



# Development Services Reports

**Committee Consideration – 9 August 2011**  
**Council Resolution – 23 August 2011**

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<b>D44.11</b>	<b>No. 98 (Lot 604) Circe Circle, Dalkeith – Overheight Secondary Street Fence</b>
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<b>Committee</b>	9 August 2011
<b>Council</b>	23 August 2011

<b>Applicant</b>	Lawrence Scanlan Architects
<b>Owner</b>	Mario & Natalie De Felice
<b>Officer</b>	Elle O'Connor – Planning Officer
<b>Director</b>	Carlie Eldridge – Director Development Services
<b>Director Signature</b>	
<b>File ref</b>	DA11/238 : CI2/98-02 : M11/14184
<b>Previous Item No's</b>	Nil
<b>Disclosure of Interest</b>	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

### Purpose

This application is referred to Council for determination as officers have no delegation to determine an application once objections have been received.

### Recommendation to Committee

Council approves the application for an over height secondary street fence at No. 98 (Lot 604) Circe Circle, Dalkeith in accordance with the application and plans dated 10 November 2010 subject to the following conditions:

1. the proposed fence in the 9 m primary street setback shall be a maximum height of 1.8 m above natural ground level at the base of the wall and visually permeable in accordance with the Residential Design Codes 2010;
2. the 26 m portion of the fence located on the secondary street boundary, behind the 9 m primary setback shall not exceed 1.8 m from natural ground level; and
3. the 15.5 m portion of the fence setback 1.5 m from the secondary street boundary shall not exceed 1.8 m above the R.L14.85 deck level.

## **Strategic Plan**

### **KFA 3: Built Environment**

- 3.8 Facilitate appropriate development of existing residential housing to complement the surrounding residential amenity.

### **KFA 5: Governance**

- 5.6 Ensure compliance with statutory requirements and guidelines.

## **Background**

Property Address: No. 98 Circe Circle, Dalkeith  
Zoning MRS: Urban  
Zoning TPS2: Residential R10  
Lot Area: 1072.5 m<sup>2</sup>

Attachment 1 (Locality Plan) outlines the site location and orientation.

An application for a two storey dwelling on the subject site was approved in August 2010. A condition of this approval was for the secondary street fence along Curlew Road to be reduced to a maximum of height of 1.8 m above natural ground level.

An application was submitted for an overheight fence in November 2010. The application proposed that the fence be increased to the height originally requested, with a maximum height of up to 2.9 m above natural ground level.

The application was put forward to Council on 22 March 2011. Conditional Planning approval was granted at the Ordinary Council Meeting held on 22 March 2011 as follows:

### **Council Resolution**

Council approves the application for an over height secondary street fence at No. 98 (Lot 604) Circe Circle, Dalkeith in accordance with the application and plans dated 10 November 2010 subject to the following conditions:

- a) The proposed fence in the 9 m primary street setback shall be a maximum height of 1.8 m above natural ground level at the base of the wall and visually permeable in accordance with the Residential Design Codes 2010;
- b) The 26 m portion of the fence located on the secondary street boundary, behind the 9 m primary setback does not exceed 1.8 m from natural ground level'; and

- c) The 15.5 m portion of the fence setback 1.5 m from the secondary street boundary does not exceed 1.8 m above the R.L14.85 deck level.

**Proposal Detail**

The applicant has now applied for another overheight secondary street fence. The secondary street fence has three sections facing Curlew Road and is proposed to have a maximum height of 2.5 m above natural ground level.

**Consultation**

Required by legislation: Yes  No

Required by City of Nedlands policy: Yes  No

Consultation type: Letter sent to adjoining owners allowing 14 days for comment to be received, in accordance with Policy 6.4 'Neighbour Consultation – Planning Application'.

Dates: 22 June 2011 – 6 July 2011

Comments received: (1) Objection

Note: A full copy of all relevant consultation feedback received by the City has been given to the Councillors prior to the meeting.

Summary of comments received	Officers technical comment
<p><b>Issue: Amenity/Streetscape</b></p> <p>Objector is concerned that the proposed secondary street fence will affect the general amenity and streetscape of Curlew Road.</p> <p>The proposed secondary street fence is out of character with the area.</p>	<p><b>Support</b></p> <p>The proposed fence will affect the streetscape of Curlew Road.</p> <p>The maximum height of a secondary street fence under Policy 6.19 is 1.8 m in order to retain the amenity and character of a street.</p> <p>The fence will dominate the streetscape with it being up to 0.7 m above that normally permitted.</p>

**Legislation**

- Town Planning Scheme No.2 (TPS2)
- Residential Design Codes 2010
- Council Policy 6.19 'Fill and Fencing'
- Council Policy 6.4 Neighbour Consultation

The application does not satisfy the relevant criteria of the above legislation.

**Budget/financial implications**

Nil

**Risk Management**

Nil

**Discussion**

Issue: Secondary Street Fence

Requirement	Clause 5.6.4 of the City of Nedlands Town Planning Scheme No.2 (TPS2) and City of Nedlands Policy 6.19 require secondary street fencing to be a maximum height of 1.8 m.
Applicants Proposal	The proposed secondary street fence is 49.5m in length with the overheight portion reaching a maximum of 2.5 m above natural ground level.
Applicant Justification Summary	<p><i>We confirm that it is not the overlooking issue into and out of the house, that is in question, as the ground floor glazing along the East elevation is translucent, but rather the overlooking from the higher land to the North, directly into the back garden, which is the primary outdoor entertaining area.</i></p> <p><i>Therefore, in our opinion, the only way to solve the problem is with a higher wall and fence, which, in this instance, and as indicated on the enclosed drawing, follows the horizontality of the architecture (of the house), rather than becoming stepped to suit the existing incline of Curlew Road, a factor which we believe will compliment the proposed structure and contribute more to the existing streetscape than either a stepped or sloping fence and wall.</i></p>

	<p><i>With this in mind, and because of the buildings' 'contemporary design philosophy', which is not only very important to the Client, but also forms part of the original Client brief, we feel it is imperative that the design of the slatted fence and solid wall remain as intended, and thus, as indicated on the current DA submission.</i></p> <p><i>We also draw your attention to the fact that a substantial portion of the proposed fence and wall, both of which are set back approximately 7 metres from the street side curb, will actually be concealed, in part, by new and existing trees and planting.</i></p> <p><i>Whilst we acknowledge that neighbours in the near proximity still have an issue with the wall design, due to all of the above we cannot understand how this design can impact on their "amenity". In fact we believe it will greatly enhance the overall ambiance of the immediate area and improve the streetscape.</i></p>
<p>Assessment Criteria</p>	<p>Under Policy 6.19, any fencing that does not meet the 1.8 m height requirement shall be assessed in terms of the developments likely impact upon streetscape.</p>
<p>Officer Technical Comment</p>	<p>The City accepts that architectural features can be constructed in order to improve the appearance of a development, however, it is expected that these elements are located within the required setbacks for the lot, not within street setback areas.</p> <p>It is considered the height of the secondary street fence, will have an adverse impact on the streetscape of Curlew Road.</p> <p>The City does not accept the applicants justification that a high wall is the only way to solve overlooking into the rear garden. As the applicant has been advised the house could be designed to ensure the rear garden was not overlooked. The portion of wall proposed at 2.5 m is located further down the site, effectively eliminating its function as a screening wall from the higher ground. The screen wall appears to be mainly for architectural merit.</p>

	<p>The City aims to provide attractive streetscapes which reinforce the functions of a street as important and valuable public places that add value to the amenity of adjacent housing and developments.</p> <p>The over height fence will specifically affect the streetscape along Curlew Road between Circe Circle North and Circe Circle South.</p> <p>This section of road is occupied by four residential properties, including the subject property, which all has Curlew Road as their secondary street.</p> <p>For this reason, there are already several solid fences along this streetscape but they are all a maximum height of 1.8 m and step down with the natural slope of Curlew Road which retains the residential streetscape. The applicant seeks a variation to this requirement due to the architectural integrity of the approved dwelling.</p> <p>The proposed fence which is 49.5 m in length, up to a maximum height of 2.5 m and proposed to be built in sections of solid brick and timber paneling will not be in keeping with this existing streetscape.</p> <p>The nature and character of Curlew Road will be affected by the proposed fence as it is 700mm higher than the allowed maximum height of a boundary fence resulting in the fence dominating the streetscape.</p> <p>The height of the fence is that of a normal parapet wall of a dwelling. Walls of this height in the secondary street area and along the street boundary will detrimentally affect the streetscape.</p>
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### Conclusion

The proposal for the fence is partly a result of the design of the dwelling with increased floor levels above natural ground level and the location of the outdoor living areas on the corner block. The floor level at the front of the block is up to 1.5 m above natural ground level and approximately 500 mm above natural ground level in the area of the games room and decking.

When the dwelling was originally submitted for approval, the applicant was informed that the over height fence was not permitted. Instead of amending the levels and design of the proposed dwelling in order to cater for a compliant secondary street fence, the applicant opted to remove the fence from the original application.

The subject dwelling approved in August 2010 is now under construction with the outdoor living/entertaining area being filled to a level 1.4 m above the natural ground level. The applicant is now concerned that pedestrians will be able to overlook into this area from the street, and in effect has applied for an overheight 'screening' fence.

The City does not accept the fence is for screening. The rear section of the fence at the highest point of Curlew Road where overlooking may be an issue, is proposed to be 1.8 m in height. The overheight section proposed to be at 2.5 m is located further down the site, effectively eliminating its function as a 'screening wall'. Due to this, it is evident that the overheight fence is not proposed for its functionality as a screening wall but in fact for its architectural merit. Though the subject fence may complement the approved dwelling, it does not complement the streetscape as a whole.

The proposed over height secondary street fence will adversely affect the streetscape of Curlew Road and will be contrary to TPS2 and Policy 6.19, and as such it is recommended the proposed fence be reduced in height to maintain the amenity of the streetscape.

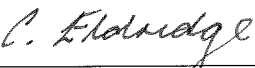
### **Attachments**

1. Locality Plan
2. Aerial Photograph
3. Site Plan – fence shown clouded
4. East Elevation – fence shown clouded
5. North and South elevations – fence shown clouded



<b>D45.11</b>	<b>No.15b (Lot 50) Erica Avenue, Mt Claremont - Proposed Two Storey Dwelling</b>
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<b>Committee</b>	9 August 2011
<b>Council</b>	23 August 2011

<b>Applicant</b>	Residential Building WA
<b>Owner</b>	Arthur & Jeanette Marshall
<b>Officer</b>	Elle O'Connor – Planning Officer
<b>Director</b>	Carlie Eldridge – Director Development Services
<b>Director Signature</b>	
<b>File ref</b>	ER1/15B : DA11/161 : M11/14177
<b>Previous Item No's</b>	Nil
<b>Disclosure of Interest</b>	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

**Purpose**

This application is referred to Council for determination as officers have no delegation to approve an application once objections are received.

**Recommendation to Committee**

**Council approves an application for a two storey dwelling located at No.15b (Lot 50) Erica Avenue, Mt Claremont in accordance with the application and plans dated 5 May 2011 and the amended plans dated 27 May 2011 subject to the following conditions:**

1. all storm water from building and paving areas (including driveways) shall be contained on site by draining to soakwells of adequate capacity to contain runoff from a 10 year recurrent storm event and the capacity of soakwells shall be a minimum of 1 cubic meter for every 80 m<sup>2</sup> of paved or roofed surface on the property;
2. all crossovers to street shall be constructed to the Council's Crossover Specifications and the applicant/owner to obtain levels for crossovers from the Council's Infrastructure Services under supervision on-site, prior to commencement of works;
3. the retaining walls and footings shall be constructed wholly inside the allotment;

4. the use of bare or painted metal building materials is permitted on the basis that, if during or following the erection of the development the Council forms the opinion that glare which is produced from the building has or will have a significant detrimental effect upon the amenity of neighbouring properties, the Council may require the owner to treat the building/roof to reduce the reflectivity to a level acceptable to Council; and
5. any additional development, which is not in accordance with the original application or conditions of approval, as outlined above, will require further approval by Council.

#### **Advice Notes specific to this approval**

- a. All verge development must comply with the Council's Verge Development Policy where verge developments other than lawn require a landscaping plan submitted for approval before commencement and verge developments not complying with this policy shall be modified at the owner's cost.
- b. All internal WC's and ensuites without window access to outside air must be serviced by mechanical ventilation, which is ducted to outside air and the minimum rate of air change must be equal or greater than 25 litres per second.
- c. Ensure that airconditioner unit(s) comply with relevant Australian Standards and that noise emissions comply with the *Environmental Protection (Noise) Regulations 1997*. Additionally, ensure that any unit is positioned so as to not create unreasonable noise to neighbours or directly emit exhaust air into openings of neighbouring premises.

#### **Strategic Plan**

- KFA 3: Built Environment
- 3.3 Promote urban design that creates attractive and liveable neighbourhoods.
  - 3.8 Facilitate appropriate development of existing residential housing to complement the surrounding residential amenity.

**Background**

Property Address: No. 15b (Lot 50) Erica Avenue, Mt Claremont  
 (attachment 1 - Location Plan)  
 Zoning MRS: Urban  
 Zoning TPS2: Residential R25  
 Lot Area: 421 m<sup>2</sup>

**Proposal Detail**

The application is for a two storey dwelling located on an east-west orientated lot. The property is one of five (5) lots that have been subdivided and rezoned R25 (attachment 2 – Aerial Photograph).

**Consultation**

Required by legislation: Yes  No

There are two variations to the Residential Design Codes (RCodes) which were advertised for the required 14 days. The RCodes advertising period was undertaken as part of the 21 day Special Procedure advertising period.

Required by City of Nedlands Policy: Yes  No

Two Storey Notification: 25 May 2011 – 8 June 2011

Comments received: One (1) objection

Note: A full copy of all relevant consultation feedback received by the City has been given to the City's Councillors prior to the meeting.

Summary of comments received	Officers technical comment
Issue	Noted
Overshadowing & setback variations outside of the acceptable requirements of the Residential Design Codes.	The proposal complies with all acceptable development of the RCodes, with the exception of Clause 6.9.1 (Design for Climate) and Clause 6.3.1 (table 1).  However, all variations comply with the Performance Criteria of the RCodes, discussed further below.

**Legislation**

- Town Planning Scheme No.2 (TPS2)
- Residential Design Codes 2010
- Council Policy 6.4 Neighbours Consultation

The application proposes the following variations to Clause 6.9.1 (Design for Climate) and Clause 6.3.1 (table 1) of the RCodes;

1. The development proposes to overshadow the southern adjoining property by 109 m<sup>2</sup> (28.2%). The acceptable development criteria of the RCodes allows for a maximum of 25% overshadowing.
2. The ground floor kitchen proposes to have a portion of the wall to be setback 0.98 m from the south side boundary. This wall has a length of 12.5 m and wall height of 3.5 m with one major opening. The RCodes require a minimum side setback of 1.5 m, a variation of 0.52 m.
3. The upper floor (Bed 3 to Master Suite) proposes to have a portion of the wall setback at 1.5 m from the south side boundary. This wall has a length of 17.0 m and wall height of 5.7 m with no major openings. The RCodes require a minimum side setback of 2.0 m, a variation of 0.5 m.

**Budget/financial implications**

Nil

**Financial**

Nil

**Risk Management**

Nil

**Discussion**

This application is referred to Council as an objection was received in relation to the variations to the acceptable development of Clause 6.9.1 (Design for Climate) and Clause 6.3.1(table 1). These variations are discussed below:

**Overshadowing**

<p>RCodes Acceptable Development Provisions</p>	<p>Clause 6.9.1 of RCodes states:</p> <p><i>Notwithstanding the boundary setbacks in design element 6.3, development in climatic zones 4, 5 and 6 of the state shall be designed that its shadow only cast at midday 21 June onto any other property does not exceed the following limits:</i></p> <p><i>On adjoining properties coded R25 and lower – 25 per cent of the site area.</i></p>
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Applicants Proposal	The dwelling proposes to overshadow 109m <sup>2</sup> of the 386.46 m <sup>2</sup> lot to the south. Therefore 28.2% of the adjoining lot.
Performance Criteria	<p>6.9.1 Solar Access for adjoining Site</p> <p><i>P1 Development designed to protect solar access for neighbouring properties taking account the potential to overshadow:</i></p> <ul style="list-style-type: none"> <li>• <i>Outdoor living areas;</i></li> <li>• <i>Major openings to habitable rooms;</i></li> <li>• <i>Solar collectors; or</i></li> <li>• <i>Balconies or verandahs.</i></li> </ul>
Applicant summary justification	<p><i>The narrow size of the irregular shaped property, along with its east/west orientation has rigorously affected the design of the dwelling.</i></p> <p><i>With a two storey dwelling proposed, overshadowing the southern adjoining property has been unavoidable. However, large setbacks have been provided, with only a small portion of the walls not complying with the required setback. If the setbacks did comply, only the shadow over the existing metal shed would be reduced.</i></p> <p><i>It can be seen from the image below (refer to hard copy of justification in Councillor pack) that before the land was subdivided and any development occurred the vegetation was dense and cast a significant shadow onto the neighbouring property. In this case, the location of the primary outdoor living area and significant major openings to the adjoining dwelling contribute to the need for a less stringent application of the codes.</i></p> <p><i>Although the overshadowing exceeds the requirements as set out in the acceptable development criteria of the Residential Design Codes, the resultant shadow is similar to that cast by the neighbouring two storey dwellings. This can be seen from the image below (refer to hard copy of justification in Councillor pack).</i></p>

<p>Officer comment</p>	<p>technical</p>	<p>The proposal is considered to comply with the Performance Criteria of the RCodes, discussed as follows:</p> <ul style="list-style-type: none"> <li>• <b>Outdoor Living Areas</b> The adjoining lots outdoor living area is situated at the rear of the property, predominately in the southern corner (see attachment 3). The proposed shadow will just reach the patio which has been erected at the rear of the dwelling and will not overshadow any of the outdoor lawn area to the south of the patio.</li> <li>• <b>Major Habitable Rooms</b> The majority of the shadow cast from the proposed development will fall on the roof of the neighbours dwelling. There is one opening on the ground floor to a habitable room (Kitchen) on the northern boundary (see attachment 4 – North Elevation of Neighbouring Dwelling). Given the neighbouring property is setback approximately 1.0 m from the boundary, any compliant structure on the subject property will overshadow this window. The existing boundary fence will overshadow this window.</li> <li>• <b>Solar Collectors</b> The adjoining property does not have solar collectors.</li> <li>• <b>Balconies and Verandahs</b> The adjoining property only has one verandah which is an entry on the southern side of the dwelling. This verandah will not be overshadowed by the proposed development.</li> <li>• <b>Other Considerations</b> Due to the narrow and unusual shape of the lot in conjunction with the orientation (east to west), direct overshadowing onto the adjoining southern property is unavoidable. Even if the overshadowing complied with the 25% coverage, the same habitable room would be overshadowed.</li> </ul>
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Southern Side Setback Variations

Requirement	Clause 6.3.1 of the RCodes requires the abovementioned walls be setback a minimum of 1.5 m and 2.0 m from the southern boundary.
Applicants Proposal	<ul style="list-style-type: none"> <li>• The 'Family Room' is proposed to be setback of 0.98 m in lieu of 1.5 m.</li> <li>• 'Bedroom 3' is proposed to be setback 1.5 m in lieu of 2. 0 m.</li> </ul>
Performance Criteria	<p><i>Performance Criteria</i></p> <p><i>P1 Buildings setback from boundaries other than street boundaries so as to:</i></p> <ul style="list-style-type: none"> <li>• <i>Provide adequate direct sun and ventilation to the building;</i></li> <li>• <i>Ensure adequate direct sun and ventilation being available to adjoining properties;</i></li> <li>• <i>Provide adequate direct sun to the building and appurtenant open spaces;</i></li> <li>• <i>Assist with protection of access to direct sun for adjoining properties;</i></li> <li>• <i>Assist in ameliorating the impacts of building bulk on adjoining properties; and</i></li> <li>• <i>Assist in protecting privacy between adjoining properties.</i></li> </ul>
Applicant justification summary	<p><i>Reduced ground floor setback to southern boundary of 987 mm – 1.5 m, in lieu of 1.5m:</i></p> <ul style="list-style-type: none"> <li>• <i>The reduced ground floor setback to the southern boundary is a direct result of irregular shaped block which makes it difficult to provide the required setbacks for the entire length of the boundary. The ground floor tapers in at the laundry and dining room, which reduces the impact of building bulk.</i></li> </ul>

	<ul style="list-style-type: none"> <li>• <i>Furthermore, the extensive glazing to the living area ensures that adequate light and ventilation will be obtained to the major openings, without adversely affecting the privacy of the adjoining property. The minimum setback of 1.036 m is behind the neighbours existing metal shed, therefore will not be visibly noticeable by the residents.</i></li> </ul> <p><i>Reduced 1<sup>st</sup> floor setback to southern boundary of 1.5 m – 3.9 m in lieu of 2.0 m:</i></p> <ul style="list-style-type: none"> <li>• <i>The southern elevation to the first floor has no major openings, however is broken up with minor openings along its length, still providing interest to the wall and ultimately reducing the bulk of the building, while maintaining the privacy of the adjoining property.</i></li> <li>• <i>Furthermore, the reduced setback is not considered to have any adverse affect on the provision of direct ventilation to the adjoining southern property, while maintaining the desired appearance of the dwelling from the street, ultimately ensuring that the amenity of the adjoining property is retained as well as its contribution to the attractive streetscape.</i></li> </ul>
<p>Officer technical comment:</p>	<p>Although the above portions of wall do not comply with the 'acceptable development' criteria of the RCodes, the proposed development is considered to comply with these performance criteria for the following reasons:</p> <ol style="list-style-type: none"> <li>1. The width of the site is narrow in comparison to the rest of the City of Nedlands and the proposed southern setbacks are designed to make best use of the width available.</li> <li>2. The proposed setback variations are 500 mm respectively and are considered minor.</li> <li>3. The proposed setback variations are only corner portions of the whole wall.</li> </ol>



	<p>4. The wall is broken up and stepped in from the boundary at different portions with varying setbacks reducing the impact of the building bulk.</p> <p>5. The neighbouring property to the south is setback between 1 m – 2 m from the common boundary with No.15b Erica Avenue, therefore providing a sufficient distance between the dwellings to allow for adequate access to sun and ventilation.</p> <p>Given the above, it is considered the proposal complies with the Performance Criteria as it provides adequate access to sun and ventilation to both properties and is not excessively bulky.</p>
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### **Conclusion**


As the proposed dwelling meets all of the provisions of the Performance Criteria the application is recommended for approval.

### **Attachments**

1. Locality Plan
2. Aerial Photograph
3. Proposed Site Plan
4. Ground Floor Plan
5. Upper Floor Plan
6. South & East Elevation Plans
7. North & West Elevation Plans
8. Overshadowing Plan

<b>D46.11</b>	<b>No.103 (Lot 23616) Alfred Road Mount Claremont - Retrospective Approval for Mt Claremont Primary School Farmers Market</b>
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<b>Committee</b>	9 August 2011
<b>Council</b>	23 August 2011

<b>Applicant</b>	Mount Claremont Primary School P & C
<b>Owner</b>	Mount Claremont Primary School
<b>Officer</b>	Coralie Anderson - Senior Statutory Planning Officer
<b>Director</b>	Carlie Eldridge - Director Development Services
<b>Director Signature</b>	
<b>File ref</b>	AL3/103
<b>Previous Item No's</b>	D46.08
<b>Disclosure of Interest</b>	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

**Purpose**

The purpose of this report is for Council to give consideration for the permanent operation of Farmers Market at Mount Claremont Primary School.

The proposal was originally approved by Council and as such this application has been referred to Council for determination.

**Recommendation to Committee**

**Council approves the permanent operation of the Farmers Market at the Mount Claremont Primary School in accordance with the application and plans dated 25 March 2011 subject to the following conditions:**

1. The operating hours for the Market shall be:
  - a. Saturday between the hours of 7:30 am to 1:00 pm; and
  - b. one evening market held in the week prior to Christmas, between the hours of 5:30 pm and 9:00 pm;
2. the stallholders shall be permitted to be on the site for the purposes of setting up and taking down of the stalls, up to a maximum of 1.5 hours before and after operating hours;

3. the traffic and parking generated by the use shall be managed by the Mount Claremont P & C to the satisfaction of the City and shall include, but not be limited to, the following:
  - a. providing onsite parking during markets hours in accordance with the approved plans;
  - b. providing a minimum of four (4) parking attendants;
  - c. signage which directs traffic to designated parking;
  - d. parking attendants shall be directing traffic and signs shall be erected, for the full duration of the operating hours and all signs shall be removed by 1:00 pm; and
  - e. the control and prevention of parking on the verges of all streets surrounding the school.
4. a maximum of 55 stalls shall operate at any one time;
5. any additional development, which is not in accordance with the original application or conditions of approval, as outlined above, will require further approval by Council; and
6. sufficient waste disposal infrastructure in place to the satisfaction of the City.

#### Advice Notes

- a. The applicants will be required to comply with the City of Nedlands minimum criteria for the operation of temporary food stalls, and the *Health Act 1911*, and will be subject to applicable fees in this regard.

#### Strategic Plan

- KFA 3: Built Environment
- 3.2 Encourage the development of diverse residential and commercial areas to meet the future needs of the whole City.
- KFA 4: Community Wellbeing
- 4.1 Provide and facilitate access to services and facilities required by the broader community, clubs and community groups.

#### Background

Property Address: 103 (Lot 23616) Alfred Rd Mt Claremont  
Zoning MRS: Urban  
Zoning TPS2: Local Scheme Reserve - Public Purpose (Primary School)

An application was approved by Council in July 2008, with a condition limiting stall numbers to a maximum of 40 stalls. The approval was also subject to a one (1) year time limit in order to give the City the opportunity to reassess the parking and traffic situation if necessary.

**Proposal Detail**

The application is for the permanent approval of the existing Mount Claremont Farmers’ Market and to increase from the originally approved 40 stalls to 55 stalls. It is understood that the market currently operates with a maximum of 53 stalls.

**Consultation**

Required by legislation: Yes  No

Required by City of Nedlands policy: Yes  No

Advertising 3 June 2011 - 17 June 2011

Comments received: Five (5) Non-objections

Note: A full copy of all relevant consultation feedback received by the City has been given to the City’s Councillors prior to the meeting.

Although there were no objections to the application, some submitters provided further comments which are discussed as follows:

Summary of comments received	Officers technical comment
Issue: Parking  Cars parked on verges blocks view of oncoming traffic	Condition  Condition that a minimum number of parking attendants are available, signage be erected to advise of the location of onsite parking areas and the management of preventing parking on verges is the responsibility of the applicant.
Issue: Suggest limit be placed on stall numbers and extent of market area	Condition  Conditions of Planning Approval will limit the number of stalls and the market area.

**Legislation**

- City of Nedlands Town Planning Scheme No.2 (TPS2)

The Farmers Market is located at the Mount Claremont Primary School, which is zoned “Local Scheme - Public Purpose (Primary School)”. Any development in this zone must be considered under Part II – Reserved Land of the Scheme.

The relevant clauses in the Scheme read as follows:

*2.1.b) Except as otherwise provided in this Part a person shall not carry out any development on land reserved under this Scheme, other than the erection of a boundary fence, without first applying for and obtaining the written approval of Council*

*2.1.c) In giving its approval the Council shall have regard to the ultimate purpose intended for the reserve and shall in the case of the land reserved for the purposes of public authority confer with that authority before giving its approval.*

### **Budget/financial implications**

Nil

### **Risk Management**

Nil

### **Discussion**

As stated, the school is located on land reserved as "Local Scheme - Public Purpose (Primary School)" and Part 2 of the TPS2 requires that all development in this zone has to have regard for the ultimate purpose intended for the reserve.

### **Compliance with TPS2**

It is considered the proposal has regard for the ultimate purpose of the reserve as follows:

- Not for profit community business venture which is wholly owned by the Mt Claremont Primary Parents and Citizens Association (P & C);
- The market assists the school in creating a strong sense community, particularly engaging the broader community;
- The market provides an opportunity for the school to promote and encourage sustainability;
- The market increases the awareness of the Primary School to the broader community.

Provided the market retains the fundraising focus, it is considered that the use is in accordance with the ultimate purpose of the reserve.

### **Market Location and Stall Numbers**

The market area is indicated on the site plans in attachment 2. The area is approximately bounded by the basketball court and the immediate adjacent sealed area.

In 2008 the markets were approved on the condition that a maximum of 40 stores would operate at any one time. In this application a total number of 55 stalls are being applied for.

It is advised by the applicant that the 55 stall numbers is the maximum which could fit within the current market area. The application was originally approved with 40 stalls and the applicant has noted that the markets have been operating with up to 53 stalls.

It is considered that if the area is limited to 55 stalls this will make sure the markets retain their fundraising and community focus.

### **Parking and Traffic**

The Primary School is located in Mount Claremont and bounded by Alfred Road, Montgomery Avenue, Lobellia Street and Jacaranda Avenue.

Attachment 3 indicates the parking areas available on site. The main car parking area is on the grass area next to Alfred Road. This area is accessed by a one way road which has an entry and exit from Alfred Road.

The other car parking area is located on the school oval and netball court with entry from Jacaranda Avenue and exit onto Lobellia Street. The applicants have noted this area is predominately only used as overflow parking.

Furthermore many patrons utilise the on-street parking bays that are located on Montgomery Avenue, Lobellia Street and Jacaranda Avenue.

Stallholders' park in the teachers' car park located off Montgomery Avenue.

To encourage customers to park on site and to ensure traffic flow is maintained in the surrounding areas four parking attendants assist in directing traffic and parking. Parking signs directing customers to parking areas are also erected on site every week.

Although no objections were received from the advertising period, there were two comments which noted concerns with illegal parking on the verges surrounding the school.

There are already City of Nedlands signs erected which advises parking on the verge and footpath is not permitted. Further, the City of Nedland's

Rangers department has also advised that the markets are patrolled approximately once to twice a month in order to control the parking situation and infringe cars parked on the verge.

In order for this issue to be resolved it is recommended as a condition of approval that the Mount Claremont P & C is responsible for the management of parking and prevention of verge parking. The P & C could further prevent this verge parking by erecting:

- additional signage advising that verge parking is not permitted;
- providing onsite parking free of charge; and
- getting the parking attendants to monitor the situation and advising drivers accordingly.

If preventive measures such as these are undertaken by the Mount Claremont P & C, this will assist in controlling the parking situation.

### **Conclusion**

The Mount Claremont Farmers' Market has been very successful, benefiting not only the school, yet also the wider community, without adversely affecting the adjoining properties.

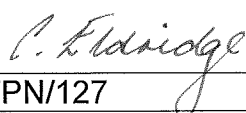
In order for the markets to continue to operate as a community venture, without affect the adjoining residents it is appropriate to include conditions relating to the market size, stall numbers, parking signage and attendants. On this basis the continuation of the Farmers' Market is recommended for retrospective planning approval.

### **Attachments**

1. Locality Plan
2. Extent of the Market Area
3. Plan of Parking Area

<b>D47.11</b>	<b>Hampden Broadway North Hollywood Precincts Study – Project Plan 2.0</b>
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<b>Committee</b>	9 August 2011
<b>Council</b>	23 August 2011

<b>Applicant</b>	City of Nedlands
<b>Owner</b>	Various
<b>Officer</b>	Gabriela Poezyn – Manager Strategic Planning
<b>Director</b>	Carlie Eldridge – Director Development Services
<b>Director Signature</b>	
<b>File ref</b>	TPN/127
<b>Previous Item No's</b>	D45.10 - 27 July 2011
<b>Disclosure of Interest</b>	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

**Purpose**

To progress the planning of Hampden Broadway North Hollywood areas for housing diversity a new project plan to guide the process is required.

**Recommendation to Committee**

**Council:**

1. endorses that the Project Plan 1.0 for the Hampden Broadway North Hollywood Precincts Study is concluded; and
2. adopts Project Plan 2.0 for the Hampden Broadway North Hollywood Precincts Study.

**Strategic Plan**

- KFA 3: Built Environment
  - 3.5 Develop and implement precinct plans for key areas in the City.
- KFA 6: Community Engagement
  - 6.5 Provide timely and accurate information across the organisation and externally.

**Background**

In response to the recognition that the population of Nedlands continues to age and family and household sizes reduce, Council adopted its Housing Diversity Strategy in 2008. Under the strategy a number of areas have been identified for housing diversity and the Hampden Broadway area is one of these areas.



The housing diversity areas are also a part of draft Town Planning Scheme No. 3 (TPS3) and are required to be progressed so that area design guidelines for the redevelopment of these areas can ultimately be included into TPS3.

The Hampden Broadway Precincts Study is the third area for which a study is being undertaken. Initially the project area included two (2) precincts, Hampden Road and Broadway area, however following a petition of local residents, North Hollywood was added as a third precinct.

With the Project Plan of May 2010 (Project Plan 1.0) the project commenced on June 2010 and included the following stages:

- Stage 1: Prepare a Project Plan
- Stage 2: Write and implement a detailed Communications Plan
- Stage 3: Introduce the project to key stakeholders
- Stage 4: Develop a database of businesses/organisations in the Stirling Highway redevelopment area
- Stage 5: Understand current uses, needs and expectations for the Stirling Highway Redevelopment (focus groups, interviews and survey) Survey to be endorsed by Council
- Stage 6: Council presentations on findings of Stage 5
- Stage 7: Communicate findings to key stakeholders
- Stage 8: Concept development
- Stage 9: Council endorsement of concepts and revised Project Plan
- Stage 10: Initial concept testing (focus groups and interviews)
- Stage 11: Council presentations on findings of Stage 10**
- Stage 12: Concept Refinement – Preparation of Draft Plan
- Stage 13: Council Endorsement of Draft Plan
- Stage 14: Consultation of Draft Plan (written survey)
- Stage 15: Council refinement of Draft Plan into Town Planning Scheme Provisions
- Stage 16: Council endorsement of Final Special Control Area Provisions for inclusion into TPS3
- Stage 17: Communicate findings to key stakeholders

While the public consultation confirmed that the development options that were proposed were moving in the right direction, it became apparent once the project had progressed to Stage 11 in June 2011 that additional work is needed before built form guidelines can be developed for each of the precincts.

The additional work involves an understanding of and the creation of strategies to address traffic and parking as well as public spaces.

## Proposal Detail

### Project Objectives, Outcomes and Outputs

The project plan is driven by the following objectives:

- To create an urban form in each of the three (3) precincts that delivers liveable housing types and facilitates quality built form outcomes.
- To understand the traffic and parking issues and identify any problem areas, priorities and solutions.
- To create better quality places in the public realm and to ensure that their improvement is coordinated with development of private property.
- To create a positive working relationships with stake holders in regards to the redevelopment of these precincts.

In order to achieve:

- Well designed, liveable housing choice options in each of the three precincts.
- A multi-faceted approach to managing traffic and parking that includes a focus on achievable actions.
- Management of parking demand more efficiently.
- Fun, innovative and comfortable community public spaces which are useable day and night by all age groups.
- Being able to partner with major stakeholders to deliver solutions for each of the three precincts.

The project is expected to yield the following three outputs:

- Built Form Guidelines to be prepared for each of the three precincts.
- A Movement Strategy to be prepared for each of the three precincts.
- A Place Making Plan to be prepared for each of the three precincts.

**Project Timing and Structure of Project Plan:**

The project spans from August 2011 to December 2012 with draft provisions being presented to Council for public consultation purposes in June 2012.

The project comprises several components and stages. As each area is unique in terms of its issues and potential solutions, work on the three areas will be done separately, but concurrently and integrated so that the final outcome includes all the proposals for each area. Accordingly, Project Plan 2.0 forms the foundation document and is supplemented by specific project plans for the three precincts. The project plan also contains the communication plan and risk management plan for the total project.

Initially the project will result in draft concepts that will be workshopped with elected members before being presented to Council for consent for public consultation. Once the advertising period has concluded comments will be reviewed in order to adjust the initial concepts and develop final concepts. Once adopted by Council, the final concepts will be incorporated into draft TPS3.

The project plan includes the following stages:

<b>Key Deliverables</b>	
Phase 1	1.1 Initial draft project plan completed
	1.2 Review and editing completed
	1.3 Draft project plan considered by Council
Phase 2	2.1 Audits completed and literature reviews completed
	2.2 Review of draft concepts completed
	2.3 Initial draft outputs completed
	2.4 Draft outputs completed
	2.5 Councillors workshop held
	2.6 Draft outputs considered by Council
	2.7 Advertising period completed
	2.8 Review of comments completed
	2.9 Final draft outputs considered by Council
Phase 3	3.1 Lessons learnt

**Legislation**

- *Planning and Development Act 2005*

**Budget/financial implications**

Budget:

Within current approved budget: Yes  No

Requires further budget consideration: Yes  No

## **Risk Management**

Project Plan 2.0 is the key to progressing the planning work that has already commenced in the Hampden Broadway North Hollywood area and created expectations within the community. Non-approval of the project plan will bring the risk that the current momentum is lost.

## **Discussion**

The time frames of Project Plan 1.0 do not cater for the additional work associated with the issues relating to traffic and parking and public spaces in each of the precinct required to be undertaken to provide outcomes that comprehensively will address the issues in each area. It is therefore considered appropriate that Project Plan 1.0 is concluded at Stage 11.

To retain the momentum of the project it is essential that the work continues and results are produced. Accordingly, Project Plan 2.0 has been created within timeframes that are realistically achievable, ensure stakeholder engagement and it is recommended that the plan be adopted without delay.

## **Conclusion**

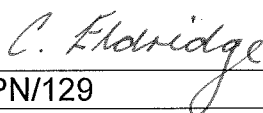
It is recommended that Council endorses that Project Plan 1.0 is concluded at Stage 11 and adopts Project Plan 2.0.

## **Attachments**

1. Project Plan 2.0

<b>D48.11</b>	<b>Draft Bedbrook Place Biodiversity Local Planning Policy</b>
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<b>Committee</b>	9 August 2011
<b>Council</b>	23 August 2011

<b>Applicant</b>	Nil
<b>Owner</b>	Various property owners affected
<b>Officer</b>	Gabriela Poezyn – Manager Strategic Planning
<b>Director</b>	Carlie Eldridge – Director Development Services
<b>Director Signature</b>	
<b>File ref</b>	TPN/129
<b>Previous Item No's</b>	Nil
<b>Disclosure of Interest</b>	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

**Purpose**

The proposed Local Planning Policy is required to give effect to the objective to strengthen the environmental values of the Bedbrook Place area by establishing a biodiversity link between the proposed conservation areas of Lot 4 and the Shenton Bushland and protecting, enhancing and upgrading any other existing natural areas located on the lots fronting onto Bedbrook Place.

The purpose of this report is to obtain approval in principle for the proposed local planning policy in order to allow public consultation.

**Recommendation to Committee**

**Council:**

1. **approves for public consultation the proposed draft Local Planning Policy – Biodiversity Corridors in the Bedbrook Place locality (BCBP-LPP);and**
2. **instructs Administration to initiate discussions with:**
  - a. **the Para Quad Association of WA in regards to Reserve 37387, with the view to making a subsequent request to the State government to grant a management order over the land in favour of the City; and**
  - b. **the Department of Health to investigate methods to protect the existing area of remnant bushland located along the western boundary of Reserve 2290 (No 6) Selby Street.**

## **Strategic Plan**

### **KFA 2: Natural Environment**

- 2.2 Prepare and implement management plans for natural areas.
- 2.3 Promote, maintain and protect existing plant diversity (both native and introduced) in the City.

### **KFA 5: Governance**

- 5.1 Manage the City's resources in a sustainable and responsible manner.

### **KFA 6: Community Engagement**

- 6.2 Encourage community participation in the City's decision making processes.

## **Background**

### **Study**

Given the close proximity between Shenton Bushland and the proposed conservation areas on Lot 4, and in addition, the presence of some quality remnant vegetation in this area, an opportunity exists to strengthen the environmental values of the wider area. This will create a linkage between these two habitats to support local flora and fauna.

Accordingly the City commissioned an ecological study of the area to assess the quality of existing bushland and determine the most suitable alignment for any proposed linkages.

The study was conducted by Syrinx and was undertaken during spring 2010 in the period of end October to early November.

The study focused on and mapped the quality of existing bushland conditions within the area, significant trees, priority species and their viability. (refer to map, attachment 1).

Noting that existing remnant vegetation is the most beneficial for the existing species in this area the study identified two possible corridors. (refer to map on attachment 2)

This policy was discussed with elected members in a workshop on 16 June 2011.

### **Proposed Local Planning Policy**

Based on the outcomes of the study the Draft Bedbrook Place Biodiversity Local Planning Policy has been prepared. (refer to attachment 3).

### Locality

As there is either quality remnant bushland located on the lots or due to the alignment of the proposed biodiversity corridors, the following properties in the Bedbrook Place area comprise the policy area. (refer map to attachment 3)

Lot No/Address	TPS Zoning	MRS Zoning	Lot Area m <sup>2</sup>	Owner
Reserve 37387	Development	Urban	9640	State of Western Australia used by Para Quad Association of W.A.
Reserve 39424 (15 Bedbrook Pl)	Development zone	Urban	9153.55	Cancer Council
Lot 11194 (13 Bedbrook Pl)	Industrial	Urban	12032.755	Palmaya Pty Ltd
Lot 11329 & Lot 12829 (9 & 5 Bedbrook Pl)	Reserve public purpose	Reserve public purpose	9769.375	Alzheimer's Association
Lot 11605 (17 Lemnos St)	Reserve public purpose	Reserve public purpose	8272.336	Arthritis Foundation of W.A. (Inc)
Reserve 2290 (only western area between western property boundary and existing structure)	Public purpose hospital	Public purpose hospital	14085.207	Royal Perth Hospital Board
Lot 9722 & Lot 1024 & Reserve 37388 (4 Bedbrook Pl)	Reserve public purpose	Reserve public purpose	10277.278	Westcare Accommodation Services
Lot 9585	Public purpose	Public purpose	13992	Workers Compensation

### Proposal Detail

The policy aims to achieve the following biodiversity outcomes:

1. Create both corridors identified in the Syrinx report; and
2. Encourage the protection, enhancement and upgrading of any other areas within in the policy area.

The proposed local planning policy will function as a negotiation tool to achieve any one or more of the biodiversity outcomes identified.

### **Structure of Local Planning Policy**

The policy aligns with the template for council policies. It provides details regarding the objectives of the policy, the legislative framework within which it operates, specifies the policy areas, discusses the proposed corridors and focuses on the principles and measures to implement the proposed corridors.

The policy aims to achieve its objectives through a multi-pronged approach. This ranges from the City being actively involvement to protect and enhance quality bushland to the City facilitating strategies through the use of incentives and partnering programs to ensure the successful implementation of the objectives of the policy.

### **Details of the Policy**

The policy focuses on creating proposed biodiversity corridors and protecting other natural areas/items within the policy area.

A comprehensive management approach is required to achieve the objectives of the policy by way of the following two pronged approach:

#### **1. Proposed Corridors**

Two corridors are proposed and have the following common characteristics:

- Both corridors use Reserve 37387, which contains quality remnant bushland as a starting point.
- Each corridor comprises of a number of land parcels that are in separate ownership.
- Traversing property boundaries the danger exists that barriers could be erected that will obstruct movement of reptiles.
- The recommended width of each corridor has been identified to be no less than 25 m excluding the width of existing fire breaks.

The additional features of the corridors are as follows:

#### **Green Corridor 1**

##### **Features**

- Includes the highest number of significant trees on site.
- Minimal existing barriers.
- Has very good condition vegetation in portions of land.
- Has a high diversity of native species.
- Re-vegetation requirements in this corridor are minimal due to the resilience of the bushland.
- Weed management is likely to have to become a priority to strengthen the quality and condition of the bushland for wildlife to inhabit and to reduce the risk of fire.
- Affects 5 lots that are in private ownership.



### **Constraints that will prevent implementation of corridor**

- Numerous landowners.
- Pressures for development from landowners.
- A portion of the corridor crosses over Bedbrook Place into a grassed area with exotic garden beds requiring a significant amount of rehabilitation.

### **Green Corridor 2**

#### **Features**

- Is less viable than corridor 1 due to greater weed cover throughout the understorey which has reduced the availability of small dense shrubs and leaf litter for small birds and reptiles.
- Has several existing fences that currently act as barriers to reptile movement.
- Has limited significant trees scattered throughout this corridor.
- Affects 3 land parcels.
- Corridor includes more areas where extensive rehabilitation will be required than proposed corridor 1.

### **Constraints that will prevent implementation of corridor**

- Extensive weed control and rehabilitation.
- Public institutions are the major landowners affected by this corridor.

## **2. Other natural areas/items within policy area**

This section of the policy aims to encourage

- The protection of the natural vegetation in pockets of areas that have been identified as having vegetation that is in 'very good condition' (refer to Figure 2) and significant trees not located within these pockets or corridors.
- Re-vegetation of degraded land.
- The use of local native plant species in landscaping.

### **City's Role**

#### **1. Active**

A significant puzzle piece in the creation of the corridors is Reserve 37387, the lot that forms the starting point for both corridors because it:

- Adjoins the southern boundary of the proposed conservation areas of Lot 4.
- Contains quality remnant vegetation that is in good condition.
- Has a size and shape that would support bio-diversity.

Reserve 37387 is crown land.

Enquiries with the Department of Regional Development and Lands, which is responsible for crown land, have revealed that this lot was promised to the Para Quad Association of W.A. in 1981, who intended to use the land for horticultural purposes at the time. The land was promised on the understanding that conditional tenure would be granted once the Association had developed the land for its purposes.

However no development has occurred on the land and therefore no management order has ever been issued to the Para Quad Association of W.A. for the land. This potentially provides the City with an opportunity that the land is secured and reserved for bushland purposes in perpetuity.

This possibility has been identified as a priority action in the process of implementing this policy.

## 2. Facilitation

The policy also provides that the City acts as a facilitator to:

- encourage implementation of the corridors, protect the existing high quality bushland pockets and significant trees, and, as far as possible, any existing quality bushland, and
- promote revegetation of any degraded land/landscaping areas.

The City would use methods such as innovative planning and design, partnership programs and incentives to fulfil its role to achieve the objectives of the policy.

## Consultation

The proposed local planning policy is presented to Council at this stage in order to obtain consent to commence public consultation.

The public consultation will occur in accordance with the process outline in clause 8.3.2 of Town Planning Scheme No. 2 (TPS2) which requires that a notice is published once a week for 3 consecutive weeks in the local press. Letters advising of the proposed policy will also be sent to all property owners of land directly affected by the policy.

Once the advertising period has closed all submissions will be evaluated, the proposed local planning policy will be reviewed in the light of the submission and determined.

## Legislation

Local planning policies are created under Part VIII of Town Planning Scheme No. 2 (TPS2) and once adopted are enforceable in accordance with the scheme.

## Budget/financial implications

Budget:

Within current approved budget: Yes  No

Requires further budget consideration: Yes  No

Financial:

Nil

## Risk Management

The purpose of a local planning policy is to reduce the risk that arises when Council has not formulated a specified vision for an area. Accordingly the absence of a local planning policy in this regard presents a greater risk than a proposed policy that is either already adopted or in the process of being adopted.

## Discussion

Given the area's unique natural features it is recommended that the multi faceted approach as outlined by the proposed policy is available to secure opportunities to strengthen the biodiversity of the area.

Corridors

It is recommended that both corridors should be pursued because:

- Neither corridor is a clear preferred alternative.
- Both corridors have significant constraints for implementation.

By pursuing both corridors the chances of success are increased.

Other natural areas/items within policy area:

The City's main role in relation to this component of the policy would be to encourage retention of the existing vegetation within areas identified with 'very good condition' and 'good condition' vegetation and significant trees outside the corridor through:

- The use of innovation site planning.
- Innovative design to ensure that the impacts on natural bushland areas by buildings are reduced.
- Encouraging the use of local plant species for landscaping in all other landscaped areas on the lots.
- Promote design that as far as possible prevents disruption of existing landforms.
- Ongoing maintenance of all natural and landscaped areas.
- Ensure ongoing monitoring and review of the environmental value of policy area to provide continuing implementation measures.

## Policy Key landholdings

### Reserve 37387

A possibility opportunity exists for the City to secure Reserve 37387 or a portion of this lot for bushland use in perpetuity. As a starting point to this objective the Para Quad Association of W.A. would need to be approached to determine their position in regard to the land.

It is therefore recommended that Council initiates discussions with the Para Quad Association of WA in regard to Reserve 37387, with the view to making a subsequent request to the State government to grant a management order over the land in favour of the City.

### Reserve 2290

The area along the western boundary of this lot comprises significant remnant bushland. The only development in this area is a carparking area that is used in conjunction with the Royal Perth Rehabilitation Hospital.

It is recommended that Council initiates discussions with the Royal Perth Rehabilitation Hospital to investigate methods to protect the existing area of remnant bushland located along the western boundary of Reserve 2290 (No 6) Selby Street in order to secure this area for bushland use in perpetuity.

## Conclusion

The proposed policy provides a direction and the tools to enhance the ecological value of the Bedbrook area, by linking the proposed conservation areas at Lot 4 with the Shenton Bushland which will contribute to supporting the natural environment well beyond its boundaries.

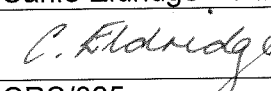
It is recommended that the policy be adopted for public consultation purposes and to enable to City to engage in dialogue to attempt to secure Reserve 37387.

## Attachments

1. Map showing quality bushland in the area
2. Map showing proposed biodiversity corridors
3. Draft Bedbrook Place Biodiversity Local Planning Policy
4. Map showing the lots that are affected by the proposed corridors.

<b>D49.11</b>	<b><i>Draft Local Planning Policy – Setback and Buildings on the Boundary in Low Density Zoning (R10 and R12.5)</i></b>
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<b>Committee</b>	9 August 2011
<b>Council</b>	23 August 2011

<b>Applicant</b>	City of Nedlands
<b>Owner</b>	City of Nedlands
<b>Officer</b>	Coralie Anderson – Senior Planning Officer
<b>Director</b>	Carlie Eldridge – Director Development Services
<b>Director Signature</b>	
<b>File ref</b>	CRS/065
<b>Previous Item No's</b>	Nil
<b>Disclosure of Interest</b>	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

### Purpose

At the Council meeting on the 22 March 2011 Council instructed Administration to prepare a draft policy for Council Consideration relating to side and rear setbacks on low density lots.

### Recommendation to Committee

**Council approves for the purpose of public consultation the proposed Draft Local Planning Policy – Setback and Buildings on the Boundary in Low Density Zoning (R10 and R12.5).**

### Strategic Plan

KFA 5: Governance

- 5.1 Manage the City's resources in a sustainable and responsible manner.
- 5.4 Monitor and review business processes, systems, structure and policies to ensure effective service delivery and organisational performance.

### Background

22 March 2011 Council Resolution

A new policy be discussed with Councillors at a Policy Intent Workshop by the end of June 2011 with the draft objectives below as a starting point and subsequently Administration prepare a draft policy for Council consideration.

1. To guide the exercise of discretion for variations within low density zones of the Residential Design Codes and the operation of the amenity clause 5.5 in Town Planning Scheme No. 2;
2. To preserve the open and spacious character of the City of Nedlands; and
3. To assist in the maintenance of privacy and prevention of overlooking of back yards.

As a result, Administration drafted a policy which was discussed at the June workshop. No amendments to the draft were suggested at the workshop.

### **Proposal Detail**

This Local Planning Policy (LPP) will clarify where discretion should be applied to rear and side setbacks in low density residential zone. The purpose of the policy is to preserve the open and spacious character of the City and the residential amenity of this low density zonings.

### **Consultation**

The proposed local planning policy is presented to Council at this stage in order to obtain consent to commence the public consultation.

The public consultation will occur in accordance with the process outline in clause 8.3.2 of Town Planning Scheme No. 2 (TPS2) which requires that:

- A notice is published once a week for three (3) consecutive weeks in the local press;
- all submissions being evaluated once the advertising period has closed; and
- the proposed local planning policy being reviewed in the light of the submission.

### **Legislation**

- Town Planning Scheme No. 2 (TPS2)
- *Planning and Development Act (2005)*
- Residential Design Codes 2010 (RCodes)

Local planning policies are created under Part VIII of Town Planning Scheme No 2 (TPS2) and once adopted are enforceable in accordance with the scheme.

Part 5 of the RCodes outlines the provisions and restrictions of LPP's. Only specific development provisions within the RCodes can be varied or changed.

Currently side and rear setbacks in low density zonings are determined under the provisions of Part 6 of the RCodes.

### **Budget/financial implications**

Budget:

Within current approved budget:                      Yes                       No

Requires further budget consideration:                      Yes                       No

### **Risk Management**

Risk Management processes are built into the operational guidelines where appropriate.

### **Discussion**

The RCodes provides specific design elements for residential development in Part 6. Under each design element there are acceptable development provisions and performance criteria provisions. Development that complies with the acceptable development provisions are deemed to comply with the performance criteria. Any development that does not comply with the acceptable development provisions is required to be assessed against the performance criteria.

Part 5 of the RCodes provides for Council's to make LPP's and outlines which acceptable development provisions can be varied or replaced by LPP's.

Point 3 of the Council resolution related to "assisting the maintenance of privacy and preventing overlooking of backyards". In this regard, it is advised that privacy and overlooking is assessed under Clause 6.3 "Privacy Requirements" of the RCodes. Part 5 of the RCodes does not allow the acceptable development provisions of Clause 6.3 to be changed or modified.

Notwithstanding this, the performance criteria of Clause 6.3.1 do restrict overlooking into active outdoor areas and therefore addresses the concerns with overlooking into rear yards.

The provisions for side and rear setbacks for R10 and R12.5 properties are outlined in Clause 6.3.1 and Clause 6.3.2 of the RCodes.

The acceptable development provisions of Clause 6.3.1 are as follows:

- rear setback of 6 m, excluding outbuildings;
- side setbacks are determined based on table 2a and 2b of the RCodes. The minimal side setback required under these tables is 1m; and
- side and rear setback distance to be reduced by half the width of an adjoining right-of-way, pedestrian access way or battleaxe leg, to a maximum reduction of 2 m.

Under the acceptable development provisions of Clause 6.3.2, walls built up to the boundary are only permitted as-of-right in these zones if the wall on the boundary abuts another wall on the boundary of similar or greater dimensions.

Under Part 5 of the RCodes, the acceptable development provisions of Clause 6.3.1 cannot be varied or modified. However, additional acceptable development provisions and performance criteria can be provided if these aspects are not provided for anywhere else in the RCodes.

This means, the minimum side and rear setbacks for these zonings (1 m and 6 m respectively) under the acceptable development provisions cannot be modified. Further, the provision to reduce the setback if abutting a laneway must also be retained.

Under part 5 of the RCodes the acceptable development provisions of Clause 6.3.2 which relates to parapet walls can be varied or modified. However, as parapet walls in low density zonings are already not permitted under the acceptable development provisions there is no requirement to change the acceptable development of this clause.

As a result, of not being able to vary or modify the acceptable development provisions, instead the policy provides additional Performance Criteria to both Clause 6.3.1 and 6.3.2. This will provide additional criteria to guide the exercise of discretion for variations relating to setbacks and parapet walls to preserve the amenity of these low density areas.

The additional Performance Criteria recommended relate to the following:

- the shape of the subject lot;
- the size, height and location of the encroachment on the building into the setback area (i.e. similar size to an outbuilding);
- Replacing of existing building that is already located within the setback area, (must improve the amenity of the development).



## **Conclusion**

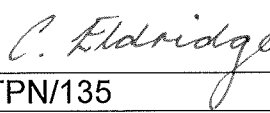
This policy provides further criteria to assess side and rear setback and parapet wall variations in low density zonings. The intent of the policy is to preserve the amenity and open and spacious nature of residential areas. On this basis it is recommended the policy should be granted consent to advertise.

## **Attachments**

1. Draft Setback and Buildings on the Boundary in Low Density Zones (R10 & R12.5)

<b>D50.11</b>	<b>Draft Capital City Planning Framework - Public Comment</b>
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<b>Committee</b>	9 August 2011
<b>Council</b>	23 August 2011

<b>Applicant</b>	N/A
<b>Owner</b>	N/A
<b>Officer</b>	Gabriela Poezyn – Manager Strategic Planning
<b>Director</b>	Carlie Eldridge – Director Development Services
<b>Director Signature</b>	
<b>File ref.</b>	TPN/135
<b>Previous Item No's</b>	Nil
<b>Disclosure of Interest</b>	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

**Purpose**

The draft Capital City Planning Framework is a State Government initiative open for public comment until 19 September 2011.

**Recommendation to Committee**

**Council:**

1. supports the draft Capital City Planning Framework in principle as a coordinated approach to Capital City Planning;
2. identifies the following issues and requests that these issues are addressed and/or corrected in the final document:
  - a. the final proposal needs to provide for commuter cyclists and take the local cycle network into account;
  - b. a connection needs to be created between the proposed ferry terminal at JoJo's and the high frequency/high capacity road public transport route which terminates at the intersection of Princess Road and Fairway;
  - c. the proposal needs to be amended so that the existing Dogs' Refuge Home WA and DiCom Waste Recovery Facility are not part of the proposed open space area along the southern side of Lemnos Street;

- d. the proposed residential area on Lot 4 (corner Selby street and Underwood Avenue) is required to be reduced to the boundary of the odour buffer from the existing of the Subiaco Waste Water Treatment Plant;
  - e. the proposed high density housing in Carrington Road is not acceptable as it will result in the City being deprived of one of only two service industrial areas which are considered vital to future sustainability;
  - f. the proposed high density housing along the Esplanade is not acceptable to the City and should remain earmarked for lower intensity residential development;
  - g. the Cooper/Clark Streets area which is more accessible to the public transport should be earmarked for medium density housing;
  - h. it is not appropriate that the Hollywood Aged Care site (Monash Street) is earmarked for medium intensity residential development because this could compromise its current purpose which is to provide for the aged persons accommodation which is vital for future sustainability;
  - i. a green link is required through the QEII site to create a connection between the proposed greened Verdun Street road reserve and Kings Park; and
  - j. the boundary of Capital Cites Planning Framework being considered for refinement to reflect planning considerations and geography.
3. works closely with the City on finalising the framework to ensure integration if the City's Strategic Town Planning.

### **Strategic Plan**

#### **KFA 5: Governance**

- 5.6 Ensure compliance with statutory requirements and guidelines.
- 5.7 Establish and actively manage a range of partnerships with government, private and not-for-profit sectors.

### **Background**

Based on the notion that inevitable change in lifestyles and population numbers will result in changes to the Perth metropolitan area over the

next 20 plus years the state government has a series of interrelated and complementary policies to guide the future of the Perth metropolitan area.

At the broadest level is Directions 2031 and Beyond, which sets the broad planning future of the Perth and Peel metropolitan regions while the Capital City Planning Framework focuses on the distinctive area of Central Perth, with the view to create a spatial strategy for this area.

Public comment on the draft document can be made until 19 September 2011.

The matter was discussed with elected members at a workshop meeting on 16 June 2011.

### **Proposal Detail**

#### **Drivers for Change**

The anticipated drivers for change of the Perth Metropolitan Region align with those identified in *Directions 2031 and Beyond* and are summarized as follows:

- Globalisation as a result of a shift in global power to China and India will place greater pressures on Perth.
- Global awareness of the inhabitants of Perth
- Position of Perth in the WA economy especially with reference to the global demand for resources:
  - Population growth
  - Technological advances
  - Scarcity of Resources
- Environment and climate change
- Social changes especially with reference to household diversity, pastimes, health and longevity, increasing disparity of incomes
- To combat fearfulness of people as these above changes occur it is important that a direction has been formulated.

#### **Central Perth Area**

Under the draft Capital City Planning Framework, the Central Perth area comprises an area that is 12 km by 12 km (attachment 1). The area extends beyond the current boundaries of the City of Perth, and affects 11 other local authorities including the City of Nedlands.

#### **Proposed Spatial Strategy – objectives and key concepts**

The proposed Capital City Planning Framework is expected to deliver a central Perth area that will satisfy the following 10 objectives:

- Become a more liveable city
- Enhance the sense of place
- Reconnect with the indigenous heritage
- Provide for growing residential population
- Provide for diverse residential population
- Reduce the City's resource footprint, including greenhouse gas emissions
- Build robustness against climate change
- Build our knowledge and cultural economy
- Become less dependent on private cars
- Build a compact central Perth

The framework therefore has identified ten (10) key concepts and derived the spatial strategy for the area as key concept 11.

The ten (10) key concepts are as follows:

**Key concept 1: A city with a reconceived setting.**

The setting for Central Perth is to be reconceived as a single natural system of indigenous habitats interwoven with its urban fabric.

**Key concept 2: A city of capital city places.**

Representation of Perth as the State's capital city is to be focused on three main precincts of the Perth city centre namely:

- Kings Park/Parliamentary Precinct
- Perth Cultural Centre – Forrest Place Precinct
- Perth Waterfront – Civic Precinct

**Key concept 3: A city for growth**

Central Perth is to further embrace the activity and intensification of built form that accompanies growth in its population.

**Key concept 4: A city with urban characteristics.**

Growth is to be aligned to the original urban characteristics of Central Perth's structure to allow for the emergence of a more sustainable and liveable city.

**Key Concept 5: A city for living in.**

Central Perth is to become home to many more people, especially within the city centre, its neighbourhood activity centres and public transport corridors.

**Key concept 6: A city for knowledge and culture.**

Perth city centre and the three university based centres are to be developed as the primary places in which to foster the knowledge and cultural industries within Central Perth.

**Key concept 7: A city for quality environments.**

Central Perth is to become an exemplar for creating places that use good design to exhibit the best characteristics of sustainability, beauty, durability, legibility and robustness.

**Key concept 8: A city with streets for movement and activity.**

City streets are to be redefined as places for both activity and movement with an increased focus on pedestrian movement.

**Key concept 9: A city with networks for all modes.**

Networks for each mode of movement are to be built upon to embody the multiple roles of our city's streets. Under this banner the strategy has defined a road continuum which includes a public transport network, pedestrian network and a bicycle network.

**Key concept 10: A city with a well-connected city centre.**

Planning is to overcome barriers to the connection of the city centre to its surrounding areas, and to better connect the city centre to its freeways.

**Proposed Spatial Strategy – Key concept 11 (refer attachment 2)**

The spatial strategy is a map which shows the location of various land-uses within the 12 km x 12 km Central Perth area.

It is derived from applying the ten key concepts listed above to the physical characteristics of the area.

The following eight (8) types of land-uses are identified in the strategy:

**City**

- Mixed use buildings comprising of commercial, retail, civic, cultural uses on the ground floor that allow for interaction with the streetscape and residential uses in upper building form.
- Building form is typically 4-6 storey towers. Where landscaped courtyards are provided the towers rise to the full height at the front elevation. Alternatively towers are staggered in order to be sensitive to the streetscape.
- Parking and service access frequently utilize laneways. Alternatively there are limited crossovers.
- High degree of integration with multi modal public transit and movement adapt to pedestrian public transport priority.

## **Urban**

- Predominantly mixed use buildings with commercial and retail uses at the lower levels of the buildings and residential uses at the upper building levels.
- Building form is typically 3-6 storeys with appropriately scaled frontages to encourage street interaction on the ground floor.
- Ideally located within well integrated multi modal public transit.

## **Higher intensity residential**

- Predominantly residential uses with some mixed use at lower building levels.
- Building form is typically 3-6 storeys or higher if impact on adjacent street is acceptable. Buildings are generally set back from the street behind front gardens, with people scaled elements like doors and windows dominant in the streetscape.
- Parking is generally not visible from the street and is accessed by crossovers or rear laneways.
- Ideally located to be within walking distance of higher-frequency public transit.

## **Medium intensity residential**

- Predominantly residential use with possible mixed use at street level in appropriate locations.
- Building form is typically a 3 storey domestic urban scale, with buildings set back from the street behind front gardens, and windows and front doors are predominant elements in the streetscape.
- Often built on narrow lots as infill development.
- Often located to be within walk able distances from higher-frequency public transit.

## **Lower intensity residential**

- Almost entirely residential land uses.
- Building form is typically no higher than three storey's, set in garden areas, with doors and windows rather than garages being dominant in the streetscape creating a cottage type residential area.
- Serviced by onsite and street parking.
- A subset of this type of land use is the suburban residential area comprising of individual housing.
- Due to more remote locations this land use is frequently removed from high-frequency public transit and is therefore dependant on access by private cars, bicycles and walking.

### **Pavilion-in-landscape**

- Characterized by civic, educational or public uses, with some ancillary commercial use.
- Building form is generally a standalone building in a highly landscaped setting, which can be of variable height, but often are of a lower height.
- Due to strong public interface access to high frequency public transport is desirable.

### **Service**

- Areas used for storage, wholesaling and light industrial activities that provide support services.
- Building generally not higher than 3 storeys in a utilitarian set behind forecourt car parks on lots that have a high level of private vehicle access.
- Requires good access to regional road infrastructure rather than high frequency public transport services.

### **Open Space**

- Places used for passive and active recreational uses and preservation of indigenous landscapes.
- Requires diverse and flexible access determined by the role of the open space as a regional or local facility.

### **Implication of proposed Spatial Strategy for Nedlands**

As a result of the 12 km x 12 km designated area, over half of the City of Nedlands' area is identified as being Central Perth (refer attachment 3), accommodating all the landuses identified in the spatial framework except the "city" land-use.

The key implications of the framework for the City of Nedlands are as follows:

### **Transport**

- Stirling Highway is identified as an arterial road, which has a very similar ranking as its current status. The previous emphasis of such roads on being through routes has reduced and with it the need for exceptionally wide road reserves. Its character as strip development, which includes medium level of speeds, and limited driveway access, has increased.
- High frequency / high capacity road public transport is proposed for Hampden Road and Fairway.
- Recreational bicycle route along Dalkeith Foreshore.
- A ferry terminal is proposed at JoJo's.



### **Redevelopment Proposal**

- The primary focus of redevelopment under the spatial framework in Nedlands is on the undeveloped land to the north of the railway line, affecting landholdings such as the Karakatta Barracks, Shenton College Royal Perth Rehabilitation Hospital, UWA's Lot 4, located within Bedbrook Place and Lemnos Street.
- Redevelopment is also proposed in the areas already identified for housing diversity (Hampden Road, Broadway and Stirling Highway, Waratah Avenue).
- The proposal retains the status quo in regards to the existing low density residential areas apart from proposing:
  - High density housing:
    - along The Esplanade.
    - along Carrington Road
  - Medium density housing on:
    - the outer fringe of Floreat and along Aberdare Road
    - Hollywood Aged care
- The proposal identifies that the existing service areas of Lemnos Street are to remain.
- Additional residential development is proposed on Lot 4 within odour buffer.

### **Open Space**

- The proposal protects all existing open spaces and recognises environmentally sensitive areas through earmarking them to be within a public open space network.
- The proposal establishes a network of public open spaces as follows:
  - In an east/west direction:
    - creating a north/south spine the Lot 4 conservation area with the Shenton Park Open Space to Karrakatta cemetery
    - greening Gairdner Road
  - In an east/west direction to link into the north/south spine by:
    - an open space link along the southern boundary of Lot 4
    - greening Verdun Street
    - greening Gordon Street East

### Consultation

Required by legislation: Yes  No

Required by City of Nedlands policy: Yes  No

Consultation type: N/A

Dates: N/A

### Legislation

The proposed Capital City Planning Framework is a state government initiative.

### Budget/financial implications

Commenting on this proposal has no budget implications for the City.

### Risk Management

Missing this opportunity to comment on this proposal the city runs the risk of having to accept undesirable outcomes in the long term.

### Discussion

Although the Capital City Planning Framework affects a significant portion of the area of jurisdiction of the City of Nedlands its negative implications for the City are limited.

It is encouraging to see that the framework:

- aligns largely with the City's approach to the planning of this area by:
  - retaining most of the City's low density housing;
  - providing housing diversity in the designated precincts that the City had already earmarked for redevelopment;
  - identifying the proposed strip development character of Stirling Highway;
- proposes an interlinking network for public open space; and
- recognizes existing environmentally sensitive areas by earmarking them within the public open space network;

However there are a number of aspects of the proposed framework that are not acceptable as follows:

### **Transport**

- The proposed does not provide for commuter cyclists or takes the local cycle network into account.
- There is no connection between the proposed ferry terminal at JoJo's and the high frequency/high capacity road public transport route which terminates at the intersection of Princess Road and Fairway.

### **Redevelopment Proposals**

- The existing Dogs' Refuge Home WA and DiCom Waste Recovery Facility are part of the proposed open space area along the southern side of Lemnos Street.
- Additional residential development is proposed on Lot 4 (corner Selby Street and Underwood Avenue). The currently approved residential area extends to the boundary of the existing odour buffer of the Subiaco Waste Water Treatment Plant. Any additional residential area would be located within the odour buffer area which would be contrary to state policies.
- The proposed high density housing in Carrington Road is not acceptable as it will result in the City being deprived of one of only two service industrial areas. Both areas, and especially Carrington Road, are currently used to capacity and losing Carrington Road as a service area would not be acceptable to the City.
- The proposed high density housing along the Esplanade is not acceptable to the City because the area is a fringe area would be unsuitable to be serviced by public transport. However, the city has earmarked the Cooper/Clark Streets area as an area for housing diversity, as this area is likely to be well served by public transport. As the Cooper/Clark Streets area has not been identified for redevelopment within the spatial framework it would be appropriate to that the Cooper/Clark Streets area rather than The Esplanade area is earmarked for increased residential densities.
- Earmarking the Hollywood Aged Care site for medium intensity residential development is not acceptable because it is imperative for the City that the site's current purpose which is to provide for the aged persons accommodation, as reflected in its "special use" under Town Planning Scheme No 2, is not compromised.

### **Open Space**

- A green link is required through the QEII site in order to create a connection between the Verdun Street road reserve that is proposed to be greened and Kings Park.

As the principles of the spatial framework are generally acceptable, the proposed Capital City Planning Framework can be supported. It is therefore recommended that the comment provided on this draft indicates that the City of Nedlands is generally in favour of the proposal but requests that certain amendments to the final document be made to address the issues identified above.

### **Conclusion**


As the Capital City Planning Framework incorporates a number of positive elements for the city and its negative implications are limited, the proposal is acceptable and can be supported in principle, provided the aspects that do not align with the City's vision for the area are brought to the attention of the authors of the draft report, so that the matters can be addressed in the final document.

### **Attachments**

1. Proposed 12 km x 12 km Central Perth area
2. Proposed Spatial Strategy
3. City of Nedlands' boundaries in the context of the Capital City Planning Framework

<b>D51.11</b>	<b><i>Cottesloe Golf Club Inc –Surrender of Lease and proposed new twenty-one year Lease with the option of a further twenty-one year term.</i></b>
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<b>Committee</b>	09 August 2011
<b>Council</b>	23 August 2011

<b>Applicant</b>	Cottesloe Golf Club Inc
<b>Owner</b>	State of WA – Vested to City of Nedlands
<b>Officer</b>	Neil Scanes – Property Management Officer
<b>Director</b>	Carlie Eldridge – Director Development Services
<b>Director Signature</b>	
<b>File ref</b>	Lease/6
<b>Previous Item No's</b>	Item C04.03, 11 February 2003
<b>Disclosure of Interest</b>	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

**Purpose**

This report recommends that Council approves the surrender of the existing Lease between the City and Cottesloe Golf Club Inc and subsequently grant a new Lease for a period of twenty-one years with the option of a further twenty-one year term between both entities. The club seeks a new lease of greater tenure in order to attract capital investment to assist in re-developing the golf course and associated infrastructure.

In addition, Council directive is sought in order to clarify whether a “Limestone Path” clause and “Pedestrian Access” clause is included within the proposed new lease.

**Recommendation to Committee**

**Council:**

1. **approves the surrender of the existing lease between the City and Cottesloe Golf Club Inc; and**
2. **approves and endorses the attached exclusive use lease for a twenty-one year term with the option of a further twenty-one year term between the City and Cottesloe Golf Club Inc;**

**Strategic Plan**

This application is in accordance with the City of Nedlands Strategic Plan 2008-2013. In particular, the following objectives are addressed:

**KFA 3: Built Environment**

- 3.4 Plan and develop the sustainable provision of community infrastructure and facilities with a focus on flexible and multiple uses.

**KFA 4: Community Wellbeing**

- 4.1 Provide and facilitate access to services and facilities required by the broader community, clubs and community groups.
- 4.2 Encourage, support and provide for a range of recreation and leisure opportunities, both active and passive.

## **Background**

### **Golf Club**

Cottesloe Golf Club Inc is a private golf club located off Alfred Road in Swanbourne. The 18 hole golf course incorporates a multi level purpose built club and function building with associated facilities built by the club.

Cottesloe Golf Club Inc was formed in 1908 and has operated from its current location since 1931. Regarded as a premier golfing venue, the club hosts the annual Cottesloe Open for Western Australia's leading amateur and professional golfers. This event, now in its 55<sup>th</sup> year is the second oldest open event in the state next to the WA Open. Recent events held at the club include the Amateur Golf Championships of Australia and the Australian Junior Interstate Series. In addition, the club provides extensive tuition for its younger junior members in all aspect of the game.

Cottesloe Golf Club Inc is a non profit entity and all surplus funds are invested into the ongoing operation of the Club. The golf club is recognised as one of Australia's premier courses and hosts major golfing events which attract national and international visitors. In order to maintain this position the club needs to continually upgrade the facilities and such expenditure requires security of tenure.

### **Golf Course**

The course is rated amongst the top golf courses in Australia. The land on which the facility resides is legally described as Lot 502 on Deposited Plan 62731, Alfred Road, Swanbourne, being the whole of the land comprised in Crown Land Title Volume LR3156 Folio 200.

Lot 502 is part of Category "C" Crown Reserve (Reserve 9299) and has been vested to the City since 27 June 1980 for the purpose of "Recreation" by way of Management Order. This grants the City the power to lease Reserve 9299 for any term not exceeding 42 years subject to the consent of the Minister for Lands.

### **Lease**

In 1980, Council resolved to lease the facility to the club for a twenty one year period. The lease commenced on 27 August 1980 and expired on 26 August 2001. A rental fee of \$2,000 per annum was adopted.

On 2 June 1988, Council resolved that a peppercorn rental be applied as opposed to the annual rental fee of \$2,000. This brought the Cottesloe Golf Club Inc into line with other sporting club's annual peppercorn lease fee, in accordance with Council policy at that time. At the expiration of the lease, the City permitted the club ongoing tenancy whilst negotiations took place to finalise a new lease agreement.

On 11 February 2003, Item C04.03, Council resolved an exclusive use ten (10) year lease with the option of a further five (5) year term between the City and club. This lease, dated 6 March 2003 commenced on 1 December 2002 and is still current. Under the terms of this lease, the Club is responsible to pay for all associated maintenance, cleaning, insurance and utility costs at no cost to the City. An annual peppercorn fee is charged by the City.

Cottesloe Golf Club Inc approached the City in writing on 9 December 2009 with a view to surrendering their current lease in order to secure a new lease of greater tenure.

The club is currently in the process of formulating a master plan to redevelop the clubs course and associated infrastructure and therefore considers long term tenure at the current site as vital to ensuring the success of its strategic planning initiatives and to secure the necessary capital investment to undertake the desired projects which are as follows:

- Completing the redevelopment of the golf course. This involves redesigning six (6) remaining holes and the upgrade of the reticulation in these areas;
- A major extension or redevelopment of the existing Clubhouse facilities inclusive of additional disabled access facilities;
- Upgrade and potential relocation of the course maintenance facilities which incorporates enhancement to occupational health and safety systems; and
- Reviewing the requirement for use of ground water and the potential implementation of a treated waste water system for reticulation of the golf course and surrounds.

The Premier wrote to the City's Chief Executive Officer on 4 March 2010 in support of the clubs request to negotiate a new lease of greater tenure.

In addition, the Premier wrote to the Minister for Lands and the City's Management Order was amended by the Minister due to the Premier's support. This has allowed the City the power to lease Crown Reserve

9299 for any term not exceeding 42 years subject to the Ministers consent, as opposed to the previous 21 year maximum lease term.

Administration has received “in principal consent” to the draft lease from the Minister of Lands pursuant to Section 18 of the Land Administration Act 1997. The Minister has specifically stated that consent is granted in principal on the provision of the City and Cottesloe Golf Club Inc negotiating a lease of twenty-one years with the option of a further twenty-one year period only.

The club has been made aware that the current lease is required to be surrendered in order for a new lease of greater tenure to be put in place subject to the approval of the Minister for Lands.

Council Policy 10.5 – “Use of Council Facilities for Community Purposes” has been taken into consideration. This policy provides all guidelines regarding tenancy for exclusive use groups. It provides the tenant with exclusive use of the facility expressed in a lease “at no cost to Council”, meaning the tenant maintains the facility to the City’s requirement.

**Key Relevant Previous Decisions:**

- Item C04.03, 11 February 2003 – Council resolve the current existing 10 year plus 5 year option lease between the City and club;
- 2 June 1998 – Council resolve to vary the lease to charge a peppercorn rental; and
- 1980 – Council resolve a 21 year lease between the City and club.

**Consultation**

Required by legislation: Yes  No

Required by City of Nedlands policy: Yes  No

**Lease Consultation**

The proposed surrender of the current lease and terms of the proposed new lease of greater tenure has been prepared in consultation with the club.

Administration has received in principal consent to the draft lease from the Minister for Lands pursuant to Section 18 of the *Land Administration Act 1997*.

**Golf Course Recreation Path Consultation**

In 2005, The Mt Claremont Administrative Liaison Working Group (ALWG) was formed in order to investigate and make recommendations to the Chief Executive Officer in relation to the provision of public open space in the Mt Claremont area.



The intent of the ALWG was to provide a detailed study to be conducted to determine what issues existed pertaining to access, quality, classification and location of public open space in the Mt Claremont area.

In June 2006, ALWG engaged Catalyse Pty Ltd, an independent research consultant, to conduct a Public Open Space Survey amongst residents in the subject area. A total of 126 responses were received and the possibility of constructing a reconstituted limestone recreation path along the eastern boundary of Cottesloe Golf Course was suggested.

The purpose of the proposed recreation path was to link the existing public open spaces of Christchurch Grammar School Playing Fields and the Town of Claremont Golf course. This would increase access to public open space and the open space network.

The City commissioned a research consultant, Estill & Associates to undertake a paper and pencil survey to determine the level of support for a recreation pathway. Two path options were presented for consideration to the Mt Claremont community. Option one detailed a straight/parallel path to the golf course boundary whilst option two was based on the construction a meandering path based on topography. A map of the options is depicted at Attachment 2 of this report.

261 completed surveys were returned. The creation of a recreation path along the edge of the Golf course was supported by 67% of respondents and 57% of respondents favoured the meandering path.

In 2007, a petition was lodged at the City by 31 residents of Mayfair Street to abandon the construction of any recreation path.

## Legislation

- Section 18 of the *Land Administration Act 1997*

## Budget/financial implications:

Budget:

Within current approved budget:                      Yes                       No

Requires further budget consideration:                      Yes                       No

Financial:

The proposed new lease specifies that Cottesloe Golf Club Inc will be responsible for all maintenance, cleaning, utility fees and insurance of the leased area. The club in turn will pay an annual peppercorn rental fee.

McLeod's Barristers and Solicitors has advised the City that Landgate states that an extension of lease constituted at law, a surrender of lease

and grant of a new lease. Consequently, both legal documents will be required to be registered at Landgate. The club will be responsible for all costs in relation to the surrender of the current lease and the preparation of the proposed new lease inclusive of Landgate lodgement and registration fees.

There has been no budget allocated by the City for the design or construction of a meandering recreation limestone pathway along the boundary of Cottesloe Golf course abutting Mayfair Street, Mt Claremont. Part A, 3.1 of the report detailing AWLG findings recommended that a total of five safety screens would be required to be installed to ensure the continued safety of people using any recreational path during the playing of golf.

### **Discussion**

City administration and Cottesloe Golf Club Inc have negotiated a provisional twenty-one (21) year lease with the option of a further twenty-one (21) year period commencing 1 June 2011, pending determination of provisional clause 45.2 and clause 45.3 relating to pedestrian access and a limestone recreational path to which the club object. This proposal is subject to Council agreeing to the surrender of the current existing lease and approving and endorsing the proposed new lease.

Cottesloe Golf Club has requested that the following two (2) amendments be made to the City's standard lease template adopted by Council on 28 April 2009, Item D27.09 that was provided to the club to review:

1. The standard "Right to Terminate" clause was removed due to the clubs future site development aspirations. From a "commercial" viewpoint, it would be extremely difficult for the club to obtain funding for the club's proposed redevelopment of the facility where security of tenure is not guaranteed;
2. Clause 24.7 was amended to allow the Club to mortgage or charge the land subject to the consent of the City and the Minister for Lands;

The City has inserted the six (6) following clauses within the proposed draft new lease:

1. Item 8 of the Lease Schedule relating to Public Liability Insurance increased from standard \$10,000,000 liability to \$20,000,000 claim;
2. Clause 10.6, "Management Plan for Remnant Bushland", ensures that the club prepare and meet the cost of developing and implementing a Management Plan approved by the City for remnant bushland vegetation in the premises within six months of the commencement of any new lease. The management plan is to be approved prior to any Development Application being supported and approved by the City;

3. Clause 43.2 "Event Management Plan", states that the club has to formulate an Event Management Plan that outlines the proposed management of events at the premises within three months of the commencement date of the proposed new lease;
4. Clause 44, "Community wellbeing", requires that the club will allocate a portion of all funds it raises to local charitable causes and projects that will have a direct benefit to the City of Nedlands;
5. Clause 45, "Access Road and Crossover", ensures that it is the sole responsibility of the club to maintain and improve the access road to the premises and the crossover to the premises from Alfred Road. Any works require City approval; and
6. Clause 45.2, "Pedestrian Access", allows any persons pedestrian access to the golf course;

The City considered one (1) additional new clause but after consideration have not included it, the clause is:

1. Clause 45.3, "Limestone Path along Eastern Boundary", reserves the City's right to construct a limestone pedestrian access path along the eastern boundary of the premises abutting Mayfair Street; and in the event the Lessor elects to construct the Lessee must permit all the times public access to the path.

Cottesloe Golf Club Inc has written to the City on 27 June 2011 agreeing to surrender their current lease and agreeing to the terms of the proposed new lease less current Clause 45.2 and Clause 45.3 which relate to the Pedestrian Access and Limestone pathway.

Clause 45.2 Pedestrian Access is proposed to be included as it provides for ongoing, yet defined public access to this key recreational site. The proposed lease is for 21 years with a 21 year extension and it is considered important to ensure controlled public access.

Clause 45.3 Limestone Path along Eastern Boundary is proposed to not be included after consideration of all aspects. It is considered the risks associated with a defined formal path through the golf course, particularly in an area close to active golf areas, are too high.

As the lease is for the whole of Crown Reserve 9299, a sketch defining the leased area is not required within the lease document.

## **Risk Management**

### **General Risk**

Virtually all Golf courses throughout the country have some form of safety problem. Therefore, there will always be an inherent risk of a bystander being injured by a golf ball being hit within or outside of the perimeter of a course. Such a risk can never be entirely mitigated and there is rarely, if any degree of total safeness on a golf course.

A *negligent* golf shot is when a ball travels in its intended direction without due regard to the safety of others, i.e. a ball is hit intentionally out of the property boundary. Such a shot is virtually impossible to defend.

An *errant* golf shot is a ball travelling in a different direction to where it was intended. Golfers possess a vast difference in skill levels and there is always the possibility that a golf ball could be hit an alarming distance and angle off line from where it was intended.

Cottesloe Golf Club has no residential housing around the perimeter of the western and southern boundaries of Reserve 9299 that border West Coast Highway and Alfred Road, respectively. There is a portion of residential housing in the north, north-eastern corner section of the boundary on Fortview Road and along the entire eastern section of the course boundary on Mayfair Street. The boundaries of the golf course where the residential properties are located are fairly heavily vegetated with perimeter plantings that provide reasonable protection to some of the boundary zones.

There is no formal set of safety distances in existence between property boundaries and golf course boundaries, i.e. Australian Standards. Slope of the terrain, prevailing winds, strategy of the golf hole and vegetation can all influence the final destination of a golf ball.

The Club is required to have public liability insurance as per lease.

### **Pedestrian Path Risk**

The club has written to the City objecting to proposed Clause 45.2, "Pedestrian Access" and Clause 45.3, "Limestone Path".

The proposed location of any future recreational pathway is in close proximity to the driving range. The club has policies in place that limits club choice on the driving range to ensure neighbouring properties are out of range from golf balls. Both the southern and northern ends of the driving range are used extensively every day. The encouragement of pedestrian access to this particularly dangerous point of the course and in reality to any part of the course whilst golf is being played is potentially a major safety and legal liability risk.

If Council proposes to construct a recreational path on the eastern boundary of the golf course during the term of the proposed lease tenure

then the City and Golf club will be exposed to an increase in the risk of pedestrians being struck by golf balls and any associated public liability risk. Whilst warning signs could be erected to remind members of the public that they are walking within the boundaries of a golf course this is not a fail proof method. Children may not understand the signs; pedestrians may not understand English and it could potentially expose the City to being aware of the inherent risk of pedestrians being struck by a golf ball, potentially enabling a public liability/negligence claim to be lodged against the City.

A petition lodged at the City in 2007 by 31 residents of Mayfair Street requested that the City abandon the idea of a recreation path due to the perceived erosion of privacy, potential increase in crime and anti-social behaviour, negative impact on property values, an increase in noise and visual pollution and injury possibilities from errant golf balls.

Other comments emitting from the Estill & Associates pen and paper survey of local residents addressed the point that it was already possible to walk around the golf course grounds and that any path would reduce the "current bush ambiance". Beyond this there was thought to be adequate paths in the surrounding area along with concern about the disruption that the construction of any path would create.

#### **Public Access Risk**

The current lease for Cottesloe Golf contains a clause on pedestrian access to ensure the site remains open to the public. The new lease also has a clause to ensure public access but stipulates it is for non golf areas as below:

##### *Clause 45.2: Pedestrian Access*

*Notwithstanding any other provision on this Lease, the Lessee shall allow all persons pedestrian access to such parts of the Premises as are not usually used for the playing of golf, and to such other parts of the Premises at such times as such access does not interfere with the lawful pursuits of the Lessee, provided that the Lessee may at any time prevent any persons from walking in or about improvements erected on the Premises and on or about fairways and putting greens on the Premises for the purposes of ensuring the orderly play of golf.*

There is no Pedestrian Access clause contained within any other of the City's current leases except for the existing lease between the City and golf club despite the majority of the other sporting club leases being located on Crown Reserves vested to the City for the purpose of "Recreation".

McLeod's Barristers and Solicitors has written to the City on 11 July 2011 to express their concern about the liability implications of Clause 45.2, "Pedestrian Access" and Clause 45.3, "Limestone Path" and the City's duty of care. Their response has been provided to councillors with council information packs.

Following advice from the City's Insurers, LGIS Liability, the Public Liability Insurance provision for this lease will be increased from the City's standard lease template of \$10,000,000 to \$20,000,000 in this instance. The other insurance provisions throughout the lease have been reviewed and deemed sufficient by the City's insurers.

Cottesloe Golf Club Inc is working in conjunction with the City to reduce the likelihood of any future potential injuries. The proposed changes in layout to particular holes along with other modifications should reduce and minimise the chance of personal injury and property damage to neighbouring residential boundaries. Any future course configuration will require approval by the City and the necessary setbacks to residential properties determined.

There will always be conflicting opinions in the design and layout of golf courses and ongoing dialogue and communication between both parties is required to mitigate or reduce any potential risk, safety and liability issues.

### **Conclusion**

It is recommended that Council approve the surrender of the existing lease between the City and Cottesloe Golf Club Inc and subsequently grant a new lease for a period of twenty-one years with the option of a further twenty-one year period between the two entities.

It is recommended clause 45.2 remain and 45.3 not be included due to potential injury risk. It is noted the Club strongly opposes both clauses.

A new lease will provide the club with security of tenure whilst they continue to develop their plan to redevelop and implement new infrastructure at their current location. This enforces the commitment that the club has for the future development of the facility and demonstrates their willingness to improve the infrastructure on site and minimise the safety issues that have been addressed in this report.

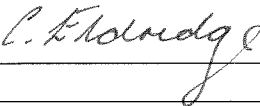
In accordance with the City's Strategic Plan, the proposed lease will ensure that the local community will continue to have access to an established sporting club and facilities, promoting community interaction, health and wellbeing.

### **Attachments**

1. Proposed new lease between the City and Cottesloe Golf Club with Clause 45.3 removed
2. Location of proposed recreational path (Option 2 in blue font is the more popular proposal)

<b>D52.11</b>	<b><i>Refurbishment of the John Leckie pavilion – acceptance of tender from XXXXXX</i></b>
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<b>Committee</b>	09 August 2011
<b>Council</b>	23 August 2011

<b>Applicant</b>	City of Nedlands
<b>Owner</b>	City of Nedlands
<b>Officer</b>	Matt Deal – Manager Property Services
<b>Director</b>	Carlie Eldridge – Director Development Services
<b>Director Signature</b>	
<b>File ref</b>	
<b>Previous Item No's</b>	
<b>Disclosure of Interest</b>	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

This will be a late item, delivered to Councillors on Friday 5 August 2011.