

# Privately Initiated Planning Scheme Amendment Policy

Date adopted: 5 August 2019

Responsible Service Area: Integrated Planning

## Purpose

This Operational Policy applies to ad hoc requests made by proponents (landowners or their representatives) for the Council to initiate planning scheme amendments which do not form part of the Council’s strategic planning program, scheme review program or any other major strategic projects. These types of amendment will be referred to as a privately-initiated planning scheme amendments.

The purpose of this Operational Policy is to:

1. Document the criteria the Council will apply to identify which privately-initiated planning scheme amendments it considers worthy of consideration and how Council may prioritise and process these scheme amendments.
2. Document the responsibilities and expectations of Council and proponents (landowners or their representatives) in considering and processing privately-initiated planning scheme amendments including preparation of work, payment of additional fees and timeframes.

## Context

The *Planning & Environment Act 1987* (the Act) establishes the planning scheme amendment process that guides and controls land use and development to help achieve the community’s long-term vision and needs as outlined in the Council’s strategic community plan *Maroondah 2040*.<sup>1</sup>

Changes to the planning scheme occur from time to time and they are most effectively done through either a municipal-wide, place-based (i.e. neighbourhood-scale or activity centre-wide) or topic-based (i.e. vegetation controls, neighbourhood character) scheme review process. This ensures the extensive resources required to process scheme amendments addresses priority needs and delivers the widest community benefits possible.

Privately-initiated scheme amendments on the other hand, represent an ad hoc and unplanned load on the Council’s resources. They have the potential to divert Council resources from the planned work program as outlined in the Council Plan and often benefit a small proportion of the community when processed

<sup>1</sup> Maroondah 2040 can be found at <http://www.maroondah.vic.gov.au/About-Council/Planning-for-our-future/Maroondah-2040>

## Policy Control Schedule

<b>Policy Title:</b> Privately Initiated Planning Scheme Amendment Policy		<b>Policy type:</b> Operational
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outside major strategic projects or the regular four (4) yearly planning scheme review cycle.

As such, they are considered exceptional and the Council has developed this Policy to better manage the process and ensure a more effective and efficient use of Council resources and delivery of community benefits. This is important, as requests for scheme amendments are increasing as growth pressures build across metropolitan Melbourne.

The Council has the discretion to seek authorisation from the Minister for Planning to prepare and exhibit a scheme amendment, or to decline amendment requests. Should the Council decline, proponents may request the Minister for Planning to intervene in accordance with the circumstances set out in *Planning Practice Note 29 – Ministerial Powers of Intervention in Planning and Heritage Matters*.

## Policy Principles

The Council considers privately-initiated planning scheme amendments as exceptional. As such, the Council's policy is to:

- only consider proposals which demonstrate strategic merit (see criteria below);
- 'pool' amendment proposals and present them once or twice a year to a Council meeting for consideration;
- consider the availability of Council resources when prioritizing amendments for review and/or Authorisation;
- require applicants to prepare most documentation, and
- charge fees as per the Planning and Environment (Fees) Regulations 2016 (Fees regulations)
- seek reimbursement of specific extraordinary costs that might arise with respect to a planning scheme amendment

## Strategic merit criteria

The Council's policy only considers proposals which demonstrate strategic merit. Scheme amendments which may be worthy of consideration include (but not limited to):

- 1) amendments which substantially aid implementation of an adopted State, regional or local strategic study, plan or policy of significance and priority for Maroondah<sup>2</sup>.
- 2) amendments which deliver substantial community benefit including (but is not limited to):
  - a. affordable and accessible housing
  - b. housing diversity
  - c. environmental excellence
  - d. vegetation protection and creation of biodiversity interests
- 3) a combined scheme amendment and planning permit under Section 96 of the Act, may be considered more favourably in certain circumstances.

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<sup>2</sup> The term 'policy' used in this sense refers to strategies, plans or policies.

- 4) The Council is *unlikely* to consider scheme amendments relating (but not limited) to:
- a. Removal of Heritage Overlays (any change to Heritage Overlays are considered through specialized heritage studies under the Council's heritage program) unless the proponent provides sufficient evidence that the elements identified as significant in the Heritage Citation no longer exist or hold value.
  - b. Any other Overlays, as changes to Overlays usually form part of larger strategic projects and apply to precincts.
  - c. Removal of Commercial or Industrial zones unless the proponent provides sufficient evidence of sustained market failure through:
    - i. Vacancy data and details of comprehensive marketing of the premises / land for at least 24 months and appropriate to the prevailing market conditions, and
    - ii. a financial appraisal that demonstrates that redevelopment for any employment-generating use is unviable and is unlikely to achieve viability within five years.
  - d. Single lots or small precincts where the amendment primarily benefits a limited number of proponents.
  - e. Metropolitan and Major Activity Centres (as these places are usually subject to comprehensive structure planning exercises to support future changes in zones or other development controls).
  - f. Matters forming part of current or planned strategic projects or studies being carried out by the Council or other relevant authorities.
  - g. Correction of minor scheme text or mapping errors (the Council addresses these through an omnibus amendment from time-to-time).

## Process

The following outlines the steps in considering requests for privately-initiated scheme amendments:

### **Step 1. Initial consultation to confirm a scheme amendment is required.**

The proponent must briefly discuss the proposal with the Statutory Planning Services to confirm that the proposal is not possible within the existing planning scheme.

### **Step 2. Preliminary discussion with Strategic Planning.**

The Manager of Integrated Planning and/or Team Leader Strategic Planning (and other senior staff as required) will meet with the proponent to:

- receive a briefing on the proponent's ideas including indicative land use and built form outcomes and community benefits.
- discuss potential alignment with the City's strategic needs, constraints and opportunities.
- brief the proponent of the Council's procedure including strategic criteria, resources and priorities and potential additional fees.

Note that unless invited by the Manager of Integrated Planning, the Council's Directors will not be present at this meeting and should not be approached separately. The Manager of Integrated Planning will brief the Director on the meeting at later stages if the proposal proceeds.

Proponents should come to this meeting having done some preparation and considering, including where possible:

- preliminary precinct context and site condition investigation,
- consideration of the City's strategic needs (from adopted State and Local Strategies),
- preliminary site development plans showing response to site opportunities and constraints, and
- any illustrative case study examples from the eastern region and/or other similar local governments.

Hand drawn plans, site photos, case study examples and dot point notes are acceptable. Please note, the Council will not become involved in drawn out discussions or investigations relating to the potential for rezoning of land. It is expected that the proponent or their representatives should engage town planning consultants to prepare and manage their proposal.

### **Step 3. Submit Draft Documentation**

Following the meeting above, the Council will require the proponent to submit a draft Explanatory Report / Strategic Assessment Report including draft rezoning maps and ordinances, and built form / land use concept plans which addresses:

- Minister's Direction No. 11 – Strategic Assessment of Amendments, any Other Relevant Ministerial Direction,
- the Council's strategic merit criteria,
- any other factors the Council raised in Step 2 exploratory discussion.

## **Step 4. Council Administration - Preliminary Consideration for the “Scheme Amendment Pool”.**

The Council administration will undertake a preliminary consideration against the strategic merit criteria and will provide a written response to the proponent indicating whether:

- the Council considers the proposal worthy of consideration and further information is required (i.e. detailed studies, informal community engagement etc.), or
- the Council considers the proposal worthy of consideration and will add the proposal to the scheme amendment ‘pool’ for presentation to a Council meeting, or
- the Council does not consider the proposal worthy of consideration and the proposal will not be further entertained.

At this step, the Council may:

- undertake preliminary discussions with the Department of Environment, Land, Water and Planning (DELWP), and other external agencies as required,
- present the proposal to the Executive Management Team for feedback.
- provide the opportunity for proponents to present to the Director.

## **Step 5. Council decision to seek formal Authorisation from Minister.**

Following the above, all proposals eligible for the scheme amendment ‘pool’ will be presented to a Council held in October / November and March / April (whichever is earliest) for consideration of relative strategic merits and available resources with a view to determining which proposals will be put forward to the Minister seeking formal Authorisation to prepare a Scheme Amendment.

At this step, the Council may:

- prepare charge a fee to cover the resources required to process the amendment.
- provide an opportunity for the proponent to brief the Councillors.
- refuse a seek Authorisation from the Minister.

The Council may prioritise proposals based on:

- those considered likely to yield the widest community benefit and
- the availability of Council resources to process privately initiated scheme amendments, over and above the Council’s planned strategic work program and scheme review cycle.

The Council will advise applicants of the recommended priorities for Council initiation with release of the Council Meeting Agenda. Applicants may be provided with an opportunity to brief Council.

It should be noted that the Council resolution supporting a scheme amendment may be conditional, including:

- payment of an additional planning resources fee, and payment of all other amendment fees including planning panel costs.
- preparation of all documentation under the instruction of a Council officer and to the Council’s standards.

## **Step 6. Formal Scheme Amendment process and responsibilities.**

Following the above, if Council chooses to initiate a scheme amendment then the statutory process and timelines as per the Planning and Environment Act 1987 and Ministerial Direction No.15: The Planning Scheme Amendment Process will be followed.

As stated earlier, proponents will be responsible for preparing most documentation under instruction and to the standards of Council, including (but not limited to):

- preparation of context and site analysis documents and plans.
- preliminary feedback from community, stakeholder and referral agencies.
- a statement addressing the strategic merit criteria (as above), in addition to statement addressing Ministerial Direction No.11 Strategic Assessments.
- preparation of scheme amendment documentation.
- preparation and organization of exhibition notices, and other community engagement materials as required.
- preparation of responses to notice submissions.
- preparation of Panel submissions.

Proponents should note:

- Planning scheme amendments represent changes in the law which can be complex and time consuming. The Council encourages private proponents to engage the services of a town planning or suitably experienced consultant to provide timely advice and assistance.
- Following Council initiation, a scheme amendment can take 12-24 months to process as they are subject to a range of factors - adequacy of information, complexity, need for collaboration with external organisations, the nature and number of public submissions, and the need for an independent panel.
- The Council is unable to guarantee success as the planning authority is the Minister for Planning.

## **Fees and Costs**

The fee for planning scheme amendment is prescribed under the *Planning and Environment (Fees) Regulations 2016*. In addition, Council requires the reimbursement of some specific and extraordinary costs that might arise with respect to a planning scheme amendment. The following costs are expected:

1. all costs associated with the administration of the scheme amendment such as advertising in newspapers, the Government Gazette, public notification and any other cost associated with consulting with the community (mail-outs, letter drops, public information sessions).
2. engaging additional planning expertise (i.e. consultant or temporary planner) where necessary to assist with negotiation, investigation, document preparation (including Section 173 agreements, peer review, processing amendments, panel submissions etc.).

- engaging additional technical expertise for investigations or opinions about impacts / effects e.g. drainage, contamination etc.
  - engaging legal expertise for the preparation of S173 agreements, reviewing draft conditions etc.
3. all costs and expenses associated with a planning panel (to resolve objections) including cost of the panel members, the panel hearing, hiring of facilities, expert witnesses, legal representation.
  4. All costs arising from the engagement of specialist consultants to review any part of the amendment.

Council will obtain written agreement with a proponent for reimbursement for specific and extraordinary costs from the proponent.

## Documentation

Proponents are expected to submit electronic copies via USB or email ([maroondah@maroondah.vic.gov.au](mailto:maroondah@maroondah.vic.gov.au)). Applications must include (but not limited to):

- Property description – proponents must provide detailed information regarding the site, its location, size, and area. This can be achieved through the inclusion of survey plans, street number, area, and dimension.
- Copy of title and copies of any registered restrictions, covenants, and/or Section 173 agreements.
- Site condition – proponent must submit an accurate description/plan of the existing use and development of the land including buildings, access points, structures, significant natural features, and any heritage sites/items.
- Site analysis – proponents must provide a plan and describe the surrounding land uses including community services and facilities. The plan should also identify the connections between the site and surrounding land uses.
- Service and utilities – proponents must provide a plan showing the existing service and utilities infrastructure (sewerage, water, electricity etc.). Descriptions should also be included to show where services and utilities could be implemented if not currently existing.
- Conceptual plans showing built form outcomes and land uses, if not part of a S96 application.
- Supporting Documents – documentation supporting any of the above components above should be included as part of the amendment application. Council may request certain documentation to be included as part of the application. Supporting documentation can include flora and fauna reports, traffic impact assessments, drainage and flooding modelling etc. Relationship to the Maroondah 2040 Community Vision

## Guiding legislation and policy

- *Planning and Environment Act 1987*
- *Planning and Environment (Fees) Regulations 2016*
- *Ministerial Direction No.11: Strategic Assessment of Amendments*
- *Ministerial Direction No.15: The Planning Scheme Amendment Process*
- *Ministerial Direction on the Form and Content of Planning Schemes*
- *Planning Practice Note 46: Strategic Assessment Guidelines*

## Key Steps - Privately-Initiated Planning Scheme Amendment

