



# SHIRE OF YORK TOWN PLANNING SCHEME NO. 2

## LOCAL PLANNING POLICY

### RETROSPECTIVE PLANNING APPLICATIONS

#### 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.

## APPENDIX 2



### SHIRE OF YORK RETROSPECTIVE PLANNING APPLICATION INFORMATION SHEET

#### What is a Retrospective Planning Approval?

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

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.

The development which was unlawfully commenced is not rendered lawful by the occurrence of any subsequent event except the granting of planning consent, and the continuation of the development unlawfully commenced is taken to be lawful only upon the granting of planning consent.

If the application relates to a building, then a retrospective Building License will also be required. The application requirements should be discussed with Council's Building Surveyors.

#### How do you apply?

Council's Planning Application form details the information that is required to be submitted with all planning applications. Your application must be complete before Council can make an assessment.

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.

#### Retrospective Application Fees

Schedule 2 of the *Planning and Development Regulations 2009* stipulate the fees Council can impose for planning applications. The Regulations state that applications for development where the development has commenced or been carried out is the adopted application fee, plus by way of penalty, twice the normal application fee. This application fee must be paid at the time of making the application, together with the advertising fee of \$165.00.

For example, if any application relates to a development that has an estimated cost of less than \$50,000, then the normal fee is \$135.00 and therefore, the retrospective application fee is \$305.00. The total fees payable upon lodging the application is \$305.00 plus \$165.00, which equals \$470.00.

Refer to Council's Information Sheet on Fees and Charges, or contact Council, to determine the fee applicable to your application.

### **Assessment of Applications**

Once your application has been submitted, Council's Planners will determine if the proposal is permissible under the provisions of the York Town Planning Scheme No. 2.

If your proposal is not permissible under the provisions of the Town Planning Scheme, then Council is unable to accept an application and you will be directed to cease the development.

Once your application is submitted to Council, it will be publicly advertised as a retrospective planning application, and assessed to ensure that the development can comply with the relevant provisions of the Town Planning Scheme.

Following completion of the advertising period, if a submission is received, the contents of the submission will be assessed by Council's Planners and may be discussed with the applicant, and then the application will be determined at a Council meeting by Council. If no submissions are received, then the application can be determined by Council Officers under delegated authority.

Please be aware, that even though you may submit a retrospective planning application, there are no guarantees it will be approved. Every application is assessed on its merits, and any objection lodged against the development will be taken into consideration.

### **If Retrospective Planning Approval IS Granted**

If retrospective planning approval is granted, no action will be undertaken by Council for the unlawful commencement of the development or use.

The applicant and land owner are responsible to ensure that if a Building License is required, then a Building License is obtained prior to the re-commencement or finalisation of works.

### **If Retrospective Planning Approval is NOT Granted**

If the development or use breaches the Scheme and is not brought into compliance, Council in addition to issuing a refusal decision may undertake further action until the development conforms to the provisions of the Scheme.

If no action is taken by the owner/ applicant to rectify an unlawful development, heavy penalties may apply and result in prosecution. If found guilty of an offence pursuant to the Planning and Development Act 2005 the penalty is \$50,000 with an applicable daily penalty of \$5,000.

### **Further Information**

It is recommended that the advice and assistance of the Council's Planners prior to the submission of an application for retrospective planning approval.

Council's Planners can be contacted during office hours at the Shire Office or by phone on 9641 2233.