STATUTORY BACKGROUND

This Local Planning Policy is prepared under the provisions of Part 2 of Local Planning Scheme No. 4 (‘the Scheme’).

Clause 5.3.4 of the Scheme prescribes the matters on which the Council is required to be satisfied in order to grant a higher density code to land having a split code.

APPLICATION

This policy applies to land with a split density code as identified on the City’s Local Planning Scheme No. 4 map.

DEFINITION AND TERMS

Building Codes of Australia (BCA):
The Building Code of Australia (BCA) is a uniform set of technical provisions for the design and construction of buildings and other structures throughout Australia. The BCA is produced and maintained by the Australian Building Codes Board (ABCB), and given legal effect through the Building Act 1975.

Class 1A Building:
A single dwelling being a detached house, or one or more attached dwellings, each being a building, separated by a fire-resisting wall, including a row house, terrace house, town house or villa unit.

Nationwide Housing Energy Rating Scheme (NatHERS):
The Nationwide House Energy Rating Scheme (NatHERS) sets national standards for software used to rate the thermal performance capabilities of Australian houses. The NatHERS scheme accredits software tools which measure the thermal potential of houses; sets standards for professionals offering NatHERS ratings; can be used to inform improvements to house design; and provides one option to demonstrate compliance with the minimum energy efficiency standards for new buildings outlined in the Building Code of Australia.

POLICY

PART A - SPLIT DENSITY CODES – REQUIREMENTS TO SATISFY

1. Retention of a building of cultural heritage significance
1.1 In this case a building of cultural heritage significance shall be taken to mean a building on the State Register of Heritage Places or the City of Fremantle Heritage List. For purposes of Clause 5.3.4 of the Scheme, the Council may, at its discretion, accept a building which is not on the State Register or Heritage List as having cultural significance where demonstrated by the applicant by:

(a) Submitting a report demonstrating this prepared by an accredited heritage professional; and

(b) Submitting an indication of the manner in which the applicant intends to conserve the property; and

(c) Nominating the property for inclusion on the Heritage List as part of the City’s annual programme.

1.2 A higher density code may be granted on the basis of the retention of a building of cultural heritage significance in the case of either subdivision or development of land. In both cases, a condition shall be imposed or recommended requiring the building to be retained.

1.3 Where a higher density coding has been granted on the basis of retention of a building of Cultural Heritage Significance:

(a) In the case of development, a condition will be imposed on the approval requiring that the building be retained;

(b) In the case of subdivision, a condition will be recommended to the Western Australian Planning Commission requesting that a Restrictive Covenant be placed on the title of the new lot containing the building to be retained restricting future owners from demolition of the building.

2. Provision of ‘low income housing’

2.1 The term ‘low income housing’ is defined in the Scheme. A higher density coding may be granted on the basis of the provision of such housing in the case of either subdivision or development of land.

2.2 Where a higher density coding has been granted on the basis provision of ‘low income housing’:

(a) In the case of development, a condition will be imposed on the approval requiring that the new dwelling(s) be restricted in use to comply with the definition of ‘low income housing’ contained in Schedule 1 of the Scheme;

(b) In the case of subdivision, a condition will be recommended to the Western Australian Planning Commission requesting that a Restrictive Covenant be placed on the title of the vacant lot restricting future development and use of the land to purposes which comply with the definition of ‘low income housing’ contained in Schedule 1 of the Scheme.

3. Energy Efficiency and Sustainability Schedule
3.1 The Energy Efficiency and Sustainability Schedule is shown as Part B of this policy. This Schedule is applicable to split density codes in accordance with the Scheme.

3.2 A higher density coding may be granted on this basis in the case of either subdivision or development of land.

3.3 Where a higher density code is sought on the basis of compliance with the Energy Efficiency and Sustainability Schedule:

(a) In the case of a development application, the applicant is required to demonstrate as part of the application that the new dwelling(s) to be constructed on the site will comply with the required elements of the Energy Efficiency and Sustainability Schedule which is contained as Part B of this policy;

(b) In the case of subdivision, a condition will be recommended to the Western Australian Planning Commission requesting that a Restrictive Covenant be placed on the title of the vacant lot(s) requiring that the land may not be developed or used in any manner which is not in accordance with the City of Fremantle Energy Efficiency and Sustainability Schedule.

4. Removal of a non-conforming use

4.1 The term ‘non-conforming use’ is defined in the Scheme, and that definition shall also be used in the application of this policy.

4.2 A higher density coding may be granted on the basis of removal of a non-conforming use in the case of either subdivision or development of land. In both cases, a condition shall be imposed or recommended requiring that the use be ceased.

PART B - ENERGY EFFICIENCY AND SUSTAINABILITY SCHEDULE

1. All of the following requirements must be achieved in order to comply with the City’s Energy Efficiency and Sustainability Schedule:

(a) The dwelling shall demonstrate a Nationwide House Energy Rating Scheme (NatHERS) star rating one star in excess of the current energy efficiency requirement of the Building Codes of Australia for class 1A buildings; and

(b) The NatHERS star rating for the dwelling shall be certified by a NatHERS accredited energy assessor using NatHERS accredited software and shall be provided at the development application stage; and

(c) Provision of a minimum 1.5kw photovoltaic solar panel system; and

(d) Provision of a minimum 3000L capacity rainwater tank plumbed to either a toilet or laundry within the dwelling; or alternatively an approved grey-water reuse system that collects grey water from the laundry and bathroom and re-directs it for garden irrigation/ground water recharge.

2. The following conditions of approval will be placed on all relevant planning approvals:
(a) That the dwelling achieve a NatHERS accredited energy efficiency star rating of [insert relevant star rating] stars that is certified by a NatHERS accredited energy assessor to the satisfaction of the Chief Executive Officer, City of Fremantle;

(b) Prior to occupation, a minimum 1.5kw photovoltaic solar panel system shall be installed and maintained thereafter to the satisfaction of the Chief Executive Officer, City of Fremantle; and

(c) Prior to occupation, a 3000L rainwater tank plumbed to a toilet and/or laundry shall be installed and maintained thereafter to the satisfaction of the Chief Executive Officer, City of Fremantle. (Or if a grey-water reuse system is provided instead of a rainwater tank, the condition shall state: Prior to occupation, an approved grey-water reuse system that collects grey water from the laundry and bathroom and re-directs it for garden irrigation/ground water recharge shall be installed and maintained thereafter to the satisfaction of the Chief Executive Officer, City of Fremantle).

3. In cases where an applicant demonstrates that the requirements of clause 1(c) and/or 1(d) of Part B cannot reasonably be met, Council may accept the achievement of an additional half (0.5) star NatHERS star rating in lieu of each of the items at clause 1(c) and/or 1(d) as an alternative means of complying with this policy.
Notes:
1. Council resolved to adopt the amendments to Local Planning Policy 2.2 Split Density Codes and Energy Efficiency and Sustainability Schedule at its Ordinary Meeting on 23 April 2014.
2. In relation to clause 1b and 2a of Part B of the policy, there is no regulatory requirement in Western Australia for energy assessors to be accredited by a NatHERS recognised Assessor Accrediting Organisation. The City will consider the term ‘NatHERS accredited energy assessor’ at Part B of the policy to be met where the energy efficiency assessment documentation submitted as required under this part of the policy is in accordance with the Western Australia Building Commission’s ‘Energy efficiency compliance using NatHERS accredited software’ Industry Bulletin IB 044/2014 at Appendix A of this policy.
Energy efficiency compliance using NatHERS accredited software

The Building Commission has published Advisory Notes AN022 and AN023 and Industry Bulletin IB007 detailing issues surrounding compliance with the energy efficiency requirements for housing in the National Construction Code (NCC) using Nationwide House Energy Rating Scheme (NatHERS) accredited software. The purpose of this Industry Bulletin is to clarify the Building Commission’s interpretation on the use of NatHERS.

There are two main options for complying with the deemed-to-satisfy (DTS) provisions for the energy efficiency performance of a house – NatHERS accredited software and Elemental Provisions.

The Building Commission is aware of concerns about inconsistencies in star ratings being provided by house energy rating scheme assessors for the purpose of demonstrating compliance with the NCC energy efficiency requirements. In part this appears to be due to a lack of clarity about the use of NatHERS accredited software for the purpose of compliance with the energy efficiency provisions in Part J of the Building Code of Australia (BCA) Volume One and Part 3.12 of BCA Volume Two.

BCA J0.2 and BCA 3.12.0.1 state that, to reduce heating and cooling loads, a building must achieve an energy rating using house energy rating software. House energy rating software is defined in the BCA as follows –

House energy rating software means software accredited under the Nationwide House Energy Rating Scheme and is limited to assessing the potential thermal efficiency of the dwelling envelope.

NatHERS is an initiative of the Commonwealth, State and Territory governments which facilitates consistent star ratings from software tools used to assess the potential energy efficiency of dwelling envelopes.

The NatHERS Software Accreditation Protocol was published in June 2012 and incorporated and replaced the Australian Building Codes Board’s Protocol for House Energy Rating Software. The NatHERS Software Accreditation Protocol outlines the requirements and processes for the accreditation of rating software used under the NatHERS scheme.

The NatHERS Software Accreditation Protocol states that in relation to building energy efficiency standards, the NatHERS accredited software must be used in Regulation Mode and operated in accordance with the ‘Principles for Ratings in Regulation Mode’ document.

The output of the NatHERS accredited software is measured in star ratings. BCA minimum star rating values are prescribed in BCA J0.2 and BCA 3.12.0.1.

Building Commission position

The preceding discussion makes it clear that when a star rating is used to demonstrate compliance:

- The software used must be accredited under the NatHERS Software Accreditation Protocol.
- The NatHERS accredited software must be operated in Regulation Mode.
• The NatHERS software used must be the current version (NatHERS accredited software versions are listed on the NatHERS website – www.natthers.gov.au).

• The NatHERS accredited software must be used in accordance with the NatHERS Principles for Ratings in Regulation Mode.

For WA, NatHERS Principles for Ratings in Regulation Mode are comprised of:

- NatHERS Technical Note 1
- NatHERS Technical Note 1 Addendum

NatHERS Technical Note 1 states that “where there is an inconsistency between a regulatory requirement for carrying out a thermal performance assessment or preparing a house energy rating, the regulatory requirement prevails to the extent of the inconsistency”.

For this reason Technical Note 2 and Technical Note 2 Addendum do not apply because NCC provisions require BCA 3.12.1.2(e) and BCA J1.3(c) to be used to determine the adjustment of minimum R-Value for loss of ceiling insulation.

• An assessment declaration must be provided.

The declaration is to:

- Be signed by the assessor.
- State the version of NatHERS accredited software used, the star rating achieved, that the software was running in regulation mode and that the NatHERS Principles for Ratings in Regulation Mode were used.
- State that the assessor has undertaken training to use the NatHERS accredited software for the applicable regulatory purpose.

Information for building surveyors

When accepting an energy efficiency assessment for the purpose of compliance with Section J or Part 3.12 of the BCA, a building surveyor must:

• Consider the qualification and experience of the assessor to ensure they have the necessary competence to provide the star rating. There are no minimum qualification or experience requirements for assessors; however the building surveyor, by accepting the star rating, is in effect taking responsibility for the assessment.

• Ensure the star rating was generated using NatHERS accredited software and in accordance with this industry bulletin (NatHERS accredited software is listed on the NatHERS website – www.natthers.gov.au).

• Review the assessment documentation provided by the assessor to ensure it provides an appropriate description of the assessed building (refer to NatHERS Technical Note 1).

• Ensure the proposed building complies with all other energy efficiency provisions of the BCA not covered by the NatHERS certificate.

Disclaimer

The information contained in this bulletin is provided as general information only and should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations you should obtain independent legal advice.

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