

**2.2: LOCAL PLANNING SCHEME NO. 1 - MORATORIUM ON SCHEME AMENDMENT REQUESTS/AMENDMENTS**

**Land Description** : N/A  
**Proponent** : City of Albany  
**Owner** : N/A  
**Business Entity Name** : N/A  
**Attachment** : Nil  
**Responsible Officer(s)** : Acting Executive Director Planning and Development Services (S Lenton)

**IN BRIEF**

- For Council to seek Ministerial approval to commence advertising of the draft Local Planning Scheme No. 1 (refer Item 2.1), and the City should impose a moratorium on processing of new scheme amendment requests and/or scheme amendments.

**RECOMMENDATION**

**ITEM 2.2: RESPONSIBLE OFFICER RECOMMENDATION**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**SUBJECT TO A RESOLUTION IN ITEM 2.1 BEING CARRIED IN THE AFFIRMATIVE**

**That Council:**

- 1) **ADVISE** Albany town planning consultancies and advertise publically that as from the date the draft LPS1 is formally approved by the Minister for Planning (or authorised person) for advertising the City will impose a moratorium on considering any new scheme amendment requests and/or scheme amendments during the period of advertising the new scheme.
- 2) **RECONSIDER** the moratorium period at the July 2012 Ordinary Council Meeting based on the number and complexity of public submissions received and likely timeframe to complete the assessment of the submissions.

**CEO:**

**RESPONSIBLE OFFICER:**

## **BACKGROUND**

1. The revised LPS1 was sent to the WA Planning Commission (WAPC) on 21 September 2011. Subsequently, the Department of Planning (DoP) presented the draft LPS1 to the WAPC Statutory Planning Committee on 8 November 2011. The City has now received correspondence from the WAPC advising that the Hon. Minister for Planning is willing to allow the Scheme to be advertised subject to one modification being made.
2. The modification relates to the removal of third party appeal rights from the Scheme, more specifically changing the appeal clause to refer to 'An applicant' rather than 'Any person'. The Council must now consider the modification to the draft LPS1 and determine whether to proceed, or not, with the draft scheme (see Item 2.1). The decision of the Minister requires the draft scheme to be modified prior to advertising and this effectively rules out 3<sup>rd</sup> party appeals. Whilst this decision of the Minister is disappointing, especially given the evidence provided by the City to support their retention of this appeal right, the Minister's decision is final. It would not prevent any person providing a submission during the advertising requesting the City include the powers in the final draft.
3. The Minister's approval to commence the advertising of the draft LPS1 was received on 3 January 2012 and staff are in the process of finalising advertising material to assist ratepayers' understanding of this important planning document. Dependent on the Council's decision regarding the modification, the advertising (for 4 months) is proposed to commence in late February in accordance with the *Planning and Development Act* and associated Regulations.

## **DISCUSSION**

4. With the imminent advertising of the draft LPS1, the City should consider the timeframe for the advertising, consideration of submissions and process for final approval of the Scheme and the impact it will have in dealing with scheme amendment requests (SAR) and/or scheme amendments (SA) to the City's present operative planning schemes (TPS's 1A, 2, 3, 3.2B and 7).
5. Council is referred to the officer's report for Item 2.1 regarding advertising the draft LPS1.
6. It is normal planning practice, that where a local government has been granted approval to advertise a draft scheme, a moratorium is imposed on new Scheme Amendment Request's (SARs) and Scheme Amendment's (SAs) and the local government will not consider any new planning proposals under the currently operative schemes for the following general reasons:
  - a) Any new SARs and SAs that are commenced now are not likely to reach finality before the new scheme gazettal and if not approved/gazetted would not be incorporated into the new scheme. This would mean that all resources used by town planning firms and City staff in the processing of the SAR or SA would be wasted should the new scheme be approved. There is no benefit in the City accepting and commencing a SAR or SA when it is likely that it would not be completed by the finalisation of the new scheme. 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.
- b) An alternative to a SAR or SA is for landowners to provide a submission on the draft scheme requesting the City consider their proposal within the new scheme rather than amending one of the present schemes and then having to reconcile the two at final approval stage for draft LPS1.
  - c) Enables City staff resources to concentrate on advertising and explaining the new scheme, answering enquiries about the new scheme and its effects on land and compiling/assessing submissions. This should be a priority. The timely processing of the submissions on the new scheme will greatly reduce the impact of any moratorium.
7. The imposition of any moratorium is entirely for the City to determine and there is no legislative requirement to impose a moratorium. The City can simply either resolve to impose a moratorium or still continue to receive and process SARs and SAs to the present schemes.
  8. As required by the September 2011 Council decision, staff have advised town planning consultancies that Council would be considering placing a moratorium on SARs and SAs on receiving notification from the WA Planning Commission that the draft scheme can be advertised. This has ensured that most of the planning proposals that were being prepared by the consultants have now been lodged (as evidenced by the large number of items on this Council Meeting's agenda).
  9. At the time of writing this report, there are still seven SAR and 23 SA (seven for TPS1A and 16 for TPS3) still in process as set out in the following tables:

**Scheme Amendment Requests**

No.	Location	Purpose
151	Reddale Road & Lancaster Road, McKail	Rural to Residential Development
150	Frenchman Bay Road, Big Grove	Public Purposes Reserve to Residential Development
148	Catalina & Chester Pass Roads, Lange	To facilitate the development of a Discount Department Store
143	La Perouse Court, Goode Beach	Rural to Special Use

**Scheme Amendments to TPS1A**

No.	Location	Purpose	Stage/Progress
178	Middleton Rd Lots 50 & 51	Special site medical clinic	In preparation
177	Emu Point ODP, Emu Point	Future Urban to Residential and Parks & Recreation Reserve	In preparation
176	n/a	Amend Future Urban Zone	Awaiting final approval
159	Katoomba Street, Orana	Parks & Recreation Reserve to Residential	At advertising stage
153	Pt 4743 North Road, Yakamia	Future Urban to Residential (R20)	At advertising stage (subject to EPA Environmental Review)
148	Chester Pass Road, Orana	Service Station & Industry	Awaiting final approval

No.	Location	Purpose	Stage/Progress
		and Public Use Reserve to Other Commercial	

**Scheme Amendments to TPS3**

No.	Location	Purpose	Stage/Progress
314	Lot 5 Racecourse Road, Robinson	Proposed modification of subdivision guide plan proposing to modify the Development Exclusion Area	In preparation
312	Oyster Harbour Shopping Centre, Bayonet Head	To modify scheme provisions and increase floorspace allowance for shopping centre	Awaiting initiation by City
311	Cosy Corner Beach Cottages, Kronkup	To modify scheme provisions for Special Use Area 8 to allow grouped dwellings	Awaiting initiation by City
310	Bon Accord Road, Kalgan	Rural to Special Rural	Awaiting initiation by City
309	Nullaki Peninsula Conservation Zone, Nullaki	To modify scheme provisions for Nullaki Conservation Zone to allow caretakers' dwellings	Initiated (being assessed by EPA)
308	Cosy Corner Road, Kronkup	Rural to Special Rural	Initiated (being assessed by EPA)
307	Swan Point/Nanarup Roads, Swan Point	Rural to Special Rural & Special Residential	Initiated (being assessed by EPA)
303	'Candyup' Nanarup Road, Kalgan	Rural to Special Residential	Initiated (being assessed by EPA)
299	Chester Pass Road, King River	Rural to Special Rural	At advertising stage
298	Terry Road, Walmsley	Rural to Residential Development	At advertising stage
293	McBride & Karrakatta Road, Goode Beach	Modify Subdivision Guide Plan	At advertising stage

10. In recommending the imposition of a moratorium on new proposals, those existing proposals listed in the tables above, which have already been the subject of previous decisions of Council, should be exempt from the moratorium.
11. The period of moratorium is entirely for Council to determine. Staff recommend that if imposed, it commence from the time the scheme is approved for advertising by the Minister. Given the expected timeframe of more than one year for the processing of the draft LPS1 including the advertising, consideration of submissions, completing modifications to text/maps and approval by the City/Department of Planning and Minister, this should allow time for those affected SAR and SA to be completed.
12. The moratorium period should be reviewed by the City when the advertising period for submissions has been concluded.

**GOVERNMENT CONSULTATION**

13. Staff have sought comment from the Department of Planning (Perth) on the proposed moratorium. Although the Department has no formal position or advice to offer, they are aware that local governments routinely implement them during the advertising of local planning schemes and support the recommendation.

**PUBLIC CONSULTATION / ENGAGEMENT**

14. Staff have advised all town planning consultancies working within the City of Albany of the proposal for a moratorium as required by Council at its September 2011 meeting.

**STATUTORY IMPLICATIONS**

15. The preparation of all local planning schemes is governed by the *Planning and Development Act 2005* and associated *Town Planning Regulations 1967*.
16. 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	Completed February 2009
2	Forward draft LPS1 to EPA and DoP/WAPC for assessment and comment	Completed 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	completed 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 subject to modification to remove third-party appeal rights	received January 2012
8	City considers Minister's modification and resolves to proceed, or not, with the draft LPS1	expected 21 February 2012
9	Forward modified draft LPS1 to Minister for approval to advertise	expected late February 2012
10	Draft LPS1 advertised for public comment for 4-months	expected March 2012 – June/July 2012
11	City considers submissions and recommends modifications	expected October – November

No	Task	Progress to Date
	to draft LPS1 as a result of submissions received	2012

### STRATEGIC IMPLICATIONS

17. This item directly relates to the following elements of the adopted City of Albany Strategic Plan (2011-2021)

*Key Focus Area*  
Sustainability and Development

*Community Priority*  
Single Town Planning Scheme

*Proposed Strategies*  
Amalgamate Town Planning Scheme 1A and Town Planning Scheme 3 into one definitive plan.

18. The completion of a new planning scheme for the City, based on the strategic land use direction promoted in Albany Local Planning Strategy (ALPS), and which consolidates the various existing planning schemes will assist the City deliver on its strategic plan for Albany.

### POLICY IMPLICATIONS

19. Prior to the finalisation of the new Scheme, staff will need to prepare a list of draft local planning policies to provide further direction to specific clauses within the Scheme.

### RISK IDENTIFICATION & MITIGATION

20. The risk identification and categorisation relies on the City's Risk Management Framework.

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>Moratorium on SAR's and SA's not imposed, then delays and confusion are likely to result whilst the City considers amendments to its current Scheme, whilst at the same time considering submissions on new Scheme.</i>	<i>Possible</i>	<i>Minor</i>	<i>Medium</i>	<i>Mitigation entirely dependent on Council.</i>

### FINANCIAL IMPLICATIONS

21. City resources will be required to process and assess SAR's and SA's and that resource allocation should be the priority to address queries and submissions on the new scheme.

**LEGAL IMPLICATIONS**

22. There are no legal implications as the imposition of a moratorium is not a legislative requirement; it is rather an adopted local government practice to appropriately transition from existing Schemes to a new Scheme.

**ALTERNATE OPTIONS**

23. Council has the following options in relation to the imposition of a moratorium:

Option A

To impose a moratorium from the time of commencing the advertising of the draft scheme, (with the possibility that the moratorium to be reassessed following completion of the submission period.)

Option B

To not impose a moratorium and continue to accept and process SAR and SA.

**SUMMARY CONCLUSION**

24. Imposition of a moratorium for at least the period of advertising the new draft scheme will prevent wasted resources by town planners, development applicants and City staff, during the transitioning of two Schemes to one.

<b>Consulted References</b>	<i>Planning and Development Act 2005</i> <i>Town Planning Regulations 1967</i>
<b>File Number (Name of Ward)</b>	LP.PLA.8 (All Wards)
<b>Previous Reference</b>	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 OCM 20/09/11 Item 2.1