

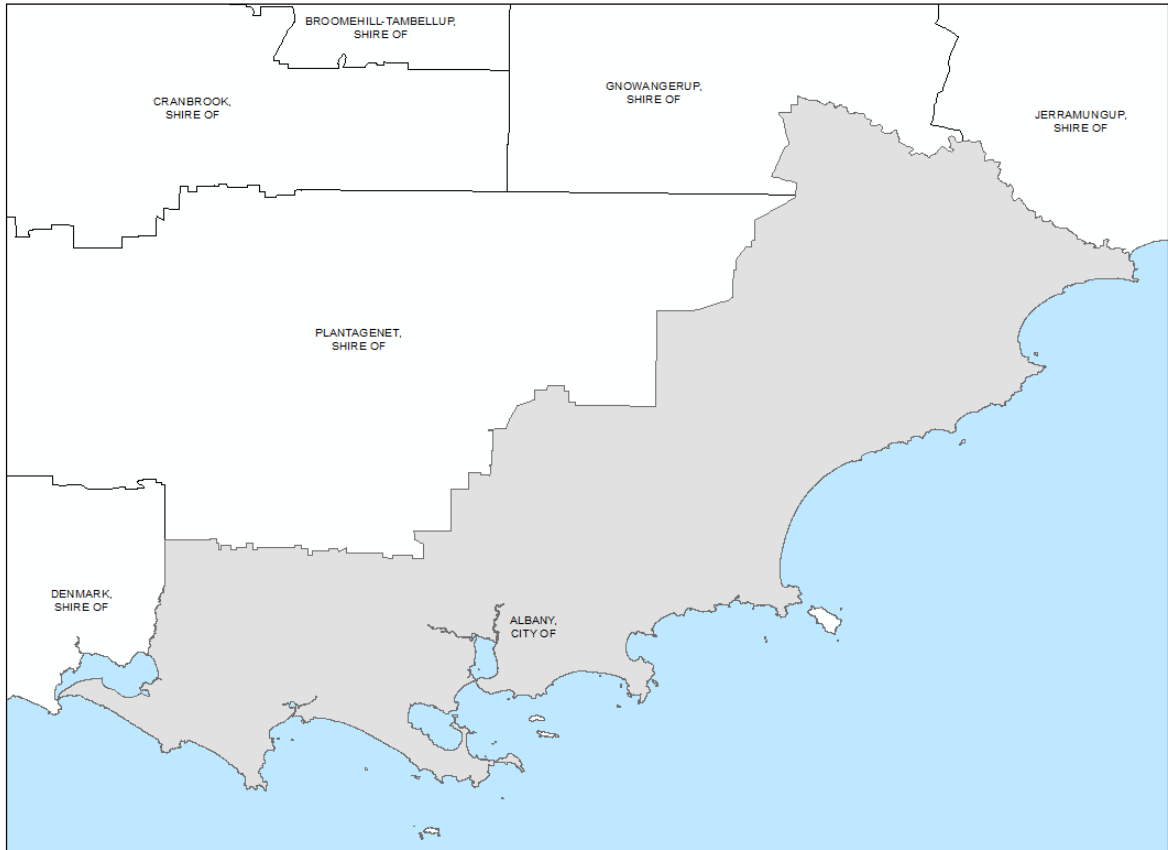
**DIS084\_V2: CONSIDERATION OF ADOPTION OF LOCAL PLANNING SCHEME AMENDMENT NO.29 – CITY OF ALBANY**

<b>Land Description</b>	:	<ul style="list-style-type: none"><li>• City of Albany</li><li>• Lot 5 #437 Chester Pass Road, Warrenup WA 6330</li><li>• Lot 21 #312 Albany Highway, Centennial Park WA 6330</li><li>• Lot 304 # 63 Pioneer Road, Centennial Park WA 6330</li><li>• Lot 250 #255 Lancaster Road, McKail WA 6330</li><li>• Lots 871, 410, 411, 868 and 869 Chester Pass Road, Milpara WA 6330.</li><li>• Lot 26 #71 Shell Bay Road, Lower King WA 6330</li><li>• Lot 6906 # 11-13 Nind Street, Spencer Park WA 6330 (Reserve 26860)</li><li>• Lot 350 # 11 Shelley Beach Road, Kronkup WA 6330</li><li>• Nullaki Conservation Zone</li></ul>
<b>Proponent</b>	:	City of Albany
<b>Owner</b>	:	See attached
<b>Business Entity Name</b>	:	Nil
<b>Attachments</b>	:	<ul style="list-style-type: none"><li>• Local Planning Scheme Amendment No. 29 – Report and Amendment Schedule</li><li>• Schedule of submissions and recommended modifications</li><li>• Submissions</li></ul>
<b>Report Prepared By</b>	:	Senior Planning Officer – Strategic Planning (A Nicoll)
<b>Responsible Officer:</b>	:	Executive Director Development Services (P Camins)

**STRATEGIC IMPLICATIONS**

1. Council is required to exercise its quasi-judicial function in this matter.
2. In making a decision on the proposed amendment, the Council is obliged to draw conclusion from its adopted *Albany Local Planning Strategy 2010* and *Community Strategic Plan – Albany 2030*.
3. The amendment complies with strategic planning requirements for the following reasons:
  - a) The *Albany Local Planning Strategy 2010* recommends the preparation of an up-to-date Local Planning Scheme; and
  - b) The *Community Strategic Plan – Albany 2030* recommends providing informed and transparent decision making that meets our legal obligations (Leadership: 1.1.2).

**Maps and Diagrams:**



**In Brief:**

- Amendment No.29 seeks to alter various parts of the *Local Planning Scheme No. 1* text and mapping to:
  - Remove any duplication of the ‘deemed’ provisions outlined in Schedule 2 of the *Local Planning (Local Planning Schemes) Regulations 2015*;
  - Include any proposed supplemental ‘deemed’ provisions within a ‘Schedule A’;
  - Align the structure and content of the City’s scheme with the ‘model’ provisions outlined in Schedule 1 of the *Local Planning (Local Planning Schemes) Regulations 2015*;
  - Rezone various land parcels not included in error at the time of gazettal of the scheme; and
  - Change the permissibility in the zoning table for various use and development classes to improve the operation of the scheme.
- Council previously initiated the amendment for advertising at the October 2017 Ordinary Council Meeting.
- One submission raised issues pertaining to the proposed amendment. In considering issues raised, modifications to the amendment have been recommended.
- Council is now requested to consider submissions received and to recommend that the Western Australian Planning Commission support the amendment with modifications.

## RECOMMENDATION

### DIS084: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council, pursuant to section 75 of the *Planning and Development Act 2005* and regulation 50. (3) (standard amendment) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, resolves to:

1. Adopt, with modifications, the proposed Amendment No.29 to *Local Planning Scheme No.1*, to:
  - a) Remove provisions, terms and definitions from *Local Planning Scheme No.1* that are superseded by the 'Deemed' provisions contained in the *Planning and Development (Local Planning Schemes) Regulations 2015*;
  - b) Introduce supplemental provisions to the 'Deemed' provisions;
  - c) Replace and introduce new provisions consistent with the 'Model' provisions contained in the *Planning and Development (Local Planning Schemes) Regulations 2015*;
  - d) Rezone various land parcels not included in error at the time of gazettal of the scheme; and
  - e) Change the permissibility in the zoning table for various use and development classes.
2. Forward Amendment Document, Amendment Schedule, Council Report, Schedule of Submissions and Modification, and Submissions to the Western Australian Planning Commission with a request that the Hon. Minister for Planning grant approval to the amendment (with modifications) and its gazettal.
3. Advise the applicant/owner and those who lodged a submission of the Council decision accordingly.

**Note:** The amendment is a standard amendment in accordance with part (a), (b), (e) and (f) of the standard amendment definition contained in Regulation 34 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

## BACKGROUND

4. *Local Planning Scheme No. 1* was gazetted on 28 April 2014 and consists of the Scheme Text and the Scheme Maps. The Scheme divides the Local Government district into zones to identify areas for particular uses and identifies land reserved for public purposes. Most importantly, the Scheme controls the types of uses and development allowed in different zones.
5. The Council resolved in October 2017 to advertise Amendment No.29, which is prepared as an omnibus of matters in respect to 'model' and 'deemed' provisions contained in the *Local Planning (Local Planning Schemes) Regulations 2015*.
6. Prior to advertising, the amendment was referred to the Environmental Protection Authority (EPA), where it was determined that the scheme amendment is unlikely to have a significant effect on the environment and does not warrant formal assessment under Part IV of the *Environmental Protection Act 1986*.
7. Following notice from the EPA, the amendment was advertised in accordance with the requirements of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

8. At the close of advertising, nine (9) submissions were received. One submission recommended modifications to the amendment. The 'Large Format Retail Association' requested modifications to ensure compliance with the requirements of legislation and Commission guidelines, and in the interest of maximising clarity, consistency and certainty for the industry.

## DISCUSSION

### Amendment 29

9. The City of Albany seeks the support of the Council to amend the City of Albany *Local Planning Scheme No. 1* to bring in-line with state legislation and to fix various errors and anomalies.
10. The *Planning and Development (Local Planning Schemes) Regulations 2015* (WA) (Regulations) came into force on 25 August 2015. The Regulations introduce new "deemed provisions" and "model provisions".
11. As a consequence of section 257B of the *Planning and Development Act 2005* (WA), the deemed provisions in Schedule 2 of the Regulations are now taken to be built into every local planning scheme in the State. To the extent that a local planning scheme is inconsistent with the deemed provisions, the deemed provisions are taken to prevail.
12. The model provisions provide a template for schemes. It is expected that local government planners and industry review or amend their local planning scheme to align with the model provisions.
13. Since the scheme gazettal on 28 April 2014, various errors, anomalies and inconsistencies have been documented in *Local Planning Scheme No.1*. While many of these are simple typographical errors, some do alter development potential.

### Submission

14. The 'Large Format Retail Association' requested the following modifications to the Amendment No.29:
- *Replicate all model terms and definitions contained in 'Schedule 1 Part 6' of the 'Planning and Development (Local Planning Schemes) Regulations 2015' within 'Schedule 1 of LPS1'.*
  - *Delete any existing defined words and expressions from 'Schedule 1 of LPS1' which duplicate or contradict the model terms and definitions contained in 'Schedule 1 Part 6' of the 'Planning and Development (Local Planning Schemes) Regulations 2015'. This should specifically include deletion of the 'Showroom' land use definition currently contained in 'Schedule 1 of LPS1'.*
  - *Within the 'LPS1 Zoning Table', replace 'Showroom' with 'Bulky Goods Showroom' and establish land use permissibility as follows within the 'LPS1' zones:*
    - *'P' within the Regional Centre Mixed Business and Highway Commercial zones.*
    - *'D' within the Regional Centre, Neighbourhood Centre and Light Industry zones.*
    - *'X' within all other zones (with the exception of the Future Urban, Rural Residential and Conservation Zones, for which no permissibility is established by the 'LPS1 Zoning Table').*
  - *Within the 'LPS1 Zoning Table', add 'Trade Supplies' as a new line entry, with permissibility as follows within the 'LPS1' zones:*
    - *'P' within the Regional Centre Mixed Business, Highway Commercial and Light Industry zones.*

- 'D' within the Regional Centre and Neighbourhood Centre zones.
  - 'X' within all other zones (with the exception of the Future Urban, Rural Residential and Conservation Zones, for which no permissibility is established by the 'LPS1 Zoning Table').
15. The Amendment No.29 proposes to adopt model scheme terms and definitions simply by reference, through modification to 'clause 1.7' of the current *Local Planning Scheme No.1* Scheme Text.
16. The 'Large Format Retail Association' submission has revealed the following specific issues, which unless corrected, have the potential to create significant confusion and inconsistency in the way such terms are to be applied:
- *The inclusion of model provisions by reference is contradictory to the 'Planning and Development (Local Planning Schemes) Regulations 2015' and supporting guidelines published by the WA Planning Commission (WAPC). Specifically, 'page 15' ('question 52') of the WAPC's 'Frequently Asked Questions' states that the model provisions cannot be included within schemes by reference, and instead "the model provisions Schedule 1, Parts 1-6 are to be replicated within the scheme."*
  - *The proposed new wording of 'LPS1' clauses '1.7.1 (b) (i)' and '1.7.2' does not correctly and accurately reference 'Schedule 1 Part 6' of the 'Planning and Development (Local Planning Schemes) Regulations 2015'.*
  - *The proposed 'LPS1' modifications do not remove or replace the existing 'LPS1' 'Showroom' land use from either the zoning table or dictionary of defined words and expressions. If the old 'Showroom' land use is kept within the 'LPS1' as proposed by 'A29', this would cause significant conflict and confusion with the new 'Bulky Goods Showroom' land use contained in 'Schedule 1 Part 6' of the 'Planning and Development (Local Planning Schemes) Regulations 2015'.*
17. To ensure the model definitions are applied as required by legislation and Commission guidelines, the City recommends that the Amendment No.29 is modified as follows:
- With the exception of the definitions 'Showroom', 'Convenience Store' and 'Warehouse', delete existing defined words and expressions from 'Schedule 1 of LPS1' which duplicate or contradict the model terms and definitions contained in 'Schedule 1 Part 6' of the *Planning and Development (Local Planning Schemes) Regulations 2015*;
  - With the exception of the terms 'Bulky Goods Showroom', 'Convenience Store' and 'Warehouse/storage', replicate model terms and definitions contained in 'Schedule 1 Part 6' of the *Planning and Development (Local Planning Schemes) Regulations 2015* within Schedule 1 of the City's *Local Planning Scheme No.1*.
18. The model scheme definitions for 'Bulky Goods Showroom', 'Convenience Store' and 'Warehouse/storage', ~~includes a number of uses in addition to uses currently included in the 'Showroom' definition~~ could create unintended consequences to the implementation of the City's scheme. The ~~additional uses~~ definition change for "bulky good showroom" could have particular ~~unforeseen~~ detrimental impacts on retail in the "Regional centre zone". The other two definitions have remained unchanged to avoid unforeseen impacts in the zones where they can be considered. These changes are therefore beyond the scope of the current amendment that is focused on low impact changes and fixing anomalies within the scheme.
19. Changes to LPS1 to include the 'Bulky Goods Showroom' 'Convenience Store', 'Warehouse/storage' and including 'Trade supplies' ~~use and definitions~~ can be considered in a future scheme amendment, after consultation and due consideration.

## GOVERNMENT & PUBLIC CONSULTATION

20. Amendment No.29 was advertised in accordance with the requirements of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
21. Nine (9) submissions were received from agencies and members of the public.
22. The submissions received are considered in a schedule available as an attachment to this report.

## STATUTORY IMPLICATIONS

23. Scheme amendments undergo a statutory process in accordance with the *Planning and Development Act 2005* and *Planning and Development (Local Planning Schemes) Regulations 2015*.
24. Section 75 of the *Planning and Development Act 2005* allows a local government authority to amend its local planning scheme with the approval of the Minister for Planning.
25. Regulation 50(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015* allows Council to support a standard amendment, with or without modification.
26. Voting requirement for this item is **SIMPLE MAJORITY**

## POLICY IMPLICATIONS

27. There are no policy implications relating to the proposed amendment.

## RISK IDENTIFICATION & MITIGATION

28. The risk identification and categorisation relies on the City's Enterprise Risk & Opportunity Management Framework.

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Reputation. The proposal may not be accepted by the Western Australian Planning Commission or the Minister for Planning.	Possible	Minor	Low	If not supported by the WAPC or Minister, the amendment will not be progressed and the City may be required to make modifications.
Reputation. The proposal may attract objections from members of the public or other public authorities.	Possible	Minor	Low	Agree to support the proposed Scheme Amendment subject to provisions to address community and agency concerns.
<b>Opportunity:</b> Increase consistency and alignment with State Planning Legislation				

## FINANCIAL IMPLICATIONS

29. There are no known financial implications relating to the proposal to amend the *Local Planning Scheme No. 1*.

## LEGAL IMPLICATIONS

30. There are no known legal implications directly relating to this item.

## ENVIRONMENTAL CONSIDERATIONS

31. There are no environmental implications relating to the proposal to amend the *Local Planning Scheme No. 1*.

32. As per Section 48(A) of the *Environmental Protection Act 1986*, the proposal was referred to the Environmental Protection Authority and environmental assessment was not deemed necessary.

**ALTERNATE OPTIONS**

33. Council may consider alternate options in relation to this item, such as:
- To resolve to support the scheme amendment without modification(s); or
  - To resolve to support the scheme amendment with additional modification(s); or
  - To resolve not to support the scheme amendment and advise the Western Australian Planning Commission, in writing, of the reasons for doing so.

**CONCLUSION**

34. The Scheme Amendment No.29 is proposing to update the City's *Local Planning Scheme No.1* to conform with the recently amended *Local Planning (Local Planning Schemes) Regulations 2015*.
35. The amendment was advertised and nine submissions were received. In light of comments received, modifications have been recommended.
36. The Amendment No.29 adheres with the City's *Community Strategic Plan – Albany 2030*, which recommends providing informed and transparent decision making that meets our legal obligations.
37. It is recommended that Council adopt Local Planning Scheme Amendment No.29, as the proposal will improve the functionality of *Local Planning Scheme No. 1*, thereby ensuring consistent decision-making in line with current best practice.

<b>Consulted References</b>	:	1. <i>Local Planning Scheme No. 1</i> 2. <i>Albany Local Planning Strategy 2010</i> 3. <i>Community Strategic Plan – Albany 2030</i> 4. <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> . 5.
<b>File Number (Name of Ward)</b>	:	City of Albany (All Wards)
<b>Previous Reference</b>	:	OCM – 31/10/2017 - DIS049