**MINUTES**

**Council Meeting**

**25 July 2023**

**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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**Table of Contents**

[1. Declaration of Opening 5](#_Toc142295917)

[2. Present and Apologies and Leave of Absence (Previously Approved) 5](#_Toc142295918)

[3. Public Question Time 6](#_Toc142295919)

[4. Addresses by Members of the Public 7](#_Toc142295920)

[5. Requests for Leave of Absence 8](#_Toc142295921)

[6. Petitions 8](#_Toc142295922)

[7. Disclosures of Financial Interest 8](#_Toc142295923)

[7.1 Councillor Mangano – Item 22.1 - CONFIDENTIAL Notice of Motion – Legal Representation 8](#_Toc142295924)

[8. Disclosures of Interests Affecting Impartiality 8](#_Toc142295925)

[8.1 Mayor & all Councillors – Item 22.1- CONFIDENTIAL Notice of Motion – Legal Representation 8](#_Toc142295926)

[9. Declarations by Members That They Have Not Given Due Consideration to Papers 9](#_Toc142295927)

[10. Confirmation of Minutes 9](#_Toc142295928)

[10.1 Ordinary Council Meeting 27 June 2023 9](#_Toc142295929)

[11. Announcements of the Presiding Member without discussion. 9](#_Toc142295930)

[12. Members Announcements without discussion. 9](#_Toc142295931)

[12.1 Councillor McManus 9](#_Toc142295932)

[13. Matters for Which the Meeting May Be Closed 10](#_Toc142295933)

[14. En Bloc Items 10](#_Toc142295934)

[15. Minutes of Council Committees and Administrative Liaison Working Groups 10](#_Toc142295935)

[15.1 Minutes of the following Committee Meetings (in date order) are to be received: 10](#_Toc142295936)

[16. Divisional Reports - Planning & Development Report No’s PD31.07.23 to PD36.07.23 11](#_Toc142295937)

[16.1 PD31.07.23 - Consideration of Scheme Amendment No. 6 – Laneways and Vehicular Access 11](#_Toc142295938)

[16.2 PD32.07.23 - Review of Local Planning Policies – Allen Park Residential Standard, St Peters Square Design Guidelines, Hollywood Design Guidelines and Swanbourne Design Guidelines 18](#_Toc142295939)

[16.3 PD33.07.23 - Consideration of Development Application – Five Grouped Dwellings at No. 2 Philip Road, Dalkeith 23](#_Toc142295940)

[16.4 PD34.07.23 - Consideration of Development Application – Residential – Single House at No. 32 Philip Road, Dalkeith 37](#_Toc142295941)

[16.5 PD35.07.23 - Consideration of Development Application – Change of Use – “Restaurant” to “Small Bar” – 99A & 101 Waratah Avenue, Dalkeith 52](#_Toc142295942)

[16.6 PD36.07.23 - Consideration of Development Application – Residential – Additions to Single House at 22 Clifton Street, Nedlands 60](#_Toc142295943)

[17. Divisional Reports - Technical Services Report No’s TS08.07.23 73](#_Toc142295944)

[17.1 TS08.07.23 – Safe Active Streets 73](#_Toc142295945)

[18. Divisional Reports - Corporate & Strategy Report No’s CPS29.07.23 to CPS33.07.23 94](#_Toc142295946)

[18.1 CPS29.07.23 – Underground Power – Review of Community Consultation and consideration of next steps 94](#_Toc142295947)

[18.2 CPS30.07.23 – Dalkeith Nedlands Bowling Club Sublease to West Coast Padel 107](#_Toc142295948)

[18.3 CPS31.07.23 - Monthly Investment Report – June 2023 117](#_Toc142295949)

[18.4 CPS32.07.23 - List of Accounts Paid – June 2023 121](#_Toc142295950)

[19. Reports by the Chief Executive Officer CEO17.07.23 to CEO18.07.23 124](#_Toc142295951)

[19.1 CEO17.07.23 – Future Elections and Polls to 2028 124](#_Toc142295952)

[19.2 CEO18.07.23 - Register of Outstanding Council Resolutions 129](#_Toc142295953)

[20. Council Members Notice of Motions of Which Previous Notice Has Been Given 132](#_Toc142295954)

[20.1 Councillor Mangano – Cancellation of WALGA Membership 132](#_Toc142295955)

[20.2 Councillor Hodsdon – Response to JDAP Decision on Chellingworth 136](#_Toc142295956)

[20.3 Councillor Mangano – Removal of Colorbond Shed – Rear of Dalkeith Hall 138](#_Toc142295957)

[21. Urgent Business Approved By the Presiding Member or By Decision 140](#_Toc142295958)

[22. Confidential Items 140](#_Toc142295959)

[22.1 CONFIDENTIAL Notice of Motion – Legal Representation 141](#_Toc142295960)

[23. Declaration of Closure 142](#_Toc142295961)

# Declaration of Opening

The Presiding Member declared the meeting open at 6.00 pm and drew attention to the disclaimer on page 2 and advised that the meeting is being livestreamed.

# 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 L J McManus Coastal Districts Ward

Councillor K A Smyth Coastal Districts Ward

Councillor F J O Bennett Dalkeith Ward

Councillor A W Mangano (retired from 8.19pm) Dalkeith Ward

Councillor N R Youngman Dalkeith Ward

Vacant Hollywood Ward

Councillor O Combes Hollywood Ward

Councillor B G Hodsdon 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 M K MacPherson Director Technical Services

Mrs N M Ceric Executive Officer

Ms L J Kania Coordinator Governance & Risk

**Public** There were 25 members of the public present and 2 online.

**Press** The Post Newspaper Representative.

**Leave of Absence** Nil.

**(Previously Approved)**

**Apologies** Nil.

# Public Question Time

Questions received from members of the public were read at this point. The order in which the CEO receives questions determined the order of questions unless the Mayor determines otherwise. Questions must relate to a matter affecting the City of Nedlands.

* 1. **Mr Peter Taranto**

My questions are to each and every councillor.

Offering your own personal opinion, kindly consider answering ‘YES’ OR ‘NO’ to the following question.

**Question 1**

Do you believe the City of Nedlands should have an insurance policy which protects each and every elected member, including each and every employee of the City of Nedlands, from any financial, reputational or psychological harm in relation to a civil claim made in the courts for anything such a person has done, provided that person has, in good faith, done that thing in the performance or purported performance of a function under any Act of parliament?

**Answer**

The City of Nedlands currently has insurance coverage through LGIS. The City has public liability coverage that provides protection for legal liability that the City may incur to others for personal injury or damage to property. It also has professional indemnity protection for loss and damage that may arise out of a breach of professional duty. The Scheme provides protection against the risk of civil liability that may result in claims against the City, its Councillors and employees. Council members and officers are able to access these policies in the event that a civil claim is made against them.

**Question 2**

Do you believe that it is the best interests of current and future elected members, local government employees, and of the community and our democratic system of government for the City of Nedlands to require its insurers to respond and provide insurance funding for the protection of elected members or employees, provided the circumstances and requirements of Question One are applicable and have been satisfied.

**Answer**

Refer to answer above.

# Addresses by Members of the Public

Addresses by members of the public who have completed Public Address Registration Forms to be made at this point.

Mr Jeremy Swan, spoke in support of item 16.3 - PD33.07.23 - Consideration of Development Application – Five Grouped Dwellings at No. 2 Philip Road, Dalkeith.

Mr Dennis Chew, spoke in support of item 16.3 - PD33.07.23 - Consideration of Development Application – Five Grouped Dwellings at No. 2 Philip Road, Dalkeith.

Mrs Paula Meling, spoke in support of item 16.4 - PD34.07.23 - Consideration of Development Application – Residential – Single House at No. 32 Philip Road, Dalkeith.

Mr Michael Threlfall, spoke in opposition to item 16.4 - PD34.07.23 - Consideration of Development Application – Residential – Single House at No. 32 Philip Road, Dalkeith.

Mr Murray McHenry, spoke in support of item 16.5 - PD35.07.23 - Consideration of Development Application – Change of Use – “Restaurant” to “Small Bar” – 99A & 101 Waratah Avenue, Dalkeith.

Suspension of Standing Orders

Moved - Councillor Youngman

Seconded - Councillor Bennett

**That Standing Order No. 3.4(4) be suspended for the purpose of allowing an additional speaker for item 16.5 and Standing Order No. 3.4(5) be suspended for the purpose of extending the Public Address Session beyond 15 minutes to allow all those registered to address Council.**

**CARRIED UNANIMOUSLY 12/-**

Mr Glen Parsons, spoke in support of item 16.5 - PD35.07.23 - Consideration of Development Application – Change of Use – “Restaurant” to “Small Bar” – 99A & 101 Waratah Avenue, Dalkeith.

Mr Jeremy Cariss, spoke in support of item 16.5 - PD35.07.23 - Consideration of Development Application – Change of Use – “Restaurant” to “Small Bar” – 99A & 101 Waratah Avenue, Dalkeith.

Mr Yogi Yogesan, spoke in opposition to item 16.6 – PD36.07.23 Consideration of Development Application – Residential – Additions to Single House at 22 Clifton Street, Nedlands.

Mr Adrian Abel, spoke in support of item 16.6 – PD36.07.23 Consideration of Development Application – Residential – Additions to Single House at 22 Clifton Street, Nedlands.

# Requests for Leave of Absence

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

Moved – Councillor Combes

Seconded – Councillor McManus

**Councillor Hodsdon be granted leave of absence for 8-29 August 2023.**

**CARRIED UNANIMOUSLY 12/-**

# Petitions

Petitions to be tabled at this point.

Nil.

# Disclosures of Financial 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.

* 1. **Councillor Mangano – Item 22.1 - CONFIDENTIAL Notice of Motion – Legal Representation**

Councillor Mangano disclosed a financial interest in Item 22.1 – CONFIDENTIAL Notice of Motion – Legal Representation, his interest being that he is the applicant. Councillor Mangano declared that he would leave the room during discussion on this item.

# 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.

* 1. **Mayor & all Councillors – Item 22.1- CONFIDENTIAL Notice of Motion – Legal Representation**

The Mayor & all Council Members disclosed an impartiality interest in Item 22.1 - CONFIDENTIAL Notice of Motion – Legal Representation. The Mayor & all Council Members disclosed that they had an association with the applicant being a fellow Councillor, and as a consequence, there may be a perception that their impartiality on the matter may be affected. The Mayor and all Council Members declared that they would consider this matter on its merits and vote accordingly.

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

Nil.

# Confirmation of Minutes

## Ordinary Council Meeting 27 June 2023

Moved – Councillor Hodsdon

Seconded – Councillor Combes

**The Minutes of the Ordinary Council Meeting held 27June 2023 be confirmed.**

**CARRIED UNANIMOUSLY 12/-**

# Announcements of the Presiding Member without discussion.

Nil.

# Members Announcements without discussion.

Written announcements by Councillors to be tabled at this point.

Councillors may wish to make verbal announcements at their discretion.

## Councillor McManus

Councillor McManus made the following statement:

Mayor and Councillors, I did not advise I wanted to make an announcement but I forgot about the Youth Art awards last Saturday.

Mayor, in your absence I attended the Youth Art awards at the Tresillian Centre on Saturday. As I told the gathering I arrived at the awards in a depressed mood after watching the Eagles get flogged again but I was immediately uplifted by the enthusiasm and spirit of the young artists in attendance. There were over 170 entrants and all of top quaintly. This was a record. Many great pieces of art were displayed around the Centre.

It was a well attended event with lots of young people present. It was very well organised by the Councils staff and the management of Tresillian. This event reflects well on the City of Nedlands.

# Matters for Which the Meeting May Be Closed

Council, in accordance with Standing Orders and for the convenience of the public, is to identify any matter which is to be discussed behind closed doors at this meeting, and that matter is to be deferred for consideration as the last item of this meeting.

22.1 CONFIDENTIAL Notice of Motion – Legal Representation

21.1 CEO19.07.23 – CONFIDENTIAL Request for Legal Representation

# En Bloc Items

Moved – Councillor Senathirajah

Seconded – Councillor Combes

**That the officer recommendations for items 15.1, 16.1, 16.2, 16.5, 18.2, 18.3, 18.4 and 19.1 will be adopted en-bloc and items 16.3, 16.4, 16.6, 17.1, 18.1, 19.2, 20.1, 20.2, 20.3, 21.1 and 22.1 will be dealt with separately.**

**CARRIED UNANIMOUSLY 12/-**

# Minutes of Council Committees and Administrative Liaison Working Groups

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

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

Moved – Councillor Senathirajah

Seconded – Councillor Combes

**The Minutes of the following Committee Meetings (in date order) be received:**

**Lake Claremont Advisory Committee Meeting Minutes 18 May 2023**

**Unconfirmed, Circulated to Councillors on 1 June 2023**

**WALGA Central Metropolitan Zone Meeting Minutes 22 June 2023**

**Unconfirmed, Circulated to Councillors on 3 July 2023**

**CARRIED UNANIMOUSLY EN BLOC 12/-**

# Divisional Reports - Planning & Development Report No’s PD31.07.23 to PD36.07.23

# PD31.07.23 - Consideration of Scheme Amendment No. 6 – Laneways and Vehicular Access

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 25 July 2023 |
| **Applicant** | City of Nedlands |
| **Information Provided** | All relevant information required has been provided. |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning & Development |
| **Attachments** | 1. Schedule of Submissions 2. Scheme Amendment No. 6 Report |

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

Moved – Councillor Senathirajah

Seconded – Councillor Combes

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED UNANIMOUSLY EN BLOC 12/-**

**Council Resolution / Recommendation**

**That Council:**

1. **Pursuant to section 75 of the *Planning and Development Act 2005* and in accordance with Regulation 41(3)(c) of the *Planning and Development (Local Planning Schemes) Regulations 2015* resolves to not support Amendment No. 6 to the City of Nedlands Local Planning Scheme No. 3 for the following reasons:**
2. **The Amendment does not result in a substantive change to the Scheme and is superfluous to contemporary planning requirements.**
3. **The Amendment will not require new subdivisions to share a single access point or reduce the number of crossovers.**
4. **The City has changed strategic direction on the ceding of laneways.**
5. **The Amendment has largely been addressed through subsequent updates to the Residential Design Codes and the introduction of new local planning policies.**
6. **Resolves to provide a summary of the reasons why the City does not support Amendment No.6 to the City of Nedlands Local Planning Scheme No.3, and a schedule of submissions made on the Amendment, to the Western Australian Planning Commission within twenty-one (21) days of the Resolution, in accordance with Regulation 53 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.**

**Purpose**

The purpose of this report is for Council to consider (post-advertising) proposed Scheme Amendment No. 6 (the Amendment) to the City of Nedlands Local Planning Scheme No. 3 (LPS3).

The Amendment proposes to amend clauses 26 and 32.3 of LPS3, which deal with, respectively, vehicle access point criteria and the ceding of land to the local government for purposes of creating a right-of-way.

The Amendment would not achieve its stated purpose of requiring grouped dwelling lots to share a single common driveway and Officers recommend that the Amendment not be progressed.

**Voting Requirement**

Simple Majority.

**Background**

The Amendment modifies existing clauses 26 and 32.3 of LPS3 as described below.

**Clause 26(4)**

Clause 26 deals with modifications to the R-Codes. The Amendment proposed adding clause 26(4) to state:

“In relation to land coded R20 or greater:

1. Clause 5.3.5 (Vehicular Access) of the R-Codes is modified by including the following modifications to C5.1 and additional deemed-to-comply requirements of C5.8, C5.9 and C5.10:

C5.1 Access to on-site car parking spaces to be provided:

* Where available, from a right-of-way available for lawful use to access the relevant lot and which is adequately paved and drained from the property boundary to a constructed street;
* From a secondary street where no right-of-way exists;
* From a primary street frontage where no secondary street, communal street or right-of-way exists; or
* Where a laneway (secondary street) is identified in accordance with Clause 32.3 (1) of the Scheme, access to on site car parking spaces is to be provided from the ceded and constructed section of the laneway where it is connected to the local road network.

C5.8 Vehicle access points to be designed and located to provide safe access and egress for vehicles and to avoid conflict with pedestrians, cyclists and other vehicles.

C5.9 Vehicle circulation areas designed to avoid headlights shining into habitable rooms within the development and adjoining properties.

C5.10 Vehicle access points are to be designed and located to reduce visual impact on the streetscape.”

**Clause 32.3**

The clause provides guidance on the ceding of rights-of-ways and laneway widening in the City of Nedlands and was proposed to be amended as follows:

“32.3(1) ~~The owner of land~~ Where land is affected by and gains benefit from the provision of a right-of-way or laneway identified by the scheme, a structure plan, a local development plan, an activity centre plan or a local planning policy, the owner is to, at the time of developing or subdividing the land:

a) cede to the local government free of cost that part of the land affected by the right-of-way or laneway; and

b) construct the relevant section of the right-of-way or laneway to the satisfaction of the local government.”

The City also proposed the addition of Clause 32.3(3), as follows:

32.3 (3) Where part of a lot has been transferred free of cost to the Crown for the purpose of widening a road or right-of-way, or for the purpose of ceding the land for a new right-of-way or laneway, the area ceded shall be included for the purpose of calculating the minimum and average site area and plot ratio in determining development potential.

**History**

Council at its meeting of 26 May 2020 resolved to initiate Scheme Amendment 6. It was subsequently referred to the Environmental Protection Authority and the Western Australian Planning Commission (WAPC) before being publicly advertised in 2020.

The R-Codes were updated in July 2021, improving the planning assessment framework. A significant update to the R-Codes in the form of introducing design for medium density development will come into effect on 1 September 2023. These updates, along with the City’s direction on laneways (being Amendment 13, initiated by Council in May this year) and recently adopted precinct planning policies, makes Scheme Amendment 6 ineffective.

**Discussion**

**Strategic Intent of Clause 26(4)**

The stated intent of amendments to clause 26(4) was to attempt to improve design of vehicle access points and circulation by adopting R-Codes Volume 2 provisions into Volume 1. These amendments would primarily impact higher density lots (R20 and above) within the Stirling Highway area (north and south).

The 2021 R-Codes already include a vehicle access hierarchy that preferences communal streets and rights-of-way over primary and secondary streets. The 2023 R-Codes to take effect in September provide even clearer wording that a development is to use a communal street or right-of-way where available. The R-Codes are read as part of the Scheme, so duplicating the R-Codes criteria within the Scheme is unnecessary.

The Amendment also proposed introducing clauses C5.8, C5.9 and C5.10 as considerations regarding vehicle access points for development on land coded R20 and above for single houses and grouped dwellings. Clauses C5.8 and C5.9 are taken, respectively, from the Element Objective and Acceptable Outcomes of R-Codes Volume 2. Clause C5.10 is a design element subject to interpretation.

These new clauses are largely duplicated through the existing planning framework, including the R-Codes and the Matters to be considered of the Deemed provisions within the Planning and Development (Local Planning Schemes) Regulations 2015. The City’s recently adopted precinct policies further enhance design considerations for many medium density areas which would have been covered under the Amendment.

The primary concern during creation of the Amendment was, and to an extent still is, the subdivisions along the R60 lots that have long frontages to a street and which commonly result in multiple new crossovers from subdivision. An example is Jenkins Avenue (between Doonan Road and Vincent Street) shown below:

A picture containing screenshot, line, rectangle, diagram

Description automatically generated

**Figure 1: Example of common subdivision layout**

Initial reasoning was that the Amendment would strengthen the City’s position for ceding land and would also require consolidated access for new developments.

However, the Amendment does not create a requirement for consolidated access points for new subdivisions. The Amendment modifies the existing wording for landowners to cede land to the City for the purposes of a laneway (and as a second part, copies R-Codes criteria into the Scheme) without setting out a laneway network. The WAPC has advised the City that they will not take into account desired laneway locations at the subdivision referral stage unless such locations are embedded in the Scheme. Should Council wish to prevent the proliferation of crossovers created by the subdivision layout shown in Figure 1, a new Amendment would be required to create a map of desired laneways. Such an Amendment would be an entirely new amendment, not simply a change to the current wording. Such an amendment would be a significant body of work that has not been identified in the City’s strategic planning forward plan. Further, the 2023 R-Codes and precinct planning work undertaken to date has provided an additional layer of guidance on matters relating to access to properties. Consequently, it is recommended that Council not progress Amendment 6.

**Strategic Intent of Clause 32.3**

The existing clause 32 allows the City to require the ceding of laneways or rights-of-way where such laneways are identified by the scheme, structure plan, local development plan, activity centre plan or local planning policy. The amendments were intended to give a little more certainty and weight by specifying that such development must “gain benefit” from a right-of-way. The amendment was predicated on advice that the existing wording may be found wanting if judged solely on reasonableness. However, the wording is not a substantive change and, again, would not reduce the number of crossovers to new developments. Additionally, it reinforces the requirement for development to cede new laneways to the City, which would burden the City with repair and maintenance costs to roads that are only used by a handful of developments.

The City’s current position, reflected in recently supported Scheme Amendment 13, is that certain laneways are to be burdened with public access in perpetuity but do not need to be ceded to the City. This is a more effective response which eliminates the resource burden on the City to maintain these laneways in perpetuity while achieving the same outcome of providing public access.

The laneways which were contemplated as requiring ceding included parts of the R160 and R60 Residential zones adjacent to the Stirling Highway area. Ceding of laneways for grouped dwellings, for example, would mean the City would be responsible for care and maintenance of a right-of-way that may only benefit a small handful of residents and which functions more like a private driveway than a true laneway. Should Council wish to embark on a program of laneway creation in the future, the current wording of Clause 32.3 is appropriate for the purpose.

**Consultation**

The Amendment was publicly advertised from 23 June 2020 through 22 August 2020 in accordance with Regulation 47 of the Planning and Development (Local Planning Schemes) Regulations 2015 with two objections and two comments received. Submissions revolved around cost impositions to owners, a lack of identified benefits, and that laneways are undesirable in general. A detailed summary of submissions along with Officer response is available as **Attachment 1**.

Main Roads also objected to the Amendment as it contested the wording would encourage direct access to roads such as Stirling Highway and suggested that the City take the opportunity to rationalise access to Stirling Highway.

**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**

Under Regulation 50(1) of the *Planning and Development (Local Planning Schemes) Regulations 2015* the local government must consider and make a resolution within 60 days after the end of the submission period unless otherwise approved by the Commission. Several requests for extensions of time have been made to the Commission, with the most recent extending the period until 31 July 2023.

Under Regulation 50(3), the local government must resolve:

1. to support the amendment without modification; or
2. to support the amendment with proposed modifications to address issues raised in the submissions; or
3. not to support the amendment.

**Decision Implications**

If Council supports the Officer’s recommendation to not proceed with the Amendment, the Amendment and all associated documents will be referred to the Commission, who will in turn advise the Minister for Planning and the Scheme will not be amended.

If Council does not support the Officer’s recommendation and opts to support the Amendment, the Amendment and all associated documents will be referred to the Commission, who will in turn advise the Minister for Planning, who will make the final decision.

**Conclusion**

It is recommended that the Amendment not be supported because:

* it is superfluous to requirements from a strategic perspective;
* it does not achieve the stated aim of reducing vehicle crossover points;
* the issues have largely been dealt with under the amended R-Codes and recently adopted precinct planning policies;
* it would conflict with the proposal regarding laneways around the Nedlands Stirling Highway Activity Corridor within recently proposed Scheme Amendment 13; and
* requiring laneways to be ceded to the City would introduce repair and maintenance costs for access networks that would primarily benefit a handful of private developments.

Should Council wish to consolidate vehicle access in a manner that will be supported by the WAPC, a separate Amendment will need to be initiated setting out locations of rights-of-way or laneways.

**Further Information**

Nil.

# PD32.07.23 - Review of Local Planning Policies – Allen Park Residential Standard, St Peters Square Design Guidelines, Hollywood Design Guidelines and Swanbourne Design Guidelines

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 25 July 2023 |
| **Applicant** | City of Nedlands |
| **Information Provided** | All relevant information required has been provided. |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest in this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Draft Local Planning Policy 5.6 - Allen Park Residential Estate Standard 2. Draft Local Planning Policy 5.3 - St Peters Square Design Guidelines 3. Draft Local Planning Policy 5.1 - Hollywood Design Guidelines 4. Draft Local Planning Policy 5.5 - Swanbourne Design Guidelines |

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

Moved – Councillor Senathirajah

Seconded – Councillor Combes

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED UNANIMOUSLY EN BLOC 12/-**

**Council Resolution / Recommendation**

**That Council adopts the Allen Park Residential Estate Standard, St Peters Square Design Guidelines, Hollywood Design Guidelines and Swanbourne Design Guidelines Local Planning Policies (Attachments 1 – 4), in accordance with Regulation 5(2) 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 formally review and adopt the draft amendments to the Allen Park Residential Estate Standard, St Peters Square Design Guidelines, Hollywood Design Guidelines and the Swanbourne Design Guidelines Local Planning Policies, included as **Attachments 1 – 4.**

**Voting Requirement**

Simple Majority.

**Background**

The City of Nedlands maintains several local planning policies which provide design guidance and seek to retain or establish the character of its neighbourhood precinct.

The City has reviewed the policy provisions of the Local Planning Policies for the Allen Park Residential and St Peters Square Estates as well as the Hollywood and Swanbourne subdivisions. The review focused on the development outcomes of each policy area and reformatted the documents to ensure that these policies reflect contemporary policy requirements.

**Discussion**

The four Policies were last reviewed and adopted by Council on 2 May 2019 following the gazettal of Local Planning Scheme No. 3. Developments at Allen Park Residential Estate and St Peters Square have been fully realized and as such references to the original developer have been removed from the Policies. All Policies have been reformatted to reflect the City’s current Local Planning Policy standards and updated to be consistent with current legislation.

**Allen Park Residential Estate**

The Allen Park Residential Estate LPP was adopted in 2000 for Lots 11 to 17 Clement Street and 18 to 25 North Street, Swanbourne, down coded from R60 to R35. It set guidance and provisions for the sub-division and development of the Estate. The reviewed Policy seeks to maintain the built form and streetscape which has been established in the Estate. No material change is proposed to the policy measures. **Attachment 1** contains the draft Policy.

**St Peters Square Residential Site Design Guidelines**

The St Peters Square LPP was established to provide design and built form guidance for the development in the estate and provided reference to the St Peters Square Residential Site Design Guidelines. The Policy was adopted in September 1999. The Policy has been reformatted and reviewed with some standards updated to match the amended R-Codes which take effect in September 2023. The Policy seeks to maintain the built form and streetscape which has been established in the Estate. The reviewed Policy absorbs the guidance contained in the St Peters Square Site Design Guidelines and contains diagrams which were absent from the previously adopted version. The draft Policy is at **Attachment 2**.

**Hollywood Design Guidelines**

The Hollywood Design Guidelines LPP was developed in response to the subdivision of the former Hollywood High School site and contains the Design Guidelines developed in collaboration with the City and Mirvac (the Developer). The Hollywood Design Guidelines were adopted as a Local Development Plan under Town Planning Scheme No. 2 and are in effect until 19 October 2025. The LPP was adopted in January 2006. As there is one vacant lot remaining in the subdivision the provisions and guidance have remained unchanged. It is proposed once all lots are developed or on 19 October 2025, whichever comes first, that the Policy be reviewed to remove reference to the Developer and provide contemporary guidance and provisions to maintain the built form and streetscape provisions achieved within the subdivision. The draft Policy is at **Attachment 3**.

**Swanbourne Design Guidelines**

The Swanbourne Design Guidelines LPP were developed in response to the subdivision of the former Swanbourne High School site and contains the Design Guidelines developed with collaboration by the City and Mirvac (the Developer). The Design Guidelines were adopted as Local Development Plans under Town Planning Scheme No. 2 and are in effect until 19 October 2025. The LPPs were initially adopted as two separate policies which covered different precincts of the subdivision. Design Guidelines A (dealing with precincts 1-5 and 9) was adopted in April 2007 and Design Guidelines B (precincts 6 -8) was adopted in September 2007. As there is one lot within the subdivision still undeveloped the provisions and guidance have remained unchanged. The Design Guidelines A and B have been reviewed and reformatted to combine into one Policy as much of the general guidance and provisions were duplicated in both policies. It is proposed once the remaining lot has been developed or on 19 October 2025, whichever comes first, that the Policy be reviewed to remove reference to the Developer and provide contemporary guidance and provisions to maintain the built form and streetscape provisions achieved with in Estate. **Attachment 4** contains the draft Policy.

**Consultation**

As the amendments to the policies are minor and do not look to alter the built form or policy measures no formal consultation has taken place or is proposed.

**Strategic Implications**

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

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

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

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

**Reflects Identities**

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

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

Encouraging sustainable building.

**Budget/Financial Implications**

Nil.

**Legislative and Policy Implications**

Regulation 5(2) of the *Planning and Development (Local Planning Schemes) Regulations 2015* allows the local government to make amendments to local planning policies without advertising the amendments if, in the opinion of the local government, the amendment is minor.

**Decision Implications**

If Council resolves to endorse the recommendation without modifications, the Policies will become operative and replace the existing Policies after public notice has been given.

If Council resolves to endorse the recommendation with modifications, and the modifications are significant, the Policy should be advertised prior to being put back to Council for adoption. If the modifications are minor the draft Policies will become operative and replace the existing Policies after public notice is given.

If Council resolves not to endorse the recommendation, the existing Policies will remain in use by the City when addressing Development Applications within these Estates and subdivisions.

**Conclusion**

The suite of Policies has been reviewed and updated to provide applicants with clear and concise provisions for developments within the Allen Park and St Peters Square Estates and the Hollywood and Swanbourne subdivisions.

**Further Information**

Nil.

# PD33.07.23 - Consideration of Development Application – Five Grouped Dwellings at No. 2 Philip Road, Dalkeith

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 25 July 2023 |
| **Applicant** | Westbridge Funds Management |
| **Information Provided** | All relevant information required for this assessment has been provided by the applicant. |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans dated 12 June 2023 3. Swept Paths - updated - (17 July 2023). 4. Ramp Cross Section - updated - (17 July 2023). 5. Submission – CONFIDENTIAL |

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

Moved – Councillor McManus

Seconded – Mayor Argyle

**That the Revised Recommendation be adopted.**

(Printed below for ease of reference)

Amendment

Moved - Councillor Mangano

Seconded – LAPSED FOR WANT OF A SECONDER

That the following be incorporated into the approved plans:

1. Permeable fencing on both frontages;
2. Building to be set back to default setbacks (1m) on both frontages; and
3. Corner of building to be truncated to match the fence line truncation.

**The Original Motion was PUT and was**

**CARRIED 11/1**

**(Against: Cr. Mangano)**

**Council Resolution / Revised Officer Recommendation**

**That Council:**

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 12 June 2023 for five grouped dwellings at 2 Philip Road, Dalkeith, subject to the following conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 12 June 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.**
2. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**
3. **Prior to the issue of a building permit, a Construction Management Plan (as appropriate) shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction process to the satisfaction of the City.**
4. **Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:**
5. **Face brick;**
6. **Painted render;**
7. **Painted brickwork; or**
8. **Other clean finish as specified on the approved plans.**

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

1. **Prior to occupation, landscaping shall be completed in accordance with the Landscaping Plan dated 12 June 2023. All landscaped areas are to be maintained on an ongoing basis for the life of the development on the site to the satisfaction of the City of Nedlands.**
2. **Prior to occupation, the applicant is to plant a minimum of one (1) x 30L tree located on the Adelma Road verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.**
3. **Prior to the issue of a building permit, a suitably qualified arborist is to submit a plan to be approved by the City of Nedlands outlining tree protection measures to be undertaken to conserve the tree identified for retention as shown on the landscaping plans. The approved measures are to be monitored by the arborist and implemented for the duration of the demolition and construction process to the satisfaction of the City of Nedlands.**
4. **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.**
5. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.**
6. **Prior to the issue of a building permit, the development plans shall be amended to include:**
7. **Two convex mirrors mounted above either side of the upper end of the vehicle access ramp to provide exiting vehicles visibility in each direction along the footpath, to the satisfaction of the City of Nedlands.**
8. **Line markings at the top of the vehicle access ramp that shall be visible to exiting vehicles and painted in non-slip paint. The line markings shall consist of a red stop line and wording that reads “STOP WATCH FOR PEDESTRIANS”**
9. **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.**
10. **Prior to the issue of a building permit, the development plans shall be amended to include a stormwater retention plan which depicts the location of soak wells and demonstrates that the land is graded such that all stormwater generated on site is contained within the site and directed towards the soak wells or similar to the satisfaction of the City of Nedlands.**
11. **Prior to occupation, the applicant is to plant a minimum of one (1) x 30L tree located on the Philip Road verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.**

Recommendation

That Council:

In accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 12 June 2023 for five grouped dwellings at 2 Philip Road, Dalkeith, subject to the following conditions:

1. This approval relates only to the development as indicated on the approved plans dated 12 June 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.
2. All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.
3. Prior to the issue of a building permit, a Construction Management Plan (as appropriate) shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction process to the satisfaction of the City.
4. Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:
   1. Face brick;
   2. Painted render;
   3. Painted brickwork; or
   4. Other clean finish as specified on the approved plans.

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

1. Prior to occupation, landscaping shall be completed in accordance with the Landscaping Plan dated 12 June 2023. All landscaped areas are to be maintained on an ongoing basis for the life of the development on the site to the satisfaction of the City of Nedlands.
2. Prior to occupation, the applicant is to plant a minimum of one (1) x 30L tree located on the Adelma Road verge, at the expense of the applicant and to the

satisfaction of the City of Nedlands.

1. Prior to the issue of a building permit, a suitably qualified arborist is to submit a plan to be approved by the City of Nedlands outlining tree protection measures to be undertaken to conserve the tree identified for retention as shown on the landscaping plans. The approved measures are to be monitored by the arborist and implemented for the duration of the demolition and construction process to the satisfaction of the City of Nedlands.
2. The street tree(s) within the verge in front of the lot are to be protected and maintained through the duration of the demolition and construction process to the satisfaction of the City of Nedlands. Should the tree(s) die or be damaged, they are to be replaced with a specified species at the owner’s expense and to the satisfaction of the City of Nedlands.
3. All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.
4. Prior to the issue of a building permit, the development plans shall be amended to include:
5. Two convex mirrors mounted above either side of the upper end of the vehicle access ramp to provide exiting vehicles visibility in each direction along the footpath, to the satisfaction of the City of Nedlands.
6. Line markings at the top of the vehicle access ramp that shall be visible to exiting vehicles and painted in non-slip paint. The line markings shall consist of a red stop line and wording that reads “STOP WATCH FOR PEDESTRIANS”
7. 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.
8. Prior to the issue of a building permit, the development plans shall be amended to include a stormwater retention plan which depicts the location of soak wells and demonstrates that the land is graded such that all stormwater generated on site is contained within the site and directed towards the soak wells or similar to the
9. satisfaction of the City of Nedlands.

**Purpose**

The purpose of this report is for Council to consider a development application for five grouped dwellings at 2 Philip Road, Dalkeith. The application is referred to Council for determination as the application is for five or more grouped dwellings. Council is specifically requested to exercise its judgement in considering the merits of the application against the design principles for the following aspects of the proposal:

* Street setback (see report section 5.1.2 Street setback)
* Lot boundary setbacks to the south (see report section 5.1.3 Lot boundary setback)
* Open space to Lots 2,3 and 4 (see report section 5.1.4 Open space)
* Visitor parking and (see report section 5.3.3 Parking)
* Visual privacy (see report section 5.4.1 Visual privacy)

**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** | R80 |
| **Land area** | Parent Lot: 943m2  Strata Lot 1: 203m2  Strata Lot 2: 167m2  Strata Lot 3: 167m2  Strata Lot 4: 138m2  Strata Lot 5: 197m2 |
| **Land Use** | Residential – Grouped Dwellings |
| **Use Class** | ‘P’ – Permitted Use |

The site is located at 2 Philip Road, Dalkeith, at the intersection of Adelma Road and Philip Road and is immediately north-east of the Dalkeith Village shopping centre. The parent lot has an area of 943m2 and features a natural slope of approximately 1m from the northern boundary down to the southern boundary.

The adjacent lot to the south is owned by the Water Corporation and is reserved for ‘Infrastructure Services’ used for sewerage access. The remainder of the properties along Philip and Adelma Roads are coded R80 and R60 and are expected to undergo a gradual

transition to a higher density and scale of development.

**Application Details**

The application seeks development approval for the construction of five, two-storey grouped dwellings with basement car parking. The development proposes a single vehicle access point from Adelma Road.

**Discussion**

**Assessment of Statutory Provisions**

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

Further, it is considered unlikely that the development will have a significant adverse impact on the local amenity and character of the locality.

**Local Planning Scheme No. 3**

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

**Design Review Panel**

The application was reviewed by the City’s Design Review Panel (DRP) on 13 February 2023. A final review of revised plans was conducted by the DRP Chair on 19 June 2023. A summary of the DRP advice is provided in the table following.

|  |  |  |
| --- | --- | --- |
| **DRP Design Quality Evaluation** | | |
|  | Supported | |
|  | Further Information Required | |
|  | Not supported | |
| SPP 7.0 Principles | 13 February 2023 | 19 June 2023 (Chair Review) |
| 1. Context and Character |  |  |
| 1. Landscape Quality |  |  |
| 1. Built Form and Scale |  |  |
| 1. Functionality and Built Quality |  |  |
| 1. Sustainability |  |  |
| 1. Amenity |  |  |
| 1. Legibility |  |  |
| 1. Safety |  |  |
| 1. Community |  |  |
| 1. Aesthetics |  |  |

There was notable improvement in the overall design over the course of the design review process. The changes included:

* An increase in landscaping area and the addition of a tree on Lot 1.
* Addition of solar panels and EV charging stations for each lot.
* Redesigned internal floor plans to improve efficiency and amenity for the occupants.

**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 via a design principle assessment pathway.

The proposed development is seeking a design principle assessment pathway for parts of this proposal relating to street setback, lot boundary setback and parking. A new version of the Codes for low and medium density development will come into effect on 1 September 2023 (R-Codes 2023). Consistent with Western Australian Planning Commission advice to local government, the City has assessed the development against the deemed-to-comply provisions of the R-Codes 2021. Where a design principle assessment has been required, due regard has been made to the relevant design principle of the R-Codes 2023.

**5.1.2 Street Setback**

The design principles for street setbacks consider the immediate and future streetscape, privacy, site planning requirements and building mass. The development meets the design principles as:

* The portion of each dwelling that is setback less than 1m from the primary street relates to architectural projections from the upper floor. The projections are solid ‘fins’ that are 7cm in width, each separated by a distance of 0.5m. Due to the width and frequency of the fins along the façade, they present minimal building bulk to the streetscape.
* The fins contribute to both the appearance and amenity of the development. The structures provide both visual privacy screening and shading to the upper floor bedrooms. Proposed to be finished in a dark bronze powder coat, the fins contribute to the visual interest and aesthetic appeal of the dwellings as viewed from the street.
* The proposal adequately responds to site planning requirements, including vehicle access, parking, and utility services. These site planning requirements are appropriately screened from the street interface where possible.

**5.1.3 Lot Boundary Setbacks (to Water Corporation site)**

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 proposal is seeking discretion be exercised for the wall adjacent to the southern lot boundary. The proposed lot boundary setbacks are considered to meet the design principles for the following reasons:

* The proposed lot boundary setbacks do not impede on any adjoining lot’s solar access or ventilation. Although the wall is adjacent to the southern side lot boundary, the southern adjoining lot is reserved for ‘Infrastructure Services’. Any shadow cast onto this lot will not affect the ability of the lot to provide access to sewerage infrastructure.
* The southern wall features articulation across both floors. The setback of the wall ranges from 1.6m to 4.2m, reducing the impact of building bulk by breaking up the mass of built form.
* The proposed setback does not impact adjoining properties in terms of overlooking. The upper floor major openings from the wall only have a view of the southern adjoining lot zoned for ‘Infrastructure Services’.

**5.1.4 Open Space**

Lots 2, 3 and 4 propose 26% open space.

The design principles for open space consider the impact of building bulk, provision of adequate sun and ventilation and ability to use external spaces for outdoor pursuits and recreation. The proposed open space meets the design principles for the following reasons:

* The lots feature a near identical or mirrored design that meets all other lot boundary setback, outdoor living area and landscaping deemed-to-comply provisions of the R-Codes. The provision of adequate setbacks and outdoor area is indicative of an appropriate amount of open space that does not result in undue building bulk or an overdevelopment of the lot.
* The open space across the three lots does not have an adverse effect on the streetscape. The design of the proposal considers the surrounding context, including the architectural styles, setbacks, and building heights of other development in the locality. The built form proposed is largely consistent with other approved and nearly complete grouped dwelling developments along Gallop, Adelma and Edna Road. Overall, the two-storey built form and scale complements the existing and future streetscape character.
* All habitable rooms within the dwellings are provided with operable major openings across both floors. This ensures appropriate access to natural light and ventilation for occupants.
* Adequate space is provided on site for external fixtures and essential facilities.

**5.3.3 Parking & Vehicle Access**

The development proposes no visitor parking bays. It should be noted that as the lot is within 250m of high frequency bus routes, the provision of 7 parking bays (inclusive of two visitor bays) is the deemed-to-comply outcome. The development provides a total 10 car parking bays, a technical ‘oversupply’ of parking.

The design principles for parking consider the availability of on-street parking and the proximity of the site to public transport. The proposed parking is considered to meet the design principles as outlined below.

1. Availability of On-Street Parking

Unrestricted street parking is available on the eastern side of Adelma Road. Time restricted public parking bays are also available along Waratah Avenue from 30 mins to one hour.

ii Proximity to High Frequency Public Transport

The site is located approximately 80m north of Waratah Avenue, along which there is an availability of a several bus routes serving a range of destinations. Bus route 24 which services Waratah Avenue provides transit via QEII Medical Centre, Nicholson Road and Kings Park Road to East Perth. Bus Route 24 also provides transit to Claremont Station. In the evening, between 5pm – 7pm, there is an average frequency of a bus servicing the nearest bus stop every 10 minutes. In the morning, between 7am – 9am, there is an average frequency of a bus servicing the nearest bus stop at an average of 15 minutes.

In terms of transport options, the development provides two car parking bays per dwelling, has sufficient availability of on-street parking and proximity to relatively high frequency public transport. The combination of these factors results in sufficient on-site car parking for the proposal.

The driveway ramp does not meet AS2890.1 as it has a gradient of 8% of instead of 5% for the initial 6m length from the street boundary. It has been demonstrated that the ramp will not damage the bottom of a vehicle when traveling along the ramp. To ensure vehicle and pedestrian safety, a condition of approval has been recommended which requires the installation of convex mirrors and line markings to aid exiting drivers.

**5.4.1 Visual Privacy**

The primary living spaces of Lots 1, 4 and 5 are seeking a design principle assessment.

The design principles for visual privacy consider the minimal overlooking of active habitable spaces and outdoor living areas of adjacent dwellings and maximum visual privacy to side and rear boundaries. The proposal meets the design principles as:

* All relevant openings are on the ground floor and a standard height dividing fence will partially or entirely obscure views and ensure privacy for adjoining landowners. The cone of vision from the primary living spaces will be further obscured by existing landscaping on the adjoining lot and proposed landscaping on the subject site.
* The cone of vision from the Lot 1 primary living space window does not impact outdoor living areas or major openings as it falls almost entirely over the existing boundary wall or front setback area on the adjacent western lot.
* Due to the topography of the land, the site has a natural upward slope from east to west. As a result, the western adjoining lot sits higher than the subject site, increasing the effective height any dividing fence or landscaping.

**Consultation**

The application is seeking assessment under the design principles of the R-Codes for street setback, lot boundary setbacks, open space.

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to affected adjoining landowner and occupiers, within five properties in either direction of the subject site, on both sides of the street. The application was advertised for a period of 14 days from 17 May 2023 to 31 May 2023. One non-objection was received.

**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. 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 is referred to Council for determination in accordance with Delegation 9.2.1, being an application for five or more grouped dwellings. The proposal is considered to meet the key amenity related elements of R-Codes Volume 1 and, as such, is unlikely to have a significant adverse impact on the local amenity of the area. The proposal has been assessed and satisfies the design principles of the R-Codes in relation to being consistent with the immediate locality and streetscape character.

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

**Further Information**

**Question**

Councillor Youngman – Can vehicle access to the garage of Lot 5 be confirmed?

**Officer Response**

Attachment 3 confirms that the design allows egress and access from the garages.

**Question**

Councillor Mangano – Can the ramp gradient be confirmed that access to the parking area will be feasible?

**Officer Response**

Attachment 4 shows the ramp cross section, with the City being satified that the ramp can safely accommodate vehicle movements, with the addition of convex mirrors and line markings as per recommended condition 10.

**Question**

Councillor Bennett – Can an additional street tree be provided on the verge, that do not affect sight lines.

**Officer Response**

A condition to provide an additional street tree can be included. The draft condition is as follows:

**Prior to occupation, the applicant is to plant a minimum of one (1) x 30L tree located on the Philip Road verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.**

The additional condition is incorporated into the revised officer recommendation.

**Revised Officer Recommendation**

**That Council:**

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 12 June 2023 for five grouped dwellings at 2 Philip Road, Dalkeith, subject to the following conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 12 June 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.**
2. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**
3. **Prior to the issue of a building permit, a Construction Management Plan (as appropriate) shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction process to the satisfaction of the City.**
4. **Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:**
5. **Face brick;**
6. **Painted render;**
7. **Painted brickwork; or**
8. **Other clean finish as specified on the approved plans.**

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

1. **Prior to occupation, landscaping shall be completed in accordance with the Landscaping Plan dated 12 June 2023. All landscaped areas are to be maintained on an ongoing basis for the life of the development on the site to the satisfaction of the City of Nedlands.**
2. **Prior to occupation, the applicant is to plant a minimum of one (1) x 30L tree located on the Adelma Road verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.**
3. **Prior to the issue of a building permit, a suitably qualified arborist is to submit a plan to be approved by the City of Nedlands outlining tree protection measures to be undertaken to conserve the tree identified for retention as shown on the landscaping plans. The approved measures are to be monitored by the arborist and implemented for the duration of the demolition and construction process to the satisfaction of the City of Nedlands.**
4. **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.**
5. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.**
6. **Prior to the issue of a building permit, the development plans shall be amended to include:**
7. **Two convex mirrors mounted above either side of the upper end of the vehicle access ramp to provide exiting vehicles visibility in each direction along the footpath, to the satisfaction of the City of Nedlands.**
8. **Line markings at the top of the vehicle access ramp that shall be visible to exiting vehicles and painted in non-slip paint. The line markings shall consist of a red stop line and wording that reads “STOP WATCH FOR PEDESTRIANS”**
9. **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.**
10. **Prior to the issue of a building permit, the development plans shall be amended to include a stormwater retention plan which depicts the location of soak wells and demonstrates that the land is graded such that all stormwater generated on site is contained within the site and directed towards the soak wells or similar to the satisfaction of the City of Nedlands.**
11. **Prior to occupation, the applicant is to plant a minimum of one (1) x 30L tree located on the Philip Road verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.**

# PD34.07.23 - Consideration of Development Application – Residential – Single House at No. 32 Philip Road, Dalkeith

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 25 July 2023 |
| **Applicant** | Coastview Australia Pty Ltd |
| **Information Provided** | All relevant information required has been provided. |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Revised Development Plans (24 July 2023) 3. Revised Development Plans 4. CONFIDENTIAL - Submission |

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

Moved – Councillor Bennett

Seconded – Councillor Brackenridge

**That the Revised Recommendation be adopted.**

(Printed below for ease of reference)

Amendment

Moved - Councillor Mangano

Seconded - Councillor Youngman

That the following be incorporated into the approved plans:

1. Reduce overshadowing of southern neighbour to 20% on 21st June;

Lost 1/11

(Against: Mayor Argyle Crs. Brackenridge Coghlan Senathirajah Amiry McManus Smyth Bennett Youngman Combes & Hodsdon)

1. No boundary wall (setback to be compliant with R codes); and

Lost 1/11

(Against: Mayor Argyle Crs. Brackenridge Coghlan Senathirajah Amiry McManus Smyth Bennett Youngman Combes & Hodsdon)

1. That the following condition be added as follows:
2. Prior to occupation, the portion of the laneway abutting the western boundary of the site being constructed and drained to its full width at the landowner/applicants cost and the remaining portion of the laneway from the western boundary of the site to the nearest constructed road being made trafficable.

Lost 4/8

(Against: Mayor Argyle Crs. Brackenridge Amiry

McManus Smyth Bennett Combes & Hodsdon)

**The Original Motion was PUT and was**

**CARRIED 11/1**

**(Against: Cr. Mangano)**

**Council Resolution / Revised Officer Recommendation**

Following the submission of the modified plans 24 July 2023, a 2nd revised officer recommendation is presented, which lower the height of the upper floor and increase the setback of the building from the southern boundary, resulting in reduced overshadowing to the south.

1. **That Council in accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 24 July 2023 for the single house at 32 Philip Road, Dalkeith, subject to the following conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 24 July 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.**
2. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**

1. **Prior to the issue of a Building Permit, revised stormwater plans shall be submitted and approved to the satisfaction of the City.**

1. **Prior to the issue of a Building Permit, a Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction process to the satisfaction of the City of Nedlands.**

1. **Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:**

1. **Face brick;**
2. **Painted render;**
3. **Painted brickwork; or**
4. **Other clean finish as specified on the approved plans.**

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

1. **Prior to occupation, one tree shall be planted within the lot and shall have a minimum planting area of 2m x 2m, to the satisfaction of the City of Nedlands. The tree is to be maintained for the life of the development.**

1. **Prior to occupation, the two redundant crossovers on Philip Road shall be removed and the verge and kerbing reinstated to the City’s specifications, at the expense of the applicant and to the satisfaction of the City of Nedlands.**

1. **Prior to occupation, the applicant is to plant a minimum of one (1) x 30L tree located on the Philip Road verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.**

1. **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**

1. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.**

Revised Officer Recommendation

Following the submission of the modified plans, a revised officer recommendation is presented, to reflect the slight reduction in the overshadowing impact on the adjacent property.

That Council, in accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 17 July 2023 for the single house at 32 Philip Road, Dalkeith, subject to the following conditions:

1. This approval relates only to the development as indicated on the approved plans dated 17 July 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.
2. All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.
3. Prior to the issue of a Building Permit, revised stormwater plans shall be submitted and approved to the satisfaction of the City.
4. 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 of Nedlands.
5. Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:

1. Face brick;
2. Painted render;
3. Painted brickwork; or
4. Other clean finish as specified on the approved plans.

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

1. Prior to occupation, one tree shall be planted within the lot and shall have a minimum planting area of 2m x 2m, to the satisfaction of the City of Nedlands. The tree is to be maintained for the life of the development.

1. Prior to occupation, the two redundant crossovers on Philip Road shall be removed and the verge and kerbing reinstated to the City’s specifications, at the expense of the applicant and to the satisfaction of the City of Nedlands.

1. Prior to occupation, the applicant is to plant a minimum of one (1) x 30L tree located on the Philip Road verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.

1. 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

1. All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.

Recommendation

That Council:

In accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 13 June 2023 for the single house at 32 Philip Road, Dalkeith, subject to the following conditions:

1. This approval relates only to the development as indicated on the approved plans dated 13 June 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.
2. All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.
3. Prior to the issue of a Building Permit, revised stormwater plans shall be submitted and approved to the satisfaction of the City.
4. 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 of Nedlands.
5. Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:
   1. Face brick;
   2. Painted render;
   3. Painted brickwork; or
   4. Other clean finish as specified on the approved plans.

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

1. Prior to occupation, one tree shall be planted within the lot and shall have a minimum planting area of 2m x 2m, to the satisfaction of the City of Nedlands. The tree is to be maintained for the life of the development.
2. Prior to occupation, the two redundant crossovers on Philip Road shall be removed and the verge and kerbing reinstated to the City’s specifications, at the expense of the applicant and to the satisfaction of the City of Nedlands.
3. Prior to occupation, the applicant is to plant a minimum of one (1) x 30L tree located on the Philip Road verge, at the expense of the applicant and to the

satisfaction of the City of Nedlands.

1. 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
2. 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 two-storey singe house at 32 Philip Road, Dalkeith. This proposal is being presented to Council for consideration due to the proposal receiving an objection within the consultation period. The proposed development is seeking a design principle assessment pathway for overshadowing and visual privacy.

**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** | R40 |
| **Land area** | 466m2 |
| **Land Use** | Single House |
| **Use Class** | ‘P’ – Permitted Use |

The site is located at 32 Philip Road, Dalkeith. Originally, the site featured two grouped dwellings in a ‘built strata’ scheme configuration. In June 2015, the ‘built strata’ was converted to a survey strata, resulting in two distinct lots: 32 Philip Road and 1 Alexander Road. The existing grouped dwellings remain and now qualify as two single houses, each on their own survey strata lot with no common property.

32 Philip Road is square in shape and is located on the southern side of the street at the intersection of Shrike Lane and Philip Road. The site is relatively flat, with a 0.5m slope from east to west. The site borders 3 Alexander Road to the south, a narrow lot which is oriented east-west.

**Application Details**

This application seeks development approval for a new two storey single house at 32 Philip Road, Dalkeith. On 13 June 2023, amended plans were submitted reducing the overall height of the house to decrease the extent of shadow cast over the southern property. Notwithstanding this amendment, the house is seeking a design principle assessment pathway for overshadowing and visual privacy.

**Discussion**

**Assessment of Statutory Provisions**

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

**Local Planning Scheme No. 3**

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

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

**5.4.1 Visual Privacy**

The balcony and ‘Bed 2’ on the upper floor overlook the adjoining eastern lot at 1 Alexander Road. The design principles for visual privacy consider the minimal overlooking of active habitable spaces and outdoor living areas of adjacent dwellings and maximum visual privacy to side and rear boundaries. The proposed overlooking is considered to meet the design principles for the following reasons:

* Overlooking is minimised as the balcony and Bedroom 2 window face the street and are intended to provide an outlook over the front of the subject site. As a result, overlooking of the adjoining property is oblique rather than direct.
* The overlooking from the Bedroom 2 window and balcony avoids all adjoining habitable areas. The cone of vision falls over the northern portion of the adjacent lot occupied by a single storey roof. No view is provided of the neighbouring outdoor living area which is located at the rear of the site along the southern boundary.
* The impact of overlooking from the balcony is further reduced through the siting of the building, with the balcony setback 5.1m from the lot boundary to the east.

**5.4.2 Solar Access for Adjoining Sites**

The development proposes 24% overshadowing to 3 Alexander Road, Dalkeith at the winter solstice. The design principles consider effective solar access for the subject development, and the protection of solar access for neighbouring properties.

Given the narrow lot width and east-west orientation of 3 Alexander Road, it is acknowledged that achieving deemed-to-comply overshadowing may be difficult. In this regard, particular consideration needs to be given to the protection of solar access to the adjoining property’s outdoor living areas, major openings to habitable rooms and solar collectors.

The application meets the design principles as:

* Due to the siting of the lot, the shadow cast by the development falls over the western rear half of 3 Alexander Road. The house on 3 Alexander Road is located within the eastern front half of the lot. As such, the overshadowing proposed does not impact walls which contain major openings on the adjacent southern site.
* The existing dividing fence accounts for half of the shadow proposed over the neighbouring lot and would be present irrespective of the development proposed at 32 Philip Road. Furthermore, the overall shadow cast by the new single house will fall over 50% of the adjoining outdoor living area, leaving approximately 110m2 of private open space unaffected by overshadowing.
* A significant setback of the upper floor wall minimises overshadowing. A 12.9m length of the upper floor wall (accounting for 64% of the upper floor wall length) is setback 5.7m from the southern boundary.
* The development achieves the deemed-to-comply provisions in respect of lot boundary setbacks, building height and open space.
* Whilst there are currently no solar collectors on the dwelling at 3 Alexander Road, the shadow cast by the proposed dwelling does not fall onto the roof area. This allows for solar collectors to be installed at a later date not to be affected by overshadowing.

**Consultation**

The application is seeking assessment under the design principles of the R-Codes for lot boundary setbacks, site works and visual privacy.

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 23 May 2023 to 6 June 2023. At the close of the advertising period, two submissions were received - one objection and one non-objection.

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 proposed overshadowing will adversely affect the outdoor living area of the southern adjoining lot.

Amended plans were received on 13 June 2023 which reduce the overall height of the development to lessen the shadow cast over the neighbouring site. The development is considered to achieve the design principles for Clause 5.4.2 (see solar access for adjoining sites discussion above).

1. The proposed overshadowing will compromise any future development or subdivision on the southern adjoining lot.

Only minimal weight can be given to the potential to overshadow a newly created lot or future development to the south. The design and configuration of a new lot or development is currently unknown and neither event appears certain or imminent.

1. The incoming R-Codes 2023 (Medium Density Codes) should be given due regard, particularly the importance the new codes place on ‘the garden’ of development sites.

Consistent with Western Australian Planning Commission advice and legal principles, regard of the new R-Codes has been limited to the design principles for elements where the current deemed-to-comply provisions have not been met. As a determination of the application is taking place prior to the new Codes coming into effect on 1 September 2023, the 2021 R-Codes as the current framework are afforded greater weight.

**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. 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 new two storey single house 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 adjoining lots or local amenity of the area. The proposal has been assessed and satisfies the design principles of the R-Codes in relation to being consistent with the immediate locality and streetscape character.

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

**Further Information**

**Question**

Councillor Mangano – What is the exact overshadowing of the lot to the south (please confirm if 24% is correct).

**Officer Response**

Amended plans were submitted on 17 July 2023 which lower the height of one of the upper floor walls, resulting in reduced overshadowing to the south. The overshadowing proposed has been calculated as 23.8% of the entire adjoining lot.

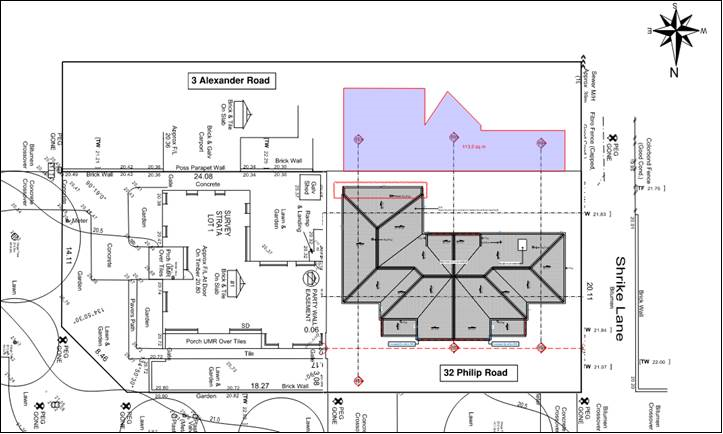
The property to the south of the subject lot is 474sqm in area.

The overshadowing created by the proposed development has been calculated by City staff as 113.2sqm.

The percentage of the property to the south covered by shadow at 12pm on 21 June is calculated as follows:

Area of shadow / area of neighbouring lot (113.2/474=0.238)

0.238 = **23.8%**



R40 code allows for 35% overshadowing as deemed to comply.

In this case, two properties are located to the north of the neighbouring property. The proportion of boundary sharing of the two northern properties (including the subject lot) is 49% to 32 Philip Road and 51% to 1 Alexander Road.

Therefore, the proportion of the 35% deemed to comply shadow associated with 32 Philip Road is 49% of 35% (0.49\*35= 17.2%)

**Question**

Councillor Bennett – What would the overshadowing provisions be for a group dwelling or a multi dwelling, relative to a single dwelling for this lot?

**Officer Response**

The deemed-to-comply / acceptable outcome provisions for overshadowing are the same for single houses, grouped dwellings and multiple dwellings in R40.

**Question**

Councillor Mangano – Can a condition be included which requires the upgrade of the laneway from Philip Road to the garage access?

**Officer Response**

A condition requiring the upgrade of a laneway is only imposed when there is an increase in the number of dwellings compared to what is existing on site. As the existing use of the land is a single house and the proposal is for a single house, a condition for laneway upgrading has not been included.

Revised Officer Recommendation

Following the submission of the modified plans, a revised officer recommendation is presented, to reflect the slight reduction in the overshadowing impact on the adjacent property.

That Council, in accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 17 July 2023 for the single house at 32 Philip Road, Dalkeith, subject to the following conditions:

1. This approval relates only to the development as indicated on the approved plans dated 17 July 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.
2. All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.
3. Prior to the issue of a Building Permit, revised stormwater plans shall be submitted and approved to the satisfaction of the City.
4. 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 of Nedlands.
5. Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:

1. Face brick;
2. Painted render;
3. Painted brickwork; or
4. Other clean finish as specified on the approved plans.

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

1. Prior to occupation, one tree shall be planted within the lot and shall have a minimum planting area of 2m x 2m, to the satisfaction of the City of Nedlands. The tree is to be maintained for the life of the development.

1. Prior to occupation, the two redundant crossovers on Philip Road shall be removed and the verge and kerbing reinstated to the City’s specifications, at the expense of the applicant and to the satisfaction of the City of Nedlands.

1. Prior to occupation, the applicant is to plant a minimum of one (1) x 30L tree located on the Philip Road verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.

1. 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

1. All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.

**Further Information – 24 July 2023**

Amended plans were submitted on 24 July 2023 which lower the height of the upper floor and increase the setback of the building from the southern boundary, resulting in reduced overshadowing to the south. The overshadowing proposed has been calculated as 23.1% of the entire adjoining lot.

The property to the south of the subject lot is **474sqm** in area.

The overshadowing created by the proposed development has been calculated by City staff as **109.5sqm**.

The percentage of the property to the south covered by shadow at 12pm on 21 June is calculated as follows:

Area of shadow / area of neighbouring lot (109.5/474=0.231)

0.231 = **23.1%**

A blueprint of a house

Description automatically generated

**Revised Officer Recommendation**

1. **That Council in accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 24 July 2023 for the single house at 32 Philip Road, Dalkeith, subject to the following conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 24 July 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.**
2. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**

1. **Prior to** the **issue of a Building Permit, revised stormwater plans shall be submitted and approved to the satisfaction of the City.**

1. **Prior to the issue of a Building Permit, a Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction process to the satisfaction of the City of Nedlands.**

1. **Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:**

1. **Face brick;**
2. **Painted render;**
3. **Painted brickwork; or**
4. **Other clean finish as specified on the approved plans.**

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

1. **Prior to occupation, one tree shall be planted within the lot and shall have a minimum planting area of 2m x 2m, to the satisfaction of the City of Nedlands. The tree is to be maintained for the life of the development.**

1. **Prior to occupation, the two redundant crossovers on Philip Road shall be removed and the verge and kerbing reinstated to the City’s specifications, at the expense of the applicant and to the satisfaction of the City of Nedlands.**

1. **Prior to occupation, the applicant is to plant a minimum of one (1) x 30L tree located on the Philip Road verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.**

1. **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**

1. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.**

# PD35.07.23 - Consideration of Development Application – Change of Use – “Restaurant” to “Small Bar” – 99A & 101 Waratah Avenue, Dalkeith

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 25 July 2023 |
| **Applicant** | Fusion Cuisine Pty Ltd |
| **Information Provided** | All relevant information required has been provided. |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans 3. Management Plan 4. Environmental Noise Assessment 5. Submissions – CONFIDENTIAL |

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

Moved – Councillor Senathirajah

Seconded – Councillor Combes

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED UNANIMOUSLY EN BLOC 12/-**

**Council Resolution / Recommendation**

**That Council:**

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 7 March 2023 for a partial change of use to a “Small bar” at 99a & 101 Waratah Avenue, Dalkeith, subject to the following conditions:**

1. **This approval is for the use of the development as a “Small Bar”, as defined in the City of Nedlands Local Planning Scheme No.3. Any alternative use of the premises may require development approval.**
2. **This approval is for a maximum of 120 patrons (internal and external).**
3. **The Environmental Noise Assessment date stamped 5 July 2023 forms part of this development approval and shall be complied with at all times, to the satisfaction of the City of Nedlands.**
4. **Prior to the use of the small bar, a Noise Management Plan shall be submitted and approved by the City of Nedlands and shall be complied with at all times to the satisfaction of the City.**
5. **The “Isoletta Management Plan” submitted on 7 March 2023 forms part of this approval and shall be complied with at all times to the satisfaction of the City.**

**Purpose**

The purpose of this report is for Council to consider a development application for a change of use from ‘restaurant’ to ‘small bar’ at 99A & 101 Waratah Avenue, Dalkeith, previously known as ‘The Local’. This application is being presented to Council for consideration as objections have been received.

**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 |
| **Floor Area** | 367m2 |
| **Land Use** | Small Bar |
| **Use Class** | ‘A’ |

The site is located at 99A & 101 Waratah, Dalkeith and is zoned ‘Mixed Use’ R-AC3 (**Attachment 1**). The small bar is proposed to be located within the two eastern-most tenancies within the site, directly adjoining the Dalkeith Hall.

**History**

In December 2010, The City approved an increase in seating capacity to 90 seats to the existing restaurant use at 101 Waratah Avenue.

In December 2022, a ‘Restaurant’ liquor licence was applied for over an expanded area which included two tenancies, 99A and 101 Waratah Avenue. As a ‘Restaurant’ is permitted by the City’s Local Planning Scheme No. 3 (LPS 3), no development approval was required. The City provided advice via a Section 40 liquor licencing certificate that the granting of the ‘Restaurant’ liquor licence would be consistent with the City’s local planning framework. A building permit for the internal alterations, fit out and amalgamation of the two tenancies was issued by the City in February 2023.

**Application Details**

This application involves the expansion of the existing restaurant tenancy (previously known as ‘The Local’) by incorporating the former adjoining shop tenancy to the west (previously known as ‘Wildwood Living’) to create a small bar and formal dining establishment called ‘Isoletta’.

Whilst the operation of the restaurant will predominately remain the same, a small bar liquor licence will allow for greater flexibility in terms of serving liquor over the bar without the need to be seated or have an accompanying meal. The application proposes to increase the number of patrons to 120, consistent with the small bar liquor licence maximum capacity requirements.

Unlike the previous restaurant use and liquor licence, a small bar requires discretionary approval and public advertising. The purpose of this report is to consider the submissions received and whether to exercise discretion and grant approval for the small bar use. Should planning approval for a small bar be granted, the liquor licence application can then progress.

**Discussion**

**Assessment of Statutory Provisions**

**Local Planning Scheme No. 3**

A “small bar” is an ‘A’ use within the Mixed-Use zone in accordance with Zoning Table in LPS3. This means that the use is not permitted unless the local government has exercised its discretion by granting approval after conducting public consultation. In considering the approval of a discretionary land use, the proposal must be consistent with the objectives of the zone. The objectives primarily relate to the facilitation of well-designed development of an appropriate scale which provide a variety of active uses on the street level that are not detrimental to the amenity of the area.

It is considered that the “small bar” use meets the objectives of the Mixed Use zone as the intent of this application is to operate an eating establishment that is largely seated but which provides greater flexibility for patrons in terms of serving liquor. A restaurant and small bar use is considered an appropriate use within the Waratah Avenue Commercial Sub-Precinct. The development will not have adverse effect on the amenity of the surrounding area due to the continuation of the current hours of operation, noise minimisation measures and compliance with liquor licence requirements, such as the responsible serving of alcohol.

The Noise Assessment prepared by Lloyd George Acoustics dated 5 July 2023 demonstrates the proposed use will meet the *Environmental Protection (Noise) Regulations 1997* (Noise Regulations). Compliance with the Noise Regulations is achievable as:

* The use will fundamentally remain the same in terms of the nature of the enterprise (serving food and drink) and the location (the same building, partially occupying the same tenancy);
* The Noise Assessment report found that compliance with the Noise Regulations is achieved at night-time with the entry door open and the windows closed.
* Music is to be played inside the premises only. There will be no music emitted externally.
* There will be no live music;
* The current hours of operation are not proposed to change (7am to midnight);
* A Management Plan has been prepared which aims to minimise any impacts of anti-social behaviour; and
* Additional noise mitigation measures (such as the operation of internal speakers, window openings, glass bottle disposal and delivery of goods) will be addressed through a Noise Management Plan.

The City’s Parking Local Planning Policy (Parking LPP) sets out parking standards for non-residential uses. The objective of the Parking LPP is to ensure that there is sufficient parking available for the proposed development. The development is considered to meet the objective of the Parking LPP as the development is located within a mixed use zone and there is sufficient public parking and alternative transport available to facilitate the development.

Due to the historical design of the premises, there are no designated parking bays on site. This can largely be attributed to the site being located within the Waratah Avenue Commercial Sub-Precinct. It is typical for commercial and mixed-use centres to feature consolidated public or shared parking areas. The use of public parking avoids the need for large car parks in front of each tenancy and allows for a continuous urban fabric of shop fronts and active uses that connect directly with the public realm.

The Waratah Avenue Commercial Sub-Precinct is a good example of this type of activity centre as it features a mix of uses which do not have onsite car parking. These uses include shops, offices, restaurants, and a recreation – private tenancy. These existing tenancies all use the public parking bays available within the area.

There are approximately 80 car bays in the surrounding area for public use along Waratah Avenue, Genesta Crescent and Alexander Road, inclusive of 7 parallel car bays directly in front of the site. The use of the 20 public car bays at the neighbouring Dalkeith Hall site is also possible, particularly for evening operation when the Hall is less likely in use. As many of the uses along Waratah Avenue are shops or offices which trade primarily during the day, a large proportion of the public car parking bays are likely to be available in the evening for patrons of the small bar.

**Consultation**

In April 2023 the City conducted a Community Scorecard survey inviting residents, businesses and community organisations to rate the City’s performance and communicate their needs to improve the quality of life in the local area. The results of the Community Scorecard indicated that there was a desire to develop and activate the Waratah Avenue Commercial Sub-Precinct through a greater diversity of uses that improved vibrancy, such as small bars. It is considered that the small bar use which services local residents within walking distance of the venue contributes to the community’s aspiration for the activation of the area.

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to 157 affected adjoining landowners and occupiers. The application was advertised for a period of 14 days from 17 April 2023 to 1 May 2023. At the close of the advertising period, 5 submissions were received - 2 objections and 3 supporting statements.

The comments or concerns raised during the submission period and the response to each concern are below:

1. Adverse impact of noise.

The Environmental Noise Assessment prepared by Lloyd George Acoustics dated 5 July 2023 demonstrates that the development will be compliant with the *Environmental Protection (Noise) Regulations 1997*. A Noise Management Plan is recommended as an additional condition. This will address matters relating to noise management such as the use and volume of speakers, limiting noise after certain hours, and the method of dealing with hours of operation etc.

1. The hours of operation will be disruptive to the area.

The Environmental Noise Assessment prepared by Lloyd George Acoustics dated 5 July 2023 demonstrates that the development will be compliant with the *Environmental Protection (Noise) Regulations 1997*. The hours of operation are not proposed to change relative to the current operating times.

1. Parking may be insufficient.

Refer to the discussion on parking above.

1. The small bar may result in increased anti-social behaviour.

The applicant has submitted a Management Plan to assist with the mitigation of anti-social behaviour. This has been included as a condition of approval. The Management Plan accounts for the following aspects of operation:

* Responsible server practices
* Security and crowd control
* Preventing underage drinking
* Preventing intoxication
* Refusal of service to intoxicated patrons
* Complaint handling procedure

It is noted that the liquor licence will include a number of requirements surrounding the responsible service of alcohol.

1. Change of use to the adjoining shop.

The plans show alterations to incorporate the western adjacent shop as part of the 'Isoletta" restaurant and small bar proposal. Administration notes these tenancies have been amalgamated and have been considered in this assessment as part of the change of use.

1. The increase in capacity may be detrimental.

The capacity is increasing from 90 to 120 patrons. An Environmental Noise Assessment and Management Plan have been submitted which demonstrate that the use will achieve compliance with the Noise Regulations and will ensure anti-social behaviour is mitigated.

1. Deliveries will have an adverse impact on the locality, particularly on Alexander Road.

The applicant has confirmed that there will be little to no increase in the number or magnitude of deliveries to the site. There are two loading bays on Waratah Avenue located 20m from the site.

**Strategic Implications**

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

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

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

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

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

**Budget/Financial Implications**

Nil.

**Legislative and Policy Implications**

Council is requested to make a decision in accordance with clause 68(2) of the Deemed Provisions. Council may determine to approve the development without conditions (cl.68(2)(a)), approve with development with conditions (cl.68(2)(b)), or refuse the development (cl.68(2)(c)).

**Decision Implications**

If Council resolves to approve the proposal, the use can proceed after receiving necessary clearances and approvals, including a small bar liquor licence.

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 City’s Local Planning Scheme No.3. Similarly, should an applicant be aggrieved by one or more conditions of approval, this can be reviewed by the Tribunal.

**Conclusion**

The application is referred to Council for determination in accordance with Delegation 9.2.1, being an application for a change of use to ‘small bar’. The proposal is considered to meet the objectives of the ‘Mixed Use’ zone and will not have an adverse impact on the local amenity.

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

**Further Information**

**Question**

Councillor Mangano – What is the plan for the applicant to fixing up the footpath?

**Officer Response**

The applicant wishes to amend the footpath by reducing the uneven paving and removing the redundant table post insets. The works will be assessed via a ‘Works in a Public Thoroughfare’ permit application. If approved the works will be undertaken by the applicant to the City’s satisfaction.

**Question**

What is the approval process for the alfresco dining area and the future use of a car parking bay for such a use.

**Officer Response**

The alfresco dining component is assessed via an application for an Outdoor Trading Licence is made with the City in accordance with the *Trading in Public Places Local Law 2000*. The application will include a management plan for the operation of the outdoor dining operation.

The conversion of an on-street car bay to verge space for use as alfresco dining would first require Council approval to remove a public car parking bay. If approved by Council, the works would then be assessed via a ‘Works in a Public Thoroughfare” permit. Use of additional verge space would then require an amendment to the approved Outdoor Trading Licence.

**Question**

Councillor Youngman – Can the trading hours be clarified?

**Officer Response**

The trading hours sought for approval are 6.00am to midnight, seven days a week. In practice, operating times within these approved hours will be dependent on demand, with the Small Bar being unlikely to open until midnight on weeknights.

**Question**

Councillor Senathirajah – Is there option for Cash in Lieu of parking?

**Officer Response**

Cash-in-lieu payment cannot be requested as the City does not have an adopted Payment in Lieu of Parking Plan or an associated Local Planning Policy.

**Question**

Councillor Bennett – can we investigate reducing the trading hours for the alfresco dining area on Monday, Tuesday and Wednesday to 10pm?

**Officer Response**

Alfresco dining operating hours can be restricted by the approved Outdoor Trading Licence. Generally, the licence restricts operating hours to 10pm on Fridays and Saturdays and 9pm Sunday to Thursday, unless the acoustic report requires shorter hours.

# PD36.07.23 - Consideration of Development Application – Residential – Additions to Single House at 22 Clifton Street, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 25 July 2023 |
| **Applicant** | Kellett Design Group |
| **Information Provided** | All relevant information required has been provided. |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans 3. Plan of Subdivision 4. Revised Development Plans 5. CONFIDENTIAL ATTACHMENT – Submissions |

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

Moved – Councillor Hodsdon

Seconded – Councillor McManus

**That the Revised Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED 11/1**

**(Against: Cr. Mangano)**

**Council Resolution / Revised Officer Recommendation**

Following the submission of the modified plans, a revised officer recommendation is presented. The finished floor levels of the deck and master suite have been amended to the original proposed levels as a result of consultation with the submitter. Additionally, the amended plans show a new 1.8m high (above decking finished floor level) brick dividing fence surrounding the rear deck for a length of 5.0m, as well as an additional 0.3m lattice topper to be added to the remainder of the length of the existing colourbond dividing fence.

**That Council, in accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 18 July 2023 for additions to the single house at 22 Clifton Street, Nedlands, subject to the following conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 18 July 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.**

1. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**

1. **Prior to the issue of a building permit, a Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction process to the satisfaction of the City.**

1. **Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:**

* 1. **Face brick;**
  2. **Painted render;**
  3. **Painted brickwork; or**
  4. **Other clean finish as specified on the approved plans.**

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

1. **Prior to occupation, one tree shall be planted within the lot and shall have a minimum planting area of 2m x 2m, to the satisfaction of the City of Nedlands. The tree is to be maintained for the life of the development.**

1. **Prior to occupation, the applicant is to plant a minimum of one (1) x 35L tree located on the Clifton Street verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.**

1. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.**

Recommendation

That Council, in accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 26 June 2023 for additions to the single house at 22 Clifton Street, Nedlands, subject to the following conditions:

1. This approval relates only to the development as indicated on the approved plans dated 26 June 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.
2. All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.
3. Prior to the issue of a 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. Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:
   1. Face brick;
   2. Painted render;
   3. Painted brickwork; or
   4. Other clean finish as specified on the approved plans.

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

1. Prior to occupation, the courtyard along the eastern boundary shall be screened as shown on the approved plans in accordance with the Residential Design Codes by either;
   1. fixed and obscured glass to a height of 1.6 metres above finished floor level; or
   2. fixed screening devices to a height of 1.6 meters above finished floor level that are at least 75% obscure and made of a durable material; or
   3. a minimum sill height of 1.6 metres above the finished floor level; or
   4. an alternative method of screening approved by the City of Nedlands.

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

1. Prior to occupation, one tree shall be planted within the lot and shall have a minimum planting area of 2m x 2m, to the satisfaction of the City of Nedlands. The tree is to be maintained for the life of the development.
2. Prior to occupation, the applicant is to plant a minimum of one (1) x 30L tree located on the Clifton Street verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.
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 additions to the single house at 22 Clifton Street, Nedlands. This proposal is being presented to Council for consideration due to the proposal receiving objections within the consultation period. Council is specifically requested to exercise its judgment in considering the merits of the application against the design principles for the following aspects of the proposal:

* Ground floor northern setback (see report section Clause 5.1.3 Lot boundary setbacks).
  + As of 1 September 2023, with the adoption of the Medium Density R-Codes, this setback will achieve the deemed-to-comply provisions of Clause 3.4.1
* Eastern and southern boundary walls (see report section Clause 5.1.3 Lot boundary setbacks).
  + In relation to the southern boundary wall, should the new lot boundaries be disregarded (1.0m pedestrian access leg), the deemed-to-comply setback to the southern lot boundary is 1.5m. The new portion of the wall is setback 1.5m whilst the existing portion of wall is setback 1.2m.
* Retaining walls and site works along the eastern boundary (see report section Clause 5.3.7 Site works)
  + The revised plans received 26 June 2023 (**Attachment 2**) have resulted in the retaining walls and site works to the northern boundary achieving the deemed-to-comply provisions for Clause 5.3.7
* Visual privacy to the south (see report section Clause 5.4.1 Visual privacy)

**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** | R40 |
| **Land area** | 240m2 |
| **Land Use** | Single House |
| **Use Class** | ‘P’ – Permitted Use |

The site is located at 22 Clifton Street, Nedlands. The site is on the eastern side of Clifton Street and has an existing single storey house, which is to be partially retained. The site recently underwent a two lot subdivision with a battle-axe configuration. This application relates to the eastern (Clifton Street facing) lot of the subdivision. The site is orientated east-west and is bound by Clifton Street to the east. The site is relatively flat, with a 0.7m slope from east to west. The lot is regular in shape, with a 11.1m frontage and a total area of 240m2.

**Application Details**

This application seeks development approval for additions and alterations to a single house at 22 Clifton Street, Nedlands. This application proposes the partial retention of the existing single storey house, with additions and alterations on the ground floor, slightly extending the ground floor footprint to the east and north. Additionally, the proposal includes the addition of a second storey consisting of 2 bedrooms, bathroom, office, living room and balcony.

**Additional Information**

On 26 June 2023 amended plans were received which reduced the site works and the subsequent finished ground and floor levels of the rear northern deck and the master suite to less than 0.5m above natural ground level. Although the 1.6m high privacy screens are no longer required to the north under Clause 5.4.1, they have been retained on the development plans to provide additional privacy to the northern adjoining landowner.

This item was considered at the 27 June Ordinary Council Meeting where it was deferred to provide the opportunity for additional information to be provided.

**Discussion**

**Assessment of Statutory Provisions**

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

**Local Planning Scheme No. 3**

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

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

Clause 5.1.3 Lot Boundary Setback

* The master suite on the ground floor proposes a 1.8m setback to the northern lot boundary.

The design principles for lot boundary setbacks consider the impact of building bulk on adjoining properties, providing adequate sun and ventilation and minimising overlooking. The proposed northern lot boundary setback is considered to meet the design principles for the following reasons:

* The impacts of building bulk are reduced using articulation on the ground floor. The ground floor proposes the retention of the 9.2m portion of wall from the living to ensuite which is setback 1.1m (excluding the minor projection of the chimney), with the addition of the master suite, a length of 4.3m which is set back further at 1.8m.
* Ventilation is maintained for the site and adjoining northern site through the varied setback on the ground floor.
* The wall is to the northern boundary so does not result in overshadowing.
* There are no overlooking concerns as the finished floor level of the master suite is not raised more than 0.5m above natural ground level. Furthermore, there are privacy screens proposed to the northern lot boundary to 1.6m above finished floor level, therefore further mitigating loss of privacy for the northern landowners.
* It is worth noting that as of 1 September 2023 with the adoption of the Medium Density R-Codes, the proposed ground floor northern lot boundary setback from the master suite will achieve deemed-to-comply of Clause 3.4.1, which stipulates a minimum 1.5m setback.

Clause 5.1.3 Lot Boundary Setback - Boundary Walls

* The eastern boundary wall is 4.0m in height; and
* The southern boundary wall is located within 3m behind the street setback line.

The Hampden-Hollywood Local Planning Policy was adopted by Council on 28 March 2023. The subject development application was submitted 1 March 2023 and had been designed and assessed prior to the adoption of the Policy. Notwithstanding, the proposal has been assessed against the Hampden-Hollywood Precinct LPP.

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 eastern boundary wall is considered to meet the design principles for the following reasons:

* The boundary wall along the eastern elevation makes more effective use of the site by providing pockets of outdoor living areas for the courtyard and retreat.
* Solar access is maintained as the wall is located on the eastern boundary and achieves the deemed-to-comply provisions.
* Ventilation is maintained for the site and adjoining eastern site through the articulation of setbacks along the eastern boundary with the remainder of the ground floor being setback a minimum of 3.4m.
* There are no overlooking concerns as a result of the eastern boundary wall.
* The eastern boundary wall is not viewable from the street.

The proposed southern boundary wall is considered to meet the design principles for the following reasons:

* The southern boundary wall consists of the existing retained 10.9m portion of wall (verandah and dining/living), with the addition of a 4.2m portion of wall (laundry and scullery). This allows the front setback area to achieve greater street setback provisions and makes more effective use of space for the outdoor living area.
* The most significant portion of the southern wall in terms of scale is that of the existing house, which is to remain and be incorporated into the new design.
* The impacts of building bulk are mitigated as the proposed boundary wall is located 1.5m from the southern lot’s (24 Clifton) boundary and therefore will not be perceived from the southern adjoining landowner as a boundary wall. The addition is minor in nature, with a length of 4.2m and 3.5m in height which is consistent with a single storey wall height.
* Solar access for the southern lot is maintained and achieves the deemed-to-comply provisions.
* Ventilation is maintained for the site and adjoining southern site through the 1.2m setback (pedestrian access leg) on the ground floor.
* There are no overlooking concerns as a result of the southern boundary wall.

The proposed boundary walls are consistent with the desired future character statement of the Policy for the following reasons:

* The proposed additions and alterations aim at retaining the existing Californian bungalow style façade, whilst incorporating more contemporary design materials into the extension.
* The proposal siting is consistent with the existing and desired future character by incorporating large front setbacks ranging from 6.0m to 8.0m. Additionally, the proposal facilitates street activation through the inclusion of the upper floor balcony, verandah, front facing outdoor living area and low permeable fences to promote passive surveillance.
* The proposal features no boundary walls as perceived from the street. Building separation is maintained by a minimum of 2.1m between the subject site house and the southern dwelling at 24 Clifton Street. This facilitates the appearance of building separation and is consistent with the desired future character of the area.

Clause 5.3.7 Site Works

* Retaining walls and site works along the eastern lot boundary are to a maximum height of 0.7m.

The lot slopes approximately 0.7m from west to east, with the fill at the rear of the site proposed to retain a consistent flat level across the site for more effective use for the residents. The proposed site works achieve the design principles as they respond to the natural slope of the site, do not add to building bulk and do not result in visual privacy concerns for the eastern adjoining property.

Clause 5.4.1 Visual Privacy

* The balcony on the upper floor overlooks the southern property.

The design principles for visual privacy consider the minimal overlooking of active habitable spaces and outdoor living areas of adjacent dwellings and maximum visual privacy to side and rear boundaries. The proposed overlooking is considered to meet the design principles for the following reasons:

* Overlooking is minimised as the balcony opening is perpendicular to the lot boundary, so overlooking is oblique and not direct.
* Overlooking from the balcony is reduced through the use of building siting, with the upper floor being setback 2.5m from the southern property’s lot boundary.
* Oblique overlooking from the balcony does not impact the adjoining southern outdoor living area or major openings as the overlooking falls within the front yard of the adjoining lot.

**Consultation**

The application is seeking assessment under the design principles of the R-Codes for lot boundary setbacks, site works and visual privacy.

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 19 April 2023 to 3 May 2023. At the close of the advertising period, two objections were received.

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

1. Reduced lot boundary setbacks to the south impacts the appearance of building bulk and adjoining amenity.

The proposal achieves the deemed-to-comply requirements for lot boundary setbacks for the southern upper floor walls. The proposed southern boundary wall on the ground floor is restricted to a maximum of 3.4m in height, consistent with a single storey height. The southern boundary wall is considered to achieve the design principles for Clause 5.1.3 (see discussion above).

1. Increased overshadowing will obstruct direct solar access and adversely impact amenity.

Overshadowing achieves the deemed-to-comply provisions for solar access to adjoining sites. This was achieved through amended plans after the consultation period including reducing the length of the office and living room on the upper floor to reduce the total shadow cast to the southern property.

1. Lack of open space impacts the appearance of building bulk.

Open space on the site satisfies the deemed-to-comply provision.

1. Extent of overshadow from future rear lot is concerning.

The proposed future shadow from the rear lot has been considered, and a proportionate share of the deemed-to-comply provision for allowable overshadow has been given to both lots on 22 Clifton Street, as per the R-Codes. The proposed shadow cast from the future rear lot development will be considered through a separate development application and will be available for community comment should the shadow exceed allowable limits.

1. Concerns with visual privacy from future rear lot.

Any future development on the rear lot will be considered through a separate development application and will be available for community comment should overlooking be proposed.

1. The minimum 0.8m setback to the north on the ground floor is a concern.

This portion of wall features an existing minor projection containing a chimney which is setback 0.8m from the northern lot boundary. There are no changes proposed to this portion of wall as part of this application.

1. Concerns with visual privacy from the rear deck and master suite to the north.

The finished floor level of both the deck and the master suite are not raised more than 0.5m above natural ground level and therefore achieves the deemed-to-comply provisions for visual privacy to the north. However, privacy screens to a height of 1.6m above finished floor level have been provided to the north to help further mitigate any visual privacy concerns.

1. Concerns with visual privacy from the front deck to the north.

The finished floor level of the front deck is not raised more than 0.5m above natural ground level and achieves the deemed-to-comply provisions for visual privacy to the north. However, a privacy screen to a height of 1.6m above finished floor level has been provided to the north to help further mitigate any visual privacy concerns.

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

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

**Further Information**

**Question**

Councillor Bennett – Could the City request the applicant add additional height to the existing fence?

**Officer Response**

A meeting was held on site at 22 Clifton Street on 13 July with the submitter and the applicant, the applicant advised that additional height would be added to the existing dividing fence adjacent to the front deck and a new portion of wall (brick) will be constructed adjacent to the rear deck at the applicants cost. This has occurrd and is reflected in the plans shown in Attachment 4.

**Question**

Councillor Amiry – Can we confirm what area of the neighbours house is being subject to overlooking? (i.e., bedroom, living room etc).

**Officer Response**

A meeting was held on site at 22 Clifton Street on 13 July 2023 with the submitter, the applicant. Following this meeting amended plans were received on 18 July 2023 illustrating the increase in finished floor levels of the deck and master suite from 16.433 (deck) and 16.49 (master suite) to 16.640 (deck) and 16.69 (master suite). As a result, the amended plans also show a new 1.8m high (above finished floor level) brick dividing fence adjacent to the rear deck for a length of 5.0m, as well an additional 0.3m lattice topper to be added to the remainder of the length of the existing colourbond dividing fence.

There is no overlooking from the proposed development to the northern neighbour. As outlined above, the amended plans received 18 July 2023 show a 1.8m high (above finished floor level) brick dividing fence surrounding the deck to be installed by the applicant to satisfy visual privacy. The area of the neighbouring property that would have been overlooked would be limited to the dining room (no major openings) and a portion of the rear alfresco area.

**Question**

Councillor Coghlan – Can the decking levels and setback be confirmed for the decking off the Master Bedroom?

**Officer Response**

The master suite now has a finished floor level of 16.69. The decking now has a finished floor level of 16.640, which is lower than the finished floor level of the master suite. The deck is has a nil setback to the northern boundary.

The master suite on the ground floor proposes a 1.8m setback to the northern lot boundary. The proposed lot boundary setback is considered to meet the design principle for the following reasons:

* The impacts of building bulk are reduced through the use of articulation on the ground floor. The ground floor proposes the retention of the existing 9.2m portion of wall setback 1.1m from the northern side boundary (excluding the minor projection of the chimney). The new portion of the wall is to be 4.3m long and setback at 1.8m.
* Ventilation is maintained for the site and adjoining northern site through the varied setback between 1.1m and 1.8m on the ground floor.
* The wall is to the northern boundary so does not result in overshadowing.
* There are no overlooking concerns as the existing dividing fence will be amended to be 1.8m above finished floor level, further mitigating loss of privacy for the northern landowners.

**Revised Officer Recommendation**

Following the submission of the modified plans, a revised officer recommendation is presented. The finished floor levels of the deck and master suite have been amended to the original proposed levels as a result of consultation with the submitter. Additionally, the amended plans show a new 1.8m high (above decking finished floor level) brick dividing fence surrounding the rear deck for a length of 5.0m, as well as an additional 0.3m lattice topper to be added to the remainder of the length of the existing colourbond dividing fence.

**That Council, in accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 18 July 2023 for additions to the single house at 22 Clifton Street, Nedlands, subject to the following conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 18 July 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.**

1. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**

1. **Prior to the issue of a building permit, a Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction process to the satisfaction of the City.**

1. **Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:**

* 1. **Face brick;**
  2. **Painted render;**
  3. **Painted brickwork; or**
  4. **Other clean finish as specified on the approved plans.**

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

1. **Prior to occupation, one tree shall be planted within the lot and shall have a minimum planting area of 2m x 2m, to the satisfaction of the City of Nedlands. The tree is to be maintained for the life of the development.**

1. **Prior to occupation, the applicant is to plant a minimum of one (1) x 35L tree located on the Clifton Street verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.**

1. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.**

# Divisional Reports - Technical Services Report No’s TS08.07.23

# TS08.07.23 – Safe Active Streets

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 25 July 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Matthew MacPherson – Director Technical Services declared an Impartiality Interest his interest being that his partner’s parents reside in a street adjoining Jenkins Avenue.  Mr MacPherson is not the author of this report nor the decision maker. |
| **Report Author** | Aaron MacNish – Coordinator Transport and Development |
| **Director** | Matthew MacPherson – Director Technical Services |
| **Attachments** | 1. Safe System Assessment (completed on Elizabeth Street only) – GTA Consultants, February 2020 2. Road Safety Inspection – Cardno, May 2021 3. Street Lighting Audit – Powerlyt, August 2021 4. CONFIDENTIAL - Safe Active Street Interim Evaluation Report – August 2021, Department of Transport |

**Regulation 11(da) – To allow for community consultation with the Melvista Ward residents, and representatives from the Nedlands Primary School to occur prior to a decision being made on the preferred course of action for the Safe Active Street.**

Moved – Councillor Coghlan

Seconded – Councillor Youngman

**Council Resolution**

**That Council:**

1. **defer the decision of the preferred course of action for the Safe Active Street until community consultation with the Melvista Ward residents has occurred;**
2. **instruct the CEO to undertake community consultation;**
3. **instruct the CEO that the consultation shall be in the form of a short survey mailed out to every property within the Melvista Ward and the final survey questions shall be agreed by Council by way of a Current Issue Briefing Note;**
4. **instruct the CEO to undertake direct liaison with the Nedlands Primary School;**
5. **instructs the CEO to present an updated report on the Safe Active Street to Council including community consultation results and the Department of Transports final report into the Safe Active Street Program, 2 months after the City receives the Program report; and**
6. **instructs the CEO to commence discussions the relevant Government Authority with a view to seek funding to improve the current design of the SAS, these would include but no be limited to:**

* **Intersection knick points.**
* **Platforms causing drainage issues.**
* **Removal of some on street parking to create safer passing sections.**
* **Replacing all intersection signage currently with Give Way signs to Stop signs.**
* **Street light provision.**

**CARRIED 11/1**

**(Against: Mayor Argyle)**

Recommendation

That Council adopt Option 1 as the preferred course of action regarding the road traffic treatment of the Nedlands Safe Active Street.

**Purpose**

This report is in response to an earlier Council Resolution and presents the options for redesigning streets which form part of the Nedlands Safe Active Street (SAS) Network.

**Voting Requirement**

Simple Majority.

**Background**

At the Ordinary Council Meeting held February 28th, 2023, Council passed the following resolution:

“That Council request the Chief Executive Officer to prepare a report for the June Ordinary Council Meeting considering:

1. Options to redesign streets which form part of Nedlands Safe Active Street network, in accordance with relevant standards;
2. Design solutions to mitigate known flooding issues;
3. Outcomes of previous reports and surveys undertaken regarding Nedlands Safe Active Street Network;
4. Scenarios for staging of design and construction activities; and
5. Associated costs for options and staging.

CARRIED 11/1”

**Project Summary**

The City of Nedlands Safe Active Street (SAS) travels along Elizabeth Street and Jenkins Avenue, providing a link across the local area from Broadway to Bay Road. A number of parallel streets were considered for this project. The Elizabeth Street and Jenkins Avenue route was ultimately selected due to its existing low traffic volumes, low traffic speeds, and connections to local amenities (schools, shops, university, sports, fields, and parks).

A map of a city with people riding bicycles and cars

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Figure 2 - City of Nedlands Safe Active Street Network, Department of Transport, 2023

Community consultation was undertaken in early 2018 running from the 1st of February through to the 9th of March. Details of the community consultation can be read in the Community Engagement Report – Final (attached). The outcomes of the engagement activities identified 73 per cent of the community generally supported the project with 15 per cent against and 12 per cent unsure.

A report was tabled to the Ordinary Council Meeting on the 26 June 2018 titled Safe Active Street Community Consultation Results including attachments; Community Engagement report and Revised Concept Plan. In that meeting the council resolution was:

“Council recognizes the level of community support for the Safe Active Streets Program in Elizabeth Street and Jenkins Avenue and authorizes the Chief Executive Office to enter into a contractual arrangement with the Department of Transport for the delivery of the project fully funded by the Department.”

The City completed their design of Stage 1 and Stage 2 of the Safe Active Street and issued the combined drawings for tender in February 2019. Construction of the Nedlands Safe Active Street was undertaken in two stages:

**Stage 1**

Started: September 2019

Completed: March 2020

**Stage 2**

Started: March 2020

Completed: December 2020

There were several design revisions as the project was delivered. During the delivery of Stage 2 of the Safe Active Street program, several key design changes were initiated in response to inadequate remaining budget.

The key design change initiated at the time was to remove the raised intersections located at Rockton Road, Waroonga Road, Bulimba Road, Taylor Road, Marita Road, Doonan Road, Louise Street and Mountjoy Road.

In a meeting between the City, Main Roads WA, and the Department of Transport it was decided that the priority was to reduce vehicle speed along the overall route, while ensuring bike riders have priority and have as smooth a route as possible. It was deemed acceptable by all parties that this would be achieved by the installation of one flat top speed hump at a mid-block location between each intersection along the route between Dalkeith Road and Rockton Road.

The Safe Active Street line marking was completed in March 2021 and has been fully open to the public since.

The total cost of the SAS Project was as follows:

|  |  |
| --- | --- |
| Party | Funding Contribution |
| Department of Transport | $1,900,000 |
| City of Nedlands | $500,000 |
| TOTAL | **$2,400,000** |

**Post-Opening**

A motion was put to Council an carried at the Ordinary Council Meeting on 27 July 2021 that requested the CEO (Chief Executive Officer) to:

1. Proceed with the release of the independent Safety Review of Jenkins Avenue and Elizabeth Street as part of the post-implementation audit of the Safe Active Street Project; and
2. Commence an investigation to rectify the shortcomings in the Safe Active Street so as to make it more acceptable to the Community including safe active transport.

In the justification for the motion, the Councillor noted that the independent safety review was foreshadowed by the former Director of Technical Services and believed it was an appropriate time to examine the review. In addition, the justification included concerns regarding ongoing issues with vehicles mounting the kerb to pass other vehicles and narrowed sections of the two affected streets (Jenkins Ave and Elizabeth St) creating confusion between oncoming vehicles.

A memorandum was prepared and sent to Councillors on the 13 August 2021 in response to the motion from the July OCM (Ordinary Council Meeting). The memorandum contained the Interim Evaluation report from Department of Transport and the Road Safety Inspection prepared by Cardno on behalf of Department of Transport. The interim report is provided as Attachment 4 and the Road Safety Inspection is provided as Attachment 2.

The outcomes of the Road Safety Inspection will be discussed in the following section of this report.

**Discussion**

This report will provide a summary of:

1. Outcomes from previous reports, data and survey undertaken regarding the Nedlands Safe Active Street,
2. Provide an update on the ongoing design work to mitigate known flooding issues along the SAS and
3. Present several scenarios for Councils consideration.
4. **Data and report findings**

The safe active street project has seen a significant increase in bicycle trips and walking trips consistently along the whole route. Interim results recorded in August 2021 approximately 6 months post opening of the SAS found the following:

* cycling increased between 45 and 83 bike riders/day,
* vehicle volumes reduced between 100 and 900 vehicles per day (varying by section) and
* daily vehicle speeds reduced between 6 km/hr and 9 km/hr (varying by section).

The Department of Transport have recently concluded a survey in relation to the SAS program, the outcome of this survey is not available from the Department at the time of writing this report. The Nedlands SAS was one of eight projects throughout metropolitan Perth forming a pilot program for the SAS. The Department of Transport are currently preparing an assessment of the full SAS program across all SAS projects, including the Nedlands SAS.

Advice from the Department of Transport is that this report is likely to be made available to the City towards the end of 2023 / early 2024.

**Safety Statistics**

Previous reports and surveys (attached for reference) completed relating to the Nedlands Safe Active Street include:

1. Safe System Assessment (completed on Elizabeth Street only) – GTA Consultants, February 2020 (attachment 1)
2. Road Safety Inspection – Cardno, May 2021 (attachment 2)
3. Street Lighting Audit – Powerlyt, August 2021 (attachment 3)
4. Safe Active Street Interim Evaluation Report – August 2021, Department of Transport (CONFIDENTIAL) (attachment 4)

In addition to the above reports Main Roads WA has released the crash data for the state up to and including 2022 data. A summary of crashes along the Safe Active Street between the opening date of March 2021 and December 2022 (21 Months) are as follows:

* Jenkins Avenue
  + 1 x Medical (Right Angle Crash)
  + 3 x Property Damage Only Minor (Right Angle, Hit Pedestrian)
* Elizabeth Street
  + Nil crashes recorded.

All crashes recorded post 2021 were at intersections along stage 2 of the SAS where the original design included raised intersections which were replaced in favour of mid-block speed plateaus. There were zero crashes involving sideswipes or head on collisions that would suggest any issues with vehicles passing each other in the carriageway width available.

Prior to the opening of the Safe Active Street in 2021 there were on average 3-4 crashes every 12-months. All these crashes were at intersections along Jenkins Avenue and all the crashes were right-angle impacts. This is in contrast to the 12-month average post opening of 2.2 crashes.

The State and Federal Governments run a funding program called Black Spot which is aimed at further improving road safety across Western Australia by reducing the significant trauma and suffering of crash victims and their families. To be eligible for Black spot funding intersections or road segments must have recorded 3 casualty crashes over five years (i.e., 2018 – 2022). This funding is intended to address locations where people are already losing their lives or being seriously injured.

The City of Nedlands currently has 13 sections of road and 11 intersections that meet the criteria for Black Spot Funding. The average number of crashes along these road sections is 13 crashes and the average number of crashes at the intersection is 15 crashes.

The City’s priority should remain to fix areas of the road network where crashes are already occurring. With the current resources available to the City, we have programmed to deliver approximately two Black Spot projects each year subject to funding availability.

For comparison the lowest scoring pre-qualified intersection in the City of Nedlands still has a crash rate four times higher than the intersections along Jenkins Avenue and involves Hospital and Fatality crashes instead of Property Damage Only crashes.

There are items raised in both the Safe System Assessment and Road Safety Inspection that have yet to be actioned by the City, but which the City will consider along the extensive list of competing projects. Both reports documented concerns regarding the compliance of the lighting provided along the route with the subsequent lighting audit confirming the street lighting along the Safe Active Street is non-compliant to currently Australian Standards.

**Carriageway Width**

None of the previous reports have raised concerns regarding the available width of the carriageway. The Safe System assessment of the route concluded that the constructed width of 4.5m (4.8m including the flush kerb) is sufficient for two vehicles to safely pass each other at the desired slow speed of 30km/h or below. Low traffic volumes further reduced the exposure and therefore the likelihood of a crash occurring, this is supported in the most recent crash statistics of the route.

Other Safe Active Streets throughout Perth and WA also use carriageway widths less than 5.5m. These include:

* Whitfield Street, Bassendean (4.5m)
* Shakespeare Street, Mt Hawthorn (4.8m)
* Railway Street, Bluff Point (4.5m)
* Links Road, Ardross (4.5m)
* Shaw Road & Beatrice Street, Innaloo (4.8m)
* Gibbs Street, East Cannington (4.5m)
* Leake Street, Bayswater (4.5m)

At present Australia does not have a unified design standard for local streets. Instead, designers need to rely on a first principles approach and consider the types of vehicles, volume, target speeds when determining and appropriate carriageway design.

The B99 passenger vehicle is the representative vehicle that covers 99% of the vehicles on the road today. The maximum width of a B99 vehicle is 1970mm wide (a 2023 model Toyota Land-cruiser is 1990mm wide mirror to mirror).

1. **Flooding issues and mitigation measures**

Following the storm event in July 2021 the City engaged GHD to prepare a design solution to mitigate flooding of properties in proximity to Bulimba Road and Taylor Road. The final design solution for this section of Jenkins Avenue is still being finalised between GHD and the City, however, the stormwater modelling completed to date shows that Jenkins Avenue is required to function as the overland flow path for the 1% AEP (Annual Exceedance Probability) storm event carrying water from Marita Road down to the two stormwater sumps on Bulimba Road. This overland flow path requires raising the southern verge of Jenkins Avenue between Taylor Road and Bulimba Road as well as removing the traffic island build outs.

Implications of various scenarios with respect to known flooding issues will be considered in the following section.

1. **Scenarios and Options**

When considering options for the redesign of the Safe Active Street it’s important to consider the following:

* The safe active street is a local road with a legal speed limit of 30km/h.
* It is designed to discourage vehicle use and promote active transport.
* Austroads Guide to Road design and Main Roads WA Supplement are both intended for State Roads only (i.e., roads under the care and control of Main Roads WA). These roads are often high volume and medium to high speed (70km/h+). These standards do not apply to local streets such as the SAS.

It is proposed that any changes to the SAS network should be limited to Jenkins Avenue between Dalkeith Road and Rockton Road as the data available to the City supports the current design and operation of Elizabeth Street being fit for purpose.

The resolution from the February OCM directed the CEO to “consider options to redesign streets which form part of Nedlands Safe Active Street network, in accordance with the relevant standard”. Upon review of the studies and data to date, the findings do not provide quantifiable evidence to support a change to the Elizabeth Street section between Dalkeith Road and Broadway. That said, while consideration of scenarios has been undertaken for the entire length in line with the resolution, more acute focus of this report is on locations where evidence supports a degree of action being justified which in turn will help inform potential treatments.

The Jenkins Avenue portion of the SAS currently requires some modification to accommodate the drainage design solution, any redesign of this portion of the SAS needs to consider the hydraulic performance of the street functioning as an overland flow path.

Options for the redesign of the Nedlands Safe Active Street should be limited to the section between Dalkeith Road and Rockton Road. As such the options that have been prepared by officers are as follows:

|  |  |
| --- | --- |
| **Option 1: No Change to roadway** | |
| Action proposed | No action – status quo |
| Probable cost | Leaving the SAS ‘as is’ won’t have any direct cost to the City. It is acknowledged that without some change to the Jenkins Avenue section of the SAS there is a likelihood of further damage from flooding to various properties within that catchment however the proposed drainage works priced as part of an independent project. |
| Staging | N/A |
| Impact on Drainage | Should the SAS be left ‘as-is’ the overland flow path along Jenkins Avenue will continue to be impacted with a large portion of the overland flow diverting down Taylor Road instead of continuing along Jenkins Avenue and down Bulimba Road to the sump. This is planned to be addressed by other drainage works as programmed. |
| Impact on Safety | Something that was raised in the Road Safety Audit was that the intersections of the side streets with the SAS lacked ‘presence’ in the road environment. When this is considered with the geometry of the side roads there is a likelihood that vehicles approaching the SAS from the side roads are doing so at a speed greater than is appropriate for this road environment. The crash data available between the completion of the SAS and the end of 2022 calendar year support this finding. All four crashes recorded involved vehicles traveling north – south across the SAS colliding with a vehicle, cyclist or pedestrian travelling along the SAS. It is important to note that thanks to the low-speed limits along the SAS these crashes resulted in property damage only and one medical severity crash instead of being the more severe hospital or fatality crashes that are typical when involving vulnerable road users. |

|  |  |
| --- | --- |
| **Option 2: Raised plateau on side streets & street lighting upgrade** | |
| Action proposed | Install road safety platforms on all side streets & upgrade streetlighting to be Australian Standard compliant. |
| Probable cost | Speed plateaus on side streets – $300,000 - $400,000, Street lighting – $100,000 - $150,000,  Design - $50,000- $60,000,  Opinion of Probable Cost = $450,000-$610,000  (Drainage Excluded & Funded Separately) |
| Staging | Design & Consult 23-24 FY, Construction 24-25 FY |
| Impact on Drainage | Overland flow path restored along Jenkins Avenue, other impacts to be confirmed by detailed stormwater modelling prior to civil design and construction. |
| Impact on Safety | Slow traffic on approach to SAS, provide better lighting for vulnerable road users, both leads to a decrease in the likelihood of crashes occurring and an increase in safety. |

|  |  |
| --- | --- |
| **Option 3: Widen & Install Protected On-Street Cycleway** | |
| Action proposed | Widen road pavement to 5.5m and install protected 2.5m on-street cycle lane full length. Remove flush beams, asphalt wearing course and on-street parking bays, modify existing drainage infrastructure and reinstate new kerb. Reinstate turf and irrigation. Refer Figure 2. |
| Probable cost | Protected on street cycle lane - $220,000 - $500,000  Widening works - $600,000 - $750,000  Design - $40,000 - $70,000  Opinion of Probable Cost = $860,000 – $1,320,000  (Drainage Excluded & Funded Separately) |
| Staging | Design & Consult in 23-24 FY, Construction in 24-25 FY |
| Impact on Drainage | Overland flow path restored along Jenkins Avenue, other impacts to be confirmed by detailed stormwater modelling prior to civil design and construction. |
| Impact on Safety | Speeds will likely increase along Jenkins Avenue and pre-SAS crash patterns are likely to re-appear. Cycling would be adequately catered for, but new conflict points would be introduced anywhere cyclist have to enter / exit the protected cycle lane. However, would no longer be considered a “Safe Active Street” as such any 30km/h line marking and SAS specific markings would also need to be removed. |

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Figure 3 - Concept Cross-section of Jenkins Avenue

|  |  |
| --- | --- |
| **Option 4: Convert the SAS between Dalkeith Road and Rockton Road to one-way traffic.** | |
| Action proposed | Narrow segments of the full length of Jenkins Avenue to a 3.0m carriageway and make the segment of road one-way with support of signage and pavement marking. |
| Probable cost | The cost for this type of program cannot be determined at this stage as any treatment to make Jenkins Avenue one-way will involve not only detailed modelling to determine wider implications, but also subsequent treatments to the surrounding road network to maintain connectivity throughout the area. It is estimated and assumed that development and design work will be considerable due to this.  However, for the basis of comparison a price range similar to Option 2 would be deemed likely owing to a mix of isolated and full-length treatments.  Option 2 Opinion of Probable Cost = $350,000 - $610,000  Additional Modelling and Design = $20,000 - $30,000  Opinion of Probable Cost = $370,000 - $640,000  (Drainage Excluded & Funded Separately) |
| Staging | Develop & consult in 23-24 FY, Design 24-25, Construction in 24/25 FY |
| Impact on Drainage | Drainage implications likely in line with current situation as per option 1 but will be determined by design. |
| Impact on Safety | Without the obstacle of manoeuvring around on-coming vehicles, and because of the straight length over which the road is one way, it is likely speeds in the determined direction will increase, and risk of accidents along with them. |

**Summary of Options**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Option** | **Option 1** | **Option 2** | **Option 3** | **Option 4** |
| **Cost** | $0 | $450k - $610k | $860k- $1.32M | $370k- $640k |
| **Staging** | N/A | Min. 2 FY’s | Min. 2 FY’s | Min. 3 FY’s |
| **Drainage impacts** | Design  Required (as planned) | Increase  drainage  capacity | Increase drainage  capacity | Unknown |
| **Safety impacts** | Maintained performance | Increase safety | Safety remains for cycling, as  a whole, safety decreases for other users due to increase in vehicle speeds and volumes. | Unknown |

**Consultation**

At this stage no consultation on the proposed redesign of the Safe Active Street has been completed.

Options herein however will rely on support and approval from relevant State authorities and should the City determine a preferred option, engagement should begin as soon as practicable to garner early support.

Further, Council may consider taking their preferred option to the community whom was originally engaged before and during the project to determine if a wider sample of the community shares similar claims and perceptions as those who would like to see further action.

**Strategic Implications**

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

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

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

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

**Great Natural and Built Environment**

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

**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.

**Reflects Identities**

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

**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
* Providing for sport and recreation
* Managing parking

As a signatory to the United Nations Sustainable Development Goals the following apply and should be considered in this decision:

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Both road safety statistics and non-motorised transport have improved since the opening of the Nedlands SAS. It should be noted that the Australian Institute of Health and Welfare reported in June 2022 that the leading cause of death for children aged 1-14 was transport accidents, and the second cause of death for adolescences aged 15-24.

**Budget/Financial Implications**

Funding for the SAS was originally wholly borne by the Department of Transport at a cost of $1.9 million. The City has already contributed an additional $500k to the existing SAS to cover additional drainage work along the route allowed for during the original construction. In addition, the current draft drainage solution proposed for Jenkins Avenue between Taylor Road and Bulimba Road is provisionally costed at $600k.

Options to reconstruct portions of the Safe Active Street will incur costs between $450,000 and $1,320,000. These costs have not been budgeted for in next financial year’s budget or the Long-Term Financial Plan.

Funding for the proposed 2023 / 24 capital works budget is expected to be approximately $6.0 million short of the asset renewal requirement. As any works herein would not constitute renewal, this undertaking any of these proposals would not contribute to reduce this shortfall.

At present the City does not have capacity to increase it’s annual spending by the amount needed to deliver any changes to the Safe Active Street, as such any project funding for the Safe Active Street would need to come at an expense of other capital works projects that are already planned and budgeted which would likely contribute to asset renewal requirement shortfalls.

The current LTFP has $2.88 million allocated to other Road Safety Projects within the City with a further 24 pre-qualified Black Spot (3 or more casualty crashes) locations which are already priorities for delivery.

It is extremely unlikely that the State Government through the Department of Transport would fund removal or conversion of the SAS. Also, it is possible that in doing so, the Department of Transport may reconsider the City as a partner for funding of future initiatives, such as toward other active travel projects.

The total capital investment on the SAS to first deliver and then convert would potentially be as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Party | Original SAS Funding Contribution | Conversion works (Opt 2&3 average) | TOTAL |
| Department of Transport | $1,900,000 | $0 | **$1,900,000** |
| City of Nedlands | $500,000 | $765,000 | **$1,265,000** |
| TOTAL | **$2,400,000** | **$765,000** | **$3,165,000** |

**Legislative and Policy Implications**

One of the options, the one way, will require a formal road closure process to be undertaken.

**Decision Implications**

The Council’s current commitment is toward to providing a safe neighbourhood that is easy to get around by preferred mode of travel, whether by car, public transport, cycle, or foot. Notwithstanding the perceptions of road users, the evidence shows that in this regard, the SAS has reduced speeds and crashes, while increasing cycling use. Any alteration to a roadway brings with it risks which must be mitigated through careful design. A risk exists that should Council wish to enact immediate change without sufficient due diligence, there may be an increase safety and drainage issues.

Beyond the perceptions of some road users, Council will need to consider the perceptions of the Department of Transport, as indicated earlier.

**Conclusion**

The introduction of the Safe Active Street along Elizabeth Street and Jenkins Avenue has resulted in lower vehicle speeds, a decrease in crashes and a substantial increase in walking and cycling.

There are areas for improvement to safety along the network as highlighted in the Road Safety Audit and Safe System Assessment, these areas focus on providing adequate street-lighting and decreasing the speeds of vehicles approaching the Safe Active Street from the adjacent side streets.

There is no evidence to suggest that the narrow carriageway is contributing to crashes along the Safe Active Street and the width is consistent with other Safe Active Streets throughout Perth.

Although there are still a small number of crashes occurring along the Jenkins Avenue section of the Safe Active Street, these crashes are of a low number and a low severity. The priority of City resources should remain in developing and implementing treatments to existing Black Spot locations throughout the City.

Should Council choose to elevate the priority of treating crashes along the Safe Active Street network the focus should be on addressing the areas identified in the Road Safety Audit and Safe System Assessment while ensuring suitable hydraulic performance in the 1% AEP storm event, this is of particular importance for the section of Jenkins Avenue between Taylor Road and Bulimba Road.

**Further Information**

On Tuesday the 20th of June 2023 the administration presented the options for redesign of the Nedlands Safe Active Street at a concept forum in response to the OCM resolution of the 28th of February 2023. Several items were raised by the Councillors’ present requesting further information on the following topics:

1. Information regarding near misses along the Safe Active Street
2. Has there been any impact on the use of the Safe Active Street with Loreto Primary School Closing?
3. Were vehicles re-distributed when the Safe Active Street was constructed?
4. What volume of vehicles use the Safe Active Street?
5. What is the rate of development along the Safe Active Street
6. Develop additional options that include:
   1. Modification of Jenkins Avenue between Mountjoy Road and Dalkeith Road to increase the width and efficiency of vehicle movements.
   2. Treatment that removes on street parking and uses the existing pavement with local widening at intersections to achieve a 5.5m two – way street, widen existing concrete path to 2m in width.

**Near Misses along Safe Active Street, Traffic volumes and Speed**

It is difficult to fully capture near misses throughout a transport network. There is no formal submission form or authority with which to submit near miss incidents on the road. A review of the City’s customer request data base returns only a handful of complaints/enquiries (6 in total) relating to the Safe Active Street. Only one of these complaints mentioned a near miss and involved a cyclist almost being hit by a car that failed to give way to the Safe Active Street at the intersection of Bulimba Road. This incident did not result in any injuries or damage but is consistent with the previous advice that the Jenkins Avenue section of the Safe Active Street would benefit from treatment to the intersections to slow vehicles approaching the Safe Active Street from the side roads.

Dealing with near miss incidents is a matter of assessing the risk relating to that event. In the case of road safety near misses, the likelihood of a crash occurring can be linked to the volume of traffic present and the consequence of the crash occurring can be linked to the speed at which a collision occurs.

The most recent traffic counts for the Safe Active Street were collected in 2021. Daily average traffic volumes along the Safe Active Street range between 333 to 1,058 vehicles per day, dependent on the section. This is considered low volume.

The speed data along the Safe Active Street shows the speed varies between 35km/hr and 43km/hr. When considering the aim of the Safe System is for impacts between vulnerable road users and vehicles to occur at or below 30km/h this speed would be considered acceptable.

Owing to the combination of low vehicle volumes and low vehicle speeds, coupled with the low numbers of written complaints and low numbers and severity of crashes, City officers consider the risk profile of the Safe Active Street acceptable.

**Impact on the closure of Loreto Primary School**

The City currently does not have any data to quantify the affect the closure of Loreto Primary school would have on the use of the Safe Active Street.

Given that Loreto Primary school has less than 200 students, it could be argued that the closure of the school could lead to a small decrease in users on the Safe Active Street it could also be expected that at least a proportion of the students from Loreto could find themselves enrolled at the Nedlands Primary School, which is also along the Safe Active Street route.

Overall, it could be expected that there may be a small reduction in the active transport trips along the Safe Active Street as a result of the closure of Loreto Primary School, however this reduction is unlikely to impact the viability of the Safe Active Street.

**Vehicle Re-Distribution**

The grid like structure of our local streets in Nedlands provides vehicles with many different choices regarding the route they take to travel through the area. This makes modelling of vehicle trips quite a complex task. However, given the land use related to trip generation (i.e residential, schools, local centres etc) has remained consistent and only the road network has changed it could be reasonably assumed these trips remain and have been redistributed elsewhere in the network.

As mentioned in Attachment 4 there was a reduction of between 100 and 900 vehicles per day along the Safe Active Street. It can be assumed that these 100 to 900 vehicles per day are now travelling on other local streets.

To date the City’s administration has not received any complaints or data that would suggest this redistribution of traffic has been concentrated in any one particularly street or is causing any problems across the wider network.

**Rate of Development along the Safe Active Street**

A comparison of aerial imagery shows that between 2021 and 2023 the following changes have occurred to development immediately adjacent the Safe Active Street.

* 9 blocks demolished.
* 32 new dwellings built.

This has resulted in a net increase of 23 new dwellings along Jenkins Avenue (to date); so far there has not been any redevelopment directly adjacent the Elizabeth Street section of the Safe Active Street.

**Additional Re-design options for Consideration:**

Two additional re-design options were requested to be considered at the Concept forum; these are identified below.

|  |  |
| --- | --- |
| **Option 5: Localised widening Jenkins Avenue between Mountjoy and Dalkeith Road** | |
| Action proposed | Widen Jenkins Avenue to 5.5m to allow improved two-way vehicle flows, raised the intersection of Mountjoy and Jenkins to provide traffic calming, modify intersection radius at Dalkeith Road to provide 5.5m wide pavement at the intersection. |
| Probable cost | Option 5 Opinion of Probable Cost = $35,000 – $52,000  Additional Modelling and Design = $5,000 – $15,000  Total Opinion of Probable Cost = $40,000 – $67,000  (Drainage Excluded & Funded Separately) |
| Staging | Develop & consult in 23-24 FY, Design 24-25, Construction in 24-25 FY |
| Impact on Drainage | Drainage implications likely in line with current situation as per option 1 but will be determined by design. |
| Impact on Safety | Increasing the width and vehicle carrying capacity of this section of road will encourage any rat-running that is currently occurring to by-pass the Dalkeith Road / Stirling Highway traffic signals. Increasing vehicle volumes will result in a detrimental impact of the safety of vulnerable road users using this section of the Safe Active Street. |

|  |  |
| --- | --- |
| **Option 6: Remove on-street parking, widen SAS to 5.5m and upgrade off-street path to minimum 2.0m** | |
| Action proposed | Widen Jenkins Avenue and Elizabeth Street using the pavement in the existing on-street parking bays, profile off existing black asphalt and replace with red for consistency remove “nibs” and localised narrowing at intersections. |
| Probable cost | Option 6 Opinion of Probable Cost = $265,000 – $400,000  Additional Modelling and Design = $40,000 - $70,000  Total Opinion of Probable Cost = $305,000 – $470,000  (Drainage Excluded & Funded Separately) |
| Staging | Develop & consult in 23-24 FY, Design 24-25, Construction in 24-25 FY |
| Impact on Drainage | Drainage implications likely in line with current situation as per option 1 but will be determined by design. |
| Impact on Safety | By widening the road and the intersections the street will no longer be able to function as a Safe Active Street. All the SAS signage will need to be removed and the speed limit of 30km/h will need to be lifted. This will create a dangerous environment, especially for cyclists that have become accustomed to the SAS route in its current form over the last 3 years. |

Below is an expanded summary of options to include the additional options 5 and 6:

**Revised Summary of Options**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Option** | **Option 1** | **Option 2** | **Option 3** | **Option 4** | **Option 5** | **Option 6** |
| **Cost** | $0 | $450k - $610k | $860k- $1.32M | $370k- $640k | $60k- $67k | $305k- $470k |
| **Staging** | N/A | Min. 2 FY’s | Min. 2 FY’s | Min. 3 FY’s | Min. 3 FY’s | Min. 3 FY’s |
| **Drainage impacts** | Design  Required (as planned) | Increase  drainage  capacity | Increase drainage  capacity | Unknown | Likely in line with option 1. | Likely in line with option 1. |
| **Safety impacts** | Maintained performance | Increase safety | Safety remains for cycling, as  a whole, safety decreases  for other users due to increase in vehicle speeds and volumes. | Unknown | May invite a degree of  ‘rat-running’  To either bypass Dalkeith lights or to preference them e.g. avoid the rest of SAS | Will no longer be considered a “SAS”, signage removed and speed limits increase. Similar vehicle outcomes as option 3, with less protection for cyclists |

**Question**

Councillor Youngman – what size vehicles were considered when developing this Safe Active Street?

**Officer Response**

The designs were checked using swept paths for a passenger sedan and a 12.5m rigid truck.

**Question**

Can we be provided with the crash data for Shakespeare Street, Mt Hawthorn?

**Officer Response**

Between 2018 and 2022 there have been a total of nine (9) crashes along the Shakespeare Street Safe Active Street in Mt Hawthorn.

* 1 x Property Damage Minor
* 7 x Property Damage Major
* 1 x Medical

These crashes can be characterised as follows:

* 6 x Right Angle
* 1 x Rear End
* 1 x Right Turn Thru
* 1 x Sideswipe Same Direction (Note this occurred turning at an intersection, not mid-block).

**Question**

Please provide pricing without profiling?

**Officer Response**

Option 6 without profiling would have an opinion of probable cost between $209,000 – $374,000.

Should the Council resolve to widen Jenkins Avenue and Elizabeth Street to a 5.5m carriageway it would be inappropriate to leave two different coloured road pavements in their current configuration. The current configuration would still give the impression of separated lanes and would likely lead to confusion amongst drivers along Jenkins Avenue and Elizabeth Street.

**Question**

Can the City consult with the Principal of Nedlands Primary School?

**Officer Response**

Should Council resolve to make any changes to the Safe Active Street it would result in changes to both the “line and level” of Jenkins Avenue and Elizabeth Street which requires the Local Government to consult with residents and ratepayers impacted by the changes. As such the Principal of Nedlands Primary School could be included in that consultation.

**Question**

Can traffic counts for surrounding streets be provided for before the Safe Active Street and after?

**Officer Response**

The City has historic traffic counts at the following streets surrounding the Safe Active Street:

|  |  |  |  |
| --- | --- | --- | --- |
| Location | Before | After | Difference |
| Taylor Road Sth Jenkins Avenue | 1223vpd | 1465vpd | +242vpd |
| Taylor Road Nth Jenkins Avenue | 1394vpd | 2022vpd | +628vpd |
| Edward Street between Florence & Stanley Street | 1361vpd | 1088vpd | -273vpd |
| Bruce Street between Stirling Hwy & Cooper Street | 3256vpd | 2886vpd | -370vpd |

If there are specific streets of interest, then City officers can investigate the stored traffic count data on a case-by-case basis as requested by Council.

**Question**

Councillor Mangano – can consideration be made to the removal of the speed humps?

**Officer Response**

To function the Safe Active Street needs to support slow vehicle speeds. Lane narrowing alone is not sufficient to achieve this and further Local Area Traffic Management devices are required. There are a number of Local Area Traffic Management devices available that include both horizontal and vertical deflections of vehicles. The speed humps could only be removed if a suitable LATM device is determined.

**Question**

Councillor Coghlan – can we survey the affected road users and community stakeholders on their opinion on the Safe Active Street? (Include - South of the Highway between Broadway, Princess Road and Brockton Road – Melvista Ward).

**Officer Response**

Should Council resolve to survey road users and community stakeholders on their opinion on the Safe Active Street City officers can provide a proposed method to undertake that consultation. It would be cautioned that “opinion” and “fact” do not always align and careful consideration would need to be made to making changes to a piece of infrastructure based on community opinion if it is not supported by factual evidence.

**Question**

Councillor Senathirajah – Local Roads do standards apply or not – which design standards apply to the SAS?

**Officer Response**

There is no one singular design standard for the Safe Active Street. The Safe Active Street has been designed with a Safe System approach to reduce vehicle speeds to 30km/h or less which not only reduces the likelihood of incidents occurring but also reduces the severity of any incidents that do occur.

**Question**

What safety reports actions have occurred / outstanding?

**Officer Response**

TS08.07.23 Attachment 2 contains the Corrective Action Report (CAR) from the Road Safety Inspection. Items that have been completed are marked so on that report. Actions still outstanding from the CAR are as follows:

* Monitor traffic speed on side street approaches and provide traffic calming on side streets where excessive approach speed are observed.
  + The City has a project this financial year to install speed plateaus on Vincent Street to slow traffic along Vincent Street including on the approach to the SAS, however this action has not been completed for every intersecting street at this stage.
* Provide additional street lighting.
  + Street Lighting Audit was undertaken but no future projects to upgrade the lighting along Jenkins Avenue or Elizabeth Street has been commenced as yet.

**Question**

Councillor Bennett – Can the nibs be replaced with line marking?

**Officer Response**

Line marking is less effective at controlling vehicle movements than physical kerbing. Typically, any of the planted nibs would be delineated with kerbing, however line marking could be considered on a case by case basis.

# Divisional Reports - Corporate & Strategy Report No’s CPS29.07.23 to CPS33.07.23

# CPS29.07.23 – Underground Power – Review of Community Consultation and consideration of next steps

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 25 July 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Michael Cole – Director Corporate Services |
| **CEO** | Bill Parker – Chief Executive Officer |
| **Attachments** | 1. Nedlands Underground Power Survey - Results |

**Regulation 11(da) - Council agreed to amend clause 3 to clarify the City would be receiving cost estimates within 10% accuracy. In addition, Council agreed that the Mayor and CEO should actively explore additional sources of funding for the project to reduce the financial burden on the City and the residents.**

Moved – Councillor Youngman

Seconded – Councillor McManus

**That the Recommendation be adopted.**

(Printed below for ease of reference)

Amendment

Moved - Councillor Senathirajah

Seconded – Mayor Argyle

* 1. amend clause 1 to add the following words “noting that support for the proposed funding model was received from only 26% of the owners of the 1700 directly affected properties;” after the word “power”;

The AMENDMENT was PUT and was

Lost 2/10

(Against: Mayor Argyle Crs. Coghlan Amiry McManus Smyth

Bennett Mangano Youngman Combes & Hodsdon)

* 1. amend clause 2 to replace the words “procurement stage” with the words “obtain cost estimates withing 10% accuracy” and after the words “three projects” add the words” after the necessary tender exercise”;

The AMENDMENT was PUT and was

Lost 5/7

(Against: Crs. Amiry McManus Smyth Mangano

Youngman Combes & Hodsdon)

* 1. **amend clause 3 to replace the words “outcomes of their procurement process” with the words “cost estimates within 10% accuracy”;**

**The AMENDMENT was PUT and was**

**The vote being tied 6/6, the Presiding Member exercised her casting vote**

**CARRIED ON THE CASTING VOTE 7/6**

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

* 1. **replace clause 4 with the following “requests the Mayor and CEO to actively explore additional sources of funding for the project to reduce the financial burden on the City and the residents.”**

**The AMENDMENT was PUT and was**

**CARRIED 11/1**

**(Against: Cr. Mangano)**

**The Substantive Motion was PUT and was**

**CARRIED UNANIMOUSLY 12/-**

**Council Resolution**

**Council:**

1. **receives the results of the community engagement for underground power for the remaining 1,701 properties in Nedlands North, Nedlands West and Hollywood East that are connected to overhead power;**
2. **authorises the CEO to enter into an agreement with Western Power to progress the City of Nedlands underground power project to procurement stage for all three projects;**
3. **notes the CEO will present a further report to Council once Western Power has provided the cost estimates within 10% accuracy; and**
4. **requests the Mayor and CEO to actively explore additional sources of funding for the project to reduce the financial burden on the City and the residents.**

Recommendation

Council:

1. receives the results of the community engagement for underground power for the remaining 1,701 properties in Nedlands North, Nedlands West and Hollywood East that are connected to overhead power;
2. authorises the CEO to enter into an agreement with Western Power to progress the City of Nedlands underground power project to procurement stage for all three projects;
3. notes the CEO will present a further report to Council once Western Power has provided the outcomes of their procurement process; and
4. agrees to list for consideration in the September 2023 Quarterly Budget review funding to appoint a suitably qualified project officer to undertake necessary preparations for these projects.

**Purpose**

The purpose of the report is to present to Council the results of community engagement for underground power and for Council to agree to the next steps.

**Voting Requirement**

Simple Majority.

**Background**

The City of Nedlands commenced the installation of underground power in its local government area in 1997 and since then, 78% of the City’s properties have been converted

to underground power through the delivery of five staged projects.

In November 2022, Council received designs and cost estimates for underground power for the remaining 1,701 properties in Nedlands North, Nedlands West and Hollywood East that are connected to overhead power. Council also endorsed the preparation of a business case for these projects.

At its meeting of 28 March 2023, Council received the City of Nedlands Underground Power Business Case and authorised the CEO to undertake community engagement with affected ratepayers and to report the results back to Council. Council also agreed to communicate to all ratepayers a summary of the Business Case, highlighting the benefits, the proposed funding model, and the financial and operational implications for the City of undertaking the project.

**Discussion**

**Community Engagement**

The City engaged the services of Data Analysis Australia Pty Ltd (DAA) to undertake community engagement. This involved direct mail to ratepayers in the project areas and a survey to from a random selection of 1,000 ratepayers in the remaining areas of the City. The City also had a feedback form available on the YourVoice platform. A community information session was held at Mt Claremont Community Centre where representatives from Western Power and the City answered questions from ratepayers.

Responses received from ratepayers in the project area were as follows:

Overall 627/1,713 = 36.7% response

* Hollywood East 304/814 = 37.3% response
* Nedlands North 105/265 = 39.6% response
* Nedlands West 218/634 = 34.4% response

Responses were received are summarised below:

**Support for initiative**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Survey | Responses | Yes % | No % | Maybe % |
| Hollywood East | 304 | 78% | 19% | 3% |
| Nedlands North | 105 | 81% | 12% | 7% |
| Nedlands West | 218 | 69% | 23% | 8% |
| Wider area | 160 | 82% | 15% | 3% |
| Feedback form | 116 | 73% | 23% | 4% |

**Support for funding**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Survey | Responses | Yes % | No % | Maybe % |
| Hollywood East | 304 | 73% | 27% | - |
| Nedlands North | 105 | 78% | 22% | - |
| Nedlands West | 218 | 62% | 38% | - |
| Wider area | 160 | 65% | 35% | - |
| Feedback form | 116 | 52% | 48% | - |

DAA full report is attached.

To put these results into context, DAA have commented that while the wider area and the general feedback surveys asked respondents whether they support the funding model, the affected area was more specific and somewhat different:

**Option 1:** I would prefer to pay this amount to get underground power in my area. OR

**Option 2:** I would prefer not to pay this amount and keep the existing overhead power.

Therefore, affected area respondents may still prefer to proceed, even if unhappy with the funding model, rather than the alternative of not proceeding. DAA have used ‘shorthand’ in the above summarising all surveys into being supportive or not of the funding model, but the results must be taken in context of the affected area.

DAA are reviewing text responses that indicate a degree of dissatisfaction with the funding model and the need to contribute financially at a personal level, even amongst those affected residents who selected Option 1.

Their report identified reservations about the cost and payment structure. Some ratepayers sought more clarity on instalment interest rates, discounted rates for properties already equipped with underground connections or green domes, and alternative payment schemes for elderly residents were voiced. More details regarding the project timeline, cost breakdown, and plans for street lighting were also demanded.

**High Transmission Lines**

In recognition that some ratepayers will still have high transmission lines remaining once the distribution lines have been undergrounded, Council’s Underground Power procedure provides for a 35% discount on the network service charge.

At its meeting of November 2022, Council resolved to apply the discount for ratepayers with adjacent high transmission lines only to those directly below transmission lines.

The amount of the discount, and the discount not applying to residents on the other side of the road are amongst the highest issues of concern raised during the engagement period. Council may need to consider increasing the level of discount and also reconsidering its decision from November 2022 to apply the discount to only those directly below transmission lines.

**Next steps**

Having considered the business case and the results of the community engagement, Council must now decide whether to proceed with these projects. The following options are presented for consideration:

**Option One – Proceed with all three projects**

Should Council agree to proceed, the recommendation is to authorize the CEO to advise Western Power to proceed to commence their procurement process (Request for Tender (RFT) process. Western Power have previously advised their RFT process can take up to 16 weeks plus 8 weeks for their business case. A further 8 weeks is required to finalise the Relocation of Works Contract (RWC) before they can engage the construction contractor.

At the RWC stage the City will be in a position to determine the timing of cash calls for the first stage of Project 1. There will be sufficient funds in the Underground Power Reserve should any funds be required in 2023/24 and these can be allocated as part of the Mid Year Budget review for 2023/24. This will also allow the City time to employ a dedicated project officer to manage the City’s involvement in these projects.

**Option Two – Proceed with first project area and defer the remainder**

There is currently $2.5 million in the Underground Power Reserve which is sufficient to fund the City’s share of the Nedlands North Project. Similar to option 1, should Council agree to proceed with North Nedlands, the recommendation is to authorize the CEO to advise Western Power to proceed to commence their Request for Tender (RFT) process for North Nedlands at this time. The same timelines as mentioned for option one will apply to Western Power’s RFT process can take up to 16 weeks plus 8 weeks for their business case. A further 8 weeks.

At the RWC stage the City will be in a position to determine the timing of cash calls for the first stage. There will be sufficient funds in the Underground Power Reserve should any funds be required in 2023/24 and these can be allocated as part of the Mid Year Budget review for 2023/24. This will also allow the City time to employ a dedicated project officer to manage the City’s involvement in this project.

**Options Three – Defer**

Given the significant impact on the City’s LTFP, Council may decide to defer further consideration of these projects until sufficient funds have been built up in the Underground Power Reserve. Council may agree to increase the annual contribution to the Reserve in order to commence these projects in the near future.

**Next steps**

Subject to Council’s decision, a further report will be brought back to Council once Western Power have advised the City of the outcomes of their RFT process. That report will address the following:

1. Funding requirements for the remainder of 2023/24 to progress these projects
2. Proposed service charge for ratepayers to be included in their rate notices for the 2024/25 financial year;
3. Proposed borrowing requirements for these projects.

**Consultation**

The City appointed Data Analysis Australia Pty Ltd (DAA) to undertake community engagement. This involved direct mail to ratepayers in the project areas and a survey to a random selection of 1,000 ratepayers in the remaining areas of the City. The City also had a feedback form available on the Your Voice platform. A community information session was held at the Mt Claremont Community Centre where representatives from Western Power and the City answered questions from ratepayers.

Overall 584 from the 1,701 ratepayers were received from the project areas, ie 34.33%

A much lower response rate to the wider survey resulted in only 132 responses from 1,000 surveys issued, ie 13.2%.

**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.

**High standard of services**

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

**Great Governance and Civic Leadership**

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

**Great Communities**

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

**Priority Area**

* Underground power

**Budget/Financial Implications**

The completion of the three remaining underground power projects is a significant undertaking by the City and affected ratepayers.

The latest estimated contribution from the City of Nedlands for the project is $19,978,601

including the $940,500 cost for the design phase already paid by the City. It is noted that

Western Power will provide an updated cost estimate to a 10% accuracy after the completion of their procurement process.

The business case identified the significant impact the three underground power projects

will have on the Long-Term Financial Plan (LTFP) 2023-2038.

The City’s adopted LTFP proposes the delivery of underground power over the first four (4) years of the plan. New loans are proposed to be raised for underground power over a 4-year term for the City and residents portions.

**Asset Renewal Backlog**

The City is currently facing a significant backlog of required asset renewal, with many assets coming to an abrupt end of life, requiring them to be removed from service or closed. The current base case modelled within the City’s Long-Term Financial Plan (LTFP) incorporates a 2.5% annual rate rise and 2% annual dwelling growth. While this approach begins to slow the rate of increase in the asset renewal backlog, it will not bottom out until 2031-32, when the renewal backlog is projected to reach $99.06 Million. It is important to note that this backlog is equivalent to the current replacement cost of all 96 City-owned buildings.

If the City undertakes the underground power project, the expected backlog will grow to a peak of $103.74 Million in 2032. By the end of the period modelled in the LTFP (2037-38), the backlog without and with underground power will be $75.01 Million and $79.68 Million, respectively.

A graph with a line graph

Description automatically generated

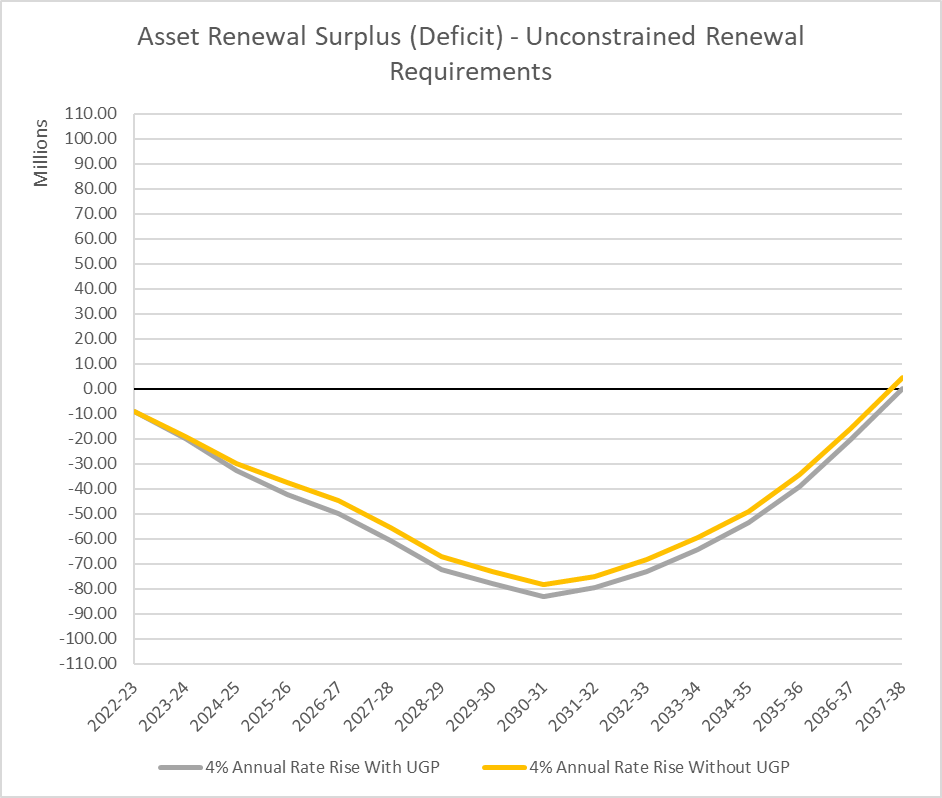
It is worth highlighting that the backlog the City faces will grow significantly with or without the underground power project. However, the scale of the backlog conceals the true impact of implementing the project on the City's assets. Over the modelled period, the additional backlog generated by the underground power project will amount to an additional $4.5 Million, which is equivalent to closing an additional 2-4 community buildings or closing all 39 of the City's playgrounds.

Furthermore, the current modelling allocates all available funding to the renewal of assets without considering any expenditure on asset upgrades or new assets. Undertaking capital works such as the sealing of laneways or the upgrade of drainage to prevent private property flooding would only further increase the renewal backlog.

A backlog of this size becomes self-perpetuating, as assets are being run into the ground and renewed past their due date, resulting in exponentially increasing maintenance costs. This further reduces the funding available for capital renewal. The implications of pursuing underground power will be a factor in this availability of funding, as due to a lack of substantial financial reserves, borrowings will need to be relied upon should cash funding be required in short order. A loan of such a scale as that required to implement underground power may significantly limit the City’s borrowing capacity.

The reality of this situation is that the condition of the City's assets will continue to deteriorate, with the current situation expected to worsen significantly before it improves. Council will need to adopt a formal stance and process for closure and potential interim disposal of assets that have reached the end of their useful life, where their renewal cannot be funded for the foreseeable future.

Officers have run an alternate scenario, considering a larger rate rise of 4% along with 2% dwelling growth. Although the backlog in this scenario remains significant, the peak is notably lower at $82.95 Million with the underground power project and $78.28 Million without it. In this scenario, the City would be able to begin earlier the journey to renew assets to a fit for service level for the long term benefit of the community.



**Comparison to Draft Strategic Project Development Policy**

The City is in the process of developing a Strategic (nee Major) Project development policy which provides a framework and definition for Strategic Projects to progress from inception to approval and subsequent delivery.

While still yet to be approved, it is based around industry best practices, and can be used to assess the progress and status of due diligence applied thus far on the Underground Power Project.

The draft Strategic Projects Development (SPD) Policy outlines a number of tests over two parts to determine whether projects should be defined and treated as Strategic Projects.

These are:

Three of the following four must be satisfied:

**High Engagement**

will attract a significant level of engagement with the community, elected members, internal or external stakeholders such as private parties or other levels of government,

And

**Long Lead Time**

A project which requires significant level of sustained resources over multiple years to evaluate, approve, tender and implement,

And

**Financial Threshold**

Investment or Capital Cost >$1m. A major project would normally have at least $1m of capital or operating project expenditure. This may not necessarily be in one year, but the total for the program or undertaking; OR

Create an Operating Deficit incremental impact >$100k per year during and after the project,

And

**Upgrade/New**

a project comprises of at least 30% upgrade/new, or if a project is >70% renewal but has a significant early renewal component.

On the above assessment, the Underground Power Project qualifies for tests a,b and c. Test d however is not applicable at this point as the asset is owned by a third party; noting streetlight ownership is yet to be determined.

Following these initial tests, a project is not defined as a major project, and thus does not receive funding or resourcing unless it meets the final test:

Support by Council

Council has given formal endorsement for the project to be evaluated and has had required resources/budget allocated.

Council has previously resolved to progress Underground Power further through its development. Therefore, taking the draft SPD policy as a guide, Underground Power would squarely define a Strategic Level project and demand sufficient rigor and due diligence for informed decision making.

Strategic projects are proposed in general to progress through 5 Phases each with broad objectives to be achieved before being moved onto the next phase with approval from Council. The draft Phases are:

1. Proposal
2. Definition
3. Planning
4. Investigation
5. Business Case

There is a sixth phase, common to all projects of significance in the City, being “Closeout”, constituting a review of the process for lessons learned and future improvements, however as this is an administrative exercises not typically requiring Council support to undertake, it is excluded from the Policy.

As such, this allows Projects which progress through the 5 phases to proceed to implantation, simultaneous to Close out of the development process.

Upon review, the Underground Power Project development has by and large adhered to these phases, albeit in a non-linear order. For instance, the full design (and associated expense) being incurred prior to the business case. Whilst this is a framework and individual projects vary on a case by case basis, there may be justification to do some components earlier rather than later.

There are instances where adherence to a determined framework would bring significant value, such as audit trail, clear evolution of cost estimates, and scenario modelling of property pricing based on known factors – particularly during the definition and investigation phases. This highlights the value of an SPD framework and policy, however, in lieu of one, the Underground Power Project can be considered to have undertaken adequate due diligence for an informed decision to be made.

**Legislative and Policy Implications**

[Local](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_6744.pdf/$FILE/Local%20Government%20Act%201995%20-%20%5B00-00-00%5D.pdf?OpenElement) Government Act 1995 Section 6.38(1)

[Local Government (Financial Management) Regulations 1996 Reg 54(c)](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_41125.pdf/$FILE/Local%20Government%20(Financial%20Management)%20Regulations%201996%20-%20%5B03-e0-00%5D.pdf?OpenElement)

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

**Decision Implications**

Having consulted with affected ratepayers and the wider community, Council must now decide whether to proceed with the projects or defer for a future time. As indicated above, should Council agree to proceed with the projects under option 1, the CEO will be authorised to advise Western Power to proceed to RFT Stage. Funding required for 2023/24 can be considered in the Mid Year Budget Review.

Should Council agree to option two, an alternate recommendation is:

Council:

1. Receives the results of the community engagement for underground power for the remaining 1,701 properties in Nedlands North, Nedlands West and Hollywood East that are connected to overhead power.
2. Authorises the CEO to enter into a suitable agreement with Western Power to progress to procurement stage for all three projects.
3. Notes the CEO will present a further report to Council once Western Power has provided the outcomes of their procurement process.
4. Agrees to list for consideration in the September 2023 Quarterly Budget review funding to appoint a suitably qualified project officer to undertake necessary preparations for these projects.

**Conclusion**

After considering the feedback received from affected ratepayers and the wider community, and the significant impact of these projects on the City’s LTFP and affected ratepayers, it is recommended Council agree to proceed with the projects under option one, and for the CEO to be authorized to advise Western Power to proceed to RFT Stage.

**Further Information**

**Question**

Councillor Senathirajah – What the City is being asked to contribute to Western Power relative to annual operating expenditure?

**Officer Response**

The last estimate provided by Western Power was a total of $19.038 million contribution by the City. Of which, $9.99 million will be met by ratepayers.

$19.038 million is approx 50% of the City’s annual operating budget. $9.99 million is approx 25% of the annual operating budget.

**Question**

Councillor Mangano – Can we request Western Power to provide an estimate to the City in a timely manner?

**Officer Response**

Should Council endorse this recommendation, the City will request they undertake their procurement process in a timely manner.

# CPS30.07.23 – Dalkeith Nedlands Bowling Club Sublease to West Coast Padel

|  |  |
| --- | --- |
| **Meeting & Date** | Council – 25 July 2023 |
| **Applicant** | Dalkeith Nedlands Bowling Club (Inc) |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Peter Scasserra – Strategic Coordinator Land and Property |
| **Director** | Michael Cole – Director Corporate Services |
| **Attachments** | 1. CONFIDENTIAL – Dalkeith Nedlands Bowling Club Letter of Support for Padel 2. CONFIDENTIAL – West Coast Padel Proposal |

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

Moved – Councillor Senathirajah

Seconded – Councillor Combes

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED UNANIMOUSLY EN BLOC 12/-**

**Council Resolution / Recommendation**

**That Council:**

1. **approve the sublease between Dalkeith Nedlands Bowling Club (Inc) and West Coast Padel Pty Ltd for a 1,600m² (approx.) portion of the premises located at 55 Jutland Parade Dalkeith (Portion of Reserve 1668: Part Lot 14867 on Deposited Plan 35721) consistent with the key terms noted within this report; and**
2. **subject to Minister for Lands’ consent, authorise the Chief Executive Officer and Mayor to execute all documents necessary to give effect to the approval of the sublease agreement and apply the City’s Common Seal.**

**Purpose**

The purpose of this report is for Council to consider approving a sublease agreement between the Dalkeith Nedlands Bowling Club and West Coast Padel for part of the premises located at 55 Jutland Parade, Dalkeith.

**Voting Requirement**

Simple Majority.

**Background**

The Dalkeith Nedlands Bowling Club (DNBC) occupies a premises at 55 Jutland Parade Dalkeith (the premises) pursuant to a lease for the permitted purpose of lawn bowls and clubrooms and uses reasonably ancillary thereto. The lease was recently renewed on the 7th of June 2023, securing tenure for the DNBC for a term of 10 years and further term of 5 years.

On the 15th of June 2023, the City of Nedlands (City) was contacted by the DNBC advising they support a proposal from West Coast Padel (WCP) to be engaged with the DNBC and form a sublease.

The proposed sublease agreement will permit the DNBC to grant WCP a part of the premises to establish and operate a Padel Court Facility.

Padel is a social, high-energy, international sport predominantly popular in Europe. It combines the elements of Tennis, Squash and Badminton and can be played by individuals of all ages and abilities.

The terms of the head lease between the City and the DNBC allow the Lessee to sublease the premises in part subject to prior written consent from the Lessor and Minister for Lands, provided the permitted purpose of the sublease is consistent with the use of the premises.

Considering the City will be a party to the sublease and is required to grant consent for the Club to sublet the premises pursuant to the head lease terms, the DNBC are seeking consent from the City and subsequent consent of the Minister for Lands approving a sublease agreement with WCP that will run concurrently with the term of the head lease.

The DNBC believe the activities delivered by WCP is consistent with the current use of the premises and will provide better use of the leasehold.

WCP are a registered proprietary limited company with Directors who have extensive business experience. One Director has been operating a similar enterprise model at City Beach in excess of 20 years.

Notwithstanding WCP’s enterprise model seeks to generate profit not unlike other businesses operating on similar recreation reserves, their operation facilitates a sport that will deliver a social return to the community by way of health and fitness, inclusion and well-being benefits.

Following a discussion with WCP, they advised they will provide free open community mornings to allow members of the community to try the sport. These mornings will not provide a profit and may be included as a community benefit deliverable within the sublease agreement.

The City has undertaken a due diligence process to determine whether the Sub Lessee is of good financial standing and capable of continuing the permitted use. A company search has determined the Sub Lessee has not been subject to any insolvency and nothing was disclosed as a result of the bankruptcy search for each of the Directors.

**Discussion**

WCP’s proposal involves establishing 3 x 200m² Padel courts on an unused bowling green at the premises.

The premises is currently used by the DNBC as a community facility for community and recreational purposes. As stated in its request for approval, WCP believe the activities derived from the Padel Court Facility align with the existing community and recreational purpose and deliver social benefits via a new recreational offering.

The construction and ongoing maintenance of the Padel courts will be funded by WCP and installed by the supplier and manufacturer of the courts subject to all necessary approvals. This will involve:

1. Site Preparation - clearing the area, leveling the ground and ensuring proper drainage.
2. Foundation - pouring a ring beam for the steel construction of the Padel court then covering the playing surface with porous concrete or porous asphalt.
3. Walls and Fences - constructing Padel court glass/metal mesh walls and steel/chain link fences.
4. Lighting - mounting LED lighting fixtures on poles around the courts and wiring into the electrical system to permit evening play.
5. Surface Finishing - applying a layer of acrylic or polyurethane paint to the court surface.
6. Netting and Posts - installing nylon netting attached to steel posts set into the ground to divide the courts.
7. Surface Finishing - rolling monofilament grass over the prepared base then aligning and securing to the edges of the court.
8. Additional Amenities - installing optional benches, scoreboards and water fountains around the Padel court area.

Building approval will be required for the fencing, walls and lighting poles, in accordance with the National Construction Code.

The Padel Court Facility is expected to operate from 6am to 10pm, 7 days a week, subject to Council approval. An online booking and pin code system will be provide access to the courts when they aren’t being manned by a Manager/Coach.

WCP intend to approach local schools with view to engaging and encouraging children to participate in the sport and maximise the use of the courts. Their research suggests evenings and weekends will be peak times with coaching sessions and school attendances conducted during the day. Considering these projections, WCP believe the existing on-site parking is sufficient to meet parking demands from these activities.

Should a sublease be approved by the Council, it will be prepared by the City’s solicitor in accordance with the City’s requirements, including but not limited to:

1. The City reviewing and being satisfied with the sublease agreement;
2. The sublease agreement being prepared by the City’s Solicitor at the Sub Lessee’s cost;
3. The expiry date of the sublease agreement not extending beyond the head lease expiry date; and
4. The sublease agreement containing:
   * 1. a covenant by the Sub Lessee to pay all amounts payable and to perform and observe the Lessee’s covenants;
     2. a redevelopment clause;
     3. an insurance clause providing adequate insurance coverage (including public liability); and
     4. an indemnity clause indemnifying the DNBC, City and Minister for Lands.

**Land Tenure**

The premises at 55 Jutland Parade is located within the locality of Dalkeith and is situated on the corner of Jutland Parade and Victoria Avenue, on Reserve 1668.

Reserve 1668 comprises Lot 14867 on Deposited Plan 35721 and is Crown land owned by the State of Western Australia that has been vested to the City by way of a Management Order.

The Management Order for Reserve 1668 provides the City with a statutory right to care, control and manage the Crown land in accordance with the conditions of use and development of the reserve. These conditions permit the land to be used for the designated purpose of ‘Recreation’ and grants the City with power to lease for any term not exceeding 21 years, subject to consent of the Minister for Lands.

Reserve 1668 is also an MRS Reserve classified for parks and recreation purposes. Noting the current use of the site by other recreational and sporting bodies that provide services of benefit to the community, a use that is within the definition of “parks and recreation” can be considered. The MRS defines “parks and recreation” as “Land of regional significance for ecological, recreation or landscape purposes”.

**Key Terms and Special Conditions**

On the 15th of June 2023, the DNBC and WCP agreed to all the key terms noted within the table below to facilitate a sublease.

|  |  |  |
| --- | --- | --- |
|  | |  |
| **Proposed Sub Lease** | |  |
| **Lease Term** | **Details** |  |
| Land | Portion of Reserve 1668: Part Lot 14867 on Deposited Plan 35721 (55 Jutland Parade, Dalkeith) |  |
| Lease Area | North west corner of leasehold area known as "D Green", 1,600m² (approx.). |  |
| Lessor | City of Nedlands |  |
| Sub Lessor | Dalkeith Nedlands Bowling Club (Inc) |  |
| Sub Lessee | West Coast Padel Pty Ltd |  |
| Commencement Date | Upon execution by all parties |  |
| Permitted Purpose | Padel Court Facility |  |
| Market Rental Valuation Assessment | N/A |  |
| Annual Rent | Rent free from Commencement Date until first 6 months of operation, then 12 months at $12,000 p.a. and $24,000 p.a. thereafter. |  |
| Rent Reviews | Annually CPI increase from year 3 onwards. |  |
| Outgoings | Sub Lessee is responsible for a proportion of rubbish removal and emergency services levy. |  |
| Term | 10 years minus the period between the Commencement Date of the Head Lease and the Commencement Date of the Sublease. The Sublease term cannot exceed the term of the Head Lease. |  |
| Further Term Option 1 | 5 years if the Lessee exercises its right to a Further Term. |  |
| Operating/Access Days and Times | Access available 24/7 by reservation with controlled access, peak periods 4pm - 10pm weekdays, 8am - 10pm weekends. |  |
| Public Liability Insurance | The Sub Lessee is responsible for Public Liability and will hold $20M minimum cover, however the City will continue to hold its policy. |  |
| Building Insurance | The City will insure its interests in the improvements, however will recover the payment of the annual insurance premium (proportionate to the lease area) from the Lessee. |  |
| Contents Insurance | The Sub Lessee will hold adequate contents insurance cover. |  |
| Workers Compensation | The Sub Lessee will hold adequate workers compensation cover. |  |
| Indemnity | The Sub Lessee will indemnify the Dalkeith Nedlands Bowling Club, the City of Nedlands and the Minister for Lands against any liability and all claims in connection with the sublease. |  |
| Preventative Maintenance | The Sub Lessee will be responsible for preventative maintenance in the sublease area. |  |
| Non-Structural Maintenance | The Sub Lessee will be responsible for non structural maintenance in the sublease area. |  |
| Structural Maintenance | The City will be responsible for all structural maintenance. |  |
| Fit Out | The Sub Lessee is responsible for all fit out works. |  |
| Alteration/Additions | The Sub Lessee will be responsible to any alterations or additions at their cost subject to all necessary approvals. |  |
| Capital Improvements | The Sub Lessee will be responsible to any capital improvements and connection to services at their cost subject to all necessary approvals- detailed plans and certifications to be provided prior to any construction**.** |  |
| Signage | Prior written consent from the City of Nedlands is required. |  |
| Lease Preparation Costs | The Sub Lessee will be responsible for sublease preparation costs. |  |
| Special Conditions | The Sublease is subject to the City of Nedlands Council approval. |  |
| The Sublease is subject to approval by the Dalkeith Nedlands Bowling Club Incorporated. |  |
| The Sublease is subject to consent of the Minister Lands. |  |
| The Sublease is subject to a redevelopment clause. |  |
| Annexures | Lease area sketch. |  |

**Lease Area Sketch**

The proposed sublease area comprises an area of approximately 1,600m² and is located in the north west corner of the DNBC leasehold area.

**Sublease Area – Sketch**

**A picture containing urban design, text, map, aerial

Description automatically generated**

Site Plan – 55 Jutland Parade Dalkeith

Sublease Area

Portion of Reserve 1668: Part Lot 14867 on Deposited Plan 35721 outlined in purple.

(‘D’ Green) – 1,600 m² (approx.)



**Consultation**

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

**Strategic Implications**

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

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

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

**Budget/Financial Implications**

The sublease as proposed would be at no cost to Council.

Should Council agree to the recommendation as proposed, the new sublease would be prepared by a solicitor and full costs would be on-charged to the Lessee.

Any works required to establish the sublease area will be at the Sub Lessee’s cost.

**Legislative and Policy Implications**

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

Considering the head lease is exempt from the requirements of section 3.58 of the *Local Government Act 1995* pursuant to Regulation 30 of the *Local Government (Functions and General) Regulations 1996*, the sublease does not need to be advertised. The sublease is granted by the Lessee under the head lease, not the City as the head Lessor so there is no requirement for the sublease to be advertised under section 3.58.

Pursuant to section 18 of the *Land Administration Act 1997,* consent of the Minister for Lands is required prior to formalising any agreement for lease over Crown reserve land.

**Decision Implications**

Should Council resolve to approve a sublease for the DNBC, Officers will instruct the City’s solicitor to prepare a sublease in accordance with the key terms and adopted recommendation contained within this report at the full cost of the Sub Lessee.

If Council do not resolve to approve a sublease for the DNBC, WCP will not be able to secure tenure within the City and will have to consider their future elsewhere.

**Conclusion**

WCP’s proposal does not change the existing land use and is consistent with the MRS reservation and with the Management Order. The introduction of a new sport will provide an additional recreational offering on a recreation reserve within a sporting precinct.

Additionally, the proposed sublease will:

* Increase the level of passive surveillance of the DNBC, thereby contributing to improved safety outcomes and reduced propensity for antisocial activity to occur while the space is being utilised.
* Provide a social return to the community.
* Provide further exposure of a space currently being used for community and recreational based activities.
* Promote increased activation of the precinct and reserve.
* Provide for maximizing building asset utilisation by increasing the number of people attending the DNBC.
* Provide additional revenue for the DNBC by way of rent and the use of its services and facilities by new community members.

Considering the City encourages the shared use of its facilities by organisations that provide a benefit to the community, it is recommended that the Council consider approving a sublease between the DNBC and WCP for a Padel Court Facility, subject to the City’s review and satisfaction of the sublease agreement. The intent being to accommodate reasonable and sensible negotiation of the proposed sublease relationship.

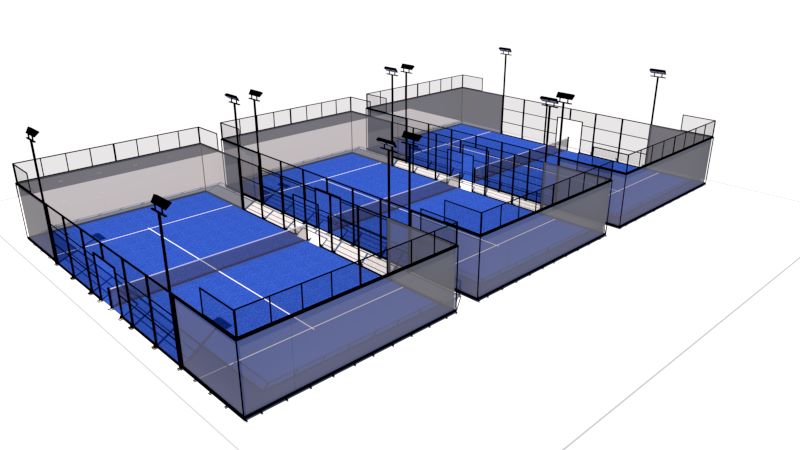
**Further Information**

**Question**

Councillor Mangano – Could further information be provided on fencing and fencing implications with one another?

**Officer Response**

West Coast Padel have provided the following graphic of their proposed courts to be established within the existing bowling green. According to the data sheet provided by West Coast Padel, the structures are a combination of galvanised steel tubing with walls that are 12mm thick tempered glass.



# CPS31.07.23 - Monthly Investment Report – June 2023

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 25 July 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Stuart Billingham |
| **Director** | Michael Cole – Director Corporate Services |
| **Attachments** | 1. Investment Report for the period ended 30 June 2023 |

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

Moved – Councillor Senathirajah

Seconded – Councillor Combes

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED UNANIMOUSLY EN BLOC 12/-**

**Council Resolution / Recommendation**

**That Council receive the Investment Report for the period ended 30 June 2023.**

**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 30 June 2023 and 30 June 2022 the City held the following funds in investments:

|  |  |  |
| --- | --- | --- |
| **Funds** | **30-Jun-23 ($)** | **30-Jun-22 ($)** |
| Municipal | 1,890,833 | 909,548 |
| Reserve | 8,710,485 | 5,096,418 |
| **Total Investments** | **10,601,318** | **14,186,966** |

The total interest earned from investments as at 30 June 2023 was $338,049, comprising of $264,303 received at maturity and $73,746 accrued.

The Investment Portfolio comprises holdings in the following institutions:

|  |  |  |
| --- | --- | --- |
| **Financial Institution** | **Funds Invested** | **Proportion of Portfolio** |
| NAB | $ 3,563,002 | 33% |
| WBC | $ 4,117,694 | 39% |
| ANZ | $ 1,132,826 | 11% |
| CBA | $ 1,787,796 | 17% |
| **Total** | **$ 10,601,318** | **100.00%** |

**Consultation**

N/A.

**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 June 2023 YTD Actual interest income from investments is $338,049 compared to the June 2023 YTD Budget of $369,162.

**Legislative and Policy Implications**

City of Nedlands - Investment of Operating Cash Policy

**Decision Implications**

N/A.

**Conclusion**

The Investment Report is presented to Council.

**Further Information**

Nil.

# CPS32.07.23 - List of Accounts Paid – June 2023

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 25 July 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Stuart Billingham – Manager Finance |
| **Director** | Michael Cole - Director Corporate Services |
| **Attachments** | 1. Creditor Payment Listing – May 2023; and 2. Credit Card and Purchasing Card Payments – June 2023 |

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

Moved – Councillor Senathirajah

Seconded – Councillor Combes

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED UNANIMOUSLY EN BLOC 12/-**

**Council Resolution / Recommendation**

**Council receives the List of Accounts Paid for the month of June 2023.**

**Purpose**

The purpose of this report is to present list of accounts paid for the month of June 2023.

**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:

1. the payee’s name;
2. the amount of the payment:
3. the date of the payment; and
4. 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 Revenue and the Manager Financial Services (or designated alternative officers).

**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.

**Priority Area**

Nil.

**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_45568.pdf/$FILE/Local%20Government%20(Financial%20Management)%20Regulations%201996%20-%20%5B03-k0-00%5D.pdf?OpenElement) administration is required to present the List of Accounts Paid for the month of September 2022 to Council.

**Decision Implications**

Nil.

**Conclusion**

The List of Accounts Paid for the months of June 2023 complies with the relevant legislation and can be received by Council (see attachments).

**Further Information**

Nil.

# Reports by the Chief Executive Officer CEO17.07.23 to CEO18.07.23

# CEO17.07.23 – Future Elections and Polls to 2028

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 25 July 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Nicole Ceric – Executive Officer |
| **CEO** | Bill Parker |
| **Attachments** | Nil. |

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

Moved – Councillor Senathirajah

Seconded – Councillor Combes

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED UNANIMOUSLY 12/-**

**Council Resolution / Recommendation**

**Council:**

1. **declares, in accordance with section 4.20(4) of the Local Government Act 1995, the Western Australian Electoral Commissioner to be responsible for the conduct of all future elections and polls until the end of 2028; and**
2. **decides, in accordance with section 4.61(2) of the Local Government Act 1995 that the method of conducting all future elections or polls will be as a postal election.**

**Purpose**

The purpose of this report is to request Council to declare the Western Australian Electoral Commission (WAEC) to be responsible for the conduct of future elections to the end of 2028 and to agree to these elections being conducted as postal elections.

**Voting Requirement**

Absolute Majority.

**Background**

The Western Australian Electoral Commission (WAEC) has conducted the City of Nedlands elections via postal vote for more than 10 years.

At the Council meeting held on 26 February 2013 Council agreed to the Western Australian Electoral Commissioner (WAEC) to conduct future elections to the end of 2017 and for these elections to be postal elections.

At the Council meeting held on 23 April 2019 Council agreed to the Western Australian Electoral Commissioner (WAEC) to conduct future elections to the end of 2023 and for these elections to be postal elections.

**Discussion**

The conduct of the Local Government ordinary elections is a complex and time-consuming event and has been well managed by experienced returning officers provided by the Western Australian Electoral Commissioner (WAEC) in recent years. The WAEC are also adequately trained which ensures that all legislative requirements are complied with.

As an alternative, the Administration can undertake the conduct of the elections at a reduced cost. However, as the Administrative staff are not trained in conducting the elections, it may increase risk of non-compliance with the Act. Further it would require additional resources, to ensure that the process is carried out in a timely manner.

Because of the convenience it provides to electors, a postal ballot encourages a higher participation rate by electors. The alternate would be to hold the election as an in-person election, but this may discourage a higher participation.

Council is requested to make a declaration that the Western Australian Electoral Commissioner (WAEC) is to be responsible for the conduct of future elections to the end of 2028 and to agree to these elections being conducted as postal elections.

**Consultation**

N/A

**Strategic Implications**

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

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

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

**Budget/Financial Implications**

Based on this year’s election (which includes a Mayoral Election) the estimated cost for each election if conducted as a postal ballot is $95,000 inc GST, which has been based on the following assumptions:

* 16,000 electors
* response rate of approximately 35%
* 5 vacancies
* count to be conducted at the offices of the City of Nedlands
* appointment of a local Returning Officer
* regular Australia Post delivery service to apply.

An additional amount of $3,450 will be incurred if Council decides to opt for the Australia Post Priority Service for the lodgment of election packages.

**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)

Elections are regulated by the *Local Government Act 1995* and having City of Nedlands Elections conducted by the Western Australian Electoral Commission ensures the City is compliant with the Act.

Administrative staff are not trained in conducting the elections, it may increase the risk of non-compliance with the Act.

**Decision Implications**

Should Council decide to appoint the Western Australian Electoral Commission to conduct future elections until 2028 all ordinary and any extra ordinary elections required during this period could be conducted without needing to go to Council for approval thus saving time and allowing administration to work ahead to ensure full compliance with the Act, and timely and efficient elections.

Should Council decide not to appoint the Western Australian Electoral Commission a report would need to be submitted to Council in advance prior to conducting any ordinary or extra ordinary elections thus slowing the process.

**Conclusion**

In conclusion it is recommended that Council appoint the Western Australian Electoral Commission to be responsible for the conduct of future elections to the end of 2028 and to agree to these elections being conducted as postal elections.

**Further Information**

**Question**

Councillor Mangano – Could the WAEC confirm what measures are in place to minimise fraud now and in the future?

**Officer Response**

The City requested information from the WAEC on this question.  The following information is a summary of the information provided by the WAEC.

With regard to elections conducted as a postal vote the WAEC has advised:

* there is a new measure that has been introduced that requires completion of a checkbox on the front of Postal Vote Envelopes from 2023 elections asking recipients to check it is addressed to them and advising that it is an offence to open mail that is not addressed to them;
* Existing measures such as
  + requiring votes to be signed by the elector in order to be considered complete. A signature box is placed on the front of the envelope. Unsigned postal votes cannot be counted. The signature is on top of a declaration that they are the voter who applied for and was issued the postal vote and indicating they haven’t voted in that election already.
  + scanning of received postal votes by the processing centre and Returning officer (prior to declaration being removed and the ballot envelope being opened). This essentially marks the voter off the electoral roll.
  + Checking by the returning officer that other votes (such as declaration votes have not been received by the same voter)
  + WAEC to only send ballots to eligible electors on the electoral roll or owner /occupier roll
  + Verification by the Returning Officer that the Ballot box for receiving of early votes and votes lodged on polling day and unused ballot papers are kept secure at all times, and locked away in an area with minimal access (some local governments use a safe)
  + Ballot Boxes are sealed, with records of seal numbers to ensure no one can remove ballot papers in the ballot box.
  + Each election package has an individual barcode and this can be checked in the database if fraud is suspected.

**Question**

Councillor Bennett – Strata properties – can we ensure that the owner /occupier is sent the election package and not sent to the Strata property where the Strata Manager receives them all for all property owners?

**Officer Response**

Postal votes are sent to the postal address supplied on the electoral roll or Owner / Occupier Roll.

Whatever postal address has been placed on the electoral roll or the Enrolment Eligibility Claim form, is the address that it is expected to be delivered to by Australia Post. An elector has the responsibility to provide their correct address to the Electoral Commission and the City (in the case of an owner / occupier). It is a legal requirement for voters to update their address with the Electoral Commission after moving house.

Mail will not be delivered to strata managers unless the strata property is the postal address that is on the application form. Australia Post deliver mail to the address listed on any letter or parcel.

# CEO18.07.23 - Register of Outstanding Council Resolutions

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 25 July 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | No officer involved in the preparation of this report has a declarable interest. |
| **Report Author** | Libby Kania – Coordinator Governance and Risk |
| **Director/CEO** | Bill Parker - CEO |
| **Attachments** | 1. Register of Outstanding Council Resolutions |

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

Moved – Councillor Smyth

Seconded – Mayor Argyle

**That the Recommendation be adopted.**

(Printed below for ease of reference)

Amendment

Moved - Councillor Senathirajah

Seconded - Councillor Mangano

That a clause 2 be added as follows:

2. instructs the CEO to give high priority to taking action on the Council Resolution of 28 March 2023, on traffic measures to minimise the adverse impact of Woolworth and Aldi developments on the residents living along Florence Road, Stanley Street and other neighbouring streets.

The AMENDMENT was PUT and was

Lost 5/7

(Against: Mayor Argyle Crs. Brackenridge Amiry

McManus Smyth Combes & Hodsdon)

**The Original Motion was PUT and was**

**CARRIED UNANIMOUSLY 12/-**

**Council Resolution / Recommendation**

**That Council receives the Register of Outstanding Council Resolutions dated July 2023.**

**Purpose**

For Council to consider the Register of Outstanding Council Resolutions (OCR) and the actions taken by Administration in progressing these items.

**Voting Requirement**

Simple Majority.

**Background**

Council has requested that all Outstanding Council Resolutions be tabled on a monthly basis at the OCM. The first OCR report was tabled at the March OCM.

**Discussion**

Attached to the Council report is the register of OCRs for Council’s noting and consideration.

The report has been updated by officers when required.

Information will be periodically provided to Councillors on previous resolutions of Council that:

(i) have been completed since the last update and

(ii) have not yet been fully implemented. Reasons for any delays or unforeseen challenges are included.

Councillors are able to seek an update on any particular project or resolution outside of the reporting period, by contacting the CEO directly for information.

**Consultation**

Nil.

**Strategic Implications**

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

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

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

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

**Budget/Financial Implications**

Nil.

**Legislative and Policy Implications**

*Local Government Act 1995*.

**Decision Implications**

Councillors have oversight of the implementation of previous Council decisions, through access to the Register and the Councillor portal. Information on decisions may be provided through the CEO Weekly update, and direct request to the CEO. The City may include the register on the website to provide transparency to the community, although the community is able to access the document through the Council agenda.

**Conclusion**

That the Council receives the Register of Outstanding Council Resolutions for noting.

**Further Information**

Nil.

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

Disclaimer: Where administration has provided any assistance with the framing and/or wording of any motion/amendment to a Councillor who has advised their intention to move it, the assistance has been provided on an impartial basis. The principle and intention expressed in any motion/amendment is solely that of the intended mover and not that of the officer/officers providing the assistance. Under no circumstances is it to be expressed to any party that administration or any Council officer holds a view on this motion other than that expressed in an official written or verbal report by Administration to the Council meeting considering the motion.

## Councillor Mangano – Cancellation of WALGA Membership

In accordance with Clause 3.9 of the *City of Nedlands Standing Orders Local Law* on the 12 July 2023, Councillor Mangano gave notice of his intention to move the following motion.

Moved – Councillor Mangano

Seconded – Councillor Youngman

That Council cancels its WALGA Membership immediately.

Councillor Coghlan left the room at 7.36 pm and returned at 7.40 pm.

Councillor Mangano left the room at 7.40 pm and returned at 7.41 pm.

Lost 2/10

(Against: Mayor Argyle Crs. Brackenridge Coghlan Senathirajah

Amiry McManus Smyth Bennett Combes & Hodsdon)

**Justification**

1. WALGA and its monopoly insurance broker provider LGIS do not serve elected members interests.
2. WALGA panel contractors have to pay WALGA a fee which adds to the cost the ratepayers pay for every contract they undertake.
3. WALGA is not subject to audit and deals with many millions of public monies, and it should be.

**Administration Comment**

Membership of WALGA was last considered by Council at its meeting of 25 August 2020.

At that meeting Council resolved as follows: (Carried Unanimously En Bloc 12/-)

Council:

1. subject to the Mayor & CEO being satisfied as to the benefits to the City, authorises the Chief Executive Officer to enter into discussions with WALGA for a membership agreement that is beneficial to the City; and
2. agrees to accept the recommendation that the City of Nedlands take up membership of the Western Australian Local Government Association (WALGA).

Background to this resolution was that in September 2013, Council resolved to resign the City’s membership of WALGA.  The Council considered re-joining in November 2017 and then again in August 2020.

At the August 2020, Officers considered that City membership of WALGA would deliver a number of benefits:

* Greater efficiency in our business processes due to the availability of local government specific manuals, templates and guidance documents;
* Procurement cost savings due to economies of scale which can be achieved by the City having access to WALGA consolidated agreements with preferred suppliers, many of whom the City already engages with separately, sometimes at higher cost;
* Assistance with tender specifications and access to the WALGA “Vendor Panel” portal which can assist with probity and transparency in the conducting of Requests for Quotation for projects below the legislated tender threshold of $250,000
* Access to timely and informed legislative and procedural advice as per the recent amendments to the LG Act (Functions & General) Regulations 1996 in April 2020;
* Cost effective training opportunities (e.g. Contracts Management) which would contribute to an upskilling of the City workforce. This will further contribute to the delivery of projects on time and within budget and avoid the risk of delays and cost over runs;
* Access to process audits and reporting to drive further administrative improvements and increase efficiency.

During 2022/23, the City obtained $111,000 in estimated savings from use of contracts on the WALGA Preferred Supplier Program

In addition, the City obtained $35,713 in savings through purchasing 100% natural power. This also resulted in 257 tonnes of CO2 offsets.

More detailed information of WALGA services is as follows:

**What is WALGA?**

WALGA was formed in 2001 with the merging of the WA Municipal Association, Local Government Association of WA, Country Urban Councils Association, and Country Shire Councils Association.  WALGA exists to advocate and negotiate on behalf of the WA Local Government sector in the best interests of its Member Councils.

**How is WALGA funded?**

As with most member-based organisations, WALGA has an annual Membership fee paid by all Member Councils. To ensure fairness, the annual Membership fee is indexed to the size and capacity of each Local Government. It contributes less than 10 per cent of WALGA total turnover.

WALGA secures additional funding through charges to State and Federal departments and agencies for the administration of grants, fee-for-services selected for use by Member Local Governments and returns from supplier contracts as part of group buying arrangements that guarantee lowest market rates for Members.

**Business Solutions**

WALGA provides services and advice including governance, industrial relations, procurement, recruitment, supplier panels, tender management and training for officers and Elected Members.  WALGA offers procurement improvement services including procurement advice, customised capacity building workshops, procurement reviews, procurement templates, development of sustainable procurement measures, and coordination of procurement network forums at the local and inter-state level.  Their training programs are especially useful and specifically tailored to Local Governments, unlike many other RTOs who work in the Public Sector. Officers believe a membership that allows for the City to cherry pick what it wants to use is an ideal scenario.

**Environment and Waste**

WALGA provides advocacy and advice to member Local Governments across a number of policy portfolios including environment and waste in part in response to legislative requirements. Under Section 1.3 (3) of the Local Government Act, Councils are required to use their best endeavours to meet the needs of current and future generations through an integration of environmental protection, social advancement, and economic prosperity. Consequently, advocacy and advice in the environment portfolio have included issues such as environmental licencing and regulation, container deposit scheme, natural area management, energy and water conservation, household hazardous waste program, pest bird control and the

**Municipal Waste Advisory Council**

WALGA provides Member Local Governments regular updates on changes to legislation and regulation along with insights into new practices through its WasteNews and EnviroNews publications and periodic.

**Finance and Marketing**

From a cost perspective, WALGA is a highly beneficial support service to Local Governments. Through its Preferred Supplier Panel program, WALGA provides consolidated procurement opportunities for economies of scale in areas which are common to all Local Governments by virtue of greater buying power. The program is not mandatory and individual Local Governments are free to utilise their own preferred suppliers where this is considered more beneficial. This program is particularly beneficial for high volume / low-cost items such as stationery, consumables, professional services and the like. They also offer the opportunity for cross council cooperation, and this can be very useful. It is especially important to consider how useful this could be at this time of national emergency when sharing of resources could be essential to our recovery.  Local Governments which are Members of WALGA can use the e-Quotes online portal for accessing preferred supplier panels or to better coordinate their own procurement processes. There is no cost to Local Governments to use the e-Quotes portal to access WALGA supplier panels and an upgrade licence fee for member Councils who want to use the portal to create their own supplier panels and procurement systems.

**Governance and Organisational Services**

WALGA provides a broad employee relations and human resources advisory and consultancy service together with best practice tools and resources to support Local Governments with employment related matter.  WALGA provides process auditing and risk assessment on a fee for service basis, and these can be useful in assessing the robustness of current City practices.

**Infrastructure**

Topics and issues addressed by WALGA include securing road funding, road design and construction including pavements and materials, heavy vehicles and freight and pedestrian and cycling infrastructure.  WALGA works with Local Governments and other stakeholders including State and Federal agencies to assist Members to sustainably manage assets such as recreation facilities, community centres, cycle and pedestrian paths and waste management. Areas encompassed in the infrastructure portfolio include natural disaster relief and recovery arrangements, utilities in the road reserve, street lighting, bridges and bus stop infrastructure.

**People and Place**

Planning services are a significant function for most Local Governments and consequently WALGA takes a prominent role in advocating and representing the sector’s interests to government and industry. WALGA’s Planning Improvement Program identifies the need for the provision of high quality, tailored and accessible Town Planning education for Local Government personnel including CEOs, Executives, Elected Members and Officers. The Local Government Town Planning training pathway comprises a free Introduction to Planning followed by Planning Practices: Essentials and Planning.

## Councillor Hodsdon – Response to JDAP Decision on Chellingworth

In accordance with Clause 3.9 of the *City of Nedlands Standing Orders Local Law* on the 14 July 2023, Councillor Hodsdon gave notice of his intention to move the following motion.

Moved – Councillor Hodsdon

Seconded – Councillor Combes

**Councillor Youngman – impartiality interest**

Councillor Youngman disclosed that his mother lives on Baird Street and he has no financial interest in his mother’s property nor any other financial involvement with her, and as a consequence, there may be a perception that his impartiality on the matter may be affected. Councillor Youngman declared that he would consider this matter on its merits and vote accordingly.

**That Council:**

1. **requests legal advice of a possible challenge to the approved plans for the site on the corner of Dalkeith Road and Stirling Highway. DAP/20/01770;**

**CARRIED 9/3**

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

1. **formally request the support of local members, Kate Chaney and Dr Katrina Stratton to pursue a reasonable outcome on this site; and**

**CARRIED 11/1**

**(Against: Cr. Mangano)**

1. **request a formal explanation from the Minister for Planning John Carey on what mechanisms are in place to evaluate the consistency and quality of JDAP decisions.**

**CARRIED UNANIMOUSLY 12/-**

**Council Resolution**

**That Council:**

1. **requests legal advice of a possible challenge to the approved plans for the site on the corner of Dalkeith Road and Stirling Highway. DAP/20/01770;**
2. **formally request the support of local members, Kate Chaney and Dr Katrina Stratton to pursue a reasonable outcome on this site; and**
3. **request a formal explanation from the Minister for Planning John Carey on what mechanisms are in place to evaluate the consistency and quality of JDAP decisions.**

**Justification**

Based on the statements made by McLeods lawyer, David Nicholson in regard to this possibility being successful. The idea is that a 400% increase in single bedroom apartments and the loss of both the podium and water features is a significant change to the 2021 approval and diminished the amenity of the surrounding area. Due and proper regard was not given to the changes to the nature and design both quantitatively and qualitatively of this development.

**Administration Comment**

At the JDAP hearing McLeods argued the case very clearly that in their opinion if the SAT had considered the Form 2 question, the SAT would have determined that the matter should not be considered as a Form 2. And therefore a Form 1 form should be completed and the appropriate fee paid. If that had occurred ultimately the JDAP would have considered the Form 1 application and presumably made the same decision (to approve the proposal). Thus by seeking a legal review of the JDAP decision, at best would result in a new form being completed and a new fee being paid, but the result in terms of an approval being granted is unlikely to change. Thus it will be an expensive morale victory at best.

Subsquent to the JDAP hearing the City has obtained advice from McLeods (see attachment) outlining the above.

Based on this officers do not consider it necessary for Council to pursue further legal advice on the JDAP decision from a Senior Counsel.

## Councillor Mangano – Removal of Colorbond Shed – Rear of Dalkeith Hall

In accordance with Clause 3.9 of the *City of Nedlands Standing Orders Local Law* on the 16 July 2023, Councillor Mangano gave notice of his intention to move the following motion.

Moved – Councillor Mangano

Seconded – Councillor Bennett

That the CEO is directed to remove the redundant colorbond garden shed at the rear of Dalkeith Hall.

Lost 11/1

(Against: Crs. Brackenridge Coghlan Senathirajah Amiry McManus

Smyth Bennett Youngman Combes & Hodsdon)

**Justification**

1. It is taking up car parking space which is required both day and night.

2. It is visual eyesore and does not match with the Dalkeith Hall or the adjoining property.

3. It is butting against the boundary fence (no setback) so is not compliant with R codes.

**Administration Comment**

The shed is used for storage of equipment and materials for NCC and Positive Ageing. This includes BBQs and chairs. The shed was built given the lack of suitable alternate storage space within the NCC premises and Dalkeith Hall. Removal of the shed without a suitable alternate space would severely impact the operations of NCC and Positive Ageing.

With regard to setbacks, the R-Codes Volume 2 would be used as a guide in assessing the relevant setbacks for the shed. It is noted that the site is a non-residential site. In this regard there are no “deemed-to-comply” setbacks which would apply to the shed. The R-Codes Volume 2 allows for boundary walls, thereby the shed would be capable of approval in its current location.

Councillor Mangano retired from the meeting at 8.19pm.

**The Presiding Member adjourned the meeting for the purposes of a refreshment break.**

The meeting adjourned at 8.16 pm and reconvened at 8.25 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 L J McManus Coastal Districts Ward

Councillor K A Smyth Coastal Districts Ward

Councillor F J O Bennett Dalkeith Ward

Councillor A W Mangano (retired from 8.19pm) Dalkeith Ward

Councillor N R Youngman Dalkeith Ward

Vacant Hollywood Ward

Councillor O Combes Hollywood Ward

Councillor B G Hodsdon Hollywood Ward

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

Mr M R Cole Director Corporate Services

Mr M K MacPherson Director Technical Services

Mrs N M Ceric Executive Officer

Ms L J Kania Coordinator Governance & Risk

**Public** There were 0 members of the public present and 2 online.

**Press** Nil.

**Leave of Absence** Nil.

**(Previously Approved)**

**Apologies** Nil.

# Urgent Business Approved By the Presiding Member or By Decision

Any urgent business to be considered at this point.

* 1. **CEO19.07.23 – CONFIDENTIAL Request for Legal Representation**

A CONFIDENTIAL report was circulated to Council Members separately.

# Confidential Items

Any confidential items to be considered at this point.

Closure of Meeting to the Public

Moved – Councillor Youngman

Seconded - Councillor McManus

**That the meeting be closed to the public in accordance with Section 5.23 (b) and (d) of the Local Government Act 1995 to allow confidential discussion on the following Items.**

**CARRIED UNANIMOUSLY 11/-**

The meeting was closed to the public at 8.23 pm.

Moved - Councillor Hodsdon

Seconded - Councillor Smyth

**That the meeting be reopened to members of the public and the press.**

**CARRIED UNANIMOUSLY 11/-**

The meeting was reopened to members of the public and the press at 8.55 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.

Please Note: Council voted against the officer recommendation.

## CONFIDENTIAL Notice of Motion – Legal Representation

A CONFIDENTIAL Notice of Motion was circulated to Council Members separately.

# Declaration of Closure

There being no further business, the Presiding Member declared the meeting closed at 8.55pm.