

Planning Law Update

A review of Planning and Environmental Law in Western Australia

SPECIFYING THE HEIGHT LIMITS OF BUILDINGS

The Residential Design Codes (“**Codes**”) note that although there are two basic measures of building height, one being height in storeys and the other height in metres, the former has problems of definition and can also vary depending on ceiling heights. In view of those potential difficulties, the Codes specify the maximum height of building in metres rather than storeys. This is not always the case, however, in planning instruments.

State Administrative Tribunal consideration

In *Grove & Ors v. City of Stirling* [2006] WASAT 136, the State Administrative Tribunal (“Tribunal”) considered an application for review of a refusal by the City of Stirling to approve an application to add four stories to an existing five storey hotel which would have resulted in the overall height of the building being 26.1 metres. The application was refused despite a proposed amendment to the City’s District Planning Scheme which would have allowed a building of up to 8 storeys or 32 metres on the subject site.

In considering the application, the Tribunal criticised the City of Stirling Planning Scheme Amendment No. 457 and draft Amendment 458 because there was no rational explanation as to why a height limit in storeys was imposed rather than an absolute height limit in metres. In addition, the Tribunal made the following comment:

“Why ... a nine storey building of 26.1 metres would be unacceptable when an 8 storey building of 32 metres is acceptable, is not apparent.”

“Why, from the planning perspective, a nine storey building of 26.1 metres would be unacceptable when an 8 storey building of 32 metres is acceptable, is not apparent. No explanation is found in the policy document relied upon by the WAPC and the Minister which formed the basis for height limits found in Amendment 457 and draft Amendment 458.” (at paragraph 38)



State Coastal Planning Policy

The policy document referred to by the Tribunal was also the forerunner to the Amendment to State Planning Policy 2.6: State Coastal Planning Policy, which was gazetted on 19 December 2006 (“**SPP 2.6 Amendment**”). The SPP 2.6 Amendment indicates that the *“height of buildings should be limited to a maximum of 5 storeys (and not exceeding 21 metres) in height ... Higher structures up to a maximum of 8 storeys (and not exceeding 32 metres in height) may be permitted ...”* in certain circumstances.

In addition, on 3 November 2006 the WAPC published a notice of resolution pursuant to clause 32 of the Metropolitan Region Scheme, and another pursuant to clause 21 of the Peel Region Scheme, requiring various coastal local governments to refer for determination by the Commission all applications for residential development “exceeding 5 storeys or 21 metres in height (or both), or exceeding 8 storeys or 32 metres in height (or both) where a height of 8 storeys or more is permissible under the Local Government Scheme on land within 300 metres of the horizontal setback datum defined in State Planning Policy No. 2.6”.

Consequences of the SPP 2.6 Amendment

Given the statements in the Codes and the Grove decision, it is unfortunate that the SPP 2.6 Amendment and the WAPC resolutions both use a measurement of height for buildings in storeys rather than an absolute height in metres. Not only is there no rational or planning explanation for this approach but it can also lead to complications and inconsistencies. For example, a five storey building and a six storey building of the same overall height will face different approval processes as a result of the WAPC resolutions. Had the SPP 2.6 Amendment specified a maximum height limit for building in metres rather than stories, this potential inconsistency could not arise.

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The information contained in this update should not be relied upon without obtaining further detailed legal advice in the circumstance of each case