

MINUTES

Policy Committee

MINUTES OF THE POLICY COMMITTEE MEETING

HELD ON

MEETING DATE



TUESDAY, 14 AUGUST 2007

CITY OF JOONDALUP

MINUTES OF THE POLICY COMMITTEE MEETING HELD IN CONFERENCE ROOM 2, JOONDALUP CIVIC CENTRE, BOAS AVENUE, JOONDALUP ON TUESDAY, 14 AUGUST 2007

ATTENDANCE

Committee Members:

Cr Kerry Hollywood	<i>Deputy Presiding Person</i>	North Ward
Mayor Troy Pickard		
Cr Steve Magyar		North-Central Ward
Cr Marie Macdonald		Central Ward
Cr Russ Fishwick		South Ward

Elected Members:

Cr Geoff Amphlett	Central Ward
-------------------	--------------

Officers:

Mr Garry Hunt	Chief Executive Officer
Mr Ian Cowie	Director Governance and Strategy
Mr Clayton Higham	Director Planning and Community Development
Mr Chris Terelinck	Manager Approvals Planning and Environmental Services
Ms Janet Harrison	Administrative Services Coordinator

DECLARATION OF OPENING

The Deputy Presiding Person declared the meeting open at 1737 hrs.

APOLOGIES/LEAVE OF ABSENCE

Apology	Cr Sue Hart
	Cr Michele John

CONFIRMATION OF MINUTES

MINUTES OF THE POLICY COMMITTEE MEETING HELD ON 6 FEBRUARY 2007

MOVED Cr Fishwick **SECONDED** Mayor Pickard that the minutes of the meeting of the Policy Committee held on 6 February 2007 be confirmed as a true and correct record.

The Motion was Put and

CARRIED (5/0)

In favour of the motion: Crs Hollywood, Magyar, Macdonald, and Fishwick, Mayor Pickard

ANNOUNCEMENTS BY THE DEPUTY PRESIDING PERSON WITHOUT DISCUSSION

Nil.

DECLARATIONS OF INTEREST

Nil

IDENTIFICATION OF MATTERS FOR WHICH THE MEETING MAY SIT BEHIND CLOSED DOORS

Nil.

PETITIONS AND DEPUTATIONS

Nil.

REPORTS**ITEM 1 PROPOSED SHORT STAY ACCOMMODATION POLICY – [72584, 81593]**

WARD: All

RESPONSIBLE Mr Clayton Higham
DIRECTOR: Planning and Community Development

PURPOSE

The purpose of this report is for the Policy Committee to consider proposed amendments to District Planning Scheme No 2 and a draft local planning policy relating to short stay accommodation.

EXECUTIVE SUMMARY

Currently, there is no specific land use in the City's District Planning Scheme No 2 (DPS2), and no local planning policy or guidelines, in relation to short stay accommodation.

Short stay accommodation applications have been classified as a 'Residential Building' under DPS2. The current provisions within DPS2 and the Residential Design Codes do not provide specific requirements for short stay accommodation, and each proposal is assessed on its merits. The Hon Minister for Planning and Infrastructure also raised this issue with Council in 2004 and requested that guidance be developed. As a result, a scheme amendment and draft policy have been prepared for the Committee's, and ultimately, Council's consideration.

A draft scheme amendment and policy were presented to Council at its meeting of 19 September 2006, where it resolved to defer the matter, pending further consideration by the Policy Committee. Subsequent decisions by the State Administrative Tribunal have resulted in a need to reassess the approach to this matter.

It was considered desirable to implement a policy on short stay accommodation as soon as possible that was not reliant on a scheme amendment. However, it is apparent that a policy alone is not a suitable approach, and a scheme amendment to address the matter will also be required.

The proposed amendment to DPS2 seeks to provide a definition of short stay accommodation and in which zones such accommodation would be permitted. The draft policy aims to provide management parameters for the operation of short stay accommodation.

As the policy relies on changes to DPS2, the policy would not be implemented until the scheme amendment is finalised.

BACKGROUND

DPS2 currently has no definition for short stay accommodation. Proposals for short stay accommodation have been assessed as a 'Residential Building' or an 'Unlisted Use' for the purposes of DPS2.

Neither the DPS2 nor the Residential Design Codes provide specific development standards and requirements for a Residential Building.

A 'Residential Building' is a discretionary use within the Residential, Mixed Use, Business, Commercial and Private Clubs and Recreation zones.

Following an inquiry into the Mullaloo Tavern development, which did not have any adverse findings against the City, the Minister for Planning and Infrastructure recommended that a policy be put in place to guide the development of short stay accommodation. Specifically, the Minister recommended:

"The introduction of measures to guide the development of short stay accommodation in those zones where such development is permissible. As a minimum, such measures should address the density of those forms of residential development for which there is currently no explicit density control."

Currently, the DPS2 is silent on issues of permitted density and the cut off between a dwelling and a residential building (or other forms of temporary accommodation), mostly occurs by virtue of the determination of what length of stay satisfies a reasonable test of being considered as permanent.

It could be stated that the DPS2 contains a 'gap' on this issue, however, it is notable that Council has received only two applications over the past two years for short stay accommodation outside the City Centre area. In these circumstances, which are effectively rare applications, Council is required to consider applications on merit rather than merely in relation to standards. That is, if standards were developed for all matters, including those which may only occur once or twice, the process would become inefficient and cumbersome.

Notwithstanding, the City has previously been advised that approximately 60-70 short stay accommodation uses may be operating within the City at present. A search of the internet indicates that there are houses that are being let out on a short-term basis. Although the presence of existing short stay accommodation should not impact upon the planning policy considerations, it should be acknowledged that the practice, to some extent, is already occurring in the residential areas.

The two applications referred to above are:

- 3 Glenelg Place, Connolly. This proposal was to convert an existing medical centre into short stay accommodation. The proposal was refused by Council at its meeting of 26 April 2005. A subsequent appeal by the applicant to the State Administrative Tribunal was upheld, effectively reversing Council's decision.
- 17 Foston Drive, Duncraig. This proposal is to utilise an existing residential dwelling for short stay accommodation. The proposal was refused at Council's meeting of 19 September 2006. Prior to this decision being issued, the applicant had already lodged an appeal to the State Administrative Tribunal, based on the 'deemed refusal' provisions of DPS2. This appeal was dismissed by the SAT in February 2007. Part of the ruling is shown below:

“As the proposed short stay accommodation use does not involve residential development or any other development contemplated by the objectives and purposes of the Residential zone, it is not consistent with the objectives and purposes and is, therefore, not permitted. The application for review must be dismissed and the decision of the City to refuse development approval affirmed.”

Issues and options considered:

Proposed Amendment to DPS2

The proposed amendment to DPS2 seeks to achieve the following:

- Define the meanings of 'temporary' and 'permanent' in the context of what constitutes a dwelling, versus what constitutes short stay accommodation. It is proposed that habitation for a period which exceeds 3 months is permanent occupation, while habitation under 3 months is temporary occupation,
- Provide a definition and use class for 'short stay accommodation',
- Reword the definition of a 'Residential Building' to clarify that the use relates to permanent accommodation for 7 or more persons.
- Provide a car parking standard for short stay accommodation at the rate of 2 bays for each short stay dwelling.

The above is proposed to be achieved by the following specific proposals:

Dwelling Definition

The definition of “dwelling” by inserting the following words (shown in italics):

“has the same meaning as that set out in the Residential Planning (Design) Codes. For the purpose of the definition of “dwelling” habitation for any period which is not less than a continuous period of 3 months is taken to be habitation on a permanent basis;”;

Short Stay Accommodation Definition and Use Class Permissibility

A definition of short stay accommodation is proposed to be included in DPS2 as follows:

“the use of a single house, grouped dwelling or multiple dwelling for the purposes of providing temporary accommodation to any person or persons; for the purpose of the definition of “short stay accommodation”, temporary accommodation excludes any period of accommodation which exceeds a continuous period of 3 months;”

It is proposed that Short Stay Accommodation would be a prohibited (‘X’) use in the Special Residential, Service Industrial, and Rural zones, and a Discretionary (‘D’) use in the Mixed Use, Business, Commercial, and Private Clubs and Recreation zones, and a discretionary use requiring advertising (‘A’) use in the Residential zone.

Residential Building Definition

The definition of Residential Building is proposed to be amended to read:

“residential building” means a building or portion of a building together with rooms or outbuilding separate from such building incidental thereto; such building being used or intended, adapted or designed to be used for the purpose of human habitation permanently by 7 or more persons, who do not comprise a single family, but does not include a hospital or sanatorium, a prison, a hotel, a motel or a residential school;”.

The proposed amendment to DPS2 is Attachment 1.

Draft Policy

The draft policy (Attachment 2) proposes guidelines for the locations and operation of short stay accommodation. The policy provides guidance with regard to the management and record keeping processes.

Options

In considering the draft scheme amendment and local planning policy, the Policy Committee can:

- Endorse the scheme amendment and policy and recommend it be presented to Council for consideration;
- Modify the draft scheme amendment and/or policy, and recommend it be presented to Council for consideration;
- Not endorse the scheme amendment or draft policy.

Link to Strategic Plan:

Short stay accommodation may be used as tourist accommodation and therefore links with Strategy 3.2 (Lifestyle) of the City's Strategic Plan, which is intended to develop and promote the City of Joondalup as a tourist attraction.

Legislation – Statutory Provisions:

Scheme Amendment

Part 5 of the Planning and Development Act 2005 enables Local Authorities to amend a Town Planning Scheme and sets out the process to be followed (Attachment 3 refers).

Should Council support the initiation of the proposed amendment for the purposes of public advertising, the proposed amendment is required to be referred to the Environmental Protection Authority (EPA) to decide whether or not a formal environmental review is required. Should the EPA decide that an environmental review is not required, upon the City's receipt of written confirmation of this from the EPA, the City advertises the proposed amendment for a minimum of 42 days.

Upon closure of the advertising period, Council considers all submissions received during the advertising period and resolves to either grant final approval to the amendment, with or without modifications, or refuse the amendment. The decision is then forwarded to the WAPC that makes a recommendation to the Minister for Planning and Infrastructure. The Minister can either grant final approval to the amendment, with or without further modifications, or refuse the amendment.

Draft Policy

Clause 8.11 of DPS2 outlines the provisions with respect to the preparation of local planning policies. Clause 8.11.1 enables Council to prepare a local planning policy in respect of any matter related to the planning and development of the scheme area.

Once the draft policy is prepared it is required to be advertised in accordance with Clause 8.11.3 by way of a notice published once a week for two consecutive weeks in a local newspaper giving notice where the draft policy may be inspected. The draft policy would also be advertised on Council's website. The specified period for advertising should not be less than twenty one (21) days.

As the draft policy is reliant on changes to the DPS2 (via the scheme amendment), the policy would not come into effect until the scheme amendment is finalised.

Risk Management considerations:

Not applicable

Financial/Budget Implications:

Not applicable

Policy implications:

It is proposed to implement a new policy.

Regional Significance:

Not applicable

Sustainability implications:

The proposed short stay accommodation policy could (if adopted) support tourism by providing alternative accommodation choices.

Consultation:

Should Council endorse advertising of the draft policy and scheme amendment, it is proposed that they be advertised concurrently for a period of 42 days. A notice would be published in the local newspaper for two consecutive weeks, and a notice would also be placed on the City's website.

COMMENTDraft Scheme Amendment

Currently, the terms 'temporary' and 'permanent' when used in the definitions of 'dwelling' and 'residential building' are not defined. The draft scheme amendment will provide clarity to this issue.

- A 'dwelling' will be permanent accommodation for a family or up to 6 people who are not a single family.
- A 'residential building' will be permanent accommodation for 7 or more people who are not a single family.
- Short stay accommodation will be temporary accommodation.
- Amending the objectives of the Residential Zone within DPS2 to acknowledge that short stay accommodation may be considered in the Residential Zone.

In terms of the permissible locations for short stay accommodation, the residential zone is likely to have the largest potential impacts on the adjoining areas. Therefore, it is considered appropriate that short stay accommodation be an 'A' use in DPS2. This means that any application will require mandatory public advertising.

Draft Policy

The policy will address:

- The management of the accommodation, including submission of a Management Plan. This includes requiring appropriate documentation to be kept by the proprietor of the accommodation, and the submission of a plan detailing how the accommodation will be managed, operated, and maintained.
- Measures to reduce the potential amenity conflicts between proposed short stay accommodation and grouped or multiple dwellings on the same lot.
- The requirement for the annual renewal of any planning approval issued where short stay accommodation is located in or abutting the Residential Zone, or where short stay accommodation is located on the same site as residential dwellings.
- Consideration of the relative merits and compatibility of the proposal with the surrounding areas, in terms of the provision of car parking, traffic generation, and location close to complementary and supporting uses.

Location of Short Stay Accommodation

In supporting the position taken by Council to refuse the proposed short stay accommodation in Foston Drive, at the SAT hearings the City contended that the proposed use was not contemplated by the objectives of the Residential Zones as outlined in the District Planning Scheme. SAT supported this view and the refusal of the application was upheld. Therefore, this decision would indicate that on the current wording of DPS2, short stay accommodation should not be approved in the Residential Zone.

It is a possible course of action that Council confirms a position not to permit short stay accommodation in the Residential Zone. Conversely, the wording of DPS2 could be amended to allow consideration of short stay accommodation in the Residential Zone.

Where short stay accommodation is proposed in a residential area, it is problematic to provide specific locational parameters as to where the use will be considered suitable, as it is difficult to establish that one residential property is more suited to short stay accommodation, from an amenity point of view, than another. On this basis, it is considered that the management and operation of the short stay accommodation is the important consideration in protecting the amenity of adjoining owners, which is addressed in the draft policy. Notwithstanding, as a measure of the impact on amenity, short stay accommodation should not be generating more car parking or traffic than would normally be expected from adjoining residential properties.

ATTACHMENTS

Attachment 1	Draft Scheme Amendment
Attachment 2	Draft Policy – Short Stay Accommodation
Attachment 3	Scheme amendment flowchart

VOTING REQUIREMENTS

Simple majority

OFFICER'S RECOMMENDATION

That the Policy Committee ENDORSES the draft Scheme Amendment and Local Planning Policy – Short Stay Accommodation as shown in Attachment 1 and 2, and RECOMMENDS that Council:

1. Pursuant to Part 5 of the Planning and Development Act 2005, CONSENTS to initiate Amendment No 36 to the City of Joondalup District Planning Scheme No. 2, for a period of 42 days, in accordance with Attachment 1 to this Report;
2. Prior to the advertising period commencing, FORWARDS the proposed amendment to the Environmental Protection Authority in order to decide if an environmental review is required;
3. ADVERTISES the draft Local Planning Policy – Short Stay Accommodation, concurrently with Amendment No 36.

The Director Planning and Community Development provided an overview of the proposed policy. Discussion ensued, with a number of questions being raised.

In relation to a query regarding density, the Committee was advised that the proposed changes do not alter the current residential densities applying to sites. This is because the definition of short stay specifically relates to the 'use' of buildings, not the density of their construction. It was noted that the District Planning Scheme could be amended to make this relationship more explicit, however it would have no operational impact.

MOVED Mayor Pickard SECONDED Cr Fishwick that the Policy Committee ENDORSES the draft Scheme Amendment and Local Planning Policy – Short Stay Accommodation as shown in Attachment 1 and 2, and RECOMMENDS that Council:

1. Pursuant to Part 5 of the Planning and Development Act 2005, CONSENTS to initiate Amendment No 36 to the City of Joondalup District Planning Scheme No. 2, for a period of 42 days, in accordance with Attachment 1 to this Report, subject to the insertion of a provision that any consideration for the application of the policy be referred to Council for determination when the site is in or abutting a residential zone;
2. Prior to the advertising period commencing, FORWARDS the proposed amendment to the Environmental Protection Authority in order to decide if an environmental review is required;
3. ADVERTISES the draft Local Planning Policy – Short Stay Accommodation, concurrently with Amendment No 36.

The Motion was Put and

CARRIED (3/2)

In favour of the Motion: Crs Hollywood, and Fishwick, Mayor Pickard Against the Motion: Crs Magyar and Macdonald

ITEM 2 PROPOSED AMENDMENTS TO POLICY 7-5 - ALFRESCO DINING – JOONDALUP CITY CENTRE – [03360]

WARD: All

RESPONSIBLE Mr Clayton Higham

DIRECTOR: Planning and Community Development

PURPOSE

The purpose of this report is for the Policy Committee to consider amendments to the City's Policy 7-5 Alfresco Dining – Joondalup City Centre.

EXECUTIVE SUMMARY

Amendments the Liquor Licensing Act 1988 have recently come into effect. Changes have included the potential for restaurants to request a liquor licence to allow consumption of alcohol without an accompanying meal. This option was previously limited to 20% of the premises under a special permit.

These changes have the potential for applications to be received for patrons to consume alcohol without a meal in alfresco areas. Policy 7-5 is currently silent on the activity of drinking alcohol without a meal. Policy 7-5 could be expanded to cover alfresco activities associated with all licensed premises within the City, and allow the consumption of alcohol without a meal, subject to patrons sitting on chairs at tables. Clarification of Policy 7-5 in terms of its application and planning approval requirements would also be of benefit.

It is recommended that the Policy Committee recommends that Council supports the proposed amendments to Policy 7-5 to enable initiation of public advertising for a period of 21 days.

BACKGROUND

The City adopted an Alfresco Dining Policy in 1994 to guide dining in public spaces such as footpaths, principally as an extension of existing restaurants and cafés. The Policy reflected the desire for operators to be able to provide patrons in the City centre with outdoor areas. It was also necessary to ensure the appropriate use of public space for pedestrians and other users with respect to access, safety and aesthetics whilst maintaining the amenity of adjacent properties.

The Policy has been reviewed three times since its inception. Policy 7-5 Alfresco Dining – Joondalup City Centre has applied since October 2005. Notwithstanding the title of the policy, it applies to the whole of the City of Joondalup.

The City also adopted a Trading in Public Places Local Law at this time that deals with the environmental health aspects of outdoor dining.

DETAILS

Changes to the Liquor Control Act

The Department of Racing, Gaming and Liquor issues licences for the serving and consumption of liquor. The Department recently reviewed and amended the Liquor Licensing Act 1988 (the Act), which is now called the Liquor Control Act 1988. A number of changes were made to the Act in response to community and industry input that sought greater diversity and innovation for local consumers and tourists.

One of the changes includes the expansion of opportunities for patrons of eating premises (restaurants and cafes) to consume alcohol without the need to have an accompanying meal, as long as they are seated at tables or fixed structures used as tables for eating food. This opportunity was previously limited to 20% of the premises. While the changes to the Act do not place a limit on the extent of premises that could have drinking-only patrons, a restaurant must still primarily and predominantly consist of the regular supply of meals to customers, seated at chairs and tables. A special licence, known as an Extended Trading Permit (ETP), is required to be issued. The change has implications for the City's assessment of alfresco activities and amendments are proposed to address this.

Proposed Amendments to Policy 7-5 Alfresco Dining

A summary of the proposed amendments is provided below:

- Amending the title of the Policy to cover all alfresco activities in the City of Joondalup;
- Amending the definition of 'alfresco dining' to 'alfresco activities' to include the consumption of alcohol in outdoor areas, when seated at chairs and tables; and
- Clarification of approval requirements, and improvement to the wording of the document.

Issues and options considered:

The options available to Council are:

- Adopt the draft amendments to Policy 7-5
- Refuse to adopt the proposed amendments to Policy 7-5
- Adopt the draft amendments to Policy 7-5, with modifications.

Link to Strategic Plan:

The following objectives and strategies in the City's Strategic Plan 2003-2008 are applicable to this report.

Objective 3.2 To develop and promote the City of Joondalup as a tourist attraction.

Strategy 3.2.1 Create and promote cultural tourist attractions.

Objective 3.1 To develop and maintain the City of Joondalup's assets and built environment.

Strategy 3.1.2 Facilitate the safe design, construction and approval of all buildings and facilities within the City of Joondalup.

Legislation – Statutory Provisions:

Clause 8.11 of the City of Joondalup's District Planning Scheme No 2 enables Council to prepare, amend and add to local planning policies that relate to any planning and development matter within the Scheme area.

Should Council adopt a draft or amendment to a policy, the proposal is required to be advertised for a period of not less than twenty one (21) days. Advertising is undertaken by way of a notice published once a week for two consecutive weeks in a local newspaper, as well as on the City's website, giving notice where the draft policy or amendment may be inspected.

Risk Management considerations:

Not applicable

Financial/Budget Implications:

Not applicable

Policy implications:

Not applicable

Regional Significance:

Not applicable.

Sustainability implications:

Not applicable

Consultation:

In the event that Council adopts the draft amendment to the policy for advertising, it is recommended that the proposal be advertised for a minimum period of twenty one (21) days. Upon completion of advertising, Council is required to consider all submissions and proceed to either adopt or refuse the amendment to the policy.

COMMENT

Proposed Amendment to Policy 7-5

The amended liquor laws provide the opportunity for restaurants, subject to the issue of a special licence, to serve alcohol without a meal to patrons. Policy 7-5 does not currently cover this activity. It is considered that this activity will not have any adverse impact on the alfresco environment, and it is therefore proposed that the Policy definition of 'outdoor dining' be amended to include the consumption of alcohol in outdoor areas, when seated at chairs and tables. Attachment 1 shows all proposed tracked amendments to Policy 7-5.

It is noted that the proposed amendment to Policy 7-5 would also allow premises with other liquor licences (eg taverns) to request approval for alfresco activities, whether that be for dining or the provision of alcohol without a meal. As with restaurants, however, the Policy would require patrons to be seated at chairs and tables.

Liquor Licence conditions

Applications for liquor licences are required to be issued with a Certificate of Local Planning Authority (known as a 'Section 40') and a Certificate of Local Health Authority ('Section 39') from the local authority, to ensure the application is in accordance with the planning and health requirements. ETPs are generally forwarded to the City for comment prior to issuing. The City can impose appropriate conditions on the Section 39 and 40 certificates, and the Department determines whether it applies these conditions to a licence or permit. These procedures will not alter under the amended Act.

Conditions suggested by the City could include such issues as a limit on the number of patrons, car parking provisions and hours of operation. Under the Liquor Control Act, if there is disparity between the conditions of the licence or permit issued by the Department and any other legislation, such as planning scheme provisions, the more onerous of the conditions imposed under these legislations applies.

Under an ETP issued for drinking only patrons, the predominant land use will still need to apply. A restaurant, café, tavern or hotel therefore needs to be the predominant use of the licensed premises, which could include the alfresco areas. For example, an ETP relating to a tavern use would need to be associated with a tavern use approval. In this way, restaurants and cafes could not become defacto taverns as development approval from the City for a change of use would be necessary in the first instance before the City could support the ETP. Enforcement of this aspect would be from the Department, enforcing the conditions of the ETP, and from the City, enforcing the provisions of the planning scheme.

Other Proposed Amendments to Policy 7-5

The other proposed amendments to the Policy (as outlined in Attachment 1) are to improve and update the wording of the document, without altering the intent or provisions of the current Policy.

Conclusion

It is not considered that the consumption of alcohol without a meal in an alfresco area will have a negative impact on the adjoining areas if conducted in accordance with the revised policy. The proposed amendment to Policy 7-5 will clarify that the consumption of alcohol without a meal is acceptable in alfresco situations where patrons are seated at chairs and tables only. Public advertising of the proposal for a period of twenty one (21) days is recommended.

ATTACHMENTS

Attachment 1 Policy 7-5 - Alfresco Dining – Joondalup City Centre (tracked changes)

VOTING REQUIREMENTS

Simple Majority

The Chief Executive Officer advised it has become evident that this matter did not fall within the terms of reference of the Policy Committee, however as it had been listed on the agenda it was proposed that the Committee should consider the report. When the minutes of this Committee are submitted to Council, it will be noted that this item would normally be presented directly to Council.

The Director Planning and Community Development provided an overview of the report.

Discussion ensued.

MOVED Cr Fishwick SECONDED Mayor Pickard that the Policy Committee RECOMMENDS that Council, in accordance with Clause 8.11 of the City of Joondalup's District Planning Scheme No 2, ADVERTISES the proposed modifications to the City's Policy 7-5 – Alfresco Dining Policy Joondalup City Centre, as shown in Attachment 1 to this Report, for public comment for a period of 21 days.

The Motion was Put and

CARRIED (5/0)

In favour of the motion:, Crs Hollywood, Magyar, Macdonald and Fishwick, Mayor Pickard

ITEM 3 PROPOSED MODIFICATION TO POLICY 3-2 - HEIGHT AND SCALE OF BUILDINGS WITHIN RESIDENTIAL AREAS – [08375]

WARD: All

RESPONSIBLE Mr Clayton Higham

DIRECTOR: Planning and Community Development

PURPOSE

The purpose of this report is for Council to consider the submissions received as a result of the advertising of a proposed modification to Policy 3-2 - Height and Scale of Buildings within Residential Areas.

EXECUTIVE SUMMARY

Policy 3-2 - Height and Scale of Buildings within Residential Areas provides guidelines for the assessment of building height for planning and building proposals in residential areas. The policy was initially prepared in response to community concern regarding the impact of large dwellings on surrounding properties.

A review of the policy has revealed that its wording could be clarified in order to improve its alignment with the provisions of Council's Town Planning delegations. The intention of the modification is not to extend or alter the extent of delegation powers.

The draft modification was advertised for a period of 21 days and four submissions of objection were received. The submissions indicate concern that the proposed changes to the policy will remove the protection for homeowners in regard to the height and scale of new buildings, and will also remove Council's decision-making ability in relation to Policy 3-2.

As the proposed modification does not alter the technical provisions of the policy or the current procedures in terms of how planning applications are determined, it is considered that the issues raised in submissions would not affect it proceeding. It is recommended that the proposed modification to the policy be adopted for final approval.

BACKGROUND

Council at its meeting held on 27 February 2007 considered this item and resolved:

- "1 In accordance with Clause 8.11 of the City of Joondalup District Planning Scheme No. 2, ADVERTISES a proposed modification to Policy 3-2 Height and Scale of Buildings within Residential Areas, forming Attachment 1 to this Report for public comment for a period of twenty one (21) days;*
- 2 NOTES that on completion of advertising the matter will be the subject of additional consideration by the Council."*

Council first adopted the policy in March 1998 (DP78-03/98 refers) and it was referred to at that time as Policy G3-17. The policy was further amended in April 2000 (CJ086-04/00).

A review of the City's Corporate Policy Manual was undertaken in June 1999 (CJ213-06/99 refers) and in October 2005 (CJ206-10/05 refers), which re-numbered the policy to 3.1.9 and 3-2 respectively.

Policy 3-2 - Height and Scale of Buildings Within Residential Areas presently applies to all development in residential zones within the City, with the exception of areas in which building height and scale are otherwise addressed in structure plans prepared in accordance with Part 9 of the City's District Planning Scheme No 2 (DPS2).

Town Planning delegations have been reviewed on various occasions, with the assistance of a number of internal and external sources, most recently in July 2007. As a result there is an identified need to add clarity to the relationship between the delegations and the Policy.

DETAILS

Issues and options considered:

Issues

Statement No. 4 of Policy 3-2 does not align with Council's current Town Planning delegations. Statement No. 4 (b) currently reads as follows:

Applications which exceed the building threshold envelope shall be deemed to be non-complying applications for which Council's development approval is required. Non-complying applications shall be processed as follows:

- (a) *In cases in which notified landowners have raised no concerns or objections AND the application is supported by the Manager Approvals, Planning and Environmental Services, the application shall be processed under delegated authority;*
- (b) *In cases in which notified landowners have raised concerns or objections OR the application is not supported by the Manager Approvals, Planning and Environmental Services, the application is to be presented to Council for determination.*

The power to determine applications arises from the District Planning Scheme. The DPS also allows Council to delegate to officers the ability to determine certain classes of application. The current Town Planning delegations allow single houses, and up to ten grouped or multiple dwellings to be determined by officers. Therefore, in practice, there is no difference in how (a) and (b) above are implemented. Attachment 1 is the current Town Planning Delegations, and Attachment 2 outlines the proposed modification to the policy.

In considering this issue, Council can:

- Adopt the proposed modification for final approval;
- Adopt the proposed modification with modifications, for final approval;
- Refuse to adopt the proposed modification; or
- Defer consideration of the proposed modification.

Link to Strategic Plan:

The following objective and strategy in the City's Strategic Plan 2003-2008 is applicable to this report:

Objective 3.1 To develop and maintain the City of Joondalup's assets and built environment.

Strategy 3.1.2 Facilitate the safe design, construction and approval of all buildings and facilities within the City of Joondalup.

Legislation – Statutory Provisions:

Clause 8.11 of DPS2 outlines the provisions with respect to the preparation or modification to local planning policies.

Once the draft modification to a policy is prepared, it is required to be advertised in accordance with Clause 8.11.3 by way of a notice published once a week for two consecutive weeks in a local newspaper giving notice where the draft policy may be inspected. The draft modification to the policy is also be advertised on Council's website. The specified period for advertising should not be less than twenty one (21) days.

Risk Management considerations:

Not applicable.

Financial/Budget Implications:

Not applicable.

Policy implications:

Not applicable.

Regional Significance:

None. No change to the application of Policy 3-2 or associated approval processes is proposed.

Sustainability implications:

Not applicable.

Consultation:

The draft modification to Policy 3-2 was advertised for a period of twenty one (21) days, with a notice placed in the local newspaper for two (2) consecutive weeks, and a notice placed on the City's website.

Four submissions of objection were received, set out in Attachment 3.

COMMENTSubmissions

The four submissions received do not support the proposed modification, the main concerns being summarised as:

- The proposed changes to the policy will remove the protection for home owners in regard to the height and scale of new buildings;
- The proposed modification will remove Council's decision-making ability in regard to Policy 3-2.

With regard to the first point, there are no changes proposed to the existing provisions of Policy 3-2 and how the policy is applied. With regard to the second point, the aim of the proposed modification is not to alter the current procedures in terms of how planning applications are assessed or determined. Should Council wish to review the delegation in relation to operation of the policy, this would be appropriate when the Town Planning delegations are reviewed.

Proposed Modification to Policy 3-2

The policy (first drafted in 1998) contains a provision that does not align with that of Council's 2007 Town Planning delegations.

It is proposed to delete Sections 4(a) and 4(b) from Policy 3-2 and Statement 4 be modified to reflect the powers delegated under the DPS2, as follows:

- 4 Applications which exceed the building threshold envelope shall be deemed to be non-complying applications for which Council's development approval is required. Non-complying applications shall be processed in accordance with the relevant Town Planning delegations, issued under Part 8.6 of the City's District Planning Scheme No.2.*

The modified wording will reflect the City's current delegated operations when dealing with residential planning and building applications. The modification will also provide sufficient flexibility should Council resolve, at a future stage, to modify the Town Planning delegations.

The proposed modification will not alter the intent or technical provisions of the policy. The proposal will remove ambiguity that currently exists in relation to the process of determining development proposals that are considered under the policy. It is therefore recommended that Council grants final approval to the proposed modification to Policy 3-2.

ATTACHMENTS

Attachment 1	Town Planning Delegations
Attachment 2	Tracked Changes - Policy 3-2 Height and Scale of Buildings within Residential Areas.
Attachment 3	Schedule of Submissions.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION

That the Policy Committee RECOMMENDS that Council, in accordance with Clause 8.11 of the City of Joondalup District Planning Scheme No. 2, ADOPTS for final approval the proposed modification to Policy 3-2 Height and Scale of Buildings within Residential Areas, forming Attachment 1 to this Report.

The Director Planning and Community Development provided an overview of the report.

Discussion ensued.

MOVED Mayor Pickard SECONDED Cr Magyar that the review of Policy 3-2 Height and Scale of Buildings within Residential Areas be DEFERRED until a workshop is held with Elected Member to review delegated powers under District Planning Scheme No 2 and, in particular, which delegations have discretion that can be exercised by officers.

The Motion was Put and

CARRIED (5/0)

In favour of the motion:, Crs Hollywood, Magyar, Macdonald and Fishwick, Mayor Pickard

ITEM 4 FREE USE OF CITY FACILITIES TO SERVICE ORGANISATIONS – [26176]

WARD: All

RESPONSIBLE DIRECTOR: Mr Ian Cowie
Governance and Strategy

PURPOSE

To identify the issues and options associated with development of a new policy to provide free use of the City's facilities to 'Service' organisations such as Lions Clubs, Rotary and Apex.

BACKGROUND

At the meeting of Council on 27 February 2007, the Chief Executive Officer was requested to provide a report "*...on the development of a policy to provide free use of the City's facilities to organisations such as Lions Club, Rotary and Apex.*"

Currently, there are 28 community facilities available for hire within the City, which are regularly accessed by a range of sporting and recreation clubs, seniors groups and two service groups, namely the Lions Club (Whitfords and Ocean Reef branches) and a branch of the Red Cross. Apex has not booked Council facilities since 1999 and there is no record of Rotary having made a booking at all. Total bookings for the Lions and Red Cross service groups combined amounts to 20 hours per week. Under current operating procedures, the two branches of the Lions Clubs and the Red Cross have free access on the grounds that over half the members are over 55 and live in the City.

Current Policy

Provision of facilities for community use is referred to in a number of City and Council Policies, and all of them identify the City's commitment to provide community facilities to meet community needs whilst addressing various aspects of how that provision should be managed.

- Council Policy 1.1 Leisure (Attachment 1)
- Council Policy 4.2 Setting Fees and Charges (Attachment 2)
- City Policy 7- 3 Community Facilities – Built (Attachment 3)
- City Policy 7- 4 Management of Community Facilities (Attachment 4)

If a new policy is developed for free use of council facilities by service clubs, consideration should be given to including it in Council Policy 4.2 Setting Fees and Charges.

DETAILS

Most Service Clubs are likely to be registered charities. Under the current Policy, it is stated that hire charges will be determined on a venue-by-venue basis and, amongst other criteria, whether the booking group is recognised as a charitable organisation by the ATO. However, the Policy does not advise on the percentage of commercial rate to be applied. This is established in an operating procedure.

Under current operating procedures the following criteria are applied with respect to inside venue hire:

- 1 Commercial rate = 100%
- 2 Community rate = 50% of the commercial rate
- 3 Charity rate = 25% of the commercial rate for registered charities
- 4 Free of Charge = Where at least 50% of the members are 55+ or under 18 and reside in the City of Joondalup

Service Clubs are defined within the procedures as:

...organisations where members may volunteer to perform community services in alignment with organisational goals and objectives. To be eligible under this definition, funds raised must be donated to a charitable cause and/or research designed to improve standards and overall quality of life. Where a service club is also a registered charity they will be charged at the Charity Rate.

Under operating procedures, a service club registered as a charity pays the “Charity Rate” at 50% of the “Community Rate” and is 25% of the “Commercial Rate.” Further, a service club may be considered for “Free of Charge” in circumstances where at least 50% of the members are over 55 and reside in the City.

Issues and options considered:

Given the disparity between the Policy and the operating procedures, which could allow for free use by Service Groups, the following options are presented for consideration:

Option One

Retain the current Policy in present form.

Option Two

Amend the current Policy to align with operational procedures. That is, include in the Policy, the basis for hire charges, which are found in the operational procedures.

Option Three

This option has two elements:

- 1 Develop a new high level composite Council policy to guide future provision and management of community facilities.
- 2 Develop a new detailed composite City policy for managing community facilities which includes:
 - Definitions of the various categories of user for both hire or lease;
 - How both lease and hire rates will be determined for each category of user;
 - Standard conditions for lease or hire;
 - Reference to procedures for setting fees and charges, management of bookings/leases and asset management.

Link to Strategic Plan:

Key Focus Area: Community Wellbeing

Objective 1.3 To continue to provide services that meet changing needs of a diverse and growing community.

Key Focus Area: City Development

Objective 3.1 To develop and maintain the City's assets and built environment.

Legislation – Statutory Provisions:

A new composite Policy in relation to Managing Community Facilities would need to comply with Section 6.17. Setting Fees and Charges, Local Government Act (1995).

Risk Management considerations:

In circumstances where there are disparities between a Policy endorsed by Council and operational procedures, there may be confusion, which creates the potential for complaints.

Financial/Budget Implications:

Currently service organisations such as the Lions Club, Rotary or Apex either do not use City facilities or obtain the facilities at no charge. Consequently, implementing a policy in relation to free usage will have no financial impact based on current usage. Should service organisations amend the nature of their usage in future, a free usage policy could have an impact.

Policy Implications:

If the Policy Committee accepts Option Three, all Policies concerning community facilities will need to be redrafted as two composite documents i.e.,

Council Policy: Provision and Management of Community Facilities. This document would outline the City's commitment to providing community facilities and managing these assets in ways that are sustainable.

City Policy: Management of Community Facilities. This document would be a composite of Policies relating to management of community facilities.

Regional Significance:

Not Applicable.

Sustainability Implications:

Providing access to City facilities at below recovery costs could be viewed as economically unsustainable. However, the provision of free use could be viewed as supporting social sustainability.

Consultation:

Not Applicable.

COMMENT

Investigations into a new Policy, which would permit free access to Council facilities for service clubs has identified a lack of alignment between policy and practice with respect to the provision and management of community facilities.

Council Policy 4.2 distinguishes between hire charges for indoor and outdoor venues, with provisos for each. A service club that is registered as a charity may currently be charged at a charitable rate although it is not clear from the Policy what percentage of the commercial rate could be levied in those circumstances.

Current operational procedures have collapsed the provisos for hiring indoor and outdoor venues into one, such that a service club in which most of the members are local and aged 55+, can hire a venue for free. If the Policy were adjusted to reflect current practice, the circumstances under which a service club could access Council facilities would be clarified.

A further opportunity exists for Council to demonstrate support for community groups and organisations that contribute to community life through:

- (a) Identifying the current and replacement value of community facilities, and;
- (b) Establishing an amount of subsidised access to community facilities e.g., 'service clubs' can obtain say 100 hours use per annum at a set percentage of the commercial rate or at no charge. Usage beyond the 100 hours would then incur the full charge.

Categories of users and levels of subsidised access to be provided could be determined on an annual basis together with fees and charges. By listing current and replacement value of community facilities and the subsidies available to community groups and organisations in budget documents, a more transparent process for the management and allocation of community facilities will be achieved.

ATTACHMENTS

Attachment 1	Council Policy 1.1 - Leisure
Attachment 2	Council Policy 4.2 - Setting Fees and Charges
Attachment 3	City Policy 7- 3 - Community Facilities – Built
Attachment 4	City Policy 7- 4 - Management of Community Facilities

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION

That the Policy Committee:

- 1 NOTES that access to City facilities is referred to in a number of existing Council and City Policies and that current operating procedures already provide for free access by service groups;
- 2 RECOMMENDS to Council that it:
 - (a) SUPPORTS Option 3 and the compilation of composite Council and City Policies for management of, and access to, community facilities;
 - (b) APPROVES development of user categories including the extent of subsidised use per category in preference to offering free use to service clubs.

The Chief Executive Officer advised it has become evident that this matter did not fall within the terms of reference of the Policy Committee. He also advised that in the drafting of the policy certain issues appear to not be aligned. It was considered appropriate to withdraw the matter to enable a revised report to be prepared.

Discussion ensued.

MOVED Mayor Pickard SECONDED Cr Magyar that consideration of free use of City facilities to service organisations be DEFERRED for further review and a report be presented to the next meeting of the Policy Committee.

The Motion was Put and

CARRIED (5/0)

In favour of the motion:, Crs Hollywood, Magyar, Macdonald and Fishwick, Mayor Pickard

MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil.

REQUESTS FOR REPORTS FOR FUTURE CONSIDERATION

Mayor Pickard requested that a number of reports be presented to the Policy Committee. As the reports requested were outside of the terms of reference of the Policy Committee, the Chief Executive Officer advised that the Committee's terms of reference would need to be amended to enable these reports to be presented.

MOVED Mayor Pickard SECONDED Cr Magyar that:

- 1 the Policy Committee **RECOMMENDS** that Council **AMENDS** the terms of reference of the Policy Committee such that both Council and City Policies are referred to the Policy Committee for recommendation and referral to Council;
- 2 **REPORTS** be submitted to the Policy Committee on the following matters:
 - (a) **Circuses within the City of Joondalup;**
 - (b) **Business Signage within the City of Joondalup;**
 - (c) **Vehicle replacement;**
 - (d) **reviewing Policy 5-3 – The City's Art and Memorabilia Collections;**
 - (e) **reviewing Policy 3-1 – Child Care centres.**

The Motion was Put and

CARRIED (5/0)

In favour of the motion: Crs Hollywood, Magyar, Macdonald, and Fishwick, Mayor Pickard

MOVED Mayor Pickard SECONDED Cr Fishwick that Deputy Presiding Person, Cr Kerry Hollywood, be requested to SET the date and time for the next meeting of the Policy Committee.

The Motion was Put and

CARRIED (5/0)

In favour of the motion: Crs Hollywood, Magyar, Macdonald, and Fishwick, Mayor Pickard

CLOSURE

There being no further business, the Deputy Presiding Person declared the Meeting closed at 1850 hrs; the following Elected members being present at that time:

Cr Kerry Hollywood
Mayor Troy Pickard
Cr Steve Magyar
Cr Russ Fishwick
Cr Marie Macdonald

