

5.4 OUTCOMES OF ADVERTISING - OMNIBUS AMENDMENT NO. 10 TO LOCAL PLANNING SCHEME NO. 2

- Attachments:**
1. **Form 2A - Local Planning Scheme No.2 - Amendment 10**
 2. **Local Planning Scheme No. 2 Amendment 10 - Explanatory Table**

RECOMMENDATION:

That Council **SUPPORTS** Amendment 10 to Local Planning Scheme No. 2 without modification, pursuant to Regulation 50(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, included in Attachment 1, for submission to the Western Australian Planning Commission.

PURPOSE OF REPORT:

To consider the outcomes of public consultation on Amendment 10 to Local Planning Scheme No. 2 (Scheme) and determine whether to support the Amendment with or without modifications, or not to support the Amendment.

BACKGROUND:

At the [17 May 2022 Ordinary Council Meeting](#), Council resolved to adopt Amendment 10 to Local Planning Scheme No. 2 (LPS2), advise the Western Australian Planning Commission (WAPC) that it would be a standard amendment, refer the amendment to the Environmental Protection Agency (EPA) for comment and advertise the amendment for public comment for a period of 42 days.

In accordance with the requirements in the *Planning and Development Act (Local Planning Schemes) Regulations (2015)*, a local government is required to pass a resolution to either support with or without modifications or refuse to support an amendment to the Scheme. The outcome of this is forwarded to the Western Australian Planning Commission (WAPC) for consideration.

DETAILS:

The City has prepared Amendment 10 (**Attachment 1**) to resolve inconsistencies and improve clarity within the Scheme, without changing established positions of Council.

The content of Amendment 10 included 10 separate modifications which related to relocating provisions, fixing administrative errors, expanding zone objectives and filling gaps between the previous and current Scheme. An explanatory table outlining the modifications has been included as **Attachment 2**.

Prior to the City progressing the draft amended Local Planning Strategy and Scheme project, this amendment will ensure any future, more complex changes, can occur in isolation.

CONSULTATION/ADVERTISING:

Letters were sent to owners and occupiers directly affected by Amendment 10, including those properties zoned R60-100 along Charles and Fitzgerald Streets and adjoining property owners to No. 15 Haynes Street, North Perth.

The consultation period commenced on 4 July and concluded on 15 August 2022.

Hard copies of Amendment 10 were displayed at City's Administration Building and Library, newspaper and social media advertisements, and an Imagine Vincent page were published for the duration of the consultation period.

No submissions were received.

Environmental Protection Agency (EPA)

Amendment 9 to LPS was referred to the EPA in accordance with Section 81 of the *Planning and Development Act 2005*. The EPA reviewed the proposal and advised that no further assessment was required.

LEGAL/POLICY:

- *Planning and Development Act 2005*;
- *Planning and Development (Local Planning Schemes) Regulations 2015*;
- *City of Vincent Local Planning Scheme No.2*; and
- *Community and Stakeholder Engagement Policy*.

Planning and Development Act 2005 & Planning and Development (Local Planning Schemes) Regulations 2015

Section 75 of the *Planning and Development Act 2005* allows a local government authority to amend its local planning scheme with the approval of the Minister for Planning.

Council may determine whether to make modifications to the proposed Amendment, and whether to support or refuse the Amendment. Major modifications may require a period of readvertising.

Council's decision is then forwarded to the WAPC which considers the proposal and submissions before making a final recommendation to the Minister for Planning.

The Minister may grant final approval to the scheme amendment, with or without modifications, or may refuse to approve the scheme amendment. The final decision rests with the Minister.

If the Minister agrees to grant final approval, the City will then arrange for the scheme amendment to be published in the Government Gazette, at which point it legally comes into effect. A scheme amendment can take up to 12 months to complete.

RISK MANAGEMENT IMPLICATIONS

Low: It is low risk for Council to endorse Amendment 10 to the Scheme, to be determined by the Minister for Planning.

STRATEGIC IMPLICATIONS:

This is in keeping with the City's *Strategic Community Plan 2018-2028*:

Innovative and Accountable

Our community is aware of what we are doing and how we are meeting our goals.

SUSTAINABILITY IMPLICATIONS:

This does not contribute to any environmental sustainability outcomes. This action/activity is environmentally neutral.

PUBLIC HEALTH IMPLICATIONS:

This does not contribute to any public health outcomes in the *City's Public Health Plan 2020-2025*.

FINANCIAL/BUDGET IMPLICATIONS:

The cost of progressing Amendment 10 would be met through the City's existing operational budget.



LOCAL PLANNING SCHEME NO. 2

Amendment No. 10

Standard amendment to modify various provisions within the Local Planning Scheme to ensure consistency and clarity with the State and local framework.



FORM 2A

Planning and Development Act 2005

RESOLUTION TO PREPARE AMENDMENT TO LOCAL PLANNING SCHEME

CITY OF VINCENT LOCAL PLANNING SCHEME NO. 2
AMENDMENT NO. 10

RESOLVED that the local government pursuant to section 75 of the *Planning and Development Act 2005* (as amended), amend the above Local Planning Scheme to:

1. Insert the following provision under Part 2, Clause 14 and renumber the remaining clauses::
 - (4) Development on local reserves, as shown on the Scheme Map, shall not detract from the amenity of neighbouring residents and should be consistent and not interfere with the predominant use of the reserve for passive and active recreation.
2. Insert new point into Part 3, Clause 16 (Commercial Zones):
 - To provide limited residential opportunities within the Commercial zone including high density housing, affordable housing, social and community housing, tourist accommodation and short term accommodation.
3. Modify Table 1 – Zoning Table for ‘Caretakers’ dwellings’ land use permissibility within Residential, Mixed Use and Local Centre zones from a ‘P’ use to an ‘X’ use and within District Centre/Regional Centre and Commercial zones from a ‘P’ use to an ‘A’ use.
4. Reclassify Lot 9 and 100 (No. 15) Haynes Street, North Perth from ‘Residential’ to ‘Public Open Space’ and remove the ‘R20’ density code;
5. In clause 26 (3), replace “R60-R100” with “R60/R100”;
6. In clause 26 (4), replace “R60-R100” with “R60/R100”;
7. Delete Schedule 1 Clause 61 and replace with:

61. Development for which development approval not required

 - (1) Development approval is not required for works if –
 - (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.

Table

	Column 1 Works	Column 2 Conditions
1A	Works to remove, destroy or interfere with any tree(s).	(a) The tree is not listed on the City of Vincent Trees of Significance Inventory; and (b) The tree is not included for retention as part of an approved landscaping plan.

8. In Clause 67 (zc), remove the words “Advisory Committee” and replace with “Review Panel”;
9. Insert the following provision under Schedule 1 – Supplemental provisions:

85D. Transitional arrangements for Heritage List



- (1) A Heritage List prepared in accordance with Town Planning Scheme No. 1 shall continue to have effect, and may be amended or revoked, as if it were a Heritage List properly adopted under Local Planning Scheme No. 2.
10. Insert the following provision under Schedule 1 – Supplemental provisions:
- 85E. Heritage Conservation Notices**
- (1) A person who is given a Heritage Conservation Notice under clause 13 of the deemed provisions must comply with that Notice within the time specified in the Notice.
- (2) It is a contravention of this planning scheme if a person fails to comply with a Heritage Conservation Notice in accordance with subclause (1) above.
11. Delete the following words from Schedule 1 – Supplemental provisions:
- ‘The amendment will not come into effect until the day after normalisation of the Lindsay Street Precinct, specifically the land is subtracted from the *Metropolitan Redevelopment Authority Regulations 2011*’
- The amendment is standard under the provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* for the following reasons:
- The amendment has minimal impact on land in the scheme area that is not the subject of the amendment, due to the relatively minor text changes proposed;
 - The amendment does not result in any significant environmental, social, economic or governance impacts on land in the scheme area; and
 - The amendment is not a complex or basic amendment.



Modification 4 – Scheme Map

Existing:



Proposed:



= Amendment area

Dated this **day** of **2022**

CHIEF EXECUTIVE OFFICER

**CITY OF VINCENT
LOCAL PLANNING SCHEME NO. 2
SCHEME MAP 5 - MT HAWTHORN**

LEGEND

METROPOLITAN REGION SCHEME RESERVES
Note: The Western Australian Planning Commission (in care of the Department of Planning) should be consulted for all information on the actual land requirements for all Metropolitan Region Scheme Reserves.

	PARKS AND RECREATION
R	Restricted Public Access
	PRIMARY REGIONAL ROADS RESERVATION
	OTHER REGIONAL ROADS RESERVATION
	RAILWAYS
	PUBLIC PURPOSES <small>Particular use denoted as follows:</small>
H	Hospital
HS	High School
TS	Technical School
CP	Car Park
U	University
CG	Commonwealth Government
SU	Special Use
WSC	Water Authority of Western Australia
P	Prison

CITY OF VINCENT LOCAL SCHEME RESERVES

	PUBLIC OPEN SPACE
R	Restricted
	PUBLIC PURPOSES <small>Particular use denoted as follows:</small>
PS	Primary School
CP	Car Park
CU	Civic Uses
HS	High School
I	Institute for the Deaf
W	Water Supply Sewerage and Drainage
TS	Technical School

CITY OF VINCENT SCHEME ZONES

	RESIDENTIAL
	MIXED USE
	COMMERCIAL
	LOCAL CENTRE
	DISTRICT CENTRE
	REGIONAL CENTRE
	SPECIAL USE <small>Particular use denoted as follows:</small>
CP	Car Park
CU	Community Use
FC	Function Centre
HC	Hall and Non Residential Club
H	Hotel
PW	Place of Worship
S	Service Station
	ADDITIONAL USE
	RESTRICTED USE

ADDITIONAL INFORMATION & RESIDENTIAL PLANNING CODES

	CODE AREA BOUNDARY
	SCHEME AREA BOUNDARY
	DENSITY CODE



LOCAL PLANNING SCHEME NO. 2

Amendment No. 10

COUNCIL RECOMMENDED/SUBMITTED FOR APPROVAL

Supported for submission to the Minister for Planning for approval by resolution of the City of Vincent at the Ordinary Meeting of the Council held on the _____ and the Common Seal of the City of Vincent was hereunto affixed by the authority of a resolution of the Council in the presence of:

.....
MAYOR

.....
CHIEF EXECUTIVE OFFICER

WAPC RECOMMENDED/SUBMITTED FOR APPROVAL

.....
DELEGATED UNDER S.16 OF
THE *PLANNING AND DEVELOPMENT ACT 2005*

DATE.....

APPROVAL GRANTED

.....
MINISTER FOR PLANNING
S.87 OF THE *PLANNING AND DEVELOPMENT ACT 2005*

DATE.....

Modification	Provision	Change proposed	Justification
1	Part 2, Clause 14 (4)	New provision: <i>(4) Development on local reserves, as shown on the Scheme Map, shall not detract from the amenity of neighbouring residents and should be consistent and not interfere with the predominant use of the reserve for passive and active recreation.</i>	To ensure that any development on reserves occurs in a manner which is consistent with the intent of local reserves, and the use of the reserve as passive and active recreation is protected.
2	Part 3, Clause 16 – Commercial zones	New objective: <i>To provide limited residential opportunities within the Commercial zone including high density housing, affordable housing, social and community housing, tourist accommodation and short term accommodation.</i>	To ensure the objectives reflect the need for high density residential development within the City's Commercial zones, to support the economic activity and growth for the area.
3	Table 1 – Land Use Table	Amend 'Caretakers' dwellings' land use permissibility within residential zones to align with the 'Industry – Light' use class.	A caretaker dwelling is defined as: <i>'...a dwelling on the same site as a building, operation or plant used for industry, and occupied by a supervisor of that building operation or plant.'</i> This use is incompatible with a residential zoned lot, and should be amended since no industrial development would occur on residential zoned land.
4	Local Planning Scheme Zoning Map	Reserve 15 Haynes Street (lots 9 and 100) for Public Open Space.	To reflect the existing conditions of a deed of trust over Lot 9 that requires the land be used for recreation, modifying the zoning of the land would align the expectation of the deed to the planning framework.

Modification	Provision	Change proposed	Justification
5,6	Part 4, Clause 26 (3) and (4)	Modification to wording from 'R60-R100' to 'R60/R100'	To provide consistency with other provisions within the Local Planning Scheme which includes a split density code. The intent of this provision is that a property is classified R60 or R100 dependent on satisfying the necessary conditions, not that the property may be classified in between R60 and R100.
7	Schedule 1 – Supplemental provisions. Clause 61 (1) (k)	Modified provision: Column 1 Works: <i>"1A Works to remove, destroy or interfere with any tree(s)."</i> Column 2 Conditions: <i>"(a) The tree is not listed on the City of Vincent Trees of Significance Inventory; and (b) The tree is not included for retention as part of an approved landscaping plan."</i>	To match format of updated Regulations and ensure that there is clarity within the local planning framework as it applies to the retention and protection of trees.
8	Schedule 1 – Supplemental provisions. Clause 67 (zc)	'(zc) any advice of the Design Advisory Committee Review Panel.'	Updated terminology to reflect the City's Design Review Panel.

Modification	Provision	Change proposed	Justification
9	Schedule 1 – Supplemental provisions New Clause 85D – Transitional arrangements for Heritage-List	New provision: <i>(1) A Heritage List prepared in accordance with Town Planning Scheme No. 1 shall continue to have effect, and may be amended or revoked, as if it were a Heritage List properly adopted under Local Planning Scheme No. 2.</i>	Established legal advice (<i>Dain Pty Ltd v Shire of Peppermint Grove [2019]</i>) suggests that there is an existing deficiency within the City's LPS 2. An oversight to the local framework, the City suggests adding clarification to the Scheme.
10	Schedule 1 – Supplemental provisions New Clause 85E – Heritage Conservation Notices	New provision: 85E. Heritage Conservation Notices <i>(1) A person who is given a Heritage Conservation Notice under clause 13 of the deemed provisions must comply with that Notice within the time specified in the Notice.</i> <i>(2) It is a contravention of this Scheme if a person fails to comply with a Heritage Conservation Notice in accordance with subclause (1) above.</i>	<i>The Planning and Development (Local Planning Schemes) Regulations 2015</i> do not expressly state that a person must comply with a Heritage Conservation Notice given under clause 13 of Schedule 2 of the Regulations. As a result, there is ambiguity about whether a person commits an offence if they fail to comply with a Heritage Conservation Notice. The proposed clause 85E ensures that a person who is given a Heritage Conservation Notice is required to comply with that notice and commits an offence under section 218(a) of the <i>Planning and Development Act 2005</i> if they fail to do so.

Modification	Provision	Change proposed	Justification
11	Schedule 1 – Supplemental provisions Clause 85C Planning Instruments Adopted Under the Central Perth Redevelopment Scheme	Delete the words: The amendment will not come into effect until the day after normalisation of the Lindsay Street Precinct, specifically the land is subtracted from the Metropolitan Redevelopment Authority Regulations 2011.	These words were included as an administrative error, meant only for inclusion in the Gazettal notice rather than the Scheme itself.