

# AGENDA.

## Special Council Meeting

20 February 2018

### Notice of Meeting

Mayor and Councillors

The next Special Council Meeting of the City of South Perth Council will be held on Tuesday 20 February 2018 in the the City of South Perth Council Chamber, Cnr Sandgate Street and South Terrace, South Perth commencing at 7.00pm.



GEOFF GLASS  
CHIEF EXECUTIVE OFFICER

16 February 2018

# Our Guiding Values

## Trust

Honesty and integrity

## Respect

Acceptance and tolerance

## Understanding

Caring and empathy

## Teamwork

Leadership and commitment

## Disclaimer

The City of South Perth disclaims any liability for any loss arising from any person or body relying on any statement, discussion, recommendation or decision made during this meeting.

Where an application for an approval, a licence or the like is discussed or determined during this meeting, the City warns that neither the applicant, nor any other person or body, should rely upon that discussion or determination until written notice of either an approval and the conditions which relate to it, or the refusal of the application has been issued by the City.

## Further Information

The following information is available on the City's website.

- **Council Meeting Schedule**

Ordinary Council Meetings are held at 7.00pm in the Council Chamber at the South Perth Civic Centre on the fourth Tuesday of every month between February and November. Members of the public are encouraged to attend open meetings.

- **Minutes and Agendas**

As part of our commitment to transparent decision making, the City makes documents relating to meetings of Council and its Committees available to the public.

- **Meet Your Council**

The City of South Perth covers an area of around 19.9km<sup>2</sup> divided into four wards. Each ward is represented by two Councillors, presided over by a popularly elected Mayor. Councillor profiles provide contact details for each Elected Member.

[www.southperth.wa.gov.au/Our-Council/](http://www.southperth.wa.gov.au/Our-Council/)

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# Special Council Meeting - Agenda

## 1. DECLARATION OF OPENING

## 2. ANNOUNCEMENTS FROM THE PRESIDING MEMBER

### 2.1 STANDING ORDERS LOCAL LAW 2007

*This meeting is held in accordance with the City's Standing Orders Local Law 2007 which provides rules and guidelines that apply to the conduct of Council meetings.*

### 2.2 AUDIO RECORDING OF THE COUNCIL MEETING

*This meeting will be audio recorded in accordance with Council Policy P673 'Audio Recording of Council Meetings' and Clause 6.15 of the Standing Orders Local Law 2007 'Recording of Proceedings'.*

## 3. ATTENDANCE

### 3.1 APOLOGIES

### 3.2 APPROVED LEAVE OF ABSENCE

## 4. DECLARATION OF INTERESTS

*Conflicts of Interest are dealt with in the Local Government Act, Rules of Conduct Regulations and the Administration Regulations as well as the City's Code of Conduct 2008. Members must declare to the Presiding Member any potential conflict of interest they have in a matter on the Council Agenda.*

## 5. PUBLIC QUESTION TIME

## 6. DEPUTATIONS

## 7. REPORTS

### 7.3 STRATEGIC DIRECTION 3: ENVIRONMENT (BUILT AND NATURAL)

#### 7.3.1 Final Adoption - Proposed Amendment No. 58 (Licensed Premises) to Town Planning Scheme No. 6

Location:	City of South Perth
Ward:	All
Applicant:	Council
File Ref:	D-18-15574
Meeting Date:	20 February 2018
Author(s):	Aaron Augustson, Senior Strategic Planning Officer
Reporting Officer(s):	Vicki Lummer, Director Development and Community Services
Strategic Direction:	Environment (built and natural): Sustainable urban neighbourhoods
Council Strategy:	3.2 Sustainable Built Form

#### Summary

At its Special Council Meeting of 14 November 2017, the Council resolved to prepare and advertise proposed Amendment No. 58 (Licenses Premises) to Town Planning Scheme No. 6 (the Scheme). The amendment was prepared in response to an identified 'loophole' under the *Liquor Control Act, 1988* whereby a large format liquor store that is the subject of a tavern licence or hotel licence may be approved as a 'tavern' or 'hotel'. The purpose of the amendment was to amend the various definitions relating to licensed premises to rectify this issue.

In accordance with Part 5 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations), the proposed amendment was advertised for public comment. At the conclusion of the consultation period, being 6 February 2018, the City had received 11 submissions, all of which were in support or partially in support of the proposed amendment.

It is recommended the Council support the amendment without modification and forward the amendment to the Minister for Planning for final approval.

#### Officer Recommendation

That Council:

1. Note the submissions received as detailed in the Schedule of Submissions at **Attachment (a)**;
2. Resolve, pursuant to Section 75 of the *Planning and Development Act 2005* and Regulation 50(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, to support Scheme Amendment No. 58 to the City of South Perth Town Planning Scheme No. 6 without modification, as detailed in the amendment documents at **Attachment (b)**;
3. Authorise the Mayor and Chief Executive Officer to execute the relevant scheme amendment documentation and affix the common seal of the City of South Perth to the documentation; and
4. Request that the Minister for Planning grant final consent to proposed Scheme Amendment No. 58 to the City of South Perth Town Planning Scheme No. 6 as referred to in 2. above.

### Background

The City made 'Liquor Store (Large)' a prohibited land use in the residential zone and all non-residential zones except for the district centre commercial zone via Amendment No. 50 to Town Planning Scheme No. 6. This amendment was in response to the City's recognition that large format liquor stores potentially have a greater negative impact on amenity due to their scale (i.e. increased traffic generation, increased noise etc.), therefore the only appropriate zone for such uses was considered to be the 'district centre commercial' zone.

Notwithstanding, a 'loophole' under the *Liquor Control Act, 1988* has been identified whereby a large format liquor store that is the subject of a tavern licence or hotel licence may be approved as a 'Tavern' or 'Hotel'. In order to rectify this issue the Council resolved to prepare and advertise Amendment No. 58 to Town Planning Scheme No. 6 (TPS6) at the 14 November 2017 Special Council Meeting. The purpose of this amendment is to modify the definitions of 'Liquor Store (Large)', 'Tavern', 'Hotel' and 'Shop' as follows:

- '*Liquor Store (Large)*' – to include reference to a tavern licence and hotel licence. This modification will ensure that premises that are the subject of a tavern and hotel licence with an area used to sell and display packaged liquor of more than 300 square metres, are included in this definition. This modification will ensure that all licences by which an owner of licenced premises may display and sell packaged liquor – specifically a 'tavern licence' and also a 'hotel licence' – are now contemplated and covered;
- '*Tavern*' and '*Hotel*' – to strengthen the abovementioned definition, clarify that such a licence does not include a liquor store large, and to preclude such uses from incorporating areas of more than 300 square metres being used to sell and display packaged liquor. This modification will ensure that tavern and hotel Licences do not incorporate what would otherwise be considered as a 'Liquor Store (Large)'; and
- '*Shop*' – to preclude the above uses and 'Liquor Store (Small)' from this definition.

These amendments would address the 'loophole' and preclude uses which essentially operate as a 'Liquor Store (Large)' from operating under a 'tavern' or 'hotel' license.

Following the Council resolution the amendment was subsequently forwarded to the Environmental Protection Authority (EPA). On the 6 December 2017 the City was advised that the amendment did not require an environmental assessment. The amendment was subsequently advertised for a period of 56 days in accordance with the Regulations and the advertising has now concluded.

### Comment

During the public consultation period, the City received 11 submissions on the proposed amendment. Further statistical information regarding the outcomes of the consultation is detailed in the 'Consultation' section of this report. The key matters raised during consultation are outlined in the table below.

Summary of submissions	Officer Comments
<p>Legal advice should be sought to ensure all possible future loopholes due to the wording are mitigated.</p>	<p>The proposed wording of Amendment No. 58 has been developed in consultation with the City's solicitors to ensure that the intent is clear and that the application of the definitions will meet the City's objective of ensuring that large format liquor stores the subject of a 'tavern' licence (or any other licence) will be assessed as a 'Liquor store (Large)'.</p>
<p>We propose the following wording for Amendment No. 58 definitions:</p> <p><i>'Liquor Store' (Large) means premises:</i></p> <p><i>a. The subject of a liquor licence granted under the Liquor Control Act 1988, and</i></p> <p><i>b. In which the whole of, or portion of, the premises with a net lettable area of more than 300 square metres is used to display and sell packaged liquor for consumption off the premise.</i></p> <p><i>'Liquor Store' (Small) means premises:</i></p> <p><i>a. The subject of a liquor licence granted under the Liquor Control Act 1988, and</i></p> <p><i>b. In which the whole of, or portion of, the premises with a net lettable area of 300 square metres or less is used to display and sell packaged liquor for consumption off the premise.</i></p>	<p>Modifications to the definitions proposed in the draft amendment are considered to satisfy the purpose of Amendment No. 58. The inclusion of the particular liquor licenses under the 'Liquor store (Large)' definition is to ensure that any sale of packaged liquor in an area greater than 300sqm is considered to be a 'Liquor store - large' regardless of the liquor license that has been approved for the premises. The proposed definitions within Amendment No. 58 have been provided through consultation with the City's solicitors to ensure that the intent is clear in meeting the City's objective of ensuring that large format liquor stores the subject of a 'tavern' licence (or any other licence) will be assessed as a 'Liquor store (Large)'.</p> <p>Amending the definitions as suggested would not add any value to or strengthen the definitions. The current wording of the proposed amendment is considered to more adequately address the loophole as it specifies the type of licenses applicable to the definition avoiding any doubt about the intent or interpretation. The further amendments to the other definitions are also considered to strengthen the amendment as they will preclude large format liquor stores from being able to be considered as a hotel or tavern regardless of other uses that exist on or are proposed for the site.</p> <p>The inclusion of reference to specific type of licenses in the liquor store definitions and modification of the 'Tavern' and 'Hotel' definitions are therefore seen as key components of the amendment to avoid any confusion or doubt as to the intent and application of the amendment.</p>
<p>A preferred approach could be to look at a definition which is grounded in the land use only, and thus avoiding any reference to the Liquor Control Act.</p> <p>The following definitions could be used as</p>	<p>Reference to the Liquor Control Act is consistent with the Model Provision definitions and also considered necessary to avoid any doubt as to the intent of the definition, and consequently any future</p>

<p>an interim measure, pending final resolution of this issue by the WAPC:  <i>'Packaged Liquor Outlet (Large)' means any premises or part thereof which sells packaged liquor where the net selling area of packaged liquor sales is over 300m<sup>2</sup></i></p> <p><i>'Packaged Liquor Outlet (small)' means any premises or part thereof which sells packaged liquor where the net selling area of packaged liquor sales is 300m<sup>2</sup> or less.</i></p> <p>This may avoid any clash with the existing definitions, and which could be dropped from TPS6 in favour of those outlined above.</p>	<p>loopholes that could be utilised by operators of 'Hotel' and 'Tavern' Licenses.</p> <p>The inclusion of the particular liquor licenses under the 'Liquor store (Large)' definition is to ensure that any sale of packaged liquor in an area greater than 300sqm is considered to be a 'Liquor store – large' regardless of the liquor license that has been approved for the premises.</p> <p>The further amendments to the other definitions are also considered to strengthen the amendment as they will preclude large format liquor stores from being able to be considered as a Hotel or Tavern regardless of other uses that exist on or are proposed for the site.</p>
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Having regard to the key matters raised in the submissions and the original intent of the amendment no modifications to the proposed amendment are recommended.

### Consultation

The proposed amendment was advertised for a period of 56 days, concluding on 6 February 2018, in accordance with the Regulations (which require a minimum 42 day period) and Local Planning Policy 301 'Community Engagement in Planning Proposals' which requires extended consultation over the Christmas and New Year periods. This consultation involved:

- a notice in the Southern Gazette, appearing on 12 December 2017;
- notice and copies of the amendment documents being published on the 'Your Say South Perth' throughout the consultation period;
- hard copy notices and copies of the proposed amendment being available at the City's Civic Centre and libraries throughout the consultation period; and
- direct mail sent to the Department of Racing, Gaming and Liquor as a public authority that may be affected by the amendment.

At the conclusion of the consultation period a total of 11 submissions were received. A detailed breakdown is provided below:

- 9 submissions supported the amendment; and
- 2 submissions supported the amendment in part.

It should be noted that no submission was received from the Department of Racing, Gaming and Liquor.

A detailed summary of the submissions is contained is provided at **Attachment (a)**. Following detailed review of the submissions, the City is recommending to:

- Uphold eight (8) submissions;
- Partially uphold one (1) submission; and
- Not uphold two (2) submissions.

No change to the draft amendment is proposed in response to comments received.



### Policy and Legislative Implications

The Council has undertaken community consultation as required by the Regulations, TPS6 and Council Policy P301, and must now consider whether to recommend to the Minister for Planning to approve Amendment No. 58, with or without modifications, or to not approve it. The recommendation is to approve the amendment **without modification**. Should the Minister approve Amendment No. 58, the City will arrange for Notice of the Minister's approval to be published in the *Government Gazette* and in the *Southern Gazette* newspaper. The amendment provisions will then become operative.

The statutory scheme amendment process as required by the Regulations is set out below, together with a date for each stage. The stages which have been completed, including the consideration at the February 2018 Council meeting, are shaded:

Stage of Amendment No. 58 Process	Timeframe
Council decision to prepare Amendment	14 November 2017
Council adoption of draft Amendment Report and Scheme Text for advertising purposes	14 November 2017
Referral of draft Amendment documents to EPA for environmental assessment, and to WAPC for information	20 November 2017
Receipt of EPA comments advising that no environmental assessment or conditions are required	6 December 2017
Community advertising period of 56 days	12 December 2017 to 6 February 2018
Council consideration of the Schedule of Submissions and resolution to support, support with modifications or to not support the amendment	20 February 2018
Referral to WAPC and Minister for consideration of the below information and final approval: <ul style="list-style-type: none"> <li>▪ all of the submissions</li> <li>▪ Report on Submissions and Schedule of Submissions</li> <li>▪ Council's recommendation on proposed Amendment</li> </ul>	Within two weeks of the February 2018 Council meeting
Minister's final determination of Amendment	Not yet known
City's publication of Notice of the Minister's final determination of Amendment No. 58 in Government Gazette and Southern Gazette newspaper following receipt from WAPC of advice of Minister's final determination	Not yet known

### Financial Implications

There will be a small cost to the City to have the final amendment gazetted in the Government Gazette.

### Strategic Implications

This report is aligned to the Council's [Strategic Community Plan 2017-2027](#).

### Attachments

**7.3.1 (a):** Schedule Of Submissions

**7.3.1 (b):** Scheme Amendment Report

**8. MEETING CLOSED TO THE PUBLIC**

**9. CLOSURE**