



City of Nedlands

Agenda

Special Council Meeting

11 September 2012

Dear Council member

A Special Meeting of the City of Nedlands is to be held on Tuesday 11 September 2012 in the Council chambers at 71 Stirling Highway Nedlands commencing at the conclusion of the Committee Meeting for the purpose of rescinding the Council decision of 28 August 2012 in relation to PD31.12 No. 97 (Lots 619-620) Tyrell Street, Nedlands – Proposed Retrospective Side Fence to Single House and replacing it with an alternate decision.

Michael Cole
Acting Chief Executive Officer
7 September 2012

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City of Nedlands

Notice of a special meeting of Council to be held in the Council chambers, Nedlands on Tuesday 11 September 2012 at the conclusion of the Committee Meeting for the purpose of rescinding the Council decision of 28 August 2012 in relation to PD31.12 No. 97 (Lots 619-620) Tyrell Street, Nedlands – Proposed Retrospective Side Fence to Single House and and replacing it with an alternate decision.

Special Council Agenda

Declaration of Opening

The Presiding Member will declare the meeting open at the conclusion of the Committee Meeting and will draw attention to the disclaimer below.

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

Present and Apologies and Leave Of Absence (Previously Approved)

Leave of Absence None
(Previously Approved)

Apologies None as at distribution of this agenda.

Disclaimer

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amended) and that the express permission of the copyright owner(s) should be sought prior to their reproduction.

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1. Public Question Time

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

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

2. Addresses by Members of the Public

Addresses by members of the public who have completed Public Address Session Forms to be made at this point.

3. Disclosures of Financial Interest

The Presiding Member to remind Councillors and Staff of the requirements of Section 5.65 of the *Local Government Act* to disclose any interest during the meeting when the matter is discussed.

A declaration under this section requires that the nature of the interest must be disclosed. Consequently a member who has made a declaration must not preside, participate in, or be present during any discussion or decision making procedure relating to the matter the subject of the declaration.

However, other members may allow participation of the declarant if the member further discloses the extent of the interest. Any such declarant who wishes to participate in the meeting on the matter, shall leave the meeting, after making their declaration and request to participate, while other members consider and decide upon whether the interest is trivial or insignificant or is common to a significant number of electors or ratepayers.

4. Disclosures of Interests Affecting Impartiality

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

Councillors and staff are required, in addition to declaring any financial interests to declare any interest that may affect their impartiality in considering a matter. This declaration does not restrict any right to participate in or be present during the decision-making procedure.

The following pro forma declaration is provided to assist in making the disclosure.

"With regard to the matter in item x..... I disclose that I have an association with the applicant (or person seeking a decision). As a consequence, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly."

The member or employee is encouraged to disclose the nature of the association.

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

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

- 6. Notice of Motion to change Council Decision**
- 6.1 PD31.12 No. 97 (Lots 619-620) Tyrell Street, Nedlands – Proposed Retrospective Side Fence to Single House**

Council

- 1. rescinds its decision of the 28 August 2012 in relation to PD31.12 No.97 (Lots 619-620) Tyrell Street, Nedlands – Proposed Retrospective Side Fence to Single House; and**
- 2. replaces it with the following:**

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 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.**

Supporting Comment

The reason for changing this decision is that the Council Resolution does not adequately cover all the grounds for refusal.

Administration Comment

The Administration generally supports the Notice of Motion, however there is an unresolved aspect, as discussed below.

As no new information has been presented, the Administration's recommendation to Council remains as per item PD31.12 of the 28 August 2012 meeting.

However, the notice of motion before Council does not entirely replicate the Administration's recommendation, as reason No. 3 does not cover the issue of whether Perspex is a listed material within the fencing local law. Whilst it is agreed that the variation clause should be included as a reason for refusal, to also include the listed materials clause would make this decision more robust and defensible in the State Administrative Tribunal.

Accordingly, the Administration supports the motion, with reason No. 3 to read as follows:

- 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.**

Council Resolution from 28 August 2012

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 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;**
- 2. 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;****
- 3. 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**
- 4. 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.**

Committee Recommendation / Administration Recommendation

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.

Declaration of Closure

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



Michael Cole
Acting Chief Executive Officer