

DIS422: INITIATION TO ADOPT AMENDMENT NO.1 (OMNIBUS) TO LOCAL PLANNING SCHEME NO. 2 FOR ADVERTISING-VERSION TWO

Land Description	: City of Albany
Attachments	: Draft Scheme Amendment No.1 Report
Report Prepared By	: Senior Planning Officer – Strategic Planning
Authorising Officer:	: Executive Director Infrastructure, Development & Environment

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.
2. 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.
3. Scheme Amendment No. 1 (AMD001 Omnibus) aligns with the strategic objectives and actions identified under the Planning Strategy.

In Brief:

- An 'omnibus' amendment is used to address a range of unrelated issues or improvements to a local planning scheme.
- Various minor technical and administrative updates require minor changes to Local Planning Scheme No. 2 (LPS2). Staff have prepared AMD001 Omnibus to address these matters, as well as introduce improvements such as additional exemptions, and implement minor mapping updates.
- Council is requested to support initiation to adopt the AMD001 Omnibus to LPS2, for referral to the Western Australian Planning Commission (WAPC) and seek approval from the Minister to advertise.

DIS422: ADDENDUM

During 14 November DIS Committee it was noted that the attachment for report DIS422: INITIATION TO ADOPT AMENDMENT NO. 1 (OMNIBUS) TO LOCAL PLANNING SCHEME NO. 2 FOR ADVERTISING had inconsistencies that required correction.

Modification 11

Issue: Definitions for “Short-term rental accommodation” and “Short-term rental accommodation arrangement” do not appear in Modification 11.

Correction: These definitions are covered under the Deemed Provisions for local planning schemes and do not need to be repeated. However, terms not covered by the Deemed Provisions, such as "Chalet" and "Tourist and Visitor Accommodation," must be included

Modification 13

Issue: Reference to "Column 3 Conditions" should be "Column 2 Conditions."

Correction: Updated to "Column 2 Conditions" and will be included in the November OCM addendum.

Issue: For No. 22, Column 3 mentions "Insert new conditions (3) and (4)"—but there is no (4).

Correction: Updated to remove reference to condition (4).

Issue: For No. 29, Column 2 Conditions starts numbering at 6 instead of 1.

Correction: Corrected numbering to start at 1.

Modification 15

Issue: Subsections start at (c) instead of (a); similarly, Mod 16 starts at (e) instead of (a).

Correction: Updated both Mod 15 and Mod 16 to start at (a).

Issue: A4 – "Motel" is being deleted, and there is inconsistency in use classification (A vs. D).

Correction: "Motel" is removed because it is no longer used in the model scheme text or Deemed Provisions. The inconsistency in classification has been corrected.

Issue: A6 – Deletion of residential uses (Single House, Grouped Dwelling, Multiple Dwelling) despite recent RDAP decision allowing a Grouped Dwelling on Lot 215.

Correction: Base zone (Residential) already permits residential uses. Additional Use designation only needs to specify Shop and Office uses, along with applicable conditions.

Issue: A19 – Deletion of "Hospital" use despite an existing Day Hospital on Lot 252.

Correction: Hospital" is included as an "A" use in the Mixed Use zone, so it is no longer required in the Additional Use (D) will be corrected in the report.

Modification 22

Issue: No. 28 under amendments references "subclause (2)(a)" instead of "(2)(b)."

Correction: Updated to reference "(2)(b)."

Modification 23

Issue: Proposal to change the minimum AHD for SCA15 from 3.02m to 2.5m, with inconsistency compared to SCA16 (Oyster Harbour Inundation Area) which remains at 3.02m.

Correction: Minimum AHD for SCA15 is updated to align with the Risk Identification Report. Oyster Harbour's minimum AHD may be amended in the future pending progression of the CHRMAP and Risk Identification Report.

Officer Reason:

An addendum is required to address and correct an error in the Omnibus report.

RECOMMENDATION

**DIS422: AUTHORISING OFFICER RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY**

THAT Council:

1. Pursuant to section 75 of the *Planning and Development Act 2005*, RESOLVES to adopt Scheme Amendment No. 1 (Omnibus) to Local Planning Scheme No. 2, in accordance with the changes set out under Form2A in the Scheme Report (Attachment 1).
2. Pursuant to regulation 35 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, RESOLVES that the amendment is 'standard' in accordance with regulation 34 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, as it satisfies the following criteria:
 - (a) Amendments relating to zone/s are consistent with the objectives identified in the scheme for that zone or reserve;
 - (b) The amendments are consistent with the City of Albany Local Planning Strategy 2019, that has been endorsed by the Western Australian Planning Commission;
 - (e) It is considered the amendments will have a minimal impact on land in the scheme area that is not the subject of the amendment;
 - (f) The amendments do not result in any significant environmental, social, economic or governance impacts on land in the scheme area; and
 - (g) It is not considered a complex or basic amendment.
3. Pursuant to section 81 of the *Planning and Development Act 2005*, DELEGATE the Chief Executive Officer to refer the scheme amendment to the Environmental Protection Authority.
4. Pursuant to regulation 46C of the *Planning and Development (Local Planning Schemes) Regulations 2015*, DELEGATE the Chief Executive Officer to:
 - a) Undertake modifications to Amendment No. 1 as required by the Minister, in accordance with section 83A (2)(b) of the *Planning and Development Act 2005*;
 - b) Undertake any further referrals of modified Amendment No. 1 to the EPA, if required, in accordance with section 83A(3) and section 81 and section 82 of the *Planning and Development Act 2005*; and
 - c) Resubmit the modified amendment to the Minister for approval, in accordance with section 83A (1) of the *Planning and Development Act 2005*.
5. In accordance with the requirements of regulation 47 (1) and (2) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, DELEGATE the Chief Executive Officer to ADVERTISE Amendment No. 1 to Local Planning Scheme No. 2, as soon as reasonably practicable after the Minister grants approval in accordance with section 83A(2)(a) of the *Planning and Development Act 2005*.

Note:

- Advertisement of Amendment No. 1 including publication of a notice to be undertaken in accordance with Part 5 Division 3 regulation 47 and Schedule 2 Deemed Provisions Part 12 cl. 87 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, in a form approved by the Western Australian Planning Commission.
- In accordance with Part 5 Division 1 regulation 35A of the *Planning and Development (Local Planning Schemes) Regulations 2015*, when the proposed amendment takes effect, the approval of any approved structure plans under the scheme is not affected.

DIS422: PROCEDURAL MOTION

MOVED: DEPUTY MAYOR TERRY
SECONDED: COUNCILLOR MACLAREN

THAT Report Item DIS422: INITIATION TO ADOPT AMENDMENT NO. 1 (OMNIBUS) TO LOCAL PLANNING SCHEME NO. 2 FOR ADVERTISING be DEFERRED and be presented to the Ordinary Council Meeting to be held on 26 November 2024.

CARRIED 8-0

Reason: The deferral will allow Council the opportunity to receive clarification regarding this report.

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 - (e) It is considered the amendments will have a minimal impact on land in the scheme area that is not the subject of the amendment;
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BACKGROUND

4. The *Planning and Development Act 2005* (P&D Act) enables local governments to prepare and maintain local planning schemes to guide the use and development of land in their area.
5. These are maintained through periodic reviews and amendments to ensure the local planning framework remains contemporary.
6. Amendments to local planning schemes are required to follow the process set out under the P&D Act, the *Planning and Development (Local Planning Schemes) Regulations 2015* (Planning Regulations) and other associated legislation.
7. Refer to Statutory Implications section below for further information.
8. Since the gazettal and implementation of LPS2, officers have identified technical and administrative errors that require correction, plus updates required following changes to the state planning framework.
9. Further improvements to LPS2 have also be identified to provide clarity, remove ambiguity and increase efficiencies.

DISCUSSION

10. This amendment (AMD001 Omnibus) was subsequently prepared to justify the proposed amendments.
11. The purpose of the proposed amendment is to:
 - a) Resolve administrative errors and minor technical matters that have been identified since LPS2 was gazetted
 - b) Update provisions to incorporate recent changes to the state planning framework and ensure consistency
 - c) Introduce new exemptions for certain developments to reduce requirements for Development Applications; and
 - d) Introduce further refinements to remove ambiguity and ensure LPS2 is maintained as a current and contemporary local planning scheme.
12. Details and rationale for the proposed changes to LPS2 are outlined under Attachment 1 Scheme Amendment No. 1 Report.
13. The proposed modifications fall into broad categories as follows:
 - Improvements to LPS2 provisions to reduce requirements for Development Applications.
 - Updates to reflect changes to legislation and the state planning framework since gazettal
 - Minor updates and corrections to technical and administrative errors and anomalies in the scheme text and map

Improvements

14. Updates are proposed across various provisions under LPS2, specifically Table 3 – Zoning Table and associated development requirements for land uses, to remove ambiguity, provide clarity and further refine and streamline development approval requirements.

Exemptions

15. New exemptions to the requirement for development approval for certain types of minor development.

Zoning table

16. Updates to permissibility of residential related land uses in the Zoning Table (Single House, Grouped Dwelling and Multiple Dwelling) to further support housing affordability and encourage diversity of dwelling typology and densities in certain zones, by the exempting requirement for development approval for change of use where proposal meets applicable requirements.
17. Updates proposed to delete assigned permissibility symbology for land uses under the Urban Development Zone
18. To remove ambiguity and ensure due regard can be given for appropriate development proposed in accordance with an endorsed structure plan, and enable minor development in areas without an endorsed structure plan. and replacing symbology with text referring to 'Land use permissibility in accordance with cl. 21 Schedule 5 Table 12 Urban Development zone' (specific updates to Table 12 provisions outlined below)
19. Minor updates to the permissibility of various land uses in certain zones, to remove ambiguity, ensure alignment with zone objectives, streamline and refine associated development provisions, and provide greater flexibility in the local planning framework where appropriate – such as proposed update from 'X' to 'A' for 'Bulky Goods Showroom' in the Mixed Use zone in alignment with zone objectives.
20. Updates to land use permissibility for certain land use proposals to reflect recent changes to the interpretation and consideration of certain land uses in specific zones, that may have a greater impact on adjoining sensitive uses and the locality.
21. The proposed updates aim to ensure a consistent approach to assessment and decision-making for such proposals – such as proposed update from 'D' to 'A' Home Business in the Rural Residential zone.
22. These updates are proposed to ensure a consistent approach during the consideration and decision-making proposed land uses, including public consultation where required, and that proposals demonstrate potential community concerns and identified impacts on amenity can be adequately managed.

State Planning Framework updates

23. Recent updates to the state planning framework and legislation include:
 - a) Implementation of changes throughout LPS2 following short-term rental accommodation (STRA) updates to the state planning framework and Planning Regulations, including deletion of existing and replacement with new land use definitions, changes to general definitions, associated updates to deletion and insertion of new land uses and assigned permissibility in the Zoning Table and general development provisions as required.
 - b) The new general and land use definitions relating to STRA and specifically in relation to unhosted and hosted short-term rental accommodation uses, have been added to Schedule 2 - Deemed Provisions of the Planning Regulations. Definitions and provisions under the Deemed Provisions, and not Schedule 1 - Model Provisions, are read as part of a local planning scheme. This means that local governments aren't required to update their local planning scheme with changes to the Deemed Provisions.

- c) However, in this instance, it was considered that the new land use definitions should be inserted into the relevant section of LPS2, to provide a better customer experience assisting various users and stakeholders navigating the local planning framework when seeking information and guidance on hosted or unhosted STRA proposals.
- d) In addition to STRA, updates to LPS2 to support the implementation of further changes to the local planning framework as part of continued implementation of Planning Reform by State government. Includes the introduction of references to planning codes and removal of the ability for local planning schemes to modify state planning policy through specific provisions.

Minor text and mapping updates

- 24. Following gazettal and implementation of LPS2, staff have identified various minor updates required to the scheme text and map, to address technical and/or administrative errors, address anomalies, to provide further clarity and remove ambiguity.

GOVERNMENT & PUBLIC CONSULTATION

- 25. In accordance with s. 83A(2)(a) of the P&D Act, following approval by the Minister to advertise a proposed standard amendment, the local government must, as soon as reasonably practicable, advertise the proposed standard amendment for 42 days.
- 26. Advertising to be undertaken in accordance with applicable requirements. including publishing a notice in a form approved by the Commission, in the local newspaper, on the website and letters sent to landholders directly affected by the amendment.

STATUTORY IMPLICATIONS

- 27. A local planning scheme is a statutory document that defines the way land can be used and developed.
- 28. The key elements of the statutory environment in relation to adoption and maintenance of local planning schemes including scheme amendments are set out in the P&D Act, the Planning Regulations.
- 29. The proposed omnibus scheme amendment has been prepared having regard to the Act, the Regulations and Model Scheme Text and Deemed Provisions contained therein.
- 30. The Planning Regulations identifies three different levels of amendments – basic, standard and complex.
- 31. Draft AMD001 is considered a standard amendment in accordance with the Planning Regulations as it satisfies applicable criteria as outlined under the Officer Recommendation above.
- 32. In accordance with r. 35 of the Planning Regulations, the local government may resolve to prepare or adopt an amendment to a local planning scheme, with the amendment then required to be forwarded to the Commission to seek approval from the Minister to advertise.
- 33. In accordance with the *Environmental Protection Amendment Regulations 2024* if a proposed amendment is unlikely to have an impact on the environment, there is no need to refer the amendment proposal to the Environmental Protection Authority.
- 34. This initiative is part of the Streamline WA initiatives to reduce the administrative burden and focus assessment on planning schemes that are likely to have an environmental impact requiring EPA consideration under the applicable legislation.

35. As referenced in the officer recommendation, should the Minister under section 83A(2)(b) of the Act require the local government to modify a proposed standard amendment submitted for approval to advertise, the local government must —
- modify the proposed amendment as required; and
 - resubmit the modified proposed amendment to the Minister in accordance with s. 83A of the P&D Act.

POLICY IMPLICATIONS

36. There are no specific policy implications relating to the changes outlined under the proposed amendment.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Operational: <i>Adoption for advertising of the omnibus amendment is not supported.</i>	<i>Possible</i>	<i>Minor</i>	<i>Medium</i>	<i>Staff to review and update the Scheme Amendment as proposed and resubmit with further information/clarification to address issues/concerns raised.</i>
Opportunity: <i>To facilitate further improvements and refinements by maintaining a contemporary and current local planning scheme and subsequently facilitate coherent regulatory outcomes.</i>				

FINANCIAL IMPLICATIONS

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

LEGAL IMPLICATIONS

39. There are no legal implications relating to the proposed scheme amendment.

ENVIRONMENTAL CONSIDERATIONS

40. As outlined above, the proposed changes outlined under AMD001 are unlikely to have a significant environmental impact that would warrant referral and formal assessment of the amendment by the Environmental Protection Authority, as otherwise required under s. 81 of the P&D Act.

ALTERNATE OPTIONS

41. In accordance with r. 46A of the Planning Regulations, the local government must resolve:
- a) to proceed to seek approval to advertise the proposed amendment, without modification, under section 83A of the Act; or*
 - b) to proceed to modify the proposed amendment and to seek approval to advertise the modified proposed amendment under section 83A of the Act; or*
 - c) not to proceed with the proposed amendment.*
42. If Council were to consider undertaking additional modifications to the amendment as proposed to be forwarded with the resolution seeking approval to advertise by the Minister, it is requested that Council defer the item to further workshop any significant modifications to the amendment with staff, prior to progressing.

CONCLUSION

43. AMD001 Omnibus proposes various changes to LPS2 to ensure consistency with recent changes to the state planning framework, provide clarity and remove ambiguity by correcting minor administrative and technical matters and introduce new provisions to improve effectiveness and reduce red tape.
44. The changes proposed outlined under the scheme amendment are not expected to have environmental implications, meaning referral to the EPA is not required in this instance.
45. Council is requested to support initiation to adopt AMD001 to refer the amendment to the Commission, seeking approval to advertise from the Minister.

Consulted References	<ul style="list-style-type: none">• <i>Local Planning Scheme No.2</i>• <i>Planning and Development Act 2005</i>• <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>• <i>Environmental Protection Amendment Regulations 2024</i>
File Number	DB.PLA.8
Previous Reference	OCM 28/02/23 Resolution DIS333.