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# **Swan Valley Planning Scheme No.1**

## **Amendment No.5**

*Modifications to Scheme Text provisions regarding succession subdivision requirements*

## Swan Valley Planning Act 2020

### RESOLUTION TO PREPARE AMENDMENT TO SWAN VALLEY PLANNING SCHEME NO.1

#### *Amendment No.5*

Resolved that the Western Australian Planning Commission pursuant to section 16(1)(b) of the *Swan Valley Planning Act 2020*, amend the above Swan Valley Planning Scheme by deleting clause 1.3 of item 2, Schedule 5, and clause 1.4 of item 3, Schedule 5 that both state:

*“Any approval of succession subdivision must include a condition preventing the sale of either new lot for a minimum of five years from the date that the new titles are created via a deed of agreements between the owner and the WAPC or similar mechanism.”*

The amendment is standard under the provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* for the following reason(s):

1. The amendment is consistent with Scheme objectives for the Priority Agriculture and Swan Valley Rural zones, thus satisfying standard amendment criteria (a) under r.34 of the Regulations.
2. The amendment is considered to have a minimal impact on land in the scheme area that is not the subject of the amendment, thus satisfying standard amendment criteria (e) under r.34 of the Regulations.
3. The amendment is not considered likely to result in any significant environmental, social, economic or governance impacts on land in the scheme area, thus satisfying standard amendment criteria (f) under r.34 of the Regulations.
4. The amendment does not reasonably satisfy the criteria for a complex or basic amendment under r.34 of the Regulations.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

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WAPC CHAIRMAN

## 1.0 INTRODUCTION

An amendment to the Swan Valley Planning Scheme No.1 is required to address an issue with the succession subdivision requirements that has been identified through implementation of the Scheme since its gazettal in August 2021. More specifically, it is proposed to amend Schedule 5 – Additional Site and Development Requirements by deleting the following provisions:

- Item 2 - Priority Agriculture Zone, clause 1.3; and
- Item 3 - Swan Valley Rural Zone, clause 1.4,

which both state:

*Any approval of succession subdivision must include a condition preventing the sale of either new lot for a minimum of five years from the date that the new titles are created via a deed of agreements between the owner and the WAPC or similar mechanism.*

## 2.0 BACKGROUND

Officers of the Department of Planning, Lands and Heritage have had a number of meetings and discussions with the owners of Lot 7 Burgess Crescent, Belhus in relation to a subdivision approval granted for their property on 3 April 2023. The subdivision approval was considered and issued under the specific provisions of the Swan Valley Planning Scheme No.1 relating to succession subdivision. One of the conditions of subdivision approval requires that:

*The landowner shall enter into a deed of agreement with the Western Australian Planning Commission by which the landowner covenants to the prevention of the sale of either new lot for a minimum of five (5) years from the date that the new titles are created and agrees to the registration of an absolute caveat against the Certificates of Title of the land. The owner is to bear all costs associated with the preparation and stamping of the agreement and the registration of the caveat. (Western Australian Planning Commission)*

The landowners have provided advice and evidence indicating that the imposition of this condition has caused difficulties in regard to the ongoing operation of their table-grape growing business. The main issue relates to the reluctance of lending institutions to provide credit facilities against a property that is encumbered by the required deed of agreement. The majority of the submission is provided below:

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*On 7th December 2021, I submitted an application for succession subdivision in accordance with Swan Valley Planning Scheme No. 1, Schedule 5, No. 2, 1.1.c. My application was approved on 3rd April 2023.*

*Inherent with seasonal farming activities, management of cash flow is of vital importance to ensure the viability of the business. One of the tools used to facilitate this function is to use credit facilities obtained from recognised lending institutions. I have used finance facilities from recognised lending institutions since 1991. I am currently in negotiations with another lender, Rural Bank, to arrange an overdraft facility to take effect later this year. This is necessary to avoid cash flow interruption due to pre-harvest activities and prior to receiving payments for grape sales in 2024. This practice is no different to broadacre farming, where it is common for seeding activities to rely on a credit advance.*

*In my pursuit to secure finance, recent interactions with two lending institutions have highlighted that should I proceed with fulfilling Condition 1, these lending institutions will not provide a loan facility. Both require an unencumbered property to support a loan facility. I have attached correspondence from these lenders to confirm this advice. I have also made enquiries seeking an alternative source of funding, that being a reverse mortgage. The major lenders no longer provide this facility to customers, and the single WA based lender offering this facility will not provide finance if the land is used for commercial purposes. The vineyard is considered a commercial use. I have also attached this correspondence.*

*The reasonable conclusion I have reached is that, because we operate our entire business on a single lot, the application of Condition 1 will prohibit our ability to conduct our business in accordance with conventionally accepted farming practices.*

*I am also of the view that the ramifications of applying this clause to single-lot farming operations would have been overlooked at the time of drafting the Scheme and subsequent conditions of approval. If this is the case, then appropriate action to amend the Scheme should be undertaken. Swan Valley Planning Scheme No. 1, Schedule 5, No. 2, 1.1.c.iv, is an example of a succession subdivision scheme criteria that could not be successfully applied to all eligible landowners and subsequently required a scheme amendment to redress this.*

*Based on the above, I respectfully seek the WAPC to consider the disadvantage Condition 1 places on me and other single-lot grape growers eligible for succession subdivision and ultimately redress this inequity by preparing an appropriate scheme amendment.*

### 3.0 PLANNING CONTEXT

The *Swan Valley Planning Act 2020* (the Act) sets out the objectives for the Swan Valley, and provided the legislative framework for establishing the Swan Valley Statutory Planning Committee, Swan Valley Strategic Leadership Group and a new Swan Valley planning scheme. In accordance with the Act, the City of Swan Local Planning Scheme No.17 and the Metropolitan Region Scheme ceased to apply to the area covered by the Act.

Swan Valley Planning Scheme No.1 (the Scheme) was adopted on 6 August 2021 as the primary document for controlling land use and development within the Swan Valley. The Scheme seeks to guide proposals for land use, development and subdivision, whilst aiming to protect long-term agricultural production.

In accordance with Part 2, Clause 17 of the Act, the Western Australian Planning Commission will have regard to the following in assessing an amendment to the Scheme:

- a) *The objects of this Act;*
- b) *Any State planning policy that affects the Swan Valley;*
- c) *Any strategic document in force under the Swan and Canning Rivers Management Act 2006 Part 4 Division 2;*
- d) *The views of any person or body consulted under section 18;*
- e) *Any advice of the Heritage Council on referral under section 19(2).*

### 4.0 PROPOSAL

#### Description of Amendment

The Scheme is proposed to be amended by deleting the following provisions from Schedule 5 – Additional Site and Development Requirements:

- Item 2 - Priority Agriculture Zone, clause 1.3; and
- Item 3 - Swan Valley Rural Zone, clause 1.4,

which both state:

*Any approval of succession subdivision must include a condition preventing the sale of either new lot for a minimum of five years from the date that the new titles are created via a deed of agreements between the owner and the WAPC or similar mechanism.*

## Planning Justification

The Scheme incorporates criteria/provisions that allow for the consideration of a special form of subdivision known as succession subdivision. This form of subdivision, which would otherwise not be permitted, seeks to provide a benefit to long-standing grape growers allowing them to create a small(er) lot on their property that may ultimately be passed on to other family members or sold to any other buyer.

The relevant Scheme provisions state the following form of subdivision may be supported:

- 1.1. d. A succession subdivision where all of the following criteria are satisfactorily demonstrated:*
  - i. A subdivision application lodged within five years of the date of gazettal of this Scheme; and*
  - ii. The subject land must have remained in the same/current ownership since at least 18 September 1995; and*
  - iii. The subject land must have continually operated as a family-run grape growing business since at least 18 September 1995; and*
  - iv. The proposed subdivision and subsequent development must not reduce the area of land that has been historically used for grape growing on the original parent lot since 18 September 1995; and*
  - v. The subdivision and subsequent development must not negatively impact the Swan Valley rural landscape character; and*
  - vi. The proposed lots are each capable of accommodating a new or existing single dwelling that satisfies the requirements of this Scheme and related policies; and*
  - vii. The subdivision and subsequent development must not significantly impact native vegetation.*
- 1.2. A maximum of one succession lot may be created per family-run grape growing business, including where a business operates over multiple lots.*
- 1.3. Any approval of succession subdivision must include a condition preventing the sale of either new lot for a minimum of five years from the date that the new titles are created via a deed of agreement between the owner and the Western Australian Planning Commission or similar mechanism.*

These Scheme provisions apply under Schedule 5 – Additional Site and Development Requirements for the Priority Agriculture Zone and are repeated under the same Schedule for the Swan Valley Rural Zone.

It is worth noting in the overall consideration of this issue that under Clause 1.1.d.i., any application for succession subdivision must be lodged by 6 August 2026, meaning that there are less than three years remaining within which applications can be made. Also, whilst it is not known exactly how many landowners/properties could fully meet these provisions, it is estimated that it is fewer than 20. This combination of factors indicates that the provisions have limited potential to impact the operation and agricultural character of the Swan Valley.

The intent of the provision was to ensure that the subject property would continue to operate as a family grape growing business for a minimum period after the issue of an approval for succession subdivision. Whilst this was seen as a reasonable provision at the time, as it sought to guarantee the retention of the vines and agricultural production on the site, the potential implications were not fully known. Furthermore, even though the provision restricted the immediate sale of the land, the resulting deed of agreement would not necessarily in itself guarantee the retention of the vines as there are no statutory impediments or restrictions on the removal of vines. So, whilst the sale of the new lots would be restricted for a period of time, there was never a guarantee that it would ensure the ongoing use of the land for viticultural production as was intended (or hoped for).

Given the benefits of the succession subdivision provisions are only available to a small number of landowners and are only valid for another few years, the deletion of provisions preventing the sale of lots for five years from the Scheme has limited potential to negatively impact the objectives of the Act and the Scheme and may in fact support the ongoing operation of existing viticultural operations.

### **Category of Scheme Amendment**

As required by r.35(2) of the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations), a resolution of the Swan Valley Statutory Planning Committee to prepare an amendment to the Swan Valley Planning Scheme must:

- a) *specify whether, in the opinion of the Swan Valley Statutory Planning Committee, the amendment is a complex amendment, a standard amendment or a basic amendment; and*
- b) *include an explanation of the reason for the Swan Valley Statutory Planning Committee forming that opinion.*

The proposed amendment is considered to be a standard amendment for the following reasons:

- The amendment is consistent with Scheme objectives for the Priority Agriculture and Swan Valley Rural zones, thus satisfying standard amendment criteria (a)

under r.34 of the Regulations. Notably, the revised succession subdivision criteria:

- seek to provide for long-term agricultural production in the Swan Valley, through limited succession subdivision of long-term family run grape growing properties which may otherwise not continue; and
- seek to respect and enhance the cultural heritage and rural landscape character of the Swan Valley, through limited succession subdivision of long-term family run grape growing properties which may otherwise not continue.
- The amendment is considered to have a minimal impact on land in the scheme area that is not the subject of the amendment, thus satisfying standard amendment criteria (e) under r.34 of the Regulations.
- The amendment is not considered likely to result in any significant environmental, social, economic or governance impacts on land in the scheme area, thus satisfying standard amendment criteria (f) under r.34 of the Regulations.
- The amendment does not reasonably satisfy the criteria for a complex or basic amendment under r.34 of the Regulations.

## **5.0 CONCLUSION**

Issues have been identified with the criteria applicable to succession subdivision proposals in the Priority Agriculture and Swan Valley Rural zones, as outlined in Schedule 5 of the Scheme. It has become apparent that the provision preventing the sale of newly created lots within five years may be counterproductive to its intended purpose by constraining the ongoing operation of viticultural uses. The modifications to the Priority Agriculture zone and Swan Valley Rural zone succession subdivision requirements in Schedule 5 of the Scheme seek to rectify the issue while remaining consistent with the objects of the *Swan Valley Planning Act 2020*.

## **Swan Valley Planning Act 2020**

### **RESOLUTION TO PREPARE AMENDMENT TO SWAN VALLEY PLANNING SCHEME NO.1**

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**SWAN VALLEY STATUTORY PLANNING COMMITTEE ADOPTION**

This Standard Amendment was adopted by resolution of the Swan Valley Statutory Planning Committee at the meeting of the Committee held on the 12th day of December, 2023.

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**WAPC CHAIRMAN**

**SWAN VALLEY PLANNING COMMITTEE RESOLUTION TO ADVERTISE**

by resolution of the Swan Valley Statutory Planning Committee at the Meeting of the Committee held on the 12th day of December, 2023, proceed to advertise this Amendment.

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**WAPC CHAIRMAN**

**SWAN VALLEY STATUTORY PLANNING COMMITTEE RECOMMENDATION**

This Amendment is recommended ..... by resolution of the Swan Valley Statutory Planning Committee at the meeting of the Committee held on the ..... day of ....., 20..... and the Common Seal of the Western Australian Planning Commission was hereunto affixed by the authority of a resolution of the Committee in the presence of:

.....  
**WAPC CHAIRMAN**

**WAPC ENDORSEMENT (r.63)**

.....  
**DELEGATED UNDER S.34 AND S.35 OF  
THE SVP ACT 2005**

**DATE.....**

**APPROVAL GRANTED**

.....  
**MINISTER FOR PLANNING**

**DATE.....**