

## **1 STATEMENT OF INTENT**

The purpose of this Planning Procedure is to set out the statutory requirements for the preparation, assessment, and determination of an application for Development Approval, within the local government area. This procedure will assist in the preparation of properly prepared applications, which will assist the City in the assessment and determination of applications for Development Approval.

This Planning Procedure should be read in conjunction with the *Planning and Development Act 2005* (PD Act 2005), *Town Planning Scheme No.2 (TPS2)*, *Planning and Development (Development Assessment Panels) Regulations 2011* and the *Planning and Development (Local Planning Schemes) Regulations 2015* (deemed provisions).

## **2 REQUIREMENT FOR DEVELOPMENT APPROVAL**

The requirement to obtain approval prior to the commencement or carrying out of development is derived from s162(1) of the PD Act 2005. Clause 60 of the deemed provisions of TPS2 and the Metropolitan Region Scheme (MRS) outlines when development approval is required and any such development is required to be carried out in accordance with the conditions of any development approval.

The term 'development' is interpreted in the PD Act 2005 as follows:

*"development means the development or use of any land, including –*

- (a) any demolition, erection, construction, alteration of or addition to any building or structure on the land;*
- (b) the carrying out on the land of any excavation or other works;*
- (c) in the case of a place to which a Conservation Order made under section 59 of the Heritage of Western Australia Act 1990 applies, any act or thing that –*
  - (i) is likely to change the character of that place or the external appearance of any building; or*
  - (ii) would constitute an irreversible alteration of the fabric of any building."*

In addition, the term 'development' is clarified by TPS2 in the following respects:

- The clearing of land and commencement of agriculture – intensive (clause 5.1.3);
- The erection, placement and display of advertisements and the use of land or buildings for that purpose (clause 5.3.1(a)); and
- In relation to any place entered in the Heritage List or contained within a Heritage Area, any act or thing that is likely to significantly change the external character of the building, object, structure or place (clause 5.4.7(d)).

Clause 60 of the deemed provisions of TPS2 and clauses 13 and 26(1) of the MRS requires all development, including a change in land use, except as otherwise provided, to have the prior development approval. Accordingly, the City requires that no person shall commence or carry out any development, including a change in land use, without first applying for and obtaining development approval.

Clause 61 of the deemed provisions of TPS2 and clauses 16, 17 and 24(2) of the MRS outlines when development approval is not required. The City's Information Sheet – What Requires Development Approval, also explains when development approval is not required, which can be viewed on the City's website.

Enquiries can be made with the City's Planning Services if there is any doubt as to whether a proposal requires development approval.

### **3 PLANNING PRACTICE**

#### **3.1 Pre-lodgement**

Before lodging an application for development approval, applicants are encouraged to discuss their proposal with the City's Planning Services. The City will provide guidance in relation to the use and development requirements of TPS2, information requirements and the process for obtaining development approval, and offer guidance in relation to the specific considerations that need to be made. The pre-lodgement meeting is offered free of cost by the City.

#### **3.2 Application for Development Approval**

##### **3.2.1 Requirements**

The City requires specific details for applications for development approval. Applications must include the following information:

- (a) A completed 'Application for Development Approval' Form. For applications that require determination by the Western Australian Planning Commission (WAPC), the application must be made on a MRS Form 1 Application for Approval to Commence Development, which is available from [www.planning.wa.gov.au/630.asp](http://www.planning.wa.gov.au/630.asp). For applications requiring determination from the Metropolitan South West Joint Development Assessment Panel (SWJDAP) refer to Planning Procedure 1.19 Development Assessment Panel Applications;
- (b) A letter explaining the proposal, particularly if a variation to the development standards and requirements of TPS2 is required;
- (c) Five copies of a detailed site plan, floor plans and elevations of the development, as outlined in further detail below;
- (d) The Administration Fee, as described in the City's Scale of Fees for Planning Services; and
- (e) Any other information specified by the City, for instance, if the land is located within the Primary Centre - City Centre Zone, Primary Centre – Waterfront Village, Primary Centre – Urban Village or the Peel-Harvey Catchment, additional detailed information will be required to be submitted. The City's Planning Policies must be checked for specific information requirements which can be viewed on the City's website.

Five copies of Plans are required to show the following information pursuant to clause 63 of the deemed provisions of TPS2, as follows:-

- (a) a location plan to a scale of at least 1:500 upon which the land the subject of the application is clearly identified;
- (b) a plan or plans to a scale of not less than 1:100 or 1:200 showing:-
  - (i) street names, lot number(s), north point and the dimensions of the site;
  - (ii) the existing and proposed ground levels over the whole of the land the subject of the land the subject of the application;
  - (iii) the location, height and type of all existing structures and environmental features, including watercourses, wetlands and native vegetation on the site;
  - (iv) the structures and environmental features that are proposed to be removed;
  - (v) the existing and proposed use of the site, including proposed hours of operation and buildings and structures to be erected on the site;

- (vi) the existing and proposed means of access for pedestrians and vehicles to and from the site;
  - (vii) the location, number, dimensions and layout of all car parking spaces intended to be provided in accordance with AS/NZS 2890.1 Parking Facilities: Part 1 Off-street parking and AS/NZS 2890.6 Parking Facilities: Part 6 Off-street parking for people with disabilities;
  - (viii) the location and dimensions of any area proposed to be provided for the loading and unloading of vehicles carrying goods or commodities to and from the site and the means of access to and from those areas, as required;
  - (ix) the location, dimensions and design of any open storage or trade display area and particulars of the manner in which it is proposed to develop the open storage or trade display area;
  - (x) the nature and extent of any open space and landscaping proposed for the site;
  - (xi) stormwater drainage and on-site disposal; and
  - (xii) existing and proposed levels, embankments, street front facing walls and retaining walls (where the proposed development involves alterations to the natural level of the ground);
- (c) plans, elevations and sections of any building proposed to be erected or altered and of any building it is intended to be retained;
  - (d) a report on any specialist studies in respect of the development that the City requires the applicant to undertake such as site surveys or traffic, heritage, environmental, engineering or urban design studies;
  - (e) any other plan or information that the City reasonably requires.

Applications, Fees and Information Sheets are available on the City's website. If applications are submitted with incomplete information delays could occur in processing times by the City seeking further information from the applicant.

### **3.2.2 Lodgement**

All applications for development approval are lodged with the City, including applications that are determined by the WAPC or the SWJDAP. Applications can be lodged with the City via three methods:

- (a) In person at the City's Administration Offices on Civic Boulevard, Rockingham; or
- (b) By mail addressed to PO Box 2142, Rockingham DC WA 6967; or
- (c) Online by registered applicants via the City's website.

The City accepts payment of the administration fee by cheque, EFTPOS, cash and credit card (in person). For online lodgement payment must be made by credit card.

### **3.2.3 Preliminary Review**

Upon receiving the application for development approval, the City will undertake a preliminary review of the sufficiency of the information provided and:-

- (a) Determine that the submitted application and fees are in order for the application to be assessed; or
- (b) Determine that the submitted application and fees are incomplete and request the applicant to provide further information and/ or the balance fee.

The City will also undertake a preliminary check of the application to determine if the application for development approval is capable of being considered under TPS2 and the MRS, and involves a land use that is permitted under TPS2.

**Note:** A preliminary review is not a comprehensive assessment of the submitted application. When further information is requested and submitted to the City, it will enable the Action Officer to undertake their planning assessment of the application; however, when the assessment has been completed additional information may be required from the applicant. Incomplete applications will be returned to the applicant. An incomplete application lodged on-line will be not accepted.

### 3.3 Assessment of Applications

#### 3.3.1 Referrals

Clause 66 of the deemed provisions of TPS2 states that in considering an application for development approval, the City may consult with any other statutory, public or planning authority it considers appropriate.

In the case of land reserved under TPS2 for the purpose of a public authority, the City is to consult with that authority before making its determination.

In certain circumstances the referral of applications for development approval are required, for comment and recommendation, before the application can be determined, as outlined in the WAPC Notice of Delegation. This applies, for example, when applications are on land abutting or that are fully or partly reserved as a Primary Regional Road (PRR) or Other Regional Road (ORR) or Parks and Recreation or Railways in the MRS, which must be referred to the relevant Public Authority.

#### 3.3.2 Authority for Dealing with Applications

Most applications for development approval are determined by the Council, in accordance with the provisions of TPS2 and the MRS. In some cases, development approval is required from the WAPC in accordance with the MRS or by the metro South-West Joint Development Assessment Panel (SWJDAP).

The SWJDAP determine the following types of DAP applications:

- Mandatory – estimated cost  $\geq$  \$10 million;
- Optional – estimated cost of between \$2 million and \$10 million;
- Delegated – estimated between \$2 million and \$10 million; or
- Amending or cancelling a DAP application.

When an applicant decides not to lodge an optional DAP application, the Council will determine the development application.

This Planning Procedure should be read together with Planning Procedure 1.19 Development Assessment Panel Applications, and is available on the City's website.

Planning Bulletin 106/2011 – Development Assessment Panels and further information is available on the Department of Planning website at: [www.planning.wa.gov.au](http://www.planning.wa.gov.au)

**Note:** There is no mandatory threshold for warehouse proposals i.e. applications for warehouses will be considered optional DAP applications if the development has an estimated cost of \$2 million or more.

#### 3.3.3 Assessment Timeframes

Clause 75 of the deemed provisions of TPS2 include two statutory time periods within which a determination must be made of an application for development approval. If the application does not require advertising, the statutory determination period is 60 days. If the application is required to be advertised, the statutory determination period is 90 days. The applicant and the City can agree in writing to extend the period by which the application must be determined.

Applications that require development approval under the MRS are required to be determined within 60 days of the receipt of the application, or within further such time as agreed in writing between the applicant and the responsible authority.

Subject to clause 75 of the deemed provisions of TPS2, an application for development approval is deemed to be refused if a determination of the application is not conveyed to the applicant by the Council within 60 days of the receipt of the application by the Council, or within a further time that is agreed in writing between the applicant and the Council.

Subject to clause 75 of the deemed provisions of TPS2, an application for development approval, which is subject to advertising, is deemed to be refused if a determination of the application is not conveyed to the applicant by the Council within 90 days of the receipt of the application by the Council, or within a further time agreed in writing between the applicant and the Council.

For applications determined by the SWJDAP the same statutory timeframes apply, but the *Planning and Development (Development Assessment Panels) Regulations 2011* require that:

- (i) If the DAP application requires advertising, the City Report for the DAP; is to be prepared within 78 days of the application being received;
- (ii) If the DAP application does not require advertising, the City Report for the DAP; is to be prepared within 48 days of the application being received.

### **3.3.4 Advertising**

The City will advertise all applications for development approval to commence or carry out development which involves an 'A' use. The Council will not grant approval to the application unless notice of the application is first given in accordance with Clause 64 of the deemed provisions of TPS2.

The City may advertise applications for development approval to commence or carry out development which involves a 'D' use, in accordance with clause 64 of the deemed provisions of TPS2.

Clause 64(3) of the deemed provisions of TPS2 states that the Council may give notice or require the applicant to give notice of an application for development approval in one or more of the following ways:-

- (a) Notice of the proposed use or development served on nearby owners and occupiers who, in the opinion of the City, are likely to be affected by the granting of development approval, stating that submissions may be made to the City by a specified date being not less than 14 days from the date the notice is given to the person;
- (b) Notice of the proposed use or development published in a newspaper circulating in the Scheme Area, stating that submissions may be made to the City by a specified day, being not less than 14 days from the day the notice is published;
- (c) Publishing a notice of the proposed use or development by electronic means on the City's website, which includes a statement that submissions may be made to the City by a specified day being not less than 14 days from the day the notice is published;
- (d) A sign or signs displaying notice of the proposed use or development to be erected in a conspicuous position on the land, including a statement that submissions may be made to the City by a specified day being not less than 14 days from the day on which the sign is erected.

Part 4 of the Residential Design Codes (R-Codes) sets out neighbour consultation associated with the development of land for any of the residential purposes dealt with by the R-Codes.

Planning Procedure 1.3 – Community Consultation explains the statutory requirements and the City's administrative requirements for the advertising of applications for development approval. It also includes specifications for signage and detailed advertising requirements.

When the City has determined that an application must be advertised, the advertising will be carried out only when it is satisfied that the applicant has submitted sufficient information and the application has been assessed to enable advertising to be commenced.

**Note:** It is the City's practice that advertising is to be undertaken for a period of 14 days and for up to 28 days for major development applications that may have a broader community interest. In most circumstances, the City undertakes advertising itself and if required the advertising instructions may be given by the City to the applicant to erect signage. Advertising commences on the day the signage is erected on site, or when the first advertisement is published, whichever is the later.

### **3.4 Determinations**

#### **3.4.1 Delegated Authority**

Clause 82 of the deemed provisions of TPS2 provides for the Council to delegate to the Chief Executive Officer (CEO) the exercise of any of its powers or the discharge of its duties under TPS2. Clause 83 of the deemed provisions of TPS2 states that the CEO may delegate to any employee of the City the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under Clause 82 of the deemed provisions of TPS2.

Planning Procedure 1.1 – Delegated Authority explains the delegation of certain decision-making powers that assist in expediting the processing of applications for development approval to the benefit of ratepayers, the general public and the land development industry. It sets out those types of applications that can be dealt with under delegated authority, the City's discretion to modify development standards and the City's ability to refuse applications for development approval.

The City's Planning Procedure 1.1 - Delegated Authority can be viewed on the City's website.

#### **3.4.2 Determination by the Council**

Pursuant to Clause 68 of the deemed provisions of TPS2, Council in determining an application for development approval may:

- (a) grant its approval with or without conditions; or
- (b) refuse to grant its approval, giving its reasons.

Clause 71 of the deemed provisions states that when the Council grants development approval for the use or development of the land:

- (a) The development must be substantially commenced –
  - (i) if no period is specified in the approval - within the period of 2 years commencing on the date on which the determination is made; or
  - (ii) if a period is specified in the approval within that period; or
  - (iii) in either case – within a longer period approved by the City on an application made under clause 77(1)(a) and
- (b) The approval lapses if the development has not substantially commenced within the period determined under paragraph (a).

Clause 72 of the deemed provisions of TPS2 allows the City to impose conditions limiting the period of time for which development approval is granted.



### **3.4.3 Determination by the SWJDAP**

A DAP application is assessed by the City in accordance with the standards and requirements of TPS2 and Policy. This includes public advertising if required, consultation with internal departments and external referral agencies and completion of the City Responsible Authority Report (RAR), with its assessment of the application and recommendation, including approval conditions or reasons for refusal and any advice notes.

### **3.4.4 Determination by the WAPC**

Prior to the determination of a development application as required by the WAPC, the City will provide its comments and recommendations.

## **3.5 Post-Approval Considerations**

### **3.5.1 Reconsideration of Applications**

The Council may, on written application from the owner of land in respect of which development approval has been granted, revoke or amend the development approval, prior to the commencement of the use or development subject of the development approval. Applications to revise the plans or amend a condition of approval must be accompanied by the Administration Fee, as described in the City's Scale of Fees for Planning Services.

The process for amending or cancelling a development approval is in accordance with Regulation 17 for approval of the SWJDAP or under Regulation 17A for approval of the City.

<p><u>Note:</u> It is the City's practice that a fresh application for development approval is lodged with the City, signed by the owner to amend the development approval.</p>
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### **3.5.2 Application for Review (Appeal)**

If an applicant is aggrieved by a determination on a development application under TPS2 or MRS, an application for a review of the decision can be made to the State Administrative Tribunal (SAT), within 28 days of the decision. An appeal right may exist for a refusal of development approval or, conditions imposed on a development approval.

If an applicant is aggrieved by a SWJDAP decision, an application for a review can be lodged with the SAT to review:

- (i) the SWJDAP's refusal to grant development approval;
- (ii) any approval conditions imposed by the SWJDAP; and
- (iii) a deemed refusal of application required to be determined by the SWJDAP.

The application for review must be lodged within 28 days from the date of the decision.

For further information regarding an application for review can be found on the SAT website as follows:  
[www.sat.justice.wa.gov.au](http://www.sat.justice.wa.gov.au)

## **4 INTERPRETATIONS**

For the purposes of this Planning Procedure, the following terms shall have the same meaning as in Town Planning Scheme No.2:-

WAPC means the Western Australian Planning Commission constituted under the Planning and Development Act 2005.

Council means the Council of the City of Rockingham.

TPS2 means City of Rockingham Town Planning Scheme No.2

For the purpose of this Planning Procedure, the following terms are defined as follows:

*Deemed Provisions means the Schedule 2 Deemed Provisions for local planning schemes in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015.*

*PD Act 2005 means the Planning and Development Act 2005.*

*Regulations means Planning and Development (Development Assessment Panels) Regulations 2011.*

*SAT means the State Administrative Tribunal.*

*SWJDAP means the Metropolitan South-West Joint Development Assessment Panel.*

*MRS means the Metropolitan Region Scheme.*

## **5 ADOPTION**

This Planning Procedure was adopted by the Council at its ordinary Meeting held on 26 February 2013 and amended by the City on 4 October 2018.

## **6 REVOCATION**

This Planning Procedure supersedes the Council's Planning Policy No.2.2 - Applications for Approval to Commence Development.



