

**5.3 ADVERTISING OF PROPOSED REVOCATION - POLICY NO. 7.5.19 - AMALGAMATION CONDITION ON PLANNING APPROVALS**

- Attachments:**
1. **Policy No. 7.5.19 - Amalgamation Condition On Planning Approvals**
  2. **Assessment of Local Planning Policy No. 7.5.19 - Amalgamation Condition on Planning Approvals**

**RECOMMENDATION****That Council:**

1. **PREPARES** a notice of proposed revocation of Policy No. 7.5.19 – Amalgamation Condition on Planning Approval, included in Attachment 1, for the purpose of community consultation pursuant to Schedule 2, Part 3, Clause 6(b)(i) of the *Planning and Development (Local Planning Schemes) Regulations 2015*;
2. **AUTHORISES** the Chief Executive Officer to carry out community consultation on the proposed revocation in accordance with Schedule 2, Part 3, Clause 6(b)(ii) of the *Planning and Development (Local Planning Schemes) Regulations 2015*;
3. **PUBLISHES** a notice of revocation in accordance with Schedule 2, Part 3, Clause 6(b)(ii) of the *Planning and Development (Local Planning Schemes) Regulations 2015* if no submissions are received during the community consultation period; and
4. **NOTES** that if any submissions are received during the community consultation period that these would be presented to Council for consideration.

**PURPOSE OF REPORT:**

For Council to consider revoking the City's Policy No. 7.5.19 – Amalgamation Condition on Planning Approval (Policy) for the purpose of undertaking community consultation on the proposed revocation. A copy of the current Policy is included in **Attachment 1**.

**DELEGATION:**

In accordance with Clause 5.8 of the City's Policy Development and Review Policy, Council approval is required to repeal a policy.

**BACKGROUND:**

The Policy was adopted by Council at its meeting on 23 May 2006. The Policy was most recently amended by Council at its meeting on 6 December 2011.

The purpose of the Policy is to define the criteria for when the amalgamation of land as a condition of development approval would be required.

**DETAILS:**

The Policy sets out that amalgamation would be required in the following instances when a development is located across two or more lots, where:

- A proposed development straddles a lot boundary.
- A proposed development does not comply with the relevant requirements of the National Construction Code (NCC).
- Car parking and car parking manoeuvring areas straddle a lot boundary.

Administration has undertaken a review of the Policy and recommends that it should be revoked for the reasons below.

### No Need for Policy to Impose a Condition

A local planning policy is not required to impose a condition on a development approval for the amalgamation of lots.

This is because the *Planning and Development (Local Planning Schemes) Regulations 2015* provides the ability for conditions to be applied to a development approval.

A condition of development approval is valid if:

- Is imposed for a planning purpose.
- It fairly and reasonably relates to the development that is the subject of the application.
- Is not so unreasonable that no planning authority would have imposed it.
- Is certain and final.

A condition of development approval requiring amalgamation for a development that is across two or more lots would be capable of meeting these criteria and could be imposed irrespective of the current Policy.

### Review of Policy Standards

An assessment of the current Policy is included in **Attachment 2** and identifies that it is currently not fit for purpose or reflective of current legislation.

This is because:

- Duplicating Building Legislation – Clause 2(ii) of the Policy requires amalgamation where a proposed development does not comply with the NCC.

It is not appropriate for the Policy to seek to enforce the NCC which is a requirement of separate legislation being the *Building Act 2011*. This would not be for a planning purpose and this separate legislation would continue to apply irrespective of whether the Policy exists.

- Car Parking – Clause 2(iii) of the Policy requires amalgamation where car parking bays and car parking manoeuvring areas straddle a lot boundary.

This does not necessarily require lots to be amalgamated. This could be dealt with as an easement on the certificate of title which is an available and commonly used mechanism under the planning framework.

Should the Policy be revoked, Administration would prepare an information sheet to provide guidance on amalgamation and that would be available for the public on the City's website.

### **CONSULTATION/ADVERTISING:**

Consultation on the proposed revocation of this Policy would be undertaken for a period of 21 days in accordance with the City's Community and Stakeholder Engagement Policy and the *Planning and Development (Local Planning Schemes) Regulations 2015*, by way of notices:

- Published on the City's website;
- Posted to the City's social media;
- Published in the local newspapers; and
- Posted on the notice board at the City's Administration and Library and Local History Centre.

Any submissions received would be presented back to Council for its consideration.

If no submissions are received, Administration would progress with providing public notice of revocation. Public notice of the revocation must be published in local newspapers and on the City's website, consistent with the *Planning and Development (Local Planning Schemes) Regulations 2015*.

**LEGAL/POLICY:**

Schedule 2, Part 3, Clause 6(b) of the *Planning and Development (Local Planning Schemes) Regulations 2015* provides the provisions for the revocation of a local planning policy.

The City's Policy Development and Review Policy sets out the process for the development and review of the City's policy documents.

**RISK MANAGEMENT IMPLICATIONS**

Low: It is low risk for Council to undertake community consultation of the proposed revocation of the Policy.

Low: It is a low risk for Council to revoke a local planning policy where it is not fit for purpose. Revocation of this Policy would reduce the risk of an amalgamation condition being imposed for invalid reasons due to the provisions contained in the existing Policy.

**STRATEGIC IMPLICATIONS:**

This is in keeping with the City's *Strategic Community Plan 2022-2032*:

Innovative and Accountable

*We embrace good ideas or innovative approaches to our work to get better outcomes for Vincent and our community.*

**FINANCIAL/BUDGET IMPLICATIONS:**

The advertising of the revocation of the Policy will be met through the City's operating budget.

**COMMENTS:**

Administration recommends revoking the Policy. This is because it is not necessary to have a local planning policy specific to a condition of development approval requiring the amalgamation of land.

It is recommended that the Policy be revoked to simplify the local planning policy framework, and that an information sheet is prepared to present the information in a clear and user-friendly format.

CITY OF VINCENT PLANNING AND BUILDING POLICY MANUAL  
DEVELOPMENT AND DESIGN  
POLICY NO: 3.5.19  
AMALGAMATION CONDITION ON PLANNING APPROVALS

**POLICY NO: 3.5.19**

**AMALGAMATION CONDITION ON PLANNING APPROVALS**

**OBJECTIVE**

- 1) To define the criteria in which the City of Vincent will require the amalgamation of land when planning applications are received and approved and where the subject development straddles two or more lots.

**POLICY STATEMENT**

- 1) The following standard condition will be imposed on any Planning Approvals requiring the amalgamation of land prior to development:

*"prior to the issue of a Building Licence, the subject land shall be amalgamated into one lot on Certificate of Title; OR alternatively, prior to the issue of a Building Licence the owner(s) shall enter into a legal agreement with and lodge an appropriate assurance bond/bank guarantee to the satisfaction of the City, which is secured by a caveat on the Certificate(s) of Title of the subject land, prepared by the City's solicitors or other solicitors agreed upon by the City, undertaking to amalgamate the subject land into one lot within 6 months of the issue of the subject Building Licence. All costs associated with this condition shall be borne by the applicant/owner(s). Amalgamation of the lots is not required if it can be demonstrated that the proposed development complies with the relevant requirements of the National Construction Code Series;"*

This condition is subject to amendment without notice.

- 2) The amalgamation condition is to be imposed on a Planning Approval in the following instances:
  - i) where any proposed development straddles a lot boundary; or
  - ii) where any proposed development does not comply with the relevant requirements of the National Construction Code Series; or
  - iii) where car parking bays and car parking manoeuvring areas straddle a lot boundary. Alternatively, the car parking bays and car parking manoeuvring area can be dealt with as a grant of easement in favour of the City registered on the certificate of tile.
- 3) The amalgamation condition is not to be imposed on a Planning Approval in the following instance:
  - i) where the existing building or proposed new development does not straddle a lot boundary and is compliant with the relevant requirements of the National Construction Code Series.

|                      |                        |
|----------------------|------------------------|
| <b>Date Adopted:</b> | <b>23 May 2006</b>     |
| <b>Date Amended:</b> | <b>6 December 2011</b> |

*Page 1 of 1*

H:\Dev\&Env\Plng&Bld\Strategic Planning\Planning and Building Policy\Policy Amendments\Amendment No. 81\The Policy\Final Policy - OMC 6 December 2011.docx

Assessment of 7.5.19 Amalgamation Condition on Planning Approvals

| No.                     | Current clause   | Impact of Policy Revocation  |
|-------------------------|--|--|
| <b>Objectives</b>       |  |  |
| 1.                      | To define the criteria in which the City of Vincent will require the amalgamation of land when planning applications are received and approved and where the subject development straddles two or more lots.   | No Impact<br><br>Can be incorporated into a future information sheet.  |
| <b>Policy Statement</b> |  |  |
| 1.                      | <p>The following standard condition will be imposed on any Planning Approvals requiring the amalgamation of land prior to development:</p> <p><i>"prior to the issue of a Building Licence, the subject land shall be amalgamated into one lot on Certificate of Title; OR alternatively, prior to the issue of a Building Licence the owner(s) shall enter into a legal agreement with and lodge an appropriate assurance bond/bank guarantee to the satisfaction of the City, which is secured by a caveat on the Certificate(s) of Title of the subject land, prepared by the City's solicitors or other solicitors agreed upon by the City, undertaking to amalgamate the subject land into one lot within 6 months of the issue of the subject Building Licence. All costs associated with this condition shall be borne by the applicant/owner(s). Amalgamation of the lots is not required if it can be demonstrated that the proposed development complies with the relevant requirements of the National Construction Code Series;"</i></p> <p>This condition is subject to amendment without notice.</p> | <p>No Impact.</p> <p>Revocation of the Policy will not impact the City in applying a condition of development approval that requires amalgamation as long as it meets the "Newbury" test for assessing the validity of a condition.</p> <ul style="list-style-type: none"> <li>• be imposed for a planning purpose – not an ulterior one.</li> <li>• fairly and reasonably relate to the development that is the subject of the development application.</li> <li>• not be so unreasonable that no planning authority would have imposed it.</li> </ul>  |
| 2.                      | <p>The amalgamation condition is to be imposed on a Planning Approval in the following instances:</p> <p>i) where any proposed development straddles a lot boundary; or</p> <p>ii) where any proposed development does not comply with the relevant requirements of the National Construction Code Series; or</p> <p>iii) where car parking bays and car parking manoeuvring areas straddle a lot boundary. Alternatively, the car parking bays and car parking manoeuvring area can be dealt with as a grant of easement in favour of the City registered on the certificate of tile.</p>   | <p>No Impact</p> <p>These items can be incorporated into a future information sheet.</p> <p>Should the City wish to rationalise a development or particularly land use over a single lot, the Newbury test can be applied when recommending a condition.</p> <p>2(i) and 2(ii) are largely reflected and required by the National Construction Code Series, <i>Building Act 2011</i> and <i>Building Act Regulations 2012</i>. Based on legal advice, Building Services cannot issue a building permit across the allotment boundary <b>unless</b> the subject lots are amalgamated into one lot on Certificate of Title.</p> <p>An information sheet can discuss these measures in greater detail.</p> <p>2(iii) Where car parking manoeuvring areas straddle a boundary, this can be dealt with by a condition of approval requiring that an easement be registered on the certificate of title.</p> |
| 3.                      | <p>The amalgamation condition is not to be imposed on a Planning Approval in the following instance:</p> <p>i) where the existing building or proposed new development does not straddle a lot boundary and is compliant with the relevant requirements of the National Construction Code Series</p>   | <p>No Impact</p> <p>Can be covered in an information sheet.</p>  |