

# Local Planning Policy No. 41

## Exemption for Specified Changes of Use and Activities Carried Out from Existing Buildings and Transitional Use Policy

Date of Adoption: dd mmm yyyy

Date Amended: Draft June 2020 (V1)

### INTRODUCTION

The purpose of Part A of this policy is to exempt certain changes of use within existing buildings located within the Town's Local Centre Zones and the Albany Highway Precinct from the need to obtain development approval.

In addition, the purpose of Part B of this policy is also to enable the consideration of temporary uses in areas undergoing redevelopment or regeneration in accordance with an endorsed structure plan, local development plan or Town Planning Scheme provisions.

By exempting a range of compatible land uses and considering temporary uses in specific areas, the Town aims to make it easier to establish and expand businesses to support economic development, local employment, and the development of active and vibrant activity centres.

This policy is made pursuant to Schedule 2, Part 2, Division 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations). Schedule 2 of the Regulations contains the deemed provisions for local planning schemes (Deemed Provisions). Clause 61(2)(e) of the Deemed Provisions allows a local planning policy to specify uses that do not require development approval, in addition to those uses specified in Clause 61(2).

Should there be any inconsistencies between the provisions of this policy and other local planning policies the provisions of this policy prevail.

### OBJECTIVES

- (a) To stimulate economic growth and employment within the Town's activity centres by reducing the regulatory burden of the planning framework for a range of compatible land uses;
- (b) To streamline the process to establish new businesses or to expand existing businesses within existing buildings along Albany Highway and within the Town's Local Centre Zones;
- (c) To designate land uses that are exempt from the need to obtain development approval on the basis that they are unlikely to have significant adverse impacts on established uses, or on adjacent land uses; and
- (d) To increase opportunities for active ground floor land uses that enhance Albany Highway and the Town's local main street centres as a vibrant, and increasingly pedestrian-orientated retail and mixed-use environments.
- (e) To enable the consideration of temporary uses in an area undergoing redevelopment or regeneration in accordance with an endorsed structure plan, local development plan or Town Planning Scheme provisions.

**NOTE**

On 8 April 2020, in response to the COVID-19 pandemic, the Minister for Planning issued a Notice temporarily exempting landowners/applicants from certain planning requirements. This includes an exemption from obtaining development approval for a change of land use as follows:

|   |                                    |   |
|---|------------------------------------|---|
| <p>1.2 Proponents are exempted from the requirement to obtain development approval for the following uses, and temporary works associated with these:</p> <ul style="list-style-type: none"><li>i. shop;</li><li>ii. restaurant/café;</li><li>iii. convenience store (excluding those selling petroleum products);</li><li>iv. consulting rooms;</li><li>v. office.</li></ul> | <p>All local planning schemes.</p> | <p>1. Provided that:</p> <ul style="list-style-type: none"><li>a) the land to be used is located in a commercial, centre and/or mixed use zone;</li><li>b) the use is not prohibited by the scheme;</li><li>c) no new permanent structures are required (with the exception that car parking bays are permitted);</li><li>d) for shop uses, once the proposed use is in place, the net lettable area for the land use does not exceed 400m<sup>2</sup>; and</li><li>e) the land is connected to all reticulated utility services, and does not depend on any onsite effluent disposal.</li></ul> <p>2. Provided that the proponent notifies the local government within 7 days of commencing the use, that the use is being undertaken.</p> <p>3. Despite any other condition, this exemption does not apply to a Heritage-Protected Place.</p> <p>4. An exemption under this clause will expire 90 days after the date upon which the State of Emergency Declaration ceases to have effect, or is revoked.</p> |
|---|------------------------------------|---|

In the first instance, proponents should refer to the temporary exemptions available under the Minister’s Notice and may rely upon this only.

Where a temporary exemption under the Minister’s Notice is not sought or is not applicable (or for any other reason), then an applicant can then seek an exemption under this Local Planning Policy 41.



## **POLICY SCOPE**

Part A of this policy applies to:

- (a) Land within the District Centre, Commercial and Residential/Commercial zones within the Albany Highway Precinct, as detailed within Albany Highway Precinct Plan P11 of the Scheme; and
- (b) Land within all 'Local Centre' zones throughout the Scheme Area.

Part B of this policy applies to:

- (a) The transitional use portion of this policy allowing development approval for temporary uses applies to all relevant areas in the Town undergoing transition to an agreed planning direction.

## **DEFINITIONS**

- (a) The following terms are defined for the purpose of this policy:

**Existing building** means a legally authorised and constructed building or structure, including any areas appurtenant to the building or structure such as alfresco areas, balconies, outdoor spaces or the like but does not include existing authorized vehicle parking bays.

**NLA** means 'net lettable area' as defined by the Scheme, which means the area of all floors within the internal finished surfaces of permanent walls but does not include the following areas –

- i. stairs, toilets, cleaner's cupboards, lift shafts and motor rooms, escalators, tea rooms and plant rooms, and other service areas;
- ii. lobbies between lifts facing other lifts serving the same floor;
- iii. areas set aside as public spaces and thoroughfares and not for the exclusive use of occupiers of the floor or building; and
- iv. areas set aside for the provision of facilities or services to the floor or building where those facilities are not for the exclusive use of occupiers of the floor or building.

**Scheme** means the Town of Victoria Park Town Planning Scheme No. 1.

- (b) All other terms, words and expressions used in this policy have the same meaning as they have in the Scheme or Deemed Provisions.

## POLICY REQUIREMENTS

### Part A - Exemptions for Specified Changes of Use and Activities Carried Out from Existing Buildings

#### 1. Changes in land use exempt from the requirement for development approval

- (a) Subject to Clause 1(b) and 1(c) being satisfied, the following land uses within the applicable Scheme Precinct(s) and zones listed below in Table 1 are exempt from the requirement for development approval –

| Scheme Precinct(s)            | Zone(s)  | Exempt Land Uses   |
|-------------------------------|--|--|
| All Precincts                 | Local Centre   | Art Gallery;<br>Consulting Rooms;<br>Exhibition Centre;<br>Fast Food Outlet;<br>Lunch Bar;<br>Office;<br>Restaurant/Cafe; and<br>Shop.                                     |
| Precinct P11 'Albany Highway' | District Centre;<br>Commercial; and<br>Residential/Commercial. | Amusement Parlour;<br>Art Gallery;<br>Consulting Rooms;<br>Exhibition Centre;<br>Fast Food Outlet;<br>Lunch Bar;<br>Office;<br>Restaurant/Cafe;<br>Shop; and<br>Small Bar. |

**Table 1 – Exempt Land Uses and Activities**

- (b) The land use must:
- i. be a new land use which replaces, in whole or in part, an existing land use in an existing building; and
  - ii. not involve the conversion of that portion of any existing building approved for residential purposes; and
- (c) The total net lettable area (NLA) for which the particular land use applies shall not exceed 400m<sup>2</sup> (if tenancies are combining or an expansion is taking place, the limit applies to the total NLA once the expansion would be complete).

#### 2. Administration and process prior to commencing the use

- (a) Prior to commencing the use, the applicant must request and obtain written confirmation from the Town that the exemption available under this policy applies to the subject site and the proposed use. Additional details relating to the scale and nature of the use may be requested by the Town before confirmation is provided;

- (b) Upon considering a request in accordance with 2(a), the Town may refuse to provide written confirmation of exemption from development approval, and instead determine that the proposed use requires development approval. The circumstances in which a proposed development/use may be determined to require development approval include (but are not limited to) where the Town considers it to:
- i. be inconsistent with the objectives of this policy, the zone in which it is located and/or the Scheme; and/or
  - ii. be detrimental to the amenity of the locality; and/or
  - iii. only be appropriate to the locality if its impacts are managed through the imposition of conditions placed on a development approval; and/or
  - iv. lead to a loss of activation or passive surveillance at street level; and/or
  - v. involve changes to the access to, layout or number of authorised car parking bays available on the subject site.
- (c) Where written confirmation of an exemption from the need to obtain development approval has been obtained pursuant to this policy, this exemption shall remain in place until such time as the use is altered through further changes of use or expansion.

**3. Temporary exemption for certain activities carried out from existing buildings**

- (a) The use of an existing building approved as a Restaurant/Café, Fast Food Outlet, Lunch Bar, Small Bar, Hotel or Tavern that is located on zoned land is permitted to carry out activities that are primarily consistent with a Service Industry and/or Fast Food Outlet use for the preparation, sale, distribution and/or delivery of food and/or beverages, only, without requiring development approval from the Town for a period of 6 months from the date of adoption of this policy.

**4. Access and facilities for people with disabilities**

- (a) New or expanded businesses are encouraged to upgrade the access and facilities within their premises to meet the current requirements of the Building Act 2011 and the Disability Discrimination Act 1992, even where the statutory requirement to do so is not required; and
- (b) A change of land use that results in a change of building classification or building use may be subject to the requirement to comply with the current standards for access and facilities for people with disabilities in accordance with the Building Act 2011 and Disability Discrimination Act 1992. This may involve the need to upgrade the access and toilet facilities within the premises as well as trigger the requirement to provide one or more accessible car parking bays on the site.

**5. On-site car parking**

- (a) For those exempt land uses and activities listed under Clauses 1 and 3 of this policy, the



Town will permit an exemption from development approval notwithstanding that the expansion or change in land use or activity would otherwise require additional on-site car parking bays to be provided as per the Town's *Local Planning Policy 23 'Parking Policy'*;

- (b) Further to Clause 5(a) above, where the expansion of an existing business or change of land use or activity results in the need to provide an accessible car parking bay on the site in order to meet the current requirements of the Building Act 2011 and the Disability Discrimination Act 1992 that is not already provided as part of the authorized car parking on the site, the following applies:
  - i. the Town will accept a reduction in the number of authorised car parking bays provided on the site by one (1) car parking bay, where the reduction is occurring to facilitate the conversion of two standard car parking bays to a single accessible car parking bay, where the existing authorised layout and dimension of the remaining car parking bays on the site and the existing vehicular access remains unaltered; and
  - ii. the conversion of two existing authorised car parking bays as per Clause 4(b)i. will be exempt from the requirement to obtain development approval; and
- (c) Any changes to the existing authorised car parking on the site other than those outlined in Clause 5(b) above will be deemed as works in accordance with Clause 6 of this policy, and subject to the requirement for development approval.

## **6. Works associated with a change in land use**

- (a) This policy only relates to changes in land use or activity in certain circumstances and does not relate to any site or building works, with the exception of Clause 5(b) above. Whether or not development approval is required for works is a matter for separate consideration under the Scheme, the Deemed Provisions and any other local planning policies applicable to development on the site. Refer to the Town's Local Planning Policy 32 'Exemptions from Development Approval' for other works which may be exempt from the requirement for development approval;
- (b) Pursuant to Clause 61(1) of the Deemed Provisions development approval is generally not required for internal building work which does not materially affect the external appearance of the building;
- (c) Notwithstanding Clause 61(1) of the Deemed Provisions internal works relating to Places on the Town's Heritage List or in the Register of Heritage Places under the Heritage of Western Australia Act 1990 may be subject to a requirement for approval for internal works;
- (d) New or modified signage associated with a proposed change of use is exempt from the requirement for development approval where it complies with the Town's Local Planning

Policy 38 'Signs'; and

- (e) The written confirmation specified in Clause 2(a) should specify whether any proposed works associated with a change of use subject to this policy will require development approval.

## **7. Other Applicable Regulations and Legislative Requirements**

- (a) The provisions of this policy do not exempt any proposed development/use from the need to comply with and/or obtain other relevant approvals under separate legislation including (but not limited to) the following:
- i. Building Act 2011;
  - ii. Building Regulations 2012;
  - iii. National Construction Code;
  - iv. Disability Discrimination Act 1992;
  - v. Disability (Access to Premises – Buildings) Standards 2010;
  - vi. Food Act 2008;
  - vii. Food Regulations 2009;
  - viii. Public Health Act 2016;
  - ix. Health (Public Buildings) Regulations 1992
  - x. Liquor Control Act 1988;
  - xi. Town of Victoria Park Health Local Law 2003;
  - xii. Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2000; and
  - xiii. any other applicable local law; and

## **Part B - Transitional Uses**

- (a) In areas of the Town undergoing transition to an agreed planning direction as identified by an adopted structure plan, local development plan or Scheme provisions, (eg Burswood Peninsula and the Causeway Precinct) uses will be considered for approval for a temporary approval period of up to 10 years, as deemed appropriate, based on the following criteria:
- i. The use provides an interim service or facility that benefits the community;
  - ii. The use provides activation and passive surveillance;
  - iii. The use promotes economic development of the area by utilizing otherwise vacant property/building during the interim period;
  - iv. The use promotes social interaction and community development;
  - v. The use is appropriate in the precinct in which it is located and is a use that Council has the ability to approve;
  - vi. The use promotes the principles of transit oriented development and/or modal shift; and
  - vii. The use does not replicate a similar use permanently approved in proximity to

the proposed use.

- (b) Where a development meets the criteria in (a) above, Council may vary relevant development standards and provisions at the Scheme or Local Planning Policies in order to facilitate development including exercising discretion under Clause 29 'Determination of Non-Complying Applications' of Town Planning Scheme No. 1.

## RELATED DOCUMENTS

*Town Planning Scheme No. 1*

*Local Planning Policy 32 'Exemptions from Development Approval'*

*Local Planning Policy 38 'Signs'*

## VERSION CONTROL

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| Date Initially Adopted : | Adopted as Local Planning Policy 41 at Ordinary Council Meeting 21 April 2020, for an initial trial period of 12 months from the date of adoption. |
| Date(s) Amended :        | N/A  |