

Local Planning Scheme No. 5

Section 76 - Amendment No. 2



Frequently Asked Questions

1. Background

- On 23 March 2022, the City received a request to amend Local Planning Scheme No. 5 (LPS 5) from the owners of No. 37 Waylen Road, Shenton Park (proposed Amendment No. 2).
- On the 31 May 2022, Council considered the proposed amendment and resolved to not amend LPS 5 given the proposed amendment is inconsistent with the Local Planning Strategy and broader planning framework, and that LPS 5 is contemporary and provides for appropriate density.
- The landowner has made a representation requesting the Minister for Planning issue the City with a section 76 order which will commence the amendment process. The landowner claims the City has failed to adopt a scheme amendment where one ought to be adopted.
- On 25 January 2023, the Department of Planning, Lands and Heritage (DPLH) requested further information from the City to assist the Minister with the detailed assessment of the section 76 order request.
- The Minister for Planning has not yet determined whether the City will be issued with a section 76 order.

2. Update on proposed Scheme Amendment No. 2

The City has received correspondence advising that the Minister for Planning is considering the merits of proposed Amendment No. 2 to LPS 5 under Section 76 of the *Planning and Development Act 2005*.

3. What is a section 76 order?

Section 76 of the *Planning and Development Act 2005* gives the Minister for Planning the power to order a local government to adopt an amendment to a local planning scheme. This commences the scheme amendment process which includes public consultation and Council consideration.

4. Who requested Scheme Amendment No. 2 and the section 76 order?

The City received the amendment request from planning consultants Dynamic Planning and Developments on behalf of the owners of No. 37 Waylen Road, Shenton Park. The same parties submitted the section 76 order representation to the Minister for Planning.

5. Why has a section 76 order been requested?

The landowners have requested a section 76 order be issued on the grounds that the City failed to adopt a satisfactory amendment to LPS 5 in a case where it ought to be adopted.

6. Has the section 76 order been issued?

No. DPLH has undertaken a preliminary assessment and requires further information from the City to assist in the determination of the request. The final decision rests with the Minister for Planning.

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7. What is proposed through Scheme Amendment No. 2?

The proposed scheme amendment includes 15 lots within the street block bound by Waylen Road, Railway Road, Morgan Street and Fortune Street in Shenton Park. The landowner seeks to increase the Residential Density Code (R-Code) of the western six lots from R15 to R60 and the eastern nine lots to R40 as shown on **Figure 1** below coloured yellow and green respectively. It should be noted the lots coloured red are already at R100 density.



Figure 1: Proposed density codes shown in yellow (R60) and green (R40)

8. What does the R-Code density mean?

The R-Code density broadly refers to the number of dwellings per hectare of land area. This means an R15 designation leads to a lower density of residential development than an R40 or R60 designation.

The R-Codes designation therefore relates to the number of dwellings that can be built on a given lot as specified in State Planning Policy 7.3 Residential Design Codes Volume 1 (R-Codes Vol. 1). **Table 1** below shows the average lot size requirements apply:

Table 1 – Average site area requirements	
R-Code	Average site area per dwelling
R15	666m ²
R40	220m ²
R60	150m ²

Under the current R15 density, generally only one dwelling can be built on each lot. Under the proposed R40 and R60 density some lots would be able to accommodate two or three dwellings if the existing house was to be demolished under the current planning framework.

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9. Does the City support proposed Amendment No. 2?

No. Council resolved to not proceed with proposed Amendment No. 2 on the 31 May 2022 (Item C3). A copy of the Council Minutes is available [here](#). The proposed amendment is not consistent with the City's local planning framework, which was only recently approved in February 2020 and was subject to extensive community consultation. Scheme Amendment No. 2 is contrary with the City's Local Planning Strategy's approach to density, which has been endorsed by the Western Australian Planning Commission (WAPC).

10. What is the City doing now?

The City received a request for further information from DPLH to assist in the Minister's detailed assessment of the section 76 order. The City is preparing a response to DPLH and the Minister for Planning consistent with the 31 May 2022 resolution of Council. The City does not support Scheme Amendment No. 2 – this will be made clear in the response.

11. What are the next steps?

The Minister for Planning will determine whether they believe there is merit in the proposed amendment, and whether a section 76 order should be given to the City.

Should the Minister not issue the City with a section 76 order, this will be the end of the process.

The Minister may issue the City with a section 76 order and direct the City to advertise proposed Amendment No. 2. In this case, the normal procedural steps set out in the *Planning and Development (Local Planning Schemes) Regulations 2015* will be followed (these are outlined further in the general questions on scheme amendments section below). Even if the Minister directs the City to advertise the amendment, this should not be construed as the Minister's support for the amendment.

If the City is directed to advertise the amendment, the City will undertake engagement with community, providing a variety of ways to have your say.

The final decision on a scheme amendment is made by the Minister for Planning.

12. Where can I find out more about the section 76 process?

DPLH has prepared a fact sheet which is available [here](#).

13. Is there a right to appeal a section 76 order?

There is no right of review to the State Administrative Tribunal (SAT) for a section 76 order, for either the applicant, local government or community.

14. How can I get involved?

The City has not formally received a section 76 order from the Minister for Planning. Following the City's response to DPLH, the Minister will decide whether a section 76 order is issued to the City, and whether the amendment should proceed to formal advertising or not.

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Should the Minister resolve proceed to advertise the amendment (with or without modifications), you will be advised of the submission period, including how to lodge a submission.

General questions on scheme amendments

15. What is Local Planning Scheme No. 5?

A Local Planning Scheme is a statutory document that defines the way land can be used and developed. The scheme implements the strategic direction set out in the Local Planning Strategy by regulating the zoning of land, residential density and including development requirements, such as maximum building height and plot ratio. The City's Local Planning Scheme No. 5 is the rule book for planning decisions and is the document against which all planning proposals and development applications are assessed.

16. What is a scheme amendment?

From time to time it is necessary to amend a Local Planning Scheme or a landowner requests the City to amend the scheme. Amendments can be prepared by the City or by a landowner. A change to the local planning scheme is referred to as a scheme amendment.

17. Who can prepare a scheme amendment?

An amendment to a local planning scheme can be proposed by all or any of the owners of land in the scheme area in accordance with section 75 of the *Planning and Development Act 2005*.

18. What is the process for a scheme amendment and how does Scheme Amendment No. 2 and a section 76 order fit in?

The procedure for amending a Local Planning Scheme is set out in *Planning and Development (Local Planning Schemes) Regulations 2015* (LPS Regulations).

The procedure generally involves the following sequential steps:

- Council resolves whether to adopt an amendment to the scheme and decides to classify the amendment as basic, standard or complex. Council resolved not to support proposed Amendment No. 2 on 31 May 2022, and classified the amendment as complex.
- Proponents have the ability to request the Minister for Planning to issue the local government with a section 76 order to commence the scheme amendment process.
- DPLH can request further information from the City to assist the Minister in the detailed assessment of whether a section 76 order should be issued. This is the current step in the process. DPLH requested further information from the City in January 2023.
- If the City is not issued with a section 76 order the process stops here. If the City is issued with a section 76 order, the procedural requirements as per the LPS Regulations are followed:
 - The amendment is referred to the Environmental Protection Authority.
 - Public advertising for a minimum of 42 or 60 days for standard and complex amendments respectively.
 - The City carefully considers all submissions and prepares a final recommendation.

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- The submissions on the amendment and all other required information is forwarded to the Western Australian Planning Commission who considers the proposed amendment in making a recommendation to the Minister for Planning.
- The Minister for Planning can approve, require modifications or refuse to approve a proposed scheme amendment.
- If approved, the amendment is published in the Government Gazette and becomes operational.

19. Where can I get further information on the proposed amendment or the section 76?

For any further queries about the proposed amendment and how it may impact your property, please contact Planning Services on 9237 9222 or city@subiaco.wa.gov.au.