

10.3.2 LOCAL PLANNING SCHEME NO. 3 - AMENDMENT NO. 1

File Ref: SUB/334-02
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Andrew Jackson
Manager Development Services
Proposed Meeting Date: 15 September 2014
Author Disclosure of Interest: Nil

SUMMARY

This report presents a proposed amendment to Local Planning Scheme No. 3 (LPS3) to enable changes to existing dwellings (eg: alterations, additions, extensions) to be approved above the height limits for residential development. The amendment:

- Relates only to existing dwellings in the Residential and other relevant zones.
- Does not relate to new residential development in those zones.
- Relates to specified classes of heritage places or areas in the district.
- Does not relate to non-residential development throughout the district.
- Does not alter height limits and measures for the beachfront zones under Special Control Area 2 or for the Development Zone under the structure plan provisions of the Scheme.

The recommendation is to proceed to prepare and advertise the proposed Scheme amendment documentation.

BACKGROUND

The LPS3 height provisions evolved from former Town Planning Scheme No. 2 (TPS2) and a range of considerations during the formulation of LPS3. Overall, the height provisions are more clearly defined and contain less discretion for variations. Building height is prescribed by Table 2, which for residential development in the Residential zone is limited to two storeys. Previous TPS2 height discretion catering for extensions to existing dwellings or for heritage buildings was not reflected in LPS3. The Scheme was finalised with this height control framework.

Whilst during the passage of LPS3 it became apparent that a degree of height flexibility to deal with changes to existing dwellings was desirable, with regard to gazetting the approved Scheme it was determined by the Department of Planning to address the matter by an amendment once the Scheme commenced.

A recent development application to add patios and balconies to a three-storey block of units at 108 Broome Street has highlighted the situation. The assessment found that in the absence of express prescription to deal with the proposal there is difficulty in applying LPS3 whereby not having the capacity to approve such proposals seems unduly restrictive. As a result Council at its 25 August 2014 meeting resolved to:

Request staff to report to Council on a potential amendment to Local Planning Scheme No. 3 to incorporate a reasonable degree of carefully-guided discretion into the height provisions for residential and other development, including existing buildings.

Following review, the proposed amendment focuses on carefully-guided height discretion for extensions to existing dwellings and for heritage properties, as well as makes some minor technical improvements to certain general height provisions. It does not change the fundamental height regime in terms of height limits, measures or key provisions controlling development throughout the district.

STRATEGIC IMPLICATIONS

Nil.

POLICY IMPLICATIONS

Nil.

STATUTORY ENVIRONMENT

Planning & Development Act.
Town Planning Regulations.
LPS3.

FINANCIAL IMPLICATIONS

Nil.

SUSTAINABILITY IMPLICATIONS

Nil.

CONSULTATION

The scheme amendment process includes public advertising and consideration of submissions.

AMENDMENT PROPOSAL

Officers have examined the subject LP3 height provisions and drafted modifications for the proposed Scheme amendment. Several clauses manage height, but only some require modification. The substance of the intended amendment has also been discussed previously and recently with the Department of Planning, which anticipates an amendment.

The indicative amendment was outlined to Elected Members at a briefing session on 27 August 2014 and has been further refined. The focus of the amendment has been confined to existing dwellings and to heritage development, as well as to some technical improvements to operational height provisions. The necessary changes to the Scheme provisions are set-out below.

A new clause is required to cover the height discretion for existing dwellings. The parameters are clearly prescribed and the extent of discretion is appropriately proscribed. Changes to one other clause and one Schedule are required to correlate with the new clause. Another change, to the heritage variations clause, is necessary to permit height variations for that purpose.

Adding new clause 5.7.5 as follows:

In the case of proposed alterations, additions or extensions to existing dwellings in the Residential, Residential Office, Town Centre, Local Centre, Foreshore Centre and Restricted Foreshore Centre zones, the local government may vary the maximum heights specified in Table 2 and clause 5.7.2, where in its opinion warranted due the circumstances and merits of the proposal, having regard to:

- (a) The existing heights of the dwelling;*
- (b) Any relevant Local Planning Policy or Design Guidelines;*
- (c) Any heritage considerations relating to the dwelling;*
- (d) Relevant planning considerations identified in clause 10.2;*
- (e) Adequate direct sun into buildings and appurtenant open spaces;*
- (f) Adequate daylight to major openings into habitable rooms;*
- (g) Access to views of significance;*
- (h) Building design to ameliorate the visual effects of height; and*
- (i) The amenity of adjoining properties, including road and public open space reserves, and the character of the streetscape;*

and subject to the development:

- (a) Not exceeding the existing number of storeys;*
- (b) Not exceeding the height of the existing dwelling, unless the Council is satisfied with the design and its implications having regard to the above criteria; and*
- (c) In the Foreshore Centre Zone, the development not exceeding the requirements of clause 6.4.3.1 (a) and (b).*

An application for planning approval requiring the exercise of the discretion under this clause is to be advertised in accordance with clause 9.4 and the notice of the application is to include such reference to the variation sought to any height standard or requirement as the local government thinks fit.

Adding to clause 6.3.6 as shown underlined:

In this special control area, the height of all development for any use shall conform to the requirements for single-storey or two-storey development as set out in clause 5.7.2, except that in the case of any development to either of the existing heritage dwellings, the local government may apply its discretion in accordance with clause 5.7.5.

In clause 7.5, Variations to Scheme provisions for a heritage place or heritage area, deleting words as shown:

7.5.1 The local government may grant, by way of planning approval, a variation to any site or development standard or requirement, ~~with the exception of any height standard or requirement,~~ specified in the Scheme or the Residential Design Codes if, in the opinion of the local government, the variation is necessary in order to —

- (a) conserve a heritage place entered in the Register of Places under the Heritage of Western Australia Act 1990 or listed in the Heritage List under clause 7.1.1; or*

- (b) *enhance or preserve heritage values in a heritage area designated under clause 7.2.1;*

which is the subject of the proposed development.

7.5.2 *An application for planning approval requiring the exercise of the discretion under clause 7.5.1 above is to be advertised in accordance with clause 9.4 and the notice of the application is to include such reference to the variation sought to any standard or requirement as the local government thinks fit.*

7.5.3 *In considering an application for planning approval under this clause, the local government is to have regard to any submissions received in accordance with the advertising of the application under clause 9.4.*

In Schedule 13, adding reference to clauses as shown underlined:

3. *Height (clause 5.7, Table 2)*

3.1 *To avoid any uncertainty, the provisions of clause 5.7 are excluded from the operation of the discretion provided in clause 5.5.1.*

3.2 *To avoid any uncertainty, for residential development in the Residential Zone, the maximum height set out in Table 2 may only be varied in accordance with clause 5.7.4, 5.7.5 or 6.3.6, and the provisions of clause 5.7.4 are excluded from the operation of the discretion provided in clause 5.5.1.*

3.3 *To avoid any uncertainty, the maximum height provisions set out in Table 2 for development in the zones listed are excluded from the operation of the discretion in clause 5.5.1.*

PROCEDURE

The Scheme amendment procedure is initiated by a Council resolution, followed by preparation of official documents and any environmental clearance prior to advertising for submissions. After considering any submissions Council resolves whether to adopt the amendment and any modifications, for forwarding to the Western Australian Planning Commission (WAPC) for assessment then the Minister for Planning for approval. Given approval, upon publication in the Government Gazette the amendment becomes incorporated into the Scheme and those provisions apply.

CONCLUSION

Amendment of the Scheme is required to cater for development proposals involving existing dwellings, allowing a reasonable degree of carefully-guided discretion. Whilst only a few changes are necessary, they are significant in facilitating dealing with alterations, additions or extensions to existing dwellings, as well as heritage buildings.

Advertising of the draft amendment and consideration of any submissions will enable Council to refine and adopt the improved provisions for endorsement by the WAPC approval by the Minister.

COMMITTEE COMMENT

Committee indicated that overall it was satisfied with the proposal. Councillor Walsh advocated caution in relation to height discretion for heritage properties which led to some discussion. The Manager Development Services clarified that the proposed new clause 5.7.5 relates to existing dwellings, which may or may not involve heritage, while the proposed change to clause 7.5 was to provide for heritage properties specifically, both residential and non-residential, throughout the district. The latter echoes a similar provision in former TPS2 and also reflects heritage incentives in accordance with the Scheme.

VOTING

Simple Majority

OFFICER AND COMMITTEE RECOMMENDATION**Moved Cr Downes, seconded Cr Burke**

THAT Council:

- (1) In pursuance of Section 75 of the Planning and Development Act 2005, hereby resolves to amend the Town of Cottesloe Local Planning Scheme No. 3 text, to provide for height variations in relation to existing dwellings and heritage buildings, by:

- (A) Adding new clause 5.7.5 as follows:

In the case of proposed alterations, additions or extensions to existing dwellings in the Residential, Residential Office, Town Centre, Local Centre, Foreshore Centre and Restricted Foreshore Centre zones, the local government may vary the maximum heights specified in Table 2 and clause 5.7.2, where in its opinion warranted due the circumstances and merits of the proposal, having regard to:

- (a) *The existing heights of the dwelling;*
- (b) *Any relevant Local Planning Policy or Design Guidelines;*
- (c) *Any heritage considerations relating to the dwelling;*
- (d) *Relevant planning considerations identified in clause 10.2;*
- (e) *Adequate direct sun into buildings and appurtenant open spaces;*
- (f) *Adequate daylight to major openings into habitable rooms;*
- (g) *Access to views of significance;*
- (h) *Building design to ameliorate the visual effects of height; and*
- (i) *The amenity of adjoining properties, including road and public open space reserves, and the character of the streetscape;*

and subject to the development:

- (a) *Not exceeding the existing number of storeys;*
- (b) *Not exceeding the height of the existing dwelling, unless the Council is satisfied with the design and its implications having regard to the above criteria; and*
- (c) *In the Foreshore Centre Zone, the development not exceeding the requirements of clause 6.4.3.1 (a) and (b).*

An application for planning approval requiring the exercise of the discretion under this clause is to be advertised in accordance with clause 9.4 and the notice of the application is to include such reference to the variation sought to any height standard or requirement as the local government thinks fit.

(B) Adding to clause 6.3.6 as shown underlined:

In this special control area, the height of all development for any use shall conform to the requirements for single-storey or two-storey development as set out in clause 5.7.2, except that in the case of any development to either of the existing heritage dwellings, the local government may apply its discretion in accordance with clause 5.7.5.

(C) In clause 7.5, Variations to Scheme provisions for a heritage place or heritage area, deleting words as shown:

7.5.1 *The local government may grant, by way of planning approval, a variation to any site or development standard or requirement, ~~with the exception of any height standard or requirement,~~ specified in the Scheme or the Residential Design Codes if, in the opinion of the local government, the variation is necessary in order to —*

(a) *conserve a heritage place entered in the Register of Places under the Heritage of Western Australia Act 1990 or listed in the Heritage List under clause 7.1.1; or*

(b) *enhance or preserve heritage values in a heritage area designated under clause 7.2.1;*

which is the subject of the proposed development.

7.5.4 *An application for planning approval requiring the exercise of the discretion under clause 7.5.1 above is to be advertised in accordance with clause 9.4 and the notice of the application is to include such reference to the variation sought to any standard or requirement as the local government thinks fit.*

7.5.5 *In considering an application for planning approval under this clause, the local government is to have regard to any submissions received in accordance with the advertising of the application under clause 9.4.*

(D) In Schedule 13, adding reference to clauses as shown underlined:

3. *Height (clause 5.7, Table 2)*

3.1 *To avoid any uncertainty, the provisions of clause 5.7 are excluded from the operation of the discretion provided in clause 5.5.1.*

3.2 *To avoid any uncertainty, for residential development in the Residential Zone, the maximum height set out in Table 2 may only be varied in accordance with clause 5.7.4, 5.7.5 or 6.3.6, and the provisions of clause 5.7.4 are excluded from the operation of the discretion provided in clause 5.5.1.*

3.3 *To avoid any uncertainty, the maximum height provisions set out in Table 2 for development in the zones listed are excluded from the operation of the discretion in clause 5.5.1.*

- (2) Request the Manager Development Services to prepare the amendment documents, upon which the Chief Executive Officer shall adopt and endorse the amendment documents on behalf of Council.
- (3) Pursuant to section 81 of the Planning and Development Act 2005, refer the proposed amendment to the Department of Environment for clearance prior to advertising.
- (4) Advertise the proposed amendment for public comment for a period of 42 days by:
 - (i) Placing a copy of the notice in the Post newspaper, on the Town's notice board/s and website, and at the Library; and
 - (ii) Placing a copy of the proposed amendment on display at the Town's Office, on the Town's website and at the Library.
- (5) Provide the Western Australian Planning Commission with a copy of the proposed scheme amendment.

COUNCIL COMMENT

Mayor Dawkins referred to the officer memorandum of 22 September 2014 advising of a desirable refinement to also apply height discretion to properties on the Municipal Inventory. As a result, Mayor Dawkins proposed to move an amendment to the officer and committee recommendation.

AMENDMENT

Moved Mayor Dawkins, seconded Cr Angers

That in item (C) after the word "shown" the words "and adding words as underlined" be added.

That in clause 7.5.1 (a) after the date "1990" the word "or" be deleted and a comma added.

That in clause 7.5.1 (a) after "7.1.1" the words "or classified in the municipal inventory" be added.

Carried 6/0

COUNCIL RESOLUTION

THAT Council:

- (1) In pursuance of Section 75 of the Planning and Development Act 2005, hereby resolves to amend the Town of Cottesloe Local Planning Scheme No. 3 text, to provide for height variations in relation to existing dwellings and heritage buildings, by:

(A) Adding new clause 5.7.5 as follows:

In the case of proposed alterations, additions or extensions to existing dwellings in the Residential, Residential Office, Town Centre, Local Centre, Foreshore Centre and Restricted Foreshore Centre zones, the

local government may vary the maximum heights specified in Table 2 and clause 5.7.2, where in its opinion warranted due the circumstances and merits of the proposal, having regard to:

- (a) The existing heights of the dwelling;*
- (b) Any relevant Local Planning Policy or Design Guidelines;*
- (c) Any heritage considerations relating to the dwelling;*
- (d) Relevant planning considerations identified in clause 10.2;*
- (e) Adequate direct sun into buildings and appurtenant open spaces;*
- (f) Adequate daylight to major openings into habitable rooms;*
- (g) Access to views of significance;*
- (h) Building design to ameliorate the visual effects of height; and*
- (i) The amenity of adjoining properties, including road and public open space reserves, and the character of the streetscape;*

and subject to the development:

- (a) Not exceeding the existing number of storeys;*
- (b) Not exceeding the height of the existing dwelling, unless the Council is satisfied with the design and its implications having regard to the above criteria; and*
- (c) In the Foreshore Centre Zone, the development not exceeding the requirements of clause 6.4.3.1 (a) and (b).*

An application for planning approval requiring the exercise of the discretion under this clause is to be advertised in accordance with clause 9.4 and the notice of the application is to include such reference to the variation sought to any height standard or requirement as the local government thinks fit.

(B) Adding to clause 6.3.6 as shown underlined:

In this special control area, the height of all development for any use shall conform to the requirements for single-storey or two-storey development as set out in clause 5.7.2, except that in the case of any development to either of the existing heritage dwellings, the local government may apply its discretion in accordance with clause 5.7.5.

(C) In clause 7.5, Variations to Scheme provisions for a heritage place or heritage area, deleting words as shown and adding words as underlined:

7.5.1 *The local government may grant, by way of planning approval, a variation to any site or development standard or requirement, ~~with the exception of any height standard or requirement,~~ specified in the Scheme or the Residential Design Codes if, in the opinion of the local government, the variation is necessary in order to —*

- (a) conserve a heritage place entered in the Register of Places under the Heritage of Western Australia Act 1990, listed in the Heritage List under clause 7.1.1 or classified in the municipal inventory; or*

(b) enhance or preserve heritage values in a heritage area designated under clause 7.2.1;

which is the subject of the proposed development.

7.5.4 *An application for planning approval requiring the exercise of the discretion under clause 7.5.1 above is to be advertised in accordance with clause 9.4 and the notice of the application is to include such reference to the variation sought to any standard or requirement as the local government thinks fit.*

7.5.5 *In considering an application for planning approval under this clause, the local government is to have regard to any submissions received in accordance with the advertising of the application under clause 9.4.*

(D) In Schedule 13, adding reference to clauses as shown underlined:

3. *Height (clause 5.7, Table 2)*

3.1 *To avoid any uncertainty, the provisions of clause 5.7 are excluded from the operation of the discretion provided in clause 5.5.1.*

3.2 *To avoid any uncertainty, for residential development in the Residential Zone, the maximum height set out in Table 2 may only be varied in accordance with clause 5.7.4, 5.7.5 or 6.3.6, and the provisions of clause 5.7.4 are excluded from the operation of the discretion provided in clause 5.5.1.*

3.3 *To avoid any uncertainty, the maximum height provisions set out in Table 2 for development in the zones listed are excluded from the operation of the discretion in clause 5.5.1.*

- (2)** Request the Manager Development Services to prepare the amendment documents, upon which the Chief Executive Officer shall adopt and endorse the amendment documents on behalf of Council.
- (3)** Pursuant to section 81 of the Planning and Development Act 2005, refer the proposed amendment to the Department of Environment for clearance prior to advertising.
- (4)** Advertise the proposed amendment for public comment for a period of 42 days by:
 - (iii)** Placing a copy of the notice in the Post newspaper, on the Town's notice board/s and website, and at the Library; and
 - (iv)** Placing a copy of the proposed amendment on display at the Town's Office, on the Town's website and at the Library.
- (5)** Provide the Western Australian Planning Commission with a copy of the proposed scheme amendment.

THE AMENDED SUBSTANTIVE MOTION WAS PUT

Carried 5/1

TOWN OF COTTESLOE

LOCAL PLANNING SCHEME NO. 3

AMENDMENT NO. 1

**PLANNING AND DEVELOPMENT ACT 2005
RESOLUTION DECIDING TO AMEND A LOCAL PLANNING SCHEME**

TOWN OF COTTESLOE

LOCAL PLANNING SCHEME NO. 3

AMENDMENT NO. 1

RESOLVED that the Council, in pursuance of Section 75 of the Planning and Development Act 2005 amend the Town of Cottesloe Local Planning Scheme No. 3 by:

(A) Adding new clause 5.7.5 as follows:

In the case of proposed alterations, additions or extensions to existing dwellings in the Residential, Residential Office, Town Centre, Local Centre, Foreshore Centre and Restricted Foreshore Centre zones, the local government may vary the maximum heights specified in Table 2 and clause 5.7.2, where in its opinion warranted due the circumstances and merits of the proposal, having regard to:

- (a) The existing heights of the dwelling;*
- (b) Any relevant Local Planning Policy or Design Guidelines;*
- (c) Any heritage considerations relating to the dwelling;*
- (d) Relevant planning considerations identified in clause 10.2;*
- (e) Adequate direct sun into buildings and appurtenant open spaces;*
- (f) Adequate daylight to major openings into habitable rooms;*
- (g) Access to views of significance;*
- (h) Building design to ameliorate the visual effects of height; and*
- (i) The amenity of adjoining properties, including road and public open space reserves, and the character of the streetscape;*

and subject to the development:

- (a) Not exceeding the existing number of storeys;*
- (b) Not exceeding the height of the existing dwelling, unless the Council is satisfied with the design and its implications having regard to the above criteria; and*
- (c) In the Foreshore Centre Zone, the development not exceeding the requirements of clause 6.4.3.1 (a) and (b).*

An application for planning approval requiring the exercise of the discretion under this clause is to be advertised in accordance with clause 9.4 and the notice of the application is to include such reference to the variation sought to any height standard or requirement as the local government thinks fit.

(B) Adding to clause 6.3.6 as shown underlined:

In this special control area, the height of all development for any use shall conform to the requirements for single-storey or two-storey development as set out in clause 5.7.2, except that in the case of any development to

either of the existing heritage dwellings, the local government may apply its discretion in accordance with clause 5.7.5.

- (C) In clause 7.5, Variations to Scheme provisions for a heritage place or heritage area, deleting words as shown:

7.5.1 *The local government may grant, by way of planning approval, a variation to any site or development standard or requirement, ~~with the exception of any height standard or requirement,~~ specified in the Scheme or the Residential Design Codes if, in the opinion of the local government, the variation is necessary in order to —*

- (a) *conserve a heritage place entered in the Register of Places under the Heritage of Western Australia Act 1990 ~~or~~, listed in the Heritage List under clause 7.1.1 or classified in the municipal inventory; or*
- (b) *enhance or preserve heritage values in a heritage area designated under clause 7.2.1;*

which is the subject of the proposed development.

7.5.4 *An application for planning approval requiring the exercise of the discretion under clause 7.5.1 above is to be advertised in accordance with clause 9.4 and the notice of the application is to include such reference to the variation sought to any standard or requirement as the local government thinks fit.*

7.5.5 *In considering an application for planning approval under this clause, the local government is to have regard to any submissions received in accordance with the advertising of the application under clause 9.4.*

- (D) In Schedule 13, adding reference to clauses as shown underlined:

3. Height (clause 5.7, Table 2)

3.1 *To avoid any uncertainty, the provisions of clause 5.7 are excluded from the operation of the discretion provided in clause 5.5.1.*

3.2 *To avoid any uncertainty, for residential development in the Residential Zone, the maximum height set out in Table 2 may only be varied in accordance with clause 5.7.4, 5.7.5 or 6.3.6, and the provisions of clause 5.7.4 are excluded from the operation of the discretion provided in clause 5.5.1.*

3.3 *To avoid any uncertainty, the maximum height provisions set out in Table 2 for development in the zones listed are excluded from the operation of the discretion in clause 5.5.1.*


CHIEF EXECUTIVE OFFICER

MINISTER FOR PLANNING

Proposal to amend a Local Planning Scheme

1. Local Authority: Town of Cottesloe
2. Description of Local Planning Scheme: Local Planning Scheme No. 3
3. Type of Scheme: District Zoning Scheme
4. Serial No. of Amendment: Amendment No. 1
5. Proposal: To amend the Scheme Text to provide Council with guided discretion for height variations in relation to existing dwellings and heritage buildings as specified in particular provisions.

SCHEME AMENDMENT REPORT

PURPOSE OF THE AMENDMENT

This proposed amendment to Local Planning Scheme No. 3 (LPS3) is to enable changes to existing dwellings (eg: alterations, additions, extensions) to be approved above the height limits for residential development. The amendment also provides for height variations to heritage buildings in accordance with particular requirements. The amended provisions:

- Relate to existing dwellings in the Residential and other relevant zones; but do not relate to new residential development in those zones.
- Relate to specified classes of heritage places or areas in the district; but do not relate to non-residential, non-heritage development generally.
- Do not alter height parameters for new development in the beachfront zones under the Special Control Area 2 provisions or in the Development Zone under the structure plan provisions of the Scheme.

BACKGROUND

The LPS3 height provisions evolved from former Town Planning Scheme No. 2 (TPS2) and a range of considerations during the formulation of LPS3. Overall, the height provisions are more clearly defined and contain less discretion for variations. Building height is prescribed by Table 2, which for residential development in the Residential zone is limited to two storeys. Previous TPS2 height discretion catering for extensions to existing dwellings or for heritage buildings was not reflected in LPS3. The Scheme was finalised with this height control framework.

Whilst during the passage of LPS3 it became apparent that a degree of height flexibility to deal with changes to existing dwellings was desirable, with regard to gazetting the approved Scheme it was determined by the Department of Planning to address the matter by an amendment once the Scheme commenced.

A recent development application to add patios and balconies to a three-storey block of older units at 108 Broome Street has highlighted the situation. The assessment found that in the absence of express prescription to deal with the proposal there is difficulty in applying LPS3 whereby not having the capacity to approve such proposals seems unduly restrictive. As a result Council at its 25 August 2014 meeting resolved to:

Request staff to report to Council on a potential amendment to Local Planning Scheme No. 3 to incorporate a reasonable degree of carefully-guided discretion into the height provisions for residential and other development, including existing buildings.

Following review, the proposed amendment focuses on carefully-guided height discretion for extensions to existing dwellings and for heritage properties. It does not change the fundamental height regime in terms of height limits, measures or key provisions controlling development throughout the district.

AMENDMENT PROPOSAL

Officers have examined the subject LPS3 height provisions and devised modifications for the proposed Scheme amendment. Several clauses manage height, but only some require modification. The substance of the intended amendment has also been

discussed previously and recently with the Department of Planning, which anticipates an amendment.

The indicative amendment was outlined to Elected Members at a briefing session on 27 August 2014 and has been further refined. The focus of the amendment has been confined to existing dwellings and to heritage development. The necessary changes to the Scheme provisions are set-out further below.

A new clause is required to cover the height discretion for existing dwellings. The parameters are clearly prescribed and the extent of discretion is appropriately proscribed. Changes to one other clause and one Schedule are required to correlate with the new clause. Other changes, to the heritage variations clause, are necessary to permit height variations for that purpose.

Proposed new clause 5.7.5 relates to existing dwellings, which may or may not involve heritage, while the proposed change to clause 7.5 is to provide for heritage properties specifically, both residential and non-residential, throughout the district. The latter echoes a similar provision in former TPS2. Allowing for variations, including to height, is consistent with the approach of incentives to encourage the retention and conservation of heritage properties, which is reflected in clause 7.6: Heritage Incentives.

For example, height discretion exercised by Council would apply to the heritage buildings *Le Fanu* and *Tukurua* in Special Control Area 1 (SCA1). Any new development in SCA1, however, is limited to two-storey in the normal manner, in order to respect those heritage buildings; ie particularly to the west or east of *Tukurua*.

Clause 7.5.1 as written allows Council to apply discretion to heritage places on the State Register, or on the Heritage List or in a Heritage Area under LPS3. Given clause 7.7: Right of Review, however, the appeal process means that some properties intended to be on the Heritage List may be deleted from it, yet they would remain significant under Council's Municipal Inventory, especially Category 1 and 2 places. It would be desirable to still be able to apply discretion to such properties, as well as to any property on the MI, including lesser categories, in order to foster heritage conservation and sensitive alterations/additions in any case.

CONCLUSION

Amendment of the Scheme is required to cater for development proposals involving existing dwellings, allowing a reasonable degree of carefully-guided discretion. Whilst only a few changes are necessary, they are significant in facilitating dealing with alterations, additions or extensions to existing dwellings, as well as heritage buildings in order to conserve and improve them sensitively.

Advertising of the proposed amendment and consideration of any submissions will enable Council to finalise and adopt the improved provisions for endorsement by the Western Australian Planning Commission and approval by the Minister for Planning.

TOWN OF COTTESLOE
LOCAL PLANNING SCHEME NO. 3
PROPOSED AMENDMENT NO. 1

Council resolves to recommend to the Honourable Minister for Planning that the Town of Cottesloe Local Planning Scheme No. 3 be amended as follows:

The Scheme Text be amended to provide Council with guided discretion for height variations in relation to existing dwellings and heritage buildings as specified in particular provisions. The full scheme amendment text is as follows:

Scheme Amendment Text:

(A) Adding new clause 5.7.5 as follows:

In the case of proposed alterations, additions or extensions to existing dwellings in the Residential, Residential Office, Town Centre, Local Centre, Foreshore Centre and Restricted Foreshore Centre zones, the local government may vary the maximum heights specified in Table 2 and clause 5.7.2, where in its opinion warranted due the circumstances and merits of the proposal, having regard to:

- (a) The existing heights of the dwelling;*
- (b) Any relevant Local Planning Policy or Design Guidelines;*
- (c) Any heritage considerations relating to the dwelling;*
- (d) Relevant planning considerations identified in clause 10.2;*
- (e) Adequate direct sun into buildings and appurtenant open spaces;*
- (f) Adequate daylight to major openings into habitable rooms;*
- (g) Access to views of significance;*
- (h) Building design to ameliorate the visual effects of height; and*
- (i) The amenity of adjoining properties, including road and public open space reserves, and the character of the streetscape;*

and subject to the development:

- (a) Not exceeding the existing number of storeys;*
- (b) Not exceeding the height of the existing dwelling, unless the Council is satisfied with the design and its implications having regard to the above criteria; and*
- (c) In the Foreshore Centre Zone, the development not exceeding the requirements of clause 6.4.3.1 (a) and (b).*

An application for planning approval requiring the exercise of the discretion under this clause is to be advertised in accordance with clause 9.4 and the notice of the application is to include such reference to the variation sought to any height standard or requirement as the local government thinks fit.

(B) Adding to clause 6.3.6 as shown underlined:

In this special control area, the height of all development for any use shall conform to the requirements for single-storey or two-storey development

as set out in clause 5.7.2, except that in the case of any development to either of the existing heritage dwellings, the local government may apply its discretion in accordance with clause 5.7.5.

- (C) In clause 7.5, Variations to Scheme provisions for a heritage place or heritage area, deleting words as shown:

7.5.1 *The local government may grant, by way of planning approval, a variation to any site or development standard or requirement, ~~with the exception of any height standard or requirement,~~ specified in the Scheme or the Residential Design Codes if, in the opinion of the local government, the variation is necessary in order to —*

- (a) conserve a heritage place entered in the Register of Places under the Heritage of Western Australia Act 1990 ~~or~~, listed in the Heritage List under clause 7.1.1 or classified in the municipal inventory; or*
- (b) enhance or preserve heritage values in a heritage area designated under clause 7.2.1;*

which is the subject of the proposed development.

7.5.4 *An application for planning approval requiring the exercise of the discretion under clause 7.5.1 above is to be advertised in accordance with clause 9.4 and the notice of the application is to include such reference to the variation sought to any standard or requirement as the local government thinks fit.*

7.5.5 *In considering an application for planning approval under this clause, the local government is to have regard to any submissions received in accordance with the advertising of the application under clause 9.4.*

- (D) In Schedule 13, adding reference to clauses as shown underlined:

3. Height (clause 5.7, Table 2)

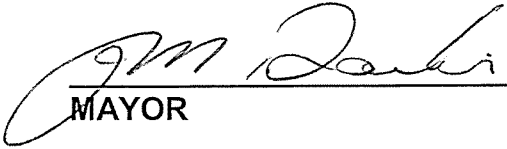
3.1 *To avoid any uncertainty, the provisions of clause 5.7 are excluded from the operation of the discretion provided in clause 5.5.1.*

3.2 *To avoid any uncertainty, for residential development in the Residential Zone, the maximum height set out in Table 2 may only be varied in accordance with clause 5.7.4, 5.7.5 or 6.3.6, and the provisions of clause 5.7.4 are excluded from the operation of the discretion provided in clause 5.5.1.*

3.3 *To avoid any uncertainty, the maximum height provisions set out in Table 2 for development in the zones listed are excluded from the operation of the discretion in clause 5.5.1.*

ADOPTION

Adopted by resolution of the Council of the Town of Cottesloe at the Ordinary Meeting of the Council held on the 22 September 2014.


MAYOR


CHIEF EXECUTIVE OFFICER

FINAL APPROVAL

Adopted for Final approval by resolution of the Council of the Town of Cottesloe at the Ordinary Meeting of the Council held on the _____, and the seal of the Municipality was pursuant to that resolution here unto affixed in the presence of:

MAYOR

CHIEF EXECUTIVE OFFICER

Submitted for Final Approval

DELEGATED UNDER S16 OF PLANNING AND DEVELOPMENT ACT 2005

Date: ____/____/____

Final Approval Granted

MINISTER FOR PLANNING

Date: ____/____/____