

Requesting a Town Planning Scheme Amendment (Information Sheet)

This Information Sheet provides an overview of the process for requesting an Amendment to the City's Town Planning Scheme No. 6 ('TPS6'). It also explains the procedure which must be followed towards finalisation of a Scheme Amendment if the Council agrees to commence the statutory process.

Discuss your proposal

Before lodging a formal request, applicants are encouraged to make an appointment with a Strategic Planning Officer at the City to discuss their idea. The Officer will:

- advise whether or not the desired form of development can currently be approved within the framework of the existing TPS6 without the need for a Scheme Amendment; and
- offer guidance as to whether the applicant's Scheme Amendment request is likely to be supported and how it should be formulated and justified.

To prepare for the meeting with the Strategic Planning Officer, applicants should:

- read this information sheet;
- investigate the existing development potential of the site; and
- consider the details of the intended development in terms of desired land uses, site layout and possible building design.

Town Planning Consultants

It is usually advisable for the applicant to engage a suitably experienced Planning Consultant who can fully address all relevant 'Planning' issues in the initial Scheme Amendment request. If the Council supports the requested Amendment, this professional report will provide the basis for the City's report when recommending to the Council.

The consultant may also be invited to prepare the necessary statutory report to be sent to the Western Australian Planning Commission and the Minister, following public advertising of the proposal. This report is also made available as public information during the advertising period when community comments are invited.

Initial request

Information required to be submitted as part of the applicant's formal initial request, includes an explanatory letter and a detailed report addressing all relevant considerations, including:

- the address of the subject lot or lots;
- an accurate description of the requested change in zoning, density coding or other amendment to the Scheme;
- the reasons for the request;
- justification for the application (referencing any applicable Council strategies or policies);
- likely effect (if any) of the proposal on surrounding land, in terms of building form, traffic, access, and the proposed use of the land generally.

Concept plans or other supporting information further clarifying the purpose of the requested change may be required.

The initial request, including full justification and explanation, should be mailed to the Chief Executive Officer, City of South Perth, cnr Sandgate Street and South Terrace, South Perth, 6151.

“Spot rezoning”

In any Town Planning Scheme, it is important for zoning to be applied in an orderly and proper manner. The Council will generally not support requests for a change of zoning, residential density coding or building height limits for an individual lot or other small area, independently of a broader Scheme Review. Modification of a small area of land in isolation from the wider locality is sometimes referred to as ‘spot rezoning’.

‘Spot rezoning’ will generally only be supported if the particular site-specific circumstances are unique, the requested rezoning is of a special or urgent nature, and the resultant development will not adversely affect surrounding areas. Rather, the request should relate to a broader, more logical area, or be considered as part of a major Scheme review.

What happens next?

How will a Scheme Amendment request be considered by the City?

Any change to TPS6 will be considered very carefully by the City. When deciding whether or not the Scheme Amendment request should be supported, a wide range of local and regional Planning considerations are taken into account.

Some matters would not be considered as relevant ‘planning’ considerations by the City, such as financial personal gain to the applicant. While important to the applicant, such matters would not be

taken into account when an Amendment request is considered. The Council would normally only consider proposals which would contribute to the long-term benefit of the wider community.

To enable the Amendment proposal to be properly and fully considered by the Council, City officers, community, and later by the Minister for Planning, a concept plan and elevations illustrating possible development of the land after completion of the Amendment, are sometimes required. These would also assist the applicant by confirming that the intended redevelopment of the land would be feasible.

The concept plan and elevations are particularly relevant in the case of rezoning of land, increased development potential, or other site-specific benefit. The supporting drawings should be realistic in scale and should illustrate the likely form of development of the site, accurately illustrating the following design elements, as a minimum:

- proposed uses and disposition of uses within the building and on the site;
- maximum permitted plot ratio area;
- maximum permitted building height;
- required setbacks from all boundaries, including any special street setback prescribed by clause 5.1(4) and Tables 2, 3 and 5 of TPS6;
- layout of the required number of car parking bays on site for all dwellings, non-residential uses, and visitors;
- location of vehicular access points. *(Refer to clause 6.6 of TPS6 for Canning Highway and Manning Road. Please note that when designing the concept site plan, any land required for future road widening is to be excluded from the lot area, as prescribed by clause 6.6(3) of TPS6.)*

The Council appreciates that the concept plan might not necessarily be the final design solution for the site and that some design elements might be refined in the more detailed preparation of the proposal at the later development application stage. While the developer would not be required to exactly replicate the concept design in any future development application, the Council would expect that the basic features of the concept plan would be retained. The concept plan and elevations will be considered by the Council when deciding whether or not to initiate the requested Scheme Amendment.

Some of the matters considered by the Council when assessing a Scheme Amendment request

When deciding whether or not a Scheme Amendment request should be supported, a wide range of matters is taken into account, including the following (in random sequence):

- purpose of the requested Amendment;
- existing zoning and site requirements (prior to their Amendment);
- existing land use;
- existing zoning under the Metropolitan Region Scheme;
- whether the proposed redevelopment is permissible under the existing zoning without requiring an Amendment;
- existing zoning and site requirements applicable to surrounding lots;
- comments received from neighbours likely to be affected by the proposal;

- any adverse effect on surrounding areas, including traffic or parking congestion in the area;
- whether the particular or site-specific circumstances of the Amendment are unique, or of a special or urgent nature;
- any precedent of similar Amendments which could affect the current request;
- TPS6 objectives listed in clause 1.6;
- relevant considerations listed in clause 67 of Schedule 2 'Deemed Provisions' of the Planning and Development (Local Planning Schemes) Regulations 2015;
- compatibility of the proposal with any City strategies and policies relating to the future development of the locality;
- compatibility of the proposal with any State government strategies and policies relating to the future development of the locality;
- any other relevant Planning consideration or requirement of the Minister responsible for Planning;
- any relevant heritage considerations or requirements of the City or the Minister responsible for State heritage; and
- any environmental considerations or requirements of the EPA or the Minister responsible for the environment.

What's involved in amending Town Planning Scheme No. 6?

Statutory requirements

TPS6 is a statutory document and must be amended in accordance with all statutory procedures.

Section 75 of the Planning and Development Act 2005 ('the Act') provides for local governments to amend a local planning scheme. Scheme Amendment provisions become operative when approved by the Minister and published in the Government Gazette.

The more detailed procedure for making and amending a local Town Planning Scheme is set out in the State Government's Planning and Development (Local Planning Schemes) Regulations 2015 ('the Regulations'). The Regulations define three kinds of local Scheme Amendments – Basic, Standard or Complex – depending on their degree of complexity and their likely effect on the area in which they operate. When initiating a Scheme Amendment process, the Council must resolve whether each Amendment is Basic, Standard or Complex. The process for amending the Planning Scheme varies according to the kind of Amendment involved.

In summary, the three kinds of amendment to a local Planning Scheme are as follows:

Basic Amendment

- corrects an administrative error; or
- brings the Planning Scheme into consistency with any over-riding provisions of a State Government Act, State planning policy, or any approved local scheme, plan or strategy for the area.

Standard Amendment

- relates to a zone or reserve that is consistent with Scheme objectives;
- is consistent with an endorsed local planning strategy;
- creates an additional zone introduced by an adopted structure plan, activity centre plan or local development plan; or
- would not result in any significant environmental, social, economic or governance impact on land in the Scheme area.

Complex Amendment

- is not consistent with, or addressed in, an endorsed local planning strategy;
- relates to development of a significant scale impact in relation to development in the locality;
- is required by an order made by the Minister under section 76 or 77A of the Act;
- identifies or amends a development contribution area or a development contribution plan.

The procedure for each kind of Amendment generally involves –

- a Council resolution to amend the Scheme;
- preparation of statutory amending documents;
- endorsement of the documents by the Council;
- in the case of Standard and Complex Amendments:
 - advertising the draft Amendment proposals for public inspection and comment to the extent required by Council Policy P301 ‘Community Engagement in Planning Processes’ (‘Policy P301’);
 - consideration of any submissions; and
- recommending to the Minister for Planning whether to approve the Amendment (with or without modification) or not approve it.

When undertaking a Scheme Amendment, the City must follow the process prescribed by the Regulations. The final decision on the Amendment is made by the Minister. Basic process charts for each kind of Amendment are attached.

Clause 9.8 of Town Planning Scheme No. 6 requires the Council to “*keep the Scheme under constant review*” and to maintain “*the Scheme as an up-to-date and efficient means for pursuing community objectives regarding development and land use*”.

Lodgement and initial assessment of an Amendment request

A request for a Scheme Amendment should be lodged with the City. Depending on the nature of the proposal, applicants might be invited to explain their proposal to the Council at a Concept Briefing, or at the monthly Council Agenda Briefing which is open to the public. Following assessment of the request, the Planning Officer’s technical report will be considered at a Council meeting. The Council will then decide whether or not to initiate the Scheme Amendment process for the requested purpose. The change to the Scheme might be supported in the manner requested, or it might be modified or

supported subject to certain performance criteria or other requirements, depending on the particular circumstances.

The Council is not obliged to initiate a requested Scheme Amendment if it is of the opinion that the proposal would not constitute orderly and proper planning. However, under Section 76 of the Act, if, following receipt of a submission by the applicant, the Minister is satisfied that a local government has failed to initiate or adopt a Scheme Amendment which ought to have been initiated or adopted, the Minister may order the local government to do so. Such a Ministerial Order would result in the Council then having to follow the normal process for the kind of Amendment involved. Alternatively, the Minister could undertake the process himself or herself.

Scheme Amendment Fee

In the case of a requested Amendment which will benefit specific land, a Planning Fee is usually imposed. The State Government's Planning and Development Regulations 2009 provide for a local government to impose certain Planning fees and charges. The City's 'Fees and Charges Schedule' for the current year may be accessed on the City's website at www.southperth.wa.gov.au, and includes a section relating to Amendments to the City's Town Planning Scheme No. 6. Estimated fees for Standard and Complex Amendments, based on the recovery of expenses incurred by the City in processing the application, are imposed. They are calculated based on standard hourly rates of City officers involved in the process, legal costs, overheads and any other costs.

The applicant will be invoiced by the City following the Council decision to initiate the Amendment process. City officers will keep a log of the time spent processing the application and other costs, to enable actual costs to be calculated precisely at the conclusion of the process. Additionally, the applicant is required to arrange and meet the costs of preparing, erecting and removing any required site notices.

The City's annual 'Fees and Charges Schedule' makes provision for the refund of any portion of the fee payment if not expended by the City, at the conclusion of the process or if the process is discontinued.

A copy of the estimated fees for each stage of the process for the relevant kind of Amendment involved, will be provided to the applicant.

Preliminary consultation prior to initiating Amendment process

In some cases, City officers will invite comments from neighbours surrounding a Scheme Amendment site, before the Amendment request is considered by the Council. Clause 9.8(3) of TPS6 requires that before the Council initiates a Scheme Amendment involving a change to the zoning, residential density coding, building height limit, or other site-specific development requirements applicable to particular land, the City is to invite comment from all of the owners of that land who were not a party to the formal request to the Council. This usually applies where the request relates to several lots.

The protocols relating to this ‘preliminary’ neighbour consultation are set out in Policy P301. The Policy requires the City to consult with not only the owners of the Amendment land, but also other neighbouring owners, to the extent specified in the Policy, for a period of not less than 21 days. Following this, the Scheme Amendment request, along with any comments received from landowners and neighbours, will be presented to a Council meeting for a decision as to whether or not to initiate the requested Scheme Amendment.

Community consultation after endorsement by the Council

The Regulations require that Standard Amendments are advertised for community comment for a minimum period of 42 days, and Complex Amendments for 60 days, during which written submissions are invited. All submissions will be assessed in detail by City officers, who will report and recommend to the Council on issues raised in the submissions. The Council will then recommend to the Western Australian Planning Commission and the Minister on the submissions and the Amendment proposal.

When determining the Amendment request, the Minister will take into account the details of the Amendment request, any ‘preliminary’ comments from other affected owners, submissions received from members of the public during the statutory advertising period, and recommendations from the Council and the WAPC. After the Scheme Amendment has been finally approved by the Minister, it is published in the Government Gazette. Notice of the Minister’s approval is also published in a newspaper circulating in the area of the amendment site. Once this has occurred, the provisions of the Scheme Amendment become operative and the City will notify the applicants and the submitters.

Advertising procedure

After the Council has resolved to initiate a Scheme Amendment and has endorsed the draft Amendment proposals for advertising purposes, the statutory Amendment documents are forwarded to the Environmental Protection Authority (EPA) for assessment. On receipt of advice from the EPA that the proposal does not require any further environmental investigation, the City will advertise the draft Amendment proposals to the extent, in the manner, and for the duration required by the Regulations and Policy P301. This normally involves, as a minimum requirement:

- An advertising period of not less than 42 days (for a Standard Amendment) or 60 days (for a Complex Amendment);
- Advertising of the proposal in a newspaper circulating within the City during the advertising period;
- Letters to owners, neighbours, relevant government agencies and any other interested party;
- Erection of one or more signs on the Amendment site (where applicable); and
- Display of Amendment documents, including any concept plans required in support of the proposal, on the City’s website, in the City’s Libraries and at the Civic Centre office.

The Regulations and Policy P301 contain precise details as to the advertising procedures that must be undertaken. The City will advise the applicant of the advertising process, including details of any required advertising that the applicant must undertake.

Final Determination

After the Council has considered the submissions and resolved how to recommend to the Minister, the City will forward the Amendment Report (including the Council's recommendation), a map of the origin of submissions, a Report on Submissions, a Schedule of Submissions, and a copy of each submission to the WAPC for the Minister's final determination. Where the Council recommends that the Amendment should proceed without modification, or with only minor modification, the City will usually also forward the required three sets of executed documents for the Minister's final approval. If the Minister agrees to approve the Scheme Amendment, a notice of the Minister's final approval is then published in the Government Gazette. The Scheme Amendment legally comes into effect from the date of gazettal. Where the Minister requires changes, the Scheme Amendment is referred back to Council for further modification. The final decision, however, always rests with the Minister.

Overall timeframe

The Scheme Amendment process is lengthy and complex, usually involving consideration at two ordinary Council meetings, one or occasionally two public consultation periods, and processing at State Government level, before being finally determined by the Minister. It is usually the case that this process takes nine to twelve months and sometimes longer. Following publication of the approved Scheme Amendment in the Government Gazette, the applicant may lodge an application for planning approval for proposed development in line with the new provisions.

Flow charts, indicating the basic Scheme Amendment process and the likely timeframe for the complete process can be found at https://www.dplh.wa.gov.au/getmedia/05184eac-8412-47ec-a7bf-803c0bebd996/FC_Process_for_Amendments_to_LPS_flowchart

Relevant publications

Addresses of relevant websites have been supplied here as a courtesy and were correct at the time of publication, however all enquirers should make their own enquiries to the identified organisations.

City of South Perth

<http://www.southperth.wa.gov.au/>

- Town Planning Scheme No. 6 - Scheme Text and Scheme Maps (including gazetted Scheme Amendments)
- Policy P301 'Community Engagement in Planning Proposals'
- Rates and Fees - Fees and Charges - Planning

State Law Publisher

<https://www.legislation.wa.gov.au>

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

- Planning and Development Regulations 2009

Western Australian Planning Commission

<https://www.dplh.wa.gov.au/policy-and-legislation/state-planning-framework/fact-sheets,-manuals-and-guidelines/local-planning-manual>

- Local Planning Manual March 2010

Environmental Protection Authority

https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a9408.html

Referral of Scheme or Amendment to EPA (Planning and Development Act 2005, Section 81)

Disclaimer

This publication is intended to provide general information only. Applicants should also discuss the matter with a Planning Officer, and read the relevant documents referred to in this Information Sheet.

Should you have any further questions regarding this, or any other matter you are welcome to contact one of the City's Strategic Planning Officers by telephone or make an appointment to see an officer in person.

City's Offices: Civic Centre, cnr Sandgate Street and South Terrace, South Perth

Telephone: 9474 0777 **Email:** enquiries@southperth.wa.gov.au

Facsimile: 9474 2425 **Web:** www.southperth.wa.gov.au