

POS	CLAUSE 32 APPLICATIONS	PSPD23
------------	-------------------------------	---------------

POSITION STATEMENT CODE:	PSPD23
DIRECTORATE:	Planning & Development
BUSINESS UNIT:	Development Services
SERVICE UNIT:	Statutory Planning
RESPONSIBLE OFFICER:	Manager, Statutory Planning
FILE NO.:	182/002
DATE FIRST ADOPTED:	11 October 2012
DATE LAST REVIEWED:	10 December 2015
ATTACHMENTS:	N/A
VERSION NO.	3

Dates of Amendments / Reviews:		
DAPPS Meeting:	27 September 2012 22 August 2013	26 February 2015 26 November 2015
OCM:	11 October 2013 12 September 2013	12 March 2015

BACKGROUND:

Within the City of Cockburn from time to time there may be Clause 32 Declarations made by the Western Australian Planning Commission (WAPC) under the Metropolitan Region Scheme (MRS). These declarations affect both specific areas and particular types of land use.

According to the Crown Solicitors' Office, two separate determinations are required for the development or use of land affected by a Clause 32 resolution. This occurs because the delegation to the Local Government to issue a determination under the Metropolitan Region Scheme has been withdrawn by the WAPC resolution.

The two determinations, therefore are:-

1. A determination by the WAPC under the Metropolitan Region Scheme (MRTPS Act).
2. A determination by the City under the local town planning scheme. (P&D Act)

Contrary to the Crown Solicitor's advice, the City's own legal advice contends that where a determination is issued by the WAPC under the MRS, there is no need for the local government to issue a corresponding determination under the local scheme. This is based on a decision of the Town Planning Appeals Tribunal.

However, as the WAPC operates under the advice of the Crown Solicitor, it is considered advisable at this time to continue to issue determinations under the City's Town Planning Scheme.

POS	CLAUSE 32 APPLICATIONS	PSPD23
------------	-------------------------------	---------------

PURPOSE:

The purpose of the policy is to ensure that the process of determining development applications affected by a Clause 32 Resolution is undertaken consistently.

POSITION:

(1) The Council will continue to issue determinations for applications affected by a Clause 32 resolution under the Town Planning Scheme. The procedure for dealing with applications is as follows:

1. The City is required to refer to the Western Australian Planning Commission all applications for development the subject of a Clause 32 Resolution under the MRS within 7 days of receiving the application.
2. The City's Statutory Planning Service will ensure that the application has been made on an MRS Form 1 and 'Applicaton for Deveopment Approval' under Town Planning Scheme No.3 (TPS 3), has suitable plans and information attached, is signed by the owner of the land and the requisite fee has been paid.
3. A standard letter shall accompany the application and advise the WAPC:-

"The attached application is referred to the WAPC under Clause 29(1) of the Metropolitan Region Scheme for its determination under Clause 32 of the Act.

The City will determine the application separately under the local town planning scheme and forward a copy of its decision to the Commission within 42 days of the receipt of the application."

4. The applicant is to be advised that the application has been forwarded to the WAPC for determination under the MRS and that the City will determine the application under the TPS. Any queries regarding the MRS approval process are to be directed to the responsible officer in the Department of Planning.
5. A copy of the MRS Form 1, together with one (1) copy of any accompanying plans and information shall be placed on the City's files together with the City's determination and the Form 2 Notice of Approval / Refusal forwarded to the City by the WAPC following its determination.
6. The WAPC is responsible for clearing and enforcing any conditions arising from its determination. It is also responsible for responding to, and defending any applications for Review of a decision that may arise in respect of the Commission's determination.

POS	CLAUSE 32 APPLICATIONS	PSPD23
------------	-------------------------------	---------------

7. It is the landowner's responsibility to ensure that all approvals are in place prior to commencement of construction, or use of the land.