



Private Planning Scheme Amendment Policy

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1. Purpose

The purpose of this policy is to:

- Ensure a consistent and equitable approach to the consideration and management of privately proposed planning scheme amendments including the payment of statutory fees for service;
- Ensure that proponents of private planning scheme amendments are clear about expectations regarding process and the statutory fees and charges
- Ensure that public money is best spent by having well considered and prepared private planning scheme amendments and that ratepayers are not subsidising private beneficiaries unless it can be shown that there is a net community benefit.
- To provide transparency, accountability and a consistent approach to considering proponent requested planning scheme amendments.
- To enable Council to partner with industry to facilitate proposed requested private planning scheme amendments that are well considered and prepared, have strategic merit, are fully proponent funded and demonstrate net community benefit.
- To ensure that Council can meet its obligations to resource strategic planning activities that respond to the highest community priorities, the Council Plan, legislative obligations and any reform to the planning scheme.

2. Scope

This policy applies to private individuals or groups, referred to as proponents, or their representatives who request a change to the East Gippsland Planning Scheme which requires Council to initiate a planning scheme amendment (including combined amendments with planning permits) for matters which do not form part of Council's strategic planning program, scheme review program or any other major strategic project.

Council has the discretion to seek authorisation from the Minister for Planning (the Minister) to prepare and exhibit an Amendment. Section 96 of the *Planning and Environment Act 1987* (**the Act**) allows an Amendment to be combined with a proposed planning permit.

3. Policy Context

East Gippsland Shire Council (**Council**) recognises that the East Gippsland Planning Scheme (**the Scheme**) is a dynamic document that should develop and evolve with the changing needs of the community. The Act allows for a planning scheme amendment to be initiated by Council (Council amendment) or a Council can respond to a request for an amendment by any person or body (Private amendment).

A 'Council amendment' is one initiated and prepared by Council on behalf of the community at its own cost, usually because it benefits the community as a whole. Common Council amendments include implementing Council adopted strategies and projects, making efficiency improvements and correcting errors. This aims to ensure that resources are applied to process amendments that address priority needs and delivers community benefit.

A 'Private amendment' is one initiated by an applicant, landowner or a group of individuals (the proponent) where the main beneficiary of the amendment is usually that applicant, landowner or a group of individuals. The amendment is usually a site-specific change for a particular use with a direct financial benefit for the proponent/s through increased land values/marketability/useability. For Council to support a 'private amendment', the benefit to the remainder of the community would ideally be positive however at least neutral to ensure that the overall community benefit is positive and often benefit a small proportion of the community.

Council, as the planning authority, is under no legal obligation to progress a 'private amendment' and a private amendment that would result in a negative net community benefit would unlikely be supported by Council.

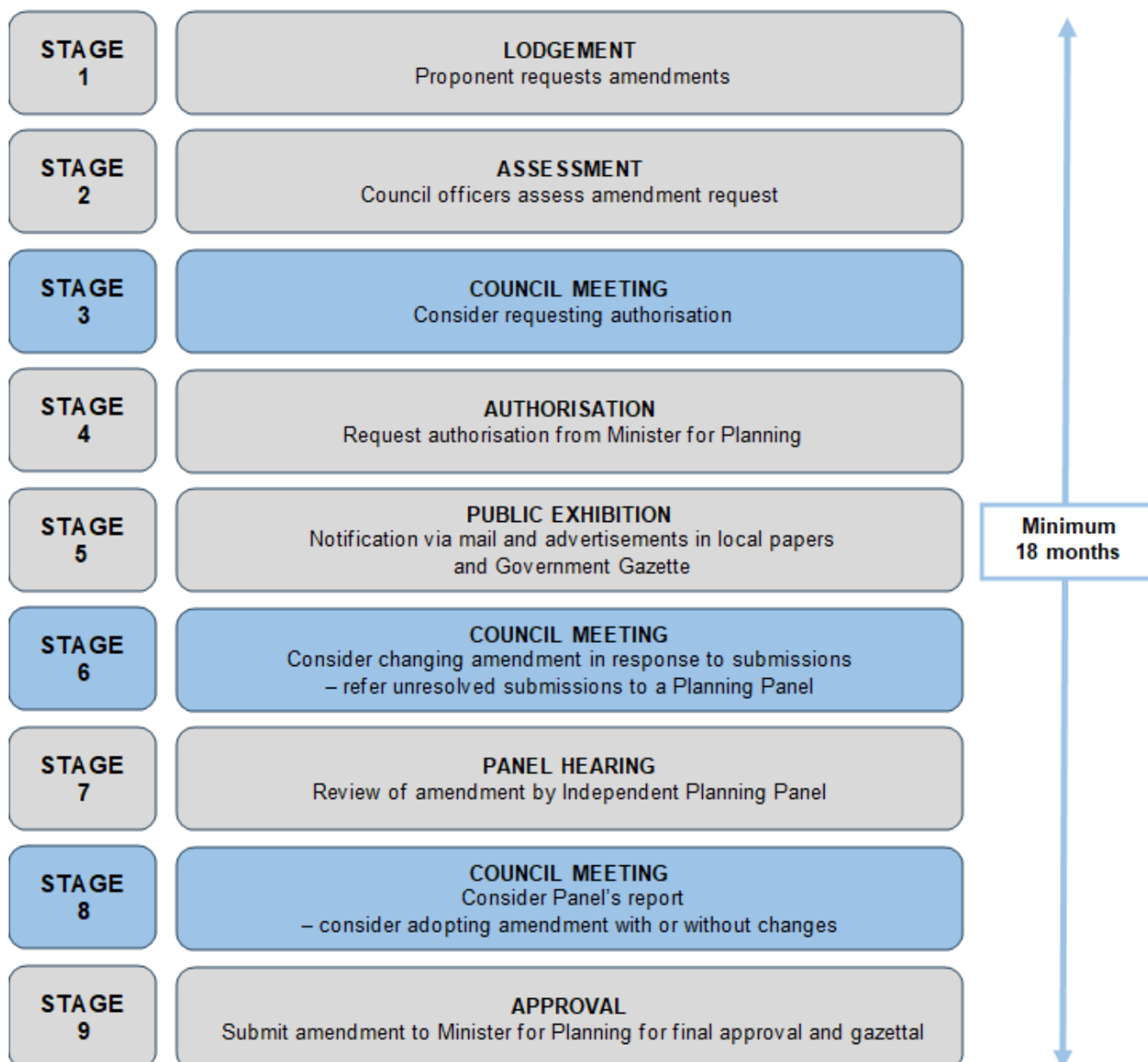
There are many matters that Council must consider in determining whether to support an amendment request. They include whether:

- the desired outcome can be achieved through other means
- the amendment helps to implement the objectives of the Act
- the amendment implements Council's strategies and the planning scheme
- the amendment is in the correct format
- potential issues and impacts have been identified and addressed as much as possible
- the priority of the issue, relative to other issues facing Council at that time

Planning scheme amendments can be costly and time consuming, particularly if there are complex technical issues or conflicting community views about the benefits of the amendment. It is important for the proponent to recognise that they are asking Council to change the law about how the subject land may be used or developed. This is a large undertaking and differs from applying for a planning permit under the planning scheme.

If Council decides to support an amendment request, Council will work closely with the proponent to ensure that the form of the amendment is satisfactory and that it can progress through the stages of the amendment process. It is the responsibility of the proponent to prepare and provide all documentation to the standards required of Council and the Minister for Planning, including supporting information and expert witness reports for any panel hearing, if required.

The general process associated with a private planning scheme amendment is as follows:



3.1 Policy principles

Council considers private planning scheme amendments as exceptions and will apply the following principles when private planning scheme amendments are contemplated and requested.

- Private planning scheme amendments will only be advanced where strategic merit can be demonstrated.
- Private planning scheme amendments will be considered and advanced in an orderly and fair manner which may include inclusion in a Council-initiated corrections amendment or collectively together with other private planning scheme amendments on an annual basis.

- The availability of Council resources will be considered when prioritising amendments for review and or authorisation.
- Statutory costs incurred will be charged in accordance with the *Planning and Environment (Fees) Regulations 2016* (Fee Regulations)

4. Policy Statement

A proponent who requests Council to undertake a private planning scheme amendment to the East Gippsland Planning Scheme is expected to:

1. Enter into a funding agreement which documents and details full cost recovery for all external costs including but not limited to such professional services as peer review and legal review of PSA documentation and Independent Planning Panel.
2. Provide proposed planning scheme documentation amendment and supporting technical documents to quality standards as required by Council and the Department of Transport and Planning (DTP) and to Council satisfaction. The preparation and number of thematic and expert technical reports will be dependent on the nature of the planning scheme amendment and will be agreed to prior to the lodgement of the request.
3. Agree with Council on the form of the amendment prior to Council seeking authorisation from the Minister, requesting the appointment of a panel and seeking ministerial approval. Council and the proponent will undertake appropriate negotiations to come to this agreement in a timely manner.
4. Provide information, as requested, in a timely manner so that Council can meet the timeframes set out in the Minister's Direction No. 15. Exemptions to this direction may be sought however this will occur subject to agreement between Council and the proponent and subject to ministerial approval.
5. Pay external costs incurred by Council which may include, but not be limited to:
 - a. Advertising costs incurred at the public exhibition stage of the amendment including newspaper notices, gazette notice and notices by mail. If it becomes necessary and the proponent and Council agree, a public information session may be run and all costs associated (venue hire, expert fees, refreshments and the like) will be borne by the proponent.
 - b. Independent peer reviews of expert technical reports or expert legal advice. These will only be sought in circumstances where Council or a referral authority have a major concern with a technical issue or report, where Council does not have the in-house expertise and/or where the resolving of the issue is critical to the progression of the amendment or where a peer review of a technical report will assist officers in considering the matter. If this arises, Council will advise the proponent at the earliest opportunity and allow the proponent to have input into the scope, brief, cost and appointment.
 - c. Planning Panels Victoria costs if a panel is requested by Council due to the receipt of submissions made to the amendment. The proponent is expected to pay for the costs of holding the panel, including the member's fees, hiring of facilities and other administrative fees charge by Planning Panels Victoria. These costs will vary based on the number of submissions received to the amendment and the complexity of the proposal. The proponent will provide all supporting documentation in preparation for the panel and will bear the costs associated with their own expert witnesses and legal representation. Council will be responsible for its own panel costs in representation at a

panel. The costs of the Planning Panels Victoria Hearing will be dependent upon complexity of the matter.

6. Pay all statutory and service fees in accordance with the Fee Regulations and Council's adopted service fees as listed in the table below.

Stage	Fee	Timing of payment
Stage 1 – Considering a request (to Planning Authority)		
Statutory fee to consider request	206 fee units ²	At the time that the amendment is requested by proponent.
Public notice letters	As set as part of fees and charges in the Council budget ³	Following public exhibition process
Public notice in local papers	At cost	
Public notice in Government Gazette	At cost	
Signs on site (if required)	At cost	
Stage 2 – Considering submissions that seek a change, and referral and assistance to panel (to Planning Authority)		
Up to and including 10 submissions	1021 fee units; or	Prior to scheduling the Council report seeking a resolution to refer the amendment to a Panel
11 to (and including) 20 submissions	2040 fee units:	
Submissions that exceeds 20	2727 fee units	
Stage 3 and 4– Approval of amendment		
Adopting the amendment, submitting it for approval and giving notice of approval under Section 36(2) of the Act	32.5 fee units if the Minister is not the planning authority or nil fee if the Minister is the Planning Authority	At the time of submitting the amendment for approval to the Minister for Planning
Statutory fee to submit the amendment to the Minister for Planning for approval and giving notice of approval under Section 36(1) of the Act	32.4 fee units if the Minister is not the planning authority or nil fee if the Minister is the Planning Authority	
Panel (if required)		
Planning Panels Victoria fees	At cost (approx. \$5,000 per day of hearing)	Prior to scheduling the Council report seeking a resolution to adopt the amendment
Venue hire, refreshments etc	At cost	
Expert Witnesses and/or Legal representation	At cost	As per agreement between proponent and consultant

- Note**
- 1: The payment of fees does not guarantee Council support for an amendment
 - 2: The value of a fee unit is set from time to time by the Victorian Government. As at the 1 September 2023 the value of a fee unit is \$15.90
 - 3: As determined from time to time in the Council budget (fees and charges). The fee for 2023/24 is \$2.00 per letter.

The Fee Regulations (Reg 14) states that for combined permit applications and amendments, the fee applicable is:

- 50% of the fee which would have applied if the application for the permit had been made separately.

If the application is for more than one permit, the highest of the fees which would have applied if separate applications for the permits had been made.

4.1 Conditions

With regards to both statutory and service fees, the following applies:

- The payment of fees does not guarantee support for an amendment.
- The Proponent will sign an agreement for payment of fees prior to the amendment proposal being considered by Council for authorisation.
- All costs and fees are payable at the time they are incurred and independent of Council's decision to support, change or abandon the amendment at any time.
- If the Proponent is not the landowner, the landowner must also sign the agreement.
- If at any stage during the amendment process the Proponent breaks the agreement, the service can be withdrawn and a decision made on whether the amendment should be abandoned.
- Council will commit to assess the initial proposal and subsequent amendment documents in a timely manner and to communicate regularly with the Proponent.

5. Roles and Responsibilities

These management positions are responsible for the implementation, communication and compliance monitoring of the policy in their work areas:

Party / Parties	Roles and Responsibilities
General Manager Place and Community	Compliance monitoring
Manager Planning	Compliance monitoring

All staff have an obligation to report occurrences of non-compliance with Council policy. Incidents of non-compliance should be reported immediately to the Director responsible for this policy, the Policy Owner or the Administration Unit.

6. References and Supporting Documents

The development of this policy is guided by the following references and associated documents:

Applicable Legislation:

- *Planning and Environment Act 1987*
- *Planning and Environment (Fees) Regulations 2016*
- *Local Government Act 2020*

Applicable Policy and Procedure:

None specified.

Supporting Documents:

- Council Plan 2021 -25
- Ministerial Direction 11: Strategic Assessments of Amendments
- Ministerial Direction No: 15: The Planning Scheme Amendment Process
- Ministerial Direction on the Form and Content of Planning Schemes
- Planning Practice Note 46: Strategic Assessment Guidelines.

7. Privacy and Human Rights Consideration

The Private Planning Scheme Amendment policy has been assessed as compliant with the obligations and objectives of the Victorian *Charter of Human Rights and Responsibilities Act 2006*.

All personal information collected by East Gippsland Shire Council in connection with the Private Planning Scheme Amendment policy will be handled in accordance with all applicable privacy legislation and will be used only for the purpose of investigating landholders and occupiers who may be affected by the proposed amendment request.

8. Gender Impact Statement

The Private Planning Scheme Amendment Policy has considered the Gender Equality Act 2020 in its preparation. The Private Planning Scheme Amendment Policy has been assessed as not requiring a Gender Impact Assessment (GIA).

9. Definitions

Term	Meaning
Action Officer	Member of East Gippsland Shire Council staff responsible for answering or responding to a request for information.
Community	People who live in East Gippsland; People and organisations who are ratepayers in East Gippsland; and People and organisations who conduct activities in East Gippsland.
Contractor	Person or company engaged to undertake works for Council, including service providers / service partners
Council	East Gippsland Shire Council
Councillor	Person who has been elected to the office of “Councillor” of East Gippsland Shire Council.
Council officer	A current member of East Gippsland Shire Council staff with the authority to engage in activities on behalf of Council.
Responsible Officer	An officer of East Gippsland Shire Council who has responsibility for the general area/subject matter to which a record pertains.
Shire	The geographic area of East Gippsland Shire Council.
Staff	All staff engaged by East Gippsland Shire Council, including all full-time, part-time and casual employees, labour hire agency staff, contractors and volunteers.
Volunteer	Formally recognised, unpaid member of the public who assists with the provision of Council services e.g. Visitor Information Centre, Library.
Planning Scheme Amendment	A change to the planning scheme undertaken by the planning authority who is authorised by the Minister for Planning to prepare.
Private Planning Scheme Amendment	An amendment initiated by an applicant, landowner or group of individuals where the main beneficiary is that applicant, owner or group.
Council Planning Scheme Amendment	An amendment prepared by East Gippsland Shire Council on behalf of the community at its own cost.
Proponent/s	An individual or group who requests Council to undertake a planning scheme amendment.
The Scheme	East Gippsland Shire Planning Scheme
The Act	Planning and Environment Act 1987
Abandon	Council resolution to no longer proceed with an amendment

10. Revision History and Review

Version Control	Approved Amended Rescinded	Date Effective	Approved By	ECM Document Reference	Summary of Changes
1	Approved	2/7/2013	Council	5323112	
2	Approved	9/5/2017	Council	7084247	
3	Amended	23/8/2018	CEO	7730753	(Amended to reflect changes to State Govt statutory fees – CEO is empowered to approve administrative changes to fees)
4	Approved	26/09/2023	Council	10121670	Reviewed