

### **3.4 ADOPTION FOR FINAL APPROVAL OF AMENDMENT NO.40 TO LOCAL PLANNING SCHEME NO. 17 - PARKING OF COMMERCIAL VEHICLES**

(All Wards) (Statutory Planning)

#### **KEY ISSUES**

- In December 2009 the City of Swan initiated an amendment to *Local Planning Scheme No. 17* that sought to address issues with the permissibility of commercial vehicle parking on private landholdings throughout the municipal area. It also introduces two policies (Commercial Vehicle Parking Policy and Transport Depot and Rural Transport Depot) to support the Scheme amendment.
- The proposed scheme amendments along with two draft local planning policies were publicly advertised between March and April 2010, including advertising in relevant newspapers and a community meeting in the Midland Town Hall. During this period the City received a number of written and verbal submissions from members of the public and special interest groups which identified several primary concerns and issues.
- At the Ordinary Council Meeting of 22 September 2010 the Council considered the issues and concerns raised in the March/April round of public comment. At this meeting it was resolved to make a number of modifications to the amendments and to discontinue the two draft local planning policies. The Council endorsed for the purposes of advertising a 'Parking of Commercial Vehicles Discussion Paper' which clearly outlined the proposed modifications to the amendments (Attachment III).
- The 'Parking of Commercial Vehicles Discussion Paper' was advertised by the City in October and November 2010 for a period of 42 days. During this second round of public comment a total of 15 public submissions were received which raised a number of further issues and concerns.
- This report aims to outline the issues raised in submissions during the second round of public comment and respond to the issues with recommendations.
- City Staff considers that the amendments, as modified, are suitable for final adoption by Council and referral to the Minister for Planning with a request for final approval.

It is recommended that Council adopt Amendment No. 40 to *Local Planning Scheme No. 17*, with the modifications outlined in the Recommendation, and refer the documentation to the Hon. Minister for Planning with a request for final approval.

## **AUTHORITY/DISCRETION**

Under Section 75 of the *Planning and Development Act 2005*, a local government may amend a local planning scheme with reference to any land within its district, or with reference to land within its district and other land within any adjacent district, by an amendment -

- a) Prepared by the local government, approved by the Minister and published in the *Gazette*; or
- b) Proposed by all or any of the owners of any land in the scheme area, adopted, with or without modifications, by the local government, approved by the Minister and published in the *Gazette*.

## **DETAILS OF THE PROPOSAL**

In December 2009 the City of Swan initiated an amendment to *Local Planning Scheme No. 17* that sought to address issues with the permissibility of commercial vehicle parking on private landholdings throughout the municipal area. These amendments primarily aimed to address:

- a) The lack of ability under the current scheme provisions for the City of Swan to approve the parking of more than one commercial vehicle on any lot within the City of Swan municipal area;
- b) The lack of consistency between the land use class of 'Transport Depot' and the objectives of the 'General Rural' zone, where the use is listed as a 'D' class (discretionary) use; and
- c) The lack of clear definitions of both 'Commercial Vehicle' and 'Transport Depot'.

These amendments were subsequently advertised in March/April 2010 for a period of 42 days, during which a total of 24 submissions were received.

In response to the issues raised in submissions, the City of Swan reconsidered the proposed amendments and published the revised documentation for a further period of public comment in October/November 2010. During this second round of comment a total of 15 submissions were received, and the City has now considered these submissions and recommended a number of further modifications to the proposed Amendment No. 40.

It is now considered that the modified Amendment No. 40 is suitable for final adoption by Council, after which it will be forwarded to the Minister of Planning with a request for final approval.

## **OTHER RELEVANT PREVIOUS DECISIONS OF COUNCIL**

### **OCM 12 December 2007**

At the OCM on 12 December 2007 Council was presented with the issue of unauthorised transport depots operating on various lots within the Swan Valley. At this meeting Council resolved to:

- 1) *Serve Direction Notices, pursuant to the Planning and Development Act 2005, on the four properties (being Lot 163, No. 47 Logue Road, Millendon; Lot 6, No. 210 Guger Road, Herne Hill; Lot 5, No. 95 Lennard Street, Herne Hill; and Lot 7, No.127 Lefroy Avenue, Herne Hill) in the Swan Valley currently being used as unauthorised Transport Depots on the basis that such a use is not permitted in Rural Living and Swan Valley Rural zones.*
- 2) *Include in the Directions Notices a stay of 12 months (until 31 December 2008) to allow for relocation of the respective Transport Depots to appropriate zoned sites. The 12 month stay could be considered for extension upon application and will be assessed on a case by case basis and on merit.*
- 3) *Advise the respective landowners/operators of the unauthorised Transport Depots that failure to comply with the Direction Notices will result in the Council initiating legal actions.*
- 4) *Adopt a consistent approach in dealing with unauthorised Transport Depots by serving similar Direction Notices under delegated authority of the Chief Executive Officer.*
- 5) *Advise the respective landowners of the unauthorised Transport Depots and the complainants of the Council's direction accordingly.*
- 6) *Request that City staff complete the Bullsbrook/Upper Swan Place Plan as a matter of urgency so as to identify land suitable for industrial purposes that could meet the demand within the City for Transport Depots.*
- 7) *Request City staff to initiate appropriate rezoning processes forthwith once suitable land is identified.*
- 8) *Record that the reason for changing the Recommendation is that whilst acknowledging that the current situation is unacceptable it was considered reasonable to allow a longer period for the respective applicants to relocate to appropriate zoned sites, bearing in mind that there is no readily available land zoned for this purpose.*

### **OCM 23 July 2008**

In attempting to address the Council resolution of the 12 December 2007, City officers presented a report to the 23 July 2008 OCM with proposals for scheme amendments and local planning policies to address the primary issues surrounding commercial vehicle parking and transport depots within the City. At this meeting Council resolved to:

- 1) *Endorse the following approach to adopting statutory measures to provide guidance on and manage commercial vehicle parking and transport depots within the City of Swan:*
  - a. *That staff prepare a draft amendment to Local Planning Scheme No. 17 to introduce a new use class "Commercial Vehicle Parking" with an appropriate definition and range of permissibility in the various zones*

*and review the definition of "Transport Depot" for consideration by Council for advertising for public comment for 42 days;*

- b. That staff prepare draft local planning policies for "Commercial Vehicle Parking" and "Transport Depots" for consideration by Council for advertising for public comment for 42 days concurrently with the proposed Scheme amendment; and*
- c. That Council review the draft Scheme amendment and local planning policies upon consideration of submissions received during the advertising period. The final Scheme amendment and local planning policies will then be forwarded to the Western Australian Planning Commission for consideration of final approval.*

### **OCM 19 December 2009**

At the OCM on 19 December 2009 Council was presented with the draft versions of two local planning policies and a number of draft amendments to *Local Planning Scheme 17* to address issues with commercial vehicle parking and transport depot development. At this meeting Council resolved to:

- 1) Initiate the proposed scheme amendments for commercial vehicle parking, transport depots and rural transport depots, as outlined in Appendix I;*
- 2) Direct the City to forward the proposed scheme amendments to the Environmental Protection Authority for review under Section 48A of the Environmental Protection Act 1986;*
- 3) Direct the City to advertise the proposed Commercial Vehicle Parking Policy and Transport Depot and Rural Transport Depot Policy for a period of 42 days; and*
- 4) Note that the advertising of the proposed scheme amendments and local planning policies will occur simultaneously for a period of 42 days after the Environmental Protection Authority has finalised its review under Section 48A of the Environmental Protection Act 1986.*

### **OCM 22 September 2010**

At the OCM on 22 September 2010 Council was presented with a draft 'Parking of Commercial Vehicles Discussion Paper' that was proposed to form the basis for a second round of advertising of LPS17 Amendment No. 40. At this meeting Council resolved to:

- 1) Endorse the proposed 'Parking of Commercial Vehicles' Discussion Paper for public advertising;*
- 2) Advertise the 'Parking of Commercial Vehicles' Discussion Paper for public comment for a period of 42 days in accordance with the Town Planning Regulations 1967 (as amended).*

City staff also sought and obtained approval from the Hon Minister for Planning for an extension of time for which to determine the submissions following the close of advertising period.

## **PUBLIC CONSULTATION**

The public consultation for Amendment No. 40 was initially undertaken for a 42 day period between March and April 2010. In response to a number of issues raised in public submissions, City officers revised the proposed amendments and Council resolved to readvertise Amendment No. 40 for a further period of 42 days between October and November 2010. The results of the public consultation are outlined as follows:

### **Public Comment – First Round (March-April 2010)**

The first round of public comment for Amendment No. 40 was undertaken between 12 March and 23 April (42 Days in total). The public comment period was advertised via local and State newspapers and the City of Swan website, in addition to a mail out to all relevant community groups and government organisations. A public meeting was also undertaken on the 25<sup>th</sup> March 2010, with approximately 50 interested stakeholders attending and participating in discussion.

During the public comment period a total of 24 submissions were received by the City, as outlined in Appendix II. These submissions, along with the City's response to the issues raised, have been considered by Council at the Ordinary Council Meeting on 22 September 2010, and are further outlined within the *Parking of Commercial Vehicles Discussion Paper* (Appendix III).

### **Public Comment – Second Round (October – November 2010)**

The second round of public comment was undertaken between 6<sup>th</sup> October and 17<sup>th</sup> November 2010, at which time a discussion paper was distributed which comprehensively outlined the amendments proposed, in addition to the public feedback received and the City's response to this feedback (Appendix III). The public comment period was advertised via local and State newspapers and the City of Swan website, in addition to a mail out to all relevant community groups and those stakeholders that commented during the first round of public comment.

During the public comment period a total of 15 submissions were received, as outlined in Appendix IV. These submissions raised a number of key issues which are summarised as follows:

- a) *A landowner will have to apply for a separate scheme amendment at a fee of \$6,600 if their current or proposed land use does not meet the proposed scheme provisions. The high financial cost and lack of certainty results in this option being unviable for many landowners in this position.*
- b) *A landowner may have to move to a new property where the parking of their commercial vehicles is permitted. There is little land available within the Perth metropolitan area where truck drivers can move to at a reasonable price, and as a result this option will be unviable for many landowners.*
- c) *The City of Swan should include a 'Grandfather' clause that permits those landowners who have parked their trucks within the City for a period of time to continue doing so without the need for any further approvals.*
- d) *The use of lot size as a determinate to the number of commercial vehicles is inappropriate, as it is not a suitable indicator of the number of commercial vehicles that a property may accommodate.*

- e) *The maximum number of vehicles permissible for the lot sizes outlined in the proposed 'Schedule 14' is too low, and too restrictive on existing and future business operators within rural areas of the City of Swan. The maximum number of vehicles should be increased to a more acceptable number that correctly reflects the number of vehicles that may be accommodated by a lot.*
- f) *The proposal to amend the permissibility of a 'Transport Depot' within the 'General Rural' zone from a 'D' use (discretionary) to an 'X' use (not permitted) is unnecessary, as this will result in Council not being able to approve the use on a lot zoned 'General Rural' even where it is reasonable to do so.*
- g) *The number of amendments proposed and complicated nature of the subject makes it difficult for all landowners to fully comprehend and comment on the proposed scheme amendments. Further consultation with affected landowners should be undertaken by the City of Swan prior to the adoption of the proposed amendments.*
- h) *The proposed scheme amendments are not considered to comply with the objectives of the Swan Valley Planning Act. These amendments should be revised to ensure that the objectives are adhered to for the parking of commercial vehicles within the Swan Valley area.*
- i) *The proposed inclusion of trailers or attachments that have a gross vehicle mass (GVM) of less than 4.5 tonnes as part of the definition of 'Commercial Vehicle' is inappropriate, as this may include any trailer or attachment, regardless of size or scale. It is also considered inappropriate that the maximum number of trailers is mandated via Schedule 14 without any discretion, as landowners may often require the parking of multiple trailers to be attached to a single vehicle at different times.*
- j) *The definition of a commercial vehicle as any vehicle with a gross vehicle mass of greater than 4.5 tonnes is inappropriate, as this will capture a number of vehicles that are not considered to cause a nuisance (including an F250/350/450 and some mobile homes, campervans and caravans). It is recommended that the threshold be increased to 7.0 tonnes, as this will ensure that only larger commercial vehicles are captured.*
- k) *The proposed 2hr time limit for the parking of commercial vehicles without requiring approval is inappropriate, as this will restrict visitors who wish to park their commercial vehicle on a property from staying for longer than 2 hrs, and will not permit overnight visitors.*
- l) *The use of the term 'is part of the approved use of the land' as part of the proposed clause 5.10.3 d) is too vague, as ancillary uses are often not stipulated within a planning approval.*
- m) *The use of the term 'semi-trailer truck' in the proposed definition of 'Commercial Vehicle' and in the proposed 'Schedule 14' is inappropriate, as this is not a common term used by the trucking and logistics industry (Verbal Submission Only).*
- n) *The proposed exemptions are considered to be unfair, as the exemption can be revoked simply by a neighbour lodging a complaint, regardless of the merit of such a complaint (Verbal Submission Only).*

## **CONSULTATION WITH OTHER AGENCIES AND/OR CONSULTANTS**

During the first round of public comment between March and April 2010 the proposed Amendment No. 40 was referred to relevant State government agencies, including the Department of Environment & Conservation, Swan River Trust, Department of Water, Main Roads WA and the Midland Redevelopment Authority.

Only the Department of Water and Main Roads WA provided a written response, and neither agency provided detailed comment or indicated any objection to the amendments as proposed.

## **REPORT**

It should be noted that Amendment No. 40 is primarily focused on ensuring that the parking of commercial vehicles at a place of residence by owner/operators occurs in a manner which will have limited impact on surrounding landowners. Whilst the amendment has an impact on the operation of 'Transport Depots' within the 'General Rural' zone, its primary focus is regulating the parking of commercial vehicles on properties used for residential purposes.

Amendment No. 40 to *Local Planning Scheme No. 17* was initiated by Council on the 19 December 2009, and publicly advertised for a period of 42 days in April/May 2010. During this first round of public comment a number of issues were raised by stakeholders, and the City responded to the issues raised with a number of modifications to the proposed amendments.

The modified amendments were considered by Council at the OCM on 22 September 2010, at which it was resolved to commence a second round of advertising for a further period of 42 days. This advertising was undertaken in October/November of 2010, and a total of 15 submissions were received by the City.

The relevant stages of the advertising process are outlined below, along with the public submissions and a number of recommendations for final modifications to the proposed scheme amendments:

### **Initial Proposed Amendments (December 2009)**

At the OCM on 19 December 2009 Council resolved to advertise a number of amendments to *Local Planning Scheme No. 17*, including the following:

- a) A revised definition of the 'Transport Depot' land use class;
- b) The introduction of a new land use class of 'Rural Transport Depot' with a suitable definition and associated land use permissibility;
- c) The introduction of a new land use class of 'Commercial Vehicle Parking' with a suitable definition and associated land use permissibility;
- d) A revised definition of 'Commercial Vehicle';

- e) Amendments to the 'Exempted Development' table (Schedule 5) for the new land use class of 'Commercial Vehicle Parking'; and
- f) The introduction of a new section 5.10 'Parking farm machinery in Rural Zones', which outlined relevant exemptions for the parking of farm machinery on rural properties.

In addition to the proposed amendments, two draft local planning policies were also approved for public advertising. These two policies, along with the proposed scheme amendments, are outlined in Attachment I.

### **Public Comment Response (First Stage – April 2010)**

The first round of public comment was undertaken for a 42 day period from 12 March until 23 April 2010. During the public comment period the City received a number of submissions, each of which raised a variety of concerns, issues and recommendations. Each of these submissions is outlined and responded to as Attachment II.

The public submissions were considered as part of a discussion paper drafted by the City of Swan, which provided a response to the issues and concerns raised, and recommended a number of modifications be made to the proposed scheme amendments and the two local planning policies. These modifications are broadly outlined as follows:

- a) Modify the definition of 'Commercial Vehicle' to ensure that it clearly identifies vehicles that have the potential to cause a nuisance or may be deemed unsuitable within a residential or rural area;
- b) Discontinue the proposed 'Commercial Vehicle Parking' land use classification in favour of inserting specific provisions into the Scheme relating to the permissibility of 'Parking of Commercial Vehicles' as an ancillary component of residing on a rural or residential lot;
- c) Discontinue the proposed 'Rural Transport Depot' land use classification in favour of increasing the permissible number of commercial vehicles on large rural blocks to a maximum of five with a maximum of five trailers;
- d) Modify the proposed definition of 'Transport Depot' to ensure that it is suitably distinguished from the specific provisions of the Scheme for the 'Parking of Commercial Vehicles';
- e) Discontinue the two draft local planning policies, as all relevant policy issues are considered to be adequately addressed in the revised Scheme provisions.

City Staff's response to issues raised in submissions, along with the proposed modifications to Amendment No. 40 is outlined in the Discussion Paper included as Attachment III.

### **Public Comment Response (Second Stage – October 2010)**

At the OCM 22 September 2010 Council resolved to readvertise Amendment No. 40 via the public distribution of the '*Parking of Commercial Vehicles – Discussion Paper*' included as Attachment III. This second round of public comment aimed to elicit a response from interested stakeholders to the revision of amendment no. 40 undertaken by the City in response to public comment received during the first round.

The discussion paper was advertised for a total of 42 days from 6<sup>th</sup> October until 17<sup>th</sup> November, during which a total of 15 written submissions were received. Each of these submissions, along with an individual response by City of Swan officers, is outlined as Attachment IV.

The primary issues and concerns raised were outlined in the 'Public Comment' section above, and are responded to as follows:

- a) *A landowner will have to apply for a separate scheme amendment at a fee of \$6,600 if their current or proposed land use does not meet the proposed scheme provisions. The high financial cost and lack of certainty results in this option being unviable for many landowners in this position.***

The City of Swan notes that many landowners are concerned that their current unapproved land use may not comply with the revised provisions of *Local Planning Scheme No. 17* relating to the parking of commercial vehicles, and that the high cost of an individual scheme amendment to facilitate their current use may prove prohibitive.

The following should also be noted, however:

- i) If a landowner is currently parking numerous commercial vehicles on their property without any form of planning approval, they are not in compliance with the existing scheme provisions, and as such their situation is not influenced by the proposed Amendment No. 40. If these landowners wish to continue operating their vehicles from their current landholding, they are currently required to seek approval via an individual amendment to *Local Planning Scheme No. 17*, regardless of Council's decision in relation to Amendment No. 40.
- ii) The required fee of \$6,600.00 is an estimate of the costs incurred by the City to fulfil the scheme amendment process required under the *Town Planning Regulations 1967* (as amended), including public advertising, referral to relevant agencies, initiation and adoption by Council and final consideration by the Minister for Planning. An amendment to a local planning scheme requires a considerable amount of work by City officers and the fee only reflects those costs incurred by the City.
- iii) It is considered entirely appropriate that a landowner who is operating a business that is not in compliance with the Scheme should seek approval from the City of Swan based on their individual circumstances. The only feasible way for the City to assess such an application is through the scheme amendment process, in which the Council may consider all relevant planning considerations as they relate to the individual landholding and business operation.

No further modifications to Amendment No. 40 are proposed in response to this issue.

- b) *A landowner may have to move to a new property where the parking of their commercial vehicles is permitted. There is little land available within the Perth metropolitan area where truck drivers can move to at***

***a reasonable price, and as a result this option will be unviable for many landowners.***

The City of Swan notes that landowners consider that there is little available land for their business to move to if they are not granted permission by Council to continue operating their business from their current premises. It is recognised by the City of Swan that there is a shortage of industrial land within the Perth metropolitan area, and City officers are working with landowners and the State Government to ensure that more industrial land becomes available to alleviate some of the demand.

This is not an easy process, however, as the City requires both motivated landowners willing to invest in the development of their land, and the State Government to be willing to invest infrastructure to support industrial development. In particular, the City is currently considering and working towards facilitating future industrial development in Malaga, Hazelmere, Upper Swan and Bullsbrook.

With respect to landowners that are not able to be granted planning approval to continue operating numerous commercial vehicles from their current landholding, the Council has indicated that these landowners will be given a 12 month 'grace period' from the date of Gazettal of Amendment No. 40 to seek an alternative solution. If the landowner chooses to find an alternative property to move the parking of their commercial vehicles to, and they cannot feasibly undertake the acquisition and development of this land within a 12 month period, they may request that Council extend the grace period based on their individual circumstances.

Such a request will need to be suitably justified by the applicant, and a reasonable extension of the time period must be sought.

No further modifications to Amendment No. 40 are proposed in response to this issue.

***c) The City of Swan should include a 'Grandfather' clause that permits those landowners who have parked their trucks within the City for a period of time to continue doing so without the need for any further approvals.***

It is noted that several landowners expressed a desire for the City of Swan to include a 'Grandfather' clause that permits landowners who have parked their trucks on properties without any valid planning approval for a period of time to continue doing so without the need to seek any form of approval in the future. Whilst it is recognised that the length of time that a business has operated may be a relevant planning consideration, it is considered entirely inappropriate for the City to consider granting an amnesty to a large group of landowners who have been operating illegally without consideration of their individual circumstances. Such a decision would be inconsistent with the requirement for all landowners to ensure that they are compliant with the provisions of *Local Planning Scheme No. 17*, and would undermine the WA planning system as a whole.

It is noted that the Scheme specifically accommodates those landowners that are operating legally prior to the introduction of an amendment that results in their land use no longer being permitted within that zone. This is achieved

through the 'Non-Conforming Use' provisions of *Local Planning Scheme 17*, outlined as clauses 4.8 to 4.11. If a landowner can demonstrate that they are consistent with the 'non-conforming use' provisions of *Local Planning Scheme No. 17* they may not be required to seek any further planning approval for their existing land use.

City officers consider that it is entirely appropriate that those landowners who are parking numerous commercial vehicles on a property without any valid planning approval should be required to request retrospective planning approval. If they are not able to conform with the amended provisions of *Local Planning Scheme 17* relating to the parking of commercial vehicles, they may request a scheme amendment for an 'Additional Use'. As part of the application for this scheme amendment they may outline the length of time that their business has been operating for, and this will be taken into consideration by Council in their decision on the proposed amendment.

No further modifications to Amendment No. 40 are proposed in response to this issue.

**d) *The use of lot size as a determinate to the number of commercial vehicles is inappropriate, as it is not a suitable indicator of the number of commercial vehicles that a property may accommodate.***

It is noted that some landowners consider that lot size is an unsuitable determinate for the ability of a property to accommodate the parking of commercial vehicles.

The City has employed lot size as a determinate as it is considered that larger lot sizes will be better able to screen commercial vehicles from view and ensure that they are parked and operated within an area that is a sufficient distance from surrounding sensitive development. Traditionally areas with larger lots also have a road network more suitably catered for the operation of commercial vehicles, as these areas contain longer stretches of road and are not traversed by substantial commuter (non-commercial) traffic.

No further modifications to Amendment No. 40 are proposed in response to this issue.

**e) *The maximum number of vehicles permissible for the lot sizes outlined in the proposed 'Schedule 14' is too low, and too restrictive on existing and future business operators within rural areas of the City of Swan. The maximum number of vehicles should be increased to a more acceptable number that correctly reflects the number of vehicles that may be accommodated by a lot.***

It is noted that some landowners consider the maximum number of commercial vehicles outlined in Schedule 14 to be too low. The City of Swan formulated the maximum number of vehicles based on:

- i) The desire for an owner operator to park a commercial vehicle that they used for work purposes at their place of residence to ensure its security and use it for commuting purposes; and

- ii) The need to ensure that the number of commercial vehicles parked on a property did not negatively impact the visual amenity, traffic safety or character of the locality.

It is considered that the parking of an increased number of vehicles above that stipulated in the proposed Schedule 14 represents a more significant business operation than a simple owner operator of a commercial vehicle, and as such does not comply with the intent of the amendments as proposed. If a landowner wishes to park a greater number of vehicles on such a property they must seek approval for that 'industrial scale' land use via an individual scheme amendment.

One submission did suggest that the wording of clause 5.10.4 be modified to ensure that it was clear in the relationship between clause 5.10 and Schedule 14. As a result the following modification to clause 5.10.4 is recommended:

*'The maximum number of commercial vehicles which may be parked or garaged on any lot within a particular zone as part of an approval under clause 5.10.1 is set out in Schedule 14.'*

- f) *The proposal to amend the permissibility of a 'Transport Depot' within the 'General Rural' zone from a 'D' use (discretionary) to an 'X' use (not permitted) is unnecessary, as this will result in Council not being able to approve the use on a lot zoned 'General Rural' even where it is reasonable to do so.***

It is noted that some landowners consider that the proposal to make 'Transport Depot' an 'X' use (not permitted) within the 'General Rural' zone is unnecessary. It is considered that the 'Transport Depot' land use class, which includes the parking of commercial vehicles on a non-residential property, and may include maintenance of vehicles and storage of goods, is an industrial scale land use that is inconsistent with the objectives of the 'General Rural' zone.

As a result, it is not considered appropriate for this use to be permitted within the 'General Rural' zone via a 'D' classification (discretionary use). It is considered entirely appropriate that an 'X' classification be applied for the 'Transport Depot' use class within the 'General Rural' zone.

No further modifications to Amendment No. 40 are proposed in response to this issue.

- g) *The number of amendments proposed and complicated nature of the subject makes it difficult for all landowners to fully comprehend and comment on the proposed scheme amendments. Further consultation with affected landowners should be undertaken by the City of Swan prior to the adoption of the proposed amendments.***

The City has undertaken a wide range of consultation with regard to Amendment No. 40 over a period of almost two years. This has included two formal public comment periods of six weeks each, advertising in local and State government newspapers, publication on the City of Swan's website and a formal public meeting held at the Midland Town Hall. City officers also attended and presented at a number of community workshops and events, and were

available to answer any and all questions from the public throughout the two year period.

It is considered that further consultation will be of little benefit and would only result in further delays and uncertainty for landowners.

No further modifications to Amendment No. 40 are proposed in response to this issue.

- h) *The proposed scheme amendments are not considered to comply with the objectives of the Swan Valley Planning Act. These amendments should be revised to ensure that the objectives are adhered to for the parking of commercial vehicles within the Swan Valley area.***

The amendments are considered to be consistent with the objectives of the *Swan Valley Planning Act 1995*, in that the landowners that reside within the Swan Valley should be given the ability to park their 'owner operated' commercial vehicles in the same manner as any other landowner within the City of Swan. It is not considered that the parking of such vehicles, in limited numbers as per the proposed Schedule 14, will degrade the character of the Swan Valley or undermine its value as a tourism and viticultural precinct.

No further modifications to Amendment No. 40 are proposed in response to this issue.

- i) *The proposed inclusion of trailers or attachments that have a gross vehicle mass (GVM) of less than 4.5 tonnes as part of the definition of 'Commercial Vehicle' is inappropriate, as this may include any trailer or attachment, regardless of size or scale. It is also considered inappropriate that the maximum number of trailers is mandated via Schedule 14 without any discretion, as landowners may often require the parking of multiple trailers to be attached to a single vehicle at different times.***

It is noted that some landowners were concerned with the definition of 'Commercial Vehicle' due to the inclusion of '*any trailer or similar article designed to be an attachment to either i) or ii), whether rated at a gross vehicle mass of greater than 4.5 tonnes or not*'. It is recognised that this may inadvertently capture smaller trailers and attachments that are designed to be attached to vehicles of less than 4.5 tonnes gross vehicle mass.

The final sentence of the proposed definition of 'Commercial Vehicle' is recommended to be modified as follows:

*'In addition to any trailer or similar article specifically designed to be an attachment to a vehicle with a gross vehicle mass of greater than 4.5 tonnes.'*

It is recognised that some landowners may have one or two motorised commercial vehicles, but multiple trailers that are used depending on the goods being carried. Such a situation may in fact be entirely appropriate provided that suitable screening measures are established, but cannot be permitted under the current proposed amendments, as the number of trailers is mandated by the maximum set in the proposed Schedule 14.

In order to address this it is proposed to allow Council discretion to vary the maximum number of trailers that may be parked on a property if it is satisfied that this will not impact on visual amenity or the character of the locality. As a result the proposed clause 5.10.7 is proposed to be modified as follows:

*'The requirements of clause 5.10.4 and clause 5.10.5 are not capable of variation by clause 5.5 of the Scheme. Council may make an exception to this clause for the 'maximum number of trailers designed to be attached to a motorised commercial vehicle', as stipulated in Column 4 of Schedule 14, if Council is of the opinion that additional trailers or other attachments:*

- a) Are only used by the applicant in conjunction with an approved motorised commercial vehicle(s) that is permitted to be parked on the subject lot;*
- b) Are sufficiently screened from view of the surrounding streets and adjacent properties; and*
- c) Do not detrimentally impact on the character of the surrounding locality.'*

- j) *The definition of a commercial vehicle as any vehicle with a gross vehicle mass of greater than 4.5 tonnes is inappropriate, as this will capture a number of vehicles that are not considered to cause a nuisance (including an F250/350/450 and some mobile homes, campervans and caravans). It is recommended that the threshold be increased to 7.0 tonnes, as this will ensure that only larger commercial vehicles are captured.***

The threshold of 4.5 tonnes gross vehicle mass is the current threshold applied in the definition of 'Commercial Vehicle' under *Local Planning Scheme No. 17*. This threshold was established to reflect the definition of 'heavy vehicle' for licensing purposes under the *Road Traffic (Licensing) Regulations 1975*, which includes any vehicle with a gross vehicle mass equal to or greater than 4.5 tonnes.

The 4.5 tonne threshold is considered to be a suitable indicator of those vehicles that have the potential to impact upon traffic management, visual amenity and character of rural and residential areas, and as such should require separate planning approval.

No further modifications to Amendment No. 40 are proposed in response to this issue.

- k) *The proposed 2hr time limit for the parking of commercial vehicles without requiring approval is inappropriate, as this will restrict visitors who wish to park their commercial vehicle on a property from staying for longer than 2 hrs, and will not permit overnight visitors.***

It is recognised that some landowners are concerned that the 2 hr time limit for the parking of commercial vehicles may limit flexibility of visitors parking commercial vehicles on their property. This time limit was established to ensure that the parking of such vehicles for delivery or pick up purposes did not require planning approval, and as such a 2 hour time limit was considered to be sufficient.

In order to cater for the parking of commercial vehicles on a property being visited, it is proposed that the time limit be increased to a maximum of 5 hours in any 24 hour period. It is not considered that overnight visitors should be accommodated for within this provision, as exempting overnight stays provides a loophole for those that do not wish to seek planning approval for the parking of commercial vehicles. If a landowner wishes to have a commercial vehicle parked on the property for longer than the time limit they should seek planning approval prior to permitting the vehicle to be parked.

The proposed provision 5.10.3 b) is recommended to be modified as follows:

*'b) is solely for the purpose of visiting the subject lot, delivery or receiving of goods and is for a duration of no longer than 5 hours in any 24 hour period;'*

- l) The use of the term 'is part of the approved use of the land' as part of the proposed clause 5.10.3 d) is too vague, as ancillary uses are often not stipulated within a planning approval.**

It is noted that some landowners consider that the above term may cause confusion and would result in uncertainty as to whether the parking of a commercial vehicle would require approval or not. It is noted that the majority of planning approvals do not list activities which may be considered ancillary to this approval, and as such do not require further approval.

The identification of ancillary land uses are currently completed via a City officer review of the approval that was granted and the basis for that approval. It is considered that this technique will be appropriate in determining whether the parking of commercial vehicles on a subject lot is ancillary to an approved land use on that property, and as such the technique should be reflected within the proposed Scheme provision.

The proposed provision 5.10.3 d) is recommended to be modified as follows:

*'d) is considered to be ancillary to an approved use of the land upon which the commercial vehicle(s) is parked or garaged; or*

- m) The use of the term 'semi-trailer truck' in the proposed definition of 'Commercial Vehicle' and in the proposed 'Schedule 14' is inappropriate, as this is not a common term used by the trucking and logistics industry (Verbal Submission Only).**

It is noted that some landowners queried the use of the term 'Semi-trailer truck', which was understood by City officers to be an interchangeable term for a 'Prime Mover'. Given that this term is not commonly used by relevant stakeholders, it is recommended that the term be removed from both the proposed definition of 'Commercial Vehicle' and the provisions outlined as Schedule 14, as shown in Attachment V.

- n) The proposed exemptions are considered to be unfair, as the exemption can be revoked simply by a neighbour lodging a complaint, regardless of the merit of such a complaint (Verbal Submission Only).**

It is noted that some landowners considered the proposed exemptions under Schedule 5 to be unfair, as the exemption can be revoked due to a complaint

being received, which will force an applicant to lodge a retrospective planning application regardless of the merit of the complaint. As a result it is recommended that the proposed exemptions be discontinued by Council.

### **Final Amendments (January 2011)**

In response to the public comments received during the second round of advertising, it is proposed that the final version of Amendment No. 40 be submitted as outlined in Attachment V.

### **OPTIONS AND IMPLICATIONS**

Option 1: Council may resolve to adopt the revised Amendment No.40 documentation as outlined within the advertised 'Discussion Paper' dated September 2010 (Attachment III) and to forward the revised documentation to the Hon Minister for Planning with a request that he approves the revised Amendment as presented.

Implications: The Hon Minister for Planning will take the Council's adoption of the revised amendment documentation and the public comments received into consideration as part of his determination for final approval. The Hon Minister for Planning may or may not support Council's position. If the revised Amendment No.40 documentation is to be adopted as advertised then the parking of some commercial vehicles which are not considered to impact visual amenity, traffic management or character of a locality may inadvertently require planning approval.

Option 2: Council may resolve to adopt the revised Amendment No.40 as outlined within the advertised 'Discussion Paper' dated September 2010 (Attachment III) with the modifications resulting from the public submission as articulated in Attachment V and forward these modified amendment documentation to the Hon Minister for Planning with a request that he adopts the revised Amendment No.40 with modifications as presented. This is the preferred option.

Implications: The Minister for Planning will take the Council's adoption of the modifications to the revised Amendment No.40 and the public comments received into consideration as part of his determination for adoption for final approval. The Hon Minister may or may not support Council's position.

Option 3: Council may resolve to refuse to adopt the revised Amendment No.40 documentation as outlined within the advertised 'Discussion Paper' dated September 2010 (Attachment III) and to forward the documentation to the Hon Minister for Planning with a request that he supports the Council's position for not adopting the amendment for final approval.

Implications: The Hon Minister for Planning will take the Council's refusal to adopt the revised Amendment No.40 and the public comments received into consideration as part of his determination and may or may not support

Council's position. If the revised Amendment No.40 with the resulting modifications is refused the commercial vehicle parking issues currently experienced will be likely to continue until a suitable legislative/policy solution is adopted.

## **CONCLUSION**

The City of Swan considers that the proposed amendments outlined as LPS17 Amendment No. 40, as modified, are an appropriate method of ensuring that commercial vehicle parking may be permitted on residential and rural properties at an appropriate scale. It is recommended that Council adopt Amendment No. 40, as modified, and forward the documentation to the Minister for Planning with a request for final approval.

## **ATTACHMENTS**

Nil.

The following documents have been circulated to Councillors under separate cover and have been made available on the City's website as an attachment:

- Proposed Scheme Amendments and draft Local Planning Policies (First Round – December 2009)
- Public Comment Received (First Round – March/April 2010)
- Commercial Vehicle Parking Discussion Paper (Second Round – September 2010)
- Public Comment Received (Second Round – Oct/Nov 2010)
- LPS17 Amendment No. 40 (Final Version – January 2011)

## **STRATEGIC IMPLICATIONS**

Nil

## **STATUTORY ENVIRONMENT**

Local Planning Scheme No. 17

Town Planning Regulations 1967 (as amended)

## **FINANCIAL IMPLICATIONS**

Nil

## RECOMMENDATION

That the Council resolve to:

- 1) Adopt the comments outlined within the Schedule of Submissions.
- 2) Adopt the revised Amendment No. 40 to *Local Planning Scheme No. 17* as outlined in the advertised 'Discussion Paper' dated September 2010 with modifications as follows:

- a) Amending the definition of 'Commercial Vehicle' listed in Schedule 1A of the Scheme by deleting the current definition and substituting therein a new definition of 'Commercial Vehicle' to read as follows:

**"Commercial Vehicle"** means a vehicle, whether licensed or not, which is rated at a gross vehicle mass of greater than 4.5 tonnes and which is used or designed for use in association with a business or trade, and for the removal of doubt includes the following vehicles above that mass:

i. Any rigid (non-articulated) vehicle, including any utility, van, truck, bus, tractor or earthmoving equipment; and

ii. Any Prime Mover;

*in addition to any trailer or similar article specifically designed to be an attachment to a vehicle which is rated at a gross vehicle mass of greater than 4.5 tonnes.*

- b) Inserting a new provision for the 'Parking of Commercial Vehicles' as clause 5.10 of *Part 5 – General Development Requirements* of the Scheme, outlined as follows:

### **"5.10 Parking of Commercial Vehicles"**

5.10.1 Subject to this clause, the parking or garaging of a commercial vehicle(s) on any land within the Scheme area requires the prior approval of the Council.

5.10.2 An application for the approval of the Council under this clause may be made on the form prescribed in Schedule 6.

5.10.3 This clause does not apply where the proposed parking or garaging of a commercial vehicle(s):

a) occurs during the period that the commercial vehicle(s) is engaged in work on the lot on which it is parked or garaged (for example, harvesting or earthmoving on the lot);

b) is solely for the purpose of visiting the subject lot or the delivery or receiving of goods and is for a duration of no longer than 5 hours in any 24 hour period;

c) is approved under this Scheme as a transport depot;

- d) *is considered to be ancillary to an approved use of the land upon which the commercial vehicle(s) is parked or garaged; or*
  - e) *is exempted from the need to obtain approval pursuant to Schedule 5.*
- 5.10.4 *The maximum number of commercial vehicles which may be parked or garaged on any lot within a particular zone as part of an approval under clause 5.10.1 is set out in Schedule 14.*
- 5.10.5 *An approval under this clause may only be granted where an occupier of the lot upon which the commercial vehicle(s) is to be parked is also:*
- a) *the owner of; or*
  - b) *the driver of; or*
  - c) *the proprietor of a business which owns or operates, every commercial vehicle which is to be parked or garaged there.*
- 5.10.6 *An approval granted under this clause may be subject to conditions, including conditions which:*
- a) *limit the time for which the approval operates;*
  - b) *restrict the location in which the vehicle may be parked and/or require appropriate visual screening to be established to the satisfaction of Council;*
  - c) *restrict the movements of the commercial vehicle(s) to times which reduce its affect on amenity, or to ensure compliance with the Environmental Protection (Noise) Regulations 1997;*
  - d) *make the approval personal to the occupier of the lot upon which the commercial vehicle(s) are parked or garaged.*
- 5.10.7 *The requirements of clause 5.10.4 and clause 5.10.5 are not capable of variation by clause 5.5 of the Scheme. Council may make an exception to this clause for the 'maximum number of trailers designed to be attached to a motorised commercial vehicle', as stipulated in Column 4 of Schedule 14, if Council is of the opinion that additional trailers or other attachments:*
- a) *Are only used by the applicant in conjunction with an approved motorised commercial vehicle(s) that is permitted to be parked on the subject lot;*
  - b) *Are sufficiently screened from view of the surrounding streets and adjacent properties; and*
  - c) *Do not detrimentally impact on the character of the surrounding locality.*
- Note:** *Approval will not be granted for the parking of restricted access vehicles (RAV's) unless the applicant can demonstrate approval has been granted from the relevant authority for the operation of these vehicles within the road network."*

- c) Amending the definition of the Use Class 'Transport Depot' listed in Schedule 1B of the Scheme by deleting the current definition and substituting therein a new 'Transport depot' definition as follows:

**"Transport Depot"** means premises, or a portion of premises, used for the parking or garaging of commercial vehicles, and:

- i. may include the maintenance and refuelling of those vehicles and the storage of goods brought to the premises by those vehicles, provided that those activities are ancillary to the parking or garaging of the commercial vehicles; and
- ii. may include the transfer of goods or persons from one motor vehicle to another.

but does not include the parking or garaging of commercial vehicles approved pursuant to clause 5.10 of the Scheme."

- d) Amend the permissibility of the Use Class 'Transport Depot' within the 'General Rural' zone listed in *Table 4.3 – Zoning Table* of the Scheme from a 'D' use (discretionary) to an 'X' use (not permitted).
- e) Introduced a new provision for the 'Parking of Commercial Vehicle(s) Provisions' as Schedule 14 of the Scheme, outlined as follows:

**"SCHEDULE 14 – PARKING OF COMMERCIAL VEHICLE(S) PROVISIONS"**

The following provisions stipulate the maximum number of commercial vehicles that Council may consider in any development application for planning approval under Clause 5.10 Parking of Commercial Vehicles. **The parking of any commercial vehicle on any Rural or Residential zoned lot is subject to planning approval.**

<b>Zone</b>	<b>Lot Size</b>	<b>Maximum Number of Motorised Commercial Vehicles</b>	<b>Maximum Number of Trailers Designed to be Attached to a Motorised Commercial Vehicle</b>
All Residential and Rural zones	Lot size of less than 750m <sup>2</sup>	No commercial vehicles are permitted to be parked on any lot.	No trailers are permitted to be parked on any lot.

<p><i>Residential Development</i> <i>Residential Redevelopment</i> <i>Special Use</i></p>	<p><i>Lot size of greater than 750m<sup>2</sup></i></p>	<p><i>A maximum of one:</i> <i>a) Rigid (non-articulated) commercial vehicle; or</i> <i>b) One prime mover</i>  <i>Will be permitted to be parked on any lot.</i></p>	<p><i>No trailers are permitted to be parked on any lot.</i></p>
<p><i>Rural Residential</i> <i>Special Rural</i> <i>Swan Valley Rural</i> <i>Rural Living</i> <i>Landscape</i> <i>General Rural Resource</i></p>	<p><i>Lot size of between 750m<sup>2</sup> and 30,000m<sup>2</sup> (3.0 hectares)</i></p>	<p><i>A maximum of one:</i> <i>a) Rigid (non-articulated) commercial vehicle; or</i> <i>b) One prime mover</i>  <i>Will be permitted to be parked on any lot.</i></p>	<p><i>A maximum of one trailer will be permitted on any lot.</i></p>
<p><i>Rural Residential</i> <i>Special Rural</i> <i>Swan Valley Rural</i> <i>Rural Living</i> <i>Landscape</i> <i>General Rural Resource</i></p>	<p><i>Lot size of greater than 30,000m<sup>2</sup> (3.0 hectares)</i></p>	<p><i>A maximum of two:</i> <i>a) Rigid (non-articulated) commercial vehicles; or</i> <i>b) Prime Movers</i>  <i>Will be permitted to be parked on any lot.</i></p>	<p><i>A maximum of two trailers will be permitted on any lot.</i></p>
<p><i>General Rural Resource</i></p>	<p><i>Lot size of greater than 60,000m<sup>2</sup> (6.0 hectares)</i></p>	<p><i>A maximum of five:</i> <i>a) Rigid (non-articulated) commercial vehicles; or</i> <i>b) Prime Movers</i>  <i>Will be permitted to be parked on any lot.</i></p>	<p><i>A maximum of five trailers will be permitted on any lot.</i></p>
<p><i>Commercial-Industrial zones</i> <i>Strategic Regional Centre zones</i> <i>Other zones</i></p>	<p><i>Not Applicable</i></p>	<p><i>Commercial Vehicle Parking will only be permitted where it is considered to be ancillary to an approved land use on the subject lots.</i></p>	

- 3) Forward the amended documentation to Western Australian Planning Commission with a request that the Hon. Minister for Planning grant his final approval to Amendment No. 40 with the modifications outlined in the resolution.

- 4) Advise those who lodged a submission of Council's decision accordingly.

