

DEVELOPMENT AND REGULATORY SERVICES**10.1.4 MINISTERIAL DIRECTION - AMENDMENT NO. 12 TO LOCAL PLANNING SCHEME NO. 3 - NO. 7 AND 11 (LOTS 50 AND 35) STATION STREET, COTTESLOE**

Directorate: Development and Regulatory Services
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Matthew Scott, Chief Executive Officer
File Reference: D22/26328
Applicant(s): Element Advisory Pty Ltd on behalf of landowners
Author Disclosure of Interest: Nil

SUMMARY

On 4 May 2022, the Minister for Planning, pursuant to section 76 of the *Planning and Development Act 2005*, issued an order to the Town of Cottesloe to initiate Scheme Amendment No. 12 to Local Planning Scheme No. 3 (LPS3) - No.7 & 11 (Lots 50 & 35) Station Street, which seeks an increase in building height of up to ten (10) storeys (35 metres), and changes to setbacks, plot ratio controls and other land use, access and built form considerations within the Cottesloe Activity Centre.

The Town is directed to comply with this order within 60 days of the date of the order (signed 4 May 2022). The Minister's reason for the decision is that proposed Amendment No. 12 is in keeping with the principle of supporting higher residential densities in and around activity centres consistent with *Perth and Peel @ 3.5 Million* and *State Planning Policy 4.2 Activity Centres for Perth and Peel* and, as such, it is appropriate that the proposal be initiated to allow for the amendment to be advertised for public comment and further detailed assessment to be undertaken through the scheme amendment process.

OFFICER RECOMMENDATION IN BRIEF

That Council notes and complies with the Minister for Planning's order by initiating and progressing the scheme amendment in accordance with the processes set out in Part 5 of the *Planning and Development Act 2005* and the *Planning and Development (Local Planning Schemes) Regulations 2015*.

BACKGROUND

In April 2019, the Town received a request to amend the scheme from planning consultant 'Element' on behalf of the landowner of No.7 and 11 (Lots 50 and 35) Station Street, Cottesloe. The scheme amendment sought to amend the Residential Design Code (R-Code) applicable to the site from R100 to RAC-0 and amend Table 2 – Development requirements.

On 25 June 2019, Council resolved to defer consideration of the amendment until such time as an Integrated Local Area Plan (now Cottesloe Village Precinct Structure Plan) for the Cottesloe Activity Centre had been suitably progressed. The Cottesloe Village Precinct Structure Plan has not progressed as quickly as anticipated and in May 2021, Element submitted revised scheme amendment documents and requested that Council initiate and

advertise the scheme amendment. On 27 July 2021, Council resolved not to initiate the scheme amendment for the following reasons:

- The Scheme Amendment is inconsistent with the Town of Cottesloe endorsed Local Planning Strategy 2008 as it would result in a form of development within the Cottesloe Town Centre that conflicts with the aims of the Strategy for the Centre to be a functional and vibrant “main-street” type district commercial centre with a traditional village-style amenity.
- The Town is currently reviewing its Local Planning Strategy as part of the review of LPS3 and has prepared and is progressing a Draft Precinct Plan for the Cottesloe Village Centre to provide a strategic framework to guide the comprehensive and coordinated redevelopment of the Centre and to properly consider any proposed amendments to LPS3 in line with the Precinct Plan. In the absence of the Precinct Plan, the proposed Scheme Amendment, if supported, is likely to set a precedent for other sites within the Precinct to be redeveloped which would undermine the purpose and function of the Precinct Plan and adversely impact on the Local Planning Strategy and LPS3 reviews.
- The Town of Cottesloe and the Shire of Peppermint Grove have jointly prepared a Draft Precinct Plan consistent with State Planning Policy 4.2 - Activity Centres (SPP 4.2) and State Planning Policy 7.2 - Precinct Design (SPP 7.2) to guide the comprehensive and coordinated redevelopment of the Cottesloe Activity Centre and delivery of land use planning and design outcomes in accordance these policies. There are insufficient grounds to support the proposed Scheme Amendment ahead of the progression of the Precinct Plan to a final approval stage as this would result in development of the Cottesloe Activity Centre in a poorly integrated, incohesive and inaccessible manner in conflict with SPP 4.2 and SPP 7.2.

A copy of the 27 July 2021 Council report is included as an attachment to this report.

On 17 September 2021, Element submitted a representation made pursuant to section 76 of the *Planning and Development Act 2005* to the Minister for Planning. The representation requested the Minister to order the Town to initiate the amendment on the basis that the Town had failed to amend its Planning Scheme so as to enable the provision of contemporary residential infill development in an appropriate location, opposite the Cottesloe Train Station, consistent with current WAPC policy.

On 10 May 2022, the Town received a letter by email from the Minister for Planning attached to an order (signed on 4 May 2022) requiring the Town to initiate the amendment as considered by Council on 27 July 2021. The direction does not represent formal support for the amendment but it is the Minister’s view that the amendment is worthy of further consideration via the scheme amendment process. A copy of the order is attached to this report.

The Town has progressed the amendment and referred the relevant documentation to the Environmental Protection Authority for consideration under section 48A of the *Environmental Protection Act 1986*. Following a Council resolution on the Ministerial order the documentation is to be forwarded to the Western Australian Planning Commission for consideration.

OFFICER COMMENT

Site

No.7 and 11 Station Street (the site) comprises a total area of 3,232m² and is occupied by two 'U' shaped ground level commercial/retail buildings with at-grade car parking. De Nardi Lane abuts the south and east side of the site and Cottesloe Train Station is in close proximity to the west of the site.



Current requirements

The site is zoned 'Town Centre' with a Residential Design Code (R-Code) of 'R100' under Local Planning Scheme No. 3 (LPS3). Development requirements are contained in Table 2 of LPS 3 and allow a plot ratio of 1:15:1, 100% site coverage and 2 storeys, or 3 storeys (11.5 metres) subject to no undue adverse impact on amenity and to design guidelines.

Scheme amendment

The scheme amendment seeks to amend the R-Code applicable to the site from 'R100' to 'RAC-0' and Table 2 of LPS3 by inserting new development requirements for the site. The amendment provides Building Control diagrams showing a building height up to ten storeys (32.5 metres) with an additional two metres (up to 34.5 metres) for rooftop articulation and structures. Setback requirements are also included. Residential development is to be assessed against the Residential Design Codes of WA Volume 2 – Apartments and is not permitted on the ground floor. The amendment requires a Local Development Plan to be prepared for the lots prior to redevelopment. A copy of the scheme amendment and the accompanying report are included as attachments to this report.

Authority/Discretion

Division 2 of the *Planning and Development Act 2005* sets out the Minister's powers in relation to local planning schemes. Section 76 of this division states:

- (1) *If the Minister is satisfied on any representation that a local government —*
 - (a) *has failed to take the requisite steps for having a satisfactory local planning scheme or an amendment to a local planning scheme prepared and approved in a case where a local planning scheme or an amendment to a local planning scheme ought to be made; or*

- (b) *has failed to adopt a local planning scheme or an amendment to a local planning scheme proposed by owners of any land, in a case where a local planning scheme or an amendment to a local planning scheme ought to be adopted; or*
- (c) *has refused to consent to any modifications or conditions imposed by the Minister,*

the Minister may order the local government, within such time as is specified in the order, to prepare and submit for the approval of the Minister a local planning scheme, or an amendment to a local planning scheme or to adopt a local planning scheme, or an amendment to a local planning scheme or to consent to the modifications or conditions imposed.

- (2) *If the representation under subsection (1) is that a local government has failed to adopt a local planning scheme or an amendment to a local planning scheme, the Minister, in lieu of making an order to adopt the scheme or amendment, may approve of the proposed scheme or amendment subject to such modifications and conditions, if any, as the Minister thinks fit.*
- (3) *A local planning scheme or an amendment approved under subsection (2) has effect as if it had been adopted by the local government and approved by the Minister under this Part.*

Options and Implications

Council may resolve not to initiate the amendment in contravention of the Minister's order. The Minister would likely act pursuant to section 76(2) of the *Planning and Development Act 2005* to progress the amendment.

It is recommended that Council comply with the order and initiate the proposed amendment for the purposes of inviting submissions. Council will have the opportunity of considering any such submissions and subsequently will be required to resolve whether to adopt the amendment as advertised, adopt the amendment subject to modifications, or not adopt the amendment for reasons it must set out. The Minister will determine the final outcome of the proposed amendment.

Conclusion

Council, at its meeting held on 27 July 2021, resolved not to initiate the proposed amendment to LPS 3 to amend the R-Code applicable to the site from 'R100' to 'RAC-0' and Table 2 of LPS 3 by inserting new development requirements for the site.

Following the applicant making a representation to the Minister for Planning, on 4 May 2022 the Minister ordered the Town to initiate this amendment.

It is recommended that Council resolve to comply with this order.

ATTACHMENTS

- 10.1.4(a) 27 July 2021 minutes [under separate cover]**
- 10.1.4(b) Section 76 order [under separate cover]**
- 10.1.4(c) Scheme Amendment 12 [under separate cover]**
- 10.1.4(d) Scheme Amendment 12 Report [under separate cover]**

CONSULTATION

The scheme amendment will be advertised in accordance with the requirements of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

STATUTORY IMPLICATIONS

Local Government Act 1995

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

Town of Cottesloe Local Planning Scheme No. 3

State Planning Policy 7.3 Residential Design Codes Volume 2 - Apartments

POLICY IMPLICATIONS

Refusal to initiate the proposed scheme amendment may lead to:

- The Minister progressing the amendment in accordance with section 76(2) of the *Planning and Development Act 2005*.
- Development approval granted to development through a separate development process (i.e. JDAP or SDAU) that does not satisfy the development and design principles advocated by the draft Precinct Plan.

STRATEGIC IMPLICATIONS

This report is consistent with the Town's *Strategic Community Plan 2013 – 2023*.

Priority Area 4: Managing Development

Major Strategy 6.4: Enhance the Town's ability to embrace and manage change.

RESOURCE IMPLICATIONS

Resource requirements are in accordance with the existing budgetary allocation.

The applicant will be invoiced for the time spent by the Town's officers on this amendment and all advertising costs associated with this amendment.

ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS

There are no perceived sustainability implications arising from the officer's recommendation.

VOTING REQUIREMENT

Simple Majority

OCM077/2022

OFFICER RECOMMENDATION AND COUNCIL RESOLUTION

Moved Cr MacFarlane

Seconded Cr Masarei

THAT Council:

1. **NOTES** the Order to the Town of Cottesloe made by the Minister for Planning, pursuant to section 76(1) of the *Planning and Development Act 2005*, on 4 May 2022 to initiate Amendment No. 12 to the Town of Cottesloe Local Planning Scheme No. 3 - No. 7 and 11 (Lot 50 and Lot 35) Station Street, Cottesloe.
2. **COMPLIES** with that Order by initiating proposed Amendment No. 12 to the Town of Cottesloe Local Planning Scheme No. 3 - No. 7 and 11 (Lot 50 and Lot 35) Station Street, Cottesloe to insert the changes set out in Attachment 3 to this report.
3. **PROGRESSES** Amendment No. 12 as set out in Attachment 3 to this report in accordance with Part 5 of the *Planning and Development Act 2005* and the *Planning and Development (Local Planning Schemes) Regulations 2015*.

Carried by En Bloc Resolution 8/0