

**2.1: REVISED CITY OF ALBANY LOCAL PLANNING SCHEME NO. 1 –
ADOPTION FOR ADVERTISING**

Land Description	: All land within the City of Albany
Proponent	: City of Albany
Owner	: Various
Business Entity Name	: N/A
Attachment	: Draft Local Planning Scheme No. 1 – Text and Maps (due to size of document placed on Council's website only).
Councillor Workstation	: Draft Local Planning Scheme No. 1 – Text and Maps (Amended Version - July 2011). All Councillors are to be provided with individual electronic copy.
Responsible Officer(s)	: E/Director Planning and Development Services (G Bride)

IN BRIEF

- Following adoption of the draft Local Planning Scheme No. 1 (LPS1) by the City in February 2009, the draft was referred to the Environmental Protection Authority (EPA) and Department of Planning (DoP) for assessment and comment.
- Their advice and suggestions have now been incorporated into a revised draft LPS1.

**ITEM 2.1: RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY**

That Council:

- 1) **ACCEPT** the modifications undertaken to the draft LPS1 resulting from the advice/recommendations from the EPA and suggested modifications from the DoP assessment of draft LPS1.
- 2) **ADOPT** the revised draft LPS1 (Amended Version – July 2011) and resubmit it to the Department of Planning/WA Planning Commission for approval to advertise for public comment for an extended period of four months, including the advice supporting the retention of third-party appeals in the Discussion section of the report.
- 3) **ADVISE** town planning consultancies that have lodged amendments with the City within the past two years that it will formally consider imposing a moratorium on new scheme amendment requests and/or scheme amendments once approval is gained from the Western Australian Planning Commission to formally advertise the draft LPS1.
- 4) **UNDERTAKE** on approval for the draft LPS1 to be advertised for public comment, consultation tasks included within the Public Consultation/Engagement section of the report.

CEO:

RESPONSIBLE OFFICER:

BACKGROUND

1. The draft Local Planning Scheme No. 1 (LPS1) adopted by Council at its 17 February 2009 meeting was referred to the Environmental Protection Authority (EPA) and WA Planning Commission/Department of Planning (WAPC/DoP) for assessment and approval to advertise for public comment.
2. The EPA assessed draft LPS1 and advised (3 May 2010) that the draft LPS1 did not require formal assessment and provided some advice/recommendations on certain aspects of the draft scheme. The EPA's advice/recommendations were incorporated into the draft LPS1. The revised draft LPS1 was forwarded to the EPA again in February 2011 and they advised (19 April 2011) that this revised version adequately implemented their previous advice/recommendations.
3. The DoP completed an extensive review of the draft LPS1 (October 2010) and provided some 200+ suggested modifications and requirements for discussion prior to the Scheme being approved for advertising. This required several meetings between the DoP and administration over time, with the Department providing ongoing comment on the proposed changes to the original scheme text as it was redrafted.
4. The draft LPS1 has now been revised in accordance with the EPA's and DoP's advice/recommendations. Some of the DoP's suggested modifications were not accepted by administration as discussed below. Copies of the revised draft LPS1 (Scheme Text and Maps) indicating all changes in red from the February 2009 version were provided to Councillors during the July 2011 briefings.
5. The LPS1 is the statutory document approved under the *Planning and Development Act 2005* that will be used by the City to implement the Albany Local Planning Strategy (ALPS) which defines the policy direction of the City over the next 20 years. Since its commencement in 2000, other City specific strategies such as the Albany Central Area Masterplan, Tourist Accommodation Planning Strategy, ALPS and the Activity Centres Planning Strategy etc have been completed and these have been incorporated into the draft LPS1 as required.
6. There are scheme amendments still being undertaken to the existing schemes that will also need to be included within LPS1 before it is finalised. In regards to scheme amendments, it is recommended that Council give appropriate notice to town planning consultancies that a moratorium on scheme amendments will be applied on receiving notification from the Western Australian Planning Commission that the draft Scheme can be advertised. This will ensure that those amendments not yet completed can be finalised within the timeframe of the draft LPS1 as discussed below.

DISCUSSION

7. The draft LPS1 applies to the whole of the municipality of the City of Albany and shall:
 - Assist the City implement the Albany Local Planning Strategy (ALPS);
 - Comply with the Model Scheme Text (Appendix B) of the *Town Planning Regulations 1967*;
 - Have due regard and comply with relevant WA Planning Commission State Planning Policies, Development Control Policies and Planning Bulletins;
 - Be prepared in a manner and format that satisfies the requirements of the Minister for Planning or other authorised persons.

8. The draft LPS1 comprises:
 - Scheme Text; and
 - Scheme Maps.

9. The Council in initiating the draft LPS1 at its February 2009 meeting required some modifications as follows:

'Council supports the following modification to the draft Albany Local Planning Scheme 1:

 - *At clause 5.3.4, within Table 6 area ELZ1, delete clauses 3(b) and 4.*
 - *At Table 2 within the Hotel / Motel zone, define "chalet / cottage unit" as a 'D' use.*
 - *Clause 5.3.6.1A be altered to read "Development within the Regional Centre Zone should respond to the scale and articulation of existing streets and buildings, with no development exceeding a height of three storeys (11.0m in height). Council may introduce a lesser height for parts of the zone and those areas will be defined in the Regional Centre Policy Plan referred to at subclause E."*
 - *Clause 5.3.6.1E be altered by including "building height" after "building envelopes".*
 - *Alter Map 13 to show the location of Special Use Area 1 on the northern side of Vancouver Lake and access to the area provided along the western boundary of Lot 660 La Perouse Road, Goode Beach;*
 - *At clause 4.2.4(i) add 'only' after 'purposes';*
 - *Within the definition of Showroom in Schedule 1 add, 'office equipment and supplies' after 'swimming pools';*
 - *Remove the 'hotel/motel' zoning from the former Frenchman Bay Caravan Park site and identify the land as 'special site – caravan park' with appropriate control mechanisms incorporated to reflect the current Town Planning Scheme 3 provisions.'*

10. These modifications were completed by administration and the draft LPS1 was forwarded to the EPA and DoP for assessment and approval to advertise for public comment in February 2009.

Draft LPS1 Assessment by Environmental Protection Authority

11. Initially the Department sought additional information on the draft LPS 1 (30 September 2009). The EPA then advised (3 May 2010) that the draft LPS1 did not require formal assessment under the *Environmental Protection Act 1986* and provided some advice and recommendations on the draft scheme for consideration by the City. This advice and recommendations were addressed by administration and modifications were made to the draft LPS1.

12. The modified draft LPS1 was resubmitted to the EPA in February 2011. The EPA advised (19 April 2011) that their previous advice had been adequately implemented in the modified draft LPS1 (February 2011 version). As such the requirements of the EPA have now been met, noting those matters that have not been assessed by the EPA as set out in the table below. The City will need to refer these projects to the EPA for assessment at the subsequent rezoning, structure plan or planning application stage.

Issue (Not Assessed by EPA)	Advice	City's Response
3.1 Remnant Native Vegetation	The EPA advice that the Structure Plan required for Lots 697-699 Wright Street, Lake Seppings area should ensure protection of remnant native vegetation.	The City has retained the land within the Future Urban zone in LPS1 and accepts that any future structure planning for the land shall include the requirement to protect remnant native vegetation.
3.2 Declared Rare and Priority Flora	The EPA advice that the development of this land (Lots 870 & Pt. 877 John/Morris Streets, Milpara) is still subject to the proponents completing a spring flora survey to inform the Development Guide Plan which is required to be prepared and approved by the City before subdivision and/or development may occur.	The City is still awaiting the outcomes of Amendment 285 to existing Town Planning Scheme No. 3 which seeks to rezone the above land for industrial purposes. The scheme controls contained within that amendment will be transferred to the LPS1 when gazetted. The City acknowledges the need for the proponents to complete a spring flora survey to inform the Development Guide Plan which is required to be prepared and approved by the City before subdivision and/or development may occur.
3.3 Wetlands	The EPA advice that the Structure Plan required for Lots 697-699 Wright Street, Lake Seppings area should prevent development within the wetland boundary/buffer and ensure the wetlands protection.	The City has retained the land within the Future Urban zone in LPS1 and accepts that any future structure planning for the land shall include the requirement to determine the appropriate wetland boundary/buffer and ensure its protection from development.

Issue (Not Assessed by EPA)	Advice	City's Response
3.4 All Factors – Relevant Factors to be Determined if Required	<p>The EPA advice that the decision to not formally assess LPS1 has been based on Lot 105 being retained as Parks and Recreation Reserve.</p> <p>They advise if there is any modification to this prior to gazettal of LPS1, it will warrant re-referral of LPS1 and will potentially attract the setting of a formal level of assessment.</p>	<p>The City has retained Lot 105 Frenchman Bay Road, Big Grove within the Parks and Recreation Reserve in draft LPS1.</p> <p>The City will retain the present reservation until such time as a scheme amendment or similar is completed that alters this classification (Note: a scheme amendment request to rezone the land to Residential Development was supported by the City at its March 2011 meeting).</p>
3.5 Surface Water and Groundwater Quality, Watercourse; and Separation Distances – Noise, Air Quality, Risk – Mirambeena Special Control Area 5	<p>The EPA through TPS3 Amendment 238 (January 2010) set the level of assessment for Mirambeena which included deferral of the above environmental factors. They therefore still remain 'not assessed' and the EPA expects that its advice will be addressed through scheme provisions so that a re-referral is avoided.</p>	<p>The City has included a new Schedule 11 – Industry Zone to deal specifically with specified industrial areas within the City.</p> <p>The Mirambeena Industrial Area has been removed from SCA5 and included within Schedule 11 as Specified Industrial Area 4 (IA4) including transferring the existing scheme controls accordingly.</p> <p>To reinforce the importance of those environmental factors that have not been assessed by the EPA regarding the Mirambeena Industrial Area, the draft LPS1 includes a new provision to require referral of relevant applications to the EPA for assessment and recommendation/advice.</p>

Scheme Assessment by Department of Planning

13. The DoP completed an extensive review of the draft LPS1. The majority of their suggested modifications have been incorporated. The reformatting of the text, particularly in Part 5 General Development Requirements, where provisions have now been combined and included into relevant sub-sections has improved its legibility.
14. The inclusion of the existing Special Rural (now the Rural Residential zone) and Special Residential Zones and other controls from the existing schemes will ensure continuity of these controls.

15. The major changes to the original draft LPS1 (February 2009 version) from the DoP's comments are summarised as follows:

Part 1 – Preliminary

Part 1.6 The Aims of the Scheme

- Added new aim c.1.6(p) regarding building sustainability.
- Added scheme note c.1.6 to refer to EPA assessment of ALPS.

Part 2 – Policy Planning Framework

Part 2.1 Scheme Determinations to Conform with Local Planning Strategy

- Added scheme note c.2.1 to refer to EPA assessment of ALPS.

Part 2.6 Local Planning Policies Made Under the Previous Schemes

- Added new clause c.2.6 to provide for continued operation of existing local planning policies under new scheme.

Part 4 – Zones and Use of Land

Part 4.2 Objectives of the Zones

- Changes to wording of Residential zone objectives (b)(vi) including reference to ancillary residential buildings and avoiding areas susceptible to natural hazards.
- Changes to wording of Future Urban zone objectives (e) including reference to requirement for structure planning and coordination of servicing.
- Changes to wording of Hotel/Motel zone objectives (a) to reinforce importance of tourism accommodation being developed within the zone.
- Caravan Park zone renamed to Caravan and Camping zone.
- Changes to wording of Caravan and Camping zone objective (d) to provide for incidental uses to support tourism development on the site.
- Changes to wording of Regional Centre Mixed Business zone objective (a) to simplify objective and introduce possibility of limited residential accommodation uses.
- Changes to wording of Regional Centre Mixed Business zone objective (b) to reinforce preclusion of 'Main-Street' style developments in the zone.
- Changes to wording of Regional Centre Mixed Business zone objective (g) to reinforce new uses must be compatible with existing or approved residential uses within the zone.
- Mixed Use zone renamed to Regional Centre Mixed Use zone.
- Changes to wording of Regional Centre Mixed use zone objective (b) to reinforce that retail uses are not permitted within the zone.
- Changes to wording of Neighbourhood Centre zone objectives by inclusion of new objective (c) to control net lettable floorspace within shopping centres as recommended in the adopted Activity Centres Planning Strategy.
- Minor change to wording of General Industry zone objective (b) by reinforcing the 'restriction' on retail activities to that incidental to the approved industrial function.
- Change to wording of General Industry zone objective (c) to advise buffer areas to accord with EPA's Guidance Statement No. 3 'Separation Distances between Industrial and Sensitive Land Uses'.
- Changes to wording of Light Industry zone objective (c) to reinforce the intention for the zoning of the Centennial Park area and to highlight the special matters to be addressed by proponents of residential developments.

- Minor changes to wording of Rural Residential zone objective (b) to simplify objective.
- Eco-Living zone renamed to Conservation zone to be consistent with existing scheme terminology.
- Minor changes to wording of Conservation zone objectives to simplify objectives.
- Changes to wording of Rural Small Holding zone objectives by deleting objective (c) as it is not relevant.
- Minor change to wording of Priority Agriculture zone objective (d) by deleting reference to subdivision.
- Rural Townsite zone renamed to Rural Village zone.
- Changes to wording of Rural Village zone objectives to reinforce the intention for the growth of these townsites and to highlight need for structure planning to occur before expansion will be allowed.
- Introduce new Special Residential zone and objectives (based on existing scheme terminology etc).

Part 4.3 Zoning Table

- Renamed Table 2 to Table 1: Zoning Table.
- Moved definitions for commercial vehicle, dry industry and health practitioner from the Land Use definitions to the General Definitions in Schedule 1 and deleted definitions of dry industry and serviced apartment from the Land Use Definitions in Schedule 1.
- Included land use classes within the Zoning Table for the following uses:
bed & breakfast/farmstay, boarding/guest/lodging house, camping ground, caravan park, home occupation, home office, motor vehicle repair, panel beating/spray painting, place of worship and telecommunications infrastructure.
- Not included land use classes within the Zoning Table for the following uses:
cemetery, corrective institution, funeral parlour, harbour installations, hospital, marina, owner/driver truck operator, public utility and radio/TV installation.
- Included new land use class and definition for Live/Work Units.
- Changed land use permissibility (as set out in the revised draft LPS1) for various uses generally to discretionary and advertised approval categories.
- Renamed zones to be consistent with part 4.2 modifications above.
- Added new Special Residential zone to be consistent with part 4.2 modifications above.
- Added Table Note 1 to Zoning Table to reinforce controls over land uses within the Rural Village zone in the absence of an approved Structure Plan for the townsite.

Part 5 – General Development Requirements

Part 5 reordered to place scheme provisions within similar planning areas and changes to the clauses as follows:

5.3 Environmental Provisions

Changes include:

5.3.1 Environmental Conditions

As there are no environmental conditions required to be incorporated into the Scheme, the clause has been reworded to state 'There are no environmental conditions imposed by the Minister for Environment, which apply to the Scheme' as set out in the MST.

5.3.2 Coastal Development

New clause to require the City to consider the recommendations of '*Southern Shores 2001 - 2021 - A Strategy to Guide Coastal and Marine Planning and Management in the South Coast region of Western Australia*' report when assessing proposals along coastal areas.

5.3.3 Vegetation Protection

New clause (5.3.3.2) added to require protection of existing vegetation as condition of planning approval.

5.3.5 Uses Adjacent to Conservation Areas

Clause 5.3.5.2(b) changed to quantify the types of matters to be addressed through the preparation and implementation of a management plan.

5.3.6 Setbacks from Watercourses

Clause 5.3.6.1 changed to introduce criteria/reasons for requiring setbacks to watercourses as requested by the EPA.

5.3.7 Land Subject to Flooding and/or Inundation

Clauses changed to provide stronger powers to the City to prevent inappropriate development of floodways and require minimum finished floor levels etc. Data on predicted flood levels removed from clause and included within Local Planning Policy 5 Rural and Environment Policy 5E 'Development on Flood Prone Areas'.

5.3.8 Acid Sulphate Soils

Clause changed to include power for the City to require acid sulphate soil management plans as a condition of approval in an affected area in consultation with the Department of Environment and Conservation and introduced additional provisions to identify susceptible areas.

5.4 Fire Protection Provisions

Clause 5.4.1.1 changed to strengthen the City's powers to implement fire control measures including relevant Australian Standards (such as AS3959 and its successors) for building constructions where a building is to be constructed in an area at moderate or extreme risk from bush fires as detailed in an adopted Local Planning Policy.

5.5 Provisions Applicable to Particular Zones

Changes include:

5.5.1 Residential Zone

Clause 5.5.1.2 added to advise density of permitted holiday accommodation shall be the same as the designated residential density applying to the land.

5.5.2 Tourist Residential Zone

Clause 5.5.2.1(b) changed to simplify wording and advise the correct interpretation of the permitted densities for holiday accommodation and residential developments. Clause 5.5.2.2 changed to refer to City's powers to impose restrictions on the number of permanent residential accommodation permitted within the zone shall be in accordance with recommendations from an adopted Local Planning Policy or Tourism Accommodation Strategy.

5.5.3 Future Urban Zone

Clause reworded to simplify wording and reinforce the City's intention for limited uses to be approved and the land to be prevented from any inappropriate use and ensure its availability for future urban uses. Apart from home offices, all land use or development requires approval from the City and the future use and development of the land for any urban purposes shall be subject to a structure plan being prepared and adopted under the Scheme.

5.5.4 Hotel/Motel Zone

Clause 5.5.4.1 included to incorporate permitted density for developments and advise on planning requirements to increase base density. Clause 5.5.4.2 reworded to simplify wording and clarify intent is to require those design elements to be incorporated into developments within the zone.

5.5.5 Caravan and Camping Zone

Clauses changed to simplify wording and refer to City's powers to impose restrictions on the number of permanent residential accommodation permitted within the zone shall be in accordance with recommendations from an adopted Local Planning Policy or Tourism Accommodation Strategy. Clause 5.5.5.5 included to incorporate advice on permitted density for holiday accommodation uses to match number of approved caravan bays.

5.5.6 Regional Centre Zone

Clause 5.5.6.5 deleted as it repeats the powers and process for local planning policies at Part 2 of the Scheme. Clause 5.5.6.7 included to incorporate advice on permitted density for holiday accommodation uses to match residential density code of the land.

5.5.7 Regional Centre Mixed Business Zone

Clause 5.5.7.1 deleted and controls transferred to new clause 5.5.7.2 Live/Work Units. Clause 5.5.7.1 dealing with development of shops within the zone, reworded to simplify wording and introduce mandatory criteria/requirements to be met. Clause strengthens intention for large-format developments to be permitted not 'Main-Street' types. New clause 5.5.7.2 included to deal with development of residential uses within the zone and the particular controls to be imposed.

5.5.8 Regional Centre Mixed Use Zone

Title changed and clauses changed to refer to 'Regional Centre' Mixed Use zone as the zone adjoins the Albany CBD areas only.

5.5.9 Highway Commercial Zone

Clauses 5.5.9.2 and 5.5.9.3 included to require landscaping, paved accessways, loading/unloading areas and screening of open storage areas within the zone.

5.5.10 Neighbourhood Centre Zone

New clauses 5.5.10.3 - 5.5.10.6 included to require certain design elements to be incorporated into site and building designs within the zone.

5.5.11 Local Centre Zone

Clauses 5.5.11.2 - 5.5.11.4 included to require landscaping, buffer plantings and design elements to be incorporated into building designs within the zone.

5.5.12 General and Light Industry Zones

Clause 5.5.12.1 renumbered to 5.5.12.4. New clauses 5.5.12.1 – 5.5.12.3 included to reinforce requirement for planning approval within the zone and introduce new Schedule 11 'Industry Zone' to provide controls for specific industry zones in the City namely: Ardess, Pendeen, Milpara and Mirambeena. New clause 5.5.12.9 included to require industrial proposal incorporate appropriate buffer areas in accordance with EPA's Guidance Statement No. 3 'Separation Distances between Industrial and Sensitive Land Uses'. Clauses 5.5.12.8 – 5.5.12.10 deleted.

5.5.13 Rural Residential Zone

Clauses reworded to be consistent with text from existing zones. All general clauses retained in Clause 5.5.13 with specific controls for each zone contained in new Schedule 14 'Rural Residential Zone'.

5.5.14 Conservation Zone

Title changed to Conservation zone to be consistent with text from existing zones. All general clauses retained in Clause 5.5.14 with specific controls for each zone contained in new Schedule 12 'Conservation Zone Provisions'.

5.5.15 Rural Small Holding Zone

Clause 5.5.15.1(a) changed to introduce controls over number of chalet/cottage units or holiday accommodation units permitted on land within the zone. New clauses added to ensure outbuildings comply with adopted LPP. New clauses added to deal with fire protection, setbacks, fencing, clearing controls, effluent disposal, water supply and subdivision in RSH area at Mt Elphinstone, Robinson/Cuthbert and Yakamia Creek.

5.5.16 General and Priority Agriculture Zones

Clauses relating to subdivision changed to refer to LPP etc (transferred to LPP 5F Agricultural Protection and Subdivision). New clause 5.5.16.3 added to introduce controls over number of chalet/cottage units or holiday accommodation units permitted on land within the zone.

5.5.17 Rural Village Zone

New clauses relating to SP requirements and permitted land uses added.

5.5.18 Special Residential Zone

New clauses added to transfer existing scheme controls into revised draft LPS1. All general clauses retained in Clause 5.5.18 with specific controls for each zone contained in new Schedule 15 'Special Residential Zone'. New clause added advising of application requirements for proposals to include any additional land within the Special Residential zone.

5.6 Provisions Applicable to Residential Land Use and Development

Changes include:

5.6.2 Special Application of Residential Design Codes

Clauses relating to split-coding (R1/20, R5/20, R30/40 & R30/60) modified. Clause relating to multiple dwellings changed to quantify steep land. New clauses added relating to split-coding of land around CBD, split-coding of land at Lot 731 Wellington Street and Spencer Park Improvement Area (transferred from existing schemes).

5.6.4 Ancillary Accommodation

New clause 5.6.4.2 added to restrict approval to 1 ancillary accommodation unit per lot.

5.6.5 Caretaker's Dwelling

New clause 5.6.5.1 added to require planning approval for all caretaker's dwellings. New clause 5.6.5.2 added to restrict approval to 1 caretaker's dwelling per lot. Clause 5.6.5.3 modified to strengthen powers available to control and impose conditions on the development of caretaker's dwellings.

5.6.6 Relocated Dwellings

New clause 5.6.6.1 added to require planning approval for all relocated dwellings.

5.6.7 Residential Uses Adjacent to Heavy Freight Routes

New sub-clause (a) added to include option for Council to require a development to comply with requirements of the WAPC's SPP 5.4 'Road and Rail Transport Noise and Freight Considerations in Land Use Planning'.

5.6.8 Holiday Accommodation

Clause reworded by retaining sub-clause A and deleting sub-clauses B, C, D, and E (Note: these controls have been moved to their individual zones). Clause 5.6.8.2 added to advise interpretation of the permitted density for holiday accommodation developments which is the same as the Residential Density Code for the land.

5.6.9 Potable Water Supplies

Clause reworded to include reference to obligation to connect to Water Corporation reticulated water supply network where available.

5.7 Miscellaneous Use and Development Requirements

Changes include:

5.7.1 Minerals and Basic Raw Materials Activities

New clause 5.7.1.2 added to require planning approval for all extractive industries. Clause 5.7.1.3 added to strengthen powers available to control and impose conditions on the development of extractive industries.

5.7.2 Agriculture – Intensive and Animal Husbandry – Intensive Activities

New clause 5.7.2.1 added to require planning approval for all intensive agriculture and intensive animal husbandry activities. Clause 5.7.2.2 modified to strengthen powers available to control and impose conditions on the development of intensive agriculture and intensive animal husbandry activities including requirement for Nutrient and Irrigation Management Plan (NIMP) and consultation with relevant government agencies.

5.7.3 Tree Plantation Activities

Clause 5.7.3.1 modified to require all tree plantations prepare a Plantation Management and Harvesting Plan as part of their application requirements. Clause 5.7.3.2 modified to strengthen powers available to control and impose conditions on the development of tree plantations including consideration of the plantation's proximity to remnant endemic vegetation or impacts on any existing conservation areas.

5.7.4 Home Business

Clause 5.7.3.1 modified to require planning approval for all home businesses. Existing clause deleted as it replicates the definition of a home business in the scheme. Clause 5.7.4.2 reworded to retain condition of approval for home business is not transferable upon the sale of the land etc.

5.7.5 Development of Other Structures

New clause added to deal with minor building developments such as outbuildings, carport, pergola, shadehouses, kennels, stables, fowlhouse etc. Clause enables Council the power to control and impose conditions relating to height, area, setbacks and construction materials of these structures through an adopted Local Planning Policy.

5.8 Site and Development Requirements

Changes include:

5.8.1 Vehicle Access

Clause retitled to 'Vehicle Access/Egress onto Major/Priority Roads, Road Widening, Unconstructed or Substandard Roads and Loading/Unloading and Service Areas' and now combines several of the previous related individual clauses/controls into 1 clause. Additional subtitles added.

5.8.3 Designated Building Envelope

Sub-clause E deleted (Note: these controls have been moved to the Conservation zone).

5.8.4 Use of Setback Areas

Minor rewording to clarify intent to control uses of land within setback areas.

5.8.5 Parking Requirements

Clause retitled to 'Parking Requirements' and now combines several of the previous individual clauses/controls into 1 clause. Additional subtitles added.

5.8.6 Parking of Vehicles, Boats, Caravans and Trailers

Clauses reworded to clarify intent. Vehicles are restricted to no more than 2t unless approval to park a larger vehicle is granted by Council and sets standard requirements for any approval.

5.8.7 Site Requirements

Table reworded to ensure cross reference with other changes and clarify requirements.

5.8.8 Bin and Refuse Storage Areas

Clause reworded to include tourist uses.

5.8.9 Landscaping Requirements

Clause modified. New table advising of Landscaping Requirements created from existing Development Table including changes to cross reference with other changes. and clarify requirements

5.8.10 Landscaping of Demolished Building Sites

New clause added to require landscaping of sites when buildings are demolished in Regional Centre, Hotel/Motel and Neighbourhood Centre zones and the site will remain vacant for more than 6 months.

5.9 Structure Plans, Development Contribution Plans and Detailed Area Plans

This section has been relocated from Part 6 Special Control Areas and has been reworded to comply with the Model Scheme provisions prepared by the Department of Planning. This clause now includes provisions relating to Structure Plans, Detailed Area Plans, continued operation of existing Structure Plans, ODP's etc., and Development Contribution Areas/Plans.

Part 6 – Special Control Areas

Part 6 reworded and existing Schedule 5 deleted. Down Road relocated to Schedule 3 – Restricted Uses and Pendeen Road relocated to Schedule 11 – Industry Zone and provisions reworded to be consistent with existing controls. Long-term urban land deleted and dealt with as Future Urban zoned land. Albany Foreshore relocated to Schedule 4 – Special Use zone and existing controls transferred into scheme.

All clauses reworded to clarify intent of the controls and the requirement for planning approval to be granted for certain activities including non-habitable buildings.

Part 8 – Development of Land

Changes include:

8.2 Permitted Development

Sub-clause (a) reworded to clarify some exempted classes of development including cut/fill activity and dwellings in certain zones; where they require reduced setback from a watercourse; is in an area susceptible to acid sulphate soils or bush fire risk; or requires an on-site water supply, is an exempt advertisement or involves rural works.

Part 9 – Applications for Planning Approval

Changes include:

9.2 Accompanying Material

Sub-clause (a) reworded to include additional requirement for applications to provide plan and information and assessment of any vegetation on the site, assess the fire hazard of the site and identify any waterways or drains on or adjacent to the site. Sub-clause (c) reworded to include requirement for land capability/suitability studies may be required to support an application.

Part 10 – Procedure for Dealing with Applications

Changes include:

10.10 Appeals

Minor rewording of clause to conform to MST. Third-party appeals retained.

Schedule 1 – Dictionary of Defined Words and Expressions

Changes include:

1. General Definitions

Addition of definitions to cross reference with terms and expressions in text and to conform to MST.

2. Land Use Definitions

Addition of definitions to cross reference with all land use classes in Zoning Table and text and to conform to MST.

Schedule 2 – Additional Uses

Changes include:

- Addition of some sites to cross reference with existing approvals.
- Minor rewording of some existing sites provisions to be consistent with the existing approvals.
- Approved Development Plans to be added to final text.

Schedule 3 – Restricted Uses

Changes include:

- Numbering.
- Additional sub-clauses added to CSBP fertiliser storage site regarding site contamination investigation and remediation, hydrology and buffer to Hanrahan Road.
- Approved Development Plan for Down Road Industrial Area to be added to final text.

Schedule 4 – Special Use Zones

Changes include:

- Numbering.
- Additional sub-clauses added to Pt Lot 660 La Perouse Road in accordance with the City's decision when adopting the draft LPS1 in February 2009.
- Additional sub-clauses added to Lot 1 & 2 Frenchman Bay Road in accordance with the City's decision in November 2010.
- Added new site for the Albany Foreshore Development Area (SU15) transferred from Special Control Area 9 with existing controls transferred from adopted Structure/Precinct Plans.
- Added new site for Lots 731 & 732 Wellington Street, Centennial Park with existing controls transferred from approved amendment.
- Added new site for Lot 734 Barker Street, Centennial Park with existing controls transferred from approved amendment.
- Added new site to transfer existing scheme controls to Lot 22 Link Road, McKail.
- Added new site for existing Elleker Store.
- Added new site to transfer existing controls to Lot 7250 Gwydd Close, Elleker.
- Added new site to transfer existing controls to Lot 200 Two Peoples Bay Road, Kalgan.
- Added new site to transfer existing controls to Lot 2 Albany Highway, Drome.
- All approved Development Guide Plans to be added to final text.

Schedule 5 – Special Control Areas

Changes include:

- Renamed to Exempted Advertisements.
- Deletion of previous Schedule 5 Special Control Areas (SCA) which were transferred to Part 6.
- Replaced with table of Exempted Advertisements transferred from existing scheme/policy.

Schedule 6 – Advertisements

Changes include:

- Renamed to Form of Application for Planning Approval.
- Deletion of previous Schedule 5 Categories of Signs which have been transferred to the adopted local planning policy.
- Replaced with MST Application Form.

Schedule 7 – Form of Application for Planning Approval

Changes include:

- Renamed to Additional Information for Advertisements.
- Replaced with MST Application Form for Advertisements.

Schedule 8 – Additional Information for Advertisements

Changes include:

- Renamed to Notice of Public Advertisement of Planning Proposal.
- Replaced with MST Notice of Application Form.

Schedule 9 – Notice of Public Advertisement of Planning Proposal

Changes include:

- Renamed to Notice of Determination on Application for Planning Approval.
- Replaced with MST Determination of Application Form.

Schedule 10 – Notice of Determination of Application for Planning Approval

Changes include:

- Renamed to Environmental Conditions.
- Replaced with MST Table for Environmental Conditions.

Schedule 11 – Environmental Conditions

Changes include:

- Renamed to Industry Zone.
- Replaced with Table including Ardess, Pendeen, Milpara and Mirambeena Industrial Areas and transferred existing controls from the schemes.

Schedule 12 – Notice of Comply with Planning Approval

Changes include:

- Renamed to Conservation Zone.
- Replaced with Table for Nullaki, Rainbows End, Torbay Beach and Boolgana Court Conservation Zones and transferred any existing controls from the schemes.

Schedule 13 – Community Infrastructure Development Contribution Plans for Structure Plan Areas

New Schedule as required by MST for development contribution plans. Currently contains Bayonet Head Structure Plan area (to be completed).

Schedule 14 – Rural Residential Zone

New Schedule to include all existing special rural zones and transferred any existing controls from the schemes.

Schedule 15 – Special Residential Zone

New Schedule to include all existing special residential zones and transferred any existing controls from the schemes.

16. The above serves to highlight and summarise the major changes only. Councillors have previously been provided with a 'marked up copy' of the revised draft LPS1 with additions in red text and deletions in strikethrough text at the July briefing session.
17. In general when dealing with the EPA and DoP advice, administration sought to accommodate the modifications and suggestions wherever possible subject to it not altering the intent of the draft LPS1 adopted by the City in February 2009.

18. Modifications to the original draft LPS1 (February 2009 version) suggested by the DoP and not accepted or accepted in part by administration are summarised as follows:
- Selectively including/deleting some land use classes and definitions to cross reference the Zoning Table.
 - Retaining the existing controls for heritage protection.
 - Selectively changing some objectives for the various zones.
 - Changing some permissibility's for land use class within the various zones.
 - Retaining the MST wording for approvals and permitted development clauses.
 - Altering the wording of the appeal clause (Clause 10.10).
19. The altering of the wording of the appeal clause (Clause 10.10) to effectively remove third-party appeals was not accepted by administration as directed by Council. This matter is discussed below:

Third-Party Appeals

20. The DoP have requested that the City modify the wording in Clause 10.10 'Appeals' to reflect the MST wording. The MST wording refers to 'An applicant' rather than 'Any person' as contained in the draft LPS1 and this would therefore effectively remove the ability for third-party appeals to be lodged.
21. Administration have advised the DoP that the City does not accept their suggested modification and will retain 'Any person' with some minor rewording to more closely reflect the wording used in the MST.
22. To support the retention of the third-party appeal rights within draft LPS1, administration reviewed planning literature, articles, presentations, SAT and Town Planning Appeals Tribunal and other data and sought legal advice on the benefits and arguments against third-party appeal rights as contained within existing TPS3 (the legal advice has previously been circulated to all Councillors). The information used to provide some of the comments has been obtained from various sources including 'Third-Party Appeal Rights: Past and Future', Judge Christine Trenorden; 'Some Observations of a Practitioner Through Four Appeal Tribunal Generations', Denis McLeod (2009) given to the Town Planning Law – Past, Present and Future Conference 18/11/2009; '3rd Party Appeal – An Information Paper' Property Council of Australia (WA Division) (2001); other planning literature and Town Planning Appeals Tribunal and State Administrative Tribunal data.
23. In considering the information it should be remembered that different States maintain different types of third-party appeal rights (both within the enabling Act and some local planning schemes) and this advice is based on a summary of the City's experience (which is in a unique position in the State) having these rights within an existing local planning scheme.

24. The benefits that third-party appeal rights provide and the City's experience can be summarised as follows:

1. Improved Public Participation in Planning Decision Making

One of the benefits of the inclusion of third-party appeal rights is that it allows the community to participate more directly in the planning decision making process over time as it affects their area. This level of participation cannot be achieved through 'normal' planning consultation processes such as submissions provided during the preparation of a planning scheme and enables a more multi-level consideration of planning proposals over the expected life of a scheme (generally 5 – 10 years and frequently more).

Third-party appeal rights ensure that local stakeholders other than just the Local Government or developer participate in determining the preferred land use and development options for the local area.

Some argue that the introduction of the State Administrative Tribunal (SAT) and the powers available under their Act sufficiently allows for other interested parties to participate in appeals. Whilst SAT have shown a willingness to allow third-parties to participate in appeals and will consider a wider range of community views in determining appeals than perhaps has occurred in the past, it does not improve participation in the plan making process. It is not the same as having the third-party appeal rights drafted directly into the LPS1 which clearly states the intention of the City and provides the maximum opportunity for community participation.

2. Better Decision Making

Third-party appeal rights facilitate improved public participation which generates a more diverse range of views for consideration on a planning proposal. The ability to consider a wider range of stakeholder views will inevitably improve the quality of the decision.

A third-party appeal that leads to changes in the original decision shows the positive benefits to the ability for members of the community to appeal to the independent State Administrative Tribunal, rather than the right being enjoyed by just the applicant.

3. Good Governance

Third-party appeal rights contribute to greater transparency by increasing public participation and scrutiny of planning decisions which improves overall governance. It provides a significant and effective deterrent to potential for collusive behaviour between parties.

The inclusion of the existing appeal clause is important as it represents a significant improvement to present MST wording in terms of providing for greater transparency in land use planning decision making.

4. The Interest of Third-Parties

Many developments have impacts well beyond the development site and the applicant is not the only stakeholder affected by a planning decision. To that end, third-party appeal rights enable the legitimate interests of surrounding and affected landowners of an area to participate in the decision making process.

To date, SAT has accepted all third-party appeals within the City which indicates that they accepted the appellants had a legitimate right for their views to be heard on the proposal. No appeal has been struck out due to the SAT deciding the appellants were being vexatious or had not shown an acceptable connection to the proposal and/or there was insufficient planning merit to warrant a review.

5. City of Albany's Experience

The introduction of appeal rights under planning schemes dates from 1983 when the then *Town Planning and Development Act 1928* was amended to introduce a general ability for 'applicants' to appeal against discretionary decisions made by Local Government. Prior to that, it was essentially the responsibility of the person drafting a particular town local planning scheme to include an appropriate appeal clause.

The former Shire's Town Planning Scheme No. 3 was gazetted in February 1980 which is the only operative scheme within the City with the specific third-party appeals. The Scheme Report prepared to support the Scheme Text does not indicate the reasons for the wording of the existing clause. The retention of these rights was most recently considered and supported by the City in March 2007 (Item 11.3.3) during the drafting of LPS1 where it was resolved:

THAT Council instructs staff;

- (1) to utilise Clause 14 of Schedule 7 of the Planning and Development Act 2005 when drafting the Albany Community Planning Scheme, to confer upon persons aggrieved by the exercise of a discretionary power a right to apply to the State Administrative Tribunal for a review of the exercise of the power; and*
- (2) to utilise all the means at the City's disposal, including the recourse to law, to ensure the Minister gives effect to Council's intention.*

Within the City, the use of third-party appeals has been positive with very limited numbers over the life of Scheme No. 3 and the decision on the appeal has mostly resulted in a variation of a development approval or to alter the conditions to address a concern and prevent adverse impacts from occurring within the area. This outcome in itself shows the benefits of a more open planning system, where an independent review can be sought that can incorporate this local knowledge into land use planning decision making processes.

The City has not been faced with any known abuse of the third-party appeal rights over the life of Scheme No. 3. Protection against future abuses rests with the State Administrative Tribunal (SAT), who can strike out any proceeding that it believes to be:

- (a) frivolous, vexatious, misconceived or lacking in substance;
- (b) being used for an improper purpose; or
- (c) otherwise an abuse of process.

25. The arguments against third-party appeal rights and the City's experience can be summarised as follows:

1. Fear Use of Third-Party Appeal Rights to 'Open the Floodgates' or as a 'Second Bite of the Cherry'

Some developers fear the inclusion of third-party appeal rights allows the community to lodge appeals that might have little merit or be considered vexatious and which cause delays in the development proceeding that increases the overall costs of the development and affects project viability.

This has not been the City's experience with appeals against its decisions which are summarised in the following table:

No.	Citation	Appellant	Appeal Outcome
1	[2000] WATPAT 12	Friends of the Bibbulman Track & Ors	Appeal dismissed. City's decision affirmed.
2	[2001] WATPAT 10	H Buttfeld & Ors	Appeal allowed. City's development approval for firewood cutting/storage set aside, application refused.
3	[2003] WATPAT 142	Bennett Range Pastoral Pty Ltd & PA Albiol	Leave to appeal granted.
4	[2004] WATPAT 32	B Kennedy	Appeal allowed. City's development refusal set aside, application for oversized outbuilding approved subject to conditions.
5	[2004] WATPAT 109	Bennett Range Pastoral Pty Ltd & PA Albiol	No data available.
6	[2004] WATPAT 194	PR & CA Cox	Appeal allowed. City's refusal for reduced setback set aside.
7	[2005] WASAT 112	RJ Dekker	Appeal dismissed. City's refusal for reduced setback affirmed.
8	[2006] WASAT 97	Ridgecity Holdings Pty Ltd	Leave to amend plans granted.
9	[2006] WASAT 187	Ridgecity Holdings Pty Ltd	Appeal dismissed. City's development refusal affirmed.
10	[2007] WASAT 27	R Thurecht	Appeal allowed. City's development refusal set aside, application for oversized outbuilding approved subject to conditions.
11	[2008] WASAT 211	PF Morgan	Appeal allowed. City's development refusal set aside, application for motorcycle training

No.	Citation	Appellant	Appeal Outcome
			approved subject to conditions.
12	[2008] WASAT 251	HJ Smith, DM Burke and JM Smith	Appeal allowed in part. City's development refusal set aside in part, refusal of application for retaining wall affirmed and application for boat ramp is approved subject to conditions.
13	[2009] WASAT 38	PB Atwell	Proposed use is not capable of being approved. City's development refusal affirmed.
14	[2009] WASAT 45	R & R Stewart	Appeal dismissed. City's development approval affirmed, condition of approval modified.
15	[2009] WASAT 73	K Wignall	Appeal dismissed. City's development refusal affirmed. Orders for unauthorised outbuilding to be demolished affirmed.
16	[2011] WASAT 85	DG Curlewis & Ors	Currently progressing. Final hearing to be held in late September 2011.

From the above simple analysis (July 2010), there has only been 3 third-party appeals (highlighted above) lodged against the City's decisions which represents approximately 19% of all appeals over a scheme that was introduced in 1980 and has been subject to some 300 amendments.

Whilst the types of third-party appeal rights varies across different States in Australia, this figure is significantly lower than the 32% of total appeals lodged in Victoria (during 2007 – 2008) and is consistent with the 16% of total appeals lodged in South Australia (during 2008 – 2009). Whilst the number of appeals will inevitably fluctuate, from the table above, the City has not been required to deal with an increased number of appeals due to the existence of the third-party appeal rights.

Of the decisions made on third-party appeals, the City's decisions have been affirmed in 1 matter; set aside in 1 matter; with the other still pending (for No. 20 Grove Street West, Little Grove). The small amount of data showing an existing 50/50 ratio on outcomes of third-party appeals within the City does not allow any detailed interpretation. It certainly does not support the contention that inclusion of the term 'Any person' in the appeal clause represents an 'opening of the flood gates' for third-party appeals.

Some developers comment that third-party appeals allow a 'second bite of the cherry' for an objector to developments when the land has been properly zoned and the use and development is consistent with applicable planning laws. The experience of the City does not support this view.

2. Delays and Costs of Third-Party Appeals

The introduction of third-party appeal rights may result in delays to the commencement of projects and increase associated costs. The data available shows that the average time from lodgement to finalisation of a third-party appeal ranged from 14 – 19 weeks in Victoria (2002/2003 – 2007/2008) and 16 – 23 weeks in South Australia (2004 – 2009). Of the data available for the City, the average time from lodgement to finalisation of applicant appeals ranges from 8 – 44 weeks with an average of 25 weeks. The limited amount of data on third-party appeals shows that the average time from lodgement to finalisation of the third-party appeals in the City ranged from 20 – 32 weeks (average 26 weeks).

The SAT has a more informal, no-costs approach to deal with appeals than is evident in other jurisdictions and this minimises the delay and cost associated with appeals generally (and by inference third-party appeals) where mediation results in many appeals being determined as a result and therefore avoiding full hearings etc.

The costs to the City associated with defending a third-party appeal do not differ from those required to defend an applicant appeal.

It is accepted that developers risk delays through the appeal process which can lead to project costs increasing. It is also clear that the majority of appeals within the City are lodged by developers as applicants rather than third-parties and that the average time for determining an appeal does not differ greatly. The ability of either party to appeal under the various legislation available in Australia gives rise to the potential for delays rather than any right specifically provided to a third-party.

3. Abuse of Third-Party Appeal Rights and Heightens Uncertainty in Planning

Objectors to third-party appeal rights often cite the opportunity for ‘meddlers’ to use the powers to frustrate a particular development from proceeding, even when there are no planning grounds or other public interest justification to support the appeal.

The use of third-party appeal rights within the City is limited and has by all accounts been effective as it has led to either a variation or reversal of the original decision. The decision of the Tribunal to overturn the original decision in itself shows that the third-parties had shown sufficient merit in their case.

The City is aware of other appeals lodged where there has either been insufficient interest shown by the appellant or the appellant might have sought a ‘secret’ hearing (such as without the proponents being present or refusing to provide the respondent with the details of the appeal) and the appeal has been subsequently been withdrawn and/or ceased which is proper.

As stated above, protection against future abuses of third-party appeals rests with the SAT. The notion that third-party appeal rights will heighten uncertainty in planning decision making is also misleading. A development compliant with the planning codes and policies etc for the area; properly designed; and having no adverse impact on the neighbours or amenity of the area should not be concerned with any third-party appeal rights.

In summary, whilst there is not a lot of data currently available to the City, the data available does show there is nothing to fear from third-party appeals or their impacts. The City has had these third-party appeal right powers in an existing local planning scheme for over 30-years and they have not led to any of the problems identified by the objectors occurring.

The DoP/WAPC have not provided any specific reasons justifying the removal of the third-party appeals, other than it is not consistent with the MST clause. Administration is unaware of any SPP or similar policy/practice note prepared by the DoP/WAPC that supports their position or the removal of the wording 'Any person'. Given this, there appears to be no reason why the City cannot maintain the present appeal clause in draft LPS1.

Moratorium

- 26. Administration also recommends that the City advise the planning industry that a moratorium on new scheme amendments and scheme amendment requests will be considered upon the WAPC granting its consent to advertise the draft LPS1. This would enable those amendments that are already in the system to be completed and incorporated into the new scheme.
- 27. There is no benefit in the City accepting and commencing a scheme amendment or scheme amendment request when it is likely that it would not be completed in time for the finalisation of the new scheme. If an amendment is not completed in time for the gazettal of the new scheme, the proponents would be required to complete a new scheme amendment under the new scheme, unless the Minister was to invoke certain powers under the Act and direct the City to modify its scheme.
- 28. At the time of writing this report, there are 3 scheme amendment requests and 20 scheme amendments (6 for TPS1A and 14 for TPS3) still in process as set out in the following tables:

Scheme Amendment Requests

Location	Purpose
Catalina & Chester Pass Roads, Lange	To facilitate the development of a Discount Department Store
Lower Denmark Road, Elleker	Rural to Residential
La Perouse Court, Goode Beach	Rural to Special Use

Scheme Amendments to TPS1A

No.	Location	Purpose
177	Emu Point ODP	Future Urban to Residential and Parks & Recreation Reserve
176	n/a	Amend Future Urban Zone
162	Hardie Road, Spencer Park	Clubs and Institutions to Residential
161	Central Area	Amend R-Codes
159	Katoomba Street, Orana	Parks & Recreation Reserve to Residential
149	Flemington and Abercorn Street, Orana	Public Purpose and Parks and Recreation to Residential

Scheme Amendments to TPS3

No.	Location	Purpose
309	Bon Accord Road, Kalgan	Rural to Special Rural
308	Cosy Corner, Kronkup	Rural to Special Rural
307	Swan Point/Nanarup Roads, Swan Point	Rural to Special Rural & Special Residential
304	Rufus Street, Milpara	Residential Development to Special Residential
302	Rowney Road, Robinson	Modify Subdivision Guide Plan
300	Federal Street, McKail	Rural to Special Residential
299	Chester Pass Road, King River	Rural to Special Rural
298	Terry Road, Walmsley	Rural to Residential Development
297	Rocky Crossing Road, Warrenup	Rural to Special Residential & Parks and Recreation
295	Frenchman Bay Road, Frenchman Bay	Parks and Recreation to Residential Development
294	Rocky Crossing Road, Warrenup	Special Rural to Special Residential
293	McBride & Karrakatta Road, Goode Beach	Modify Subdivision Guide Plan
275	Pine Rise, Kalgan	Special Use to Special Rural
266	Frenchman Bay Road, Robinson	Rural to Residential Development

29. Those amendment proposals that are affected by any moratorium may also be provided as submissions on the draft LPS1 when being advertised. This would enable these planning proposals to be considered during the process of finalising the draft scheme.
30. The time for commencement of any moratorium is entirely for the City to determine. Administration recommends that it commence when the scheme is approved for advertising by the Minister. Given the expected timeframe for the processing of the draft LPS1 including the advertising, consideration of submissions, completing modifications to text/maps and approval by the City/DoP and Minister is approximately 12 months, this should allow time for those affected amendments to be completed.

GOVERNMENT CONSULTATION

31. The revised draft Scheme Text and Maps have been referred to the EPA and DoP for assessment and comment and administration have met with these agencies on numerous occasions since February 2009 to discuss their requirements and provide responses to their suggestions for the draft LPS1.
32. The EPA has advised that the revised draft LPS1 has adequately implemented their previous advice and recommendations.
33. Following consideration of this revised draft LPS1, the DoP will then prepare a report for consideration by the WA Planning Commission and Minister for Planning on the appropriateness of the scheme and whether to give or withhold consent for the scheme to be advertised and with or without modifications.
34. The DoP (Great Southern Office) has provided verbal advise that the revised draft LPS1 has adequately implemented their suggested modifications and changes on the initial draft LPS1 excepting the wording of the appeal clause (discussed above).

PUBLIC CONSULTATION / ENGAGEMENT

35. Upon acceptance by the Minister or authorised person, the draft LPS1 is required to be advertised for public comment for a minimum period of 3 months. As the likely timeframe for public consultation is during the Christmas/School breaks which are a typically busy time in the City, Council may consider extending the advertising period by a month accordingly.
36. Given the importance of ensuring effective opportunity for the community to review the draft LPS1 and contribute submissions, administration recommends the City undertake additional tasks during the submission period including:
- Public displays are held in locations around the City.
 - Public information sessions are held in locations around the City.
 - Information pamphlets be prepared and distributed to residents to inform them of the preparation of the new scheme and their opportunity to comment.
 - Inclusion of regular press articles summarising aspects of the draft scheme using press and radio outlets.
 - 1-on-1 meetings with targeted stakeholder groups such as Albany Port, Progress Associations, Speedway, Heritage Groups, etc.

STATUTORY IMPLICATIONS

37. The preparation of all local planning schemes is governed by the *Planning and Development Act 2005* and associated *Town Planning Regulations 1967*.
38. The following table provides a summary of the processes and progress for preparing the new planning scheme (with the existing progress status highlighted):

No	Task	Progress to Date
1	Initiate the draft LPS1	February 2009
2	Forward draft LPS1 to EPA and DoP/WAPC for assessment and comment	February 2009
3	EPA determine if draft LPS1 requires formal or informal environmental review	EPA does not require formal assessment (May 2010) with advice and recommendations provided. Final modifications agreed (April 2011).
4	DoP provide comments and suggested modifications on LPS1	Final modifications agreed (May 2011). Third-party appeal rights retained in revised draft LPS1.
5	Revised draft LPS1, incorporating suggested modifications, adopted by City	expected September 2011
6	Forward draft LPS1 to DoP/WAPC for approval to advertise	expected September 2011
7	Minister for Planning grants approval for draft LPS1 to be advertised for public comment	expected December 2011
8	Draft LPS1 advertised for public comment for 3-months (4	expected December 2011 –

No	Task	Progress to Date
	months recommended to cater for Christmas Period)	April 2012
9	City considers submissions and recommends modifications to draft LPS1 as a result of submissions received	expected June 2012
10	City refers draft LPS1, submissions and recommendations to DoP/WAPC for consideration and final approval	expected June 2012
12	Minister approves new LPS1 subject to modifications	expected August 2012
13	LPS1 gazetted and existing town planning schemes revoked	expected August 2012

STRATEGIC IMPLICATIONS

39. The recently adopted City of Albany Strategic Plan (2011-2021) states under the Key Focus Area of *'Sustainability and Development'* the following community priorities in relation to this item:

"Single Town Planning Scheme

Amalgamate Town Planning Scheme 1A and Town Planning Scheme 3 into one definitive plan that includes:

- A. Greater flexibility in housing options so there is greater property diversity;*
- B. An increase in mixed use developments and dwellings, particularly in the CBD;*
- C. Clearly defined "rules" and then ensure consistent application;*
- D. Streetscape development guidelines for private development projects and a streetscape master plan for the City;*
- E. Definitions of the type and location of future residential housing;*
- F. High density housing of up to three levels in approved areas to reduce urban expansion;*
- G. Restrictions to development in prime locations and in accordance with a coastal policy;*
- H. Protection of natural reserves;*
- I. Flexibility for development in key tourism areas;*
- J. The establishment of green belts around Albany;*
- K. A requirement for developers to turn drainage basins into living streams or parks;*
- L. Strategies to prevent urban sprawl;*
- M. Strategies to retain prime agricultural land."*

40. The following comments are made in relation to the above:

- A. The new scheme proposes the split-coding of suitable residential areas around the City to encourage a diversity of lot sizes and dwelling types. The recent review of the R-Codes by the WAPC, which is used by all local governments to control residential developments within the State, will also enable a greater diversity of housing over time to be achieved (including aged persons accommodation).
- B. The new scheme creates a specific mixed use zone for areas around the CBD.
- C. The new scheme (based on the Model Scheme Text) has been drafted to clearly define the 'scheme rules' in plain English. The new scheme combines 5 existing schemes operating in the City and will ensure that all applications are assessed against a common set of criteria and dealt with in a consistent manner.

- D. The new scheme maintains the City's current requirement to require the preparation and implementation of building and streetscape development guidelines when necessary. This requirement may be triggered by topography, transport, landscape, heritage or streetscape issues that necessitate the preparation of these guidelines.
 - E. The new scheme supports the outcomes of the Albany Local Planning Strategy and has included some of the areas of land identified within ALPS within appropriate residential or future urban zones. As with greater flexibility, the incorporation of split-coding of suitable residential areas around the City and review of the R-Codes will encourage a greater diversity of lot sizes and dwelling types.
 - F. Common with some of the other outcomes, the reduced lot sizes expected from some of the split-coded areas and review of the R-Codes will encourage a greater diversity of dwelling types, including grouped and multiple dwellings.
 - G. The new scheme includes the requirement that in assessing any land use or development proposals in the vicinity of the coast, the Local Government shall have due regard to State Planning Policy 2.6 (State Coastal Policy) and "*Southern Shores 2001 - 2021 - A Strategy to Guide Coastal and Marine Planning and Management in the South Coast Region of Western Australia*".
 - H. The new scheme includes requirements to protect natural areas (both public and private) through scheme reservation through to planning controls that can be imposed on individual proposals.
 - I. The new scheme has introduced several zones including tourist residential, regional centre, hotel/motel, caravan and camping and agriculture zones to control tourism developments within the City. In conjunction the Scheme incorporates the key recommendations from the Tourism Accommodation Planning Strategy.
 - J. The new scheme requires the protection of conservation areas including coastal/rivers, topography/vegetation to create green-spines or ecological corridors between significant natural areas.
 - K. The new scheme requires all development incorporate water sensitive urban design principles and best management practices which would include the design of some drainage basins into landscape features.
 - L. The new scheme supports the outcomes of the Albany Local Planning Strategy and has only included certain areas within appropriate residential or future urban zones to assist/control development fronts and discourage urban sprawl.
 - M. The new scheme has introduced a specific priority agriculture zone to assist with the aim of retaining prime agricultural land within the City for food production.
41. The completion of a new planning scheme for the City, based on the strategic land use direction promoted in ALPS, and which consolidates the various existing planning schemes will assist the City deliver on its strategic plan for Albany.

POLICY IMPLICATIONS

42. Council has recently reviewed its planning policies and has adopted a Local Planning Policy Manual. On gazettal of the Scheme a review of the policy framework and how such policies will support the new Planning Scheme will need to be undertaken.

RISK IDENTIFICATION & MITIGATION

43. The risk identification and categorisation relies on the City’s Risk Management Framework.

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Revised draft LPS1 not adopted by Council. This would result in the City continuing to utilise the present multiple and dated schemes.	Possible	Medium	High	Mitigation entirely dependent on Council.
WAPC grants consent to advertise the Scheme, but with a modification that requires the removal of all references to third party appeals. If this occurs it has the potential to delay the advertising of the Scheme, especially if Council is not prepared to undertake the modifications.	Possible	Medium	High	On the basis of previous Council decisions staff have prepared a list of reasons why third-party appeal provisions should be maintained in the City’s combined scheme, and it is recommended that this information is forwarded to the WAPC to adequately convey the City’s position on this issue.

FINANCIAL IMPLICATIONS

44. The costs to undertake the liaison with agency staff and reporting on suggested modifications and completing accepted modifications and the completion of the revised draft scheme text and maps has been undertaken by the Directorate using existing staff resources within existing budget lines.

45. The City 2011/12 includes an amount of \$20,000 to undertake consultation on the draft LPS1. This will be used to complete the tasks identified in the Public Consultation/Engagement section above.

LEGAL IMPLICATIONS

46. Administration has been requested by the DoP staff to remove third-party appeal rights from the draft scheme. Staff have not agreed and maintained that its inclusion reflects previous decisions of the City and continues the existing powers available under Town Planning Scheme 3. The Minister for Planning will ultimately determine the appropriateness of the scheme, including the retention of these appeal rights.

ALTERNATE OPTIONS

47. Council has the following options in relation to the revised draft scheme:

Option A

To accept the revised draft (in part or whole).

Option B

To defer consideration of the revised draft (in part or whole).

Option C

To seek additional information or discussions with the EPA/DoP.

Option D

To not adopt the revised draft.

48. It is recommended that Option A (i.e. the revised draft LPS1 be accepted in whole) be adopted and resubmitted to the WAPC/Minister accordingly.

49. If Option D is pursued, Council's support for the original draft LPS1 (from February 2009) would remain in place. This version is not acceptable to the EPA or DoP without modifications.

SUMMARY CONCLUSION

50. It is recommended that Council adopts draft Local Planning Scheme No. 1 to provide a contemporary framework for the ongoing development of the City.

Consulted References	Draft Local Planning Scheme No. 1 <i>Planning and Development Act 2005</i> <i>Town Planning Regulations 1967</i>
File Number (Name of Ward)	LP.PLA.8 (All Wards)
Previous Reference	OCM 11/4/00 Item 12.1.14 OCM 5/9/00 Item 11.3.1 OCM 16/1/07 Item 11.3.3 OCM 20/3/07 Item 11.3.3 OCM 17/02/09 Item 11.6.1