

Design WA – Inability of Local Government to Require Improved Design in Development Applications

By Denis McLeod

It is not uncommon for a local government responsible for assessing an application for planning approval, to come to the view that a proposed development is badly designed, with the consequence that the proposed development will be either detrimental to the streetscape, detrimental to the amenity of the locality, or score poorly on liveability by neglecting design elements reflecting negatively on the amenity and convenience of future inhabitants. However, in accordance with normal planning principle, it is considered that a decision-making authority does not have a role in redesigning a proposed development. If a proposed development complies with all relevant standards, then it is ordinarily considered to be impermissible for the responsible planning authority to refuse the proposal because of design deficiencies.

That is the approach which the WATPAT and the SAT on numerous occasions have adopted when the Tribunal has been urged by a respondent to either refuse a badly designed development proposal, or to impose conditions aimed at improving the design outcomes. The normal Tribunal response in that situation is that the redesign of a proposal is not part of its role if the proposal ‘ticks all the boxes’ in regard to the applicable standards and requirements for a development of that kind.

In face of the current pressures to reduce residential lot sizes, and to allow ever increasingly high-density development, there is a pressing need for decision-making authorities to be given greater power to require good design outcomes in residential development proposals. It may be the same could be said of commercial and industrial development proposals.

What is required is a provision in the model scheme text in Schedule 1 of the Planning and Development (Local Planning Schemes) Regulations 2015, or even preferably in the deemed provisions in Schedule 2, which make it clear that a decision-maker under an LPS is able to consider design outcomes in a proposed development, and to refuse approval, or impose appropriate conditions, if a proposed development is poorly designed, even if the poor design does not justify refusal on grounds of amenity impact. It is not likely that such a provision would be contemplated in either the model scheme text or in the deemed provisions unless there was some balancing provision to ensure that a decision-maker in considering design outcomes, is acting on appropriate advice. It may be that a provision giving power to a decision-maker to refuse approval or impose appropriate conditions where a development proposal is poorly designed, would require the decision-maker to demonstrate that its views in regard to design are based on a report by a design advisory committee or the like.

On 19 October 2016 the Hon Minister for Planning released ‘Design WA’, which has been described as a suite of policy documents seeking to elevate the importance of design in planning, integrating early design review and encouraging stronger design skills. This would seem to be an appropriate time for the Department of Planning to consider the provision of a power in planning schemes to planning decision-makers to in-effect require the redesign of a badly designed proposal.



Such provision would make it clear that a decision-maker under an LPS is authorised to require better design outcomes consistent with advice given by an independent person or body, such as a design advisory committee, and if necessary to refuse an application on the basis of poor design.

If you would like to discuss any of the matters raised in this article further, please do not hesitate to contact Denis McLeod at dmcleod@mcleods.com.au. The information contained in this update should not be relied upon without obtaining further detailed legal advice in the circumstances of each case.