



CITY OF FREMANTLE

LOCAL PLANNING POLICY 2.20

DISCRETION TO VARY LOCAL PLANNING SCHEME SITE OR DEVELOPMENT REQUIREMENTS FOR HERITAGE PURPOSES

ADOPTION DATE: 6 August 2016 (Ordinary Meeting of Council 27 July 2016)

AUTHORITY: LOCAL PLANNING SCHEME NO.4

STATUTORY BACKGROUND

Under the provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations), the Deemed Provisions contained in Schedule 2 of the Regulations are applicable to all local planning schemes, whether or not they are incorporated into the local planning scheme text. Accordingly these provisions are applicable to the City of Fremantle Local Planning Scheme No. 4 (the Scheme).

Clause 12 of the Deemed Provisions states:

- (1) The local government may vary any site or development requirement specified in this Scheme to –
 - (a) facilitate the built heritage conservation of a place entered in the register of Places under the Heritage of Western Australia Act 1990 or entered in the heritage list; or*
 - (b) enhance or preserve heritage values in a heritage area.**
- (2) A variation under sub-clause (1) may be unconditional or subject to any conditions the local government considers appropriate.*
- (3) If the local government is of the opinion that the variation of site or development requirements is likely to affect any owners or occupiers in the general locality of the place or the heritage area the local government must –
 - (a) consult the affected parties by following one or more of the provisions for advertising uses under clause 64; and*
 - (b) have regard to any views expressed prior to making its determination to vary the site or development requirements under this clause.**

PURPOSE

The purpose of this policy is to provide guidance on the submission, assessment and determination of applications for development approval in cases where the decision-making authority may consider exercising its discretionary power under clause 12 of the Deemed Provisions in Schedule 2 of the Regulations to vary any site or

development requirement specified in the Scheme in order to achieve one or more the heritage outcomes stated in clause 12(1)(a) or (b).

Site and Development requirements can include, but are not limited to, height, setbacks, plot ratio, provision of car parking, etc. These site and development requirements will vary depending upon the site and the development being proposed.

POLICY

1. Any development application which, in order to be approved, requires the exercise of discretion by the decision-maker under clause 12 of the Deemed Provisions to vary any Scheme site or development requirement must include information which clearly demonstrates that an outcome of the proposed variation(s) will be to either:
 - a. facilitate the built heritage conservation of a heritage listed place; or
 - b. enhance or preserve heritage values in a heritage area.
2. The information referred to in (1) above must be provided by the applicant in the form of a written Statement of Justification. The Statement of Justification must provide a clear rationale for the design approach adopted for the proposed development which requires the variation, and also explain how it achieves one of the outcomes referred to in (1).
3. The Statement of Justification should address the following issues:
 - (a) the physical relationship (including the nature and extent of the relationship) between the elements of the proposed development which require the variation and one of the heritage outcomes referred to in (1);
 - (b) whether and, if so, how the heritage outcomes achieved through the variations make a contribution to the public realm (e.g. streetscape);
 - (c) whether the extent of the variation (e.g. additional building height) is the minimum necessary to achieve the heritage outcome;
 - (d) the proportionality between the nature and extent of the variation sought and the heritage values and level of the heritage significance of the place or area;
 - (e) the spatial relationship (including degree of proximity) between the place or heritage area (as the case may be) and the development in respect of which a variation is sought.

The Statement of Justification may also address other issues which the applicant wishes the decision maker to consider.
4. The Statement of Justification may include drawings, photographs or other relevant information in support of the written statement. The local government may request the applicant to provide additional information prior to determination of the application if it does not consider sufficient information has been provided in the initial Statement of Justification submitted with the application to enable

the decision-making authority to make a properly informed judgement regarding whether the proposed development will enable one or both of the heritage outcomes specified in clause 12(1)(a) and (b) of the Deemed Provisions to be achieved.

5. Development applications which seek to justify variations to Scheme site or development requirements solely on the basis that financial benefit derived from the development will be used to fund heritage works will not be supported.
6. The matters set out in 3(a) to (3)(e) above will be considered by the decision making authority in assessing whether the relationship between a development proposal and the outcomes for a heritage place or area that would result from the proposed development, if it was approved, justify the exercise of discretion to vary any Scheme site or development requirement under the provisions of clause 12 of the Deemed Provisions.
7. When an application for development approval is granted on the basis of the exercise of discretion to vary Scheme site or development requirements under clause 12 of the Deemed Provisions, the decision-making authority may impose conditions on the approval. Such conditions may include a requirement for a legal agreement between the local government and the owner of the land to which the approval relates, to ensure that the heritage outcome associated with the approved development is achieved when the development is undertaken. The requirements of any condition will depend upon the nature of the development the subject of the approval granted, and its relationship with the heritage outcome associated with the development.