

16. Policy and Legislation Committee Reports

16.1 Draft Council Policy 3.5 Initiation of Local Planning Scheme Amendments

Responsible Officer	Dale Page – General Manager Planning and Economic Development
Voting Requirements	Simple Majority
Attachments	Attachment 16.1A – Draft Council Policy 3.5 Initiation of Local Planning Scheme Amendments

Purpose

For Council to consider a draft Council Policy intended to provide guidance when making a decision to initiate an amendment to a local planning scheme that has been requested by a landowner or applicant.

Committee Recommendation

That Council APPROVES draft Council Policy 3.5 Initiation of Local Planning Scheme Amendments proceeding to public consultation.

Background

1. This report is being submitted to address the emerging issue of ad-hoc scheme amendment requests being received by the City, ahead of finalisation of the Local Planning Strategy (Strategy) and Local Planning Scheme No.3 (Scheme).
2. Due to the length of time it takes to prepare and approve strategic documents such as the Strategy and Scheme, there is a period of time in which landowners and applicants may wish to progress scheme amendments ahead of these documents being finalised. Whilst individual applications should be considered on their merit, there is no guidance or systematic framework in place to guide where there is merit to a specific proposal, and consequently whether to initiate an amendment to a local planning scheme.
3. It is timely that the Council adopts a Policy which guides the assessment of scheme amendments. This will provide clarity to landowners, applicants, the Administration and Council Members.

Discussion

4. Without such a policy to guide decision making, there is a risk that scheme amendments may be sought and progressed in a manner that could undermine the intent of the Strategy or the Scheme and ultimately be to the detriment of the future form and function of the city.
5. Without such a policy, there is also a risk that uncertainty of outcome (until the new strategy and Scheme are finalised) could be a disincentive to submission of development proposals that would result in positive investment and development outcomes for the city.
6. The decision whether (or not) to initiate a scheme amendment rests with the Council. The legislative power to initiate a scheme amendment falls under Clause 75 of the *Planning and Development Act 2005* (the Act).
7. If a scheme amendment request is received by the City, there is no statutory period within which the request is required to be considered. The statutory process (and timelines) only commence once a scheme amendment is initiated by Council.
8. There is no right of review (appeal) where a local government chooses not to initiate a scheme amendment. However, clause 76 of the Act gives the Minister for Planning the authority to instruct a local government to amend its local planning scheme in certain circumstances. This power is seldom used.
9. The Council is not the final decision maker on scheme amendments. The Council's position on a scheme amendment is considered by the Western Australian Planning Commission, which makes a recommendation to the Minister for Planning. The Minister is the final decision maker on scheme amendments.

Consultation

10. Subject to Council endorsement of the draft policy, consultation is proposed to occur as follows:
 - a. Written notification to key industry groups
 - b. Written notification to consultants who regularly submit Scheme Amendment requests to the City
 - c. Written notification to the Neighbourhood Groups

- d. Written notification to applicants who currently have scheme amendment requests lodged with the City
- e. Information on Engage Perth.

Decision Implications

11. If Council supports the draft Policy, it will provide a framework to the community, stakeholders and the Council as to the matters to be taken into account in determining the merit of a proposed local planning scheme amendment.

Strategic, Legislative and Policy Implications

Strategy	
Strategic Pillar (Objective)	Liveable
Related Documents (Issue Specific Strategies and Plans):	Local Planning Strategy The Local Planning Strategy provides a 10 -15 framework to guide the planning and development of the city and the preparation of the Local Planning Scheme No.3.

Legislation, Delegation of Authority and Policy	
Legislation:	Clause 75 of the <i>Planning and Development Act 2005</i> provides local government with the legislative power to initiate an amendment to a local planning scheme operating within its local government area
Authority of Council/CEO:	Section 2.7(2)(b) of the <i>Local Government Act 1995</i> , which states that Council is to determine the City's policies.
Policy:	Nil.

Financial Implications

Nil.

Further Information

12. Questions and responses received prior to and taken on notice at the Agenda Briefing Session held 23 August 2022 were as follows:

	Question	Response
1.	Does the WAPC need to agree with this policy?	It is the City's view that the policy (which is a Council policy and not a Local Planning Policy) does not require WAPC approval. The City could, however, refer the policy to WAPC as part of consultation on the policy.

Council Resolution (Committee's Recommendation) (OCM-22/08-136)

Mover: Councillor Brent Fleeton

Seconded: Councillor Rebecca Gordon

That Council APPROVES draft Council Policy 3.5 Initiation of Local Planning Scheme Amendments proceeding to public consultation.

CARRIED UNOPPOSED (9/0)

For: Lord Mayor Basil Zempilas; Deputy Lord Mayor Di Bain; Councillors Sandy Anghie, Clyde Bevan, Brent Fleeton, Liam Gobbert, Rebecca Gordon, Viktor Ko and Catherine Lezer

Against: Nil



CP 3.5 | Initiation of Local Planning Scheme Amendments

Objective

1. To assist landowners and applicants to prepare requests for Scheme Amendments that are well considered and appropriately justified.
2. To guide officer assessment and Council determination of requests for Scheme Amendments from landowners or applicants, to ensure decisions are consistent, transparent and merit based.

Scope

3. Scheme Amendments are a statutory process involving a change to the zoning, land use permissibility, or development controls under the applicable Local Planning Scheme. This policy applies to all Local Planning Schemes in the City of Perth.
4. This policy will apply to all requests received by the City of Perth for Scheme Amendments.
5. This policy does not apply to 'basic amendments' as defined by the *Planning and Development (Local Planning Schemes) Regulations 2015*.

Policy statement

Council decisions on Scheme Amendments should take account of and be guided by the following:

6. Does the proposal have strategic merit?

- a. Consideration should be given to how the proposed Scheme Amendment aligns with the vision and objectives of the Local Planning Strategy, and the potential implications of the proposal on the long-term planning for the city.
- b. Where a Scheme Amendment departs from the vision and objectives of the Local Planning Strategy, consideration should be given to whether the Scheme Amendment demonstrates the following:
 - i. A change that represents a better outcome for the specific site, and for the city overall.
 - ii. Provision of direct community benefit.
 - iii. A new opportunity or development outcome that is currently not anticipated within the Local Planning Strategy but is considered to have unique attributes and would achieve the overall intent of the Strategy.
 - iv. Delivery of strategic priorities approved by the Council.
 - v. A specific infrastructure response to a key neighbourhood need identified in a strategy or plan of the City of Perth.



- 34 **7. Is the proposal in the interests of orderly and proper planning?**
- 35 a. Changes to individual lots or other small areas, ~~in isolation from the wider locality~~, will generally
- 36 not be supported independently of a broader Local Planning Scheme review. However,
- 37 consideration will be given to proposals where:
- 38 i. there are compelling site-specific circumstances (unique, unusual, urgent), and
- 39 ii. the proposal would achieve the outcomes of Part 1 above; and
- 40 iii. the resultant development would not adversely affect surrounding areas.
- 41 b. Scheme Amendments required for procedural purposes or that are considered to improve or
- 42 clarify the existing intent of a Local Planning Scheme will generally be supported.
- 43 c. Consideration should be given to the extent to which a development proposal has progressed,
- 44 with greater weight given to proposals with Development Approval, or concept plans and
- 45 agreements between landowners and developers that will result in a tangible outcome.
- 46 d. Scheme Amendments should not unduly pre-empt the Council's decisions on the draft Local
- 47 Planning Scheme or other strategic planning documents (like Precinct Structure Plans).
- 48 **8. Does the proposal align with existing Scheme/ Policy objectives?**
- 49 a. Where a Scheme Amendment deviates significantly from the existing Scheme/Policy (i.e. it
- 50 results in a change to zoning, plot ratio, the building height limit, or a significant change to the
- 51 development potential of an individual lot or other small area), the following should be taken
- 52 into consideration:
- 53 i. Any unintended consequence and/or risk associated with initiating the amendment.
- 54 ii. Any undesirable precedents set because of initiating the amendment.
- 55 iii. The uniqueness of the proposition and site outcome.
- 56 iv. The level of community benefit being delivered by the proposal.
- 57 **9. Is there community support for the proposal?**
- 58 a. Consideration needs to be given to any external feedback received on the Local Planning
- 59 Strategy or other planning instruments that may relate directly to the Scheme Amendment.
- 60 b. Consideration needs to be given to comments from the community received during advertising
- 61 of the Scheme Amendment.
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63 Document Control

64 Policy Context

Legislation, standards & external guidelines	<i>Local Government Act 1995</i> <i>Planning and Development Act 2005</i> <i>Planning and Development (Local Planning Schemes) Regulations 2015.</i>
Policies and procedures	Nil.
Strategies, plans and frameworks	Local Planning Strategy (draft) City Planning Scheme No.2 Local Planning Scheme No.26 City of Subiaco Town Planning Scheme No.4 City of Nedlands Town Planning Scheme No.2.

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66 Document custodian

Alliance	Planning and Economic Development	Service Unit	City Planning
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68 Review management

Next review due:	August 2024	Document Management Ref:	
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70 Document management

Version	Adopted by	Adoption date	Synopsis of changes
1.0			

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