

# TOWN OF COTTESLOE



## DEVELOPMENT SERVICES COMMITTEE MINUTES

MAYOR'S PARLOUR, COTTESLOE CIVIC CENTRE  
109 BROOME STREET, COTTESLOE  
6.00 PM, MONDAY, 15 SEPTEMBER 2014

**CARL ASKEW**  
Chief Executive Officer

17 September 2014

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# DEVELOPMENT SERVICES COMMITTEE

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**1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS**

The Presiding Member announced the meeting opened at 6:02 PM.

**2 DISCLAIMER**

The Presiding Member drew attention to the Town's disclaimer.

**3 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION**

The Presiding Member attended the Infinity Waste Awards as the Town received a nomination for the three-bin initiative that introduced a green waste bin at the beginning of the year. Cr Jeanes commented that competition was strong, and although the Town didn't win an award there were still benefits to the Town. He acknowledged the Principal Environmental Health Officer's efforts in driving the project that will result in cost-savings in the longer term with less waste going to landfill.

The Presiding Member also took the opportunity to mention that the Cottesloe Civic Centre grounds, particularly the balustrade walls and Norfolk Island Pines, were featured prominently in the TV mini-series *The War That Changed Us* recently screened on the ABC.

**4 PUBLIC QUESTION TIME****4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

Nil.

**4.2 PUBLIC QUESTIONS**

Nil.

**5 PUBLIC STATEMENT TIME**

Nil.

**6 ATTENDANCE****Present**

Cr Peter Jeanes	Presiding Member
Mayor Jo Dawkins	
Cr Philip Angers	
Cr Helen Burke	
Cr Jack Walsh	
Cr Katrina Downes	

**Officers Present**

Mr Carl Askew	Chief Executive Officer
Mr Andrew Jackson	Manager Development Services

Mr Ed Drewett  
Mr Ronald Boswell  
Mrs Liz Yates

Senior Planning Officer  
Planning Officer  
Development Services Administration Officer

### **6.1 APOLOGIES**

Nil.

#### **Officer Apologies**

Nil.

### **6.2 APPROVED LEAVE OF ABSENCE**

Nil.

### **6.3 APPLICATIONS FOR LEAVE OF ABSENCE**

**Moved Mayor Dawkins, seconded Cr Jeanes**

**That Mayor Dawkins' request for leave of absence from the October Development Services Committee meeting be granted.**

**Carried 6/0**

## **7 DECLARATION OF INTERESTS**

Nil.

## **8 CONFIRMATION OF MINUTES**

**Moved Cr Downes, seconded Mayor Dawkins**

[Minutes August 18 2014 Development Services Committee.docx](#)

**The Minutes of the Ordinary meeting of the Development Services Committee held on 18 August 2014 be confirmed.**

**Carried 6/0**

## **9 PRESENTATIONS**

### **9.1 PETITIONS**

Nil.

### **9.2 PRESENTATIONS**

Nil.

### **9.3 DEPUTATIONS**

Nil.

## 10 REPORTS

### 10.1 PLANNING

#### 10.1.1 LOCAL PLANNING SCHEME NO. 3 - TOWN AND LOCAL CENTRES DESIGN GUIDELINES

**File Ref:** SUB/335  
**Attachments:** [Proposed Design Guidelines](#)  
**Responsible Officer:** Carl Askew  
Chief Executive Officer  
**Author:** Andrew Jackson  
Manager Development Services

**Proposed Meeting Date:** 15 September 2014  
**Author Disclosure of Interest:** Nil

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#### SUMMARY

This report presents proposed Design Guidelines under Local Planning Scheme No. 3 (LPS3) for the Town Centre and Local Centres to supplement the Scheme provisions. The Design Guidelines relate to the main Town Centre, the Eric Street shopping centre Local Centre and the Railway Street Local Centre zones.

The proposed Design Guidelines are attached. The recommendation is to advertise the proposed Design Guidelines.

#### BACKGROUND

LPS3 in clause 5.9 provides for design guidelines to be created as policy as a vehicle for dealing with detail and discretion in the design aspects of development proposals:

##### *5.9. Development requirements – Local Planning Policy Design Guidelines*

- 5.9.1. The local government may prepare and adopt Local Planning Policy Design Guidelines in accordance with the procedure outlined in clause 2.4, to augment the Scheme provisions with more detail to guide the planning and design of development proposals.*
- 5.9.2. In considering an application for planning approval for land to which adopted Local Planning Policy Design Guidelines apply, the local government shall have regard to the Design Guidelines and shall use them as a basis on which to determine any variation allowed under the Scheme.*

The Scheme policy-making procedure is followed to accord design guidelines status under the Scheme. Local Planning Policy Design Guidelines have greater force and effect than design guidelines that are simply adopted by resolution or used in practice but not made officially pursuant to the Scheme:

##### *2.2. Relationship of Local Planning Policies to Scheme*

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- 2.3.1. *If a provision of a Local Planning Policy is inconsistent with the Scheme, the Scheme prevails.*
- 2.3.2. *A Local Planning Policy is not part of the Scheme and does not bind the local government in respect of any application for planning approval but the local government is to have due regard to the provisions of the Policy and the objectives which the Policy is designed to achieve before making its determination.*

*Note: Local Planning Policies are guidelines used to assist the local government in making decisions under the Scheme. Although Local Planning Policies are not part of the Scheme they must be consistent with, and cannot vary, the intent of the Scheme provisions, including the Residential Design Codes. In considering an application for planning approval, the local government must have due regard to relevant Local Planning Policies as required under clause 10.2.*

LPS3 in Table 2 lists specific development requirements/standards for particular zones and refers to design guidelines in a number of instances, including:

- Town Centre zone – minimum setbacks and maximum heights for the different sub-areas.
- Local Centre zone – maximum plot ratio and site cover and minimum setbacks. Although the Scheme does not mandate design guidelines here the discretion contained in these development requirements is appropriate to be addressed by such.

These typical design guidelines aspects relate to principles, standards or criteria for the design and assessment of proposed development allowing for guided flexibility and discretionary decision-making. Therefore for these zones Design Guidelines are necessary to enable development proposals to be formulated and determined.

## **STRATEGIC IMPLICATIONS**

Nil.

## **POLICY IMPLICATIONS**

Scheme Local Planning Policy Design Guidelines are to be had regard to.

## **STATUTORY ENVIRONMENT**

LPS3.

## **FINANCIAL IMPLICATIONS**

Nil.

## **SUSTAINABILITY IMPLICATIONS**

Nil

## **CONSULTATION**

The scheme policy process for the creation of design guidelines includes public advertising and consideration of submissions, similar to for a scheme amendment.



## **DESIGN GUIDELINES PROPOSAL**

The draft Design Guidelines were prepared by a town planning consultant based on a brief provided by staff in accordance with the framework of the Scheme aims, zone objectives and clause 10.2 matters to be considered. Preparation involved site inspections, map information and consideration of previous studies in order to appreciate the context and character of existing land use and development for each area.

The proposed Design Guidelines have been discussed by Elected Members at briefing sessions on LPS3. They have also been tested in discussing preliminary development proposals.

The Design Guidelines document explains their role and purpose, describes a broad vision for each centre and sets out the relevant development parameters for each centre in relation to the Scheme provisions.

## **PROCEDURE**

The Scheme procedure for creating policies/design guidelines is initiated by a Council resolution, followed by advertising of the proposal inviting submissions. Advertising entails public notices in a local newspaper and a minimum of 21 day period; while dissemination via the Town's website and other means may also occur. After considering any submissions, Council resolves whether to adopt the design guidelines and any modifications. Policies/design guidelines may also be amended from time-to-time, replaced, or revoked as needs evolve.

## **CONCLUSION**

The subject Design Guidelines are required by the Scheme and will assist with development proposals in the Town Centre and Local Centres. Advertising of the draft Design Guidelines and consideration of any submissions will enable Council to refine and finalise them as a Local Planning Policy instrument under the Scheme.

## **COMMITTEE COMMENT**

Committee discussed the proposal at some length and considered that, further to the earlier Council briefing sessions, it was desirable to hold a Council workshop on the Design Guidelines before reporting to Council and moving to advertising them. It was felt that the workshop would assist to recap on previous suggestions for improvements to the Town Centre in particular, as well as review the draft to reflect current aspects of relevance for the centres to be reflected in the Design Guidelines.

## **VOTING**

Simple Majority

## **OFFICER RECOMMENDATION**

### **Moved Cr Downes, seconded Cr Jeanes**

THAT Council note the proposed Design Guidelines for the Town Centre and Local Centres and undertake public consultation in accordance with the Local Planning Policy provisions of the Scheme, for the consideration of any submissions and further reporting to Council.

**AMENDMENT**

**Moved Cr Jeanes, seconded Mayor Dawkins**

**THAT the item be deferred for a workshop of Councillors and Officers to discuss further details of the proposed Design Guidelines and report back to Council prior to initiating advertising.**

**Carried 5/1**

**COMMITTEE RECOMMENDATION**

**THAT the item be deferred for a workshop of Councillors and Officers to discuss further details of the proposed Design Guidelines and report back to Council prior to initiating advertising.**

**THE AMENDED SUBSTANTIVE MOTION WAS PUT**

**Carried 5/1**

**10.1.2 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

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**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*

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*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 Mayor Dawkins, seconded Cr Jeanes

**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.

Carried 5/1

**10.1.3 REVIEW OF DELEGATION FOR PLANNING MATTERS**

**File Ref:** SUB/38-02  
**Attachments:** [Current Delegation](#)  
**Responsible Officer:** Carl Askew  
Chief Executive Officer  
**Author:** Andrew Jackson  
Manager Development Services

**Proposed Meeting Date:** 15 September 2014  
**Author Disclosure of Interest:** Author's position has delegation

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**SUMMARY**

This report presents a review of the delegation of planning powers to senior officers arising from the replacement of former Town Planning Scheme No. 2 (TPS2) by new Local Planning Scheme No. 3 (LPS3).

Preliminary explanation and discussion in this regard has occurred at Elected Member briefing sessions on LPS3. The recommendation is that Council adopt the updated delegation arrangement.

**BACKGROUND**

Decision-making for town planning matters involves delegation of some of Council's powers to senior staff for efficiency in handling lesser matters, reduced timelines for customers and manageable Development Services Committee meetings.

The power of this delegation stems from a local government's planning scheme. LPS3 in clause 11.3 Delegation of Functions provides for Council to delegate to the CEO any of its powers or duties under the Scheme, and for the CEO to sub-delegate such to any employee.

Delegation to the CEO, Manager Development Services (MDS) and the Senior Planning Officer for the MDS has operated well under previous TPS2 for many years. With the introduction of LPS3 it is necessary to continue the delegation arrangement and to review the details for consistency with the new Scheme and the latest Residential Design Codes (RDC).

In addition the delegation covers matters regarding the Metropolitan Region Scheme and subdivision procedures.

Although these planning delegations are perpetual they can be repeated annually with other Council delegations or updated whenever required.

**STRATEGIC IMPLICATIONS**

Nil.

**POLICY IMPLICATIONS**

Nil.

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**STATUTORY ENVIRONMENT**

- Local Government Act 1995
- Planning & Development Act 2005
- Metropolitan Region Scheme
- Local Planning Scheme No. 3
- Residential Design Codes

**FINANCIAL IMPLICATIONS**

Nil.

**SUSTAINABILITY IMPLICATIONS**

Nil.

**CURRENT DELEGATION**

The current delegation statement (attached) is a somewhat complicated document, and is summarised as follows.

**Development applications**

The current delegation instrument permits senior staff to approve (or refuse, as guided) development applications for:

- Single dwellings and associated development (eg carports, sheds, pools, fences).
- Ancillary dwellings (eg granny flats).
- A maximum of two grouped dwellings (townhouses) or multiple dwellings (apartments).
- Home Occupations and Home Businesses (Home Offices as defined do not require planning approval).
- Additions and alterations to residential units.
- Additions and alterations to commercial premises.
- Changes of use.
- Demolition; except for places on the State Register, Scheme Heritage List or Municipal Inventory Categories 1 or 2.
- Renewal of or variations to Council approvals.

This includes dealing with such development applications in the Stirling Highway Primary Regional Road Reservation under the Metropolitan Region Scheme, as delegated to local governments by the Western Australian Planning Commission (WAPC).

Refusal under delegation may be exercised only when the proposal does not comply with mandatory provisions of the Scheme, Scheme Policies or RDC; ie discretionary refusals are to be determined by Council. This means that proposals for which the decisions may be appealed are considered by Council. The incidence of refusals under delegation or by Council is low.

### **Subdivision matters**

Subdivision procedures involving local governments stem from the Planning Act rather than planning schemes.

Currently Council has delegated that senior staff can recommend approval and conditions or refusal to the WAPC, and clearance of conditions, for subdivision or amalgamation proposals, which includes strata proposals, for single dwellings that:

- Conform to the Scheme (and therein the RDC) and Scheme Policies.
- Conform to a related development approval.

This is except for places on the State Register, Scheme Heritage List or Municipal Inventory Category 1 and 2 buildings, which are to be dealt with by Council.

In addition, the delegation covers all minor residential or other subdivision or amalgamation proposals, such as boundary adjustments, ROW widenings, corner truncations, etc in relation to any zoning, land use or development; which are considered to be virtual technicalities and of no consequence to other parties nor of strategic significance. Often these arise from the implementation of development approvals.

Subdivision conditions recommended are to meet the requirements of the Scheme, Scheme Policies, RDC and development approvals and to preserve the amenity of the area by site controls.

Currently, in the case of an application to subdivide existing lots containing single dwellings, where those lots do not meet the average lot size for their density code, if the size of the overall site permits grouped dwellings, a recommendation to the WAPC may be made under delegation; otherwise the Town's recommendation on the proposal is determined by Council. Note that this is restrictive and could be expanded to include existing lots with grouped dwellings, as well applying the up to 5% site area concession under the RDC.

### **Exercising delegation**

As currently written the delegation is to be exercised subject to:

- Advertising of proposals for submissions as required by the Scheme or otherwise.
- Submissions received where relevant being addressed by conditions or mediation.
- Residential development applications satisfying the deemed-to-comply provisions or the design principles of the RDC.
- Special Purpose Dwellings satisfying the deemed-to-comply provisions of the RDC; ie any discretion under the design principles of the RDC is to be determined by Council. Note that this is restrictive as minor variations under the design principles of the RDC are capable of being managed under delegation for this type of dwelling, as above for other types, and this type of residential development is both small and infrequent.

The current delegation excludes determining:

- Height variations under the Scheme.
- Density variations under the RDC (ie concessions or bonuses).
- Development forward of the six-metre primary street setback pursuant to Council's 2002 Resolution, unless permitted to be varied under Scheme Policy (eg for garages or carports). Note that under LPS3 this is now outmoded.
- Mixed-use development under the RDC.

The delegation administrative procedure of a weekly notice to Elected Members and the CEO with call-in capacity works well and is to remain unchanged.

**PROPOSED DELEGATION**

LPS3 differs from former TPS2 in various respects and the current RDC have also been significantly revised. The delegation needs to respond to these latest planning controls and the proposals they will attract and guide.

**Determination of applications**

The following changes to the nature or extent of matters covered by the delegation are identified as appropriate.

Applications generally:

- Increase the maximum number of grouped or multiple dwellings to be dealt with under delegation from two to four.
- Delegate dealing with conforming subdivision, amalgamation and strata proposals not only for single dwellings but also for grouped or multiple dwellings (which occurs with strata proposals anyway).
- Delegate dealing with Special Purpose Dwellings which satisfy not just the deemed-to-comply provisions of the RDC but also the design principles of the RDC; ie as delegated for other types of residential development.
- Delegate applying height variations as permitted under the Scheme, where no objection is received to an advertised proposal.
- Delegate dealing with residential density variations which may be permitted under and as guided by the RDC in association with development applications, eg aged and dependent persons dwellings.
- For clarity, delegate dealing with fences, walls and gatehouses which are in accordance with the Scheme, RDC and any relevant Scheme Policy or Local Law.

Specific matters under LPS3:

- Delegate dealing with all advertisements (ie signage), including for heritage places, but at the officer's discretion refer proposals to the Development Services Committee and Council.
- Delegate issuing notices to remove or repair existing advertising signage.

## Residential setbacks

### Overview:

- In relation to TPS2, in 2002 Council passed a resolution to favour a 6m front setback for residential development throughout the district. This was despite the then Residential Planning Codes providing for lesser setbacks in a range of situations.
- It was also despite TPS2 and the Codes prevailing over a Council resolution in terms of statutory bearing; ie a Council resolution expresses a position or practice but does not have the status of a Council Policy or Scheme Policy.
- With the formulation and introduction of LPS3, as well as the latest RDC, the resolution has less relevance and weight. Also, over time Council has made numerous reasoned decisions departing from the resolution.
- Further, because the resolution was made in the context of (but not directly under the provisions of) now defunct TPS2 and the former Codes, it is effectively redundant.
- This overall change of circumstances and inconsistency needs to be reviewed.

### Detailed discussion:

In today's schemes, including LPS3, residential setbacks are managed primarily by the RDC, which are incorporated into Schemes and are intentionally flexible, allowing for variation based on the assessment of design principles.

In 2002 Council passed a Resolution generally preferring a standard 6m front setback for residential development throughout the district, irrespective of density coding and excluding setback averaging. This responded to the Residential Planning Codes of the time and recognised the pattern of traditionally greater front setbacks affording uniform streetscapes in many (although not all) localities. For over a decade the Town has applied this informal policy fairly successfully, partly due to large sites and cooperation from owners/designers. Council has also relaxed this approach and permitted lesser front setbacks in a number of carefully-considered situations, such as corner subdivisions, small lots, where there are adjoining reduced setbacks, streets characterised by lesser setbacks and where there are no dwellings opposite (eg Marine Parade). This has been in R20 areas as well as medium density-coded areas (eg R30, R40), and for both extensions to existing dwellings and new dwellings.

It is noted, however, that the Resolution carries limited weight, and does not have the bearing of a Scheme provision or Policy. Essentially, the Scheme prevails and in this respect:

- LPS3 relies predominantly on the RDC setback controls, which have since evolved and vary across a range of density codes.
- Whilst under the RDC R20 density-coded areas have a 6m front setback as a starting point, they may attract averaged front setbacks and other setback variations in accordance with the latest RDC.
- Clause 5.3.7 of LPS3 is the only prescribed variation to the RDC front setbacks, and reads:

*Despite anything contained in the Residential Design Codes to the contrary, in the case of areas with a residential density code of R30, the local government may require an R20 front setback of 6m to be applied, for the preservation of streetscapes, view corridors and amenity.*

- This provision for a greater setback accords more force than the Resolution, but is not mandatory and is applied by Council at its discretion, hence is appealable (in the same way that RDC setback reductions sought but refused are appealable).
- Further, it is at odds with the facts that the Scheme does not apply this provision to areas with density codes of less than R30 and that areas of R30 or greater density code have lesser setbacks under the RDC, as well as at odds with higher density codes applied under LPS3.
- To address this situation and clarify its direction Council could consider amending the Scheme, including reviewing the above clause 5.3.7, or creating a Scheme Policy on streetscape setbacks, including having regard to heritage properties and areas.
- Alternatively, to be consistent with the Scheme as adopted by Council and approved, which overrides the Resolution, the officer delegation should now be extended to allow approval of development with front setbacks where compliant with the Scheme or RDC, ie including averaging and other variations as guided by the RDC.
- Front garages and carports would be included in applying averaged setbacks. Note that this differs from the previous TPS2 Policy for these structures in front setbacks; however, under the deemed-to-comply provisions of the RDC the streetscape visual result of such new development would tend to be better than under the previous Policy.
- On this basis it is concluded that the 2002 Council Resolution has become outmoded and should be rescinded.

### **Subdivision matters**

- Expand the delegation *“In the case of an application to subdivide existing lots containing single dwellings, where those lots do not meet the average lot size for their density code, if the size of the overall site permits grouped dwellings, a recommendation to the WAPC may be made under delegation.”* to include existing lots with grouped dwellings, as well applying the up to 5% site area concession under the RDC.

### **Enforcement and administration**

- Delegate to the CEO authorisation of employees to inspect properties for the purposes of the Scheme.

### **Exercising delegation**

- Maintain the current administrative practices.

### **CONCLUSION**

The purpose of the delegation is for efficiency for customers and Council. It has been successful for the following reasons:

- Being aware of quicker decisions under delegation applicants are more inclined to ensure complying proposals.
- Delegation is effective in distinguishing between minor and major matters and provides appropriate flexibility for applying guided discretion.
- Neighbour notification and liaison are part of the process.
- Officers vet applications for potential delegated decisions and if in doubt refer proposals to the Development Services Committee and Council.
- The notification procedure informs Councillors, who may enquire about a proposal and if concerned refer it to the Development Services Committee and Council.

A revised delegation arrangement for LPS3 will ensure updated, ongoing efficiency and consistency in processing and determining planning proposals. Following Council approval the revisions will be made to the current delegation statement.

### **COMMITTEE COMMENT**

Committee indicated it was satisfied with proposed updated delegation arrangement and the Manager Development Services confirmed that the weekly Delegation Notice to Elected Members with call-in power would continue unchanged.

### **VOTING**

Absolute Majority required by Scheme.

### **OFFICER AND COMMITTEE RECOMMENDATION**

**Moved Cr Walsh, seconded Cr Jeanes**

**THAT Council:**

1. Pursuant to clause 11.3 of Local Planning Scheme No. 3, continue the delegation of authority for town planning purposes from Council to the Chief Executive Officer, the Manager Development Services and the Senior Planning Officer in the absence of the Manager Development Services, subject to the following revisions:

**Applications generally:**

- Increase the maximum number of grouped or multiple dwellings to be dealt with under delegation from two to four.
- Delegate dealing with conforming subdivision, amalgamation and strata proposals not only for single dwellings but also for grouped or multiple dwellings.
- Delegate dealing with Special Purpose Dwellings which satisfy not just the deemed-to-comply provisions of the RDC but also the design principles of the RDC.
- Delegate applying height variations as permitted under the Scheme, where no objection is received to an advertised proposal.
- Delegate dealing with residential density variations which may be permitted under and as guided by the RDC in association with development applications.



- Delegate dealing with fences, walls and gatehouses which are in accordance with the Scheme, RDC and any relevant Scheme Policy or Local Law.

**Specific matters under LPS3:**

- Delegate dealing with all advertisements, including for heritage places, but at the officer's discretion proposals may be referred to the Development Services Committee and Council.
- Delegate issuing notices to remove or repair existing advertising signage.
- Delegate approval of residential development, including garages, carports and other structures, with front setbacks where compliant with the Scheme or RDC, including averaging and other variations as guided by the RDC,

**Subdivision matters:**

- Expand the delegation *"In the case of an application to subdivide existing lots containing single dwellings, where those lots do not meet the average lot size for their density code, if the size of the overall site permits grouped dwellings, a recommendation to the WAPC may be made under delegation."* to include existing lots with grouped dwellings, as well applying the up to 5% site area concession under the RDC.

**Enforcement and administration:**

- Delegate to the CEO authorisation of employees to inspect properties for the purposes of the Scheme.
2. Given the provisions under Local Planning Scheme No. 3 and the Residential Design Codes for the control of front setbacks, rescind its 28 October 2002 Resolution to generally require a six metre front setback for residential development, without averaging, in the district.

Carried 6/0

**11 ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Nil.

**12 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING BY:**

**12.1 ELECTED MEMBERS**

Nil.

**12.2 OFFICERS**

Nil.

**13 MEETING CLOSED TO PUBLIC**

**13.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED**

Nil.

**13.2 PUBLIC READING OF RECOMMENDATIONS THAT MAY BE MADE PUBLIC**

Nil.

**14 MEETING CLOSURE**

The Presiding Member announced the closure of the meeting at 6:40 PM.

CONFIRMED MINUTES OF 16 September 2014 PAGES 1 – 24 INCLUSIVE.

PRESIDING MEMBER:

POSITION:

.....

DATE: ..... / ..... / .....