



# CITY OF FREMANTLE

## LOCAL PLANNING POLICY 1.7

### DEVELOPMENT EXEMPT FROM APPROVAL UNDER LOCAL PLANNING SCHEME NO. 4

**ADOPTION DATE:** 22/05/2019 (Council Adoption)

4/10/2019 (Gazettal of Amendment 78 to LPS4)

**AMENDED:** 23 September 2020 (Council Adoption)

**AUTHORITY:** LOCAL PLANNING SCHEME NO. 4 & PLANNING AND  
DEVELOPMENT (LOCAL PLANNING SCHEMES) REGULATIONS  
2015

### STATUTORY BACKGROUND

Clause 60 of the *Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015 ('Deemed Provisions')* requires the prior approval of Council for all development subject to Local Planning Scheme No. 4 (LPS4), except as detailed in Clause 61. Clause 61 lists development which is exempt from approval under the planning scheme and includes the carrying out of works or land use specified in a local planning policy or local development plan.

Clause 3 of the *Deemed Provisions* outlines the parameters for local planning policies and Clause 4 outlines the procedure for making local planning policy. This local planning policy operates under Clause 3 and supplements Clause 61 to outline additional development which is exempt from the requirement to obtain development (i.e. planning) approval under LPS4. It should be read in conjunction with Clause 61 of the *Deemed Provisions*.

Separate policies relating to specific development types include additional exemptions. (e.g. LPP 2.8: Fences Policy, LPP 2.14: Advertisement Policy).

Notwithstanding the provisions of this policy:

- Development approval may still be required for use and/or works carried out on land in certain circumstances, such as sites located within a Bushfire Prone Area or Special Control Area.
- An exempt development cannot contravene any valid conditions of an existing development approval.
- An exemption from the requirement to obtain development approval does not remove the need to seek and obtain any other approval which may be required under any other written law, such as the *Building Act*, *Strata Titles Act*, *Heritage of Western Australia Act* or *Dividing Fences Act*.

### PURPOSE

The purpose of this policy is to specify development which does not require planning approval by Council under Local Planning Scheme No. 4 in addition to the exemptions listed under Clause 61 of the *Planning and Development (Local Planning Schemes) Regulations 2015 ('Deemed Provisions')*.

## **POLICY**

The following uses and development are exempt from the requirement to obtain development approval under Local Planning Scheme No. 4:

### **State of Emergency – Notice of Exemption**

1. Development prescribed in exemptions 1.2, 1.3, 6.1 and 6.2 of the *Planning & Development (Local Planning Schemes) Regulations - State of Emergency Clause 78H Notice of Exemption* dated 30 April 2020, shall also be exempt under the same conditions and for the same period on land within a Heritage Area designated under Local Planning Scheme No. 4, except where the place is:
  - entered in the State Register of Heritage Places;
  - the subject of a Heritage Order; or
  - included on the Heritage List.

### **Public Works and Temporary Development**

2. Works by any public authority acting pursuant to the provisions of any Act on, in, over or under a public street, or works for a utility service.
3. Works urgently necessary for public safety, safety or security of plant or equipment, maintenance of essential services, or protection of the environment.
4. Any development, excluding signs/advertisements, which are temporary and in existence for less than 14 days or such longer time as the Council agrees.

### **Land Use**

5. The use of a single house, grouped dwelling or multiple dwelling as a short stay dwelling, where occupied by 6 or fewer persons.
6. Notwithstanding the provisions of clause 3.3 (zoning table) and clauses 4.7.1 to 4.7.4 inclusive (vehicle parking) of LPS4, a change in the use of an existing building in the City Centre zone to any of the following uses:
  - (i) Shop;
  - (ii) Office;
  - (iii) Consulting rooms;
  - (iv) Child care premises;
  - (v) Health studio;
  - (vi) Medical centre;
  - (vii) Restaurant, excepting properties located on Market Street or High Street west of Kings Square; or
  - (viii) Small bar, excepting properties located on Market Street or High Street west of Kings Square.

NOTE: In relation to points (vii) and (viii) above, development approval is required to be sought for change in use to Restaurant or Small Bar for properties on Market

Street or High Street west of Kings Square. The requirement for approval does not automatically preclude the use but makes it subject to a decision of Council.

7. Notwithstanding the provisions of clause 3.3 (zoning table) and clauses 4.7.1 to 4.7.4 inclusive (vehicle parking) of LPS4, a change in the use of an existing building in the Local Centre zone to any of the following uses:
  - (i) Shop – with a net lettable area not exceeding 400m<sup>2</sup>;
  - (ii) Office; or
  - (iii) Consulting rooms.
  
8. Notwithstanding the provisions of clause 3.3 (zoning table) and clauses 4.7.1 to 4.7.4 inclusive (vehicle parking) of LPS4, a change of use of a building which currently has development approval for use as a Restaurant or Small Bar to use as a Restaurant or Small Bar where:
  - (i) the building is on land zoned Mixed Use or Local Centre; and
  - (ii) the new use operates in accordance with any conditions of development approval relating to the hours of operation that apply to the currently approved Restaurant or Small Bar use on the subject site.

### **Additions and Alterations**

9. Single storey (ground level) additions and all alterations to a Single House on a lot in a Heritage Area where the works –
  - (i) are located between a dwelling and the side or rear lot boundary of a development site (excluding secondary street setback areas); and
  - (ii) are compliant with the applicable deemed-to-comply provisions of the Residential Design Codes and any relevant local planning policy; andexcept where the place is –
  - entered in the State Register of Heritage Places;
  - the subject of a Heritage Order;
  - included on the Heritage List; or
  - located within Special Control Area 5.7 (SCA 5.7).
  
10. Single storey (ground level) additions and all alterations to Grouped Dwellings where the works –
  - (i) are located between a dwelling and the side or rear lot boundary of a development site (excluding secondary street setback areas);
  - (ii) are compliant with the applicable deemed-to-comply provisions of the Residential Design Codes and any relevant local planning policy;
  - (iii) do not propose a boundary wall unless the boundary wall abuts an existing or simultaneously constructed boundary wall of the same or greater dimension; andexcept where the place is –
  - entered in the State Register of Heritage Places;
  - the subject of a Heritage Order;
  - included on the Heritage List;

- located within Special Control Area 5.7 (SCA 5.7).
11. The carrying out of any building or works to a building on the Heritage List which affects only the interior of a building where the works are confined to any of the following:
- Kitchen, bathroom or laundry fit out with no structural alterations;
  - Replacement of light fitting(s);
  - Painting/wall papering/plastering of internal walls;
  - Retiling;
  - Construction of new internal non-masonry, non-load bearing walls;
  - New floor covering placed over but not replacing existing floor surface materials;
  - or
  - Electrical and plumbing works; and
- except where the place is –
- entered in the State Register of Heritage Places; or
  - the subject of a Heritage Order.
12. The modification of major and minor openings to a building where the modification is within the relevant deemed-to-comply provisions of the Residential Design Codes and except where the place is –
- entered in the State Register of Heritage Places;
  - the subject of a Heritage Order; or
  - included on the Heritage List.
13. Outbuildings in Heritage Areas where compliant with the relevant deemed-to-comply provisions of the Residential Design Codes and except where the place is –
- entered in the State Register of Heritage Places;
  - the subject of a Heritage Order;
  - included on the Heritage List;
  - located within Special Control Area 5.7 (SCA 5.7).
14. Patio in Heritage Areas where –
- (i) located between a dwelling and the side or rear lot boundary of a development site (excluding secondary street setback areas); and
  - (ii) compliant with the deemed-to-comply provisions of the Residential Design Codes; and
- except where the place is -
- entered in the State Register of Heritage Places;
  - the subject of a Heritage Order;
  - included on the Heritage List; or
  - located within Special Control Area 5.7 (SCA 5.7).
15. Shade structures in Heritage Areas where –
- (i) located between a dwelling and the side or rear lot boundary of a development site (excluding secondary street setback areas);

- (ii) located more than 1 metre from any boundary; and
- (iii) no greater than 3 metres in height and 25 sqm in area; and

except where the place is –

- entered in the State Register of Heritage Places;
- the subject of a Heritage Order;
- included on the Heritage List;
- located within Special Control Area 5.7 (SCA 5.7).

16. Private swimming pools and outdoor spas in Heritage Areas where situated between a dwelling and the rear lot boundary of a development site, and no greater than 1.8m in height and except where the place is –

- entered in the State Register of Heritage Places;
- the subject of a Heritage Order; or
- included on the Heritage List.

17. Screening material where attached to an existing fence and projecting no more than 500mm above the top of the fence at any point and is not situated within a primary or secondary street setback area.

### **Site Works**

18. Minor filling or excavation of land, provided there is no more than 500 millimetres change to the natural ground level and except where the place is:

- (i) entered in the State Register of Heritage Places; or
- (ii) the subject of a Heritage Order.

19. Construction of a retaining wall less than 500 millimetres in height, except where the place is:

- (i) entered in the State Register of Heritage Places; or
- (ii) the subject of a Heritage Order.

20. Outdoor hard surfaces where –

- (i) the finished level of the surface is no more than 500mm above natural ground level; and
- (ii) located between a dwelling and the side or rear lot boundary of a development site (excluding secondary street setback areas), where the outdoor hard surface is located within a place that is included on the Heritage List; and

except where the place is –

- entered in the State Register of Heritage Places; or
- the subject of a Heritage Order.

### **Building Maintenance**

21. The painting or application of render on the external surface of any building or structure, except where the building or structure is located in a place that is —

- (i) entered in the State Register of Heritage Places;
  - (ii) the subject of a Heritage Order; or
  - (iii) included on the Heritage List.
22. The maintenance and repair of any building or structure being lawfully used immediately prior to the Scheme having effect except where the place is –
- (i) entered in the State Register of Heritage Places; or
  - (ii) the subject of a Heritage Order.
23. Replacing or altering roofing materials on a building where there is no change to the roof form and pitch except where the place is –
- (i) entered in the State Register of Heritage Places;
  - (ii) the subject of a Heritage Order; or
  - (iii) included on the Heritage List.
24. Adding, altering or replacing external cladding materials on a building where there is no change to the building form and except where the place is –
- (i) entered in the State Register of Heritage Places;
  - (ii) the subject of a Heritage Order;
  - (iii) included on the Heritage List; or
  - (iv) included in a Heritage Area.

### **External Fixtures (General)**

25. External fixtures installed on a building to which the R-Codes do not apply, except where the place is:
- (i) entered in the State Register of Heritage Places;
  - (ii) the subject of a Heritage Order;
  - (iii) included on the Heritage List; or
  - (iv) included in a Heritage Area.
26. External fixtures on a place on the Heritage List where –
- (i) not exceeding 1.8m in height and fixed to a wall of a building which faces the rear or a side boundary (excluding walls facing secondary streets); or
  - (ii) fixed to a plane of the roof of a building which faces the rear or a side boundary (excluding roof planes facing secondary streets), or to a flat roof, and projecting no more than 1m above the part of the existing roof to which the fixture is attached and no greater than 2m wide, or projecting no more than 2m above the highest part of the existing roof at any point in the case of an aerial or antenna; and
  - (iii) in all circumstances the maximum diameter of a satellite antenna or dish permitted without development approval is 1m.
27. External fixtures in a Heritage Area where –
- (i) not exceeding 1.8m in height and fixed to a wall of a building which faces the rear or a side boundary (excluding walls facing secondary streets); or

- (ii) fixed to a plane of the roof of a building which faces the rear or a side boundary (excluding roof planes facing secondary streets), or to a flat roof, and projecting no more than 1m above the part of the existing roof to which the fixture is attached or projecting no more than 2m above the highest part of the existing roof at any point in the case of an aerial or antenna; and
- (iii) in all circumstances the maximum diameter of a satellite antenna or dish permitted without development approval is 1m.

### **Minor Structures and Other Fixtures**

28. Air conditioning units on a place on the Heritage List or in a Heritage Area where –

- (i) not exceeding 1.8m in height and fixed to a wall of a building which faces a side boundary (excluding walls facing secondary streets);
- (ii) fixed to a wall or roof plane of a building which faces the rear boundary at a height not exceeding the highest part of the existing roof at any point; or
- (iii) excluding places on the heritage list an air conditioning unit on a building with a flat roof, in a position where the top of the air conditioning unit is not more than 1m above the highest part of the existing roof at any point.

29. Water tanks on a place on the Heritage List or in a Heritage Area where –

- (i) fixed to a wall of a building which faces the rear or a side boundary (excluding walls facing secondary streets) at a height not exceeding the eaves height; or
- (ii) free standing and located between a dwelling and the side or rear lot boundary of a development site (excluding secondary street setback areas), and no greater than 2.4m in height if more than 1m from any boundary, or 1.8m in height if less than 1m from any boundary.

30. Minor structures where –

- (i) Within the primary street setback area below 2m in height excluding clothes lines; or
- (ii) Below 3m in other cases; and

except where the place is –

- entered in the State Register of Heritage Places; or
- the subject of a Heritage Order.

31. Flag poles where –

- (i) free standing and not more than 6m in height, and
- (ii) not used for advertising purposes; and

except where the place is –

- entered in the State Register of Heritage Places; or
- the subject of a Heritage Order.

### **Demolition and Removal**

32. Removal of trees or vegetation areas except where those which are identified on the *Register of Significant Trees or Vegetation Areas*, or where required to be retained on a site through a condition of development approval.

33. The demolition of a building on a lot to which the R-Codes do not apply, except where located in a place that is:
- (i) entered in the State Register of Heritage Places;
  - (ii) the subject of a Heritage Order;
  - (iii) included on the Heritage List; or
  - (iv) included in a Heritage Area.
34. Demolition of the following structures on a place in a Heritage Area:
- (i) Outbuildings not of masonry or limestone construction with a floor area of less than 25sqm;
  - (ii) Minor structures;
  - (iii) Patios;
  - (iv) Shade Structures;
  - (v) Carports;
  - (vi) External Fixtures;
  - (vii) Air Conditioners;
  - (viii) Private swimming pools and outdoor spas;
  - (ix) Flag poles; and
  - (x) Water tanks.
35. Demolition of internal and boundary / dividing fences in Heritage Areas except where the place is:
- (i) entered in the State Register of Heritage Places;
  - (ii) the subject of a Heritage Order; or
  - (iii) included on the Heritage List.

### **Definitions:**

**Heritage Area** – an area designated as having cultural heritage significance within the Local Planning Scheme area under Schedule 2, clause 9 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

**Heritage List** – a list identifying places within the Local Planning Scheme area of cultural heritage significance, and worthy of built heritage conservation, under Schedule 2, clause 8 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

**Heritage Act** – refers to the *Heritage of Western Australia Act 1990*, as amended, or subsequent legislation which supersedes this Act.

**State Heritage Register** – refers to the Register of Heritage Places prepared under the Heritage Act.

**Heritage Order** – refers to an Order made under Part 6 of the Heritage Act.



**Review information and related documentation**

<b>Reviewing officer:</b>	<b>Manager Strategic Planning</b>
<b>Policy adopted:</b>	<b>22/05/2019 - SPT1905-3</b>
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<b>Legislation:</b>	<b>Planning and Development (Local Planning Schemes) Regulations 2015; Planning and Development Act 2005</b>
<b>Delegations:</b>	<b>NA</b>
<b>Related documents:</b>	<b>NA</b>
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