

NOTICE TO CONVENE SPECIAL MEETING OF COUNCIL

To: Chief Executive Officer City of Joondalup Mr G Hunt
From: Deputy Mayor Cr Russell Poliwka
Subject: Notice to Convene a Special Meeting of Council – Pursuant to Section 5.4 of the *Local Government Act 1995*
Date: 10 JANUARY 2018

Section 5.4 of the *Local Government Act 1995* states that:

5.4. Calling council meetings

An ordinary or a special meeting of a council is to be held —

- (a) *if called for by either —*
 - (i) *the mayor or president; or*
 - (ii) *at least 1/3 of the councillors,*
in a notice to the CEO setting out the date and purpose of the proposed meeting; or
- (b) *if so decided by the council.*


In accordance with clause 5.4(a)(ii) of the *Local Government Act 1995*, the Councillors listed hereunder give notice to you to convene a Special Meeting of the Council to be held on 23 JANUARY 2018 for the purpose of reconsidering the amendment Moved by Cr Norman and seconded by Cr Chester in relation to item:-

CJ193-12/17 Initiation Of Scheme Amendment No. 90 To District Planning Scheme No. 2 – Recoding From R20/60 And R20/40 To R20/30 as follows:

AMENDMENT MOVED Cr Norman, SECONDED Cr Chester that a new Part 6 be ADDED to the Motion to read as follows:

- "6 *NOTES the requirements of the City's Community Consultation and Engagement Policy with respect to consultation during the summer break and AGREES to proceed with public consultation as soon as possible even if commencement occurs before the first ordinary meeting of Council in February 2018.*"

Signed by Councillors:

- | | | | |
|----|-------------|---|----------------------|
| 1. | Cr Poliwka: |  | Date: <u>10/1/18</u> |
| 2. | Cr Norman: | _____ | Date: _____ |
| 3. | Cr Chester: | _____ | Date: _____ |
| 4. | Cr May: | _____ | Date: _____ |
| 5. | Cr Jones: | _____ | Date: _____ |

6. Cr Fishwick



10/01/2018

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Signed by Councillors:

1 Cr Poliwka

2 Cr Norman

3 Cr Chester

4 Cr May

5 Cr Jones

Date 10/1/18

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Date 10/1/18

Date 10/1/18

Date 10/1/18

**Extract from minutes of Council meeting
Held on 12 December 2017**

**CJ193-12/17 INITIATION OF SCHEME AMENDMENT NO. 90 TO
DISTRICT PLANNING SCHEME NO. 2 – RECODING
FROM R20/60 AND R20/40 TO R20/30**

WARD	South
RESPONSIBLE DIRECTOR	Ms Dale Page Planning and Community Development
FILE NUMBER	106679, 101515
ATTACHMENTS	Attachment 1 Location Plan Attachment 2 Scheme Amendment Maps
AUTHORITY / DISCRETION	Legislative - includes the adoption of local laws, planning schemes and policies.

PURPOSE

For Council to consider initiating an amendment to *District Planning Scheme No. 2* to change the residential density code of the portion of Housing Opportunity Area 1 (HOA1) located west of Davallia Road from R20/40 and R20/60 to R20/30.

EXECUTIVE SUMMARY

As part of a report addressing issues in Housing Opportunity Areas, at its meeting held on 21 November 2017 (CJ177-11/17 refers), Council considered a petition from some landowners in Duncraig and subsequently resolved to include the area west of Davallia Road, Duncraig, into existing Amendment No. 88. This would effectively mean that Council would need to revoke its earlier decision to initiate and advertise existing Amendment No. 88 and to replace it with an amendment to DPS2 to recode the entire area of HOA1 west of the Mitchell Freeway from R20/40 and R20/60 to R20/30.

Following this resolution, the Department of Planning, Lands and Heritage (DPLH) advised that it does not believe that the *Planning and Development (Local Planning Schemes) Regulations 2015* expressly provide for Amendment No. 88 to be rescinded at this stage. DPLH advised that Amendment No. 88 should be advertised in the form that it was initiated, and cannot be modified prior to advertising. Separate legal advice sought by the City has confirmed this to be the case.

This means that Amendment No. 88 must proceed to be advertised in its current form, that is, not including the portion of HOA1 west of Davallia Road.

However, as an alternative, Council can consider initiating a separate scheme amendment (Amendment No. 90) to recode the portion of HOA1 west of Davallia Road from R20/40 and R20/60 to R20/30 and in practical terms, where possible, treat the amendments as though they were one amendment by:

- advertising both amendments concurrently and in the same manner
- reporting on both amendments in one report to Council at the conclusion of advertising

- advising the Western Australian Planning Commission (WAPC), via a formal resolution of Council and through the amendment documentation sent to the WAPC, that the two amendments both deal with the same issue in the same Housing Opportunity Area and encourages the WAPC to view the two amendments as one issue to be dealt with holistically

If Council supports this course of action, this report provides the necessary mechanism to initiate an additional scheme amendment (Amendment No. 90) to implement the above.

BACKGROUND

Suburb/Location	Properties within HOA1 west of Davallia Road, Duncraig.
Applicant	City of Joondalup.
Owner	Various.
Zoning	DPS 'Residential', 'Public Use', 'Parks and Recreation'.
	MRS 'Urban'.
Site area	Various.
Structure plan	Not applicable.

At its meeting held on 27 June 2017 (CJ086-06/17 refers), Council resolved to initiate Amendment No. 88 to DPS2 to amend the residential density code of a portion of HOA1 bounded by Mitchell Freeway, Davallia Road, Beach Road and Warwick Road, Duncraig, from R20/40 and R20/60 to R20/30.

Following Council's resolution to initiate Amendment No. 88, the City referred the amendment to the Western Australian Planning Commission (WAPC) and Environmental Protection Authority (EPA) prior to advertising, as required by the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations).

Permission was granted to advertise Amendment No. 88, but prior to commencement of advertising, a separate petition was received from some landowners in HOA1 west of Davallia Road seeking to also include this area of HOA1 in Amendment No. 88.

Amendment No. 88 was therefore not advertised pending Council's consideration of the petition to include additional areas into the amendment.

At its meeting held on 21 November 2017 (CJ177-11/17 refers), Council resolved in part as follows:

"SUPPORTS the request to include the portion of Housing Opportunity Area 1, located west of Davallia Road into Amendment No. 88 to District Planning Scheme No. 2, to reduce the density coding from R20/R40 and R20/R60 to a density coding of no higher than R20/R30 and NOTES that a report dealing with the revocation of Council's earlier decision to initiate existing Amendment No. 88 and to initiate a replacement amendment will be presented to an upcoming Council meeting".

DETAILS

In accordance with Council's decision on 21 November 2017 (CJ177-11/17 refers), an amendment is required to DPS2 that includes the original Amendment No. 88 area, being the area of HOA1 bounded by the Mitchell Freeway, Davallia Road, Beach Road and Warwick Road as well as the area of HOA1 located west of Davallia Road. This amendment would therefore effectively seek to recode the entire area of HOA1 west of the Mitchell Freeway from R20/40 and R20/60, to R20/30.

The remainder of HOA1 to the east of the Mitchell Freeway would not be impacted by the proposed amendment.

The City has obtained legal advice which indicates that the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations):

- do not contain provisions which expressly allow a decision to proceed to advertise a scheme amendment to be revoked
- require that an initiated scheme amendment must be advertised
- do not contain provisions to allow an initiated scheme amendment to be modified prior to advertising.

Amendment No. 88 must therefore proceed to be advertised in its current form, that is, not including the portion of HOA1 west of Davallia Road.

However, in order to implement the intent of Council's decision, a new amendment can be initiated to DPS2 (Amendment No. 90) to recode the portion of HOA1 west of Davallia Road from R20/40 and R20/60 to R20/30 (Attachments 1 and 2 refer).

In acknowledgment of the concerns expressed at the Council meeting that a separate amendment for the area west of Davallia Road may not be given the same consideration as Amendment No. 88 by the WAPC, it is proposed that the City deal with the two separate amendments as though they were a single amendment, as far as possible.

To this end it is recommended that Council initiates a new amendment (Amendment No. 90) for the area to the west of Davallia and seeks the consent of the WAPC to advertise it, holding the advertising of the original Amendment No. 88 in abeyance until the City has approval to advertise Amendment No. 90. This will not delay progress for the residents east of Davallia Road and the subject of the original Amendment No. 88 as they would have formed part of the new, larger amendment anyway.

In practical terms, the two amendments could be treated as one large amendment by advertising both amendments concurrently, using the same letters and the same Frequently Asked Questions and then considering with the outcomes of consultation on both amendments in one report to Council at the conclusion of advertising.

The Council could then advise the WAPC, via a formal resolution of Council and through the amendment documentation sent to the WAPC, that the two amendments both deal with the same issue in the same Housing Opportunity Area and the City could encourage the WAPC to view the two amendments as one issue to be dealt with holistically.

Council could also elect to not initiate a new amendment and resolve to include the area of HOA1 west of Davallia Road into Amendment No. 88 as part of its consideration of Amendment No. 88 after advertising. It is likely however, if this approach was to be undertaken, that the Minister for Transport, Planning and Lands would direct Council to readvertise the amendment, resulting in a much longer timeframe for a final decision to be made.

Issues and options considered

The options available to Council in considering the scheme amendment are:

- resolve to advertise Amendment No. 90 with or without modifications and refer the proposal to the WAPC for advice as to whether any modifications to the documents are required before advertising, and to the EPA for advice as to whether the amendment requires a formal assessment under the *Environmental Protection Act 1986*
or
- resolve not to proceed to advertise Amendment No. 90.

Legislation / Strategic Community Plan / policy implications

Legislation

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

Strategic Community Plan

Key theme

Quality Urban Environment.

Objective

Quality built outcomes.

Strategic initiative

Housing infill and densification is encouraged and enabled through a strategic, planned approach in appropriate locations.

Policy

Not applicable.

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

Part 5 of the *Planning and Development Act 2005* along with the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations) enables a local government to prepare or amend a local planning scheme and sets out the process to be followed.

Under the Regulations, scheme amendments are classified as being basic, standard or complex amendments. In resolving to proceed with an amendment, Council needs to specify the amendment type and explain the reason for that classification. As the proposed scheme amendment is not consistent with the City's *Local Housing Strategy*, it is classed as a complex amendment under the Regulations. Complex amendments are required to be referred to the WAPC for advice as to whether any modifications to the documents are required prior to advertising.

Should Council resolve to proceed with proposed Amendment No. 90 for the purposes of public advertising, the proposed amendment is required to be referred to the EPA to decide whether or not a formal review is necessary. Should the EPA decide that an environmental review is not required, and notify the City accordingly, then it will be necessary to proceed to advertise the proposed scheme amendment for 60 days, provided the WAPC has approved advertising as outlined above.

Upon closure of the advertising period, Council is required to consider all submissions received and to either adopt the amendment, with or without modifications, or refuse to adopt the amendment. The decision is then forwarded to the WAPC, which makes a recommendation to the Minister for Transport, Planning and Lands. The Minister can either grant final approval to the amendment, with or without modifications, or refuse the amendment.

Council may also decide not to proceed to advertise a proposed amendment.

Risk management considerations

Draft *Local Planning Scheme No. 3* (LPS3) is currently being assessed for final approval by the Department of Planning, Lands and Heritage (DPLH).

There is a risk that should Amendment No. 90 to DPS2 be initiated now, given the statutory processes to be undertaken, it is possible that draft LPS3 will have progressed beyond a point where there is the ability to capture this subject amendment within draft LPS3. If this was to occur, a new amendment would then need to be initiated following the finalisation of LPS3 to request the reduction in the residential coding to the portion of HOA1 located west of the Mitchell Freeway.

Financial / budget implications

The City, as the proponent is required to cover the costs associated with the scheme amendment process. The costs incurred are for the advertising of the scheme amendment which could include letters to all owners, and placing a notice in the local newspaper and on the City's website. The total cost of advertising is estimated to be \$2,700. A notice will also be placed in the *Government Gazette* in the event that the scheme amendment is approved.

Regional significance

Not applicable.

Sustainability implications

Not applicable.

Consultation

Should the WAPC permit Amendment No. 90 to be advertised, it is required to be advertised for public comment for 60 days. It is proposed that Amendment No. 88 and Amendment No. 90 would be advertised at the same time by way of:

- letters to all landowners within the two scheme amendment areas (approximately 797)
- a notice placed in *the Joondalup Community newspaper*
- a notice and documents placed on the City's website
- documents available to view at the City's Administration building
- letters to relevant service authorities
- a notice placed through the City's social media platforms.

Council's *Community Consultation and Engagement Policy* states that no public consultation is to be undertaken during the summer break, being the last Ordinary Meeting of Council in December to the first Ordinary Meeting of Council in February.

Based on the anticipated Council meeting schedule, this would mean that no consultation could occur between Tuesday 12 December 2017 and Tuesday 20 February 2018, unless otherwise directed by the Council.

Therefore, even if the EPA and the WAPC grant permission to advertise proposed Amendment No. 90, consultation on Amendments No. 88 and 90 will not commence until late February.

COMMENT

It is not legally possible to modify Amendment No. 88 to include the portion of HOA1 west of Davallia Road, and Amendment No. 88 must be advertised in its current form. Therefore, a separate scheme amendment is required to meet the intent of Council's resolution at its meeting held on 21 November 2017 (CJ177-11/17 refers).

The effect of Amendments No. 88 and 90 would be to recode the area of HOA1 west of the Mitchell Freeway from R20/40 and R20/60 to R20/30. It is considered appropriate to advertise the amendments at the same time, and for Council to consider the submissions on the amendments together. It is also considered appropriate to request that the WAPC consider both amendments together, given that they apply to the same HOA, and with the intent that they essentially be one amendment.

Should Council initiate Amendment No. 90, it should be noted that the City has received advice that it would only be appropriate to give weight to the provisions of the amendment once there is certainty that the amendment will be approved.

VOTING REQUIREMENTS

Simple Majority.

MOVED Cr Dwyer, SECONDED Cr Hamilton-Prime that Council:

- 1 Pursuant to section 75 of the *Planning and Development Act 2005* and Regulation 37(1) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, RESOLVES to proceed to advertise Scheme Amendment No. 90 to the *City of Joondalup District Planning Scheme No. 2* to:**

- 1.1 amend the Residential Density Code Map to recode a portion of Housing Opportunity Area 1 from R20/40 and R20/60 to R20/30, as depicted at Attachment 2 to Report CJ193-12/17,**

for the purpose of public advertising for a period of 60 days;

- 2 Pursuant to Regulation 35(2) of the *Planning and Development (Local Planning Schemes) Regulations 2015* NOTES that Scheme Amendment No. 90 is a complex amendment as the proposal is not consistent with the *City of Joondalup Local Housing Strategy*;**

- 3 **SUBMITS** Scheme Amendment No. 90 to the Western Australian Planning Commission to advise if any modifications are required to the documents prior to advertising;
- 4 **REQUIRES** Amendments No. 88 and 90 to the *City of Joondalup District Planning Scheme No. 2* to be advertised for public comment at the same time and **NOTES** that, following the conclusion of the advertising period, the amendments will be considered by Council within the one report;
- 5 **ADVISES** the Western Australian Planning Commission that Council considers Amendments No. 88 and 90 to be addressing the same issue within Housing Opportunity Area 1, and **REQUESTS** that the amendments be considered together.

AMENDMENT MOVED Cr Norman, SECONDED Cr Chester that a new Part 6 be ADDED to the Motion to read as follows:

“6 *NOTES the requirements of the City’s Community Consultation and Engagement Policy with respect to consultation during the summer break and AGREES to proceed with public consultation as soon as possible even if commencement occurs before the first ordinary meeting of Council in February 2018.*”

The Amendment was Put and

LOST (4/8)

In favour of the Amendment: Crs Chester, Jones, Norman and Poliwka.

Against the Amendment: Mayor Jacob, Crs Dwyer, Hamilton-Prime, Hollywood, Logan, May, McLean and Taylor.

The Motion as Moved by Cr Dwyer and Seconded by Cr Hamilton-Prime

Was Put and

CARRIED (12/0)

In favour of the Motion: Mayor Jacob, Crs Chester, Dwyer, Hamilton-Prime, Hollywood, Jones, Logan, May, McLean, Norman, Poliwka and Taylor.