

**Notice of Meeting**

Mayor & Councillors

A Special Council Meeting of the City of Nedlands is to be held on Wednesday, 20 March 2024 in the Council chambers at 71 Stirling Highway Nedlands commencing at 6pm for the purpose of:

1. Appointment of an Independent Consultant in accordance with the Resolution of Council dated of 11 March 2024.

This meeting will be livestreamed [Livestreaming Council & Committee Meetings » City of Nedlands](https://www.nedlands.wa.gov.au/council/council-meetings/livestreaming-council-committee-meetings.aspx)

**Tony Free | Acting Chief Executive Officer**

**18 March 2024**

**AGENDA**

**Special Council Meeting**

**Wednesday, 20 March 2024**

**Information**

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

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

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# Declaration of Opening

The Presiding Member will declare the meeting open at 6.00pm and acknowledge the Whadjuk Nyoongar people, Traditional Custodians of the land on which we meet, and pay respect to Elders past, present and emerging. The Presiding Member will draw attention to the disclaimer on page 2 and advise the meeting is being livestreamed.

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

**Leave of Absence** Councillor B G Hodsdon Hollywood Ward

**(Previously Approved)**

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

# Public Question Time

Public questions submitted to be read at this point.

# Address by Members of the Public

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

# Declaration 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.

# Divisional Reports

## 8.1. NOM05.03.24 – Councillor Amiry - Appointment of an Independent Consultant - Audit

In accordance with Clause 3.9 of the City of Nedlands Standing Orders Local Law on the 14 March 2024, Councillor Amiry gave notice of her intention to move the following motion.

**That Council:**

1. **pursuant to s5.45(2)(a) of the Local Government act and Council resolution 8.2 of 11 March 2024:**
   1. **appoints Mr Craig Ross to the position of independent consultant to address the attached scope of work; and**
   2. **engagement contract term to be no less than 3 months starting 25 March 2024 with total remuneration of $42,000 to be paid no later than 24 June 2024; and**

1. **instructs the acting CEO to provide Mr Ross:**
   1. **an engagement contract referencing the above terms and the attached scope of work complete with all confidentiality agreements required for his signature;**
   2. **a working laptop with unrestricted access to all finance related records, documentation and information systems including SharePoint sites and One Council;**
   3. **introduction to a nominated senior member of the finance staff as the primary contact point for the duration of the contract;**
   4. **access to the Audit and Risk Committee on a fortnightly timeline to provide on-going findings and confirm work priorities; and**
   5. **an open and collaborative environment to facilitate Mr Ross complete his scope of work.**

**Justification**

The City of Nedland’s received a Disclaimer of Opinion from the Office of the Auditor General (OAG) in relation to the City’s Annual Financial Statement for year ending 30 June 2023.

Nine months of the 2023/2024 Financial year has already passed and Council can have no confidence that a second Disclaimer of opinion will not be forthcoming from the OAG for the City’s Annual Financial Statement for year ending 30 June 2024. This eventuality would have dire consequences for this Council and the City of Nedlands.

It is therefore imperative that there is a review and gap analysis of the City’s financial record keeping and reporting to ensure appropriate corrective actions to address OAG’s concerns so the City does not receive another Disclaimer of Opinion for the City’s Annual Financial Statement for year ending 30 June 2024. The review must be undertaken in parallel with the administration doing the work necessary to ensure proper financial records are in place in a timely manner for the OAG 2024 audit.

The timeframe of only 3 months has necessitated that Council delegate its powers to an independent consultant in accordance with Council resolution 8.2 of the 11 March 2024.

Mr Craig Ross is a Finance manager and Group accountant. He is a chartered accountant with a deep knowledge of AAS and extensive expertise in auditing, financial management & reporting, governance, and risk. Most importantly, Mr Ross has significant demonstrated experience in the provision of independent expert advice with a blue chip accounting firm. We are fortunate to find a professional of such outstanding capability available to the City at short notice.

Given the gravity of the matter and the short timeline to the end of this financial year it is prudent that Council engages Mr Ross’s services at the earliest.

**Background on Independent Consultant**

CRAIG ROSS BCom, CA

Chartered accountant with over 30 years significant audit, accounting, and corporate financial reporting experience including end of year closing procedures, internal control processes, financial statement preparation, budget analysis and compliance reporting in a wide variety of significant multinational corporations across numerous industries.

2021-2023 - Group Accountant/Finance Manager, Civmec (Henderson)

1992-2018 – Audit Manager through to Audit Director with international Big 4 accounting firm in a variety location (Australia, Papua New Guinea, Indonesia, Croatia, Slovenia, Bulgaria)

**Attachments**

Attachment 1 – Scope for Independent Consultant

Attachment 2 – CONFIDENTIAL Resume Mr Craig Ross

Attachment 3 – Procurement of Goods & Services Council Policy

**Administration Comment**

There are a number of concerns with respect to the proposed motion included in the notice. These are as follows:

1. Reference to Section 5.45 of the Local Government Act 1995

The section of the Act referenced in the proposed motion, is not referencing the correct section of the Act.

That section of the Act is referring to the potential for someone to “act through a person”.

This section of the Act is relevant in a situation when **a person has no discretion in carrying out a function, then that function may be undertaken by another through the ‘acting through’ concept**.

A good example of this is when Council commences the process of creating a Local Law, Council resolves to that effect, and then there are a number of administrative functions which need to occur, Council is “acting through’ officers as these administrative functions are undertaken.

The words “Pursuant to S5.45(2)(a) of the Local Government Act and Council resolution 8.2 of 11 March 2024” should be deleted.

1. Regulation 11A of the Local Government *(Functions and General) Regulations 1996*

Council does not have the power to circumvent the Council’s procurement procedures as outlined in the Council Policy – Procurement of Goods and Services.

Regulation 11A of the *Local Government (Functions and General) Regulations 1996* states –

(1) A **local government** is to prepare or adopt, and is to implement, a purchasing policy in relation to contracts for other persons to supply goods or services where the consideration under the contract is, or is expected to be, $250 000 or less or worth $250 000 or less.

(2) **A purchasing policy is to make provision for and in respect of the policy to be followed by the local government** for, and in respect of, entering into contracts referred to in subregulation (1).

(3) A purchasing policy must make provision in respect of —

(a) the form of quotations acceptable; and

(ba) the minimum number of oral quotations and written quotations that must be obtained; and

(b) the recording and retention of written information, or documents, in respect of —

(i) all quotations received; and

(ii) all purchases made.

The reference to the “policy to be followed by the Local Government”, includes Council. The Regulations don’t permit / allow nor facilitate Council circumventing the purchasing policy. The Policy outlines requirements in relation to seeking a minimum of three quotes, makes reference to the form of the quotations, and includes as one of its objectives, that the process should be open, fair and transparent **(see Policy attached).**

1. Under section 5.41 (c) of the Local Government Act 1995 a role of the Chief Executive Officer is to implement Council decisions.

To this end, following Council’s resolution 8.2 of 11 March 2024, the City has sought formal quotations from the WALGA approved panel of Finance and Corporate Services providers to implement the Council decision of Monday 11 March. As part of that process, what the City provided as the scope of works and key deliverables was based on the Council resolution. The City has given those on the WALGA panel until 28 March to submit quotations to the City.

This process allows multiple firms / individuals to submit a quote. It provides the firms with adequate time to prepare a quote. The quotes received will be presented to Council, for determination. This process of using the WALGA Panel is considered to be the, most transparent, and from a governance sense the most appropriate approach to follow, as it allows for multiple, appropriately qualified firms / individuals to submit a quote. This process provides Council with the best opportunity to appoint the most appropriate firm / individual at the most competitive price.

1. Alternative Approach

The submission from Mr Ross will be added to any submissions received via the WALGA panel process, plus any other submissions received.

It is recommended that Council follow the WALGA panel approach as commenced by officers as this process is open, fair and transparent.

The closing date for submissions is 28 March.

It is suggested that the submissions received could be presented to a further Council meeting to facilitate Council making the appointment. Noting that Good Friday is 29 March, allowing adequate time for Council to consider the agenda including the submissions received, the matter could be considered by Council on Tuesday 9 or Wednesday 10 April.

**Officer recommendation**

**That Council;**

**Requests that the submission from Mr Craig Ross be considered and included in the report to Council to appoint the Independent Consultant along with any other submissions received including those from the WALGA panel.**

# Declaration of Closure

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