

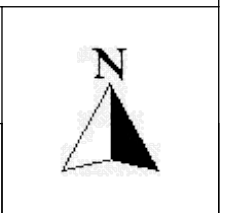


LPS3 - Amendment 2

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Scale 1:531

12/02/2015



**10.3.3 LOCAL PLANNING SCHEME NO. 3 - AMENDMENT NO. 2 (EILEEN STREET LOTS 101-103)**

**File Ref:** SUB/1888  
**Attachments:** [Lots 101 103 Eileen Street Scheme Extracts](#)  
**Responsible Officer:** Carl Askew  
Chief Executive Officer  
**Author:** Andrew Jackson  
Manager Development Services

**Proposed Meeting Date:** 20 October 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 correct anomalies affecting Lots 101-103 Eileen Street (Nos 138 Marine Parade and 2 and 2A Eileen Street), on the northern side from Marine Parade eastward.

The amendment is necessary to apply appropriate zoning, land usage, development requirements and built form controls to the lots, without ambiguity.

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

**BACKGROUND**

The overall LPS3 provisions evolved from former Town Planning Scheme No. 2 (TPS2) and a range of considerations during the formulation of LPS3.

Under TPS2 the three lots were in the Special Development Zone for the street block bounded by Marine Parade and Eric, Gadsdon and Eileen Streets, with a density code of R50, and have been developed as follows:

- Lot 101, corner Marine Parade – three-storey dwelling approved but only the basement was built. The lot has recently sold and a development proposal is anticipated in due course.
- Lot 102 – three-storey dwelling, with fourth storey extension proposed.
- Lot 103 – three-storey dwelling, with fourth storey extension approved but so far not built.

The street block and three lots fall within the beachfront commercial/residential precinct along the eastern side of Marine Parade from Eric to Forrest Streets, which when formulating LPS3 was the subject of extensive deliberations and ultimately ministerial modifications to determine the land use and development regime, including building height and form. Broadly, the resultant Scheme provisions entail zones for mixed uses, a three storey frontage to Marine Parade and greater heights stepped back, as prescribed for particular zones and sites.

The Town in carrying-out the ministerial modifications to LPS3 discovered several anomalies in the provisions applying to the three lots, which it raised with the

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Department of Planning given their ability to settle technical corrections at officer level.

Due to the nature of the anomalies and the principle of advertising proposed zoning or other significant changes, it was agreed that further modification or future amendment of the Scheme was required to address the matter. In view of the ministerial modifications having already been issued and with the primary aim being to finalise the Scheme, an amendment once the Scheme commenced was determined as the preferred method.

### **CURRENT PROVISIONS**

The Scheme provisions currently relating to the three lots are described in more detail below.

#### Zoning:

The Scheme Map applies Development Zone 'A' over the street block, which comprises the Ocean Beach Hotel (OBH) site and the three lots. The Scheme Map also designates Special Control Area 2 (SCA2) over this block, which applies special provisions to beachfront properties.

#### Land usage:

The Zoning Table refers to the structure planning provisions and process under Part 6 of the Scheme to determine land uses in the Development Zone.

#### Development requirements:

By virtue of Part 6 the SCA2 provisions apply in addition to and prevailing over the ordinary provisions of the Scheme. Further, by virtue of Schedule 14 particular Development Zone 'A' provisions apply to the street block; however, that part of the Schedule specifically excepts Lots 101-103 Eileen Street.

#### Built form controls:

By virtue of SCA2 the provisions in Schedule 15: Building Design Controls including the Building Control Diagrams apply to the street block. However, Diagrams 2 and 8 include a note specifically excluding Lots 101-103 Eileen Street; hence there is no building envelope or related parameters assigned to these lots. This makes interpretation of the Building Control Diagrams difficult.

From all of the above it can be seen that the Scheme provisions applying to the lots are inconsistent and incomplete, whereby it is not possible to properly formulate or regulate planning proposals for them. It can also be seen that the controls for these lots need to have regard to their existing development and amenity, and to also take into account their interrelationship with the neighbouring beachfront sites.

### **REVIEWING THE PROVISIONS**

Several considerations relate to how the three lots ought to be dealt with by the Scheme:

Zoning strategy:

Under TPS2 and LPS3 the zoning strategy has been to treat the street block as a whole in anticipation of comprehensive planning and development – although that has not yet eventuated and is not guaranteed – and the three lots have not been acquired as part of the OBH site. Influencing factors include multiple ownership, differing aspirations, development feasibility, and so on. There are various options in terms of structure planning, subdivision, land use, development and built form, including whether or not to retain existing buildings, possible sale of land parcels, staged development, etc.

The Scheme states objectives for its zones, those relevant here being for the Development, Foreshore Centre, Restricted Foreshore Centre and Residential zones; which in that order range from active, mixed-use sites with intensive development to lower-key, predominantly housing development respecting residential amenity.

Whilst the planning context for the OBH street block supports intensive development, there needs to be a transition to the surrounding residential development. Under LPS3 the lot on the south-west corner of Marine Parade and Eileen Street is zoned Foreshore Centre/SCA2 and developed to three storeys with 16 multiple dwellings, which were recently upgraded so are expected to remain for many years. After that, land along Eileen Street south and Gadsdon Street east and west is zoned Residential, with medium density codes of R40, R50 and R60.

Desired land usage:

The zoning strategy is premised on properties fronting Marine Parade from Eric to Forrest Streets having active, non-residential uses at ground floor level and mixed uses including short-stay accommodation and permanent residential on upper levels. On this basis at least the corner Lot 101 should be in such a zone. Moving inland the land use intent is for residential, and for any redevelopment of the OBH site to be compatible with that.

Existing development and character:

At present Eileen and Gadsdon Streets are residential on both sides, except for the open car park to the rear of the OBH site, and built mainly to the two-storey height limit, with some older three-storey apartment buildings. The dwellings are a mixture of ages, style, sizes and condition. Land values and tightly-held ownership (including strata) tend to restrict the rate of redevelopment. The three-storey multiple dwellings complex occupies the other Eileen Street corner site fronting Marine Parade. The six-storey OBH motel building contrasts with the existing lower-rise character.

Development controls and built form:

LPS3 recognises the potential for redevelopment along Marine Parade and provides for that through its development and built form controls, notably the SCA2 provisions applying to all land fronting Marine Parade, which by virtue of Development Zone 'A' for the OBH block includes the three lots.

These controls include a three-storey/12m building height limit to Marine Parade and additional storeys behind progressively setback, as prescribed by the Building Control Diagrams. For the OBH block the Diagrams specify a three-storey frontage to Eileen Street and two-storey to Gadsdon Street, to step-down and interface with residential development on the other sides of those streets.

As mentioned, the Diagrams as drawn are unclear in relation to the three lots, other than to be annotated to exclude them. Consideration of the zoning for these lots needs to take into account height controls.

#### Amendment No. 1

Amendment No. 1 to LPS3 initiated by Council in September 2014 addresses height controls in relation to extensions to existing buildings. For the sake of clarity, that Amendment does not provide for the proposed fourth storey to Lot 102 Eileen Street, as it is not applicable to the Development Zone the subject of this report, does not permit the addition of a storey, and does not alter the height controls for the Foreshore Development Zone.

#### Zone options considered:

In earlier discussion the Department of Planning has recognised that the three lots do not form part of the broader OBH site which is under different ownership, that two of the three lots have been developed for single dwellings and that Eileen Street is intended to be residential in character with a three-storey edge to the northern side. On this basis the Department suggested a Residential zoning with an R60 density code. However, as assessed below that appears less suitable, and it is noted that the SCA2 provisions and Schedule 15 do not relate to the Residential Zone.

#### Development Zone:

This would reflect the previous TPS2 and current LPS3 zoning; however, the abovementioned exclusion of the three lots from the provisions of Schedules 14 and 15 for the zone flag that the zoning of the lots requires review. Acquisition and development of the lots under such zoning has not been pursued. It would be excessive to require any one or more of the three lots to undergo the extensive structure planning process under this zoning separate from the OBH site for redevelopment. A Development Zone would encourage loss of existing residential development and a more abrupt built form interface with residential opposite, including potential traffic affecting Eileen and Gadsdon Streets.

#### Residential Zone:

This would recognise the existing land usage and street character, but be inconsistent with the LPS3 zoning strategy for the Marine Parade frontage. It would mandate a two-storey height limit for residential (re)development, which would be at odds with the existing three-storey dwellings and the previously-approved and proposed fourth storeys within the 12m height envelope. It would result in diminutive development, at least for the corner lot, interfacing with the OBH site, and it would offer little incentive for development of the corner lot, including as residential use at ground floor would lack amenity.

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Foreshore Centre Zone:

This is the zone applied to land fronting Marine Parade, other than the Development Zone block and Cottesloe Beach Hotel site (Hotel zone), which interfaces with predominantly Residential Zone behind. SCA2 overlays all of these zones. As explained above, a Foreshore Centre zoning would be consistent for at least the corner lot and possibly all three lots. It would allow the existing dwellings to remain, or to be redeveloped in accordance with that zone and the relevant provisions, and would be an incentive for development of the corner lot. Were all three lots zoned Foreshore Centre, this would extend along Eileen Street to match the Foreshore Centre Zone on the other side; however, the implication would be for non-residential use on the ground floor, hence more activity in the street. An option would be that the larger corner lot is zoned Foreshore Centre and the other two lots are zoned Residential, although the latter would have the implications described above.

Based on the SCA2 provisions and Schedule 15, the height regime for this zone is three storeys/12m to Marine Parade with fourth and fifth storeys (max. 21m) setback. Assuming this zoning, given the 15.5m depths of the lots from Eileen Street, the north-south setback of 12m currently required to the fourth and fifth storeys results in only a small area that could be developed above three storeys, which is impractical. An interface above three storeys/12m would also be less desirable to the dwellings opposite. Therefore, limiting height to three storeys/12m for these lots would create a suitable built form interrelationship with the surrounding sites.

Alternatively, given the previous TPS2 provision and approval, and the current proposal, for a fourth storey within the 12m height limit, applicable to residential development, as a variation it would be feasible to assign that height control to the three lots, which would maintain the intended building envelope whilst permitting compatible development. This would also offer greater flexibility to the design of the corner lot to accommodate mixed uses and have a streetscape presence against the backdrop of the OBH site. On balance, this is the recommended solution.

Restricted Foreshore Centre Zone:

In the main beachfront precinct this lesser zone applies to a few land parcels on Warnham Road and John Street behind the Marine Parade properties. It involves a reduced range of lower-key land uses and a more limited extent and height of development, and is not covered by SCA2. As such it would not adequately provide for the existing or potential development of the subject lots.

**STRATEGIC IMPLICATIONS**

Nil.

**POLICY IMPLICATIONS**

Nil.

**STATUTORY ENVIRONMENT**

Planning & Development Act.  
Town Planning Regulations.

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LPS3.

**FINANCIAL IMPLICATIONS**

Nil.

**SUSTAINABILITY IMPLICATIONS**

Nil.

**CONSULTATION**

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

**AMENDMENT PROPOSAL**

Following the review explained in this report the proposed amendment focuses on applying the Foreshore Centre zone and the SCA2 provisions to the three lots, with corresponding modification of the Schedule 15 Building Control Diagrams in terms of building height.

The references to the three lots in Schedule 14 and in Schedule 15 Diagram 8 can remain as they exclude them from the OBH site, as will the rezoning.

**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 correct the current anomalies for certainty of the Scheme zoning and provisions applying to the three lots.

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 supported the proposed Scheme Amendment as necessary and the intended four storey/12m height limit for the subject lots as appropriate.

**COUNCIL COMMENT**

Manager for Development Services circulated a memo to the Elected Members to advise that there is a need to change section of the Scheme text. The consequential amendments required are to the introductory text of Schedule 15 in point 3 a) and in the Scheme Text in clause 6.4.3.1 (a), to add words correlating with the maximum

building height of 4 storeys within 12m applying specifically to the lots. Therefore the addition sections of (b) and (c) were added to the Council resolution.

**VOTING**

Simple Majority

**COUNCIL RESOLUTION**

Moved Cr Jeanes, seconded Cr Birnbrauer

**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, to provide appropriate zoning and development controls for Lots 101-103 Eileen Street, Cottesloe, by:
  - a. Amending the Scheme Map to exclude Lots 101-103 Eileen Street (Nos 138 Marine Parade and 2 and 2A Eileen Street) from Development Zone 'A' and to include them as Foreshore Centre Zone, and therefore Special Control Area 2.
  - b. Amending the Scheme Text in clause 6.4.3.1 (a), by adding the words "except for Lot 101 Eileen Street on the corner of Marine Parade, which may have a maximum height of 4 storeys within 12m.
  - c. Amending Schedule 15 Building Design Controls for Special Control Area 2, in the text section in point 3 a), by adding to the line "4 storeys – maximum building height shall be 17m" the words "except for Lots 101-103 Eileen Street, for which the four storey maximum building height shall be 12m."
  - d. Amending Schedule 15 in the Building Control Diagrams to distinguish:
    - (i) A height limit and building envelope of four storeys within 12m for the whole of Lots 101-103 Eileen Street.
    - (ii) That Lots 101-103 Eileen Street are in a zone and building envelope separate from the Ocean Beach Hotel site.
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:
  - a. placing a copy of the notice in the Post newspaper, on the Town's noticeboard/s and website, and at the Library; and
  - b. 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.

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Carried 9/0





**PTS Town Planning Pty Ltd**

70 Grand Promenade, Bayswater WA 6053  
Mob 0411 445031  
[pt.simpson.70@gmail.com](mailto:pt.simpson.70@gmail.com)  
ABN 32 603 168 850

Your Ref: SUB/1888, 138 Marine

5 January 2015

Chief Executive Officer  
Town of Cottesloe  
PO Box 606  
COTTESLOE WA 6911

Attention: Mr Andrew Jackson

Dear Andrew

**LOCAL PLANNING SCHEME AMENDMENT NO. 2 - LOTS 101-103  
EILEEN STREET, COTTESLOE - SUBMISSION**

Further to the letter from Mr David Dillon dated 5 January 2015 to the Town of Cottesloe, PTS Town Planning Pty Ltd, on behalf of Mr David Dillon, provides the following submission to Local Planning Scheme Amendment No. 2.

**Appreciation**

We understand that Amendment No. 2 has been initiated to address the existing anomalies in Local Planning Scheme No. 3 (LPS3) whereby the LPS3 provisions that apply to Lots 101, 102 and 103 Eileen Street, Cottesloe are inconsistent and incomplete.

To address the anomaly the Town proposes to rezone the three lots from Development Zone 'A' to Foreshore Centre Zone and to provide built form standards.

**Background**

As identified in Mr Dillon's letter, the site was purchased in 2014, following discussions with the Town, with the express desire to construct a single house. An application for a single house was lodged with the Town in December 2014.

We also note that a single house was approved on the site in 2002 and has been partially constructed and that single houses exist on Lots 102 and 103.

## Scheme Amendment No. 2

Amendment No. 2 proposes to rezone the three lots to Foreshore Centre Zone and that a number of zones were explored as part of the amendment consideration.

Our client supports the rezoning of Lot 101 to Foreshore Centre Zone and the identified built form, however, does not support the amendment which makes a single house a not permitted land use (and subsequently makes the single houses on Lots 102 and 103 non-conforming land uses). Our client also does not support the requirement for the ground level of Lot 101 to be commercial as the intent when the site was purchased, and the fact that a single house has been partially constructed, is to construct a single house.

Therefore our client seeks changes to the Amendment to enable a single house to be constructed without the requirement for commercial land uses at ground level. We understand that the Town is amenable to this request.

### Proposed Amendments

The following changes are proposed to enable a single dwelling to be constructed on Lot 101. We also identify provisions that ensure that Lots 102 and 103 do not become non-conforming land uses, however, we do not act for these landowners.

- Include an additional use 'Single House' under Clause 4.5 and within Schedule 2 for Lot 101 Eileen Street (Lots 102 and 103 can also be included if the owners require). It is not considered that any conditions are necessary for the additional use given the nature of the use. This would enable a single house to be constructed on Lot 101 and would also mean that the existing single houses on Lots 102 and 103 do not becoming non-conforming land uses.
- Amend Clause 5.12 after the words Foreshore Centre to insert (Excluding Lots 101, 102 and 103 Eileen Street). This would exclude these lots from this clause and therefore enable habitable rooms to be constructed at ground level for Lot 101 and reflect the existing ground level uses of Lots 102 and 103.
- It is ambiguous whether Lots 101, 102 and 103 would be within the Ocean Beach Hotel Site, although it is noted that it is proposed to amend Schedule 15 so that the lots are separate from the OBH site. For the sake of clarity it would be worth amending Clause 6.4.3.3 in the Clause Title after Additional Provisions Applicable to the Ocean Beach Hotel Site to insert (Excludes Lots 101-103 Eileen Street). As identified, this clause may not be relevant, however, given that it is before Schedule 15 it should be amended to ensure that it is clear that the provisions do not relate to Lots 101, 102 and 103.
- Amend Clause 6.4.3.5(a) after Foreshore Centre Zone to insert (Excluding Lots 101-103 Eileen Street). This would then permit residential at ground level.
- Amend Clause 6.4.3.59(b) after Table 1 to insert 'and any additional use identified in Schedule 2'. This would reference that a single house is permitted on Lots 101, 102 and 103.



## Planning Justification

The request to change the provisions of Amendment No. 2 is based on the following.

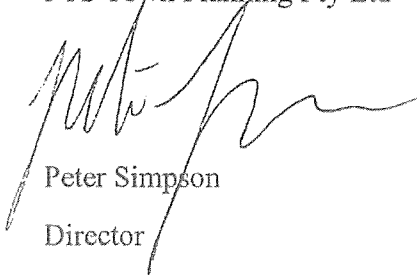
- Our client purchased the site with the express desire to construct a single house. This was discussed with the Town's Officers.
- A single house is consistent with the Foreshore Centre Zone objectives which include providing for a wide range of residential and community uses and a limited range of commercial uses and ensuring the zone is predominantly residential.
- There is an approval for a single house on the site from 2002 which has been partially constructed. It is considered that the works undertaken have achieved substantial commencement on site and therefore the approval is valid in perpetuity. It is acknowledged, however, that our client intends to modify the improvements and construct a new single dwelling.
- Lots 102 and 103 have existing single houses and the amendment would make them non-confirming land uses, which is not considered an appropriate planning outcome for a largely residential street.
- The Department of Planning suggested that the sites be rezoned to Residential, which would reflect the existing and proposed uses. While our client supports the Foreshore Centre Zone, the advice provided by the Department suggests that a single dwelling is an appropriate land use.
- The amendment as proposed would enable commercial frontages for all three lots and we note that this is not a desired outcome along Eileen Street, given the residential nature of the street.
- The longer frontage of Lot 101 addresses Eileen Street which should be more appropriately residential in nature.
- Lot 101 has a very small frontage to Marine Parade which would make the provision of commercial at ground level very difficult in terms of access and car parking (it is also not our client's objective for the site).
- Given the small frontage of Lot 101 to Marine Parade and that the OBH site is located adjacent, the removal of the commercial ground level would not impact the planning outcome established for the area.

Therefore we seek appropriate changes to the scheme amendment to enable our client to construct his family home. We are happy to discuss the changes with you and you may also want to seek legal advice to ensure the amendments achieve the proposed outcome, given the complex nature of the local planning scheme provisions.

We look forward to your favourable consideration of this submission. Should you have any queries regarding the above, please do not hesitate to contact the undersigned on 0411 445 031.

Yours sincerely

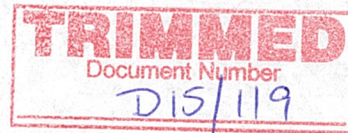
PTS Town Planning Pty Ltd

A handwritten signature in black ink, appearing to read 'Peter Simpson', written over the printed name and title.

Peter Simpson

Director





5 January 2015  
Dr D. Dillon  
34 North Street  
Cottesloe WA 6011

Chief Executive Officer  
Town of Cottesloe  
Broome Street  
Cottesloe WA 6011

Dear Sir

**RE: Lot 101 / 138 Marine Parade**

Thank you for the opportunity to comment on Amendment 2 of TPS3. I have been a Cottesloe rate payer since 2008 at my current home at 34 North Street.

I purchased the property at Lot 101 / 138 Marine Parade in September of last year, with the express intent of building a family home there. The site was advertised, on advice from Council to the agent that the residential use could continue. Prior to purchase I met with the Manager of Development Services and discussed my intended course of action with him. As a result of his advice I resolved to purchase the site.

Whilst Amendment 2 is still a proposal, no clear advice was provided to me, until the last few weeks, about the long term intention to make single house not permitted and residential development at ground level not permitted on my site.

In commenting on the Amendment I have two objectives, firstly to ensure that my DA for a house will be considered favourably by Council and secondly to question the inflexible planning constraint for future ground level uses on the site, given the probable life span of the existing residential developments in Eileen Street. They are highly unlikely to change function for some years and it is understood that other owners in Eileen Street have applied to have an extra storey added, in line with the increase in permitted height.

Commercial uses may well be the desired long term goal in much of this section of Marine Parade, but it does not have to be at the expense of Residential use. I believe that the market has and should determine such outcomes in this part of the mixed use zone.

I am pleased that council has accepted my submission for development approval following legal advice that Council still has the power to make a determination.

Attached is a short history of activity on the site. A report from Town Planner, Peter Simpson, which includes suggested changes to the text in Amendment 2 to permit residential development on Lot 101 and the adjoining Lots 102 and 103, has been sent under separate cover.

Regards

A handwritten signature in black ink, appearing to read "Dillon", with a long horizontal line extending to the right.

David Dillon



**Lot 101 / 138 Marine Parade**

**Potted History**

1. In 2002 Development and then Building Licence approvals were issued by Council for the development of a four level house on Lot 101.
2. Building works were substantially commenced on the site and the brickwork, slabs and reinforced retaining to the basement completed. The value of the complete work, which includes substantial engineering content, has been estimated in the order of \$250,000, by my consultants, though the original building designer advised that the figure was as high as \$400,000.
3. Despite extensions of time by Council, work failed to proceed and ultimately the building licence lapsed. The property has been left in an incomplete state ever since.
4. Several attempts have been made to sell the property and it was advertised again earlier this year.
5. I approached council prior to purchase and met with Andrew Jackson, at which meeting I advised that it was my intention to buy the lot with the express intention of building a family home on it.
6. I subsequently purchased the property and engaged Craig Smith Architect to proceed with the plans.
7. The error in the State Planning amendment and the changes to TPS3 proposed in amendment 2 were not raised in preliminary discussions with Council officers, but were discussed in detail with Andrew Jackson at the beginning of November and the complications clarified.
8. Council, after receiving legal advice, accepted my development application on 19 December last year.