



City of Nedlands

Agenda

Council Committee Meeting

10 September 2019

Dear Council Member

The next meeting of the Council Committee will be held on Tuesday 10 September 2019 in the Council Chambers at the City of Nedlands located at 71 Stirling Highway, Nedlands commencing at 7.00pm.

Mark Goodlet
Chief Executive Officer
5 September 2019

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City of Nedlands

Notice of a meeting of the Council Committee to be held in the Council Chambers, Nedlands on Tuesday 10 September 2019 at 7 pm.

Council Committee Agenda

Declaration of Opening

The Presiding Member will declare the meeting open at 7 pm and will draw attention to the disclaimer below.

(NOTE: Council at its meeting on 24 August 2004 resolved that should the meeting time reach 11.00 p.m. the meeting is to consider an adjournment motion to reconvene the next day).

Present and Apologies and Leave Of Absence (Previously Approved)

Leave of Absence None.
(Previously Approved)

Apologies None as at distribution of this agenda.

Disclaimer

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

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

1. Public Question Time

A member of the public wishing to ask a question should register that interest by notification in writing to the CEO in advance, setting out the text or substance of the question.

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

2. Addresses By Members of the Public (only for items listed on the agenda)

Addresses by members of the public who have completed Public Address Session Forms will be invited to be made as each item relating to their address is discussed by the Committee.

3. Disclosures of Financial Interest

The Presiding Member to remind Councillors 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.

4. Disclosures of Interests Affecting Impartiality

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

Councillors 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). 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.

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

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

6. Confirmation of Minutes

6.1 Committee Meeting 13 August 2019

The Minutes of the Council Committee held 13 August 2019 are to be confirmed.

7. Matters for Which the Meeting May Be Closed

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

8. Divisional Reports

Note: Regulation 11(da) of the *Local Government (Administration) Regulations 1996* requires written reasons for each decision made at the meeting that is significantly different from the relevant written recommendation of a committee or an employee as defined in section 5.70, but not a decision to only note the matter or to return the recommendation for further consideration.

8.1 Planning & Development Report No's PD34.19 to PD40.19

Planning & Development Report No's PD34.19 to PD40.19 to be dealt with at this point (copy attached yellow cover sheet).

- PD34.19 No. 20 Nardina Crescent, Dalkeith – Additions to Single House
- PD35.19 No. 52 Stirling Highway, Nedlands – Single Dwelling
- PD36.19 No. 100 Stirling Highway, Nedlands – Roof Sign (Retrospective)
- PD37.19 Scheme Amendment No. 2 – Lot 325-329 Bedford Street, Nedlands
- PD38.19 Local Planning Scheme 3 – Local Planning Policy Waste Management and Guidelines
- PD39.19 Local Planning Scheme 3 – Local Planning Policy Parking
- PD40.19 Local Planning Scheme 3 – Local Planning Policy - Residential Development: Single and Grouped Dwellings

8.2 Community Development No's CM03.19 to CM05.19

Report No's CM03.19 to CM05.19 to be dealt with at this point (copy attached orange cover sheet).

CM03.19 Community Sport and Recreation Facilities Fund Applications-
Swanbourne Nedlands Surf Life Saving Club and Nedlands
Golf Club

CM04.19 Approval of Expenditure on Artwork Installation Annie
Dorrington Park

CM05.19 Arts Committee Recommendation Co-ordinator Annie
Dorrington Park

8.3 Corporate & Strategy Report No's CPS14.19

Report No's CPS14.19 to be dealt with at this point (copy attached green cover sheet).

CPS14.19 List of Accounts Paid – July 2019

9. Reports by the Chief Executive Officer

9.1 Bruce Trust and Esplanade

| | |
|---|--|
| Committee | 13 September 2019 |
| Council | 24 September 2019 |
| Applicant | City of Nedlands |
| Employee Disclosure under section 5.70 Local Government Act 1995 | Nil. |
| CEO | Mark Goodlet |
| Attachments | 1. Bruce Trust Deed 2. Attorney General Advice Dated 1 May 2019 |

Executive Summary

This report seeks formal Council approval to seek the Attorney Generals consent to amend the indenture of the Bruce Trust Deed to allow part of the Bruce Trust Land to be used as road reserve.

Recommendation to Committee

Council instructs the CEO to put forward a Scheme Proposal to the Office of the Attorney General to vary the Bruce Trust Indenture as follows, by the insertion of a new clause numbered '9':

The Indenture, dated 4 June 1909, in respect of the Bruce Trust Land, is varied by adding, immediately after clause 8, a new clause 9 as follows:

- '9. Notwithstanding anything in this Indenture, the Road Board may do whatever is necessary or appropriate to:**
- (a) enable part of the said Lot 792 (but not exceeding twenty feet in width) to be used as a road, aligned as nearly as practicable to the existing road known as The Esplanade;**
 - (b) enable the application of the City of Nedlands Parking and Parking Facilities Local Law 2013 (as amended or replaced from time to time) to the road known as The Esplanade, including any part of the road that is on the said Lot 792; and**
 - (c) prohibit the charging of fees that allow for parking on any part of the road that is on the said Lot 792; and**
 - (d) maintain, but not increase, the bituminised surface and associated road infrastructure constructed on the said Lot 792, as existing at 31st May 2019.**

Discussion/Overview

The Bruce Trust Land

The far east section of Swan River foreshore that lies within the City's boundaries is known as the Charles Court Reserve an area made up of several separate land parcels. One of these land parcels was vested in the City's predecessor, the Claremont Road Board, in June 1909, with the legal responsibility now remaining with the City. This land was vested subject to a number of conditions expressed in a document known as the Bruce Trust Deed (Attachment 1), and the land parcel is hereunto referred to as the 'Bruce Trust Land'. As Trustees of the Deed the City of Nedlands is required to apply the conditions within it to any activity affecting the land.

The 'Bruce Trust Land', labelled 3 in the diagram below with the area represented in blue, is identified as Lot 792 on deposited plan 2948 with an area of 19,482.6 m². It sits adjacent to a strip of Crown land, Class A reserve labelled 2 below, which has a management order to the City of Nedlands from the Department for Planning and Infrastructure. In practise, the two parcels of land are utilised as a combined area exclusively used for sports and recreation as playing fields and as a public recreational area. Playing fields are marked out across the two and games are frequently held on the land by the Nedlands Rugby club, who lease a club house from the City labelled 1 below, and informal games are played upon it by various visiting members of the community and recreational user groups.



The Esplanade

The Esplanade provides access to the Charles Court Reserve that is inclusive of the Bruce Trust Land. With the exception of a small number of residential properties that front the road, some parking facilities, and a small function centre at the far end, this road leads to recreational facilities and a large area of public reserve. As such, this road may be considered to primarily service recreation and reserve.

In summer months, based on the City's current data, approximately 1,070 vehicles travel along the Esplanade on average each day past the Bruce Trust Land. The City has issues with the Esplanade currently that it wishes to resolve, so that the road can effectively facilitate safe and compliant access for these road users to access the recreational reserves and facilities in alignment with the Australian standards for road design and construction.

One issue is that the section of Esplanade road reserve, at its northern end, adjacent to the Bruce Trust is only 10m wide, being half the standard width. The Esplanade carriageway itself is constructed to inconsistent widths and currently overlaps onto the Bruce Trust Land by differing amounts along a length of approximately 140m. A total approximate stretch of 190m of the Esplanade lies in such close proximity to the boundary of the Bruce Trust Land that the road reserve could not be extended to the full width of 20m without encroaching further onto the Bruce Trust Land.

A current issue is that cars regularly park along this section of the Esplanade, often half on the road and half on the grass, being wholly parked on the Bruce Trust Land or parked half on the Esplanade and half on the Bruce Trust. While the City's Parking and Parking Facilities Local Law applies to roads and reserves throughout the City. The City is unable to apply the full Parking and Parking Facilities Local Law to properly manage and enforce this parking, as not all parts of this Local Law can be applied to land that is not road reserve, and as such cannot be applied to vehicles that are parked on the Bruce Trust land. Cars parked in this narrow section of the Esplanade create sight line hazards and congestion along the Esplanade, particularly at weekends during rugby games.

Previous Scheme Proposal

In September 2016, Council approved for a submission to be put forward to the Attorney General's Office under section 7B of the Charitable Trusts Act 1962 proposing that the Bruce Trust Land be combined with adjacent Crown land. This would in effect transfer the land in ownership from the City to the Crown and for it to be subjected to a management order vested to the City of Nedlands, combining the two parcels of land into one to be jointly administered as a managed public resource for recreation. It was proposed that such a scheme would enable the City to more effectively manage and provide for the charitable purpose of the land, being as a reserve and recreational grounds. This would allow for more effective and consistent management of the Reserve as a single entity and would be the first step

towards amending the boundary of the Reserve to resolve the narrowness of the Esplanade and resolving the associated parking issues. Part of this proposal was also to allow for the upgrading of existing sports lighting which is reaching its end of life and not compliant with current Australian Standards.

A submission was put forward to the Attorney General who referred the matter to the State Solicitors Office (SSO). The City worked through various options with the SSO and it became apparent that changing the terms of the Trust, instead of merging the Trust land with the surrounding Class A Reserve, could be a solution to resolve parking and lighting issues more quickly. The City then put forward a proposal to the Attorney General seeking a change to the Trust conditions, effectively to:

- allow part of the Trust to be used 'as if' it were road reserve, enable the application of the City's Parking and Parking Facilities Local Law on the abovementioned section of land; and
- to increase the allowed building heights to allow for higher lighting.

The Attorney General instructed the City to give notice inviting public submissions in opposition to the City's Proposal and instructed this be sent to all key stakeholders including the 'Nedlands Park Estate', this being a designated area comprising properties owned by over 800 people. The SSO collated the responses and provided a summary to the City, giving the City the opportunity to respond to the submissions made. Following this the Attorney General provided the City advice in respect to what he would and would not approve, see Attachment 2. In short, he will support the effective use as a road and parking, but not the increased height of the floodlighting.

New Scheme Proposal

Taking the Attorney General's advice into consideration, the City has drafted a new Scheme Proposal, as put forward in the recommendation of this report.

The Attorney General advised that he will not, support a submission in respect to increasing the allowing building heights of infrastructure which would enable the construction of higher sports lighting. As a result, the City has not included this in the draft Scheme Proposal recommended for Council approval.

The Attorney General expressed concerns over the charging of parking on the land and increasing the physical bituminised surface of the road. As a result, the City has included new clauses that prohibit these. In addition, the Attorney General specified how much land he would approve to be used as road reserve, being no more than 20 foot in width (approximately 6 metres). This is also reflected in the new Scheme Proposal.

The new Scheme Proposal that has been drafted for Council consideration is as follows:

The Scheme Proposal being put forward is to vary the Bruce Trust Indenture as follows by the insertion of a new clause numbered '9':

The Indenture, dated 4 June 1909, in respect of the Bruce Trust Land, is varied by adding, immediately after clause 8, a new clause 9 as follows:

- '9. Notwithstanding anything in this Indenture, the Road Board may do whatever is necessary or appropriate to:
 - (a) enable part of the said Lot 792 (but not exceeding twenty feet in width) to be used as a road, aligned as nearly as practicable to the existing road known as The Esplanade;
 - (b) enable the application of the City of Nedlands Parking and Parking Facilities Local Law 2013 (as amended or replaced from time to time) to the road known as The Esplanade, including any part of the road that is on the said Lot 792; and
 - (c) prohibit the charging of fees that allow for parking on any part of the road that is on the said Lot 792; and
 - (d) maintain, but not increase, the bitumanised surface and associated road infrastructure constructed on the said Lot 792, as existing at 31st May 2019.

Conclusion

Council's approval of this Scheme Proposal, and the subsequent Attorney General's approval, will enable the City to utilise a 20ft strip (approximately 6m) of the Bruce Trust land along its adjacent length to the Esplanade, as road reserve. This would increase the width of the road reserve to approximately 16m inclusive of a nature strip on both sides. The yellow lines in the concept below shows the new area that would be treated as a road reserve including the existing Esplanade and a 6m wide strip of the Bruce Trust Land.



The City may not increase the bitumen surface of the carriageway or charge for parking but will be able to effectively enforce parking compliance including for the existing 'no standing' and '3-hour limit' parking restrictions in place. The only physical change would be to move the existing bollards further into the Bruce Trust area to create a length of grassed nature strip wide enough for vehicles to wholly park on, eliminating the 'half on the road' parking situation and resolving congestion and sight line issues on the Esplanade.

Key Relevant Previous Council Decisions:

Council resolved at the Ordinary Meeting of Council 27 September 2016, item 13.6:

'Council instruct the CEO to prepare and submit a scheme to the Attorney General, seeking approval to combine the 'Bruce Trust Land' (Lot 792 on deposited plan 2948) with adjacent Class A Reserve (Lot 5168 on deposited plan 91504), under section 7B of the Charitable Trusts Act 1962.'

Consultation

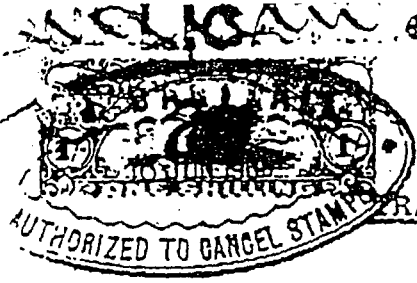
The City has undertaken public statutory consultation in respect to this matter at the instruction of the Attorney General in April 2018. This included information being released above and beyond the Attorney General's statutory notice, and a public workshop being held. The City has also met with all residents who have requested meetings to discuss the matter, in some cases on several occasions.

In relation to using part of the Bruce Trust as if it were road reserve, there was some concern expressed during consultation that the City was seeking the change in order to create a car park and charge payment for parking. The proposed Scheme Amendment creates restrictions regarding the charging of parking and the extension of any bituminised areas in order to address these

concerns. Additionally, during meetings with some local residents, there was concern about changes to where vehicles would be allowed to park opposite residences. The City maintains this Scheme Proposal proposes no changes to any existing parking road marking and signage, the existing 'no standing' areas and '3-hour limit' areas intend to be retained. If at any stage in the future the City reviews the parking arrangements in this area, this would be subject to the standard community engagement and Council approval processes applied to parking reviews throughout the City.

Budget/Financial Implications

The City has sufficient operating budget allocated to 'Governance', and sufficient Parks Operating Budgets for the moving of the bollards adjacent to the Esplanade, to adequately cover the costs of implementing this amendment should it be approved.



DECLARATION OF TRUST.

THIS INDENTURE made the *fourth* day of *January*
 One thousand nine hundred and nine BETWEEN EDWARD BRUCE of
 Folkestone England Gentleman (hereinafter called the grantor
 which term includes his personal representatives) of the one
 part AND THE CLAREMONT ROAD BOARD (hereinafter called the
 Road Board) of the other part WHEREAS the grantor is the ..
 registered proprietor of Swan Locations 122 123 ~~and 140~~ and
 portions of Swan Locations ~~256 and 258~~ being the untransferred
 portion of the land comprised in Certificate of Title Volume
 NOW 444. 73
 104 Folio 98 known as the HEIDLANDS PARK ESTATE and has by
 Transfer of even date transferred to the said Road Board so
 much of the said Estate as is comprised in Lot 792 on deposi-
 ted plan 2948 AND WHEREAS the consideration for the said ...
 Transfer was the execution by the Road Board of an Agreement
 dated the Seventh day of August One thousand nine hundred and
 seven and made between the parties hereto And the object for
 which the said land was so transferred was to secure an open
 area and reserve under the control of the said Road Board for
 the use and enjoyment for all time of all persons within the
 District under the jurisdiction of the Road Board AND WHEREAS
 it is desirable to set forth the trusts and conditions upon

Registrar of Titles.

CLAD

2206
1909

City Of Nedlands - To May

which the said land was so transferred and is now held by the Road Board NOW THIS INDENTURE WITNESSETH that the parties mutually covenant and declare as follows:-

1. THE said land so transferred shall be vested in and held by the said Road Board as a Reserve and Recreation Ground under the "Roads Act 1902" or any Act amending the same to the same extent and in the same manner as if the said land were a reserve placed under the control and management of the Board by the Governor and be subject to all Bylaws and Regulations for the time being made and published by the Road Board in relation thereto provided that no such Bylaws or Regulations shall discriminate between any class or description of persons using or desiring to use the said land for recreation purposes.

2. THE Road Board shall not lease or let the said land or any part thereof but shall at all times retain the exclusive possession management and control thereof.

3. THE owners and occupiers for the time being of the subdivisional lots on the said plan abutting upon the said lot 792 shall at all times have free access to and from the foreshore over the said last mentioned lot.

4. THE Road Board shall not build or erect any erections or structures upon the said Lot 792 of a height exceeding thirty feet nor except as in this paragraph provided interfere with the rights of access in the last preceding paragraph referred to No building erection or structure under this clause

CITY OF NEEDHAM 10 MAY 2007

shall be placed closer than twenty five feet to the boundary line of any of the said subdivisinal lots abutting on Lot 792.

6. THE Road Board shall keep the said land and all buildings and erections thereon in good order and condition and properly cleaned and attended to.

5. THE Road Board shall not commit or permit on the said land any act or thing likely to become or be a nuisance damage annoyance or injury to the grantor or to any person or persons owning leasing or occupying any part of the said Estate.

7. THESE presents may be enforced against the Road Board by any person who for the time being is lessee occupant or owner of the said estate or any part thereof and for such purpose such persons shall be deemed beneficiaries under and entitled to the benefit of this instrument.

8. THE grantor or the Registrar of Titles may lodge a Caveat against the Certificate of Title of the land to protect these presents.

IN WITNESS whereof the said parties have hereunto set their hands and seals the day and year first before written.

SIGNED SEALED AND DELIVERED by the)
said EDWARD BRUCE by his Attorney)
Arthur Henry Williams in the pres-)
ence of,)

Edward Bruce
by his Attorney
Arthur H Williams

THE COMMON SEAL of the CLAREMONT)
ROAD BOARD was hereunto affixed in)
the presence of,)

Mark Cooper
Chairman
Claremont Road Board
Common Seal

W. Payne

City of Nedlands 18 May 1969

5973/09 14002/33
31734/10 15004/34 584/17
TRANSFER 2206 Vol. 432, Fol. 171
11119

CT 0444 0073 F
Item 9.1 - Attachment 2
REGISTER BOOK.
Vol. 444 Fol. 73



Certificate of Title

under "The Transfer of Land Act, 1893."
Sch. 5, 55 V., 14.

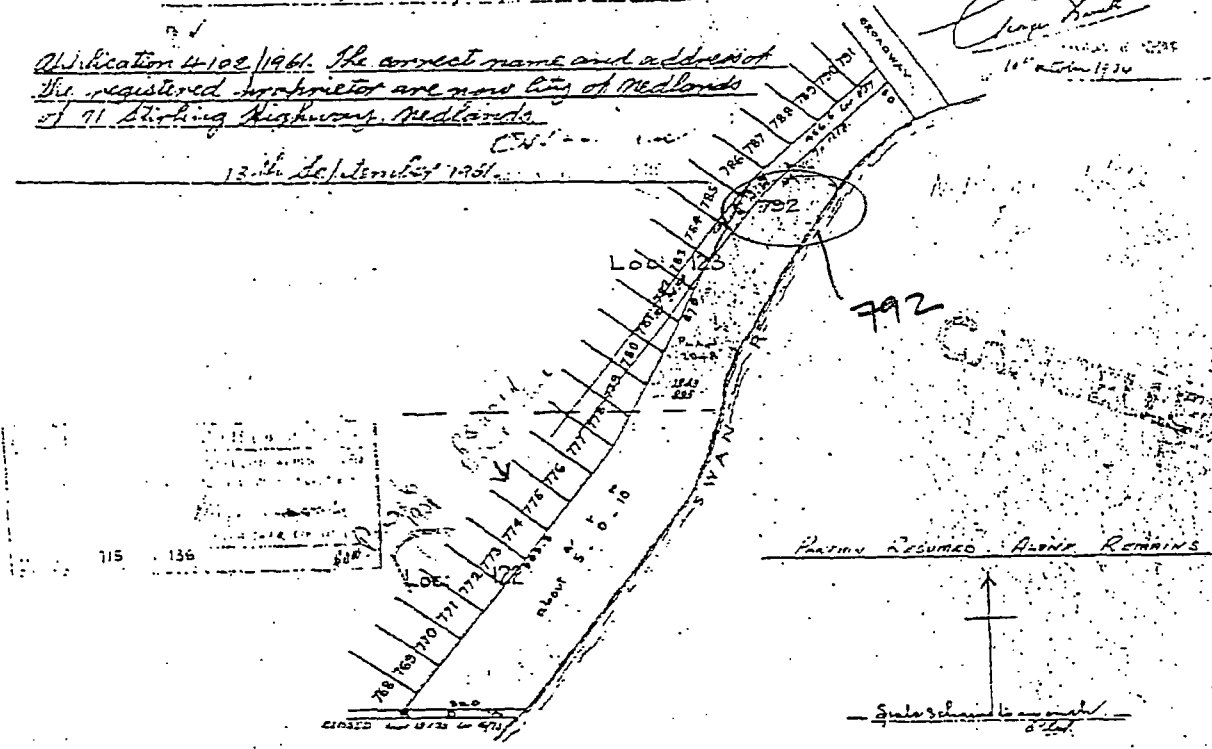
The Claremont Road Board

is now the sole proprietor
of an estate in fee simple in possession subject to the easements and encumbrances notified hereunder, in all
that piece of land delineated and coloured green on the map hereon,
containing five acres and ten perches
or thereabouts, being a portion of Swan Locations 122 and 123 and being
Lot 792 on deposited plan 2948.

Application 2025/1934 By order in Council appearing in the Government Gazette of 12th August 1934
the name of Claremont Road Board is attached to the said land and therefore the
name of the registered proprietor of the above described land is now Claremont Road Board, and
its address is 199, Darling Highway, Claremont.

Application 4102/1961. The correct name and address of
the registered proprietor are now City of Nedlands
of 71 Darling Highway, Nedlands.

13th September 1961



Dated the Twenty-second day of June 1961 (one thousand nine hundred and sixty-one)

Registrar of Titles.

For encumbrances and other matters affecting the land see back.

[4114/61]

City of Nedlands

Application 1051 Vol. 679 Fol. 136
1919



REGISTER BOOK.

Vol. 715 Fol. 136

Item 9.1 - Attachment 2

Plan 44
44

WESTERN AUSTRALIA.

Certificate of Title

under "The Transfer of Land Act, 1893," (Sch. 5, 56 Vic. 14.)

CT 0715 0136 F



Arthur Henry Williams of Perth, Gentleman.

is now the sole proprietor

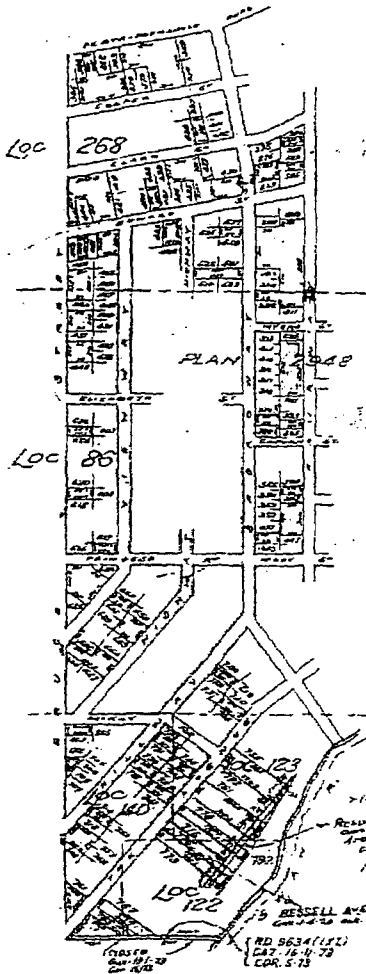
of an estate in fee simple in possession subject to the easements and encumbrances notified hereunder in ALL

pieces of land delineated and coloured *green* on the map heron,

containing in the aggregate *twenty four acres one rood thirty four and a half perches.*

or thereabouts, being *portions of Swan Locations 86 122 123 140 and 268 being part of the land on plan 2948.*

Portions coloured brown and portions resumed remain.



Scale 10 chains to an inch
A.H.W.

AREA OF CERTAIN
LOTS 280 OF 23-24
R.D.N. 10 11-30
TOTAL 260.10 345m

Dated the First day of August, One thousand nine hundred and

1919

[Signature]

Registrar of Titles.

For encumbrances and other matters affecting the land see back.

5/03 9/04

EASEMENTS AND ENCUMBRANCES REFERRED TO.

Item 9.1 - Attachment 2

Current encumbrances on or to balance of lot 78 of Section 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

- Transfer 10/10/1919 Lot 310 to Frank Lambert Registered 1st August 1919 at 2.200/-
- Transfer 10/20/1919 Lot 723 to Estelle Adelaide White Registered 4th August 1919 at 4.500/-
- Transfer 30/5/1919 Lot 183 to Constantinos Kouravos Registered 8th August 1919 at 2.500/-
- Transfer 24/6/1919 Lot 711 to Joseph G. Lampros Registered 21st August 1919 at 100/-
- Transfer 27/6/1919 Lot 403 to Truitts Strong Bakery Registered 27th August 1919 at 2.550/-
- Transfer 1/10/1919 Lot 641 to Frederick Henry Connally Registered 22nd September 1919 at 1.150/-
- Transfer 15/9/1919 Lot 619 to David Gordon Dawkins Registered 23rd September 1919 at 1.150/-
- Transfer 16/7/1919 Lot 367 to Oliver Harford and William Thomas Kugel (old partners) Registered 2nd October 1919 at 11.500/-
- Transfer 6/10/1919 Lots 421, 425, 426 to George Milton Leitman Registered 7th October 1919 at 2.500/-
- Transfer 7/10/1919 Lot 449 to Humphrey Hannibal Bradford Registered 15th October 1919 at 12.450/-
- Transfer 7/10/1919 Lot 779 to Beatrice Maud Brown Registered 13th October 1919 at 900/-
- Transfer 8/11/1919 Lot 343 to Victor Arthur Jenn Registered 12 November 1919 at 2.400/-
- Transfer 8/11/1919 Lots 344 and 345 to Blifton Leslie Jenn Registered 13 November 1919 at 2.200/-
- Transfer 8/11/1919 Lot 309 to Archibald McDonald Registered 13 November 1919 at 2.580/-
- Transfer 8/11/1919 Lots 383 and 384 to William Stephen Bradley Registered 18 November 1919 at 2.350/-
- Transfer 8/11/1919 Lot 764 to Doris Lucy Simonds Registered 28th November 1919 at 1000/-
- Transfer 8/11/1919 Lots 494, 495 to Caroline Madge Langford Registered 28th November 1919 at 1000/-
- Transfer 9/12/1919 Lot 637 to Oliver Harford Registered 8th December 1919 at 11.100/-
- Transfer 9/12/1919 Lot 311 to Charles Milled Registered 9th December 1919 at 12.300/-
- Transfer 9/12/1919 Lot 438 to Grace Regge Holder Registered 10th December 1919 at 300/-
- Transfer 9/12/1919 Lot 652 to Frederick Charles Pashaw Registered 12th December 1919 at 300/-
- Transfer 4/1/1920 Lot 311 to Frank Thornton Thornton Registered 17th January 1920 at 11.000/-
- Transfer 6/2/1920 Lot 329 to The War Service Homes Commission Registered 22nd January 1920 at 1000/-
- Transfer 12/2/1920 Lot 361 to Caroline Madge Langford Registered 6th February 1920 at 10.400/-

CITY OF NEDLANDS - 18 MAY 2007

CERTIFICATE OF TITLE

Registered Vol. 715 Fol. 136

Transferred 1972/1920 Lots 417, 418, 442, 443 & 445 to Leslie George Allen Registered 26th February 1920 at 10.000/-
733 - 116 & 117

Transferred 1979/1920 Lot 750 to Leslie George Allen Registered 26th February 1920 at 10.400/-
733 - 118

Public Works Act 1902
Sec. II.
Cor. 1419/10 Gazette 27.2.20 Area 15.9.315 Pion 4280
Portion of the land herein comprised is resumed for the purpose of Medlands Park Foreshore Improvements
And the said land is vested in His Majesty accordingly freed and discharged from all trusts mortgages charges - easements rights-of-way or other easements whatsoever.
By proclamation dated 19.2.20

Asst. Registrar of Titles

Transferred 1718/1920 Lot 766 to Edward and Ann Donaldson Registered 20th February 1920 at 1.000/-
735 - 118

Transferred 1826/1920 Lot 631 to Andrew Stephen Registered 23rd February 1920 at 11.550/-
733 - 72

Transfer 1900/1920 Lots 365 and 366 to Herbert Thomas Bram Registered 25 February 1920 at 2.550/-
733 - 106

Transferred 2871/1920 Lot 719 to Caroline Bennetts Registered 18th March 1920 at 2.150/-
735 - 120

Transferred 3361/1920 Lot 431 to Henry Ottewill Registered 31st March 1920 at 11.500/-
736 - 116

Transferred 3400/1920 Lots 289, 290, 291 & 292 to Herbert Keble Buscombe Registered 31st March 1920 at 2.900/-
736 - 128

Transferred 3579/1920 the unresumed portion of Lot 761 to Cyril Kenneth Ford Potvin Registered 4th April 1920 at 11.300/-
737 - 117

Transferred 3794/1920 Lots 327 & 328 to Ellen Amelia Heath Registered 14th April 1920 at 1200/-
737 - 125

Transferred 3945/1920 Lot 326 to Thomas John Healy Registered 14th April 1920 at 1200/-
737 - 121

Transferred 4171/1920 Lots 628 & 630 to Walter Vernon Kinnison Registered 22nd April 1920 at 11.150/-
738 - 82

Transfer 4743/1920 Lot 364 to Oscar Berthold Hoffmann Registered 7th May 1920 at 1.900/-
740 - 6

Transfer 4931/1920 Lot 463 to The Max Irvine Home Commission Registered 11 May 1920 at 11.300/-
740 - 52

Transferred 5053/1920 Lot 632 to John Sinclair Bissett Registered 14th May 1920 at 11.300/-
740 - 97

Transferred 6443/1920 Lot 433 to Dinah Edwards - Registered 7th June 1920 at 10.000/-
744 - 140

Transferred 6444/1920 Lot 432 to Dinah Edwards - Registered 17th June 1920 at 10.000/-
744 - 141

Transfer 6540/1920 Lot 434 to Elizabeth Emily Jarman - Registered 21st June 1920 at 12.400/-
744 - 140

Transferred 8565/1920 Lot 661 to Christopher John Mitchell Registered 20th August 1920 at 2.000/-
750 - 143

City of Nedlands - 18 May 2007

Transfer 4528/1921 Lots 306 and 307 to James Hamilton
Registered 12th November 1921 at 11.35 a.m.
791.110
Affide
Registrar of Titles

Transfer 457/1922 Lots 277 and 278 to Mary Ellen Jones - Registrar
20th January 1922 at 3 p.m.
796.3
Affide
Registrar of Titles

Transfer 1074/1922 Lot 246 to Charles Miller - Registrar
February 1922 at 3 p.m.
797.153
Affide
Registrar of Titles

Transfer 3527/1922 Lot 305 to Robert William Knight - Registrar
13th May 1922 at 11.40 a.m.
805-130
Affide
Registrar of Titles

Transfer 7004/1922 Lots 455, 456, and 457 to Fred Ruffenford - Registrar
Registered 7th September 1922 at 3 p.m.
813.24
Affide
Registrar of Titles

Transfer 2382/1923 Lots 376 and 377 to Joseph Wood Langford
Registered 20th March 1923 at 1.30 p.m.
826.96
Affide
Registrar of Titles

Transfer 14292/1923 Lots 284, 300, 301, 302, 303 and 304 to Joseph Wood Langford
Registered 6th June 1923 at 3 p.m.
832.110
Affide
Registrar of Titles

Transfer 2625/1923 Lot 287 to Walter ...
Registered 5th September 1923 at 11.30 a.m.
840.115
Affide
Registrar of Titles

Transfer 2747/1924 Lot 281 to Joseph Patheon. Registered 30th October 1924 at 1.45 p.m.
873.91
Affide
Registrar of Titles

Transfer 126/1925 Lot 729 to Alfred James Reford Cord - Registrar
9th January 1925 at 3 p.m.
877.39
Affide
Registrar of Titles

Transfer 1161/1925 Lot 460 to Carl Rudolf Bernhard Joseph
Registered 18th February 1925 at 2.15 p.m.
879.191
Affide
Registrar of Titles

Transfer 2056/1925 Lot 334 to John Green - Registrar
Registered 19th March 1925 at 10.20 a.m.
883-75
Affide
Registrar of Titles

Transfer 1130/1926 Lot 763 to Douglas Matthew Joseph. Registered 17th February 1926
at 1.50 p.m.
912.101
Affide
Registrar of Titles

Transfer 1356/1926 Lot 324 to Alfred Amey. Registered 19th February 1926 at 2.30 p.m.
912.127
Affide
Registrar of Titles

Transfer 142/1926 Lot 147 to ... Registered 11th May 1926 at 12.15 p.m.
962.115
Affide
Registrar of Titles

Application 2627461. The fee of the portion of R.O.W. closed by Gazette 19.1.73 and included in Lot 765 on plan 2945 (Sheet 5) is now included in Vol 1343 Fol 894. Registered 14th February 1973 at 10.52 a.m.

Application 2627462. The fee of the portion of R.O.W. closed by Gazette 19.1.73 and included in Lot 792 on plan 2945 (Sheet 5) is now included in Vol 1343 Fol 894. Registered 14th February 1973 at 10.52 a.m.

Application 2627463. The fee of the portion of R.O.W. closed by Gazette 19.1.73 and included in Lot 792 on diagram 208.9 is now included in Vol 1343 Fol 894. Registered 14th February 1973 at 10.52 a.m.

Application 2627464. The fee of the portion of R.O.W. closed by Gazette 19.1.73 and included in Lot 764 on plan 2945 (Sheet 5) is now included in Vol 1344 Fol 268. Registered 22nd February 1973 at 11.00 a.m.

City of Nedlands - 18 May 2007

CITY OF NEDLANDS - 18 MAY 2007



Application A627462
Volume 444 Folio 73
715 136

WESTERN



AUSTRALIA



1343 895

CERTIFICATE OF TITLE

UNDER THE "TRANSFER OF LAND ACT, 1893" AS AMENDED

I certify that the person described in the First Schedule hereto is the registered proprietor of the undermentioned estate in the undermentioned land subject to the easements and encumbrances shown in the Second Schedule hereto.

DATED 14th February, 1973

Hedwards
REGISTRAR OF TITLES



ESTATE AND LAND REFERRED TO

Estate in fee simple in portion of each of Swan Locations 122 and 123 and being part of Lot 792 on Plan 2948 (Sheet 5), delineated and coloured green on the map in the Third Schedule hereto.

FIRST SCHEDULE (continued overleaf)

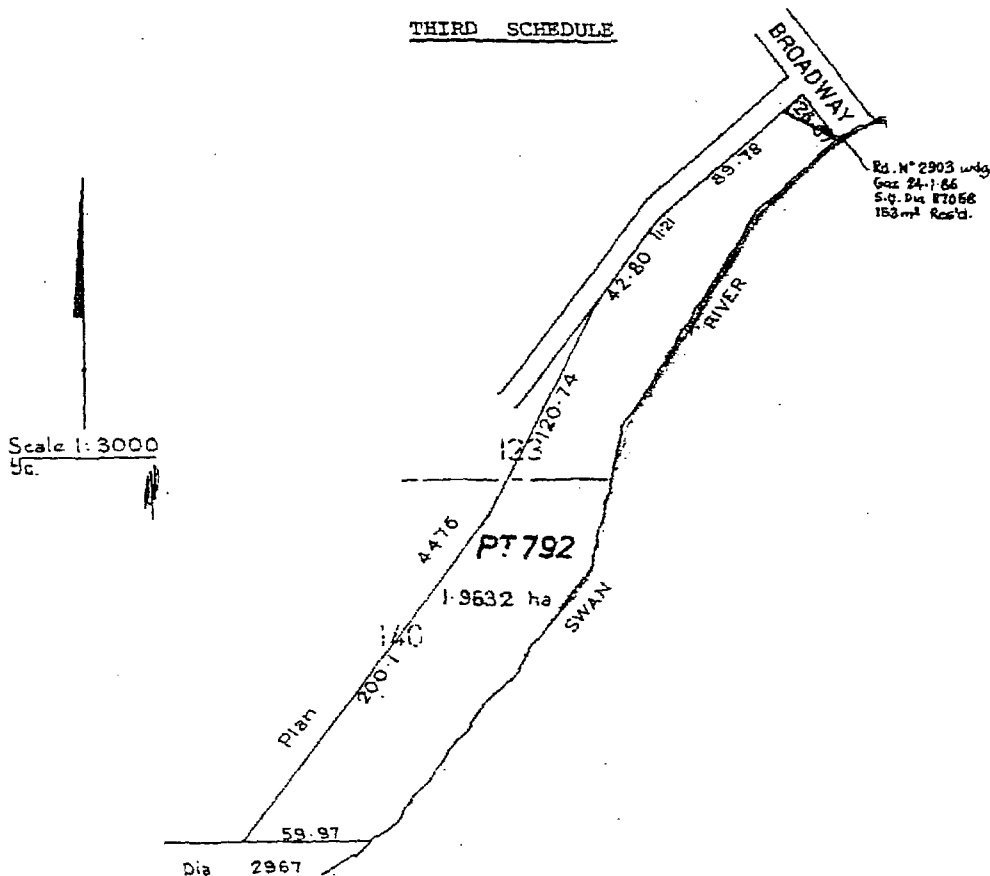
City of Nedlands of 71 Stirling Highway, Nedlands.

SECOND SCHEDULE (continued overleaf)

1. CAVEAT 485/1909. Lodged by Commissioners Instruction 22.6.09 at 2.40c/o.

Hedwards
REGISTRAR OF TITLES

THIRD SCHEDULE



PERSONS ARE CAUTIONED AGAINST ALTERING OR ADDING TO THIS CERTIFICATE. ANY FALSIFICATION HEREON

NOTE: RULING THROUGH AND SEALING WITH THE OFFICE SEAL INDICATES THAT AN ENTRY NO LONGER HAS EFFECT. ENTRIES NOT RULED THROUGH MAY BE AFFECTED BY SUBSEQUENT ENDORSEMENTS.

895 FOL.
1343 VOL.

Page 1 (of 2 pages)

City of Nedlands - 18 May 2007

377/1974
(RB)

Item 9.1 - Attachment 2

FIRST SCHEDULE (continued)

RULING THROUGH AND SEALING WITH THE OFFICE SEAL INDICATES THAT AN ENTRY NO LONGER HAS EFFECT. ENTRIES NOT RULED THROUGH MAY BE AFFECTED BY SUBSEQUENT ENDORSEMENTS.

| REGISTERED PROPRIETOR | INSTRUMENT | | REGISTERED | TIME | SEAL | INITIALS |
|-----------------------|------------|--------|------------|------|------|----------|
| | NATURE | NUMBER | | | | |
| | | | | | | |

SECOND SCHEDULE (continued)

NOTE: RULING THROUGH AND SEALING WITH THE OFFICE SEAL INDICATES THAT AN ENTRY NO LONGER HAS EFFECT. ENTRIES NOT RULED THROUGH MAY BE AFFECTED BY SUBSEQUENT ENDORSEMENTS.

| INSTRUMENT | | PARTICULARS | REGISTERED | TIME | SEAL | INITIALS | CANCELLATION | NUMBER | REGISTERED OR LODGED | SEAL | INITIALS |
|------------|--------|-------------|------------|------|------|----------|--------------|--------|----------------------|------|----------|
| NATURE | NUMBER | | | | | | | | | | |
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CERTIFICATE OF TITLE VOL.

1343 895

DOJA COPY OF ORIGINAL NOT TO SCALE Fri Jul 20 12:43:38 2001 JOB 609881

City of Nedlands - 18 May 2007



Attorney General; Minister for Commerce

Our ref: 67- 00818
Your ref: PROJ-1566224070-50

The City of Nedlands
as Trustee of the Bruce Trust
71 Stirling Hwy
NEDLANDS WA 6009

Attention: Greg Trevaskis, Chief Executive Officer

Dear Mr Trevaskis

BRUCE TRUST – SCHEME UNDER CHARITABLE TRUSTS ACT 1962 (WA)

1. By letter dated 1 May 2017, the City of Nedlands (**City**), as trustee of the Bruce Trust, submitted a scheme under the *Charitable Trusts Act 1962 (WA)* (the **Act**) to vary the Bruce Trust. In addition to the initial letter, I also received:
 - (a) your letters to the State Solicitor's Office dated 4 and 17 January 2018, which provided further information in relation to the proposed scheme;
 - (b) a copy of the advertisement of the scheme;
 - (c) nine submissions in response to the scheme; and
 - (d) your letter to the State Solicitor's Office dated 21 November 2018, responding to issues raised in those submissions.
2. I accept that all the persons who made representations in response to the advertisement or notice of the scheme have an interest in the matter and I have had regard to those representations, in accordance with section 10A(5)(b) of the Act.

Summary

3. I would approve the scheme as it relates to parking, subject to conditions to reduce the allowed width of road reserve and prohibit paid parking or bitumenising of the Bruce Trust land. I would refuse the scheme in relation to erecting new, taller lighting structures.
4. I invite the City to submit an amended scheme to give effect to this conclusion.

A. The Bruce Trust

5. The Charles Court Reserve is an area of the Swan River foreshore in the City of Nedlands. It is made up of separate land parcels, one of which is Lot 792 on deposited plan 2948, with an area of 19,482.6m², owned by the City of Nedlands subject to a charitable trust (the **Bruce Trust Land**).

6. The trust was established by a deed dated 4 June 1909 (the **Trust Deed**) by which Edward Bruce transferred land known as the "Nedlands Park Estate" to the Claremont Road Board.
7. The Trust Deed established a charitable trust, requiring the land to be held "as a Reserve and Recreation Ground". The City of Nedlands (as the successor to the Claremont Road Board) is the registered proprietor of the Bruce Trust Land and is the current trustee of the Trust.

B. Scheme proposed

8. The City seeks approval of the following scheme:

The Indenture, dated 4 June 1909, in respect of the Bruce Trust Land, is varied by adding, immediately before clause 7, a new clause 6 as follows: -

(6) Notwithstanding anything in this Indenture, the Road Board may do whatever is necessary or appropriate to enable –

(a) part of the said Lot 792 (but not exceeding sixty feet in width) to be used as a road, aligned as nearly as practicable to the existing road known as The Esplanade;

(b) the erection upon the said Lot 792 of light towers, each not exceeding a height of 99 feet, for the purpose of illuminating the playing fields on the said Lot 792 and the adjoining Reserve Lot 5168; and

(c) the application of the City of Nedlands Parking and Parking Facilities Local Law 2013 (as amended or replaced from time to time) to the road known as The Esplanade, including any part of the road that is on the said Lot 792.

9. The City advised that:
"The primary purpose of this proposal is to address road safety concerns adjacent to, and resolve non-compliant lighting on, the Bruce Trust land."
10. Since the scheme addresses two separate issues, road safety and lighting, these issues are addressed separately below.

C. Preliminary issues

Jurisdiction

11. Under section 10A of the Act (and regulation 3(1) of the *Charitable Trusts Regulations 2015* (WA)), I have jurisdiction to approve schemes where the value of the property is less than \$100,000.
12. The City provided a valuation of the Bruce Trust Land dated 5 December 2017 for a valuation as at 23 November 2017 prepared by Herron Todd White. The valuation report states that the current market value of the Bruce Trust Land "As is" is \$75,000. I note that the market value takes into account the current constraints on the use of the land (that is, the land may only be used for recreational purposes). Accordingly, on the basis of the valuation report, I am satisfied that I have jurisdiction to approve the scheme since the Bruce Trust Land is valued at less than \$100,000.

Validity of notice

13. One submission I received asserted that the scheme should be refused on the basis that the notice given by the City of the scheme was "misleading and substantively defective", because it only invited submissions from "any person who opposes the Scheme", rather than inviting submissions more generally from any person considered by the Attorney General to have an interest in the matter. The submission asserted that the Notice implied that an application had been made to the Court under section 10(2) of the Act, which would invoke the requirements of sections 11 and 12 of the Act and that the notice may lead the general public to think that if they supported the scheme, there was no capacity to make a submission.
14. I am not persuaded by the argument that the notice was invalid, or that the scheme should be refused on that basis, for several reasons:
- (a) First, in my view, the wording was broad enough to capture any relevant submissions (and certainly captures any that could be relied upon by a person opposing the scheme);
 - (b) Secondly, the Act requires that the trustees give public notice of the scheme "in such a manner as the Attorney General thinks fit". No further requirements for the advertising are set out. This allows some latitude in the drafting of the advertisement. I directed the form of the notice;
 - (c) Thirdly, the call for submissions in opposition to the scheme mirrors the approach of the Act which, in section 11 setting out the advertising requirements for schemes to be submitted to the Supreme Court, refers to notice "requir[ing] any person desiring to oppose the scheme" to respond. Similarly, section 12 requires a person "wishing to oppose a scheme" to give notice before the hearing. There is no equivalent, broader provision allowing for submissions in support of the scheme;
 - (d) Fourthly, in my view the notice does not (as alleged) misleadingly suggest an application has been made to the Court, such that sections 11 and 12 of the Act are invoked. The Act contains two separate procedures: one for approval by the Attorney General (section 10A), the other for approval by the Supreme Court (sections 10, 11 and 12). The notice expressly states that the application has been made under section 10A;
 - (e) Fifthly, the advertisement of a scheme under section 10A is not mandatory in every case (under section 10A(5)(a));
 - (f) Finally, in any event, section 10A(11) of the Act expressly provides that the "Attorney General may approve a scheme even if the procedural requirements of this Part have not been complied with in relation to the scheme." Although the submission argues that the advertisement is not procedural, I do not agree with this view. It seems clear from a fair reading of the whole of section 10A that advertising requirements would be considered procedural requirements.
15. Not all the submissions received were from people opposed to the scheme. One merely sought a change to a parking design (which apparently did not actually relate to the proposed scheme).

Claims that information was misleading

16. Some submissions opposing the scheme alleged that information provided to local residents, at a public information session and in a letter dated 28 February 2018, was misleading. Based on the City's response to those allegations, I am not satisfied that they are correct.

17. In any event, those materials were not submitted to me other than to respond to those allegations, so do not form part of the basis on which I assessed the scheme.

Other approvals

18. Some submissions referred to environmental concerns relating to the proposed towers (given that flocks of fairy terns fish and roost in the area) and a requirement for permits under the *Swan and Canning Rivers Management Act 2006* (WA). The City acknowledged this legislation and advised that it intended to consult with, and seek necessary approvals from, the Swan River Trust division of the Department of Biodiversity, Conservation and Attractions before undertaking any development on the Bruce Trust Land.
19. The City could not seek those approvals before approval of the scheme. In my opinion, any environmental issues can be adequately addressed through that approvals process.

D. Road safety / parking

20. By the City's letter dated 1 May 2017, submitting the scheme, the City explained the purpose of this aspect of the scheme as follows:

"The proposed variation 6(a) seeks to use a modest portion of the Bruce Trust Land as road reserve, to address road safety issues on the road adjacent, the Esplanade. The current width and layout of the existing Esplanade road reserve is not sufficient to accommodate the number of visitors to recreational areas of the foreshore including the Bruce Trust land. The substandard width of the Esplanade, combined with a high volume of parallel parking, half on the verge and half on the road, creates sight line hazards and safety concerns for passing vehicles. The issue is particularly prevalent during weekends and evenings when games are being played on the Bruce Trust land and a large number of people are visiting the area for passive recreation and dog walking. ...

The proposed variation 6(c) would enable the City to apply local parking laws upon the portion of land identified in variation 6(a) to ensure the provision of parking can be effectively managed for safety and maximising public amenity."

21. The City's letter to the State Solicitor's Office dated 4 January 2018 expanded upon the safety improvements in relation to sightlines that were sought by the scheme:

"The insufficient parking availability and road width currently means that vehicles driving past the Bruce Trust are illegally driving over solid white lines and struggling to pass oncoming traffic. This is not only unsafe to those driving past as it creates sight line hazards and increases chances of collision, but also makes it unsafe for Bruce Trust visitors parked along the Esplanade and exiting their cars or for Bruce Trust visitors crossing the road between parked cars. The current lack of parking and safe access currently often means that people driving to the area to make use of the Bruce Trust land for recreation, are forced to park much further down the road and use alternative public space, or are discouraged from visiting the area at all."

22. The City has advised that the width of the current Esplanade road reserve is 10 metres, which is half the width of most other roads in the City. In its response to

submissions dated 21 November 2018, the City clarified that it refers to "road reserve" in a broader sense:

"The City is referring to the road reserve in its true sense of land classified as road reserve under Certificate of Title which is typically required to accommodate a variety of other infrastructures in addition to 'road surface' including verge/nature strip, footpaths, drainage infrastructure, parking bays, public lighting and suchlike."

23. The City advised in its letter dated 21 November 2018 that the intention of the scheme is:

"to enable the City to move the existing bollards slightly south so that vehicles could park fully on the grass allowing a safe trafficable route along the bitumenised road surface for passing vehicles. ... The City could and would endeavour to offset deterioration of the grass through supplementary turf management means."

24. Further, as noted in the same letter, the City considers that the amendment is required in order to properly apply the City's *Parking and Parking Facilities Local Law* and to enforce parking restrictions under that law. I accept that apparently relevant provisions of that local law apply to "carriageways" or "thoroughfares" and that these terms are defined by reference to, amongst other things, "roads". The local law does not apply to land generally. I therefore accept that proper regulation of parking would be assisted by the scheme proposed.
25. Several of the submissions I received raised an understandable concern that allowing parking on the Bruce Trust Land would lead to future bitumenised parking or parking for which a fee would be charged.
26. By letter to the State Solicitor's Office dated 17 January 2018, the City confirmed that it had no intention of introducing paid parking on the Bruce Trust Land and the City had no objection to it being a condition of approval of the scheme that fees for parking on the Bruce Trust Land be prohibited.
27. The City has confirmed that it is proposing only to make the Esplanade road reserve wider, not to increase the bitumenised road surface constructed within that reserve. In my opinion, this should be confirmed by way of condition on the scheme, consistent with the charitable purpose of the trust (namely, recreation).
28. The scheme proposed refers to a possible width of road reserve of sixty feet. I understand this width is based on the usual road reserve width of approximately 20 metres. However, since the Esplanade is already 10 metres wide, a much smaller width of encroachment onto the Bruce Trust Land would be sufficient to create an average sized road reserve. Further, a usual road reserve would include the bitumenised surface plus land on both sides of this – an average of five metres on each side of a 10 metre surface. Therefore, I would only approve an encroachment of approximately this magnitude. The proposed scheme uses feet, rather than metres (I assume for consistency with the Trust Deed). I would approve a scheme permitting an encroachment of up to 20 feet (just over six metres).
29. One submission in opposition to the scheme asserted that witch's hats, "no standing" signs and yellow lines could be an appropriate long-term solution to control parking. The City disagreed and noted that enforcement of "no standing" signs and other

parking issues is currently difficult where cars are parked on the Bruce Trust Land and not on a road reserve. I accept the City's position on this issue.

30. One submission raised a concern that the scheme would allow parking too close to the corner of the Esplanade where it meets Broadway. However, the City noted that parking is (and should continue to be) disallowed at this corner. I also accept that enforcement of this position would be assisted by the scheme.
31. The City states that parking restrictions in the area are regularly breached and have provided photographs that support this.
32. Some of the submissions I received objected to the parking changes on the basis that this would increase speeding on the Esplanade. I accept the City's position that cars being parked onto the trafficable surface of the road is not an appropriate method of deterring speeding. If there are issues with speeding, these should be addressed by different means.
33. Similarly, some of the submissions were concerned that there may be an increase in traffic due to the scheme. The City did not accept that resolving the parking issues would affect traffic. It also noted that traffic count data showed an average of 800 or 1200 vehicles per day (in winter and summer respectively), which is under half the maximum recommended for a residential road (3000 vehicles per day). I am satisfied that I do not need to refuse the scheme on the basis of any traffic issues.
34. I must also be satisfied that the changes proposed under this scheme would not affect the charitable purpose of the trust. The City has provided the following information that satisfies me that the proposed parking will be for recreational purposes - that is, people parking to use the Bruce Trust Land – rather than for parking for other purposes:
 - (a) In its letter dated 4 January 2018 the City stated:

"With the exception of a small number of residential properties, the Esplanade adjacent to the Bruce Trust does not lead to anywhere other than recreational facilities and open space. As such, it is expected that the majority of the vehicles accessing and parking on the Esplanade belong to recreational users of the area."
 - (b) In its letter dated 21 November 2018 the City advised that:

"Some of the peak parking issues occur whilst games are being played on the foreshore, often co-inciding with peak times for dog walkers and those enjoying the river for passive recreation".

Increased parking at times when the reserve is busy suggests people parking are using the Bruce Trust Land for recreation (rather than parking for nearby homes or businesses or to attend university);
 - (c) The City also notes that parking areas further along the Esplanade are not well-utilised during times while the Esplanade is experiencing congestion, suggesting that those parking on the Bruce Trust Land are using that area, rather than parking there to go elsewhere;
 - (d) In relation to parking for university students, the City stated in its 21 November 2018 letter:

"The 3hr parking restrictions implemented along the Esplanade are a deliberately implemented strategy designed to deter regular long-term parking by university students and the City intends to retain these restrictions."

35. As trustee, the City will still be under an obligation to ensure that the Bruce Trust Land is only used for charitable (recreational) purposes. I therefore do not need to impose a condition to this effect.
36. The City submitted the scheme pursuant to sections 8 and 10A of the Act. Section 8 requires the applicant to demonstrate that the proposed variations will "facilitate" the administration of trust property or the overall operation of the trust. This provision has not been frequently used in this jurisdiction. However, the New Zealand High Court has said, in respect of the equivalent provision of the New Zealand Act, on which section 8 is based¹:
- "It is necessary for this Court to be satisfied that the administration of the property or the carrying out of the Trust "could be facilitated" by the variation sought. The ordinary dictionary meaning of "facilitate" is "made easier, promoted or held forward"."*²
37. I am satisfied that, due to the narrow width of the Esplanade road reserve, cars will continue to park on the Bruce Trust Land, whether or not the scheme is approved. Based on the evidence provided by the City, I am satisfied that such parking is, at least in general, for the purposes of recreational use of the reserve that includes the Bruce Trust Land.
38. In accordance with the Court's approach noted above, I am satisfied that it would "facilitate" the recreational purpose of the Bruce Trust to regulate the parking that occurs on the Bruce Trust Land. I am satisfied that the scheme is a reasonably necessary and an appropriate way of achieving this.
39. I would, however, impose conditions on this aspect of the scheme, as follows:
- (a) the reference to a width "not exceeding sixty feet" be amended to "not exceeding twenty feet";
 - (b) no fees be charged by the City for parking on the Bruce Trust Land; and
 - (c) there be no increase to the bituminised surface of the Esplanade onto the road reserve on the Bruce Trust Land.

E. Lighting

40. By the City's letter dated 1 May 2017, submitting the scheme, the City explained the purpose of this aspect of the scheme as follows:

"The proposed variation 6(b) seeks to enable the City to replace existing non-compliant lighting for existing playing fields. A current design for the installation of six new compliant lighting poles, two of which would need to be located on the Bruce Trust land, is unable to proceed based on the existing conditions of the Trust, which were developed before current sports lighting technologies and standards existed."

41. The "existing condition" referred to is clause 4 of the Trust Deed, which, relevantly, provides:

"The Road Board [trustee] shall not build or erect any erections or structures upon the said Lot 792 of a height exceeding thirty feet nor except as in this

¹ Section 33 of the *Charitable Trusts Act 1957* (NZ).

² *Re Melanesian Mission Trust Board*, High Court Auckland M1140/98, 24 September 1998, Paterson J.

paragraph provided interfere with the rights of access in the last preceding paragraphs referred to[.] No building erection or structure under this clause shall be placed closer than twenty five feet to the boundary line of any of the said subdivisional lots abutting on Lot 792."

42. In effect, the scheme seeks to remove this restriction, as it relates to lighting for the purposes of illuminating the playing fields on the Bruce Trust Land. The City's letter to the State Solicitor's Office dated 4 January 2018 explained the basis for the change sought:

"The restriction enforced by clause 4 in the Deed limits the height of lighting towers to a little over 9 metres. The proposed lighting towers are 30 metres in compliance with Australian Standard 2560.2.3-2007 Sports lighting – Lighting for football Ball and Physical Training. Such lighting towers and heights take into consideration the required lighting to suitably accommodate such recreational activities to take place in the evening, but also reduced light spill and light impact on any surrounding facilities and residences. The proposed lighting upgrade will output only downward light with no light above horizontal. As such, despite being much taller than the existing sports lighting, the proposal will not adversely impact upon the character of the local area or result in any loss of amenity for surrounding development."

43. In response to submissions from nearby residents (who benefit from the existing clause 4 of the Trust Deed), the City clarified that the relevant Australian Standards requirements do not directly or expressly require lighting towers with a height of 30 metres, or any particular height. However, according to the City, in order to comply with the combination of requirements for:

- (a) sufficient lighting for the relevant sporting activities (50 lux as required for "Amateur and semi-professional level – ball and physical training"); and
- (b) limiting dispersion of light (light spill) and glare issues, for the benefit of people living nearby (which requires that lighting be directed more vertical/downward rather than more horizontally, to reduce glare and to confine the light spill area), in effect, 30 metre lighting towers are required.

44. The standards referred to by the City were:

- (a) AS 2560.1-2002 Sports lighting Part 1: General principles (currently under review, in draft as DR AS 2560.1:2018);
- (b) AS 2560.2.3-2007 (R2017) Sports Lighting Part 2.3: Specific applications – Lighting for football (all codes); and
- (c) AS 4282-1997 Control of the obtrusive effects of outdoor lighting (currently under review, in draft as DR AS/NZS 4282:2018).

45. The City advised (in its letter dated 21 November 2018) that its lighting designers used specialised design software which allows the modelling of light uniformity, glare and spill. Their advice was that to comply with the relevant lighting standards in this particular location would require that lighting towers be 30 metres in height to allow the luminaires to be directed sufficiently vertically rather than horizontally.

46. The City says that if such lighting is not approved and the current 10 metre high lighting towers deteriorate, they could not be replaced with the same height towers, since the current lighting does not comply with the above Australian Standards. The City claims that in this case it would "be forced to remove the lighting completely and evening sports will be forced to cease completely."

47. I received nine submissions in relation to the scheme. Eight of these were from nearby residents, who benefit from the protective provisions of the Trust Deed. Seven of those eight submissions opposed the scheme, including opposing increasing the height of the lighting towers. They claimed that changing the lighting towers as proposed would detrimentally affect their amenity (being more physically obtrusive as structures, interrupting views across the reserve and the river and by increasing the light spill). Several submissions noted that the proposed towers would be higher than their units, so that even horizontal light would be significantly intrusive. The City (in its letter dated 21 November 2018) disagreed that that would be the effect, referring to the proposed "directional LED technology with controlled light spill, which would reduce the light spill [compared with] the current lighting towers". It provided photographs demonstrating that the type of lighting proposed appears to be very focused, with areas behind the lighting remaining in darkness.
48. Some submissions claimed that unit values would be reduced. In its response, the City stated that there was no evidence of this.
49. Some submissions claimed that increased night games (facilitated by greater lighting) would adversely impact their amenity due to noise (such as shouting and yelling by players). The City advised that no changes to existing practice timetables or playing times were proposed.
50. I accept that the administration of the Bruce Trust Land and its charitable purpose of recreation would be "facilitated" by allowing the new lighting proposed by the City, for the purpose of evening sports. However, I also accept that there would be some adverse impact on nearby residents, who currently benefit from protections in the Trust Deed (as discussed further below).
51. I must therefore consider whether it is open to me and appropriate to approve this aspect of the scheme, given clauses 4 and 6 of the Trust Deed.

Conditions on charitable trusts

52. The Trust Deed provides for certain rights of residents of the privately-held land adjoining the Bruce Trust Land. Clause 4 of the Trust Deed prohibits the building or erecting of any erections or structures upon the Bruce Trust Land which:
- (a) are of a height exceeding 30 feet;
 - (b) interfere with the rights of access granted to the owners and occupiers of the subdivisional lots abutting the Trust land; or
 - (c) are closer than 25 feet to the boundary line of any of the subdivisional lots abutting the Trust land.
53. Clause 6 of the Trust Deed (incorrectly numbered as a second clause 5) provides:
- "The Road Board shall not commit or permit on the said land any act or thing likely to become or be a nuisance damage annoyance or injury to the grantor or to any person or persons owning leasing or occupying any part of the said Estate."*
54. Clause 7 of the Trust Deed provides that the provisions of the Trust Deed:
- "may be enforced against the Road Board by any person who for the time being is lessee occupant or...owner of the said estate or any part thereof and for such*

purpose such persons shall be deemed beneficiaries under and ... entitled to the benefit of this instrument."

55. It is common for the donors of funds for charitable purposes to attach conditions to the gift or to stipulate mechanisms pursuant to which the funds are to be spent. These conditions or stipulations do not affect the charitable character of gifts.³
56. Although a charitable trust may not have mixed charitable and non-charitable purposes,⁴ it appears that it is permissible for a trust that is for charitable purposes to be subject to a condition that has a private, rather than public and charitable purpose. For example, in **Re Tyler; Tyler v Tyler** [1891] 3 Ch 252; [1891-94] All ER Rep Ext 1996, money was bequeathed to a charity on condition that the charity maintain the testator's family vault. The Court upheld the condition; the trustees were bound by it.
57. Once the trustee has accepted a gift subject to conditions, it must comply with those conditions (subject to exceptional circumstances, such as illegality). As Young J stated in **Re Byrne's Estate; Permanent Trustee Co Ltd v A-G** (unreported, SC(NSW), Young J, 12 December 1994):

"If one is given a gift for a certain purpose or on certain conditions, then if one accepts the gift one must comply with the conditions. If one does not like the conditions, one does not accept the gift."

58. When considering a scheme proposed under section 7 of the Act (relating to a trust's purposes), I am obliged to consider whether the proposed scheme gives effect, as nearly as possible, to the original intentions of the donor. For example, in **Re Goldwater (dec)** [1967] NZLR 754, 757, Gresson J stated (in respect of the New Zealand equivalent provision⁵):

"... in deciding whether to approve a scheme, the Court owes a duty to the settlor of the trust property to dispose of it as nearly as possible in accordance with the intentions of the settlor. It owes a duty also to those proposed to be benefited by the trust, and to the public generally, to dispose of the fund or property as nearly as possible in accordance with the charitable purposes of the trust, and in such a way as will best serve the interests of those intended to be benefited."

59. The possible application of such a rule under section 8 is more complex.
60. Section 8 requires the applicant to demonstrate that the proposed variations will "facilitate" the administration of trust property or the overall operation of the trust. This provision has not been frequently used. However, as noted above, the New Zealand High Court has said, in respect of the equivalent provision of the New Zealand Act, on which section 8 is based⁶:

"It is necessary for this Court to be satisfied that the administration of the property or the carrying out of the Trust "could be facilitated" by the variation

³ **Central Bayside General Practice Association Ltd v Commissioner of State Revenue** (2006) 228 CLR 168, [33] (Gleeson CJ, Heydon and Crennan JJ).

⁴ **Morice v Bishop of Durham** (1804) 9 Ves 399; 32 ER 656, 659 - subject to s 102 of the *Trustees Act 1962* (WA).

⁵ Section 32 of the *Charitable Trusts Act 1957* (NZ).

⁶ Section 33 of the *Charitable Trusts Act 1957* (NZ).

sought. The ordinary dictionary meaning of "facilitate" is "made easier, promoted or helped forward".⁷

61. In New Zealand, it appears that the equivalent of section 8 has been relied upon for relatively uncontroversial amendments to trust deeds, generally with the purpose of bringing a trust into line with more modern requirements for governance and administration. For example:
- (a) changes to a trust's name, governance, proceedings of trustees meetings, limitation of powers and remuneration to trustees;⁸ and
 - (b) changes to the numbers of trustee board members, appointment and removal of such trustees and permitting trustee resolutions in writing (without requiring meetings in person).⁹
62. However, it appears that the New Zealand High Court has been careful to avoid approving, pursuant to the equivalent of section 8, a scheme which would alter the original charitable purposes of the trust.¹⁰ The Court has described the provision as one "relating to amending administrative provisions of a trust".¹¹
63. In the second reading speech of the bill which became the Act, the Hon Mr Guthrie, Member for Subiaco, said¹²:
- "These schemes arise basically in two sets of circumstances. Either the trust that was worked out by the donor has not been complete in itself and needs amplification; or the very purposes for which it has been established become untenable. The Policy of the law is to endeavour to give effect to the donor's intention by approving what is known as a cy-pres scheme."*
64. The "two sets of circumstances" referred to are apparently those covered by sections 7 and 8 of the Act respectively. That is, section 8 is described as covering circumstances where "the trust that was worked out by the donor has not been complete in itself and needs amplification".
65. This suggests that, in contrast to section 7 of the Act (which only applies in limited, specified circumstances), section 8 is not apparently intended to allow for a scheme that would fundamentally alter the trust as originally intended, as opposed to "amplifying" or expanding upon it. This approach is consistent with the cy-près jurisdiction of the Court that was replaced by the Act¹³, that was intended to, as nearly as possible, give effect to the donor's original purpose.

⁷ *Re Melanesian Mission Trust Board*, High Court Auckland M1140/98, 24 September 1998, Paterson J.

⁸ *Re Canterbury Branch New Zealand Federation of University Women Trust* [2015] NZHC 950 [7 May 2015], [5].

⁹ *In the matter of Auckland Observatory and Planetarium Trust Board* [2017] NZHC 1224 [7 June 2017], [6].

¹⁰ See *Re Canterbury Branch New Zealand Federation of University Women Trust* [2015] NZHC 950 [7 May 2015], [9], [10]; and *In the matter of Auckland Observatory and Planetarium Trust Board* [2017] NZHC 1224 [7 June 2017], [13] – [14].

¹¹ *The WR Williams Memorial for the Missions to Seamen Trust Board Inc* [2018] NZHC 867 [30 April 2018].

¹² See Hansard, Legislative Assembly, 1 November 1962, 2306.

¹³ See *Taylor v Princess Margaret Hospital for Children Foundation Inc* [2012] WASC 83, [47] – [59].

66. In light of the above, in my view it is not open to me to approve the scheme as it relates to lighting, since to do so would be directly inconsistent with a (valid) condition on the charitable trust.
67. Alternatively, if it is open to me to approve the scheme as it relates to lighting, I decline to do so as in my view it would be contrary to public policy (in accordance with section 18(1)(a) of the Act) since it may discourage future charitable gifts if potential donors consider that any otherwise valid conditions they impose on those gifts will not be carried out.
68. I accept that in some cases it may be appropriate to vary, by a scheme under the Act, some conditions imposed on charitable gifts, however in my view it is not appropriate to do so in this particular case.

F. Section 18 of the Act

69. As you are aware, a scheme under Part III of the Act cannot be approved unless I am satisfied of the matters set out in section 18 of the Act:
- (a) Whether the scheme is a proper one etc: Subject to my view that it is not open to me nor appropriate to override clauses 4 and 6 of the Trust Deed, in my view the scheme is otherwise a proper one that should carry out the desired purpose and is not contrary to law or public policy or good morals.
 - (b) Whether the scheme can be approved under Part III: Other than proposed clause 6(b), in my view the scheme can be approved under Part III of the Act, in accordance with section 8.
 - (c) Whether every proposed purpose is charitable and can be carried out: in accordance with section 5 of the Act, the recreational purpose of the trust and the scheme is a charitable one. In particular, I am satisfied that the arrangements to allow (and better regulate) parking on the Bruce Trust Land are nevertheless for recreational purposes, as discussed in paragraph 32 above.
 - (d) Compliance with Part III: The City has complied with Part III of the Act in that it has prepared a scheme under section 9 of the Act and submitted the scheme to me in accordance with section 10 of the Act.

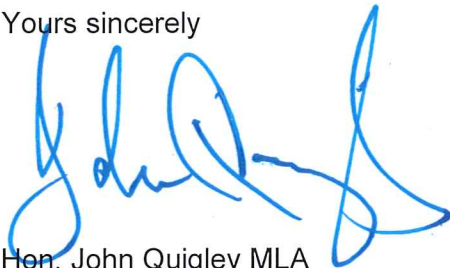
G. Conclusion

70. I would approve clauses 6(a) and 6(c) of the proposed scheme, subject to the following amendment and conditions:
- (a) the reference to a width "not exceeding sixty feet" be amended to "not exceeding twenty feet";
 - (b) no fees be charged by the City for parking on the Bruce Trust Land; and
 - (c) there be no increase to the bituminised surface of the Esplanade onto the road reserve on the Bruce Trust Land.
71. I would refuse to approve clause 6(b) of the proposed scheme.
72. In accordance with section 10A(4) of the Act, I must either approve the scheme submitted or refuse to approve it. Section 10A of the Act does not permit me to approve a scheme in part only. Therefore, if you wish me to approve a scheme in the terms referred to in paragraph 70 above, please submit an amended scheme in those

terms. This is permitted in accordance with sections 10(1)(a) and 10A(4)(1) of the Act.

73. If the City does not submit a new scheme, but instead requires a decision on the scheme as submitted, I would refuse to approve that scheme, for the reasons set out above.
74. Please also note that pursuant to section 10A(11) of the Act, I may charge the trustee my reasonable fees for the costs and expenses incurred in considering the scheme. I will address this issue at the completion of the consideration of the scheme.
75. I look forward to receiving your advice as to how you would like to proceed.

Yours sincerely



Hon. John Quigley MLA
ATTORNEY GENERAL

- 1 MAY 2019

9.2 Policy Reviews

| | |
|---|--|
| Committee | 13 September 2019 |
| Council | 24 September 2019 |
| Applicant | City of Nedlands |
| Employee Disclosure under section 5.70 Local Government Act 1995 | Nil. |
| CEO | Mark Goodlet |
| Attachments | <ol style="list-style-type: none"> 1. Staff Superannuation Contributions Policy - Existing 2. Superannuation Contributions Policy - New 3. Footpaths – Construction and Maintenance Policy 4. Naming of Parks, Streets, Public Facilities and Buildings Policy 5. Shading of Streetlights Policy 6. Dinghy Storage on River Foreshore Reserves Policy 7. Crossover Construction and Maintenance Policy 8. Superannuation Contributions Procedure 9. Footpaths – Construction and Maintenance Procedure 10. Naming of Parks, Streets, Public Facilities and Buildings Procedure |

Executive Summary

All Council policies are required to be reviewed regularly and approved by Council. This report contains policies that have been reviewed and require formal Council adoption.

Recommendation to Committee

Council:

1. **revokes the Staff Superannuation Contributions Policy;**
2. **adopts the new Superannuation Contributions Policy;**
3. **adopts the following updated policies;**
 - a. **Footpaths – Construction and Maintenance Policy;**
 - b. **Naming of Parks, Streets, Public Facilities and Buildings Policy;**
 - c. **Shading of Streetlights Policy;**
 - d. **Dinghy Storage on River Foreshore Reserves Policy;**
 - e. **Crossover Construction and Maintenance Policy; and**

4. **notes the following procedures:**
- a. **Superannuation Contributions Procedure;**
 - b. **Footpaths – Construction and Maintenance Procedure;**
 - c. **Naming of Parks, Streets, Public Facilities and Buildings Procedure; and**

Discussion/Overview

Council policies are reviewed periodically to ensure they reflect the strategic direction and responsibilities of Council and are kept up to date.

The procedure for policy reviews is as follows:

- Policies will be reviewed and updated by staff with any amendments due to changes in any Legislation, Local Laws, Regulations etc. and recommendations made to the Executive Management Team;
- Staff recommendations are reviewed by the Executive Management Team and amended as required and recommendations made to Council;
- Where there are major amendments to existing policies these policies are then presented at a Councillor Briefing for discussion prior to presentation to Council;
- Where a number of policies have common themes, these policies may be combined to establish a new policy. Redundant and old policies will be revoked where they are substantially changed, and a new replacement policy will be presented at a Councillor Briefing for discussion prior to presentation to Council; and
- Administration may at times recommend a policy be revoked with no Council Policy to replace it. This may occur when it has been identified that the policy is operational or covered under legislation and/or the responsibility of the Chief Executive Officer.

Policy statements should provide guidance for decision-making by Council and demonstrate the transparency of the decision-making process.

Superannuation Contributions Policy

This policy was reviewed as required and it is recommended that the Staff Superannuation Contributions Policy (attachment 1) be revoked and replaced with the Superannuation Contributions Policy (attachment 2), due to the extent of rewording. This policy sets out the criteria for the payment of government guaranteed superannuation to employees as well as additional superannuation contributions to employees where employees elect to make a voluntary contribution.

The fundamental contribution percentage remains unchanged.

Footpaths – Construction and Maintenance Policy

This policy was reviewed as required and it is recommended that the Footpaths – Construction and Maintenance Policy (attachment 3) be adopted with one minor change (as tracked in attachment 3) being the removal of KFA (Key Focus Area) – Natural and Environment which was referenced in our previous Strategic Community Plan but is no longer referenced in our current Strategic Community Plan.

Naming of Parks, Streets, Public Facilities and Buildings Policy

This policy was reviewed as required and it is recommended that the revised Naming of Parks, Streets, Public Facilities and Buildings Policy (attachment 4) (previously Naming of Parks, Streets, Public Facilities, Buildings and Signs on Reserves Policy) be adopted with the recommended changes (as tracked in attachment 4) for the following reasons:

- Removal of KFA (Key Focus Area) – Community Wellbeing Governance and Civic Leadership which was referenced in our previous Strategic Community Plan but is no longer referenced in our current Strategic Community Plan.
- Updating the titles of relevant documents i.e. changing ‘Guidelines’ to ‘Policies and Standards’ for Geographical Naming in Western Australia.
- Policies & standards do not allow the use of names associated with ‘past’ or ‘ongoing public service within all levels of government.
- Policies & standards prescribe ‘Requests to approve names that commemorate or that may be construed to commemorate, a living person will also not be accepted.
- Signs on reserves has been removed from this policy for the following reasons:
 - statutory approval requirements are dealt with under Local Planning Scheme 3 and the Local Planning Policy – Signs;
 - the provisions within the policy are better aligned for inclusion in the ‘Community Signage’ Policy.

Shading of Streetlights Policy

This policy was reviewed as required and it is recommended that the Shading of Streetlights Policy (attachment 5) be adopted with one minor change (as tracked in attachment 5) being the removal of KFA (Key Focus Area) – Natural and Environment which was referenced in our previous Strategic Community Plan but is no longer referenced in our current Strategic Community Plan.

Dinghy Storage on River Foreshore Reserves Policy

This policy was reviewed as required and it is recommended that the Dinghy Storage on River Foreshore Reserves Policy (attachment 6) be adopted with two minor changes (as tracked in attachment 6) for the following reasons:

- removal of KFA (Key Focus Area) – Governance and Civic Leadership which was referenced in our previous Strategic Community Plan but is no longer referenced in our current Strategic Community Plan.
- Updating jurisdictional powers from 'Swan River Trust' to 'Parks and Wildlife Service'.

Crossover Construction and Maintenance Policy

This policy was reviewed as required and it is recommended that the Crossover Construction and Maintenance Policy (attachment 7) be adopted with two minor changes (as tracked in attachment 7) for the following reasons:

- removal of KFA (Key Focus Area) – Natural and Environment which was referenced in our previous Strategic Community Plan but is no longer referenced in our current Strategic Community Plan.
- adding additional clause 7 to support single crossovers to double garage to allow owners the option of having more garden / lawn area rather than paving/cement on their verge where safe to do so.

Internal Procedures

The following procedures are provided to Council for noting as internal procedures used by administration staff to ensure policy alignment with day to day operations.

- Superannuation Contributions Procedure (attachment 8);
- Footpaths – Construction and Maintenance Procedure (attachment 9);
and
- Naming of Parks, Streets, Public Facilities and Buildings Procedure (attachment 10).

Key Relevant Previous Council Decisions

Nil.

Consultation

Policies were discussed at Councillor Briefings as per the list below prior to presentation to Council.

18 June 2019

- Superannuation Contributions Policy
- Footpaths – Construction and Maintenance Policy

2 July 2019

- Naming of Parks, Streets, Public Facilities, Building and Signs on Reserves Policy
- Shading of Streetlights Policy
- Dinghy Storage on River Foreshore Reserve Policy

6 August 2019

- Crossover Construction and Maintenance Policy

Budget/Financial Implications

Nil.



Staff Superannuation Contributions

| | |
|-----------------------------|---|
| KFA | Governance and Civic Leadership |
| Status | Council |
| Responsible division | Office of the Chief Executive Officer |
| Objective | To establish employer and employee superannuation contributions |

Context

This policy sets out the criteria for the payment of government guaranteed superannuation to employees as well as additional superannuation contributions to employees where employees elect to make a voluntary contribution.

Statement

Council will contribute an additional amount to superannuation schemes for its staff at the levels provided for in the procedure associated with this policy to a maximum of 2% above the guaranteed superannuation rate.

For the Council to contribute the additional 2% to an employee's superannuation, the employee must become a full contributory member of the Local Government Superannuation Scheme.

Related documentation

Staff Superannuation Contributions Procedure

Related Local Law/legislation

Nil

Related delegation

Nil



Review History

24 September 2013 (Report CPS28.13)

22 November 2005 (Report CP35.05)

23 November 2004 (report C65.04)

27 April 1999 (Report C43.99)

Superannuation Contributions

| | |
|-----------------------------|---|
| KFA | Governance and Civic Leadership |
| Status | Council |
| Responsible division | Office of the Chief Executive Officer |
| Objective | To establish employer and employee superannuation contributions |

Context

This policy sets out the criteria for the payment of government guaranteed superannuation to employees as well as additional superannuation contributions to employees where employees elect to make a voluntary contribution.

Statement

The City shall provide superannuation co-contribution payments to all employees regardless of their modes of employment when certain criteria are met.

Definitions

Employee - means an employee of the City of Nedlands

Mode of employment - mean full time, part-time or casual employment.

Superannuation co-contribution scheme - a system for payments made to an employee's superannuation scheme over and above those made in the superannuation guarantee payment.

Superannuation guarantee payment - payments set at a minimum rate by the Federal Government, to be paid to complying funds or retirement savings accounts.

Objectives

To determine the criteria for the payment of employee superannuation co-contributions in addition to payments made in accordance with the Superannuation Guarantee (Administration) Act 1992.

Policy Principles

The purpose of this policy is to:

- provide an employment incentive for employees, commensurate with the employment market; and
- provide an incentive to all employees to voluntarily contribute to their superannuation fund.

Policy Guidance

The City offers its superannuation co-contribution scheme to all employees.

Under the superannuation co-contribution scheme, the City will contribute 2% of an employee's base salary to the employee's superannuation where the employee contributes a minimum of 5%, or more, of their base salary to superannuation.

The co-contribution paid by the City is in addition to the City's mandatory Superannuation Guarantee Payment prescribed by the Federal Government.

The co-contribution will be paid to the employee's nominated superannuation fund.

All employees can contribute to their superannuation via salary sacrifice (pre-tax amount) or salary deduction (post-tax amount) as allowed under the Australian Taxation Office guidelines.

Salary sacrificed superannuation contributions are classified as employer superannuation contributions, rather than employee contributions. This reduces the amount of superannuation guarantee contributions that the City is required to make. Employees should consider whether the additional salary they wish to sacrifice combined with the City's co-contribution will cause them to exceed their concessional (before-tax) contributions cap and attract additional tax or attracts Division 293 tax.

Related documentation

Contracts between the City and Employees / CEO
Enterprise Bargaining Agreements between the City and employees
Staff Superannuation Contributions Procedure

Related Local Law/legislation

Superannuation Guarantee (Administration) Act 1992 Local Government Act 1995
Local Government (Employee Superannuation) Regulations 2016



Related delegation

Nil.

Review History

(insert date & report #)



Footpaths – Construction and Maintenance

~~KFA~~ ————— ~~Natural and Built Environment~~

Status Council

Responsible division Technical Services

Objective To outline a strategy for improving and rehabilitating the footpath network throughout the City. For information regarding the City's cycle network, please refer to the City's Bike Plan.

Context

The City of Nedlands is responsible for the provision and care of footpaths. The City will aim to minimise the cost of rehabilitating and maintaining footpaths in the City to an acceptable standard.

Statement

The City of Nedlands will develop and implement a strategy for the improvement and rehabilitation of the footpath network and for the integration of a hierarchy of paths for pedestrians and cyclists. A schedule of footpath improvements and rehabilitation shall be submitted to Council as a Forward Works Program. Priority shall be for paths that provide strategic routes to schools, aged care facilities, commercial centres, hospitals, child care centres and recreational facilities and along bus routes.

The City shall construct footpaths:

- to meet its obligations under the Disability Access and Inclusion Plan;
- in accordance with Australian Standards AS1428 Design for Access and Mobility and Austroads Guide to Road Design Part 6A: Pedestrian and Cyclist Paths;
- where practicable and where budget allows, in accordance with 'Crime Prevention Through Environmental Design' principles; and
- in a location that, where complying with other requirements and where reasonably practicable, is closer to the boundary than the kerb.

Notification requirements will be as outlined in the Council's Community Engagement Policy and Strategy.

The procedures associated with this policy detail the ways in which the strategy will be developed and the standards and specifications for footpaths.

Related documentation

10 Year Strategic Community Plan
Forward Works Program
Footpaths – Construction and Maintenance Procedures
Disability Access and Inclusion Plan

Related Local Law/legislation

Local Law on Thoroughfares
Local Government Act 1995 Schedule 9.1 (7)
Local Government (Administration) Regulations 1996
Local Government (Uniform Local Provisions) Regulations 1996
Disability Access and Inclusion Plan

Related delegation

Nil

Review History

25 March 2014 (Report CPS14.14)
26 February 2013 (Report CPS07.13)
24 July 2012 (Report CP31.12)



Naming of Reserves, Parks, StreetsRoads, Public Facilities, and Buildings and Signs on Reserves

~~KFA~~ Community Wellbeing Governance and Civic Leadership

Status Council

Responsible Division Technical Services

Objective To provide clear guidelines for the naming of parks, ~~streetsroads, public facilities and~~ buildings ~~and signs on reserves~~ within the City of Nedlands.

Context

The Geographic Names Committee (GNC) is responsible for collecting, approving and registering place names in Western Australia. The Landgate publication 'Policies and Standards for Geographical Naming in Western Australia' (Policies and Standards) documents the processes and principles that guide the decisions of the GNC.

The Policies and Standards apply to the naming of geographical features, localities, roads and reserves. It is a requirement that the naming of these features conform with the Policies and Standards in order that the GNC will approve the name. Public facilities and buildings on reserves are not subject to the Polies and Standards and provide the opportunity for Council to honour and recognise individuals or groups.

Statement

When naming ~~reserves, parks and, streetsroads, public facilities/buildings and signs on reserves~~, Council will be guided ~~mainly by the policies~~ Policies and Standards of ~~theas applied by the Geographic Names CommitteeGNC. of Landgate and~~ When naming public facilities and buildings on reserves, Council intends to apply its discretion and priority will be given to naming after a person or group who has contributed to the local community.

The current Policies and Standards do not support many of the past practices used for naming reserves, parks and roads. Council does not intend to apply the Polices and Standards retrospectively as there is no requirement to do so.

~~Statement~~ Assignment of Names

~~Naming of~~ Reserves, Parks and Roads:

Names that ~~eommemerate honour~~, or may be construed to ~~eommemerate honour~~, living persons ~~will not~~ shall not be considered for ~~reserves, parks or roads~~ reserves over

~~4 ha. For~~ When applying personal names, ~~this will be done posthumously and~~ the person being ~~honored-commemorated~~ by the naming should have either had a direct long-term association with the area or have made a significant contribution to the area of the proposed ~~reserve, park or road~~. Association or contribution can include:

- Early pioneers or early settlers.
- Persons who have performed considerable and outstanding community service to the local community.
- A demonstrated record of high achievement or reputation at state, national or intentional level.
 - ~~Two or more terms of office on a local government council.~~

Only in exceptional circumstances and with substantial community support, will a proposal to rename a reserve, park or reserve-road be considered. The proposed amended name shall conform with the Policies and Standards.

~~The above will apply when considering names for parks and reserves under 1 hectare except that the names of living persons are acceptable providing that they are not a holder of any public office.~~

~~Components of reserves (i.e. ovals, pavilions, gardens, footpaths, walk trails etc) may be named to recognise any individual (including those still living) who has contributed to their establishment or to the local community in general.~~

Naming of streets, pPublic facilities and buildings:

Components of reserves and parks (i.e. ovals, pavilions, gardens, footpaths, walk trails etc.) may be named to recognise any individual who has contributed to their establishment or to the local community in general.

~~All~~ Though there is no formal approval required, naming of ~~streets,~~ public facilities and buildings shall ~~also~~ be in accordance with the ~~Geographic Names Committee guidelines~~ Policies and Standards to the extent there is no duplication of names elsewhere in Western Australia.

Suggested names that meet the above criteria may be recorded for use on a "future names register" compiled in accordance with the procedure associated with this policy.

Signs on reserves:

~~Council will consider applications to erect signs on any land or premises owned or controlled by the City of Nedlands if the proposed sign provides information about a community event or service.~~

Commented [AD1]: Policies & standards do not allow the use of names associated with "past or ongoing public service within all levels of government"

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Commented [AD2]: Policies & standards prescribe "Requests to approve names that commemorate, or that may be construed to commemorate, living persons will also not be accepted"

~~Any sign must conform to the standards outlined in the Local Law Relating to Signs, Hoardings and Bill Posting and Town Planning Scheme No. 2.~~

Related documentation

~~Memorial Park Furniture
Naming of Reserves, Parks, Roads, Public Facilities and Buildings Procedure
Community Signage Policy
Policies and Standards for Geographical Naming in Western Australia (Landgate)
Local Planning Policy - Signs~~

Related Local Law / Legislation

~~Local Laws Relating to Signs, Hoardings and Bill Posting
Town Local Planning Scheme No. 23~~

Related delegation

Nil.

Review History

26 July 2011 (Report CM05.11)
13 December 2005 (Report CP36.05)
23 Novmeber 2004 (Report T37.02)
26 November 2002 (Report T37.02)
27 November 2001 (Report T53.01)

Shading of Streetlights

~~KFA~~ ————— ~~Natural and Built Environment~~

Status Council

Responsible Division Technical Services

Objective To outline Council's position on the provision of shading of streetlights owned by Western Power and located in the road reserve within the City of Nedlands.

Context

The City considers 'spill light' that emanates from street lighting as a necessary incident of the amenity of an urban area in which street lighting is required by statute. Street lighting is provided in the public interest for safety reasons.

The City is vested with care, control and management of road reserves (excluding main roads) upon which streetlights are situated and has a general duty of care to persons using the road reserve. The City is only partially responsible for the provision of street lighting in that it covers electricity running costs and advises Western Power of streetlight faults as it becomes aware. The City does own a small number of streetlights situated within the City of Nedlands.

The City is not authorised to modify streetlight infrastructure however, it is able to facilitate requests for shading of streetlights through authorising Western Power to shade or modify a streetlight. The City will only consent to authorising streetlight shading if it is satisfied that the proposed modification would not impede the proper and adequate lighting of the road reserve in accordance with all applicable installation and safety standards. The City will consider the modification of all streetlights in line with the policy statement as described below.

For the purposes of this policy, streetlight means any fixed raised source of light located adjacent to a road, cycleway, footpath or thoroughfare within the City of Nedlands.

Statement

The City will consider requests for streetlight shading where:

- road or other works have necessitated the installation of additional streetlights or streetlight fittings;
- additional streetlights or modifications to streetlight fittings have caused a significant change to illumination levels;

- a change to illumination levels has occurred due to lamp replacement by Western Power; and
- Western Power has advised the City that streetlight shading is appropriate and will not adversely affect the proper and adequate lighting of a road, cycleway, footpath or thoroughfare.

The City will not consider requests for streetlight shading where:

- safety would be compromised due to inadequate lighting of a road, cycleway, footpath or thoroughfare as a result of the modification;
- there is evidence that amenity to neighbouring properties would be negatively affected; and/or
- Western Power has advised the City that the streetlight shading is inappropriate, cannot be installed and/or it does not currently provide this service.

Assignment of Costs

Where the decision to provide shading of a streetlight has been authorised by the City at the request of and for the benefit of owners of private property, the full cost of investigation, design and installation of the shading will be met by the applicant.

Related documentation

Nil.

Related Local Law/legislation

Local Government Act 1995
Electricity Corporations Act 2005

Related delegation

Nil.

Review History

25 August 2015 (Report CPS20.15)
26 June 2012 (Report CP27.12)

Dinghy Storage on River Foreshore Reserves

~~KFA Governance and Civic Leadership~~

Status Council

Responsible Division Technical Services

Objective The policy defines Council's position on private dinghy storage on river foreshore reserves under its care and control.

Context

Though it has been a common practice ~~for some time in the past~~, there is no established entitlement or protocol for the community to store private dinghies on public foreshore reserves which are under the care and control of the City.

The City's foreshore reserves sit within the Swan Canning Riverpark and are subject to the jurisdictional powers of the ~~Swan River Trust Parks and Wildlife Service~~ as set out by the *Swan and Canning Rivers Management Act 2006*. The Swan River Trust introduced policy *SRT/D26 - Dinghy Management along the Swan Canning Riverpark Shoreline* in 2010. Policy SRT/D26 requires the City to either:

1. Develop a management system to control dinghy storage on the Swan River foreshore if this is to remain a permissible practice; or
2. Enforce the prohibition of private dinghy storage on the Swan River foreshore within its jurisdiction.

Statement

In order to meet its obligations in respect of SRT/D26, the City of Nedlands will enforce the prohibition of private dinghies, and other watercraft, being stored on foreshore reserves under its care and control.

Related documentation

Nil.

Related Local Law/legislation

Local Government Act 1995
 Swan and Canning Rivers Management Act 2006
 Western Australian Marine Act 1982
 Local Law Relating to Reserves, Foreshores and Beaches



Local Law Relating to Thoroughfares

Related delegation

Nil.

Review History

25 September 2012 (Report CP41.12)

26 August 2014 (Report CPS28.14)

Crossover Construction and Maintenance

KFA ————— **Natural and Built Environment**

Status Council

Responsible division Technical Services

Objective To protect public safety and the interests of property owners in the City of Nedlands by providing a minimum standard for crossovers.

Context

The City of Nedlands has responsibility for the control of crossings from its thoroughfares to adjacent properties.

Statement

1. The City of Nedlands will ensure that all new and modified crossovers are safe to the public.
2. The City of Nedlands has crossover standards which are to be implemented for all new or modified crossovers.
3. Council will provide a subsidy for the construction of a crossover where:
 - a. The crossover is the primary crossover to a new development;
 - b. Approval is obtained prior to the construction of the crossover; and
 - c. The crossover conforms to the specifications provided in the procedure associated with this policy;
4. The amount of the subsidy is provided in the Schedule of Fees and Charges that forms part of the annual budget;
5. The City of Nedlands will ensure that crossovers are safe to the public;
6. The maximum combined crossover width (one or two driveways) is 9m and the width requirements of the Nature Strip Development policy also apply; and
7. Where applicable the City will encourage applicants to consider support a -single crossover to double garage;
8. The term "crossover" has the same meaning as "crossing" in the *Local Government (Uniform Local Provisions) Regulations 1996*.

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Related documentation

Crossover construction and maintenance procedure.

Related Local Law/legislation

Local Government Act 1995 Schedule 9.1(7)

Local Government (Uniform Local Provisions) Regulations 1996

Related delegation

Nil.

Review History

25 March 2014 (Report CPS14.14)

26 February 2013 (Report CPS07.13)

13 December 2005 (Report CP36.05)

23 November 2004 (Report T34.04)

28 October 2003 (Report T29.03)

24 October 2000 (Report T43.00)

Superannuation Contributions

Responsible Division Office of the Chief Executive Officer

1. Recognised Superannuation Schemes

The City of Nedlands is obliged to make superannuation contributions in accordance with the *Superannuation Guarantee Contribution Administration Act 1992*.

Under Federal legislation, Employees have freedom of choice over the fund that their Superannuation Guarantee Contributions are paid into.

2. Level of Contributions

The City will contribute the level of superannuation to an Employee's chosen Superannuation fund as set by legislation. As of January 2018, the statutory minimum contribution to be made by an Employer is 9.5% of the Employee's salary. The percentage payment may be adjusted by legislation from time to time.

The City of Nedlands will make superannuation contributions of 2% in addition to the minimum amount set by legislation where the Employee chooses to make their own additional contribution of 5% or more from their salary to their nominated superannuation fund.

3. Staff superannuation arrangements not requiring a Council contribution

The City will permit employees to enter into superannuation arrangements which result in the employee making additional contributions including contributions resulting from salary sacrifice arrangements, where those additional contributions do not attract any requirement for a Council contribution to that employee's superannuation.

All such additional superannuation arrangements must comply with all relevant legislation including taxation legislation.

Related documentation

Superannuation Contributions Council Policy



Related Local Law/legislation

Superannuation Guarantee Contribution Administration Act 1992
Governance of Australian Government Superannuation Schemes Act 2011
Superannuation Guarantee Administration Act 1992
Superannuation Guarantee Charge Act 1992
Local Government Act 1995 (WA)
Australian Taxation Law

Related delegation

Nil.

Review History

Approved by CEO 12 July 2019
Approved by CEO 8 January 2018
Approved by Executive 27 August 2013

Footpaths – Construction and Maintenance

| | |
|-----------------------------|--------------------|
| KFA | Transport |
| Responsible division | Technical Services |

Procedure

1. The Strategy

- a) To provide a safe network of footpaths, shared-use paths and cycle ways for pedestrians, cyclists, wheel chairs and motorised wheel chair users.
- b) To develop a hierarchy system based on its proximity to aged care facilities, schools, shopping precincts or areas of high pedestrian volumes.
- c) To implement a strategy for footpath maintenance that is proactive rather than reactive.
- d) To address the requirements of Roadwise, Bikewest, the Disability Access and Inclusion Plan, the Liveable Neighbourhoods Code, the Road Traffic Act WA 1974, and the Austroads Guide to Traffic Engineering Practice - Part 13 Pedestrians and Part 14 Bicycles, and the Town Planning Scheme.

2. Footpath Inspections

All existing footpaths shall be inspected twice per year to determine their condition in terms of tripping hazards, cracked slabs, gaps and general condition. The results shall be used to generate a program of footpath maintenance on a priority basis as per the hierarchy system and within the budget allocation for Footpath Maintenance.

3. Footpath Maintenance

Isolated tripping hazards greater than 10 mm high or individual gaps greater than 15 mm shall be remedied by relaying the individual slabs, bricks or concrete panels. Short sections of path that are extensively cracked by vehicles frequently driving over them shall be maintained by replacing with insitu concrete.

4. Footpath Improvement

This program includes the construction of new footpaths, shared-use paths (Dual Use Paths) and cycle-paths that are listed on the Western Suburbs' Bike Plan, and Footpath Plan. The priority shall be based on the predicted volume of pedestrian and/or bicycle traffic for each route.



Footpath Rehabilitation

This program includes the rehabilitation and replacement of existing slab footpaths and the upgrading of shared-use paths identified in the Footpath Plan with insitu concrete.

5. Commercial Centers

Replacement of slab footpaths in commercial centers would generally be with brick paving and landscaped with trees, shrubs, gardens and street furniture where appropriate. This shall be scheduled to occur after aerial mains are removed and underground power installed in these commercial centers.

6. Parks and Reserves

Footpaths within parks and reserves shall be included in the Development Plan for each park and shall be designed to provide links across the park to footpaths in the road reserve.

Footpath Specifications

7. Alignment of Footpath within the Road Reserve

The preferred alignment for new paths shall be 600mm from the boundary line, but may be on other alignments including the kerb. The location shall be selected in consideration of the location of the existing path, street trees alignment, traffic volume, traffic speed, number of crossovers, location of public utilities, slope of the verge, condition of the kerb and location of drainage infrastructure. The 600 mm alignment provides clearance from fences and shrubs growing out from the property line and avoids Telstra pits that are on a 300 mm alignment.

8. Path Width

The path width shall be either 1.5 m, 2.0 to 2.5m, 3.0m or full verge width. These widths shall be considered for each path where:

- a) 1.5m is the desirable width and allows two people to walk side by side comfortably, as well as allowing a child on a bicycle to pass a pedestrian.
- b) 2.0m is the minimum required for shared-use paths (Dual Use Paths), paths adjacent to right-angle parking bays and paths against the road kerb.
- c) 3.0m is the minimum required for cycle paths used by commuter cyclists travelling at high speed.



- d) Full verge width paving is appropriate in commercial areas with heavy pedestrian traffic. In the case of new commercial developments, where full verge paving is preferred, the Council may permit a developer to brick pave the entire verge, for the full road reserve frontage of that development. The construction shall be to the satisfaction of the City. Any vehicle crossovers shall be constructed in a contrasting colour to the footpath

9. Disability Access and Inclusion Plan

At all termination points, a “pram-ramp” shall be constructed at the kerb in accordance with the Disability Access and Inclusion Plan and the current Main Roads Standard for Pram Ramps Drawing 9831-5649. Pram ramps shall be constructed on existing paths. All pram ramps are to include Ground Surface Tactile Indicators (GSTI's).

10. Concrete Footpaths

Concrete footpaths shall be constructed from cast-in-situ concrete with a minimum thickness of 100 mm. Paths adjacent to the kerb shall 125 mm in thickness. Footpaths shall be constructed across any asphalt crossovers or rough crossovers and increased to 150 mm in thickness. Footpaths shall butt up to brick-paved or concrete crossovers, unless they are in poor condition.

11. Brick Paved Footpaths

Brick paving is appropriate for footpaths in commercial areas, public open space and verge developments. Bricks shall be trafficable with a minimum thickness of 60mm to reduce the number of bricks cracking or displacing under vehicle loads. Construction shall be to the satisfaction of the City.

12. Asphalt Footpaths

Asphalt footpaths are appropriate for off-road cycle-paths and shall be constructed with 30 mm red-oxide asphalt on 150 mm thick crushed limestone base-course. A flush concrete kerb 150 mm wide shall be constructed on each edge to minimise edge breaks and grass encroachment.

Related documentation

Footpaths Policy
Footpaths Forward Works Program
Disability Access and Inclusion Plan



Related Local Law/legislation

Local Law on Thoroughfares

Local Government Act 1995 Schedule 9.1 (7)

Local Government (Administration) Regulations 1996

Local Government (Uniform Local Provisions) Regulations 1996

Disability Access and Inclusion Plan

Related delegation

Nil.

Review History

Approved by Executive 6 September 2012

Naming of Reserves, Parks, Roads, Public Facilities and Buildings

KFA Governance and Civic Leadership

**Responsible
Division** Technical Services

Naming

Reserves, Parks and Roads

1. A future names register is to be maintained and reviewed as required.
2. Suggestions for names are to conform with the Policies and Standards for Geographical Naming in Western Australia (Policies and Standards) as published by Landgate and as amended from time to time. In accordance with the Policies and Standards, the following procedures shall apply when suggesting names for reserves, parks and roads:
 - a. commemorative names shall only use the surname of a person posthumously. Naming proposals associated with people that are still alive will not be accepted.
 - b. a commemorative name shall not be used to commemorate victims of, or mark the location of, accidents or tragedies.
 - c. a commemorative name shall not be considered for adoption if a well-established and acceptable name already exists for the feature.
 - d. past or ongoing public service within all levels of government, current or past ownership of the land or precedence of existing names are not considered as appropriate grounds for a commemorative naming request.
3. Suggested names are to be made in writing and accompanied by the required information:
 - a. Biographical details for a personal name.
 - b. Origins and meanings.
 - c. Historical information and rationale for inclusion on the future names register.
 - d. If possible, area of the City that the suggested name is most pertinent to.
4. The preferred sources of names are:
 - a. Descriptive names appropriate to the features to be named.
 - b. Pioneers, persons significant to the community, war casualties and historical events connected with the area.
 - c. Names from Aboriginal languages currently or formally identified with the general area.



5. Names should generally not be hyphenated or use an apostrophe.
6. Where a personal name is suggested as a reserve, park or road name, the surviving family of that person should be consulted, if possible, in order to gauge support for the use of the name. If there is objection to the use of the name, it should not be included on the future names register.

Facilities and Buildings

7. In accordance with the Policies and Standards, Council has the opportunity to use its discretion to name public facilities and buildings on reserves in recognition of individuals and groups. The following procedures shall apply:
 - a. suggested names should have geographical, historical, cultural or local significance.
 - b. if a living person is nominated, they must have contributed time, money or services to the community that were not part of their work, for at least 10 years.
 - c. naming after people is appropriate where they have been recognised in their field of expertise at a state, national or higher level, for at least 10 years.
 - d. names shall not include persons who have been convicted of criminal offences.
 - e. family names that have already been used are not to be considered even though it refers to a different family. Consideration may be given to using the person's full name to avoid confusion or duplication e.g. Joe Smith Library, Jane Doe Pavilion.
 - f. buildings, infrastructure and facilities named after a person may include an appended functional title where this would serve to clarify the location of the building or assist in identification.

General Procedures

8. The CEO or a Director may recommend to Council:
 - a. names for new reserves, parks and roads from the register to be submitted to the Geographical Names Committee for approval;
 - b. new names for reserves, parks, roads, facilities and buildings where circumstances suggest that a name not already on the register may be more appropriate;
 - c. to change the suffix of the road name proposals if required;
9. Council shall be responsible for suggesting and approving names for public facilities and buildings on reserves. The Administration shall liaise with the Geographic Names Committee secretariat to ascertain if a suggested name for a public facility or building duplicates a name already in existence within Western Australia and should be considered for use or not.
10. All proposed names for reserves, parks, roads, public facilities and buildings shall be presented via a report to Council for endorsement following appropriate



consultation with elected members and the community (where required). Following endorsement by Council, naming proposals shall be submitted by the Administration to the Geographic Names Committee secretariat for approval and/or registration on the Western Australia GEONOMA database.

Related documentation

Naming of Reserves, Parks, Roads, Public Facilities and Buildings Policy
Policies and Standards for Geographical Naming in Western Australia (Landgate)

Related Local Law / Legislation

Town Planning Scheme No. 3
Advertisement Signs on Zoned and Reserved Land Local Planning Policy

Related delegation

Nil.

Review History

Approved by Executive 7 November 2013

10. Urgent Business Approved By the Presiding Member or By Decision

Any urgent business to be considered at this point.

11. Confidential Items

11.1 TS19.19 – Government Road and Loch Street Sumps

Confidential Report circulated separately to Councillors.

Declaration of Closure

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