

Agenda **Policy Committee**

A MEETING WILL BE HELD IN

**CONFERENCE ROOM 2
JOONDALUP CIVIC CENTRE
BOAS AVENUE, JOONDALUP**

ON

TUESDAY 16 SEPTEMBER 2008

COMMENCING AT

5.30 pm

Note:

Clause 77 of the City's Standing Orders Local Law 2005 states:

"Unless otherwise provided in this local law, the provisions of this local law shall apply to meetings of committees with the exception of:

- (a) clause 29 (Members seating;) and
- (b) clause 54 (Limitation on members speaking.)"

GARRY HUNT
Chief Executive Officer
12 September 2008

www.joondalup.wa.gov.au

CITY OF JOONDALUP

Notice is hereby given that a meeting of the **POLICY COMMITTEE** will be held in Conference Room 2, Joondalup Civic Centre, Boas Avenue, Joondalup on **TUESDAY 16 SEPTEMBER 2008** commencing at **5.30 pm**

GARRY HUNT
Chief Executive Officer
12 September 2008

Joondalup
Western Australia

AGENDA

Committee Members

Cr Kerry Hollywood	Presiding Person
Cr Trona Young	Deputy Presiding Person
Mayor Troy Pickard	
Cr Marie Macdonald	
Cr Mike Norman	
Cr Sue Hart	
Cr Fiona Diaz	

Terms of Reference

- To make recommendations to Council on the development and review of Council and City policies to identify the direction of Council.
- To initiate and request the formulation and drafting of both Council and City policies.
- To devise and oversee the method of development (level and manner of community consultation) for the development of Council and City policies.
- To review the Council Policy Framework in order to ensure compliance with the provisions of the Local Government Act 1995.

DECLARATION OF OPENING

APOLOGIES/LEAVE OF ABSENCE

CONFIRMATION OF MINUTES

MINUTES OF THE POLICY COMMITTEE HELD 23 JUNE 2008

RECOMMENDATION

That the minutes of the meeting of the Policy Committee held on 23 June 2008 be confirmed as a true and correct record, subject to the following amendments being made to Pages 9 and 10 of the Minutes:

Deletion of Point 4 which reads:

“4 REQUESTS that a report be presented to Council establishing temporary parking permits for the Warwick train station catchment area where parking prohibitions are to be established.”

and replacement with a new Point 4 to read:

“4 IMPLEMENTS temporary parking permits for the Warwick train station catchment area.”

ANNOUNCEMENTS BY THE PRESIDING PERSON WITHOUT DISCUSSION

DECLARATIONS OF INTEREST

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

PETITIONS AND DEPUTATIONS

REPORTS

Item 1	Legal Representation for Elected Members	Page 3
Item 2	Proposed Parking Policy for Commercial Development within Joondalup City Centre	Page 9
Item 3	Alfresco Activities Policy	Page 12
Item 4	Proposed Local Planning Policy – Cubby Houses	Page 17

MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

REQUESTS FOR REPORTS FOR FUTURE CONSIDERATION

CLOSURE

ITEM 1 **LEGAL REPRESENTATION FOR ELECTED MEMBERS – [01173]**

WARD: All

RESPONSIBLE DIRECTOR: Mr Ian Cowie
 Governance and Strategy

PURPOSE/EXECUTIVE SUMMARY

For the Policy Committee to review the current financial limits under the City's policy, "Legal Representation for Elected Members and Employees" (City Policy 8 – 7).

It is recommended that the Committee supports an increase in the maximum payment for legal representation costs for Elected Members, (without Council approving a higher amount), to \$6,000 and to increase the maximum payment approvable by the Chief Executive Officer (CEO) to \$6,000 also.

BACKGROUND

At its meeting of 10 June 2008, Council resolved, inter alia, to:

"ENDORSE Option 2 by not supporting the City of Stirling's proposal to lobby the State Government for an inclusion of independent legal representation for Elected Members issues in the Local Government Act 1995."

In the lead up to this decision, it was noted that the current financial limit for legal representation in the City's policy may not adequately cover advice being sought, particularly if the matter is of a complex nature. As such, the current limit should be reviewed.

This report provides a comparison of the Department of Local Government and Regional Development's approach, (contained within its model policy), and the current maximum payment in the City's policy, with the view to recommend options for increasing the limit.

DETAILS

Comparison of Relevant Policy Provisions: Total Amount Available

City of Joondalup

- 4.1 ***Unless otherwise determined by the Council***, payment of legal representation costs in respect of a particular application is not to exceed **\$5,000**.

Department of Local Government

- 4.1 The Council in approving an application in accordance with this policy shall set a limit on the costs to be paid **based on the estimated costs in the application**.

Analysis:

Despite the stated limit of \$5,000 in the City's policy, a larger payment can still be approved due to the inclusion of the phrase "*unless otherwise determined by the Council*".

The model policy provided by the Department does not require a maximum limit to be set in the policy, but does require Council to determine a limit when considering each application. This would be decided on a case-by-case basis depending on the nature of the advice being sought and the costs estimated in the application.

On comparison, it is possible for the City to replicate the Department's approach by removing a stated limit within the policy and allowing Council to determine the limit when considering each application. However, the benefit of providing a stated amount is that Council is provided with a guide outside of the estimated costs provided in the application.

Comparison of Relevant Policy Provisions: Emergency Situations*City of Joondalup*

- 6.1 In cases of emergency, the CEO, subject to clause 6.2, may exercise, on behalf of the Council, any of the powers of the Council under clauses 5.1 and 5.2, to a limit of **\$2,000**, where a delay in approving an application would be detrimental to the legal rights of an Elected Member or Employee.

Department of Local Government

- 6.1 In cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the CEO may exercise, on behalf of the Council, any of the powers of the Council under clause 5.1 and 5.2, to a maximum of **\$10,000** in respect of each application.

Analysis:

There is an obvious significant difference between the maximum limit set in the City's policy and the Department's policy. Investigation into the reason for this disparity has not uncovered any explanation, however, a timeline of the relevant amendments made to both policies since their inception is provided below.

Previous Amendments made to policies:*The Department's Model Policy*

(2000)

- Limit for **CEO** in cases of urgency \$5,000.
- No limit stated for **Elected Members** within the model policy.

(2006)

- Limit for **CEO** in cases of urgency increased from \$5,000 to \$10,000 in the model policy.
- Limit for **Elected Members** to be set by Council based on the estimated costs in the application.

Joondalup's Policy

(2001)

- Limit for **Elected Members** increased from \$3,000 to \$5,000 to reflect a proforma policy released by the Department (A report to Council on 13 February 2001 referenced the Department's policy; however, a copy of the policy at the time has not been uncovered).

(2004)

- Limit for **CEO** in cases of urgency reduced from \$5,000 to \$2,000 in both the policy and the Delegated Authority Manual, (based on a recommendation by the City's Policy Committee in 2003).

Issues and options considered:

The Policy Committee has several options to consider:

Option 1: *Do not amend the City's Policy to increase the maximum payment for legal representation costs for Elected Members or the delegated maximum payment approvable by the CEO.*

This option is *not* recommended based on the fact that the policy has not been amended since 2004 and the fact that the current limit for the CEO is drastically unaligned with the Department's model policy.

Option 2: *Increase the maximum payment limit for Elected Members in line with annual CPI increases.*

The current CPI figures are at 4.2%. This would equate to an increase of \$210. It would seem unnecessary to amend the City's Policy annually only to increase the limit by such a low amount. This approach also contrasts with the Department's model policy.

This option is *not* recommended.

Option 3: *Increase the maximum payment limit for Elected Members by a small amount, (say to \$6,000).*

This option *is* recommended as an additional \$1,000 would sufficiently absorb several increases in CPI and any additional payments that may be required could be applied for through Council.

Option 4: *Increase the maximum payment limit for Elected Members substantially, (say to \$10,000).*

Given that the City's Policy enables more than one application to be presented to Council in respect of the same matter, an initial amount of \$10,000 may seem excessive in the first instance if additional payments may be applied for.

This option is *not* recommended.

Option 5: *Increase the maximum payment approvable by the CEO to \$6,000.*

Given that the intention of this provision is to allow a preliminary legal consultation to be urgently undertaken before a Council Meeting is scheduled, \$6,000 would seem a sufficient payment to cover these costs. This amount is also closer to the amount in the Department's model policy than the current amount. It also mirrors the amount proposed to be allowable without any further representation to Council.

Should a greater amount of money be required following the initial consult, Council has the capacity to determine a more appropriate payment in respect of recommendations provided in the application.

This option *is* therefore recommended for endorsement by the Policy Committee.

Option 6: *Increase the maximum payment approvable by the CEO in line with the Department's model policy, namely \$10,000.*

Research has not uncovered any rationale for the Department opting to increase the maximum payment from \$5,000 to \$10,000; however, for an initial consultation it would seem unnecessary to approve an amount of \$10,000.

This option is *not* recommended.

Option 7: *Increase the maximum payment approvable by the CEO in line with annual CPI increases.*

The current CPI figures are at 4.2%. This would equate to an increase of \$84. It would seem unnecessary to amend the City's Policy annually for an increase of such a low amount. This approach also contrasts with the Department's model policy.

This option is *not* recommended.

Link to Strategic Plan:

Not Applicable.

Legislation – Statutory Provisions:

Not Applicable.

Risk Management considerations:

Should Council choose not to amend the City's Policy 8 – 7 to increase the maximum payment approvable by the CEO, there is a risk that \$2,000 may not cover the costs of a preliminary consultation.

Financial/Budget Implications:

Not Applicable.

Policy implications:

The recommendations within this report relate to the City's Policy 8 – 7 "Legal Representation for Elected Members and Employees".

Regional Significance:

Not Applicable.

Sustainability implications:

Not Applicable.

Consultation:

Not Applicable.

COMMENT

Ultimately the approach and option taken is a matter of choice for Council There is no technical reason to reject any approach or amount suggested.

ATTACHMENTS

Attachment 1: City Policy 8–7 - Legal Representation for Elected Members and Employees.

Attachment 2: Department of Local Government and Regional Development "Operational Guideline No. 14 – Legal Representation for Council Members and Employees".

VOTING REQUIREMENTS

Simple Majority.

RECOMMENDATION

That the Policy Committee RECOMMENDS that Council AMENDS Policy 8-7 – Legal Representation for Elected Members and Employees as follows:

- 1 In Clause 4.1, deleting the figure of “\$5,000” and replacing it with “\$6,000”;**
- 2 In Clause 6.1, deleting the figure of “\$2,000” and replacing it with “\$6,000”.**

Appendix 1 refers

ITEM 2 PROPOSED PARKING POLICY FOR COMMERCIAL DEVELOPMENT WITHIN JOONDALUP CITY CENTRE – [00152]

RESPONSIBLE Mr Clayton Higham
DIRECTOR: Planning and Community Development

PURPOSE

To provide a parking policy which will ensure an adequate supply of private and public parking as well as providing an incentive for major commercial development within the City Centre.

EXECUTIVE SUMMARY

The proposed draft Parking Policy is aimed at ensuring that an adequate supply of both private and public parking occurs in the City Centre, as well as providing incentives for the significant commercial development.

The draft policy effectively requires parking for commercial developments at a rate of one bay per 60 square metres Net Lettable Area (NLA) and a normal financial contribution to the public parking component.

The draft policy has been prepared to recognise the current phase of growth in the City Centre and the desire to encourage major commercial development.

It is recommended that the draft policy be advertised for public comment.

BACKGROUND

The current requirement for parking for commercial developments within the City Centre is one bay per 30 square metres NLA. Research has shown that this is consistent with other local governments within metropolitan Perth however, some local governments have provided reduction factors to encourage sustainability and public transport usage. Consideration was given to a policy for the City which reduced the one per 30 requirement based on proximity to public transport facilities and the provision of end of trip facilities for cyclists. Validation of this approach for the Joondalup situation was sought from traffic consultants.

The traffic consultant advised that such reductions for the Joondalup City Centre are not recommended. The consultant did however, make a number of recommendations in relation to the overall strategy for parking within the City Centre (see attached report).

Based on the consultant's report a number of principles were established and adopted by the Council at its meeting on 15 July 2008 (CJ143-07/08 refers). The adopted principles are:

- The standard car parking rate is 1 car bay per 30 sqm of floorspace.
- The application of this standard is 50% provided on-site (ie 1 bay per 60 sqm), and 50% provided off-site in the form of public car parking.
- The development must provide on-site car parking at the rate of 1 per 60 sqm, with consideration given to cash in lieu (at the full rate) for a portion of the on-site requirement.
- In terms of the off-site provision, the City will be responsible for providing public car parking, with the developer contributing a portion as cash in lieu at a rate that will not be a disincentive to development.
- In order to encourage buildings of greater height, the developer's provision of on-site car bays will be reduced on a sliding scale depending on the height of the building.
- Support the provision of bays for smaller cars and scooters, as well as bike facilities including storage, lockers, and showers.
- In the longer term, 1 car bay per 45 sqm of floorspace will be the standard requirement.

DETAILS

Draft Policy - Joondalup City Centre Car Parking at Attachment 1 has been drafted on the basis of the principles adopted by the Council. Importantly, the policy assures that the City will achieve an overall parking provision of one car bay per 30 square metres of commercial net lettable area, however, a developer of commercial floor space will only be required to provide 50% of that overall requirement, with the City potentially ensuring the provision of the remaining 50% in public parking.

The policy also allows for the developer's 50% requirement to be discounted based on the height of the proposed building. The higher the building to be constructed the greater the discount. A proportion of the onsite parking can also be built as small vehicle bays and/or motorcycle or scooter bays. While the advantage for small vehicle bays is marginal, the floor area saving for motorcycles and scooters could be quite significant. There needs to be recognition that at the present time, motorcycles and scooters only represent a relatively small proportion of vehicle parking needs.

In terms of the off-site parking requirement, the general principle is that the City will be responsible for providing approximately 50% of the overall parking requirement, however, a contribution would be sought from the developer to off-set the cost of providing the public parking. The draft policy suggests that the contribution be diminished, as the number of bays required increases.

Link to Strategic Plan:

3.1 Objective: to encourage the development of the Joondalup CBD.

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.

Risk Management considerations:

Council's approach to the Policy and the future consideration of cash in lieu of parking will potentially have a major impact on the built form of the City Centre and its ability to fund/provide public parking.

COMMENT

The proposed parking policy is quite different to policies currently operating in other local governments. This policy has however, been drafted to recognise the particular circumstances within the City Centre of Joondalup and has regard to the current stage of development that the City is at. It is proposed that the policy be reviewed every two years to ensure that it is achieving its objectives and that the balance between public and private parking is being maintained.

Is it recommended that the draft policy be adopted for the purpose of advertising for a period of thirty (30) days.

ATTACHMENTS

Attachment 1 Draft Parking Policy - Joondalup City Centre Car Parking

Attachment 2 Explanatory Notes

VOTING REQUIREMENTS

Simple Majority

RECOMMENDATION

That the Policy Committee RECOMMENDS that Council ADVERTISES the draft Parking Policy - Joondalup City Centre Car Parking forming Attachment 1 to this Report for a period of 30 days.

Appendix 2 refers

**ITEM 3 ALFRESCO ACTIVITIES POLICY – ISSUES –
[03360]****WARD:** All**RESPONSIBLE** Mr Clayton Higham
DIRECTOR: Planning and Community Development

PURPOSE

To report to the Policy Committee on issues regarding the current Policy 7-5 Alfresco Activities.

EXECUTIVE SUMMARY/BACKGROUND

Policy 7-5 Alfresco Activities was recently reviewed, and the modifications adopted by Council at its meeting held on 15 April 2008. The amendments expanded the policy 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, in accordance with recent amendments to the Liquor Licensing Act 1988. Clarification in terms of application of the policy and planning approval requirements were also included.

The matter of alfresco dining has been requested to be placed before the Policy Committee, as issues have been raised in regard to the enclosure of alfresco areas, and the potential impact on pedestrian movement in the City Centre.

DETAILS**Issues and options considered:**

Principally, the issue has arisen from the City's refusal for the café 'Kulcha' (Boas Avenue) to enclose the existing alfresco dining area by the use of drop-down plastic blinds from the awning. Reasons for the refusal were based on the blinds preventing the public from using the area and the pedestrian shelter.

The Joondalup City Centre Development Plan and Manual (JCCDPM) places emphasis on pedestrian awnings being provided in the CBD for the comfort of pedestrians.

Currently Policy 7-5 does not state whether alfresco activities should be located against the building, or against the kerb/roadway. The Policy does state that a 1.8 – 2.1 metre clear footpath must be provided in either scenario.

Link to Strategic Plan:

3.1 – To encourage the development of the Joondalup CBD.

4.1 – To ensure high quality urban design within the City.

Legislation – Statutory Provisions:

Not Applicable

Risk Management considerations:

Not Applicable

Financial/Budget Implications:

Council may wish to consider introducing fees and charges for the operation of alfresco activities.

Policy implications:

Modifications to the existing policy may be required as a result of Council's consideration.

Regional Significance:

Not applicable

Sustainability implications:

Not applicable

Consultation:

Not applicable

COMMENT

Alfresco dining is encouraged in the City Centre as it adds interest and activity in the streets, which contributes to a lively City Centre. However, there is balance between this objective, the commercial use of public land, and the amenity of streets for pedestrians.

Pedestrian shelter versus use of awning area for alfresco dining

For development within the CBD, the provision of awnings over the footpath area is required to provide pedestrian comfort, from both sun and rain, when moving around the City.

However, alfresco dining may also occur under existing building awnings, potentially generating a conflict between the use of awnings to provide pedestrian shelter, and the use of awnings for alfresco dining.

The current Policy does not express a particular view on the location of alfresco dining in relation to the location of awnings or pedestrian shelter. The policy does, however, state that a 1.8 – 2.1 metre pedestrian path must be maintained at all times.

Of the various Alfresco Policies obtained from other local authorities, only one considers the location of existing awnings as a factor in the location of alfresco areas. In that instance, the policy does not permit the pedestrian areas under awnings to be utilised for alfresco dining in inclement weather.

Within the Joondalup City Centre, 'Kulcha', 'La Vita', and 'Another Cup' utilise the area under the awning for alfresco dining. Pedestrians are largely excluded from using the awning when the alfresco area is in operation (see Attachment 1).

Others, for example 'T5 Espresso' and 'Elroys', do not utilise the under awning area. Rather they use umbrellas to provide shade protection, and do not use the outdoor area during inclement weather. The awnings are therefore available to provide protection to pedestrians (see Attachment 1).

'Sugar & Spice' have a permanent shade structure for the alfresco area. This structure is not located under the awning, thereby allowing the awning still to be used for pedestrian shelter (see Attachment 1.) This is possible due to the wide footpath in this location, and may not be possible in other locations.

Use of 'Café Blinds'

Requests for the enclosure of alfresco areas, such as the use of café blinds, occur from time to time. Potential concerns over the use of such items are:

- Privatisation of the footpath area (ie the area becomes an extension of the adjoining café or restaurant.
- are visually unattractive
- are used on a permanent basis (eg each night), not just during inclement weather
- prevent the public from utilising awnings for weather protection
- do not allow alfresco areas to add to the desired atmosphere of the City Centre, and defeats the purpose of 'outdoor' dining.

On the positive side, enclosures can:

- allow eating areas to be used during inclement or cold weather.

Public versus Private use of the footpath area

The footpath areas utilised for alfresco dining are largely located on public land. This may give rise to requests from food operators for exclusive use of these areas by way of a lease. However, this is not considered appropriate, and the City and other service authorities must retain the right of access to public footpaths, as needed.

Fees and charges

Planning application fees (\$123, renewed every 3 years) and an Outdoor Dining Licence fee (\$230 annually) are currently charged. However, fees are not charged for the use of the footpath area for alfresco dining.

Other local authorities do charge alfresco operators for the privilege of using the footpath area. This fee may be per chair, table, or both, per square metre, or based on the GRV.

Examples are:

- City of Perth, Melville – Fee per square metre
- City of Stirling – Fee based on GRV
- City of Subiaco – Fee per chair

There is an argument for the City charging some type of fee for the use of public land under its control or management, particularly when there is commercial gain for an operator.

However, significantly increasing the fees food businesses pay for alfresco dining may result in less businesses offering outdoor dining, and therefore have a detrimental effect on the amenity of the CBD. It would be possible to phase in the increase in fees.

Questions

The following questions are relevant when considering this issue:

- Is the provision of awnings primarily to provide comfort for pedestrians moving around the City? Is the use of the area under awnings for alfresco activities secondary, ie only used in fine weather?
- Should alfresco activities occur only when the weather permits? ie not allow enclosures and accept that alfresco dining is a seasonal activity, and not always possible.
- If enclosures are permitted, what form should they take? Free standing, attached to existing structures only, attached to existing awnings?
- Should alfresco operators be charged a fee to operate outdoor dining areas on public land? Would this be seen as detrimental to the desire to encourage these activities?

Possible Principles

Depending on the answers to the above, guiding principles can be developed that would inform a review of the Alfresco Activities Policy. Principles could be:

- Where awnings are provided, areas under those awnings will be retained for pedestrian access.
- Enclosures to alfresco areas may take the form of drop down clear café blinds, however, they may only be used during inclement weather. General use (eg each night) is not permitted. Pedestrian access under any awnings must be maintained.
- Permanent shade structures will be considered, where appropriate (eg wide footpaths)
- In order to encourage alfresco activities, the City will not charge fees for alfresco activities at present.

ATTACHMENTS

Attachment 1: Photos of Alfresco Areas with the Joondalup City Centre

VOTING REQUIREMENTS

Simple Majority

RECOMMENDATION

That the Policy Committee RECOMMENDS that Council REVIEWS Policy 7-5 Alfresco Activities, with the following principles incorporated:

- **Where awnings are provided, areas under those awnings will be retained for pedestrian access.**
- **Enclosures to alfresco areas may take the form of drop down clear café blinds, however, they may only be used during inclement weather. General use (eg each night) is not permitted. Pedestrian access under any awnings must be maintained.**
- **Permanent shade structures will be considered, where appropriate (eg wide footpaths)**
- **In order to encourage alfresco activities, the City will not charge fees for alfresco activities at present.**

Appendix 3 refers

ITEM 4 PROPOSED LOCAL PLANNING POLICY - CUBBY HOUSES – [74619]

WARD: All

**RESPONSIBLE
DIRECTOR:** Mr Clayton Higham
 Planning and Community Development

PURPOSE

The purpose of this report is for the Policy Committee to consider a draft Local Planning Policy - Cubby Houses.

EXECUTIVE SUMMARY

The community's attention has recently been drawn to the installation of cubby houses for children and their subsequent potential impact on the amenity of adjoining property owners. The issues include inappropriate location and overlooking of adjoining properties.

The purpose of this policy is to outline the parameters where a cubby house can be erected without the need for planning approval. The proposed parameters aim to ensure that there is minimal impact on adjoining properties, and include limits on size, height and location.

It is recommended that the draft Local Planning Policy - Cubby Houses be advertised for public comment.

BACKGROUND

Currently the City does not have a policy relating to the erection of cubby houses. In the past 12 months, two complaints about cubby houses were received from adjoining neighbours. The first complaint was that a cubby house blocked views and was unsightly; the other complaint was that there was overlooking into the adjoining neighbour's property.

With the first complaint, City officers were able to negotiate with the cubby house owner to lower the structure and the matter was satisfactorily resolved. The second complaint is ongoing.

The City has received legal advice as to the controls which the City could use in regard to the erection of cubby houses. While it appears that the answer is not straight forward, due to inconsistencies between the City of Joondalup District Planning Scheme No 2 (DPS2) and the Residential Design Codes (Variation 1) (R-Codes), the advice does state that it would be reasonable for the City to produce a policy which sets out the circumstances where approval is required.

DETAILS

The R-Codes, which govern residential development, has inconsistent provisions which make it difficult for the City to obtain clear direction on whether or not the R-Codes control these structures. A cubby house could fall within the definition of “building” and “outbuilding” under the R-Codes and therefore could require approval from the City. However, the R-Codes also states that “cubby houses.....are exempted from planning control”. In addition, Clause 6.1.3 of DPS2 is silent on whether or not cubby houses require approval.

A draft policy has been prepared to address these inconsistencies between DPS2 and the R-Codes with regard to whether cubby houses require planning approval. The policy also provides parameters where cubby houses can be erected without the need for planning approval.

The proposed parameters aim to ensure that there is minimal impact on adjoining properties, and include limits on size, height and location. If a cubby house does not satisfy any one of the parameters, then an application for planning approval and a building licence must be submitted to the City for consideration. The draft policy requires that all planning applications be advertised to adjoining owners for a period of 14 days and that comments from adjoining owners are taken into consideration in the determination of the application.

Issues and options considered:

In regard to the draft policy, Council can:

- Advertise draft Policy 7-24 for public comment;
- Not support the advertising of Policy 7-24 for public comment.
- Advertise draft Policy 7-24, with modifications, for public comment.

Link to Strategic Plan:

Objective 4.1 - To ensure high quality urban development within the City.

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 policy, or an amendment to an existing 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:

It is proposed to implement a new policy.

Regional Significance:

Not Applicable.

Sustainability implications:

Not Applicable.

Consultation:

In the event that Council adopts the draft policy for advertising, advertising of the proposal for a period of 21 days is recommended. Upon completion of advertising, Council is required to consider all submissions and proceed to adopt, modify or refuse the amendment to the policy. There is no requirement under DPS2 for local planning policies to be forwarded to the Western Australian Planning Commission (WAPC) for approval, however a copy of the policy may be forwarded if its provisions affect the interests the WAPC.

COMMENT

It is recognised that cubby houses are a standard feature of many backyards, and an important play feature for children. In this respect, cubby houses should not be over regulated. Notwithstanding, it is also recognised that cubby houses may have an impact on the amenity of adjoining owners if inappropriately located and built above ground level. The City has, on an infrequent basis, been required to address situations relating to the construction, location and impact that cubby houses have on adjoining properties or on the streetscape.

As outlined previously, the inconsistent provisions of the R-Codes and DPS2 make it difficult for the City to obtain clear direction on whether or not the R-Codes or DPS2 control these structures. A draft policy has been developed to provide guidance and clarification regarding the circumstances when a cubby house needs approval and when it does not require approval.

The issues experienced with cubby houses are their impact on adjoining properties, particularly with regard to the potential loss of privacy, their height, location and the potential for noise. The policy seeks to address those issues by providing parameters where cubby houses can be erected without the need for planning approval. The proposed parameters aim to ensure that there is minimal impact on adjoining neighbours, and include limits on size, height, location and views into adjoining properties.

One of the main issues with cubby houses is when they are elevated above natural ground level and overlooking of adjoining properties occurs from the cubby house. The policy requires that cubby houses which can look into adjoining properties must be submitted for planning approval, and provides guidelines for assessment such as the need to protect the privacy of adjoining properties by preventing views into the main outdoor areas.

Overall, the draft policy seeks to control potential conflict between neighbours with regards to cubby houses and provides an avenue for the City to assess and determine cubby house applications. It is recommended that the Policy Committee recommend that Council initiate advertising of the policy.

ATTACHMENTS

Attachment 1 Draft Policy – Cubby Houses

VOTING REQUIREMENTS

Simple Majority.

RECOMMENDATION

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 draft City Policy - Cubby Houses, as shown in Attachment 1 to this Report, for public comment for a period of twenty one (21) days.

Appendix 4 refers

APPENDICES

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POLICY 8-7 – LEGAL REPRESENTATION FOR ELECTED MEMBERS AND EMPLOYEES

- STATUS:** **City Policy** - *A policy that is developed for administrative and operational imperatives and has an internal focus.*
- Developed by the Policy Committee and/or the administration and adopted by Council.*
- RESPONSIBLE DIRECTORATE:** Office of the CEO
- OBJECTIVE:** Under the *Local Government Act 1995*, the City's 'good government' powers allow it, in appropriate circumstances, to pay for the Legal Representation Costs of an individual Elected Member or Employee.
- This Policy sets out guidelines to assist the Council in determining when it is appropriate to pay Legal Representation Costs.
- This Policy does not cover legal representation provided to, or on behalf of, the City.

STATEMENT:

1 Payment Criteria

There are three major criteria for determining whether the City should pay the Legal Representation Costs of an Elected Member or Employee. These are:

- (a) the Legal Representation Costs must relate to a matter that arises from the performance, by the Elected Member or Employee, of his or her functions;
- (b) the Legal Representation Costs must be in respect of Legal Proceedings that have been, or may be, commenced; and
- (c) in performing his or her functions, to which the Legal Representation relates, the Elected Member or Employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct.

2 Examples of Legal Representation Costs that may be approved

- 2.1 If the criteria in clause 1 are satisfied, the City may approve the Payment of Legal Representation Costs:

- (a) where proceedings are brought **against** an Elected Member or Employee in connection with his or her functions – for example, an action for defamation or negligence arising out of a decision made or action taken by the Elected Member or Employee; or
- (b) for involvement in a statutory or other inquiry that requires information to be given, or to which information is given, by an Elected Member or Employee in connection with his or her functions.

2.2 This policy does not relate to situations where legal proceedings are commenced by an Elected Member or Employee and there is a presumption that the City will not pay for legal representation costs in these circumstances. However this policy does not preclude such a request being submitted and considered by the Council for extenuating circumstances where the Elected Member or Employee is the subject of threatening behaviour by another person.

2.3 The City will not approve the Payment of Legal Representation Costs to an Elected Member or Employee for a defamation action, or a negligence action, instituted by the Elected Member or Employee.

3 Application for payment

3.1 An Elected Member or Employee who seeks assistance under this Policy is to make an application(s) for Payment of Legal Representation Costs.

3.2 The application:

- (a) is to be made in writing to the Council; and
- (b) is to give details of:
 - (i) the matter for which Legal Representation is sought;
 - (ii) how that matter relates to the functions of the relevant Elected Member or Employee;
 - (iii) the lawyer (or law firm) who is to be asked to provide the Legal Representation;
 - (iv) the nature of Legal Representation to be sought (such as advice, representation in court, preparation of a document etc); and
 - (v) the estimated cost (if known) of the Legal Representation.
- (c) is to contain a declaration by the applicant that he or she has acted in good faith, and has not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates; and

(d) so far as possible, is to be made before seeking the Legal Representation to which the application relates.

3.3 The application is to be accompanied by a written statement by the applicant that he or she:

- (a) has read, and understands, the terms of this Policy;
- (b) acknowledges that any approval of Legal Representation Costs is conditional on the repayment provisions of clause 7 and any other conditions to which the approval is subject; and
- (c) undertakes to repay to the City any Legal Representation Costs in accordance with the provisions of clause 7.

3.4 An application is also to be accompanied by a report prepared by or on behalf of the CEO or, where the CEO is the applicant, by the Director Corporate Services and Resource Management.

4 Legal Representation Costs - limit

4.1 Unless otherwise determined by the Council, payment of Legal Representation Costs in respect of a particular application is not to exceed \$5,000.

4.2 An Elected Member or Employee may make a further application to the Council in respect of the same matter.

5 Council's powers

5.1 The Council may:

- (a) refuse;
- (b) grant; or
- (c) grant subject to conditions, including a financial limit,

an application for payment of Legal Representation Costs.

5.2 A condition under clause 5.1 may include a financial limit and/or a requirement to enter into a formal agreement, including a security agreement, relating to the payment, and repayment, of Legal Representation Costs.

5.3 In assessing an application, the City may have regard to any insurance benefits that may be available to the applicant under the City's Councillors and Officers insurance policy (or its equivalent).

5.4 The Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of Legal Representation Costs.

- 5.5 The Council may, subject to clause 5.6, determine that an Elected Member or Employee whose application for Legal Representation Costs has been approved has, in respect of the matter for which Legal Representation Costs were approved:
- (a) not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
 - (b) given false or misleading information in respect of the application.
- 5.6 A determination under clause 5.5 may be made by the Council only on the basis of, and consistently with, the findings of a court, tribunal or inquiry.
- 5.7 Where the Council makes a determination under clause 5.5, it may also determine that all or part of the Legal Representation Costs paid by the City are to be repaid by the Elected Member or Employee in accordance with clause 7.

6 CEO's powers

- 6.1 In cases of urgency, the CEO, subject to clause 6.2, may exercise, on behalf of the Council, any of the powers of the Council under clauses 5.1 and 5.2, to a limit of \$2,000, where a delay in approving an application would be detrimental to the legal rights of an Elected Member or Employee.
- 6.2 Where the CEO is the applicant, the powers in clause 6.1 are to be exercised by the Director Corporate Services and Resource Management.
- 6.3 An application approved by the CEO under clause 6.1, or by the Director Corporate Services and Resource Management under clause 6.2, is to be submitted to the next meeting of the Council which may exercise any of its powers under this Policy, including its powers under clause 5.4.

7 Repayment of Legal Representation Costs

- 7.1 An Elected Member or Employee whose Legal Representation Costs have been paid by the City is to repay the City:
- (a) all or part of those costs – in accordance with a determination by the Council under clause 5.7; or
 - (b) as much of those costs as are available to be paid by way of set-off – where the Elected Member or Employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the City paid the Legal Representation Costs.

- 7.2 The City may take action in a court of competent jurisdiction to recover any monies due it under this Policy.

Explanation of Key Terms

Approved Lawyer is to be:

- (a) a 'certificated practitioner' under the *Legal Practice Act 2003*; and
- (b) approved in writing by the Council.

Elected Member or Employee means a current or former Commissioner, Elected Member, or Employee of the City.

Legal Proceedings may be civil, criminal or investigative (including an inquiry under any written law).

Legal Representation is the provision, to or on behalf of an Elected Member or Employee, by an Approved Lawyer of Legal Services that are in respect of:

- (a) a matter or matters arising from the performance of the functions of the Elected Member or Employee; and
- (b) Legal Proceedings involving the Elected Member or Employee that have been, or may be, commenced.

Legal Representation Costs are the costs, including fees and disbursements, properly incurred in providing Legal Representation.

Legal Services includes advice, representation or documentation that is provided by an Approved Lawyer.

Payment by the City of Legal Representation Costs may be either by:

- (a) a direct payment to the Approved Lawyer (or the relevant law firm); or
- (b) a reimbursement to the Elected Member or Employee.

Amendments: CJ213-06/99, CJ001-02/01, CJ136-06/04,
CJ206-10/05, CJ207-10/07

Related Documentation:

Issued: October 2007

ATTACHMENT

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Legal Representation for Council Members and Employees

Local Government Operational Guidelines - Number 14 April 2006



Department of Local Government
and Regional Development
Government of Western Australia

www.dlgrd.wa.gov.au

Legal Representation for Council Members and Employees

1. Introduction

1 In today's society there is an increased risk of legal action being taken or threatened against individual council members and employees. Council members and employees may require legal advice and representation and expect their local government to provide financial assistance to meet the cost of the advice or representation.

2 For example, council members or employees may be threatened with legal action when an aggrieved party believes that they will not or have not carried out their legislative functions or responsibilities in the correct and appropriate manner. Legal action may also be threatened where it is anticipated that such action will influence a vote or a recommendation.

3 Council members and employees may feel inhibited in undertaking their roles in a full, frank and impartial manner if they do not have an assurance that they are protected from threats and will be given proper legal representation if any legal action is taken against them. Local governments have a legislative duty of care to their employees to provide a safe working environment and morally have the same duty to council members. Accordingly, it is appropriate and prudent for local governments to assist council members and employees by adopting a policy to fund or partly fund the cost of providing legal representation in appropriate circumstances.

4 The Inquiry into the City of Joondalup criticised some council members for making uninformed and ill-advised decisions to pay personal legal expenses of the Chief Executive Officer (CEO). It is therefore important that council adopts a policy on the provision of financial assistance so that it's position is known to the council members, employees and the community in advance of applications for funding being made. Non-elected council committee members may also require assistance and should be considered in any Policy adopted by council.

5 This guideline, and the attached Model Policy, are provided to assist councils when making decisions or developing a Policy. It is important that a council devotes time to understanding the issues outlined in this guideline.

6 If a Policy is adopted and legal representation costs are granted under the Policy it is critical that council has presented to it full and detailed accounts from the lawyer approved to provide the legal representation to ensure that the representation provided complies with the approval given. Repayment of any costs associated with matters not approved should be enforced.

7 This guideline does not address the situation where council members and employees are interviewed during or are required to give evidence to an inquiry into their local government. Determining whether financial assistance is given in these situations is a complex matter and one that will relate to the circumstances and reasons for the inquiry.

2. Legislation

8 Section 9.56 of the *Local Government Act 1995* (the Act) provides protection from actions of tort for anything a council member or employee has, in good faith, done in the performance or purported performance of a function under the Act or under any other written law. However, the legislation does not preclude people taking action against individual council members or employees if they believe that the council member or employee has not acted in good faith.

9 Section 3.1 of the Act provides that the general function of a local government is to provide for the good government of persons in its district. Section 6.7(2) provides that money held in the municipal fund may be applied towards the performance of the functions and the exercise of the powers conferred on the local government by the Act or any other written law. Under these provisions a council can expend funds to provide legal representation for council members and employees as long as it believes that the expenditure falls within the scope of the local government's function.

3. Determining a Suitable Policy

10 The Policy should have a clear set of principles or directives to help the council deal with a situation where a council member or employee is defending or will need to defend a legal action or requires advice or representation and is requesting financial assistance. The policy should set out the circumstances under which funding will be provided, the level of funding that will be provided and the processes to be followed by the applicant when making a request.

11 The degree of complexity of an appropriate policy may vary but generally could include the following matters –

- under what circumstances would financial assistance be provided. For example, where legal action is taken against a council member or employee in connection with the performance of their duties and they have not acted illegally, dishonestly or in bad faith;
- who would make the decision that financial support would be provided (eg council or the CEO);
- who would provide the legal services (eg the local government's lawyers, other lawyers);
- what limits, if any, would be placed on financial assistance;
- how applications would be made for assistance;
- what obligations a council member or employee receiving assistance should have (eg an obligation to disclose anything that might affect representation or to act reasonably);
- whether contingent authorisation in urgent cases would be provided for and who would exercise that authority;
- under what circumstances could financial assistance be withdrawn (eg person having acted illegally, dishonestly or otherwise in bad faith);
- provision for the recoup of money already provided under the Policy where approval is withdrawn; and
- a clear statement that legal representation will not be provided for matters that relate to the personal affairs of a council member or employee (eg under investigation for a matter not related to a legislative function or an employee seeking legal advice on a contract of employment).

3.1 Other circumstances where funding requests may be made

12 Under legislation, any expenditure of a local government's funds must be justified on the basis that the expenditure will "provide for the good government of persons in its district". Therefore, in formulating a policy on legal representation the council must take into account the need to satisfy itself that the expenditure can be justified as providing for that good government.

13 Local government council members and employees will at times be subject to personal public criticism they consider to be unfair. Depending on the circumstances and the veracity of the criticism council members or employees may seek to redress the situation by taking legal action. Legal advice received by the Department suggests that only in exceptional circumstances would a local government be able to justify under the "good government" provisions funding the initiation of legal action by a council member or employee.

14 It is important to note that where public criticism is made about the local government, ie the City, Town, or Shire, funding could not be justified. Legal precedent dictates that it is fundamental to public scrutiny that governments be open to criticism by members of the community. The threat of civil action against any person who publicly criticises a local government will have an inhibiting effect on freedom of speech and inevitably lessen a local government's accountability to its community.

15 Council members, if asked to vote on such a request, should ask themselves "would a reasonable person, given all the facts, conclude that the expenditure provides for the good government of the persons in the district". If a majority of council members are satisfied, council could, under its general function power, resolve that the local government fund the obtaining of advice or initiation of legal action by the council member or employee.

16 Council members should ensure that they receive appropriate documentation that presents reasons for and against the recommendation when considering an application for such funding as they may be asked to

justify the decision at a future date. Documentation provides a proper decision-making trail that can be used to support the decision.

- 17 As a condition of approval the council may require the council member or employee to undertake to refund the costs of legal representation paid by the local government should their action be successful.

Support for former council members and employees

- 18 The council when considering the scope of its policy will need to determine if the policy extends to the funding of legal representation for former council members, commissioners and employees and under what circumstances funding would be provided.

Delegation

- 19 A number of councils have, in adopting a policy on this issue, delegated to their CEO the power to deal with requests for the payment of legal representation costs.

Because of the sensitive nature of providing funding, some CEOs have asked council not to delegate the power. A council should discuss the matter with the CEO before making any decision to delegate any aspect of its legal representation policy.

- 20 It may be appropriate for council to seek agreement from the CEO for a delegation limited to circumstances where a delay in approving a request will be detrimental to the legal rights of the council member or employee.

4. Adopting a Policy

- 21 In considering the policy all relevant people are encouraged to study and thoroughly understand the implications and likely consequences of adopting the policy.

- 22 The Department welcomes any comments that individuals or local governments believe will assist in the improvement of the model policy.

Model Policy

LEGAL REPRESENTATION FOR COUNCIL MEMBERS AND EMPLOYEES

EXPLANATION OF KEY TERMS

approved lawyer is to be –

- (a) a 'certified practitioner' under the *Legal Practice Act 2003*;
- (b) from a law firm on the *City/Town/Shire's* panel of legal service providers, if relevant, unless the council considers that this is not appropriate – for example where there is or may be a conflict of interest or insufficient expertise; and
- (c) approved in writing by the council or the CEO under delegated authority.

council member or employee means a current or former commissioner, council member, non-elected member of a council committee or employee of the *City/Town/Shire*.

legal proceedings may be civil, criminal or investigative.

legal representation is the provision of legal services, to or on behalf of a council member or employee, by an approved lawyer that are in respect of –

- (a) a matter or matters arising from the performance of the functions of the council member or employee; and
- (b) legal proceedings involving the council member or employee that have been, or may be, commenced.

legal representation costs are the costs, including fees and disbursements, properly incurred in providing legal representation.

legal services includes advice, representation or documentation that is provided by an approved lawyer.

payment by the *City/Town/Shire* of legal representation costs may be either by –

- (a) a direct payment to the approved lawyer (or the relevant firm); or
- (b) a reimbursement to the council member or employee.

1. Payment Criteria

There are four major criteria for determining whether the *City/Town/Shire* will pay the legal representation costs of a council member or employee. These are –

- (a) the legal representation costs must relate to a matter that arises from the performance, by the council member or employee, of his or her functions;
- (b) the legal representation cost must be in respect of legal proceedings that have been, or may be, commenced;
- (c) in performing his or her functions, to which the legal representation relates, the council member or employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and
- (d) the legal representation costs do not relate to a matter that is of a personal or private nature.

2. Examples of legal representation costs that may be approved

2.1 If the criteria in clause 1 of this policy are satisfied, the *City/Town/Shire* may approve the payment of legal representation costs –

- (a) where proceedings are brought against a council member or employee in connection with his or her functions – for example, an action for defamation or negligence arising out of a decision made or action taken by the council member or employee; or
- (b) to enable proceedings to be commenced and/or maintained by a council member or employee to permit him or her to carry out his or her functions – for example where a council member or employee seeks to take action to obtain a restraining order against a person using threatening behaviour to the council member or employee; or
- (c) where exceptional circumstances are involved – for example, where a person or organization is lessening the confidence of the community in the local government by publicly making adverse personal comments about council members or employees.

- 2.2 The *City/Town/Shire* will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, or a negligence action, instituted by a council member or employee.
3. **Application for payment**
- 3.1 A council member or employee who seeks assistance under this policy is to make an application(s), in writing, to the council or the CEO.
- 3.2 The written application for payment of legal representation costs is to give details of –
- (i) the matter for which legal representation is sought;
 - (ii) how that matter relates to the functions of the council member or employee making the application;
 - (iii) the lawyer (or law firm) who is to be asked to provide the legal representation;
 - (iv) the nature of legal representation to be sought (such as advice, representation in court, preparation of a document etc);
 - (v) an estimated cost of the legal representation; and
 - (vi) why it is in the interests of the *City/Town/Shire* for payment to be made.
- 3.3 The application is to contain a declaration by the applicant that he or she has acted in good faith, and has not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates.
- 3.4 As far as possible the application is to be made before commencement of the legal representation to which the application relates.
- 3.5 The application is to be accompanied by a signed written statement by the applicant that he or she –
- (a) has read, and understands, the terms of this Policy;
 - (b) acknowledges that any approval of legal representation costs is conditional on the repayment provisions of clause 7 and any other conditions to which the approval is subject; and
 - (c) undertakes to repay to the *City/Town/Shire* any legal representation costs in accordance with the provisions of clause 7.
- 3.6 In relation to clause 3.5(c), when a person is to be in receipt of such monies the person should sign a document which requires repayment of that money to the local government as may be required by the local government and the terms of the Policy.
- 3.7 An application is also to be accompanied by a report prepared by the CEO or where the CEO is the applicant by an appropriate employee.
4. **Legal representation costs – Limit**
- 4.1 The council in approving an application in accordance with this policy shall set a limit on the costs to be paid based on the estimated costs in the application.
- 4.2 A council member or employee may make a further application to the council in respect of the same matter.
5. **Council's powers**
- 5.1 The council may –
- (a) refuse;
 - (b) grant; or
 - (c) grant subject to conditions,
- an application for payment of legal representation costs.
- 5.2 Conditions under clause 5.1 may include, but are not restricted to, a financial limit and/or a requirement to enter into a formal agreement, including a security agreement, relating to the payment, and repayment, of legal representation costs.

- 5.3 In assessing an application, the council may have regard to any insurance benefits that may be available to the applicant under the *City's/Town's/Shire's* council members or employees insurance policy or its equivalent.
- 5.4 The council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.
- 5.5 The council may, subject to clause 5.6, determine that a council member or employee whose application for legal representation costs has been approved has, in respect of the matter for which legal representation costs were approved –
- (a) not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
 - (b) given false or misleading information in respect of the application.
- 5.6 A determination under clause 5.5 may be made by the council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.
- 5.7 Where the council makes a determination under clause 5.5, the legal representation costs paid by the *City/Town/Shire* are to be repaid by the council member or employee in accordance with clause 7.
6. **Delegation to Chief Executive Officer**
- 6.1 In cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the CEO may exercise, on behalf of the council, any of the powers of the council under clause 5.1 and 5.2, to a maximum of \$10,000 in respect of each application.
- 6.2 An application approved by the CEO under clause 6.1, is to be submitted to the next ordinary meeting of the council. Council may exercise any of its powers under this Policy, including its powers under clause 5.4.
7. **Repayment of legal representation costs**
- 7.1 A council member or employee whose legal representation costs have been paid by the *City/Town/Shire* is to repay the *City/Town/Shire* –
- (a) all or part of those costs – in accordance with a determination by the Council under clause 5.7;
 - (b) as much of those costs as are available to be paid by way of set-off – where the council member or employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the *City/Town/Shire* paid the legal representation costs.
- 7.2 The *City/Town/Shire* may take action in a court of competent jurisdiction to recover any monies due to it under this Policy.



**Department of Local Government
and Regional Development**
Government of Western Australia

www.dlgrd.wa.gov.au

FURTHER INFORMATION

For more information about this and other guidelines, contact the Local Government Support and Development Branch of the Department of Local Government and Regional Development on:

Tel: (08) 9217 1500

Fax: (08) 9217 1555

Freecall: 1800 620 511 (Country Only)

These guidelines are also available on the Department's website at www.dlgrd.wa.gov.au

ABOUT THE GUIDELINE SERIES

This document and others in the series are intended as a guide to good practice and should not be taken as a compliance requirement. The content is based on Departmental officers' knowledge, understanding, observation of, and appropriate consultation on contemporary good practice in local government. Guidelines may also involve the Department's views on the intent and interpretation of relevant legislation.

All guidelines are subject to review, amendment and re-publishing as required. Therefore, comments on any aspect of the guideline are welcome. Advice of methods of improvement in the area of the guideline topic that can be reported to other local governments will be especially beneficial.

POLICY– JOONDALUP CITY CENTRE CAR PARKING

STATUS: **Council Policy** - *A strategic policy that sets governing principles and guides the direction of the organisation to align with community values and aspirations.*

Council policies are developed by the Policy Committee for approval by Council.

RESPONSIBLE DIRECTORATE: Planning and Community Development

OBJECTIVE: To provide guidance to the provision of private and public car parking in order to:

- Ensure that the Joondalup City Centre attains its position as the second major City in metropolitan Perth,
- To ensure an appropriate balance between private and public parking provision in the City Centre.

POLICY AREA

This policy applies to the section of the Joondalup City Centre as depicted on the attached plan.

OVERALL STRATEGY

The following overall strategy is proposed, taking into account both the current car parking demand of 1 car bay per 30sqm of commercial Net Lettable Area (NLA), as well as the possible long term car parking demand of 1 car bay per 45sqm:

- An overall car parking provision of 1 car bay per 30sqm of commercial NLA must be provided in the short/medium term, in order to satisfy the current level of demand.
- Approximately 50% of this should be provided in public car parks, in order to maximise opportunities for shared use of parking facilities, leaving the other 50% (1 car bay per 60sqm of commercial NLA) to be provided on the development site.
- In the long term, taking into account further increases in public transport usage, cycling, and walking, as well as the increases in the number of people living and working in the City Centre, the aim should be to achieve a reduction to 1 car bay per 45 sqm of commercial NLA overall, if possible (being comprised of 1 car bay per 90sqm on site, and 1 bay per 90sqm in public parking for the maximum possible overall floor space in the long term).

- The balance of public and private parking will be reviewed every 2 years to gauge the performance of the policy against actual built outcomes.

STATEMENT:

1 Overall Parking Requirement

The provision of car parking within the City Centre shall be in accordance with the following:

- (i) The overall parking requirement for commercial developments shall be calculated at 1 bay per 30sqm NLA, comprising two components:
 - (a) The private or **on site parking requirement**; and
 - (b) The public or **off site parking requirement**.
- (ii) The developer will be fully responsible for the on site parking component and will make a contribution to the off site parking component according to the schedule below.

2 On Site Parking Requirement

- (i) All of the overall parking requirement (ie 1 bay per 30sqm) can be provided on site, however the minimum on site parking requirement for commercial development is 50% of the overall parking requirement – ie 1 bay per 60sqm NLA.
- (ii) To encourage commercial buildings of greater height the on site parking requirement may be reduced according to the following schedule:

Proposed Building Height	% of Min On Site Parking Req't
Up to 4 storeys	0% reduction
5 storeys	15%
6 storeys	20%
7 storeys	25%
8 storeys	30%
9 storeys	35%
10 storeys plus	40%

- (iii) Cash in lieu payments may be made for up to 25% of the required on site bays at the full scheduled amount.

The actual number of bays to be constructed on site will result from the application of clauses (iii), (iv), and (v). This number will be used in the application of the following clauses (vi) and (vii).

- (iv) All parking areas and bays will be designed and constructed in accordance with AS2890.1 (Part1 Off Street Parking), however, up to 20% of the bays to be constructed on site may be designed and constructed as “small” vehicle bays.

- (v) Up to 10% of the bays to be constructed on site may be constructed as bays for motor cycles and scooters (ie 1 standard vehicle bay can be constructed as a motor cycle/scooter bay). In the case of bicycles a secure location or bicycle lockers and end of trip shower and change facilities is a requirement under the City Centre Structure Plan.

3 Off Site Parking Requirement

- (i) The City accepts the responsibility of providing approximately 50% of the overall parking requirement. A cash in lieu contribution will be made by the developer for the off site parking component (ie 1 bay per 60 sqm NLA) equivalent to the number of bays of that component not constructed on the development site. That contribution will be in accordance with the following schedule:

- 50% of the full scheduled cash in lieu fee for bays 1 - 5
- 40% of the full scheduled cash in lieu fee for bays 6 - 10
- 30% of the full scheduled cash in lieu fee for bays 11 - 25
- 25% of the full scheduled cash in lieu fee for bays 26 - 50
- 20% of the full scheduled cash in lieu fee for bays in excess of 50.

4 Parking For Residential Uses

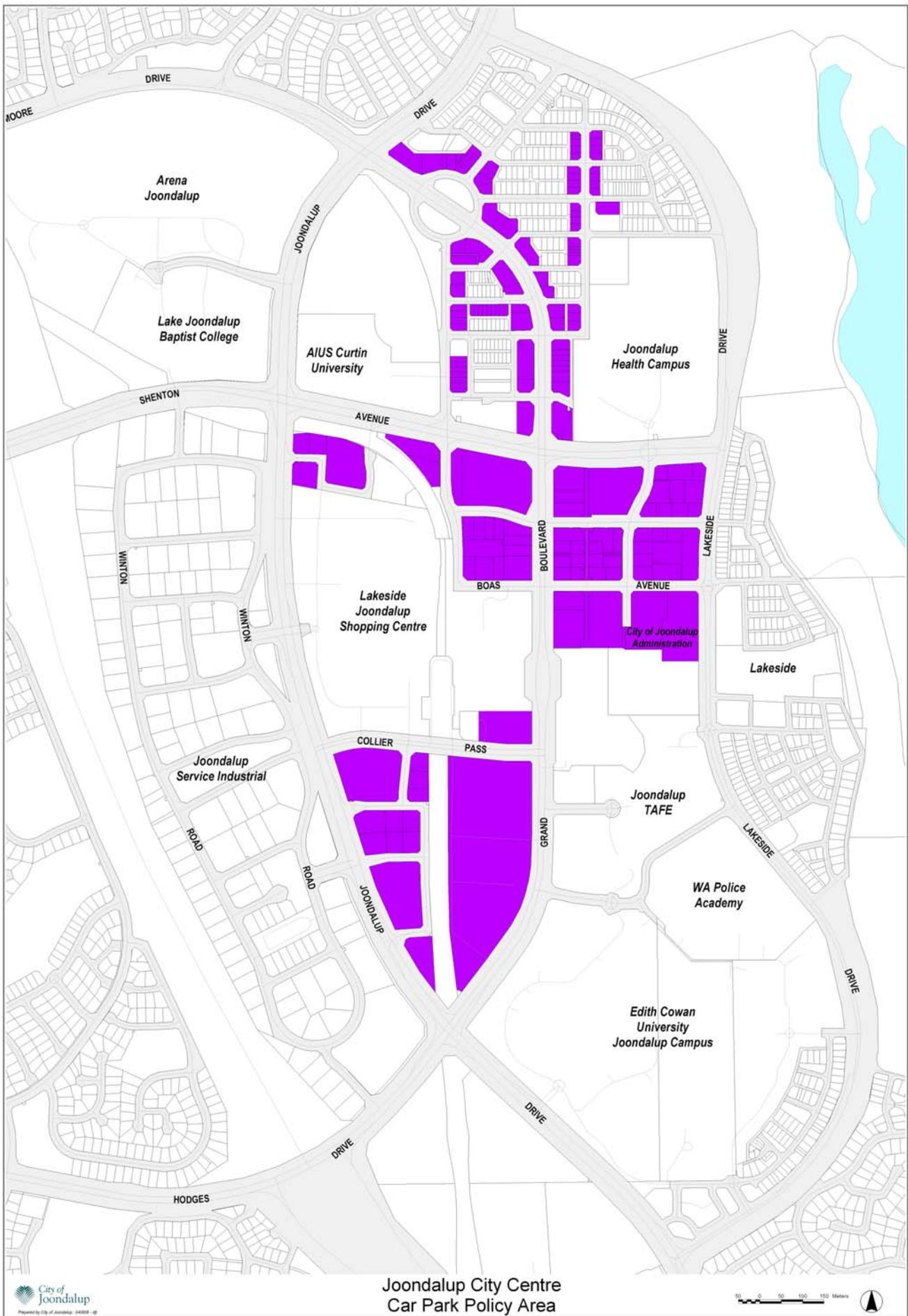
- (i) The provision of any required car parking for residential uses shall be provided on-site at the rate stipulated under the Joondalup City Centre Structure Plan.

Previous Policy No:

Amendments:

Related Documentation: City of Joondalup District Planning Scheme No 2
Joondalup Development Plan and Manual.

Issued:



Explanatory notes - Parking Policy

The following is a guide to how each clause in the policy would operate using a range of examples.

OVERALL PARKING REQUIREMENT

Clause 1 (i) Overall Parking requirement

Proposed Commercial Building Height	NLA/Floor space per floor	Total floor area sqm	Clause 1 (i) Overall Parking requirement (ie 1/30 sqm) Bays
2 storey	600	1200	40
4 storey	900	3600	120
5 storey	1200	6000	200
6 storey	1200	7200	240
7 storey	1200	8400	280
8 storey	1200	9600	320
9 storey	1200	10800	360
10 storey	1200	12000	400

e.g. 8 storey building with 1200sqm per floor (NLA) would have a total NLA of 9600sqm. The overall parking requirement at 1 bay/30sqm NLA would be 9600 divide 30 = 320 bays.

ONSITE OR PRIVATE PARKING COMPONENT

Clause 2 (i) Onsite requirement

Proposed Commercial Building Height	NLA/Floor space	Total floor area sqm	Clause 1 (i) Overall Parking requirement (ie 1/30 sqm) Bays	Clause 2 (i) Onsite requirement (min) (ie 1/60 sqm) Bays
2 storey	600	1200	40	20
4 storey	900	3600	120	60
5 storey	1200	6000	200	100
6 storey	1200	7200	240	120
7 storey	1200	8400	280	140
8 storey	1200	9600	320	160
9 storey	1200	10800	360	180
10 storey	1200	12000	400	200

e.g. Based on the 8 storey example, the minimum on site requirement could be reduced by 50%. The 320 bays divide 2 = 160 bays.

Clause 2 (ii) Building Height Reduction

Proposed Commercial Building Height	NLA/Floor space	Total floor area sqm	Clause 1 (i) Overall Parking requirement (ie 1/30 sqm) Bays	Clause 2 (i) Onsite requirement (min) (ie 1/60 sqm) Bays	Clause 2 (ii) Building Height Discount (new minimum) Bays
2 storey	600	1200	40	20	20
4 storey	900	3600	120	60	60
5 storey	1200	6000	200	100	85
6 storey	1200	7200	240	120	96
7 storey	1200	8400	280	140	105
8 storey	1200	9600	320	160	112
9 storey	1200	10800	360	180	117
10 storey	1200	12000	400	200	120

e.g. Using the 8 storey example the minimum on site requirement could be reduced by 30%. 160 bays - 30% of 160 (48) = 112 bays.

Clause 2 (iii) Cash in lieu reduction

Proposed Commercial Building Height	NLA/Floor space	Total floor area sqm	Clause 1 (i) Overall Parking requirement (ie 1/30 sqm) Bays	Clause 2 (i) Onsite requirement (min) (ie 1/60 sqm) Bays	Clause 2 (ii) Building Height Discount (new minimum) Bays	Clause 2 (iii) Onsite cash in lieu Bays \$30,458/bay 75%	
						Bays	Cash in lieu
2 storey	600	1200	40	20	20	15	\$152,290
4 storey	900	3600	120	60	60	45	\$456,870
5 storey	1200	6000	200	100	85	64	\$639,618
6 storey	1200	7200	240	120	96	72	\$730,992
7 storey	1200	8400	280	140	105	79	\$791,908
8 storey	1200	9600	320	160	112	84	\$852,824
9 storey	1200	10800	360	180	117	88	\$883,282
10 storey	1200	12000	400	200	120	90	\$913,740

e.g. Based on the 8 storey example of the 112 bays calculated above, up to 25% could be provided as cash in lieu, but at the full scheduled rate (currently \$30,458). The developer could then provide 84 bays (75% of 112) on site plus \$852,824 (28 x \$30,458) as cash in lieu.

_Clause 2 (iv) & (v) Type of Bays

Proposed Commercial Building Height	NLA/Floor space	Total floor area sqm	Clause 2 (iii) cash in lieu \$30,458/bay	Onsite Bays 75%	On Site Parking Options		
					Clause 2(iv) Standard	Clause 2 (v) Small	Motorcycle/scooter
2 storey	600	1200	15	\$152,290	9	4	2
4 storey	900	3600	45	\$456,870	30	10	5
5 storey	1200	6000	64	\$639,618	46	12	6
6 storey	1200	7200	72	\$730,992	51	14	7
7 storey	1200	8400	79	\$791,908	55	16	8
8 storey	1200	9600	84	\$852,824	59	17	8
9 storey	1200	10800	88	\$883,282	62	17	9
10 storey	1200	12000	90	\$913,740	63	18	9

e.g. This clause allows the developer to determine (up to a percentage) how many of the parking bays that are to be constructed on site (that is, the number of bays at Clause 2 (iii) after any cash in lieu) could be converted to small vehicle bays or motorcycle/scooter bays.

In the 8 storey example, the 84 bays could be constructed as 8 motorcycle/scooter bays (10% of 84), 17 small vehicle bays (20% of 84) with the remaining 59 bays as standard (84 – 17 – 8 = 59).

Off site or Public Parking Component

Clause 3 (i)

Proposed Commercial Building Height	NLA/Floor space	Total floor area sqm	Clause 1 (i) Overall Parking requirement (ie 1/30 sqm) Bays	Clause 3 (i) Off Site Parking - Maximum contribution assuming built on site	
				Bays	Cash in lieu
2 storey	600	1200	40	20	\$228,430
4 storey	900	3600	120	60	\$525,410
5 storey	1200	6000	200	100	\$769,090
6 storey	1200	7200	240	120	\$890,930
7 storey	1200	8400	280	140	\$1,012,770
8 storey	1200	9600	320	160	\$1,134,572
9 storey	1200	10800	360	180	\$1,256,450
10 storey	1200	12000	400	200	\$1,378,290

This clause relates to the other 50% of the overall parking requirement referred to in Clauses 1 (i) and 1 (ii). The developer is only required to contribute to up to 50% of the overall parking requirement for the offsite component. If a developer chooses to build more than the 50% of the on site bays, then the cash in lieu contribution is calculated as per the following example.

Using the 8 storey building example again, the overall parking requirement is 320 bays. The maximum off site requirement for which a contribution is sought is 160 bays. If a developer chooses to build 200 bays on site, then the cash in lieu contribution for off site parking is based on 120 bays (320 – 200) and not 160 bays.

Continuing with the 8 storey building example, should the developer wish to provide the minimum number of bays on site and leave an off site parking contribution of 160 bays, the cash in lieu for these bays is calculated in the following way.

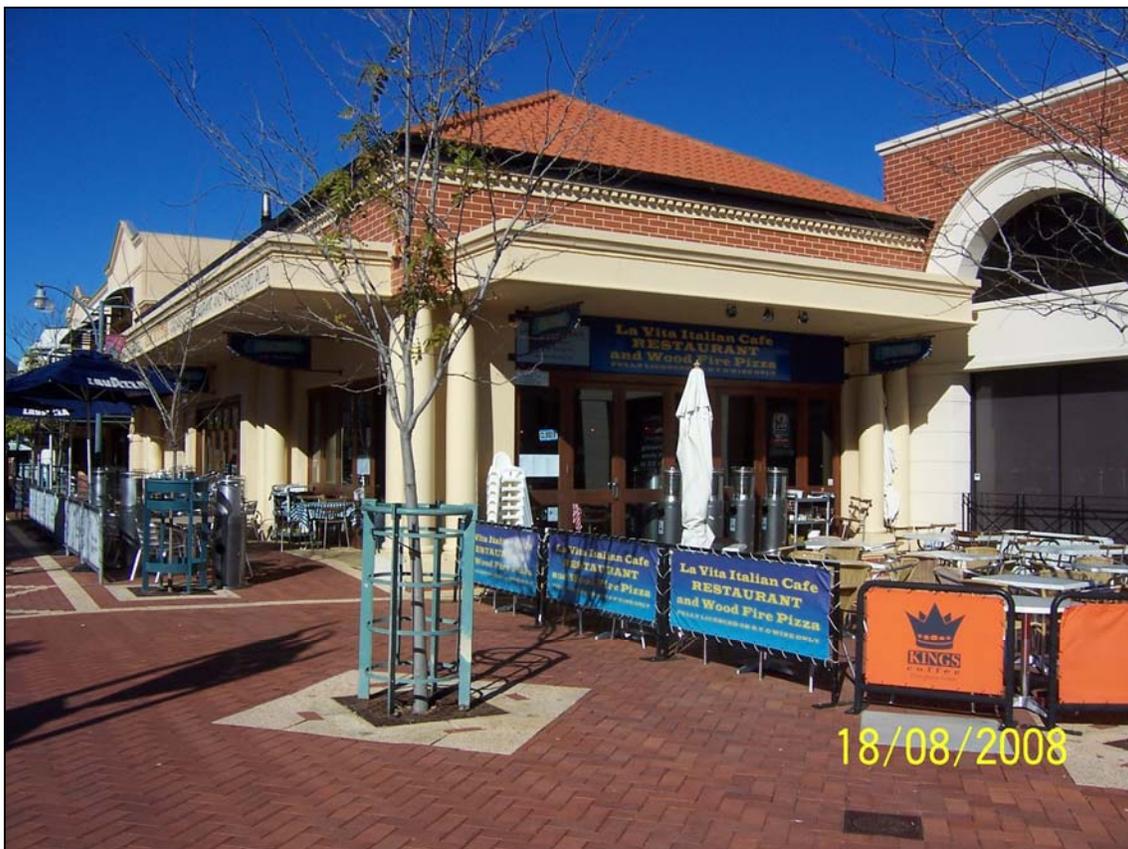
On the basis of the current scheduled fee of \$30,458 per bay, the off site parking contribution for 160 bays is calculated using clause 3 (i) as follows:

Bays 1-5	50% of \$30,458 = \$15,229	x 5 =	\$76,145
Bays 6-10	40% of \$30,458 = \$12,183	x 5 =	\$60,915
Bays 11-25	30% of \$30,458 = \$9,137	x 15 =	\$137,061
Bays 26-50	25% of \$30,458 = \$7,615	x 25 =	\$190,375
Bays over 50	20% of \$30,458 = \$6,091	<u>x 110 =</u>	\$670,010
		160 bays	\$1,134,506

In summary, using the example of the 8 storey building, and applying the clauses to the maximum, the developer would be required to construct 84 bays (of the original 320 bays) and contribute a total cash in lieu payment of \$1,987,330 (\$852,824 + \$1,134,506). For this payment the City would construct 236 bays (320 – 84) of public parking.



Kulcha



La Vita



Another Cup

T5 Espresso





Elroys and Musashi



Sugar and Spice



POLICY- CUBBY HOUSES

STATUS:	City Policy - <i>A policy that is developed for administrative and operational imperatives and has an internal focus.</i>
	<i>City policies are referred to Council for review and endorsement.</i>
RESPONSIBLE DIRECTORATE:	Planning and Community Development
OBJECTIVE:	To establish a criteria for cubby houses that ensures that the structures are of a minor nature, are not detrimental to the amenity of adjoining properties, and therefore do not require planning or building licence approvals.

Authority

This policy has been prepared in accordance with clause 8.11 of the City of Joondalup District Planning Scheme No. 2 (DPS2) which allows Council to prepare planning policies relating to planning or development within the scheme area.

Area

This policy applies to the whole of the City of Joondalup

Definitions:

Interpretations and definitions of terms used in this policy are as per DPS2 and the Residential Design Codes, with the addition and clarification of the following:

“Amenity” shall have the same meaning as DPS2:- meaning all those factors which combine to form the character of the area to residents and passers by and shall include the present and likely future amenity.

“Building” shall have the same meaning as DPS2:- meaning any structure or appurtenance thereto whether fixed or moveable, temporary or permanent, and without limiting the generality of the foregoing includes a shed, stall, fence, wall, barrier, hoarding, outbuilding, tent, caravan or swimming pool.

“Cubby house” means an enclosed structure or small-scale replica of a dwelling and includes a tree house, usually of simple construction which is used primarily by children for the purposes of play, but excludes unenclosed platforms. A cubby house may also be commonly referred to by other names, such as an outdoor fort or children’s den.

“Natural Ground Level” shall have the same meaning as the Residential Design Codes:- meaning the levels on a site which precede the proposed development,



excluding any site works unless approved by the council or established as part of the land proceeding development.

Statement

A Cubby House does not require planning approval or a building licence provided each of the following criteria are met:

A Cubby House shall:

1. not have a floor level elevated more than 500mm above natural ground level.
2. not have balconies, windows, doors and the like which overlook adjoining properties.
3. not be located within the primary street setback area.
4. not be used for habitable purposes.
5. be limited to one cubby house per property.
6. not exceed 2.1 metres in height above the natural ground level.
7. not exceed 6m² in total floor area.
8. not be attached to a boundary fence or other buildings.
9. not abut more than one side or rear boundary.
10. apart from statement 9, must be setback a minimum of 1.0 metre from all other boundaries.
11. contain all stormwater run off onsite.

If a cubby house fails to satisfy any one or more of the above, an application for planning approval and thereafter a building licence will be required.

Advertising of Applications

All applications for planning approval will require the City of Joondalup to consult with property owners likely to be affected by the proposal for a minimum period of 14 days, prior to the determination of the application.

Planning Consideration

Where an application for planning approval is required such applications will be considered on their individual merits.

In determining whether to approve a planning application the City of Joondalup will consider whether the proposal has the potential to adversely impact adjoining properties and/or streetscape with regard to:



- the comments of any objectors or supporters of the application;
- the degree to which the proposal impacts the amenity of adjoining properties and/or streetscape;
- the need to protect the privacy of adjoining properties by preventing views into adjoining active habitable spaces and outdoor living areas;
- the requirement to consider matters stipulated under clause 6.8 of the DPS2; and
- any other relevant planning matter the City of Joondalup considers appropriate or is required to consider.

When submitting an application for planning approval, the applicant is required to provide justification addressing the above mentioned planning considerations.

Amendments:

Related Documentation: District Planning Scheme No. 2
 Residential Design Codes

Issued: