

**POLICY NO. 7.5.11****EXERCISE OF DISCRETION FOR  
DEVELOPMENT VARIATIONS****INTRODUCTION**

The guidelines contained within this Policy are designed to provide a framework to assist the Council in determining development applications that require the exercise of discretion for variations to standards or requirements set out under the Scheme or prescribed under a Local Planning Policy.

Clause 40 of the City's Town Planning Scheme No. 1 relating to the Determination of Non-Complying Applications provides discretion to the Council to approve development applications which does not comply with a standard or requirement of the Scheme or in the Scheme Map.

**OBJECTIVES**

1. Provide an equitable and standardised process to determine non-complying development applications received by the City;
2. Create an incentive based approach to encourage landmark development that provides a direct and tangible benefit to the environment, the community and local residents;
3. Encourage development that exhibits design excellence and sustainable design principles in key strategic sites within the City;
4. Encourage development that provides a range of housing typologies that address the demographic and growing needs of the community; and
5. Encourage the retention and adaptive re-use of the City's building stock.

**DEFINITIONS****Non-Complying Application**

An application which does not comply with a standard or requirement of the Scheme, including a standard requirement set out in a Planning Policy or in the Scheme Map, where the standard or requirement does not provide for any permitted variation. A Non-Complying Application does not apply to a prohibitive use.

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**POLICY STATEMENT****1. VARIATIONS TO STANDARDS OR REQUIREMENTS PRESCRIBED UNDER THE SCHEME**

- 1.1 For all development proposing a variation to standards of requirements prescribed under the Town Planning Scheme No. 1, the Council must have due regard to any submissions received or expressed views prior to making its determination to grant the variation and be satisfied by an Absolute Majority that any non-complying development:
- 1.1.1 is consistent with the orderly and proper planning of the locality and the conservation of the amenities of the locality; and
  - 1.1.2 will not place undue impact on the occupiers and users of the development, the inhabitants of the locality or the likely future development of the locality; and
  - 1.1.3 is consistent with the overall objective of the Scheme or Local Planning Strategy or of the relevant Local Planning Policy; and
  - 1.1.4 where applicable, results in the conservation, adaptive re-use or enhancement of an existing building worthy of retention, including, but not limited to any place included in the City's Municipal Heritage List.

**2. VARIATIONS TO STANDARDS OR REQUIREMENTS PRESCRIBED UNDER A LOCAL PLANNING POLICY.**

- 2.1 Except for the variation of the number of storeys for a building, which is to be determined under clause 3 below, the Council may vary any standard or requirement prescribed under a Local Planning Policy, provided the Council is satisfied that the proposed variation:
- 2.1.1 would not be detrimental to the amenity of the locality;
  - 2.1.2 is consistent with the overall objective of the Scheme or Local Planning Strategy or of the relevant Local Planning Policy; and
  - 2.1.3 where applicable, results in the conservation or enhancement of an existing building worthy of retention, including, but not limited to any place included on the City's Municipal Heritage Inventory.

**3. VARIATIONS TO THE NUMBER OF STOREYS UNDER A LOCAL PLANNING POLICY.**

- 3.1 The provisions of this Policy must not be used in conjunction with the requirements of Town Planning Scheme No. 2 as adopted by Council at its Special Meeting held on 18 November 2014.
- 3.2 The Council may approve a variation to the number of the storeys prescribed as a maximum building height under a Local Planning Policy if the following provisions are satisfied in the table below.

- 3.3 All Applications must demonstrate the Essential Criteria (EC), in addition to at least one Additional Requirement (AR) for the Council to consider an Application with respect to a variation to the number of storeys. The degree of variation to the number of storeys allowed will be subject to the number and quality of measures proposed to meet the Additional Requirements.

## REQUIREMENTS FOR VARIATIONS TO NUMBER OF STOREYS

Table 1: Prescribed Height Limit – 2 or 3 Storeys. Variation - 1 Additional Storey

Prescribed Height Limit	Variation	Essential Criteria	Additional Requirements
2 or 3 storeys	1 additional storey  (which is not to exceed a height of 3.5 metres)	<p><b>EC 1.1</b> The variation will not be detrimental to the amenity of the locality, nor will it result in development that would adversely affect the significance of any heritage place or area;</p> <p><b>EC1.2</b> The site is zoned Residential R60 and above, Residential/Commercial, District Centre, Local Centre or Commercial; and</p> <p><b>EC1.3</b> the proposed development incorporates exemplary design excellence and has the positive recommendation of the City's Design Advisory Committee.</p> <p><b>EC1.4</b> <u>minimum 20% of the site area will be soft landscaping. Soft landscaping excludes "green walls".</u></p> <p><b>EC1.5</b> <u>minimum 30% of the site area will be open space.</u></p> <p><b>EC1.6</b> <u>Where the rear of the site adjoins land coded R40 and below, the proposal does not include variations to the rear setback as required by Council policy</u></p>	<p>The development must meet one (1) or more of the following additional requirements:</p> <p><b>AR 1.1</b> <del>The natural ground level of the site is sloping downwards from the primary street and</del> <del>the proposed development has the appearance of a two-storey development from the primary street; or</del></p> <p><b>AR 1.2</b> the proposed development conserves, enhances or adaptive re-uses an existing building worthy of retention, including, but not limited to any place on the City's Municipal Heritage List; or</p> <p><b>AR 1.3</b> the proposed development incorporates sustainable design features which would qualify the development to receive a rating which significantly exceeds that required under the statutory minimum as assessed by an Organisation recognised by the Council; or</p> <p><b>AR 1.4</b> the proposed development provides affordable housing, demonstrated through partnership agreements with an approved housing provider recognised by the Department of Housing.</p>

Table 2: Prescribed Height Limit – 3 Storeys – Variation for 2 Additional Storeys

Prescribed Height Limit	Variation	Essential Criteria	Additional Requirements
3 storeys	<p><b>2 additional storeys</b></p> <p>(which is not to exceed a height of 7 metres)</p>	<p>Refer to <b>EC 1.1 to 1.3</b> (above); and</p> <p><b>EC 1.4</b> the site adjoins a road prescribed on the Main Roads WA Perth Metropolitan Functional Road Hierarchy map as a Primary Distributor or District Distributor; or</p> <p><b>EC 1.5</b> the site has a land size of 1000 square metres or greater.</p>	Refer to <b>AR 1.1 – AR 1.4</b> (above)."

Table 3: Prescribed Height Limit – 4 Storeys or More. Variation - 1 Additional Storey

Prescribed Height Limit	Variation	Essential Criteria	Additional Requirements
4 storeys or more	<p><b>1 additional storey</b></p> <p>(which is not to exceed a height of 3.5 metres)</p>	<p><b>EC 2.1</b> the variation would not be detrimental to the amenity of the locality, nor will it result in development that would adversely affect the significance of any heritage place or area; and</p> <p><b>EC 2.2</b> the proposed development incorporates exemplary design excellence and has the positive recommendation of the City's Design Advisory Committee.</p> <p><b>EC 2.3</b> <u>minimum 20% of the site area will be soft landscaping.</u></p> <p><u>Soft landscaping is defined by this policy as any landscaped area with a minimum soil depth of 300mm that contains in ground planting, and is exclusive of removable planter boxes/pots, green walls and porous paving areas.</u></p> <p><b>EC 2.4</b> <u>minimum 30% of the site area will be open space.</u></p> <p><b>EC2.5</b> Where the rear of the site</p>	<p>The development must meet one (1) or more of the following additional requirements:</p> <p><b>AR 2.1</b> the proposed development conserves or enhances an existing building worthy of retention, including, but not limited to all places on the City's Municipal Heritage List; or</p> <p><b>AR 2.2</b> the proposed development incorporates sustainable design features which would qualify the development to receive a rating which significantly exceeds that required under the statutory minimum as assessed by Organisation recognised by the Council; or</p> <p><del><b>AR 2.3</b> the development includes a significant community or other facility that constitutes a significant improvement to the locality; or</del></p>

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Prescribed Height Limit	Variation	Essential Criteria	Additional Requirements
		<u>adjoins land coded R40 and below, the proposal does not include variations to the rear setback as required by Council policy</u>	<p><b>AR 2.4</b> the proposed development provides affordable housing, demonstrated through partnership agreements with an approved housing provider recognised by the Department of Housing; or</p> <p><b>AR 2.5</b> the proposed development will result in the ceding of significant land to the local government for a public purpose and/or public open space; or</p>
			<p><del><b>AR 2.6</b> the proposed development effects the discontinuance of a non-conforming use; or</del></p> <p><del><b>AR 2.7</b> the proposed development provides short stay accommodation, in the form of a hotel, serviced apartments or similar.</del></p>

*Table 4: Prescribed Height Limit – 4 Storeys or More. Variation - 2 Additional Storeys*

Prescribed Height Limit	Variation	Essential Criteria	Additional Requirements
<b>4 storeys or more</b>	<b>2 additional storeys</b>  (which is not to exceed a height of 7 metres)	<p>Refer to <b><u>EC 2.1, EC2.2, EC2.3 and EC2.4 and 2.5 1 and 2.2</u></b> (above); and</p> <p><b>EC 2.63</b> the site is regarded by Council as a strategic development site in accordance with the following criteria;</p> <p><b>EC 2.63.1</b> the site adjoins a road prescribed on the Main Roads WA Perth Metropolitan Functional Road Hierarchy map as a Primary Distributor or District Distributor; or</p> <p><del><b>EC 2.3.2</b> the site is located in District Centre or a Commercial or a Residential/Commercial zoned area; or</del></p>	Refer to <b>AR 2.1 – AR 2.7 5</b> (above).

Prescribed Height Limit	Variation	Essential Criteria	Additional Requirements
		<b>EC 2.6.2 3.3</b> the building would be a prominent gateway building into the district of the local government and/or the site is a prominent gateway site into the district of the local government.	

#### 4. VARIATIONS TO THIS POLICY

- 4.1 Any variations to Part 3 of this Policy is considered a non complying application in accordance with the City's Town Planning Scheme, therefore requires an Absolute Majority Decision.

<b>Date Initially Adopted:</b>	20 November 2012
<b>Date Amended:</b>	9 April 2013, 10 September 2013
<b>Date of Next Review:</b>	April 2018