

# EXPLANATORY NOTE

## PARKING OF COMMERCIAL VEHICLES

### INTRODUCTION

This explanatory note is intended to clearly and concisely outline the proposed amendments to *Local Planning Scheme 17* which are to be considered by Council at the Ordinary Council Meeting on 2<sup>nd</sup> March 2011.

**This note is intended to inform interested stakeholders prior to Council consideration on 2<sup>nd</sup> March 2011. It is possible that some information contained in this note may be superseded by a resolution of Council with regard to Amendment No. 40 to *Local Planning Scheme 17*.**

### BACKGROUND

As a local government authority the City of Swan is primarily responsible for ensuring that land uses and development within its municipal area is appropriate and does not result in land use conflict. Since the early 1990's the City of Swan has been under significant pressure to accommodate the parking of trucks and other heavy vehicles within residential and rural localities, primarily due to the shortage of suitable industrial land for the storage of trucks and the desire of owner/operators to park their trucks at their place of residence.

The parking of these 'commercial vehicles' has, however, resulted in land use conflict in residential and rural areas, primarily due to the noise, pollution, traffic management and safety implications associated with frequent heavy vehicle movements. As the responsible authority the City of Swan must act to minimise land use conflict and ensure that the amenity, safety and character of rural and residential localities are protected.

In 2008 Council responded to a series of complaints by considering the prosecution of a number of unapproved 'Transport Depots' that were causing land use conflict within rural areas. At this time Council resolved to delay enforcement proceedings against landowners until a review of the permissibility of commercial vehicle parking within both residential and rural areas could be conducted. This review was initiated in 2009 and included consideration of previous attempts to regulate commercial vehicle parking within the City of Swan and other outer metropolitan municipalities.

In November 2009 the City of Swan presented a number of proposed amendments to *Local Planning Scheme 17* that were aimed at clarifying the permissibility of commercial vehicle parking within residential and rural areas and ensuring that the parking of commercial vehicles did not negatively impact on the surrounding community. These amendments, along with two local planning policies, were initiated by Council in 2009 and publicly advertised for a period of 42 days in March/April 2010.

During public advertising the City received a wide variety of feedback, with a number of key issues identified that required further consideration. In response to the public feedback the City proposed to discontinue the local planning policies and make a number of modifications to the proposed amendments, all of which were outlined as part of a '*Parking of Commercial Vehicles Discussion Paper*'. This discussion paper was considered by Council in September 2010 and published for a second round of public advertising in October 2010.

The second round of advertising was undertaken for a 42-day period in October/November 2010. During this time the City received a number of submissions which have been considered by City officers as part of the final recommendation to Council. The public feedback has resulted in a number of minor changes to the proposed amendments, and the final modified scheme amendments have now been presented to Council for their consideration.

### **WHAT IS A COMMERCIAL VEHICLE?**

Under both the current and the proposed LPS17 provisions a 'Commercial Vehicle' is any vehicle with a gross vehicle mass (GVM) of greater than 4.5 tonnes which is used for or designed to be used for a commercial purpose. This includes any rigid (non-articulated) vehicle, including any utility, van, truck, bus, tractor, earth-moving equipment or prime mover, in addition to any trailer specifically designed to be attached to a vehicle with a GVM of greater than 4.5 tonnes.

### **WILL I REQUIRE PLANNING APPROVAL FOR THE PARKING OF MY COMMERCIAL VEHICLE?**

Under the proposed LPS17 provisions a person who is parking a commercial vehicle on private property will not require planning approval where this parking:

- a) Has previously been granted planning approval by the City of Swan;
- b) 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)
- c) 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;
- d) Is approved under the Scheme as a 'Transport Depot';
- e) Is considered to be ancillary to an approved use of the land upon which the commercial vehicle(s) is parked or garaged; or

The parking of commercial vehicles that do not fall within any of the above categories will be required to submit a planning application for consideration by Council.

### **Application Procedure**

If a landowner is required to seek planning approval for the parking of commercial vehicles the following should be noted:

- a) The applicant must be the owner, driver or proprietor of a business which owns or operates every commercial vehicle which is to be parked or garaged on the property;
- b) The maximum number of vehicles that a landowner may park on a rural or residential property is outlined within the attached Appendix I (Schedule 14);
- c) Council may vary the maximum number of trailers outlined in Appendix I (Schedule 14) if they are of the opinion that additional trailers:
  - i. Are only used by the applicant in conjunction with an approved motorised commercial vehicle(s) that are permitted to be parked on the subject lot;
  - ii. Are sufficiently screened from view of the surrounding streets and adjacent properties; and
  - iii. Do not detrimentally impact on the character of the surrounding locality.
- d) Council may impose conditions on an approval for commercial vehicle parking, including a time limit for which the approval operates, the location that the vehicle is to be parked, any required visual screening, a limitation on operating times and the person to whom the approval is granted.
- e) The applicant must demonstrate that the road network to be traversed is sufficient to accommodate the subject vehicle.

## **CAN I OPERATE A TRANSPORT DEPOT?**

A 'Transport Depot' for the purpose of *Local Planning Scheme 17* is a property used for the parking or garaging of commercial vehicles, and may include maintenance, refuelling, storage and transfer of goods. It is not expected that a 'Transport Depot' would include properties used as a primary residence of the owner/operator of the commercial vehicles.

Under the City's proposed amendments a landowner may only operate a 'Transport Depot' in a rural or residential zone where they have an existing planning approval in place or where they have an 'Additional Use' granted under *Local Planning Scheme No. 17* that is specific to that lot and permits the 'Transport Depot' use.

## **WHAT WILL HAPPEN IF I CANNOT COMPLY WITH THE NEW PROVISIONS?**

It is anticipated that once the proposed amendments become operational all landowners will be granted a period of 12 months in which they must ensure that they have lodged any development applications for the parking of their commercial vehicles that may be required.

After this 12 month period the City of Swan will commence enforcement proceedings against any landowner that cannot demonstrate that the parking of their commercial vehicles is compliant with the provisions of *Local Planning Scheme 17*.

If a landowner is required to seek planning approval for the parking of commercial vehicles but they currently exceed the maximum number of vehicles outlined in Appendix I (Schedule 14) they will be required to undertake one of the following courses of action:

### **Option A: An individual amendment to *Local Planning Scheme 17***

A landowner may request the City of Swan to consider an amendment to *Local Planning Scheme 17* that will allow them to apply for the parking of more than the maximum number of commercial vehicles on their property. This amendment would be for an 'Additional Use' of 'Commercial Vehicle Parking' or 'Transport Depot' for their property only, and would be subject to specific conditions.

The application for a scheme amendment must be submitted by the landowner(s) and will be assessed by City of Swan officers based on its individual merit. The application will also be subject to a public advertising period of 42 days, after which it will be considered by Council and referred to the Western Australian Planning Commission for final consideration by the Minister for Planning.

The application for a scheme amendment attracts a standard assessment fee of \$6,600.00 (as at July 2010), which includes all advertising and Council costs. There is no guarantee that the application will be approved and there is no set time period for the assessment process.

### **Option B: Moving to a more suitable property**

Within the 12 month period a landowner may notify the City of Swan that they are aware that the parking of commercial vehicles on their property is not compliant with the provisions of *Local Planning Scheme 17* and they are attempting to find a more suitable property. In this notification they may request the City to delay enforcement proceedings for a reasonable period of time whilst they attempt to find more suitable premises in which to move to.

### **Option C: Reduction of the land use**

A landowner may reduce the number of commercial vehicles parked on their property to ensure that they do not exceed the maximum number of vehicles permitted. Again within the 12 month period they may notify the City of Swan that they are aware that the parking of commercial vehicles on their property is not compliant with the provisions of *Local Planning Scheme 17*, and request the City to delay enforcement proceedings for a reasonable period of time whilst they attempt to reduce the number of commercial vehicles parked on their property.

## **FINALISATION OF THE AMENDMENT PROCESS**

The proposed amendment to *Local Planning Scheme 17* is strictly governed by the *Town Planning Regulations 1967* (as amended) and the City of Swan is required under these regulations to follow a set process for finalisation of an amendment. After the close of advertising the City of Swan is granted a maximum of 60 days to make a final decision and forward all documentation to the Minister for Planning for his consideration.

The Minister will then either choose to approve the proposed amendment (with or without modification) or refuse to approve the amendment. If the amendment is approved by the Minister for Planning it will then be published in the *Government Gazette*, at which time it will become an operational component of *Local Planning Scheme 17*.

The City of Swan has now made a final recommendation to Council on Amendment No. 40 and this is outlined in Appendix I. **This recommendation will be considered by Council at the Ordinary Council Meeting on the 2<sup>nd</sup> March 2011.**

## **FURTHER INFORMATION**

If any person requires any further information or has any questions with regard to the proposed provisions for commercial vehicle parking they may contact:

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## **COUNCIL DEPUTATION AND QUESTION TIME**

If any person would like to make a deputation to or ask a question of Council on any of the proposed provisions for commercial vehicle parking they may do so in person at the **2<sup>nd</sup> March 2011** Council meeting.

The procedure for making a deputation to or asking a question of Council is outlined on the City of Swan's website at the following address: [http://www.swan.wa.gov.au/Council/Public\\_Question\\_Time](http://www.swan.wa.gov.au/Council/Public_Question_Time).

## APPENDIX I: City of Swan Final Recommendation – Amendment No. 40 to LPS17 – Parking of Commercial Vehicles

The City of Swan recommends that Council resolve to adopt Amendment No. 40 to *Local Planning Scheme 17* as outlined within 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.**

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