



City of Nedlands

Minutes

Special Council Meeting

11 September 2012

ATTENTION

These minutes are subject to confirmation.

Prior to acting on any resolution of the Council contained in these minutes, a check should be made of the Ordinary Council Meeting next following this meeting to ensure that there has not been a correction made to any resolution.

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City of Nedlands

Minutes of a special meeting of Council held in the Council chambers, Nedlands on Tuesday 11 September 2012 at 8.56 pm 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.

Declaration of Opening

The Presiding Member declared the meeting open at 8.56 pm and drew 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)

Councillors	His Worship the Mayor, R M Hipkins	(Presiding Member)
	Councillor K E Collins	Coastal Districts Ward
	Councillor N B J Horley	Coastal Districts Ward
	Councillor L J McManus	Coastal Districts Ward
	Councillor I S Argyle	Dalkeith Ward
	Councillor W R Hassell	Dalkeith Ward
	Councillor S J Porter	Dalkeith Ward
	Councillor R M Binks	Hollywood Ward
	Councillor B G Hodsdon	Hollywood Ward
	Councillor T James	Melvista Ward
	Councillor N Shaw	Melvista Ward

Staff	Mr M Cole	Acting Chief Executive Officer
	Ms D Blake	Acting Director Corporate & Strategy
	Mr P Mickleson	Director Planning & Development Services
	Mr A Melville	Acting Director Technical Services
	Ms M Granich	Acting Director Community & Organisational Development
	Ms N Borowicz	Executive Assistant

Public There were 4 members of the public present.

Press The Post Newspaper representative.

Leave of Absence (Previously Approved) Nil.

Apologies	Councillor K Walker	Hollywood Ward
	Councillor M L Somerville-Brown	Melvista Ward

Absent Nil.

Disclaimer

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In particular and without derogating in any way from the broad disclaimer above, in any discussion regarding any planning application or application for a licence, any statement or intimation of approval made by a member or officer of the City of Nedlands during the course of any meeting is not intended to be and is not to be taken as notice of approval from the City of Nedlands. The City of Nedlands warns that anyone who has any application lodged with the City of Nedlands must obtain and should only rely on written confirmation of the outcome of the application, and any conditions attaching to the decision made by the City of Nedlands in respect of the application.

The City of Nedlands wishes to advise that any plans or documents contained within this agenda may be subject to copyright law provisions (*Copyright Act 1968, as 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.

There were no public questions.

2. Addresses by Members of the Public

Dr R Oates, 101 Tyrell Street, Nedlands
(spoke in support of the motion)

3. Disclosures of Financial Interest

The Presiding Member reminded 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.

There were no disclosures of financial interest.

4. Disclosures of Interests Affecting Impartiality

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

There were no disclosures affecting impartiality.

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

Nil.

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

Moved – Councillor Porter

Seconded – Councillor Hassell

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; and**
 - c. splattering of paint on the northern side of the perspex;**

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.

CARRIED UNANIMOUSLY 11/-

Council Resolution

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; and**
 - c. splattering of paint on the northern side of the perspex;**
- 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 declared the meeting closed at 9.15 pm.