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| **DIS333: ADOPTION OF DRAFT LOCAL PLANNING SCHEME NO. 2** |

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| **Land Description** | **:** | City of Albany. |
| **Proponent / Owner** | **:** | City of Albany. |
| **Attachments** | **:** | 1. Advertised Local Planning Scheme No.2 – Text 2. Advertised Local Planning Scheme No.2 – Maps 3. DPLH Decision Modifications – prior to advertising 4. EPA Decision and Modifications – prior to advertising 5. City Submissions 6. Schedule of Submissions 7. Schedule of Modifications |
| **Supplementary Information & Councillor Workstation** | **:** | Agency Attachments  Public Attachments |
| **Report Prepared By** | **:** | Senior Planning Officer – Strategic Planning (A Nicoll) |
| **Authorising Officer:** | **:** | Executive Director Infrastructure, Development and Environment (P Camins) |

## Councillor Brough declared an Impartiality Interest in this item. Councillor Brough remained in the Chamber and participated in the discussion and vote for this item.

## STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan 2032:

* **Pillar:** Place
* **Outcome:**
  + Responsible growth, development and urban renewal.
  + Interesting, vibrant and welcoming places.
  + Local history, heritage and character is valued and preserved.
  + A safe, sustainable and efficient transport network.
* **Pillar:** Planet
* **Outcome:** 
  + Sustainable management of natural areas; balancing conservation with responsible access and enjoyment.
  + A resilient community that can withstand, adapt to, and recover from natural disasters.
* **Pillar:** Prosperity
* **Outcome:** 
  + A strong, diverse and resilient economy with work opportunities for everyone.
  + A highly sought-after tourist destination.
* **Pillar:** Leadership
* **Outcome:** Grow awareness, understanding and engagement in City projects, activities and decisions.

1. The *Albany Local Planning Strategy 2019* (the Planning Strategy) is the local planning strategy that sets out the long-term planning directions for the Scheme area. The draft Local Planning Scheme No. 2 (LPS2) is developed to align with the strategic objectives and actions identified under the Planning Strategy.

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| **RESOLUTION**  **VOTING REQUIREMENT: SIMPLE MAJORITY**  **MOVED: COUNCILLOR THOMSON**  **SECONDED: COUNCILLOR SUTTON**  **THAT Report Item DIS333: Adoption of Draft Local Planning Scheme No. 2 be considered prior to all other reports.**  **CARRIED 13-0** |

# In Brief:

* The draft LPS2 has been developed in accordance with the Planning and Development (Local Planning Schemes) Regulations (Planning Regulations), and upon gazettal will replace current Local Planning Scheme No. 1.
* The draft LPS2 aligns with the recommendations of the City’s Planning Strategy and will provide consistency between the state and local planning frameworks, that includes state and local planning policies, plus local structure plans and local development plans.
* The draft LPS2 was advertised in accordance with the Planning Regulations, and agency and public submissions were received during the comment period. Following close of advertising, issues raised in the submissions have been considered, with a number of modifications proposed to draft LPS2 to address these.
* Staff recommend Council resolve to support draft City of Albany Local Planning Scheme No. 2 subject to modifications, and to advise the Western Australian Planning Commission (WAPC) accordingly.

## RECOMMENDATION

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| **DIS333: RESOLUTION**  **VOTING REQUIREMENT: SIMPLE MAJORITY**  **MOVED: COUNCILLOR BROUGH**  **SECONDED: COUNCILLOR THOMSON**  **THAT Council Pursuant to Regulation 25(3) of the Regulations, advise the Western Australian Planning Commission (WAPC) that it SUPPORTS the draft scheme with proposed modifications to address issues raised during the advertising process, including the following amendments:**   1. ***Include the following modifications to the schedule of submissions and update the schedule of modifications accordingly;*** 2. ***In the Table 3, Zoning Table, change:***   ***‘Tree Farm’ from ‘D’ to ‘P’ use in the Rural zone.***   1. ***Recommendation 62:***   ***Modify the Schedule 1, Table 8, AR12, ‘Description of Land’, by deleting the following text:***  ***~~R 50239 (Location 8099) and~~***   1. ***Recommendation 63:***   ***Modify Schedule 1, Table 8, AR12, (5)(c) as follows:***   * ***All development shall be sympathetic to existing landscape elements (namely landform and vegetation) in terms of their designs, materials and colour. Wherever metal cladding, the finish used shall be of ~~green~~ dark tones.***  1. ***Recommendation 64:***   ***Include a new provision at Schedule 1, Table 8, AR12, as follows:***   1. ***The use of the land as an exhibition centre may include the exhibiting of marine heritage, flora and fauna and tourism facilities.***   **\**Note: The above recommendation overrides Recommendation 34 in the schedule of submissions and schedule of modifications which state:***  ***Schedule of Submissions***  ***34. Rather than modifying the model scheme definition, it is recommended that a new provision is included at Schedule 1, Table 8, AR12 as follows:***   1. ***The use of the land as exhibition centre may include the exhibiting of marine heritage and flora and fauna.*** 2. ***Recommendation 65:***   ***In Table 3 – Zoning Table change:***   * ***‘Lunch Bar’ from ‘X’ to ‘D’ use in the ‘Industrial Development’ Zone.*** * ***‘Motor Vehicle, Boat or Caravan Sales’ from ‘X’ to ‘D’ use in the ‘Industrial Development’ Zone.*** * ***‘Motor Vehicle Wash’ from ‘X’ to ‘D’ use in the ‘Industrial Development’ Zone.*** * ***‘Recreation-Private’ from ‘X’ to ‘A’ use in the ‘Industrial Development’ Zone.***  1. ***THAT Tree Farm Use remain a “D” Use instead of an “A” Use in Priority Agriculture Zones, as originally advertised during the LPS2 advertisement period.***   **CARRIED 13-0** |

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| **DIS333: AMENDMENT BY COUNCILLOR GRIMMER**  **VOTING REQUIREMENT: SIMPLE MAJORITY**  **MOVED: COUNCILLOR GRIMMER**  **SECONDED: COUNCILLOR TERRY**  **THAT:**   1. **The following recommendations be INCLUDED in the City of Albany Schedule of Submissions:**  * **Recommendation 62:**   **Modify the Schedule 1, Table 8, AR12, ‘Description of Land’, by deleting the following text:**  ***~~R 50239 (Location 8099) and~~***   * **Recommendation 63:**   **Modify Schedule 1, Table 8, AR12, (5)(c) as follows:**  ***All development shall be sympathetic to existing landscape elements (namely landform and vegetation) in terms of their designs, materials and colour. Wherever metal cladding, the finish used shall be of ~~green~~ dark tones.***   * **Recommendation 64:**   **Include a new provision at Schedule 1, Table 8, AR12, as follows:**   1. ***The use of the land as an exhibition centre may include the exhibiting of marine heritage, flora and fauna and tourism facilities.***   **Note: the above recommendation overrides Recommendation 34 in the schedule of submissions and schedule of modifications which state:**  **Schedule of Submissions**  **34. Rather than modifying the model scheme definition, it is recommended that a new provision is included at Schedule 1, Table 8, AR12 as follows:**   1. **The use of the land as exhibition centre may include the exhibiting of marine heritage and flora and fauna.**  * **Recommendation 65:**   **In Table 3 – Zoning Table change:**   * **‘Lunch Bar’ from ‘X’ to ‘D’ use in the ‘Industrial Development’ Zone.** * **‘Motor Vehicle, Boat or Caravan Sales’ from ‘X’ to ‘D’ use in the ‘Industrial Development’ Zone.** * **‘Motor Vehicle Wash’ from ‘X’ to ‘D’ use in the ‘Industrial Development’ Zone.** * **‘Recreation-Private’ from ‘X’ to ‘A’ use in the ‘Industrial Development’ Zone.**   **And**   1. **Pursuant to Regulation 25(3) of the Regulations, advise the Western Australian Planning Commission (WAPC) that it supports the draft scheme with proposed modifications (Schedule of Submissions, Schedule of Modifications and City of Albany Submissions) to address issues raised during the advertising process.**   **CARRIED 13-0** |

**Councillor Reason:**

Recommendation 62: Whale World Request. The Reserve 50293 does not form part of Whale World.

Recommendation 63: Whale World Request: To give a little flexibility but maintaining the intent.

Recommendation 64: Whale World Request. For clarity.

Recommendation 65: Harley Dykstra Request. Industrial Development Zone-To achieve compliance with the aims of the zone.

**Officer Comment:**

Officers have no objection to any of these proposed amendments as they do not change the intent of LPS2.

**Councillor Grimmer then moved a further amendment to the Committee Recommendation.**

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| **DIS333: AMENDMENT BY COUNCILLOR BROUGH**  **VOTING REQUIREMENT: SIMPLE MAJORITY**  **MOVED: COUNCILLOR BROUGH**  **SECONDED: COUNCILLOR THOMSON**  **THAT Tree Farm Use remain a “D” Use instead of an “A” Use in Priority Agriculture Zones, as originally advertised during the LPS2 advertisement period.**  **CARRIED 11-2** |

**Record of Vote**

Against the Motion: Councillors Cruse and Smith

**Councillor Reason:**

1. LPS2 was advertised to the community with tree farming being a “D” use in priority agriculture land.
2. A “D” use enables City of Albany officers to refuse the establishment of a tree farm at the development application stage to ensure that the tree farm is not established on land that is of local, regional or state significance for food production.
3. DPIRD made a submission recommending tree farm use in priority agriculture be changed from “D” use to “A” use, to ensure that there was more time for consideration to refuse an application with regard to carbon farming threatening food production.
4. The DPIRD recommendation was upheld, however in citing reasons why, DPIRD’s two sentences of justification were quoted verbatim without additional analysis as to why DPIRD’s request should be upheld.
5. Regarding DPIRD’s moot concerns about food security in priority agricultural land:
6. None of the activities in the Albany region are critical for food security of our local society, or regionally or for the state of WA; most of the agriculture in our region is focussed on export products that compete in a world market with producers who have less government red tape; and
7. With a “D” use, City of Albany still reserves the right to not grant development approval on the basis of carbon farms gobbling up strategic food-producing lands
8. Regarding concerns about carbon farms, current federal legislation dictates plantation cycles of 25 years (the same duration as a pine plantation cycle), or 100 years. Although 100-year plantation cycles tie up land for a century, they are currently unable to economically compete with other priority agriculture pursuits within City of Albany, and would nevertheless be able to be refused by planning officers under a “D” use on the basis of interference with food production purposes.
9. State Government policy is that tree plantations are an agricultural pursuit like any other; indeed they are a plant-based crop.
10. A ubiquitous aspect of planting any crop, be it canola, wheat, or eucalypts, is that planting must be timed in accordance with the seasons.  Just as wheat is not planted in midsummer, nor are eucalypts or pines.  Yet the lead time for preparing tree plantations is long. Seedlings must be ordered and raised late in the year, and planting must occur in the coming June-July.
11. Delays in planting due to complications arising from advertising will result in flow-on effects include wasted stock (unlike cereal seeds, infant trees can’t be saved for next year and net a total financial loss) or plantation failure due to establishment too late in the season.
12. By requiring an advertisement process in addition to a discretionary use development application, there is:
13. A net increase in administrative burden on the farmer; and
14. Risk of impairment of establishment of the crop with potential lost outlays for seedlings and/or the need to postpone planting for a year.
15. To contextualise, at current market rates, the real economic cost to a farmer wanting to establish a 100Ha eucalypt plantation, who is forced to delay planting by one year due to a lost planting window because of advertising requirements is ~$150,000 in lost earnings (rainfall band ~800mm/yr), excluding any unrecoverable costs in seedlings purchased.
16. Property owners have a right to decide how they use their land, provided it is consistent with the zoning; tree farms, as an agricultural pursuit like any other, are consistent with a priority agriculture zoning.
17. Establishment of an advertising process for a specific type of agricultural development that vests power in the opinions of adjacent landowners’ on essential food production, is inconsistent with good planning principle.
18. By reverting the Priority Agricultural land use to “D”, City of Albany officers remain empowered to refuse any tree farm development application in priority agricultural land on the basis of the inappropriate location, as well as DPIRDs concerns for food security.
19. Simultaneously, the “D” use will deliver justice to farmers through allowing the approval/refusal process to occur in a timely fashion, respectful of the nature of the seasons and the agricultural enterprise.

**Officer Comment:**

As stated in the draft scheme, the purpose of the 'Priority Agriculture' zone is:

*‘To identify land of State, regional or local significance for* ***food production purposes.’***

The Department of Primary Industries and Regional Development (DPIRD) works to protect the sustainability of agriculture, including food production and made a submission on the scheme

DPIRD provided the following in their submission;

*‘Tree Farm can remain a ‘D’ use in the Rural zone but should be an ‘A’ use in the Priority Agriculture zone to ensure that a tree farm is not established on land that is of local, regional, or state significance for food production. This is especially important if the tree farm is for carbon storage (carbon farming) as this has the potential to exclude the land from being used for food production in permanently*.’

Staff recommend upholding the DPIRD submission.

* Both classifications 'D' and 'A', allow for development refusal.
* The 'A' classification requires advertising.
* Advertising gives the DPIRD the opportunity to assess any impact on food security.

In support of this position the Lower Great Southern Strategy 2016 states (section 2.8):

* Given that agriculture is the cornerstone of the economy in the Lower Great Southern, planning should ensure that its agricultural base is protected from loss of agricultural land due to unplanned subdivision and **permanent** land use changes.
* In order to protect agricultural land and guide future land use, zoning, subdivision and development in these areas, WAPC rural planning policy (SPP 2.5) requires priority agricultural land to be zoned priority agriculture in local planning schemes.
* A key difference between priority agriculture and general agriculture zones is the way land uses are treated through local planning schemes. In general, land uses that provide for food production should be given greater permissibility than other land uses in priority agricultural areas.
* From 1988 to the mid-2000s, there was rapid growth in the plantation timber industry in the higher rainfall belt of the Great Southern region. This growth resulted in changes to the landscape, transport usage and rural populations in the Lower Great Southern. More recently farm forestry production has declined following issues with investment schemes: however, there are signs that the industry is stabilising in the region. In addition carbon sequestration plantations may increase into the future. This land use can have impacts from a visual landscape perspective, can result in long term land use change and **can compete with food production land uses on priority agricultural land.** As such there remains a need for State and local planning to manage tree plantations through policies, strategies and schemes.

**And State Planning Policy SPP 2.5 Rural Planning also support this position;**

* “5.6: Tree farming Tree farming is an umbrella term used to describe the planting of trees to generate economic return and/or environmental benefits. It has been a rapidly emerging industry in a number of rural locations across the State. Usually this has involved the planting of trees for harvest. However, more recently the planting of trees for carbon sequestration has emerged as a new rural land use. Tree farming which involves harvesting is a primary production activity that also sequesters carbon. The different types of tree farms, i.e., integrated, chip logs or saw logs, require varied planning approaches.

*(a) tree farming is supported and encouraged on rural land as a means of diversifying rural economies and providing economic and environmental benefit;*

*(b) tree farming should generally not occur on priority agricultural land;*

*(c) tree farming should generally be a permitted use on rural land, except where development of a tree farm would create an extreme or unacceptable bushfire risk or when responding to specific local circumstances as identified in a strategy or scheme;*

*(d) local governments should manage the location, extent and application requirements for tree farming in their communities through local planning strategies, schemes and/or local planning policies;*

*(e) in planning for tree farming, local government considerations should include but are not limited to, potential bushfire risk, environmental and economic factors, water availability and recharge, visual landscape impacts, transport impacts of tree farming (where harvesting is proposed), planting thresholds, appropriate buffers, and location relative to conservation estates and sensitive land uses;*

*(f) where tree farm proposals are integrated with farm management for the purpose of natural resource management and occupy no more than 10 per cent of the farm, the proposal should not require local government development approval; and*

*(g) the establishment of tree farms does not warrant the creation of new or smaller rural lots.”*

It should also be noted that, the Department of Planning Lands and Heritage is unlikely to support a position that will contradict their policy, the Lower Great Southern Strategy and the advice from DPIRD.

**Councillor Brough then moved an amendment to the Committee Recommendation.**

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| **DIS333: COMMITTEE RECOMMENDATION**  **VOTING REQUIREMENT: SIMPLE MAJORITY**  **MOVED: COUNCILLOR BROUGH**  **SECONDED: COUNCILLOR THOMSON**  **THAT Council Pursuant to Regulation 25(3) of the Regulations, advise the Western Australian Planning Commission (WAPC) that it SUPPORTS the draft scheme with proposed modifications to address issues raised during the advertising process, including the following amendment:**   1. ***Include the following modifications to the schedule of submissions and update the schedule of modifications accordingly;*** 2. ***In the Table 3, Zoning Table, change:***   ***‘Tree Farm’ from ‘D’ to ‘P’ use in the Rural zone.***  ***And***   1. ***Pursuant to Regulation 25(3) of the Regulations, advise the Western Australian Planning Commission (WAPC) that it to supports the draft scheme with proposed modifications to address issues raised during the advertising process.*** |

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| DIS333: COMMITTEE RECOMMENDATION (AMENDMENT BY COUNCILLOR BROUGH)  MOVED: COUNCILLOR TERRY  SECONDED: COUNCILLOR SMITH  THAT Council Pursuant to Regulation 25(3) of the Regulations, advise the Western Australian Planning Commission (WAPC) that it SUPPORTS the draft scheme with proposed modifications to address issues raised during the advertising process, including the following amendment:   1. *Include the following modifications to the schedule of submissions and update the schedule of modifications accordingly;* 2. *In the Table 3, Zoning Table, change:*   *‘Tree Farm’ from ‘D’ to ‘P’ use in the Rural zone.*  *And*   1. *Pursuant to Regulation 25(3) of the Regulations, advise the Western Australian Planning Commission (WAPC) that it to supports the draft scheme with proposed modifications to address issues raised during the advertising process.*   CARRIED 11-1 |

**Record of Vote**

Against the Motion: Councillor Grimmer

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| DIS333: AMENDMENT NO.2 BY COUNCILLOR BROUGH  MOVED: COUNCILLOR BROUGH  SECONDED: COUNCILLOR SUTTON  THAT the following amendments be made to Local Planning Scheme No. 2:   1. Include the following modifications to the schedule of submissions and update the schedule of modifications accordingly; 2. In the Table 3, Zoning Table, change:   ‘Tree Farm’ from ‘D’ to ‘P’ use in the Rural zone.  And   1. Pursuant to Regulation 25(3) of the Regulations, advise the Western Australian Planning Commission (WAPC) that it to supports the draft scheme with proposed modifications to address issues raised during the advertising process.   CARRIED 8-4 |

**Record of Vote**

Against the Motion: Councillors Smith, Shanhun, Terry and Cruse

**Councillor Reason:**

1. Tree farming in general agricultural/rural land is currently a permitted use (P).
2. City of Albany planning officers have justified the land use change from (P) to (D) on the basis of fear that someone will lodge a tree farm DA on rural land that planning officers deem inappropriate.
3. City of Albany planning officers have reported that there has never been an instance of a general agriculture/rural tree farm DA being lodged in an area deemed inappropriate by planning by officers.
4. (P) means that the use is permitted if it complies with any relevant development standards and requirements of a Scheme.
5. To establish a tree farm in any location in the state, a farmer must comply with 62 pieces of separate legislation - 17 federal government Acts, and 45 WA state government Acts.
6. Examples of the legislation include:
   * Land Drainage Act 1925 (WA) governing land drainage
   * Bushfires Act 1954 (WA) explicitly limiting plantation establishment within town site influence zones
   * Country Areas Water Supply 1947 (WA) ensuring protection of water catchments
   * Civil Aviation Regulations (AUS) limiting tree farm establishment around airstrips
7. With 62 separate pieces of legislation already governing the establishment of tree farms, the addition of an extra layer of local government red tape is unwelcome and, as suggested by the absence of precedence of problems, unnecessary.
8. A consequence of making tree farming in rural land (D) rather than (P) is that local government will have greater powers to limit freedom of land use in agriculture areas.
9. A possible unintended consequence of this change of use may be price inflation of existing tree farms due to additional red tape for establishment.

**Officer Comment:**

If a use of land is identified in a zone as being a class ‘P’ use, the local government may not refuse an application for development approval for that use in that zone but may require works that are to be undertaken in connection with that use to have development approval.

Works, in relation to land, includes, *the carrying out on the land of any excavation or other works.*

Under LPS1, the works associated with a tree farm are not exempt under the regulations and Development Approval is already required. No additional requirements (aka red tape) are being introduced, only the permissibility is being changed.

Tree farming may have a detrimental impact on the visual landscape, adjacent watercourses, adjacent sensitive uses and the bushfire regime of an area.

A ‘D’ use allows the local government to carefully consider the potential impacts associated with a tree farm.

The level of assessment is also similar to the majority of other Local Governments in lower part of Western Australia.

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| **Shire/LGA** | **Land use** | **Priority Ag** | **Rural/General Ag** |
| Shire of Denmark | Plantation |  | AA (similar to D) |
| Shire of Augusta-Margaret River | Plantation | Priority – D | Gen Ag - D |
| Shire of Manjimup | Plantation | Priority Ag – A | Gen Ag – A. |
| Shire of Boyup Brook | Tree Farm |  |  |
| Shire of Esperance | Tree Farm | No Priority Ag. | Rural – D |
| Shire of Harvey | Forestry | No Priority Ag | Gen Farming – AA  Forestry zone - P |
| Shire of Cranbrook | Plantation/  agroforestry | No Priority Ag | Rural – D |
| Shire of Nannup | Tree farm | D | Rural – D |
| Shire of Kojonup | Plantation/Agroforestry | No priority Ag | Special rural & rural - IP |
| Shire of Plantagenet | Tree Farm |  | P |

This modification could be made without resulting in readvertising.

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| DIS333: AMENDMENT NO. 1 BY COUNCILLOR BROUGH  MOVED: COUNCILLOR BROUGH  SECONDED: COUNCILLOR SUTTON   1. Pursuant to Regulation 26 of the Regulations, agree to advertise the following proposed modifications to the draft Local Planning Scheme No.2. 2. At Schedule 4, Table 11, insert the Special Use (SU13) zone classification, pertaining to Lot 12 (No. 516), Lot 13 (No. 512), Lot 14 (No. 508) and Lot 15 (No. 504) Albany Highway, Milpara, as follows:  |  |  |  |  | | --- | --- | --- | --- | | No. | Description of Land | Special Use | Conditions | | SU13 | Lot 12 (No.  516), Lot  13 (No.  512), Lot  14 (No.  508) and  Lot 15 (No.  504)  Albany Highway, Milpara | Bulky Goods Showroom (A)  Caretaker’s Dwelling (D)  Car Park (D)  Civic Use (A)  Commercial Vehicle Parking (D)  Community Purpose (D)  Exhibition Centre (A)  Funeral Parlour (A)  Garden Centre (P)  Industry – Light (A)  Liquor Store – Large (A)  Liquor Store – Small (D)  Lunch Bar (P)  Market (A)  Motel (A)  Motor Vehicle, Boat or Caravan Sales (D)  Motor Vehicle Repairs (A)  Motor Vehicle Wash (D)  Office (I)  Recreation – Private (D)  Telecommunication Infrastructure (D)  Trade Display (D)  Trade Supplies (D)  Veterinary Centre (D)  Warehouse/Storage (A) | 1. A change of use requires development approval. Provided there is no intensification (including traffic generation), in the opinion of the local government, no Local Development Plan is required. 2. Prior to intensification of development on the site, in the opinion of the local government, a Local Development Plan is to be approved by the local government. The Local Development Plan shall address:    1. Rationalising vehicle access to/from Albany Highway from two crossovers to one crossover to maximise the safety of road users;    2. Access, loading/servicing areas and car parking;    3. Bushfire management;    4. Sewage disposal;    5. Stormwater management;    6. Building height, bulk and orientation;    7. Building setbacks;    8. Landscaping; and    9. Rectifying historic encroachment into Reserve 43653. 3. All development shall be generally in accordance with the Local Development Plan approved by the local government. 4. No subdivision of the site, to create additional lots, is permitted until a Structure Plan is approved by the Western Australian Planning Commission. Any Structure Plan is required to address relevant matters including vehicle access (including consolidation of crossovers/access points to/from Albany Highway), traffic generation, car parking, servicing and landscaping. 5. Upon approval of the Structure Plan, development and/or subdivision of the site is to be generally in accordance with the Structure Plan. |   MOTION LOST 1-11 |

**Record of Vote**

For the Motion: Councillor Sutton

**Councillor Reason:**

1. I refer all councillors to the reasons outlined by the proponent, especially in their planning justification comments.
2. The land has served industrial uses for at least 50 years.
3. The landowners have been paying rates to the city for industrial land use
4. There is no reticulated sewerage in the area, nor are there plans for this to occur any time soon.
5. The lack of sewerage precludes effective development as urban development.
6. Rezoning to SU13 will harmonise the zoning with the actual land use, and enable the properties to be redeveloped in ways that address the concerns of the planning officers, and encourage economic development in the area.
7. Rezoning will not change the land use - rather it will facilitate enhancement of the area through further development of the area.
8. Concerns about property owners being able to profit from sale of land after rezoning are moot in this instance given that the land is not able to be developed for residential purposes.
9. It has been expressed that rezoning these four blocks makes common sense, which warrants reasonable consideration of this proposed amendment in the chamber before elected members.

**Officer Comment:**

1. During development of the Local Planning Strategy 2019, the Department of Planning Lands and Heritage / WAPC decided not to support a commercial zone classification for the subject site. The following reasons were provided:
2. No strategic basis. Has been zoned residential at least since TPS 3. Rezoning should only be considered if there is actually an identified need for additional commercial land, which Activity Centre review suggests there isn't and floorspace needs to be carefully managed to ensure viable productivity.
3. Milpara is identified as an area for infill sewerage in order to make infill viable - lack of services cited as a reason residential is not viable. Zoning to formalise existing non-conforming unsewered development not supported.
4. Providing additional commercial land uses only on the basis of pre-existing non-conforming uses adjacent to Orana local centre would undermine the future viability of this centre as well as other land already zoned for commercial and light industrial purposes and discourage the current businesses operating on the site to relocate to suitably zoned land should they wish to expand.
5. ALPS discusses education precincts - question whether encouraging the existing land uses are suitable here - potential for student accommodation under Residential zoning?
6. Would be a major modification that would warrant readvertising (if City provides sufficient justification for DPLH to consider supporting)
7. The proposed change in zoning is therefore clearly a departure from the Albany Local Planning Strategy
8. The proper process to deal with an amendment that is not aligned with a Local Planning Strategy is via the Complex Scheme Amendment process post LPS 2 finalization.
9. Such an amendment should include all the relevant studies required to make an informed decision. including a water management plan, a traffic impact assessment and a servicing report detailing how reticulated sewer can be provided.
10. There is also not sufficient strategic justification to support the rezoning of the subject site to allow for industrial and commercial type land uses.
11. Additionally, without including supporting information and justification the advertising of this proposal would not be appropriate. We would therefore have to wait for the required information to be prepared or prepare this information on the proponents’ behalf, causing considerable delays to the processing of the Scheme.
12. Contrary to Councillor points 4 and 5 there is an aspiration for sewer to be provided to this area and advocacy for construction of sewerage is a reason for the development of the North Albany District Structure plan.
13. Please note that some of the recommended uses proposed as part of SU13 would also require Sewerage.

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| DIS333: AUTHORISING OFFICER RECOMMENDATION  THAT Council Pursuant to Regulation 25(3) of the Regulations, advise the Western Australian Planning Commission (WAPC) that it SUPPORTS the draft scheme with proposed modifications to address issues raised during the advertising process. |

# BACKGROUND

1. The purpose of this report is for Council to pass a resolution to support the draft scheme subject to proposed modifications recommended to address issues raised during advertising.
2. Council resolved in November 2019, to recommend to the WAPC, that the City’s Local Planning Scheme No. 1 (LPS1) be repealed, and a new scheme prepared in accordance with the outcomes of a review that was commenced in early 2019. For more information and background on the scheme review process to date, refer item DIS285 presented to the November 2021 Council meeting.
3. Draft LPS2 was subsequently developed, and at the November 2021 meeting, Council resolved to:

* Proceed to advertise draft LPS2; and
* Delegate the CEO to progress the required actions outlined under the Planning Regulations, including seeking WAPC certification of LPS2 and referral to the Environmental Protection Authority (EPA) to consider if LPS2 needed to be assessed pursuant to Section 48A of the *Environmental Protection Act 1986* (EP Act).

1. In May 2022, certification was granted by the WAPC, outlining their support for the advertising of the draft LSP2, subject to modifications (refer Attachment 3). The modifications generally involved ensuring consistency with the manner and form of themodelprovisions set out under the Schedule 1 of the Planning Regulations.
2. Following receipt of certification from the WAPC, draft LPS2 was subsequently referred to the EPA for consideration in late May 2022. As part of their preliminary consideration of draft LPS2, the EPA requested a number of modifications to address areas of concern, prior to undertaking their formal referral. Modifications included (refer Attachment 4):

* Additional provisions in relation to the use and development of land that incorporates or is in proximity to land with existing environmental values and/or constraints. These provisions related to matters such as improving habitat protection and retaining and protecting wildlife corridor connectivity, managing outcomes on unmanaged local reserves, siting and use of building envelopes, on-site effluent disposal, keeping of livestock and pets, setbacks from water resources, restricting dams in waterways, minimising risk of contamination and limiting further clearing of remnant vegetation.
* Reinstating scheme 1 provisions and mapping associated with Special Use zone 12 (Lot 7250 Gwydd Close, Elleker).

1. In September 2022 the EPA notified the City that draft LPS2 should not be assessed under Part IV Division 3 of the *Environmental Protection Act 1986* (EP Act) as it was concluded that environmental objectives could be appropriately managed through the proposed scheme text and maps.
2. The EPA also noted in their advice that as the scheme provides for land uses which may generate trade waste, such as breweries, it was recommended that Schedule 6 of draft LPS2 be modified to include a requirement for the City to consider trade waste disposal at development approval stage.
3. As per the City’s schedule of modifications, it has been recommended that the following notation is included in the draft scheme (at Schedule 6, Table 12, Sewerage disposal):

*Note: The Environmental Protection Act 1986 (EP Act) currently regulates some types of premises that generate trade wastes. Prescribed premises under the EP Act require a licence for the discharge of the trade waste back into the environment. Trade waste includes any wastewater, discharged from a business or industry, aside from that which comes from staff amenities or office facilities.*

1. With certification received from the WAPC and a response from the EPA not requiring further assessment, the public consultation period commenced in late September 2022 for a minimum period of 90 days, concluding on 23 December 2022.
2. Formal public advertising included:

* Letters to ratepayers and state government authorities and agencies
* Notice in the newspaper and media release
* Publication and Distribution of Scheme Brochure and Frequently Asked Questions (FAQ) information.
* Publication of the LPS2 consultation page on the City’s website, that included
  + Copies of scheme text and map to download
  + Online mapping portal
  + Online submission form
  + Supporting information including brochure and FAQs
* Two drop-in information sessions at the Waterfront in October and November.
* Hard copies of draft LPS2 scheme text and map at City of Albany North Road offices and Albany library.

1. Public and agency submissions were received during the advertising period, primarily submitted through the online submission form that was made available on the City’s LPS2 consultation page.

## DISCUSSION

1. A schedule of submissions (refer Attachment 6) and a schedule of modifications (refer Attachment 7) are attached to this report item.
2. The schedule of submissions is divided into two sections:
   1. Agency submissions
   2. Public submissions
3. The schedule of submissions includes a response to each comment.
4. There is also a schedule dealing with City staff recommended modifications (refer to Attachment 5)
5. The schedule of modifications outlines suggested changes to the advertised scheme (combination of staff recommendations and recommendations stemming from the advertising process).
6. The proposed modifications are not considered significant in accordance with the Planning Regulations, and therefore additional advertising is not warranted.
7. Proposed modifications include:

* Zone and reserve map classification changes for various properties to make it consistent with current scheme classifications and current land uses
* Text changes to strengthen provisions and correcting terminology
* Permissibility changes for various land uses for different zones
* Text changes to provisions dealing with the management of domestic animals covered by other legislation
* Within public drinking water resource areas, allowing the consideration of uses, that are considered incompatible with other agency land use compatibility tables
* Exempting the need for approval to undertake tree farming, which is incorporated with agriculture (agroforestry) or is for environmental restoration.

Zone and Reserve Map changes

1. Modifications have been recommended for the scheme maps, in-particular where discrepancies exist between the current and draft new schemes and between land use characteristics and zone or reserve classifications.

General text changes

1. Modifications have been recommended for some scheme provisions to provide clarity and consistency with current scheme standards, policy position statements and state legislation.

Land Use Permissibility

1. Modification to the permissibility of some land uses has been recommended, especially where the land use conforms with zone objectives.

Pets

1. It has been recommended that provisions dealing with the keeping of pets are deleted.
2. The planning system does not manage the keeping of domestic pets. Pets are managed in accordance with the Animals Local Law 2020, Dog Local Law 2017, the Dog Act 1976 and Cat Act 2011.
3. The provisions associated with the keeping of pets were suggested during early discussions with the Environmental Protection Authority. The WAPC may subsequently liaise with the EPA on this matter.

Land Uses in Public Drinking Water Source Areas

1. The Department of Water and Environmental Regulation (DWER) has adopted a land use compatibility table, which outlines land uses and activities that need to be avoided in drinking water source areas.
2. For example, floriculture, market garden (horticulture), turf farm, garden centre, transport depot, restaurant/café, brewery, workforce accommodation, golf course and grouped dwellings are considered incompatible for areas within the Priority 2 Public Drinking Water Source Areas.
3. Some of the land uses identified as being incompatible in the DWER land use compatibility table, may be considered in accordance with the draft new scheme (Table 3. – Zoning Table), for the ‘Rural Residential’, ‘Rural Smallholdings’, ‘Priority Agriculture’ and ‘Rural’ zones, which are located within Priority 2 public drinking water source areas.
4. The Draft new scheme, at schedule 8, Table 17, Special Control area 2, (3)(b) states:

*“Notwithstanding the land use permissibility set out in Table 3. – Zoning Table, a use which is identified as incompatible within the relevant priority area classification shall not be approved, unless exceptional circumstances apply.”*

1. The Table 3 in the scheme lists permissibility for land uses. The provision (3)(b) contradicts the permissibility classifications in Table 3. The provision (3)(b) has the potential to create uncertainty.
2. It has been recommended that the provision (3)(b) be modified to state:

“*Notwithstanding the land use permissibility set out in Table 3. – Zoning Table, a use which is identified as incompatible within the relevant priority area classification shall not be approved, Unless risks or impacts associated with the proposed land use to the satisfaction of the Local Government in consultation with relevant referral agency can be adequately managed or mitigated.”*

1. The provisions associated with DWER land use compatibility table were suggested during early discussions with the Environmental Protection Authority. The WAPC may subsequently liaise with the EPA on this matter.

Tree Farming

1. The new scheme seeks to change the ‘General Agriculture’ name classification to the ‘Rural’ name classification, in-line with the State’s model scheme. For both the ‘Rural’ and ‘Priority Agriculture’ zoned areas, the new scheme proposes that tree farms (greater than 4ha) are not permitted unless the local government has exercised its discretion by granting development approval.
2. Land holders and the tree farming industry objected to the proposed permissibility change for tree farming in the ‘Rural’ zone, believing that this creates a level of unnecessary “red tape” and affects their ability to plant trees for shelter belts, corridor plantings or revegetation of degraded areas.
3. In the current scheme, tree farming is permitted (‘P’) in the ‘General Agriculture’ zone and not permitted in the ‘Priority Agriculture’ zone.  Note that if a use of land is identified in a zone as being a P use, the local government may not refuse an application for development approval for that use on a lot in that zone.  It does not mean that a development application for the works is not required.
4. Under LPS1, the works associated with a tree farm are not exempt under the regulations and Development Approval is required. The Development Application must comply with the standards of the scheme which include the industry developed code of conduct. LPS1 also includes a list of matters (Section 4.7.3 Tree Plantation Activities page 68) that should be taken into consideration when an application for the works (planting and provision of infrastructure) is lodged and assessed.
5. For the new scheme, it is proposed that tree farms in the ‘Rural’ zone are not permitted unless the local government has exercised its discretion by granting development approval (“D” use). The discretionary decision-making process gives the local government the opportunity to assess plantation management plans and fire management plans to ensure development occurs in accordance with scheme and industry standards, including:

* Appropriate setbacks to sensitive uses (bushfire risk)
* Management of public roads
* Development of water tanks for a permanent source of water for firefighting purposes
* Appropriate management of weeds
* Appropriate development of plantation cells and including firebreaks (max cell sizes)
* Appropriate development of internal access (min widths and passing bays)
* Visual amenity to key tourist locations

1. The proposed level of assessment is fairly consistent throughout Planning Schemes of the Local governments in the South West, Great Southern and along the South Coast (e.g. Esperance) as per the following Land use comparison table;

|  |  |  |  |
| --- | --- | --- | --- |
| **Shire/LGA** | **Land use** | **Priority Ag** | **Rural/General Ag** |
| Shire of Denmark | Plantation | No Priority Ag | AA (similar to D) |
| Shire of Augusta-Margaret River | Plantation | D | Gen Ag - D |
| Shire of Manjimup | Plantation | A | Gen Ag – A. |
| Shire of Boyup Brook | Tree Farm | No Priority Ag | Rural - A |
| Shire of Esperance | Tree Farm | No Priority Ag | Rural – D |
| Shire of Harvey | Forestry | No Priority Ag | Gen Farming – AA  Forestry zone - P |
| Shire of Cranbrook | Plantation/  agroforestry | No Priority Ag | Rural – D |
| Shire of Nannup | Tree farm | D | Rural – D |
| Shire of Kojonup | Plantation/Agroforestry | No Priority Ag | Special rural & rural - IP |
| Shire of Plantagenet | Tree Farm | No Priority Ag | P |

‘IP’ means that a use is not permitted unless it is determined by the Council to be incidental to the predominant use.

“Plantation” has the same meaning as in the Code of Practice for Timber Plantations in Western Australia (1997) published by the Department of Conservation and Land Management and the Australian Forest Growers;

1. Tree farming can potentially tie up the land for long periods of time (20 years), which may conflict with the aim of the priority agriculture zone, which is to protect the use of the land for food production. The “A” use allows for consideration of agency and neighbouring landholder comment and ensures that development and on-going management occur in a manner that meets the objective of the zone.
2. It has been recommended that approval is not required, where the planting of trees is for environmental restoration or is incorporated with broadacre farming (agroforestry). E.g. shelter belts or corridor plantings or revegetation of degraded areas.

It is important to clarify this in the new Planning Scheme and a modification is being made to include these uses as a specific Scheme exemption, thus identifying that a discretionary approval is only required for tree farms that are of a commercial scale and nature.

Clearing of Native Vegetation (in mainly the Yakamia area).

1. The scheme has identified areas for ‘Urban Development’ in accordance with endorsed structure and strategic planning documents. The purpose of the ‘Urban Development’ zone is to allow for residential expansion. Areas of native vegetation exist within some areas identified for ‘Urban Development’ e.g. Yakamia.
2. Comments were submitted seeking modifications to the scheme to ensure native vegetation is protected, especially on land in the Yakamia area and on freehold land owned by the City.
3. It has been recommended that consideration regarding protection of native vegetation or clearing of native vegetation to accommodate residential expansion, first occur via a review of the Local Planning Strategy 2019 and the Yakamia/Lange Structure Plan.
4. The Department of Planning, Lands and Heritage is currently undertaking a review of the Yakamia/Lange Structure Plan.
5. If strategic documents (such as Structure Plans) identify alternative recommendations after Local Planning Scheme 2 is approved, the Scheme can be amended.

## GOVERNMENT & PUBLIC CONSULTATION

1. Draft LPS2 was advertised in accordance with r. 22 of the Planning Regulations.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Type of Engagement** | **Method of Engagement** | **Engagement Dates** | **Participation (Number)** | **Statutory Consultation** |
| Consult | Notice in Advertiser | 22/09/22 | 180 public submissions received  15 state government agency submissions received | Yes |
| Consult | Public comment – City website | Between 22/09/2022 and 23/12/2022 | Yes |
| Consult | Mail out to ratepayers and state government agencies and authorities | Comment period held between 22/09/2022 and 23/12/2022 | No |
| Consult | Drop-in information sessions | 9am-12pm  15 October 2022  &  5 November 2022 | No |
| **Note**: Nil | | | | |

1. The drop-in information sessions were held at the Waterfront, across from the Albany Entertainment Centre, with staff available to answer queries about LPS2.
2. Draft LPS2 was referred to various relevant state government agencies and authorities for comment, with individual responses outlined under the attached Scheduled of Submissions.
3. In accordance with the Planning Regulations, submissions on draft LPS2 were required to be made in writing, in a form approved by the WAPC, and had to include a minimum level of information, such as the submitter’s name, address and a statement about the capacity in which the person was making the submission.
4. In considering the submissions, it is important to note the consultation period was not designed to gather quantitative, representative data but to gather qualitative data. Accordingly, all submissions were given due regard.
5. Details and discussion on the most pertinent and broader themes arising from the submissions received and specific modifications proposed are outlined above.
6. Details on individual submissions, associated officer comment and where a specific modification is proposed in response to a submission, are outlined under the attached Schedule of Submissions.
7. All proposed modifications are outlined under the attached Scheduled Modifications.

## STATUTORY IMPLICATIONS

1. Regulation 25 the Planning Regulations outline requirements for local government consideration of submissions received during advertising of a new draft local planning scheme, and subsequent consideration of proposed modifications to the draft new local planning scheme in response to submissions.
2. In accordance with r. 25 of the Planning Regulations, local governments are required to consider all submissions received during advertising and pass a resolution to either support a draft scheme with or without modification, or otherwise not support a draft scheme, within 120 days after the end of the submission period for the draft scheme, or otherwise a day approved by the WAPC.
3. In this instance, the proposed modifications are not considered significant to warrant further advertising. It is therefore recommended that Council resolve to support draft LPS2 subject to modifications in their current form, which will then be referred to the WAPC for formal consideration.
4. Regulation 26 of the Planning Regulations sets out the process and timeframes local governments are required to follow, should Council consider that a proposed modification is significant to warrant further advertising and therefore defer the current item to allow for this process to be undertaken.

## POLICY IMPLICATIONS

1. Draft LPS2 has been prepared in alignment with the requirements of relevant state planning policies. Where variations to state planning policy requirements are identified under draft LPS2, these have been addressed through specific provisions.
2. As outlined in item DIS285 presented to Council in November 2021, provisions from a number of local planning policies are recommended to be incorporated into draft LPS2, in accordance with state direction and recent changes to the Planning Regulations. Where these provisions are progressed under draft LPS2, the applicable local planning policies will subsequently be reviewed upon gazettal of LPS2, and either updated where appropriate and referred to Council for consideration, or otherwise revoked in their entirety.
3. The suite of remaining existing local planning policies will also be updated to reflect relevant administrative changes required, following gazettal of LPS2.

## RISK IDENTIFICATION & MITIGATION

1. The risk identification and categorisation relies on the City’s Enterprise Risk and Opportunity Management Framework.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Risk** | **Likelihood** | **Consequence** | **Risk Analysis** | **Mitigation** |
| ***Business Operation, Reputation & Financial.***  *Not updating the City’s Local Planning Scheme to conform with City Strategy and State Regulation may result in decision making that is not in line with community and state expectations.* | *Likely* | *Moderate* | *Medium* | *Staff to review and address any areas of concern prior to reconsideration and adoption by Council.* |
| ***Reputation*** *: Public concern about being affected by zoning changes (i.e.) Injurious affection* |  |  |  | *No additional reservations of private land is being proposed.* |
| ***Opportunity:*** *Consistency and orderly, proper planning.* | | | | |

## FINANCIAL IMPLICATIONS

1. The proposed scheme has been developed within budget, with estimated future administrative costs adequately catered for within the current and forecasted budget.

## LEGAL IMPLICATIONS

1. The proposed scheme has been developed to minimise the potential for any legal implications, including claims for injurious affection.
2. A landholder may make a claim for compensation for injurious affection for land that is reserved in a scheme or subject to a special control. A claim for compensation for injurious affection can be made if:
   1. Private Sale – the landholder sells the property on the open market at a reduced price (due to the effect of the reservation or special control); or
   2. Refused development – the City has either refused a development application over the property or approved it subject to conditions that are unacceptable to the applicant.

## ENVIRONMENTAL CONSIDERATIONS

1. A number of matters were identified by the EPA in their preliminary consideration of draft LPS2 that resulted in modifications to address various environmental considerations. These modifications were subsequently incorporated into draft LPS2 for EPA’s final consideration for certification.
2. In the EPA’s certification notice from September 2022, Schedule 6 of draft LPS2 was recommended for further modification to allow for the consideration of trade waste disposal. A scheme modification has been recommended to deal with this matter.
3. There are two recommended modifications, which vary from previous discussions with the Environmental Protection Authority. These include the management of domestic pets and uses in public drinking water resource areas. The WAPC may subsequently liaise with the EPA on this matter.

## ALTERNATE OPTIONS

1. In accordance with r. 25 of the Planning Regulations, Council may resolve to:
2. support the draft advertised scheme without modification; or
3. support the draft advertised scheme subject to modifications proposed to address issues raised during the advertising process; or
4. not support the draft advertised scheme.
5. Where Council consider that a proposed modification is significant and that advertising should therefore be undertaken, the item currently before Council should be deferred, until the relevant process outlined under r. 26 of the Planning Regulations are completed.

## CONCLUSION

1. Draft LPS2 has now been advertised.
2. Submissions received during the public advertising period have been duly considered and the schedule of submissions includes a response to each comment.
3. The schedule of modifications outlines suggested changes to the advertised scheme.
4. The proposed modifications are not considered significant in accordance with the Planning Regulations, and therefore additional advertising is not warranted.
5. As there was an acceptable level of engagement and general support of the document, it is recommended that draft LPS2 is supported by Council, to allow submission to the Western Australian Planning Commission and subsequent endorsement by the Minister.

|  |  |  |
| --- | --- | --- |
| **Consulted References** | **:** | * *Local Planning Scheme No.1.* * *Planning and Development (Local Planning Schemes) Regulations 2015.* * *Local Planning Strategy 2019.* * *City of Albany Strategic Community Plan.* |
| **File Number (Name of Ward)** | **:** | DB.PLA.8 |
| **Previous Reference** | **:** | DIS184 26/11/2019  DIS268 24/08/2021  DIS271 24/08/2021  DIS285 23/11/2021 |