

9. REPORTS

9.1 DEVELOPMENT SERVICES

9.1.1 Amendment to Local Planning Policy No. 7 - Outbuildings*

Applicant	Shire of Chittering
File ref	18/06/0007
Prepared by	Principal Planning Officer
Supervised by	Executive Manager Development Services
Disclosure of interest	Nil
Voting requirements	Simple Majority
Attachments	1. Amended Local Planning Policy No. 7 - Outbuildings

Executive Summary

Council is requested to consider amendments to the Shire of Chittering *Local Planning Policy No. 7 – ‘Outbuildings’*. The amendments to the Policy provide clarity to the statutory exemptions already available. This essentially results in less approval requirements for outbuildings in the Rural Residential zone and less restrictions on the size of outbuildings also in this zone.

Background

Within the last 12 months, Council has made resolutions on outbuilding development applications that are variations to the Shire of Chittering *Local Planning Policy No. 7 – ‘Outbuildings’* (LPP7). Council have typically allowed increased floor area and height limits of outbuildings in the Rural Residential Zone. Council also permitted a shed to be constructed prior to the construction of a dwelling. These variations were considered significant and warranted a review of LPP7 to ensure it maintain its validity into the future.

In July 2019, Shire officers workshopped LPP7 with Council with the following matters being raised and discussed:

1. Floor area of outbuildings in the Rural Residential zone;
2. Height restriction on outbuildings in the Rural Residential zone;
3. Outbuildings constructed before dwellings in the Rural Residential zone; and
4. Outbuildings in Townsite zone (with no R-code) having no assessable criteria.

The general outcome of the workshop was to allow larger outbuildings in the Rural Residential zone and to investigate legal avenues for outbuildings to be constructed (and used for storage) prior to a dwelling.

In light of the above, Shire officers commenced a review of LPP7. The review however, uncovered some further legality issues with the Policy’s interaction with the Shire of Chittering *Local Planning Scheme No. 6* (LPS6) and the *Planning and Development (Local Planning Schemes) Regulations 2015* (Regulations). These issues have been addressed in the amended LPP7 which is presented to Council for consideration.

Consultation/Communication Implications

Local

The Regulations direct a local government to advertise an amendment to a Local Planning Policy, unless the amendment is considered to be of a minor nature. Officers do not consider the amendment to be minor, and therefore will recommend it be advertised in accordance with the Regulations in the following ways:

- (i) Publish a notice of the amendment in the local newspaper; and
- (ii) Publish a notice of the amendment on the Shire's website.

State

Further to the local advertising requirements, the Regulations require that any Local Planning Policy adoption (or amendment) is referred to the Western Australian Planning Commission (WAPC) for comment, if the Policy is a variation to a State Planning Policy. LPP7 consists of outbuilding size variations to *State Planning Policy 7.3 (Residential Design Codes of WA)* and therefore, it is appropriate for the WAPC to comment on the amended Policy.

Legislative Implications

State

- *Planning and Development (Local Planning Schemes) Regulations 2015*

Sch. 2, Pt. 2, Cl. 5 of the Regulations dictate the process for amending a Local Planning Policy. Typically, the Council resolve to amend a Policy, advertises the amendment(s), and then again considers the amendment(s) in light of any submissions received.

Following the advertising period and consultation with the WAPC, Council will have the opportunity to further modify the Policy, in response to any submissions.

Local

- *Shire of Chittering Local Planning Scheme No. 6 – Outbuilding Exemptions*

As highlighted in the background of this report, the review of LPP7 uncovered some statutory inconsistencies with the Policy and LPS6. In the event of any inconsistency between a Local Planning Policy and a Local Planning Scheme, the Scheme shall always prevail.

The cause for the inconsistency is embedded within Schedule A – ‘Supplemental Provisions’ of LPS6. Schedule A provides specific exemptions for development approval, in addition to those exemptions provided for in the Regulations. This Schedule was introduced into LPS6 via a Scheme Amendment gazetted in February 2017.

Schedule A, Clause 61(1)(m) provides the following exemption for development approval (underlined words for emphasis):

- (m) *the erection or extension of an outbuilding, external fixture, boundary wall or fence, patio, pergola, veranda, garage, carport or swimming pool on the same lot as a single house if a single house is a permitted (“P”) use in the zone (where the R Codes do not apply) and where the development standards set out in the scheme (including the schedules) for that particular zone (including boundary setbacks) are satisfied, unless the development is located in a place that is:*
 - i. *Entered in the Register of Heritage Places under the Heritage of Western Australia Act 1990; or*
 - ii. *The subject of an order under Part 6 of the Heritage of Western Australia Act 1990; or*

- iii. *Included on a heritage list prepared in accordance with this Scheme; or*
- iv. *Within an area designated under the Scheme as a heritage area; or*
- v. *The subject of a heritage agreement entered into under the Heritage of Western Australia Act 1990 section 29; or*
- vi. *In a vegetation protection area, identified in an approved environmental management plan or structure plan; or*
- vii. *The proposal requires access from an unconstructed road; or*
- viii. *The proposal is located within a designated bushfire hazard area, as identified in Schedule 10 – Bushfire Hazard Areas of the Scheme.*

The above provisions exempts the requirement for development approval to be obtained for all outbuildings in the Rural Residential zone, if a dwelling is on the lot. At present, LPP7 provides maximum floor areas and wall heights that if exceeded, required development approval to be obtain. This is inconsistent with the above exemption of LPS6, and as noted previously, where there is an inconsistency, the Scheme shall always prevail.

Therefore, as outbuildings in the Rural Residential zone are exempt from development approval, maximum floor area and height limits within LPP7 are redundant. As such, the amended LPP7 has removed all reference to floor area and height limits in this zone.

It is noted that the removal of floor area and height restrictions on outbuilding in the Rural Residential zone is generally consistent with Council's historical decisions to permit larger outbuildings, in order to facilitate the storage needs of the community. It should be made clear that although the amended Policy does not restrict the dimensions of an outbuilding, LPS6 still controls how it can be used. An outbuilding can only be used in association with a dwelling on the same lot (personal storage). Any commercial activities proposed within an outbuilding will require the development approval from the Shire.

Further to the above, it is noted that LPS6 provides restrictions on outbuildings in Special Control Areas (Landscape Protection, Water Prone, Military Considerations, Basic Raw Materials, Muchea Employment Node and Land Refuse) and also imposes restrictions on reflective material being used. In these instances, development approval will be required and an application will be assessed against the relevant LPS6 provisions.

- *Shire of Chittering Local Planning Scheme No. 6 - Outbuilding before Dwelling*

Council have previously approved an outbuilding before a dwelling, contrary to the provisions of the current LPP7. It was understood that this was to assist a landowner in transitioning to the property, prior to building a dwelling. It was also indicated through the Council workshop in July 2019 that this opportunity should be formalised through the Policy. The intent was to allow an outbuilding to be used for the storage or personal items while the landowner builds a house and transitions to the property.

The issue with this concept is that an outbuilding is only exempt from development approval where there is a 'single house' on the lot. Therefore any outbuilding prior to a dwelling requires development approval. It would also be categorised as a 'shed', as the definition of an outbuilding requires some association with a dwelling (as per the R-Codes definitions). The shed could not technically be used for any household storage purpose, as this is a land use in its own right that requires development approval. Storage of domestic or personal items is only permitted with a dwelling, as it is considered 'incidental' to the predominant residential land use. The 'Storage' land use in the Rural Residential zone is an 'x' (not permitted) use, pursuant to LPS6.

Due to these difficulties, the amended policy cannot technically allow the use of an outbuilding/shed on rural residential land prior to a dwelling being constructed. The amended Policy does however offer some flexibility in that an outbuilding can be constructed, if a dwelling has been substantially commenced on the same lot (entire slab poured). This is expected to offer land owners an ability to transition to the property by having on-site, safe and secure storage, whilst the Shire can have the confidence that a dwelling will be built shortly. It avoids the risk that a shed is built on the property, and remains in place without a dwelling, creating opportunities for illegal habitation of the shed. If this aspect requires control in the future, it can be addressed through a future scheme amendment or when LPS6 is reviewed in its entirety.

Policy Implications

State

- State Planning Policy 7.3 – Residential Design Codes of Western Australia
State Planning Policy 7.3 – Residential Design Codes of Western Australia (R-Codes) provides size limitations for outbuildings in R-coded areas (i.e. parts of Muchea Townsite and Bindoon Townsite). The R-Codes restrict outbuilding sizes to a maximum 60m².

The current and proposed amended LPP7 increase the R-Code floor area limit to 120m². This is better reflective of the lot sizes available in the Muchea and Bindoon Townsites and the understood needs of the community.

The outbuilding limit of the R-Codes can be varied by a Local Planning Policy, subject to the approval of the WAPC. As such, the WAPC will be provided within an opportunity to review the amended Policy during the advertising period.

Local

Nil

Financial Implications

The amended Policy is likely to reduce the amount of development applications submitted to the Shire for outbuildings, which attracts a standard fee (\$147 fee if the cost of constructing the outbuilding is less than \$50,000). This could result in a loss of annual revenue for the Shire however, this should not be seen as a reason to maintain the Policy in its current form.

Strategic Implications

Nil

Site Inspection

Not applicable

Triple Bottom Line Assessment

Economic implications

The amended Policy is expected to reduce the likelihood for development applications to be submitted for outbuildings in the Rural Residential zone, saving the ratepayer the cost of an application fee. It also allows flexibility in terms of outbuilding sizing which may encourage prospective ratepayers to invest in Rural Residential land within the Shire, as opposed to a Local Governments that have stringent controls on outbuilding sizes.

Social implications

Over recent times, there has been a significant amount of interest and approvals granted for 'oversized sheds' (greater than 200m²). Making the amendments to the Policy creates opportunities for ratepayers to develop their land in a manner that suits their needs.

There is also an opportunity for large sheds to be constructed in plain sight of other properties and public spaces having adverse impacts on the visual amenity of the area. It is however acknowledged, that this is currently permitted by Schedule A of LPS6, and the amendment to the Policy is simply correcting an existing inconsistency.

Environmental implications

There are no known environmental implications associated with this proposal.

Officer Comment/Details

The proposed amendments to the Policy are primarily correcting inconsistencies that exist between the Policy and LPS6. These amendments will, in summary, achieve the following in the Rural Residential zone:

- (i) Remove size limitations on outbuildings; and
- (ii) Remove development approval requirements for all outbuildings (outside of Special Control Areas).

In the Agricultural Resource zone, the following will be achieved by the amended Policy:

- Remove the development approval requirements for rural sheds and outbuildings (outside of Special Control Areas);

In addition to the above proposed changes, the current LPP7 has no parameters or guidance on outbuildings in the Townsite zone that does not have an R-Code. This affects the central portion of the Muchea Townsite. Planning staff have previously applied a pragmatic approach when faced with development applications in this area, and assessed the outbuilding against the size of the property and other outbuilding sizes in the locality. Amending the Policy to include sizing parameters gives the Shire formal guidance when assessing these applications, in addition to providing the ratepayers and prospective purchaser of a clear indication of acceptable outbuildings sizes.

It is proposed to limit outbuilding floor sizes to 200m² in these areas as this seems to be generally reflective of current outbuildings in this area, and is considered contextually appropriately given the larger lot sizes (2 ha - 4 ha), while recognising it as a Townsite zone.

It is acknowledged 'Schedule A' of LPS6 exempts the requirement for development approval in this area however, due to the presence of a Water Prone Special Control Area (SCA), a development approval is required. It is only through the presence of this SCA that the outbuilding sizes can be controlled. Although not a perfect solution, it will be effective to achieve the intended purpose, until such time that a complete review of LPS6 is conducted.

In terms of the usability of the Policy by the public, some elements may be challenging to understand. Particularly with reference to the exemptions provided by the Regulations. It is expected that if the amended Policy is adopted, Shire staff will develop a simple to read flowchart, which can be used by the Public to clearly identify whether or not development approval is required, for their land. This would be provided simply as an information sheet associated with the Policy, but not part of the Policy itself. It therefore would not require any endorsement from Council.

The proposed amendments to the Policy are effectively correcting inconsistencies with LPS6 to ensure the statutory provisions of LPS6 are applied correctly. The changes will reduce planning approval requirements and provide greater flexibility to the community for their personal storage needs. Council are reminded that the LPP7 will be again reviewed following the period of advertising, where further modifications can be made, if considered necessary.

It is recommended that Council proceed with the amended LPP7 and advertise it for a minimum period of 21 days in accordance with the Regulations.

OFFICER RECOMMENDATION

Moved Cr Curtis / Seconded Cr Osborn

That Council:

1. Proceed with the amended Local Planning Policy No. 7 – ‘Outbuildings’ as provided in Attachment 1 pursuant to Schedule 2, Part 2, Clause 5 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
2. Advertise a notice of the amended Local Planning Policy No. 7 – ‘Outbuildings’ as provided in Attachment 1 in accordance with Schedule 2, Part 2, Clause 4(1) and (2) of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

MOTION / COUNCIL RESOLUTION 031219

Moved Cr Hughes / Seconded Cr Ross

That Council suspend *Local Government (Council Meetings) Local Law 2014, Part 8 – Conduct of Members* to allow for free and open debate.

CARRIED 7/0
7:51PM

MOTION / COUNCIL RESOLUTION 041219

Moved Cr Davis / Seconded Cr Osborn

That Council resume the meeting in accordance with *Local Government (Council Meetings) Local Law 2014, Part 8 – Conduct of Members*.

CARRIED 7/0
7:55PM

9.1.1 OFFICER RECOMMENDATION / COUNCIL RESOLUTION 051219

Moved Cr Curtis / Seconded Cr Osborn

That Council:

1. Proceed with the amended Local Planning Policy No. 7 – ‘Outbuildings’ as provided in Attachment 1 pursuant to Schedule 2, Part 2, Clause 5 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
2. Advertise a notice of the amended Local Planning Policy No. 7 – ‘Outbuildings’ as provided in Attachment 1 in accordance with Schedule 2, Part 2, Clause 4(1) and (2) of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

CARRIED 6/1
7:56PM