

15.2 GENERAL MANAGER – INFRASTRUCTURE AND ENVIRONMENT

15.2.1 ADOPTION OF DRAFT LOCAL PLANNING SCHEME NO. 2

Responsible Officer: Italo Pisedda
General Manager Infrastructure and Environment

Author: Kaitlin Redmond-Ball
Senior Planning Officer

Disclosure of Interest:

Cr Nardia Turner declared a financial interest as her husband and her son have a business in the area affected and her father-in-law is a property owner in the area.

Cr Nardia Turner left the room at 8.01pm.

VOTING REQUIREMENTS

Simple

OFFICER RECOMMENDATION

That Council:

1. Pursuant to Regulation 25 (2) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, endorse the recommendations contained within the Schedule of Submissions (refer Attachment 3).
2. Endorse the Schedules of Modifications (refer Attachments 4 and 5).
3. Pursuant to Regulation 25 (3) (b) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, resolve to adopt with modifications the City of Kalgoorlie-Boulder Local Planning Scheme No. 2.
4. Authorise the Mayor and Chief Executive Officer to sign and apply the Common Seal to the Local Planning Scheme No. 2 documentation.
5. Pursuant to Regulation 28 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, authorise the Chief Executive Officer to forward the Local Planning Scheme No. 2 documentation to the Western Australian Planning Commission for its consideration, and request that the Minister for Planning grant final approval to Local Planning Scheme No. 2.
6. Pursuant to Regulation 35 of the *Planning and Development (Local Planning Schemes) Regulations 2015* resolve to enact a cessation on the preparation or adoption for advertising of any additional amendments to Town Planning Scheme No. 1, until such time that the Minister for Planning has made a determination on Local Planning Scheme No. 2.
7. Advise all submitters of Council's resolution in relation to Local Planning Scheme No. 2.

COUNCIL RESOLUTION**MOVED BY: CR JOHN MATTHEW****SECONDED BY: CR GARY BROWN****That Council:**

1. Pursuant to Regulation 25 (3) (b) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, resolves to support Draft Local Planning Scheme No. 2 with proposed modifications to address issues raised in the submissions, as set out in:
 - a. Attachment 4 - Scheme Text Modifications
 - b. Attachment 5 - Scheme Map Modifications
2. Determines that Scheme Text Modification 31 and Scheme Map Modification 16 are significant modifications and resolves pursuant to Regulation 26 (1) of the *Planning and Development (Local Planning Schemes) Regulations 2015* to advertise the significant modifications for a period of not less than 60 days.
3. Acknowledge that the 60 day consultation period applies only to the land area defined within Attachment No. 6.
4. Request an officer report, as soon as is reasonably practicable on the outcome of advertising, for consideration at a Council meeting before the recommendations and information on modified Draft Local Planning Scheme No. 2 are sent to the WAPC pursuant to Regulation 28 (1) of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

**CARRIED
(11/0)**

JUSTIFICATION FOR COUNCIL ALTERNATE RECOMMENDATION:

1. Formal advertising of the significant modifications is the best way for Council to have confidence that the modified draft scheme adequately addresses the needs of all stakeholders.
2. Council is entitled to advertise modifications if they are considered to be significant. Council can do so without asking the WAPC for any further time.

EXECUTIVE SUMMARY

Council adopted draft Local Planning Scheme No. 2 (draft LPS2) at the Ordinary Council Meeting on 22 June 2020 for the purpose of public advertising. Draft LPS2 was advertised for a period of 150 days between 27 July and 21 December 2020; during which time the City received ninety-nine (99) submissions. A number of text and map modifications are proposed to LPS2 for formatting consistency, to correct minor drafting errors and to reflect community participation.

The purpose of this report is for Council to consider all submissions on LPS2 and the justification by officers regarding modifications and decision making. Council may resolve to adopt the City of Kalgoorlie-Boulder's Local Planning Scheme No. 2

(LPS2), subject to the modifications set out in the Schedules of Modifications (Attachments 4 and 5) and advise the Western Australian Planning Commission (WAPC) accordingly.

COMMUNITY STRATEGIC PLAN LINKS

This report links to the Strategic Community Plan through the following Guiding Themes:

- **FUTURISTIC:** We plan for the future proofing of our City by being a thinking and innovative society.
- **EMPOWERED:** We are utilising diverse points of view to inform decision making and actions taken for the City.

BUDGET IMPLICATIONS

There are no financial implications resulting from the recommendations of this report.

REPORT

Background

Town Planning Scheme No. 1 (TPS1) was gazetted on 18 April 1997 and since that time has been providing overarching land use and development control across the City.

In accordance with the *Planning and Development Act 2005* (the Act) and the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations), all local governments are required to conduct five yearly reviews of their local planning scheme, with a comprehensive review occurring at each 10 year interval. On 3 April 2012, Council resolved to prepare Town Planning Scheme No. 2.

The following table outlines the key milestones that have been achieved to date.

Date	Milestone
3 April 2012	Council resolved to prepare a new Planning Scheme
11 March 2013	Council adopted Local Planning Strategy
9 July 2013	Local Planning Strategy endorsed by the Western Australian Planning Commission (WAPC)
22 February 2016	Council initiated amendment to Local Planning Strategy
December 2016	Councillor workshop to formulate the new Scheme
12 June 2017	Council adopted modification to Local Planning Strategy
29 January 2018	Council endorsed modifications to the draft Local Planning Scheme
29 June 2018	The WAPC advise that the Scheme is suitable for advertising subject to modifications
6 August 2018	Environmental Protection Authority (EPA) advise scheme is not required to be assessed under Part IV Division 3 of the

	<i>Environmental Protection Act 1986</i>
22 October 2018	Council resolved to endorse LPS2 Community Engagement Strategy
April 2019	Workshop with Department of Planning to clear remaining issues
December 2019	Final modifications made to draft scheme in conjunction with the Department of Planning text and map corrections
22 June 2020	Council resolved to endorse draft Local Planning Scheme No. 2 for the purposes of public advertising

Overview of Local Planning Scheme No. 2 Principles

By way of background, the objective of LPS2 is to support growth and development of Kalgoorlie-Boulder by achieving outcomes that enhance liveability and promote economic activity. The below points outline the principles that underpin this:

- Increase the amount of developable land for residential and industrial development;
- Open up new areas of land for development that were previously encumbered by land reservation;
- Increase the residential density of properties around key activity nodes to provide in-fill development opportunities;
- Limit commercial sprawl and concentrate new commercial development in Kalgoorlie and Boulder town sites;
- Provide new development tools for mixed use development in the CBD to promote residential living opportunities and to stimulate the night-time economy;
- Provide new development opportunities in the rural town sites of Ora Banda and Broad Arrow;
- Speed up the processing time for certain types of land use activities;
- Expand the range of land use activities that are exempt from development approval;
- Embed development incentives into the Scheme to encourage new innovative development in the Kalgoorlie and Boulder town sites;
- Increase the size of Heritage precincts to protect heritage values and incorporate development requirements that ensure new development can co-exist with heritage buildings.

Consultation

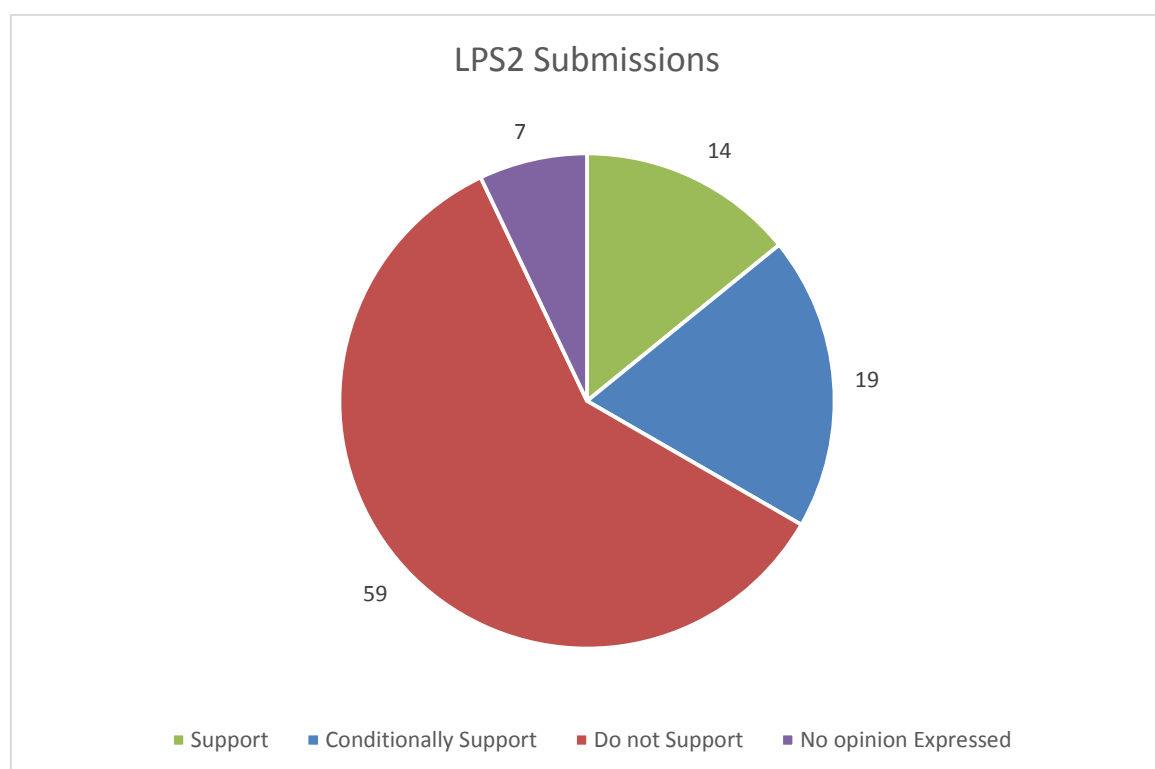
Draft Local Planning Scheme No. 2 was advertised for public comment between 27 July 2020 and 21 December 2020 (150 days). The public consultation process was undertaken as follows:

- Public Notice in the Kalgoorlie Miner (Saturday 25 July 2020)
- Notice and publication via the City's website
- Available for public inspection at various City locations including the Administration Building, William Grundt Library, Oasis Recreation Centre and the Kalgoorlie and Boulder Town Halls

- Written notification to landowners within street blocks requested to be upcoded.
- Written notification to each public authority the local government considers likely to be affected by the Scheme
- Workshops with key stakeholders

Public Submissions

The City received ninety-nine (99) submissions, including twelve (12) submissions from State Government agencies. Of the submissions, fourteen (14) were supportive, nineteen (19) were conditionally supportive, fifty-nine (59) were not supportive of the proposed Local Planning Scheme and seven (7) did not explicitly express an opinion.



Schedule of Submissions

Planning legislation mandates that the City consider and present to Council all properly made submissions received on LPS 2. The Schedule of Submissions (Attachment 3) is a summary of all public submissions together with the City's recommendation and justification. Having regard to all public submissions, officer's assessment and justifications are founded on the Local Planning Strategy, state and federal legislation, market analysis, population trends and community expectations.

Scheme Modifications

Modifications to the Scheme text and maps are recommended for the following general reasons. LPS2 is distinguished by its two parts – the Scheme text (Attachment 1) and the Scheme Maps (Attachment 2). A detailed schedule of

modifications (Attachments 4 and 5) outlines the document sections to be modified, the specific modification and the officer justification.

Note: *All modifications are not considered to be significant and are predominantly administrative in nature and don't require specific consideration.*

- To correct errors, omissions or reflect new or superseded information
- To improve grammar
- To improve legal interpretation
- To ensure consistency with the recently updated *Planning and Development (Local Planning Schemes) Regulations 2015*
- To ensure consistency throughout the scheme text
- To address concerns raised by submitters

Matters for Consideration on Proposed Modifications

Recommendations on modifications that will create significant change to the advertised Scheme are summarised in the proceeding report segment. These proposals are not considered as having an adverse impact on any of the affected properties. The summary of the officer's recommendation outlines the decision-making process.

1. **Town Centre Zone** - deleting the 'Mixed Use' zone and introducing the 'Town Centre' zone.
2. **Town Centre Density** - increasing the residential density within the walkable catchment of the Kalgoorlie and Boulder Town Centres.
3. **Town Centre Development Requirements** - introducing development requirements relating to minimum and bonus densities and built form within the Town Centre zone.
4. **Mixed Business Zone** - introducing Additional Uses 13 and 14

1. Town Centre Zone

Both the Kalgoorlie and Boulder town centres were proposed to be zoned 'Mixed Use' with varying densities between R60 and R100. Based on two (2) separate submissions (Submissions 1 and 16) it was considered that the Mixed Use zone was not flexible enough to allow the market to drive development and did not provide enough incentive for developers to invest in the CBD. To address this, officers propose to use the 'Town Centre' zone with Residential Activity Centre coding. Development in this zone is to be guided by Table 11 within Schedule 2 of the scheme text, in addition to a Local Planning Policy and State Planning Policy 7.3 Volume 2 – Apartments. Through these provisions, City staff envision unique town centres possessing a high level of amenity and activity while reinforcing and building upon the town's established character. It is worth noting that other regional local governments have followed a similar approach to development within their town centres.

2. Town Centre Density

Kalgoorlie and Boulder have always been low scale, low density and dispersed

commercial centres with Hannan and Burt streets forming the major movement and activity axis. The town centres currently contain few residents or temporary accommodation for tourists and visitors. This has resulted in most streets becoming very quiet after hours, which is not conducive to the safety and security of the streets and their users, detrimental to the commercial viability of many businesses, and inconsistent with the vibrant, lively and attractive urbanity the City is keen to promote.

In response to two (2) separate submissions (Submissions 1 and 16), it was considered the proposed varying densities between R60 and R100 did not provide enough incentive for developers to invest in the CBD. To address this, officers propose Residential Activity Centre codes as depicted below in Figures 1 and 2.



Figure 1. Kalgoolie Town Centre

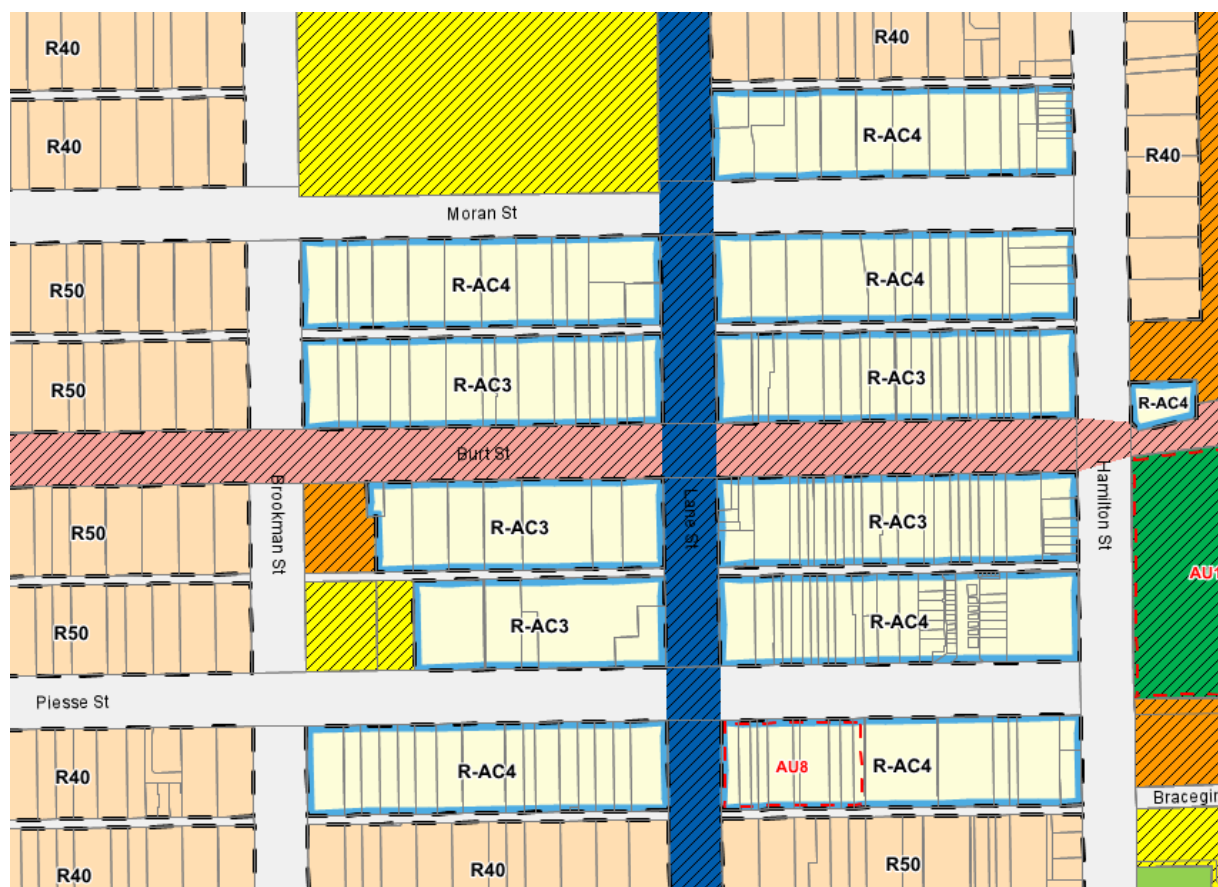


Figure 2. Boulder Town Centre

3. Forrest Street/Throssell Street Mixed Business Zone

Thirty five (35) submissions specifically relate to the existing Forrest Street/Throssell Street Mixed Business zone; defined for the purposes of this report by the area outlined in blue in Figure 3.

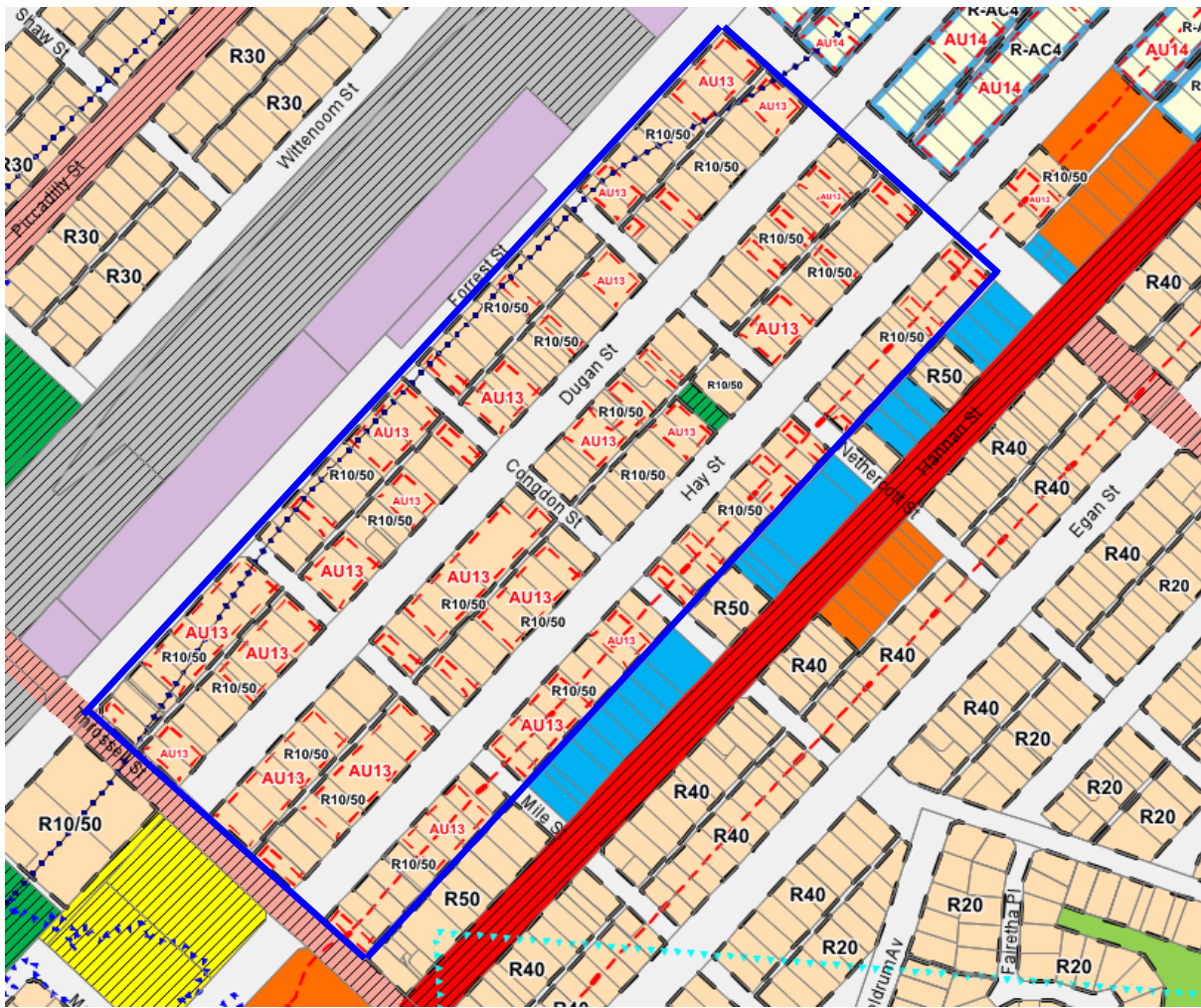


Figure 3. Mixed Business zone

Of the thirty-five (35) submissions received, twenty-eight (28) **do not** support reclassifying the Forrest Street/Throssell Street area from Mixed Business to Residential. The submissions highlighted potential adverse commercial impacts in addition to restricting business opportunities if non-conforming use rights take effect. Additional use rights provide flexibility to landowners in terms of land use diversity and is suitable in this locality due to the eclectic mix of land uses that co-exist. Justification supporting additional use rights is discussed below:

- Applies to existing lawful commercial land uses within the defined boundary of Throssell / Forrest / Lionel / Hay streets
- Does not apply to existing residential land uses
- Applies to LPS2 land use categories compatible with a residential area
- Without modification to the Scheme, additional use rights extinguish when a use lawfully changes to a permitted use within the zone
- Allows voluntary transition to the residential zone through incentives and increased development opportunity
- Properties are listed in Table 5 of the Scheme text

Additional Use 13 (AU13) Land Use Categories

Land use categories nominated for additional uses were determined on the compatibility with residential activity. The additional use classes proposed in LPS2 (listed below) were assessed against the current site activity of properties in the defined area. This was performed by site inspections, review of building/planning approval types, and local government records.

Planning Permissibility	
Discretionary (D)	Advertisement Required (A)
Office	Bulky Goods Showroom
Shop	Garden Centre
Warehouse/Storage	Industry Light
	Motor Vehicle, Boat or Caravan Sales
	Motor Vehicle Repair

Gatacre Drive and Great Eastern Highway cell

The Gatacre Drive and Great Eastern Highway cell is defined by those properties outlined in blue in Figure 4.

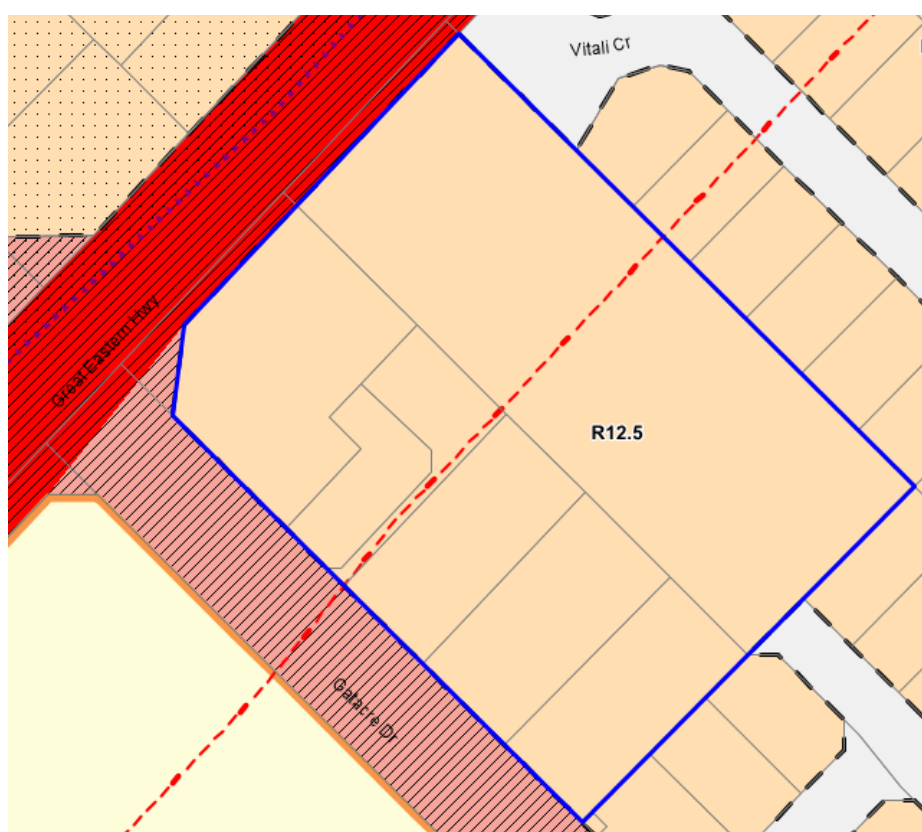


Figure 4. Gatacre Drive and Great Eastern Highway cell

During the consultation process, the City received three (3) submissions requesting this cell be considered for more intensive development; more specifically either Mixed Use with a density of R60 or Residential R40. The request to increase the density to R40 is generally consistent with the objective of the Local Planning Strategy to increase density along Great Eastern Highway. As a result, City staff

sent a written notification of the request to each landowner within the defined development area to gauge whether the request should be supported. Two (2) further submissions were received which did not support the proposal to increase the density in this area.

At 22 February 2021 Ordinary Council Meeting, Council acknowledged receipt of the public submissions and preliminary assessment undertaken by the City. Officers recommended that an increase in density to the defined area should not be supported through this process.

Upon further consideration, City staff recommend an increase in density to R40 should be supported for the portion of 23 Great Eastern Highway that abuts the Child Care Centre and in close proximity to Great Eastern Highway. This recommendation is consistent with the objective of the Local Planning Strategy to increase the residential density of properties fronting Great Eastern Highway. It is recommended that the remainder of 23 Great Eastern Highway is increased to a density of R25 so as to decrease the harsh transition between the proposed R40 and the surrounding lots which are afforded a density of R12.5. This recommended densities are depicted below in Figure 5.



Figure 5. Recommended Density for 23 Great Eastern Highway

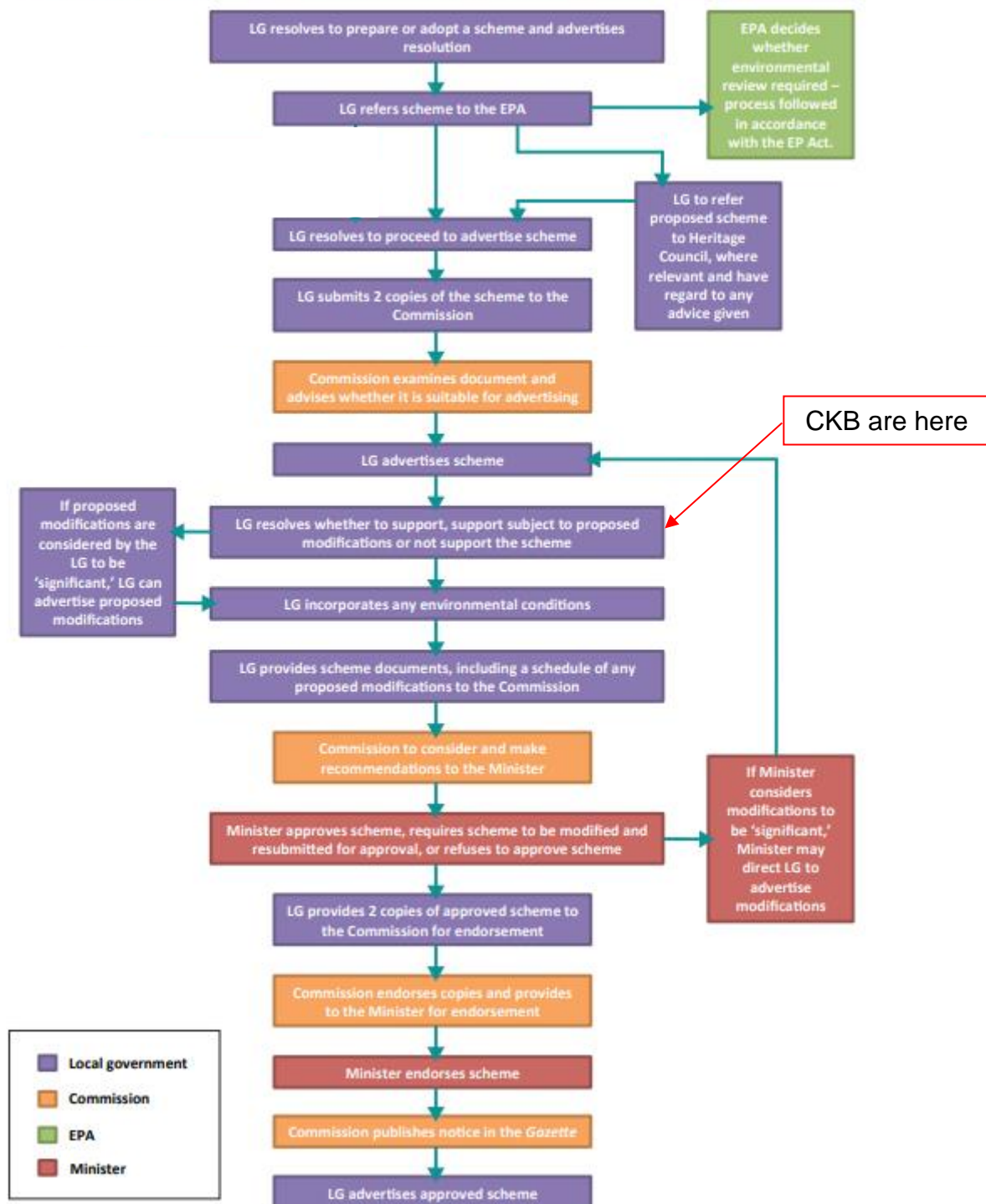
Scheme Governance

LPS2 will replace TPS1 as the principal statutory planning tool for controlling land use and development. To achieve this, local government use Model Provisions prescribed under Section 257A of the Act. The provisions establish a consistent planning framework across WA and set planning tools and requirements for local government to use. Fundamentally, the LPS2 was prepared using the Model Provision framework, guided by the strategic goals, planning intent and community expectations within the City of Kalgoorlie-Boulder Local Planning Strategy.

Process for Preparation or Adoption of a New Local Planning Scheme

The WAPC has prepared a simplified preparation or adoption of a new Local Planning Scheme flowchart, provided below.

Simplified preparation or adoption of a new local planning scheme flowchart



In accordance with Regulation 25 (3) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, Council must pass a resolution:

- To support the draft scheme without modification; or
- To support the draft scheme with proposed modifications to address issues raised in the submissions; or
- Not support the draft scheme

EPA has advised that there are no environmental conditions which need to be incorporated into the Scheme, as such within 21 days of the date of Council's resolution, the Scheme documents including a schedule of any proposed modifications must be forwarded to the WAPC.

Moratorium on Amendments on Town Planning Scheme No. 1

When gazetted, Clause 3 of LPS2 will repeal TPS1. Following a decision of Council on LPS2, the WAPC will consider LPS 2 and make a recommendation to the Minister for Planning. The Minister for Planning will subsequently make a determination on LPS2. While the specific timeframe for this process is unknown by the City, it is estimated that LPS2 could be approved by the Minister for Planning within the next 12 months (following the statutory timeframes for various steps under Regulations 29 and 31 of the Regulations). It should be noted that this is only an estimated timeframe.

Based on the progress of previous amendments to TPS1 since the Regulations were introduced in 2015, it is considered that a scheme amendment generally takes a minimum of 12 months to progress from initiation (at a Council meeting) to Gazettal. This excludes the time taken prior to initiation spent drafting the amendment documents and the Council report. On this basis, it is not considered efficient to continue amending TPS1, when the Scheme could potentially be repealed prior to the completion of the scheme amendment process.

Council is therefore requested to enact a cessation on any further amendments to TPS1, and the Officer Recommendation of this report reflects this accordingly. This essentially places a moratorium on scheme amendments until the Minister for Planning has made a decision on LPS2. The wording of the moratorium is such that should the Scheme not be approved by the Minister, the moratorium would be lifted and amendments to TPS1 may again be prepared; however, the risk of this scenario is low.

It is common practice for local governments to maintain a record of items that require attention in a forthcoming Local Planning Scheme, so that an omnibus amendment can be prepared or progressed once the Scheme is gazetted. Any items that may arise between Council's decision and gazettal of LPS2 will be recorded in this manner for inclusion in an omnibus amendment to LPS2.

Deemed Provisions

In accordance with Part 9, Schedule 2 (the Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015*; the local government is to have due regard to the requirements of orderly and proper planning including any proposed local planning scheme that has been advertised in accordance with the Regulations or any other proposed planning instrument that the local government is seriously considering adopting or approving. Should Council resolve to adopt LPS2, the City may commence to exercise limited discretion in considering development applications utilising the provisions of LPS2. This discretion cannot extend to uses currently not capable of approval within a zone (in other words, 'X' uses) or to areas where residential density is proposed to increase.

Conclusion

A contemporary Planning Scheme enables the City to effectively implement its Local Planning Strategy and Strategic Community Plan to support growth and development of Kalgoorlie-Boulder and meet Council's objectives to enhance liveability and support the local economy and vibrancy of the City.

The requirements for community consultation and compliance with State legislation are now satisfied. Officers have considered and responded to each submission received and, in some instances, recommend that modifications be undertaken to update the Scheme in accordance with best practice, legislative responsibilities and community expectations.

The Scheme is anticipated to come into effect within 12 months. During this period a suite of new local planning policies will be created to guide users on Scheme requirements. This will hopefully achieve better development outcomes and lower compliance incidences.

It is recommended that Council supports LPS 2 and the proposed modifications contained in this report, to progress the statutory process for the Scheme to take legal effect.

STATUTORY IMPLICATIONS

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

Town Planning Scheme No. 1

POLICY IMPLICATIONS

There are currently 15 Local Planning Policies that are adopted under and complement TPS 1. In preparation for the adoption of Local Planning Scheme No. 2, the City has consolidated the TPS 1 Local Planning Policy suite, including repealing some policies that are no longer required.

A new suite of Local Planning Policies will need to be adopted when Local Planning Scheme No. 2 is gazetted, as the statutory head of power for Local Planning Policies will have changed. The City is preparing an updated Local Planning Policy suite that will be progressively advertised and finalised in preparation for the gazettal of Local Planning Scheme No. 2, and will be referred back to Council for approval at a time when the gazettal of LPS2 is imminent. It is intended that through this process, a Local Planning Policy suite will be approved in an expedient manner to complement Local Planning Scheme No. 2.

ATTACHMENTS


15.2.1 Attachment 1 - Local Planning Scheme No. 2 Text 

15.2.1 Attachment 2 - Local Planning Scheme Maps 

15.2.1 Attachment 3 - LPS2 Submissions 

15.2.1 Attachment 4 - Scheme Text Modifications Log Sheet 

15.2.1 Attachment 5 - Scheme Map Modifications Log Sheet 

15.2.1 Attachment 6 – Map to which 60 day consultation period applies 

Cr Deborah Botica left the room at 8.12pm.

Cr Deborah Botica returned to the room at 8.14pm.

Cr Nardia Turner returned to the room at 8.17pm.