

12 Chief Community Planner reports

12.2 Proposed Local Planning Policy No.41 - Exemption from Development Approval for Changes of Use within the Albany Highway Precinct

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| Location | Town-wide |
| Reporting officer | Laura Sabitzer / Leigh Parker |
| Responsible officer | Robert Cruickshank |
| Voting requirement | Simple majority |
| Attachments | <ol style="list-style-type: none">1. Draft LPP 41 'Exemption from Development Approval for Changes of Use Within the Albany Highway Precinct' [12.2.1 - 5 pages]2. Model Draft Local Planning Policy - Department of Planning, Lands & Heritage recommended template [12.2.2 - 4 pages] |

Recommendation

That Council:

1. Agrees for the Town of Victoria Park to participate in the Department of Planning, Land and Heritage's 'Action Plan for Planning Reform' pilot program to test a fast track / exemption from development approval policy for small, low impact businesses.
2. Consents to advertising of draft Local Planning Policy 41 'Exemption from Development Approval for Changes of Use within the Albany Highway Precinct' (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) Regulation 2015*.
3. 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 Local Planning 41 'Exemption from Development Approval for Changes of Use within the Albany Highway Precinct' with or without modifications.

Purpose

The purpose of this report is:

- To consider the recommendation for the Town to participate in the 'Action Plan for Planning reform' pilot program to test a fast track/exemption from development approval policy (along with a number of other participating inner-city local governments); and
- To consent to public advertising of draft LPP 41, which has been tailored in its scope, application and range of exempt uses to apply to changes of use within the Albany Highway Precinct, with the additional benefit of incentivising improved access and facilities for people with disabilities for existing premises.

In brief

The Town of Victoria Park is part of the Inner-City Council Planning Working Group, which consists of representatives from planning services areas at the Town and the Cities of Perth, Subiaco, Vincent and South Perth.

The Department of Planning, Lands & Heritage have selected the local governments of the Inner-City Council Planning Working Group to be involved with a pilot program to make it easier for small businesses wishing to establish or expand into existing buildings in town centres and main street café/retail strips (activity corridors), such as Albany Highway.

A draft model Local Planning Policy has been developed in partnership to provide a framework for exempting 'change of use' development applications in certain areas in inner-city Perth, for a 12-month trial period.

The draft model policy has been further modified to apply to specified changes of use within the Albany Highway Precinct only, with additional provisions to provide clarity in relation to car parking requirements, the provision of accessible car parking bays and the upgrade of existing premises that may be required in order to satisfy National Construction Code and Disability Discrimination Act 1992 requirements that may be triggered through changes of use that result in a change of building classification.

Background

In August 2019, the Department of Planning, Lands & Heritage (DPLH) released an Action Plan for Planning Reform, which has an overarching goal for a consistent and efficient planning system in Western Australia.

One of the initiatives to help achieve this goal is to make approvals easier for small businesses in commercial and mixed use centres. The intended outcome for this initiative is a streamlined and state-wide consistent 'change of use' development approval process for existing town centres, main streets and other commercial and mixed-use centres.

To help achieve this initiative and outcome the Inner-City Council Planning Working Group (the Town and the Cities of Perth, Subiaco, Vincent and South Perth), and the City of Fremantle have been selected by DPLH to develop and test a framework for change of use development applications in these areas.

The DPLH has advised that these local governments have been selected, "due to the established nature of their commercial areas and the fact that a number already have processes in place to streamline approval processes for changes of use in certain areas".

The first component of this framework is the draft policy. The policy will be supported by an information package for those wishing to establish a business in the subject areas. This information package will be developed by the group in conjunction with the DPLH and include relevant information on what is required to establish a business, including all relevant approvals, when and how to undertake the necessary tasks.

The policy will be tested with the group for 12 months and the outcomes reviewed. The trial and its outcomes are important to inform any refinements to the framework and inform any regulatory changes that may be required to support its wider implementation.

Strategic alignment

| Civic Leadership | |
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| Strategic outcome | Intended public value outcome or impact |
| CL02 - A community that is authentically engaged and informed in a timely manner. | Community consultation and public advertising occurring in accordance with State legislative requirements and LPP 37 'Community Consultation on Planning Proposals'. |
| CL10 - Legislative responsibilities are resourced and managed appropriately, diligently and equitably. | The review and development of the Town's LPPs to ensure they remain relevant, effective and consistent with current legislative requirements and State Planning Policies. |

| Economic | |
|--|---|
| Strategic outcome | Intended public value outcome or impact |
| EC01 - A desirable place for commerce and tourism that supports equity, diverse local employment and entrepreneurship. | The development of policies that encourage and incentivise improved access and facilities for people with disabilities, fostering increased opportunities for social and economic participation, employment and independence. |
| EC02 - A clean, safe and accessible place to visit. | |

Engagement

| Internal engagement | |
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| Stakeholder | Comments |
| Place Planning business unit | Have reviewed the draft policy and support its general intent and objectives. Further, additional engagement will occur during public advertising in relation to the range of exempt land uses to ensure an appropriate range and diversity of land uses are included. The process of having to obtain written verification of exemptions was noted as possibly being complicated for the average local business proprietor, however could potentially be overcome through education and information packages being provided during the trial implementation of the policy. |
| Building business unit | Have reviewed the draft policy and refined the provisions related to the change or expansion of land uses that may trigger legislative requirements to upgrade access and facilities (including car bays) for people with disabilities. |
| Community Development | Have reviewed the draft policy with reference to current standards for access and facilities for people with disabilities in accordance with the Building Act 2011 and Disability Discrimination Act 1992. Current design of disability access and inclusion business education information packages could assist in providing understanding of Building Act 2011 and requirements in the trial policy. |

Legal compliance

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

The amendment of a Local Planning Policy is to be undertaken in accordance with deemed clauses 4 and 5 of the *Planning and Development (Local Planning Scheme) Regulations 2015* (the Regulations), including:

- Community consultation for a period of not less than 21 days; 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.

As per deemed clause 4(5) and clause 6(b)(ii), 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 a newspaper circulating within the Scheme Area.

Risk management consideration

| Risk and consequence | Consequence rating | Likelihood rating | Overall risk analysis | Mitigation and actions |
|---|--------------------|-------------------|-----------------------|---|
| Reputational The policy is perceived to discriminate established businesses or result in excessive levels of competition resulting in the reduced viability of local businesses. | High | Moderate | Moderate | Proceed to public advertising of draft LPP 41, which will assist (and is required) for Council to approve a 12-month trial of the policy. If adopted, the outcomes of the policy trial will be evaluated and a further decision made by Council as to whether it will cease operating or if further changes are necessary to enable its ongoing adoption. |
| Compliance The policy results in the establishment of a large number of new and/or expanded businesses with significantly increased demand for car parking and traffic generation and associated adverse impacts. | High | Moderate | Moderate | Proceed to public advertising of draft LPP 41, which will assist (and is required) for Council to approve a 12-month trial of the policy. If adopted, the outcomes of the policy trial will be evaluated to determine if these or any other impacts have occurred and what possible measures can be undertaken to mitigate their impacts. |

Financial implications

Current budget impact

Sufficient funds exist within the annual budget to address this recommendation.

Future budget impact

The proposed policy will reduce the development application fees that would otherwise be received by the Town for those changes of use not currently exempt from the requirement for development approval, if adopted. Based upon previous years, it is estimated that development application fees would reduce by around \$4000 within a 12 month period. There will also be administrative costs in terms of staff time and resources used to administer the policy, providing confirmation of change of use exemptions in writing to business proprietors (requiring a level of assessment) and the input of exemption requests into the Town's electronic system as they are received and confirmed to ensure the Town has a method of tracking and analysing the outcomes of the policy trial and reporting this back to the Council and Inner-City Council Planning Working Group.

Analysis

The draft policy, proposed for an initial 12 month trial, will serve as a significant incentive for the expansion and establishment of small businesses within the Albany Highway Precinct, and contribute to improved activation outcomes. It will also reduce the regulatory burden allowing for a timely transition in uses to occur, reducing the time and number of tenancies left vacant between changes or termination of leasing agreements. As the exemption from development approval will apply only to a range of land uses in existing buildings of up to 400 square metres net lettable area (NLA), they will most greatly support the establishment or expansion of small to medium sized businesses located in ground floor tenancies.

The range of exempt land uses proposed for inclusion under the draft policy have been reviewed by Council Officers having regard to their ability to attract customers/patrons, thereby contributing to an activated and vibrant public realm/streetscape. Employment generating uses (such as Offices) which support more active land uses (such as Shops and Restaurants) have also been included. A number of uses have not been included due to their potential to result in potentially very significant traffic generation, noise or other impacts, or to result in a reduced level of street activation contrary to the intent of the policy. These uses include Hotels, Taverns, Recreation – Private (gymnasiums) and Bulky Goods Showrooms.

The draft model policy has been further modified to apply to a range of specified land uses within the Albany Highway Precinct only, with additional provisions to provide clarity in relation to car parking requirements, the provision of accessible car parking bays and the upgrade of existing premises that may be required in order to satisfy current legislative requirements with respect to access and facilities for people with disabilities. The finalised version of the draft model policy template prepared by the Inner-City Council Planning Working Group is silent on these matters, likely owing to the complex legislative and regulatory framework they are governed by, which includes several Acts, Regulations and subordinate codes and standards.

In relation to car parking, a change to or expansion of the exempt land uses under draft LPP 41 (subject to a maximum floor area of 400 square metres NLA in existing buildings only) will not be required to provide any additional on-site car parking as would otherwise be required under Council's LPP 23 'Parking Policy'. This represents a significant incentive for existing and future business proprietors within the Albany Highway activity corridor, where car parking requirements can be a significant or insurmountable barrier to the expansion or establishment of new businesses.

Other additional provisions contained within the Town's draft LPP 41 will ensure businesses are aware of and incentivised to meet the access and facilities requirements for people with disabilities without compromising the intent of the policy to reduce planning regulatory requirements (redtape) by

removing the need to obtain development approval. These additional changes result in the potential for one car bay to be lost on sites that upgrade their premises to include an accessible on-site car bay through the conversion of two existing car bays. However, and in the spirit of encouraging increased legislative compliance and improved access for people with disabilities consistent with the objectives of Council's Strategic Community Plan and Disability Access and Inclusion Plan, it is considered on balance to be a positive, worthwhile and comparatively minor additional exemption to include as part of the policy.

Draft LPP 41 is considered to be a progressive, proactive policy measure, and if adopted by Council for an initial 12 month trial period, will help to inform the potential adoption of similar policy measures across the Perth metropolitan area as part of further work of the Inner-City Planning Working Group.

It is recommended that draft LPP 41 proceed to public advertising. A further report will be presented to Council in the future following the conclusion of the advertising period, reporting on any submissions received, and seeking a final decision from Council as to whether or not to adopt the draft revised policy, with or without modifications.

Relevant documents

[Department of Planning, Land and Heritage's Action Plan for Planning Reform](#)

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| COUNCIL RESOLUTION (339/2020): | |
| Moved: Mayor Karen Vernon | Seconded: Cr Claire Anderson |
| That Council: | |
| <ol style="list-style-type: none"> 1. Agrees for the Town of Victoria Park to participate in the Department of Planning, Land and Heritage's 'Action Plan for Planning Reform' pilot program to test a fast track / exemption from development approval policy for small, low impact businesses. 2. Consents to advertising of draft Local Planning Policy 41 'Exemption from Development Approval for Changes of Use within the Albany Highway Precinct' (as contained within Attachment 1) for public comment for a minimum period of 21 days in accordance with deemed Clause 4 of the <i>Planning and Development (Local Planning Schemes) Regulation 2015</i>. 3. 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 Local Planning 41 'Exemption from Development Approval for Changes of Use within the Albany Highway Precinct' with or without modifications. | |
| CARRIED BY EXCEPTION RESOLUTION (8 - 0) | |
| For: Mayor Karen Vernon, Cr Claire Anderson, Cr Vicki Potter, Cr Brian Oliver, Cr Luana Lisandro, Cr Wilfred Hendriks, Cr Bronwyn Ife, Cr Jesvin Karimi | |
| Against: nil | |