

Deemed Provisions – Cl 67 Matters to be considered by local Government

Land Use:

a) The aims and provisions of this Scheme and any other local planning scheme operating within the area	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
<p>Comment:</p> <p><u>Definitions</u> The proposal is consistent with the definition of 'Fast Food/Take Away Shop' in TPS 2: <i>"means a shop wherein food is prepared and offered for sale for consumption principally off the premises".</i></p> <p>The proposed development is not considered to fall within the definition of 'Restaurant'. This is due to the definition of 'Restaurant' excluding scenarios where the sale of food for consumption outside the building is a principal part of the business. Due to the building being designed to accommodate a dual-lane drive-through Shire Officers consider the sale of food for consumption outside the building is a principal part of the business, therefore the proposed development must be considered as 'Fast Food/Takeaway Shop' rather than 'Restaurant'.</p> <p><u>Aims and Objectives of the Scheme</u> Clause 5.17 of TPS2 states the objectives of the 'Urban Development' zone, as follows: <i>"to provide for the orderly planning of large areas of land in a locally integrated manner and within a regional context, whilst retaining flexibility to review planning with changing circumstances".</i></p> <p>It is considered that the proposed land use is consistent with the objectives of the 'Urban Development' zone because the development services the needs of the community and is integrated with surrounding services to maximise convenience.</p> <p><u>Permissibility of Proposed Land Use</u> The subject lot is zoned 'Urban Development' under TPS2. A 'Fast Food/Take Away Shop' development is capable of approval in the 'Urban Development' zone under Clause 5.18.6.3 of TPS2.</p> <p><u>Due Regard to Structure Plans</u> It should also be noted that Clause 27 of the Planning and Development (Local Planning Schemes) Regulations 2015 (the Deemed Provisions) states: <i>"(1) A decision-maker for an application for development approval or subdivision approval in an area that is covered by a structure plan that has been approved by the Commission is to have due regard to, but is not bound by, the structure plan when deciding the application."</i></p> <p><u>DAP Discretion</u> The DAP needs to exercise its discretion before granting planning approval in accordance with Clause 27 (above). In giving 'due regard' to the Redgum Brook LSP and the Redgum Brook Local</p>			

Development Plan 21 (LDP21), the DAP must consider State and Local Planning Policies which are relevant to the proposed development. In this case, the overall development proposes minor variations to Local Planning Policies and more significant variations to the LDP which are discussed in detail below. In considering if the DAP uses its discretion and approves the application, the DAP is required to consider Schedule 2, Part 9, Clause 67 of the Deemed Provisions.

b) The requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> or any other proposed planning instrument that the local government is seriously considering adopting or approving	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: Refer to Orderly and Proper Planning section of Responsible Authority Report			

c) any approved State planning policy	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
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Comment:*State Planning Policy No.1 (SPP1)*

This Policy provides general principles for land use planning in the areas of environment, community, economy, infrastructure and regional development. Part A No.2 refers to planning taking account of and giving effect to these principles and related policies to ensure integrated decision-making throughout government.

Environment

This principle encourages the protection and enhancement of key natural and cultural assets of the State and deliver to all West Australian a high quality of life based on environmentally sustainable principles. Shire Officers note that the site is vacant and does not feature any remnant vegetation, so no opportunity is available for the development to protect any natural assets. Shire Officers consider that appropriate landscaping of the site as part of the development will positively contribute to the natural assets of the area.

Community

This principle encourages land use planning to respond to social changes and facilitate the creation of vibrant, safe and self-reliant communities. Shire Officers note that the population of the Byford area has increased dramatically over the past ten years. As a result of the substantial growth there is perceived to be a lack of local employment opportunities within the Shire. The Applicant has advised that the proposed development will employ between 10 to 15 staff at a time once operational. Shire Officers note that jobs will also be created during the construction phase of the development. Although only a small part of the development, Shire Officers acknowledge that the McDonald's development includes a play room facility for its patrons. Shire Officers consider that the development is consistent with the community principle of SPP1.

Economy

This principle encourages land use planning to actively assist in the creation of regional wealth, support the development of new industries and encourage economic activity in accordance with

sustainable development principles. This principle refers to avoiding land use conflicts by separating incompatible economic activities and land uses. Shire Officers acknowledge that development for Fast Food/Take Away businesses does not represent the development of a new industry. Subject to regulatory compliance, Shire Officers consider that the proposed development is unlikely to result in land use conflict. Shire Officers note that the site has been identified in the Redgum Brook LSP for 'Mixed Use' development, therefore the intention was for the subject site to be developed for commercial purposes rather than residential purposes. Development of a Fast Food/Take Away business is therefore more consistent with SPP1 and the Redgum Brook LSP than development for residential purposes.

Infrastructure

This principle encourages land use planning to facilitate strategic development by making provision for efficient and equitable transport and public utilities. The proposed development is a result of strategic planning which has identified the site as being suitable for development for 'Mixed Use' purposes. Being located near Thomas Road and within close proximity to Tonkin Highway means that the site is well serviced by vehicle based transport infrastructure. In addition, as the site has recently been created through subdivision of a larger balance lot it is fully serviced by public utilities. Shire Officers consider the proposed development to be consistent with the infrastructure principle of SPP1.

Regional Development

This principle encourages land use planning to assist the development of regional Western Australia by taking account of the special assets and accommodating individual requirements of each region. This principle does not directly relate to the proposed development.

The proposal is consistent with the State Planning Framework, Local Planning Framework being TPS 2 and the objectives of the zone. As a result, the development is considered to be in accordance with orderly and proper planning.

State Planning Policy 4.2 – Activity Centres (SPP 4.2)

The main purpose of this policy is to specify broad planning requirements for the planning and development of new activity centres and the redevelopment and renewal of existing centres in Perth and Peel. Byford is identified in this policy as a District Centre.

Officers consider the built form of the amended development to be consistent with the broad urban design objectives of SPP 4.2.

d) any environmental protection policy approved under the <i>Environmental Protection Act 1986</i> section 31(d) – None Applicable to this area from what I can determine	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

e) any policy of the Commission	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

f) any policy of the State	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

g) any local planning policy for the Scheme area	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
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Comment:

Local Planning Policy 56 – Fast Food Premises (LPP56).

LPP56 requires one car parking space for every five seats and one car parking space per five square metres of waiting area. With 110 seats and 13m² of counter waiting area the proposed development generates a requirement for 25 car parking spaces under LPP56. Excluding drive-through bays, the proposed development provides for 60 car parking bays. Therefore under LPP56 the proposed development has a car parking surplus of 35 bays.

Shire Officers are satisfied that the proposed development provides car parking in accordance with LPP56.

Bicycle Facilities

Local Planning Policy 58 – Bicycle Parking Facilities (LPP58) provides development standards for commercial development, dividing the requirement into short term bays (for customers) and long term bays (for employees).

LPP58 requires one space for every 100m² NLA for long term parking and one space for every 50m² NLA for short term parking. The proposed development therefore generates demand for 1.9 long term bays and 3.7 short term bays.

The development proposes only four short term facilities and no long term facilities. The Applicant has provided justification for not providing long term facilities based on limited need for long term facilities due to a large number of young and part-time employees. Shire Officers do not agree with the Applicants justification to not provide long term facilities. Shire Officers believe that employing a large number of young staff is likely to increase the use of long term bicycle facilities due to an increase in the number of staff which will not be old enough to have a car licence.

While Shire Officers acknowledge the Applicants justification for not providing long term bicycle facilities, Officers also note that the requirement for Fast Food/Take Away facilities in accordance with LPP58 has been applied as a condition to similar developments such as Hungry Jacks (Lot 101 Beenyup Road, Byford) and Kentucky Fried Chicken (Lot 77 Abernethy Road, Byford). The proposed development is of a similar form to those developments, including fast food and drive-through facilities. Shire Officers are not satisfied that the proposed development meets the requirements of LPP58 and therefore recommend a condition of approval requiring both short and long term bicycle parking be provided in accordance with LPP58.

Shire Officers acknowledge that Local Planning Policy 5 – Advertising Signs (LPP5) does not apply to the proposed development due to the development being proposed on land zoned 'Urban Development'. However, as Shire Officers are giving due regard to the LSP which designates the

subject site as 'Mixed Use', in turn Shire Officers are giving due regard to Planning Policies which would apply to 'Mixed Use' zoned land.

The proposed signage is a mix of sign types as defined by LPP5, including projecting signs, a pylon sign and wall signs.

Projecting Signs

The projecting signs are consistent with LPP5 and are considered appropriate by Shire Officers.

Wall Signs

LPP5 allows for two wall signs per façade. The Applicant proposes four signs facing Pingaring Court and three signs facing Pindipindi Loop. The Applicant has justified the wall signage variations based on the different services available – such as the traditional store, the McCafe and the Play Place area.

While Shire Officers acknowledge the various components of the proposed development, as far as TPS 2 considers land uses, they all form part of the Fast Food/Take Away Shop. However, the proposed signage is appropriate for the scale of the development and is considered to be consistent with the objectives of LPP5 as it is not superfluous and is commensurate to the realistic commercial need for advertising.

Pylon Sign

LPP5 allows pylon signs to be a maximum of six metres height from ground level, not exceeding 2.5m measured either horizontally or vertically across the face of the sign and no greater than four square metres in area.

The Applicant proposes a pylon sign facing Thomas Road which is ten metres in height, has a horizontal width of 4.343m and a sign face area of 13m². Shire Officers do not raise concerns regarding the width of face of the proposed pylon sign as it is not a solid area of sign and due to its shape is visually permeable.

Shire Officers raise significant concerns regarding the height of the proposed pylon sign. While Shire Officers acknowledge that a nine metre high pylon sign was proposed for the Service Station development located on Lot 857 Kardan Boulevard to the west of the subject site, the finished level of the subject site is up to 1.8m higher. Thus a ten metre high pylon sign on the subject site would approximately 2.8m higher than the pylon sign located on Lot 857 Kardan Boulevard.

Shire Officers consider that the proposed pylon sign is of a superfluous height and that it should be reduced to a height which results in a similar finished height as the pylon sign on Lot 857 Kardan Boulevard. To be of a similar finished height, the pylon sign on Lot 906 Kardan Boulevard would need to be reduced to 7.2m in height. Shire Officers note that a height of 7.2m is still a 1.2m variation to LPP5, however it represents a better planning outcome for the area.

Therefore Shire Officers recommend a condition of approval which requires the pylon sign to be a maximum of 7.2m in height.

Shire Officers are also concerned that the proposed pylon sign will be in a location which has an adverse impact on the visual amenity of nearby residents. In its proposed location, there is minimal setback to residential lots and no opportunity to screen the sign as it is in close proximity to the boundary of the property. Shire Officers consider there to be an opportunity for the pylon sign to be relocated to provide a greater setback to nearby residential properties and thus an

increased possibility that trees within the car park and landscaping areas will provide a visual separation and partial screen.

Shire Officers recommend a condition of approval to amend the location of the pylon sign to be 50m west of the current proposed location. In this location the proposed building would provide a visual screen between the illuminated sign and residential lots on Pindipindi Loop.

h) any structure plan, activity centre plan or local development plan that relates to the development	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: Consistent with Mixed Use depicted by Structure Plan			

i) any report of the review of the local planning scheme that has been published under the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

j) in the case of land reserved under this Scheme, the objectives for the reserve and the additional and permitted uses identified in this Scheme for the reserve	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

Development:

k) the built heritage conservation of any place that is of cultural significance	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

l) the effect of the proposal on the cultural heritage significance of the area in which the development is located	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: Refer to Form of Development section of Responsible Authority Report.			

n) the amenity of the locality including the following – I. Environmental impacts of the development	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
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II. The character of the locality			
III. Social impacts of the development			
Comment: Refer to Amenity section of Responsible Authority Report.			

o) the likely effect of the development on the natural environment or water resources and any means that are proposed to protect or to mitigate impacts on the natural environment or the water resource	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

p) whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: The proposed development includes landscaping, however there is no opportunity for vegetation to be preserved.			

q) the suitability of the land for the development taking into account the possible risk of flooding, tidal inundation, subsidence, landslip, bushfire, soil erosion, land degradation or any other risk	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

r) the suitability of the land for the development taking into account the possible risk to human health or safety	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

s) the adequacy of –	YES	NO	N/A
I. The proposed means of access to and egress from the site; and	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
II. Arrangements for the loading, unloading, manouvering and parking of vehicles			
Comment: Shire Officers acknowledge that the Applicant has provided a traffic assessment of the proposed development which indicates that the internal vehicle circulation, as well as traffic entering and exiting from the site will comply with engineering standards. Shire Officers have assessed the traffic information and agree that the proposed development has been designed in an appropriate manner. While the development would increase the traffic visiting the localised area, it is traffic that was anticipated to be generated by commercial uses on the subject site. Shire Officers acknowledge that community consultations submissions have raised concerns with the safety of the Thomas Road and Kardan Boulevard intersection, however Shire Officers note that accident statistics for this intersection show that the cause of accidents is driver error, rather than a poorly designed intersection. Shire Officers note that the Traffic Assessment also identifies that the Kardan Boulevard and Thomas Road intersection is projected to 'fail' by 2031, however this is not directly attributed to			

the proposed development, instead it is due to the overall growth of the residential population in the nearby area.

Shire Officers are satisfied that the Applicant has sufficiently demonstrated that traffic impacts of the proposed development are at an acceptable level.

t) the amount of traffic likely to be generated by the development, particularly in relation to the capacity off the road system in the locality and the probable effect on traffic flow and safety	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
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Comment: Shire Officers are satisfied that the Traffic Assessment demonstrates that the site can be suitably serviced both in the short and long term. Upgrades to the Kardan Boulevard and Thomas Road intersection is likely to be required by 2031 to ensure ongoing functionality.

u) the availability and adequacy for the development of the following – I. Public transport services II. Public utility services III. Storage, management and collection of waste IV. Access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities) V. Access by older people and people with disability	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
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Comment:

Bus services are currently available to Thomas Road.

The site is able to connect to all major service providers.

Bicycle facilities have been added as a recommended condition of planning approval.

The site plans indicate disability parking bays in close proximity to the entrance to the tenancy.

v) the potential loss of any community service or benefit resulting from the development other than potential loss that may result from economic competition between new and existing businesses	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
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Comment: The proposed development will result in additional services for the community, particularly dining opportunities.

w) the history of the site where the development is to be located	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
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Comment:

x) the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: The proposed development is considered by Shire Officers as likely to have a positive impact on the community.			

y) any submissions received on the application	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: Refer to Responsible Authority Report and Schedule of Submissions			

Za) the comments or submissions received from any authority consulted under clause 66	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment: See Responsible Authority Report for Main Roads WA comments			

Zb) any other planning consideration the local government considers appropriate	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			