



City of Nedlands

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Governance Manual

As at 27 July 2010

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Introduction

Corporate governance is a system of processes through which an organisation makes decisions and directs, controls and monitors its operations. The systems are complex and are required by legislation. The Governance Manual will assist the City to achieve its commitment to governance.

The Manual links the respective roles under the Local Government Act and other relevant legislation with the suite of available governance documents. It is designed to provide guidance and information to the major participants in all functions and governance processes of the City. It will act as:

- an introduction for new Councillors and staff members to the governance framework and processes for the City;
- a guide and reference for Councillors in performing their duties as elected representatives;
- a document that establishes clear guidelines for the day-to-day governance of the City of Nedlands; and
- a basis to monitor the performance of the Council and administration in working towards excellence in governance.

The manual has been based on a number of existing governance frameworks, but in particular “Excellence in Governance for Local Government” produced by the Local Government Managers Australia and CPA Australia.

The Manual is divided into seven parts:

Part 1 – Principles and vision

The principles and vision establish the underlying aspects that should govern every aspect of City corporate operations.

Part 2 – Overview of corporate governance in Local Government

This section introduces the need for a governance manual. It explains the importance of good governance and the critical factors to be considered for all stakeholders in governance processes.

Part 3 – City of Nedlands governance statement and framework

This part outlines the conceptual governance framework for the City of Nedlands. It provides a statement of commitment to good governance principles within which all Elected Members and staff should operate.

Part 4 – Good governance practice

Provides more detailed guidelines on how good governance is carried out. This section covers roles and responsibilities, decision-making, accountability and sustainability.

Part 5 – City of Nedlands Code of Conduct

Provides guidelines for behaviour of Elected Members and staff in governance processes. How Councillors and staff conduct themselves is the foundation of accepted principles for transparency and accountability and good conduct is essential for governance processes to function effectively.

Part 6 - Council, Committees, forums and other meetings

Covers key aspects of how governance processes should be conducted to ensure that excellence in governance is achieved.

Part 7 – Key documents, policies and procedures

Provides reference to essential documents that support the governance processes and procedures at the City of Nedlands.

Sustainability principles have been applied in the preparation of the Governance Manual to ensure that the operations of the Council produce balanced economic, social and environmental benefits for the City.

PART 1 Principles and vision

Clear principles govern how decisions are made by the **whole organisation**. All decisions should be measured against the principles to ensure that the governance processes and practices adhere to the overarching principles of operation.

Individual Elected Members and staff take specific responsibility for governance in their own activities. **Individual actions** in governance must demonstrate values that reflect best practice in governance and alignment with the agreed principles.

Five key principles have been identified to assist Council achieve excellence in governance. These are:

Principle 1. – Clear vision and culture

Uniting in a clear vision and positive culture that respects the natural and built heritage of the City as well as community needs and aspirations without bias.

Principle 2. – Productive roles and relationships

Valuing the different roles of the various elements of a local government and the need for positive working relationships between these elements.

Principle 3. – Good Leadership.

Demonstrating exemplary leadership qualities through effective and impartial decision-making and related management processes that reflect transparency, integrity and sustainability.

Principle 4. – Accountability.

Accounting for all local government activities and installing and maintaining systems which reinforce accountability and which facilitates effective communication with the community.

Principle 5. – Commitment to Sustainability

Making the right decisions for both present and future generations, in careful monitoring of progress to avoid and/or mitigate negative impact, and, in positive change for improved results.

Vision 2008-2013

The City of Nedlands is an attractive City with residential amenity and a strong sense of community and place.

PART 2 – Overview of corporate governance in local government

Governance and the Legislative Environment

Local Governments in Western Australia are required make decisions, report them and implement them according to the provisions of the Local Government Act 1995 (the Act). Other legislation regulates the way in which a local government exercises its authority in areas such as Town Planning, Environmental Health and Dog Control. The Act defines the roles and responsibilities of Elected Members and the Chief Executive Officer to ensure that a local government fulfils its obligations and exercises its powers and functions appropriately.

Section 3.1 (1) of the act prescribes that the general function of a local government is to provide for the good government of persons in its district.

To facilitate good government, local governments develop strategies and policies and provide mechanisms and processes for their implementation as provided for in the Act and its regulations. The Governance Manual establishes the policies and processes by which the Elected Members and the Chief Executive Officer undertake their respective roles.

Definition of Good Governance

Just as the companies operating in the private sector have a requirement to adhere to legislation and regulations governing compliance and behaviour, so too do local governments in the public sector.

The private sector has had a long standing involvement with governance issues, as reflected in adoption of mechanisms such as the Australian Institute of Company Directors corporate governance charter, which:

“...defines the roles and responsibilities of the ultimate decision makers in the organisation and establishes a framework for strategic planning. It also defines expectations of the board and delineates critical policies, such as strategies for risk management and the delegation of responsibility.”

Governance

Governance is the process by which decisions are taken and implemented, the process by which organisations go about achieving their goals, producing their outputs and, the process by which organisations are directed, controlled and held to account. It encompasses authority, accountability, stewardship, leadership, values and culture within the organisation.

Good governance occurs when it is underpinned by accountability, integrity, openness and commitment to sustainability. It involves a focus on clarity of roles and responsibilities, robust systems which support both internal and external accountability and public access to decision making and information.

From a Local Government perspective, a governance framework reinforces the statutory authority and responsibilities of Council as a corporate body and assists Elected Members and professional officers in the delivery of quality services. Central to the achievement of these outcomes is the engagement of key stakeholders and intended beneficiaries in the development and implementation of initiatives for the betterment of local communities.

Effective outcomes are best achieved where the role and focus of Elected Members as a collective corporate body, is directed to policy formulation and strategic development. The role of the officers is to implement the policies and strategies of the corporate body through an accountable, effective and efficient application of resources and assets.

PART 3 – Governance statement

Council considers that integrity, role delineation, accountability, a systems approach and strategic management are applicable to local government. To ensure effective, transparent and sustainable administration of the City's affairs, a governance framework has been designed.

The governance statement, key principles and framework aim to create a strategic and accountable approach to management of the City as "pillars" of good governance. Collectively, appropriate policies, strategies and procedures constitute the City's governance "foundations".

Governance is based on the understanding that the Council and its Chief Executive Officer and staff have different roles and responsibilities which, when combined, create the environment for effective management and operation of the City. It recognises that good governance does not only apply to internal procedures but ultimately reflects in the satisfaction of the residents and other stakeholders of the City both now and into the future.

PART 4 – Good governance practice

The increasing level of scrutiny now being directed to the operations and activities of public bodies has created a need for full and open disclosure of the governance systems which exist within these organisations.

Accountability is an essential element of good governance and applies to Elected Members and Chief Executive Officer alike. From a political perspective, accountability requires that the Mayor and Councillors of the City of Nedlands (the City) are accessible to residents and ratepayers so they may be cognisant of community issues and needs.

As the governing body of the City, the Council has the ultimate responsibility for ensuring compliance with legislation and regulations. It is the Chief Executive Officer's responsibility to ensure that Council is provided with unbiased and relevant, professional advice and information on which decisions are made. The Chief Executive Officer is also responsible for the management of officers, financial resources and the maintenance of effective and efficient systems, procedures and processes which are necessary to meet the accountability requirements of the Council.

Accountability is unachievable without effective stewardship of the City's financial, physical, intellectual and natural heritage assets. Stewardship refers to the planning and management required to ensure optimum use of assets to serve existing community needs and provide a lasting legacy for future generations. It requires Innovation-reflected in strategies designed to encourage sustainable growth and prosperity, which are compatible with the unique character and focus of the City.

A summary of good governance practice

The following practices, as they relate to the five principles of operation apply to the achievement of good governance at the City of Nedlands. A summary of the key practices that will govern actions for each principle is provided below. Further detail on each aspect is provided in the following sections.

Principle 1 – Vision and organisational culture

There is a clear vision and strategic plan that is produced through a comprehensive and inclusive process which is owned by all sectors of the local government.

There is a positive culture that promotes openness and honesty, in which questioning is encouraged and accountability is clear.

Principle 2 – Roles, responsibilities and relationships

There is clarity about the roles of local government and there exists a clear and succinct approach to defining and implementing these.

There are effective working relationships that are promoted and supported within and between the mayor, councillors, CEO and administration.

Principle 3 – Decision-making and management

There are effective decision-making processes in place that reflect the transparency and accountability which underpin good governance.

There should be robust and transparent financial management to meet local government's accountability to its stakeholders, particularly in terms of stewardship of community assets, both now and into the future.

An effective approach to the identification, assessment, monitoring and management of risks should be in place and maintained.

Effective delegations should be implemented and maintained.

There should be an active performance management system in place that enables Elected Members and officers to be openly accountable for their performance.

Principle 4 – Accountability

Consultation should be undertaken that is appropriate to the scope and potential impact of the matter. It should respect the position and opinion of all stakeholders. The outcomes of the consultation should be taken into account when the decision is made and feedback should be provided to those who participated.

The City of Nedlands must account for its activities and have systems that support this accountability.

The City of Nedlands should have internal structures that provide for independent review of processes and decision-making to assist the Council to meet its accountability to stakeholders.

Principle 5 – Commitment to Sustainability

The City of Nedlands will align with the principles of the State Sustainability Strategy.

The City of Nedlands should endeavour to keep up-to-date with all processes, methodologies and technologies which are capable of achieving improved outcomes for the City.

Awareness of practices that will lead to improved resource management, environmental protection and rehabilitation, stronger communities and added economic value will be raised within the Council and staff and across the community.

Potential environmental, social and economic impact of any project or decision will be considered.

1.1 Principle 1 – Vision and organisational culture

Vision

There is a clear vision and strategic plan that is produced through a comprehensive and inclusive process which is owned by all sectors of the local government.

The City of Nedlands vision as stated in Part 1 is the driver that governs the culture of the organisation. The vision has been generated as a united focus for the City. Governance decisions and practice must at all times contribute towards achievement of the vision.

Organisational Culture

There is a positive culture that promotes openness and honesty, in which questioning is encouraged and accountability is clear.

The City of Nedlands Elected Members and staff will strive to achieve the following eight elements within its organisational culture:

- Effectiveness in management structures and practices
- Good communication including feedback
- Learning
- Ethical behaviour and codes of conduct
- No conflict of interest
- Support for frankness and openness
- Confidentiality
- Innovation.

The above elements will be achieved through the following twelve actions:

Effectiveness in management structures and practices

- A good management structure will be maintained based on the organisation's vision, with clear roles and responsibilities.
- Responsibility and accountability will be delegated appropriately down the organisation.
- Management will support clarity in responsibility and accountability and focus on outcomes.
- There will be effective and efficient processes and systems in place.

Good communication including feedback

- Good relationships will be developed between the various stakeholders of the City of Nedlands.

Learning

- Decision making processes will incorporate appropriate consultation, knowledge management and involvement.
- There will be training programs for Elected Members and officers designed to improve their skills and knowledge requirements.

Ethical behaviour and code of conduct

- The Code of Conduct and ethics will be owned and practiced, particularly by leaders throughout the organisation.
- The Mayor and Councillors, CEO and senior management will be models of appropriate behaviour.

No conflict of interest

- An effective induction program will reinforce the organisation's culture so that all people associated with the organisation will recognise where conflicts of interest may arise and how relevant action can be taken.
- There will be agreement about different, but complementary roles of councillors and officers.

Support for frankness and openness

- Opportunities will be provided for open and frank exchange between Elected Members, management and staff.
- Effective feedback mechanisms from the community will be established and maintained.

Confidentiality

- Where issues of confidentiality arise, the City will be transparent about instances where confidentiality must be protected or where confidentiality cannot be preserved as it is in conflict with transparency requirements.

Innovation

- The City will recognise that it operates in a changing environment and so must be aware of opportunities in order to improve the way the City operates.
- The City staff will be encouraged to take reasonable efforts to keep abreast of current best practice and up to date technologies.

1.2 Principle 2 – Roles, responsibilities and relationships

There is clarity about the roles of local government and there exists a sophisticated approach to defining and implementing these.

Working relationships

There are effective working relationships that are promoted and supported within and between the Elected Members, CEO and administration.

Effective working relationships are promoted and/or supported by and between the Mayor, Councillors, Chief Executive Officer and administration. It is a requirement that initial officer contact by Elected Members is made through the Chief Executive Officer in accordance with Council policy. Should an elected member wish to contact any other officer directly, a request shall first be made to the Chief Executive Officer, who will assess the request and advise the elected member of their decision.

Good corporate governance requires clear identification and definitions of responsibility and a clear understanding of relationships between the organisation's stakeholders and those responsible for managing its resources. Very important relationships are those between:

- the Mayor and the Councillors;
- Elected Members and other Elected Members;
- the Mayor and the Chief Executive Officer;
- Elected Members and the Chief Executive officer; and
- Elected Members and the administration.

Effective relationships are achieved and maintained at the City of Nedlands through:

- Parties agreeing on and respecting the differences in their roles.
- Protocols being established based on the agreements about roles and responsibilities being followed.
- Information and discussion about the various roles being included in Councillors' induction processes.
- Goodwill on the part of all parties to make governance work.
- The administration accepting that local government is a level of government and that political activities of Council are legitimate. Councillors are accountable to their constituents as well as to the "corporate whole" and they have to be able to address these accountability requirements in a constructive manner.
- There being a preparedness to tackle problems when they arise.

Council - The Body Corporate roles and responsibilities

Under the Act the Council is a body corporate with perpetual succession, a common seal and is charged with the following responsibilities:

- governs the City of Nedlands affairs
- responsible for the performance of the City of Nedlands functions
- oversees the allocation of the City of Nedlands finances and resources
- determining the City of Nedlands policies.

The City has interpreted these responsibilities as they are contained in the Act in conjunction with the City's governance framework and this governance framework and statement document provides the following guidance on the range and scope of these roles:

Governs the City of Nedlands affairs.

This role encompasses strategic planning mechanisms to ensure the continued viability and performance of the organisation, the setting of strategic goals for the organisation and the monitoring of the City's performance against these strategic goals.

Is responsible for the performance of the City of Nedlands functions.

This role provides that the Council bears the ultimate responsibility for the performance of the City's functions. It can exercise this responsibility through the development of appropriate governance frameworks including delegations of authority.

Oversees the allocation of the City of Nedlands finances and resources.

The Council exercises this role by adopting the City's budget and forward financial plans. It is advised by officers of the City who are responsible for the professional development of appropriate financial controls and strategic documents.

Determines the City of Nedlands policies.

The role of Council in setting policy is most effective when it consults with a professional organisation that implements these policies through the development of appropriate management practices and work processes. Council policy should set the standards for the administration to achieve and make strategic policy decisions that guide officers in their decision making processes.

Under the Act, a local government is a body corporate with perpetual succession and a common seal.

Role of Elected Representation

The Council of the City of Nedlands comprises thirteen elected members including the Mayor.

Three (3) Councillors are elected from each of the City's four wards. The Mayor is elected by popular vote throughout the entire City.

Local Government elections are conducted biennially on a fixed date prescribed by the Act, with candidates elected to the office of Councillor or Mayor as applicable, attaining terms of four (4) years. *Attachment 1* provides the eligibility criteria for nomination, current terms of office applicable to the Mayor and Wards.

Statutory role of Councillors

Section 2.10 of the Act describes that the role of a Councillor is to:

- (a) represent the interests of electors, ratepayers and residents of the City;
- (b) provide leadership and guidance to the City of Nedlands community;
- (c) facilitate communication between the community and the Council;
- (d) participate in the City of Nedlands decision making processes at Council and Committee meetings; and
- (e) perform such other functions as are given to a Councillor by this Act or any other written law.

Each individual Councillor has a legislative requirement to fulfil this role. This governance framework provides guidance to Councillors on how they perform this role at the City.

Individually Councillors have a responsibility to act as a conduit between the community and the City. Not only must they represent the interest of the broader community on the Council, but also as community leaders they must represent the interests of the City within the broader community.

Whilst Councillors may be elected from an individual ward, their primary obligation is to represent the interests of the broader community within the City. It is not appropriate for individual Councillor's constituent concerns to interfere with their decision making processes in providing good governance of the City as a whole.

Elected Members sitting as Councillors are responsible and ultimately accountable for long term financial planning, the annual budget and monitoring financial performance. In doing so, each individual elected member thus accepts a joint and individual responsibility for the financial outcomes.

Accountability and transparency is also facilitated through the standards and behaviour maintained by members – most notably, through their adherence to legislation governing declarations of financial and other interest where these arise, together with associated implications for participation in any debate.

Elected Members rely on:

- Financial advice and factual and timely information from administration;
- Input from internal and external auditors and the Audit and Risk Committee;

Role and responsibilities of Council

The role of Council can be categorised into three key areas - namely legislative, executive and quasi-judicial.

Legislative

The Council is responsible for adopting a set of local laws that reflect current community standards and provide for the good governance of the City. Council when making local laws must be aware of their legislative effect.

Executive

The Council is responsible for overseeing the executive functions of the City and determines appropriate policies, strategies and functions for the administration to implement.

Quasi judicial

The Council is responsible for applying factual situations to the legislative regime in a quasi-judicial manner under the Local Government Act, Town Planning and Development Act and other relevant legislation. This is explained in more detail at Part 4 “City of Nedlands Governance Tools” – Planning and Development Functions of the Council.

Accountability, stewardship, sustainability and innovation

Accountability, stewardship, sustainability and innovation objectives are most effectively pursued where the focus of Elected Members of Council centres upon:

- Strategic planning, policy development and defining scope for delegation of powers and functions;
- Allocating the City’s resources;
- Monitoring performance of the City against adopted strategies and objectives;
- Representing the interests of the City of Nedlands community;
- Appointing the Chief Executive Officer and participating in the performance review process of that officer.

Accordingly, the Council is required to be accountable and transparent by undertaking deliberations and making resolutions within a framework which is factually based, non prejudicial and relevant to issues at hand.

Limitation of Member Liability

The City of Nedlands has the legal capacity of a natural person. As such, the City may instigate legal proceedings in its corporate name and have proceedings taken against it. Section 9.56 of the Act, summarised in *Attachment 2* specifies the limitation that Councillors must be aware of when taking office.

It is largely due to such legislative-based requirements, that local governments have embraced strategies designed to mitigate the liability of members and officers, with liability insurance protection and risk management now serving as a significant element of corporate governance frameworks.

It is for these reasons that many organisations have developed and implemented processes for identifying, analysing and mitigating risks which could prevent the achievement of business objectives. These organisations have put control activities in place to manage risk throughout the organisation by developing risk management plans that cover activities as diverse as reviews of operating performance, information technology and management information systems.

The Mayor

The role of the Mayor as provided under Section 2.8 of the Act, is to:

- preside at meetings in accordance with the Act
- provide leadership and guidance to the City of Nedlands community
- carry out civic and ceremonial duties on behalf of the City
- speak on behalf of the City
- perform such other functions as are given to the Mayor by the Act or any other written law
- liaise with the Chief Executive Officer on the City of Nedlands affairs and the performance of its functions
- otherwise fulfil the role of Councillor.

The Deputy Mayor

Section 2.9 of the Act enables the Deputy Mayor to perform the functions of the Mayor, if:

- the office of Mayor is vacant
- if the Mayor is not available, or is unable or unwilling to perform the functions of Mayor.

Chief Executive Officer

The Chief Executive Officer's functions as described under Section 5.41 of the Act are to:

- advise the Council in relation to the functions of the City of Nedlands under the Act and other written laws

- ensure that advice and information is available to the Council so that informed decisions can be made
- cause Council decisions to be implemented
- manage the day to day operations of the City of Nedlands
- liaise with the Mayor on the City of Nedlands affairs and the performance of the City's functions
- speak on behalf of the City if the Mayor agrees
- be responsible for the employment, management, supervision, direction and dismissal of other employees (subject to Section 5.37 (2) in relation to senior employees)
- ensure that records and documents of the City of Nedlands are properly kept for the purposes of the Act, or any other written law
- perform any other function specified or delegated by the City of Nedlands or imposed under the Act or any other written law as a function to be performed by the Chief Executive Officer.

Section 5.42 of the Act enables the City to delegate in writing to the Chief Executive Officer, the capacity to exercise any of its powers or duties, with the exception of those relating to:

- actions in which a decision of an absolute majority or a 75% majority of the Council is required
- acceptance of a tender which exceeds an amount as determined by the Council
- appointment of an auditor
- acquisition or disposal of any property valued at an amount exceeding an amount determined by the Council for the purposes of this paragraph
- any of the Council's powers under Sections 5.98A, 5.99A or 5.100 (*determining fees, allowances and expenses of members and Committee members*)
- borrowing money on behalf of the City
- hearing or determining an objection of a kind referred to in Section 9.5
- carrying out any power or duty that requires the approval of the Minister or the Governor
- such other powers or duties as may be prescribed.

This clear separation of elected member and Chief Executive Officer roles and responsibilities as identified within the Act reinforces good governance principles. It also ensures that the City adheres to all statutory requirements whilst meeting the expectations of its community.

Administration

In undertaking its functions and responsibilities, Council is supported by the Chief Executive Officer and an Executive Management Team comprising the heads of four (4) Divisions, namely:

1. Corporate Services
2. Community and Strategy

3. Development Services
4. Technical Services.

The Executive Management Team meets regularly as a basis for ensuring effective coordination of the City's operations and implementation of Council resolutions.

These meetings are complemented by Divisional, Operational Management Team meetings and Departmental Managers' meetings. Such forums are considered important, both in enabling management information dissemination and also feedback by officers. This promotes a whole of organisation approach for the City in the fulfilment of its functions and responsibilities.

1.3 Principle 3 – Decision making and management

Decision-Making

There are effective decision-making processes in place that reflect the transparency and accountability which underpin excellence in governance.

The five stages in decision making which will be followed at the City of Nedlands are:

Agenda Setting – This will be achieved through:

- an effective and efficient strategic planning process which produces owned strategic goals
- processes being in place which ensures Council plans are properly implemented.

Information Gathering – This will be achieved through:

- the information gathered being sufficient to allow a decision to be made
- an effective process within the administration to convert information into advice
- good quality and timely Council reports which provide the necessary information, options and clear recommendations. The reports will always incorporate the corporate view of the issue in question, the financial impacts and any risks
- workable and productive consultation processes are in place which ensure that decision-makers are aware of the views of those whom the decision affects
- process for identifying and distilling data into appropriate information
- agendas being structured so as to facilitate good decision-making processes.

Opinion Formation - This will be achieved through:

- ensuring that Elected Members understand the issues and have enough information provided to make a decision.

Decision-making - This will be achieved through:

- council and committee meetings being well chaired and conducted in accordance with Council Standing Orders
- facilitate participation and involvement while ensuring debate is relevant and succinct
- robust debate which ensures that all issues are aired. Although it is robust, the debate is conducted with courtesy and respect
- the chair attempting to find common ground amongst Elected Members
- opportunities being available for the community to participate appropriately
- delegations where appropriate.

Implementation - This will be achieved through:

- decisions being implemented in a timely manner
- solidarity among the Councillors once a decision has been made
- confidentiality being maintained wherever necessary.

1.4 Financial Management

There should be robust and transparent financial management established and maintained to meet local government's accountability to its stakeholders, particularly in terms of stewardship of community assets, both now and into the future.

Council through policy will determine the appropriate mix between borrowing for capital works and funding them from revenue. Council will consider the implications of its decisions on the level of capital works and infrastructure maintenance.

Longer-term financial planning

Elected Members, sitting as Council, will determine a sound and long term financial plan. They must be accountable for the process of developing the longer-term financial plan.

Plan for the future of the District (Strategic Plan)

Section 5.56 of the Act requires that a local government prepare a plan for the future of the district. The Council must know where it is going long-term. It's visions and goals must be properly reflected in the Strategic plan. Council will take its final decisions about the content of the Strategic Plan based on an understanding of the

long-term financial consequences of their decisions. To enable this to successfully occur, the following steps will be implemented by council:

- The implementation of a ***Long-Term Financial Model*** that can be used to align capital and operating expenditure requirements with income streams complies with Council's rating strategy and policy.
- Approve each year's ***Annual Budget*** as being the appropriate one-year-window of the Long Term Financial Model.

Forward Financial Plan

The delivery of the services identified in the Forward Financial Plan will be in accordance with the City's strategic direction.

The financial strategy should be consistent with the Council strategic plan. That is, it must be able to fund its projects.

As part of responsible business planning, the City's Forward Financial Plan will detail the significant programs and activities to be undertaken by the City over the next five years.

The Forward Financial Plan will provide a broad overview of where the financial resources of the City are planned to be directed over this period and the manner in which these activities will be funded.

The rating system

The rating system at the City of Nedlands will reflect the Council's strategy and vision for the future of the City of Nedlands. The rating levels and mix will represent a fair distribution of the rate burden across the community and Council's policies on appropriate taxation contributions from different sectors of the City.

Council's approach to rating will incorporate the concept of intergenerational equity that is; the way the rating burden is spread between current and future generations of ratepayers of the City.

Council will be informed whether the rates outcome, which was envisaged in the Forward Financial Plan, is still appropriate and consistent with all other aims of the Council Strategic plan.

Mindful of the role outlined under Section 2.10 of the Act, Elected Members must assess whether the budget delivers what the Council wishes to achieve.

1.5 Annual Budget

Developed as part of sound business management, the annual budget provides a framework for allocation of financial, physical and administrative resources required in pursuing the City's objectives for the proceeding twelve month period.

The annual budget will be developed within the following framework:

Process

Administration will develop annually a budget preparation timetable and process which meets Councils statutory requirements and gives enough time to resolve major issues.

Administration will ensure that Council is given adequate time to have the opportunity to work through key issues.

Consistency with Financial Plan

Council's Forward Financial Plan will provide broad guidance for the budget.

The Forward Financial Plan will be reviewed annually to incorporate the long term impact of any significant current decisions which are not consistent with the plan.

Information

Information will be presented to Council by Administration in a way that enables Council to make an informed decision.

1.6 Financial Reporting – Monitoring performance against budget

Statutory Compliance

The City of Nedlands recognises that when decisions are made by Council, resolutions are acted upon and performance outcomes are reported, its is important that the requirements of any legislation and/or regulations are complied with, especially because of the reporting requirements of the Statutory Compliance Return.

Compliance will be pursued through ensuring the integrity of the key financial planning and reporting mechanisms which underpin the City's operations – especially the Annual Budget and Annual Report, and supplemented by internally based performance measurement instruments such as reports from each division.

Compliance with key financial and statutory requirements is assessed through the audit schedule conducted in accordance with the Act by professionally qualified internal and external parties as appointed by the City. Financial reporting to Council must be as a minimum, in accordance with its statutory requirements.

Content

The focus of financial reports to Council is to provide accurate information about the City's overall financial position.

Councillors, when considering the financial reports, will satisfy themselves that the information they are given reflects the actual situation of the City of Nedlands. Councillors will ensure that they understand sufficiently the financial indicators for them to ask appropriate questions and interpret the responses.

Annual Report

The Annual Report has its basis in the Act, but also serves as the vehicle by which the City can monitor, control and report on the outcome of its activities over a particular financial year.

The Annual Budget should reflect the priorities expressed in the Strategic Plan and the Annual Report should indicate the extent to which those priorities have been achieved.

Services and funds

Council will:

- monitor on a regular basis (every 2 years) community satisfaction with the levels of service it provides
- have appropriate user charges for its services and facilities
- will be mindful of the proportion of rate revenue required to meet administrative costs for the City
- will comply with government policy
- where appropriate, seek to obtain other avenues of financial assistance such as grants, being mindful of the implications of accepting any grant including financial and management obligations
- Ensure costs will be recognised and recovered appropriately.

Capital works and debt servicing

- Key assets will be maintained.
- Any borrowing must be sustainable and not impose an unacceptable level of debt servicing.
- Council will be informed on the proportion of rate revenue required to service debt and decide whether it is appropriate for the City of Nedlands when compared to those of similar local governments.

Accountability and policy

- Council will meet its legislative and financial reporting requirements.
- Council will meet its accountability requirements to the community in terms of stewardship of assets.
- Council will strive to achieve best practice in financial policies and practices.

- Council will leave an appropriate legacy for future Councils.

Audit, Indemnity and Liability Insurance Protection

The City has elected to establish an Audit and Risk Committee made up of Elected Members. Council has also appointed professional internal and external auditors. These strategies are intended to enable maintenance of comprehensive professional indemnity and public liability insurances, which are supported by appropriate insurance policies to ensure that the City is more than adequately safeguarded against unforeseen risks.

Risk Management

An effective approach to the identification, assessment, monitoring and management of risks should be established and maintained.

The City's performance in implementing effective risk management strategies and adherence to sound business practice is reinforced through access to independent legal advice, the completion of the annual statutory compliance audit and the annual financial audit undertaken by professional, external auditors as required by the Act.

The City maintains a wide range of assets including:

- Infrastructure assets
- Real property
- Financial assets
- Information assets and intellectual property
- Natural and heritage assets.

The City takes an active approach to risk management in the conduct of its business through the implementation of a number of specific and organisation wide initiatives.

This risk management strategy involves the City identifying, collating and treating all the identified risk (internal and external) to ensure a coordinated approach that effectively minimises business, financial and physical liability to the City's operations.

- The Council will ensure the risk management program is of the standard required to meet its fiduciary obligations to:
- safeguard assets
- ensure there are sufficient monies to meet its financial obligations when they fall due
- prevent and detect fraud
- ensure accuracy and completeness of accounting records.

Controls and risk minimization processes have been put in place in the form of:

- An Audit and Risk Committee.

- Formal processes whereby strategic and operational business risks and activities are considered by the Council.
- Review processes and reporting requirements that monitor compliance of service providers with their contracts.
- Formal procedures for the safeguarding of assets. The procedures include accounting, financial reporting and internal control policies.
- Regular reporting to the Council on financial and non - financial areas of Council operations.

Internal control and risk management procedures are set out in the following documents:

- Procedures and Controls.
- Fraud Control Checklist.
- Risk Management Statements.
- Liability Insurance.
- Asset Insurance.
- Financial Controls.
- Delegations Manual.
- The risk management database.

Delegations

Effective delegations should be implemented and maintained

Delegations of authority are required in order to provide officers of the City with the power to exercise duties and make determinations. It is essential that the Council's delegations are performed in accordance with the adopted governance framework and are compliant with relevant legislation. The City is required to keep records on the exercise of its delegations.

Council may delegate authority to the Chief Executive Officer and other nominated officers under the provisions of the Local Government (Miscellaneous Provisions) Act 1960, Health Act 1911, Strata Titles Act 1985, Caravan Parks and Camping Grounds Regulations 1987 and the City of Nedlands Town Planning Scheme No. 2. to perform some of its functions and duties.

The Act and associated regulations allows the Chief Executive Officer to delegate to any other officer the authority to perform functions and duties that are exercisable by the Chief Executive Officer under the Act or that have been delegated to the Chief Executive Officer by the Council.

This accords with a governance framework whereby officers are responsible to the Chief Executive Officer and the Chief Executive Officer is responsible to Council. Similarly the Chief Executive officer is responsible for the implementation of Council decisions and may delegate some of this responsibility to other officers of the City.

All delegations are to be recorded in a register established for the purpose (as required by the Act) and reviewed annually. The Chief Executive Officer will report to Council on a monthly basis any decisions that have been made under delegated authority.

Under the provisions of Town Planning Scheme Number 2 Council may delegate authority to certain officers other than the Chief Executive officer. If such a delegation is exercised Council shall be advised.

1.7 Principle 4 - Accountability

Local government must account for its activities and have systems that support this accountability.

Excellence in governance is based on the premise that those who are involved in governance are held accountable for what they do. Accountability at the City of Nedlands means the Elected Members and management taking responsibility for their performance.

Elected Members and management at the City of Nedlands accept they are accountable under legislation in terms of how the Council operates and reports. This also extends to other measures such as:

- Risk management systems implemented and maintained to ensure that community assets are protected.
- Internal audit and an Audit and Risk Committee focused toward providing assurances to all stakeholders that processes and procedures are being adhered to and that financial reports are accurate.
- A consultation and policy to support good decision making by ensuring Elected Members are aware of the views of those who will be affected by any decision.

Performance Management

There should be an active performance management system in place that enables Elected Members and officers to be openly accountable for their performance.

The City will put in place a range of mechanisms to ensure that performance is measured and reviewed and thereby enable remedial action to be taken, where necessary.

The City is committed to the development of appropriate performance measures in financial policies and strategic plans to ensure long term viability.

Ongoing financial performance will be monitored through internally and externally based systems and processes, with associated reporting to the Executive Management Team and Council.

Effective coordination between the strategic and operational elements will be maintained through a regular (3 monthly) report to Council based on the Strategic Plan and corporate plans.

Chief Executive Officer Performance Management

The Chief Executive Officer is appointed by the Council and is directly accountable to it. The Council is accountable for setting the Chief Executive Officer's performance plan and subsequent monitoring of his or her performance. This responsibility belongs to Council sitting as the Council and is not the responsibility of individual Elected Members.

Council has established a Chief Executive Officer's Performance Review Committee which is responsible for –

- undertaking a performance appraisal of the Chief Executive Officer in accordance with the provisions of Section 5.38 of the Local Government Act 1995 and in accordance with the terms and conditions of the employment contract of the Chief Executive Officer
- managing and conducting the performance appraisal of the Chief Executive Officer in order to meet both Council's statutory obligations in accordance with the requirements of Section 5.38 of the Local Government Act 1995 and any terms and conditions of the employment contract of the Chief Executive Officer
- determining and setting in place an appropriate review process
- using the resources and professional advice of the Manager Human Resources and any additional assistance that the Manager Human Resources may recommend to determine the process and plan and conduct the review
- negotiating and setting goals, objectives, key performance indicators and changes to the remuneration package within the terms of the Chief Executive Officers contract. Any goals, objectives, key performance indicators or remuneration package changes so negotiated and set must be acknowledged in writing by both the Mayor and the Chief Executive Officer
- brief all Elected Members on the outcomes of the review

The City will use an independent party to facilitate the Chief Executive Officer's performance review.

At its meeting on 23 February 2010, Council approved the appointment of the Western Australian Local Government Association (WALGA) as an independent body to assist in the conduct of the CEO Performance Review for 2009/210, with a view to reassessing the service provider for the 2010/2011 performance cycle.

Independent Review

Local governments should establish internal structures that provide for independent review of processes and decision-making to assist the Council to meet its accountability to stakeholders.

Independent Review will be achieved at the City of Nedlands through the following ways:

- Audit and Risk Committee
- Internal auditors
- External auditors.

Customer Consultation

Consultation should be undertaken that is appropriate to the scope and potential impact of the matter. It should respect the position and opinion of all stakeholders. The outcomes of the consultation should be taken into account when the decision is made and feedback should be provided to those who participated.

The City will maintain and regularly review a Customer Service Charter which details the levels of service a customer can expect from the City, concentrating on the areas of service that our residents have indicated are the most important.

The City is prepared to explore new and innovative methods of service delivery in order to provide improved access to information and enhance customer interaction.

The City is committed to fostering high levels of public awareness of its activities, by providing its residents and ratepayers with access to a wide range of information.

In addition to meeting the state wide and local public notice requirements prescribed by the Act in respect to particular proposals and activities, the City will also ensure that information is available by electronic means.

The City will utilise the local press for notifying residents about important issues. Information will also be posted on its official notice board located at the Administration Centre. The Nedlands News and website will continue in its role as a mechanism for disseminating information and encouraging feedback on key strategies, projects and significant City events.

Increasingly, the City's website at: www.nedlands.wa.gov.au will serve as the focal point for providing up to date information and service delivery information to ratepayers and residents.

Community engagement involving residents and ratepayers is facilitated by the City through a range of mechanisms which includes; information provision, consultation, public comment, Special Meetings and Annual General Meetings.

1.8 Principle 5 – Commitment to sustainability

Sustainability Principles

The City will align with the principles of the State Sustainability Strategy.

The City of Nedlands agrees to adopt the State Governments definition of Sustainability;

“Meeting the needs of current and future generations through an integration of environmental protection, social advancement and economic prosperity”

The City of Nedlands will meet its commitment by ensuring that planning, reporting and decision making are conducted in the following ways:

- Incorporate sustainability principles and actions in strategic and business planning and budgeting.
- Report on sustainability achievements in annual reports.
- Where appropriate, utilise sustainability assessment in planning and decision making.
- Where appropriate actively engage stakeholders and the public in transparent policy development and decision making processes.

Sustainability Outcomes

Local Government should endeavour to keep up-to-date with processes, methodologies and technologies which are capable of achieving improved outcomes for the City.

The City of Nedlands will:

- Identify, assess and manage risks to employees, contractors, the environment and communities.
- Strive to achieve industry best practice.
- Meet and where appropriate, exceed the minimum performance standards required by legislation.
- Set and achieve targets that include reducing and preventing pollution.
- Develop our people and provide the resources to meet our targets.
- Support the fundamental human rights of employees, contractors and the communities in which we operate.
- Care for the environment and value cultural heritage.

Communicate with, and engage employees, contractors, business partners, suppliers, customers, visitors and communities to build relationships based on honesty, openness, mutual trust and involvement.



Sustainability Practices

Awareness of practices that will lead to improved resource management, environmental protection and rehabilitation, stronger communities and added economic value will be raised within the Council and staff and across the community.

The Sustainable Nedlands Team will act as a leader for the City in driving the knowledge management of the City in sustainable development practices.

Organisational Divisions will support sustainability by

- Ensuring procurement complies with Council's sustainable procurement policy.
- Integrating service delivery across departments.
- Minimising the consumption of energy, water and other resources, by reducing waste and maximising recycling.
- Reducing vehicle use, maximising fuel efficiency, promoting alternative fuels and modes of travel to offset greenhouse gas emissions.
- Incorporating sustainability considerations into the design, procurement, leasing, construction, maintenance and management of Council assets and to the management or development of Council owned land.
- Encouraging Elected Members and staff to support sustainability principles.
- Continually improving their knowledge about sustainability through education and training.
- Encouraging participation in community development through voluntary initiatives that support sustainability.
- Implementing occupational health and safety measures in the workplace to improve environmental, economic and social outcomes.

Sustainability Monitoring

Potential environmental, social and economic impacts of any project or decision will be considered.

Sustainability is not an outcome in itself, but is a process towards improved outcomes in social, economic and environmental terms.

Reviewing progress in that process is important for the City of Nedlands to assess its level of success and learn from its own processes.

PART 5 – City of Nedlands Code of Conduct

In 2007, the Local Government Act 1995 was amended and the Local Government (Rules of Conduct) Regulations 2007 were published. These changes establish rules of conduct and general principles that apply to council members in their capacity as a council member.

In addition to the Local Government (Rules of Conduct) Regulations, the City of Nedlands' has adopted a Code of Conduct (the Code) in accordance with the legislative requirements of the Local Government Act that apply to councillors and members of staff.

The Code establishes the minimum appropriate standards for the honest and ethical behaviour of Elected Members and employees. Members and employees are required to familiarise themselves with the Code and ensure they observe its provisions.

The Code is not a replacement for any act, regulation or local law. If there is a conflict between the Code and the provisions of any act, regulation or local law, the latter provisions prevail.

The Mayor will ensure that the Code is brought to the notice of all members. Members must observe the Code and behave in accordance with its provisions. Members, upon taking the oath or affirmation of allegiance, will declare that they will abide by the standards set out in the Code.

The Chief Executive Officer will ensure that the Code is brought to the notice of all employees. Employees must observe the Code's contents as part of the conditions of their contract of employment.

In view of the open and accountable environment within which Western Australian Local Government operates, the Code occupies an important role in promoting good governance.

A fundamental tenet of the Code is that it involves self regulation and relies upon the Mayor, Councillors and the Chief Executive Officer to ensure the City is accountable and transparent and that the business of the Council is conducted in an environment of transparency, openness and honesty.

Conflicts of Interest

The City's Code of Conduct requires that:

Elected Members will ensure that there is no actual or perceived conflict or incompatibility between their personal interests, the impartial fulfilment of their public or professional duties, and either their personal interests or those of close associated persons.

Elected Members and Employees are not to allow businesses or business activities in which they have an interest (excludes any interest which is solely the ownership, an interest in the ownership or an entitlement to ownership of shares in a publicly listed company) to engage in any form of work directly with Council or in any other way that may place them in a conflict of interest with their role and responsibilities as an Elected member or employee.

Elected Members and designated employees will comply with the requirements of the *Local Government Act 1995* and Regulations with regards to lodging financial returns and shall lodge a Primary Return and subsequently Annual Returns with the Chief Executive Officer in accordance with those legislative requirements.

Employees who exercise any discretionary function must disclose the possibility of any conflict before exercising such discretion when dealing with immediate relatives or close friends. Whenever possible, or if there is any doubt about an employee's ability to deal with a particular matter impartially, an employee will not deal with the matter. Disclosures will be made in writing to the employee's Director, or to the Chief Executive Officer, when applicable and the Chief Executive Officer will make disclosures to the Mayor.

Employees and Elected Members will comply with the tender provisions of the *Local Government (Functions and General) Regulations 1996* if tendering for a contract to be let by the City.

In accordance with Part 5, Division 6 of the *Local Government Act 1995*, a Council member or an employee is to disclose any interest that he or she has in any matter:

- to be discussed at a Council meeting at which they attend
- to be discussed at a Council meeting in respect of which the member or employee has given, or will give, advice.

The interest is to be disclosed at the meeting immediately before the matter is discussed or at the time the advice is given, and is to be recorded in the minutes of that meeting.

Disclosure of Conflict of Interest

Where a disclosure of a conflict of interest is required by law, the Code, or otherwise it should be made promptly, fully and preferably in writing.

In addition to disclosure of financial or non-financial interests, a member or employee:

- attending a Council meeting
- giving advice to a Council meeting will disclose any interest they have in a matter to be discussed at the meeting.

Where a conflict of interest is disclosed, the disclosure will be made at the meeting immediately before the matter is discussed or at the time the advice is given, and will be recorded in the minutes of the meeting.

Financial Interests

Elected Members must disclose certain financial interests:

- In matters before Council and Committee meetings
- In Primary and Annual Returns.

Elected Members need to inform themselves about their obligation to disclose because there are a number of offences that can be committed. Fines of up to \$10,000 or imprisonment of up to two years can be imposed.

Disclosures at meetings and in Primary and Annual returns are recorded in a register to which the public has access. This enhances the accountability of Elected Members to the public. At the same time, protection is given to Elected Members because it is an offence for a person to publish information from the register unless under specified circumstances.

The Financial Interests Handbook, detailing the financial interest provisions of the Local Government Act 1995, is available from the Department of Local Government.

Disclosure of Interests Affecting Impartiality

In addition to financial interests, Elected Members must declare any interest, which the community may perceive, would affect their ability to act with impartiality. Interests which commonly fall within this definition are when an Elected Member or is a member of a group, club or association and that organisation requires Council to make a decision on an application it has made. In addition, if a member's parents, siblings or children (not living at home) has an item before Council, it would be wise for the member to disclose an interest affecting impartiality.

It is important to note that if an Elected Member has an interest affecting impartiality, once they have declared their interest they can still take part in debate and vote on the matter.

The Department has produced guidelines in relation to interests affecting impartiality.

The Declaration and Recording of Gifts

The City's Code of Conduct requires that an elected member or employee cannot accept a gift, other than a token gift, from a person who is undertaking, or is likely to undertake, business with the City of Nedlands. All gifts must be in accordance with the Local Government (Elections) Regulations 1997 Part 5A – Disclosure of Gifts as shown in *Attachment 3*. In summary, a token gift refers to a gift with a value between \$50-300.

Unless the Chief Executive Officer decides that a gift is given by way of hospitality, a Council member or an employee who accepts a token gift from a person mentioned above, is to record:

- the names of the persons who gave, and received, the token gift
- the date of receipt of the token gift
- a description, and the estimated value, of the token gift.

The Chief Executive Officer is to keep a register of all token gifts.

The Chief Executive Officer also maintains a Public Register of Election Donations in which is recorded all donations to the election campaigns of the Mayor and Councillors including donations in kind in accordance with regulation 30D of the Act. The Mayor and Councillors are required to submit a return detailing any donations to their election campaign within two months of Election Day.

PART 6 - Council, committees, forums and other meetings

Council and Committee Meetings

The City of Nedlands operates on a cycle of one meeting per month of the Council and of the Committee of the Whole. Generally, Council meets on the fourth Tuesday of each month and Committee meet on the second Tuesday of each month. The exception being December when these days are brought forward by one week and January when Council is in recess. Special Meetings of Council may be held at any time providing the requirements to notify Elected Members are met.

Ordinary Council and Committee meetings commence at 7 pm. All Council and Committee meetings are open to the public but there may be occasions when it is considering confidential items that the public is asked to leave.

An agenda is prepared by the City's Administration, incorporated within are background reports and recommendations relating to matters requiring consideration and recommendation in the case of Committee, or consideration and resolution in the case of Council.

The Standing Orders incorporated within the Local Law:

- Provide the rules and guidelines which apply to the conduct of meetings of Council and meetings of Electors
- Ensure that all meetings of Council and other matters as prescribed are conducted in accordance with the Act, the Regulations.

If used effectively, the Standing Orders result in,

- better decision making by Council
- the orderly conduct of meetings dealing with Council business
- better understanding of the process of conducting meetings dealing with Council business
- the more efficient and effective use of time at meetings.

Advisory Committees and Advisory Groups

The City operates advisory committees and groups responsible for providing recommendations on the management of key community assets and facilities. Advisory groups comprising community and stakeholder representatives and resourced by the City's technical and administrative officers may also be established to progress key strategic projects.

As part of the City's aim of maintaining ongoing, effective community participation in decision making, consultative committees may also be established on an 'as needs' basis to facilitate input and feedback in the development of major proposals and initiatives.

Council currently has the following advisory committees:

- Sustainable Nedlands Committee
- Audit & Risk Management Committee
- Chief Executive Officer's Performance Review Committee
- Budget Committee
- Traffic Management Committee.

Each of these committees has specific "terms of reference" and minutes of each meeting are placed on the Council Agenda.

Qualified Privilege for Members in the performance of their duties

The Courts have decided that Elected Members, in the performance of their duties, are only protected by a qualified privilege in certain circumstances. This qualified privilege allows members to make public comment on issues under consideration, either at a committee and/or Council meeting or a Councillors forum session. Qualified privilege provides members with a limited protection from actions in damages for defamatory statements.

The qualified privilege is available on occasions where a member has a moral, legal or social duty that is shared by the other members as a result of their consideration of an issue in the performance of their duties. The exercise of their duty requires the member to make a communication to the Council to allow the other members to fulfil their duty.

This qualified privilege is limited to items under consideration by Council. Members can only claim it where they believe they are making a genuine and honest statement. Any malice on behalf of the member claiming qualified privilege may result in a finding that the member has misused the qualified privilege.

In ensuring that they represent the interests of the community in Council decision making procedures, members must be able to speak honestly, openly and frankly, taking into account all matters that are relevant to items for consideration. Qualified privilege allows members to honestly raise genuine concerns, in the fulfilment of their duty to provide good governance for the community, without fear of an action in defamation.

The defence of qualified privilege cannot be used if it can be proved that the defamation was motivated by malice. Malice may be defined as "desire to cause harm to someone, particularly in relation to an action for defamation".

Agenda and Minutes

As required under the Act and associated regulations, the administration prepares agendas for Committee and Council meetings and endeavours to ensure that they are delivered to members no later than the Wednesday prior to a scheduled Committee or Council meeting.

In keeping with the City's commitment to openness and accountability and engaging with its community, agendas are placed on its website and in printed form on the Friday prior to a scheduled Committee/Council meeting.

Minutes of both Committee and the ordinary Council meeting are submitted to the next Committee or Council meeting for confirmation. The Act allows a Local Government to release minutes in an unconfirmed form, in the interests of maintaining public information and accountability. Accordingly, the City endeavours to make unconfirmed minutes of its Committee and Council meetings available to the public within one week of a meeting.

Local Laws, Policies, Management practice and delegations

The City has adopted a number of local laws, policies, delegations and management practices to guide the administration in the conduct of the City's operations. The policy and delegation regimes are key components of the City's governance framework.

Local Laws

The Act outlines the process by which the City may adopt local laws. Its legislative role allows the City to adopt local laws that may be enforced through the courts, by the issue of infringement notices or by performing other executive functions Council is aware when adopting Local Laws that they operate with the force of legislation which the City has an obligation to enforce.

When a local law is proposed the community has an opportunity to comment upon it. The local law is then presented once more to Council and any public submissions are considered. If adopted by Council the local law is further considered by the Western Australian Parliamentary Committee on Delegated Legislation. Local laws must also comply with the National Competition Policy principles adopted by agreement between local, state and federal governments. A local law comes into force once it has been listed in the Government Gazette.

The City maintains local laws relating to:

- Standing Orders
- Council Halls
- Parking and Parking Facilities Local Laws
- Dogs Local Laws
- Fencing
- Health
- Long Service Leave
- Reserves, Foreshores and Beaches
- Site Erosion & Sand Drift
- Thoroughfares
- Trading in Public Places

- Signage.

Policies and management practice

Policies provide the administration with guidance for the implementation of processes. They have been drafted in a manner that allows Council to adopt policies in accordance with its role of providing policy direction to the administration of the City.

These policies focus on setting standards in compliance with legislation, adopting values or guiding processes. These practices and processes are descriptive of the functions and tasks that are required to achieve each policy objective. They are contained in management practices that are developed by the Executive Management Team and approved by the Chief Executive Officer.

1.9 Town planning and the consideration of development applications

Town Planning Schemes

A Local Government is required under the Town Planning and Development Act to have in place a Town Planning Scheme for the district. A Local Government Town Planning Scheme is required to be consistent with the Metropolitan Region Scheme, which is administered by the State Government. The Local Government Town Planning Scheme must also take into consideration State Government Town Planning Strategies, Plans and Policies.

Town Planning Schemes are statutory law and require the approval of the Minister for Planning and Infrastructure.

A Town Planning Scheme provides a legal framework for a range of functions including:

- Providing land use and development controls.
- Supporting housing choice, variety and amenity.
- Providing the mechanism for the development of convenient and attractive retail centres.
- Assisting economic development through facilitation of commercial, industrial and business development to maximise job opportunities.
- Establishing high quality open space areas and protecting areas of environmental significance.
- Assisting in the provision of a transport network, which serves the needs of the community by providing a range of alternative networks catering for

different transport modes, which are closely integrated with land use considerations.

The provisions of a Town Planning Scheme are formulated through a collaborative and consultative process involving the State Government, Local Government and the community. The State Government, through the Minister for Planning and Infrastructure provides final approval to the contents of a Town Planning Scheme and once gazetted a Scheme comes into operation and has the force of law. The authority to operate its Town Planning Scheme is delegated to the local government by the State government.

A Town Planning Scheme requires review every five years to ensure that the Scheme continues to meet changing community needs and expectations. The review process is facilitated by the Local Government and involves community input. The City operates under Town Planning Scheme 2 which was gazetted in 1985. The scheme has been under review since 1997.

Amendments can be made to an operative Town Planning Scheme to vary the Scheme provisions. An amendment to a Scheme again involves a range of stakeholders including the Local Government, the State Government and the community. The Minister for Planning and Infrastructure provides the final decision in relation to a Scheme Amendment.

A range of local planning policies are also used to support and guide the implementation of the Scheme.

Importantly, Local Government Town Planning Schemes incorporate by reference the Residential Design Codes (R-Codes), which is the planning policy of the State Government providing detailed development control for residential development. The State Government revises the R-Codes from time to time.

The role of a Council in administering a Town Planning Scheme includes:

- Consideration of development applications.
- Consideration of subdivision proposals.
- Consideration of Town Planning Scheme Amendment proposals (whether suggested by the City or by a customer).
- Enforcement of Town Planning Scheme provisions.
- Development of planning policies.
- Review of existing Town Planning Scheme.
- Formulation of new Town Planning Scheme.

Council is provided with the professional advice from specialist planning officers in exercising its role in relation to each of these matters. This advice will provide Members with detailed information relating to the particular Town Planning issue requiring Council consideration. In certain circumstances applicants have rights of appeal to challenge a planning related decision of the Council. It is therefore important for Elected Members to gain a full understanding of the issues and follow proper process before reaching a decision.

While all decisions relating to development applications represent a 'Council decision', a number of determinations are made by the Director Development Services under delegated authority from Council.

Town Planning decisions must be consistent with, and have regard to, the requirements of the Swan River Trust, who have jurisdiction over land adjoining the Swan River.

The Consideration of Development Applications

When a Council considers a development or planning application it undertakes an almost judicial role. It is required to consider the information the applicant has provided and test it against the provisions of the Town Planning Scheme and any other relevant planning instruments or policies. It is guided in its consideration by the professional advice of its technical officers.

Councils are required to decide development applications in an unbiased way that satisfies the principles of administrative law and natural justice. It may be that there is opposition to a development application from the community but if an application is consistent with the provisions of the Town Planning Scheme (which is statutory law) then that opposition should not influence a decision against the proposal.

The City employs specialist planning officers to draft reports and provide Council with the information it needs to consider a development or planning application and advise it of any relevant law or policy.

In considering a development or planning application Council should take into account those planning issues which are relevant to the application and which are usually contained in the officer's report.

Council, in deciding development and planning applications (including requests for rezoning) must take care to ensure that the following principles are adhered to:

- Councillors must read the officer's report on the matter before voting at a Council meeting. A Councillor who has not read the officer's report and then participates in the decision making process without a full understanding of the issues may jeopardise the validity of the decision making process.
- Councillors must ensure that when they debate a planning matter under consideration they restrict themselves to relevant matters of fact and law. These relevant matters will be contained and addressed in the officer's report. Where Council conducts a debate on a matter that is based on considerations other than those planning issues relevant to an application, they may jeopardise the decision making process.
- If Council resolves a planning matter contrary to the recommendation made by its technical officers then the reason for resolving differently should be recorded in the resolution. The reasons must be based upon valid planning considerations.
- Council policy is to ensure neighbours who may be significantly affected by a development proposal have an appropriate opportunity to be heard. The agenda report will include details of any consultation that has occurred.

Council must ensure that neighbours that may be affected by a proposed development have had an adequate opportunity to put their case and that any relevant matters that they raise have been considered in the decision making process. An opportunity to make a written submission is generally significant, though an opportunity to make a submission in person to a relevant meeting may be appropriate where it is requested by a person with a significant interest. If any submission is to influence the decision making process it must address valid planning issues. The role of Council is to test any submission against the application and the provisions of the Town Planning Scheme. The applicant must be given the right of reply.

PART 7 – Key governance documents, policies and procedures

1. Corporate Plans and Reports

- Strategic Plan
- Forward Financial Plan
- Annual Budget
- Annual Report
- Financial Monthly Report

2. Council Committees

- Full Committee of Council
 - Sustainable Nedlands Committee
 - Budget Committee
 - Audit & Risk Management Committee
 - Chief Executive Officers Performance Review Committee
 - Traffic Management Committee

3. Ethics and Values

- Member and Officer Code of Conduct
- Strategic Plan 2008-2013
- Communication/Community Engagement Strategy
- Customer Perception Surveys
- Statutory Compliance
- Australian Accounting Standards.
- Australian Records Management Standard ISO/AS 15489-2002 Parts 1 & 2.
- Aboriginal Heritage Act 1972.
- Building Code of Australia 1996.
- Building Regulations 1989.
- Builders Registration Act 1939.
- Bush Fires Act 1954.
- Caravan Parks and Camping Grounds Act 1995
- Corruption and Crime Commission Act 2003
- Disability Services Act 1993.
- Dog Act 1976
- Environmental Protection Act 1986.
- Equal Employment Opportunity Act 1984.
- Evidence Act 1906.
- Freedom of Information Act 1992.
- General Disposal Authority for Local Government Records RD99004.
- Health Act 1911 and association regulations.
- Heritage of Western Australia Act 1990.
- Industrial Awards.
- Industrial Relations Act 1979 (WA).

- Industrial Relations Act (Federal).
- Interpretation Act 1984.
- ISO 9000/2000.
- Justices Act 1902.
- Land Administration Act 1997.
- Land Valuation Tribunals Act 1978.
- Library Board of Western Australia Act 1951.
- Limitation Act 1935.
- Litter Act 1979.
- Liquor Licensing Act 1988.
- Local Government Act 1995 and associated regulations.
- Local Government (Miscellaneous Provisions) Act 1960.
- Local Government Grants Act 1978.
- Main Roads Act 1930.
- Metropolitan Region Town Planning Scheme Act 1959.
- Minimum conditions of employments act (State)
- Native Title Act 1993.
- National Competition Policy.
- Occupational Safety and Health Act 1984 and associated regulations.
- Parks and Reserves Act 1895.
- Parliamentary Commissioner Act 1971.
- Public Works Act 1902.
- Radiation Safety Act 1975 and associated regulations.
- Rates and Charges (Rebates and Deferments) Act 1992.
- Residential Design Codes of WA 2002
- Rights in Water and Irrigation Act 1914.
- Risk Management AS/NZS 4360:1999.
- Road Traffic Act 1974.
- State Records Act 2000.
- State Records Principles & Standards 2002.
- Strata Titles Act 1985.
- Swan River Trust Act 1988.
- Telecommunications Act 1974.
- Town Planning and Development Act 1928.
- Transfer of Land Act 1893.
- Valuation of Land Act 1978.
- Waterways Conservation Act 1976.
- Workers Compensation and Assistance Act 1981.
- Annual Statutory Compliance Return.
- Annual Budget and Annual Report.
- Departmental Reports.

5. Asset and Risk Management

- Independence of Decision Makers.
- Policies, management practices and delegations.
- Sound budgetary framework.
 - Procedural and technological safeguards.
 - Legislative and regulatory compliance.
 - Independent, external legal advice.
 - Risk management strategy
 - Quality, customer-focused decision making.
 - Assets register.
 - Capital works programs.

6. Audit, Indemnity and Liability Insurance Protection

- Sound budgetary, reporting and performance management framework
- Effective, compliant financial and information management processes and systems.
- Professional, external audit services.
- Appropriate insurance cover.

7. Human Resource Management/Development and Occupational Health Safety and Welfare Management

- Certified Agreement. (Enterprise Bargaining Agreements).
- Contracts of employment
- Occupational Health Safety and Welfare Programs.
- Annual Performance Assessments.
- Training and Development Programs.

8. Performance Measurement and Review

- Forward Financial Plan.
- Peer-based Benchmarking of Rate Competitiveness .
- Corporate Reporting Performance Management Model.

9. Customer Consultation

- Customer Service Charter.
- Internal/External Customer Satisfaction Surveys.
- Customer Action Request System (C.A.R.S).

10. Continuous Improvement

- Strategic Plan 2008-2013.
- Customer Service Charter.
- Communication/Community Engagement Strategy.
- Corporate Reporting Performance Management Model.

1.10 Attachment 1 – Eligibility to become Elected

Who Is Eligible To Nominate For Election To The Office Of Mayor Or Councillor?

There are no professional qualifications or pre-requisites for individuals to nominate for election to Council. A person is eligible to nominate as a candidate in an election, provided that they are:

- at least 18 years of age;
- an elector of the district;
- not disqualified from being elected as a member of Council arising from their incumbency as a representative of State or Federal parliament or their disqualification due to insolvency, criminal convictions and membership of another Council; and
- not an employee of the local government for which they are elected to serve**.

(Persons are not precluded from standing as a candidate in any Council election under such circumstances, however it is a requirement that employment be relinquished in the event of their election to office)

Current Terms of Office of the Mayor and Councillors

As a consequence of the October 2009 elections, terms have been allocated to the Council members as follows:

Mayor	Term – expiring October 2011		
Coastal Ward Two members	One member Term expiring	Term expiring October 2013	October 2011
Dalkeith Ward One member	Two members Term expiring	Term expiring October 2013	October 2011
Hollywood Ward Two members	One member Term expiring	Term expiring October 2013	October 2011
Melvista Ward One member	Two members Term expiring	Term expiring October 2013	October 2011

1.11 Attachment 2 - Limitation of Member Liability

The City of Nedlands has the legal capacity of a natural person. As such, the City may instigate legal proceedings in its corporate name and have proceedings taken against it.

Section 9.56 of the Act specifies:

- (a) *a member of the Council or of a Committee of the Council, of a local government*
- (b) *an employee of a local government; or a person appointed or engaged by a local government to perform functions of a prescribed office or functions of a prescribed class;*

Further to this, section of the Act specifies that:

- (2) *“An action in tort does not lie against a protected person for anything that the person has, in good faith, done in the performance or purported performance of a function under the Act or under any written law”.*
- (4) *“It does not relieve the local government of any liability that it might have for the doing of anything by a protected person”.*

It is important to also note that, under section 9.56 of the Act:

- (a) *a reference to the doing of anything includes a reference to the omission to do anything;*
- (b) *a reference to the doing of anything by a protected person in the performance or purported performance of a function under any written law other than this Act is limited to a reference to the doing of anything by that person in a capacity described in subsection (1) (a), (b) or (c) as the case may be.*

1.12 Attachment 3 – Disclosure of gifts

Local Government (Elections) Regulations 1997 Part 5A – Disclosure of Gifts

Part 5A of the Local Government (Elections) Regulations 1997 requires that a “Gift Register” is established and maintained by the Chief Executive Officer.

(1) In this Part

“**Gift**” means a disposition of property, or the conferral of any financial benefit, made by one person in favour of another.

(2) A gift can include a gift of money, a gift which is non-monetary but of value, a gift in kind, the payment of an inadequate financial consideration or the receipt of a discount (where the difference or discount is more than \$200 worth), financial or other contribution to travel, the provision of a service for no consideration or for inadequate consideration, and a firm promise or agreement to give a gift at some future time.

(3) A gift can be made with or without an instrument in writing, without consideration in money or money's worth passing from one person to another, and in the present or sometime in the future.

(4) A gift is only relevant if -

(a) the value of the gift is \$200 or more; or

(b) the value of the gift is less than \$200, but the gift is one of 2 or more gifts, with a total value of \$200 or more, made by one person at any time during the period set out in regulation 30C.

(5) A gift does not include -

(a) a gift by will;

(b) a gift by a relative (as defined in section 5.74(1) of the Act);

(c) a gift that the candidate would have received notwithstanding his or her candidature; or

(d) the provision of volunteer labour.

5.3 30G. Register

- (1) The Chief Executive Officer is to establish and maintain an electoral gift register.
- (2) The Chief Executive Officer is to ensure that all 'disclosure of gifts' forms completed by candidates and received by the Chief Executive Officer are placed on the electoral gift register:
 - (a) upon receipt by the Chief Executive Officer; and
 - (b) in a manner that clearly identifies and distinguishes the candidates.
- (3) When the period under regulation 30G has concluded in relation to any election, the Chief Executive Officer is to remove any 'disclosure of gifts' forms completed by an unsuccessful candidate from the electoral gift register, and retain those forms separately for a period of at least 2 years.
- (4) When a successful candidate completes the term of office resulting from an election, the Chief Executive Officer is to remove any 'disclosure of gifts' forms completed by that person for that election from the electoral gift register, and retain those forms separately for a period of at least 2 years.

The Act requires that a local government is to review its code of conduct within 12 months after each ordinary elections day and make such changes to the code as it considers appropriate. (S5.103 (2))

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