



# Planning and Development Services Reports


**Committee Consideration – 14 August 2012**  
**Council Resolution – 28 August 2012**

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<b>PD28.12</b>	<b>No. 9 (Lot 201) Cross Street, Swanbourne – Retrospective Additions and Enclosure of Carport to Single House</b>
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<b>Committee</b>	14 August 2012
<b>Council</b>	28 August 2012

<b>Applicant</b>	Mr Chris Carey
<b>Owner</b>	Mr Chris Carey
<b>Officer</b>	Nick Bakker - Planning Officer
<b>Director</b>	Peter Mickleson - Director Planning & Development Services
<b>Director Signature</b>	
<b>File ref.</b>	DA11/165
<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 retrospective application is referred to Council for determination as part of the proposal does not meet the provisions of the Residential Design Codes relating to Carports and Garages in the front setback, and accordingly the application is recommended for approval subject to the carport doors being removed.

**Recommendation to Committee**

**Council approves an application for Retrospective Additions and Enclosure of Carport to Single House at No. 9 (Lot 201) Cross Street, Swanbourne in accordance with the application and plans dated 10 May 2011 with the following conditions:**

1. the door is to be removed from the street elevation of the existing carport, (as marked in red on the attached plans);
2. the door on the existing carport is to be removed within 42 days of the date of this decision; and
3. 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.

## Strategic Plan

KFA 3: Built Environment

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

## Background

Property Address: No. 9 Cross Street, Swanbourne  
Zoning MRS: Urban  
Zoning TPS2: Residential – R35  
Lot Area: 306 m<sup>2</sup>

- 4 May 1989  
Council approved an application for a new dwelling which included a carport with a nil front boundary setback.

The original plans included a solid garage door which was not supported by Council. The plans were amended and the approved plans clearly show the garage door crossed off and not included in the approval.

- 7 June 1990  
Council refused an application for a proposed garage door in front of the existing carport.
- 21 December 2010  
The City received a letter from an adjoining owner outlining concerns with a number of additions at No. 9 Cross Street, Swanbourne undertaken without Council approval.
- 23 February 2011 and again on 11 April 2011  
The Senior Building Surveyor sent a letter to the owner of No. 9 Cross Street, Swanbourne notifying them the City was aware of these unapproved works and requested a retrospective planning application be submitted.
- 11 May 2011  
The City received a retrospective development application for the unapproved works outlined below.

The retrospective works proposed in this application include:

1. Enclosing an existing upper balcony structure;
2. A new ground floor patio structure with roof cladding built up to the western boundary with a nil setback; and
3. A garage door constructed on the front elevation of the existing carport.

### Consultation

Required by legislation: Yes  No

Required by City of Nedlands policy: Yes  No

Consultation type: N/A

The City is usually required to advertise development applications which propose variations to the RCodes.

However, the City did not undertake the advertising period as the owner of No. 9 Cross St obtained the relevant neighbour signatures himself.

### Legislation

- City of Nedlands Town Planning Scheme No.2 (TPS2);
- Residential Design Codes (RCodes); and
- Policy 6.4 'Neighbour Consultation – Planning Applications'.

### Discussion

The three (3) structures proposed as part of this retrospective application are discussed below:

1. Enclosed existing upper balcony structure.

The existing upper balcony was originally approved (in 1989) with no roof structure over and unenclosed on the western elevation.

The balcony has since been fully enclosed with sliding windows to the west and a fiberglass roof over, without the required approvals. The City received a complaint from the western neighbour who was concerned about the amount of rain water running off the roof into his property as no gutters had been installed.

The owner of No. 9 Cross Street Swanbourne, has since notified the City that a gutter and down pipe have been installed to resolve the issue. The City has conducted a site visit and confirmed this has been carried out.

Given the above issue has now been resolved and that the new structure fully complies with RCodes, it is recommended this structure be approved.

2. New ground floor patio structure with a nil western side setback.

The patio structure on the ground floor was constructed with colourbond roofing and steel pillars built up to boundary, without the required approvals.

As the roof over patio structure was not permeable to rain water, the structure was required to be setback from the boundary in accordance with the RCodes.

The owner has moved the roof cladding back 500 mm from the western boundary.

This setback complies with the provisions of the RCodes and the neighbouring owner who originally raised concern to the City is satisfied with the structure and has removed his objection.

3. Garage door built on the front elevation of the existing carport.

The dwelling was originally approved with a carport in accordance with the RCodes.

The garage door does not comply with the provisions of the RCodes as discussed in more detail below.

Issue: Garage Door with nil Primary Street Setback

Requirement	<p>Clause 3.2.3 -</p> <p>Under the Acceptable Development Criteria of Clause 3.2.3 of the RCodes garages are required to be setback 4.5 m from the primary street. Where the application does not comply with the Acceptable Development Criteria of the RCodes, the proposal can be considered under the Performance Criteria.</p>
Applicants Proposal	<p>The existing carport was approved with a nil front setback, therefore the proposed roller door results in a garage with a nil primary street setback.</p>
Performance Criteria	<p><i>"The setting back of carports and garages so as not to detract from the streetscape or appearance of dwellings, or obstruct views of dwellings from the street or vice versa".</i></p>
<p>Applicant justification summary</p> <p>Note: A full copy of the applicant justification received by the City has been given to the City's Councillors prior to the meeting.</p>	<p>The applicant/ owner provided no justification for the garage door variation.</p> <p>The applicant/owner only mentioned that the garage door was put in place by the previous owner of the property.</p>

Officer comment	technical	<p>The garage is considered to not comply with the above Performance Criteria.</p> <p>The enclosing of the carport is not in keeping with the character of the surrounding area and detracts from the streetscape and appearance of the dwelling.</p> <p>Furthermore it is considered that by enclosing the carport the resulting garage obstructs views of the dwelling from the street and visa versa, reducing surveillance of the street and effecting the open nature of the street.</p> <p>The property next door at No. 7 Cross Street, Swanbourne has also constructed a garage door with a nil front setback, without the required approvals. As a result the impact on the streetscape and surrounding area is doubled.</p> <p>A retrospective application has been received for No. 7 Cross Street, Swanbourne and a report for Council's consideration is included in this agenda.</p>
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### Conclusion

Given that the enclosed upper balcony and ground floor patio structure comply with the Performance Criteria of the RCodes, it is recommended these parts of the application be approved.

However, the garage door with a nil front setback does not meet the Performance Criteria or Acceptable Development Criteria of the RCodes. Council has previously refused an application for a similar proposal in this area (i.e. No. 10 Knutsford Street, Swanbourne.).


In order to remain consistent and protect the streetscape of the surrounding area it is recommended Council includes a condition on the approval that the garage door be removed and structure reverted back to a carport.

### Attachments

1. Locality Plan
2. Ground and Upper Floor Plan
3. Elevations Plans

<b>PD29.12</b>	<b>No. 7 (Lot 201) Cross Street, Swanbourne – Retrospective Enclosure of Carport to Single House</b>
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<b>Committee</b>	14 August 2012
<b>Council</b>	28 August 2012

<b>Applicant</b>	Mr N George & S Sofoulis
<b>Owner</b>	Mr N George & S Sofoulis
<b>Officer</b>	Nick Bakker - Planning Officer
<b>Director</b>	Peter Mickleson - Director Planning & Development Services
<b>Director Signature</b>	
<b>File ref.</b>	DA12/263
<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 retrospective application is referred to Council for determination as part of the proposal does not meet the provisions of the Residential Design Codes relating to Carports and Garages in the front setback.

As there is no officer delegation to refuse a Development Application (where discretion exists for Council to approve the variations), the application must be referred to Council for final determination.

**Recommendation to Committee**

**Council:**

1. **refuses an application for Retrospective Enclosure of a Carport to Single House at No. 7 (Lot 200) Cross Street, Swanbourne in accordance with the application and plans dated 6 July 2012 for the following reasons:**
  - a. **the door on the carport with a nil front setback does not meet the Performance Criteria or Acceptable Development Criteria of the RCodes; and**
  - b. **the enclosed carport with a nil front setback is not in keeping with the surrounding streetscape and the proposal will not be orderly and proper planning.**

2. **instructs the removal of the door on the carport within 42 days of the date of this decision.**

### Strategic Plan

KFA 3: Built Environment

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

### Background

Property Address: No. 7 Cross Street, Swanbourne  
Zoning MRS: Urban  
Zoning TPS2: Residential – R35  
Lot Area: 306 m<sup>2</sup>

- 4 May 1989  
Council approved an application for a new dwelling which included a carport with a nil front boundary setback.

The original plans included a solid garage door (which was not supported by Council. The plans were amended and the approved plans clearly show the garage door crossed off and not included in the approval.

- 11 May 2011  
The City received a retrospective development application for unapproved works including a garage door with a nil setback outlined below at No. 9 Cross Street, Swanbourne.

This application is on the same Council agenda and recommended to be removed.

- 6 July 2012  
This application was submitted to Council for determination. The City's staff noted an unapproved garage door at No. 7 Cross Street, Swanbourne while on a site inspection for the application at No. 9 Cross Street, Swanbourne.

This retrospective application is for a garage door constructed on the front elevation of an existing carport.

### Consultation

Required by legislation: Yes  No

Required by City of Nedlands policy: Yes  No

Consultation type: N/A



The City is usually required to advertise development applications which propose variations to the RCodes.

However, the City did not undertake the advertising period as the owner of No. 9 Cross Street, Swanbourne obtained the relevant neighbour signatures himself. The documentation provided with the list of signatures covers the garage doors for both No's 7 & 9 Cross Street Swanbourne.

### Legislation

- City of Nedlands Town Planning Scheme No.2 (TPS2);
- Residential Design Codes (RCodes); and
- Policy 6.4 'Neighbour Consultation – Planning Applications'.

### Discussion

The dwelling was originally approved with a carport in accordance with the RCodes.

The garage door does not comply with the provisions of the RCodes as discussed in more detail below.

Issue: Garage Door with nil Primary Street Setback

Requirement	<p>Clause 3.2.3 -</p> <p>Under the Acceptable Development Criteria of Clause 3.2.3 of the RCodes garages are required to be setback 4.5 m from the primary street. Where the application does not comply with the Acceptable Development Criteria of the RCodes, the proposal can be considered under the Performance Criteria.</p>
Applicants Proposal	<p>The existing carport was approved with a nil front setback, therefore the proposed roller door results in a garage with a nil primary street setback.</p>
Performance Criteria	<p><i>"The setting back of carports and garages so as not to detract from the streetscape or appearance of dwellings, or obstruct views of dwellings from the street or vice versa".</i></p>

<p><b>Applicant justification summary</b></p> <p>Note: A full copy of the applicant justification received by the City has been given to the City's Councillors prior to the meeting.</p>	<p>The owner believes that from an aesthetic point of view it is better to have doors on the carport (refer to attached photos).</p> <p>From a safety and security perspective it would be better for people not being able to see in and identify if you are there or not.</p>
<p><b>Officer technical comment</b></p>	<p>The garage is considered to not comply with the above Performance Criteria.</p> <p>The enclosing of the carport is not in keeping with the character of the surrounding area and detracts from the streetscape and appearance of the dwelling.</p> <p>Furthermore it is considered that by enclosing the carport the resulting garage obstructs views of the dwelling from the street and visa versa, reducing surveillance of the street and affecting the open nature of the street.</p> <p>The property next door at No. 9 Cross Street, Swanbourne has also constructed a garage door with a nil front setback, without the required approvals. As a result the impact on the streetscape and surrounding area is doubled.</p> <p>A retrospective application has been received for No. 9 Cross Street, Swanbourne and a report for Council's consideration is included in this Council agenda.</p>

**Conclusion**

The garage door with a nil front setback does not meet the Performance Criteria or Acceptable Development Criteria of the RCodes. Council has previously refused an application for a similar proposal in this area (i.e. No.10 Knutsford Street, Swanbourne).


In order to remain consistent and protect the streetscape of the surrounding area it is recommended Council refuse the garage door, ordering it to be removed and structure reverted back to a carport.

**Attachments**

1. Locality Plan
2. Ground and Upper Floor Plan
3. Elevations Plans
4. Applicant's Photos

<b>PD30.12</b>	<b>No. 75 (Lot 137) Viking Road, Dalkeith – Retrospective Enclosure of Carport to Single House</b>
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<b>Committee</b>	14 August 2012
<b>Council</b>	28 August 2012

<b>Applicant</b>	Ms Marilyn Tan
<b>Owner</b>	Ms Marilyn Tan
<b>Officer</b>	Laura Sabitzer - Planning Officer
<b>Director</b>	Peter Mickleson - Director Planning & Development Services
<b>Director Signature</b>	
<b>File ref.</b>	DA12/221 : V13/75-02
<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 the proposal does not meet the provisions in the City of Nedlands Town Planning Scheme No. 2 (TPS2) and Council Policy 6.23 'Carports and Minor Structures Forward of the Primary Street Setback'.

**Recommendation to Committee**

**Council approves an application for Retrospective Enclosure of Carport to Single House at No. 75 (Lot 137) Viking Road, Dalkeith in accordance with the application and plans dated 6 June 2012 with the following conditions:**

1. the lattice on the south and west sides of the carport shall be removed within 42 days from the date of this decision;
2. all stormwater from the development which includes permeable and non-permeable areas shall be contained on site by draining to soak-wells of adequate capacity to contain runoff from a 20 year recurrent storm event; and soak-wells shall be a minimum capacity of 1 m<sup>3</sup> for every 80 m<sup>2</sup> of calculated surface area of the development; and
3. 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:**

1. all downpipes from guttering shall be connected so as to discharge into drains which shall empty into a soak-well and each soak-well shall be located at least 1.8 m from any building, and at least 1.8 m from the boundary of the block.

**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. 75 (Lot 137) Viking Road, Dalkeith  
(Refer to attachment 1)

Zoning MRS: Urban

Zoning TPS2: Residential, R10 coding

Lot Area: 1012 m<sup>2</sup>

The property has recently been sold and the City completed an Order and Requisitions request. As part of the Order and Requisitions, it was established that there was an outstanding compliance issue. A compliance letter was sent to the owners in 2007, which has not been resolved.

The carport had not been constructed in accordance to the plans approved in July 2002 and does not meet Condition (v) of that approval. Condition (v) of the approval states the following:

*"The applicant/owner shall keep the front of the carport facing the street open, in accordance with the City of Nedlands Policy 11.1 'Carports and Minor Structures Forward of the Primary Street Setback'"*

The carport on the south (front) and west (side) has had a solid limestone wall and lattice installed without receiving planning approval or a building permit (refer to attachment 2-7). The unapproved additions have enclosed the carport and do not allow the side of the carport facing the street to be open.

A retrospective planning application was received by the City in June 2012. This application is for retrospective addition to a previously approved carport. The retrospective addition is the installation of a solid limestone wall and lattice on the south (front) and west (side) of the carport (refer to attachments 2 - 7).

## Consultation

Required by legislation: Yes  No

Required by City of Nedlands policy: Yes  No

Notification Period: 22 June 2012 – 6 July 2012

The variations identified were advertised by letter to surrounding affected landowners for fourteen (14) days.

Comments received: One (1) objection received

*"..should be converted back to a carport open on all sides as approved in 2002. There is no precedent otherwise"*

Note: A full copy of the adjoining owner's submission received by the City has been given to the City's Councillors prior to the meeting.

## Legislation

- Residential Design Codes (RCodes);
- City of Nedlands Town Planning Scheme No.2 (TPS2);
- Policy 6.23 *Carport and Minor Structures Forward of the Primary Street Setback* (Policy 6.23); and
- Policy 6.4 'Neighbour Consultation – Planning Applications'.

The RCodes define a carport as:

*"a roofed structure designed to accommodate one or more motor vehicles unenclosed except to the extent that it abuts a dwelling or a property boundary on one side, and being without a door unless that door is visually permeable" and a garage as "any roofed structure, other than a carport, designed to accommodate one or more motor vehicles and attached to the dwelling".*

Whilst Policy 6.23 defines a carport as:

*"a roof structure designed to accommodate a motor vehicle and shall be open on all sides unless constructed adjoining a boundary fence or wall of a building".*

The addition of the solid wall and lattice to the south and west sides to the carport means that it is no longer an unenclosed structure. As the structure is no longer open on all sides and it cannot be classed as a carport under the RCodes or Policy 6.23.

It is noted that the north (rear) of the carport abuts a wall of the dwelling, which is permitted under Policy 6.23.

The application proposes the following variations to the provisions of TPS2 and Policy 6.23:

1. TPS2 – Clause 5.6.2(d) and Policy 6.23 require carports in the primary street setback to be “...open on all sides...” unless constructed adjoining a boundary fence / wall. The addition of the limestone wall and lattice on the south and west sides do not allow the carport to be open on all sides.
2. Policy 6.23 requires that the side of the carport facing the street to be left open. The addition of the limestone wall and lattice on the south (front) side does not result in the carport being open.

**Budget/financial implications**

Nil

**Risk Management**

Nil

**Discussion**

The variations to the TPS2 and Policy 6.23 are discussed as follows:

Issue: Additions to Carport

Requirement	<p>TPS2 Clause 5.6.2(d) states that “<i>the carport shall be open on all sides unless constructed adjoining a boundary fence or wall of a building, in accordance with Council policy</i>”.</p> <p>Policy 6.23 defines a carport as “<i>a roof structure designed to accommodate a motor vehicle and shall be open on all sides unless constructed adjoining a boundary fence or wall of a building</i>”.</p> <p>Policy 6.23 states “<i>carports may be constructed forward of the required primary street setback, but the side facing the street must be left open</i>”.</p>
Applicants Proposal	<p>The carport on the south and west sides has been enclosed with a solid limestone wall and lattice (refer to attachments 2 - 7).</p>
Assessment under TPS2	<p>Clause 5.6.2 of TPS2 allows Council to approve a carport to be constructed in the front setback area. However the carport must meet the design requirements of Clause 5.6.2 (a)-(d).</p> <p>In this case the carport does not meet Clause 5.6.2 (d) and therefore it is deemed that Council has no discretion to approve the enclosure of the carport.</p>

<p>Assessment under Policy 6.23</p>	<p>Policy 6.23 – where an application does not comply with the policy requirements, then the application is evaluated according to whether the variation will have impact on “<i>either the relevant adjoining property or the streetscape</i>”.</p>
<p>Officer technical comment</p>	<p>In regard to assessment under Policy 6.23, the officers comments are as follows:</p> <p><b>Adjoining property</b> It is considered that the additions to the carport will not impact the adjoining properties.</p> <p><b>Streetscape</b> The additions ‘as is’ are considered to impact the surrounding streetscape.</p> <p>The majority of properties in the City, including properties on Viking Road, have a 9 m front setback in accordance with TPS2. This 9 m front setback creates a streetscape which is of an open nature. Policy 6.23 was introduced to accommodate the development of carports and other minor structures forward of the primary street setback. The requirements of Policy 6.23 allow carports forward of the primary street setback, whilst ensuring the open character and street amenity of the City is not compromised.</p> <p>The carport with the retrospective additions results in an enclosed structure. This is contrary to Policy 6.23 which requires “<i>carports to be open on all sides unless adjoining a boundary fence or wall of building</i>”. As the carport is no longer ‘open’, it disrupts the amenity and open nature of the existing streetscape.</p> <p>It is recommended that the lattice on the west and south sides of the carport are removed. The lattice encloses the carport and screens views of the ground floor of the dwelling from the street. If the lattice is removed it will result in more than 50 % of the carport’s west and south side being open. Furthermore, the ground floor of the dwelling will be able to be viewed from the street.</p> <p>The solid limestone wall is low and finishes below eye level. It is considered to not impede views of the dwelling from the street. The wall (without the lattice) will not enclose the structure to the extent to which it will disrupt the ‘openness’ of the streetscape.</p>



Response to previous landowner's justification

Summary of previous landowner's justification	Officers technical comment:
<p><i>"The alterations were made after we...saw the effect of the winter rains and the summer sun. 75 Viking Road is on the north side of the road and is very much open to weather from the south and west and summer sun from the west. I thought that these additions would be open enough and would provide some protection".</i></p>	<p>A carport is a non habitable space, and is used to accommodate motor vehicles. The carport, with a covered roof provides substantial protection from the weather.</p> <p>The property also has a fully enclosed garage (outbuilding) towards the rear of the property, which allows for protection from the weather.</p> <p>Policy 6.23 allows a carport forward of the 9m front setback, providing that it is open on all sides, to maintain the amenity of the streetscape</p> <p>The additions added to the carport obstruct views from the street to the dwelling. The lattice is closely spaced and is not considered to be open for the purposes of the policy.</p>
<p>Note: A full copy of the previous landowner's justification received by the City has been given to the City's Councillors prior to the meeting.</p>	

**Conclusion**

The low solid limestone wall on the west and south sides will have minimal impact on the existing streetscape. This is because the wall finishes below eye level and will not impede views of the dwelling from the street. Therefore, it is recommended that the addition of the low wall to the carport is approved.


However it is considered that the lattice on the west and south sides of the carport encloses the structure. The lattice is not open and restricts views to the dwelling from the street. Not only does it detract from the open nature of the streetscape, it results in the carport being 'enclosed' and therefore there is no discretion for Council to approve. Accordingly, it is recommended that lattice on the west and south sides of the carport is removed, as outlined in Condition (1).

**Attachments**

1. Locality Plan
2. Photos (1)
3. Photos (2)
4. Approved site plan at Council 2002
5. Approved elevation plan at Council 2002
6. Site plan
7. Elevation plan

<b>PD31.12</b>	<b>No. 97 (Lots 619-620) Tyrell Street, Nedlands – Proposed Retrospective Side Fence to Single House</b>
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<b>Committee</b>	14 August 2012
<b>Council</b>	28 August 2012

<b>Applicant</b>	Peter Webb & Associates
<b>Owner</b>	Ms Makara Pen
<b>Officer</b>	Matt Stuart – Senior Statutory Planning Officer
<b>Director</b>	Peter Mickleson – Director Planning & Development Services
<b>Director Signature</b>	
<b>File ref</b>	TY1/97-02 : DA12/235 : M12/15720
<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 do not have delegation to determine an application under instrument of delegation 6A, where valid objections have been received.

**Recommendation to Committee**

**Council refuses an application for a retrospective side fence to a single house at No. 97 (Lot 619-620) Tyrell Street, Nedlands, in accordance with the application and plans dated 12 June 2012, for the following reasons:**

- 1. the perspex / plastic material is dangerous by not maintaining adequate sightlines within the 1.5 m truncation area, in accordance with Council Policy 6.19 (Fill and Fencing) clause 'Fencing Abutting Vehicle Access Points';**
- 2. the perspex / plastic material is dangerous by not maintaining adequate sightlines within the 1.5 m truncation area, in accordance with *City of Nedlands Fencing Local Law 2007*, clause 14.1 (Maintenance and Protection of Fences);**

3. **the perspex / plastic material is not a listed material in accordance with the *City of Nedlands Fencing Local Law 2007*, clause 16 (Fencing Materials). Furthermore, the material is not accepted via the discretion of clause 15 (General Discretion of the Local Government) due to it adversely affecting the safety and convenience of the southern neighbour and general public;**
4. **The fence has not been finished to an acceptable standard, in accordance with the *City of Nedlands Fencing Local Law 2007*, clause 14.1 (Maintenance and Protection of Fences), namely:**
  - a. **unfinished paint on the southern side of the lattice;**
  - b. **bare masonry (maxi-bricks) not being rendered and painted to match the existing fence;**
5. **the external appearance of the fence adversely affects the amenity of the surrounding area, in accordance with Town Planning Scheme No. 2 (TPS2) clause 5.5.1 (Preservation of Amenity); and**
6. **the development is not orderly and proper planning, in accordance with Town Planning Scheme No. 2 (TPS2) clause 6.5.1 (Determination by Council).**

**Advice Notes specific to this proposal:**

1. **The Notices served upon the landowner in April 2012 remain current. These notices require the landowner to bring the structures into compliance with the previous planning approvals, within specific timeframes which are now overdue.**
2. **As the obstructed visual sightline is a safety issue for the general public, the landowner is urged to bring the structure into compliance without delay.**

**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.**

**KFA 6: Community Engagement**

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

## **Background**

Property address: No. 97 (Lots 619-620) Tyrell Street, Nedlands  
MRS zoning / reserve: Urban  
TPS2 zoning / reserve: Residential, R10 coding  
Lot area: 2,023 m<sup>2</sup>

The site has a long history (refer to attachment 1).

The site has a frontage to Tyrell Street to the east, and located adjacent to dwellings to the north, west and south, as seen in the location plan (refer to attachment 2).

The existing development on the site is a Single House with a substantial front fence, as depicted in the site photographs (refer to attachment 4).

Relevant Previous Decisions:

The City has recently conditionally approved a second retrospective application for the front fence. This application did not require neighbour consultation and was determined under delegation.

## **Proposal Detail**

The proposal involves the retrospective construction of a side dividing fence on the site, as depicted in the submitted plans (refer to attachment 3). Furthermore, the site photographs show the relationship of the site with the surrounding built environment (refer to attachment 4).

Noting that planning approval was granted in 2007 for a complying side fence, this proposal includes the following:

1. Perspex / plastic materials;
2. Unfinished surface of masonry (bare maxi-bricks); and
3. Unfinished surface of timber lattice (partially painted).

Variations include the following issues:

1. Visual sightlines;
2. Materials; and
3. Finishes.

The Applicant's letter describes the proposal in more detail (refer to attachment 5).

**Consultation**

Required by legislation: Yes  No

Required by City of Nedlands policy: Yes  No

Notification Period: 22 June 2012 – 6 July 2012

The variations identified were advertised by letter to surrounding affected landowners for fourteen (14) days.

Comments received: One (1) objection received

Summary of comments received	Officer's technical comment
Issue: safety issue The fence is visually impermeable via glare and frost, resulting in a danger to users of a local oval and kindergarten.	<b>Upheld</b> See Discussion section.
Issue: amenity Strong opposition to the effect of unsightly materials upon the neighbouring property and the wider streetscape.	<b>Upheld</b> See Discussion section.
Issue: finish Unsightly cement blocks and lattice needs to be painted and the neighbour is willing to paint them if they remove the Perspex.	<b>Upheld</b> See Discussion section.
Issue: illegal works The landowner has built structures illegally.	<b>Not Upheld</b> Retrospective planning applications have been lodged.
Issue: disputing neighbour issues Comments regarding personal matters.	<b>Noted</b> Not relevant to planning assessment.
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.	

**Legislation / Policy**

- *Local Government Act 1995*
- *City of Nedlands Fencing Local Law 2007*
- *Planning & Development Act 2005*
- *City of Nedlands Town Planning Scheme No. 2 (TPS2)*
- *Residential Design Codes of WA 2010 (RCodes)*
- *Council Policy 6.19 – Fill and Fencing*
- *Council Policy 6.4 – Neighbour Consultation*

## **Budget / Financial Implications**

The application is for works constructed on a private lot, and therefore has no budget / financial implications for the City.

## **Risk Management**

Approving the structure increases the risk of accidents between vehicles and pedestrians, causing injury to persons and damage to property.

There is an additional risk that the responsibility of this problem could be transferred from the landowner onto the Council, and the consequential potential for litigation against the Council.

## **Discussion**

### **Visual Sightlines - RCodes**

RCodes clause 6.2.6 (Sight lines at vehicle access points and street corners) requires a 1.5 m visual truncation area, which is covered and supplemented by local planning policy, as discussed below.

### **Visual Sightlines - Local Planning Policy**

Council Policy 6.19 (Fill and Fencing) clause 'Fencing Abutting Vehicle Access Points' ensures pedestrian safety by enforcing visual sightlines for vehicles and pedestrians (emphasis added):

*"In addition to the primary street fences, dividing fences and secondary street fence requirements of this policy, **fences shall be required to maintain adequate sightlines** within the 1.5 m truncation area where walls and fences adjoin vehicle access points where a driveway meets a street.*

*Within this truncated area the following obstructions are deemed acceptable development:*

- 1. One pier with a maximum height of 2.1 m from natural ground level with a length and width no greater than 0.5 m;*
- 2. All other solid structures to be reduced to a height of no greater than 0.75 m from natural ground level;*
- 3. All visually permeable structures to a maximum height of 1.8m from natural ground level."*

The City has previously approved a complying fence, being:

- Solid at a height of 750 mm;
- Visually permeable lattice above 750 mm;
- One pier at a height of 2.1 m; and
- The pier being 500 mm in length and width.

**Visual Sightlines- proposed Perspex**

The landowner has also clad the fence with perspex / plastic, which has/will result in obscurity from glare, frost, dirt, scratches and discolouration:

1. the neighbour’s driveway is paved with a light-coloured limestone, which reflects or glows in sunlight (refer to attachment 3). This was particularly noticeable on a morning site visit on a sunny day when the azimuth of the sun was low in the sky.
2. frost completely obscures the perspex, which was particularly noticeable on a morning site visit in the winter (refer to attachment 3).
3. the perspex will require regular cleaning over time as it will become dirty and more obscure; however the lattice prevents cleaning of that side by the neighbour.
4. the perspex is prone to hazing (discolouration) from the sun and scratches, adding to the obscurity.

Applicant’s justification	Officer’s technical comments
<p>Issue: Glare The glare from the Perspex is not possible as the sun is to the north, and the Perspex is fixed to the southern side of the fence and therefore effectively shaded.</p>	<p><b>Not Upheld</b> See Discussion section.</p>
<p>Issue: Visual Sightlines Verge is sufficiently wide enough to fully accommodate a vehicle</p>	<p>The measure of assessment is based upon visual sightlines at the boundary because this is where the footpath is located (refer to attachment 3).</p> <p>It is noted that a 2.8 ha reserve is located only 60 m away, including (but not limited to) a child health clinic and an early-learning centre. In addition, an extensive reserve on the Swan River is located approximately 750 m away.</p> <p>Accordingly, the footpath is a facility frequently used by pedestrians, including postal workers, junk mail deliverers and the general public. The public use the footpath multiple times a day, including small children on fast-moving wheeled vehicles (as seen in attachment 3), which clearly demonstrates a high-risk safety issue.</p>



<p>Issue: visual sightlines The solid portion of the fence is 750 mm within the 1.5 m visual truncation area.</p>	<p>Not in dispute.</p>
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**Incomplete Finish of Materials- partially painted lattice**

During construction, the builder has partially painted the timber lattice and clad it with Perspex (refer to attachment 4). The neighbour has offered to paint his side of the fence, however the Perspex prevents him from doing so (see Consultation section).

The fence has not been finished to an acceptable standard, in accordance with the *City of Nedlands Fencing Local Law 2007*, clause 14 (Maintenance and Protection of Fences) (emphasis added):

*'An Owner or occupier of a lot on which a fence is erected shall **maintain the fence in good condition and so as to prevent it becoming dangerous, dilapidated, or unsightly.**'*

Given that the work is incomplete, it is visible from the street, and the neighbour is prevented from rectifying it, the finish of the structure is considered inappropriate and is not recommended for approval.

**Incomplete Finish of Materials- bare masonry**

During construction, the builder has cut an existing rendered-masonry fence to build additional fencing. Through this process, 'maxi-bricks' have been left exposed on the neighbour's side (refer to attachment 4).

The finish is not an acceptable standard, in accordance with the *City of Nedlands Fencing Local Law 2007*, clause 14.1 (Maintenance and Protection of Fences) (emphasis added):

*'An Owner or occupier of a lot on which a fence is erected shall **maintain the fence in good condition and so as to prevent it becoming dangerous, dilapidated, or unsightly.**'*

Given that maxi-bricks are designed to be clad (i.e. not a face-brick), and is visible from the street, the finish of the structure is considered inappropriate and is not recommended for approval.

**Preservation of Amenity**

TPS2 clause 5.5.1 (Preservation of Amenity) states (emphasis added):

*'Without limiting the generality of Clause 6.5 the Council may refuse to approve any development if in its opinion the development would adversely affect the **amenity of the surrounding area** having regard to the likely effect on the locality in terms of the **external appearance of the development, traffic congestion and hazard, noise or any other factor inconsistent with the use for which the lot is zoned.**'*

In response, the external appearance of the development is unacceptable (as discussed elsewhere) and traffic congestion and noise is not relevant. Accordingly, it is considered that the proposed development adversely affects the amenity of the surrounding area and is not recommended for approval.

### **Orderly & Proper Planning**

TPS2 clause 6.5.1 (Determination by Council) states:

*'The Council may determine an application by granting approval, refusing approval or granting approval subject to such conditions as it thinks fit, having regard to the orderly and proper planning of the area.'*

In response, the development does not comply with Scheme provisions, with some discretionary variations which are not recommended for approval (see Discussion section). Accordingly, it is considered that the proposed development is not orderly and proper planning in accordance with clause 6.5.1, and is not recommended for approval.

### **Conclusion**

The current matter centres on a dividing fence within the streetscape that is unsafe and unsightly. The structure increases the risk of accidents between vehicles and pedestrians, causing injury to persons and damage to property. The use of plastic, exposed masonry and unfinished paint is unsightly and adversely affects the amenity of the area.


Accordingly, the application is recommended for refusal; with the legal Notices served upon the landowner remaining to resolve the safety and amenity issues.

### **Attachments**

1. Background
2. Location plan (aerial)
3. Site plan & elevation
4. Photographs of the site and surrounds

<b>PD32.12</b>	<b>Draft Subiaco Wastewater Treatment Plant Odour Buffer Local Planning Policy</b>
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<b>Committee</b>	14 August 2012
<b>Council</b>	28 August 2012

<b>Applicant</b>	N/A
<b>Owner</b>	N/A
<b>Officer</b>	Michael Swanepoel - Senior Strategic Planning Officer
<b>Director</b>	Peter Mickleson - Director Planning & Development Services
<b>Director Signature</b>	
<b>File ref.</b>	TPN/130
<b>Previous Item No's</b>	D61.10
<b>Disclosure of Interest</b>	No officer is 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 endorse the Draft Subiaco Wastewater Treatment Plant Odour Buffer Local Planning Policy for public advertising.

**Recommendation to Committee**

**Council endorses the Draft Subiaco Wastewater Treatment Plant Odour Buffer Local Planning Policy for public advertising as per attachment 1.**

**Strategic Plan**

KFA 3: Built Environment  
 3.7 Provide efficient and integrated approvals systems.

**Background**

Property Address: Properties affected by proposed Local Planning Policy  
 Zoning MRS: Public Purpose, Parks and Recreation reservation  
 Zoning TPS2: Development and Light Industrial  
 Reserve TPS2: Recreation  
 Lot Area: Refer to map

### **Plant History, Odour Control and Odour Buffer**

The Subiaco Wastewater Treatment Plant ('the Plant') is operated by the Water Corporation. The Plant commenced operations in 1927. It currently caters for 300,000 people, with nominal plans for catering to over 400,000 people by 2040.

Water Corporation advises that:

- Currently there is excellent control of odour at the Plant as a result of the upgrade with a plant-wide odour control system in the early 2000s. As a result, there have been no formal odour-related complaints since 2004.
- An increase in additional capacity at the Plant will not require an expansion in the odour buffer boundary.
- The current odour buffer boundary was finalised after much investigation. It was found that the easterly winds rather than the prevailing south-westerly winds create the ideal conditions for spreading odour.
- The boundaries of the odour buffer reflect these environmental conditions, which accounts for its skewed boundary of the odour buffer that includes more land to the western side rather than eastern side of the plant.

Water Corporation remains committed to maintaining the current high standards of odour control at the Plant.

### **How the Odour Buffer fits within the Land Use Planning Framework**

To address the issues of odour nuisance (as well as safety and amenity issues) an odour buffer boundary was identified by the Water Corporation to protect:

- the plant from the encroachment of inappropriate land uses; and
- residents from the risks of living close to a treatment plant.

In this regard, Water Corporation has advised that incompatible land uses include:

- Restaurants;
- Cafes;
- Residential; and
- Essentially all land uses where there is an expectation not to be exposed to odour.

The City of Nedlands Town Planning Scheme No. 2 (TPS2) and associated policies are the mechanisms to control land use within the buffer area. A Local Planning Policy (LPP) can also guide recommendations to the Western Australian Planning Commission (WAPC) where land is not zoned in the scheme.

A draft Local Planning Policy was prepared for the Subiaco Wastewater Treatment Plant Odour Buffer area and considered by Council at its Ordinary Meeting held in September 2010. The draft policy did not progress to advertising as Council required a workshop with affected landowners and stakeholders.

### **Stakeholder Workshop**

In March 2011, a workshop with affected landowners and stakeholders was held at the Mt Claremont Community Centre. Following a structured presentation on the history of the plant and how it fits within the planning framework, the workshop focused on group discussion addressing the following:

- What do you value most about the area and what would you like to retain?
- What do you see as the key issues for the overall area and separately, for the area affected by the odour buffer?
- What is your vision for the overall area and separately, for the land you are a stakeholder to?
- What would you like to see in broad terms, and more specifically, what would you like to see included into a Local Planning Policy?

The findings of the workshop are attached to this report (refer to attachment 2) and helped to shape the approach in modifying the draft Policy.

### **Proposal Detail**

#### **1. Policy context**

The draft Policy represents a Local Planning Policy prepared and adopted according to the requirements as stipulated in the City of Nedlands Town Planning Scheme No. 2 (TPS2).

The tables below summarise the head of power (Metropolitan Region Scheme and Town Planning Scheme No.2) and the intended application of the draft Policy within this context.

<b>Metropolitan Region Scheme</b>	<ul style="list-style-type: none"> <li>• Public Purpose</li> <li>• Parks and Recreation</li> </ul>
Background	<ul style="list-style-type: none"> <li>• Any development applications within these reservations require approval from the Western Australian Planning Commission.</li> <li>• There may be proposed amendments to the Metropolitan Region Scheme.</li> </ul>
Application of draft Policy	<ul style="list-style-type: none"> <li>• Guide Council's recommendation to the Western Australian Planning Commission on proposed development and/or amendments.</li> </ul>

<b>Town Planning Scheme No. 2</b>	<ul style="list-style-type: none"> <li>• Development zone</li> </ul>
Background	<ul style="list-style-type: none"> <li>• This zone requires that an Outline Development Plan is prepared and adopted prior to receiving development approval.</li> <li>• There is no specific guidance for applicants and Council about appropriate land uses.</li> </ul>
Application of draft Policy	<ul style="list-style-type: none"> <li>• Assist Council in determining acceptable land uses when considering proposed draft Outline Development Plans.</li> </ul>

<b>Town Planning Scheme No. 2</b>	<ul style="list-style-type: none"> <li>• Light Industrial zone</li> </ul>
Background	<ul style="list-style-type: none"> <li>• In some instances, the 'Use Class Table' in the TPS2 provides specific guidance as to which land uses are permitted.</li> <li>• However, where an 'AA' category is allocated to a use in the 'Use Class Table' this policy can provide some guidance.</li> </ul>
Application of draft Policy	<ul style="list-style-type: none"> <li>• Assist Council in determining acceptable land uses when considering proposed applications for 'AA' uses.</li> </ul>

The draft Policy has been prepared to achieve the following objectives:

- To protect the Subiaco Wastewater Treatment Plant from encroachment by those land uses that would be sensitive to its impacts.
- To promote compatible land uses within the buffer area that are unlikely to be affected by the off-site impacts associated with the Subiaco Wastewater Treatment Plant.
- To allow other land uses within the buffer area in a way that maximises amenity minimises environmental and health impacts and takes account of risk to nearby sensitive land uses.

It is intended that the draft Policy will yield the following outcomes:

- the right land uses are permitted in the right location;
- conflict between the Subiaco Wastewater Treatment Plant and sensitive land uses is avoided; and
- consistent decision-making for land within the odour buffer area.

The above outcomes will be achieved based on the following guiding principles:

- The proximity to the emission source and estimated level of impact and/or risk on the use or development.
- The sensitivity of the proposed use or development to odour, noise, visual impact and risk issues resulting from the Subiaco Wastewater Treatment Plant.
- Advice received from the Environmental Protection Agency, Department Environment and Conservation, and any other relevant agencies.

2. How the policy works

The table below briefly explains how the draft Policy is intended to work.

Elements	Explanation
Use Sensitivity Categories	<ul style="list-style-type: none"> <li>• The odour buffer boundary has been broken up into three use sensitivity categories (high, medium and low).</li> <li>• Land in close proximity to the Plant is categorised high, whilst land on the fringe of the boundary is categorised low.</li> </ul>
Approval Outcomes	<ul style="list-style-type: none"> <li>• Three (3) approval outcomes (permitted, discretionary, non-permitted) are identified.</li> </ul>
Sensitivity Criteria	<ul style="list-style-type: none"> <li>• A set of sensitivity criteria is outlined. This criteria is identified for discretionary uses.</li> </ul>
Definitions and Land Uses	<ul style="list-style-type: none"> <li>• Definitions and Land Uses in the draft Policy are based on the City's TPS2 as amended.</li> </ul>

Assessing applications	<ul style="list-style-type: none"> <li>• In the first instance, applications are reviewed according to their proximity to the treatment plant and allocated a Use Sensitivity Category.</li> <li>• Each Use Sensitivity Category outlines the approval outcomes for land uses.</li> <li>• Sensitivity criteria confirming the conditions that need to be met to achieve support for discretionary uses are also outlined.</li> </ul>
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These elements are explained in more detail in the draft Policy.

**Consultation**

Required by legislation: Yes  No

Required by City of Nedlands policy: Yes  No

Consultation type: As per Town Planning Scheme No. 2 (TPS2)

As per TPS2 publicly advertising the draft Policy involves:

- Publishing a notice of the draft Policy once a week for three (3) consecutive weeks in a local newspaper, giving details of:
  - where the draft Policy may be inspected;
  - the subject and nature of the draft Policy; and
  - in what form and during what period (being not less than 21 days from the date the notice is published) submissions may be made.
- Publishing a notice of the draft Policy in such other manner and carry out such other consultation as Council considers appropriate.

The draft Policy will be made available in hardcopy at the City’s Library and Administration Office. It will also be made available electronically on the City’s website.

**Legislation**

- *Planning and Development Act 2005*
- Metropolitan Region Scheme (MRS)
- Town Planning Scheme No. 2 (TPS2)

**Budget/financial implications**

Budget:

Within current approved budget: Yes  No



Requires further budget consideration: Yes  No

Financial:

The draft Policy has no financial implication for the City.

### **Risk Management**

A risk of progressing without a policy in place is that Council may face pressure to allow inappropriate use to develop in the area and increase the likelihood of conflict between users of incompatible land uses.

### **Discussion**

#### 1. Procedure for making/amending a Local Planning Policy

The draft Policy does not propose any changes for how land is currently set aside under Town Planning Scheme No. 2. It will provide additional guidance to Council when it considers Outline Development Plans and development applications.

Through its objectives and outcomes, the draft Policy provides a clear direction for decision making. In this regard, it builds on what is in place to provide for the orderly and proper planning for the area.

The draft Policy is tactically flexible in so much as it acknowledges what is currently on the ground whilst trying to get the right use in the right location over the long term.

The draft Policy was prepared in the context of the following:

- Preliminary Report on Buffer Zone for Subiaco Wastewater Treatment Plant (2001, Water Corporation)
- Separation Distances between Industrial and Sensitive Land Uses (2005, Environmental Protection Authority)

In summary, this draft Policy satisfies the procedure for making/amending a Local Planning Policy as outlined in Clause 8.3.1 of the TPS2.

#### 2. Stakeholder workshop

The stakeholder workshop, in particular Question 4, set the context for preparing this draft Policy.

A summary of comments arising from Question 4 and their relevance to preparing this draft Policy is shown in the table below:

Summary of comments (from Question 4)	Application in draft Policy
If there is to be a policy, it needs to reflect the existing uses on the ground.	The draft Policy recognises the existing uses on the ground.
Prevent nasty land use.	The draft Policy includes objectives and outcomes intended to prevent inappropriate land use in the area.
Not too prescriptive or restrictive.	There is an element of flexibility imbedded within the draft Policy.
Include different requirements for uses depending on distance from the plant.	Different requirements depending on distance have been included within the draft Policy.
Want to keep serenity of the area.	The draft Policy includes objectives and outcomes intended to prevent inappropriate land use in the area.
Area as a character area to be wider than the odour buffer.	<p>The scope of this project was to prepare a draft Policy.</p> <p>Preparing a strategy for the wider area that goes beyond the odour buffer could be prepared in the future.</p>
No odour policy should be in place.	<p>A draft Policy provides additional context and guidance for how Council will assess appropriate land uses included as part of any proposed Outline Development Plans.</p> <p>Maintaining the status quo leaves Council vulnerable to pressure to allow inappropriate use to develop in the area</p>

<p>Current draft LPP contradicts vision for precinct.</p> <p>Note: This comment refers to the original LPP.</p>	<p>The new draft Policy recognises the existing uses on the ground and attempts to provide additional guidance relating to appropriate land uses to be included in any proposed Outline Development Plans.</p> <p>Preparing a strategy for the wider area that goes beyond the odour buffer could take into account the vision for the area.</p>
<p>Clarify 'public purposes' of MRS</p>	<p>The draft Policy attempts to clarify Council's position regarding the Public Purpose reservation.</p>
<p>Residential/dormitory key issues</p>	<p>The objectives and outcomes of the draft Policy provide a clear direction in how proposed residential or short-term accommodation uses will be assessed.</p> <p>In this instance, the draft Policy does not support residential/dormitory uses within the buffer zone.</p>
<p>Statutory body management of precinct</p>	<p>The scope of the draft Policy relates only to land use approvals related to Town Planning Scheme No. 2 and providing recommendations to the Western Australian Planning Commission.</p>
<p>Connecting to knowledge arc – light rail to sporting precinct?</p>	<p>These issues are beyond the scope of the draft Policy.</p> <p>Any strategy for the wider area would take these considerations into account.</p>

Additional detail about the outcomes of the workshop is included in Attachment 2.

The draft Policy is largely based on stakeholder input. It reflects what is already on the ground but also includes a more nuanced approach for dealing with uses depending on their distance from the plant.

## **Conclusion**

The draft Policy represents a more considered approach for determining acceptable land uses within the odour buffer area. The policy strikes a balance between acknowledging those uses that are currently on the ground with establishing a consistent approach for long-term decision-making for the area.


It is recommended that Council endorses the Draft Subiaco Wastewater Plant Odour Buffer Local Planning Policy for public advertising.

## **Attachments**

1. Draft Subiaco Wastewater Treatment Plant Odour Buffer Local Planning Policy.
2. Findings of 2011 Stakeholder Workshop.

<b>PD33.12</b>	<b>Draft North Hollywood Precinct Land Use Strategy</b>
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<b>Committee</b>	14 August 2012
<b>Council</b>	23 August 2012

<b>Applicant</b>	City of Nedlands
<b>Owner</b>	Various
<b>Officer</b>	Strategic Planning Department
<b>Director</b>	Peter Mickleson - Director Planning & Development Services
<b>Director Signature</b>	
<b>File ref.</b>	TPN/127-04
<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**

Council is requested to endorse the proposed draft North Hollywood Precinct Land Use Strategy for public consultation.

**Recommendation to Committee**

**Endorses the proposed draft North Hollywood Strategy for public consultation.**

**Strategic Plan**

- KFA 3: Built Environment
  - 3.3 Promote urban design that creates attractive and liveable neighbourhoods.
  - 3.5 Develop and implement precinct plans for key areas in the City.
  
- KFA 6: Community Engagement
  - 6.2 Encourage community participation in the City's decision making processes.

**Background**

Property Address: various  
 Lot Areas: ranging from 350 m<sup>2</sup> – 2229 m<sup>2</sup> (median approximately 1110 m<sup>2</sup>)

1. Location

This Strategy broadly relates to all of North Hollywood, with a particular focus on the North Hollywood Precinct Study area bounded by Verdun Street, Aberdare Road, Gairdner Drive and the Old Hollywood High School site.

2. North Hollywood Precinct Study

In late 2010, following a petition from residents in the area, North Hollywood was incorporated into the Hampden Broadway Precincts Study.

The precinct study included the area bounded by Aberdare Road in the north, Gairdner Street in the east, Verdun Street in the south and Kitchener Street in the west.

3. Consultation

A number of preliminary draft proposed development options were prepared for North Hollywood. These options were:

- development along the edge;
- incremental subdivision;
- comprehensive redevelopment; and
- retain status quo.

In May 2011, a survey was circulated amongst the community to provide residents the opportunity to consider options for North Hollywood to decide a preferred option.

4. Survey results

The survey results were inconclusive:

- each of the four options received twenty five percent support from those people completing the survey;
- analysis of the survey results identified that there did not appear to be any middle ground amongst the responses; and
- people were either considerably for or against each of the proposed draft development options.

5. North Hollywood Strategy

As consultation resulted in no clear direction the need for further study was identified. This was endorsed by Council at its meeting

held in July 2011 when it adopted a revised project plan for the North Hollywood Precinct Study.

To reflect the additional study required for this area, the project plan provided for the following outputs to be prepared:

- Land Use Planning Strategy
- Movement Strategy
- Placemaking Strategy

Each of these outputs have been combined into one (1) strategy for North Hollywood.

### Proposal Detail

#### 1. Strategy context

The draft North Hollywood Precinct Land Use Strategy represents a Council Strategy. It is intended to convey Council's long-term intent for the North Hollywood neighbourhood. It is intended that this document will set the context for consistent decision making for the neighbourhood.

#### 2. How the Strategy works

A key assumption of the Strategy is that it is important to resolve how the neighbourhood is likely to develop. Each of the four (4) development scenarios – status quo, edge, incremental, and comprehensive are dealt with in this document. The draft Strategy then recommends a development scenario for the neighbourhood that has an accompanying set of land use planning, movement and placemaking implications.

In this regard, the draft Strategy comprises of three (3) components – land use planning, movement, and placemaking. These components have been prepared in such a way to ensure that they are integrated with each other. To ensure a particular focus, they each have their own vision, objectives and outcomes.

The draft Strategy is also made up of three (3) parts, which are explained in the table below:

Parts	Content
Part 1: Background	<ul style="list-style-type: none"> <li>• Introduction.</li> <li>• Explanation on how to use the Strategy.</li> <li>• Description of North Hollywood.</li> <li>• A brief report on consultation already conducted.</li> </ul>

<p>Part 2: The Strategy</p>	<ul style="list-style-type: none"> <li>• Vision, objectives and outcomes for land use planning, movement and placemaking.</li> <li>• Discussion of each of the four development scenarios in a land use planning, movement and placemaking context.</li> <li>• Summary of the key points of each of the components.</li> <li>• Recommendation .</li> </ul>
<p>Part 3: Monitor and Review</p>	<ul style="list-style-type: none"> <li>• Explanation of how the draft Strategy will be monitored.</li> <li>• Description of how each component – land use planning, movement and placemaking will be reviewed.</li> </ul>
<p>Appendices</p>	<ul style="list-style-type: none"> <li>• Additional supplementary information.</li> </ul>

These elements are explained in more detail in the draft strategy.

### 3. Strategy recommendation

Each of the four development scenarios are dealt with in the discussion section of the draft Strategy. After weighing the benefits and costs, the draft Strategy recommends proceeding with the edge development scenario. This scenario allows for subdivision along Verdun Street and Aberdare Road, whilst retaining the existing large single residential lots in the remainder of the neighbourhood.

It is noted that the draft Strategy has been set up so that specific actions to achieve the recommended development scenario can be added or subtracted.

#### Consultation

Required by legislation: Yes  No

Required by City of Nedlands policy: Yes  No

Consultation type:

The draft Strategy will be advertised for public comment for 28 days.

Advertising will include one notice in the local press, letters being mailed to all landowners, residents and traders and information being published on the City's website.

Copies of the draft Strategy will be made available at the City's Administration Office and on the City's website.



## Legislation

There is no legislation that requires or guides the development of this strategy, but once adopted the strategy provides justification for actions, and is implemented through the scheme.

## Budget/financial implications

Budget:

Within current approved budget: Yes  No

Developing, adoption and management of the strategy can occur within the current approved budget.

Requires further budget consideration: Yes  No

Future budget considerations are only in relation to actions recommended in order to implement the Strategy over its life time.

Financial:

Only implementation of proposals within the Strategy will have financial implications for the City.

## Risk Management

The risk of not adopting a strategy for the development North Hollywood is that continual pressures for redevelopment will undermine the leafy large lot scale residential living character of the area.

## Discussion

### 1. A clear direction and consistent decision making

North Hollywood is in a state of flux with the expansion of the Queen Elizabeth II (QEII) Medical Campus and the redevelopment of the former Hollywood High School site. Given its large lots and traditional grid layout a clear direction and consistent decision making for the neighbourhood has become increasingly important.

The draft Strategy recommends a clear direction (edge development) and consistent decision making for making this happen. The recommendation is accompanied by movement and placemaking actions that focus on managing parking, traffic and upgrading the public realm.

2. Land use planning is central

The land use component is central to the draft Strategy and is the key to all other actions. Its development options are sequential which enables the strategy to be flexible to guide the development of the area into the long term.

3. Edge development

The draft Strategy retains the majority of the neighbourhood's large lots through the recommendation of pursuing edge development along Verdun Street and Aberdare Road. Placemaking actions are intended on involving the community and telling North Hollywood's story.

Implementing the recommended development scenario implies an ongoing long-term direction for the neighbourhood. It is also acknowledged that circumstances may change and that the recommendation may require revisiting.

Monitoring and review continues to be an important part of the strategy as it will ensure that its actions remain current, and can easily be adapted to accommodate changing circumstances.

### **Conclusion**


The draft North Hollywood Precinct Land Use Strategy provides an overriding development vision for the neighbourhood and adequate detail for directing action in the short, medium and long term.

This approach and its recommendations provide the area with the opportunity to build an identity based on its distinctive character.

It is recommended that the draft Strategy is endorsed for public consultation as the initial step toward final adoption.

### **Attachments**

1. Draft North Hollywood Precinct Land Use Strategy

<b>PD34.12 Sunset Hospital</b>	
<b>Committee</b>	14 August 2012
<b>Council</b>	28 August 2012
<b>Applicant</b>	City of Nedlands
<b>Owner</b>	City of Nedlands
<b>Officer</b>	Peter Mickleson - Director Planning & Development Services
<b>Director</b>	Peter Mickleson - Director Planning & Development Services
<b>Director Signature</b>	
<b>File ref.</b>	M12/16264
<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**

For Council to advise the State Government of matters it wishes to be considered with any future use of the former Sunset Hospital site.

**Recommendation to Committee**

**That the Council advises the Premier of Western Australia that the City of Nedlands wishes to have the following matters considered in any future use or development of the former Sunset Hospital site.**

1. **Land Use:**  
It is acknowledged that some form of alternative land use is likely to occur in order to allow the site to be available for public access and that this alternate land use should be sympathetic to the existing amenity of the site and the surrounding neighbourhood.
2. **Public Access:**  
It is important that public access is maintained within and through the site including to the reserve adjoining the Swan River. This would not preclude some parts of the site being closed to the public.
3. **Site Coverage:**  
Site coverage should not exceed that which currently exists in order to maintain the amenity of the site and the surrounding residential neighbourhood.

4. **Building Bulk:**  
In general terms the current building bulk, including maximum heights and setbacks, should not be increased. Council would prefer to see a reduction in building bulk by removing a number of the later additions which connect buildings. This would enhance the amenity of the site by providing view shafts between buildings and from the surrounding neighbourhood through the site.
5. **Heritage:**  
Any buildings that have significant heritage values either in their own right or in combination with other buildings on the site should be retained; and
6. **Traffic:**  
Allowing public access to and use of the site is likely to increase vehicle movements to and from the site. Any other non-public uses of the site should not increase traffic on surrounding streets by more than the vehicle movements that existed when the hospital was in operation.

### **Strategic Plan**

- KFA 1: Infrastructure
- 1.3 Provide and maintain quality passive and active recreational and leisure facilities and open space to meet community needs.
- 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**

Property Address: Birdwood Parade Dalkeith  
Zoning MRS: Public Purposes – Hospital  
Zoning TPS2: N/A  
Lot Area: 81320 m<sup>2</sup>

The former Sunset Hospital was closed over 20 years ago and has since that time been the subject of considerable community discussion as to its most appropriate future use. The full history since the hospitals' closure will not be repeated here other than to restate the last resolution of the City of Nedlands in relation to the future use or redevelopment of the site. On 13 December 2005 the Council resolved:

**That, with regard to the A Class Reserve known as the Sunset site, the Council advises the Premier of Western Australia that the Nedlands City Council's position is that the site be retained for the sole use of recreation, as it was created for that purpose in 1890, for the benefit of all citizens of Western Australia.**

It is understood that the State Government may make an announcement on its preferred future use for the site prior to the State elections in early 2013.

**Proposal Detail**

The State Government may soon be making an announcement on the future use of the former Sunset Hospital site. This report suggests a number of matters that the Council may have a view on and wish to bring to the attention of the State Government.

**Consultation**

Required by legislation:	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Required by City of Nedlands policy:	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

**Legislation**

N/A

**Budget/financial implications**

Budget:

Within current approved budget:	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Requires further budget consideration:	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

Financial:

Nil

**Risk Management**

N/A

**Discussion**

Given that the State Government is likely to make an announcement on its preferred future use for the site prior to the State elections in early 2013 the Council may consider it appropriate to also make known its preferred future use of the site.

To date comments from Council on behalf of the community have been of a general nature but with a common theme of the site being available for public use and access.

If the Council were of a mind to provide comments on the future use of the site it may wish to consider the following:

**Land Use:**

The Council may not wish to indicate a preferred use of the land in addition to that indicated in 2005 (reserve). However it may wish to acknowledge that some form of alternative land use is likely to occur in order to allow the site to be available for public access and that this alternate land use should be sympathetic to the existing amenity of the site and the surrounding neighbourhood.

**Public Access:**

The Council may consider it important that public access is maintained within and through the site including to the reserve adjoining the Swan River.

**Site Coverage:**

The Council may consider it appropriate to suggest that the coverage of the site not exceed that which currently exists in order to maintain the amenity of the site and the surrounding residential neighbourhood.

**Building Bulk:**

Council may wish to indicate a maximum limit on building bulk, particularly height and distance from boundaries. In general terms the current building bulk, including maximum heights and setbacks, should not be increased. Council may prefer to see a reduction in building bulk by removing a number of the later additions which connect buildings. This would enhance the amenity of the site by providing view shafts between buildings and from the surrounding neighbourhood through the site.

Alternatively, if floor space on the site is reduced with the removal of peripheral buildings of no heritage value, these could be replaced with new buildings of no greater floor space.

**Heritage:**

Council may wish to encourage the retention of any buildings that have significant heritage values either in their own right or in combination with other buildings on the site.

**Traffic:**

Council may wish to acknowledge that in allowing public access to and use of the site some increase in vehicle movements may be necessary. However any other non-public uses of the site should not increase traffic on surrounding streets by more than the vehicle movements that existed when the hospital was in operation.

The Metropolitan Region Scheme (MRS) zones the former Sunset Hospital site as a Reserve for a Public Purpose – Hospital. The land has no zoning under Town Planning Scheme No. 2 (TPS2), but is set aside as a MRS Reserve. The City of Nedlands TPS2 therefore is not in a position to impose planning controls over development on this site as the City is not the approving authority and will simply be asked to comment by the approving authority – the Western Australian Planning Commission (WAPC).

It would be possible to develop a Local Planning Policy (LPP) which details the matters Council would like the approving authority to consider when determining a development application. However the value in doing this needs to be questioned when ultimately this Council will not be making the decision. Council would be asked for comment on any application by the approving authority and could simply forward a copy of this recommendation as a statement of Councils view on the matter (assuming it is adopted).

Further Council would need to carefully consider what resources it is prepared to allocate to developing a robust LPP (assuming some of the matters would require further investigation) given it has previously expressed a desire not to get involved in State Planning matters due to a perceived inability to influence the outcomes.

### **Conclusion**

Given that it is likely an announcement on the future use of the former Sunset Hospital will be made soon, Council may wish to signal to the State Government any matters it wishes to see addressed with the future use of the site.

### **Attachments**


Nil





<b>PD35.12</b>	<b>Review of the verge parking trial, Smyth Road between Monash Avenue and Verdun Street.</b>
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<b>Committee</b>	14 August 2012
<b>Council</b>	28 August 2012

<b>Applicant</b>	City of Nedlands
<b>Owner</b>	City of Nedlands
<b>Officer</b>	Luke Marsden – Parking Strategy Coordinator
<b>Director</b>	Peter Mickleson – Director Planning & Development Services
<b>Director Signature</b>	
<b>File ref.</b>	SM1-03
<b>Previous Item No's</b>	Item 7.6 – 2 August 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 provide Council with the outcome of the community consultation relating to the six (6) month parking trial on Smyth Road between Monash Avenue and Verdun Street and the various options for off street parking, including the recommended parking option.

**Recommendation to Committee**

**Council**

1. **approves that the six (6) month parking trial restrictions become permanent in:**
  - a. **Smyth Road from Monash Avenue to Verdun Street which provides for two (2) hour parking restriction “2P Monday to Friday 8 am to 5 pm, Verge only” on the eastern side of Smyth Road and that “No Verge Parking” on the western side of Smyth Road; and**
  - b. **Langham Street, between Gordon Street and Karella Street, which provides for two (2) hour parking, “2P Monday to Friday 8 am – 5 pm” restriction on the east side and “No Parking, Monday to Friday 8 am – 5 pm” on the west side;**
2. **changes to the respective roads be made to facilitate the parking in accordance with attachment 2 and attachment 3; and**

3. **refers all project costs for the recommended parking proposal to the 2013/14 budget for consideration;**

### **Strategic Plan**

- KFA 1 Infrastructure
  - 1.2 Design and construct infrastructure in accordance with Australian standards and guidelines.
  - 1.4 Develop and implement an integrated transport strategy for the City which promotes access to safe and integrated transport options.
  
- KFA 6 Community Engagement
  - 6.2 Encourage community participation in the City's decision making process.

### **Background**

As a result of the redevelopment works at the Queen Elizabeth the Second (QEII) hospital, there has been a continuous reduction in the amount of on-site parking at the hospital for staff. The consequence of this is that other areas within close proximity of the hospital are under pressure for all day parking. Among these areas is the verge on the east side of Smyth Road between Verdun Street and Monash Avenue.

As a result of all day parking the area is no longer available to Hollywood Primary School parents and people associated with the school, and members and users of the various sporting facilities at Highview Park who have informally used this area for short term parking including drop off/pick up of school children.

The issues associated by all day parking were confirmed by parking observations assessed by Administration on 12 July 2011 at 11:45 am where it was found that:

- Approximately 52 vehicles were long term parking (in excess of 4 hours). It is assumed that they were predominantly by QEII staff and contractors to the QEII site during construction;
- Vehicles were not only parked in an ad-hoc fashion, but the entire nature strip (verge) area was occupied between 8 am and 5 pm Monday to Friday.

The former Traffic Management Committee instructed that a parking trial be implemented and consultation is undertaken with the community, and formalised parking options are investigated for implementation at the completion of the trial.

### **Key Relevant Previous Decisions**

*2 August 2011– Item 7.6:*

Traffic Management Committee recommended:

1. Administration be instructed to implement a two (2) hour parking restriction (2P) 8 am to 5 pm, Monday to Friday “Verge only” on the eastern side of Smyth Road from Monash Avenue to Verdun Street and that no verge parking be permitted on the western side for a trial period of six (6) months;
2. Instruct Administration to undertake community consultation with residents and stakeholders within the area including hospital staff; and
3. Investigate options for formalised street and off street parking on Smyth Road.

### **Proposal Detail**

Based on the feedback received, Administration decided the need to design formalised parking options.

Four (4) options were investigated and are proposed to Council to address the nature strip on Smyth Road. Of those options, only two (2) include formalised parking bays.

The drawings are preliminary concepts only, and while both of the formalised parking options are suitable, the preferred layout will be the one that is most cost effective.

Council is to instruct Engineering Services to allocate appropriate funds for consideration in the 2013/14 budget on the most cost effective option.

Based on the feedback received, Administration decided the need to address the spill over parking as a result of introducing the two (2) hour restriction on the verge in Smyth Road.

It is also proposed to introduce parking restrictions in Langham Street between Gordon Street and Karella Street.

### **Consultation**

Required by legislation: Yes  No

Required by City of Nedlands policy: Yes  No

Consultation type: Dates

The City undertook a letter drop to the community on 20 April 2012 for a period of five (5) weeks.

The City sent out a total of 320 letters and received a total of 43 responses. Twenty six (26) submissions were in support of retaining the parking restrictions, 11 submissions were in support, subject to the layout paved or bitumen and 6 submissions were in opposed to the parking restriction/no parking on the nature strip (verge).

The following table is a summary of the comments received and officers' comments from the community consultation.

<b>All feedback</b>	
Summary of comments received	Officers technical comment
The grass verge is not maintained very well. Request for the area to be designed with street trees.	Administration has provided formalised conceptual parking options to create an attractive streetscape.
Existing parking is dangerous to pedestrians and cyclists as there is no separation between footpath and road.	Noted. It is expected that formalised parking will address this issue.
The backing out of parked cars on to a busy road is dangerous.	Adequate design of formalised parking area can mitigate risk.
Ad-hoc parking.	Proposed parking options will formalise the area and remove ad-hoc parking.
Restricted parking allows better access to school and sport facilities for local (Nedlands) residents.	Agreed and provides support for time restricted parking.
The 2 hour parking restriction is essential for safe access to the primary school.	Agreed.
Previous parking restriction was no parking not unrestricted.	Noted, however prior to the trial, the area did not have any restrictions and was predominantly used by users of the bowling club and school users.
Request for Smyth Road to include cycle lanes.	Noted, to be considered as part of the Integrated Transport Strategy.

**Legislation**

- *Local Government Act 1995*
- *City of Nedlands Parking and Parking Facilities Local Law 2002*

**Budget/financial implications**

Budget:

- Within current approved budget:                      Yes                       No
- Requires further budget consideration:                      Yes                       No

Financial:

- Option one (1) and two (2) require budget consideration as part of 2013/14 budget.

**Risk Management**

The risk of not taking the action under this proposal is that users of the sporting facilities and school will continue to be disadvantaged, and the nature strip (verge) will continue to deteriorate as vehicles use it in an uncontrolled manner that is unsafe.

**Discussion**

Following the outcome of the community consultation for the area (including Kinninmont Avenue and Langham Street) the design options as discussed above were generated.

The following table outlines the advantages/disadvantages of each option.

1

<b>Status Quo</b>	
Advantage	Disadvantage
Inexpensive.	Nature strip will continue to look untidy and detract from the area.
	Ad-hoc parking on the nature strip will continue.
	No separation between shared path and parking bays.

2

<b>No parking – nature strip to be planted out</b>	
Advantage	Disadvantage
Streetscape is improved.	Ongoing cost for maintenance of planting.
	Additional pressure on existing parking within close proximity.
	Existing users disadvantaged.
	Requires budget allocation 2013/14.

3

<b>30 Degree parking bays</b>	
Advantage	Disadvantage
Increased safety due to separation between shared path and parking bays.	Prior to the trial, the area did not have any restriction and was predominantly used by the bowling club and school users.
Vehicles more likely to reverse out with only 1 conflict point.	Difficulty accessing parking bays travelling north of Monash Avenue.

<b>30 Degree parking bays</b>	
Advantage	Disadvantage
Streetscape improved with landscaping around bays.	Increased vehicle use on Smyth Road will put additional pressure on safety at peak times.
	Requires budget allocation 2013/14.

**4**

<b>Parallel parking bays</b>	
Advantage	Disadvantage
Creates the best visibility for motorists exiting the parking bays (formalised).	Least amount of parking bays available.
Vehicles can exit the parking bays travelling forward.	Accessibility to the parking bays can be bidirectional from vehicles.
Streetscape improved with landscaping around bays.	Requires budget allocation 2013/14.
	Conflict where motorists wish to reverse into parking bays (volume of traffic).

Whilst there are advantages/disadvantages associated with each option options three (3) or four (4) are considered to be the most viable options given the current requirements for the area.

Additionally, the community consultation has confirmed that there is spill over parking as a result of introducing the two (2) hour restriction on the verge in Smyth Road as follows:

- Kinninmont Avenue between Karella Street and Carrington Street; and
- Langham Street between Karella Street and Gordon Street.

In both streets the complaints have been in regards to all day parking whilst the trial was undertaken.

Following an assessment of the complaints, parking counts were undertaken which concluded that between zero (0) and two (2) cars were parked alongside the kerb on Kinninmont Avenue between Karella Street and Carrington Street. While this should not warrant introducing a parking restriction immediately, ongoing monitoring of parking in the area may indicate that it would be appropriate to impose restrictions in the future.

Administration has received a number of complaints from residents in regards to the informal kerbside parking in Langham Street between Karella Street and Gordon Street which focus on the following:

- Blocked access to residence;
- Blocked access within the carriageway due to vehicles parking too close on both sides;
- Reduced visitor parking; and
- Adjacent streets have a combination of time restricted parking on one side and no parking on the opposite side. Langham Street has neither.

Parking inspections of the area have indicated that there is a high occupancy rate of parking in Langham Street between the hours of 9 am and 5 pm.

As there are currently no restrictions within this area and Langham Street (between Karella Street and Gordon Street) is the only street east of Smyth Road and north of Stirling Highway in the Hollywood area that does not have timed parking restrictions. It is recommended that short term parking restrictions are imposed.

It is acknowledged that parking restrictions in Langham Street will result a shift to another street nearby.

This measure aims to solve a short term problem and the City will address long term parking issues with a comprehensive strategy.

As the redevelopment project at the QEII site is not expected to be completed until 2015, parking is expected to become increasingly sought after. Administration will continue to work together with officers from North Metropolitan Health Board NMHB to address concerns relating to traffic, access and parking as generated from the QEII site.

### **Conclusion**

Timed parking and "No Parking" be introduced immediately on a permanent basis in Smyth Road between Monash Avenue and Verdun Street with options three (3) and four (4) to be progressed. Budget allocations are provided in the 2013/14 budget for the most cost effective option.

Engineering Services to be advised to allocate appropriate funds into the 2013/14 budget on the preferred option.

Council approves the permanent parking restriction in Langham Street (as per attachment 3).


### **Attachments**

1. Various options for the nature strip, Smyth Road, Nedlands
2. Proposed parking restriction Smyth Road, Nedlands
3. Proposed parking restriction Langham Street, Nedlands



<b>PD36.12</b>	<b>Review of the Proposed Local Law Relating to Parking and Parking Facilities.</b>
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<b>Committee</b>	12 June 2012
<b>Council</b>	26 June 2012

<b>Applicant</b>	City of Nedlands
<b>Owner</b>	City of Nedlands
<b>Officer</b>	Peter Mickleson – Director Planning & Development Services
<b>Director</b>	Peter Mickleson – Director Planning & Development Services
<b>Director Signature</b>	
<b>File ref.</b>	LEG/003-07/01
<b>Previous Item No's</b>	PD21.12 – 26 June 2012 14.3 – 27 April 2011 T24.10 – 14 December 2010 13.2 - 22 June 2010 7.7 - 18 May 2010 CP41.09 - 13 October 2009 14.2 - 11 August 2009
<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 approve the proposed Parking and Parking Facilities Local Law (Local Law) (refer to attachment 1).

**Recommendation to Committee**

**Council approves the proposed Parking and Parking Facilities Local Law as shown in attachment 1 in accordance with the statutory requirements, Part 3, Division 2, section 3.12 of the *Local Government Act 1995*.**

**ABSOLUTE MAJORITY REQUIRED**

**Strategic Plan**

- KFA 5: Governance
  - 5.6 Ensure compliance with statutory requirements and guidelines.
- KFA 6: Community Engagement
  - 6.2 Encourage community participation in the City's decision making processes.

- KFA 7: Economic Development  
7.2 Develop and implement a City parking strategy.

### **Background**

The *Local Government Act 1995* Part 3, Division 2 Section 3.16 (1) stipulates that within a period of eight (8) years from the day when a Local Law commenced or a report of a review of the Local Law was accepted under this section, as the case requires, a local government is to carry out a review of the Local Law to determine whether or not it considers that it should be repealed or amended.

The City's current Local Law in this regard entitled "Local Law Relating to Parking and Parking Facilities" was last reviewed on 23 April 2002 and was gazetted on 8 May 2002.

At the ordinary Council meeting held in August 2009, a need to amend the existing Local Law to control parking on nature strips (verge) in instances that are deemed to be dangerous was identified, which prompted the review of the existing Local Law.

### ***Key Relevant Previous Decisions***

Numerous decisions in relation to the proposal law have been taken since 2009 which resulted in the proposed Local Law for Parking and Parking Facilities (refer to attachment 2) that was considered at the Council meeting of 26 June 2012 – PD21.12.

A summary of decisions leading up to the June 2012 decision is attached as per attachment 3.

At the June 2012 meeting it was determined that the Local Law be referred back to Administration for redrafting to remove all provisions which permit or allow the introduction of pay for use parking.

There is not a definition for "pay for use parking". Administration has therefore taken a pragmatic approach and interpreted this decision to mean that reference to ticket issuing machines and the ability to install ticket issuing machines is removed from the proposed Local Law considered in June (as per attachment 2) to create the proposed Local Law document currently under consideration (refer to attachment 1).

Council made it clear at its June 2012 meeting that including any reference to ticket issuing machines made it simpler for a subsequent decision of Council to have paid parking introduced.

## Proposal Detail

The proposed draft Local Law currently under consideration (refer to attachment 1) varies from the proposed draft Local Law that was considered in June 2012 (as per attachment 2) only to the extent that all references to ticket issuing machines have been removed.

Due to the time that has elapsed since the commencement of this process there are a number of variations between the Local Law currently under consideration and the draft Local Law that was sent to the Department of Local Government. Except for reference to ticket issuing machines the Local Law currently under consideration, as with the Local Law considered in June 2012, includes the following variations:

### 1. Event Parking

Administration has changed the heading of clause 4.13 "Special Event Parking" to "Event Parking".

This change was prompted by the recommendation of the Joint Standing Committee Delegated Legislation (JSCDL) as advised on the Parliament's website in relation to the City of Perth's and Town of Claremont's special event parking clause. The details are shown in pages 10-13 in the JSCDL's Report 44, annual report 2010, dated February 2011 – special events.

Based on the information provided the term "Special Events" has a very specific meaning and is applied in the following contexts:

- a. According to the information published by the JSCDL in relation to "Special Event Parking" if the terms are included in a Local Law the exact dates & times of "Special" events must be specified in the Local Law so that people can comply with the exact provisions, and the authorised officers can enforce the provisions exactly as worded in the clauses of the Local Law.
- b. Alternatively under the *Liquor Control Act 1988*, only the Minister (responsible for that Act) can declare an event to be a "Special" event - which attracts very large crowds (for example, Skyworks, an open public event where approximately 300,000 people attend) and the issues of misbehaviour/nuisance towards others (assault & battery due to influence of alcohol or to binge drinking etc) and issues of causing harm/injury to others require strong police presence (Commissioner of Police's "Special" orders). Therefore, law and order issues in "Special" events are enforced underwritten legislation (Acts of Parliament), not local laws.

By comparison to City of Perth events, the City of Nedlands does not have "Special" events. Therefore, the word "Special" is required to be deleted.

However the municipality has local festivities, garden fetes, and carnivals and borders the Royal Agricultural Show which does not attract such a large scale of crowds, but still requires some practical consideration of extensive parking areas to accommodate a temporary increase from the usual number of vehicles required to be accommodated.

**2. Averment on complaint as to clause 1.5(2) agreement**

The City has made changes to the proposed Local Law by removing clause 10.3 - "Averment on complaint in relation to clause 1.5(2) agreement" as advised by the JSCDL.

This change is based on the changes requested by the JSCDL from the Shire of Bruce Rock Parking and Parking Facilities Local Law as well as WALGA's pro forma as shown in pages 22-24, Report 16 (May 2006) of the JSCDL's document Local Government Reports & Undertakings which was obtained from the Parliament's website. For details of this decision refer to attachment 4.

On this basis it is no longer a requirement for a Local Government to provide proof of an agreement between the Local Government and a private party. All that is required is an agreement between the Local Government and a property owner if that property owner wishes to use the Local Law in relation to a private car park. This provision is provided by way of Clause 1.5(2).

If a member of the public wishes to view that agreement they can request it through Freedom of Information (FOI), alternatively if it is required in court then the City will provide it and there should be no reason to withhold an agreement such as this.

**3. Changes as advised by the Department of Local Government for the Joint Standing Committee Delegated Legislation (JSCDL)**

Grammatical and punctuation errors have been corrected in the final drafts of the proposed Local Law and the following updates to the format have been made in order to ensure that the presentation of this Local Law is consistent with other local laws in the state.

These include:

- The wording for the enacting formula has been updated;
- Definitions need not be in a set of double quotation marks, but italicize the term being defined;
- Remove the heading "Object" from clause 1.2 and replace with "Purpose and effect" because the scope of the Local Law is limited to compliance within the district of the individual local government;

- Delete the reference “the Standards Association of Australia” and insert reference to “Standards Australia”; and
- Removal of “ticket issuing machines” and “ticket machine zones” reference.

**4. Removing provision for ticket issuing machines**

While the Local Law considered in June 2012 incorporates safeguards to limit the ability to install ticket issuing machines on public land, all references to these clauses have been removed from the Local Law currently under consideration.

**5. Adjoining Owners charging a fee for providing parking spots**

A recent issue has come to the attention of administration whereby residents are “renting” the nature strip (verge) in front of their property to third parties. A web-site exists to facilitate this practice which identifies nature strip (verge) that are available for “rent” and advertises a cost per day. This practice is also occurring within the residential property boundaries and administration will be suggesting that a new Local Planning Policy is developed to address this issue.

In terms of this Local Law an additional clause 5.14 (4) has been added. This clause prohibits an owner or occupier of premises adjacent to the verge/nature strip from obtaining payment from motorists in exchange for allowing them to park on the nature strip (verge) adjoining the premises.

**Consultation**

There has been no further public consultation other than that for the Local Law that was presented to Council in June 2012. All comments below therefore relate to the proposed draft Local Law considered in June 2012 (refer to attachment 2)

Required by legislation: Yes  No

Required by City of Nedlands policy: Yes  No

Consultation type:	Dates:
The West Australian Newspaper	5 December 2009
Post	5 December 2009
Letter to businesses and organisations within the City’s catchment	18 December 2009
Western Suburbs Weekly	22 January 2010
Post	30 January 2010
Councilors’ workshop	25 October 2010
The West Australian Newspaper	5 February 2011
Post	5 February 2011
Letter to Minister for Local Government	22 March 2011
Councilors’ workshop	30 June 2011
Strategic Planning workshop	15 March 2012

The draft Local Law was advertised from 5 December 2009 (The West Australian and The Post) initially for a period of six (6) weeks. Copies were made available at both City libraries, Administration Office and on the City's web site.

As the advertising period included the Christmas/New Year period and to allow that further submissions could be made, the review period was extended 1 March 2010. A further round of advertising in the media was done (Western Suburbs Weekly on 22 January 2010, Post on 30 January 2010).

Three hundred and twenty six (326) letters were also sent out to businesses and organisations within the City's catchment requesting comments/feedback pertaining to the Local Law. Submissions closed on 18 January 2010 and the City received 12 submissions. From the extended advertising period the City received a further three (3) more submissions increasing the total number of submissions received to 15 with one (1) late submission.

Additional notification required from legislation was also done:

1. As a result of Councils decision on 22 June 2010 to repeal the Local Law, the City as required under the *Local Government Act 1995*, Part 3, Division 2, s. 3.12 (3) is to undertake statewide public notice that the local government proposes to make a Local Law. This was undertaken on 5 February 2011 with submissions closing on 25 March 2011.
2. The City provided a copy of the proposed Local Law and a copy of the advertising notice to the Minister which received by the Minister on 22 March 2011.

The comments received from the advertising period focus on three (3) key areas:

<b>Safety when parking on the nature strip (verge)</b>	
Summary of comments received	Officers technical comment
Support for sub clause (4) (refer Council Resolution item 14.2 11 August 2009) nature strip (verge) parking where there is an obstruction to sight lines.	Not supported by administration on the basis of legal opinion.

<b>Safety when parking on the nature strip (verge)</b>	
Summary of comments received	Officers technical comment
<p>Permanently parked cars on nature strip (verge) block the view of on-coming traffic. Motorists cannot see when backing out and this is very dangerous. All residential nature strip (verge) parking should be limited to a one (1) hour limit and the hours of 6 pm – 8 am and restricted where it obstructs the view of vehicles entering a carriageway on a crossover.</p>	<p>The City of Nedlands allows a large number of residents to park on the nature strip adjacent to their property. This is consistent with neighbouring councils i.e. Town of Claremont, City of Subiaco, Town of Cambridge and Town of Cottesloe. A restriction of this nature would require a shift in resident behaviour and additional enforcement resources and is not supported.</p>
<p>In support of status quo, with regards to the nature strip (verge) parking</p>	<p>Section 5.14 Stopping on a nature strip (verge) as per the proposed Local Law has been maintained in its current form.</p>

<b>Signs</b>	
Summary of comments received	Officers technical comment
<p>City of Nedlands should adhere to AS 1742.11-1999, as a guide for the development or marking of signs in order that signs are generally similar and compatible with other signage in the Western Suburbs, the state and the nation.</p>	<p>AS 1742.11-1999 provides for guidelines to reference should the local government wish to do so. The City has modeled clause 2.4(3) on the City of Kalgoorlie-Boulder as advised by the Department of Local Government.</p>
<p>It is unclear what a "bicycle parking" sign is. I assume this clause is attempting to prevent parking in on road cycle lanes, and therefore "bicycle parking" should be amended to "bicycle marking" or similar.</p>	<p>A bicycle parking sign refers to a sign as provided within the Road Traffic Code 2000 Part 12, division 6 r.169. Its purpose is to stop vehicles parking on a length of carriageway to which a "bicycle parking" sign applies. This is not related to a bicycle lane unless expressly stated.</p>
<p>Clause 4.1 Restrictions on parking in particular areas (5). This clause and related clauses should allow for specific categories of authorised persons. For example the introduction of parking restricted only to surf life saving patrols and club members could be restricted to an area designated by a sign.</p>	<p>There is no requirement to provide specific categories of authorised persons within the text of this Local Law. The local government has the ability to determine who is authorised to park in an area which may or may not be stated by a sign.</p>

<b>Ticket Issuing Machines</b>	
Summary of comments received	Officers technical comment
Oppose the introduction of paid parking/ticket issuing machines including a petition of 48 signatories.	Provisions for ticket machine parking have been removed from the proposed Local Law currently being considered (refer to attachment 1). It had previously been included to facilitate the ability to charge for parking on privately owned land i.e. Hollywood Hospital. This presented a balanced approach to facilitate parking facilities on privately owned land while providing safeguards whereby paid parking can only be implemented to public land through a Council resolution.
Support the introduction of paid parking/ticket issuing machines including a petition of 16 signatories.	As above.

### Legislation

- *Local Government Act 1995*: Part 3, division 2, section 3.12(4) required that after the last day for submissions in relation to a proposal to make a Local Law, a local government is required to consider any submissions made and may make the Local Law as proposed or may make a Local Law that is not significantly different from what was proposed.

The City is required to make a Local Law by absolute majority.

- *City of Nedlands Parking and Parking Facilities Local Law 2002*

### Budget/financial implications

Budget:

Within current approved budget: Yes  No

Requires further budget consideration: Yes  No

Financial:

- Legal costs to review documentation of the proposed Local Law; and
- Costs for advertising in the *Government Gazette*.



## **Risk Management**

There are a number of risks associated with various aspects of the Local Law:

### **Status of 2002 Local Law**

The *Local Government Act 1995* Part 3, division 2, section 3.16 requires that a periodic review of local laws is undertaken within a period of eight (8) years from the day when a Local Law commenced or a report of a review of the Local Law was accepted under this section. The 2002 Local Law is outdated and no longer meets the City's requirements. If no new Local Law is made then the City could be subject to questions of legal validity from the Department of Local Government or in court should any infringement be challenged.

### **Process Errors**

Council is required to make a Local Law by absolute majority. If this requirement has not been satisfied or the Local Law that is made is significantly different from what was first proposed, a risk exists that the entire process, including advertising and public consultation, must recommence.

### **Removing reference to ticket issuing machines**

Administration believes there is a low risk in removing all reference to ticket issuing machines. This was a specific matter that the community commented on and Council must weigh up the appropriateness, or not, of including or deleting references to it in the Local Law.

## **Discussion**

The matters relating to the change in name from "special events" to "events", "averment" and the formatting changes are legislative requirements and therefore are supported. There are also no further comments required in relation to the matters of signs raised during the consultation period.

The other matters merit the following further comments:

### **Removing provision for ticket issuing machines**

Removal of all references to ticket issuing machines in the proposed Local Law currently under consideration (refer to attachment 1) means that if the Council subsequently wished to introduce paid for use parking an amendment to the Local Law would be required.

Notwithstanding that it is possible to make amendments during the life of a Local Law; a Local Law adopted in this year can be expected to apply until 2020. It is therefore important that the document is robust and able to address current as well as future situations.

There is currently one privately operated parking station within the City's district which regulates parking by way of ticket issuing machines. However it is not necessary to rely on a Local Law for private parking stations to operate.

**Adjoining Owners charging a fee for providing parking bays**

The latest refinement of the addition of clause 5.14 (4) is to address a recent commercial opportunity being advertised to property owners in some areas. This opportunity invites property owners to let parking bays available to them to visiting motorists in exchange for payment. This practice has the potential to affect both privately owned land and public land such as nature strip (verge). While the Local Law already provides the legislative basis to allow the City to take action on private land, it is recommended that a new clause 5.14(4) is included to prohibit adjoining owners from charging third parties for parking on the nature strip (verge).

**Sight lines for safety when parking on nature strip (verge)**

The issues raised in the relation to safety concerns surrounding nature strip parking and the resulting request from Council to explore incorporating a generic clause regarding sight lines were evaluated. Legal advice indicates that any generic clause regarding sight lines on nature strips would have significant enforcement difficulties. It was decided not to include such provisions in the proposed Local Law.

**Process**

The final steps in the process below are what the City is required to undertake for the review of the Local Law:

1. Council is required to make the Local Law by resolution by absolute majority (current stage);
2. The adopted Local Law is signed and sealed by the Mayor and Chief Executive Officer;
3. A copy of the adopted Local Law is published in the *Government Gazette*;
4. A copy of the gazetted Local Law is forwarded to the Minister of Local Government as well as any other Minister that administers the *Local Government Act 1995* under which the Local Law is made;
5. A copy of the Local Law, the Explanatory Memorandum, Explanatory Memorandum checklist and Council minutes is forwarded to the Committee Clerk of the of the Joint Standing Committee on Delegated Legislation (JSCDL) ; and
6. The Local Law adopted by Council by absolute majority is advertised by local public notice outlining the title, purpose and effect, date the Local Law comes into operation and advising that copies may be inspected or obtained from the office of the local government.

## **Conclusion**

As a result of the earlier decision of Council all reference to ticket issuing machines have been removed from the proposed Local Law under consideration (refer to attachment 1). All other changes that have been made as the result of consultation and other feed back since the inception of this process are considered to be appropriate.

A new clause has been added to deal with a new issue of "renting" the nature strip (verge) outside residential properties.

The proposed Local Law under consideration (refer to attachment 1) is therefore recommended for approval.

## **Attachments**

1. City of Nedlands proposed Local Law.
2. City of Nedlands proposed Local Law (considered at Council on 26 June 2012)