

1.2 - AMENDMENTS TO LOCAL PLANNING POLICIES - INCLUSION OF SPECIAL RURAL ZONE AND RURAL HOME BUSINESS LAND USE

WARD : ALL
FILE No. : - M/164/20
DATE : 28 April 2020
REF : CC/MK
RESPONSIBLE : EDDS
MANAGER

In Brief:

- The introduction of the new “Special Rural” zone and ‘rural home business’ land use/development type into TPS No.4 via Amendment No.97 has led to the need to amend ten (10) Local Planning Policies (LPP).
- It is recommended that Council adopt minor amendments to nine (9) LPPs without advertising and adopt one (1) amended LPP with significant amendments for the purpose of advertising it for public comment in accordance with planning procedures.

Tabled Items

Nil.

Decision Type

Legislative

The decision relates to general local government legislative functions such as adopting/changing local laws, town planning schemes, rates exemptions, City policies and delegations etc.

Executive

The decision relates to the direction setting and oversight role of Council.

Quasi-judicial

The decision directly affects a person’s rights or interests and requires Councillors at the time of making the decision to adhere to the principles of natural justice.

Officer Interest Declaration

Nil.

Strategic Implications

2.5. Implement and administer the City’s Town Planning Scheme and Local Planning Strategy to deliver quality development outcomes.

2.5.1.1 Implement the Local Planning Strategy recommendations through amendments to TPS No.4, Structure Plans, Planning Policies and strategies

Legal Implications

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

Town Planning Scheme No.4

Council Policy/Local Law Implications

- PLN 2.1 Establishment or Amendment of Development Envelope Locations
- PLN 2.4 Tree Preservation
- PLN 2.7 Environmental Management and Improvement of Constrained Land
- PLN 2.8 Subdivision and Structure Planning for lots within water courses in Rural Living and General Rural zones
- PLN 3.3 Home Occupations and Home Businesses
- PLN 3.4 Outbuildings
- PLN 3.5 Setback Variations – Rural Living and General Rural zones
- PLN 3.6 Ancillary Dwellings – Control of Additional Accommodation
- PLN 5.2 Commercial Vehicle Parking
- PLN 5.3 Sea Containers, Railway Carriages and Other Decommissioned Transport Conveyances

Budget/Financial Implications

Costs associated with advertising one (1) of the Local Planning Policies (LPP's) for public comment can be accommodated within the Planning Services Budget.

Consultation

Development Control Unit (DCU)

BACKGROUND

Amendment No.97 to TPS No.4 was gazetted in March 2020. The main modifications to TPS No.4 that resulted from Amendment No.97 were as follows:

1. addition of the “Special Rural” zone and the rezoning of selected “Rural Living” zone localities to “Special Rural”;
2. addition of the “rural home business” use class as an ‘A’ (discretionary with advertising) land use in the “Special Rural”, “Rural Living” and “General Rural” zones and ‘X’ (not permitted) in all other zones;
3. changes to the permissibility of land use/development types in the “Rural Living” zone;
4. new scheme provisions applicable to the development of ‘A’ uses in the “Rural Living” zone; and
5. a number of other site specific rezoning and scheme text changes.

Refer to Attachments for Location Plan of the “Special Rural” and “Rural Living” zones and TPS No.4.

The requirement for updates to LPPs was previously foreshadowed in the Council reports for the initiation and final adoption of Amendment No.97 in April 2018 and February 2019 respectively, however, the final outcome on the proposals of Amendment No.97 and the full extent of the amendments required to the City's LPPs was only known in February 2020 when the Minister granted final approval.

A relevant example is the Minister's modifications to the 'rural home business' land use definition to increase the allowable floor area for the use from 100m² to 200m², and the number of commercial vehicles from 1 to 3 as well as other minor amendments to the definition. The management of these modifications are discussed below.

DETAILS OF PROPOSAL

Ten (10) LPPs are required to be updated to include reference to the "Special Rural" zone in policy provisions that relate to the "Rural Living" zone so that the policy provisions would apply to both these zones. This approach is consistent with Scheme text changes made by Amendment No.97 that apply the "Rural Living" zone Scheme provisions to the newly introduced "Special Rural" zone. The titles of two (2) LPPs would also change to include reference to the "Special Rural" zone. The ten (10) LPPs to be updated are as follows:

- PLN 2.1 Establishment or Amendment of Development Envelope Locations
- PLN 2.4 Tree Preservation
- PLN 2.7 Environmental Management and Improvement of Constrained Land
- PLN 2.8 Subdivision and Structure Planning for lots within water courses in Rural Living and General Rural zones
- PLN 3.3 Home Occupations and Home Businesses
- PLN 3.4 Outbuildings
- PLN 3.5 Setback Variations – Rural Living and General Rural zones
- PLN 3.6 Ancillary Dwellings – Control of Additional Accommodation
- PLN 5.2 Commercial Vehicle Parking
- PLN 5.3 Sea Containers, Railway Carriages and Other Decommissioned Transport Conveyances

In addition to the above updates, "PLN 3.3 Home Occupations and Home Businesses" is proposed to be updated to include the "rural home business" land use/development type in the Policy's title and provisions.

The "rural home business" land use/development type is an 'A' (discretionary with advertising) land use in the "Special Rural", "Rural Living" and "General Rural" zones and 'X' (not permitted) in all other zones of TPS No.4. The Scheme Text definition of this uses is as follows:

"rural home business" means a dwelling or land around a dwelling used by an occupier of the dwelling to carry out a business, service or occupation if the carrying out of the business, service or occupation—

- (a) *does not involve employing more than 2 people who are not members of the occupier's household;*
- (b) *will not cause injury to or adversely affect the amenity of the neighbourhood;*
- (c) *does not occupy an area greater than 200m²;*
- (d) *does not involve the retail sale, display or hire of any goods unless the sale, display or hire is done only by means of the Internet;*
- (e) *does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood;*
- (f) *does not involve the presence, use or calling of more than 3 vehicles at any one time or of a vehicle of more than 30 tonnes gross weight.*

The proposed amendments to PLN 3.3 includes a “Rural Home Business Compatibility Table” tool to assist the assessment of development applications for the use based on their intensity and scale i.e. number of workers, commercial vehicles (size and number) and floor area. The Compatibility Table would assist in addressing the modifications made by the Minister to the “rural home business” definition by weighting businesses with, for example, larger floor areas and more and/or heavier vehicles with more points (proposals over 30 points in the Compatibility Table are recommended for refusal).

Assessment (scoring) of ‘rural home business’ proposals would also provide support to decisions that involve refusal of the use in the Rural zones of the Scheme on the basis of excessive scale and/or intensity of development, and defending those decision in the State Administrative Tribunal if the need arises.

A number of minor edits to several of the LPPs are also proposed to update information and improve LPP clarity including environmental criteria in “PLN 2.1 Establishment or Amendment of Development Envelope Locations”, “PLN 2.4 Tree Preservation” and “PLN 2.7 Environmental Management and Improvement of Constrained Land”.

A copy of the amended Local Planning Policies are presented in the Attachments to this report.

COMMENT/ANALYSIS

DCU Comments

The proposed amended LPPs were subject to review by the City’s DCU and edits were incorporated into PLN 2.1, 2.4 and 2.7 to further clarify the City’s environmental requirements within existing policy provisions. These edits are shown in green text in the proposed amended policies in the Agenda attachments.

ANALYSIS

Procedure for making an Amendment to a Local Planning Policy

The procedures for amending LPPs are contained in the *Planning and Development (Local Planning Schemes) Regulations 2015*, and are the same as those procedures for preparing a new LPP (initial adoption, advertising and consideration of submissions and final adoption) however, Council is allowed to amend LPPs without advertising if, in the opinion of the Council, the amendments are minor.

Referring to the “Special Rural” zone in the LPPs is considered minor on the grounds that the LPPs had previously applied to these localities before they were rezoned from “Rural Living” to “Special Rural” zone under Amendment No.97, and the proposed amendments do not alter the planning and/or development provisions (requirements) of the LPPs.

The amendments to include the 'rural home business' land use/development type into "PLN 3.3 Home Occupations and Home Businesses" are not considered minor as it introduces set of new development requirements (via the Compatibility Table) and should therefore be subject to advertising for public comment. Under planning legislation the City is required to: publish a notice of the proposed amended policy in a local newspaper; provide a 21 days comment period; and, undertake other consultation as considered appropriate. Once these activities have been undertaken, the City would report back to Council on any submissions received and with a recommendation on the LPP.

OPTIONS

1. Council could resolve to adopt the amendments to LPP PLN 2.1, 2.4, 2.7, 2.8, 3.4, 3.5, 3.6, 5.2 and 5.3 as minor amendments not requiring advertising and, resolve to adopt amendments to LPP PLN 3.3 for advertising.
2. Council could resolve not to adopt the proposed amendments to the above LPPs and provide reasons for doing so.

CONCLUSION

In response to several changes made to TPS No.4 by Amendment No.97, amendments are required to be made to ten (10) LPPs. Amendments to nine (9) of the ten (10) LPPs which reference the "Special Rural" zone are considered minor and therefore do not require advertising. The amended policies would come into effect when Council resolves to adopt them.

Amendments proposed to "PLN 3.3 Home Occupations and Home Businesses" to introduce the 'rural home business' land use into the LPP as well as appropriate development provisions (requirements) is not considered minor so the approval of Council is required to advertise the amended Policy.

The LPP amendments as proposed will assist in achieving appropriate planning and/or development outcomes in the "Special Rural" zone, and for the 'rural home business' land use/development type in TPS No.4 Rural zones.

Given the above, Option 1 is recommended.

ATTACHMENTS

1. ↓ Location Plan - "Special Rural" and "Rural Living" zones and TPS No.4
2. ↓ Amended Local Planning Policies PLN 2.1, 2.4, 2.7, 2.8, 3.4, 3.5, 3.6, 5.2 and 5.3

Committee Discussion

Committee requested that the word “and” be removed from Policy PLN 2.4 - Tree Preservation Policy section 3.2.1.(b) Species Significance.

RECOMMEND

D32/5/20

That Council:

1. **Advertise amended Local Planning Policy PLN 3.3 – Home Occupations, Home Businesses & Rural Home Businesses as shown in the *Attachments* for a period of at least 21 days in accordance with Schedule 2, Part 2, Clause 5 (1) of the Planning and Development (Local Planning Schemes) Regulations 2015; and,**
2. **Adopt amendments to the following nine (9) Local Planning Policies and as shown in the *Attachments* as minor amendments without the requirement for advertising in accordance with Schedule 2, Part 2, Clause 5 (2) of the Planning and Development (Local Planning Schemes) Regulations 2015:**
 - i. **PLN 2.1 Establishment or Amendment of Development Envelope Locations;**
 - ii **PLN 2.4 Tree Preservation;**
 - iii **PLN 2.7 Environmental Management and Improvement of Constrained Land;**
 - iv **PLN 2.8 Subdivision and Structure Planning for lots within water courses in Special Rural, Living and General Rural zones;**
 - v **PLN 3.4 Outbuildings;**
 - vi **PLN 3.5 Setback Variations – Special Rural, Rural Living and General Rural zones;**
 - vii **PLN 3.6 Ancillary Dwellings – Control of Additional Accommodation**
 - viii **PLN 5.2 Commercial Vehicle Parking; and,**
 - ix **PLN 5.3 Sea Containers, Railway Carriages and Other Decommissioned Transport Conveyances.**

Moved Cr C M Wielinga
MOTION CARRIED

(6/0)