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## RETROSPECTIVE PLANNING APPLICATIONS

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<b>Policy Owner:</b>	Planning Department
<b>Person Responsible:</b>	Manager Planning
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### 1. STATEMENT OF INTENT

This Policy is intended to be used to provide guidance to Shire Officers and landowners within the Shire of York when considering applications for retrospective planning approval.

### 2. RELATIONSHIP OF A POLICY TO THE SCHEME

Clause 7.14 of the York Town Planning Scheme No. 2 states that Council may grant planning consent to a use or development already commenced or carried out regardless of when it was commenced or carried out, if the development conforms to the provisions of the Scheme.

If a provision of the Local Planning Policy is inconsistent with the Scheme, the Scheme prevails.

The Local Planning Policy is not part of the Scheme and does not bind the Local Government in respect of any application for planning approval but the Local Government is to have due regard to the provisions of the Policy and the objectives which the Policy is designed to achieve before making its determination.

### 3. GENERAL GUIDELINES

#### 3.1 Extent of Application

This policy applies to the Shire of York.

#### 3.2 General Policy Objectives

- (a) To set out a procedure for the retrospective approval of planning applications.
- (b) To ensure that where a retrospective approval is required it can be assessed in a timely manner.

#### 3.3 Definitions

**applicant** means the person applying for the planning approval. The applicant is not necessarily the landowner, but has the landowner's consent.

**landowner** means the person or entity that holds the title to the land.

**Council** means the elected members of the Shire of York.

**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;

**development application** means an application under a planning scheme, or under an interim development order, for approval of development;

**land** includes —

- (a) land, tenements and hereditaments; and
- (b) any interest in land, tenements and hereditaments; and
- (c) houses, buildings, and other works and structures;

**local planning scheme** means a planning scheme of effect or continued under Part 5 of the *Planning and Development Act 2005*;

**responsible authority**, except as provided in regulations made under section 171A(2)(a) of the *Planning and Development Act 2005*, means —

- (a) in relation to a local planning scheme or local interim development order, the local government responsible for the enforcement of the observance of the scheme or order, or the execution of any works which under the scheme or order, or this Act, are to be executed by a local government; and
- (b) in relation to a region planning scheme, regional interim development order or planning control area, the Commission or a local government exercising the powers of the Commission; and
- (c) in relation to an improvement scheme, the Commission;

**Retrospective planning application** means applications are applied for developments within the Shire that have been commenced or completed without first obtaining approval for a variety of reasons.

**Shire** means the Shire of York.

**TPS 2** means the Shire of York Town Planning Scheme No 2.

## 4. POLICY GUIDELINES

### 4.1 Process for Obtaining Planning Consent

## 4.1.1 Form of Application

An application for retrospective planning approval must be made on the approved planning application form (refer to Schedule 9 of the TPS2) and accompanied by the applicable fees and accompanying information.

In addition to the standard application requirements, all applications for retrospective approval need to be accompanied by a written justification as to why Council should accept the application and not instigate compliance action.

## 4.1.2 Application Fees

All application fees for retrospective planning fees will be charged in accordance with Schedule 2 of the *Planning and Development Regulations 2009* and Council's adopted Annual Budget.

The Regulations stipulate that a planning application for development where the development has commenced or been carried out is the adopted planning application fee, plus by way of penalty, twice that fee.

The applicable application fees will be charged at the time of making the application. Where the applicant believes that there are extenuating circumstances, a waiver of fees may be considered by Council following receipt of a written request.

## 4.1.3 Assessment and Determination of Applications

- (a) Applications will be assessed as if they are new proposals for planning approval.
- (b) All applications for retrospective planning approval will be publicly advertised as a 'retrospective planning application' and in accordance with the requirements of Clause 7.3 of TPS2.
- (c) If an application relates to a heritage listed property or a property located in a flood affected area, the application will be referred to the appropriate state agencies for comment.
- (d) If a submission is received regarding the proposal then the application will be determined by Council.
- (e) If no submissions are received, then the application will be determined by Council Officers under delegated authority.

## 4.2 Post-Determination Requirements

An application for retrospective planning approval may be determined by Council or under delegated authority by approving or refusing the application. Following determination of an application, an applicant must:

### **4.2.1 Approval**

- (a) If the application relates to a structure, it is the applicant and/or landowner's responsibility to obtain a building licence or building certificate prior to re-commencement or finalisation of work.
- (b) If the application relates to a use, it is the applicant and/or landowner's responsibility to comply with the conditions of consent within the specified time period.
- (c) It is also the applicant's responsibility to comply with any State agency requirements, such as the Water Corporation.

### **4.2.2 Refusal**

- (a) If the planning application is refused then it is the landowner's responsibility to rectify the situation, either by ceasing the landuse or removing the unapproved structure.
- (b) Council may also instigate legal proceedings to rectify the situation.