

12 Chief Community Planner reports

12.1 Draft Amended Local Planning Policy 37 'Community Consultation on Planning Proposals'

Location	Town-wide
Reporting officer	Leigh Parker
Responsible officer	Robert Cruickshank
Voting requirement	Simple majority
Attachments	<ol style="list-style-type: none">1. Draft Amended LPP 37 'Community Consultation on Planning Proposals' [12.1.1 - 15 pages]2. Existing LPP 37 'Community Consultation on Planning Proposals' [12.1.2 - 12 pages]

Recommendation

That Council:

1. Consents to the advertising of draft amended Local Planning Policy 37 'Community Consultation on Planning Proposals' (as contained within Attachment 1) for public comment for a minimum period of 21 days in accordance with deemed clause 4 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
2. Requests the Chief Executive Officer to provide a further report to Council summarising and responding to any submissions received during the public advertising period along with a recommendation on whether to adopt draft amended Local Planning Policy 37 'Community Consultation on Planning Proposals' with or without modifications.

Purpose

To consent to public advertising of draft amended Local Planning Policy 37 'Community Consultation on Planning Proposals' (LPP 37), which has been revised to reflect recent amendments to Town Planning Scheme No. 1 and State Government legislation.

In brief

- Existing LPP 37 has been revised and broadened in scope to ensure it is consistent with recently gazetted changes to the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations) as well as recent amendments to the Town's local planning scheme.
- The revised provisions provide clarity and certainty to the community and the Town's officers as to the duration and methods of consultation that will be undertaken in relation to new, amended or repealed instruments of the Town's local planning framework, as well as applications for development approval.
- It is recommended that draft amended LPP 37 be advertised for public comment.

Background

1. Existing LPP 37 was last amended in December 2018, following its review by the Urban Planning service area, as detailed in the Ordinary Council Meeting Minutes of 11 September 2018 and 11 December 2018.
2. Amendments to the Regulations were gazetted in December 2020 with the stated goals of streamlining development approval processes, reducing unnecessary 'red tape' and helping to support the State's economic recovery.
3. The majority of changes to the Regulations commenced operation as of 15 February 2021 and has resulted in a number of local planning policies being reviewed and amended as a result of the changes. LPP 37 is the fourth local planning policy to be reviewed as a result of the amended Regulations.
4. A number of additional changes to the State and local planning framework have occurred since the last review of LPP 37, including recent amendments to the Town's local planning scheme and the gazettal of Volume 2 of the Residential Design Codes WA, which applies to mixed use development and multiple dwellings on land with a density coding of R40 and above.
5. In view of the above changes to both the State and local planning frameworks, the review and amendment of existing LPP 37 has been completed.

Strategic alignment

Civic Leadership	
Strategic outcome	Intended public value outcome or impact

CL02 - A community that is authentically engaged and informed in a timely manner.	The development of a LPP that ensures community consultation and public advertising of planning proposals is undertaken in accordance with Stage legislative requirements, and provides clarity and certainty to the community, the development industry, property owners and Town officers.
CL08 - Visionary civic leadership with sound and accountable governance that reflects objective decision-making.	The review and development of LPPs that ensure the processing, assessment and determination of development applications is undertaken in a consistent and objective manner.
CL10 - Legislative responsibilities are resourced and managed appropriately, diligently and equitably.	The review of the Town's LPPs to ensure they remain relevant, effective and consistent with current legislative requirements and the State Planning Framework.

Environment	
Strategic outcome	Intended public value outcome or impact

EN01 - Land use planning that puts people first in urban design, allows for different housing options for people with different housing need and enhances the Town's character.	The development of LPPs that facilitate appropriate planning proposals for development and land use within the Town, while providing the opportunity for community input into the decision-making process in relation to significant proposals or where variations are being sought to relevant development standards
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	or policy requirements which may have external amenity impacts.
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Social	
Strategic outcome	Intended public value outcome or impact

S02 - An informed and knowledgeable community.	The development of LPPs that provide clarity to the community about the circumstance and manner in which they will be informed and consulted in relation to planning proposals within the Town.
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Engagement

Internal engagement	
Stakeholder	Comments
Place Planning	The draft amended policy has been distributed to Place Planning officers for internal review and comment. No feedback has been provided. It is noted that the reporting officer (who undertakes duties across both the Place Planning and Urban Planning service areas) did not expect any significant internal feedback given the heavily administrative nature of the policy, with the proposed changes having minimal (if any) impacts from a place perspective.
Urban Planning	Urban Planning officers have reviewed the draft policy and provided feedback, which has informed the provisions of the draft revised policy.
Community Engagement	The draft amended policy was distributed to Community Engagement for internal review and comment with no feedback being received. Significant feedback was not anticipated in relation to the proposed changes given heavily administrative nature of the policy and as it deals primarily with statutory advertising requirements governed by State legislation.

Notwithstanding the above, the opportunity to consider and incorporate any further internal officer feedback can be undertaken during the community consultation period.

Legal compliance

[Planning and Development \(Local Planning Schemes\) Regulation 2015](#)

- The adoption of a new or amended Local Planning Policy is to be undertaken in accordance with deemed clauses 4 and 5 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, including:
 - Publication of a notice in accordance with deemed clause 87;
 - Community consultation for a period of not less than 21 days after the day on which the notice is first published; and
 - Consideration of public submissions and a Council resolution to proceed with the new or amended policy with or without modifications, or not to proceed.

7. As per deemed clause 4(5) and 6(b), the adoption of a new or revised local planning policy, or the revocation of an existing local planning policy, takes effect upon publication of a notice in accordance with deemed clause 87.

Risk management considerations

Risk impact category	Risk event description	Consequence rating	Likelihood rating	Overall risk level score	Council's risk appetite	Risk treatment option and rationale for actions
Financial	Nil	Nil	Nil	Nil	Low	N/A
Environmental	Nil	Nil	Nil	Nil	Low	N/A
Health and safety	Nil	Nil	Nil	Nil	Low	N/A
Infrastructure/ ICT systems/ utilities	Nil	Nil	Nil	Nil	Low	N/A
Legislative compliance and Reputation	Continued application of an existing policy that does not provide adequate guidance in relation to the current planning framework, contains superseded provisions and/or is inconsistent with State legislative requirements.	Low	Likely	Medium	Low	Consent to public advertising of draft amended LPP 37, which mitigates this risk.
Service delivery	Nil	Nil	Nil	Nil	Low	N/A

Financial implications

Current budget impact	Sufficient funds exist within the annual budget to address this recommendation.
Future budget impact	Not applicable.

Analysis

8. A review of existing LPP 37 'Community Consultation on Planning Proposals' (contained in Attachment 2) has been completed by Council officers. This review has considered:
- the effectiveness of the current policy including any issues of interpretation, application, gaps or deficiencies;
 - similar policies of other local governments;
 - alignment with relevant State legislation, policy and/or guidelines;

- d) greater clarity in the objectives of the policy; and
- e) improving the presentation and ease of use (for both the public and Council officers) of the policy.

Issues identified during review of LPP 37

9. The major issues identified during the review relate to:

- (a) the recent changes to the Regulations, which have introduced amended timeframes, standard procedures and requirements for the advertising of planning proposals, which must be undertaken by the Town and are not captured by existing LPP 37;
- (b) the need to revise and expand the definitions contained within the policy to reflect the amended Regulations, and in particular to ascertain the circumstances where application for development approval will undergo public advertising as 'standard' applications (for 14 days) or 'complex' applications (for 28 days);
- (c) the lack of certainty/clarity provided by the existing policy provisions relating to:
 - i. the manner and duration of preliminary consultation to be undertaken in relation to proposed amendments to the Town's local planning scheme, before the Council resolves to formally initiate the scheme amendment process;
 - ii. The circumstances, manner and duration of consultation to be undertaken in relation to amended applications for development approval, following the completion of advertising of the original proposal;
 - iii. The limited range of local planning framework instruments listed within the policy that may be adopted, amended or repealed, and are subject to the requirement for community consultation; and
 - iv. The limited scope of community consultation tools listed as applying to some planning proposals but not others;
 - v. the need to update the policy to reflect new and/or amended decision-making bodies other than the Town that may be responsible for determining applications for development approval;
 - vi. the need to update the policy to reflect changes to the State and local planning frameworks since the last review of the policy, including:
- (d) Amendments 80 and 84 to Town Planning Scheme No. 1 (TPS1) which have broadened the range of land uses that may be considered for approval by the Town and may require specific or altered community consultation requirements; and
- (e) the gazettal of the Residential Design Codes WA – Volume 2 (Apartments) in December 2019, which apply to mixed use developments and multiple dwellings in areas with a density coding of R40 or higher;
- (f) a range of minor variations to the Residential Design Codes – Volume 1 (applying generally to Single Houses and Grouped Dwellings), which are routinely supported by Council officers and approved under delegated authority from the Council, but for which community consultation is still currently required and objections are very rarely raised from adjoining/surrounding properties; and
- (g) a limited range of circumstances for non-residential developments/specific land uses that require a sign on site to be provided during the community consultation period, but which are considered by Council officers to be overly onerous/unnecessary given

their minor impacts and/or as other consultation methods (for example, letters to surrounding or adjoining properties) are considered to adequately advertise these proposals and invite public submissions.

Proposed amendments to LPP 37

10. In view of the above, existing LPP 37 has been amended to:

- a) align itself with the amended advertising requirements of the Regulations, which have a greater focus on digital rather than traditional printed community consultation methods;
- b) include new and revised definitions, in particular:
 - i. the new definition of 'complex application' in accordance with the Regulations, which applies to Unlisted Uses, and those nominated by the Town in a policy or local planning scheme as 'complex applications', to which the most significant consultation requirements apply in terms of duration (minimum 28 days) and methods (must include a sign on site, as well as other methods); and
 - ii. the nomination of 'significant applications' as defined by the policy as 'complex applications' (subject to the advertising requirements of the amended Regulations), and the revision of the definition of 'significant application' to include additional criteria for those application types considered by Council officers to warrant 'complex application' community consultation requirements, rather than standard 14 day advertising. These additional criteria include:
 - residential or mixed use development that contains 1 or more new multiple dwellings (which are subject to performance-based (rather than 'deemed-to-comply') assessment under Volume 2 of the Residential Design Codes WA);
 - new buildings of more than 3 storeys in height; and
 - applications requiring determination by the Inner South Joint Development Assessment Panel (DAP) (excluding extension of time or cancellation applications) or State Development Assessment Unit of the Department of Planning, Lands and Heritage;
- c) include new/amended policy provision clarifying when and how modified applications for development approval will be readvertised (if necessary);
- d) nominate the geographic extent and duration of consultation to be undertaken for preliminary consultation for proposed local planning scheme amendments prior to Council determining whether or not to formally initiate the amendment process;
- e) the expansion of Table 1 covering consultation requirements relating to various instruments of the Town's local planning framework, to cover all planning instruments that may be adopted, amended or repealed/revoked and the full range of consultation methods/tools that may be required;
- f) the consolidation of Tables 2A to 2D applying to applications for development approval into a single Table 2 that identified the applicability of the full range of consultation methods/tools that may apply to each application type/circumstance;
- g) the modification of the application types/attributes listed within Table 2 that are subject to community consultation, including:
 - i. the land uses of Home Store and Home Business introduced by Amendment 84 to TPS1;
 - ii. applications for mixed use development and multiple dwellings that are seeking a variation from relevant 'Acceptable Outcomes' of Volume 2 of the Residential Design Codes WA that have potential to externally impact upon neighbouring properties or the streetscape;
 - iii. variations to the lot area, plot ratio area and location requirements of Volume 1 of the Residential Design Codes WA in relation to ancillary dwellings; and

- iv. the removal of non-compliant signs for 'AA' uses in residential areas, as such signage is considered to be a minor matter that can be assessed and considered by Council officers on their merit;
 - h) the modification or exemption from community consultation requirements for the following categories of applications for development approval:
 - i. the exemption from the requirement for a sign on site to be provided for an 'AA' (discretionary) use within the Industrial (1) or Industrial (2) zones, or for a Home Store or Home Business use (letters to adjoining properties are still required for these use), where community consultation is required;
 - ii. the exemption from consultation for development applications seeking the following minor variations to the Residential Design Codes – Volume 1 or the Town's LPP 25 'Streetscape' or LPP 26 'Boundary Walls', which are commonly proposed and routinely supported by Council officers and approved under delegated authority from the Council:
 - variations to the average 3.0m boundary wall height requirement, where the maximum height of the boundary wall is 3.5m or less above natural ground level; and
 - minor overlooking into an adjoining residential property behind its street setback line, where the overlooking occurs over:
 - (h) a driveway, car parking bay or car parking structure; or
 - (i) an open garden or landscaped area forward of the main dwelling which is visible from the street and does not function as the primary outdoor living area for the dwelling; and
 - (j) variations to the maximum dwelling setback from a right-of-way of 1.0m or less, which is often encountered on lots with an angled boundary to a right-of-way.
11. The abovementioned amendments are considered to increase the level of certainty and clarity regarding the duration and methods of consultation to be undertaken for planning proposals of all kinds, and bring LPP 37 into alignment with the recently gazetted amendments to the Regulations. They will also serve to reduce the time and resources used by Council officers as well as applicants during the development application process in those limited circumstances noted above, where particular consultation requirements or the requirement to undertake community consultation are not considered necessary.
12. In view of the above, it is recommended that Council consent to public advertising of draft amended LPP 37 (as contained in Attachment 1). A further report will be presented to Council in the future following the conclusion of the public advertising period, reporting on any submissions received, and seeking a final decision from Council as to whether or not to adopt the amended policy (in its current form or in a further modified form).

Relevant documents

Not applicable.

Further consideration

13. At the Agenda Briefing Forum a question was raised in relation to the use of the term 'original' with respect to the requirement for community consultation for an application proposing the demolition of an original shopfront along Albany Highway. An original shopfront is taken to be the first building on the site.

COUNCIL RESOLUTION (65/2021):

Moved: Mayor Karen Vernon

Seconded: Cr Vicki Potter

That Council:

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2. Requests the Chief Executive Officer to provide a further report to Council summarising and responding to any submissions received during the public advertising period along with a recommendation on whether to adopt draft amended Local Planning Policy 37 'Community Consultation on Planning Proposals' with or without modifications.

Carried by exception resolution (8 - 0)

For: Mayor Karen Vernon, Cr Claire Anderson, Cr Vicki Potter, Cr Ronhhda Potter, Cr Brian Oliver, Cr Luana Lisandro, Cr Wilfred Hendriks, Cr Bronwyn Ife

Against: nil