

10.1.4 PROPOSED SCHEME AMENDMENT NO.13 TO LOCAL PLANNING SCHEME NO. 3 - RESIDENTIAL BUILDING HEIGHTS

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File Reference: D22/29179
Applicant(s): N/A
Author Disclosure of Interest: Nil

SUMMARY

The purpose of this report is to present a proposed amendment to Local Planning Scheme No. 3 (LPS 3) to introduce discretion to building height controls for new residential development.

The change is considered necessary due to some of the building height provisions in LPS 3 being redundant as they have been superseded by the “deemed provisions” in the *Planning and Development (Local Planning Schemes) Regulations 2015*.

OFFICER RECOMMENDATION IN BRIEF

That Council resolves to initiate Amendment No. 13 to LPS 3 as a basic amendment to refine the residential height provisions in clause 5.7.5, consistent with the *Planning and Development (Local Planning Schemes) Regulations 2015* and State Planning Policy 7.3 - *Residential Design Codes (R-Codes)*.

BACKGROUND

The fundamental height regime for residential and non-residential development in the Town (apart from Special Control Area 2 and the Development zone areas) is contained in clause 5.7: Building Height, related Schedule 11, and Table 2: Development Requirements of LPS 3.

The definitions in LPS 3 relating to Building height, Wall height and the diagrams in Schedule 11 however, are redundant as they have been superseded by the “deemed provisions” in the *Planning and Development (Local Planning Schemes) Regulations 2015* (see below):

Superseded height definitions in LPS 3

Building Height means the maximum vertical distance between any point of natural ground level and the uppermost part of the building directly above that point (roof ridge, parapet, or wall), excluding minor projections.

Wall Height means the vertical distance between –

- a) any point of natural ground level; and
- b) the level of the roof or the top of a parapet from that point in accordance with Figures 1, 2, 3 or 4 in Schedule 11.

Replacement height definitions in the “deemed provisions” - *Planning and Development (Local Planning Schemes) Regulations 2015*

Building height, in relation to a building –

- a) *if the building is used for residential purposes – has the same meaning given in the R-Codes; or*
- b) *if the building is used for purposes other than residential purposes – means the maximum vertical distance between the natural ground level and the finished roof height directly above, excluding minor projections as that term is defined in the R-Codes.*

Wall height, in relation to a wall of a building –

- a) *if the building is used for residential purposes – has the same meaning given in the R-Codes; or*
- b) *if the building is used for a purpose other than residential purposes – means the vertical distance from the natural ground level of the boundary of the property that is closest to the wall to the point where the wall meets the roof or parapet.*

R-Codes height definitions referred to in the “deemed provisions”

Height, building – *This is the distance between the point where the base of the wall meets the natural ground level and measured to the highest point of a wall or roof of a building vertically above that point (for measurement guidance refer to Figure Series 7) excluding minor projections.*

Height, wall – *This is the vertical distance between the point where the base of the wall meets the natural ground level at the boundary immediately adjacent to the wall to the roof or top of the parapet.*

Change to definition of natural ground level

The definition of natural ground level in the R-Codes has been replaced by the following definition in the “deemed provisions”:

Natural ground level, in relation to land subject to development, means –

- (a) *the ground level specified in either of the following that applies to the land (or, if both of the following apply to the land, the more recent of the following) –*
 - (i) *a condition on an approval of a plan of subdivision that specifies a ground level;*
 - (ii) *a previous development approval for site works on the land that specifies a ground level;*

or

- (b) *if paragraph (a) does not apply – the level of the land before any disturbance to the land relating to the development.*

Previous “Building height” Scheme amendments

Since LPS 3 was gazetted in 2014, there have been three (3) amendments to the Scheme that have applied discretion to the building height provisions:

- Amendment 1 (gazetted 24 March 2015) - to create discretion to increase height for extensions to existing dwellings, and for heritage buildings;
- Amendment 3 (gazetted 14 July 2015) - to restore the maximum building height limit for single storey buildings of 6m; and

- Amendment 6 (gazetted 4 November 2016) - to make changes to clause 5.7.5 in pursuance of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

State Administrative Tribunal (SAT) decision (WASAT 115)

The decision of the SAT in September 2021 to uphold an appeal against the Council's decision to refuse a development application for a property located at 7 Avonmore Terrace, Cottesloe, reinforced the proviso that where the Scheme is inconsistent with a deemed provision, the deemed provision prevails. The SAT also determined how natural ground level (NGL) should be interpreted for the purposes of assessing building height and wall height and determined in that instance, NGL should be taken from existing approved site levels, not the level of the land before any disturbance took place relating to the development.

OFFICER COMMENT

The gazettal of the *Planning and Development (Local Planning Schemes) Regulations 2015* relating to the definition of building height, wall height, and natural ground level is significant as it has made some of the provisions in LPS 3 redundant. This is particularly true for new residential development which under the current LPS provisions is excluded from any height discretion being allowed.

If no change is made to LPS 3, the non-discretionary maximum building height for new residential development may result in an undesirable streetscape that does not satisfy the aims and objectives of the Scheme. This is largely due to the building heights being measured from existing approved site levels (including sites that have been excavated), in accordance with the "deemed provisions".

The proposed change will give the Town discretion to consider heights of residential dwellings consistent with surrounding development. It is not proposed to extend the discretion to non-residential development at this stage as these are not assessed under the R-Codes.

Proposed Scheme Amendment No. 13 is considered a "basic" amendment under the *Planning and Development (Local Planning Schemes) Regulations 2015* as it modifies the Scheme text to be consistent with the Regulations and the R-Codes.

Clause 5.1.6 in the R-Codes (Volume 1) refers to "Building height" and allows development to demonstrate compliance with the following design principles:

Building height that creates no adverse impact on the amenity of adjoining properties or the streetscape, including road reserves and public open space reserves; and where appropriate maintains:

- *adequate access to direct sun into buildings and appurtenant open spaces;*
- *adequate daylight to major openings into habitable rooms; and*
- *access to views of significance.*

Clause 2.2 in the R-Codes (Volume 2 – Apartments) refers to "Building height" and requires the following element objective to be satisfied:

- *The height of development responds to the desired future scale and character of the street and local area, including existing buildings that are unlikely to change;*
- *The height of buildings within a development responds to changes in topography;*
- *Development incorporates articulated roof design and/or roof top communal open space where appropriate;*
- *The height of development recognises the need for daylight and solar access to adjoining and nearby residential development, communal open space and in some cases, public spaces.*

Proposed modification to clause 5.7.5 in LPS 3

It is recommended that clause 5.7.5 in LPS 3 be refined to include new dwellings, and to read as follows (changes highlighted):

In the case of new dwellings, or 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 is warranted due the circumstances and merits of the proposal, having regard to (as applicable) -

- 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 67 of the Planning and Development (Local Planning Schemes) Regulations 2015;*
- 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 including consideration of setting-back the side walls of added storeys from the side walls of existing buildings; 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 permitted number of storeys; or where that is already exceeded, 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 64 of the Planning and Development (Local Planning Schemes) Regulations 2015 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.

In addition to this, the LPS 3 text on the WAPC's website has not been updated to reflect all the changes made in Amendment 6 (gazetted 4 November 2016). In particular, the second part, point (a), in clause 5.7.5 needs to be updated to read:

Not exceeding the permitted maximum number of storeys; or where that is already exceeded, not exceeding the existing number of storeys.

The basic amendment does not require advertising as the proposed changes to the Scheme text are consistent with the *Planning and Development (Local Planning Schemes) Regulations 2015* and the R-Codes.

Within 21 days of passing a resolution to prepare or adopt a basic amendment, or such longer time approved by the Commission, it is required to be referred to the Western Australian Planning Commission (WAPC).

If on receipt of the amendment the WAPC considers that it is a complex or standard amendment then it can direct the Town –

- a) to advertise the amendment as a complex amendment or standard amendment as the case requires; or
- b) to take any other steps it considers appropriate to advertise the amendment.

ATTACHMENTS

Nil

CONSULTATION

The Scheme Amendment does not require advertising if accepted as a basic amendment.

STATUTORY IMPLICATIONS

- *Planning and Development Act 2005*
- *Planning and Development (Local Planning Schemes) Regulations 2015*
- Town of Cottesloe Local Planning Scheme No. 3

POLICY IMPLICATIONS

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

STRATEGIC IMPLICATIONS

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

Priority Area 4: Managing Development

RESOURCE IMPLICATIONS

Resource requirements are in accordance with the existing budgetary allocation.

ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS

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

VOTING REQUIREMENT

Simple Majority

OCM100/2022

OFFICER RECOMMENDATION AND COUNCIL RESOLUTION

Moved Mayor Young

Seconded Cr Bulbeck

THAT Council:

1. In accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015*, resolve to initiate Scheme Amendment No. 13 to Local Planning Scheme No. 3 (LPS 3) by:
 - 1.1 Modifying clause 5.7.5 as follows:
 - i. amend the first paragraph to read:

In the case of new dwellings, or 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 it is warranted due the circumstances and merits of the proposal, having regard to *(as applicable)*;
 - ii. amend the last paragraph to read:

An application for planning approval requiring the exercise of the discretion under this clause is to be advertised in accordance with clause 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015* 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.
 2. Request the WAPC to update point (a) in the second part of clause 5.7.5 in accordance with Amendment 6, gazetted 4 November 2016, to read :

Not exceeding the permitted maximum number of storeys; or, where that is already exceeded, not exceeding the existing number of storeys.
 3. Resolve that this is a basic amendment as it is consistent with the *Planning and Development (Local Planning Schemes) Regulations 2015 and Residential Design Codes*.
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4. Refer a copy of proposed Scheme Amendment No. 13 to the Environmental Protection Authority for consideration and comment.
5. Request the administration to progress Amendment No. 13 in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015*

Carried by En Bloc Resolution 9/0