

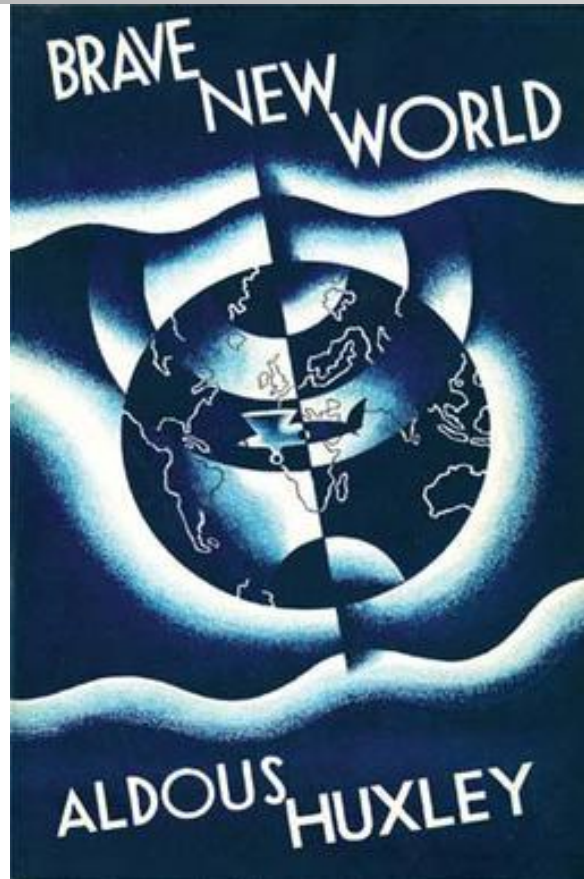
WALGA PLANNING SHOWCASE

THE BRAVE NEW WORLD OF PLANNING UNDER THE 2015 REGULATIONS

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Brave New World



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Structure plans: What are they good for?

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Amherst Developments v Gosnells

- Residential Development zone.
- ODP (Structure Plan) zoned land Local Centre.
- Development assessment against Local Centre zoning.

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Result:

- ODP is due regard only.
- ODP cannot zone land.
- Use permissibility according to Zoning Table.

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Development is to be in accordance with an approved structure plan.

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- ‘(7) If the zoning table does not identify any permissible uses for land in a zone the local government may, in considering an application for development approval for land within the zone, have due regard to any of the following plans that apply to the land —
- (a) a structure plan;
 - [(b) *deleted*]
 - (c) a local development plan.’

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No.	Description of land	Requirement
32.4	Mixed Use, Local Centre and Neighbourhood Centre zones	<p>(1) On land zoned Local Centre and Neighbourhood Centre, <u>residential uses are not permitted on the ground floor facing a primary and/or secondary street, except where the use faces a right-of-way or laneway.</u></p> <p>(2) <u>Residential uses are not permitted on the ground floor facing primary or secondary streets, except where the use faces a right-of-way or laneway in the Mixed Use zone, or where identified in an approved local planning policy.</u></p> <p>(3) Buildings are to have active frontages to the primary and/or secondary street, except where a use faces a right-of-way or laneway.</p> <p>(4) Minimum tenancy depth facing a street is 10m. (5) In relation to developments that are not subject to the RCodes, where development standards are not specified in an approved structure plan, local development plan, local planning policy and/or activity centre plan, the development standards are subject to the applicable RCode.</p>

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'34. Variations to site and development requirements

(1) In this clause –

additional site and development requirements means requirements set out in clauses 32 and 33.

(2) The local government may approve an application for a development approval that does not comply with an additional site and development requirements.'

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- ‘(5) The local government may only approve an application for development approval under this clause if the local government is satisfied that -
- (a) approval of the proposed development would be appropriate having regard to the matters that the local government is to have regard to in considering an application for development approval as set out in clause 67 of the deemed provisions; and
 - (b) the non-compliance with the additional site and development requirement will not have a significant adverse effect on the occupiers or users of the development, the inhabitants of the locality or the likely future development of the locality.’

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'standard structure plan means a plan for the coordination of future subdivision and zoning of an area of land

precinct structure plan means a plan for the coordination of future subdivision, zoning and development of an area of land'

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‘(iii) any major land uses, zoning or reserves proposed by the plan’

Mastaglia and City of Cockburn

- the land was in a Development Area, and was subject to a structure plan and detailed area plan (DAP);
- the DAP has effect under the deemed provisions as a local development plan (LDP);
- the Scheme said (in effect) that a single house requires development approval if it does not comply with an LDP;
- the LDP required *Any exposed parapet wall on a common boundary shall be suitably finished to match the external walls of the dwelling, unless otherwise agreed with the adjoining property owner.* The single house therefore did not comply.

Mastaglia and City of Cockburn

- Scheme provisions that are inconsistent with the deemed provisions are of no effect.
- A scheme cannot give an LDP legislative effect, as it is only a due regard instrument.

McComish and Shire of Peppermint Grove

- 2 storey single house did not comply with additional site requirement for plot ratio.
- Compliant with DTC requirements of R-Codes.

McComish and Shire of Peppermint Grove

'32. ADDITIONAL SITE AND DEVELOPMENT REQUIREMENTS

- (1) The Table sets out requirements relating to development that are additional to those set out in the R-Codes, activity centre plans, local development plans or State or local planning policies.

McComish and Shire of Peppermint Grove

No.	Description of land	Requirement
1	Residential	(a) For R10, R12.5, R15 and R20 Coded areas the maximum plot ratio shall be 0.5 unless otherwise determined by the local government.

McComish and Shire of Peppermint Grove

‘(2) To the extent that a requirement referred to in subclause (1) is inconsistent with a requirement in the R-Codes, an activity centre plan, a local development plan or a State or local planning policy the requirement referred to in subclause (1) prevails.’

McComish and Shire of Peppermint Grove

- clause 60(b) of the deemed provisions says that development requires approval unless it is exempted by clause 61;
- clause 61 says that a single house that meets the DTC requirements of the R-Codes does not require approval;
- the additional plot ratio requirement is inconsistent with cll 60 and 61 of the deemed provisions because it would have the effect that a deemed to comply single house requires development approval;
- to the extent there is an inconsistency between a scheme provision and a deemed provision, the deemed provision prevails (PD Act s.273B(3)).

McComish and Shire of Peppermint Grove

‘To construe these provisions in a way that requires any model provision, which has been prepared and approved by the Planning Minister pursuant to s 87(4) of the PD Act, to be read down on account of the fact it touches on a matter which is dealt with by the deemed provisions, cannot have been the purpose and intent of enacting the model provisions, in particular cl 32 which provides for the making of additional development controls and standards beyond those found in, relevantly, the R-Codes.’

McComish and Shire of Peppermint Grove

‘I rhetorically ask, what would be the point of including such a provision in LPS 4 if it were required to be read down as against cl 60(b) of the deemed provisions. In the context of the Shire, which I will discuss further below, it is likely to have little to no practical application.’

McComish and Shire of Peppermint Grove

- (a) the works are of a class specified in Column 1 of an item in the Table;
and
- (b) if conditions are set out in Column 2 of the Table opposite that item
— all of those conditions are satisfied in relation to the works; and
- (c) *if there is compliance with the additional requirements set out in cl 32(1) of the Scheme or the approval of the Council has been obtained under cl 34(2) of the Scheme*

A Brave New World?

