Coghlan Smyth

Bennett Mangano & Youngman)

**Regulation 11(da) - Council considered that its previous decision to impose the condition in relation to the opaque or frosted glass ought to remain to protect the amenity and streetscape of the location**.

Moved – Councillor Youngman

Seconded – Mayor Argyle

**Council Resolution**

**In accordance with Clause 68(2)(c) of the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015,* Council refuses the amendment to 5 grouped dwellings at Lots 207-210 (Nos. 13-19) Jenkins Avenue dated 25 May 2021 (DA20-55087) as shown on the plans dated 19 July 2022, for the following reasons:**

1. **Condition 14 of the approval dated 25 May 2021 remains valid, so to protect and enhance local character and amenity in accordance with the aims of Local Planning Scheme No. 3.**
2. **Condition 14 of the approval dated 25 May 2021 remains valid so to as ensure the development maintains compatibility with the desired streetscape in accordance with the objectives of the Residential zone.**

**CARRIED 7/4**

**(Against: Crs. Senathirajah Amiry Combes & Hodsdon)**

Recommendation

In accordance with Clause 77(b) of the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015,* Council approves the amendment to 5 grouped dwellings at Lots 207-210 (Nos. 13-19) Jenkins Avenue dated 25 May 2021 (DA20-55087) as shown on the plans dated 19 July 2022 subject to the same conditions as the original approval except where modified below:

A. Condition 14 be amended as follows:

14. All balcony balustrades, except for those on Houses 02-05 (Lots 207-210), shall be either opaque material or frosted glass.

All other conditions will remain as per the original determination.

**Purpose**

The purpose of this report is for Council to consider an amendment to a previous development approval. This application seeks the removal of condition 14 of the original development approval which requires the balcony balustrades to have opaque glazing or frosted glass. This application relates only to the dwellings at 13, 15, 17 and 19 Jenkins Avenue, 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 | Ranges from 191m2 to 203m2 |
| Land Use | Residential – Single House |
| Use Class | ‘P’ – Permitted Use |

The subject sites are located at 13, 15, 17 and 19 Jenkins Avenue, Nedlands. All properties have a primary frontage to Jenkins Avenue.

**History**

The original application (Ref DA20-55087) included five grouped dwellings on one development application. At the 25 May 2021 Ordinary Council Meeting, Council resolved to approve the development subject to a number of conditions. Condition 14 states:

14. All balcony balustrades shall be either opaque material or frosted glass.

Since the original approval, the lot has been subdivided into five lots (one per dwelling).

The balcony balustrades of all dwellings front onto Jenkins Avenue to the south. All dwellings are currently under construction.

**Application Details**

The application seeks the removal of Condition 14, which relates to the balcony balustrading having either an opaque glazing or frosted glass. The application seeks the removal of Condition 14 for the following properties:

* Lot 210 (No. 13) Jenkins Avenue, Nedlands (House 5);
* Lot 209 (No. 15) Jenkins Avenue, Nedlands (House 4);
* Lot 208 (No. 17) Jenkins Avenue, Nedlands (House 3) and
* Lot 207 (No. 19) Jenkins Avenue, Nedlands (House 2)

Lot 206 (No. 22 – House 1) forms part of a separate application (Reference DA22-78292).

**Discussion**

**Assessment of Statutory Provisions**

It is recommended that the application be approved by Council as it is considered to satisfy the deemed-to-comply provisions of the State Planning Policy 7.3: Residential Design Codes (R-Codes) relating to visual privacy. There is no discretion being sought by this application to the deemed to-comply provisions 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 visual privacy.

**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. This application meets all the relevant deemed-to-comply provisions relating to visual privacy. Therefore, a design principle assessment is not required.

**Condition 14**

The condition states: “All balcony balustrades shall be either opaque material or frosted glass.”

The removal of Condition 14 from the properties at 13, 15, 17 and 19 Jenkins Avenue, Nedlands is supported for the following reasons:

* The balustrades directly front Jenkins Avenue and overlook the public realm.
* The cone of vision will be confined to the street and there is no overlooking into any other residential property behind the street setback area.
* Passive surveillance from the balcony onto Jenkins Avenue is a positive outcome, as it is generally a good planning principle to promote safety through providing opportunities for ‘eyes on the street’.
* The intent of Condition 14 was to protect privacy of the lot across the street to the south. This intent would be unaffected by this amendment given the large separation distance between the balcony and the next closest residential lot across the street.
* There is already an existing condition on the approval (Condition 7) which addresses visual privacy screening and requires screening and obscure glass when required by the R-Codes directly facing residential properties.

**Consultation**

The application is not seeking assessment under the design principles of the R-Codes. All relevant deemed to-comply provisions of the R-Codes have been met by this application. In accordance with the City’s Consultation Policy, no advertising was conducted as there is no discretion being sought by the proposed amendments.

**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**

Should Council refuse to remove Condition 14 and the applicant seeks review from the State Administrative Tribunal, the City may be responsible for legal fees to defend its decision. Based on recent State Administrative Tribunal cases, costs of $30,000 to $50,000 can be anticipated depending on the complexity of the matter.

**Legislative and Policy Implications**

Council is requested to make a decision in accordance with clause 77(4) 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.77(4)(a)), approve with development with conditions (cl.77(4)(b)), or refuse the development (cl.77(4)(c)).

**Decision Implications**

If Council resolves to approve the proposal, development can proceed after receiving an amended 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. In this case, the application is not seeking any discretion to the deemed-to-comply provisions of the R-Codes.

**Conclusion**

The application seeks approval for the removal of Condition 14 from the properties at 13, 15, 17 and 19 Jenkins Avenue, Nedlands. The application has been presented for Council to consider due to the proposal being an amendment to a previous application which was determined by Council.

The proposal satisfies all the relevant deemed-to-comply provisions of the R-Codes relating to visual privacy. There is no discretion being sought by the proposal. Moreover, street surveillance is seen as a positive outcome by the R-Codes and visual privacy meets the deemed-to-comply provisions of the R-Codes.

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

**Further Information**

**Question**

Councillor Coghlan – Please confirm what is being constructed at the north of the site?

**Officer Response**

Three group dwellings have been approved at No 20 Vincent Street. These are 2 storey dwellings with courtyards to the south, matching a similar design to the dwellings fronting onto Jenkins Street.

**Question**

Councillor Smyth – what weight should be given to the contractual agreement the owners have with the builders?

**Officer Response**

Council is required to make a planning decision. Contractual agreements between present/previous owners, builders/developers are civil matters which are not relevant to the Council planning decision making function. Council should give no weight to any contractual arrangements which may or may not have existed.

Officers note that the primary living area of the dwellings (kitchen, living and dining) are all located on the ground floor and have an opening to the balcony on the ground floor (Balcony 1). The balustrading on the ground floor balcony if clear glass would provide an outlook from the primary living area, onto the street.

The ground floor balconies have a finished floor level of approximately 2.5 metres above the road level, this is because the undercroft parking is sunken into the property. For context, generally balconies on an upper floor have a finished floor level least 3 metres above the road level.

The provision of opaque or frosted glass on the balconies is not supported by the Residential Design Codes and will be difficult to successfully defend at the State Administrative Tribunal. Thus Council may wish to consider that the ground floor balcony balustrading be clear glass, whilst the balcony on the first floor would still be required to have an opaque material or frosted glass on the balustrading.

If Council wished to approve the application for the balustrades to the opaque only on the first floor balcony, wording of the Council resolution should be as follows:

**In accordance with Clause 77(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, Council approves the amendment to 5 grouped dwellings at Lots 207-210 (Nos. 13-19) Jenkins Avenue dated 25 May 2021 (DA20-55087) as shown on the plans dated 19 July 2022 subject to the same conditions as the original approval except where modified below:**

**A. Condition 14 be amended as follows:**

**14. All balcony balustrades, except for Balcony 1 on the ground floor on Houses 02-05 (Lots 207-210), shall be either opaque material or frosted glass.**

# PD50.08.22 Consideration of Development Application – Additions to a Single House at 93 Victoria Avenue, Dalkeith

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 August 2022 |
| **Applicant** | Ross McAndrew Architect |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans 3. CONFIDENTIAL ATTACHMENT – Submissions 4. Amended Development Plans dated 11 August |

Councillor Coghlan left the room at 7.37 pm.

**Regulation 11(da) – Not Applicable – Revised Officer Recommendation Adopted**

Moved – Councillor Youngman

Seconded – Councillor Combes

**That the Revised Officer Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED UNANIMOUSLY 10/-**

**Council Resolution / Revised Officer Recommnendation**

**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 11 August 2022 for additions to a single house at 93 Victoria Avenue, Dalkeith, subject to the following conditions:**

1. **The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
2. **Prior to the issue of a demolition permit and a building permit, a Demolition or Construction Management Plan (as appropriate) shall be submitted and approved to the satisfaction of the City. The approved Demolition and Construction Management Plans shall be observed at all times throughout the construction and demolition processes to the satisfaction of the City.**
3. **Prior to occupation of the development the external finish of the parapet walls is to be the same standard as the rest of the development in:**

**a. Face brick;**

**b. Painted render;**

**c. Painted brickwork; or**

**d. Other clean material as specified on the approved plans;**

**and maintained thereafter to the satisfaction of the City of Nedlands.**

1. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**
2. **All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite.**

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 26 July 2022 for additions to a single house at 93 Victoria Avenue, Dalkeith, subject to the following conditions:

1. The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.
2. Prior to the issue of a demolition permit and a building permit, a Demolition or Construction Management Plan (as appropriate) shall be submitted and approved to the satisfaction of the City. The approved Demolition and Construction Management Plans shall be observed at all times throughout the construction and demolition processes to the satisfaction of the City.
3. Prior to occupation of the development the external finish of the parapet walls is to be the same standard as the rest of the development in:

a. Face brick;

b. Painted render;

c. Painted brickwork; or

d. Other clean material as specified on the approved plans;

and maintained thereafter to the satisfaction of the City of Nedlands.

1. All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.
2. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite.

**Purpose**

The purpose of this report is for Council to consider a development application for additions to a single house at 93 Victoria Avenue, Dalkeith.

**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 | R10 |
| Land area | 1248m² |
| Land Use | Residential – Single House |
| Use Class | ‘P’ – Permitted Use |

The site is located at 93 Victoria Avenue, Dalkeith and has a single-storey house on the lot, which is to be retained.

The site is a corner lot, bound by Victoria Avenue to the west, Philip Road to the north and Silvereye Lane to the east. The site is 1248m² and relatively flat. The lot is rectangular in shape, albeit slightly irregular with a 20.1m frontage to Victoria Avenue and a 25m frontage to Silvereye Lane at the rear.

**Application Details**

The application seeks development approval for additions to a single house at 93 Victoria Avenue, Dalkeith. A ground floor extension to the garage is proposed, allowing for an increase from 2 to 3 car bays and additional storage area. Upper floor additions are also proposed, including alterations to the existing loft above the garage to turn it into a bedroom, and a new sitting room and bathroom located over the ground floor storage area.

Amended plans were submitted reducing the height of the boundary wall from 2.9m to 1.8m high in response to submissions.

**Discussion**

**Assessment of Statutory Provisions**

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

**Local Planning Scheme No. 3**

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

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

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

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

**Clause 5.1.2 – Street setback**

On the ground floor, the wall to the storage area proposes a 1.8m setback to the secondary street (eastern lot boundary). The design principles for street setbacks consider the established streetscape and providing adequate privacy and open space for dwellings. The proposed secondary street setback is considered to meet the design principle as:

* The existing building has a 1.8m setback from the laneway. The portion of this building facing the laneway remains predominantly the same except for the addition of a bike storage area along the southern boundary. The remainder of the building is already in place and is only proposed to be converted from a storage area to a third car bay.
* The storage area is consistent with the established laneway streetscape. Four of the six properties backing on to the laneway (including the existing garage on the subject site) have buildings located within their respective secondary street setback areas.
* Locating the storage area along the southern boundary and near the secondary street does not compromise open space to the outdoor living area and swimming pool area of the subject site.
* When viewed from the laneway, the dominance of the storage area wall is reduced as it is setback in line with the existing garage and proposes a similar wall height to the garage.

**Clause 5.1.3 – Lot Boundary Setback**

On the ground floor, the storage area wall proposes a nil setback to the southern lot boundary. The design principles for lot boundary setbacks consider the impact of building bulk on adjoining properties, providing adequate sun and ventilation and minimising overlooking. The proposed southern lot boundary setback is considered to meet the design principles for the following reasons:

* The new boundary wall is 1.8m in height which is the typical height of a dividing fence. Therefore, the impact of the bulk of the wall is comparable to a standard dividing fence.
* The remainder of the building is set back in accordance with the deemed-to-comply provisions.
* The boundary wall allows for more effective of use of the garage and storage space. The reduced setback allows for additional vehicle parking space and areas for utilities.
* The enclosure of the storage area ensures privacy between the landowners and the adjoining landowners at 95 Victoria Avenue. The solidity of the boundary wall and absence of windows prevents any overlooking.
* The boundary wall does not compromise direct sunlight for the adjoining property to the south. The shadow cast from the boundary wall does not result in any significant overshadowing of the adjoining lot, especially as compared to the shadow cast from the existing garage and proposed upper floor addition.
* Ventilation to the adjoining lot is maintained due to the varying setbacks between the ground and upper floor. The upper floor is setback 1.3m from the southern lot boundary.

**Consultation**

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to two adjoining properties. The application was advertised for a period of 14 days from 29 April 2022 to 13 May 2022. At the close of the advertising period, one objection was received. Following the objection, the applicant submitted amended plans, reducing the height of the boundary wall from 2.9m to 1.8m high. Notwithstanding this, the objection stands.

The following is a summary of the concerns/comments raised in relation to the amended plans and the officer response and recommended action taken in relation to each issue:

1. Concerns with the bulk and scale of the boundary wall along the southern boundary.

Amended plans were received, which reduced the height of the boundary wall to the south. The boundary wall is now 1.8m in height which is equivalent to the height of a standard dividing fence.

Officers support the proposed boundary wall as the development proposal is unlikely to negatively impact the amenity of the adjoining landowner to the south or the streetscape. Please see the report above for further details.

1. The development proposes significant overshadowing to the back garden of the adjoining lot to the south.

The development achieves the deemed-to-comply provisions of the R-Codes in relation to solar access for adjoining sites. The shadow cast from the boundary wall does not result in any significant overshadowing of the adjoining lot. Additionally, when measuring overshadowing as per the R-Codes, boundary fence shadows are excluded from the calculations. This effectively results in the boundary wall having no impact on overshadowing calculations to the adjoining lot.

1. The development proposes an overwhelming 7-metre-high brick structure over 13 metres long, with a prominent sloping tiled roof.

The 7-metre-high portion of building is not located on the boundary. Rather, it has a setback ranging from 1.3m to 1.9m and exceeds the deemed-to-comply provisions of the R-Codes. The overall height achieves the Residential Development Local Planning Policy in relation to wall and roof height.

The development proposes multiple articulations when viewed from the southern elevation. The bulk of the building is set back from the boundary, and the sloping roof has been designed to be in keeping with the existing roof materiality and colour of the garage.

1. Concerns with stormwater run-off into the adjoining backyard.

The boundary wall includes a gutter to catch stormwater runoff. If development approval is granted, stormwater will be required to be contained on the subject lot in accordance with both planning and building legislation.

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

The proposed nil setback is supported as the development proposal is unlikely to negatively impact the amenity of the adjoining landowner. If the storage area were setback 1m to the southern lot boundary, the wall could be increased to a height of 3.5m and still achieve the deemed-to-comply provisions of the R-Codes in relation to lot boundary setbacks. The relative impact on the adjoining landowner of a 1.8m high boundary wall is less than the impact of a 3.5m high wall setback 1m from the southern lot boundary.

**Strategic Implications**

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

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

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

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

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

**Budget/Financial Implications**

Nil.

**Legislative and Policy Implications**

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

**Decision Implications**

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

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

**Conclusion**

The application for additions to a single house at 93 Victoria Avenue, Dalkeith has been presented for Council consideration due to an objection 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 consistency with the immediate locality and streetscape character, and minimal impacts to adjoining properties.

The objection received relates to the impact of building on the boundary, overshadowing, building bulk and stormwater. An assessment against the design principles has identified that the proposal can be supported given the characteristics of the site and the affected property.

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

**Further Information**

**Question**

Request for amended plans to be included.

**Officer Response**

Amended plans were received 11 August 2022 relating to the addition of a box gutter to address concerns raised by the adjoining landowners at 95 Victoria Avenue (see Attachment 4).

The boundary wall to the southern boundary involves a box gutter design. The box gutter is located internally between the sloping roof of the store room and the boundary wall. A box gutter ensures appropriate drainage flow is maintained. The box gutter is concealed from view and located behind the boundary wall, when viewed from the south elevation.

The box gutter is setback from the southern lot boundary. This will ensure runoff is contained on site and will prevent any spillage onto the adjoining lot.

A revised officer recommnedation is submitted to reflect the amended plans.

**Revised officer recommnendation**

**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 11 August 2022 for additions to a single house at 93 Victoria Avenue, Dalkeith, subject to the following conditions:**

1. **The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
2. **Prior to the issue of a demolition permit and a building permit, a Demolition or Construction Management Plan (as appropriate) shall be submitted and approved to the satisfaction of the City. The approved Demolition and Construction Management Plans shall be observed at all times throughout the construction and demolition processes to the satisfaction of the City.**
3. **Prior to occupation of the development the external finish of the parapet walls is to be the same standard as the rest of the development in:**

**a. Face brick;**

**b. Painted render;**

**c. Painted brickwork; or**

**d. Other clean material as specified on the approved plans;**

**and maintained thereafter to the satisfaction of the City of Nedlands.**

1. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**
2. **All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite.**

# PD51.08.22 Consideration of Development Application – Four Multiple Dwellings at 43 Napier Street, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 August 2022 |
| **Applicant** | Matt Buckley Designs |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans 3. R-Codes Assessment 4. CONFIDENTIAL ATTACHMENT – Submissions |

**Regulation 11(da) – Not Applicable – Recommendation Adopted**

Moved – Councillor Brackenridge

Seconded – Councillor Combes

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED 8/2**

**(Against: Crs. Bennett & Mangano)**

**Council Resolution / 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 1 July 2022 for four multiple dwellings at 43 Napier Street, Nedlands, subject to the following conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 1 July 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. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.**

**Engineering and Design**

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 and demolition processes to the satisfaction of the City.**
2. **Prior to the issue of a building permit, a minimum of 20% units (1 unit) are to be designed at building permit stage to the Silver Level requirements as defined in the Liveable Housing Design Guidelines (Liveable Housing Australia) and implemented prior to occupation to the satisfaction of the City of Nedlands.**
3. **Prior to the issue of a building permit, amended plans are to be submitted demonstrating that:**
4. **Ground floor air conditioning units are not visible from the street.**
5. **Upper floor air conditioning units are located near the centre of the roof so as to be visually unobtrusive from adjoining lots.**
6. **Utilities, including fire pumps and metre boxes, are accessible and integrated into the design of the building and landscaping.**

**The above is to the satisfaction of the City of Nedlands.**

1. **Prior to the issue of a building permit and the commencement of excavation works, a Dilapidation Report shall be submitted to the City of Nedlands and the owners of the adjoining properties listed below detailing the current condition and status of all buildings (both internal and external together with surrounding paved areas and rights of ways), including ancillary structures located upon these properties:**

* **Lot 87 (No. 41) Napier St, Nedlands**
* **Lot 85 (No. 45) Napier St, Nedlands**
* **Lot 128 (No. 42) Loftus St, Nedlands**
* **Lot 129 (No. 44) Loftus St, Nedlands**
* **Lot 130 (No. 46) Loftus St, Nedlands**

**In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant must demonstrate in writing to the satisfaction of the City of Nedlands that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed.**

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

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

**Landscaping**

1. **Prior to occupation, an amended landscaping plan shall be submitted providing species selection and demonstrating sufficient soil depth to support healthy plant growth based on Table 4.12 of the R-Codes Volume 2 to the satisfaction of the City of Nedlands.**
2. **Prior to occupation, landscaping shall be completed in accordance with the amended plans 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.**
3. **The street tree(s) within the verge in front of the lot are to be protected and maintained through the duration of the demolition and construction processes to the satisfaction of the City of Nedlands. Should the tree(s) die or be damaged, they are to be replaced with a specified species at the owner’s expense and to the satisfaction of the City of Nedlands.**
4. **Prior to the issue of a Building Permit, an Arborist report is to be prepared and submitted to the City identifying tree protection strategies for the retained trees on site and neighbouring vegetation within 3m of the development site. The recommendations contained within the report must be complied with at all times to the satisfaction of the City of Nedlands.**
5. **Prior to occupation, all communal and private open space areas with landscaping shall include a tap connected to an adequate water supply for the purpose of irrigation.**

**Acoustics and Visual Privacy**

1. **Prior to the issue of a Building Permit the applicant is to lodge with the City of Nedlands an acoustic report prepared by a suitably qualified and licensed acoustic consultant demonstrating compliance of mechanical plants with the requirements of the *Environmental Protection (Noise) Regulations* *1997* to the satisfaction of the City of Nedlands.**
2. **Prior to occupation, a notification, pursuant to section 70A of the Transfer of Land Act 1893, shall be placed on the certificate of title for the subject lot. The notification shall be created at the owner/applicants’ expense and lodged with the Registrar of Titles for endorsement. The notification is to state as follows:**

**‘This lot is in the vicinity of a transport corridor and is affected, or may in the future be affected, by road and rail transport noise. Road and rail transport noise levels may rise or fall over time depending on the type and volume of traffic.’**

**Sustainability**

1. **Prior to occupation, the recommendations contained within the LBS Sustainable Design Assessment dated 29 April 2022, or any approved modifications, are to be carried out and maintained for the lifetime of the development to the satisfaction of the City of Nedlands.**

**Waste**

1. **Prior to the issue of a Building Permit, a Waste Management Plan is to be prepared and approved to the satisfaction of the City of Nedlands. The Waste Management Plan is to be observed for the lifetime of the development.**

**Parking**

1. **Prior to occupation of the development, all car parking bays and visitor bicycle bays are to be clearly line marked, drained and with visitor car parking clearly marked or signage provided, and maintained thereafter by the landowner to the satisfaction of the City of Nedlands.**
2. **All car parking dimensions (including associated wheel stops and headroom clearance), manoeuvring areas, ramps, crossovers and driveways shall comply with Australian Standard 2890.1-2004 - Off-street car parking and Australian Standard 2890.6:2009 - Off-street parking for people with disabilities (where applicable) to the satisfaction of the City of Nedlands.**
3. **Prior to occupation, all bicycle racks shall be provided and installed to the satisfaction of the City of Nedlands and maintained for the lifetime of the development.**

**Screening and Lighting**

1. **Prior to occupation, all air-conditioning plant, satellite dishes, antennae and any other plant and equipment to the roof of the building shall be located or screened to the satisfaction of the City of Nedlands.**
2. **Prior to occupation, an external lighting plan must be submitted and approved by the City of Nedlands. The lighting is to be designed and located to prevent any increase in light spill onto the adjoining properties in accordance with Australian Standard 4282 – Control of Obtrusive Effects of Outdoor Lighting.**

**Purpose**

The purpose of this report is for Council to consider a development application for four multiple dwellings with a basement at 43 Napier Street, 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 | 696m2 |
| Land Use | Residential – Multiple Dwellings |
| Use Class | ‘P’ – Permitted Use |

The site is located at 43 Napier Street, Nedlands. The lot is rectangular in shape, has a 15m frontage and a total area of 696m2. The site is relatively flat. The property is currently occupied by a single storey house with a freestanding carport.

**Application Details**

The application seeks development approval for the construction of a two storey building consisting of four multiple dwellings with basement car parking. Vehicle access will be obtained from a ramped driveway located along the south of the site which leads to parking in the basement. All resident parking, visitor parking, resident stores and bin stores are located within the basement.

**Discussion**

**Assessment of Statutory Provisions**

The proposal has been assessed against all relevant legislative requirements including Local Planning Scheme No.3 (LPS3), Residential Design Codes Volume 2 – Apartments (R-Codes) and Local Planning Policies.

The development achieves the Acceptable Outcomes of the Primary Controls of Volume 2 of the R-Codes for the following:

* Building height
* Street setbacks
* Plot ratio
* Building depth
* Building separation

It is noted that under Volume 2 of the R-Codes, development must ultimately meet the Element Objectives, not just the Acceptable Outcomes. This proposal meets the Element Objectives for the above criteria for the following reasons:

* This development presents as a two storey house when viewed from the street.
* The development fits comfortably within the existing streetscape context of predominantly single storey and two storey houses.
* The development provides a gradual transition to a higher density commensurate with the coding while matching the built form of nearby single houses.
* The development is designed so as to not impact adjoining solar collectors, and with side setbacks greater than those which would be deemed-to-comply for a single house of the same size.
* The development includes deep soil area between the house and the primary street boundary to compliment the existing landscaped character of the street.

Please refer to the assessment provided below for side and rear setbacks. A detailed R-Code assessment is also provided within **Attachment 3** to this report.

**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**

The following sustainability initiatives are implemented by the development:

* A minimum NatHERS rating of 6.4 stars and an overall average NatHERS rating of 7.1 stars (compared to the minimum 5 star and average 6 star requirement).
* R4.0 insulation throughout the development
* Waterwise plants
* Solar panels
* Natural cross-ventilation
* Water efficient plumbing fixtures and fittings
* Waterwise landscape reticulation
* Daylight and occupancy sensor lighting for communal areas

**State Planning Policy 7.3 - Residential Design Codes – Volume 2 – Apartments**

The proposal has been assessed against all relevant design elements of the Residential Design Codes Volume 2 – Apartments (R-Codes) which provides a comprehensive basis for the control of residential development. Those elements which require key consideration are detailed below.

**Element 2.4 – Side and rear setbacks**

The side setbacks to the north and south provide adequate separation to the neighbouring properties for the following reasons:

* The side setbacks do not contribute to adverse building bulk given the 2-storey design in lieu of the 3 stories envisaged under the Acceptable Outcomes. The immediate adjoining properties are of a similar bulk and scale proposed by the development.
* The house is similar in bulk and scale to a single house when viewed from the street and adjoining properties.
* The development includes side setbacks that exceeds the deemed-to-comply setbacks that would apply to a single house.
* The development satisfies the acceptable outcomes for visual privacy, with no overlooking of sensitive areas of neighbouring lots.
* The extent of shadow cast to the adjoining site is 39% on 21 June, which is below the 50% deemed-to-comply criteria by the R-Codes Volume 1 for single houses. For the remaining months of the year there is meaningful sunlight to habitable spaces.
* The applicant has demonstrated that solar collectors on the neighbouring southern lot are not affected by shadow cast from the development.

The rear (west) setback appropriately responds to the development’s context and provides adequate separation to adjoining lots.

* The wall closest to the rear boundary consists of a single storey, unenclosed outdoor living area on the ground floor. The remainder of the development provides a 5.3m setback to the ground floor, and 4.7m setback to the upper floor.
* The rear setback provides for an appropriate separation to the adjoining neighbouring property.
* The proposed outdoor living area is open on the side facing the rear, thereby reducing the impact of any perceived building bulk as viewed from neighbouring lots.
* The additional setback of approximately 5m proposed for the majority of the built form of the development responds to the development’s context of predominantly single houses, with large rear setback areas and gardens.
* The rear setback allows for an appropriate deep soil area and the retention of two existing trees on site.
* The proposed setback areas are well landscaped by small trees and supplementary vegetation. At maturity, this landscaping will soften the built form interface with adjoining lots and as viewed from the street.

**Consultation**

The application was advertised for 28 days from 2 May 2022 to 30 May 2022 by the following:

* Letters posted to all landowners and occupiers within a 200m radius of the site;
* A sign on site was installed at the site’s street frontage for the duration of the advertising period;
* An advertisement was published on the City’s website with all documents

relevant to the application made available for viewing during the advertising

period;

* Notice placed in the “Post” local newspaper;
* Posted on the City’s social media platforms; and
* Community information session held on 18 May 2022.

Upon conclusion of advertising, a total of three responses were received objecting to the development. The key concerns in the objections related to:

* Traffic
* Car and bicycle parking
* Landscaping
* Side and rear setbacks
* Façade Design
* Visual privacy

A summary of the key issues raised is provided in the table below:

|  |  |
| --- | --- |
| **Issue Raised** | **Officer comments** |
| **Parking**  Insufficient parking and impacts on the street which will be exacerbated by this development. | **Parking achieves Acceptable Outcomes and is supported**  The development exceeds the Acceptable Outcomes in relation to resident and visitor parking by providing 2 bays for every unit plus an additional visitor bay. |
| **Traffic**  Increased traffic congestion & impacts to safety | **Traffic achieves Acceptable Outcomes and is supported**  The development will increase traffic comparatively to that generated by the existing single house on the property. However, the density is consistent with the grouped dwellings approved on similarly coded sites in other areas of the City. The development is also consistent with the site’s density coding and the expected traffic generated comparative to that density. |
| **Noise**  Location of air-conditioning units, compactor and other services to be modelled as part of the proposal. | **Noise achieves Acceptable Outcomes subject to conditions and is supported**  A revised Acoustic Report is recommended in the event the applicant is approved. This is to demonstrate the development meets the noise requirements, including in relation to mechanical noise and is to be undertaken prior to the issue of a Building Permit. |
| **Setbacks**  Insufficient side and rear setbacks | **Setbacks achieve Element Objectives and are supported**  The development proposal meets the Element Objectives in relation to side and rear setbacks. The bulk and scale is comparable to a single house, but the development exceeds the setbacks of the deemed-to-comply provisions of Volume 1 of the R-Codes for single houses. Refer to the Planning Assessment section of this report. |
| **Landscaping and deep soil areas**  Insufficient landscaping provided. | **Landscaping** **achieves Acceptable Outcomes and is supported**  The development proposal exceeds the Acceptable Outcomes by providing 16% deep soil area in lieu of 7%. The development also proposes the retention of 2 trees at the rear of the site plus planting of 6 additional trees and softscaping. |
| **Plot ratio**  Plot ratio should comply | **Plot ratio achieves Acceptable Outcomes and is supported**  The development meets the Acceptable Outcomes with a plot ratio of 0.79. |
| **Solar access and shadow**  The development will overshadow neighbouring properties. | **Plot ratio achieves Acceptable Outcomes and is supported**  The development overshadows 39% of the adjoining lot. The bulk, scale, height and overshadowing caused by the development is commensurate with that presented by a two storey single house. |
| **Visual Privacy**  The development will result in overlooking of neighbouring properties to the west. | **Visual privacy setbacks achieve Acceptable Outcomes and are supported**  Amended plans were received following consultation providing full height screening to the Unit 4 western balcony in question. |

Following the advertising period, the City received amended plans and additional documentation on 1 July 2022 which propose the following changes:

* Installation of a full height screen on the western elevation of Unit 4’s balcony.
* Addition of shading window treatments to windows.
* Addition of a planter box to the balconies of Units 3 and 4.
* Increase to driveway width of a minimum of 4.0m
* Addition of resident and visitor bike parking areas.

The amendments made are minor and do not trigger the need for formal re-advertising of the proposal. However, the amended plans were made available for public inspection at the City’s Administration and are available on the City’s Your Voice website.

**Design Review**

The development was reviewed by the City’s Design Review Panel (DRP). The DRP summary is as follows:

|  |  |  |
| --- | --- | --- |
| **DRP Design Quality Evaluation** | | |
|  | Supported | |
|  | Further Information Required | |
|  | Not supported | |
| SPP 7.0 Principles | 24 January 2022 DRP Review | 25 July 2022 Chair Review |
| 1.      Context and Character |  |  |
| 2.      Landscape Quality |  |  |
| 3.      Built Form and Scale |  |  |
| 4.      Functionality and Built Quality |  |  |
| 5.      Sustainability |  |  |
| 6.      Amenity |  |  |
| 7.      Legibility |  |  |
| 8.      Safety |  |  |
| 9.      Community |  |  |
| 10.   Aesthetics |  |  |

Amended plans were referred to the DRP Chair for review on 25 July 2022. The Chair was satisfied that the proponents engaged with DRP comments in a constructive manner and have improved the design accordingly. The chair strongly supports the proposal and finds that it has now addressed all 10 Design Principles.

**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 (Volume 2) as a State Planning Policy. Similarly, should an applicant be aggrieved by one or more conditions of approval, this can be reviewed by the Tribunal.

**Conclusion**

The application for four multiple dwellings with a basement has been presented to Council consideration due to objections being received. The objections received relate side and rear setbacks, visual privacy, traffic and façade design. An assessment against the relevant element objectives has identified that the proposal can be supported.

The development is generally well designed and sits comfortably within the built form outcomes anticipated by Volume 2 of the R-Codes and the site’s development context. The siting, mass and scale of the building is sympathetic to the streetscape and surrounding lots and is consistent with the form of expected development within the immediate locality. The development presents with a similar bulk, scale and height as a two-storey single house as viewed from the street and adjoining lots.

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

**Further Information**

Nil.

Councillor Coghlan returned to the room at 7.39 pm.

# PD52.08.22 Consideration of Local Planning Policy – Primary Controls for Apartment Development

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 August 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Draft LPP – Primary Controls for Apartment Development 2. Schedule of Submissions 3. Western Australian Planning Commission Advice |

**Regulation 11(da) - Council consider that the introduction of the Policy would assist in achieving appropriate design outcomes for Nedlands.**

Moved – Councillor Coghlan

Seconded – Councillor Bennett

**Council Resolution**

**That Council, in accordance with clause 4(3)(b)(ii) of the Deemed provisions of the Planning and Development (Local Planning Schemes) Regulations 2015:**

1. **Adopt the Local Planning Policy – Primary Controls for Apartment Development as set out in Attachment 1 as modified in the document titled RAC – LPP amendments.**
2. **Publish notice of the amended Policy in accordance with clause 87(4) of the Deemed provisions.**

**CARRIED 9/2**

**(Against: Crs. Senathirajah & Combes)**

Recommendation

That Council under clause 4(3)(b)(iii) of the Deemed provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, not proceed with the Local Planning Policy – Primary Controls for Apartment Development.

**Purpose**

Council is to consider adoption of the proposed Local Planning Policy – Primary Controls for Apartment Development (the Policy). It is recommended that Council not adopt the Policy. Advice affirms it would be inconsistent with the performance-based nature of the R-Codes. Further it will be superseded by the more localised precinct planning policies that are well underway.

**Voting Requirement**

Simple Majority.

**Background**

At the 28 September 2021 Ordinary Council Meeting, Council resolved to advertise the draft Policy as shown in Attachment 1.

**Discussion**

The existing planning instrument for apartments is the Residential Design Codes (R-Codes) Volume 2. Volume 2 deals with apartments in density codes of R40 and above, while the R-Codes Volume 1 deals mainly with single houses and grouped dwellings. The two Volumes differ in their approach to assessing a development.

In Volume 1, if an element of a single house (such as lot boundary setbacks, open space, etc.) meets the deemed-to-comply criteria it does not need approval and generally the local government does not have the ability to require changes to that element. There is no such deemed-to-comply pathway in Volume 2.

Ultimately, applications for development approval under Volume 2 need to demonstrate that each design element (ie: plot ratio, landscaping, internal ventilation, etc.) meets its respective ‘Element Objective’. The ‘Element Objectives’ are subjective aims with no defined measurements.

Each design element also contains ‘Acceptable Outcomes’, which are default objective measurements that assist in satisfying the ‘Element Objectives’. However, unlike in Volume 1 of the R-codes, meeting the ‘Acceptable Outcomes’ does not mean that the development automatically meets the ‘Element Objectives’. Additional or alternative design solutions may be needed in response to site specific conditions.

The draft Policy attempts to establish a clear limit on the Primary Controls (Part 2 of the R-Codes Volume 2) and to force all developments to strictly meet the ‘Acceptable Outcomes’ for Primary Controls. This is done by including a broad statement to the effect that anything that does not strictly adhere to the measurements in the ‘Acceptable Outcomes’ will not achieve the ‘Element Objectives’.

Submissions received appear to link the policy to community benefit. However, the draft Policy does nothing with regard to development incentives for community benefit other than to note that a future local planning policy may introduce such a framework.

Currently, Council Officers treat the ‘Acceptable Outcomes’ for Primary Controls as the intended future form and scale of development when assessing the ‘Element Objectives’. This approach matches that in the draft Policy and is consistent with the desired community approach as shown in the submissions (Attachment 2).

However, the two approaches differ in that the draft Policy effectively forbids consideration of any measurement that goes beyond that prescribed in the Primary Controls. Legal advice affirms that this cannot be achieved through a policy. Development beyond the ‘Acceptable Outcomes’ can be considered where it meets the ‘Element Objectives’. The City cannot base an argument for refusal on non-compliance with ‘Acceptable Outcomes’. Any such argument will not hold weight with an ultimate decision-maker, such as the Development Assessment Panels (DAP) or the State Administrative Tribunal (SAT).

**Advice**

After the draft Policy was advertised, the City sought advice from the Western Australian Planning Commission on the policy (Attachment 3). The advice concluded that, while an LPP can **encourage** development to meet the ‘Acceptable Outcomes’, it cannot **require** compliance with the ‘Acceptable Outcomes’. The advice can be further summarised as follows:

* The R-Codes focus on whether the ‘Element Objectives’ are achieved or demonstrated, not on compliance with ‘Acceptable Outcomes’.
* Whether or not a particular aspect of a proposed development ‘complies’ with the ‘Acceptable Outcomes’ for that Design Element does not determine whether or not that aspect of the development is acceptable.
* It is not possible for a local government to amend or replace the performance-based ‘Element Objectives’ of the R-Codes.
* Any policy which attempts to set a standard which is incapable of variation would be legally ineffective.
* There is no evidentiary basis that the default development standards embody the existing and desired future scale, height or character of Nedlands. It would therefore have little or no legal weight by a decision-maker.

Simply put, the City is unable to amend or replace the ‘Element Objectives’ of the R-Codes Volume 2. Nor can the City require strict compliance with the ‘Acceptable Outcomes’ as the ultimate assessment must always be carried out against the performance-based ‘Element Objectives’.

The draft Policy attempts to prohibit any development from exceeding the ‘Acceptable Outcomes’ through a broad measure asserting that any variation to the primary controls would not meet the ‘Element Objectives’ relating to the desired future character of the area. This is an attempt to set a standard that cannot be varied. A decision-maker would be legally compelled to have little regard for the Policy in order to make a valid decision.

**Alternatives**

Nedlands residents are understandably concerned about the lack of a local planning framework, and worry that the planning controls within the R-Codes Volume 2 are insufficient to prevent development that may be seen as out of scale with the character of the area. The draft Policy is an attempt to place hard limits on the height, bulk and scale of developments, and provide certainty to residents and developers. Officers share residents’ concerns but ultimately, as discussed above, this draft Policy will not achieve the desired outcome and will have little impact on development.

What will provide greater certainty and act as a framework to guide future development is the precinct planning for infill areas that is well underway at the City. The precinct policies would set indicative built form within a specific area and act as the desired scale of future development with which to measure the Primary Controls against. This precinct planning is the result of built form modelling and is going through the process set out in the Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015 to ensure that it is a valid, enforceable policy.

As part of the City’s precinct planning work, detailed investigations, community engagement, built form modelling and precinct policies have been undertaken and are being developed in response to local context. Council’s objective will more appropriately be achieved through the setting of additional assessment criteria specific to the local context. The City’s draft precinct policies endeavour to go above and beyond some of the provisions of the draft Policy by amending several R-Codes - Volume 2 ‘Acceptable Outcomes’, particularly in relation to setbacks and vegetation. In this manner, the precinct policies will achieve the aims that the draft Policy unsuccessfully attempts.

Applying a broad-brush approach to apartment controls within the entire City of Nedlands municipality does not accurately reflect the existing character or desired character of specific areas. The precinct policies will reflect more accurate controls based on thorough feedback from the community and testing by urban designers.

**Consultation**

The draft Policy was publicly advertised from 11 February 2022 until 8 March 2022. A total of 63 submissions were received, overwhelmingly in support of the draft Policy. (Attachment 2)

**Strategic Implications**

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

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

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

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

**Reflects Identities**

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

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

**Budget/Financial Implications**

Strict reliance on the policy as written may result in an increase in the number of appeals lodged with SAT and corresponding legal fees incurred by the City in defending an invalid policy.

**Legislative and Policy Implications**

If the draft Policy is adopted, Officers are legally compelled to continue to assess apartment developments against the ‘Element Objectives’ of the R-Codes Volume 2 rather than the Policy. The Joint Development Assessment Panel, State Administrative Tribunal and the Western Australian Planning Commission will have little regard for the Policy when making decisions.

**Decision Implications**

If the draft Policy is adopted, Council must publish notice of the Policy in accordance with clause 87 of the Deemed provisions. The Policy will have effect on publication of such notice.

However, Officers will still have to make an assessment against the ‘Element Objectives’ for each development site and cannot make a legally binding recommendation that is contrary to the R-Codes Volume 2. Adoption of the draft Policy would raise community expectations but fail to deliver the expected outcomes of absolute limits on the form of development for matters like height, separation, etc.

**Conclusion**

While a policy can guide the exercise of discretionary power, it cannot restrict the power as if it is legally binding. The draft Policy will not be given much weight by decision-makers and will fail to limit the scale of development beyond that set out in the R-Codes. A more effective mechanism for altering the R-Codes Volume 2 Primary Controls is through the implementation of local precinct policies. Local precinct planning work is already well underway. In summary, the draft Policy would not achieve what it sets out to do.

It is recommended that Council not adopt the Policy.

**Further Information**

**Question**

Councillor Coghlan - Council has seen various versions of this policy and the 63 submissions overwhelmingly support this LPP.  What weight does the City of Nedlands give to submissions in the development of Local Planning Policies?

**Officer Response**

Clause 4(3)(a) of the deemed provisions requires the local government to review the proposed policy in the light of any submissions made. Clause 4(3)(b) allows the local government to proceed with the policy without modification, or proceed with the policy with modifications or not to proceed with the policy. The weight given to any submission will depend on the merit of the argument presented in the submissions. The number of submissions received is not relevant.

**Question**

Why in the 3 years since LPS3 been imposed by the WAPC, has the City of Nedlands not implemented one local planning policy that puts a limit on building heights or plot ratio?

**Officer Response**

Policy development has been ongoing throughout the three years since the Scheme was gazetted. The time taken to prepare background information and conduct community engagement has ensured that the City’s future policy settings are based on sound planning principles and reflect the community’s expectations for development in the various precincts. Experience has shown that quickly-formulated policy responses to a specific circumstance will not produce a policy with sufficient weight to be considered by the JDAP or SAT. In order to ensure all development reflects an identified Nedlands design response, considerable research, context analysis and engagement is required. This has been done for the draft precinct policies that are currently being advertised (Waratah, Broadway and Hollywood-Hampden).

**Question**

**W**hy would we not adopt this LPP now as it can be implemented immediately, even if it will be gradually superseded by more specific Precinct Plans, which may take 6 -12 months to present, review, advertise and then possibly adopt?

**Officer Response**

As discussed in the Council report, officers advice that the policy in its current form cannot be afforded weight in a planning determination. Council acting in its role as a planning authority, is required to prepare planning policies consistent with established planning practices and the established planning framework.

**Question**

**I**s this LPP aligned with the City’s strategic vision, values and priorities?

**Officer Response**

The preparation of legally-sound local planning policies that seek to complement the local planning scheme and strategy almost certainty would align with the City’s strategic vision, values and priorities.

**Question**

Why does the City’s report claim that this policy seeks to mandate “Acceptable Outcomes” when it does not, and in fact seeks to define the Element Objectives?

**Officer Response**

The legal advice that was received by the City identifies that the Policy;

“is aimed to engage with the Element Objectives for the respective Primary Control design elements, with the intended result that, since Council has stated that the Acceptable Outcome standards (and nothing more) are consistent with the character of Nedlands, any exceedance of those standards should not be accepted under the supposedly-discretionary, performance-based Element Objectives”.

In this way, the Policy is a de facto mandate of ‘Acceptable Outcomes’.

As the Officer’s Report states:

“The draft Policy attempts to prohibit any development from exceeding the ‘Acceptable Outcomes’ through a broad measure asserting that any variation to the primary controls would not meet the ‘Element Objectives’ relating to the desired future character of the area. This is an attempt to set a standard that cannot be varied.”

**Question**

There is a great difference between “limiting discretion” and “eliminating all discretion” and a performance-based system merely requires some discretion.

1. This LPP does not eliminate all discretion, so why would merely limiting discretion by providing planning guidance make this LPP “inoperable” as claimed in the report?
2. As the Precinct Plans also limit discretion by prescribing “indicative built form” and setting “desired future scale”, why are they not considered to be “inoperable” by the same inference?

**Officer Response**

The difference in this case is that the Policy seeks to remove the ability enshrined in the R-Codes to consider primary control solutions that do not meet ‘Acceptable Outcomes’. The precinct policies are constructed differently to avoid this conflict. The precinct policies effectively create amended or new ‘Acceptable Outcomes’ to be considered using the current methodology required by the R-Codes.

**Question**

Why does the report incorrectly list as shortcomings of the LPP that it requires compliance with “Acceptable Outcomes” and that it “attempts to amend or replace the Element Objectives”, which it does not in both cases?

**Officer Response**

The intent of the Policy is very clearly to mandate ‘Acceptable Outcomes’ by defining the desired future scale and character referred to in the ‘Element Objectives’. The ultimate outcome is to forbid any consideration of design elements that exceed the ‘Acceptable Outcomes’ of the Primary Controls.

**Question**

Why has the City referred to a legal opinion on an outdated and very different version of this policy obtained prior to February 2021 (as per Council Meeting Minutes) and quoted from this opinion to prepare the current report to Council?

**Officer Response**

The City has received two legal opinions and the opinion of the Department of Planning, Lands and Heritage. The January 2021 legal opinion was on an earlier Council resolution to create this Policy. The most recent legal opinion from 7 July 2022 was on the most recent version of this policy, as was the DPLH’s advice. The first legal opinion was used in the report to step through what is possible to achieve through any given local planning policy. The other two opinions specifically reference the latest version of the Policy and how it falls short of a Policy that is legally effective.

**Question**

**T**he City’s report states the LPP has not been prepared on “sound planning principles”, but as it is directly based on the R-codes, State Planning Policy 7.3 Volume 2 and Nedlands LPS3, does the City believe these documents are not based on “sound planning principles”?

**Officer Response**

The City’s position is also held by the legal opinion received and the advice of the Department of Planning, Lands and Heritage dated 14 July 2022 in that there is no evidentiary basis supporting the position that the ‘Acceptable Outcomes’ are the desired future scale and character of the area.

**Question**

Are the City officers aware that local government does not require the approval or review of the WAPC or DPLH when developing and properly implementing local planning policies?

**Officer Response**

The requirement for approval of external agencies depends upon the situation and the scope of the policy. In relation to the R-Codes Volume 2, approval is required for some sections of Parts 3 and 4. Additionally, Clause 4 of Schedule 2 (Deemed provisions) of the Planning and Development (Local Planning Schemes) Regulations 2015 requires that the local government give notice of a proposed policy to the Commission where it may be inconsistent with any State planning policy. Clause 4(3A) further states that, generally, a local government is not to proceed with a policy that amends a deemed-to-comply provision where the Commission’s approval is required but has not been granted.

# PD53.08.22 Adoption for Advertising of Local Planning Policy – Trees on Private Land

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 August 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. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning & Development |
| **Attachments** | 1. Draft Local Planning Policy – Trees on Private Land 2. City of Nedlands *Sustainable Landscaping Advice* information sheet |

**Regulation 11(da) – Not Applicable – Recommendation Adopted**

Moved – Councillor Youngman

Seconded – Councillor Bennett

**That the Recommendation be adopted.**

(Printed below for ease of reference)

The Presiding Member adjourned the meeting for a short break.

The meeting adjourned at 7.52pm and reconvened at 7.55 pm with the following people in attendance:

**Councillors** Mayor F E M Argyle (Presiding Member)

Councillor B Brackenridge Melvista Ward

Councillor R A Coghlan Melvista Ward

Councillor R Senathirajah Melvista Ward

Councillor H Amiry Coastal Districts Ward

Councillor K A Smyth Coastal Districts Ward

Councillor F J O Bennett Dalkeith Ward

Councillor A W Mangano Dalkeith Ward

Councillor N R Youngman Dalkeith Ward

Councillor O Combes Hollywood Ward

Councillor B G Hodsdon Hollywood Ward

**Staff** Mr W R Parker Chief Executive Officer

Mr M Cole Director Corporate & Strategy

Mr T G Free Director Planning & Development

Mr A D Melville Acting Technical Services

Mrs N M Ceric Executive Officer

**Public Gallery** There were 12 members of the public present and 10 online.

**Press** The Post Newspaper representative.

**Leave of Absence** Nil.

**(Previously Approved)**

**Apologies** Councillor L J McManus Coastal Districts Ward

Dissent Motion

Moved – Councillor Hodsdon

Seconded – Councillor Combes

That the ruling (that Councillor Hodsdon is not permitted to speak) of the Presiding Member be disagreed with.

Lost 5/6

(Against: Mayor Argyle Crs. Brackenridge Coghlan Amiry Smyth Bennett)

**The motion was PUT and was**

**CARRIED 7/4**

**(Against: Crs. Senathirajah Mangano Combes & Hodsdon)**

**Council Resolution / Recommendation**

**That Council:**

* **adopts the Draft Local Planning Policy – Trees on Private Land for advertising in accordance with Clause 4 of the Deemed Provisions of Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015;**
* **notes that the advertising period will be for a minimum of 60 days, which will run concurrently with the advertising of Scheme Amendment No. 12; and**
* **refers the draft Local Planning Policy – Trees on Private Land to the Western Australian Planning Commission at the close of advertising, in accordance with Clause 4(3A) of the Deemed Provisions of Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015.**

**Purpose**

The purpose of this report is for Council to adopt for advertising the draft Local Planning Policy – Trees on Private Land (the Policy), included as Attachment 1.

**Voting Requirement**

Simple Majority.

**Executive Summary**

The Policy has been prepared in support of Scheme Amendment No. 12, which was adopted by Council for advertising at its 28 June 2022 meeting. The Policy provides guidance on the assessment of development applications received for removal, destruction or damage of trees, and sets out requirements for the provision of new trees for residential development on sites coded R20 and below. If the Policy is adopted, it is intended that it be advertised concurrently with Scheme Amendment No. 12.

**Background**

At the 14 December 2021 meeting, Council resolved that an amendment to Local Planning Scheme No. 3 (LPS 3) be prepared, for the purpose of requiring development approval for the removal of trees that meet certain criteria on lots with a coding of R20 and below. Council also resolved that a local planning policy (LPP) be prepared to outline the application process and afforded discretion in support of the proposed amendment to LPS 3.

A report on the preparation of the draft scheme amendment relating to trees on private land (Scheme Amendment No. 12) was presented to Council at its 28 June 2022 meeting. Scheme Amendment No. 12 was adopted by Council and has since been referred to the Environmental Protection Agency and Western Australian Planning Commission (WAPC) in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 (the Regulations).

The Policy in support of Scheme Amendment No. 12 has now been prepared and is the subject of this report.

**Discussion**

Scheme Amendment No. 12 introduces the requirement to obtain development approval to remove, destroy or damage a tree that meets certain criteria and is located on private land. The intent of the amendment is to provide an improved framework for the protection and enhancement of the City’s urban tree canopy. The Policy has been prepared to guide the assessment of development applications received in accordance with Scheme Amendment No.12, and to set out requirements for the provision of new trees for residential development sites coded R20 and below. The key elements of the Policy are discussed in further detail below.

**Development applications for tree removal, destruction or damage**

This section provides guidance on the submission and assessment of development applications for the removal, destruction or damage of a tree on private land, as required by Scheme Amendment No. 12.

This section requires an arboriculture report to be submitted with the development application, which is to identify existing trees onsite, and assess the health and viability of those trees proposed for removal. The report must also identify any measures necessary to protect trees which are being retained.

This section outlines that there is to be a presumption in favour of tree retention, unless an arboriculture report demonstrates that the tree ought to be removed due to its health, life expectancy, structural stability or risk to life or property, or where redesign of the development to support tree retention is not feasible. Where removal of a tree is supported, this section requires the replacement of that tree by two new trees. This section also requires protection of retained trees in accordance with the arboriculture report.

**Unsuitable species exempt from Scheme Amendment No. 12 requirements**

Appendix 1 of the Policy sets out the tree species which are exempt from the requirements of Scheme Amendment No. 12. These species are identified as exempt as they are considered unsuitable, on account of being a weed species or being susceptible to pest or disease.

**Provision of new trees on development sites**

This section applies to all development applications for lots zoned Residential with a density coding of R20 and below, except for extensions to existing dwellings and ancillary structures, such as carports and outbuildings. These exemptions are consistent with those in the Residential Design Codes Volume 1 (R-Codes Volume 1).

The section augments the existing landscaping provisions under the R-Codes Volume 1 as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Minimum tree requirements** | | | |
| **Dwelling type and site area** | | **Existing deemed-to-comply requirements under R-Codes Volume 1** | **Proposed requirements in draft LPP** |
| Single houses and grouped dwellings | | 1 tree per dwelling | 1 small tree per 450m2 site area, or part thereof |
| Multiple dwellings (trees per site) | Less than 700m2 | 2 trees | 1 medium and 2 small trees |
| 700-1000m2 | 3 trees | 2 medium trees  OR  1 large tree and 2 small trees |
| Greater than 1000m2 | 4 trees | 1 large tree and 2 medium trees  OR  1 large tree and 4 small trees |

This section also:

* Reduces the number of new trees required onsite (as specified above), where an existing tree meeting Scheme Amendment No. 12 criteria is retained onsite;
* Introduces requirements for new tree plantings within the primary street setback area, consistent with the draft Medium Density Codes;
* Specifies the size of the required tree (small, medium or large), with the specifications for each size (canopy, height and root protection area) aligning with those in the draft Medium Density Codes;
* Provides guidance for the planting of new trees, including minimum pot size, species preference (as per the City of Nedlands *Sustainable Landscaping Advice* information sheet, included as **Attachment 2**), required root protection area, and compliance with the approved landscaping plan; and
* Requires a landscaping plan to be submitted with all applicable development applications, showing the position, type and size of proposed trees to be planted onsite, including maintenance requirements for those trees.

It is proposed that this section of the Policy replace the deemed-to-comply requirements of Clause 5.3.2 Landscaping (C2.2) of the R-Codes Volume 1. Therefore, this section will require the approval of the WAPC, prior to becoming operational.

**Subdivision**

This section sets out that where a subdivision application proposes the creation of additional residential lots, the City will recommend a condition for the identification and protection of vegetation onsite which is worthy of retention. Additionally, this section establishes that the City will notify prospective purchasers of the requirements of the LPP via orders and requisitions notices.

**Community consultation**

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

* Minimum 21-day advertising period
* Notice in the local newspaper
* Notice on the City’s Notice board
* Notice on the City’s Your Voice engagement portal
* Notice on the City’s social media channels
* Community information session

It is intended that the Policy be advertised concurrently with Scheme Amendment No. 12, which has a minimum advertising period of 60 days as a complex scheme amendment. Therefore, it is intended that the Policy would also be advertised for a period of 60 days, to allow the community sufficient time to consider both instruments collectively.

**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.

**Budget/Financial Implications**

If Council proceeds with the Policy, there will be no immediate cost to the City other than those associated with advertising.

The costs associated with Scheme Amendment No. 12 were outlined in the report to the 28 June 2022 meeting.

**Legislative and Policy Implications**

Clause 3(1) of the Deemed Provisions of Schedule 2 of the [Regulations](https://www.wa.gov.au/government/document-collections/planning-and-development-local-planning-schemes-regulations-2015)allows the City to prepare an LPP 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. Further detail on the advertising of the Policy is provided in the Community Consultation section above.

The Policy proposes to replace the deemed-to-comply requirements of Clause 5.3.2 Landscaping (C2.2) of the R-Codes Volume 1. Therefore, this section of the Policy will require the approval of the WAPC prior to reporting back to Council post-advertising, in accordance with Clause 4(3A) of the Deemed Provisions of Schedule 2 of the Regulations.

Following the advertising period, and referral to the WAPC, 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 outlined above.

If Council resolves not to endorse the recommendation, the Policy will not be advertised, or progressed. Doing so would mean that there is no guidance in place for the assessment of development applications received in accordance with Scheme Amendment No. 12.

**Conclusion**

The Policy has been prepared to guide the assessment of development applications received in accordance with Scheme Amendment No. 12. It also sets out requirements for the provision of new trees for residential development sites coded R20 and below. It is recommended that Council adopt the Recommendation and formally advertise the Policy.

**Further Information**

Nil.

# PD54.08.22 Review of Aberdare Road Concept Design and Corridor Requirements and Consideration of Repeal of By-law Relating to New Street Alignment (Aberdare Roads By-law)

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 August 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Employee disclosure required where there is an interest in any matter of which the employee is providing advice or a report. |
| **Report Author** | Roy Winslow, Manager Urban Planning |
| **Director** | Tony Free, Director Planning and Development |
| **Attachments** | 1. 1978 By-law 2. Department of Planning, Lands and Heritage advice 2016 3. Draft Repeals Amendment Local Law 2022 |

**Regulation 11(da) - Council considered that an updated design of Aberdare Road ought to be pursued prior to the By-Law being repealed.**

Moved – Councillor Bennett

Seconded – Councillor Youngman

**Council Resolution**

**That Council formally requests the Department of Planning, Lands and Heritage to prioritise a review of the 1991 concept design and Metropolitan Region Scheme reserve requirement for Aberdare Road that accommodates a shared use path and greenway corridor between Thomas Street, Shenton Park and Railway Road, Karrakatta, or alternatively provide funding to allow the City of Nedlands to undertake the review.**

**CARRIED UNANIMOUSLY 11/-**

Recommendation

That Council:

1. Formally requests the Department of Planning, Lands and Heritage to prioritise a review of the 1991 concept design and Metropolitan Region Scheme reserve requirement for Aberdare Road between Thomas Street, Shenton Park and Railway Road, Karrakatta, or alternatively provide funding to allow the City of Nedlands to undertake the review.
2. Makes the proposed City of Nedlands Repeals Amendment Local Law 2022 as detailed in Attachment 3 for the purposes of public advertising.
3. Advertises the proposed City of Nedlands Repeals Local Law 2022 in accordance with section 3.12(3)(a) of the Local Government Act 1995.
4. Forwards a copy of the proposed City of Nedlands Repeals Amendment Local Law 2022 to the Minister for Local Government in accordance with section 3.12 (3)(b) of the Local Government Act 1995.
5. Requests the Chief Executive Officer to prepare a further report at the conclusion of the public advertising period to enable Council to consider any submissions made.

**Purpose**

The purpose of this report is for Council to consider requesting the Department of Planning, Lands and Heritage to review the road design concept and corridor requirements for Aberdare Road, Nedlands. A second purpose of the report is for Council to consider repeal of the 1978 By-law Relating to New Street Alignment through the making of the City of Nedlands Repeals Amendment Local Law 2022.

The first part of the local law-making process is for Council to resolve that a proposed local law be advertised for public consultation. At that meeting, it is necessary under section 3.12(2) of the Local Government Act 1995 for the Presiding Member to read aloud the purpose and effect of the proposed local law.

The **PURPOSE** of the local law is to repeal superfluous, defunct and obsolete local laws.

The **EFFECT** of the local law being more efficient and effective local government by removing outdated local laws from the public record.

**Voting Requirement**

An Absolute Majority is required to allow for the making of the Repeal Local Law.

**Background**

**Overview**

The Aberdare Road Widening By-law, gazetted in 1978, is a local law that allows for a 9m-wide portion of private land on the southern side of Aberdare Road to not be developed, unless otherwise approved (**Attachment 1**). The By-law is a relatively simple instrument that nominates a new ‘street alignment’ 9m behind that existing at the time. It then provides for a penalty to any person developing without approval in front of the new alignment. The By-law itself does not create a head of power for the taking of the land, nor does it act as a development control.

The City’s Local Planning Scheme No.3 (LPS3) was gazetted in 2019. This instrument reserves a 4m wide portion of private land for the purpose of Other Regional Roads. This reserve is a Metropolitan Region Scheme reserve with the land acquired by the State at the time of subdivision. Recent acquisition of the widening area has included the State purchasing the required land rather than it being ceded free-of-cost. Unlike the By-law, which can be considered a ‘passive’ instrument, the MRS reserve is an ‘active’ instrument in that it acts as a head of power to prohibit development and to allow for acquisition of the 4m widening area. Effectively, the MRS reservation can be used to refuse development within the widening area, whereas the By-law cannot.

Whereas the State in 1963 identified a 9m wide portion of land as necessary for future road purposes, this was reduced in 1995 to the current 4m. The WAPC has previously advised that it does not require more than 4m for the widening of Aberdare Road (**Attachment 2**). The City has been continuing to acquire the additional 5m over time for landscaping and greenway purposes. Until 2015, the approach of the City has been to support a ’density bonus’ on properties that agree to cede the land free-of-charge, although the last examples of this appear to have occurred in the 1990’s. This density bonus allowed for a second dwelling on a property. However, a 2015 decision of the Minister for Planning to refuse such an amendment removed this form of compensation. In 2019, all properties abutting Aberdare Road with the exception of the former Hollywood High School area were ‘upcoded’ from R10 or R25 to R60, regardless of whether the widening area had been ceded or not.

Until April 2019, scheme controls included a setback of 12m for development along Aberdare Road. This was enabled under the former Residential Design Guidelines incorporated into Appendix V of former Town Planning Scheme No.2 (TPS2). Upon gazettal of LPS3 in April 2019, these controls ceased, with the default R60 setback of 2m applying from the southern edge of the MRS reserve (i.e. 6m from the original ‘street alignment’). From this date, the City’s ability to enforce through its Scheme controls a setback that allowed for the 9m widening was removed.

The recent increase in development potential in the area, including future plans for the Queen Elizabeth II Medical Centre, it is anticipated that Aberdare Road will require upgrading to cater for private vehicles, freight, public transport and walking/cycling. The existing MRS reserve width may not be sufficient to accommodate all travel modes. It is recommended that the City works with DPLH to identify a concept design and corridor width that will cater for future needs of all travel modes. This corridor can then be reserved in the MRS rather than as a local reserve, given its regional importance.

Should Council wish to continue to acquire the 5m portion of widening behind the 4m wide MRS reserve, it could consider a local Scheme reserve, such as a local road or parks and recreation. However, in this model, the City will also need to provide compensation to property owners for the loss of the land. In 2016, the cost of acquiring the land was estimated at $186,000 per property, with 9 properties affected. However, given the current state of the market and the R60 density coding, this cost is likely to be higher.

Notwithstanding Council may wish to continue with the 9m widening approach from 1978, the current By-law instrument is no longer consistent with orderly and proper planning. Reservation in the MRS is the most appropriate instrument to allow for the acquisition of additional land through purchase at the time of development or subdivision.

Repeal of the By-law will require the making of the City of Nedlands Repeals Amendment Local Law 2022 (**Attachment 3**). Should Council by absolute majority make the local law, advertising of it will be required in accordance with section 3.12(3)(a) of the Local Government Act 1995.

**1963 – 1995**

The Metropolitan Region Scheme (MRS) was gazetted in 1963 with Aberdare Road shown as an “Important Regional Road” (also known as a “Blue Road”).

In the mid 1970’s, the future road widening requirements for Aberdare Road called for an overall 40m wide reserve, which was a generic width applied to a number of blue roads. A 9m wide portion of this reserve was located within private property on the southern side of Aberdare Road, between Gairdner Drive and what was then the Hollywood Senior High School site, west of Kitchener Street.

Consistent with what is understood to have been the practice of the time, in 1978 the City created a By-law relating to street widening in order to protect the 9m portion of the blue road reserve that was located on private land on the south side of Aberdare Road. The By-law was made under the Local Government Act 1960 and was also consistent with section 364 of the Local Government (Miscellaneous Provisions) Act 1960. Section 364 relates to the setting of new street alignments using by-laws (now known as local laws). The practice of using by-laws or local laws in this way appears to have ceased after creation of the Aberdare Road By-law in 1978 with land acquisition occurring directly through the provisions of the Metropolitan Region Scheme and Land Administration Act 1997. The By-law does not provide a head-of-power for the ceding of the land. Rather, it protects the road widening area from development, unless this development is approved by the local government. It is a simple “call-in” mechanism that ensures any development within the widening area is considered by the City and approval granted. The By-law is not a development control mechanism.

In 1991, a review of all MRS road reserves was commenced, with the Western Australian Planning Commission and Main Roads WA identifying for the first time the future road reserve requirements for each road based on traffic modelling and concept planning. This allowed for the road reserve requirements for Aberdare Road to be reduced from 40m to 24-27m. The widening required on the southern side of Aberdare Road reduced from 9m to 4m. The MRS reserve was amended in 1995 to require only the 4m.

**1995-2019**

After rationalisation of the MRS reserve in 1995, the City continued to retain the By-law, with it re-confirmed in 2000. No longer required to protect land for the Aberdare Road MRS widening, the additional 5m widening was to provide a landscaped entry into the City. This was reflected in the City’s 2001 Greenways Policy.

In order to obtain the 9m widening, the City facilitated a density bonus arrangement as compensation. Effectively, should a property give up the widening land free of charge, the City would amend its Scheme to increase the density from the base R10 to R25. This allowed these properties to be developed with a second dwelling entitlement. This arrangement appears to have been used by 7 properties over time. There appears to have been no ceding of land post-2005, with most activity having occurred in the 1980’s and 1990’s.

In 2005, a detailed area plan was prepared and incorporated into former TPS2. This plan included an effective 12m setback for buildings from the unwidened Aberdare Road boundary. This allowed for the future 9m widening, plus 3m future front setback.

The detailed area plan remained in place until TPS2 was revoked in April 2019. From this date, the R60 density applied to all properties fronting Aberdare Road, regardless of whether the widening had been taken or not. With the gazettal of LPS3, the ability to provide a density bonus to offset the loss of land to the 9m widening was removed. Critically, LPS3 provides for a deemed-to-comply primary street setback of 6m (inclusive of the 4m MRS reserve) instead of the former 12m setback of TPS2.

**Discussion**

At the time of writing this report, the By-law remains in place. However, it is in conflict with LPS3. The Scheme reserves the first 4m behind the original Aberdare Road boundary as ‘Other Regional Roads’. The next 5m of land currently in private ownership but subject to the By-law is zoned ‘Residential R60’.

When approving subdivision of land on Aberdare Road, the WAPC is currently requiring the 4m MRS reserve to be ceded to the Crown. It is understood that this is not ceded free of cost, with the State purchasing the 4m widening area by private treaty. The state is purchasing the land as the need for the road widening is not caused by the subdivision, but by a larger need.

Consistent with the objective of the By-law, the City has requested the additional 5m (9m in total) to be ceded free of cost at the time of subdivision. This request was denied as the WAPC was not satisfied that a need and nexus existed for the land to be given up without compensation. Any further ceding of the 5m of widening outside of the MRS reserve at the time of subdivision will require the City to purchase the land in the same manner as the state is undertaking with the 4m MRS widening. Further, in order to ensure orderly and proper planning of the City’s public land requirements, the placement of a reservation in LPS3 is required in order to satisfy the WAPC that a planning ‘need’ exists.

Applications for development and subdivision under the controls set out by LPS3 have started to be received by the City and WAPC. The subdivision of 61 Aberdare Road was approved by the WAPC in 2020 without requiring the 5m additional widening. Development applications for these new lots have started to be received by the City, proposing a 2m minimum primary street setback in accordance with the deemed-to-comply provisions of the Residential Design Codes. A multiple dwelling development at 47 Aberdare Road was recently approved by the Joint Development Assessment Panel with development within the By-law area.

**2013 consideration**

Council has previously considered the By-law on at least two occasions. In 2013, consideration focused on the matter of compensation for the road widening. In 2016, consideration was given to the repeal of the By-law.

Council has previously resolved to maintain the By-law and to continue to acquire land for landscaping and potentially future road widening. This position has become problematic with the gazettal of LPS3 and the removal of the previous density bonus arrangement.

In December 2013, Council resolved in part as follows:

2*.* Where the designated road widening is voluntarily surrendered free of charge by the landowner, the City will initiate rezoning the balance of land adjoining Aberdare Road affected by the City of Nedlands By-Laws relating to New Street Alignment gazetted 20 October 1978, to allow two dwellings;

This resolution appears to have triggered a scheme amendment as outlined below.

**Density Bonus 2015 Test**

Whilst ‘spot’ rezonings of land in Aberdare Road had occurred in the 1980’s and 1990’s, more recently the approach has been unsuccessful.

In 2014, Council initiated a rezoning amendment to TPS2 to recode 61 Aberdare Road from R10 to R25. It did this having entered into agreement to obtain the road widening without compensation (other than the density bonus). This amendment was subsequently refused by the Minister for Planning for the following reasons:

1. The subject lot and surrounding land require broader strategic planning, implemented through the City’s Local Planning Strategy and Local Planning Scheme, to determine suitable, possibly higher, residential densities due to its location near the University of Western Australia – Queen Elizabeth II Medical Centre Specialised Centre.
2. The proposed recoding will create a precedent for further individual lot recoding proposals in the locality, prior to the broader strategic planning referred to in point (a) above.

The actions required by reason a) above have now been completed with the endorsement of the City’s Local Planning Strategy in 2017 and gazettal of LPS3 in 2019. Reason b) is a general presumption against so-called ‘spot’ rezonings.

**Need for 9m widening**

The need for a 9m widening of Aberdare Road on the southern side was based on the MRS road reservation requirements of the 1963-1995 era. Since 1995, the link between the MRS road reservation requirement and the 9m widening set by the By-law has been broken.

It is understood that the City has maintained the 9m widening in part to allow for future road widening options, as well as for landscaping. The 2001 Greenways Policy reflects this by identifying Aberdare Road as a local greenway linking Kings Park to larger areas of bushland to the west. It appears that the reduced width required for road purposes provided an opportunity to acquire land for landscaping, or a greenway link.

**Suitability of existing road reserve**

Officers have liaised with the Department of Planning, Lands and Heritage, which is the agency responsible for the planning of “blue roads” in the metropolitan region. Advice received in 2016 identified that the current 24-27m wide MRS reserve is suitable for current and envisaged road requirements (**Attachment 2**). This advice has been reiterated by the Department in recent months.

The Department, as the responsible authority, is satisfied that the current MRS reserve is sufficient. Consequently, any additional road widening required by the City would be outside of the MRS reservation process and not covered by compensation paid by the state.

It is noted that the ‘ideal’ road reserve width for a 4-lane road with median and service corridors is 30-35m. This width is typically seen in outer suburban areas where road planning precedes the creation of subdivided land. In inner areas, it is common to see narrower road reserves. In 1995 when the Aberdare Road reserve was reduced, other roads were similarly treated, including Fitzgerald Street and Walcott Street, North Perth and Scarborough Beach Road. At the time of the 1995 changes, the then-Minister for Planning stated the original 1963 reservations could be reduced given there was a clearer picture of which regional roads need to be upgraded and to what extent.

Given the changes to the development and travel patterns of the region since 1991, a review of the Aberdare Road concept plan and corridor width is considered prudent. Notwithstanding the general increase in traffic volumes since 1991, the expansion of the Queen Elizabeth Medical Centre precinct has exceeded that envisaged during the last review. In addition to the now-built Perth Children’s Hospital, the State Government has announced the relocation of the King Edward Memorial Hospital for Women to the QEII site. The greater tertiary medical precinct will become the largest in Australia not served by a high-capacity public transport service, such as heavy or light rail. The importance of Aberdare Road in serving the precinct for the broad range of travel modes requires renewed consideration.

**Contemporary Mechanisms**

The By-law is a relatively simple instrument. In effect, it defines a new street alignment for the southern side of Aberdare Road. The By-law does not provide guidance on when the land should be taken, nor does it detail any compensation. The By-law is a simple protection mechanism against unapproved development within the designated road widening area.

The By-law is no longer considered the most appropriate mechanism for protecting land for a public purpose. Further, its main purpose to protect land for future road widening has been superseded by the current MRS reserve.

The most appropriate form of protecting land for future acquisition for public purposes is the MRS. This provides for land to be reserved for a range of purposes, including Other Regional Roads (MRS blue roads). The acquisition of land is then accommodated through the Land Administration Act 1997.

The effect of the By-law to protect land from inappropriate development has been weakened by subsequent zoning schemes, firstly in 1985 (TPS2) and more recently 2019 (LPS3). From 1995, the schemes did not reserve more than 4m of private land. The remaining 5m was zoned Residential, firstly R10 and since 2019, R60. Where the additional 5m had been ceded, this land has been reserved for local roads.

**Effect on current applications**

LPS3 does not recognise the additional 5m widening. The 4m MRS reservation is shown on the scheme maps and is taken into account in planning determinations (development or subdivision). Whilst a by-law or local law is not explicitly listed as a ‘matter for consideration’ in clause 67(2) of the deemed provisions, decision makers can have ‘due regard’ to it as an ‘any other planning consideration’. By providing due regard, a decision maker must weigh the level of significance the By-law should take based on its legislative strength. Whilst still in effect, the role the By-law plays has been replaced by more contemporary mechanisms. Further, the By-law relates only to identifying a new street alignment and stating that no development should take place within the widening area without approval. Given this, the By-law does not prohibit development, nor does it remove a decision maker’s discretion to allow development.

As the By-law is not explicitly a matter to be considered in a planning determination and that the By-law does not in itself prohibit development, the weight to be provided to it is reduced. Another consideration is that the stated purpose of the By-law to increase the road reserve by 9m was replaced in 1995 by a 4m mandate. Since this time, there has been a conflict between the strategic intent of the Metropolitan Region Scheme and the By-law prepared to implement the MRS.

The By-law cannot be used as a reason to refuse development as it does not explicitly prohibit development. Until April 2019, development controls existed that effectively provided for the 9m widening. The Design Guidelines contained in Appendix V of former TPS2 provided for a setback of 12m from the original street alignment. This accommodated a 9m widening and 3m future primary street setback. Until this date, the City had the legal ability to require the setback of buildings to accommodate the 9m widening area.

As of April 2019, there has been no primary street setback control in place to ‘protect’ the road widening area. Rather, the normal deemed-to-comply provisions of the R-Codes for the R60 density have applied. Accounting for the 4m MRS widening, the practical setback has reduced from 12m to 6m for properties that have not previously ceded the 9m widening area.

With the 2020 approval of the subdivision at 61 Aberdare Road, obtaining a uniform 9m widening along the entire section of Aberdare Road is no longer practicable. Any refusal to grant development approval to development on the grounds that the 9m widening has not been provided will not be supported by provisions in LPS3.

**Repeal of By-law**

Repeal of the By-law is recommended on the following grounds:

* The By-Law is not a statutory development control mechanism and does not provide an enforceable setback or trigger a land acquisition process. Instead, the By-law simply states that local government approval is required for any development within the 9m widening area. The By-law is not a replacement for a scheme reserve or development setback incorporated into a local planning scheme;
* There is currently no reservation in LPS3 that provides a “head of power” to the By-law, in the same manner as that which existed in 1978 when gazetted; and
* There is currently no strategic “need and nexus” for the widening, such as identification in a local planning strategy.

Repeal of the By-law will require the making of the City of Nedlands Repeals Amendment Local Law 2022 (**Attachment** **3**).

**Review of Concept Design and Corridor Width**

It is recommended that the City works with DPLH (as the agency responsible for planning of Blue Roads) to review the 1991 concept design and corridor width for Aberdare Road.

This review should take into account the following (as a minimum):

1. Projected traffic volumes identified by the City’s Integrated Transport Strategy, which is currently being prepared;
2. Projected traffic volumes for the expanded Queen Elizabeth II Medical Centre in consultation with the QEII Medical Centre Trust and City of Perth;
3. Projected public transport requirements for Aberdare Road in consultation with the Public Transport Authority. It is understood that the importance of the current bus link between Shenton Park Railway Station and the medical precinct will increase over time;
4. Walking / cycling / e-mobility device requirements in consultation with the Department of Transport;
5. Road and intersection geometry requirements in consultation with Main Roads WA;
6. Consultation with abutting landowners; and
7. Tree retention / landscaping requirements in consultation with State Agencies and Kings Park.

Under normal circumstances, DPLH is responsible for the above planning works, with assistance from the relevant local governments. However, in some circumstances, the local government has taken on the role of lead agency with financial assistance from DPLH. This can have the benefit of ensuring the review is completed in a timely manner. It is recommended that the City offer to lead the process with funding from DPLH, should the Department not be in a position to resource the review itself.

**Consultation**

Should the proposed City of Nedlands Repeals Amendment Local Law 2022 be supported the City is required to advertise the proposal to make the new local law by statewide public notice, make copies available for inspection and invite submissions on the proposed local law. The submission period is required to be at least six weeks in compliance with Section 3.12(3) of the Local Government Act 1995.

Meaningful engagement with affected landowners and the wider community of the review of Aberdare Road will be incorporated into any future project brief.

**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**

Repeal of the By-law will not create a significant budget implication as costs associated with advertising and making the Real Local Law are relatively minor.

It is anticipated that the costs associated with the review of Aberdare Road will be borne by DPLH as the responsible agency. This cost is estimated at approximately $80,000 to $100,000.

**Legislative and Policy Implications**

**Procedure for repeal of local law**

The By-law is a “local law” for the purposes of Part 3, Division 2, Subdivision 1 of the [Local Government Act 1995](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a465.html) (sections 3.11-3.17). Repeal of a local law is undertaken by ‘making’ a repeal local law under section 3.12 of the Act.

The first part of the local law-making process is for Council to resolve that a proposed local law be advertised for public consultation. At that meeting, it is necessary under section 3.12(2) of the Act for the Presiding Member to read aloud the purpose and effect of the proposed local law.

The **PURPOSE** of the local law is to repeal superfluous, defunct and obsolete local laws.

The **EFFECT** of the local law being more efficient and effective local government by removing outdated local laws from the public record.

**Decision Implications**

It is recommended that Council repeals the By-law for the reasons outlined above. Repeal of the By-law will have no impact on Council’s ability to administer its local planning scheme or to acquire the widening area should it wish to pursue this.

Maintenance of the By-law will have no effect on protecting the widening area given the conflict with Council’s development controls (LPS3). The By-law cannot be used as a reason for refusal of planning applications as it does not explicitly prohibit development.

**Conclusion**

It is recommended that Council repeal the By-law on the grounds that it has little effect on the ability for the City to control development or to acquire land. The presence of the By-law is insufficient to “protect” the road widening area except for the first 4m located within the MRS “blue road” reserve. Should Council wish to protect and acquire the widening area over time, it is recommended that a review of the concept design and corridor width of Aberdare Road be undertaken by DPLH in collaboration with the City.

Refusal of development applications based on the presence of the By-law is not recommended.

**Further Information**

Nil.

# PD55.08.22 Process to implement a Payment in Lieu of Parking Plan

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 August 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil |
| **Report Author** | Roy Winslow, Manager Urban Planning |
| **Director** | Tony Free, Director Planning and Development |
| **Attachments** | Nil. |

**Regulation 11(da) - Council considered that the matter ought to be deferred to allow for additional time to consider the implications and opportunities of such a strategy.**

Moved – Councillor Bennett

Seconded – Councillor Mangano

**Council Resolution**

**That this item be deferred.**

**CARRIED UNANIMOUSLY 11/-**

Recommendation

That following the finalisation of the Integrated Transport Strategy, consideration be given to the provision of funds for a Car Parking Strategy as part of the preparation of the 2023/24 budget ahead of presentation to Council.

**Purpose**

The purpose of this report is to outline the process to implement a Payment in Lieu of Parking Plan (Parking Plan), in accordance with the 22 March 2022 Council resolution. The report will also identify the legal limitations on the charging of payment-in-lieu of parking.

**Voting Requirement**

Simple Majority.

**Background**

At the 22 March 2022 Ordinary Council Meeting the Council resolved:

The Chief Executive Officer be requested to present a report to Council outlining the process, requirements, and implementations of introducing cash in lieu of car parking as part of the City of Nedlands planning framework.

This report responds to the above resolution.

**Discussion**

**Planning and Development (Local Planning Schemes) Regulations 2019**

Cash-in-lieu of car parking is governed by Part 9A of the Regulations. Clause 77G(2) states that the Local Government must not impose cash-in-lieu as a condition of development approval unless there is a Parking Plan in effect. In accordance with the Regulations, application of a Parking Plan is limited to:

* Non-residential development;
* A development or use that requires development approval; and
* A shortfall of at least 2 bays is proposed.

It is important to note that the Regulations do not extend to cash-in-lieu for residential development, nor non-residential development which is exempt from development approval. A Parking Plan is valid for a period of 10 years, unless otherwise approved by the Western Australian Planning Commission (WAPC).

**Preparation of a Payment in Lieu of Parking Plan**

Clause 77J of the Regulations requires a Parking Plan to be prepared in the manner and form approved by the WAPC. Two critical elements of the manner and form is that a Parking Plan must have a sound strategic and financial basis.

Payment in lieu of car parking can be applied for either public parking infrastructure, other transport infrastructure or ancillary or incidental purposes. However, it is important that the need for parking and/or other infrastructure is demonstrated through sound strategic supporting documents. At present the City does not have any strategic documents which validate a need for parking or related infrastructure. In this regard prior to preparing a Parking Plan, a City-wide Car Parking Strategy is required to be adopted to demonstrate parking demand and opportunities for City-owned parking investment.

Further, a Parking Plan needs to have a sound financial basis and the City needs to include items proposed to be obtained with cash-in-lieu funds within its Integrated Planning and Reporting (IPR) framework. The Parking Plan should also relate directly back to the relevant IPR documents.

Given the above, the City is not currently in a position whereby it could prepare and adopt a Payment in Lieu of Parking Plan in the manner and form approved by the WAPC.

It should be noted that in the event of Council adopting a Parking Plan, this would have no effect in residential areas. Requesting cash-in-lieu via a Parking Plan requires a direct link between the specific development proposed and an identified parking need. A Parking Plan may be effective in areas such as Hampden Road or Broadway.

**Residential Car Parking**

Part 9A of the Regulations limits application of a Parking Plan to non-residential development only. Car parking for residential development is managed by the Residential Design Codes Volume 1 and 2. There is currently no planning framework applicable for which cash in lieu of residential car parking can be implemented.

**Preparation of a City-wide Parking Strategy**

A City-wide Parking Strategy would follow the completion of the Integrated Transport Strategy, as this Strategy will provide answers to questions relating to the demand for the various forms of the transport modes for the desired future form of the Nedlands local government area. From these conclusions, assessments will be able to be made about the demand for parking and other transport infrastructure.

The Strategy ideally would assess the City’s management of parking – including the use of the timed parking, the potential for the introduction of paid parking, the use of technology in the enforcement of the City’s parking requirements. The Strategy would also identify locations of expansion or improvements of the City’s parking infrastructure and other transport related infrastructure. The Strategy would inform the City’s Long Term Financial Plan, which illustrates a commitment to the project for which funds can be requested via the payment in lieu provisions of the Parking Plan. The creation of a Parking Strategy would have potential implications for the organisation beyond the creation of a Parking Plan to collect cash in lieu of parking provision.

It should be noted that as part of this process a review of the City’s car parking requirements for particular land uses would be required to ensure they reflect contemporary standards.

**Consultation**

Should Council resolve to prepare a Payment in Lieu of Parking Plan, the proposed plan will be advertised to the public for a minimum of 21 days in accordance with Clause 87 of the Regulations.

**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**

The preparation of a Parking Plan in the form required will cost approximately $80,000.

**Legislative and Policy Implications**

Should Council resolve to prepare a Payment in Lieu of Parking Plan, this policy work would be placed on hold until such a time as the City has an adopted strategic and financial basis on which to prepare a policy.

**Decision Implications**

Nil.

**Conclusion**

The City does not currently have the strategic and financial basis on which it could prepare a Parking Plan in the manner and form approved by the WAPC. A Parking Plan may be pursued at a later date following the adoption of a Car Parking Strategy. It is recommended that Council consider the provision of funding for a Parking Plan as part of the 2023/2024 budget.

**Further Information**

Nil.

# PD56.08.22 Section 31 Reconsideration of Development Application for Temporary Change of Use (Display House) and Signage at 20 Curlew Road, Dalkeith

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 August 2022 |
| **Applicant** | Webb & Brown-Neaves |
| **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 and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Extract of Ordinary Council Minutes for 24 May 2022 2. Transport Impact Statement 2 August 2022 3. Operational Management Plan 2 August 2022 4. CONFIDENTIAL ATTACHMENT – Submissions |

**Regulation 11(da) - Council considered that its previous decision to refuse the display Home ought to be upheld on the grounds of parking and traffic impacts being inappropriate for that location.**

Moved – Mayor Argyle

Seconded – Councillor Mangano

**Council Resolution**

**That Council in accordance with section 31(2)(b) of the State Administrative Tribunal Act 2004, varies its decision of 24 May 2002 refuse a temporary change of use from a Single House to a Display House at 20 Curlew Road, Dalkeith and substitutes the following new decision:**

**That Council in accordance with Clause 68(2)(c) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, Council refuses the development application in accordance with the information date stamped 2 August 2022  for a temporary change of use from a  Single House to a Display House for the following reasons:**

1. **The proposed land use will result in an increase in vehicle movements to and from the subject site beyond what is reasonable for a residential area. Vehicle movements will result in traffic and parking issues that will have an adverse impact on the amenity of the adjoining properties.**

**2. The development does not meet the City of Nedlands Parking Local Planning Policy objectives as inadequate parking has been provided on site.**

**CARRIED 6/5**

**(Against: Crs. Senathirajah Amiry Youngman Combes & Hodsdon)**

Recommendation

That Council:

In accordance with section 31(2)(c) of the State Administrative Tribunal Act 2004, sets aside the 24 May 2002 refusal to grant development approval for the temporary change of use from a single house to a display house at 20 Curlew Road, Dalkeith and substitutes the following new decision:

That Council in accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the information date stamped 2 August 2022 for a temporary change of use from a single house to a display house at 20 Curlew Road, Dalkeith, subject to the following conditions:

1. This approval is valid for eighteen (18) months from the date of this determination. The sign is to be removed, and the use of the site as a display house will revert to a single house at the end of the approval period.
2. This approval relates only to a temporary change of use from a single house to a display house and one sign. It does not relate to any other development on this lot.
3. The Operational Management Plan date stamped 2 August 2022 is to be fully implemented at all times to the satisfaction of the City of Nedlands, including but not limited to the following:
4. Hours of operation to be strictly Wednesdays 14:00-17:00 and Saturdays and Sundays 12:00-17:00;
5. Maximum of one (1) employee on the premises at any one time;
6. Maximum of six (6) adult visitors on the premises at any one time;
7. Visitation by appointment to be encouraged at all times, including provision on the operator’s website for bookings;
8. Employee parking to be located within the garage or the property;
9. Visitor parking to be located on the driveway of the property;
10. Signage to be limited to one (1) fixed sign 1200mm wide x 700mm high (maximum height of 1050mm with posts) to be displayed only for the life of this approval and one (1) portable sign to be displayed during open hours only;
11. A visitor log to be maintained at all times with details of name, contact and vehicle registration. This log to be made available for inspection by the City of Nedlands upon request; and
12. The complaints procedure outlined in the Operational Management Plan to be documented and displayed within the display home at all times so that employees, visitors and neighbours are made aware of the procedure.

**Purpose**

The purpose of this report is for Council to reconsider its decision relating to the refusal of a development application for a temporary change of use to Display Home at 20 Curlew Road, Dalkeith. The reconsideration will be undertaken in accordance with section 31 of the State Administrative Tribunal Act 2004 (SAT Act).

**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 SAT.

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**

**Previous Decision**

Council considered the initial application at its Ordinary Meeting held on 24 May 2022. An extract of the Minutes for this meeting relating to the proposal and Council’s decision is included at **Attachment 1**.

Please refer to the extract of the Minutes for details of the initial decision. This report will focus on the new information that has been provided in support of the request for reconsideration.

On 24 May 2022, Council resolved to refuse the application on the following grounds:

1. The proposed use is inappropriate for the site’s context and fails to meet the objectives of the Residential Zone as listed in the City of Nedlands Local Planning Scheme No. 3.
2. The proposed land use will result in an increase in vehicle movements to and from the subject site beyond what is reasonable for a residential area. Vehicle movements will result in traffic and parking issues that will have an adverse impact on the amenity of the adjoining properties.
3. The development does not meet the City of Nedlands Parking Local Planning Policy objectives as inadequate parking has been provided on site.

**SAT Application**

Subsequent to Council’s 24 May 2022 decision, the applicant exercised their right for a review of the decision by the State Administrative Tribunal (SAT). As is customary for this type of matter, SAT held a mediation between the parties, where the proposal was discussed without prejudice and in a confidential manner. As required by the SAT Act, the results of the mediation are confidential.

The applicant has prepared new information for consideration by Council as the initial decision-maker. Reconsideration is enabled by section 31 of the SAT Act (see legislative and policy implications section of this report).

**Purpose of Reconsideration and New Information**

The purpose of reconsidering the initial decision is to allow a decision-maker to consider an amended proposal and/or to consider new information. In this case, Council is being invited to consider new information.

The new information that has been provided for Council’s consideration is as follows:

* Transport Impact Statement; and
* Operational Management Plan.

This new information is assessed below. All matters considered by Council on 24 May 2022 have not been reproduced below. These matters may be referenced at **Attachment 1**.

**Discussion**

**Transport Impact Statement**

A transport impact statement (TIS) has been prepared to provide additional information on how parking and traffic will be managed by the display home use. The intent of the TIS is to provide a higher level of confidence that the display home can operate in a manner that will not cause nuisance to surrounding residences or wider locality.

The TIS has been prepared in accordance with the Western Australian Planning Commission (WAPC) Transport Impact Assessment Guidelines 2016. A copy of the TIS is included at **Attachment 2**.

The TIS is based upon the operational parameters of the display home as follows:

* Operating hours of a total of 13 hours over Wednesdays, Saturdays and Sundays;
* Encouragement of bookings;
* Maximum of 1 employee and 6 adult visitors at any one time;
* Provision of 4 visitor car parking spaces on the driveway;
* Employee to park within the garage so that the driveway is free for visitor parking; and
* Provisions to manage a situation where more than 6 visitors seek to enter the display home at the same time.

The TIS concludes that the usage of the display home will not create a significant impact on the traffic volumes or traffic management in the vicinity. The number of visitors is to be limited in a manner where the number of separate ‘groups’ visiting the display home can be accommodated in the driveway.

**Operational Management Plan**

The Operational Management Plan (OMP) has been prepared to clearly identify how the display home will be operated. The object of the OMP is to provide Council with a high degree of confidence that the display home will operate in a manner that is consistent with the residential amenity of the locality. A copy of the OMP is included at **Attachment 3**.

The OMP is predicated on the parameters of the TIS. The relevant findings of the TIS have been integrated into the OMP. The OMP outlines the following operational details:

* Hours of operation to be Wednesday 2-5pm and Saturdays and Sundays 12-5pm;
* Maximum of one employee at any one time;
* Location of a 0.9m², 1200mm wide x 700mm high (1050mm high with posts) sign. The purpose of the sign is to identify the location, operating times and contact details for the display home operator. This sign is intended to be discrete given the residential location. This black and white sign replaces the previously proposed red, white and black ‘pylon’ sign that was considered by Council on 24 May 2022;
* The making of appointments to view the display home will be encouraged. Whilst ‘walk-in’ visitations will be permitted, these will operate within the maximum capacity of six adult visitors at any one time. A visitor log will also be maintained; and
* Arrangements for dealing with the maximum number of visitors exceeding the limit of six. This will require the employee taking details and politely asking the group to leave the site. The group will then be contacted to either return immediately once other groups have departed or to arrange an appointment for another time.

**Signage**

As identified above, a permanent (i.e. for the length of the approval) sign of 0.9m² is proposed for the site. The design of the sign has been modified from the original proposal to be white on black. The intention is for the sign to provide critical information whilst remaining discrete. The use of red on the sign has been removed to ensure the sign is more discrete.

In addition to the permanent sign, a portable A-frame sign will be located on the side of the driveway to clearly show where visitors are to park. This sign will assist in ensuring street and verge parking is not undertaken. This sign will only be displayed during operating hours.

**Complaints Procedure**

The OMP also identifies a complaints procedure, should any surrounding residents have a concern with any facet of the display home’s operation. This procedure is based on the following:

* In the event of approval of the display home, the operator will correspond with all immediate neighbours providing relevant contact details, including after-hours contacts; and
* Where possible, the on-site employee is to be responsible for taking the complaints and handling these immediately.

**Can this use operate appropriately?**

In its previous decision, Council determined that the proposed use was inconsistent with the objectives of the residential zone. It is understood that the display home use did not ‘sit’ within a residential context.

It will be appreciated that display homes are a common occurrence in our residential areas, albeit normally in developing areas. However, with a greater focus on infill development in recent times, there is a burgeoning market for display homes in established areas. Home builders have developed a range of infill-ready house designs that they look for opportunities to showcase.

Apart from the relatively small and discrete sign, there is no other way to identify the dwelling is a display home. The context and character of the dwelling is already established and will not be altered. There will be no advertising ‘gimmicks’, such as lighting, banners or inflatable devices that may be seen in other display homes. The operating parameters have been established to reflect the location and the expectations of the desired target market.

The City officers are satisfied that the additional information provided will give Council a higher degree of confidence that the display home will operate in an appropriate manner.

**Consultation**

No additional consultation has occurred since Council’s 24 May 2022 decision. To allow for the submissions received to be considered as part of this decision, confidential copies have been included at **Appendix 4**.

**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 for Business**

Our City has a strong economic base with renowned Centres of Excellence and is attractive to entrepreneurs and start-ups.

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

**Budget/Financial Implications**

In the event that this matter is considered at a formal hearing of the SAT, costs associated with obtaining representation and preparing the case are anticipated to be $20,000-$30,000, depending on the length of hearing and number of witnesses. As a Class 1 matter, neither side is permitted to use legal representation. The City will require the services of a planning consultant experienced in SAT representation.

Should Council resolve to set the initial decision aside and grant planning approval, no further costs are anticipated.

**Legislative and Policy Implications**

The reconsideration is being conducted in accordance with section 31 of the SAT Act. This section allows for the SAT to invite a decision-maker to reconsider the initial decision. Upon being invited to reconsider the decision the decision-maker may:

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

It is noted that section 31 does not compel a decision-maker to reconsider a decision.

As the decision to be reconsidered is a planning determination, the provisions of clause 68 of the Deemed Provisions contained in Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015 also apply. This clause allows for the decision-maker to approve without conditions, approval with conditions or refuse the application.

**Decision Implications**

Council is acting as the decision-maker for the purposes of section 31 of the SAT Act. Should Council affirm or vary the original refusal decision, the matter will be placed for further directions on 9 September 2022. The applicant will then have the ability to request the SAT conduct a formal hearing and make a decision to either dismiss or uphold the application for review. In this event, the SAT will become the decision-maker and effectively either approve or refuse the proposal.

In the event Council sets the decision aside and substitutes an approval, the SAT matter will only continue in the even the applicant is aggrieved with one or more conditions of approval. The officer recommendation provided is based upon the information provided by the applicant. Given this, it is unlikely that the applicant will be aggrieved by the conditions of approval in the event Council resolves the recommendation as proposed.

**Conclusion**

The additional information provided is intended by the applicant to provide Council a high level of confidence that the display home can operate in a manner that will not adversely impact on the residential amenity of the locality.

The dwelling that is subject to the proposal has been fully constructed. No external changes to the dwelling are necessary to allow for the display home use to operate. External impacts on the property will be limited to a sign 0.9m² sign in black and white that is intended to provide information whilst remaining discrete.

The operating details of the display home are biased towards the location in which it is located and the market in which it is ‘pitched’. This display home will not be a high-volume product that may be seen in the display villages located in new estates. Rather, the intent is to promote a premium product in the context and character in which it is intended. The volume of persons wishing to visit this display home will be relatively small in comparison with a ‘first homeowners’ product.

The planning process conducted for this proposal has produced additional information that further details how the display home will operate and the impact it is likely to have on the vicinity. Should Council desire, the additional information now available would allow for the refusal to be set aside and replaced with an approval with conditions based on the OMP.

**Further Information**

**Question**

Councillor Mangano – Could the City please investigate no stopping line marking on the intersection.

**Officer Response**

In the event of the Display Home being approved, officers will assess the situation and if necessary, ensure the provision of appropriate parking management on the northern side of the Curlew Road / Waratah Avenue intersection, be this line marking or the provision of signs, combined with enforcement.

# PD57.08.22 Request to utilise City-owned land for public laneway between Dalkeith Road and Florence Road

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 August 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** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Laneway Map 2. Laneway Scenario 1 3. Laneway Scenario 2 4. Laneway Scenario 3 5. CONFIDENTIAL ATTACHMENT – Draft Dalkeith Road to Stanley Street Laneway Agreement 6. 12.5 metre Truck Sweep Path |

**Regulation 11(da) - Council considered that it was important that the laneway on both sides of Florence Road should be in alignment and that prior to Council giving final consent, related matters ought to be approved by Council.**

Moved – Councillor Mangano

Seconded – Councillor Youngman

**Council Resolution**

**That Council:**

1. **agrees in principle to a right of carriageway easement across 56 Dalkeith Road, Nedlands as part of a right of carriageway easement between Florence and Dalkeith Roads, Nedlands subject to Woolworths/Fabcot agreeing in a legally binding agreement in perpetuity, to be accepted by Council, that Laneway 2 is directly opposite Laneway 1;**
2. **requests the Florence Road to Stanley Street Laneway agreement with Woolworths/Fabcot be presented to Council for approval as a separate item once the design of that is produced and the legally binding agreement is produced;**
3. **request a legal binding agreement in perpetuity with ALDI regarding the use of the easement is presented to Council; and**
4. **requests the plan showing what road closures are required, where trucks are to be positioned and any other works associated with educting the proposed tank is presented to Council.**
5. **requests the CEO to begin investigations to create one way cul-de-sacs on both Florence Road, from the north side of properties number 1 on the west side to property number 8 on the east side, and Stanley Street from the north side of properties number 11 on the west side to property number 12 on the east side.**

**CARRIED 6/5**

**(Against: Mayor Argyle Crs. Senathirajah Amiry Combes & Hodsdon)**

Recommendation

That Council:

1. consents to a right of carriageway easement across 56 Dalkeith Road, Nedlands as part of a right of carriageway easement between Florence and Dalkeith Roads, Nedlands.
2. endorses the Dalkeith Road to Stanley Street Laneway Agreement between the City of Nedlands and Fabcot Pty Ltd.
3. authorises the Chief Executive Officer and the Mayor to sign the Dalkeith Road to Stanley Street Laneway Agreement, and any other documents necessary to execute the terms of the Agreement.

**Purpose**

The purpose of this report is to seek Council approval for a public right-of-carriageway (laneway) connecting Dalkeith Road and Florence Road through the City-owned land at 56 Dalkeith Road, Nedlands. The laneway within 56 Dalkeith Road will remain under the ownership of the City. All drainage and necessary roadworks will be paid for and carried out by a third party subject to the specifications of the City. An Agreement has been drafted by the applicant and is being reviewed by the City’s solicitors.

**Voting Requirement**

Simple Majority.

**Background**

**Development Application and SAT Proceedings**

On 29 June 2020 the Metro Inner-North Joint Development Assessment Panel (JDAP) deferred its consideration of the Nedlands Square Development Application (ie: Woolworths Shopping Centre, reference DA19/38512, DAP19/01651) for 90 days for the following reasons:

1. To provide greater certainty on the traffic, transport and access issues;
2. To provide further information on heritage issues; and
3. To address the integration of the project in the Nedlands Town Centre.

The applicant advised on 21 July 2020 that it had sought a review of the application at the State Administrative Tribunal (SAT). The matter has since remained in mediation at the SAT, with mediations occurring several times since mid-October 2020. The next mediation is scheduled for late August 2022.

While the City of Nedlands is not a party to the SAT proceedings, the City undertook further work in order to provide advice back to the parties in respect of:

* The Dalkeith Road to Stanley Street Laneway Network; and
* The urban design treatment of Florence Road between the proposed Woolworths Shopping Centre and approved ALDI development.

**The Dalkeith Road to Stanley Street Laneway Network**

The proposed laneway network is shown in Figure 1 below and consists of two laneways comprising:

1. Dalkeith Road to Florence Road laneway:
   * Lots 50 and 51 (No. 56) Dalkeith Road. The two parcels of land together form one drainage sump (the sump).
   * Lots 4 and 5 (No. 90 Stirling Highway) owned by ALDI and approved by JDAP for retail (supermarket) and restaurant purposes in mid-November 2018.
2. Florence Road to Stanley Street laneway:
   * This laneway is entirely within private land the subject of the Woolworths development, and forms part of the JDAP application currently at SAT.

Condition 5 of the approved ALDI JDAP approval requires:

“Prior to occupation of the development, the applicant is to enter into a Deed of Agreement with the City of Nedlands to ensure that, should access be made available to Dalkeith Road in the future, the proposed development is able to facilitate public through access from Dalkeith Road to Florence Road. The Deed of Agreement is to be prepared at the applicant’s cost”.



**Figure 1:** Landholdings involved in the future Dalkeith Road to Stanley Street Laneway

The laneway connection is further identified in the Local Planning Policy - Dalkeith Road to Stanley Street Laneway and Built Form Requirements. It is noted that the policy proposes that the laneway on the Woolworths site is in alignment with the City laneway. However, the proposed Woolworths laneway does not align with the proposed ALDI/sump laneway the subject of this Agreement. The only possible location for a laneway between Dalkeith Road and Florence Road is the location proposed, as all other lots between Florence Road and Dalkeith Road are privately owned. The laneway on the Woolworths site is part of an existing application currently in mediation at SAT.

**Stanley Street to Florence Road Laneway**

The proposed laneway connecting Stanley Street to Florence Road is located entirely within the property boundaries of the future Woolworths site and is not the subject of this report except in respect of the overall strategic road network linkages. The location of this link is unlikely to change in the course of the Woolworths development.

**Florence Road to Dalkeith Road Laneway**

This is the section of laneway that is the subject of the Agreement. The laneway between Florence Road and Dalkeith Road will be constructed partly over ALDI’s land and partly over the City-owned sump at 56 Dalkeith Road. The laneway would be publicly accessible and assist in diverting vehicle traffic and deliveries in relation to the Woolworths and ALDI developments away from Edward Street.

Original discussions revolved around a cost-sharing agreement between the City and the applicant for Woolworths. However, recently the applicant agreed to bear the full cost of works and carry out the works to the City’s specifications and with an overseer appointed by the City (also at the cost of the applicant). The proposed Agreement stipulates:

* The applicant will construct drainage appropriate to replace the City’s sump and provide a new laneway over the City’s land. Works, such as rainwater pits and underground plumbing, may also be needed within the Dalkeith Road and Florence Road reserves (Detailed designs have not yet been finalised).
* Acoustic treatments, which may include a sound wall, will be installed as part of the laneway works to shield southern properties from future traffic noise.
* The design and works will be undertaken by the applicant and overseen by a superintendent appointed by the City.
* The works will be designed and built to the City’s specifications and to the satisfaction of the City.
* The City will tender and appoint a Superintendent to oversee the works on the City’s behalf. The applicant will bear the full costs of the Superintendent.

In order to achieve the same level of drainage for a subterranean sump as the current open-air sump, significant works are required within the sump. As of 2020 when the agreement was first proposed, the total works were estimated to cost between $2.9 million and $4.1 million. As per the Agreement, these costs will be borne by the applicant.

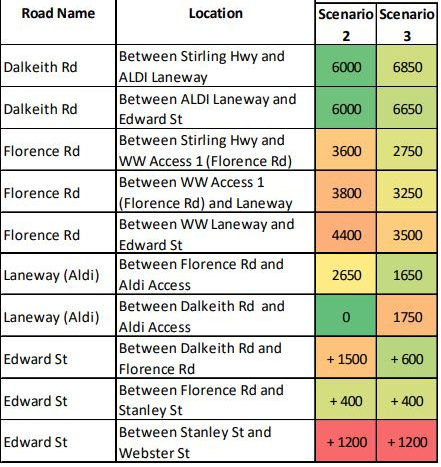
**Discussion**

**Traffic Impact to Neighbourhoods**

Main Roads has indicated it plans to make the Florence Road and Stirling Highway intersection left in/left out only. Should vehicles (including large delivery trucks) leaving either the ALDI or Woolworths wish to turn right onto Stirling Highway, they will need to reach Dalkeith Road. With the laneway constructed, cars and delivery trucks will be able to use the laneway to reach Dalkeith Road. Without the laneway, the majority of vehicles and delivery trucks will proceed south down Florence Road towards Edward Street and then west to Dalkeith Road or, to a lesser extent, east to Broadway. In effect, without the laneway more traffic will be diverted into residential neighbourhoods than would be the case should the laneway be constructed.

In 2021, the City modelled several traffic scenarios taking into consideration both the ALDI development and the Woolworths development. Excerpts from the relevant scenarios can be seen in Table 1 following:

**Table 1**: Daily traffic volumes in 2 different scenarios



Note: Scenario 2 is **without** laneway across the City’s sump.

Scenario 3 is **with** the laneway constructed across the City’s sump.

As demonstrated in the above table, the laneway option (Scenario 3) generally reduces traffic down the whole of Florence Road, and significantly reduces traffic along Edward Street. Without the laneway, cars and delivery trucks will need to proceed down to Edward Street and then west in order to reach the Dalkeith Road/Stirling Highway intersection to turn right.

**Access for ALDI and Woolworths**

Both ALDI and Woolworths (once approved) will be able to operate in the event that the City refuses to consent to the portion of laneway over the sump. ALDI has been approved with a turntable for delivery vehicles that will enable them to enter and exit the site in forward gear. The turntable will not be required if the laneway is constructed. Woolworths will build their portion of laneway, which will allow their vehicle deliveries to enter through Stanley Street and exit onto Florence Road.

Should the City refuse to be party to the Agreement and not allow construction of the laneway over the sump, there will be significant traffic impacts down to Edward Street and through the nearby residential neighbourhoods. Cars and delivery vehicles from the two development sites will mostly proceed toward Edward Street and then to Dalkeith, where they will be able to turn right onto Stirling Highway at the Dalkeith Road/Stirling Highway intersection.

**Impact on City infrastructure**

In order to construct the laneway, the existing open-air sump at 56 Dalkeith Road must be converted to a subterranean drainage facility. Preliminary design work has been undertaken by the City to demonstrate feasibility. Final designs will be undertaken by the applicant to the City’s satisfaction.

The Agreement does not include any changes in land ownership. Both the City’s sump and the ALDI land needed to complete the laneway are to have a public right of carriageway easement placed over them. Ongoing maintenance of the City’s portion of laneway will be the responsibility of the City as part of general maintenance.

**Dogleg arrangement**

Some concerns have been expressed that the proposed dogleg arrangement of the laneways will be unsafe. The Woolworths development is still in mediation. The final location of the laneway across the Woolworths site is yet to be determined and will need to be approved in light of the location of the subject laneway being fixed. The City will be recommending that a condition of approval require Woolworths to conduct a Road Safety Review on the operation of the laneways in light of the dogleg arrangement. Detailed study would occur as part of the building permit process, however, officers are confident that a design solution can be found that would demonstrate acceptable levels of safety.

Discussions have suggested that such safety works may include paving treatments, such as raised plateaus, and line marking to Florence Road to delineate a hierarchy of vehicle movement. Kerbing and footpath treatments may also be required. These works would need to demonstrate that the road could facilitate safe movement of cars and large delivery vehicles without running over the kerbs or traffic islands. Any such works would be at the expense of the applicant and to the satisfaction of the City. Such safety works are not the subject of this proposed Agreement.

**Interface at Dalkeith Road and proposed laneway**

As of the date of this report, no design work has been done on the intersection of the laneway and Dalkeith Road. It is likely that kerbing and the traffic island would need to be modified to allow vehicles to turn right from the laneway onto Dalkeith Road. These works would form part of the Woolworths development and be a condition of approval to be carried out at their costs and to the City’s satisfaction.

Based on the Traffic Impact Assessments (TIA) of the two developments, there will be some queuing on Dalkeith Road that will line up past the laneway. However, such queues are only likely to be in existence for short periods of time while vehicles approaching Stirling Highway wait for a traffic signal change. Further, the TIAs indicate that demand for the laneway will be at its highest during off-peak times at Dalkeith Road.

**Consultation**

The laneway connecting Florence Road to Stanley Street is entirely within private land and was shown on previous development applications that were advertised for public comment. The laneway network is also the subject of an active development application. Accordingly, there was no need for further consultation on this leg of the laneway.

Administration posted letters to the three residential property owners and residents immediately south of the City’s sump at 56 Dalkeith Road. The letters briefly described the proposal and invited the recipients to discuss the proposal with City Officers should they require further details. The submission period took place from 30 May to 13 June 2022 and one submission was received raising the following issues, followed by Administration’s response:

1. This proposal seems solely for the benefit of ALDI and Woolworths.

As discussed in the report above, the two developments can operate without the laneway and will increase traffic regardless of whether the laneway is built or not. The laneway will funnel traffic away from Edward Street to the south and reduce the impact to those residential areas.

1. It will be hazardous for large trucks to negotiate the two laneways.

The final location of the Stanley Street to Florence Road laneway has not been determined and is part of a SAT application. A recommended condition of approval on the Woolworths development will be to conduct a Road Safety Review and carry out any works necessary to facilitate vehicle movement and safety. Safety can be facilitated through road modifications such as line marking, signage, pavement treatments, and raising sections of road.

1. There are frequent traffic jams on Dalkeith Road. Traffic backs up across the junction between the laneway and Dalkeith Road during peak hours.

The TIAs for each development indicate the laneway will still be functional even at these peak times.

1. There are a number of large developments proposed nearby, and a lot of high-density areas that could build large developments. Once these are developed it will make traffic along Dalkeith Road even worse, as it will be the only nearby intersection that allows right turns onto Stirling Highway.

This would be true in any scenario. The laneway attempts to alleviate traffic congestion down Florence Road to Edward Street, and for the southern portion of Dalkeith Road.

1. It will be hazardous for pedestrians crossing Dalkeith Road, particularly to the child care centre at the junction of the proposed laneway. This junction will be a dangerous blind spot.

Necessary road works will need to occur to ensure the laneway can operate safely. Any such road works will come out of the detailed design review by the Woolworths proponent and be subject to approval from the City.

1. Noise and pollution from the trucks will severely impact the child care centre at 58 Dalkeith Road and the surrounding properties.

The Agreement includes the provision of suitable acoustic treatments, which may include a sound barrier, to protect the southern properties from traffic noise. Even without the laneway, there will be an increase in cars and delivery vehicles along Dalkeith Road should both developments proceed. These southern properties lie in a transition zone coded R160, between R-AC1 coding to the immediate north and R60 coding a few lots to the south. As development occurs nearby, it is expected that these properties, too, could be redeveloped.

The proposed laneway from Florence Street to Dalkeith Road has been discussed with Councilors at a Concept Forum on 28 July, which raised issues in relation to the traffic modelling used, loading bay locations, right turns into Stanley Street from Stirling Highway and safety and functionality of the dogleg movement across Florence Street.

Additional information will be provided on these matters at the Council meeting, with the following preliminary information provided at this stage:

In relation to the traffic modelling, the animation shown to Councillors does not show movement from each individual site. Local experiences may not be clearly shown via the animation, however, at a macro level the traffic modelling reflects the known current movements and based on assumptions makes predictions of future traffic movements. The purpose of the model is to assist within decision making.

The location of the loading bays will be a matter which the JDAP will need to consider as part of its determination on the Woolworths development application. The current plans show a loading bay of 8.6 metres in length located on Florence Street, and a second loading bay of 5.5 metres in length located within the basement level.

The right turn from Stirling Highway into Stanley Street will be subject to further consideration, which will be presented to Council. Ultimately the JDAP will need to consider this matter as part of their consideration of the Woolworths development application.

Officers are of the opinion that the dogleg movement between the Woolworths site and the proposed laneway from Florence Street to Dalkeith Road can be made safe for the 19 metre delivery trucks to make this movement, through appropriate design which ensures clear sight lines are created and appropriate infrastructure treatments. This is possible given the infrequency of the delivery trucks making the movement, the limit on the movements being made during non-peak times, and the traffic volumes on Florence Road and the laneway.

Officers have sought advice from Woolworths on their willingness to accept a restriction on 12.5 metre delivery trucks being used to service the Woolworths store. Woolworths have also been requested to consider restricting the access along Florence Street from the southern boundary of the Woolworths site to only north bound traffic. This would allow vehicles from the south to access Woolworths via Florence Street but would require them to return via the laneway and Dalkeith Road or via Stanley Street. The position of Woolworths on these matters will be outlined to Council prior to the Council meeting.

**Strategic Implications**

The development of the Dalkeith Road to Stanley Street Laneway connection is consistent with the City’s adopted LPP Dalkeith Road to Stanley Street Laneway and Built Form Requirements.

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.

**Easy to Get Around**

We strive for our City to be easy to get around by preferred mode of travel, whether by car, public transport, cycle or foot.

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

Renewal of community infrastructure such as roads, footpaths, community and sports facilities

**Budget/Financial Implications**

The design, works, and oversight costs will be borne by the applicant as per the Agreement. Additional expenditure for ongoing maintenance and cleaning of the drainage infrastructure over the City’s portion of laneway at 56 Dalkeith Road may be $8,000 to $10,000 annually.

The remaining portion of laneway will be maintained by the landowner.

**Legislative and Policy Implications**

The proposed laneway between Florence Road and Dalkeith Road is consistent with the [*Local Planning Policy – Dalkeith Road to Stanley Street Laneway*](https://www.nedlands.wa.gov.au/documents/686/dalkeith-road-to-stanley-street-laneway). A right of carriageway easement may be established under the [*Transfer of Land Act 1893*](https://www.legislation.wa.gov.au/legislation/statutes.nsf/RedirectURL?OpenAgent&query=mrdoc_45321.pdf)*.*

**Decision Implications**

Should Council endorse the recommendation, it will allow the Chief Executive Officer to sign the draft Agreement for the applicant to design and construct the laneway over the City’s sump to the specifications of the City. It will also authorise the Chief Executive Officer to sign a right of carriageway easement over the City’s land at 56 Dalkeith Road.

Should Council not endorse the recommendation, the Florence Road to Dalkeith Road laneway will not be able to be constructed. ALDI will operate using their approved turntable for delivery vehicles. Woolworths will still have the ability to construct a laneway between Stanley Street and Florence Road over the land they control. The impact to surrounding residential areas is that more traffic and delivery vehicles will proceed down the southern portion of the Florence Road block to reach Dalkeith Road via Edward Street. Edward Street will see higher traffic volumes and delivery vehicle volumes, particularly towards Dalkeith Road, as traffic seeks a way to turn right onto Stirling Highway at the Dalkeith Road intersection.

**Conclusion**

The ALDI development has already been approved without the laneway, and the proposed Woolworths development can still operate without it. The main purpose of the laneway is to divert cars and heavy trucks away from the southern portions of Florence Road and Dalkeith Road, and off Edward Street to the south. This is seen as in the best interests of the local community.

The laneway can be safely designed and with sufficient drainage to compensate for the removal of the sump. All works on City land will be overseen by a Superintendent on behalf of the City. All works, including the provision of the Superintendent, will be carried out by the applicant.

The other laneway connecting Stanley Street to Florence Road is subject to further consideration, as it forms part of an existing development application currently being mediated through SAT. The City is not agreeing to the location of this laneway at this time.

It is recommended that Council endorse the Agreement and authorise the CEO to sign on behalf of the City.

**Further Information**

**Question**

Councillor Mangano – Can the sweep path diagram for 12.5m trucks be provided?

**Officer Response**

The 12.5 metre length truck sweep paths is shown in Attachment 6. The diagram shows left and right turns into Stanley Street from Stirling Highway, a left turn from Florence Road onto Stirling Highway and a right turn from Dalkeith Road onto Stirling Highway. All of these movements can be made safely subject to appropriate intersection design.

**Question**

Could ALDI be consulted in regard to the size of trucks using the laneway and any possible impacts on ALDI?

**Officer Response**

ALDI are fully aware the proposal in relation to the drainage arrangements and the use of the laneway by Woolworths delivery trucks and customers. The most recent sweep paths diagram has been shared with ALDI, as has the officer Council report.

The laneway over the ALDI portion will have an easement to allow for a right of carriageway. Thus the easement will ensure that full public access is maintained over this portion of the laneway, with ALDI to retain ownership of this portion of the laneway. A condition of approval on the ALDI approval requires that ALDI enter into a Deed of Agreement with the City of Nedlands prior to occupation to ensure the development is able to facilitate public access along the laneway (should the laneway be constructed). The Agreement will also require ALDI to maintain the laneway to the satisfaction of the City of Nedlands.

**Question**

Can LGIS be consulted re risk to the City in approving this laneway? Will Councillors be liable for any incident / accident on the laneway?

**Officer Response**

LGIS have been advised of the proposal. Section 9.56 of the *Local Government Act 1995* provides protection to elected members and employees of the City who have acted in good faith in the performance of their duties under the Act or under any other written law.

**Question**

Councillor Bennett – Can administration prepare recommended timetable for delivery trucks etc as part of the approval?

**Officer Response**

The delivery times for the Woolworths development will be a matter for the JDAP to determine. Any approval will require a Delivery Management Plan which will detail the hours within which delivers to the supermarket are to take place.

**Question**

Councillor Coghlan – If the laneway is not approved what are the alternative options available to Council?

**Officer Response**

Based on the traffic modelling, in the event that the laneway to Dalkeith Road is not created, additional traffic will be placed on Florence Road between Stirling Highway and Edward Street, (see Scenario 2 and 3 in Attachments 3 and 4). Additional traffic is also expected on Edward Street. It is open to Council to facilitate this outcome. Officers remain of the view that the better community outcome is the provision of the laneway.

The combination of the ALDI and Woolworths developments with result in additional traffic on Stanley Street, Florence and Dalkeith Roads regardless of the option adopted by Council in terms of the Florence to Dalkeith laneway decision, Edward Street will also carry additional traffic. If Council was to consider any modifications to the local road network in response, careful and detailed consideration should be given to the impacts of any such modifications in terms of the overall traffic movements within the wider area, the urban design implications in terms of permeability, the process to be followed will also need to be explored to ensure that the City’s decision is legally safe and the role of the any State Government agency and their approval should be well understood prior to this process commencing.Importantly the basis of the Council decision to make modifications to the local road network would need to clearly articulated and consistent with sound traffic management, urban design and town planning principles.

**Question**

Councillor Mangano – Drainage info - will the sump be ducted and how much will it cost? Who will pay for this?

**Officer Response**

The design, works, and oversight costs will be borne by the applicant as per the Agreement. Additional expenditure for ongoing maintenance and cleaning of the drainage infrastructure over the City’s portion of laneway at 56 Dalkeith Road may be $8,000 to $10,000 annually, payable by the City. The City will seek to improve the design to lower maintenance costs as the design process progresses. The annual cleaning out of the drainage facility will result in the closure of the laneway for a short period of time (potentially two half days annually), both ALDI and Woolworths are aware of this. The drainage facility is being designed to ensure that the closure of Dalkeith and Florence Road will not be required during the cleaning progress.

# Divisional Reports – Technical Services Report No’s TS16.08.22 to TS17.08.22

# 17.1 TS16.08.22 Refusal of Vehicle Crossover Application, 41 Hillway, Nedlands – Disposal of Objection to Decision

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 August 2022 |
| **Applicant** | H H Meeves |
| **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 and the proponents or their consultants. |
| **Report Author** | Andrew Dickson – Manager Parks Services |
| **Director** | Andrew Melville – Acting Director Technical Services |
| **Attachments** | 1. Application Covering Letter and Plans 2. Street Tree Image 3. Streetscape Images 4. Objection Submission from Property Owner |

**Regulation 11(da) – Not Applicable – Recommendation Adopted**

Moved – Councillor Youngman

Seconded – Councillor Amiry

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED UNANIMOUSLY EN BLOC 11/-**

**Council Resolution / Recommendation**

**That Council dismiss the objection and refuse the vehicle crossover application for 41 (Strata Lot 4) Hillway, Nedlands and accompanying plans date stamped 10 February 2022 for the following reasons:**

1. **Relocation of the crossover from Bruce Street to Hillway as proposed would detract from the local amenity as it requires the removal of a street tree that would adversely impact on the streetscape; and**
2. **The proposal is contrary to Council’s Street Trees Policy which –**
   1. **requires development plans to be adjusted to accommodate established street trees;**
   2. **prioritises tree retention on nature strips adjoining development sites;**
   3. **will only consider street tree removal when no other practicable design alternative exists; and**

**Purpose**

The purpose of this report is for Council to consider an objection to the Administration’s decision to refuse a vehicle crossover application. The applicable legislation allows for an affected person to object to the Administration’s decision and have the matter considered by Council.

**Voting Requirement**

Simple Majority.

**Background**

The property located at 41 (Strata Lot 4) Hillway, Nedlands (the Property) is a corner lot with frontage to Bruce Street and Hillway. Vehicle access to the Property is from a crossover located on Bruce Street which is setback approximately 10m from the tangent point of the street corner. The existing crossover meets the Australian Standard for off-street car parking.

The subject vehicle crossover application accompanies development application DA22-74177, received on 10 February 2022 pertaining to the Property. The development application proposes alterations to a single house including reconfiguration of internal parking and driveway access. The accompanying vehicle crossover application proposes:

* Removal of the existing crossover from Bruce Street with reinstatement of the nature strip inclusive of installation of a new ‘mature’ street tree.
* Relocating vehicle access to Hillway with construction of a new crossover proposed to be 4.0 metres in width.
* The removal of one (1) street tree on Hillway to facilitate the new crossover.
* The applicant has committed via email correspondence on 5 April 2022 to plant two (2) new ‘mature’ street trees as replacement for the one (1) proposed removed street tree.

The Bruce Street and Hillway nature strips adjacent to the Property accommodate a total of six (6) Queensland Box street trees. The tree proposed to be removed is the northernmost of the three (3) street trees on Hillway adjacent to the Property. An image of the tree is provided in Attachment 2.

**Discussion**

**Existing Development Approval**

Development application DA21/65385 relating to the Property was approved on 29 September 2021. This development approval remains current and proposes an alternative design which does not require relocation of the existing crossover. Consequentially, no vehicle crossover application or requirement to remove a street tree is associated with this existing development approval.

**Street Trees Council Policy**

Council’s Street Trees Policy does not authorise the removal of street trees associated with development proposals where practicable design alternatives exist. Street tree removal can only be authorised where, following consultation with the City, it is not considered reasonable or practicable to redesign or amend the development proposal to enable the retention of the street tree.

**Street Tree Assessment**

The City has completed a preliminary assessment of the street tree and identified that it:

* is a mature Queensland Brush Box tree approximately 6m in height.
* is in good condition and has a life expectancy of up to 40 years.
* has good prospects of enduring through and beyond the building activities.

**Streetscape Considerations**

The tree is part of an avenue of Queensland Box trees on Hillway. It contributes to a consistent and better than average avenue of Box trees of which few remain throughout the City at this level of preservation. Please refer to Attachment 3 for images of the streetscape.

**Consultation**

No community consultation was undertaken as vehicle crossover applications are not required to be advertised.

**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**

[*Local Government (Uniform Local Provisions) Regulations 1996*](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_24865.pdf/$FILE/Local%20Government%20(Uniform%20Local%20Provisions)%20Regulations%201996%20-%20%5B02-a0-04%5D.pdf?OpenElement) *­*– Regulation 23(b) Objections and review.

Part 9 Division 1 of the Act applies to a decision of a local government made upon an application under regulation 12 or a decision by the Commissioner of Main Roads under regulation 14(2) relating to the application.

[*Local Government Act 1995*](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_45135.pdf/$FILE/Local%20Government%20Act%201995%20-%20%5B07-z0-00%5D.pdf?OpenElement)– Sections 9.6(1) and 9.6(4) Dealing with objection.

The objection is to be dealt with by the council of the local government or by a committee authorised by the council to deal with it.

Council may dispose of the objection by determining to –

(a) dismiss the objection, or

(b) vary the decision objected to, or

(c) revoke the decision objected to, with or without –

(i) substituting for it another decision; or

(ii) referring the matter, with or without directions, for another decision by a committee or person whose function it is to make such a decision.

**Decision Implications**

If Council resolves to dismiss the objection and refuse the vehicle crossover application, the applicant will have a right of review to the State Administrative Tribunal.

If Council resolves instead to approve the vehicle crossover application, the street tree will be removed enabling the crossover to be installed, and the City will require that the applicant plant two (2) new ‘mature’ street trees in an alternative location to replace the tree that has been removed.

**Conclusion**

The proposal associated with the Property has been assessed and does not satisfy the provisions of Council’s Street Trees Policy. The Administration has refused the vehicle crossover application on the basis it proposes removal of a street tree where reasonable and practicable design alternatives exist which would result in its retention. The Property owner has objected to this decision.

Council is required to consider the objection. It is recommended that the objection be dismissed, and that Council refuse the vehicle crossover application as the removal of the street tree does not align with Council Policy as its removal would have an adverse impact on the streetscape, amenity of the area, and the environment, as the street tree contributes to the established character of the area. The current vehicle access arrangement is safe and functional, and relocation of the crossover is considered unnecessary.

**Further Information**

Nil.

# 17.2 TS17.08.22 Adoption of Asset Management Plan 2023-2025

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 August 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Renier De Beer – Acting Assets Coordinator |
| **Director/CEO** | Andrew Melville – Acting Director Technical Services |
| **Attachments** | 1. Nedlands AMP - Buildings 2. Nedlands AMP - Drainage 3. Nedlands AMP - Parks 4. Nedlands AMP - Paths 5. Nedlands AMP - Roads |

Moved – Councillor Mangano

Seconded – Councillor Bennett

That the item be deferred.

Lost 3/8

(Against: Mayor Argyle Crs. Coghlan Senathirajah Amiry

Smyth Youngman Combes & Hodsdon)

**Regulation 11(da) – Not Applicable – Recommendation Adopted**

Moved – Mayor Argyle

Seconded – Councillor Senathirajah

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED 10/1**

**(Against: Cr. Mangano)**

**Council Resolution / Recommendation**

**Council:**

1. **receive the Asset Management Plans 2023 – 2025 (AMP); and**
2. **requests that the Administration provide an annual presentation to Councillors which provides an update on the state of the City’s Assets.**

**Voting Requirement**

Simple Majority.

**Background**

The Local Government Act 1995 requires all local governments to develop future planning objectives and methodologies. These integrate corporate business planning and objectives, which include matters relating to resources, such as asset management, workforce planning, and long-term financial planning.

Asset management rules and guidelines have been developed by the Department of Local Government, Sport, and Cultural Industries (DLGSCI) which describe asset management being critical to meeting local government strategic goals within an Integrated Planning and Reporting approach.

Asset Management Policies, Strategies and Plans are informed by, and in turn inform, community aspirations and service requirements in the Strategic Community Plan.

This City currently does not have any adopted Asset Management Plans which would provide strategic and operational objectives to effectively manage the organisation’s asset portfolio.

Council, in September 2021 (item 13.8) adopted the CEO KPI’s, where Council directed the CEO to develop Asset Management Plans for significant and critical asset classes including the identification of:

* Asset Consumption Ratio
* Asset Sustainability Ratio
* Asset Renewal Funding Ratio

The Asset Management Plans will inform Councillors of the current state of our assets and assist Councillors in determining affordable, realistic, and achievable priorities, while sustainably managing the City’s assets.

By making certain that Asset Management Plans are monitored and outcomes reported to the community, Council ensures that it is making progress towards meeting long term community needs.

It was resolved that Council will be required to adopt the final Asset Management Plans. In response, the CEO provides Asset Management Plans across each of the City’s primary asset classes (Buildings, Drainage, Parks, Paths, Roads). Their adoption will ensure the City’s alignment with the requirements of the Local Government Act 1995 and the City’s Corporate Business Planning requirements.

**At the ordinary Council Meeting held on Tuesday 26 July, Council considered the draft Asset Management Plans where a decision was made to defer their consideration to the August round of meetings. This was to enable the Administration to make some modifications to the Plans, where data tables are included to provide Council with an understanding of the of the financial gap that exists between the quantity of asset renewal needed, and the asset renewal that the City is currently able to deliver. The Plans presented with this report now contains that information.**

**Discussion**

The Administration has engaged and worked closely with an external consultant (Talis) to develop Asset Management Plans across each of the City’s primary asset classes (Buildings, Drainage, Parks, Paths, Roads).

The Asset Management Plans highlight some key elements and concerns regarding the management of the City’s asset portfolio which are sumarised as follows:

* There is a significant increase in asset portfolio value compared to previous financial years likely caused by undervaluing of assets in previous years,
* There are identified funding gaps that exist between current and required expenditure to meet asset renewal needs
* There is a considerable backlog of assets which require intervention, likely caused by delayed renewal of the assets when intervention was historically required
* The overall condition of assets has substantially deteriorated over time and adopted useful lives have been historically overestimated; and
* The absence of several strategic and guiding documents that would provide direction for each asset class including an Integrated Transport Strategy, Building Strategy, Path Network Strategy, Data Management Plans, etc.

To manage the key elements and concerns within the Asset Management Plans, possible approaches are as follows:

* Increase the funding / expenditure for asset renewal, ensuring that the assets remain within appropriate serviceable levels,
* To reduce levels of service (technical and customer) to sustainable levels
* Review and rationalisation of the City’s asset portfolio, to ensure sustainable and effective provision of services

The Administration has noted the above elements that will require action, and will be presented to Council in due course for consideration. It is noted that the Asset Management Plans have identified several areas of improvement that will require strategic decisions in the next three years to further develop the City’s long-term sustainably, and management of the City’s asset portfolio.

The Asset Management Plans are live documents and will be continually reviewed and updated on a regular basis as new data, knowledge and information is discovered, works are completed, and strategic decisions are made.

It is proposed that the Asset Management Plans will be updated and reviewed frequently on an ongoing basis as new information is received. The Administration expects that going forward the Councillors will receive an annual presentation through a Concept Forum, on the current state of the City’s Assets.

**Consultation**

Consultation with stakeholders was conducted and feedback sought to ensure that objectives within the Asset Management Plans reflect the current status quo, are consistent and achievable, which included but is not limited to:

* Elected Members of Council
* Directors and Managers
* External Consultants
* Other Local Governments

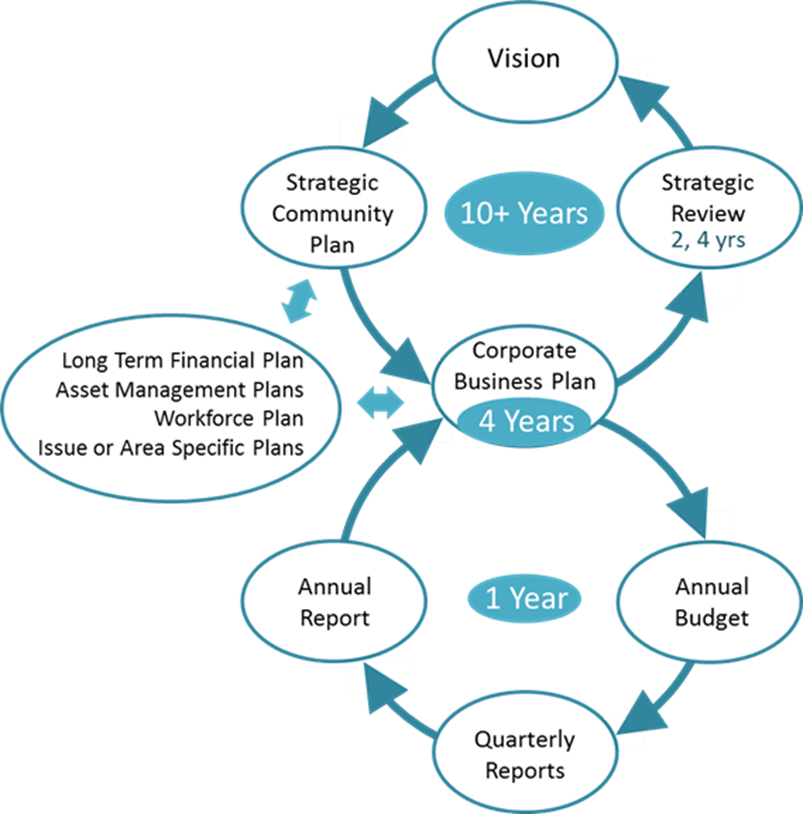
**Strategic Implications**

WA Local Governments are required to align strategic planning objectives and processes with the Integrated Planning and Reporting (IPR) Framework of the Department of Local Government, Sport, and Cultural Industries (DLGSCI).

The framework provided by the IPR sets out, amongst other things, a requirement for Local Governments to administer the assets they are responsible for effectively and efficiently.

The IPR requires that Local Governments develop and implement Asset Management Plans that are aligned, consistent, and support the objectives of the Local Government. The Objectives of the Local Government are set out in various other documents as shown in the figure below and principally include:

* The Strategic Community Plan
* The Corporate Business Plan
* The Long-Term Financial Plan
* The Annual Budget
* Asset Management Plans
* Other strategic planning documents



**Figure 3. DLGSCI Integrated Planning and Reporting (IPR) Framework**

The Asset Management Plans interlink and inform the strategic objectives and priorities of the Strategic Community Plan and vice versa, ensuring that proposed objectives are alignment.

**Budget/Financial Implications**

The key financial elements and concerns regarding the City’s asset portfolio are sumarised as follows:

* The City’s asset portfolio is in an overall Average condition and a considerable backlog of assets which require intervention exists, likely caused by delayed renewal of the assets when intervention was historically required.
* The backlog of works required is still being quantified and the Administration will continue to work with Council on the best approach to manage this through the Long-Term Financial Plan and Annual Budget processes.
* Historical capital expenditure (including new assets and renewal) has been approximately $7M over the last five years.
* The average annual unconstrained asset renewal investment need across the asset portfolio is approximately $11.5M (noting this excludes the Building Asset class due to limited valuation information which will be updated following the 30 June 2022 valuation and condition assessment).
* Given the City’s current trajectory it is forecasted that the asset management ratios will continue to change as follows:
  + Sustainability Ratio (indicates whether a local government is replacing or renewing existing non-financial assets at the same rate that its overall asset stock is wearing out)
    - Will decrease, indicating that the required expenditure on renewal or replacement of assets has not occurred at minimum acceptable levels to maintain the longevity of the assets
  + Consumption Ratio (measures the extent to which depreciable assets have been consumed by comparing their depreciated replacement cost to their current replacement cost)
    - Will decrease, indicating that the assets have not been renewed at the optimal time
  + Renewal Ratio (measure of the ability of a local government to fund its projected asset renewal / replacements in the future)
    - Will decrease as the City is likely unable to fund the capital expenditure required to renew or replace assets based on current levels of service into the future

The Administration will continue to work with Council to determine and set appropriate service levels that are sustainable and meet the City and community needs and objectives.

**Legislative and Policy Implications**

The recommendations and suggested actions in the Asset Management Plans are in alignment with the Local Government Act’s requirements for Corporate Business Planning including establishment and consistent evaluation of strategic documentation. The Plans also align with the Integrated Planning & Reporting Framework.

Meeting these requirements will assist the City to manage and administer our assets effectively and efficiently.

**Decision Implications**

The Officer recommendation is for Council to receive the Asset Management Plans 2023 – 2025 to ensure the City is brought into alignment with; the Local Government Act, Regulations, and the Integrated Planning and Reporting (IPR) Framework by Department of Local Government, Sport, and Cultural Industries.

The impact on the community with the receipt of the asset management plans is yet to be quantified as service levels have not been established and adopted. The Administration will continue to work with Council to determine and set appropriate service levels that are sustainable and meet the City and community needs and objectives. The receipt of the Asset Management Plans 2023 – 2025 demonstrates Council’s support for and collaboration with Administration to sustainably manage the City’s asset portfolio.

**Conclusion**

Council has directed the CEO to execute and deliver Asset Management Plans across each of the City’s primary asset classes (Buildings, Drainage Parks, Paths, Roads) as a Key Performance Indicator. The Administration has reviewed the outcomes and developed Asset Management Plans to be received by Council.

It is noted the Asset Management Plans have several areas of improvement and strategic decisions over the next three years to further develop the City’s long-term sustainably and management of the City’s asset portfolio.

**Further Information**

Nil.

# Divisional Reports – Community Services & Development Report No CSD04.08.22

# 18.1 CSD04.08.22 CSRFF Application Swanbourne Cricket Club

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting - 23 August 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 *Local Government Act 1995*** | Nil |
| **Report Author** | Amanda Cronin – Acting Manager Community Development |
| **Director/CEO** | Bill Parker – Chief Executive Officer |
| **Attachments** | Nil. |

**Regulation 11(da) – Not Applicable – Recommendation Adopted**

Moved – Councillor Youngman

Seconded – Councillor Amiry

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED UNANIMOUSLY EN BLOC 11/-**

**Council Resolution / Recommendation**

**Council:**

1. **advises Department of Local Government, Sport and Cultural Industries (DLGSCI) that it has ranked and rated the application to the Community Sport and Recreation Facilities Fund Small Grant Round as follows:**
2. **Swanbourne Cricket Club – Cricket Net Upgrade: Well planned and needed by the municipality (A Rating);**
3. **endorses the above application to DLGSCI on the condition that all necessary statutory approvals are obtained by the applicant.**

**Purpose**

This item seeks Council’s endorsement of a grant application to the Department of Local Government, Sport and Cultural Industries (DLGSCI) for the Community Sport and Recreation Facilities Fund (CSRFF) Small Grant Round, from Swanbourne Cricket Club (SCC) for a Cricket Net Upgrade at Swanbourne Primary School. SCC is not requesting a Council grant towards the project and therefore there is no budgetary impact on the City. All CSRFF applications to DLGSCI must be accompanied by a formal Council resolution. As the DLGSCI’s current CSRFF Small Grant Round closes on 31 August 2022, it is important that Council makes a decision on this matter at the Council meeting on 23 August 2022.

**Voting Requirement**

Simple Majority.

**Background**

**Community Sporting and Recreation Facilities Fund**

The DLGSCI administers the CSRFF. The purpose of the fund is to provide financial assistance to sporting clubs and local government authorities to develop basic infrastructure for sport and recreation. The program aims to increase participation in sport and recreation, with an emphasis on physical activity, through rational development of sustainable, good quality, well designed and well utilised facilities. This fund has three categories, shown below:

Table 1: CSRFF Grant Categories

|  |  |  |  |
| --- | --- | --- | --- |
| **Grant Category** | **Total Project Cost Range** | **Standard DLGCSI Contribution** | **Frequency** |
| Small Grant | ≤ $300,000 | $2,500 – $100,000 | Bi-annual |
| Annual Grant | $300,001 - $500,000 | $100,001 - $166,666 | Annual |
| Forward Planning Grant | ≥ $500,001 | $166,667 - $2,000,000 | Annual |

For applications to be supported by DLGSCI, they must first be endorsed by the relevant Local Government Authority. For approved projects, DLGSCI will provide a grant of a maximum of 1/3 of the total project cost.

**Ranking**: The City is required by DLGSCI to rank in priority order the applications received for each CSRFF round.

**Rating**: The City is required by DLGSCI to rate each application against the categories below:

A - Well planned and needed by municipality

B - Well planned and needed by applicant

C - Needed by municipality, more planning required

D - Needed by applicant, more planning required

E - Idea has merit, more preliminary work needed

F - Not recommended

**Discussion**

There is one application to this CSRFF Small Grant Round. An overview of this application is provided in Table 2 following:

Table 2: CSRFF Small Grant Application 2022/23 Round

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Applicant** | **Project** | **Total Project Cost (EX GST)** | **Club Contribution** | **Grant Amount Requested of State Govt.** | **Grant Amount Requested of Council** |
| Swanbourne Cricket Club | Cricket Net Upgrade | $17,791 | $11,861 | $5,930 | $0 |

**Swanbourne Cricket Club**

|  |  |
| --- | --- |
| Total Membership | 250 |
| No. of City of Nedlands Members | 125 |

SCC was formed in 1962 and the Club has been based at Allen Park since its establishment. SCC has a total membership of 250 with 50% being City of Nedlands residents. The Club started a junior cricket program in 2018 and now field five junior teams. The juniors play across multiple locations in the City, including Allen Park, Swanbourne Reserve and Swanbourne Primary School.

SCC is seeking a CSRFF small grant to assist with funding the refurbishment of synthetic cricket nets and the centre wicket at Swanbourne Primary School. The wickets are worn and require replacement.

SCC is requesting Council support for their application but is not requesting a Council grant towards the project. This is consistent with Council policy. The Club have already secured funding from the Australian Cricket Infrastructure Fund and are now applying for a CSRFF small grant.

The project will have a high level of community benefit for City residents who are members of the Club. Additionally, the project will benefit other members of the community who use the cricket facilities at the school.

**Consultation**

The applicant has completed a formal application to submit to DLGSC for this grant round. The application is available to Councillors on request from the CEO’s office.

**Strategic Implications**

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

**Values** **Great Communities**

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

**Priority Area**

* Renewal of community infrastructure such as roads, footpaths, community and sports facilities.
* Providing for sport and recreation.

The City currently has no approved Strategic Recreation Plan in place. However, ongoing upgrade of sporting and community facilities within the City of Nedlands is identified as a priority in the City’s Strategic Community Plan.

The application is consistent with Council’s strategic priorities being renewal of community infrastructure and providing for sport and recreation. The project will benefit the junior club members, especially female participation, as well as the wider community who use the cricket facilities.

**Budget/Financial Implications**

SCC are not requesting a grant from Council therefore there aren’t any financial implications of supporting this application.

**Legislative and Policy Implications**

**Council Policy**

Council policy Capital Grants to Sporting Clubs states that:

“To be eligible to apply for a sporting club capital development grant, the applicant must be …… based on a reserve vested in the City. While Council may provide in principle support to applicants for projects based on reserves that are not managed by the City, no Council grant funding will be provided to these projects”.

Therefore, consistently with Council policy, it is recommended that Council endorse this project, but does not provide grant funding towards it. This is consistent with the application, which is not requesting Council funding.

**DLGSC Requirements**

In general, DLGSC will fund up to 1/3 of the total cost of an approved project, with the remaining 2/3 to be funded by either the applicant sporting club or a combination of the applicant sporting club and the relevant local government authority.

DLGSC will only consider projects endorsed by the relevant local government. However, Councils may endorse projects without necessarily providing funding to them.

**Decision Implications**

Council is required to make a decision on the Club’s application by the grant round closing date of 31 August 2022. If Council endorses the application, it will be submitted to DLGSCI for consideration. If Council does not endorse the Club’s application, the Club cannot proceed with their application to DLGSCI.

**Conclusion**

It is recommended that Council endorses this CSRFF application for funding to Department of Local Government Sport & Cultural Industries. Council’s support for the application will strengthen the Club’s ability to receive funding from the state government; and is consistent with Council’s strategic aim of providing sport and recreation infrastructure as essential for healthy communities.

**Further Information**

Nil.

# Divisional Reports - Corporate & Strategy Report No’s CPS30.08.22 to CPS35.08.22



# CPS30.08.22 Lease to Kidz Galore – 64-66 Melvista Avenue, Dalkeith

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 August 2022 |
| **Applicant** | Kidz Galore Pty Ltd |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Michael Cole – Director Corporate Services |
| **Director** | Michael Cole – Director Corporate Services |
| **Attachments** | 1. CONFIDENTIAL – Public Notice 25 June 2022 2. CONFIDENTIAL – Attachment 2 – Public Submission 3. CONFIDENTIAL – Attachment 3 – Public Submission 4. CONFIDENTIAL – Attachment 4 - Submission |

**Regulation 11(da) – Not Applicable – Recommendation Adopted.**

Moved – Councillor Youngman

Seconded – Councillor Amiry

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED UNANIMOUSLY EN BLOC 11/-**

**Council Resolution / Recommendation**

**That Council:**

1. **in accordance with section 3.58 of the *Local Government Act 1995*, notes that each of the public submissions received during the statutory advertising period has been considered;**
2. **requests the Chief Executive Officer proceed with the proposed new lease for Kidz Galore at 64-66 Melvista Avenue Dalkeith; and**
3. **authorises the Chief Executive Officer and Mayor to execute the agreements and apply the City’s Common Seal.**

**Purpose**

At its meeting of 26 April 2022, Council approved Key Terms for a new lease for Kidz Galore Pty Ltd at 64-66 Melvista Avenue, Dalkeith and requested the CEO to commence public advertising of the proposed new lease.

This report is presented to allow Council to consider submissions received during the advertising period.

**Voting Requirement**

Simple Majority.

**Background**

The 64-66 Melvista Avenue, Dalkeith site (‘Site’) is made up of two freehold parcels of land which sit within the City’s land asset portfolio. The site is currently leased to Kidz Galore Pty Ltd (‘Kidz Galore’) who operate childcare services on a commercial basis for the local community.

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

In September 2020, Council decided to defer any decision on the future of the Site 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.

The City’s tenants, Kidz Galore have now written to the City formally requesting a new lease agreement, and at its meeting of 26 April 2022 Council agreed to key terms and a public advertising period.

This report considers submissions received during the public advertising period.

**Previous Council Decisions:**

• On 26 April 2022, Council approved Key Terms for a new lease for Kidz Galore Pty Ltd at 64-66 Melvista Avenue, Dalkeith and requested the CEO to commence public advertising of the proposed new lease.

• 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.

• On 22 September 2020, in item CPS21.20, Council considering the sale of the Site, and decided to defer any decision, subject to a review of childcare services ‘south of Stirling Highway’.

• On 30 June 2020, Council approved the Annual Budget 2020/21 with provision to include the asset disposition.

• 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 childcare service and authorised administration to conduct a thorough investigation into PRCC regarding increasing the fees in order for the service to break even.

• 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.

**Discussion**

Following Council’s most recent resolution of 26 April 2022 (Item 17.1), Council requested the CEO to commence the statutory advertising of the disposition by negotiation in accordance with section 3.58(3) of the *Local Government Act 1995.*

During the public advertising period, the City received a total of 4 submissions from the public. These submissions have been provided to Elected members in full in the confidential attachment.

Of the 4 submissions received, 2 were in objection to the proposed lease and 2 were in support.

The table below shows a breakdown of the types of comments received within each of the submissions.

|  |  |
| --- | --- |
| **Submission** | **Officer Comments** |
| **Objection**  Concerns regarding noise and how Council will address any future noise complaints that may arise | Objection noted. Similar concerns were considered by Council at its meeting 26 April 2022.  The Lease (Acoustic) Management Plan provided by Kidz Galore is over and above what is required and creates an extra layer of information for the proposed tenant to adhere to.  If the neighbours lodged a formal complaint as they have previously, Officers would first refer to the Lease (Acoustic) Management Plan under the lease to determine whether a violation of those terms has occurred. If required, the City could investigate and assess the level of compliance with the Regulations to assist in that determination. If the complaint is deemed valid, then the proposed tenant could be breached under the lease agreement and or dealt with under the Regulations |
| **Support**  Submission was supportive of the proposed lease.  Concerns about the Oryx Aged Care construction and impacts on safe pick up and drop of children at Kidz Galore. | Support for Kidz Galore noted.  With regards the Oryx Aged Care development, the City’s Planning and Development team are working to provide solutions to minimise the impacts on the neighbourhood. |
| **Support**  Submission in support of Kidz Galore, daughter currently attends and younger daughter enrolled from 2023.  Also raised concerns about Oryx Aged Care construction and impacts on safe pick up and drop of children at Kidz Galore. | Support for Kidz Galore noted.  With regards the Oryx Aged Care development, the City’s Planning and Development team are working to provide solutions to minimise the impacts on the neighbourhood. |
| **Objection**  Concerns regarding finding public notice on proposed lease. Supportive of sentiments expressed in flyer received.  Concerned they have not received noise abatement plan.  WA may follow NSW and Vic regarding free education for 3 to 4 year olds, suggesting this facility will be in less demand.  Premises are better suited to pre-kindergarten.  There is a glut of childcare places  Low rate of return for the site.  Alternate uses – other than pre-kindergarten suggested site could be used as a community centre.  Hours of operation are too long.  Site is too close a residents. | Concerns about finding the public notice are noted.  A copy of the noise management plan will be provided on a confidential basis.  Comments about the future of education for 3 to 4 year olds is a matter for the operator to consider.  Alternate uses suggested are noted and could be considered if Council does not support the proposed lease to Kidz Galore.  The hours of operation and location to residents along with noise complaints were considered by Council in April 2022. |

**Consultation**

The proposed lease was advertised in the local Post Newspaper on 11 June and was readvertised again on 25 June 2022 due to an administrative error with the first advertisement. Submissions closed on 11 July 2022. The notice was also available on the City’s website during this period.

**Strategic Implications**

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

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

**Values Great Governance and Civic Leadership**

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

**Budget/Financial Implications**

The Site currently generates $60,420 of rental revenue per year. Should elected members endorse the recommendation as contained within this report, following a market review (statutory obligation), the City will receive a rental revenue of $80,000 plus outgoings and GST.

**Legislative and Policy Implications**

Section 3.58 of the *Local Government Act 1995* (‘Act’) governs how Local Governments can dispose of property. Dispose includes leasing in this case.

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 Chief Executive Officer proceed with finalising the proposed new lease for Kidz Galore at 64-66 Melvista Avenue Dalkeith and the Chief Executive Officer and Mayor execute the agreements and apply the City’s Common Seal.

**Decision Implications**

Should elected members choose to support the recommendation, Kidz Galore will secure a new short-term lease and the City will realise a financial return. With the inclusion of the 12-month sale or redevelopment clause included within the proposed lease, the City will have the opportunity (after 5-years) to make a longer-term decision about the future of the site.

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.

**Conclusion**

At its meeting of 26 April 2022 Council has approved key terms for a new lease for Kidz Galore Pty Ltd at 64-66 Melvista Avenue, Dalkeith and requested the CEO to commence public advertising of the proposed new lease.

The submissions received have been considered in this report.

**Further Information**

A copy of the Acoustic Management Plan was provided on a confidential basis to the neighbours as requested during discussion at the April 2022 meeting of Council. The neighbours have advised of their approval of the Acoustic Management Plan.

# 19.2 CPS31.08.22 Lease to Leo Heaney Pty Ltd – City of Nedlands Depot in Mount Claremont, Portion of Reserve 45054 John XXIII Depot, 19 John XXIII Avenue, Mount Claremont

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 August 2022 |
| **Applicant** | Leo Heaney Pty Ltd |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Michael Cole – Director Corporate Services |
| **Director** | Michael Cole – Director Corporate Services |
| **Attachments** | 1. CONFIDENTIAL – Submission 1 – Letter to Councillor Smyth 2. CONFIDENTIAL – Submission 2 – Mt Claremont Depot Lease |

**Regulation 11(da) - Not applicable - Alternate motion was lost and the officer recommendation was not foreshadowed therefore, no decision was made by Council. Item to be brought to the September Council meeting.**

Moved – Councillor Smyth

Seconded – Councillor Mangano

Council refuses the lease of portion of Reserve 45054 (zoned for public purposes) to Leo Heaney Pty Ltd, for the storage of privately owned vehicles.

Lost 5/6

(Against: Mayor Argyle Crs. Brackenridge Senathirajah

Amiry Combes & Hodsdon)

Recommendation

That Council:

1. in accordance with section 3.58 of the *Local Government Act 1995*, notes that each of the public submissions received during the statutory advertising period has been considered;
2. requests the Chief Executive Officer proceed with the proposed new lease for Leo Heaney Pty Ltd for portion of the currently vacant area within Reserve 45054 at the City’s John XXIII Depot in Mount Claremont; and
3. authorises the Chief Executive Officer and Mayor to execute the agreements and apply the City’s Common Seal.

**Purpose**

At its meeting of 26 April 2022, Council approved Key Terms for a lease to Leo Heaney Pty Ltd for portion of the currently vacant area within the City’s John XXIII Depot in Mount Claremont and requested the CEO to commence public advertising of the proposed new lease.

This report is presented to allow Council to consider submissions received during the advertising period.

**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.

At its meeting of 26 April 2022, Council approved key terms for a lease to Leo Heaney Pty Ltd for portion of the currently vacant area within the City’s John XXIII Depot in Mount Claremont and requested the CEO to commence public advertising of the proposed new lease.

**Discussion**

Following Council’s resolution of 26 April 2022 (Item 17.1), the CEO commenced the statutory advertising of the disposition by negotiation in accordance with section 3.58(3) of the *Local Government Act 1995.*

During the public advertising period, the City received a total of 2 submissions from the public. These submissions have been provided to Elected members in full in the confidential attachment.

The table below shows a breakdown of the types of comments received within each of the submissions.

|  |  |
| --- | --- |
| **Submission** | **Officer Comments** |
| Concerns raised about the traversing of heavy vehicles along the current non-gazetted road from the Depot to John XXIII Avenue.  Safety concerns for students who enter via the same road.  Measures have been put in place to ease concerns and the use of heavy vehicles would seem counterproductive | The submission is noted and was raised when Council considered this in April 2022 when considering key terms of the proposed lease.  Leo Heaney Pty Ltd have advised the Site will be used primarily to store the trucks that are used the least amount (estimated at this time to be 3 or 4 water trucks). However, in the event these trucks need to be utilised, they are generally operated before school hours and would likely be back at the Site prior to school finishing for the day.  Leo Heaney Pty Ltd advised they currently hold contracts with other Local Government entities. As such, they are generally required to undertake works early in the morning and have those works completed by early afternoon before school finishes and community sporting activities take place. |
| Concerns about daily traffic issues with students arriving between 6.45am and 6pm depending on pre and post school commitments.  Comment that Council should provide better paths interconnecting McGillivray and the hockey stadium to allow students to cycle safely there.  The trucks will be using same entry road as new student car park. | The submission is also noted and was raised when Council considered this in April 2022 when considering key terms of the proposed lease.  Leo Heaney Pty Ltd have advised the Site will be used primarily to store the trucks that are used the least amount (estimated at this time to be 3 or 4 water trucks). However, in the event these trucks need to be utilised, they are generally operated before school hours and would likely be back at the Site prior to school finishing for the day.  Leo Heaney Pty Ltd advised they currently hold contracts with other Local Government entities. As such, they are generally required to undertake works early in the morning and have those works completed by early afternoon before school finishes and community sporting activities take place.  Council has been considering connective paths in the location as part of the Schools Sport Circuit concept. |

**Consultation**

The proposed lease was advertised in the local Post Newspaper on 11 June and was readvertised again on 25 June 2022 due to an administrative error with the first advertisement. Submissions closed on 11 July 2022. The notice was also available on the City’s website during this period.

**Strategic Implications**

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

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

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

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

**Budget/Financial Implications**

The 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 will receive revenue of $28,750 plus outgoings.

**Legislative and Policy Implications**

Section 3.58 of the *Local Government Act 1995* (‘Act’) governs how Local Governments can dispose of property, in this case by way of lease.

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 lease of the land.

**Decision Implications**

Should elected members choose to endorse the recommendation as contained within this report, the Applicant would lease the Site in accordance with the Key Terms as noted above. Should the arrangement run for the full 23-months, following a market valuation the City would realise revenue of $28,750 plus outgoings plus GST.

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.

Concerns about truck movements and safety of students using the same access have been raised during the public submission period. Similar concerns were considered by Council at its meeting in April 2022.

**Further Information**

**Question**

Councillor Smyth – Is the proposed lease consistent with the City’s Local Planning Scheme?

**Officer Response**

The land subject to the proposed lease is reserved under the Metropolitan Region Scheme and the City of Nedlands Local Planning Scheme No. 3 for “Public Purpose”. The use of the land as proposed is consistent with the purpose of “depot site” via the vesting to the City and is therefore not conflicting with Local Planning Scheme No. 3.

**Question**

Could an alternate recommendation for refusal be prepared with reasons including proper planning process?

**Officer Response**

There would be no basis for a refusal of the lease on planning grounds.

# CPS32.08.22 Supply and Construction of Extruded Kerbing RFQ 2021-22.18

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 August 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Stuart Billingham - Acting Manager Financial Services |
| **Director** | Michael Cole - Director Corporate Services |
| **Attachments** | 1. Supply & Construction of Extruded Kerbing - Evaluation Report Confidential Item. |

**Regulation 11(da) - Not Applicable – Recommendation Adopted**

Moved – Councillor Youngman

Seconded – Councillor Amiry

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED UNANIMOUSLY EN BLOC 11/-**

**Council Resolution / Recommendation**

**That Council accepts the request for quotation received from Allstate Kerbing and Concrete for ‘Supply and Construction of extruded kerbing’ up to $200,000 (excl GST).**

**Purpose**

In accordance with Council’s amended purchasing policy, to seek Council consideration of approving a Request for Quotation ‘Supply and Construction of extruded kerbing’ where only one submission was received in the procurement band between $50,001 and up to $250,000.

**Voting Requirement**

Simple Majority.

**Background**

At the Council meeting on 24 May 2022 item 17.2 the City of Nedlands Procurement of Goods and Services policy was reviewed by Council and amended.

The procurement thresholds table between $50,001 and up to $250,000 amended removing the CEO discretion where only one written quotation is received for purchases between $50,001 and up to $250,000 and replaced with to be brought to Council.

The City of Nedlands Technical Services staff have recently through the WALGA Preferred Supplier Program Panel sought three written quotations for the supply and construction of extruded kerbing up to $200,000 (excl GST).

At the close of the RFQ only one preferred supplier had submitted a schedule of unit rates for this procurement. An evaluation and investigation of the RFQ by City Technical Services staff revealed that the unit rates quoted are comparable with other LG rates and in line with current market pricing unit rates.

The Chief Executive Officer has endorsed the evaluation report and this matter is now brought to Council to consider approving the use of this supplier for the Supply and construction of extruded kerbing up to $200,000 (excl GST).

**Discussion**

City staff have investigated why WALGA preferred Suppliers did not submit a quote for these goods and services. Feedback received from Preferred Panel suppliers mentioned they were unable to submit quotes due to their businesses experiencing staff shortages issues due to the impacts on the employment market by COVID 19 and supply chain issues impacted by the current economic market factors.

**Consultation**

Consultation was conducted between City officers and

* WALGA (Preferred Supplier Program Panel)
* Preferred Panel Program Suppliers (both who submitted and who didn’t submit Quotes)
* Other Local Governments (reference checking and market rates checking)

**Strategic Implications**

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

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

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

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

**Great Governance and Civic Leadership**

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

**Priority Area**

* Renewal of community infrastructure such as roads, footpaths, community and sports facilities.

**Budget/Financial Implications**

Adequate funds are listed in the 2022/23 Annual Budget for this matter.

Planned kerbing works for 2022/23 is for extruded kerbing maintenance and capital works throughout the City.

**Legislative and Policy Implications**

City of Nedlands Procurement of Goods and Services Policy

[*Local Government (Functions & General) Regulation 1996*](https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/wa/consol_reg/lgagr1996474/)

**Decision Implications**

If Council endorses the recommendation City staff can progress the procurement to carry out the supply and construction of extruded kerbing works in the City of Nedlands for the 2022/23 financial year.

If Council doesn’t endorse the recommendation, then the planned works for extruded kerbing will be postponed and result in delays in the delivery of required extruded kerbing infrastructure works program for 2022/23.

**Conclusion**

It is recommended that Council accepts the Supply and Construction of extruded kerbing RFQ from Allstate Kerbing and Concrete.

**Further Information**

**Question**

Councillor Mangano – please confirm percentage that WALGA gets for these contracts.

**Officer Response**

WALGA does receive a management fee from suppliers under their Preferred Supplier Program (PSP). The management fee is commercial in confidence.

**Question**

Can we go out to market rather than just going through WALGA?

**Officer Response**

Yes, the City can go to the market rather than going through WALGA but would need to consider the following:

1. Tenders would require statewide advertising at an approx cost of $580 per tender as well as advertising via Tenderlink of $184 per tender. A minimum of 14 days requried for statewide notice.

Both requests for tender and requests for quotation also possible through the WALGA Preferred Supplier Panel (PSP) which covers 13 different panels and over 1,300 suppliers. There is no cost to advertise and no minimum period for the WALGA PSP.

The City’s general terms and conditions will require and agreement by each successful supplier. Under WALGA’s PSP terms and conditions have been agreed up front by suppliers.

1. The City would be required to use Tenderlink to manage tenders and use emails to manage requests for quotations. Under WALGA’s PSP these are all via the vendor panel.
2. Some pre-qualification/due diligence checks have been completed by WALGA (e.g. insurances, financial capability checks, referees) and can be excluded from the City’s quotation process.
3. Ongoing contract management support provided by WALGA (e.g. regular compliance checks, KPI monitoring, contract dispute support).
4. Category management expertise and support provided by WALGA.
5. Procurement process can be expedited as a public tender is not required (Reg. 11 (2)(b)).
6. It is noted that panels do not provide for all the City’s products/service needs.

# CPS33.08.22 Monthly Financial Report – July 2022

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 August 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Lauren Fitzgerald – Senior Project Accountant |
| **Director** | Michael Cole – Director Corporate Services |
| **Attachments** | 1. Statement of Financial Activity – 31 July 2022  2. Statement of Net Current Assets – 31 July 2022  3. Statement of Comprehensive Income – 31 July 2022  4. Statement of Financial Position – 31 July 2022  5. Reserve Movements – 31 July 2022  6. Borrowings – 31 July 2022  7. Capital Works Program – 31 July 2022 |

Councillor Hodsdon left the room at 9.06 pm.

**Regulation 11(da) – Not Applicable – Recommendation Adopted**

Moved – Councillor Youngman

Seconded – Councillor Combes

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED 8/2**

**(Against: Crs. Coghlan & Mangano)**

**Council Resolution / Recommendation**

**That Council receive the Monthly Financial Report for 31 July 2022.**

**Purpose**

Administration is required to provide Council with a monthly financial report in accordance with *Regulation 34(1)* of the *Local Government (Financial Management) Regulations 1996*. The monthly financial variance from the budget of each business unit is reviewed with the respective manager and the Executive to identify the need for any remedial action. Material variances are highlighted to Council in the attached Monthly Financial Report.

**Voting Requirement**

Simple Majority.

**Background**

Nil.

**Discussion**

The monthly financial management report meets the requirements of *Regulation 34(1), 34 (3), and* *34(5) of the Local Government (Financial Management) Regulations 1996*.

This report is presented in a new format following the go live of OneCouncil from 1 July 2022.

The attached report shows the month end position as at the end of July 2022. Please note that the opening position is a preliminary result for the year ended 30 June 2022 as the Financial Statements for 2021/22 are still being finalised and as a result will be subject to change. The municipal surplus as at 31 July 2022 is $4,490,718 which is favourable, compared to a budgeted surplus for the same period of $3,732,878.

The operating revenue at the end of July 2022 was $353,710 which represents a $4,809,686 unfavourable variance compared to the year-to-date budget, primarily in fees and charges. More details are provided below.

The operating expense at the end of July 2022 was $2,982,905, which represents a $530,261 favourable variance compared to the year-to-date budget, primarily in employee costs and insurance expenses.

The attached Statement of Financial Activity compares Actuals with Amended Budget by Nature or Type as per regulation 34 (3) of the Local Government Financial Management Regulations. Material variances, as defined by a previous decision of Council, from the budget of revenue and expenditure are detailed below.

**Operating grants, subsidies, and contributions**

Unfavourable variance of $532,095 primary due to timing of revenue recognition of FOGO grant of $174,300, and Nedlands Community Care grants of $344,978

**Fees and charges**

Unfavourable variance of $3,517,405 primary due to the timing of issuing waste charges for the 2022/23 year being $3,370,911. Rate notices will be issued in August 2022 which includes waste charges.

**Interest earnings**

No variance analysis required as variance to budget is less than $20,000.

**Other revenue**

Favourable variance of $26,054 primarily due to invoice raised for waste CDS Payment of $18,655 and utility reimbursements for buildings of $6,826.

**Employee costs**

Favourable variance of $188,302 due to vacant positions. Savings primary in Urban Planning of $53,366, Parks Maintenance of $37,195, Ranger Services of $24,157, City Projects of $23,900, and Information Records Management of $21,258.

**Materials and contracts**

No variance analysis required as variance to budget is less than $20,000 and 10%.

**Utility charges**

Unfavourable variance of $77,279 due to the cycle of utility charges. Cycle of water, electricity, and gas charges to be reviewed and budget phasing amended.

**Depreciation and amortisation**

No variance analysis required as variance to budget is less than $20,000 and 10%.

**Insurance expenses**

Favourable variance of $258,952 due to the timing of payment of the 2022/23 insurance policy.

**Interest expenses**

No variance analysis required as variance to budget is less than $20,000 and 10%.

**Other expenditure**

No variance analysis required as variance to budget is less than $20,000.

**Loss on disposal of assets**

No variance analysis required as variance to budget is less than $20,000 and 10%.

**Non-operating grants, subsidies, and contributions**

No variance analysis required as variance to budget is less than $50,000 and 10%.

**Proceeds from disposal of assets**

No variance analysis required as variance to budget is less than $50,000 and 10%.

**Purchase of property, plant, and equipment**

No variance analysis required as variance to budget is less than $50,000.

**Purchase and construction of infrastructure**

Unfavourable variance of $567,509 primary due to the budget phasing of carry forward projects being Portland Street at $139,489, Alfred/Rochdale Road at $341,455, Waratah Road at $1,000, Drainage Implementation and River Wall at $47,559, and Perth Flying Squadron Foreshore at $37,918.

**Payments for intangible assets**

Favourable variance of $113,690 primary due to timing of consultant payments for OneCouncil project. Project is in the planning stages of phase two, with consultant time scheduled for September onwards.

**Repayments of borrowings**

No variance analysis required as variance to budget is less than $20,000 and 10%.

**Recoup of self-supporting loans**

No variance analysis required as variance to budget is less than $20,000 and 10%.

**Payments for principal portion of lease liability**

No variance analysis required as variance to budget is less than $20,000.

**Transfers to reserves**

No variance analysis required as variance to budget is less than $20,000.

**Transfers from reserves**

No variance analysis required as variance to budget is less than $20,000 and 10%.

**Rates**

No variance analysis required as variance to budget is less than $20,000.

Outstanding rates debtors are $416,630 as at 31 July 2022 compared to $287,000 as at 31 July 2021. Breakdown as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Receivable** | **31-Jul-22** | **31-Jul-21** | **Variance** |
| Rates | $ 308,559.00 | $ 200,000.00 | $ 108,559.00 |
| Rubbish & Pool | $ 29,250.00 | $ 38,000.00 | -$ 8,750.00 |
| Pensioner Rebates | -$ 7,724.00 | $ 8,000.00 | -$ 15,724.00 |
| ESL | $ 82,405.00 | $ 37,000.00 | $ 45,405.00 |
| Other Service Charges | $ 4,140.00 | $ 4,000.00 | $ 140.00 |
| **Total** | **$ 416,630.00** | **$ 287,000.00** | **$ 129,630.00** |

**Employee Data**

|  |  |
| --- | --- |
| **Description** | **Number** |
| Number of employees (total of full-time, part-time and casual  employees) as of the last day of the previous month | 190 |
| Number of contract employees (temporary/agency) as of the last day of the previous month | 2 |
| \*Occupied FTE (Full Time Equivalent) count as of the last day of the previous month | 162.59 |
| Number of unfilled employee positions at the end of month | 17 |

There was a reduction in vacant positions from 23 vacant positions (June) to 17 vacant positions (July). July terminations (resignations): 1 x full time employee; 1 x part time employee; 2 x casual employees; (terminations): 1 x terminated casual employee.

**Consultation**

N/A

**Strategic Implications**

The 2022/23 approved budget is in line with the City’s strategic direction. Our operations and capital spend, and income is undertaken in line with and measured against the budget.

The 2022/23 approved budget ensures that there is an equitable distribution of benefits in the community.

The 2022/23 budget was prepared in line with the City’s level of tolerance of risk and it is managed through budgetary review and control.

The approved budget was based on zero based budgeting concept which requires all income and expenses to be thoroughly reviewed against data and information available to perform the City’s services at a sustainable level.

**Budget/Financial Implications**

At the Special Council Meeting on 11 August 2022, item CPS36.08.22, Council adopted the following thresholds for the reporting of material financial variances in the monthly statement of financial activity reports:

a. Operating items – Greater than 10% and a value greater than $20,000

b. Capital items – Greater than 10% and a value greater than $50,000

pursuant to Regulation 34(5) of the Local Government (Financial Management) Regulations 1996, and Australian Accountings Standard AASB 1031 Materiality.

**Legislative and Policy Implications**

[*Local Government Act 1995*](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43454.pdf/$FILE/Local%20Government%20Act%201995%20-%20%5B07-t0-00%5D.pdf?OpenElement) *and* [*Local Government (Financial Management) Regulations 1996.*](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_45250.pdf/$FILE/Local%20Government%20(Financial%20Management)%20Regulations%201996%20-%20%5B03-j0-00%5D.pdf?OpenElement)

**Decision Implications**

Nil.

**Conclusion**

The municipal surplus as at 31 July 2022 is $4,490,718 which is favourable, compared to a budgeted surplus for the same period of $3,732,878 being a 20.30% variance.

The operating revenue at the end of July 2022 was $353,710 which represents a $4,029,123 or 91.93% unfavourable variance compared to the year-to-date budget of 4,382,833, primarily in fees and charges.

The operating expense at the end of July 2022 was $2,982,905, which represents a $530,261 or 15.09% favourable variance compared to the year-to-date budget of 3,513,166, primarily in employee costs and insurance expenses.

**Further Information**

Nil.

Councillor Hodsdon returned to the room at 9.07 pm.

# CPS34.08.22 Monthly Investment Report – July 2022

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 August 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Lauren Fitzgerald – Senior Project Accountant |
| **Director** | Michael Cole – Director Corporate Services |
| **Attachments** | 1. Investment Report for the period ended 31 July 2022. |

**Regulation 11(da) – Not Applicable – Recommendation Adopted**

Moved – Councillor Youngman

Seconded – Councillor Amiry

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED UNANIMOUSLY EN BLOC 11/-**

**Council Resolution / Recommendation**

**That Council receive the Investment Report for the period ended 31 July 2022.**

**Purpose**

In accordance with the Council’s Investment Policy, Administration is required to present a summary of investments to Council on a monthly basis.

**Voting Requirement**

Simple Majority.

**Background**

Nil.

**Discussion**

Council’s Investment of Funds report meets the requirements of *Section 6.14 of the Local Government Act 1995.*

The Investment Policy is structured to minimise any risks associated with the City’s cash investments. The officers adhere to this Policy, and continuously monitor market conditions to ensure that the City obtains attractive and optimum yields without compromising on risk management.

The Investment Summary shows that as at 31 July 2022 and 31 July 2021 the City held the following funds in investments:

|  |  |  |
| --- | --- | --- |
| **Funds** | **31-Jul-22** | **31-Jul-21** |
| Municipal | $ 10,340,260 | $ 5,902,735 |
| Reserve | $ 2,728,039 | $ 1,887,192 |
| **Total Investments** | **$ 14,179,299** | **$ 7,789,927** |

The City has $1,332 070 in a Westpac online saver account which returns an interest rate of 0.40% per annum. As this rate is higher than the rates quoted for the term deposits as of end May, the surplus cash is maintained in the Westpac online saver account.

The total interest earned from investments as at 31 July 2022 was $14,294, comprising of $6,310 earnt at maturity and $7,984 accrued.

The Investment Portfolio comprises holdings in the following institutions:

|  |  |  |
| --- | --- | --- |
| **Financial Institution** | **Funds Invested** | **Proportion of Portfolio** |
| NAB | $ 4,238,338.26 | 29.89% |
| WBC | $ 4,005,052.91 | 28.25% |
| ANZ | $ 2,189,436.12 | 15.44% |
| CBA | $ 3,746,471.52 | 26.42% |
| **Total** | **$ 14,179,298.81** | **100.00%** |



**Consultation**

N/A

**Strategic Implications**

The investment of surplus funds in the 2022/23 approved budget is in line with the City’s strategic direction.

The 2022/23 approved budget ensured that there is an equitable distribution of benefits in the community.

The 2022/23 budget was prepared in line with the City’s level of tolerance of risk and it is managed through budgetary review and control.

The interest income on investment in the 2022/23 approved budget was based on economic and financial data available at the time of preparation of the budget.

**Budget/Financial Implications**

The July 2022 YTD Actual interest income from investments is $14,294 compared to the July 2022 YTD Budget of $18,097.

**Legislative and Policy Implications**

N/A

**Decision Implications**

N/A

**Conclusion**

The Investment Report is presented to Council.

**Further Information**

N/A

# CPS35.08.22 List of Account Paid – July 2022

|  |  |
| --- | --- |
| **Meeting & Date** | Council – 23 August 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil |
| **Report Author** | Lauren Fitzgerald – Senior Project Accountant |
| **Director/CEO** | Michael Cole - Director Corporate Services |
| **Attachments** | 1. Creditor Payment Listing – July 2022; and 2. Credit Card and Purchasing Card Payments July 2022 |

**Regulation 11(da) – Not Applicable – Recommendation Adopted**

Moved – Councillor Youngman

Seconded – Councillor Senathirajah

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED 9/2**

**(Against: Crs. Coghlan & Mangano)**

**Council Resolution / Recommendation**

**Council receives the List of Accounts Paid for the month of July 2022 as per attachments.**

**Purpose**

The purpose of this report is to present list of accounts paid for the month of July 2022.

**Voting Requirement**

Simple Majority.

**Background**

*Regulation 13* of the *Local Government (Financial Management) Regulations 1996* requires a list of accounts paid to be prepared each month, showing each account paid since the last list was prepared. This list is to include the following information:

* the payee’s name;
* the amount of the payment:
* the date of the payment; and
* sufficient information to identify the transaction.

**Discussion**

The accounts payable procedures ensure that risk is managed, and no fraudulent payments are made by the city, and these procedures are strictly adhered to by the officers. These include the final vetting of approved invoices by the Coordinator Financial Accounting and the Manager Financial Services (or designated alternative officers).

**Consultation**

Not applicable.

**Strategic Implications**

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

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

We have local services delivered to a high standard that take the needs of our diverse community into account. The 2022/23 budget was prepared in line with the City’s level of tolerance of risk and it is managed through budgetary review and control. All relevant information has been provided in this report and through the attachments.

**Priority Area**

Not applicable.

**Budget/Financial Implications**

The payments are made in accordance with the approved budget.

**Legislative and Policy Implications**

In accordance with *Regulation 13* of the [*Local Government (Financial Management) Regulations 1996*](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_45250.pdf/$FILE/Local%20Government%20(Financial%20Management)%20Regulations%201996%20-%20%5B03-j0-00%5D.pdf?OpenElement) Administration is required to present the List of Accounts Paid for the month of May 2022 to Council.

**Decision Implications**

This does not have any impact upon the rates.

**Conclusion**

The List of Accounts Paid for the months of July 2022 complies with the relevant legislation and can be received by Council (see attachments).

**Further Information**

Nil.

# Reports by the Chief Executive Officer CEO08.08.22

# CEO08.08.22 Appointment of Replacement Member and Deputy Member to the Chief Executive Officer Performance Review Committee

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 23 August 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Nicole Ceric – Executive Officer |
| **CEO** | Bill Parker – Chief Executive Officer |
| **Attachments** | Nil. |

**Regulation 11(da) – Not Applicable – Recommendation Adopted**

Moved – Councillor Youngman

Seconded – Councillor Amiry

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED UNANIMOUSLY EN BLOC 11/-**

**Council Resolution / Recommendation**

**That Council:**

1. **appoints Councillor Combes as the Hollywood ward member to the CEO Performance Review Committee; and**
2. **appoints Councillor Hodsdon as the deputy Hollywood ward member to the CEO Performance Review Committee.**

**Purpose**

The purpose of this report is to appoint a replacement member and replacement deputy member to the Chief Executive Officer’s Performance Review Committee.

These positions are required to be filled as per the Terms of Reference.

**Voting Requirement**

Simple Majority.

**Background**

Councillor Wetherall resigned as of the 30 June 2022 leaving a vacancy in the Hollywood Ward and on the CEO Performance Review Committee.

**Discussion**

**5.38. Annual review of employees’ performance**

* 1. A local government must review the performance of the CEO if the CEO is employed for a term of more than 1 year.
  2. The CEO must ensure that the performance of each other employee who is employed for more than 1 year is reviewed.
  3. A review under subsection (1) or (2) must be conducted at least once in relation to each year of the person’s employment.

The Chief Executive Officer’s Performance Review Committee meets from time to time on an as required basis.

Previous members for the period ending October 2021 were the Deputy Mayor McManus and Councillors, Bennett, Coghlan, Horley & Wetherall.

**Consultation**

Nil.

**Strategic Implications**

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

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

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

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

**Budget/Financial Implications**

There are no budget or financial implications.

**Legislative and Policy Implications**

Council Terms of Reference for the CEO Performance Review Committee states (extract below):

**Membership**

1. The membership of the committee shall comprise the Mayor and one Councillor from each ward with the Councillors being determined by nomination and if necessary, a ballot conducted at a Council Meeting.
2. The membership of the Committee shall comprise of one Councillor from each ward as deputy members with voting rights with the Councillors being determined by nomination and if necessary, a ballot conducted at a Council Meeting.
3. Deputy members are only required to attend and vote if the primary member is absent, an apology or on leave or has resigned.
4. The Committee must comprise of at least one independent observer.
5. If a vacancy on the committee occurs for whatever reason, then Council shall appoint a replacement in accordance with the same arrangements as for the original appointment.

Therefore, both a replacement member and deputy member are required to comply with the Council’s adopted Terms of Reference for the CEO Performance Review Committee.

**Decision Implications**

Should Council not appoint a replacement member and replacement deputy member to the CEO Performance Review Committee it would be in breach of the Council’s adopted Terms of Reference, potential to have no representative from the Hollywood Ward and CEO Performance review meetings may be put on hold if there is no quorum for each meeting which could result in non-compliance with the Local Government Act 1995.

**Conclusion**

It is recommended that Council appoint a replacement delegate and deputy delegate to the CEO Performance Review Committee to ensure compliance with Council’s adopted Terms of Reference for this Committee and to ensure the review the performance of the CEO in compliance with the Local Government Act 1995.

**Further Information**

Nil.

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



# 21.1 Councillor Mangano – Local Government’s role in Building Control – An introduction for Councillors

On the 3 July 2022, Councillor Mangano gave notice of his intention to move the following motion.

Moved – Councillor Mangano

Seconded – Councillor Youngman

**Council Resolution**

**That the City of Nedlands write to DMIRS Buildings & Energy and request them to produce a brochure similar to the attached VBA one but pertinent, of course, for WA councillors.**

**CARRIED UNANIMOUSLY 11/-**

Justification

In WA, local councils have crucial roles to fulfil as integral contributors to building compliance across the State.

Oversight of council’s performance in fulfilling their obligations under WA’s building legislation is a crucial aspect of the role of elected members.

In Victoria, the State Building Regulatory Body, the Victorian Building Authority, produces a document for elected members to explain their council’s role(s), powers and obligations and by way of this motion Nedlands councillors are requesting the CEO to approach WA’s Building Regulator, Building and Energy, about producing a similar document pertinent for Western Australian local government councillors.

Administration Comment

Notwithstanding that Victoria operates under different legislation and the responsibilities of the Building Surveyor is different in Western Australian, the preparation of such a document would be a proactive approach. The involvement of WALGA would also assist.

# 21.2 Councillor Mangano – Outstanding List of Council Resolutions

On the 1 August 2022, Councillor Mangano gave notice of his intention to move the following motion.

Moved – Councillor Mangano

Seconded – Councillor Smyth

**Council Resolution / Officer Recommendation**

**Council instructs the CEO to:**

1. **provide Council monthly with a table of all outstanding Council Resolutions, the date they were resolved by Council, and their current status;**
2. **include this information in all future Ordinary Council Meeting Agendas from 1st February 2023; and**
3. **implement a process by which Council can endorse the status of completion for Resolutions**.

**CARRIED UNANIMOUSLY 11/-**

Council instructs the CEO to:

1. provide Council monthly with a table of all outstanding Council Resolutions, the date they were resolved by Council, and their current status;
2. include this information in all future Ordinary Council Meeting Agendas; and
3. implement a process by which Council can endorse the status of completion for Resolutions.

Justification

1. There are a large number of outstanding Council Resolutions, some going back a number of years.
2. Many have impact on development applications.
3. All resolutions of Council must be acted upon unless they are illegal.
4. Council should be party to the decision that a Resolution has been completed and removed from the Outstanding list.
5. With the change of Councillors and staff the corporate knowledge of tried and treated matters can be re-raised, sapping resources.
6. Resolutions can be left only partly addressed, with the remainder left in limbo. (eg a car park is built while the replacement playground is left unresolved).

Administration Comment

The City of Nedlands currently provides Elected Members with access to outstanding Council resolutions via the Councillor Portal. Should Elected Members resolve for a monthly report to be presented to Council, the administration would request that this task commence when a resource is added to the governance service area. The recently endorsed Workforce Plan and Annual Budget include a resource in this service area. The City currently does not have a resource in the governance service area.

**Officer Recommendation**

**Council instructs the CEO to:**

1. **provide Council monthly with a table of all outstanding Council Resolutions, the date they were resolved by Council, and their current status;**
2. **include this information in all future Ordinary Council Meeting Agendas from 1st February 2023; and**
3. **implement a process by which Council can endorse the status of completion for Resolutions**.

# Councillor Mangano – Repurpose – Former Tennis Courts

On the 5 August 2022, Councillor Mangano gave notice of his intention to move the following motion.

Moved – Councillor Mangano

Seconded – Councillor Bennett

**Council Resolution** / Officer Recommendation

**That the CEO provides a report to Council by the October 2022 OCM to provide a least cost solution to repurpose the former tennis courts in front of PRCC which were not included in the David Cruickshank Reserve Enviro Masterplan.**

**CARRIED 9/2**

**(Against: Mayor Argyle Cr. Amiry)**

That the CEO provides a report to Council by the September 2022 OCM to provide a least cost solution to repurpose the former tennis courts in front of PRCC which were not included in the David Cruickshank Reserve Enviro Masterplan.

Justification

1. There is a safety hazard due to the large drop off in the middle of the area concerned
2. Nearby ratepayers have been advocating for a passive recreation area in that location for at least 3 years.The state of the area has a negative impact on PRCC.

Administration Comment

A report can be provided by the October 2022 Ordinary Council Meeting. Given the City’s Governance Framework, reports for the September OCM have already been finalised.

**Officer Recommendation**

**That the CEO provides a report to Council by the October 2022 OCM to provide a least cost solution to repurpose the former tennis courts in front of PRCC which were not included in the David Cruickshank Reserve Enviro Masterplan.**

# Councillor Mangano – Utility Costs

On the 10 August 2022, Councillor Mangano gave notice of his/her intention to move the following motion.

Moved – Councillor Mangano

Seconded – Councillor Bennett

**Council Resolution**

**Due to extremely high utility costs in the budget, the CEO is directed to conduct an audit and report of utility costs (water, power, gas) including the following:**

1. **Is full cost recovery from end users eg clubs, playgroups, tenants etc occurring and if not which do not.**
2. **Identify the Top 10 utility users by $ and location**
3. **In the case of Administration Building and other staff occupied buildings, a solution to provide at least 80% of daytime electricity from PV at each location**
4. **Solutions to eliminate gas usage where practicable**
5. **Solutions to significantly reduce mains water usage**

**CARRIED 10/1**

**(Against: Cr. Amiry)**

Justification

1. High cost of utilities and likelihood of increases in years to come;
2. Full cost recovery should be occurring for all end users;
3. The City should be a leader in energy efficiency.

Administration Comment

In order to undertake the review the City would need to extend the services of Azility for an additional 12 month contract period.  Azility monitor the City’s utilities bills and provide data analysis which would be used to undertake this review.

The cost of an additional 12 months is $8,260 (ex GST) and is not accounted for in the current budget.

# Urgent Business Approved by the Presiding Member or by Decision

Urgent Business approved by the Presiding Member or By Decision will be dealt with at this point.

Nil.

# Confidential Items

Confidential items to be discussed at this point.

Closure of Meeting to the Public

Moved – Councillor Bennett

Seconded - Councillor Coghlan

**That the meeting be closed to the public in accordance with Section 5.23 (d) of the Local Government Act 1995 to allow confidential discussion on the following Items.**

**CARRIED UNANIMOUSLY 11/-**

The meeting was closed to member of the public at 9.19 pm.



# CEO09.08.22 Confidential Final Determination Report (03621Iv-01)

Confidential report circulated separately to Council Members.

Moved - Councillor Hodsdon

Seconded - Councillor Amiry

**That the meeting be reopened to members of the public and the press.**

**CARRIED UNANIMOUSLY 10/-**

The meeting was reopened to members of the public and the press at 9.28 pm.

In accordance with Standing Orders 12.7(3) the Presiding Member read out the motions passed by the Council whilst it was proceeding behind closed doors and the vote of the members to be recorded in the minutes under section 5.21 of the Local Government Act 1995.

Moved – Councillor Mangano

Seconded – Mayor Argyle

**Council Resolution / Confidential Recommendation**

**That Council:**

1. **receives the Confidential Final Determination Report (03621Iv-01) as per attachment 1;**
2. **finds that Mayor Fiona Argyle has breached section 9(c) of the Code of Conduct Council Members, Committee Members and Candidates;**
3. **instructs the CEO to prepare and implement a Plan for Mayor Fiona Argyle to undertake counselling;**
4. **requires the completion of the actions within the Plan by 31 December 2022;**
5. **requests that the CEO notify Councillors once the requirements of the Plan have been completed.**

**CARRIED 6/4**

**(Against: Mayor Argyle Crs. Brackenridge Coghlan Amiry)**

# Declaration of Closure

There being no further business, the Presiding Member declared the meeting closed at 9.28 pm.