

LOCAL PLANNING POLICY

5.21

TITLE:	NON-CONFORMING USE REGISTER
ADOPTED:	OMC 25 June 2015 - pages 61 – 65
REVIEWED:	OMC 17 December 2015 – Pages 110 – 121 OMC 25 May 2017 – Pages 85 – 260 OMC 14 December 2017 – Pages 1030 – 1043 OMC 12 December 2019 – Pages 213 - 221 OMC 30 May 2024 – Pages 10 –16
ASSOCIATED LEGISLATION:	Planning and Development Act 2005 Local Planning and Development (Local Planning Schemes) Regulations 2015 Planning Scheme No 7 (LPS7)
ASSOCIATED DOCUMENTS:	
REVIEW RESPONSIBILITY:	Director Development Services
DELEGATION:	Delegations are exercised in accordance with delegation granted in terms of Section 5.42 of the Local Government Act 1995 as amended or other statutes as applicable to specified officers.
APPLICATION:	This policy applies to the LPS7 area.

Background

Clause 22 of LPS7 establishes what is a non-conforming use and in short, a nonconforming use means a use of land which, though lawful immediately before the coming into operation of a planning scheme, is listed as a 'prohibited' or 'X' use under the zoning table under the new Scheme.

A non-conforming uses may continue unless the use is discontinued for a period of six months or more (Clause 22(2)).

Once the non-conforming use rights are no longer applicable the use must comply with the zoning, and any change of use or development will be subject to the normal

planning requirements. Any alteration or extension of a non-conforming use or building, used in conjunction with a non-conforming use, or a change from a nonconforming use to another non-conforming use, requires development approval (Clause 23). If the change is from one non-conforming use to another, then the proposed use has to be closer to the intended purpose of the zone (Clause 23(3)).

Clause 24 of the Scheme gives the ability for the Shire to maintain a register of nonconforming uses and this Policy will establish the process for this.

Disclaimer: the existence of the Shire of Broome register or the inclusion or exclusion of particular uses does not alter the status of the particular use. Where a use has been discontinued for a period of six months or more, its non-conforming use right will cease to exist, irrespective of whether the site or use remains on the Shire of Broome nonconforming use register.

Objectives:

1. Establish a process for a property to be nominated for inclusion on the Shire of Broome's non-conforming use register.
2. Define the minimum amount of information to be presented for the Shire of Broome to assess whether a property can be included on the non-conforming use register.
3. Establish a process to guide whether a property is appropriate for inclusion or exclusion from the non-conforming use register.

Definitions:

"Non-compliant use" is a use which is being undertaken which was not issued with appropriate approvals under previous Schemes or Interim Development Orders.

"Non-conforming use" is a use undertaken in accordance with Clause 22 of Local Planning Scheme No 7.

"Register" means the non-conforming use register maintained by the Shire in accordance with Clause 24 of LPS7 and set out in Appendix No 1 to this Policy.

Policy:

General Provisions

- 1.0 To maintain accurate records and give effect to Clause 24 of LPS7. This Policy will establish a process for a property owner wishing to nominate their property to the Shire of Broome's non-conforming use register.
- 2.0 The non-conforming use register will form an Appendix to this Local Planning Policy. The register, as set out in Appendix No 1, will be updated by Shire's Planning Officers every time a new property is listed in accordance with relevant delegation procedures.

Level of Information to be submitted with a request to be listed on the Register

- 3.0 The onus on providing information that the existing use on the property was lawful rests with the property owner, not the Shire of Broome.
- 4.0 The following minimum level of information must be forwarded with a request to be listed on the register:
- a) A cover letter setting out the following:
 - (i) The property address;
 - (ii) What is the non-conforming use;
 - (iii) Details on when the use commenced on the property and what, if any approvals, were issued by the Shire; and
 - (iv) Whether there were any periods in which the property was not used for that purposes and, if so, how long for.
 - b) Copies of approvals issued for the property.
- 5.0 In circumstances where development approval was not issued by the Shire of Broome for the use (because it was not required under either a previous Scheme or Interim Development Order), a copy of the approved building plans issued by the Shire of Broome must be supplied or any other information from the Shire of Broome confirming that the non-conforming use exists (i.e. a letter from the Shire or Council minute reference or any legitimate evidence that the business or activity was undertaken and has not discontinued (copies of invoices, etc)).

What will be assessed in determining whether a property will be listed on the Register

- 6.0 Firstly, the use must be a non-conforming use, and therefore must be an 'X' use under the Zoning Table or prohibited under Special Control Area provisions.
- 7.0 Secondly, it must be determined that the use was operating lawfully prior to the gazettal of LPS7. The following therefore must be established:
- a) Development approval was issued by the Shire of Broome for the use, unless the use was a 'Permitted' use under the operative Scheme or Interim Development Order at that time or was listed as being exempt from the need to obtain development approval; or
 - b) The Shire of Broome had issued a building permit/licence which expressly sets out on the stamped approved plans the building use, which is now not permitted; or
 - c) If the use was being undertaken on land prior to the gazettal of any Scheme or Interim Development Order, if building works were involved, then a building permit/licence with a stamped approved plans showing the building use; or

- d) If the use was undertaken on land prior to the gazettal of a Scheme or Interim Development Order, prior written correspondence from the Shire of Broome advising of the non-conforming use existence, reference to the use within Council Meetings Minutes or any legitimate evidence that the business or activity was undertaken and has not discontinued (copies of invoices, etc).

8.0 Any request to be listed on the register which is submitted and is identified as being a non-compliant use will be dealt with as a compliance matter in accordance with the Shire's Compliance and Enforcement Policy.

Assessment Process undertaken for Determining Whether a Property has a Non-Conforming Use

9.0 When a request for a property to be listed on the non-conforming use is received, the following process will be followed:

- a) The request is recorded and date stamped at Central Records.
- b) The request will be registered as a 'non-conforming use' application type in Synergy.
- c) Planning Officers will undertake a technical assessment by completing a delegated authority report to determine whether the property meets the criteria under clause 6.0 and 7.0 of this Policy.
- d) The delegated authority report will be tabled for discussion at the Shire's DCU meeting.
- e) If a property meets the criteria of a non-conforming use and is supported for inclusion at the DCU meeting, the Planning Officer is to correspond to the property owner and advise that the property is a non-conforming use, and Appendix 1 is to be updated under delegated authority.
- f) If a property does not meet the criteria of a non-conforming use and is not supported for inclusion at the DCU meeting, the Planning Officer is to correspond to the applicant and advise the property is not a nonconforming use and set out the reasons why.

10.0 When, through a review of Council's records or through the undertaking of a planning assessment, Planning Officer's identify a non-conforming use, the following process will be followed:

- a) The identified property will be registered as a 'non-conforming use' application type in Synergy.
- b) Planning Officer will undertake a technical assessment by completing a delegated authority report setting out the property meets the criteria under Clause 6.0 and 7.0 of this Policy.
- c) The delegated authority report will be tabled for discussion at the Shire's DCU meeting.

- d) If a property meets the criteria of a non-conforming use and is supported for inclusion at the DCU meeting, the Planning Officer will correspond to the property owner and advise that the property is a non-conforming use, and Appendix One is to be updated under delegated authority.

SHIRE OF BROOME LOCAL PLANNING SCHEME No. 7 (LPS7) – LOCAL PLANNING POLICIES

This Policy is a Local Planning Policy adopted pursuant to Part 2 clause 4 of the deemed provisions of LPS7. LPS7 is administered by the Shire of Broome as the responsible authority under the Scheme. LPS7 was gazetted and came into operation on the 28 September 2023.

Planning policies adopted under LPS7 may be amended or rescinded after the procedures set out in Part 2 of the deemed provisions of LPS7 have been completed.

APPENDIX 1 – NON-CONFORMING USE REGISTER

NCU #	NCU Type	Street No.	Lot No.	Street	Suburb	Current Zoning

Register of Entries /Amendments

NCU#	Date of Update	Date of DCU Decision	Property file reference