



NATURE RESERVES PRESERVATION GROUP

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Subject: Submission on Draft Local Planning Policy 34. Wetlands and Waterways.

Dear Rhonda,

This submission is on behalf of Nature Reserves Preservation Group (NRPG) Inc. For many years, the group has been active on behalf of the preservation and enhancement of the local biodiversity values. It is pleasing to see many of the environmental concerns raised by the group in past submissions addressed in this document and the City is to be commended for taking this step in the right direction.

As in past submissions to the City, for the convenience of those reading the submission, passages of most interest to the group will be quoted in italics, followed by 'boxed' NRPG comments on the quoted passage.

1. Introduction and Purpose

The functions listed are comprehensive and it is encouraging to have them so fully and clearly stated.

"It is important to protect and enhance the hydrological, ecological and cultural values of the City's wetlands and waterways through the establishment and management of wetland buffers and waterway foreshore areas, during the planning and development process."

Acknowledgement of the importance of protecting and enhancing the values of wetland and waterways values is similarly encouraging. The task of achieving this has, in the past, proved difficult or impossible. Where *"development activities"* have been carried out, many environmental *"benefits"* have been lost. A prime example was the loss of the beautiful ephemeral wetland on the corner of Kalamunda Road and Stirling Crescent. Given more consideration of its aesthetic and environmental values, what could have become a welcoming 'entrance statement' to the (then) Shire, is buried under a massive 'heat sink' of a machinery parking lot (yet to be used as such). NRPG pleas for the retention of this wetland were ignored. Had this draft policy been in force at that time, the outcome may well have been different.

2. Application of the Policy

“This policy applies to all strategic planning, subdivision and development proposals, located within 50 m of a wetland or waterway, or with the potential to impact a wetland or waterway.”

This clear wide-ranging statement is most welcome and will cover many areas of past concern to NRP. Rigorously applied, this would undoubtedly fulfill the stated purpose of the policy.

3. Statutory Authority / Legal Status

“(a) Relationships to Commonwealth legislation

This policy should be read in conjunction with:

i. Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act).”

Given the ongoing lengthy review of this Act and the many failures highlighted in the Samuels’ report, attention should be paid to this review when considering this LPP draft, particularly as the final form of the EPBC Act takes precedence.

“(b) Relationship to WA State Legislation, Regulations and guidelines

This policy should be read in conjunction with:

i. Environmental Protection Act 1986 provides for significant environmental impacts (Part iv) and clearing of native vegetation (Part v)”

As with the above Commonwealth Act, this State Act has also been under review. Once again, failings have been found. Given that the proclamation of amendments under Stage 3 are expected at the end of 2022, the implications of potential amendments for this LPP should also be considered.

“viii. Draft State Planning Policy 2.9 Planning for Water Policy provides for the protection and enhancement of wetlands and waterways

Logically, this important Policy is listed despite its draft status. See also, comments at *“Definitions. Wetlands”* (below). Whilst admitting the more direct relevance of SPP 2.9 to this LPP, it is puzzling to see no reference here to the draft Native Vegetation Policy for Western Australia (also released for comment in August 2021). Despite its broad nature (and therefore possible reduced direct relevance), in its final form it may yet have relevance to this LPP and should be listed.

4. Objectives

“(c) To protect wetlands and waterways from impacts of development and enhance their hydrological, ecological, and social values”

While all five key objectives have the full support of NRP, the above is considered to be the most important. Objectives a), b) and e), have objective c) as their ultimate goal. *“...sustainable long-term management”* and *“clear guidance”* are of little use if they fail to achieve objective c). Reference to past NRP submissions on Shire/City Strategies and Structure Plans will reflect this support. The NRP remains concerned about adequate buffers, setbacks and wildlife corridors which fall under documents such as the Wildlife Corridor Strategy and Local Biodiversity Strategy.

5. Policy Statement

“1. Any strategic planning, subdivision, and development proposals located within 50 m of a wetland or waterway, or with the potential to adversely impact a wetland or waterway will be referred to the Department of Water and Environment Regulation for comment.”

Having this clear, unambiguous statement in place, is a very welcome step. The referral being simply the first step in a process, more detail of the process following the referral, would have been welcome. There should be a definition of how “adverse” an impact would need to be to trigger a referral.

“2. Where a water body is both a wetland and a waterway, the greater buffer/foreshore distance may apply.”

Given the use of the tentative “may”, in its present form, this statement lacks impact and could be deleted. NPRG requests replacing “may” with “**shall**”, and if exceptions are required then these should be listed.

Wetlands

“5. Noting that the available State wetland mapping is broad and not site specific, the City reserves the right to request a wetland site assessment to accurately define the wetland boundary or management category, where the mapped wetland boundary does not appropriately reflect the wetland values.”

Failure to accurately define wetland boundary, management category and values, is a **major** shortcoming. In such cases, stronger City action is surely warranted. Suggest section 5 be redrafted in toto, to read:

“Noting that the available State wetland mapping is broad and not site specific, where the mapped wetland boundary does not appropriately reflect the wetland values, the City shall request a wetland site assessment to accurately define the wetland boundary or management category. This assessment should be completed using *A methodology for the evaluation of wetlands on the Swan Coastal Plain, Western Australia* (DPaW 2017) in consultation with the Department of Biodiversity, Conservation and Attractions.”

“6. Where the applicant can demonstrate that wetland hydrological, ecological and social functions will be maintained and enhanced, the local government may grant a variation/ reduction to the buffer distances outlined in Table 2.”

The requirement for an applicant to demonstrate the above, should be rigorously enforced. NPRG also requests to add “sense-of-place” to the functions included, as this is very important to their significance and value.

“7. In determining permissible land uses and/or activities within the wetland buffer, the City will have regard to the Environmental Protection Authority’s Environmental Guidance for Planning and Development (GS 33).”

Noting the rather vague *“the City will have regard to...”*, NRPG requests a stronger commitment to follow the information and advice provided by EPA *“...to protect, conserve and enhance the environment”*. Checking on the 2008 GS 33, the following note: *“the content of this guideline has not been updated to reflect the EPA’s revised policy framework”* makes it difficult to make further meaningful comment in this submission.

“8. Permissible activities or actions as part of, or as a result of, development proposals within the wetland buffer include:”

Other activities, such as works related to creating, or improving ‘connectivity’ between wetlands, waterways and wildlife corridors (such as underpasses for unnatural barriers), should be listed in this section. In sections 6, 10 and 12, all references to *“social functions”*, *“social values”* should be expanded by adding: **“sense of place and cultural integration.”** (cf. draft SPP 2.9 7.2 *Environmental, social and Cultural Values* pp. 3 & 4).

“9. Prohibited activities or actions as part of, or as a result of, development proposals within the wetland buffer include”

NRPG requests the addition to the list of:

- Access by non-native animals which can harm/harass wildlife and spread weeds (such as livestock and horses).
- Incursion of weeds by any methods, and control by sensitive weeds of any which do occur.

“10. The City may approve prohibited land uses and/or activities within the wetland buffer where it can be demonstrated by the proponent that the land use and/or activity will not have a detrimental impact to the hydrological, ecological and social values of the wetland and the land use and/or activity is supported by an endorsed Wetland Management Plan or Urban Water Management Plan.”

NRPG requests rewording to *‘...ecological, social values, sense of place and cultural integration of the wetland ...’*. This is also applicable to item 12.

Waterways

“3. Waterway foreshore areas are determined by several biophysical characteristics that contribute to the health and function of the waterway ecosystem. The width of a waterway foreshore should therefore reflect the biophysical characteristics of the waterway.”

Suggest a minimum foreshore width of 20 metres be specified and the onus placed on a developer to justify any reduction in this figure. Considering the function of waterways as wildlife corridors, consideration should be given to the City’s Wildlife Corridor Strategy (2008). In this, the optimum (aspirational) width of such corridors was 100 metres, an impracticable objective, yet one which emphasises the importance of such corridors. This should be reflected in this draft.

“5. The biophysical assessment shall be undertaken by a suitably qualified professional and shall include:”

The biophysical assessment list should also include the likely impacts of the changing climate, such as the increased intensity of storm activity and the role of waterways in mitigating the heat island effect in many locations.

*“6. In the absence of a biophysical assessment, the City may agree to a **conservative** foreshore width ...”*

The use of the word “*conservative*” in this context, is totally inappropriate. It proposes the City “may agree to a **purposely low foreshore width**, for the sake of caution” [Oxford English Dictionary]. Bearing in mind the ‘precautionary principle’, the sentence creates an oxymoron. To avoid this, request “**conservative**” be replaced with “**reduced.**”

“7. The foreshore width to a waterway shall not be less than 15 m in width, measured each side of the waterway, extending outwards from the high water line.”

See comments above (3.) requesting a minimum 20 metres width. Where a fire access track is required, it must be completely outside the foreshore area. Wherever possible, construction must achieve ‘hazard reduction’ and vehicle access functions, without creating a mineral earth break. A mineral earth break encourages erosion and associated weed ingress.

“8. Permissible activities or actions as part of, or as a result of, development proposals within the waterway foreshore include:”

See above comments at ‘**Wetlands**’ (8.).

“11. Prohibited activities or actions listed under Clause 9 apply to the construction of dams along watercourses;”

Whilst including the construction of dams in “*prohibited activities*” seems logical, the inclusion may need clarification or, the rationale for inclusion expanded. The impacts of a changing climate (including reduced rainfall yet, increased frequency of high-intensity rainfall events), have resulted in more damaging peak flows in waterways. These reflect past failures to maximise an extensive use of permeable surfaces and to mandate the use of bio-retention systems at lot level, as a condition of development. It may be time to consider the positive role of dams and other sensitive water harvesting or detaining methods, in the

reduction of such peak flows and the ensuing erosion. See comments on **Wetland** definition.

Management of Wetland Buffers and Waterway Foreshores

*“1. c) iii Peak flows greater than 5 year and up to 100 year ARI events are to be **attenuated** at pre-development rate.”*

The method of ‘attenuation’ is not specified. Will the flow be detained and then released slowly, or will it be diverted away from the wetland in question? Clarification is required. Given the climate- change-induced rainfall reduction, together with increased frequency of severe weather events, the former course of action is preferable.

*“2. Where a waterway or a wetland has been identified on a site the City **may**, as a condition of development or subdivision approval require ...”*

It is reasonable to expect that, once a waterway or wetland has been identified, given the increasing importance to the environment and the community of such City assets, a more positive action is needed. Request the following change be made: *“the City **shall**... require...”*

“3. The Foreshore Management Plan or Wetland Management Plan is to include the following information:”

Such a plan should also include (perhaps in section e) measures to be taken to guard against potential pollution, including that by waste or litter.

“5. Development applications that propose a land use/activity with the potential to export nutrients to a wetland or waterway shall be accompanied by a Nutrient Management Plan that includes the following information:”

The elements of the Nutrient Management Plan are clearly stated and appear adequate. What is missing is a requirement to consider the spatial extent of any potential nutrient export. Such an area may extend beyond the City boundaries and may require coordination with another local government authority. This is tacitly acknowledged in the **Introduction and Purpose** of this draft, viz.

“ All water systems are interconnected through tributaries, catchments, soil moisture, permeability, groundwater, and surface water flows, and thus management of one area can impact the function of a whole hydrological system.”

Areas containing unique biodiversity values, which would be destroyed by increased nutrient levels, may exist some considerable distance from a proposed development. Alison Baird Reserve, Brixton Street Wetlands and Yule Brook Reserve are prime examples. Such sites **must** receive consideration in any development application requirements.

*“6. Wetland buffers and waterway foreshore areas are required to be established by the applicant/landowner, to the standards specified in any associated, approved management plans. Following practical completion, the landowner **may** be required...”*

To ensure the effectiveness of such areas is maintained, a stronger commitment from the City is required. The NRPG requests replacing **“may”** with **“shall”**.

Appendix 1 – Definitions

“Wetland (as defined in Draft State Planning Policy 2.9 Planning for water): An area of seasonally, intermittently or permanently waterlogged or inundated land, whether natural or otherwise, and includes a lake, swamp, marsh, spring, dampland and sumplands. **For the purpose of this policy, wetlands do not include constructed dams.**”

If this policy is to be aligned with the draft SPP 2.9, this last sentence should be deleted. The phrase “*whether natural or otherwise*” suggests the draft State Policy does NOT exclude constructed wetlands. Given the urgent need to conserve surface water run off (rather than permitting it to enter waterways unchecked in its rush to the river system), the role of artificially constructed wetlands becomes even more important and they should not be excluded from this draft. Failure to delete this sentence will mean the Policy will conflict with State Policy and “...*the legislation will prevail*” making the sentence redundant. Further, the definition of wetland should include those areas which have in the past been wetlands but now seldom or never hold water due to the impacts of climate change. This not only allows for reconstruction of wetlands but also acknowledges their prior importance and function. The boundary must include consideration of the ‘high water mark’.

“Wetland buffer (as defined in Draft State Planning Policy 2.9 Planning for Water): An area of terrestrial land immediately surrounding a wetland that provides spatial separation between the wetland and adjacent land use(s).”

It would be appropriate here, to bear in mind and insert the following:
“A separate body of work is underway to review and enhance guidance for the establishment of wetland buffers through the land planning process. This guidance document, when completed, will go through a separate consultation process.” SPP 2.9 Draft Explanatory Notes p.5.

Further comments:

The objectives of the policy are most welcome yet pose a question. How will this policy succeed, when past strategies have failed to maintain adequate wetland buffers and waterway foreshore areas, together with their interconnectivity values? Unless changes are made in the actions of planners and councillors, the policy will contribute little to the long term survival of these essential assets.

The importance of our wetlands and waterways is increasingly acknowledged. The cumulative effects of the loss of many small areas, is now being recognised and the SPP 2.9 draft recognises this.

*“e) Planning decisions (except development applications) should consider **cumulative** impacts on water resources. Where the cumulative impact is considered significantly detrimental, the proposal should not be supported.”*

(General measures. SPP 2.9 7.1 e)

The Shire of Kalamunda’s District Conservation Strategy addressed this in directing a “*whole catchment approach be taken when preparing the Waterways Management Plans.*” (District Conservation Strategy 1996 Chapter 6, p.33). Consideration of these cumulative impacts should be addressed in this Policy. NRPG also suggests the incorporation of many small capture points for water to be designed into developments, road upgrades and other capital works, to increase the chance for infiltration and reduce the high ‘pulse’ of water experienced during high

intensity rainfall. This should already be part of Water Sensitive Urban Design, but we request the City to:

- Call for developers to show WSUD in their developments,
- Seek opportunities to investigate a WSUD pilot in a small upper catchment (such as Toornaart Creek, or smaller if required), and
- Require developers to incorporate run-off capture that favours our street trees, such that they gain more access to water in a drier and drying climate.

NRPG also requests the City to:

- Provide updates on water quality measurement more regularly,
- Encourage residents to install rainwater tanks through an incentive scheme if possible.

In line with a Wetlands Conservation Society request for **all** wetland categories to be conserved and rehabilitated (submission to DPC on Green Growth Plan 2016), we request this be given consideration at local planning policy level. Currently only Conservation and Resource enhancement wetlands receive this treatment. The EPA's 2008 *'Category Management Objectives'* are becoming increasingly out of date and should be updated if they are to remain relevant.

It is of great concern that this policy completely ignores the role of climate change in the future of the wetlands and waterways. Nowhere in this draft is the term **"climate change"** to be found, unlike the State Planning Policy 2.9, which states:

"proposals should consider water resource related issues associated with climate change."

SPP 2.9 General Measures (7.1 d).

To draft a local planning policy, with no mention of what is perhaps the most threatening change process with which we must deal, is a serious omission. To affirm the City's awareness of this threat, the subject of climate change must be included in this draft.

While this Local Planning Policy is a welcome step in addressing the future of remaining waterways and wetlands within the City, unless it is vigorously and strictly implemented, the future of such assets will remain bleak.

On the topic of the Stirk Park Masterplan, the NRPG believes the City has an opportunity (as suggested in a submission on the plan) to enhance and showcase our waterways and wetlands by:

- changing the 'drain' to a natural waterway/creek
- creating an artificial wetland at the 'lake' and/or adding another wetland to further enhance rainwater harvesting and filtration from drainage runoff

Making these changes would fit well with this LPP 34 Policy, Kalamunda Flowing and the City's previously stated commitment to water sensitive urban design. Is there still an opportunity to achieve this win-win situation?

Yours sincerely

Steve Gates

President.