

Town of Cottesloe Local Planning Scheme No. 3 – Amendment No. 7

Schedule of Submissions

No.	Name	Description of affected property	Summary of Submission	Council's recommendation	Commission's recommendation
1	Environmental Protection Authority	N/A	Considers that the amendment should not be assessed under Part IV Division 3 of the Environmental Protection Act 1986 and that it is not necessary to provide any advice or recommendation.		
2	Mrs W.G.E England	Not specified in submission	Concerned for the whole (Cottesloe) area; Does not want to see any changes to existing building heights; Concerned that higher buildings result in increased overshadowing or overlooking which is undesirable.		
3	Brad Osborne	Not specified in submission	Welcomes the Town's intention to improve the wording of the Scheme and to remove ambiguity as to its interpretation by development applications; Suggests that another amendment be made to the Scheme to modify the first paragraph of Clause 5.3.5 to read as follows (changes shown shaded): <i>Despite anything contained in the Residential Design Codes and notwithstanding the density codes shown on the Scheme Map, existing grouped dwellings or multiple dwellings that exceed a density code shown on the Scheme Map at the Gazettal date of the Scheme (or at the Gazettal date of subsequent scheme amendments made from time to time) can, with the approval of the local government, be redeveloped at a density higher than that shown on the Scheme Map, equal to, but not exceeding the existing built density, subject to the proposed development;</i> Considers that this change would remove uncertainty as to whether the test for relevance means existing grouped or		

			multiple dwellings as at 1 August 2014 (the gazettal date of LPS 3), or as at the date that any amendment involving an increase coding occurs.		
4	John Hammond Cottesloe Residents & Ratepayers Association (Inc.)	N/A	Does not support changes to the Local Planning Scheme on an ad-hoc basis. However, is pleased that Amendment No. 7 had been circulated for community consultation prior to it being initiated; Advises that subject to further advice from expert consultants, the Association supports Amendment No. 7 as it appears to clarify and reinforce the intended height control under clause 5.3.5.		

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



Your Ref:

Our Ref: CMS17205

Enquiries:

Email:

Dear Sir/Madam

DECISION UNDER SECTION 48A(1)(a)
Environmental Protection Act 1986

SCHEME:	Town of Cottesloe –Local Planning Scheme 3 – Amendment 7
LOCATION:	Town of Cottesloe
RESPONSIBLE AUTHORITY:	Town of Cottesloe
DECISION:	Referral Examined, Preliminary Investigations and Inquiries Conducted. Scheme Amendment Not to be Assessed Under Part IV of EP Act. No Advice Given. (Not Appealable)

Thank you for referring the above scheme to the Environmental Protection Authority (EPA).

After consideration of the information provided by you, the EPA considers that the proposed scheme should not be assessed under Part IV Division 3 of the *Environmental Protection Act 1986* (EP Act) and that it is not necessary to provide any advice or recommendations.

Please note the following:

- For the purposes of Part IV of the EP Act, the scheme is defined as an assessed scheme. In relation to the implementation of the scheme, please note the requirements of Part IV Division 4 of the EP Act.

- There is no appeal right in respect of the EPA's decision to not assess the scheme.

Yours sincerely

Patrick Seares
Delegate of the Environmental Protection Authority
Executive Director EPA Strategic and Guidance

2 October 2017

16 FEB 2018

Form No.3A
RECEIVED

Planning and Development Act 2005

TO: The Chief Executive Officer of the Town of Cottesloe

**SUBMISSION ON
PROPOSED AMENDMENT NO. 7 TO LOCAL PLANNING SCHEME NO. 3**

Name/s MRS W.G. ENGLAND.

Organisation/Company..... ..

Address..... ..

Phone/s..... ..

Email

SUBJECT OF SUBMISSION

(State how your interests are affected, whether as a private citizen, on behalf of a company or other organisation, or as an owner or occupier of property).

.....

.....

ADDRESS OF PROPERTY AFFECTED BY SCHEME AMENDMENT

(If applicable. Include lot number and nearest street intersection).

.....

.....

SUBMISSION

(Provide your comments in full and any arguments to support them. Attach additional pages if necessary).

THIS SUBMISSION IS NOT FOR PERSONAL REASONS, BUT CONCERN FOR THE WHOLE AREA. I DO NOT WANT TO SEE ANY CHANGE TO THE CURRENT BUILDING HEIGHTS.

AS MORNING IS THE BEST TIME FOR BEACH ACTIVITIES BEFORE THE SEA BREEZE STARTS, I AM CONCERNED THAT PLANNERS OFTEN IGNORE THE FACT THAT ANY STRUCTURE WILL CAUSE A SHADOW, AND SPOIL IT FOR BEACH GOERS.

THE SAME APPLIES TO RESIDENTIAL AREAS WHERE NOBODY WANTS TO BE OVERSHADOWED, OR OVERLOOKED BY HIGHER BUILDINGS.

.....

.....

.....

.....

.....

Date 15 FEB 18 Signature/s.....

From: Brad Osborne -
Sent: Saturday, 17 February 2018 11:01 AM
To: Mat Humfrey
Subject: Submission - Amendment No.7 LPS3

Matt,

I am writing as a resident and rate payer of Cottesloe to provide a submission with regard to Amendment No. 7 to Cottesloe's Local Planning Scheme No3.

I welcome the Town's intention to improve the wording of the scheme and to remove ambiguity as to its interpretation by development applications. Whilst, the intended wording changes make the interpretation of the permissible height controls clearer I would like to suggest that a further amendment is made. Specifically, the first paragraph uses the basis of relevance for the use of the clause being existing grouped or multiple dwellings as at the date of Gazettal of the Scheme. That date is understood to be the 1st August 2014. I believe this is open to interpretation, given that the scheme is evolving over time as further scheme amendments occur (for example Amd. No.5). On reading the amendment as proposed, I am uncertain if the test for relevance would mean existing grouped or multiple dwellings as at 1st August 2014, or as at the date that any Amendment involving an increase in coding occurs.

For this reason I would like to recommend that a further change is made to paragraph 1 as per the following;

Despite anything contained in the Residential Design Codes and notwithstanding the density codes shown on the Scheme Map, existing grouped dwellings or multiple dwellings that exceed a density code shown on the Scheme Map at the Gazettal date of the Scheme (or at the Gazettal date of subsequent scheme amendments made from time to time) can, with the approval of the local government, be redeveloped at a density higher than that shown on the Scheme Map, equal to, but not exceeding the existing built density, subject to the proposed development

Overall I am supportive of the proposed amendment and its intention to remove ambiguity, however trust that the above suggestion further improves on the delivery of the intended improvement.

Regards,

Brad Osborne



**COTTESLOE
RESIDENTS & RATEPAYERS ASSOCIATION (Inc.)**
ARN A1005384K

19 February 2018



Attention To:

The Chief Executive Officer;
The Mayor; and
Counselors
The Town of Cottesloe
PO Box 606
COTTESLOE WA 6911

E-MAILED
20/02/18

By Email: _____

And By Post

Dear Chief Executive Officer, Mayor and Counsellors

AMENDMENT SEVEN (7) - LOCAL PLANNING SCHEME THREE (3)

We refer to the above matter and **enclose** our Submission on Proposed Amendment No. 7 to Local Planning Scheme No. 3.

Yours sincerely

John Hammond
Chairperson
Cottesloe Residents & Ratepayers Association (Inc.)

Planning and Development Act 2005 Form No.3A

TO: The Chief Executive Officer of the Town of Cottesloe

SUBMISSION ON ☐ PROPOSED AMENDMENT NO. 7 TO LOCAL PLANNING SCHEME NO. 3

Name/s

Organisation/Company

Cottesloe Residents & Ratepayers Assoc (Inc)

Address

Phone/s

Email

SUBJECT OF SUBMISSION

(State how your interests are affected, whether as a private citizen, on behalf of a company or other organisation, or as an owner or occupier of property).

As an Association representing residents and ratepayers in Cottesloe, two of the Associations' goals are:

- (a) To provide a forum for the residents and ratepayers of Cottesloe to voice their opinions on the management and development of Cottesloe.
- (b) To provide a medium for regular communication for the Town of Cottesloe to ensure that the views of the residents and ratepayers of Cottesloe are made known to the Town of Cottesloe.

ADDRESS OF PROPERTY AFFECTED BY SCHEME AMENDMENT

(If applicable. Include lot number and nearest street intersection).

SUBMISSION

(Provide your comments in full and any arguments to support them. Attach additional pages if necessary).

Town Planning is a specialist area and maintaining control of LPS3 is a struggle especially when apparent loopholes are discovered. Having been through extensive consultation for many years that finally produced LPS3, and gazetted in 2014, ratepayers find it difficult to understand why Council makes decisions to change the Scheme on an ad-hoc basis. Amendments that impact on ratepayer lifestyle are generally not welcome, amendment 5 is an example.

It is pleasing that Amendment 7 has been circulated for community consultation prior to it being initiated and allowing plenty of time for discussion, in order to prepare this submission, advice has been sought from a number of people who have expertise in town planning/building/architecture.

Subject to further advice from expert consultants, the Association supports Amendment 7 as it appears to clarify and reinforce the intended height control under clause 5.3.5.

Date

Signature John Hammond

19.2.2018

PLANNING**10.1.1 LOCAL PLANNING SCHEME NO. 3 – CLAUSE 5.3.5 – PROPOSED AMENDMENT**

File Ref: SUB/2458
Attachments: Solicitor's Draft Amendment Advice
CONFIDENTIAL
Responsible Officer: Mat Humfrey, Chief Executive Officer
Author: Andrew Jackson, Manager Development Services
Proposed Meeting Date: 22 August 2017
Author Disclosure of Interest: Nil

SUMMARY

This report presents a proposed amendment to Local Planning Scheme No. 3 in relation to clause 5.3.5: *Redevelopment of existing grouped or multiple dwellings*, to remove potential ambiguity in its interpretation. The matter was previously overviewed at the 1 August 2017 Briefing Forum.

It is recommended that Council proceed with an amendment in order to address this matter.

BACKGROUND

Clause 5.3.5 was created to provide Council with a degree of discretion to enable the appropriate redevelopment of existing grouped or multiple dwellings.

A recent decision of the State Administrative Tribunal has highlighted the need to consider amending the clause to clarify interpretation of the possible additional building height.

STRATEGIC IMPLICATIONS

The Local Planning Strategy notes that there are a number of older grouped and multiple dwellings in the district which may be encouraged to redevelop at a density and standard of design and amenity compatible with the generally lower-density areas in which they are located.

POLICY IMPLICATIONS

Nil.

STATUTORY ENVIRONMENT

Planning and Development Act 2005
Planning and Development (Local Planning Schemes) Regulations 2015
Local Planning Scheme No. 3

FINANCIAL IMPLICATIONS

Nil.

STAFFING IMPLICATIONS

Nil.

SUSTAINABILITY IMPLICATIONS

Nil.

CONSULTATION

The statutory process for a 'standard' or 'complex' level of scheme amendment includes advertising for public information and submissions.

STAFF COMMENT**Existing clause**

Clause 5.3.5 of the Scheme currently provides as follows:

Redevelopment of existing grouped dwellings or multiple dwellings

Despite anything contained in the Residential Design Codes and notwithstanding the density codes shown on the Scheme Map, existing grouped dwellings or multiple dwellings that exceed a density code shown on the Scheme Map at the Gazettal date of the Scheme can, with the approval of the local government, be redeveloped at a density higher than that shown on the Scheme Map, equal to, but not exceeding the existing built density, subject to the proposed development —

- (a) complementing the character of the streetscape;*
- (b) not detrimentally increasing the mass, scale or surface area of the development relative to existing development on surrounding properties;*
- (c) resulting in improved landscaping of the land;*
- (d) providing adequate and safe means of vehicular and pedestrian access to the land; and*
- (e) providing an adequate number of car parking spaces on the land.*

Furthermore, and notwithstanding any other clause in this Scheme, the proposed development may be considered for additional building height (maximum one additional storey) over the prevailing permissible building height for the locality where, in the opinion of the local government, the original number of dwellings (and their replacement plot ratio) cannot be appropriately accommodated on the lot without an increase in height.

In relation to the second paragraph, the basic height limits apply unless Council is satisfied that the exercise of discretion is justified. The Town has always understood the intent of the provision to be one additional storey more than the maximum building height permitted for the relevant zone by Table 2: Development Requirements.

The provision does not automatically confer an additional storey, but was conceived to cater for the redevelopment of over-height grouped or multiple dwellings for better outcomes. For example, in the Residential Zone some three-storey blocks of flats on

large sites could be redeveloped in accordance with the two-storey height limit, whilst a four-or-more storey block of flats may qualify to be redeveloped at three storeys.

However, the Tribunal has discerned that in the clause the words *prevailing permissible building height for the locality* could be interpreted as a building height greater than the maximum building height limit specified in Table 2.

Therefore, as the meaning of the clause appears arguable, it is desirable to address this situation for clarity and certainty.

Another consideration is that as the provision is not readily applicable to all zones and would only allow consideration of an additional storey as follows:

- Residential Zone and Residential Office Zone – three instead of two storeys.
- Town Centre Zone – at present this zone contains only a small amount of residential development; and those buildings are consistent with the density and height limits for their locations. The two fairly new three-storey mixed-use commercial/residential developments are unlikely to undergo redevelopment for a long time, and because they are not solely residential the clause may not be applicable to them.
- Local Centre Zone – there is a maximum building height of 9 metres without a specified number of storeys, which practically allows for a maximum of three storeys.
- Foreshore Centre Zone and Hotel Zone (Cottesloe Beach Hotel) – the clause is not applicable as the Special Control Area height provisions prevail.
- Restricted Foreshore Centre Zone – four instead of three storeys, although the maximum height in metres may prevent an additional storey.
- Development Zone – not applicable, as the development parameters including building height are determined otherwise and as these sites do not contain any such existing dwellings.

Hence it would also be appropriate to confine the clause to relevant zones, being Residential and Office Residential.

Proposed clause

The Town's solicitor has advised that given the Tribunal's interpretation of the term "permissible" in clause 5.3.5 does not accord with the Town's intended meaning, the Town should consider an amendment to clause 5.3.5 to clarify that the maximum building height is limited to one additional storey over the maximum building height applicable to the land in question as specified in Table 2.

The suggested amendment to the wording of the last paragraph of the clause is as follows (shown shaded):

Furthermore, and notwithstanding any other clause in this Scheme, for developments under this clause within the Residential and Residential Office zones, the local government may approve the development with a building height one storey higher than the maximum building height that would otherwise be applicable to the development in accordance with Table 2 if, in the opinion of the local government, the original number of dwellings (and their replacement plot ratio)

cannot be appropriately accommodated on the lot without an increase in building height.

This would avoid, for example, the scenario of a property located in the Residential zone, but adjacent to the Foreshore Centre zone, being able to be redeveloped to a height one storey higher than the greater number of storeys permitted in the latter.

As mentioned above, applying the discretion to only specified zones as above would further restrict the scope of that discretion.

The amendment would ensure overall consistency in the application of the clause throughout the Residential and Residential Office zones.

Type of Amendment

Under the *Planning and Development (Local Planning Schemes) Regulations 2015* there are three types or levels of scheme amendment: “basic”, “standard” and “complex”. A basic amendment is for essentially technical or administrative changes, which this proposal exceeds. Standard and complex amendments are for matters of greater significance and are defined as follows:

Standard means any of the following:

- (a) An amendment relating to a zone or reserve that is consistent with the objectives identified in the scheme for that zone or reserve;
- (b) An amendment that is consistent with a local planning strategy for the scheme that has been endorsed by the Commission;
- (c) An amendment to the scheme so that it is consistent with a region planning scheme that applies to the scheme area, other than an amendment that is a basic amendment;
- (d) An amendment to the scheme map that is consistent with a structure plan, activity centre plan or local development plan that has been approved under the scheme for the land to which the amendment related if the scheme does not currently include zones of all the types that are outlined in the plan;
- (e) An amendment that would have minimal impact on land in the scheme area that is not the subject of the amendment;
- (f) An amendment that does not result in any significant environmental, social, economic or governance impacts on land in the scheme area;
- (g) Any other amendment that is not a complex or basic amendment.

Complex means any of the following:

- (a) An amendment that is not consistent with a local planning strategy for the scheme that has been endorsed by the Commission;
- (b) An amendment that is not addressed by any local planning strategy;
- (c) An amendment relating to development that is of a scale, or will have an impact, that is significant relative to development in the locality;
- (d) An amendment made to comply with an order made by the Minister under section 76 or 77A of the Act;
- (e) An amendment to identify or amend a development contribution area or to prepare or amend a development contribution plan;

As can be seen judgement is required to determine the type of amendment suitable having regard to the various criteria. In this instance the proposed amendment accords with criteria (a), (b) and (e) of a standard amendment; that is, it is consistent with the

Residential and Residential Office zone objectives and the Local Planning Strategy, and would have minimal impact on land in other zones to which it does not relate.

As to the amendment process, a standard amendment is initiated by the local government and proceeds to the Western Australian Planning Commission after advertising, whereas a complex amendment is initiated by the local government and proceeds to the Commission before advertising. A standard amendment takes less time and it is desirable to advance this amendment. Council would initiate the amendment, undertake advertising, consider any submissions and forward the amendment with its recommendation to the Commission for consideration and determination by the Minister.

To ensure that the subject provision is unambiguous and to address the matter as a priority, moving straight to statutory consultation would be appropriate in this instance, as the amendment is the Town's initiative in order to clarify and reinforce the height control and to achieve consistency in its application.

The amendment documentation would follow the statutory format and comprise simply a textual description of the change in wording to the clause and an explanation of the rationale for that.

VOTING

Simple Majority

OFFICER RECOMMENDATION

Moved Cr Rodda, seconded Cr Angers

THAT Council, in pursuance of the *Planning and Development Act 2005* and the *Planning and Development (Local Planning Schemes) Regulations 2015*, hereby resolves to:

1. Prepare an amendment to the Town of Cottesloe Local Planning Scheme No. 3, to refine a particular provision in relation to residential building height, by amending the Scheme Text in clause 5.3.5 in its second paragraph, to read as follows (change shown shaded for the purpose of this recommendation):

Furthermore, and notwithstanding any other clause in this Scheme, for developments under this clause within the Residential and Residential Office zones, the local government may approve the development with a building height one storey higher than the maximum building height that would otherwise be applicable to the development in accordance with Table 2 if, in the opinion of the local government, the original number of dwellings (and their replacement plot ratio) cannot be appropriately accommodated on the lot without an increase in building height.

2. Form the opinion that the proposed amendment is a standard type amendment in order for that procedure to be followed, as it accords with criteria (a), (b) and (e) of a standard amendment, and as the proposal is to refine an existing provision contained within a single clause of the Scheme Text, which would be confined to two specified zones, and the effect of the amendment is to clarify the limitation of building height.
3. Request the Chief Executive Officer to prepare the amendment documents for the purpose of advertising.

4. Refer the proposed amendment to the Department of Water and Environmental Regulation for environmental clearance prior to advertising.
5. Advertise the proposed amendment for submissions for a period of 42 days by:
 - a. A notice in local newspapers, on the Town's noticeboard, on its website, and at the Library; and
 - b. Placing a copy of the proposed amendment for inspection at the Town's Office, on the Town's website and at the Library.

AMENDMENT**Moved Cr Boulter, seconded Cr Pyvis**

That the Officer Recommendation for Item 10.1.1 be amended as follows:

- Amend Officer Recommendation 1 to substitute the words, "*Draft a scheme amendment, for the purpose of pre-advertising the scheme amendment before initiating it,*" for the words "*Prepare an amendment*".
- Amend Officer Recommendation 3 to substitute the word "*pre-advertising*" for the word "*advertising*".

Amend Officer Recommendation 5 as follows:

1. Substitute the word "*pre-advertise*" for the word "*advertise*"
2. Add the words "*;clearly articulating the intent of the proposed amendment,*" after the word "*notice*" in 5(a)
3. Substitute the number "*14*" for the number "*42*"
4. Add the words "*on its Facebook page*" after the word "*website,*" in 5(a)
5. Add the words, "*full and complete*" after the word "*a*" in 5(b)

Add an additional Officer Recommendation 6 as follows:

'Require a report to Council from the TOC administration following the pre-advertising period that identifies each submission as to whether it is from a resident and ratepayer of Cottesloe or not, the precise substance of each submission and a technical officer response of the pros and cons of each submission'.

LOST 3/6

For: Crs Thomas, Boulter and Pyvis

Against: Mayor Dawkins, Crs Rodda, Downes, Birnbrauer, Angers and Burke

OFFICER RECOMMENDATION AND COUNCIL RESOLUTION**Moved Cr Rodda, seconded Cr Angers**

THAT Council, in pursuance of the *Planning and Development Act 2005* and the *Planning and Development (Local Planning Schemes) Regulations 2015*, hereby resolves to:

1. Prepare an amendment to the Town of Cottesloe Local Planning Scheme No. 3, to refine a particular provision in relation to residential building height, by amending the Scheme Text in clause 5.3.5 in its second paragraph, to read as follows (change shown shaded for the purpose of this recommendation):

Furthermore, and notwithstanding any other clause in this Scheme, for developments under this clause within the Residential and Residential

Office zones, the local government may approve the development with a building height one storey higher than the maximum building height that would otherwise be applicable to the development in accordance with Table 2 if, in the opinion of the local government, the original number of dwellings (and their replacement plot ratio) cannot be appropriately accommodated on the lot without an increase in building height.

2. Form the opinion that the proposed amendment is a standard type amendment in order for that procedure to be followed, as it accords with criteria (a), (b) and (e) of a standard amendment, and as the proposal is to refine an existing provision contained within a single clause of the Scheme Text, which would be confined to two specified zones, and the effect of the amendment is to clarify the limitation of building height.
3. Request the Chief Executive Officer to prepare the amendment documents for the purpose of advertising.
4. Refer the proposed amendment to the Department of Water and Environmental Regulation for environmental clearance prior to advertising.
5. Advertise the proposed amendment for submissions for a period of 42 days by:
 - a. A notice in local newspapers, on the Town's noticeboard, on its website, and at the Library; and
 - b. Placing a copy of the proposed amendment for inspection at the Town's Office, on the Town's website and at the Library.

CARRIED 8/1

For: Mayor Dawkins, Crs Birnbrauer, Burke, Downes, Pyvis, Rodda, and Thomas
Against: Cr Boulter