

LATE ITEM P20/3840 - REVIEW OF LOCAL PLANNING POLICY 1.1 'PLANNING PROCESS AND DECISION MAKING' (REC) (ATTACHMENT)

Ward : All
Category : Policy
Application Number : Not applicable
Property : Not applicable
Proposal : Review of Local Planning Policy 1.1 ' Planning Process and Decision Making'
Applicant : Not applicable
Owner : Not applicable
Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items : P17/3747 - Review Of Local Planning Policy LPP 1.1 Planning Process And Decision Making.
M19/5723 - Summary Of Legal Advice On Withdrawal Of Delegated Authority To Submit Responsible Authority Reports To Joint Development Assessment Panel
December 2019 OCM - Motion With Notice - 16.3 Cr Barton – Planning Process and Decision Making Policy LPP 1.1 (Withdrawn)
Responsible Officer : Peter Prendergast
Manager Statutory Planning

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AUTHORITY / DISCRETION

DEFINITION

<input type="checkbox"/>	Advocacy	<i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input checked="" type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & policies.</i>
<input type="checkbox"/>	Review	<i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>When the Council determines an application/matter that directly affects a person’s right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>
<input type="checkbox"/>	Information	<i>For the Council/Committee to note.</i>

KEY ISSUES / SUMMARY

- Local Planning Policy 1.1 ‘Planning Process and Decision Making’ was most recently reviewed by Council in 2017.
- At the December 2019 Ordinary Council Meeting, it was resolved to change the process for dealing with development applications which will be determined by the Development Assessment Panel.
- ‘Local Planning Policy 1.1 ‘Planning Process and Decision Making’ is required to be updated to reflect these changes.
- It is also proposed to change ‘Local Planning Policy 1.1 ‘Planning Process and Decision Making’ to ensure that terminology used is consistent with the Planning and Development (Local Planning Schemes) Regulations 2015, to modify the DAU call up procedure and to clarify the advertising requirements for ‘Major Developments’.
- The amendments are considered to be minor in nature and do not require formal consultation under the provisions of the Planning and Development (Local Planning Schemes) Regulations.

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BACKGROUND

In Western Australia the planning framework is set by the state government, via the Planning and Development Act 2005. This sets out the system of land use planning and development in the State. There are several sets of regulation which sit under the Planning and Development Act such as the Planning and Development (Local Planning Schemes) Regulations 2015 and the Planning and Development (Development Assessment Panel) Regulations 2011.

Planning and Development (Local Planning Schemes) Regulations 2015 are particularly detailed. This document sets out the process for dealing with various planning matters such including development applications, subdivision and changes to the planning framework. The regulations are very specific, providing significant amounts of details with regard to every process. By consolidating the process into one document the State Government has attempted to ensure there is consistency across local governments. The process for dealing with DAP application is set out in the DAP Regulations, however this is largely the same as for standard DA's,

Subsequent to these regulations there are multiple State Planning Policies, planning bulletins, development control policies and position statements produced by the Department of Planning Lands and Heritage. Finally the Local Planning Scheme and Local Planning Policies need to be taken into consideration.

Local Planning Policy 1.1 ‘Planning Process and Decision Making’ has the following policy objectives:

- To promote a consistent approach by the City in the assessment and public advertising of development applications.
- To facilitate community input into the decision making process.
- To provide information to both applicants and submitters regarding the planning application assessment process.

At the December 2019, Ordinary Council Meeting (OCM), it was resolved that changes would be made to the process for dealing with Development Assessment Panel (DAP) applications. Specifically, this resolution requires that the CEO does not provide the Responsible Authority Report (RAR) to the JDAP where the RAR is the subject of a call up to Council for its information.

At the December 2019 OCM, a Notice of Motion was proposed by Cr Barton which called for all development application to go through the Development Advisory Unit process as described in Local Planning Policy 1.1 ‘Planning Process and Decision Making’ (LPP1.1). A decision on this Notice of Motion was deferred pending discussion at an Elected Members Information Session, to take place ahead of the March 2020 OCM.

After discussions with Officers, Cr Barton withdrew the Notice of Motion on the basis that changes would be proposed to LPP 1.1 to streamline the DAU to Council call up procedure. This change would essentially remove the need for Elected Members to justify any call up request, as is required by the current policy provisions, also removing the need for a meeting to take place with the Director Urban Planning and/or the Manager Statutory Planning to discuss the nature of and associated reasons for the call up request.

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DETAIL

At the December Ordinary Council Meeting it was resolved to put the following procedures in place in relation to the way the City deals with applications which will be considered by the JDAP:

- 1) The Council must be alerted to each development application to be determined by the JDAP as soon as it is received by the City, by means of circulating the details of the development application to all Elected Members, in order to facilitate the potential call up of the development application.
- 2) Where a development application is called up, the City’s officers are to prepare the RAR in accordance with the statutory framework and submit it to a Special Meeting of Council for comment in sufficient time to meet the requirements of the JDAP statutory time period for the application.
- 3) Where a development application has been called up, the CEO may not submit the RAR to the JDAP until the Council has resolved that it be submitted, with dissenting comments from the Council attached if so resolved.
- 4) If a development application to be determined by the JDAP is not called up, the RAR may be prepared and submitted under delegated authority by the CEO in accordance with DA-020.

In order to formalise these changes, the City is required to update and add various subclauses in section under clause 3.7 ‘Development Assessment Panel’ of LPP1.1. The changes ensure that Elected Members will be alerted to the details of a development application soon after it is lodged with the City via a notice in the EMB, a Major Development Briefing and the Melville Talks page on the website. The changes also confirm that when a RAR is called up to Council for its information, City officers will prepare the RAR and submit it an appropriate meeting and the report will not be sent without Council endorsement.

It was also resolved to amend the instrument of Delegated Authority DA-20 ‘Planning and Related Matters’ to add the following limitation.

‘Should a development application be called up by Council, the Chief Executive Officer may not make recommendations to the Joint Metro Central Development Assessment Panel without first seeking Council’s comment on the application and the planning officer’s recommendations in the Responsible Authority Report, and attaching to the RAR the Council’s comments as approved by Council.’

This action has now been undertaken.

The following key changes are also proposed as a part of the current review:

- 1) Modify Clause 3.5.4 ‘Call Up of DAU applications for consideration by Council’ so that Elected Members no longer need to justify in material planning terms why a DAU matter should be called up for the consideration and determination of Council. Rather, a simple request from an Elected Member to have a matter from the DAU called up to Council will suffice.
- 2) Modify Clause 1.7 to confirm Major Developments will be the subject of public consultation and to clarify the methods used to undertake this consultation.

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- 3) Delete Clause 1.8 Major Developments as this clause is made redundant by the changes to Clause 1.7.
- 4) A number of grammatical changes to ensure the terminology used in the policy is consistent with the relevant planning framework and to provide greater clarity on the process where required.

A copy of the proposed policy is provided below with tracked changes to clearly demonstrate the modifications.

The proposed changes to LPP 1.1 are considered to be minor in nature and do not require advertising.

STAKEHOLDER ENGAGEMENT

I. COMMUNITY

The Regulations came into effect on 19 October 2015. Clause 5 of Schedule 2 of the Regulations contains requirements for amending a local planning policy. In accordance with Sub-Clause 5(1) the local government should advertise the changes to the Local Planning Policy in the same manner as it would for a new policy, described in Clause 4, unless the modifications are considered minor. In this instance it is considered that the recommended modifications are minor and formal advertising is not required.

II. OTHER AGENCIES / CONSULTANTS

Clause 4(4) of Schedule 2 of the Regulations requires that the Council advises the Western Australian Planning Commission (WAPC) if it is of the opinion that the policy is inconsistent with any State Planning Policy. As there is no such inconsistency in this case, the WAPC need not be informed.

STATUTORY AND LEGAL IMPLICATIONS

The review of a Local Planning Policy, provided such a review is undertaken in accordance with the provisions of the Regulations, does not in itself have any statutory or legal implications.

The statutory and legal implications of withdrawing delegation to submit an RAR to the JDAP were outlined in detail at the December Ordinary Council meeting (Item **M19/5723**). These implications remain.

If a RAR is not submitted in the required timeframe, the JDAP has the power to request separate technical advice from the City’s planning officers or to determine an application without a RAR.

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FINANCIAL IMPLICATIONS

There are no financial implications identified as a part of this review

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

The strategic, risk and environmental implications of withdrawing delegation to submit an RAR to the JDAP were outlined in detail at the December Ordinary Council meeting (Item M19/5723). These implications remain.

POLICY IMPLICATIONS

Local Planning Policy LPP 1.1 Planning Process and Decision Making enable a consistent approach by the City in relation to the assessment and public advertising of development applications.

COMMENT

At the December Ordinary Council Meeting it was resolved to put the following procedures in place in relation to the way the City deals with applications which will be considered by the JDAP. The procedures are outlined below along with a brief comment regarding how this has been achieved.

- 1) The Council must be alerted to each development application to be determined by the JDAP as soon as it is received by the City, by means of circulating the details of the development application to all Elected Members, in order to facilitate the potential call up of the development application.

Clause 3.7.6 has been updated to confirm Elected Members will be made aware of the details of the DAP application via the Elected Members Bulletin, and further detail will be provided at a Major Development Briefing and on Melville Talks once the advertising period begins. Clause 3.7.8 has also been updated to confirm that Elected Members will be provided with a summary of the submissions received at the end of the consultation process. Notification to Elected Members of the receipt of a DAP application, briefings to Elected Members on DAP applications and notification to Elected Members of the outcomes of community consultation is already occurring as a part of the assessment process, it is considered that the changes to the LPP will provide Elected Members with more comprehensive information about DAP applications at an earlier stage.

- 2) Where a development application is called up, the City's officers are to prepare the RAR in accordance with the statutory framework and submit it to a Special Meeting of Council for comment in sufficient time to meet the requirements of the JDAP statutory time period for the application.

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Clause 3.7.9 has been updated to confirm this will occur. The Clause clarifies that the RAR will be presented to either an Ordinary Council Meeting or a Special Council meeting if this is appropriate.

- 3) Where a development application has been called up, the CEO may not submit the RAR to the JDAP until the Council has resolved that it be submitted, with dissenting comments from the Council attached if so resolved.

Clause 3.7.10 has been updated to confirm that if the application has been called up to Council. the RAR must not be submitted without Council endorsement.

- 4) If a development application to be determined by the JDAP is not called up, the RAR may be prepared and submitted under delegated authority by the CEO in accordance with DA-020.

Clause 3.7.12 has been added to LPP 1.1.

In respect of the Call Up procedure outlined in Clause 3.5.4 (a) the need for a call up request to be signed by two Elected Members and for consultation with the Director of Urban Planning or the Manager Statutory Planning has been removed. If an Elected Member wishes to call up a matter it is simply necessary to lodge the request with the CEO using the appropriate form.

In respect of Clause 1.7.7 - Extent of Advertising, several clauses were used to describe the consultation methods to be used by the City. These clauses have now been consolidated. Clause 1.7.7 has also been amended to confirm that Major Developments will be the subject of wider consultation. If valid submissions are received during the consultation period the submissions will be dealt with in accordance with Clause 1.9 ‘Submissions and Petitions’. On the basis of this change Clause 1.8 has been deleted.

A number of minor changes have been made to the policy to ensure that it is consistent with the relevant planning framework. These changes include;

- Changes to the policy objectives to better reflect the purpose of the policy;
- The term planning approval updated to development approval throughout the document;
- Clarification on the statutory timeframe for dealing with applications;
- Clarification that a performance assessment is required having regard to the relevant planning framework;
- Update to reflect current clauses of the R-Codes;
- Changes to sentence structure to improve the flow of the document and to remove any areas of uncertainty or un-necessary repetition.

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ALTERNATE OPTIONS AND THEIR IMPLICATIONS

The Council may resolve not to proceed with the changes outlined above or determine that further changes to the policy are required.

CONCLUSION

In conclusion, it is recommended that LPP 1.1, Planning Process and Decision Making, be amended as outlined by this report. As stated previously, it is considered that, if approved by Council, the changes proposed can be implemented without the need for further community consultation.

If Council resolve to endorse the changes, a notice will be published in the local newspaper as required by the Regulations. The City will also provide details of the changes including a copy of this report on its website.

OFFICER RECOMMENDATION (3840)

APPROVAL

That the Council pursuant to Clause 4, Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015 adopts the changes to Local Planning Policy LPP1.1 Planning Process and Decision Making as detailed below in the attachment.

[3840 LPP1.1 Planning Process and Decision Making](#)