



AGENDA

PLANNING AND DEVELOPMENT COMMITTEE

02 November 2016

6.00pm

City of Albany Council Chambers

**CITY OF ALBANY
COMMUNITY STRATEGIC PLAN (ALBANY 2023)**

VISION

Western Australia's most sought after and unique regional city to live, work and visit.

VALUES

All Councillors, Staff and Volunteers at the City of Albany will be...

Focused: on community outcomes

This means we will listen and pay attention to our community. We will consult widely and set clear direction for action. We will do what we say we will do to ensure that if it's good for Albany, we get it done.

United: by working and learning together

This means we will work as a team, sharing knowledge and skills. We will build strong relationships internally and externally through effective communication. We will support people to help them reach their full potential by encouraging loyalty, trust, innovation and high performance.

Accountable: for our actions

This means we will act professionally using resources responsibly; (people, skills and physical assets as well as money). We will be fair and consistent when allocating these resources and look for opportunities to work jointly with other directorates and with our partners. We will commit to a culture of continuous improvement.

Proud: of our people and our community

This means we will earn respect and build trust between ourselves, and the residents of Albany through the honesty of what we say and do and in what we achieve together. We will be transparent in our decision making and committed to serving the diverse needs of the community while recognising we can't be all things to all people.

TERMS OF REFERENCE

(1) Function:

The Planning and Development Committee will be responsible for the delivery of the following Liveable Environmental Objectives contained in the City of Albany Strategic Plan:

- (a) To advocate, plan and build connected, liveable communities;
- (b) To create a community that supports people of all ages and backgrounds;
- (c) To create vibrant neighbourhoods which are safe yet retain our local character and heritage.

(2) It will achieve this by:

- (a) Developing policies and strategies;
- (b) Establishing ways to measure progress;
- (c) Receiving progress reports;
- (d) Considering officer advice;
- (e) Debating topical issues;
- (f) Providing advice on effective ways to engage and report progress to the Community ; and
- (g) Making recommendations to Council.

(3) Chairperson: Councillor N Mulcahy

(4) Membership: Open to all elected members, who wish to be members

(5) Meeting Schedule: 1st Wednesday of the Month

(6) Meeting Location: Council Chambers

(7) Executive Officer: Executive Director Development Services

(8) Delegated Authority: None

PLANNING AND DEVELOPMENT COMMITTEE
AGENDA –02/11/2016

TABLE OF CONTENTS

	Details	Pg#
1.	DECLARATION OF OPENING	4
2.	PRAYER AND ACKNOWLEDGEMENT OF TRADITIONAL LAND OWNERS	4
3.	RECORD OF APOLOGIES AND LEAVE OF ABSENCE	4
4.	DISCLOSURES OF INTEREST	5
5.	REPORTS OF MEMBERS	5
6.	RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE	5
7.	PUBLIC QUESTION TIME	5
8.	APPLICATIONS FOR LEAVE OF ABSENCE	5
9.	PETITIONS AND DEPUTATIONS	5
10.	CONFIRMATION OF MINUTES	5
11.	PRESENTATIONS	5
12.	UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS	5
13.	MINUTES AND RECOMMENDATIONS OF COMMITTEES	5
PD128	HOME BUSINESS AND FILL - LOT 355 EMU POINT DRIVE, ROAD, COLLINGWOOD PARK	6
PD145	PROPOSED BED AND BREAKFAST – LOT 3, 13 CLIFF STREET, ALBANY	12
PD146	CONSIDERATION OF ADOPTION OF LOCAL PLANNING SCHEME AMENDMENT – LOTS 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550 AMITY QUAYS, ALBANY	19
PD147	FUEL STATION AND LUNCH BAR – LOT 40 AND 41, 342-346 ALBANY HIGHWAY, ORANA WA 6330	25
14.	NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF COUNCIL	34
15.	MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN	34
16.	REPORTS OF CITY OFFICERS	34
17.	MEETING CLOSED TO PUBLIC	34
18.	CLOSURE	34

PLANNING AND DEVELOPMENT COMMITTEE
AGENDA –02/11/2016

1. DECLARATION OF OPENING

2. PRAYER AND ACKNOWLEDGEMENT OF TRADITIONAL LAND OWNERS

“Heavenly Father, we thank you for the peace and beauty of this area. Direct and prosper the deliberations of this Council for the advancement of the City and the welfare of its people. Amen.”

“We would like to acknowledge the Noongar people who are the Traditional Custodians of the Land.

We would also like to pay respect to Elders both past and present”.

3. RECORD OF APOLOGIES AND LEAVE OF ABSENCE

Mayor

Mayor D Wellington

Councillors:

Member

N Mulcahy (Chair)

Member

B Hollingworth (Deputy Chair)

Member

A Goode JP

Member

R Hammond

Member

J Shanahun

Member

R Sutton

Staff:

Chief Executive Officer

A Sharpe

Executive Director Development Services

D Putland

Manager Building and Engineering Services

P Camins

Manager Planning Services

J van der Mescht

Minutes

J Cobbold

Apologies/Leave of Absence:

Member

G Stocks

PLANNING AND DEVELOPMENT COMMITTEE
AGENDA –02/11/2016

4. DISCLOSURES OF INTEREST

Name	Committee/Report Item Number	Nature of Interest

5. REPORTS OF MEMBERS

6. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

7. PUBLIC QUESTION TIME

8. APPLICATIONS FOR LEAVE OF ABSENCE

9. PETITIONS AND DEPUTATIONS

10. CONFIRMATION OF MINUTES

DRAFT MOTION

VOTING REQUIREMENT: SIMPLE MAJORITY

THAT the minutes of the Planning and Development Committee Meeting held on 05 October 2016 as previously distributed, be CONFIRMED as a true and accurate record of proceedings.

11. PRESENTATIONS

12. UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS

PD128: PROPOSED HOME BUSINESS AND FILL – LOT 355, 307-321 EMU POINT DRIVE, COLLINGWOOD PARK

Land Description : Lot 355, 307-321 Emu Point Drive, Collingwood Park
Proponent : F G Liva
Owner : F G Liva and K J Liva
Business Entity Name : N/A
Directors
Attachments : 1. Area Plan
2. Site Plan
3. Earthworks Plan
4. Schedule of submissions
Supplementary Information & Councillor Workstation : Copy of submissions
Report Prepared by : Senior Planning Officer (A Bott)
Responsible Officer : Executive Director Development Services (D Putland)

Responsible Officer's Signature:



STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. When exercising its discretion in relation to planning matters, the pertinent strategic document is the *Albany Local Planning Strategy*.
3. The proposal is consistent with the strategic directions identified in the *Albany Local Planning Strategy*.

Maps and Diagrams:



In Brief:

- Council is asked to consider a development application for a Home Business and Fill at Lot 355, 307-321 Emu Point Drive, Collingwood Park.
- The application was advertised for public comment and referred to surrounding landowners in writing.
- Thirteen letters of objection have been received from nearby residents. The objections primary relate to concerns over traffic, amenity impacts and environmental impacts.
- The application was originally deferred at the June Planning Committee and was consequently withdrawn from the agenda pending a review of the application.
- The originally proposed dam has consequently been removed from the application. The proponent has also engaged an engineer and prepared an earthworks plan for the subject lot.
- Staff recommend that Council approve the proposed development, subject to conditions.

RECOMMENDATION

PD128: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council resolves to ISSUE a notice of determination granting development approval, subject to the following conditions, for a Home Business and Fill at Lot 355, 307-321 Emu Point Drive, Collingwood Park:

Conditions:

- (1) **Prior to occupancy of use, unless varied by a condition of approval or a minor amendment to the satisfaction of the City of Albany, all development shall occur in accordance with the stamped, approved plans dated (**insert date**).**
- (2) **Earthworks and management of stormwater drainage shall be undertaken in accordance with the earthworks plan, including proposed levels**
- (3) **Surface water management shall be undertaken to ensure that the vehicle storage area is suitably drained and sealed.**
- (4) **All vehicle wash-downs shall be undertaken off-site at the appropriate commercial facilities and there shall be no direct discharges from the vehicle storage area.**
- (5) **No servicing of vehicles shall be undertaken on the premises.**
- (6) **A landscaping plan detailing the size, species and location of trees/shrubs shall be submitted for approval in writing and implemented to the satisfaction of the City of Albany.**
- (7) **All landscaped areas shall be maintained as per the approved landscaping plan(s) to the satisfaction of the City of Albany.**
- (8) **The new crossover(s) shall be constructed to the specifications, levels and satisfaction of the City of Albany.**

Advice:

A 'Permit for Vehicle Crossover Construction' from the City of Albany is required prior to any work being carried out within the road reserve, which shall be in accordance

with drawing nos. 97024 1/3 – 97024 3/3 (refer to the City of Albany's Subdivision and Development Guidelines).

- (9) The level of noise emanating from the premises shall not exceed that prescribed in the Environmental Protection Act 1986, and the Environmental Protection (Noise) Regulations 1997.**
- (10) The development hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust.**
- (11) No preparation of bitumen shall be undertaken on the premises.**
- (12) There shall be no storage of construction materials or dumping of construction waste (including asphalt) on the premises.**

BACKGROUND

4. *Local Planning Scheme No. 1* was gazetted on 28 April 2014 and consists of the Scheme Text and the Scheme Maps. The Scheme divides the Local Government district into zones to identify areas for particular uses and identifies land reserved for public purposes. Most importantly, the Scheme controls the types of uses and development allowed in different zones. There are particular controls included for heritage and special control areas. The Scheme Text also sets out the requirements for planning approval, enforcement of the Scheme provisions and non-conforming uses.
5. The subject lot lies to the north side of Emu Point Drive, approximately five kilometres north-east of Albany city centre. The lot has an area of approximately 1.44 hectares and is zoned 'General Agriculture' under *City of Albany Local Planning Scheme No. 1*.
6. The land to the south is zoned 'Future Urban' and is bounded by 'Parks and Recreation' local scheme reserve. The land to the north and west is zoned 'General Agriculture', while the land to the east is covered by the 'Parks and Recreation' local scheme reserve.
7. The application was advertised for public comment, in accordance with Schedule 2, clause 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015* and clause 9.4 of *Local Planning Scheme No. 1*. Surrounding landowners were directly notified in writing. A total of 13 submissions were received, all of which objected to, or raised concerns around the proposal.
8. The proponent was granted a clearing permit by the Department of Environmental Regulation on 29 May, 2014. The permit granted clearing of an area of vegetation within the north-western quadrant of the property. Clearing has occurred, and all vegetation within the clearing area removed.
9. The application was originally laid on the table at the June Planning Committee meeting and was consequently withdrawn from the June Ordinary Council meeting pending a review of the application.
10. The application has subsequently been amended by the proponent, with an earthworks plan developed and the originally proposed dam removed from the proposal.
11. Council is now requested to consider whether to grant development approval.

DISCUSSION

12. The proposal now consists of the two elements, being earthworks and truck parking/ storage.
13. The truck and equipment storage is associated with the proponent's bitumen spraying business, which has operated within Albany for the past ten years.

14. The proponent does not propose to mix bitumen material on the site and the current zoning does not allow the City of Albany to approve this use on the site.
15. As outlined above, a total of 13 letters of submission were received during the public advertising period, all of which raised concerns around the proposal.

The main concerns that have been raised and the proposed mitigation measures are addressed as follows:

Traffic

16. A number of submissions have raised concerns regarding the truck movements from the site.
17. The proponent has stated in the application that at most, two trucks would leave and return to the premises on a daily basis. The business will be run by the landowners, with no additional employees. All business is undertaken off site and there are no customers attending the premises.
18. In terms of restricting the use of Emu Point Drive, the City of Albany does not have the statutory authority to control the direction of vehicles which are classified as 'as of right' vehicles by Main Roads WA. An 'as of right' vehicle is defined as any vehicle that is not a Restricted Access Vehicle. Rigid trucks and semi-trailers are not classed as Restricted Access Vehicles and do not require any permits or exemptions from regulatory requirements.

Amenity

19. Impact on amenity is a concern consistently raised in the submissions. Concerns primarily relate to noise generated from the proposed development and impacts on visual amenity.
20. With regard to noise issues: Any operations would be subject to ongoing compliance with the *Environmental Protection (Noise) Regulations 1997*. All work will be undertaken off the premises, including the cleaning and servicing of vehicles and machinery, and the preparation of bitumen. Therefore, the only noise generated would be from vehicles travelling to and from the premises.
21. In terms of mitigating visual impact, the location of the storage area has been proposed at the rear of the premises.
22. There is also a 70 metre section of established screening vegetation which runs east from the crossover along Emu Point Drive, which will also reduce the visual impact from public vantage points.
23. In addition to the above, the proponent has submitted a landscaping plan for the lot. The proponent has proposed to plant peppermint trees and Melaleucas along the road verge, adjoining property and storage areas.
24. It is considered that the landscaping, in conjunction with the stated scale of the operation, will assist in mitigating amenity issues. However, it is recommended that the implementation and ongoing maintenance of the landscaping and rehabilitation planting be stipulated as a condition of development approval.

Environment

25. Concerns regarding environmental impacts were consistently raised in the submissions.
26. The proposed dam on the original proposal was the subject to a number of concerns raised in submissions. The dam has now been removed from the application.
27. The Department of Water was consulted and has advised the City that standard water control conditions are applicable to the proposal, which includes surface water management being undertaken by the developer. It is recommended that water management measures are applied as condition of development approval.

28. City of Albany engineers have reviewed the proponent’s engineers plan request to fill sections of the lot. The proposed plan will allow fill to be undertaken to expand the useable area of the land, while maintaining the natural floodplain and drainage functions of the area. Compliance with the submitted earthworks plan is recommended as a condition of development approval.
29. A number of submissions have also raised the issue of clearing of native vegetation. It is apparent from these submission that there is a level of misunderstanding within the community regarding the approval of the clearing that has taken place. Some members of the community believe that the City of Albany had granted approval for clearing. To clarify, the Department of Environmental Regulation is the statutory authority for clearing permits within Western Australia and has issued approval for clearing within the north-western quadrant of the subject lot.
30. The proponent has submitted a landscaping details for the planting of additional native vegetation. The planting and ongoing maintenance is recommended as a condition of consent.

GOVERNMENT & PUBLIC CONSULTATION

31. The proposal was advertised for public comment for a period of 21 days, in accordance with Schedule 2, clause 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015* and clause 9.4 – *Advertising of Applications* within *Local Planning Scheme No. 1*. Surrounding landowners were directly notified in writing.
32. A total 13 submissions were received during the public advertising period. All 13 submissions objected or raised concerns around the proposal. Staff comments are provided in the attached schedule of submissions, while the broad issues are discussed above.

STATUTORY IMPLICATIONS

33. A ‘Home Business’ is classified as a ‘D’ use within the ‘General Agriculture’ zone under *Local Planning Scheme No. 1*, meaning that the use is not permitted, unless the local government has exercised its discretion by granting planning approval.
34. Voting requirement is a **Simple Majority**.

POLICY IMPLICATIONS

35. The site is within the City of Albany’s *Development in Flood Prone Areas Policy*. In the context of this application, the primary objectives of the policy are to ensure that there are no interruptions to the natural drainage system of the area.
36. The proposed earthworks plan relating to fill have been developed in consultation with City of Albany engineers. The plan has the with the intention of allowing the proponent to increase the levels on the site and subsequent useability of the site, while maintaining the natural drainage function of the area. It is recommended a condition be applied requiring compliance with the approved earthworks plan.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<p>Organisational Operations and Reputation The proposed use could give rise to unacceptable detrimental impacts on the environment and or amenity of the area.</p>	Possible	Moderate	Medium	Mitigation of impacts to be achieved through adoption and enforcement of appropriate planning conditions.

FINANCIAL IMPLICATIONS

38. All costs associated with the development will be borne by the proponent.
39. Should the proponents seek a review of Council's decision or any attached conditions through the State Administrative Tribunal, the City could be liable for costs associated with defending the decision at a State Administrative Tribunal hearing.

LEGAL IMPLICATIONS

40. Council may use its discretion to approve or refuse the proposal. An proponent aggrieved by a decision or condition may apply for a review to the State Administrative Tribunal, in accordance with Section 252 of the *Planning and Development Act 2005*.
41. The proponent has the right to seek a review of the Council's decision, including any conditions attached to an approval. The City of Albany may be required to defend the decision at a State Administrative Tribunal hearing.

ENVIRONMENTAL CONSIDERATIONS

42. The subject lot is largely cleared and slopes downward from Emu Point Drive towards the north-west. The lot was subject to a clearing permit issued by the Department of Environment Regulation. The permit was fulfilled and has now expired.

ALTERNATE OPTIONS

43. Council may consider alternate options in relation to this item, such as:
 - To determine that the proposed use is unacceptable and to resolve to refuse the application; or
 - To alter, amend, remove or add conditions to the approval to address potential impacts from the development.

SUMMARY CONCLUSION

44. The matters raised in the submissions received during the public advertising period have been broadly addressed and can be mitigated through the application of appropriate planning conditions.
45. It is therefore recommended that Council approve the proposed development, subject to the conditions provided.

Consulted References	:	1. <i>Local Planning Scheme No. 1</i> 2. <i>Albany Local Planning Strategy 2010</i> 3. <i>City of Albany Development in Flood Prone Areas</i> local planning policy
File Number (Name of Ward)	:	A145789 (Breaksea Ward)
Previous Reference	:	O.C.M. 28/06/2016 – Item PD128 (withdrawn by proponent)

**PD145: PROPOSED BED AND BREAKFAST – LOT 3, 13 CLIFF STREET,
ALBANY**

Land Description : Lot 3, 13 Cliff Street, Albany
Proponent : H L Moyle
Owner : H L Moyle
Business Entity Name : N/A
Directors : N/A
Attachments :
1. Copy of development application
2. Schedule of submissions
Supplementary Information & Councillor Workstation : 3. Copy of submissions
4. Copy of legal advice
Report Prepared by : Planning Officer (J Anderson)
Responsible Officer : Executive Director Development Services (D Putland)

Responsible Officer's Signature:



STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. When exercising its discretion in relation to planning matters, the pertinent strategic document is the *Albany Local Planning Strategy*.
3. The proposal is consistent with the strategic directions identified in the *Albany Local Planning Strategy*.

Maps and Diagrams:



In Brief:

- Council is asked to consider a development application for a Bed and Breakfast at Lot 3, 13 Cliff Street, Albany.
- The proposal is to let one room, with a maximum of three guests.
- Due to the site's topography, vehicular access can only be gained via a privately owned Right of Way from View Street, to the south.
- The application was advertised for public comment and referred to surrounding landowners in writing.
- Two letters of objection have been received from surrounding landowners. The objections primarily relate to concerns over the use of the privately owned Right of Way; specifically, whether Council can approve a use with a commercial element when the only means of access is via a privately owned Right of Way, the condition of the Right of Way, the lack of contribution to its maintenance and the possibility of guests reversing down the Right of Way. Other concerns relate to the compounding parking issues, the possibility of motorhomes parking on the verge of Cliff Street and pets being permitted on the premises.
- Legal advice was received with regard to whether Council has the right to approve a use with an incidental commercial element when access is gained via a privately owned Right of Way. This advice stated that *"all registered proprietors, as well as their guests and invitees, have an implied right to use the right of way. There is no prohibition on guests or invitees using the right of way as a means of access to a lot with a minor commercial element."*
- One neighbour has since agreed that the planning conditions proposed mitigate the issues they raised.
- The second concerned resident does not think the use should be approved on the grounds that it will generate too much traffic on the Right of Way and has requested that the proposal is determined at an Ordinary Council Meeting.
- Staff recommend that Council approve the proposed development, subject to conditions, which will mitigate the concerns raised.

RECOMMENDATION

PD145: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council resolves to ISSUE a notice of determination granting development approval, subject to the following conditions, for a Bed and Breakfast at Lot 3, 13 Cliff Street, Albany:

Conditions:

- (1) The vehicular access way shall be sealed and constructed to the City of Albany's specifications, levels and satisfaction, as specified for vehicular crossovers, to a minimum width of four metres within four months from the date of this approval, unless otherwise agreed in writing by the City of Albany.**
- (2) The operator/manager of the Bed and Breakfast accommodation hereby approved shall ensure that a copy of the House Rules is provided to all guests, and enforced to the satisfaction of the City of Albany.**
- (3) One parking space shall be provided per guest bedroom, in addition to the two (2) bays required for the full-time occupants of the dwelling.**
- (4) Vehicular parking must be contained within the lot boundaries at all times.**
- (5) Prospective guests shall be advised that there is no capacity to park motorhomes, caravans, trailers, boats or similar large vehicles or trailers.**
- (6) Guests shall be notified that they must leave the premises in a forward gear.**
- (7) The maximum number of persons residing in the Bed and Breakfast accommodation shall not exceed three (3) at any one time, exclusive of the owner/operator, unless otherwise agreed in writing by the City of Albany.**
- (8) The owner/operator of the Bed and Breakfast accommodation shall reside on-site.**
- (9) The Bed and Breakfast accommodation hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust.**
- (10) The owner/operator of the Bed and Breakfast accommodation hereby approved shall maintain an annual register and receipt book, containing the details of all persons who stay on the premises, to the satisfaction of the City of Albany.**
- (11) The Bed and Breakfast accommodation hereby approved shall be used for short-stay accommodation only, and shall not be occupied by the same person or persons for more than three months in any 12 month period.**

BACKGROUND

4. *Local Planning Scheme No. 1* was gazetted on 28 April 2014 and consists of the Scheme Text and the Scheme Maps. The Scheme divides the Local Government district into zones to identify areas for particular uses and identifies land reserved for public purposes. Most importantly, the Scheme controls the types of uses and development allowed in different zones. There are particular controls included for heritage and special control areas. The Scheme Text also sets out the requirements for planning approval, enforcement of the Scheme provisions and non-conforming uses.

5. The subject site lies to the south side of Cliff Street, approximately 550 metres west of Albany city centre. The lot has an area of 553m² and is zoned 'Residential' under *City of Albany Local Planning Scheme No. 1*. The surrounding lots are also zoned 'Residential'.
6. Due to topography the subject lot can only gain pedestrian access from Cliff Street. Vehicular access is via a privately owned Right of Way from View Street, to the south.
7. The application was advertised for public comment, in accordance with Schedule 2, clause 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015* and clause 9.4 of *Local Planning Scheme No. 1*. Surrounding landowners were directly notified in writing. Two written submissions were received, both of which raised concerns with the proposal.
8. These matters were discussed with the proponent, who subsequently revised the proposed house rules in an attempt to mitigate the concerns.
9. One of the concerned residents has since confirmed that the proposed planning conditions would mitigate their concerns. However, the second concerned resident does not think the use should be approved on the grounds that it will generate too much traffic on the Right of Way and has requested that the proposal is determined at an Ordinary Council Meeting.
10. Council is now requested to consider whether to grant development approval.

DISCUSSION

11. *City of Albany Local Planning Scheme No. 1* defines Bed and Breakfast accommodation as “a dwelling, used by a resident of the dwelling, to provide accommodation for no more than six guests away from their normal place of residence on a short-term commercial basis within the dwelling and may include the provision of meals”.
12. The City's *Bed and Breakfast Accommodation* local planning policy states that “*Bed and Breakfast accommodation should occupy a maximum of two bedrooms of a dwelling house and be made available for short-stay accommodation for a maximum of six guests at any one time and will only be approved on a lot where it can be demonstrated that:*
 - 1) *The proposal is consistent with surrounding land use activities and can demonstrate general support from adjoining landowners;*
 - 2) *The owner/manager of the Bed and Breakfast accommodation will reside on-site;*
 - 3) *The proposal provides addition on-site car parking bays at the ratio of 1 bay per bedroom and shall not interfere with vehicular access; and*
 - 4) *Access/egress to the site and car parking shall not adversely impact on with local vehicular or pedestrian access.”*
13. The existing dwelling has three bedrooms, inclusive of the proposed guest room. It is proposed to let this room, which is housed in an existing standalone structure with ensuite, to a maximum of three guests at any one time.
14. The City's *Bed and Breakfast Accommodation* local planning policy requires one car parking bay per room for let, in addition to the required two bays for the single dwelling. The proponent is currently constructing a double garage and an additional parking bay will be provided for the exclusive use of guests.
15. During the public comment period, two written submissions were received from surrounding landowners, both objecting to the proposal. The objections are summarised and addressed in the attached schedule of submissions.

16. The main concerns raised and the proposed mitigation measures are addressed as follows:

I. Use of the Right of Way

One submission raised concerns that the guests will use the Right of Way and stated that the use of the Right of Way does not extend to a commercial use. They claim that the use should not be supported as it involves the use of someone else's land, which is only to be used for personal access to their properties and not for commercial use. The City has sought legal advice in this regard and was advised that *“all registered proprietors, as well as their guests and invitees have an implied right to use the right of way. There is no prohibition in guests or invitees using the right of way as a means of access to a lot with a minor commercial element.”*

II. The condition of the Right of Way and lack of contributions towards its upkeep

As the proponent is introducing an additional use, City Engineering Staff have recommend that a condition is placed on the approval requiring the proponent to upgrade a portion of the Right of Way to an acceptable driveway standard. In relation to the ongoing upkeep of the Right of Way, this is a civil matter and the City strongly recommends that the landowners liaise with each other to reach an amicable solution.

III. Parking

Limited off-street parking is available and there is a concern that inviting additional traffic onto the property will compound the existing shortage of parking. It has also been suggested that vehicles, including motorhomes, may park on Cliff Street, obstructing traffic and lines of sight. Furthermore, there is no suitable parking available for large vehicles and caravans or trailers. In order to address these issues, the proponent is currently constructing a double garage and one additional car parking bay for the exclusive use of the guests, which will meet the minimum car parking requirement for the proposed development. The proponent has also updated the House Rules to require parking in the designated guest bay and to prohibit parking on Cliff Street. Additionally, the proponent has agreed to notify any prospective guests at the time of booking that there is no parking available for motorhomes, caravans, trailers, etc. This will be required by application of an appropriate planning condition.

IV. Safety

Concerns were raised over the possibility of guests reversing down the Right of Way due to a lack of turning space. To address this issue, the proponent has revised the house rules to include information for guests that they should leave the premises in a forward gear.

V. Dogs being permitted

Concern was raised that guests may be permitted to bring their dogs to the premises. The keeping of domestic animals is permitted on a residential property and the proponent has amended the house rules to ensure that guests are only permitted to bring small or medium dogs to the premises, that they must be contained on the premises, or on a lead when out walking and that all litter is to be picked up (litter bags will be provided).

17. The proposed condition requiring the upgrade of a portion of the Right of Way has been raised with the proponent, who has stated that this will affect the viability of the proposed Bed and Breakfast accommodation. The proponent believes that it is unjustified, due to the scale of the development and the relatively small increase in traffic that it will generate.

18. Staff subsequently discussed the revised house rules and proposed planning conditions with the owner of the Right of Way, who is still not comfortable with the proposal and the potential effects that it could have on the use of the Right of Way.

19. The second concerned resident has confirmed that he is satisfied that the proposed planning conditions would mitigate his concerns.
20. The application is considered to be generally consistent with the City of Albany's *Bed and Breakfast Accommodation* local planning policy.
21. Council is now requested to consider the submissions received during the public advertising period and determine whether to grant development approval.

GOVERNMENT & PUBLIC CONSULTATION

22. The proposal was advertised for public comment for a period of 21 days, in accordance with Schedule 2, clause 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015* and clause 9.4 – *Advertising of Applications* within *Local Planning Scheme No. 1*. Surrounding landowners were directly notified in writing.
23. A total of two submissions were received during the public advertising period. Both submissions objected to the proposal. Staff comments and recommendations are provided in the attached schedule, while the broad issues are discussed in paragraphs 18 – 33 above.

STATUTORY IMPLICATIONS

24. A Bed and Breakfast is classified as an 'A' use within the 'Residential' zone under *Local Planning Scheme No. 1*, meaning that the use is not permitted, unless the local government has exercised its discretion by granting planning approval after giving special notice in accordance with clause 9.4 of the Scheme.
25. Voting requirement is a **Simple Majority**.

POLICY IMPLICATIONS

26. Proposals for the development of Bed and Breakfast accommodation are assessed in the context of the City of Albany's *Bed and Breakfast Accommodation* local planning policy.
27. In this instance, the proposed Bed and Breakfast accommodation is considered to be consistent with the objectives and provisions of the policy. These matters are discussed in more detail in paragraphs 9 to 23 above.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<p>Organisational Operations and Reputation The proposed use could give rise to unacceptable detrimental impacts on the amenity of the area.</p>	Possible	Moderate	Medium	Mitigation of impacts to be achieved through adoption and enforcement of conditions.

FINANCIAL IMPLICATIONS

29. All costs associated with the development will be borne by the proponent.

30. Should the proponents seek a review of Council's decision or any attached conditions through the State Administrative Tribunal, the City could be liable for costs associated with defending the decision at a State Administrative Tribunal hearing.

LEGAL IMPLICATIONS

31. Council may use its discretion to approve or refuse the proposal. A proponent aggrieved by a decision or condition may apply for a review to the State Administrative Tribunal, in accordance with Section 252 of the *Planning and Development Act 2005*.
32. The proponent has the right to seek a review of the Council's decision, including any conditions attached to an approval. The City of Albany may be required to defend the decision at a State Administrative Tribunal hearing.

ENVIRONMENTAL CONSIDERATIONS

33. The subject lot is developed with a residential dwelling and garden ground. There are no environmental considerations relating to this proposal.

ALTERNATE OPTIONS

34. Council may consider alternate options in relation to this item, such as:
- Determine that the proposed use is unacceptable and to resolve to refuse the application; or
 - Alter, amend, remove or add conditions to the approval to address potential impacts from the development.

SUMMARY CONCLUSION

35. The proposal is considered to be consistent with the objectives of the zone and the requirements of the City of Albany's *Bed and Breakfast Accommodation* local planning policy.
36. The matters raised in the public submissions received during the advertising period have also been broadly addressed by the proponent and can be mitigated through the application of appropriate planning conditions and the yearly licence renewal process.
37. It is therefore recommended that Council approve the proposed development, subject to the conditions provided.

Consulted References	:	1. <i>Local Planning Scheme No. 1</i> 2. <i>Albany Local Planning Strategy 2010</i> 3. <i>Bed and Breakfast Accommodation</i> local planning policy
File Number (Name of Ward)	:	A105416 (Frederickstown Ward)
Previous Reference	:	Nil.

PD146: CONSIDERATION OF ADOPTION OF LOCAL PLANNING SCHEME AMENDMENT – LOTS 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550 AMITY QUAYS, ALBANY

Land Description : Lots 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550 Amity Quays, Albany

Proponent : Ayton Baesjou Planning

Owner : LandCorp

Business Entity Name : LandCorp

Attachments : Local Planning Scheme Amendment No. 20 report

Supplementary Information & Councillor Workstation: : Nil

Report Prepared by : Planning Officer (C McMurtrie)

Responsible Officer : Executive Director Development Services (D Putland)

Responsible Officer's Signature:



STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. When exercising its discretion in relation to planning matters, the pertinent strategic document is the *Albany Local Planning Strategy*.
3. This proposal is consistent with the strategic direction set in the *Albany Local Planning Strategy*.

Maps and Diagrams



In Brief:

- A request has been submitted for Council to adopt a local planning scheme amendment to:
 - Incorporate Lots 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550 Amity Quays, Albany within a ‘Special Control Area’ and change the residential density code from R30 to R60;
 - Incorporate the Amity Quays Special Control Area within Part 6 – Special Control Areas of the Scheme Text; and
 - Amend the Scheme Maps accordingly.
- City planning Staff support the local planning scheme amendment, as it is consistent with the strategic direction set in the *Albany Local Planning Strategy*.
- The proposal will facilitate the development of higher density dwellings in close proximity to the City centre with the attendant amenity benefits that this will bring.
- Council is requested to adopt the amendment for the purpose of public advertising and referral to public authorities.

RECOMMENDATION

PD146 RESPONSIBLE OFFICER RECOMMENDATION

THAT Council, pursuant to section 75 of the *Planning and Development Act 2005*, resolves to:

- 1. Adopt Amendment No. 20 to amend *City of Albany Local Planning Scheme No. 1* by:**
 - (1) Incorporating Lots 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550 Amity Quays, Albany within a ‘Special Control Area’ and change the residential density code from R30 to R60;**
 - (2) Incorporating the Amity Quays Special Control Area within Part 6 – Special Control Areas of the Scheme Text; and**
 - (3) Amending the Scheme Maps accordingly.**
- 2. Note that the Amendment is standard under the provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* for the following reasons:**
 - **The amendment is consistent with the *Albany Local Planning Strategy*, which sets a strategic objective to support urban infill development based on compatibility of land uses and infrastructure capacity;**
 - **The amendment would have minimal impact on land in the scheme area that is not the subject of the amendment; and**
 - **The amendment does not result in any significant environmental, social, economic or governance impacts on land in the scheme area.**

BACKGROUND

4. *Local Planning Scheme No. 1* was gazetted on 28 April 2014 and consists of the Scheme Text and the Scheme Maps. The Scheme divides the Local Government district into zones to identify areas for particular uses and identifies land reserved for public purposes. Most importantly, the Scheme controls the types of uses and development allowed in different zones. There are particular controls included for heritage and special control areas. The Scheme Text also sets out the requirements for planning approval, enforcement of the Scheme provisions and non-conforming uses.
5. Amendment No. 20 has been prepared to seek:
 - Incorporation of Lots 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550 Amity Quays, Albany within a 'Special Control Area' and change the residential density code from R30 to R60;
 - Incorporation of the Amity Quays Special Control Area within Part 6 – Special Control Areas of the Scheme Text; and
 - Amendment of the Scheme Maps accordingly.
6. The subject lots are located approximately 500 metres west-south-west of York Street and have a cumulative area of approximately 1.1 hectares. The land slopes very slightly upward in a northerly direction, from Amity Quays toward the railway line. The land has been cleared and extensive remediation works have been undertaken to remove soil contamination resulting from its former use as a gasworks.
7. The subject land is bounded on its western, southern and eastern sides by Amity Quays. It is bounded by the railway line to the north. The land to the south of Amity Quays is occupied by a strip of public open space and a public parking area within a 'Parks and Recreation' local scheme reserve. Princess Royal Drive extends along the southern edge of the public open space within a 'Major Roads' local scheme reserve and Princess Royal Harbour lies beyond.
8. The land to the west of the subject lots is covered by a 'Parks and Recreation' local scheme reserve and is partly developed with a cluster of buildings currently occupied by the Community Living Association. The land to the east of the subject lots is covered by a 'Public Purposes' local scheme reserve and is occupied by the Navy Cadet Hall, the Brig Amity, the Residency Museum and a large area of public open space. The land to the north of the subject lots is zoned 'Residential' with an R30 Residential Density Code and largely developed with single houses on individual lots, although some vacant lots remain.
9. The amendment document states that:

"The subject land is currently zoned 'Residential with an R30 density code. However, the site has been subdivided into 18 lots of approximately 600m² each which equates to an R15 density code. While each lot can be developed as a duplex lot with two dwellings per lot, a potential buyer has no idea what might be built within the estate or next to or in some cases, in front of their property.

Given the unique nature of the site, its location near the CBD and the general amenity available in terms of water views and strategic siting, it is considered that a higher density coding is warranted and should be encouraged. This would be in accord with the key planning documents guiding development within the City which encourages;

 - *The consolidation of urban development;*

- *Infill development;*
- *Increased densities up to R60 around the periphery of the CBD; and*
- *Provision of a variety of housing to accommodate the increasing proportion of smaller households.*

In order to ensure the site specific issues...are addressed, it is recommended that the subject land be incorporated within a 'Special Control Area' which will facilitate the incorporation of conditions to address those issues."

DISCUSSION

10. The City's planning Staff support the incorporation of Lots 1533-1550 Amity Quays, Albany within a 'Special Control Area', changing the residential density code from R30 to R60 and incorporating the Amity Quays Special Control Area within Part 6 – Special Control Areas of the Scheme Text, as it is consistent with the *Albany Local Planning Strategy*.
11. The amendment documents include a concept plan and indicative built form examples to illustrate how the site could be developed to an R60 density. A Services Investigation Report prepared by a consulting engineer has also been submitted in support of the proposal. It indicates that there are no technical difficulties associated with developing the site to a higher residential density.
12. Additionally, a Bushfire Attack Level Contour Plan prepared by an accredited bushfire assessor has been provided, identifying the fire risk associated with the vegetation surrounding the site. The majority of the site has been identified as being subject to Bushfire Attack Level 12.5, which can be managed by the application of appropriate building standards. A higher risk has been identified in the north-western and north-eastern corners of the subject land and a notation has been provided on the indicative concept plan, identifying the need for further detailed planning work to establish suitable building setbacks to mitigate the risk.
13. The *Albany Local Planning Strategy* identifies the site as part of the 'Existing Urban' area and sets strategic objective to support urban infill development based on compatibility of land uses and infrastructure capacity.
14. The proposal is consistent with the Albany Local Planning Strategy's objective of supporting urban infill development, as it will facilitate the development of higher density dwellings in close proximity to the City centre with the attendant amenity benefits that this will bring.

GOVERNMENT & PUBLIC CONSULTATION

15. The *Planning and Development (Local Planning Schemes) Regulations 2015* require that a local planning scheme amendment be adopted by a resolution of Council prior to the proposal being advertised for public comment. Consequently, no other consultation has been undertaken at this stage.

STATUTORY IMPLICATIONS

16. Scheme amendments undergo a statutory process in accordance with the *Planning and Development Act 2005* and *Planning and Development (Local Planning Schemes) Regulations 2015*.
17. Section 75 of the *Planning and Development Act 2005* allows a local government authority to amend its local planning scheme with the approval of the Minister for Planning. Section 81 of the Act requires a local government to refer an adopted local planning scheme amendment to the Environmental Protection Authority to determine if it should be assessed.

18. Regulation 35 of the *Planning and Development (Local Planning Schemes) Regulations 2015* allows Council to adopt a standard scheme amendment for advertising and referral to relevant public authorities.
19. The proposal is considered to be a standard scheme amendment for the following reasons:
- The amendment is consistent with the *Albany Local Planning Strategy*, which identifies the site as ‘Existing Urban’ and sets a strategic objective to support urban infill development based on compatibility of land uses and infrastructure capacity;
 - The amendment would have minimal impact on land in the scheme area that is not the subject of the amendment; and
 - The amendment does not result in any significant environmental, social, economic or governance impacts on land in the scheme area.
20. Voting requirement for this item is **SIMPLE MAJORITY**

POLICY IMPLICATIONS

21. There are no policy implications directly relating to this item.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<p>Organisational Operations and Reputation</p> <p>The proposal may not be accepted by the Western Australian Planning Commission or the Minister for Planning.</p>	Possible	Minor	Medium	If not supported by the WAPC or Minister, the amendment will not be progressed and the City will advise the proponent that they may submit a modified proposal.
<p>Community, Organisational Operations and Reputation</p> <p>The proposal may attract objections from members of the public or other public authorities.</p>	Possible	Minor	Medium	Widely consulting with all parties who may be affected and all relevant public authorities should mitigate any risk in this regard. If necessary, further information can be requested from the proponent as part of the amendment process.

FINANCIAL IMPLICATIONS

23. There are no financial implications directly relating to this item.

LEGAL IMPLICATIONS

24. There are no legal implications directly relating to this item.

ENVIRONMENTAL CONSIDERATIONS

25. The subject land was formerly the site of Albany Gasworks. Extensive remediation works have been undertaken to remove soil contamination. As per Section 48(A) of the *Environmental Protection Act 1986*, the proposal will be referred to the Environmental Protection Authority to determine if environmental assessment is necessary, prior to public advertising and referral to public authorities.

ALTERNATE OPTIONS

26. Council may consider alternate options in relation to this item, such as:

- To resolve not to adopt the amendment to the local planning scheme.

SUMMARY CONCLUSION

27. It is recommended that Council adopt Local Planning Scheme Amendment No. 14, as the proposal is consistent with the current strategic direction set within the *Albany Local Planning Strategy* and will facilitate the development of higher density dwellings in close proximity to the City centre with the attendant amenity benefits that this will bring.

Consulted References	:	1. <i>Local Planning Scheme No. 1</i> 2. <i>Albany Local Planning Strategy 2010</i> 3. <i>City of Albany Strategic Community Plan 2023</i> 4. <i>City of Albany Corporate Business Plan 2013-2017</i> 5. Western Australian Planning Commission <i>State Planning Policy 1 – State Planning Framework Policy (Variation No. 2)</i>
File Number (Name of Ward)	:	LAMD20 (Frederickstown Ward)
Previous Reference	:	Nil

**PD147: SERVICE STATION AND LUNCH BAR - LOT 40 AND 41 , 342-346
ALBANY HIGHWAY, ORANA WA 6330**

Land Description	: Lot 40 and 41, 342-346 Albany Highway Orana WA 6330.
Proponent	: Peter Webb and Associates
Owner	: Procon Investments 7 Pty Ltd
Business Entity Name	: Procon Investments 7 Pty Ltd
Directors	: David Leon Key
Attachments	: 1. Application 2. Area Plan 3. Site Plan 4. submissions
Supplementary Information & Councillor Workstation	: Additional correspondence
Report Prepared by	: Manager Planning services (J van der Mescht)
Responsible Officer	: Executive Director Planning & Development Services (Dale Putland)

Responsible Officer's Signature:



STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. When exercising its discretion in relation to planning matters, the pertinent strategic document is the *Albany Local Planning Strategy*.
3. The proposal is consistent with the strategic directions identified in the *Albany Local Planning Strategy*.

Maps and Diagrams:



In Brief:

- Council is asked to consider a development application for a Service Station and Lunch Bar at Lots 40 and 41, 342-346 Albany Highway Orana WA 6330.
- Both of the uses are “p” permitted land uses within the “Highway Commercial” zone in accordance with LPS1.
- A permitted (“P”) use means that the use is permitted by the Scheme providing the use complies with the relevant development standards and the requirements of the Scheme.
- The application was referred to Main Roads for comment as this section of Albany Highway falls under their control and they regulate access onto roads under their control.
- Main Roads objected to the proposed development. The objections primarily relate to concerns regarding safety and efficiency of the state road network.
- Main Roads have also stated that they will only support one crossover of up to 11m wide.
- Staff recommend that Council approve the proposed development, subject to conditions.

RECOMMENDATION

PD147: RESPONSIBLE OFFICER RECOMMENDATION

- **THAT Council resolves to ISSUE a notice of determination granting development approval, with conditions, for a Service Station and Lunch Bar at Lots 40 and 41, 342-346 Albany Highway Orana WA 6330.**

Conditions:

1. All development shall occur and be maintained in accordance with the stamped, approved plans referenced P2160267(subject to variations to plans necessary for condition 7 to be met) and/or unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.

2. The proposal shall comply with any details and/or amendments marked in red on the stamped, approved plans.

Advice:

Notwithstanding the submitted detail the pylon sign shall be reduced to a maximum height of 6m above ground level in accordance with the City’s Signs Policy, to the satisfaction of the City of Albany.

3. Prior to commencement of development, a schedule of materials and colours to be used on the buildings/structures hereby approved shall be submitted for approval. The development shall be constructed in accordance with this approved detail to the satisfaction of the City of Albany.

4. Prior to commencement of development, a landscaping plan detailing the size, species and location of trees/shrubs shall be submitted for approval in writing by the City of Albany. The approved landscaping shall be implemented in the first planting season following occupancy of the development to the satisfaction of the City of Albany.

5. Prior to commencement of development, stormwater disposal plans, details and calculations shall be submitted for approval by the City of Albany. The development shall be constructed in accordance with this approved detail to the satisfaction of the City of Albany.

Advice:

Stormwater disposal is to be designed in accordance with the 'City of Albany's Subdivision and Development Guidelines';

The stormwater disposal system is to be designed and certified by a practicing Civil Engineer to the satisfaction of the City of Albany.

6. Prior to commencement of development, a vehicular and bicycle parking and access plan shall be submitted for approval by the City of Albany and shall be implemented and constructed to the satisfaction of the City of Albany.

Advice:

Car parking and access is to be designed in accordance with the Australian Standard 2890.

The plan shall clearly indicate the intended use of all parking bays (eg disabled bay, loading bay etc), access areas, line marking, kerbing and sealing.

A minimum of 1 bicycle parking bay shall be provided for the development hereby approved.

This plan shall reflect and be in accordance with Main Roads approved crossover location(s).

7. Vehicle access points, traffic movements and stormwater management onto Albany Highway and/or Chester Pass Road, shall be provided to the specification agreed by Main Roads Western Australia.
8. All landscaped areas shall be maintained as per the approved landscaping plan/s to the satisfaction of the City of Albany.
9. All vehicular parking and access areas shall be maintained as per the approved details and plans, to the satisfaction of the City of Albany.
10. The loading and unloading of goods shall occur entirely within the site and be undertaken in a manner so as to cause minimum interference with other vehicular traffic.
11. No goods or materials shall be stored, either temporarily or permanently, in the parking or landscape areas or in access driveways, unless otherwise agreed in writing by the City of Albany.
12. The development hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust.
13. Lighting devices are to be positioned and shielded so as not to cause any direct, reflected or incidental light to encroach beyond the property boundaries, in

accordance with Australian Standard AS4282/1997.

14. Unless otherwise agreed in writing with the City of Albany, the level of illumination of the fuel price pylon sign information shall not exceed a maximum luminance of:

- a. 6000 cd/m² during hours of full daylight;
- b. 600 cd/m² at dawn and dusk; and
- c. 300 cd/m² during hours of darkness.

15. Sign(s) shall not be erected on the lot without the prior approval of the City of Albany.

Advice:

Please refer to the City of Albany Local Planning Policy – Signs for further information.

16. Prior to occupancy of use lots 40 and 41 Albany Highway, shall be amalgamated into one lot and the necessary Certificate of Title created, to the satisfaction of the City of Albany.

17. Prior to occupancy of use a public art work commission to the value of 1% (or cash in lieu off) to reflect or enhance local cultural identity shall be provided as part of the development hereby approved, to the satisfaction of the City of Albany.

Advice: please refer to the City of Albany policy - Art in the Public Domain for further information

18. A plan indicating the location and type of bin and refuse storage shall be submitted for approval by the City of Albany, and shall be implemented to the satisfaction of, the City of Albany prior to occupancy of the use.

BACKGROUND

4. *Local Planning Scheme No. 1* was gazetted on 28 April 2014 and consists of the Scheme Text and the Scheme Maps. The Scheme divides the Local Government district into zones to identify areas for particular uses and identifies land reserved for public purposes. Most importantly, the Scheme controls the types of uses and development allowed in different zones. There are particular controls included for heritage and special control areas. The Scheme Text also sets out the requirements for planning approval, enforcement of the Scheme provisions and non-conforming uses.
5. The subject lots are located on the northern side of the Albany Highway and Chester Pass Road junction/roundabout, approximately 1.3 kilometres from the Albany city centre.
6. The lots have a combined area of approximately 3219 m² and are zoned 'Highway Commercial' under *City of Albany Local Planning Scheme No. 1* (LPS1)
7. The subject lots are currently developed and contain derelict buildings, a hardstand and fencing associated with a used car sales business that has not operated for a number of years.
8. The Service Station and Lunch Bar uses are listed as ("p") permitted land uses within the "Highway Commercial" zone in LPS1.

9. A permitted 'P' use means that the use is permitted by the Scheme providing the use complies with the relevant development standards and the requirements of the Scheme.
10. The application was referred to Main Roads for comment who objected to the proposed development. The objections primarily relate to concerns regarding safety and efficiency of the state road network.
11. Council is now requested to consider whether to grant development approval given the impact and concerns regarding the access to the development.

DISCUSSION

12. An assessment of the proposed development is required to ensure that the development (and not the use) complies with the development standards and the requirements of the Scheme.
13. When considering a permitted 'P' use the City does not have the ability to refuse the use. However the City may impose conditions on the use of the land to comply with any relevant development standards or requirements of the Scheme, and may refuse or impose conditions on any development of the land.
14. The most pertinent development standards and requirements of the Scheme to be considered include;
 - a. vehicle access and egress;
 - b. vehicle parking;
 - c. Site requirements
 - d. bin and refuse storage areas
 - e. landscaping requirements
 - f. Signs (policy)
 - g. Public Art (policy)
15. The application was assessed and the proposed development complies (or through satisfying standard conditions will comply) with all but two of the development standards and requirements of the Scheme.
16. The applicant has requested variations to the standards and requirements for vehicle access & egress and advertising Signs have been requested.

Vehicle access and egress

17. The application proposes the amalgamation of the two existing lots and a rationalisation of the existing driveway provision on Albany Highway from three to two; one for entry which will be 10m wide and another for exit which will be 11m wide.
18. The applicant contends that it is likely that the proposed development will attract 226 vehicles per day (452 movements) including 34 vehicles in the peak hour. Most of the vehicles will be pass by trips that use this facility because they are already passing the site and form part of the existing traffic flow, or linked trips combining multiple trip purposes at a number of destinations (i.e. already travelling on the road network in this area).
19. The LPS1 provisions for Highway Commercial zoned areas include the following provision;

“5.5.9.1 Within the Highway Commercial zone: ...

(d) Any access/egress point(s) onto adjoining roads requires the approval of the relevant road control authority. “

20. The application was referred to Main Roads for comment as this section of Albany Highway and Chester Pass Road fall under their jurisdiction.
21. Main Roads have objected to the proposed development and also required further information. Their objections and concerns primarily relate to safety and efficiency of the state road network.
22. Main Roads state that "A fuel station will be a high demand development that will generate high traffic movements at this location. Main Roads considers this to be a major safety issue and will also impact the efficiency to the State Network at this location."
23. Main Roads also provided advice stating that (in accordance with their relevant policy) that they will only support one crossover up to 11m wide.
24. The applicant was informed of the Main Roads response. The proposed responses and restrictions were unacceptable to the applicant and they requested the City to defer its decision until they could discuss the matter with the relevant Minister for Transport and Main Roads.
25. The applicant and their traffic engineers have since held a number of discussions with Main Roads and provided further information in an attempt to resolve Main Roads's concerns without success. (Please refer to the correspondence attached to this report for more detail on the responses.)
26. The applicant contends that the proposed driveways are in accordance with the current MRWA (Main Roads Western Australia) "Driveways" Policy, which allows two 11m driveways for a Service Station in this situation.
27. The applicant insists on the need for two (2) driveway crossovers to the development to enable a fuel tanker to safely access, circulate and exit the site and to safely allow other vehicles to enter and exit the site. If restricted to a single crossover, any fuel tanker would be unable to negotiate the site safely. The applicants contend that this situation will have a far greater impact on Albany Highway with respect to traffic operations and safety.
28. Main Roads have reemphasised their concerns and need to restrict the number of driveway access points to single access.
29. The applicant has now requested the City to make a decision on the matter and has requested the use of two (2) driveway access point (crossovers).
30. The applicant's arguments over the need and benefit of having the two access points for vehicle circulation is acknowledged by Staff. However these roads are under control of Main Roads and the number of access points remains their decision.
31. City Staff therefore recommend that a condition requiring Main Roads approval for access/egress point(s) onto the adjoining roads be placed as a condition of any approval.
32. This condition will allow the Applicant to alter their plans in accordance with Main Roads comments or negotiate an alternative outcome with Main Roads.

Signage

33. As part of the application a pylon sign 7.30 m in height is proposed.
34. The maximum height allowed for a pylon sign under the City's Signs policy is 6m in height. There is no planning merit or local precedence to warrant a variation to this policy requirement.
35. City Staff therefore recommend that a condition requiring the pylon sign to be amended to a maximum of 6 m height be placed as a condition of any approval.

GOVERNMENT & PUBLIC CONSULTATION

36. The proposal was referred to Main Roads for comment as this section of Albany Highway and Chester Pass Road fall under their jurisdiction and they regulate access to roads under their control.
37. Main Roads objected to the proposed development. The objections primarily relate to concerns regarding safety and efficiency of the state road network.
38. Main Roads also stated that in accordance with their relevant policy, they will only support one crossover up to 11m wide.

STATUTORY IMPLICATIONS

39. The “Service Station” and “Lunch Bar” land uses are both listed as (“p”) permitted land uses within the “Highway Commercial” zone in LPS1.
40. A permitted ‘P’ use means that the use is permitted by the Scheme providing the use complies with the relevant development standards and the requirements of the Scheme.
41. According to City of Albany *Local Planning Scheme No. 1*;
 - a. **lunch bar** means premises or part of premises used for the sale of takeaway food (in a form ready to be consumed without further preparation) within industrial or commercial areas;
 - b. **service station** means premises used for:
 - i. (a) the retail sale of petroleum products, motor vehicles accessories and goods of an incidental/convenience retail nature; and
 - ii. (b) the carrying out of greasing, tyre repairs and minor mechanical repairs to motor vehicles,
 - iii. but does not include premises used for a transport depot, panel beating, spray-painting, major repairs or wrecking;
42. City of Albany *Local Planning Scheme No. 1* clause 4.2.11 lists the following objectives for the Highway Commercial zone:
 - (a) Provide along the main transport spines into the CBD, a range of services and activities that support the main CBD commercial areas including automotive trades, car sales, showrooms, vehicle servicing and repairs, storage and similar activities that cannot be accommodated in other commercial or industrial related zones;
 - (b) Ensure that the lot sizes, the built form and layout of the development is robust and adaptable, and the built form provides attractive, complementary street façades and adjoining developments promote the joint use of crossovers and parking areas; and
 - (c) Restrict the sizes and location of signs and encourage landscaping of front setbacks to improve the amenity of highway commercial areas.
43. City of Albany *Local Planning Scheme No. 1* clause 4.2.11 lists the following pertinent objectives for the Highway Commercial zone:

“5.5.9.1 Within the Highway Commercial zone:

...

 - (d) Any access/egress point(s) onto adjoining roads requires the approval of the relevant road control authority.

(e) Signage associated with an approved development should be incorporated into the fabric of buildings and structures on-site and the use of bunting should be avoided.”

44. Voting requirement is a **Simple Majority**.

POLICY IMPLICATIONS

45. The proposal is assessed in the context of the City of Albany’s Local Planning Scheme, Signs policy and Public Art policy.

46. The proposal, as submitted, is not consistent with the signs policy. It is therefore recommended that a condition requiring the plans for the proposed pylon sign to be amended to have a height of 6 m maximum be placed on any approval.

47. It is recommended that a condition requiring a 1% Public art contribution in accordance with the Public Art policy be placed on any approval.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<p>Organisational Operations and Reputation The proposed use could give rise to unacceptable detrimental impacts on the safety and efficiency of the road network.</p>	Possible	Moderate	Medium	Mitigation of impacts to be achieved through adoption and enforcement of appropriate planning conditions.

FINANCIAL IMPLICATIONS

49. All costs associated with the development will be borne by the proponent.

50. However, should the proponents be aggrieved by Council’s decision or any attached conditions and seek a review of that decision or conditions through the State Administrative Tribunal, the City could be liable for costs associated with defending the decision at a State Administrative Tribunal hearing.

LEGAL IMPLICATIONS

51. Council is at liberty to use its discretion to approve or refuse the proposal. An applicant aggrieved by a decision or condition may apply for a review to the State Administrative Tribunal, in accordance with Section 252 of the *Planning and Development Act 2005*.

52. The proponent has the right to seek a review of the Council’s decision, including any conditions attached to an approval. The City of Albany may be required to defend the decision at a State Administrative Tribunal hearing.

ENVIRONMENTAL CONSIDERATIONS

53. The subject lot is developed with derelict buildings and a hardstand associated with used car sales business that has been vacant for a number of years. There are no environmental considerations relating to this proposal.

ALTERNATE OPTIONS

54. Council may consider alternate options in relation to this item, such as:

- To determine that the proposed development as proposed is unacceptable and to resolve to request the applicant to submit a proposal that is acceptable to Main Roads. This option may be considered by the applicants as a “deemed refusal” and brought before the State Administrative Tribunal for a review.
- To alter, amend, remove or add conditions to the approval to address potential impacts from the development.

SUMMARY CONCLUSION

55. The subject lots have been neglected for a number of years. The proposed development will result in the removal of the derelict buildings, hardstand and fencing and thereby improving the street scape appearance of this highly visible approach to the City.
56. The proposed land uses are permitted (“P”) uses within Local Planning Scheme number 1. When considering a permitted ‘P’ use the City cannot refuse the use because of the unsuitability of the use for the zone.
57. The City may impose conditions on the use of the land to comply with any relevant development standards or requirements of the Scheme.
58. The proposed development generally complies with all except two of the development standards and the requirements of the Scheme as discussed in this report.
59. These matters can however be resolved through appropriate conditions of approval.
60. It is therefore recommended that Council approve the proposed development, subject to the conditions provided.

Consulted References	:	1. <i>Local Planning Scheme No. 1</i> 2. <i>Albany Local Planning Strategy 2010</i> 3. <i>Signs Policy</i> 4. <i>Public Art policy</i>
File Number (Name of Ward)	:	A119358 (Yakamia Ward)
Previous Reference	:	

14. **NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF COUNCIL**
15. **MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**
16. **REPORTS OF CITY OFFICERS**
17. **MEETING CLOSED TO PUBLIC**
18. **CLOSURE**