



Development Approval



32 Determination of Application for a Preferred Use

Where, in a precinct, a use group category is classified as a preferred use then, in considering an application involving a use from that category in that precinct, the local government -

- (a) shall refuse the application if it involves a change of use prohibited by clause 35;
- (b) cannot otherwise refuse the application by reference to the proposal to begin or continue the preferred use.

NOTE: 1. Subject to Amendment No. 25 gazetted on 26 February 2013 and No. 35 gazetted on 24 February 2017.

33 Determination of Application for a Contemplated Use

The provisions of clause 67 of the Deemed Provisions apply to an application for a contemplated use. The local government may also require an application for a contemplated use to be advertised in accordance with clause 64 of the Deemed Provisions.

NOTE: 1. Subject to Amendment No. 35 gazetted on 24 February 2017.

34 Determination of Application for an Unlisted Use

- (1) The local government cannot grant development approval for a development which involves an unlisted use unless -
 - (a) the advertising procedure set out in clause 64 of the Deemed Provisions has been followed; and
 - (b) it is satisfied, by an absolute majority, that the proposed development is consistent with the matters listed in clause 67 of the Deemed Provisions.

NOTE: 1. Subject to Amendment No. 35 gazetted on 24 February 2017.

35 Change of Use of Development Granted Bonus Plot Ratio

- (1) Where under this Scheme approval has been granted for a development which incorporates-
 - (a) a residential use with bonus plot ratio permitted under clause 28(2)(b), any subsequent change of use of the residential portion of the development; or
 - (b) a special residential use with bonus plot ratio permitted under clause 28(2)(c), any subsequent change of use of the special residential development or any part of the special residential development, except a change of use incidental to the special residential use;

is prohibited within 10 years following the date on which that portion of the development is lawfully occupied.

- (2) Where bonus plot ratio has been granted under clause 28(2) (c) (ii) for a development which incorporates a new hotel which provides high quality accommodation a change of use incidental to the hotel use may only be granted if in the opinion of the local government the hotel will maintain sufficient facilities and amenities to ensure that it will continue to provide high quality accommodation.

- (3) Where a minor bonus plot ratio has been granted under clause 28(6) (ii) a subsequent change of use of the floor area derived from that bonus plot ratio to office is prohibited.

NOTE: 1. Refer to City Planning Scheme No.2 Bonus Plot Ratio Policy for information on 'high quality accommodation' and 'minor bonus plot ratio'.
2. Subject to Amendment No. 25 gazetted on 26 February 2013 and No. 35 gazetted on 24 February 2017.

36 Determination of Non-Complying Applications

- (1) In this clause -
- (a) an application which does not comply with a standard or requirement of this Scheme (including a standard or requirement set out in a planning policy, the relevant precinct plan or minor town planning scheme), is called a 'non-complying application';
 - (b) a non-complying application does not include an application involving a prohibited use or an application to increase the maximum plot ratio which exceeds the limits set out in clause 28 and/or 30.
- (2) Subject to subclause (3), the local government may refuse or approve a non-complying application.
- (3) The local government cannot grant development approval for a non-complying application unless -
- (a) if so required by the local government under clause 64 of the Deemed Provisions, the application has been advertised;
 - (b) in respect of an application to which clause 66B(1)(a) or (b) of the Supplemental Provisions applies, the Western Australian Planning Commission has either notified the local government of its support for the application or has not responded under clause 66 of the Deemed Provisions; and
 - (c) the local government is satisfied by an absolute majority that -
 - (i) if approval were to be granted, the development would be consistent with -
 - (A) the orderly and proper planning of the locality;
 - (B) the conservation of the amenities of the locality; and
 - (C) the statement of intent set out in the relevant precinct plan; and
 - (ii) the non-compliance would not have any undue adverse effect on -
 - (A) the occupiers or users of the development;
 - (B) the property in, or the inhabitants of, the locality; or
 - (C) the likely future development of the locality.

NOTE: 1. Subject to Amendment No. 14 gazetted on 10 March 2009, No. 25 gazetted on 25 February 2013, No. 29 gazetted on 17 March 2015 and No. 35 gazetted on 24 February 2017.

37 Determination of Application for Demolition

- (1) In considering an application for or involving demolition, which is not exempt under clause 61 of the Deemed Provisions, the local government is to have regard to the matters listed in clause 67 of the Deemed Provisions and may refuse the application where the local government has not granted development approval for the subsequent development of the relevant site.
- (2) Where the local government grants development approval for demolition, the approval may be subject to the following conditions-
 - (i) the retention, maintenance, reinstatement or repositioning of any part of the existing building or structure;
 - (ii) the screening of the site upon completion of the demolition; and
 - (iii) where the development that has been approved has not been substantially commenced for a total period of more than 6 months, the landscaping of or other treatment of the site to the satisfaction of the local government.

NOTE: 1. Subject to Amendment No. 35 gazetted on 24 February 2017.

38 Determination of Applications

- (1) For the purposes of this clause, where -
 - (a) the approval of an application requires an absolute majority; and
 - (b) the decision of the local government in respect of the application is not an approval by an absolute majority,then the decision is taken to be a decision to refuse the application.

NOTE: 1. Subject to Amendment No. 35 gazetted on 24 February 2017.