



Town Planning Scheme No. 3 Amendment No. 13

Town of East Fremantle

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PLANNING AND DEVELOPMENT ACT 2005

RESOLUTION TO ADOPT AN AMENDMENT TO A LOCAL PLANNING SCHEME

TOWN OF EAST FREMANTLE

TOWN PLANNING SCHEME NO. 3

AMENDMENT NO. 13

RESOLVED that the Town of East Fremantle in pursuance to Section 72 of the Planning and Development Act 2005 (as amended) amend the above Town Planning Scheme by:

- (1) Deleting entry numbers 1 and 2 in Schedule 4: Special Use Zones.

The Amendment is basic under the provisions of the Planning and Development (Local Planning Schemes) Regulations 2015 for the following reasons:

- (1) Pursuant to regulation 35(2)(a) of the Planning and Development (Local Planning Schemes) Regulations, considers that the Amendment is a 'Basic Scheme Amendment' as it will correct an anomaly in the Scheme.

Dated: 1 July 2016



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GARY TUFFIN
CHIEF EXECUTIVE OFFICER

INTRODUCTION

The proposed amendment will delete the Special Use zone entries numbers 1 and 2 in Schedule 4 of TPS No.3. which relate to the subject site. These provisions restrict the use of the subject site specifically to the uses of 'hospital' and 'office' identified in the Schedule. The Town has received legal advice that the nursing home and associated medical services which are proposed for the site cannot be approved pursuant to the defined 'hospital' and 'office' definitions of Schedule 4.

BACKGROUND

- Kaleeya private hospital ceased operations in December 2014 when the State Government sold it to Southern Cross Care Pty Ltd for the purpose of running an aged care facility.
- The site was marketed as a health campus suitable for aged persons accommodation and was purchased by Southern Cross Care for \$17.5 million on their understanding that the site could be used as a nursing home/aged care facility.
- A development application was then lodged in October 2015 for a 68 bed aged care facility and associated medical consultants, pharmacy, café and utilising the existing physiotherapy and hydrotherapy facilities. The development application was to be determined by a Development Assessment Panel (DAP).
- The Town recommended approval of the application (albeit for the nursing home/aged care component and medical centre serving the nursing home/aged care residents only, as it is considered to be consistent with the Hospital reservation.
- The Metropolitan South West DAP subsequently deferred the determination of the application in February 2016, stating it had received advice that it did not have the ability to approve any land use on Lot 102 other than a 'Hospital' due to the presence of Schedule 4:Special Use Zones of TPS3.
- The same Schedule affects the permissibility of uses on Lot 2, being for an 'Office' only.
- Further legal investigations concluded that there are numerous anomalies in the Scheme in relation to Schedule 4 including that the site is not a Special Use zone on the Scheme map, the former hospital is not on any heritage list and does not require a Conservation Plan, the incorrect property details are used and Wolsely Street is misspelled. Accordingly, it is considered that the presence of Lot 102 and Lot 2 within Schedule 4: Special Use Zones is an anomaly in the Scheme that needs to be corrected.
- Notwithstanding the above, the DAP subsequently approved the development application on 7 April 2016. The application was conditionally approved for the nursing home, with medical centre services permitted provided they are wholly used for the residents of the aged care facility.

STATUTORY ENVIRONMENT

Metropolitan Region Scheme

The subject site is zoned 'Urban' under the Metropolitan Region Scheme. The development concept is consistent with the 'Urban' zoning of the land. The site is not subject to any regional reservations.

Town of East Fremantle – Town Planning Scheme No. 3

Under TPS 3, Lot 102 is locally reserved for 'Public Purposes – Hospital' as shown by the Scheme Map Clause 3.4.2 of TPS 3 states that:

'In determining an application for planning approval, the local government is to have due regard to:

- *the matters set out in clause 10.2; and*
- *the ultimate purpose intended for the Reserve”.*

Lot 2 is zoned 'Residential' with a density as prescribed by the Residential Design codes (R-Codes) of R12.5. Lot 2 is also afforded the Additional Use (A2) of 'Car parking for Hospital (Kaleeya)' on the Scheme Map (along with Lots 3 and 88), however has never been used for that purpose.

Lot 102 and Lot 2 are also included in Schedule 4: Special Use Zones of TPS 3, as follows:

No.	Description of land	Special Use	Conditions
1	Lot 102 Diagram 84181, Staton Road (Cnr Wolsely Road and Coolgardie Avenue)	Hospital	Minimum 10% of the site to be allocated as landscaped open space. Existing building to be retained and restored in accordance with an agreed Conservation Plan for the site.
2	Part Lot 2 Alexandra Road	Office (In-house Training, In-house Meetings, Record Storage, Community Purposes)	Minimum 10% of the site to be allocated as landscaped open space. Use for Community Purposes other than meetings and training, subject to approval in accordance with the requirements for 'A' uses under the Scheme.

The Scheme Map does not show Lots 102 or 2 as being within a Special Use Zone and does not include 'Special Use Zone' within the Scheme Map Legend. Clause 4.72 of TPS 3 states:

"A person must not use any land, or any structure or buildings on land, in a special use zone except for the purpose set out against that land in Scheme 4 and subject to compliance with any conditions set out in Schedule 4 with respect to that land”.

This may effectively mean that the only use that may be permitted on Lot 2012 is a 'Hospital' and similarly, on Lot 2, and 'Office'. Pursuant to TPS 3 Schedule 1: Dictionary of Defined Words and Expressions 'Hospital' means:

"Premises in which persons are admitted and lodged for medical treatment or care and includes a maternity hospital”.

Whilst the nursing homes provides 'care', TPS 3 includes a specific definition for 'Nursing Home' and therefore is considered a 'Hospital' for the purpose of applying the Special Use for Lot 102. Notwithstanding, the above DAP agreed with legal advice regarding the anomalies in TPS 3 and subsequently approved the nursing home.

COMMENT

The proposed Scheme Amendment will delete the entries within *Schedule 4: Special Use Zones* of TPS3 on the basis that their presence is erroneous and inconsistent with the intentions of the aims and objectives of TPS2 and TPS3. The presence of Schedule 4 currently prohibits the use of Lot 102 (former Kaleeya Hospital site) for any use other than a 'Hospital', and similarly Lot 2 for any use other than an 'Office'. The Amendment corrects this administrative anomaly to ensure that land use and development of the subject land can be carried out in light of the purposes for which they were intended by the base reservation and zonings.

Planning and Development (Local Planning Schemes) Regulations 2015

Part 5, Division 4 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (PD Regulations) provides for a local planning scheme to be amended via a 'Basic' amendment. A basic amendment means,

"any of the following amendments to a local planning scheme –

- (a) an amendment to correct an administrative error;
- (b) an amendment to the scheme so that it is consistent with the model provision in Schedule 1 or with another provision of the local planning scheme;
- (c) an amendment to the scheme to delete provisions that have been superseded by the deemed provisions in Schedule 2;
- (d) an amendment to the scheme so that it is consistent with any other Act that applies to the scheme or the scheme area;
- (e) an amendment to the scheme so that is consistent with a State Planning Policy;
- (f) an amendment to the scheme map to include a boundary to show the land covered by an improvement scheme or a planning control area;
- (g) an amendment to the scheme map that is consistent with a structure plan, activity centre plan or local development plan that has been approved under the scheme for the land to which the amendment relates if the scheme currently includes zones of all the types that are outlined in the plan;
- (h) an amendment that results from a consolidation of the scheme in accordance with section 92 (1) of the Act;
- (i) an amendment to the scheme so that it is consistent with a region planning scheme that applies to the scheme area if the amendment will have minimal effect on the scheme or landowners in the scheme area'.

In accordance with (a) above, this amendment is considered a Basic Scheme Amendment as it will correct an administrative error in the Scheme; its implications which were never the intention of the drafters of TPS2 or TPS3.

CONCLUSION

The proposed Basic Scheme Amendment will resolve the anomalies in TPS3 as they relate to the subject site. The applicants have submitted that the planning history points to an administrative error in transposition of historic planning provisions in to

TPS No 3, and ultimately deems *Schedule 4: Special Use Zones* as erroneous and in need of correction.

The proposed amendment will in effect, regularise the decision of the DAP to approve the redevelopment of the subject site for an aged care facility and allied medical services, notwithstanding the current impediments of the Scheme. The Amendment will ensure that land use and development of the subject land can be carried out in light of the purposes intended by the base reservation and zonings in the Scheme.

In the instance, Lot 102 represents an opportunity to establish a much needed health and community use that will provide nursing home beds and associated medical centre services. Lot 2 can be recognised as a dwelling with its heritage conserved as intended and as recently approved.

ADOPTION

Adopted by resolution of the Council of the Town of East Fremantle at the Ordinary Meeting of the Council held on the 21 June 2016.


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MAYOR

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CHIEF EXECUTIVE OFFICER

FINAL APPROVAL

Adopted for submission to the Minister for Planning for approval by resolution of the Town of East Fremantle at the Ordinary Meeting of the Council held on the 21 June 2016 and the Common Seal of the Town of East Fremantle was hereunto affixed by the authority of a resolution of the Council in the presence of:



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MAYOR

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CHIEF EXECUTIVE OFFICER

Recommended/Submitted for Final approval

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DELEGATED UNDER S.16 OF
THE *PLANNING AND DEVELOPMENT ACT 2005*

DATE.....

Final Approval Granted

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MINISTER FOR PLANNING
S.87 OF THE *PLANNING AND DEVELOPMENT ACT 2005*

DATE.....