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# MINUTES

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## DEVELOPMENT AND INFRASTRUCTURE SERVICES COMMITTEE MEETING

**14 June 2017**

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) **Functions:** The Committee is responsible for:

Development Services:

The delivery of the “*Liveable Environmental Objectives*” contained in the City of Albany Strategic Plan:

- Advocate, plan and build connected, liveable communities.
- Create a community that supports people of all ages and backgrounds.
- Create vibrant neighbourhoods which are safe yet retain our local character and heritage.

Infrastructure Services:

The delivery of the “*Clean and Green Objectives*” contained in the City of Albany Strategic Plan:

- To protect and enhance our pristine natural environment.
- To promote environmental sustainability.
- To promote our region as clean and green.

(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) **Membership:** Open to all elected members.

(4) **Meeting Schedule:** Monthly

(5) **Meeting Location:** Council Chambers

(6) **Executive Officers:** Executive Director Works & Services, Executive Director Development Services

(7) **Delegated Authority:** None

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**1. DECLARATION OF OPENING THE CHAIR DECLARED THE MEETING OPEN  
AT [6:00:06 PM](#)**

**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 D Wellington

**Councillors:**

Member	P Terry
Member	C Dowling
Member	G Stocks
Member	B Hollingworth
Member	J Shanhun ( <b>Chair</b> )
Member	S Smith
Member	A Goode JP
Member	A Moir
Member	R Sutton

**Staff:**

Chief Executive Officer	A Sharpe
Executive Director Works and Services	M Thomson
Acting Executive Director Development Services	S Reitsema
Manager Development, Planning & Land Information Services	J van der Mescht
Manager City Engineering	D King
Executive Director Corporate Services	M Cole
Meeting Secretary	J Cobbold

**Apologies:**

Member	N Mulcahy (on leave of absence until 30 June 2017)
Member	R Hammond
Executive Director Development Services	P Camins
Member	J Price

**4. DISCLOSURES OF INTEREST**

<b>Name</b>	<b>Committee/Report Item Number</b>	<b>Nature of Interest</b>
Cr Bill Hollingworth	DIS033	A potential contractor to any potential wetland project as a supplier of plant species.

**5. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE -Nil**

**6. PUBLIC QUESTION TIME - Nil**

**7. PETITIONS AND DEPUTATIONS -Nil**

**8. CONFIRMATION OF MINUTES**

**DRAFT MOTION**

**MOVED: COUNCILLOR Moir  
SECONDED: COUNCILLOR GOODE**

**THAT the minutes of the Development and Infrastructure Services Committee meeting held on 10 May 2017, as previously distributed, be CONFIRMED as a true and accurate record of proceedings.**

**CARRIED: 10-0**

**9. PRESENTATIONS NIL**

**10. UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS - NIL**

**DIS027: CONTRACT C17014 - PROVISION OF TRAFFIC CONTROL**

**Proponent / Owner** : City of Albany  
**Report Prepared By** : Depot Administration Coordinator (T Sudran)  
**Responsible Officers:** : Executive Director Works and Services (M Thomson)  
**Attachments** : Nil

**Responsible Officer's Signature:**



**Note: Confidential Briefing Note distributed under separate cover.**

**STRATEGIC IMPLICATIONS**

1. This item relates to the following elements of the City of Albany Strategic Community Plan 2023 and Corporate Business Plan 2014 - 2018:
  - a. **Key Theme:** 2. Clean, Green and Sustainable
  - b. **Strategic Objectives:** 2.2 To maintain and renew city assets in a sustainable manner.
  - c. **Strategy:** Not applicable

**In Brief:**

- Council approval is sought to accept tendered rates for Contract C17014 – Provision of Traffic Control for a period from 1 July 2017 or date of award (whichever occurs latest) until 30 September 2019, with an option for a further one year period by mutual agreement.
- The tender from Advanced Traffic Management is considered the most advantageous to Council.

**RECOMMENDATION**

**DIS027: COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR HOLLINGWORTH**  
**SECONDED: COUNCILLOR TERRY**

**THAT the Responsible Officer Recommendation be ACCEPTED.**

**CARRIED: 10-0**

**DIS027: RESPONSIBLE OFFICER RECOMMENDATION**

THAT Council ACCEPT the tender from Advanced Traffic Management and award contract C17014 Provision of Traffic Management Services until 30 September 2019 with an option to extend for a further 12 months.

**BACKGROUND**

2. The City's current contract with Advanced Traffic Management is due to expire 30 June 2017. It is necessary to establish a new contract for the provision of traffic management services.
3. Tenders were called for the provision of traffic management from 1 July 2017 or date of award (whichever occurs latest) until 30 September 2019.

4. The tender is for all work necessary to provide for the safe movement of traffic and the protection of persons and property through and or around work sites within the City.

### DISCUSSION

5. A total of twelve (12) tender documents were issued by the City of Albany.
6. Six (6) completed tender documents were submitted on/before the advertised closing date and time. The following table summarises the tender submissions and overall evaluation scores applicable to each submission.
7. The tenders were evaluated using the weighted attributes methodology. This method scores the evaluation criteria and weighs their importance to determine an overall points score for each tender. The criteria are tabled below:

Criteria	% Weighting
Cost	35%
Relevant Experience	15%
Key Personnel Skills and Experience	15%
Tenderer's Resources	15%
Demonstrated Understanding	15%
Corporate Social Responsibility	5%
<b>Total</b>	<b>100%</b>

8. The following table summarises the tenders and overall evaluation scores applicable to each submission:

Tender	Total Evaluation Score
Advanced Traffic Management	711.47
Tenderer B	612.70
Tenderer C	598.71
Tenderer D	538.64
Tenderer E	520.49
Tenderer F	404.65

### GOVERNMENT & PUBLIC CONSULTATION

9. A request for tenders was published in the West Australian on 12 April 2017 and the Albany Weekender on 13 April 2017. The tender closed at 2pm on the 27 April 2017.

### STATUTORY IMPLICATIONS

10. Regulation 11 of the Local Government (Functions and General) Regulations 1996 (Regulations) requires Council to publicly tender if the contract is, or is expected to be, more, or worth more than \$150,000.
11. Regulation 18 of the Regulations outlines a number of requirements relating to choice of tender. Council is to decide which of the acceptable tenders is the most advantageous to Council. It may also decline to accept any tender.
12. Regulation 19 of the Regulations requires Council to advise each tenderer in writing the result of Council's decision.



### POLICY IMPLICATIONS

13. The City of Albany Tender Policy and Regional Price Preference Policy are applicable to this item.
14. The value of this tender is expected to be in excess of \$500,000 and therefore Council approval is required as this exceeds the CEO's delegation.

### RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Business Interruption Non-compliance with contract or business failure resulting in inadequate traffic management	Unlikely	Moderate	Medium	General conditions of contract allow for contract termination on the basis of failure to supply goods and services
People Health and Safety Increased project risk due to inadequate traffic management	Possible	Major	High	Only tenders from reputable companies who have the required certification considered.

### FINANCIAL IMPLICATIONS

16. The cost scoring was carried out based on an assumption of predominantly daytime works. It should be noted that if a significant amount of after-hours and or weekend works be required, the preferred tender submission may result in higher costs being incurred than the cost score criteria would indicate.
17. The cost per job will be included in the specific budget line item.

### LEGAL IMPLICATIONS

18. Nil.

### ENVIRONMENTAL CONSIDERATIONS

19. Nil.

### ALTERNATE OPTIONS

20. Council can accept or reject tenders as submitted.

### CONCLUSION

21. On reviewing the submissions, the evaluation team assessed Advanced Traffic Management as being the most advantageous tenderer across the evaluation criteria, for daytime works. It is recommended that Advanced Traffic Management is awarded the provision of traffic control contract.

<b>Consulted References</b>	:	Local Government (Functions and General) Regulations 1995 Council Policy – Purchasing (Tenders & Quotes) Council Policy – Buy Local (Regional Price Preference)
<b>File Number (Name of Ward)</b>	:	C17014
<b>Previous Reference</b>	:	Nil

**DIS028: ELLEN COVE SWIMMING ENCLOSURE – THREE YEAR TRIAL**

**Land Description** : Middleton Beach, Albany  
**Proponent / Owner** : City of Albany  
**Business Entity Name** : N/A  
**Attachments** : Global Marine Enclosures Maintenance Program Report Year 1  
Community Perception Survey (September 2015)  
Community Experience Survey (March 2017)  
**Supplementary Information & Councillor Workstation** : NIL  
**Report Prepared By** : Major Projects Officer (E Evans)  
**Responsible Officers:** : Executive Director Works and Services (M Thomson)

**Responsible Officer's Signature:**



**STRATEGIC IMPLICATIONS**

1. This item relates to the following elements of the City of Albany Strategic Community Plan 2023 and Corporate Business Plan 2014 - 2018:
  - a. **Key Theme:** 2. Clean, Green and Sustainable.
  - b. **Strategic Objectives:** 2.1. To protect and enhance our natural environment
  - c. **Strategic Initiative:** 2.1.2. Sustainably protect and enhance our iconic coastline and reserves.

**In Brief:**

- In March 2016, the City installed a Swimming Enclosure (Shark Barrier) at Ellen Cove, Middleton Beach.
- The Swimming Enclosure has now been in place for 12 months.
- The Swimming Enclosure has performed well and the community feedback has been positive.

**RECOMMENDATION**

**DIS028: COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR SUTTON**  
**SECONDED: COUNCILLOR SMITH**

**THAT the Responsible Officer Recommendation be NOTED AND SUPPORTED**

**CARRIED: 10-0**

**DIS028: RESPONSIBLE OFFICER RECOMMENDATION**

That Council:

1. NOTE the community survey results, and
2. SUPPORT the continuation of the Ellen Cove Swimming Enclosure 3-year trial.

**BACKGROUND**

2. In July 2015, the State Government announced that \$200 000 would be provided to the City of Albany for the installation of a Shark Barrier at Middleton Beach, Albany.

3. The City of Albany considered the offer at its Ordinary Council Meeting on 25 August 2015 where it was resolved to:
  - a) *Support conducting a feasibility study into the installation of a Shark Barrier enclosure at Middleton Beach for future consideration and,*
  - b) *Agree to undertake relevant stakeholder and community consultation in respect to the installation of a Shark Barrier enclosure at Middleton Beach in conjunction with the Feasibility Study.*
  
4. Following the presentation of the Feasibility Study and presentation of Community Consultation Results, Council resolved the following:
  - a) *The installation of a shark barrier is considered suitable to be trialled at Middleton Beach and therefore Council should accept the State Government grant of \$200,000.*
  - b) *That the barrier be installed for a trial period, duration will be determined by cost but is expected to be 2 to 3 years.*
  - c) *A Request for Tender (RFT) for procurement of a shark barrier system inclusive of all planning/approvals, design, supply, installation, maintenance and monitoring is prepared and publically advertised.*
  - d) *That environmental education is incorporated (signage, media, community news) which will assist communities to accept and understand concerns, and an evaluation of community perceptions is reviewed as part of a trial.*
  - e) *Once tenders are assessed, capital costs to install the barrier be contained within the \$200,000 funding. Recurrent maintenance and renewal funding shall be allocated each financial year from municipal funds. If tenders exceed the budget, then a report for Council consideration shall be prepared.*
  - f) *All opportunities for grant funding be investigated and applied for if appropriate.*
  
5. The City then conducted a competitive tender process. Council then resolved to:–
  - a. *Accept the tender from Global Marine Enclosures (Aquarius Barrier) and AWARD contract C15034 – Shark Exclusion Barrier System, Design and Construct, Middleton Beach, Albany.*
  - b. *It was noted that contract C10536 – Piles for Shark Exclusion Barrier System Design and Construction, Middleton Beach, Albany was not awarded as the Aquarius System did not require the installation of Piles.*

## **DISCUSSION**

6. Below is a summary of the performance of the barrier in the first 12 months:
  - a. No bycatch reported.
  - b. No swimmer safety incidents.
  - c. No shark/predator breaches.
  - d. After initial replacement of one section, very minimal damage recorded.

- e. Proven its ability to withstand seagrass influx.
  - f. Endured many winter storms and swell breaking at Middleton Point.
  - g. Growth found to be stable and does not require cleaning.
  - h. An established eco-system has formed on the barrier.
  - i. Upgrades performed include:
    - i. Adding vertical ropes to reinforce barrier.
    - ii. Modify materials of clips to strengthen in surf zone.
    - iii. Introduce new float design in surf zone.
    - iv. Improve the rock anchor section to reduce wear and increase longevity.
    - v. Increased the height in surf zone to account for bathymetry changes.
7. Since these upgrades have been carried out the barrier has been performing extremely well and GME and the City are confident that the knowledge gained over the first 12 months has resulted in a solution that fits well in the unique environment at Ellen Cove.
8. The monitoring and maintenance has been carried out by South Coast Diving Services as a sub-contractor to GME. GME will continue to manage the monitoring and maintenance of the barrier for the continuation of the trial.

#### GOVERNMENT & PUBLIC CONSULTATION

9. In September 2015 during the feasibility phase of this project a community perception survey was carried out. 120 people completed the survey. Some of the results were:
- a. **63.33%** of people supported the installation of a Swimming Enclosure at Middleton Beach.
  - b. People were concerned about the cost and the potential damage to the environment.
  - c. People felt that a Swimming Enclosure would offer a safe place to swim (**79.83%**) and **57.14%** of respondents said that they would choose to swim at Middleton Beach as opposed to a different beach if there was a barrier.
10. In March 2017 following the barrier having been in place for 12 months a Community Experience Survey was carried out. 146 people completed the survey. Some of the results were:
- a. **93.15%** of people saw value in the City installing and maintaining the Swimming Enclosure.
  - b. **65.75%** of people stated that they had increased their swimming at this location because of the barrier being in place.
  - c. **75.17%** of people stated that they had experienced social benefits from the barrier being installed.
  - d. **91.78%** of people stated that they supported the continuation of the three year trial of the Swimming Enclosure at Ellen Cove.
11. Prior to installation of the barrier the following organisations were briefed on the project and approvals gained if necessary.
- a. Department of Parks and Wildlife (approval not required)
  - b. Department of Lands (approval received)
  - c. Department of Fisheries (approval received)
  - d. Department of Transport (Navigational Safety) (approval received)
  - e. Department of Transport (Exclusion Zone) (approval received)

- f. Department of Transport (Jetty License) (approval received)
- g. WA Planning Commission (approval not required)
- h. Department of Aboriginal Affairs (approval not required)
- i. Department of Fire and Emergency Services (approval not required)
- j. Environmental Protection Authority (approval not required)
- k. City of Albany Planning Approval (approval not required)
- l. City of Albany Building Approval (approval not required)
- m. Southern Port Authority (Seabed Lease) (approval received)

12. No further approvals are required.

### STATUTORY IMPLICATIONS

13. There are no statutory implications related to this project.

### POLICY IMPLICATIONS

14. There are no policy implications related to this project.

### RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>People Health &amp; Safety:</b> The integrity of the barrier could be compromised after an encounter with a large shark or storm, therefore exposing swimmers to shark attack.	Possible	Major	High	Continue ongoing monitoring of barrier, particularly after storm events or shark sighting.
<b>Legal &amp; Compliance:</b> Failure to comply with conditions of insurance coverage, could expose the City of Albany to public liability litigation in the event of an injury/shark attack.	Possible	Major	High	Continue to follow processes that have been put in place.
<b>Community:</b> Community swimming/water activities may be disrupted or impacted by the installation of a shark barrier.	Possible	Minor	Medium	Continue to work with stakeholder groups in regards to the use of the area.
<b>Reputation:</b> Community is disappointed if trial doesn't continue or barrier is not maintained.	Unlikely	Minor	Low	Continue with trial and continue to maintain barrier.
<b>Financial:</b> Ongoing maintenance costs and unknown cost of replacement.	Possible	Moderate	Medium	Allocate maintenance costs in budget. Ensure barrier is appropriately insured.

### FINANCIAL IMPLICATIONS

16. Council is responsible for the ongoing costs of maintenance and monitoring. This is currently \$35,580 (ex-GST) per year.

### LEGAL IMPLICATIONS

17. There are no legal implications related to this report.

## ENVIRONMENTAL CONSIDERATIONS

18. Monitoring of the barrier since installation has identified NO detrimental impacts on the environment. Monitoring will be ongoing through the duration of the trial.

## ALTERNATE OPTIONS

19. Nil.

## CONCLUSION

20. The Global Marine Enclosures 'Aquarius Barrier' has been in place at Ellen Cove for 12 months.
21. The barrier has performed well and community feedback has been positive.
22. This report recommends that the City continues with the 3-year trial of the Ellen Cove Swimming Enclosure.

<b>Consulted References</b>	:	<ul style="list-style-type: none"><li>• <i>Review of the Dunsborough Beach Enclosure Trial, Hydrobiology 2014.</i></li><li>• <i>Middleton Beach Shark Exclusion Barrier Feasibility.</i></li></ul>
<b>File Number (Name of Ward)</b>	:	EM.PLA.29 - Frederickstown Ward & Breaksea Ward
<b>Previous Reference</b>	:	OCM - 25 August 2015 – Item WS084. OCM - 27 October 2015 – Item WS091. OCM – 15 December 2015 – Item WS098.

**DIS029: CONSIDERATION OF ADOPTION OF LOCAL PLANNING SCHEME AMENDMENT – LOT 1 JASON RD, LOT 476 SIBBALD RD AND LOT 1001 LOWER KING RD, BAYONET HEAD.**

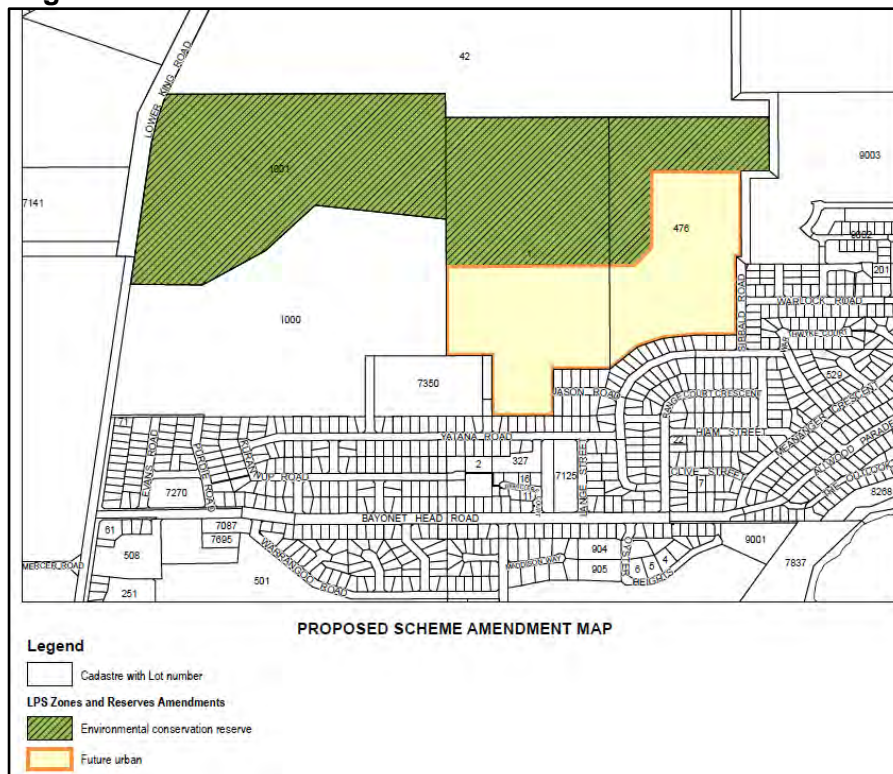
<b>Land Description</b>	: Lot 1 Jason Rd, Lot 476 Sibbald Rd and Lot 1001 Lower King Rd, Bayonet Head.
<b>Proponent</b>	: Edge Planning & Property
<b>Owner</b>	: Lots 1 & 1001 – LOWE PTY LTD Lot 476 – E & M Cameron
<b>Business Entity Name</b>	: Lowe Pty Ltd, Heath Developments
<b>Attachments</b>	: Schedule of Submissions Comments – Environmental Protection Authority Amendment 22
<b>Supplementary Information &amp; Councillor Workstation:</b>	:
<b>Report Prepared by</b>	: Senior Planning Officer – Strategic planning (A Nicoll)
<b>Responsible Officer</b>	: Executive Director Development Services (P Camins)

**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:**

- Council previously initiated and advertised Local Planning Scheme Amendment No.22, which proposes to rezone land from 'General Agriculture' to 'Environment Conservation' and 'Future Urban'.
- The amendment is a culmination of the strategic *Bayonet Head Plan for Development* and as such, does not conflict with the current moratorium to rezone agricultural land.
- City planning Staff support the local planning scheme amendment, as it is consistent with environmental conservation measures imposed by the Minister and the strategic direction set in the *Albany Local Planning Strategy*.
- Council is requested to consider the submissions received following public advertising and referral to public authorities and determine whether to support the local planning scheme amendment.

**RECOMMENDATION**

**DIS029: COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR SUTTON  
SECONDED: COUNCILLOR TERRY**

**THAT the Responsible Officer Recommendation be ADOPTED**

**CARRIED: 10-0**

**NOTED:** Cr Dowling lives in the area but commented she did not feel she had to declare an interest as there is no financial gain. Guidance was provided by the CEO - indicating the interest was not considered a financial interest and was a matter that was shared in common with many local ratepayers.

**DIS029: RESPONSIBLE OFFICER RECOMMENDATION**

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

1. Adopt, without modification, Amendment No. 22 to amend *City of Albany Local Planning Scheme No. 1* by:
  - (1) Creating a new 'Environmental Conservation' reserve;
  - (2) Adding a notation to the Scheme Map legend;
  - (3) Rezoning Lot 1 Jason Road and Lot 476 Sibbald Road, Bayonet Head from 'General Agriculture' zone to 'Future Urban' zone and 'Environmental Conservation' reserve;
  - (4) Transferring Lot 1001 Lower King Road, Bayonet Head from 'General Agriculture' zone to 'Environmental Conservation' reserve; and
  - (5) Amending the Scheme Maps accordingly.

**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. In 2006-2007, the strategic *Bayonet Head Plan for Development* was submitted as a proposal to guide development in the localities of Bayonet Head and Oyster Harbour.
6. The plan proposed development over areas reported as having ecological qualities. Consequently, the Minister at the time issued a statement requiring 67% of the area being ceded as an Environmental Conservation reserve.
7. In October 2016, Council resolved to advertise Amendment No. 22, which proposes to rezone land from 'General Agriculture' to 'Environment Conservation' and 'Future Urban, in accordance with the previous Ministerial Statement 942.
8. Prior to advertising, the amendment was referred to the Environmental Protection Authority (EPA). In order for the EPA to make an assessment of the proposal, the EPA requested that the amendment be modified to provide correct information. The amendment incorrectly states:  
  
*'The Minister also determined that the proposal was a 'derived' proposal, and that future clearing within the development footprint does not require further assessment from the EPA.'*
9. The EPA advised that no proposal within the strategic proposal area has been declared a 'derived' proposal and that development proposals within the area may require further consideration by the EPA.
10. Subsequently, the amendment document was modified. Upon further consideration, the EPA determined that the scheme amendment is unlikely to have a significant effect on the environment, and does not warrant formal assessment under Part IV of the Environmental Protection Act.
11. Following notice from the EPA, the amendment was advertised in accordance with the requirements of the *Planning and Development (Local Planning Schemes) Regulations 2015*. At the close of advertising, a total of 13 submissions were received.

## DISCUSSION

12. City planning Staff support the local planning scheme amendment, as it is consistent with environmental conservation measures imposed by the Minister and the strategic direction set in the *Albany Local Planning Strategy*.
13. A 'Schedule of Submissions' has been developed to identify issues raised during the advertising process and to provide recommendations for Council deliberation. The schedule is available as an attachment to this report item. Key issues raised included:
  - a) Need for additional access onto Lower King Road;
  - b) Need for public recreation areas;
  - c) Need for bushfire management measures due to extreme hazard conditions; and
  - d) Need to modify conservation area.

### Additional Access to Lower King Road

14. Access to Lower King Road currently exists via Bayonet Head Road. It is likely that additional access points will have to be provided at the time of subdivision. The access arrangements will be determined in detail during the structure planning and or subdivision stages in accordance with a Transport Impact Assessment.

### Public Open Space

15. As a component of future structure planning or subdivision design, areas of public open space will be designated in accordance with the WAPC Liveable Neighbourhoods' policy in consultation with the Department of Planning. Public Open Space is generally acquired at a rate of 10% of the gross subdivision area and developed for both passive and active means.

#### Bushfire Management

16. The proposed vegetated conservation areas pose a Bushfire hazard and as such, bushfire management measures will need to be implemented as a component of future structure planning, subdivision design and development. Measures may include suitable egress, separation between development and hazard areas and water for firefighting purposes.

#### Modify Conservation Area

17. Two submissions recommended reducing the proposed conservation area to allow for new conservation areas further south to preserve habitat for the western ring tail possum and the Baudin's cockatoo and Carnaby's cockatoo.
18. Staff recommend that the request to modify conservation areas be dismissed in light of supporting comments received from the Environmental Protection Authority (EPA) and the Department of Parks and Wildlife (DPAW).
19. The EPA considers that the scheme amendment is unlikely to have a significant effect on the environment and does not warrant formal assessment under Part IV of the Environmental Protection Act.
20. The DPAW considers that the rezoning of Lot 1001 and partial Lots 1 and 476 from 'General Agriculture' to 'Environmental Conservation' reserve is in accordance with Ministerial Statement 942.

*Figure illustrating conservation areas deemed by MS942.*



21. Future Planning processes will create the remaining conservation areas as deemed by Ministerial Statement 942 (refer to map above of all proposed conservation areas).
22. The amendment contributes to biodiversity conservation through maintaining landscape native vegetation linkage and habitat for native flora and fauna including listed Threatened species and communities.

23. The amendment is consistent with the Albany Local Planning Strategy, which classifies the subject lots as being suitable for urban development within a short to medium development timeframe.
24. The amendment is a culmination of a strategic *Bayonet Head Plan for Development* and as such does not conflict with the current moratorium to rezone agricultural land.

### GOVERNMENT & PUBLIC CONSULTATION

25. The local planning scheme amendment was advertised in accordance with the requirements of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
26. Thirteen submissions were received from public authorities and members of the public. Submissions are considered in a schedule available as an attachment to this report and deliberated in the 'Discussion' section of this report item.

### STATUTORY IMPLICATIONS

27. Scheme amendments undergo a statutory process in accordance with the *Planning and Development Act 2005* and *Planning and Development (Local Planning Schemes) Regulations 2015*.
28. 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.
29. Regulation 50(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015* allows Council to support a standard amendment, with or without modification.
30. Voting requirement for this item is **SIMPLE MAJORITY**

### POLICY IMPLICATIONS

31. There are no policy implications relating to the proposed amendment. Relevant Policy documents include:
  - a) *State Planning Policy 2 – Environment and Natural Resources Policy (2003)*
  - b) *State Planning Policy No. 2.9 Water Resources (2006)*
  - c) *State Planning Policy No. 3 – Urban Growth and Settlement (2006)*
  - d) *State Planning Policy 3.7 Planning in Bushfire Prone Areas (2015)*
  - e) *Liveable Neighbourhoods (2009)*.

### RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Organisational Operations and Reputation</b> <i>The proposal may not be accepted by the Western Australian Planning Commission or the Minister for Planning.</i>	Possible	Minor	Medium	<i>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.</i>
<b>Community, Organisational Operations and Reputation</b>	Possible	Minor	Medium	<i>Submissions have been considered and will be</i>

<i>The proposal may attract objections from members of the public.</i>			<i>forwarded to the WAPC for further deliberation.</i>
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**FINANCIAL IMPLICATIONS**

33. The developer is responsible for managing the conservation area for 10 years or until the land is ceded to the City for management.

**LEGAL IMPLICATIONS**

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

**ENVIRONMENTAL CONSIDERATIONS**

35. Environmental studies and associated assessments have been undertaken for the subject amendment.
36. On 9 August 2013, the Minister issued a statement that allows urban development for 33% of the site and for 67% of the site to be ceded as an Environmental Conservation reserve.
37. The Ministerial Statement includes various conditions of subdivision, including requirements for a Conservation Area Management Plan and Construction Management Plan.

**ALTERNATE OPTIONS**

38. Council may consider alternate options in relation to this item, such as:
- a) To resolve to support the scheme amendment with modification; or
  - b) To resolve not to support the scheme amendment and advise the Western Australian Planning Commission, in writing, of the reasons for doing so.

**SUMMARY CONCLUSION**

39. During the public consultation period, 13 submissions were received; two submissions recommended modifying conservation areas and the remaining either had no objection or recommended support.
40. Having considered the supporting comments from the Environmental Protection Authority and the Department of Parks and Wildlife, a modification to conservation areas is not necessary.
41. The City recommends that Council adopt, without modifications, Local Planning Scheme Amendment No. 22.

<b>Consulted References</b>	:	<ol style="list-style-type: none"> <li>1. <i>Local Planning Scheme No. 1</i></li> <li>2. <i>Albany Local Planning Strategy 2010</i></li> <li>3. <i>City of Albany Strategic Community Plan 2023</i></li> <li>4. <i>State Planning Policy 2 – Environment and Natural Resources Policy (2003)</i></li> <li>5. <i>State Planning Policy No. 2.9 Water Resources (2006)</i></li> <li>6. <i>State Planning Policy No. 3 – Urban Growth and Settlement (2006)</i></li> <li>7. <i>State Planning Policy 3.7 Planning in Bushfire Prone Areas (2015)</i></li> <li>8. <i>Liveable Neighbourhoods (2009).</i></li> </ol>
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<b>File Number (Name of Ward)</b>	:	LAMD22 (Breaksea Ward)
<b>Previous Reference</b>	:	PD142 24 October 2016

**DIS030: PROPOSED COUNCIL POLICY – REGULATORY COMPLIANCE**

<b>Proponent</b>	: City of Albany
<b>Attachments</b>	: <ul style="list-style-type: none"><li>• Proposed Council Policy – Regulatory Compliance</li><li>• Proposed Council Guidelines – Compliance and Enforcement</li><li>• Appendix 1-1 &amp; 1-2 directly follow this report.</li></ul>
<b>Report Prepared by</b>	: Manager Ranger and Emergency Services (T Ward)
<b>Responsible Officer</b>	: Executive Director Development Services (P Camins)

**Responsible Officer's Signature:**



**STRATEGIC IMPLICATIONS**

1. This item relates to the following elements of the City of Albany Strategic Community Plan 2023 and Corporate Business Plan 2014 - 2018:
  - a. **Key Theme:** 5. Civic Leadership
  - b. **Strategic Objectives:**
    - 5.1 To establish and maintain sound business and governance structures.
    - 5.3 To engage effectively with our community.
  - c. **Strategy:** Nil.

**In Brief:**

- The City of Albany has a regulatory and compliance enforcement role.
- A new Regulatory Compliance Policy has been drafted to:
  - Ensure a consistent approach in undertaking compliance and enforcement actions in relation to WA state legislation and City of Albany local laws.
  - Ensure transparency, procedural fairness and the principles of natural justice are enacted in such activities.
- This Policy is supported by guidelines which inform the application of principles for compliance and enforcement activities.

**RECOMMENDATION**

**DIS030: COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR HOLLINGWORTH  
SECONDED: COUNCILLOR MOIR**

**THAT the Responsible Officer Recommendation be ADOPTED.**

**CARRIED: 10-0**

**DIS030: RESPONSIBLE OFFICER RECOMMENDATION**

THAT Council:

- 1) **ADOPT** the proposed Regulatory Compliance Policy:
  - (a) **Purpose:** The purpose of which is to establish principles and guidelines for compliance and enforcement activities.
  - (b) **Effect:** The effect of which provides a framework of enforcement options and considerations, in line with a recognised Public Interest test.
- 2) **RECEIVE** the Council Guidelines - Compliance and Enforcement as informing principles for these activities.

**BACKGROUND**

2. The City of Albany has a well-established regulatory compliance and enforcement role which is presently being conducted in an ad-hoc and inconsistent manner.
3. Agencies, such as the State Administrative Tribunal and the Crime and Corruption Commission have been established to monitor and investigate the activities of public bodies, including local governments.
4. Various WA local government officers and elected members have recently been subjected to intense public scrutiny over allegations of misconduct.
5. Many State Government agencies and some local governments have developed publicly available prosecution and compliance policies to ensure:
  - the separation of the roles of law makers and law enforcers;
  - that decisions made by law enforcers are consistent; and
  - that matters which go to prosecution are based on sufficient evidence and that the prosecution is in the public interest.
6. This policy recognises that while the CEO has carriage of regulatory matters, Council by resolution can exercise its right to the direction the CEO has in these matters.
7. This policy will provide guidance to direct City officers' compliance decisions and actions in accordance with the principles of the model litigant that is expected by the Attorney General (see Appendix 1-1 for details).
8. The expectation of the courts as the arbiter of law is reflected in a number of public documents (see Appendix 1-2 for details).

**DISCUSSION**

9. The application of the Policy should ensure that elected members responsible for making the laws are largely separated in role and function from those interpreting and applying the law and actively upholds the Crime and Corruption Commission's expectations of a misconduct resistant public service.
10. The regulatory role of City of Albany officers includes exercising legislated powers which can have a significant impact on community members. The decisions made by officers vary in their impact but can include significant financial impacts. Associated powers include the seizure of personal property, including land and family pets.

11. The community and the courts expect that decisions are made or powers exercised consistently and appropriately in accordance with the principles of natural justice.
12. The Policy identifies an approach to prosecution that:
  - ensures each matter being subject to the determination of a *prima facie* case, that is that on the face of it, a matter presents sufficient evidence to lodge a prosecution in a court of law;
  - the prospects of success at law are considered; and
  - only matters which are in the public interest are taken forward to prosecution.
13. While the steps in this process are set out in a linear manner, the above criteria may be applied in a non-linear fashion. For example, a matter which is clearly not in the public interest to pursue may not be subject to a rigorous assessment of the evidence.
14. This Policy also details matters which should not influence the decision to prosecute such as the responsible officer's reputation or career aspirations.
15. This Policy provides a specific mitigation to claims against the City and its officers under duty of care obligations in the *Civil Liability Act 2002* (see Appendix 1-3).
16. Furthermore, section 5W of the *Civil Liability Act 2002* provides a defence against a claim where insufficient resourcing may apply (see Appendix 1-4).

**Options:**

- **Option 1** – Adopt the proposed Policy, noting that Council has the option to either accept the draft Policy as presented or make amendments as it sees fit.
- **Option 2** – Not adopt a Regulatory Compliance Policy and continue compliance and enforcement actions unchanged. This option will not address the risks identified in this report.

**GOVERNMENT AND PUBLIC CONSULTATION**

17. Similar policies across the sector have been reviewed and WALGA representatives have also been consulted. An early version of the proposed policy was provided to WALGA's legal team for comment.
18. The advice provided was that while compliance is a matter for the CEO, the policy presented included principles that apply to procedural matters without including substantial procedure. As such, there was value in the policy being adopted by Council rather than as an administrative policy.
19. **Internal Consultation:**
  - Manager Ranger & Emergency Services
  - Ranger Team Leader
  - Manager Governance and Risk
  - Manager Building Health and Compliance
  - Health Coordinator
  - Senior Planning Officer – Statutory Planning and Compliance

**STATUTORY IMPLICATIONS**

20. The *Local Government Act 1995* (the Act), section 2.17(2) states in part, "*the council is to determine the local government's policies*".



21. Voting requirement for this item is **SIMPLE MAJORITY**

### POLICY IMPLICATIONS

22. There are no policy implications related to this item.

### RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Legal and Compliance:</b> Inappropriate practices may expose staff and elected members possible legal action.	Possible	Moderate	Medium	A documented policy position will provide a point of reference and education resource.
<b>Reputation:</b> Inconsistent application of compliance and enforcement may result in loss of community confidence.	Almost Certain	Moderate	High	A formal policy position and operational guidelines will reduce the likelihood of inappropriate practices.  Residual risk considered medium.
<b>Financial:</b> Inconsistent compliance actions may result in an increased litigation and legal action.	Likely	Moderate	High	Education and consistent practice will mitigate exposure to legal action under the <i>Civil Liability Act 2002</i> .

### FINANCIAL IMPLICATIONS

24. There are no immediate financial implications in adopting this policy, however costs associated with future regulatory compliance activities may increase should planned action be undertaken in this field.

### LEGAL IMPLICATIONS

25. There are no direct legal implications related to this item.

26. A policy guiding regulatory compliance activities provides defence under s5W(d) and s5X of the *Civil Liability Act 2002*, in a claim for damages for harm lodged against a public body or officer performing a public function.

### ENVIRONMENTAL CONSIDERATIONS

27. There are no direct environmental considerations related to this item; however appropriate regulatory compliance has a direct effect on the natural environment.

### CONCLUSION

28. It is recommended that Council adopt the proposed policy, including the public interest principles, unchanged.

<b>Consulted References</b>	:	<ul style="list-style-type: none"> <li>• <i>Local Government Act 1995</i></li> <li>• <i>Statement of Prosecution Policy and Guidelines 2005 and Director of Public Prosecutions Act 1991</i></li> <li>• <i>Civil Liability Act 2002</i></li> </ul>
<b>File Number (Name of Ward)</b>	:	<i>All Wards</i>
<b>Previous Reference</b>	:	<i>Nil</i>

## Appendix 1

1. This policy will provide guidance to direct City officers' compliance decisions and actions in accordance with the principles of the model litigant, expected by the Attorney General and consistent with the expectations of the prosecution policy and guidelines of the Director of Public Prosecutions, thereby avoiding the possibility of the Director of Public Prosecutions intervening in a City of Albany Prosecution under s11(1)(b) of the *Director of Public Prosecutions Act 1991*.
2. The expectation of the courts as the arbiter of law is reflected in a number of public documents including, but not limited to:
  - a) *Director of Public Prosecutions Act 1991*;
  - b) *Civil Liabilities Act 2002*;
  - c) *Statement of Prosecution Policy and Guidelines 2005 issued by the Director of Public Prosecutions WA*;
  - d) *Speech by the Crime and Corruption Commissioner Len Roberts-Smith to the WALGA AGM 2008*,
  - e) *The Hon Michael Mischin (Attorney General) response to parliamentary question in relation to the introduction Model Litigant Guidelines (Hansard 21 Sept 2010 P6886)*; and
  - f) *Australian Government Investigation Standards 2011*.
3. This policy also provides a specific mitigation to claims against the City and its officers under duty of care obligations in the *Civil Liability Act 2002* which states:

### ***“5X. Policy defence***

*In a claim for damages for harm caused by the fault of a public body or officer arising out of fault in the performance or non-performance of a public function, a policy decision cannot be used to support a finding that the defendant was at fault unless the decision was so unreasonable that no reasonable public body or officer in the defendant's position could have made it.”*

4. Furthermore Section 5W of this legislation provides a defence against a claim of insufficient resourcing. The legislation states:

### ***“5W. Principles concerning resources, responsibilities etc. of public body or officer***

*The following principles apply in determining whether a public body or officer has a duty of care or has breached a duty of care in proceedings in relation to a claim to which this Part applies —*

- a) *the functions required to be exercised by the public body or officer are limited by the financial and other resources that are reasonably available to the public body or officer for the purpose of exercising those functions;*
- b) *the general allocation of those resources by the public body or officer is not open to challenge;*
- c) *the functions required to be exercised by the public body or officer are to be determined by reference to the broad range of its activities (and not merely by reference to the matter to which the proceedings relate);*
- d) *the public body or officer may rely on evidence of its compliance with the general procedures and applicable standards for the exercise of its functions as evidence of the proper exercise of its functions in the matter to which the proceedings relate.”*

## DIS031: LOCAL PLANNING SCHEME NO.1 HERITAGE LIST PROCEDURE

**Proponent / Owner** : City of Albany  
**Attachments** : City of Albany Local Planning Scheme Heritage List  
Heritage List procedure  
**Report Prepared By** : Senior Planning Officer – Statutory Planning & Compliance (T  
Wenbourne)  
**Responsible Officers:** : Executive Director Development Services (P Camins)

**Responsible Officer's Signature:**



### STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan 2023 and Corporate Business Plan 2014 - 2018:
  - a. Key Themes:
    - 3: A Connected Built Environment
    - 4: A Sense of Community
  - b. Strategic Objectives:
    - 3.3: To develop vibrant neighbourhoods which retain local character and heritage
    - 4.2: To create interesting places, spaces and events that reflect our community's identity, diversity and heritage.
  - c. Strategies:
    - 3.3.2: Provide proactive planning and building services
    - 4.2.2: Deliver activities and programs that promote Albany's unique heritage.

### In Brief:

- The current heritage list was inherited from Town Planning Scheme 1A (former Town of Albany Scheme). There is only one (1) place included from the former Shire area.
- Only places included in the heritage list are afforded statutory protection through the Local Planning Scheme.
- The City is finalising its review of the Municipal Heritage Inventory (Heritage Survey) whereby the heritage value categories of places are being assessed.
- The proposed Heritage List procedure sets the direction and process for including places on the Scheme heritage list based on the heritage value categories.

## RECOMMENDATION

### DIS031: COMMITTEE RECOMMENDATION

**MOVED: COUNCILLOR SMITH**  
**SECONDED: COUNCILLOR DOWLING**

**THAT the Responsible Officer Recommendation be NOTED & ENDORSED.**

**CARRIED: 10-0**

### DIS031: RESPONSIBLE OFFICER RECOMMENDATION

That Council NOTE & ENDORSE the Heritage List procedure, which will guide the future selection of places for inclusion on the Heritage List from the Heritage Survey review process.

## BACKGROUND

2. Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* details deemed provisions for local planning schemes. Clause 8(1) of this Schedule relates to a Heritage List and states:

‘The local government must establish and maintain a heritage list to identify places within the Scheme area that are of cultural heritage significance and worthy of built heritage conservation’.

3. Prior to the adoption and gazettal of Local Planning Scheme No.1 (LPS1) in April 2014, the City of Albany had three (3) actively used planning schemes inherited from the former Town and Shire. Of these three (3) schemes only one (1), Town Planning Scheme 1A (TPS 1A), recognised heritage and included a schedule of places of heritage value.
4. During the development of LPS1 the existence of the schedule under TPS 1A was recognised as a starting point for the required heritage list. Clause 7.1.7 was written into the new scheme to the effect that all the places contained in the TPS 1A schedule of places of heritage value are deemed to be included in the new Heritage List.
5. This resulted in the continuing recognition of the heritage places from the former Town of Albany, but nothing from the former Shire area was captured.
6. The one addition to the heritage list since its creation in the 1980s occurred relatively recently as part of Council’s consideration of the State Government disposal of the RAAF Operations Bunker near Albany Airport. This place is the only property from the former Shire area entered on the heritage list.
7. The procedure applies to the administration and operation of the heritage list associated with the City of Albany Local Planning Scheme No.1.

## DISCUSSION

8. The City is close to finalising its review of the Municipal Heritage Inventory. This document will then be known as the City of Albany Heritage Survey.
9. As part of the review, the current recognised places have been updated with the information of each place checked and the level of significance converted to the new format suggested by the State Heritage Office.

10. The review also allowed for new places to be nominated in addition to those on a hold over list that were not able to be included at the last review in 2000.
11. The new Heritage Survey will no longer differentiate places according to inner and outer areas (the old Town and Shire areas). Instead the individual place records will be collated alphabetically by road name from the entire City of Albany administrative area.
12. The City of Albany Local Planning Scheme No.1 is required to have a Heritage List. In preparing the Heritage List, clause 7.1.2 of the Scheme states the local government will have regard to the Municipal Heritage Inventory.
13. This procedure details the selection of places from the Heritage Survey (Municipal Heritage Inventory) based on their relative heritage value through the categories of significance.
14. Council is requested to note and endorse this selection procedure for inclusion of places on the Scheme Heritage List.

### GOVERNMENT & PUBLIC CONSULTATION

15. There has been no Government or Public Consultation in regards to this issue as it is not warranted for adopting this approach procedure.
16. The procedure and the Scheme provide detail of the consultation process with the property owners of places identified for inclusion in the Heritage List. This consultation will be undertaken at the appropriate time when developing the heritage list.

### STATUTORY IMPLICATIONS

17. The *Planning and Development (Local Planning Schemes) Regulations 2015* require local governments to establish and maintain a heritage list associated with the Local Planning Scheme. The proposed procedure sets out the process by which the City will achieve this statutory requirement.
18. Voting requirement for this item is **SIMPLE MAJORITY**

### POLICY IMPLICATIONS

19. The proposed procedure and formulation of an updated heritage list will better inform the application of the City's *Heritage Protection* planning policy.

### RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<p><b>Reputation. / Community.</b></p> <p><i>Inclusion in the heritage list is the only local mechanism to provide statutory protection to places of heritage value. If this is not updated and maintained in a consistent manner some places of heritage value may be missed. This could potentially result in these places being lost or having their heritage value diminished through inappropriate alteration.</i></p> <p><i>In many cases heritage places contribute to the aesthetic value and amenity of the surrounding</i></p>	<i>Possible</i>	<i>Moderate</i>	<i>Medium</i>	<i>Apply a consistent approach to maintaining and updating the Scheme heritage list.</i>

area. As such they are valued by the wider community.				
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**FINANCIAL IMPLICATIONS**

21. There are no financial implications associated with noting and endorsing this procedure.

**LEGAL IMPLICATIONS**

22. There are no legal implications related to this item.

**ENVIRONMENTAL CONSIDERATIONS**

23. There are no environmental considerations related to this item.

**ALTERNATE OPTIONS**

24. Continue with an ad-hoc approach to updating and maintaining the Scheme heritage list and risk losing places of heritage value due to lack of statutory protection.

**CONCLUSION**

25. The proposed procedure will bring consistency and transparency to the inclusion of places of heritage value on the Scheme heritage list.

26. This is achieved by setting a threshold based on the assessed heritage values of a place through the Heritage Survey assessment process.

27. The procedure provides a clear, standard approach for determining inclusion or exclusion and its application will ensure the City meets its statutory requirements to establish and maintain the heritage list of places that are of cultural heritage significance.

28. It is recommended that the Heritage List procedure be noted and endorsed.

<b>Consulted References</b>	:	1. <i>The City of Albany Local Planning Scheme 1</i> 2. <i>City of Albany Local Planning Scheme Heritage List</i> 3. <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>
<b>File Number (Name of Ward)</b>	:	
<b>Previous Reference</b>	:	

**DIS032: INTERNAL REVIEW OF DECISION**

**Business Entity Name** : City of Albany  
**Attachments** : CONFIDENTIAL - Letter of objection to issuing of Notice of Breach  
CONFIDENTIAL – Internal Review Report  
**Report Prepared By** : Manager Governance & Risk (S Jamieson)  
**Responsible Officers:** : Executive Director Corporate Services (M Cole)  
Executive Director Development Services (P Camins)

**Responsible Officer's Signature:**



***This Report was considered behind closed doors as a confidential report in accordance with section 5.23 (2) (e) of the Local Government Act 1995, being a matter that if disclosed, would reveal information that has a commercial value to a person.***

**STRATEGIC IMPLICATIONS**

1. This item relates to the following elements of the City of Albany Strategic Community Plan 2023 and Corporate Business Plan 2014 - 2018:
  - a. **Key Theme:** 5. Civic Leadership.
  - b. **Strategic Objectives:** 5.1 To establish and maintain sound business and governance structures.
  - c. **Strategy:** 5.1.2 Develop informed and transparent decision making processes that meet our legal obligations.

**In Brief:**

- A Notice of Breach has been served and the party subject to the notice has objected.
- Council is required to review the CONFIDENTIAL Internal Review Report and make a determination on how the objection is to be disposed of.

**RECOMMENDATION**

**RESOLUTION**

**VOTING REQUIREMENT : SIMPLE MAJORITY**

**MOVED: COUNCILLOR DOWLING**

**SECONDED: COUNCILLOR TERRY**

**THAT the meeting is CLOSED TO THE PUBLIC in accordance with section 5.23 of the Local Government Act 1995, section 5.23 (2) € being a matter that if disclosed, would reveal information that has a commercial value to a person.**

**CARRIED: 10-0**

All Members of the public and media left the Chamber.

**DIS032: COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR STOCKS**  
**SECONDED: MAYOR WELLINGTON**

**THAT the Responsible Officer Recommendation be RECEIVED:**

**CARRIED: 10-0**

**DIS032: RESPONSIBLE OFFICER RECOMMENDATION**

THAT Council:

- (1) NOTE the objection and Internal Review Officer's Report and Recommendation.
- (2) RESOLVE to DISMISS the objection.

**BACKGROUND**

2. The hearing or determining an objection referred to in section 9.5 of the *Local Government Act 1995*, cannot be delegated to the CEO.
3. No Council committees have been delegated the authority to deal with objections.
4. The City of Albany is committed to provide peace of mind to our customers through a transparent, independent and robust internal review process.
5. Internal review is a mechanism for individuals who are concerned that a decision was not made correctly, to have the decision reviewed and their concerns addressed by an independent review officer.

**Principles**

6. An internal review is a "merits review", meaning the internal review officer will make their decision based on the material which was available to the original decision maker as well as any new, relevant information that becomes available during the review.
7. The City of Albany incorporates the following principles when dealing with reviews:

**Courtesy** - The internal review officer will:

- Be courteous and helpful
- Show patience, reliability and trustworthiness
- Display integrity, trust and respect

**Professional Skills & Knowledge** - The internal review officer will:

- Listen and understand issues
- Conduct internal reviews in an accurate and rigorous manner
- Respect confidentiality where appropriate
- Meet ethical obligations

**Responsiveness** - The customer will be:

- Informed of timeframes for action
- Kept informed of the progress of their internal review application
- Relied upon to provide all relevant information required by the internal review officer to make a new decision if applicable

**Monitoring, review and continuous improvement** - The City will:

- Record, monitor, analyse and report internal review outcomes



- Identify necessary improvements and training opportunities
- Implement organisational change and better decision-making

**Accountability:**

The internal review was undertaken by a person who was not involved in making the original decision and who is of an equal or more senior level to the person who made the original decision.

Internal review officers must be consistent in their approach. They follow best practice in decision making to ensure their decision accurately reflects the law and the facts are established based on evidence. All decisions must provide for natural justice to all affected parties.

Internal review officers must act independently and exercise their own judgment while having regard to the legislation, the Council's policies and procedures and, where relevant, accepted technical standards. They must provide written reasons for their decisions within legislated timeframes and service delivery standards.

**DISCUSSION**

8. The City's Marine Terrace road reserve in Little Grove was cleared without authorisation in October 2016.
9. The City's compliance staff investigated the unauthorised clearing and determined the party ultimately responsible for the clearing of the vegetation.
10. An Authorised Officer, Senior Planning Officer - Statutory Planning & Compliance has issued a:  
*"Notice of Breach under the Local Government Act 1995 for the damage to the thoroughfare pursuant to Section 9.3 of the City of Albany Activities on Thoroughfares and Public Places and Trading Local Law 2011."*
11. The Notice of Breach which the party has objected to, requires the stockpile of cleared vegetation to be mulched and spread within the road reserve and for the road reserve to be revegetated.
12. The party served with the Notice of Breach has exercised their right to object and seek a review of the decision to issue the notice.
13. The review has been undertaken independent of the directorate that issued the notice.
14. Observations and recommendations are detailed in the CONFIDENTIAL – Internal Review Report.
15. Council is required to deal with the objection and make a resolution on how the objection is to be disposed of.

**GOVERNMENT & PUBLIC CONSULTATION**

16. Not applicable.

**STATUTORY IMPLICATIONS**

*Extract from Local Government Act 1995, states:*

***"Section 9.5, Objection may be lodged:***

- (1) *An affected person may object to a decision if the person has not applied under this Division for a review of the decision.*
- (2) *The objection is made by preparing it in the prescribed form and lodging it with the local government in the prescribed manner within 28 days after the right of objection arose [i.e. within 28 days after the decision], or within such further time as the local government may allow.*

**Section 9.6, Dealing with objection**

- (1) *The objection is to be dealt with by the council of the local government or by a committee authorised by the council to deal with it.*
- (2) *A committee cannot deal with an objection against a decision that it made or a decision that the council made.*
- (3) *The person who made the objection is to be given a reasonable opportunity to make submissions on how to dispose of the objection.*
- (4) *The objection may be disposed of by —*
  - (a) *dismissing the objection; or*
  - (b) *varying the decision objected to; or*
  - (c) *revoking the decision objected to, with or without —*
    - (i) *substituting for it another decision; or*
    - (ii) *referring the matter, with or without directions, for another decision by a committee or person whose function it is to make such a decision.*
- (5) *The local government is to ensure that the person who made the objection is given notice in writing of how it has been decided to dispose of the objection and the reasons for disposing of it in that way.”*

**POLICY IMPLICATIONS**

17. Nil.

**RISK IDENTIFICATION & MITIGATION**

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

<b>Risk</b>	<b>Likelihood</b>	<b>Consequence</b>	<b>Risk Analysis</b>	<b>Mitigation</b>
<p><b>Risk:</b> <i>If decision is overturned, may set a precedence.</i></p> <p><b>Opportunity:</b> <i>Facilitates Council Committee critique of Compliance actions.</i></p>	<i>Likely</i>	<i>Major</i>	<i>High</i>	<i>The outcome of the review is based on a thorough re-examination of the evidence. The recommended decision is considered sound and fair.</i>

**FINANCIAL IMPLICATIONS**

19. Nil.

**LEGAL IMPLICATIONS**

20. Nil.

**ENVIRONMENTAL CONSIDERATIONS**

21. Nil.

**ALTERNATE OPTIONS**

22. The objection may be disposed of by —
  - a. dismissing the objection; or
  - b. varying the decision objected to; or
  - c. revoking the decision objected to, with or without —
  - d. substituting for it another decision; or

- e. referring the matter, with or without directions, for review by the State Administrative Tribunal (SAT).

**CONCLUSION**

23. That the Internal Review Report findings be noted and a decision is made to dismiss the objection.

<b>Consulted References</b>	:	<ul style="list-style-type: none"><li>• <i>Local Government Act 1995</i></li><li>• <i>City of Albany Activities on Thoroughfares and Public Places and Trading Local Law 2011</i></li></ul>
<b>File Number (Name of Ward)</b>	:	CU.PRA.17 (All Wards)
<b>Previous Reference</b>	:	Nil

**DIS033: PARTNERSHIP AGREEMENT – REGIONAL ESTUARIES INITIATIVE**

<b>Land Description</b>	: Drainage Reserve
<b>Proponent / Owner</b>	: City of Albany
<b>Attachments</b>	: Draft Partnership agreement – Royalties for Regions Project - Regional Estuaries Initiative Yakamia Creek Wellington Basin Concept Design
<b>Supplementary Information &amp; Councillor Workstation</b>	N/A
<b>Report Prepared By</b>	: Manager City Engineering (D King)
<b>Responsible Officers:</b>	: Executive Director Works & Services (M Thomson)

**Responsible Officer's Signature:**



**STRATEGIC IMPLICATIONS**

1. This item relates to the following elements of the City of Albany Strategic Community Plan 2023 and Corporate Business Plan 2014 - 2018:
  - a. **Key Theme:** 2. Clean, Green and Sustainable
  - b. **Strategic Objectives:** 2.2. To maintain and renew city assets in a sustainable manner.

In Brief:

- As part of the Regional Estuaries Initiative the City of Albany has been approached to enter a Partnership Agreement with the Department of Water to deliver a project to improve water quality in Oyster Harbour.
- The Project, which spans over 4 years, is to rehabilitate the Wellington Street Basins into a stormwater bio-filter and natural habitat.
- The Basins are part of the Centennial Park Sporting Precinct (CPSP) and the works will enhance the deliverables proposed for the \$6.9M State Government commitment expected to complete CPSP.
- Within the agreement the Department will provide \$520,000 of cash funding which needs to be matched by the City of Albany in a combination of cash and in-kind.
- It is proposed that matching funding will be paid by the State Government commitment.
- The purpose of this item is to report the rationale for entering into this agreement.

**RECOMMENDATION**

At [6:31:05 PM](#) Cr Hollingworth left the Chambers

**DIS033: COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR SUTTON  
SECONDED: COUNCILLOR TERRY**

**THAT the Responsible Officer Recommendation be NOTED.**

**CARRIED: 9-0**

DIS033: RESPONSIBLE OFFICER RECOMMENDATION

THAT the Committee NOTE that the City of Albany will enter into the Regional Estuaries Initiative Partnership Agreement.

At [6:33:42 PM](#) Cr Hollingworth returned to the Chambers

**BACKGROUND**

2. The Department of Water is the state government agency responsible for the management of the State's water resources. The Department is also the lead agency responsible for delivering the Regional Estuaries Initiative (REI) funded through the State Government Royalties for Regions program.
3. The REI is a \$20 million dollar investment over four years to halt the decline of water quality of key estuarine ecosystems in the South West of Western Australia. The Department of Water has a Memorandum of Understanding (MOU) with the Department of Regional Development to deliver the REI through partnerships with government agencies, Catchment Management and industry groups.
4. Oyster Harbour is one of 6 focus estuaries within the initiative and Yakamia Creek has been allocated \$600,000 for works to improve water quality entering Oyster Harbour.
5. Yakamia Creek drains a mixed agricultural/urban catchment through the City of Albany and enters Oyster Harbour. The creek is partly channelised to prevent flooding in the floodplain portion of the lower catchment. Confusion over drainage ownership is frequently vexatious and the catchment is a major contribution of nutrients and other pollutants to Oyster Harbour. The City of Albany, the Department of Water, South Coast Natural Resource Management and Oyster Harbour Catchment Group have been engaged in recent years in integrating planning and actions for the creek.
6. The City is responsible for the management of built and natural drainage infrastructure where it passes through City controlled lands. The City seeks to apply best management practice in respect to State objectives for water quality and develop stormwater management infrastructure consistent with meeting State objectives
7. City Officers have previously identified and presented a number of potential projects worthy of collaboration and co-funding with the Regional Estuaries Initiative

**DISCUSSION**

8. The Department have indicated their support to enter into a partnership agreement with the City of Albany to rehabilitate the Wellington Street Basins into a stormwater bio-filter and natural habitat.
9. This project will modify and enlarge an existing poorly performing detention basin into a nutrient stripping basin. The project will convert 210 linear metres of trapezoidal drain (Yakamia Creek) into approximately 11,000m<sup>2</sup> of wetland bio-filtration basin. The basin will contain a meandering low flow channel that will be vegetated with native sedges, low shrubs and tall trees. The project also includes bioremediation of runoff from adjacent access road and car parking area. These areas are contiguous with the basin and extend the treatment area to include modification of trapezoidal drains into wider stream treatment areas.
10. The aim of the project is to improve water quality in Yakamia Creek by reducing levels of nutrients and contaminants. The project will also seek to achieve multiple benefits, including enhancing wetland habitat and passive recreation values associated with nature based areas. The basin will also provide some attenuation during larger rainfall events.
11. The access road and channel treatment areas will be located on City of Albany vested recreation and road reserves and the basin will be located on freehold City of Albany land within the Centennial Park sporting precinct, near Wellington Street. The site is downstream

of both residential urban and light industrial commercial zones, and provides an opportunity to improve water quality midway through the Yakamia catchment, before flowing to the (privately owned) floodplain and ultimately discharging to Oyster Harbour.

12. The project would be delivered in partnership, with the Department of Water as the project lead. The City of Albany would be responsible for project implementation for all four stages, including Project Management and Superintendence, Scope of Work and Specification Development, and administration of any third party tender, contract or award. The Department of Water would provide technical and managerial input and advice, including the water quality monitoring component of the project.
13. This project aligns with City Strategic objective of being clean, green and sustainable
14. The partnership agreement comprises of a contribution of \$520,000 from the Department with a matching contribution of both cash and in-kind contributions from the City of Albany.
15. It is proposed that the cash component from the City of Albany will be \$395,000 and \$125,000 in kind.
16. The City of Albany have been promised \$6.9M as part of the Labour State election promises for Centennial Park Sporting Precinct (CPSP). This CPSP project sits within the proposed scope of works for that funding, and it is the intention to use \$520,000 of the \$6.9M as the matching funds to the Partnership agreement with the Department.

#### **GOVERNMENT & PUBLIC CONSULTATION**

17. This project will be referred to Noongar consultation committee and Department of Aboriginal Affairs for comment. Should any approval process be identified as part of this consultation, City officers will ensure requirements are observed.

#### **STATUTORY IMPLICATIONS**

Delegation: 2017:006 – Sign Documents on Behalf of the City of Albany

18. The agreement will be executed (signed) under delegated authority by the Chief Executive Officer in accordance with the Council Policy: Use of the Common Seal, which states in part:

*“(1)(a) All legal documents shall be executed under the City of Albany’s Common Seal with the signatures of the Mayor and the Chief Executive Officer... and reported to Council monthly”.*

#### **POLICY IMPLICATIONS**

19. There are no policy implications relating to this matter.

## RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Reputation:</b> <i>If State election promises are not realised and the City chooses not to fund the contribution by other means, the City will not be able to honour the agreement and suffer reputational damage with the Department and potentially Royalties for Regions</i>	<i>Possible</i>	<i>Minor</i>	<i>Medium</i>	<i>Forward planning and working in alternative options if State funding does not eventuate.</i>
<b>Financial Opportunity:</b> <i>To leverage an additional \$520k funds for CPSP with potentially no contribution required from general revenue, loans or reserves.</i>				
<b>Environmental Opportunity:</b> <i>To significantly improve the water quality and bio-diversity within Yakamia Creek</i>				
<b>People and Safety Opportunity:</b> <i>To significantly improve the safety of vehicles and pedestrians travelling along the access road to the western gravel carpark in CPSP by creating improved gradients to the creek.</i>				

## FINANCIAL IMPLICATIONS

21. This project spans 4 years with no additional funding required from council. Council's commitment will be as follows - 17/18 financial year is divided into in-kind services (Salaried Staff) of \$30k and a cash component of \$20k which is funded from existing budget allocations. 18/19 financial year \$70k in-kind (Salaried Staff) and \$365k being paid from the \$6.9M State Government's commitment for Centennial Park Sporting Precinct (CPSP). The balance of \$30k equally apportioned over the next two years from within existing budgets.
22. In the event that the State Government commitment for CPSP is not realised, a financial contribution in the 2018/19 budget will be considered, and brought back to council through the budget process.

## LEGAL IMPLICATIONS

23. There are no legal implications related to report.

## ENVIRONMENTAL CONSIDERATIONS

24. The City of Albany recognises the value of its natural environment and the importance of protecting and managing natural values for future generations. As part of this commitment any construction works identified in this document will be undertaken in accordance with the *Environmental Code of Conduct Guideline* adopted by Council in 2006.

## ALTERNATE OPTIONS

25. Nil.

**CONCLUSION**

26. An opportunity exists to leverage additional funding to enhance the \$6.9M State Government commitment to complete Centennial Park.
27. The project will enhance bio-diversity in the area and contribute positively to the water quality of Yakamia Creek and Oyster Harbour.

<b>Consulted References</b>	:	Local Government Act 1995
<b>File Number (Name of Ward)</b>	:	All Wards
<b>Previous Reference</b>	:	Nil



**11. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN -NIL**

**12. MEETING CLOSED TO THE PUBLIC NIL**

**NOTE: FOR ITEM DIS033: PARTNERSHIP AGREEMENT – REGIONAL ESTUARIES INITIATIVE – THE CEO WILL SIGN THE DOCUMENT PRIOR TO THE OCM DUE TO FUNDING TO BE ACCEPTED BEFORE THE END OF THE FINANCIAL YEAR.**

**13. AS THERE WERE NO FURTHER DISCUSSION THE CHAIR DECLARED THE MEETING CLOSED AT [6:47:27 PM](#)**