

Town Planning

An introduction and overview of the fundamentals



Not always black and white – there is often grey

Planning is an 'Art' rather than a science and within it there are many grey areas and is open to a lot of interpretation.

This provides great flexibility but can also provide complexity.

Unlike prescriptive 'Codes' disciplines like engineering or building, where the answer can be as clear as YES or NO, Planning does rely greatly on interpretations against objectives and is very outcomes based.

Town Planning was actually an Olympic event in 1928, 1932, 1936 and 1948



What is Town Planning

- There are essentially two disciplines in the Local Government context
 - Strategic Planning
 - Which seeks to plan for the future, design policy and the planning framework
 - Statutory Planning
 - Responsive to developers and applicants who want to subdivide, develop or change the use of land
 - Implement the instruments of the planning framework
 - Regional Scheme
 - Local Planning Scheme
 - State and Local Planning Policy (Residential Design Codes, Advertising devices etc)



Why do we do it?

The primary objective for planners is sustainable development

“development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” (Bruntland Commission 1987)

Further to this global objective, planners at the local government level seek to ensure economic growth and responsible response to community needs while seeking to protect the amenity and enjoyment of people who live here and the environment in which they live.

We think we do a good job....

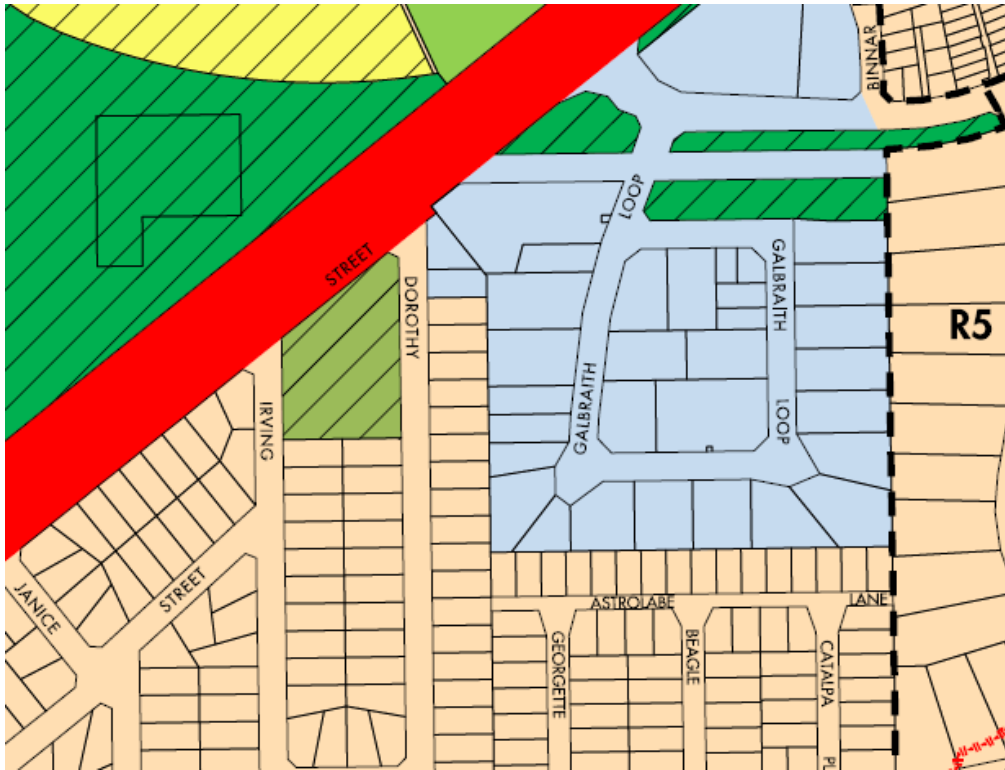


When Good Planning doesn't happen



Mitigation Measures

Sometimes there are incompatible land uses next to each other – Galbraith Loop Industry and Service Commercial adjacent to Residential for example

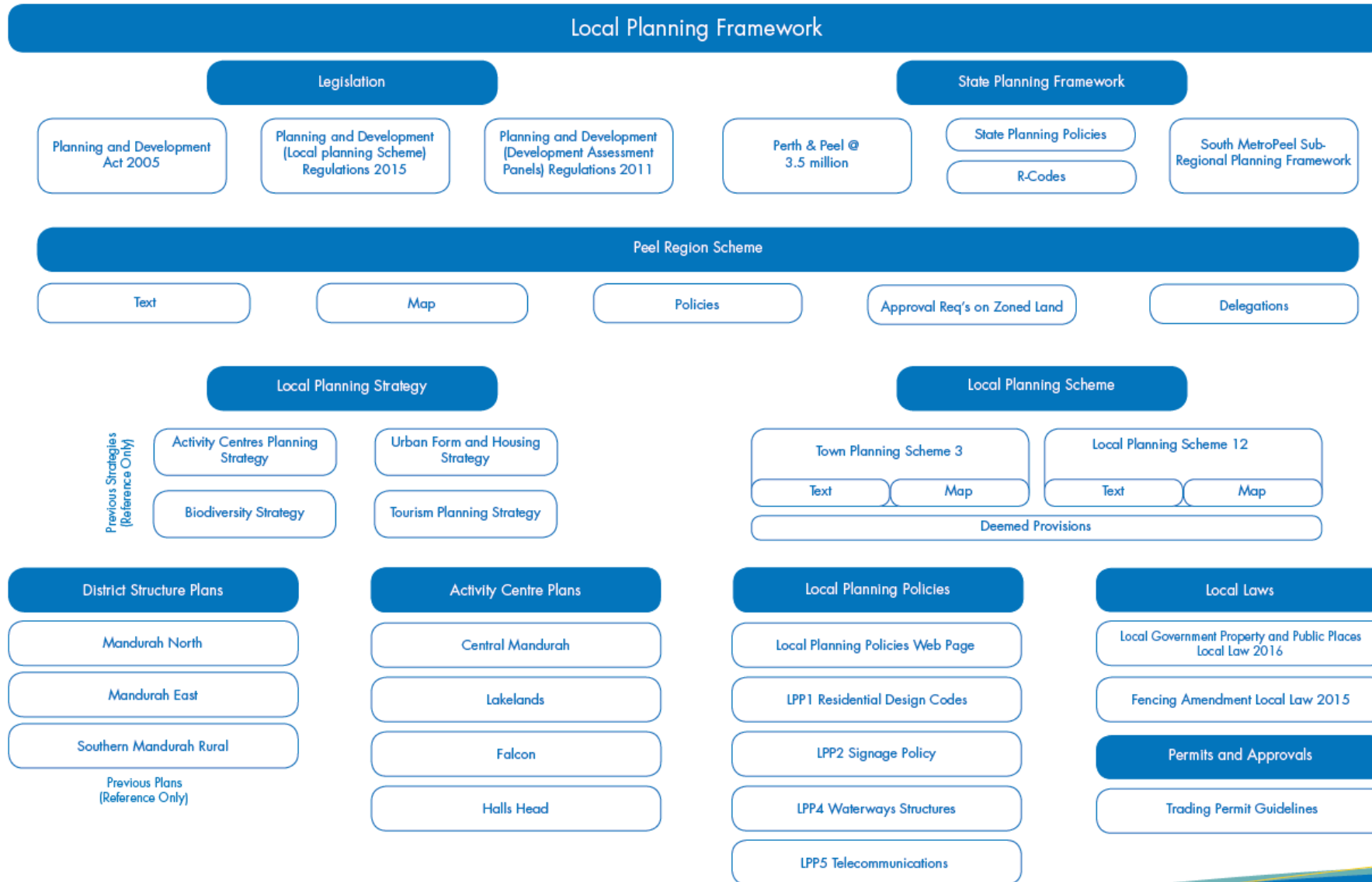


Local Planning Policy specifically to address the contrasting land uses (LPP9)

- Vegetated buffer
- Increased setbacks (7m)
- Limited land uses



The Framework



Decision making and the role of Elected Members

- Largely, the Elected member involvement is with setting the rules and policy rather than individual decisions.
- Most decisions are made under delegated authority with officers undertaking a planning assessment against the suite of rules and policies that exist.
- Sometimes with significant proposals or even just proposals that are expensive to build, the Joint Development Assessment Panels become the decision making authority.
- The Council is not the determining authority for subdivisions or Local Structure Plans as this function is performed by the West Australian Planning Commission (WAPC), however the Council and City provide recommendations and are a referral agency in the assessment process.
- Sometimes, however, it is necessary for Council to be the determining authority. For example;
 - Non residential development where there is opposition
 - Matters of community significance and interest



Making Planning Decisions

In making Planning decision there is often significant interest and at times there are competing views.

The West Australian State Government released a document to guide practitioners called '***Making Good Planning Decisions***'.

This document is 95 pages long, demonstrating the complexity and nuances that can be involved in the planning discipline.

But fundamentally there are things that can and things that cannot be considered when making planning decisions.

Things that can be considered	Things that cannot be considered
Privacy	A better proposal
Loss of light or overshadowing	Property value
Parking	Economic competition
Noise	Moral positions
Lawfulness of proposals	



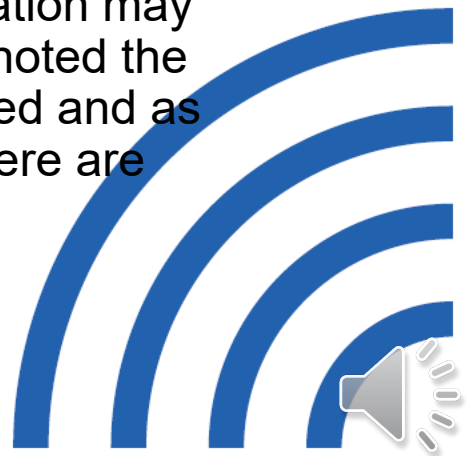
Discretion to Modify Development

Importantly, while Planning Schemes and Planning Policies are full of development standards such as setbacks, height limitations, parking provisions and other restrictions, there are often times where decisions can be made where an application does not achieve the standards.

Planning assessments will often include matters where discretionary decisions are required to modify the development standards.

These assessments and recommendations are merit based and will consider the impact and most importantly the outcome.

An example of considering an aspect that may not achieve the approved policy development standards is the Child Care Centre being considered. While acknowledged there are 28 bays required by the Policy, the addition of 5 on street bays and the existence of the on street bays associated with the School are considered. The Planning rationale and merit based recommendation recognised there is a certain reciprocity where a percentage of the child care population and the school population may be from the same family and therefore only one parking action for both is required. It is also noted the peak time for the school and the peak time for the child care centre are not necessarily aligned and as such there is now on street bays for school parents when the child care is not in peak and there are bays available for child care parents when the school is not in peak.



Decisions

There are three possible outcomes for an application

1. **Approval without conditions;**
2. **Approval with conditions; and**
3. **Refusal**

Applicants then have the right to have decision or conditions reviewed by the State Administrative Tribunal (SAT)

As a result, we are very careful to recommend decisions and conditions that we are prepared to and able to defend.

Refusals are rare as we prefer to negotiate change but when they are recommended it is critical that the reasons given are based on planning grounds. If not, the City's success in defending such decisions is very low which risks our reputation, can be very costly and is resource heavy.



Conditions

Discretionary decisions are made subject to conditions almost all of the time.

Conditions are subject to appeal and must fit the following criteria;

1. It has a planning purpose
2. It fairly and reasonably relates to the development
3. It is not so unreasonable that no reasonable planning authority could have imposed it
4. The condition is certain and final



Conditional expanded

Must have a planning purpose

- For example it should relate to planning and not things covered by other legislation.
- For example a condition could not be imposed that said a development must be built by a particular company

Fairly and reasonable relates to the development (nexus)

- For example could not condition the upgrade of a different property owned by the applicant and not specifically linked to the application
- For example cannot unreasonably change what was applied for through a condition – for example you could not condition that a storey be deleted



Conditions expanded

Must not be unreasonable

- Could not impose a condition for a proposed small shop that required a \$10 million upgrade to an intersection for example.
- Imposing a condition that required the developer to provide more parking than required under the planning framework.

Must be Certain and Final

- Conditions should not have vague or open ended triggers – for example ‘the development shall be painted a satisfactory colour’.



Thank You

Questions?

Slides have been added containing some information based on questions that were asked in the chamber.



Question Responses

Can conditions be imposed that provide a date by which developments must be completed?

- Development approvals currently must be substantially commenced within 4 years of the date of their approval and then they expire, but it is not common for a condition that requires works to be complete within a certain time.
 - If there is an occasion where a development has been commenced but not completed, it may be the case where the developer has gone to of business and therefore, compliance action would become problematic.
 - If concerns exist about a half finished development that relate to untidy construction sites or potentially safety, there are existing local laws and other legislative mechanisms that can be enacted.

Is there a function where once the Planning approval has been done, then it is handed over to another team to ensure compliance and are we involved in the compliance?

- Once a development approval has been issued, the applicant is then required to obtain a Building Permit in most cases. Any conditions that relate to the development approval conditions are certainly something the Planning team are involved in the compliance.
 - Planning conditions always include a trigger point, For example, it is common for a development condition to include “prior to occupancy” as the trigger. If for example the condition said “prior to occupancy, the landscaping shall be installed to the satisfaction of the City”; prior to the building team issuing an Occupancy Certificate, planners would inspect and advise. That allows the City to withhold occupancy certificates and ensure conditions are appropriately met.
 - If conditions of approval are not adhered to the City has the opportunity o undertake compliance action under the provisions of the Planning and Development Act. For example, if the condition of approval required the implementation of the Waste Management Plan and the developer failed to do so, infringements or even prosecution may follow.



Question responses continued...

When an application is made, as part of the assessment there are a lot other departments that are consulted, for example road networks, geotechnical information, power and water. Is this something the Planning Department consider and / or collate?

- There are two responses to this question
 - Subdivision
 - With regard to an application for subdivision approval, the WAPC are the responsible authority and refer the proposals out to the agencies such as Water Corporation, Western Power and Telstra for example. The City of Mandurah is part of this referral process and provides a recommendation to the WAPC and includes conditions.
 - The subdivision approval granted by the WAPC will include a number of conditions and will include the authority who is responsible for clearing those conditions.
 - The City does discuss these proposals interdepartmentally during the formulation of the assessment and recommendation to the WAPC.
 - Development
 - As the City is responsible for the determination of the majority of Development Applications (besides those considered by the Joint Development Assessment Panels), as part of the assessment, planners rely on our own expertise and certainly on the expertise of relevant others. We have fortnightly meetings with Engineers, weekly meetings with the Building team and other departments such as Health Services and Waste Management are regularly and routinely consulted internally as part of a thorough assessment.
 - Applications are generally made that include the necessary technical reports. For example, a Traffic Impact Statement was provided in support of the Child Care Centre – this was referred to the City's traffic engineer and considered acceptable which helped officers arrive at the recommendation.



Questions Continued.....

Sometimes on paper a proposal fits but ideologically it does not quite fit, does your team factor that in as well?

- When making a planning decision, we must remain focussed on planning matters. Planners themselves may hold a certain ideological view, however as all decisions and conditions are potentially subject to appeal, it is only possible to base decisions on matters that are therefore defensible

