**AGENDA**

**Council Meeting**

**26 April 2022**

**Notice of Meeting**

**To Mayor & Councillors**

A Council Meeting of the City of Nedlands is to be held on Tuesday 26 April 2022 in the Council chambers at 71 Stirling Highway Nedlands commencing at 6pm. This meeting will also be livestreamed.



Bill Parker

Chief Executive Officer

21 April 2022

**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.

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

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# Declaration of Opening

The Presiding Member will declare the meeting open at 6.00 pm and will draw attention to the disclaimer on page 2.

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

**Leave of Absence** Councillor J D Wetherall Hollywood Ward

**(Previously Approved)**

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

# Public Question Time

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

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

# 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.

# Requests for Leave of Absence

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

# Petitions

Petitions to be tabled at this point.

# Disclosures of Financial Interest

The Presiding Member to remind Council Members and Staff of the requirements of Section 5.65 of the Local Government Act to disclose any interest during the meeting when the matter is discussed.

A declaration under this section requires that the nature of the interest must be disclosed. Consequently, a member who has made a declaration must not preside, participate in, or be present during any discussion or decision-making procedure relating to the matter the subject of the declaration.

However, other members may allow participation of the declarant if the member further discloses the extent of the interest. Any such declarant who wishes to participate in the meeting on the matter, shall leave the meeting, after making their declaration and request to participate, while other members consider and decide upon whether the interest is trivial or insignificant or is common to a significant number of electors or ratepayers.

# Disclosures of Interests Affecting Impartiality

The Presiding Member to remind Council Members and Staff of the requirements of Council’s Code of Conduct in accordance with Section 5.103 of the Local Government Act.

Council Members and staff are required, in addition to declaring any financial interests to declare any interest that may affect their impartiality in considering a matter. This declaration does not restrict any right to participate in or be present during the decision-making procedure.

The following pro forma declaration is provided to assist in making the disclosure.

"With regard to the matter in item x ….. I disclose that I have an association with the applicant (or person seeking a decision). This association is ….. (nature of the interest).

As a consequence, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly."

The member or employee is encouraged to disclose the nature of the association.

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

Members who have not read the business papers to make declarations at this point.

# Confirmation of Minutes

The minutes of the Ordinary Council Meeting held 22 March 2022 are to be confirmed.

# Announcements of the Presiding Member without discussion.

Any written or verbal announcements by the Presiding Member to be tabled at this point.

# Members Announcements without discussion.

Written announcements by Council Members to be tabled at this point. Council Members may wish to make verbal announcements at their discretion.

# Matters for Which the Meeting May Be Closed

For the convenience of the public, the following Confidential items are identified to be discussed behind closed doors, as the last items of business at this meeting.

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

20.2 CONFIDENTIAL CEO04.04.22 Risk & Reporting Update

# En Bloc Items

That the officer recommendations for Items 15.1, 15.2, 15.3, 16.1, 16.2, 16.3, 16.4, 16.5, 17.1, 17.2, 17.3, 17.4, 17.5, 19.1, 19.2, 20.1 and 20.2 be adopted en bloc and the remaining items be dealt with separately.

# 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).

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

**Audit & Risk Committee 14 March 2022**

Unconfirmed, circulated to Councillors on 23 March 2022

**CEO Recruitment & Selection Committee Meeting 28 March 2022**

Unconfirmed, circulated to Councillors on 29 March 2022

# Minutes of the 2021 Annual General Meeting of Electors

That the Minutes of the 2021 Annual General Meeting of Electors held 24 March 2022 be received.

# Motion Passed at the 2021 Annual General Meeting of Electors

**That the following motion passed at the 2021 Annual General Meeting of Electors held on the 24 March 2022 be received:**

Moved – Mr Murray

Seconded – Mr Taranto

**That Council:**

1. **provide detail on how the City’s position on tree protection will apply to public A Class Reserves in Swanbourne and throughout the City of Nedlands; and**
2. **during this and the next financial year it will act to firmly ensure the preservation of the bushland and all canopy cover that sustains and protects the biodiversity of our suburbs.**

**CARRIED 12/-**

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

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

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting - 26 April 2022 |
| **Applicant** | H Zhang |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director/CEO** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Development Plans 2. Landscaping Plan 3. 3D Render 4. Aerial Image and Zoning Map 5. CONFIDENTIAL ATTACHMENT - Submissions |

**Purpose**

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

**Recommendation**

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

1. **This approval relates only to the development as indicated on the approved plans dated 10 March 2022. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.**
2. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**
3. **Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:**
4. **Face brick;**
5. **Painted render;**
6. **Painted brickwork; or**
7. **Other clean finish as specified on the approved plans.**

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

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

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

1. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.**
2. **The street tree(s) within the verge in front of the lot are to be protected and maintained through the duration of the demolition and construction process to the satisfaction of the City of Nedlands. Should the tree(s) die or be damaged, they are to be replaced with a specified species at the owner’s expense and to the satisfaction of the City of Nedlands.**
3. **Prior to occupation, landscaping shall be completed in accordance with the approved plans or any approved modifications to the satisfaction of the City of Nedlands. All landscaped areas are to be maintained on an ongoing basis for the life of the development on the site to the satisfaction of the City of Nedlands.**

**Voting Requirement**

Simple Majority.

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

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

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

**Background**

**Land Details**

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

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

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

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

**Discussion**

**Assessment of Statutory Provisions**

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

**Local Planning Scheme No.3**

Schedule 2, Clause 67(2) (Consideration of application by Local Government) of LPS3 – identifies those matters that are required to be given due regard to the extent relevant to the application.  Where relevant, these matters are discussed in the following sections. Overall, the development is considered to meet these objectives, particularly in regard to height, scale, bulk and appearance, and the potential impact it will have on the local amenity.

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

State Planning Policy 7.3 Residential Design Codes Volume 1 (R-Codes) apply to all single and grouped dwelling developments. An approval under the R-Codes can be obtained in one of two ways. This is by either meeting the deemed-to-comply provisions or via a design principle assessment pathway.

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

**Clause 5.1.3 – Lot Boundary Setback**

Unit 4 - Western First Floor Setback

The development proposes a 1.5m setback to the first floor. The design principles for lot boundary setbacks consider the impact of building bulk on adjoining properties, providing adequate sun and ventilation and minimising overlooking. The proposed western lot boundary setback is considered to meet the design principles as:

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

**Clause 5.3.3 – Parking**

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

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

**Consultation**

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

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to 13 adjoining properties. The application was advertised for a period of 14 days from 17 January 2022 to 31 January 2022. At the close of the advertising period, one objection was received.

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

1. Lot boundary setbacks should be increased to the northern lot boundary.

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

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

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

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

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

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

**Strategic Implications**

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

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

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

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

**Priority Area**

Urban form - protecting our quality living environment

**Budget/Financial Implications**

N/A

**Legislative and Policy Implications**

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

**Decision Implications**

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

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

**Conclusion**

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

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

**Further Information**

**Question**

Councillor Smyth - Requested for a meeting to be organised between the neighbours and the outcome recorded in the Council Report.

**Officer Response**

The applicant and the neighbour did meet following the Agenda Forum meeting**.**

**Question**

Councillor Hodsdon - Option for driveway to be marked as a visitors parking bay.

**Officer Response**

There is no ability to provide a visitor bay within the driveway of the development without obstructing vehicle access into the garages of the dwellings. A conditional subdivision approval has been granted (28 March 2022) for the subject site and does not include a visitor bay. The subdivision layout matches the DA proposal and does not include provision for a visitor’s bay

**Question**

Councillor Coghlan - Requested for a current street view photograph of the property.

**Officer Response**

The two street trees are proposed to be retained and the driveway has been designed to accommodate this.

The City is limited in its ability to require retention of trees within private property. However, the applicant has agreed to retain the tree at the rear of the site and shown this on the landscaping plan. The City can impose a condition that the landscaping plan be adhered to, and that the tree be retained. Given the tree is located close to the driveway and that there are significant works proposed across the site, best protection of the tree would require an arborist to investigate and provide recommendations.

The tree which is on the private property at the front of the lot is impacted due to the location of the slab for the front unit. Significant earthworks are required to be completed. The location of these earthworks and slab relative to the tree would result in damage to the root structure and likely result in the death of the tree. The tree is too close to the proposed building and cannot be retained with the current design. As compensation, 4 new trees are proposed to be planted within the front setback.

The applicant has requested that the application be deferred to allow more time for officers to discuss the proposal with them to address matters raised at the Agenda Forum, as such an alternate officer recommendation for deferral is now recommended. This will allow for matters including the street view photograph to be included in the report to Council.

**Alternate Officer Recommendation**

**That Council defer consideration of the application for 4 grouped dwellings at 7 Florence Road, Nedlands, until the May Council meeting, to allow for additional discussions to occur with the applicant.**

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

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 26 April 2022 |
| **Applicant** | Z Liaoliang & L Lixin |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director/CEO** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans 3. Architectural Perspective Drawings 4. CONFIDENTIAL ATTACHMENT – Submissions |

**Purpose**

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

**Recommendation**

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

1. **This approval relates only to the development as indicated on the approved plans dated 1 March 2022. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.**
2. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**
3. **Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:**
   1. **Face brick;**
   2. **Painted render;**
   3. **Painted brickwork; or**
   4. **Other clean finish as specified on the approved plans.**

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

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

**Voting Requirement**

Simple Majority.

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

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

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

**Background**

**Land Details**

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

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

**History**

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

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

**Application Details**

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

**Discussion**

**Assessment of Statutory Provisions**

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

It is recommended that the application be approved by Council as it is considered to satisfy the design principles of the R-Codes. Further, it is considered unlikely that the development will have a significant adverse impact on the local amenity and character of the locality.

**Local Planning Scheme No. 3**

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

**Sustainability**

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

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

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

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

The proposed development is seeking a design principle assessment pathway for parts of this proposal. Council is requested to consider the design principles relating to visitor parking and site works (retaining walls). As required by the R-Codes, Council, in assessing the proposal against the design principles, should not apply the corresponding deemed-to-comply provisions.

**Clause 5.3.3 – Parking**

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

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

**Clause 5.3.7 – Site Works**

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

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

**Consultation**

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

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

1. Concerns regarding the height of the retaining

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

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

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

1. Concerns regarding the setbacks proposed to Clark Street

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

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

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

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

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

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

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

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

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

**Strategic Implications**

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

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

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

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

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

**Budget/Financial Implications**

N/A

**Legislative and Policy Implications**

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

**Decision Implications**

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

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

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

**Conclusion**

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

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

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

**Further Information**

**Question**

Councillor Smyth – what can we do to remediate the constant disruptions to the neighbouring property? Can restrictions be made on the process?

**Officer Response**

This is beyond the planning function which Council is being requested to consider and would need to be considered separately.

**Question**

Councillor Brackenridge – request for eastern view of all the site, additional information on the elevations.

**Question**

Councillor Coghlan – Ranoora Gum – 2 x magnolia teddy bear, 5 dwarf magnolias, will these provide shade?

**Officer Response**

The applicant has requested that consideration of the application be deferred to allow for more detailed plans to be provided. This will include a review of the retaining wall and fence heights. The expectation is that eastern and western elevations will be provided for Council to consider. The deferral will allow for Council to consider the matter in a holistic manner, which is considered appropriate. Hence officers are recommending an alternative recommendation as follows:

**That Council refer the application to the Administration with the advice that the Council is not prepared to grant planning approval to the application for 4 grouped dwellings at 24 Clark Street, Nedlands based on the current submitted plans, and invite the applicant, prior to the next appropriate Council meeting, to submit more detailed plans.**

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

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 26 April 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Roy Winslow, Manager Urban Planning |
| **Director/CEO** | Tony Free, Director Planning and Development |
| **Attachments** | 1. Reviewed Local Planning Policy – Design Review Panel 2. SPP 7.0 Design Principles |

**Purpose**

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

**Recommendation**

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

**Voting Requirement**

Simple Majority.

**Background**

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

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

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

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

**Discussion**

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

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

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

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

1. Simplification of fees and charges.

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

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

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

**Consultation**

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

**Strategic Implications**

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

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

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

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

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

**Budget/Financial Implications**

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

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

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

**Legislative and Policy Implications**

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

**Decision Implications**

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

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

**Conclusion**

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

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

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

**Further Information**

**Question**

Councillor Smyth – Please provide track changes in the policy.

**Officer Response**

**Attachment 3** shows tracked changes. The minimum number of grouped dwellings required to trigger design review has been changed from five to four.

**Question**

Councillor Mangano – Can the Design Review Panel give more due regard to the amenity of the street and neighbouring properties?

**Officer Response**

The matter of ‘amenity’ is enshrined in all of the ten design principles that the Panel considers as part of a design review. Effectively, appropriately addressing all ten principles will provide a high level of amenity to both residents and those surrounding a development. This is a similar concept to consideration of the Residential Design Codes. Rather than amenity being a stand-alone measure, it is integrated into all elements that are considered. Appropriately addressing the design elements of the R-Codes will afford a decision maker a high degree of confidence that the amenity of the development and its locality is protected. In addition to amenity being integral to all of the design principles, Principle 6 relates directly to amenity, with the following statement:

“Good design provides successful places that offer a variety of uses and activities while optimising internal and external amenity for occupants, visitors and neighbours, providing environments that are comfortable, productive and healthy.”

Amenity is addressed at both the design review and planning assessment stages of an application. In order for amenity in its broadest sense to be protected or enhanced by a development, both the design principles assessed by the DRP and the R-Codes assessed by planning officers need to be appropriate addressed.

**Question**

Councillor Hodsdon – list of requirements given to Developments and advise whether these items are negotiable or not?

**Officer Response**

The ten design principles considered by the Panel in each assessment are outlined in **Attachment 2**. These principles are:

* Context and Character;
* Landscape Quality;
* Built form and scale;
* Functionality and build quality;
* Sustainability;
* Amenity;
* Legibility;
* Safety;
* Community; and
* Aesthetics.

The design principles are established by State Planning Policy 7.0 and are to be considered in each design review. However, these are a set of guiding principles and are not prescriptive in nature. How they are assessed by the Panel will depend in the large to individual perspectives being provided by the Panel members, after which a consensus view is reached.

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

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 26 April 2022 |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director/CEO** | Tony Free–Director Planning & Development/ Bill Parker-CEO |
| **Attachments** | 1. Draft Waratah Precinct Design Response Local Planning Policy 2. Summary of changes – Waratah Precinct Design Response LPP Relationship to SPP 7.3 R-Codes |

**Purpose**

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

**Recommendation**

**That Council:**

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

**Voting Requirement**

Simple Majority

**Executive Summary**

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

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

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

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

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

**Background**

**Built Form Modelling**

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

The built form modelling work included the following deliverables:

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

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

**Community Engagement**

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

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

**Discussion**

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

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

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

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

**Local Planning Strategy**

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

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

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

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

**Local Planning Scheme No. 3**

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

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

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

(a) Protects and enhances local character and amenity;

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

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

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

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

**Residential Zone**

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

**Mixed Use Zone**

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

**Local Centre Zone**

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

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

**Informing Studies**

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

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

**Strategic Intent**

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

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

**Character Statements**

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

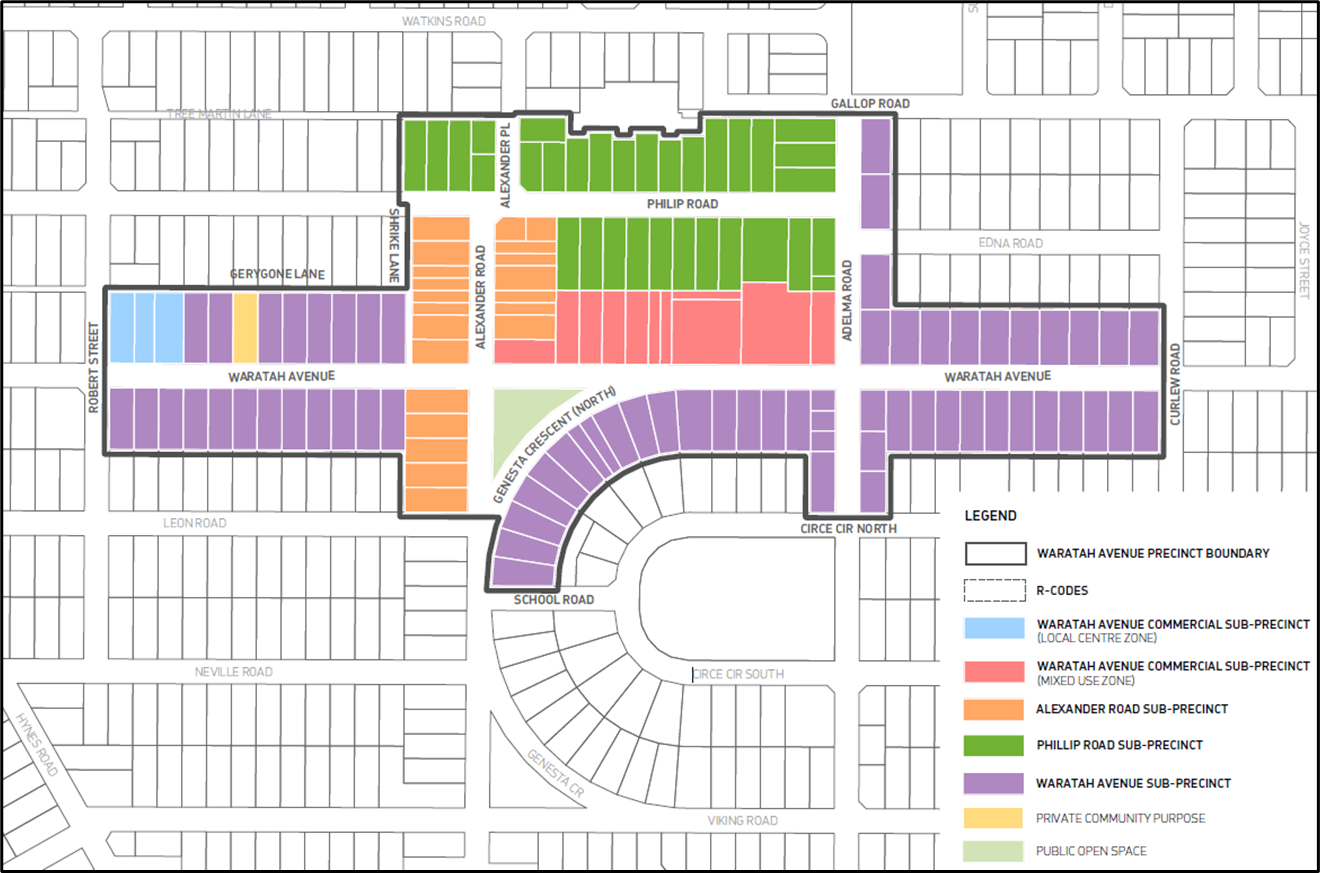
**Sub-Precincts**

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

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

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

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



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

**Policy Scope**

Single House and Grouped Dwellings

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

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

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

**Multiple Dwellings**

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

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

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

**Alexander Road Sub-Precinct**

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

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

**Philip Road Sub-Precinct**

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

**Waratah Avenue Sub-Precinct**

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

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

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

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

**General Provisions**

**Development**

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

**Sustainability**

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

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

**Waratah Village Laneway Requirements Local Planning Policy**

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

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

**Consultation**

**Community Engagement Program**

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

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

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

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

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

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

**Built Form**

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

**Landscaping**

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

**Amenity**

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

**Movement**

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

**Land Use**

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

**Sustainability**

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

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

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

**Survey and Open House**

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

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

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

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

**Community consultation**

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

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

**Strategic Implications**

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

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

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

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

**Reflects Identities**

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

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

Encouraging sustainable building

**Budget/Financial Implications**

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

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

**Legislative and Policy Implications**

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

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

**Decision Implications**

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

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

**Conclusion**

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

**Further Information**

**Question**

Councillor Youngman – page 92 4.2.1 A item 1 general provisions – why 4 green stars not 6?

**Officer Response**

There are three Green Star ratings available:

* 4 star rating reflects best practice environmental performer.
* 5 star rating demonstrates nation excellence
* 6 star rating showcases world leadership

A rating of four stars is well above the industry average and will be contentious for the development community. Anything higher may be seen as unachievable for a mid-rise development.

A four-star rating builds on the minimum expectations to deliver a building that is either net zero carbon in operations or a higher performer in energy, water, and health related issues.

Officers are of the view that applying a four star rating will be an effective benchmark that can be improved over time.

Prior to the Policy being adopted by Council after advertising a discussion paper will be prepared for Council’s consideration on the merits of the 4 star rating versus a different rating (see the alternative officer recommendation)

**Question**

Councillor Mangano – shows 6 storeys whereas existing are only 5 storeys?

**Officer Response**

The R-AC3 density provides an acceptable outcome of 6 storeys. The existing development at 87 Waratah Avenue was approved under the special control area provisions of former Town Planning Scheme No.2. This provided for a building height of 16.5m, equivalent to 5 storeys. The development at 95A Waratah Avenue was approved under the existing R-AC3 density code, which provides an acceptable outcome of 6 storeys. It is noted that 95A Waratah is 5 storeys in height, although this was a decision made by the developer instead of being required to meet a Scheme or R-Code requirement.

Given the Mixed Use R-AC3 zoning of the shopping precinct, a building height outcome of 6 storeys is considered appropriate, particulalry given the properties immediately to the north have an acceptable outcome of 4 storeys (R80).

The Policy requires that the heights meet the two requirements of storeys and height in metres beinbg as follows:

3 storeys – 12 metres

4 storeys – 15 metres

5 storeys – 18 metres

6 storeys – 21 metres

This allows for 4 metres for an adoptable ground level, 3 metres for subsquent levels and 2 metres for roof articulation. The natural ground level is as per the R- Codes.

**Alternative Officer Recommnedation**

**That Council:**

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

# PD23.04.22 Development Assessment Panel Reform

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 26 April 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure**  **under section 5.70**  **Local Government**  **Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director/CEO** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Reform Submission 2. DAP Reforms Overview and Submission Form 3. City of Nedlands Submission on 2022 DAP Changes |

**Purpose**

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

**Recommendation**

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

**Voting Requirement**

Simple Majority.

**Background**

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

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

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

A submission is included at **Attachment 1**.

**Discussion**

**Overview of Proposed Changes**

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

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

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

**Special Matters DAP**

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

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

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

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

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

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

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

**Consultation**

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

**Strategic Implications**

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

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

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

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

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

**Budget/Financial Implications**

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

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

**Legislative and Policy Implications**

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

**Decision Implications**

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

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

**Conclusion**

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

**Further Information**

**Submission Prepared**

A submission has been prepared based on the input provided by Councillors. This is included at **Attachment 3**.

**Question**

Councillor Hodsdon declared financial interest as he owns a property within the area.

**Officer Response**

This is a matter to be considered at the Council meeting.

**Question**

Councillor Smyth - diagram page 212 – can we request limitations?

**Officer Response**

This is the area to be covered by the Special matters DAP. It covers the land zoned R-AC1. It is open to Council to recommendations to this area as part of the council submission.

**Question**

Request for email sent on 30 March requesting Council Member feedback on DAP Reforms by 18 April 2022 be resent to Council Members.

**Officer Response**

The Executive Officer resent the email to Council Members on 12 April 2022 as requested.

**Question**

Councillor Mangano – Can the WALGA representative to be replaced by City of Nedlands Member.

**Officer Response**

This is included in the draft submission at **Attachment 3**.

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

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

|  |  |
| --- | --- |
| **Meeting & Date** | Council – 26 April 2022 |
| **Applicant** | Kidz Galore Pty Ltd |
| **Employee Disclosure under section 5.70 *Local Government Act 1995*** | Nil. |
| **Report Author** | David Thomason – Coordinator Land & Property |
| **Director/CEO** | Michael Cole –Director Corporate Services |
| **Attachments** | 1. CONFIDENTIAL – Kidz Galore New Lease Proposal 2. CONFIDENTIAL – Kidz Galore Lease (Acoustic) Management Plan 3. CONFIDENTIAL – Updated Kidz Galore Lease (Acoustic) Management Plan – 20 April 2022 |

**Purpose**

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

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

**Recommendation**

**Council:**

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

**Voting Requirement**

Simple Majority.

**Background**

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

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

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

**Previous Council Decisions:**

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

**Discussion**

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

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

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

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

**Kidz Galore Current Performance and Proposal**

**Current Performance Under Lease Provisions**

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

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

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

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

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

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

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

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

**Proposal**

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

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

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

**Negotiation of Key Terms and Special Conditions**

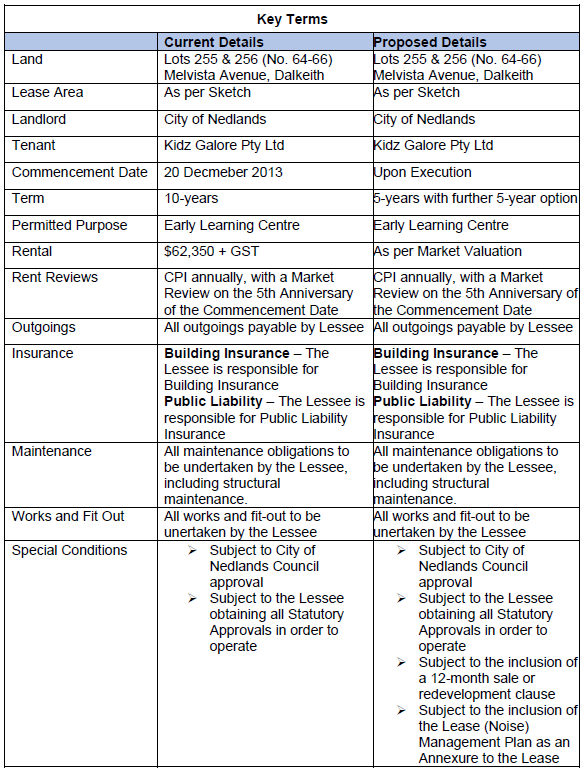
Following receipt of the Kidz Galore Proposal, the City considered the request and noted all details surrounding the Site including the return on investment the arrangement is currently realising, the performance of the tenant under the lease, and also the alleged noise complaints.

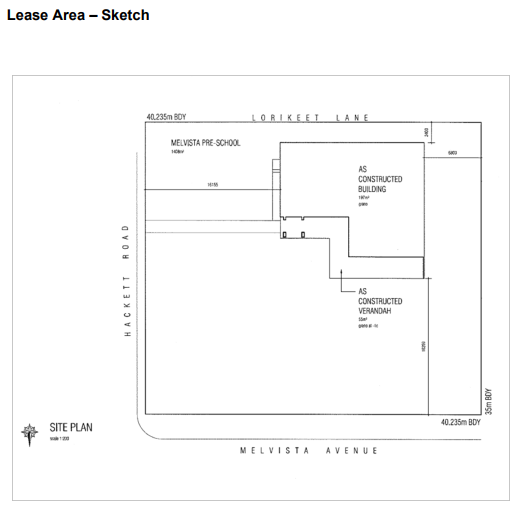
Over the last few months, officers worked with Kidz Galore to negotiate a new lease for the elected members’ consideration.

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

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

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





**Land Investment Strategy**

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

**Consultation**

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

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

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

**Sale of the Site**

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

**Noise Management Plans and Conditions**

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

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

**Relocation of Kidz Galore Service**

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

1. Nedlands Child Health Clinic

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

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

1. College Park Family Centre

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

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

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

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

**Strategic Implications**

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

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

**Budget/Financial Implications**

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

**Legislative and Policy Implications**

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

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

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

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

**Decision Implications**

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

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

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

**Conclusion**

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

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

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

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

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

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

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

**Further Information**

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

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

In addition, the following questions were raised at the Agenda Forum on 12 April 2022.

Question

Councillor McManus – Can the CEO request Kidz Galore supply a copy of the proposed Lease (Acoustic) Management Plan to the adjoining neighbour?

**Officer Response**

Following the concerns raised at the Agenda Forum on 12 April 2022, Kidz Galore have provided an updated Lease (Acoustic) Management Plan (Confidential Attachment 3).

Kidz Galore have provided their consent to the confidential attachment being shared with the adjoining neighbour on a private and confidential basis. However, Kidz Galore have advised the document must remain confidential to all other parties as any further release would unfairly disadvantage Kidz Galore in the event elected members chose to make an alternative resolution to lease the Site via public tender or expressions of interest process.

**Question**

Councillor Coghlan - Can Kidz Galore delay any gardening work and opening of the shed until after 9am?

**Officer Response**

Following the concerns raised at the Agenda Forum on 12 April 2022, Kidz Galore have provided an updated Lease (Acoustic) Management Plan (Confidential Attachment 3).

Points 7, 8 & 9 within section 8.0 of the Lease (Acoustic) Management Plan which state that gardening activities and the opening of sheds will be limited to after 9am.

**Question**

Councillor Coughlan - Is it feasible for Kidz Galore provide a ‘noise free window’ during the day (i.e. midday – 2pm?)

**Officer Response**

Following the concerns raised at the Agenda Forum on 12 April 2022, Kidz Galore have provided an updated Lease (Acoustic) Management Plan (Confidential Attachment 3).

Kidz Galore have advised it is not feasible to guarantee a ‘noise free window’ during the middle of the day and thus, no provision for a ‘noise free window’ has been included within the Lease (Acoustic) Management Plan.

However, within correspondence accompanying the amended Lease (Acoustic) Management Plan, Kidz Galore have advised that whilst they cannot commit to keeping children inside during the middle of the day, they can advise outdoor playtime will be limited on the account of; Quiet Time and Nap Time, Lunch Time and also UV Exposure. The confluence of these factors has resulted in a substantial reduction in outdoor activities.

**Question**

Councillor Amiry - Do we have sufficient childcare south of Stirling Highway?

**Officer Response**

As noted in the ‘Previous Council Decisions’ section of this report, on 22 September 2020, in item CPS21.20, Council considered the sale of the Site and decided to defer any decision, subject to a review of childcare services ‘south of Stirling Highway’.

Unfortunately, on 23 February 2021, as noted in item CPS04.21, the Administration was unable to appoint a consultant with the high level of direct experience and knowledge, deemed necessary to conduct the required review. This resulted in Council approving the deferral of any decision on the Site to be made in line with the Land Investment Strategy. That Strategy will be presented to Council later this year.

**Question**

Mayor Argyle - Are there options to go to the market for this service, rather than approve a new lease?

**Officer Response**

Under section 3.58 of the *Local Government Act 1995*, the City may choose to call a public tender seeking a new tenant for the Site, for a purpose the City deems appropriate.

This is the process the City chose to undertake in 2013 when Kidz Galore were chosen as the preferred tenderer to operate from the Site

**Question**

Mayor Argyle - Can the Administration please advise whether a market valuation for the proposed (or any new lease) will likely result in an increase in rent per annum?

**Officer Response**

As noted in the ‘Budget/Financial Implications’ section of this report, the Site currently generates approximately $62,350 of rental revenue per year, and it is likely that the statutory market valuation will result in the City receiving a similar rate of return should elected members choose to endorse the recommendation as contained within this report.

With regard to a new lease to a new operator, if the purpose of the lease was to remain as childcare, the market valuation would not substantially change. If, however, the Site was leased for a new purpose, the market valuation may change.

**Question**

Councillor Mangano – If a new lease is in place and noise complaints continue, what is the process for investigation of the complaint and what would the repercussions be for the tenant if the complaint is justified?

**Officer Response**

Should the elected group endorse the new lease with the inclusion of Lease (Acoustic) Management Plan, normal property management principles would apply in conjunction with noise complaints process under the *Environmental Protection (Noise) Regulations 1997* (‘Regulations’).

The Lease (Acoustic) Management Plan is over and above what is required under the Regulations and would essentially create an extra layer of information for the proposed tenant to adhere to.

If the neighbours lodged a formal complaint as they have previously, Officers would first refer to the Lease (Acoustic) Management Plan under the lease to determine whether a violation of those terms has occurred. If required, the City could investigate and assess the level of compliance with the Regulations to assist in that determination. If the complaint is deemed valid, then the proposed tenant could be breached under the lease agreement and or dealt with under the Regulations.

# CPS14.04.22 Lease to Heaney Pty Ltd for Portion of Reserve 45054 (Mount Claremont Depot)

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

**Purpose**

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

**Recommendation**

**That Council**

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

**Voting Requirement**

Simple Majority.

**Background**

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

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

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

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

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

**Discussion**

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



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

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



**Key Terms and Special Conditions**

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

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

**Term**

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

**Lease Rental**

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

**Works and Fit-Out**

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

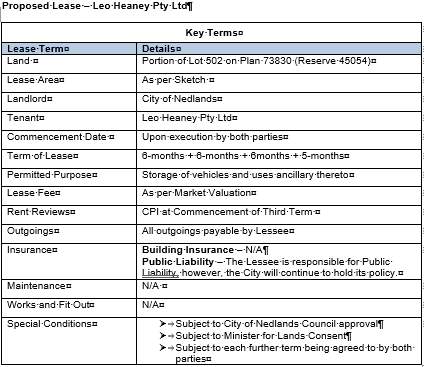
**Subject to the lease being at no-cost to Council**

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

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

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

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



**Consultation**

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

**Planning Services**

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

**Technical Services**

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

**Land & Property**

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

**Strategic Implications**

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

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

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

**Budget/Financial Implications**

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

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

**Legislative and Policy Implications**

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

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

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

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

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

**Decision Implications**

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

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

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

**Conclusion**

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

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

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

**Further Information**

**Question**

Councillor Smyth - What progress has been made on the Resolution of Council dated 23 February 2021 (Item 14.5) regarding the access road to this site in light of the John XXIII College re-development and the apparent use of Crown Land to access their new student car park?

**Officer Response**

Discussions have been held with the Department of Local Government, Sport and Cultural Industries, Western Power and Main Roads. The investigative discussions are ongoing.

**Question**

Councillor Smyth **-** What is the volume of traffic and truck movements expected by Leo Heaney Pty Ltd and the potential egress clashes (student car park) at the intersection of Depot & John XXIII Avenue?

**Officer Response**

Leo Heaney Pty Ltd have advised the Site will be used primarily to store the trucks that are used the least amount (estimated at this time to be 3 or 4 water trucks). However, in the event these trucks need to be utilised, they are generally operated before school hours and would likely be back at the Site prior to school finishing for the day.

As described earlier in this report, Leo Heaney Pty Ltd currently hold contracts with other Local Government entities. As such, they are generally required to undertake works early in the morning and have those works completed by early afternoon before school finishes and community sporting activities take place.

**Question**

Councillor Smyth - Can the Item subject title be extended to include the lease number and reference to the Depot, so that future keyword searches can be effective?

**Officer Response**

The Item Title has been updated to include description of the Reserve and Depot.

# CPS15.04.22 List of Accounts

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 26 April 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil |
| **Report Author** | Purvi Chudasama – Finance Officer (Accounts Payable) |
| **Director/CEO** | Michael Cole - Director Corporate & Strategy |
| **Attachments** | 1. Creditor Payment Listing – March 2022; and 2. Credit Card and Purchasing Card Payments March2022 |

**Purpose**

The purpose of this report is to present list of accounts paid for the month of March 2022

**Recommendation**

**Council receives the List of Accounts Paid for the month of March 2022 as per attachments.**

**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 Financial Accounting and the Manager Financial Services (or designated alternative officers).

**Consultation**

Not applicable

**Strategic Implications**

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

**Values** **High standard of services**

We have local services delivered to a high standard that take the needs of our diverse community into account. The 2021/22 budget was prepared in line with the City’s level of tolerance of risk and it is managed through budgetary review and control. All relevant information has been provided in this report and through the attachments.

**Priority Area**

* Urban form - protecting our quality living environment
* Renewal of community infrastructure such as roads, footpaths, community and sports facilities
* Underground power
* Encouraging sustainable building
* Retaining remnant bushland and cultural heritage
* Providing for sport and recreation
* Managing parking
* Working with neighboring Councils to achieve the best outcomes for the western suburbs as a whole

**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 Administration is required to present the List of Accounts Paid for the month of March 2022 to Council.

**Decision Implications**

This does not have any impact upon the rates.

**Conclusion**

The List of Accounts Paid for the months of March 2022 complies with the relevant legislation and can be received by Council.

**Further Information**

Nil.

# 17.4 CPS16.04.22 Monthly Financial Report

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 26 April 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Hassan Shiblee – Coordinator Financial Accounting |
| **Director/CEO** | Michael Cole – Director Corporate Services |
| **Attachments** | 1. Financial Summary (Operating) by Business Units – 31 March 2022 2. Capital Works & Acquisitions – 31 March 2022 3. Statement of Net Current Assets – 31 March 2022 4. Statement of Financial Activity – 31 March 2022 5. Borrowings – 31 March 2022 6. Statement of Financial Position – 31 March 2022 7. Operating Income & Expenditure by Reporting Activity – 31 March 2022 8. Operating Income by Reporting Nature & Type – 31 March 2022 |

**Purpose**

Administration is required to provide Council with a monthly financial report in accordance with Regulation 34(1) of the Local Government (Financial Management) Regulations 1996. The monthly financial variance from the budget of each business unit is reviewed with the respective manager and the Executive to identify the need for any remedial action. Significant variances are highlighted to Council in the attached Monthly Financial Report.

**Recommendation**

**That Council approve the Monthly Financial Report for 31 March 2022.**

**Voting Requirement**

Simple Majority.

**Background**

Nil.

**Discussion**

The monthly financial management report meets the requirements of Regulation 34(1) and 34(5) of the Local Government (Financial Management) Regulations 1996.

This report gives an overview of the revenue and expenses of the City for the year-to-date 31 March 2022 together with a Statement of Net Current Assets as at 31 March 2022.

The operating revenue at the end of March 2022 was $33.95m which represents $763k favourable variance compared to the year-to-date budget.

The operating expense at the end of March 2022 was $25.92m, which represents $2.75m favourable variance compared to the year-to-date budget.

The attached Operating Statement compares “Actual” with “Budget” by Business Units. The budget figures include subsequent Council approval to budget changes. Variations from the budget of revenue and expenses by Directorates are highlighted in the following paragraphs.

**Governance**

Expenditure: Favourable variance of $ 403,335

Revenue: Favourable Variance of $ 909

The favourable expenditure variances are mainly due to:

* + - Governance and HR Professional fees, Special projects and Other Employee Costs of $368k not spent.
    - Communication Office Expenses of 32k not spent.

The favourable revenue variance of $1k is due to leased property ESL payment.

**Corporate and Strategy**

Expenditure: Favourable variance of $ 598,589

Revenue: Favourable variance of $ 185,258

The favourable expenditure variances are mainly due to:

* + - Corporate Services and ICT Professional fees of $374k not spent.
    - Corporate services ICT expenses of $80k not expensed yet,
    - ICT and Land and Property Salaries expenses of $150k not spent due to delay in filling current vacancy.
    - Offset by Land and Property Special Projects expenses of $12k over spent.

The favourable revenue variance is mainly due to:

* + - Higher income from rates collected of $193k.
    - Higher General Purpose Grants Operating of $27k.
    - Offset by Lower General Purpose Interest of $44k.

**Community Development and Services**

Expenditure: Favourable variance of $ 224,614

Revenue: Favourable variance of $ 484,530

The favourable expenditure variances are mainly due to:

* + - NCC, PRCC and Library salaries of $246k not spent yet, which is expected to be in line with the budget by year end.
    - Nedlands Library Other Expenses and ICT Expenses of $52k not spent.
    - Offset by Community Development Salaries of $57k over spent.
    - Offset by Tresillian and Positive Aging Salaries of $23k over spent.

The favourable income variance is mainly due to:

* + - Increased Tresillian and PRCC fees & charges of $257k.
    - Grants Operating Income for NCC of $263k.
    - Offset by Community Facilities Council Property Income of $40k less.

**Planning and Development**

Expenditure: Favourable variance of $ 1,065,951

Revenue: Unfavourable variance of $ (188,030)

The favourable expenditure variances are mainly due to:

* + - Urban Planning office, professional fees and projects expenses of $422k not spent yet.
    - Urban Planning and Environmental Health salary of $233k not expensed yet due to delay in filling current vacancy.
    - Environmental operation activities of $374k not spent.
    - Ranger Motor Vehicles, Finance and Other Expense of $35k not spent.

The unfavourable revenue variance is mainly due to:

* + - Lower fees & charges and Fines & Penalties from building services of $134k.
    - Lower fees & charges and Fines & Penalties from Town Planning Admin of $75k.
    - Offset by Higher fees & charges from Environmental Health of $21k.

**Technical Services**

Expenditure: Favourable variance of $ 455,573

Revenue: Favourable variance of $ 280,205

The favourable expenditure variance is mainly due to:

* + - Maintenance Parks of $463k not expensed yet.
    - Offset by Salaries Expense from Buildings Maintenance of $12k.

The favourable revenue variance is mainly due to:

* + - Increased income from payments from Suez and waste fees & charges of $74k.
    - Direct grants payment from Main roads of $75k.
    - Sundry Income from Parks Services of $65k
    - Contributions & Reimbursement of $48k from Building Maintenance received.
    - Contributions & Reimbursement of $17k from Streets Roads & Depots received.

**Borrowings**

As at 31 March 2022, we have a balance of borrowings of $300k.

**Net Current Assets Statement**

At 31 March 2022, net current assets were $13.63m compared to $12.39m as at 31 March 2021.Current assets increased by $4.81m compared to 31 March 2021 offset by increased current liabilities of $3.88m.

Outstanding rates debtors are $2.2m as at 31 March 2022 compared to $1.57m as at 31 March 2021. Breakdown as follows:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **31 March 2022**  **($000)** | **31 March 2021**  **($000)** | **Variance**  **($000)** |
| **Rates** | $1,645 | $ 980 | $665 |
| **Rubbish & Pool** | $ 82 | $ 78 | $ 4 |
| **Pensioner Rebates** | $ 391 | $ 427 | ($ 36) |
| **ESL** | $ 74 | $ 80 | ($ 6) |
| **Other Service Charges** | $ 4 | $ 4 | $ 0 |
| **Total** | $2,196 | $1,569 | $627 |

**Capital Works Program**

As at 31 March, expenditure on capital works was $2.47m with additional capital commitments of $0.86m which represents 37% of a total budget of $8.91m.

**Employee Data**

|  |  |
| --- | --- |
| **Description** | **Number** |
| Number of employees (total of full-time, part-time and casual employees) as of the last day of the previous month | 185 |
| Number of contract employees (temporary/agency) as of the last day of the previous month | 5 |
| \*Occupied FTE (Full Time Equivalent) count as of the last day of the previous month | 158.85 |
| Number of unfilled employee positions at the end of each month | 23 |

There was a reduction in vacant positions and a corresponding increase in occupied FTE by 5.5 and an increase in total number of employees (all employees) by 7 to 185.

**Consultation**

N/A

**Strategic Implications**

The 2021/22 approved budget is in line with the City’s strategic direction. Our operations and capital spend, and income is undertaken in line with and measured against the budget.

The 2021/22 approved budget ensures that there is an equitable distribution of benefits in the community.

The 2021/22 budget was prepared in line with the City’s level of tolerance of risk and it is managed through budgetary review and control.

The approved budget was based on zero based budgeting concept which requires all income and expenses to be thoroughly reviewed against data and information available to perform the City’s services at a sustainable level.

**Budget/Financial Implications**

As outlined in the Monthly Financial Report.

**Legislative and Policy Implications**

N/A

**Decision Implications**

Nil.

**Conclusion**

The statement of financial activity for the period ended 31 March 2022 indicates that operating expenses are under the year-to-date budget by 9.59% or $2,748k, and revenue is over the budget by 2.30% or $763k.

**Further Information**

Nil.

# 17.5 CPS17.04.22 Monthly Investment Report

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 26 April 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil |
| **Report Author** | Hassan Shiblee – Coordinator Financial Accounting |
| **Director/CEO** | Michael Cole – Director Corporate Services |
| **Attachments** | 1. Investment Report for the period ended 31 March 2022 |

**Purpose**

In accordance with the Council’s Investment Policy, Administration is required to present a summary of investments to Council on a monthly basis.

**Recommendation**

**That Council approve the Investment Report for the period ended 31 March 2022.**

**Voting Requirement**

Simple Majority.

**Background**

Nil.

**Discussion**

Council’s Investment of Funds report meets the requirements of Section 6.14 of the Local Government Act 1995.

The Investment Policy is structured to minimise any risks associated with the City’s cash investments. The officers adhere to this Policy, and continuously monitor market conditions to ensure that the City obtains attractive and optimum yields without compromising on risk management.

The Investment Summary shows that as at 31 March 2022 and 31 March 2021 the City held the following funds in investments:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | | **31-Mar-2022** | | | **31-Mar-2021** | |
| **Municipal Funds** | | $ 15,485,848 | | | $ 6,111,879 | |
| **Reserve Funds** | | $ 5,328,730 | | | $ 7,560,781 | |
| **Total investments** | | $ 20,814,578 | | | $ 13,672,660 | |
|  | |  |  | |

The City has $2.3m in a Westpac online saver account which returns an interest rate of 0.40% per annum. As this rate is higher than the rates quoted for the term deposits as of end March, the surplus cash is maintained in the Westpac online saver account.

The total interest earned from investments as at 31 March 2022 was $32,002.

The Investment Portfolio comprises holdings in the following institutions:

|  |  |  |  |
| --- | --- | --- | --- |
| **Financial Institution** | **Funds Invested** | **Interest Rate** | **Proportion of Portfolio** |
| NAB | $6,976,687 | 0.27% - 0.36% | 33.52% |
| Westpac | $5,002,092 | 0.26% - 1.05% | 24.03% |
| ANZ | $2,189,075 | 0.05%- 0.15% | 10.52% |
| CBA | $6,646,724 | 0.17% - 0.33% | 31.93% |
| **Total** | **$20,814,578** |  | **100.00%** |

**Consultation**

N/A

**Strategic Implications**

The investment of surplus funds in the 2021/22 approved budget is in line with the City’s strategic direction.

The 2021/22 approved budget ensured that there is an equitable distribution of benefits in the community.

The 2021/22 budget was prepared in line with the City’s level of tolerance of risk and it is managed through budgetary review and control.

The interest income on investment in the 2021/22 approved budget was based on economic and financial data available at the time of preparation of the budget.

**Budget/Financial Implications**

The Mar YTD Actual interest income from investments is $32,002 compared to the YTD Feb Budget of $31,500.

**Legislative and Policy Implications**

N/A

**Decision Implications**

N/A

**Conclusion**

The Investment Report is presented to Council.

**Further Information**

N/A

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

# Councillor Mangano – Tawarri Site

On the 31 March 2022 Councillor Mangano gave notice of his intention to move the following motion.

That Council directs the CEO to immediately complete the following at the Tawarri Site:

* + 1. **make the building secure;**
    2. **clear all overgrown vegetation including any trees whose roots are damaging the building;**
    3. **remove all graffiti;**
    4. **remove the ineffective temporary fence; and**
    5. **install surveillance camera(s) on the site.**

Administration Comment

Since the Council decision to not proceed with the Major Land Transaction, the administration has:

1. Secured damaged windows and doors.
2. Straightened, retightened and moved the fence further away from the building. The fence has also been moved to block access to the park.

Temporary security cameras can be arranged at a cost of $660/month plus delivery per unit.

# Councillor Mangano - Tawarri Recommissioning Committee

On the 31 March 2022 Councillor Mangano gave notice of his intention to move the following motion.

A Tawarri Recommissioning Committee to be established to drive the process to recommission the building as follows:

1. Councillors to visit the site immediately

2. Obtain a report from an independent qualified person as to the condition of the building

3. Recommend which outbuildings shall be demolished

4. Recommend what maintenance works need to be completed (windows, doors, painting, plumbing, electrical, landscaping etc)

5. Commence the process to seek EOI from suitable operators to operate the site as a café, and be in operation no later than 30 November 2022.

Administration comment

In accordance with section 5.8 of the *Local Government Act 1995,* to establish a Committee requires an absolute majority decision of Council. Members of the Committee also need to be appointed by absolute majority.

The City organised a site visit for Council Members on Thursday 7th April 2022. Therefore, part one of this notice of motion has already been actioned.

In terms of the other components, the City received correspondence from the Minister for Housing, Lands, Homelessness and Local Government on 20th April 2022 indicating that the Department has proceeded to lodge documents at Landgate to excise the required land from the reserve and commence discussions with Tawarri Hot Springs Pty Ltd in regard to a direct lease agreement.

There is a risk that any building condition report and subsequent maintenance to the existing facility will become redundant should the facility be demolished.

**Recommended Alternative Wording**

**That Council:**

* + - 1. **establish a Tawarri Recommissioning Committee to drive the process to recommission the building and oversee the following:**
  1. **Obtain a report from an independent qualified person as to the condition of the building and recommend:**
     1. **which outbuildings shall be demolished**
     2. **what maintenance works need to be completed (windows, doors, painting, plumbing, electrical, landscaping etc)**
  2. **Commence the process to seek EOI from suitable operators to operate the site as a café and be in operation no later than 30 November 2022.**
     + 1. **appoint the following members to the Tawarri Recommissioning Committee**

1. **(insert name)**
2. **(insert name)**
3. **(insert name)**
4. **(insert name)**
5. **(insert name)**
   * + 1. **appoints the following deputy members to the Tawarri Recommissioning Committee:**
6. **(insert name)**
7. **(insert name)**
8. **(insert name)**
9. **(insert name)**
10. **(insert name)**

# Councillor Youngman – Development of a Reconciliation Action Plan

On the 4 April 2022 Councillor Youngman gave notice of his intention to move the following motion:

**That Council requests the Chief Executive Officer prepare a report for Council consideration on developing a Reconciliation Action Plan.**

Justification

According to Reconciliation Australia (RA), reconciliation is not a single issue or an agenda. Based on international research and benchmarking, RA defines and measures reconciliation through five critical dimensions: race relations; equality and equity, institutional integrity; unity; and historical acceptance.   All sections of our community— governments, civil society, the private sector, and Aboriginal and Torres Strait Islander communities—have a role to play in progressing these dimensions.

When I served on the Town of Vincent Council, going back to 2007, the Aboriginal Flag was proudly flown outside the Council Chambers.  This flag, with colours representing the Aboriginal people of Australia and their connection to the land, was first raised in Australia on *9 July 1971* and is now flown in front of most important institutions around Australia and importantly locally at the University of Western Australia and the QEII Medical Centre.  The State Parliament of Western Australia has flown the Aboriginal flag for many years.  Recently, young Aboriginal woman Cheree Toka won a five-year campaign to get the Aboriginal flag flown permanently on the Sydney Harbour Bridge.

The Aboriginal Flag serves as a reminder that we are a nation of many and that our history is far longer than the beginning of colonisation.

Australia as a nation is stronger because of participation by Aboriginal and Torres Strait Islander people in war, politics, sport, law and many other areas of our society important to our identity as Australians.  This should be celebrated.

Other Local Government Authorities in our area are keen to start a Reconciliation Action Plan and the City of Nedlands has the opportunity to join in the process to spread this further throughout the Western Suburbs of Perth.

We can only create a community where everyone can be healthy, happy and thriving if we listen and acknowledge the truth of our past and our present.

Tackling racism is a multi-faceted, multi-cultural project.  We all have obstacles to overcome and as the multicultural aspects of Australian society expands, so do our acceptances of peoples differences.  It is important that no-one is left behind in our society and that Aboriginal and Torres Strait Islander people are acknowledged for their unique cultural differences as well as their intrinsic similarities to everyone else in this country. Together, we can all be part of the important work of truth-telling and reconciliation, including through a Reconciliation Action Plan that includes proudly flying the Aboriginal flag at our Council and acknowledging the Traditional Owners of the City of Nedlands area before every Council Meeting, Forum and Function.

Aboriginal and Torres Strait Islander people have lived on the islands and island continent now known as Australia for more than 60,000 years, but understanding and acknowledging their position as the traditional custodians of this land and knowledge holders has not always been handled well. Through listening, learning and walking together we can take pride in sharing 60,000 years of knowledge, experience and connection to the land.

Australia has matured.  As a nation we continue to work together to acknowledge, understand and heal the wrongs of the past.  British colonisation and subsequent Australian land laws were established on the claim that Australia was terra nullius (land belonging to no one).   This was used to justify acquisition by British occupation without treaty or payment.  The Mabo Treaty saw this concept thrown out by the High Court of Australia on 3 June 1992 yet reconciliation has not yet found its way into all of Australia. The Uluru Statement from the Heart was yet another call to action from Aboriginal people around the country for meaningful change and truth telling.

Here in WA, we are lucky to live and work on beautiful Whadjuk Noongar boodja. And yet, today, Aboriginal and Torres Strait Islander people in our community still suffer injustices that have been in place since colonisation - like extreme poverty, lack of housing, family violence, gaps in health, continued child removal, over-incarceration and deaths in custody. But we have the opportunity to be part of the change to back First Nations people and together, to build a better future.

The City of Nedlands has been criticised in the past for not wanting to fly the Aboriginal flag or acknowledge tradition ownership of land.  The perception that the Council was racist is difficult to hear and not openly demonstrated by the current Council, but should serve as a lesson that we need to work harder in this space.  We all need to learn and be reminded just how important it is to be a nation inclusive to all.

To quote Karen Mundine, the Chief Executive Officer of Reconciliation Australia:

* Over 1,000 dedicated corporate, government, and not-for-profit organisations have formally committed to reconciliation through the Reconciliation Action Plan (RAP) program since its inception in 2006.
* RAP organisations across Australia are turning good intentions into positive actions, helping to build higher trust, lower prejudice, and increase pride in Aboriginal and Torres Strait Islander cultures.

Every step forward we take together uplifts, heals and frees us all, for a better future.

# Councillor Mangano – Guttering and Downpipe Replacement – Nedlands Child Health Centre

On the 7 April 2022 Councillor Mangano gave notice of his intention to move the following motion:

That Council instruct the Chief Executive Officer to replace all guttering and downpipes at Nedlands Child Health Centre.

Justification

The gutters are completely rusted out and falling of the building. It has been like this for many years. Winter is coming, and damage to the building and its foundations will occur if this is not rectified immediately.

Administration Comment

This project that includes a new roof and gutters for the Child Health Centre has been scoped. This will inform the 2022/23 budget process with the work to commence as soon as possible after the budget is adopted. As the roof will need to be removed, timing also be weather and contractor availability dependent.

# Councillor Hodsdon – Hollywood Reserve

On the 11 April 2022 Councillor Hodsdon gave notice of his intention to move the following at this meeting:

**Council directs that prior to remediation work being undertaken on the fire damaged areas of the Hollywood Bushland reserve the CEO organise:**

1. **That an independent , external review of the Hollywood reserve that will include assessment of its current state and provide recommendations on how to enhance , maintain and manage this reserve. The person should be a qualified scientist or botanist by the city with Council approval;**
2. **Following the submission of the review, it will be open to the community for comment; and**
3. **The whole process should be submitted to council no later than Friday 16th December 2022.**

Justification

The fire in this native area took out more than a hectare of trees and plants. It is hoped that from this disastrous set of events that we take the opportunity to step back and evaluate how we manage, support the community, and evaluate the uses of this area. From this sad set of events, it is hoped that we can regenerate and revitalise the area with climate change and limited water use in mind.

Administration Comment

Hollywood Reserve has had management plans since 2001, with the most recent one having been prepared in 2019,  which included a botanist to survey and review the bushland condition and environmental weeds across the site. Hollywood Reserve is being managed for the purposes of conservation and biodiversity protection.

After a fire the Hollywood Reserve Management Plan identifies key Fire Management Actions that include monitoring seed germination, regeneration of vegetation for two years following a fire, carry out extensive weed control for native species recolonisation to maximise native species establishments.

It is likely that a new or revised management plan is not required as actions required after a fire are clearly established in the current management plan. The City will continue with remediation works (extensive weed control) to promote re-sprouting and increased seed germination otherwise the bushland condition can decline following unplanned fires. As such, its planned that the City with support from the Friends of Hollywood Reserve will be coordinating weeding activities now and for the next few years in the burnt zone to assist natural regeneration and to ensure the improvement in bushland condition and biodiversity in the burnt zone.

Officers estimate an independent review will cost approximately $50-60,000.

The best approach is considered to be for the City to continue managing the reserve as per the management plans, Council policy and appropriate service levels linked to the budget.

It is recommended by officers that a Discussion Paper be prepared and presented at a Concept Forum outlining the background information on how this reserve is being managed, the costs associated with this level of service and the impacts of the fire and how the management plan allows the management of the reserve to respond after an unplanned fire.

**Recommended Alternative Wording**

**That Council request that the Chief Executive Officer prepare a Discussion Paper for presentation at a Concept Forum outlining the options open to Council with respect to the future management of the reserve and the associated costs.**

# Councillor Bennett – Aberdare Road Greenway, Safe Path and Long Term Cycle Network Link

On the 14 April 2022 Councillor Bennett gave notice of his intention to move the following at this meeting:

**Council decides that the CEO will prepare a report outlining possible grants and funding contributions, including compensation to impacted landowners, to create a Greenway with a Long Term Cycle Network link between QEII Medical Centre and Karrakatta Train Station that utilises the remainder of the 9m land annexation defined in the City of Nedlands Local Laws for Aberdare Road, so that a safe cycle and pedestrian route shaded by urban tree canopy can be realised.**

Justification

A Long-Term Cycle Network path along Aberdare road will encourage greater use of public transport as a mode of transport to arrive at various hospital campuses on Aberdare road.

This hospital and medical precinct already experiences traffic and car parking problems and improved shared use paths will alleviate these problems by enabling a safe and direct path to arrive via other modes of transport such as cycling or walking from the Karakatta train station.

This link will also connect Primary Cycle Paths that run adjacent to the train line with the extensive King's Park cycle network increasing accessibility to a much-enjoyed parkland and major Perth tourism attraction.

Historical crime events in the area have caused apprehension about walking or riding in this area so a clearly defined, well surveilled, well-lit and well-maintained shared path set amongst attractive greenspace will alleviate lingering fears.

The shared path should allow for casual commuter cycling and pedestrians to traverse the short distance between King's Park, the medical district and Karakatta train station with adjacent Primary Cycle Path.

The greenway will ensure a high amenity and well shaded path while also supporting local ecology by connecting King's Park with established wooded areas at Karakatta cemetary and nearby reserves.

This link can also form the beginning stages of a direct path link to Swanbourne beach from King's Park further increasing the appeal to local residents, visitors and tourists alike. There are also opportunities to connect into the future School Sports Circuit.

If this Long-Term Cycle Network is appropriately promoted it should attract funding from numerous sources due to the high profile and great importance of the QEII medical precinct.

If only 4m is annexed for future Aberdare Road widening, there will be insufficient space for a viable shared use path nor room for significant tree plantings to maintain and improve the tree canopy vital for the greenway link in an increasingly urbanised area.

If Development Applications are approved in disregard for the required 9m annexation, then the greenway link and shared use path will no longer be viable.

Administration Comment

A report is expected to be presented to Council in May when Council will be asked to consider the future of the Aberdare Road By-Law from 1978. If Council is to continue with that By-Law, Council needs to understand that it is likely to be given little weight in planning decisions.

Council should also understand that if Council wishes to obtain the additional land for landowners, this funding will need to come from the City of Nedlands. The opportunities for funding from other sources to be provided to the City of Nedlands to purchase land based on a 1978 By-Law are likely to very limited.

The future design of Aberdare Road should incorporate multiply forms of transport, it certainty is important that the City of Nedlands engages with the State Government on the design. The City’s Integrated Transport Study and the plans for the expansion of the QE11 precinct are appropriate starting points. It would not be unreasonable to expect that the road design would incorporate appropriate pedestrian and cycling paths, with appropriate tree provision.

# Councillor Bennett – Nedlands Heritage Listings and Heritage Precincts

On the 14 April 2022 Councillor Bennett gave notice of his intention to move the following at this meeting:

**Council decides:**

1. **the CEO will prepare applications for both state and federal heritage listing of the following significant Nedlands heritage sites completed for submission ready for Council approval by the June Ordinary Council Meeting 2022.**

**a. The Nedlands Baths and associated Nedlands Jetty, more recently known as JoJo's Cafe and Aqua Viva Reception Venue**

**b. The Tawarri Reception Centre**

**c. Peace Memorial Rose Gardens**

**d. Windsor Theatre**

**e. Captain Stirling Hotel**

1. **the CEO will prepare applications for both state and federal heritage listing of a Nedlands foreshore heritage precinct comprising but not limited to the following sites significant to Nedlands completed for submission ready for Council approval by the June Ordinary Council Meeting 2022.**

**a. Nedlands foreshore comprising the foreshore lands, intertidal areas and shallows both within the City of Nedlands local government area boundary and directly adjoining the boundary within the Swan river.**

**b. The Nedlands Jetty**

**c. The Nedlands Baths**

**d. Charles Court Reserve and playing fields**

**e. Birdwood Bushland Reserve**

**f. Nedlands Tennis Club**

**g. Memorial Gun in Birdwood Park**

**h. Nedlands War Memorial**

**i. Sunset Heritage Precinct and adjoining foreshore reserve**

**j. Tawarri Reception Centre**

**k. Point Resolution Bushland and Reserve**

**l. Paul Hasluck Reserve**

**m. Bishop Road Bushland and Reserve**

**n. Jo Wheatley All Abilities Play Space**

**o. Beaton Park**

**p. Gallop House**

**q. Melvista Park Reserve**

**r. David Cruikshank Reserve**

**s. Nedlands Park Hotel**

1. **The CEO and Mayor will invite the Town of Claremont and City of Perth to consider forming complimentary foreshore Heritage precincts in the vicinity of Claremont Bay and Matilda Bay respectively, noting the shared heritage with the City of Nedlands.**
2. **The CEO will propose residential heritage precincts valid for assessment in planning proposals based on the findings of recent City of Nedlands character and built form studies and guided by the extensive research and recommendations within the Palassis Report 2014 - Municipal Inventory Review.**
3. **The CEO will ensure the City of Nedlands will give notice of these proposed heritage sites and heritage precincts seeking public comment with a notice in the POST newspaper and a comment period of at least four weeks utilising the Nedlands YourVoice website seeking comment on Nedlands Heritage according to state planning guideline and the following criteria as explained in the federal government guide to heritage listing in Australia;**

**Criteria for identifying heritage significance taking into account aesthetic, historic, scientific, social or other special values to all generations.**

* + - Importance to the course, or pattern, of our cultural or natural history.
    - Possession of uncommon, rare or endangered aspects of our cultural or natural history.
    - Potential to yield information that will contribute to an understanding of our cultural or natural history.
    - Importance in demonstrating the principal characteristics of a class of cultural or natural places or environments.
    - Importance in exhibiting particular aesthetic characteristics. Importance in demonstrating a high degree of creative or technical achievement at a particular period.
    - Strong or special association with a particular community or cultural group for social, cultural or spiritual reasons.This includes the significance of a place to Indigenous peoples as part of their continuing and developing cultural traditions.
    - Special association with the life or works of a person, or group of persons, of importance in our history.

Justification

A guide to heritage listing in Australia (attachment 1) and link to this document is also provided below:

<https://www.nedlands.wa.gov.au/sites/default/files/Palassis%20Report%202014%20%E2%80%93%20Municipal%20Inventory%20Review.pdf>

Administration Comment.

Background Information

Within Australia, heritage is generally classified under four tiers of significance:

* + - World Heritage List
    - National and Commonwealth Heritage List
    - State Heritage List
    - Local Government List

National Heritage List

The National List is a list of places that are of outstanding heritage value to the nation. Whilst anyone can nominate a place for the National List the threshold is that the place must be important to the Australian community as a whole. This is done through comparisons with other places. Generally, when preparing heritage assessments for consideration for the State Register this process provides a good indication if a place presents as an item likely to be of outstanding heritage value to the nation.

State Heritage List

These are places of special interest in the broader context of Western Australia. They must have some important significance to Western Australia in its widest sense (rather than just a locally important place).

Local Government Heritage List

Local governments are responsible for reviewing their Town Planning Schemes and formulating Local Planning Policies to ensure their heritage assets within their jurisdiction are conserved for future generations. Entry of a place into this Local Heritage Survey is recognition of the place’s heritage significance to the community. The Survey is to be forwarded to the Heritage Council of Western Australia for public information. Under the Planning and Development (Local Planning Schemes) Regulations 2015 – Schedule 2 Deemed Provisions, a local government must establish and maintain a Heritage List to identify places within the Scheme area that are of cultural heritage significance and worthy of built heritage conservation.

City of Nedlands Current Situation

Currently beyond the sites listed on the State Heritage Register (totally 18) which include Gallop House, Sunset Hospital, Nedlands War Memorial, the Memorial Rose Garden and the Capital Stirling Hotel, the only other sites protected by the City’s Local Planning Scheme are the Director’s house (fmr) and gardens (Grainger Drive in Mount Claremont) and Irwin Barracks.

Local Heritage Survey

A Local Heritage Survey identifies local heritage places in a systematic manner and provides base cultural and historic information for the community and the local government.

Heritage Surveys assist local governments to develop local conservation policies and provide information to develop a Heritage List as required by the Planning and Development (Local Planning Schemes) Regulations 2015 [the 'Deemed Provisions'].

Section (104) of the Heritage Act 2018 states that:

The purposes of a local heritage survey by a local government include:

(a) identifying and recording places that are, or may become, of cultural heritage significance in its district;

(b) assisting the local government in making and implementing decisions that are in harmony with cultural heritage values;

(c) providing a cultural and historical record of its district;

(d) providing an accessible public record of places of cultural heritage significance to its district; and

(e) assisting the local government in preparing a heritage list or list of heritage areas under a local planning scheme.

The 'Guidelines for Local Heritage Surveys' states that:

* + - Each local government should adopt a process for the periodic update of place records to reflect administrative changes, approved works, or other information that does not impact on the cultural heritage value of the place.
    - Provision should be made for the ad hoc creation or review of one or more place records, including the commissioning of a heritage assessment where required, independent of a review.
    - A review should ensure that the Local Heritage Surveys reflects the current understanding and opinion of local government and its community, and that the Local Heritage Surveys  meets current standards.
    - A review should take place at intervals consistent with the major review of a local planning strategy or strategic community plan.

  Suggested Approach

The financial cost of the proposed Notice of Motion is likely to be in excess of $100,000.

It would be appropriate for Council to consider the merits of preparing a Local Heritage Survey and the potential incorporation of the findings into the policy work, currently being undertaken for Broadway, Hollywood Hampden and Stirling Highway, in additional to the overall benefits of having such a survey undertaken to identify and assist in the protection of the local Nedlands heritage.

There will be implications of such work, including budgetary, potential preservation of the Nedlands character, and implications for individual landowners amongst others. This would be most appropriately outlined in a Discussion Paper to be prepared for presentation at a Concept Forum prior to the presentation to Council of a proposal to incorporate heritage considerations more directly into the local planning considerations in Nedlands.

**Alternative Wording**

**That Council requests that the Chief Executive Officer prepare a Discussion Paper for presentation at a Concept Forum outlining Council’s obligations with respect to heritage under the Planning Framework, ahead of a report to Council on the matter.**

# Mayor Argyle – Protection of Trees on Private Property

On the 14 April 2022 Mayor Argyle gave notice of her intention to move the following motion at this meeting.

**Council requests the Chief Executive Officer to a provide a Discussion Paper to be presented at a Concept forum ahead of a report to Council for the purpose of preparing an amendment to Local Planning Scheme No. 3 to require development approval for the removal of trees that meet certain criteria on lots of a coding of R80 or less.**

Administration Comment

On Thursday 26 May, at the proposed Concept Forum, officers proposed to present to the Councillors, a discussion paper based on the Council resolution of December 2021 (relating to the requirement to obtain development approval for the removal of certain trees on lots zoned R20 or less), ahead of a report to Council in June, to consider initiating an Amendment to the Local Planning Scheme.

Officers consider it wise that this approach be followed before any consideration of suggesting an Amendment to include lots up to R80 in a Scheme Amendment is considered. An amendment of the nature proposed (to include lots beyond the R20), may well provide to be counter productive. It may well be the case that if the lots beyond the R20 are included, that this approach may be seen by the WAPC in a very different light to what Council resolved in December.

If the desire is to protect trees on private property, it is recommended that Council not proceed with any proposal to increase the lots which are affected by the proposed amendment before Council has considered the current proposal in June.

# Mayor Argyle – Nedlands Library

On the 14 April 2022 Mayor Argyle gave notice of her intention to move the following motion at this meeting.

**That Council instructs the Chief Executive Officer to immediately progress the following works at the Nedlands Library:**

* 1. **Clean up of the front garden, with the large trees all to remain, but bushes, are to be cut down, so the building is in view;**

* 1. **Windows to be cleaned;**

* 1. **Building is to be cleaned;**

* 1. **A light is to be placed on the City of Nedlands sign, which is on the left hand side of the building; and**
  2. **Consider the Nedlands Library as a possible site for the Sculpture by the Sea Sculpture.**

Justification

The Nedlands Library and the Council Chamber as well as the Maisonettes, are the landmark gateway to our city.

These buildings are a representation of our city and must be a reflection of our fine community.

Administration Comment

The increased level of service will be included in the budget for the Library moving forward and the landscaping, window cleaning and tidy up will commence as soon as possible.

Building Maintenance will install a light to illuminate the Library sign.

# Mayor Argyle – Nedlands Nature Walk

On the 14 April 2022 Mayor Argyle gave notice of her intention to move the following motion at this meeting.

**Council:**

1. **endorses a move towards a Nedlands Nature Walk, similar to the Park Connector Network in Singapore; and**

1. **requests the Chief Executive Officer list the following tree plantings for consideration in the draft 2022/23 annual budget:**
   1. **At Mason’s Gardens, a collection of trees to replace the fallen;**
   2. **One tree at the City of Nedlands Library, to mark the importance of life-long learning and education; and**
   3. **One tree at Tawarri, to mark the retention of an A class Reserve for the community.**

Justification

The proposed Nedlands Nature Walk, similar to the Park Connector Network in Singapore will begin with three sites with a suitable guide map.  For the winter the suggestion is for three plantings, to mark the Queens’ Diamond Jubilee.  These are suggested to be at Mason’s Gardens, a collection of trees to replace the fallen trees, one tree at the City of Nedlands Library, to mark the importance of lifelong learning and education and one tree at Tawarri, to mark the retention of an A class Reserve for the community.

The City’s Ceremonial Shovel will be used of which is on display at the City of Nedlands Library.  It is noted that more than a million trees have now been planted in England to mark the Queens Diamond Jubilee.  It is fitting the City of Nedlands support this initiative, offering more play and amenity for the citizens of Nedlands, and involving our community in this international initiative.

Administration Comment

Administration will include the three areas listed in the Notice of Motion in the 2022/23 Tree Planting Program.

# Urgent Business Approved By the Presiding Member or By Decision

Urgent Business approved by the Presiding Member or By Decision will be dealt with at this point.

# TS08.04.22 RFT2021-22.04 Civil Rehabilitation of Waratah Avenue, Dalkeith

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 26 April 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Neil Brown – Coordinator of Projects |
| **Director/CEO** | Andrew Melville – Acting Director Technical Services |
| **Attachments** | 1. CONFIDENTIAL Council Report – Tender Award RFT2021-22.04 Waratah Avenue 2. CONFIDENTIAL Additional Works Proposal Feedback Summary |

**Purpose**

The purpose of this report is for Council to accept the evaluation and recommendation for the award of RFT 21-22.04 Civil Rehabilitation of Waratah Avenue, Dalkeith to Civcon Civil & Project Management Pty Ltd

**Recommendation**

**That Council:**

1. **approves the award of the contract for Civil Rehabilitation of Waratah Avenue excluding the additional package of works, to Civcon Civil & Project Management Pty Ltd in accordance with the City’s Request for Tender number RFT 21-22.04 and comprising of that request, the City’s Conditions of Contract, the Civcon Civil & Project Management Pty Ltd tender submission inclusive of the Schedule of Rates, and all post tender clarifications and negotiations;**
2. **instructs the CEO to arrange for a Letter of Acceptance and a Contract document be sent to Civcon Civil & Project Management Pty Ltd for execution;**
3. **instructs the CEO to arrange for all other tender respondents to be advised of the tender outcome;**
4. **instructs the CEO to commence detailed design of the median island, tree wells and realignment of Genesta Crescent, ensuring any designs are developed in conjunction with the Waratah Avenue Precinct Plan; and**
5. **considers the installation of the median island and trees for delivery in a future Capital Works Program as part of the forthcoming Corporate Business Planning Process.**

**Voting Requirement**

Simple Majority.

**Background**

At the Ordinary Council Meeting on 25 May 2021, Council resolved to requests the CEO to progress the following items to the upcoming Council discussions for inclusion in the 2021/22 budget:

* + 1. to resurface the roadway;
    2. repave all sections of damaged paving;
    3. constructs a loading bay situated outside Dalkeith Hall;
    4. no raised plateaus be constructed;
    5. repair all kerbing that is damaged;
    6. to investigate the installation of street trees in the medium strip.

The scope of works was developed to address the above points from the Council Resolution. The basic scope of works addressed points 1-5, and an additional works package was included in the tender documents to seek prices for the installation of trees in the median strip. Each work package was priced separately, so either the base case or base case plus median and tree works could be awarded.

The City commenced a tender process to test the market and invited bids from suitably qualified and experienced contractors nominated within the WALGA Roads, infrastructure and depot services prequalified panel, to provide civil construction services for the rehabilitation of Waratah Avenue, Dalkeith.

The request for tender was advertised on the WALGA e-quotes system during the period 11 February – 18 March 2022. The City approached 7 companies and received a total of 2 submissions.

**Discussion**

At the closure of the tender submission period, the evaluation panel completed the analysis and evaluation of the submissions received.  At the conclusion of the evaluation process, Civcon Civil & Project Management Pty Ltd was nominated as the preferred supplier for this package of works. The submissions were rated against the following criteria:

* Relevant experience (30%),
* Key personnel skills and experience (30%), and
* Project Methodology (40%).

Civcon Civil & Project Management Pty Ltd provided information on similar projects that they have recently undertaken, successfully demonstrating an ability to complete the requirements of this request.

Key personnel listed were experienced, suitably skilled and have experience delivering similar projects. The project methodology provided by Civcon Civil & Project Management Pty Ltd was acceptable, being provided at high level reiterating the scope of the works.

Officers identified that there was cost overrun with the original submission from the tenderer. There is currently a high demand for civil contractors within the market, and this is reflected in the lack of submissions for the works and higher than estimated tendered prices.

Should the project be awarded works are expected to start in May and finish in September 2022.

References were provided by previous clients Sam Collura from the City of Kalamunda and Nick Allen, both stated that works were undertaken adequately.

Following the due diligence processes that the City has undertaken, the City is confident that Civcon Civil & Project Management Pty Ltd are capable of completing the scope of work to the required standards, and that their offer represents good value for money to the City within the market.

**Consultation**

A targeted consultation process was undertaken to determine local sentiment for a new median along the length of Waratah Avenue. Residents and businesses that face directly onto Waratah Avenue were provided with an opportunity to comment on the median placement, tree planting and lane narrowing. This was conducted through a letter drop issued on 14 February, 2022 with responses emailed directly to the Project Manager. Responses closed on 2 March, 2022.

Fifteen (15) individual responses were received, of which eight (8) submissions were in favour and seven (7) were against the proposal. Two additional submissions were received from Councillors.

Responses that were supportive of the proposal, half of which noted that support would only be provided where endemic tree varieties such as Marri be planted within the median, were generally in favour of the proposal as it improved the visual amenity of the street and provided more shading. One responder requested speed bumps to slow down cars and cyclists due to speeding concerns but generally supported the proposal.

Responses that were not supportive of the proposal, commented on cyclist/pedestrian safety concerns due to the narrower road width (pedestrian/cyclist and car collisions), existing vehicle speeds and raised concern over the additional traffic congestion resulting from an inability to enter residents and businesses from either lane and or stopping the ability to overtake cars parking. Some business’s provided comment that the median strip would reduce commercial visibility, cause significant inconvenience to users and clients and would ultimately result in loss of income.

The narrower lane widths and median placement were generally not seen as conducive to reducing vehicle speeds by those that were against the proposal. The median strip was seen as a safety risk by inhibiting speeding vehicles swerving to avoid collisions, a comment noted within several responses.

One response noted that should the tree planting go ahead, it would limit future designs or proposals with a further response noting that the proposal was a knee jerk, counterproductive and ill-thought-out proposal.

The Councillor submissions provided responses in support of the proposal, requesting that further works be undertaken to provide street lighting upgrades, that additional car parking be included on Genesta Crescent and that the median access be redesigned. The Councillor submissions requested that Genesta Crescent be turned into two-way access and that all subsided paving be re-laid. Of the Councillor’s request, only the repairs to existing paving are within the current project scope.

All responses are provided within Attachment 2 – Feedback Responses.

**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.

**High standard of services**

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

**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**

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

**Budget/Financial Implications**

The 2021/22 budget allocation for these works is $650,000. Should this project proceed, works will commence this financial year, and carry over into the following 2022/23 financial year. Any unspent budget from 2021/22 will be carried over into the 2022/23 Annual Budget.

The table below outlines the two budgeting options for this project and how the budget is proposed to be distributed over this and next financial year for both options.

|  |  |  |  |
| --- | --- | --- | --- |
| **Element** | **2021/22 Budget** | **2022/23 Budget** | **Total Cost** |
| Option 1 (Base Case) | $650,000 | $64,745 | $714,745 |
| Option 2 (Base case + median & trees) | $650,000 | $759,918 | $1,409,918 |

An allowance of $180,000 for Waratah Avenue has been included in the draft 2022/23 Capital Works Program. This draft program is already larger than financial modelling indicates the City can fund. As such, lower priority works will likely need to be deferred to allow high priority renewal works to be undertaken.

If option 1 is selected by Council, $64,745 will be required to be included in the 2022/23 Annual Budget process. This will have a minimal impact on the overall budget, and would not require other projects to be deferred.

If the additional works of the median strip and tree planting are included in this project, the project cost increases to $1,409,918. This would require $759,918 to be allocated in the 2022/23 Annual Budget. This will have a significant impact on the Capital Works Program and would require a project to be deferred to fund this budget overrun. All proposed road projects in the 2022/23 Capital Works Program are in poor condition. As such there is a level of risk that would need to be accepted if a project was deferred to fund the additional works on Waratah Avenue.

At the request of an elected member, the City has also estimated the price of a median strip without trees. In this option, the trees would be replaced with irrigated garden beds. The estimated cost of this option is approximately $250,000 +/- 50%.

**Legislative and Policy Implications**

The award of this tender is governed by the City of Nedlands [Procurement of Goods and Services Policy](https://www.nedlands.wa.gov.au/sites/default/files/Procurement%20of%20Good%20%26%20Services%20Council%20Policy_2.docx).

The works to be delivered under this contract are in line with the City of Nedlands Asset Management Policy.

**Decision Implications**

Road users, pedestrians, businesses and homeowners in the area benefit from the award of this contract, as it will ensure the City’s roads, pathways, driveway aprons and drainage are well maintained and perform to a high standard. By approving the award of this Tender the City will be able to undertake required repairs and improvements to Waratah Avenue.

By not endorsing the recommendation the works will not be able to be undertaken, and the road will continue to degrade, presenting undue safety risks to road users and community.

This project is partially grant funded from both the State and Federal Government. Extensions to both grants have been received, but if the contract is not awarded and works commence this financial year there may be ongoing financial impacts imposed by the grant funding bodies.

If Council resolves to undertake the project without the additional works package an additional approx. $65,000 will need to be allocated as part of the 2022/23 budget process. This value can be accommodated without required project deferral.

If Council resolves to undertake the additional works package an additional approx. $760,000 will need to be allocated to this project. Due to the limited savings in the 2021/22 capital works program, this additional funding would have to be allocated as part of the 2022/23 budget process. If this additional funding is required another project will need to be deferred.

If the base scope of works is undertaken now, the additional median and tree works could be undertaken at a later stage. The additional works package has been priced as a separate line item and it is likely that if undertaken at a later stage would be a similar price. Undertaking the median island works at a later stage would require parts of the road surface to be excavated, however as the road lanes would be narrowed there would be minimal abortive works.

**Conclusion**

Civcon Civil & Project Management Pty Ltd have completed road rehabilitation and civil services for other metropolitan local governments, have the required skills and experience necessary to complete the works, and are therefore the recommended tenderer for this package of works.

Civcon Civil & Project Management Pty Ltd’s response demonstrated an ability to provide a new road pavement, pathways, kerbing, driveway aprons, drainage, and parking bays as per the RFT documentation.

In order to continue to provide effective ongoing maintenance, to preserving the safety and condition of the road pavement and associated infrastructure, it is recommended that Council approve the award of a contract Civcon Civil & Project Management Pty Ltd, excluding the median and tree planting option that was investigated during the procurement process.

It is further recommended that Administration commence detailed design of a median island, including tree planting, ensuring any designs are developed in conjunction with the Waratah Avenue Precinct Plan, and that the works will be considered for delivery in a future years Capital Works Program.

**Further Information**

N/A

# PD24.04.22 Consideration of Responsible Authority Report for 12 Multiple Dwellings at 47 Aberdare Road, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council – 26 April 2022 |
| **Applicant** | I Wang, RJS WA PTY LTD |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director/CEO** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Responsible Authority Report and Attachments |

**Purpose**

The purpose of this report is for Council to consider the Development Assessment Panel application for 12 multiple dwellings at 47 Aberdare Road, Nedlands. Council is requested to make its recommendation to the Metro Inner-North Joint Development Assessment Panel as the Responsible Authority. Council’s recommendation will be incorporated into the Responsible Authority Report and lodged with the DAP Secretariat on 29 April 2022.

**Recommendation**

**That Council adopts as the Responsible Authority the Officer Recommendation contained in the Responsible Authority Report for the development of 12 Multiple Dwellings 47 Aberdare Road, Nedlands as follows:**

**It is recommended that the Metro Inner-North Joint Development Assessment Panel resolves to approve DAP Application reference DAP/22/02160 and accompanying plans 8 April 2022 in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, and the provisions of the City of Nedlands Local Planning Scheme No. 3 subject to the following conditions:**

**Conditions**

**General**

1. **Pursuant to clause 26 of the Metropolitan Region Scheme, this approval is deemed to be an approval under clause 24(1) of the Metropolitan Region Scheme.**
2. **This decision constitutes planning approval only and is valid for a period of 4 years from the date of approval. If the subject development is not substantially commenced within the specified period, the approval shall lapse and be of no further effect.**

**Building**

1. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**
2. **Prior to the issue of a demolition permit and a building permit, a Demolition or Construction Management Plan (as appropriate) shall be submitted and approved to the satisfaction of the City. The approved Demolition and Construction Management Plans shall be observed at all times throughout the construction and demolition processes to the satisfaction of the City.**
3. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.**

**Landscaping**

1. **Prior to issue of a demolition permit and a building permit, a Tree Protection Assessment is to be undertaken and approved by the City of Nedlands for the trees along the boundary which form part of the Carnaby’s Black-Cockatoo roost site, to ensure minimal disturbance during construction.**
2. **Prior to occupation, landscaping shall be completed in accordance with the approved plans prepared by Plan \ E dated received 8 April 2022 or any approved modifications to the satisfaction of the City of Nedlands. All landscaped areas are to be maintained on an ongoing basis for the life of the development on the site to the satisfaction of the City of Nedlands.**
3. **Prior to occupation, all communal and private open space areas with landscaping shall include a tap connected to an adequate water supply for the purpose of irrigation.**

**Design**

1. **Prior to occupation of the development, all air-conditioning plant, satellite dishes, antennae and any other plant and equipment to the roof of the building shall be located or screened to the satisfaction of the City of Nedlands.**
2. **Prior to occupation of the development the finish of the parapet walls is to be finished in accordance with the hereby approved plans.**
3. **All screening and obscure glazing shown on the approved plans to be installed prior to occupation and maintained at all times thereafter.**
4. **Prior to occupation, the balcony to Units 6 and 7 located on the west elevation and Unit 10 located the east elevation shall be screened in accordance with the Residential Design Codes by either;**
5. **fixed and obscured glass to a height of 1.6 metres above finished floor level; or**
6. **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**
7. **a minimum sill height of 1.6 metres above the finished floor level; or**
8. **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. **A minimum of 20% (3) units are to be designed at building permit stage to the Silver Level requirements as defined in the Liveable Housing Design Guidelines (Liveable Housing Australia) and implemented prior to occupation.**

**Vehicle Access and Parking**

1. **All car parking dimensions (including associated wheel stops and headroom clearance), manoeuvring areas, crossovers and driveways shall comply with Australian Standard 2890.1-2004 - Off-street car parking and Australian Standard 2890.6:2009 - Off-street parking for people with disabilities (where applicable) to the satisfaction of the City of Nedlands.**
2. **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.**
3. **Prior to occupation, a minimum of 6 residential bicycle bays and 2 visitor bicycle bays shall be provided and installed to the satisfaction of the City of Nedlands and maintained for the lifetime of the development.**
4. **Prior to occupation, all car parking bays are to be clearly line marked, drained and with visitor/staff parking clearly marked or signage provided, and maintained thereafter by the landowner to the satisfaction of the City of Nedlands.**

**Environmental Health**

1. **Prior to the issue of a building permit, an amended Acoustic Report is to be prepared and approved by the City. The approved Acoustic Report, and any recommendations within the Acoustic Report shall be carried out and complied with at all times to the satisfaction of the City of Nedlands.**
2. **Prior to the issue of a building permit, a Noise Management Plan is to be submitted and approved by the City of Nedlands detailing measures that will be undertaken to ensure noise levels during operation of the development are kept within levels prescribed in the Environmental Protection (Noise) Regulations 1997 to the specifications and satisfaction of the City of Nedlands.  The noise management plan shall be adhered to at all times.**
3. **Prior to occupation, an external lighting plan must be submitted and approved by the City of Nedlands. The lighting is to be designed and located to prevent any increase in light spill onto the adjoining properties in accordance with Australian Standard 4282 – Control of Obtrusive Effects of Outdoor Lighting.**

**Waste Management**

1. **Prior to the issue of a building permit, an amended Waste Management Plan must be prepared and approved by the City. The approved Waste Management Plan shall be complied with at all times to the satisfaction of the City of Nedlands.**

**Sustainability**

1. **Prior to occupation, the recommendations contained within the Resirate Energy Efficiency Report dated received 23 December 2021, or any approved modifications, are to be carried out and maintained for the lifetime of the development to the satisfaction of the City of Nedlands.**

**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**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban, Other Regional Road |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R60 |
| **Land area** | 1045m2 |
| **Land Use** | Residential - Multiple Dwellings |
| **Use Class** | ‘P’ Permitted Use |
| **Proposed Plot Ratio** | 0.85 (886m2) |
| **Proposed No. Storeys** | Three |
| **Proposed No. Dwellings** | 12 |

The application is for a proposed residential development, comprising 12 multiple dwellings at 47 Aberdare Road, Nedlands.

**Discussion**

The proposal has been assessed against all relevant legislative requirements including Local Planning Scheme No.3 (LPS3), Residential Design Codes Volume 2 – Apartments (R-Codes) and Local Planning Policies. The matters below have been identified as key considerations for the determination of this application.

* Street setback.
* Plot ratio.
* Orientation.
* Tree canopy and deep soil areas.
* Visual privacy.
* Energy efficiency.
* Waste Management.
* Carnaby’s Black-Cockatoo roosting site.

These matters have been addressed within the Responsible Authority Report.

**Consultation**

**Public Consultation**

In accordance with the City’s Local Planning Policy – Consultation of Planning Proposals, the development was advertised for a period of 28 days, from 21 January 2022 to 18 February 2022.

* Letters sent to all City of Nedlands and City of Subiaco landowners and occupiers within a 200m radius of the site (letters);
* A sign on site was installed at the site’s street frontage for the duration of the advertising period;
* An advertisement was published on the City’s website with all documents relevant to the application made available for viewing during the advertising period;
* An advertisement was placed in The Post newspaper published on 22 January 2022; and
* A community information session was held by City Officers on 31 January 2022.

At the conclusion of the advertising period, the City received 17 submissions; 13 opposing the proposal and four providing comments only. Two late submissions were received after the consultation period. The key concerns in the objections related to:

* Height
* Street Setback / Aberdare Road By-law
* Overshadowing
* Overlooking
* Traffic / Parking
* Carnaby’s Black-Cockatoo roost site

These matters have been addressed within the Responsible Authority Report. All submissions on this proposal have been given due regard in this assessment in accordance with Clause 67(y) of the *Planning and Development (Local Planning Schemes Regulations) 2015.*

Amended plans for the proposal were submitted to the City on 8 April 2022 that differ from the advertised plans in the following manner:

* Rearrangement of ground floor to position Unit 1 facing the street and the communal courtyard to the middle and rear;
* Alteration to roof form of Unit 12 to minimise overshadowing to southern adjoining property;
* Inclusion of a lift and UAT for universal access;
* Alterations to façade design and windows;
* Increase in permeability of front fence and addition of a pedestrian gate to Unit 1;
* Modifications to bin store to meet City’s Waste Management Policy;
* Relocation of storage rooms from unit balconies to ground floor; and
* Amendments to landscaping plans and species list.

The amendments did not trigger the need for formal re-advertising of the proposal.

**Design Review Panel**

The application was referred to the City’s Design Review Panel (DRP) on two occasions. A summary of the DRP advice is provided in the table below.

|  |  |  |
| --- | --- | --- |
| **DRP Design Quality Evaluation** | | |
|  | Supported | |
|  | Further Information Required | |
|  | Not supported | |
| SPP 7.0 Principles | 24 January 2022 | 4 April 2022 |
| 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 |  |  |

The development plans have been amended in response to the specific recommendations by DRP on 4 April. However, the timing of the RAR deadline did not facilitate a third DRP review of the amended plans. It is considered that the amended plans have addressed the outstanding concerns of the DRP.

**Strategic Implications**

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

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

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

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

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

**Budget/Financial Implications**

N/A

**Legislative and Policy Implications**

Council is requested to make a recommendation to the JDAP in accordance with Regulation 12(5) of the [*Planning and Development (Development Assessment Panels) Regulations 2011*](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_s42531.html)*.* Council may recommend to approve, refuse or defer the application.

**Decision Implications**

Council’s recommendation will be incorporated into the Responsible Authority Report (RAR) and lodged with the DAP Secretariat on or before 29 April 2022. The recommendation noted above is the officer recommendation that is also included in the RAR. In the event that Council does not adopt the officer recommendation, Council’s recommendation will be located at the front of the RAR as the Responsible Authority Recommendation and the officer recommendation will be contained in the rear of the report. In the event that Council does not make a recommendation, the RAR will be forwarded to DAP on 29 April 2022 with the Officer Recommendation only.

**Conclusion**

Council is requested to consider the proposed development as the Responsible Authority. It is requested that Council makes a recommendation to the JDAP to either approve, defer or refuse the application.

The application for 12 multiple dwellings is consistent with the City’s statutory and strategic planning framework, will have minimal undue adverse impact upon adjoining properties, and achieves a unique design outcome. The development is consistent with the expected future scale of development within the area given the transition from ‘Residential R10’ to ‘Residential R60’. The proposal meets all Element Objectives of the R-Codes and generally responds well to the environment, particularly the improvement to tree canopy from the pre-development condition. The proposal has been amended to respond to the recommendations of the City’s DRP and the City.

For the above reasons, it is recommended Council adopt the Officer Recommendation contained in the Responsible Authority Report to approve the development.

# Confidential Items

Confidential items to be discussed at this point.

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

# CONFIDENTIAL CEO04.04.22 Risk & Reporting Update

# Declaration of Closure

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