



AGENDA

DEVELOPMENT AND INFRASTRUCTURE SERVICES COMMITTEE MEETING

13 September 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

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	J Shanhun (Chair)
Member	S Smith
Member	A Goode JP
Member	A Moir
Member	J Price
Member	R Hammond
Member	C Dowling
Member	N Mulcahy
Member	G Stocks

Staff:

Chief Executive Officer	A Sharpe
Executive Director Development Services	P Camins
Executive Director Works and Services	M Thomson
Meeting Secretary	A Paulley

Apologies:

Member	R Sutton – leave of absence
Member	B Hollingworth – annual leave

4. DISCLOSURES OF INTEREST

Name	Committee/Report Item Number	Nature of Interest

5. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

6. PUBLIC QUESTION TIME

7. PETITIONS AND DEPUTATIONS

8. CONFIRMATION OF MINUTES

DRAFT MOTION

THAT the minutes of the Development and Infrastructure Services Committee meeting held on 9 August 2017, as previously distributed, be CONFIRMED as a true and accurate record of proceedings.

9. PRESENTATIONS

10. UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS

DIS044: C17020 PROVISION OF PLUMBING SERVICES

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

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 C17020 – Provision of Plumbing Services for an initial two (2) year period, from 1 October 2017 or date of award (whichever occurs latest) until 30 September 2019, with an option for a further one (1) year period by mutual agreement.
- The tender from Albany Plumbing and Gas is considered the most advantageous to Council.

RECOMMENDATION

DIS044: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council ACCEPT the tender from Albany Plumbing and Gas and award contract C17020 Provision of Plumbing Services until 30 September 2019 with an option to extend for a further 12 months.

BACKGROUND

2. The City's current contract with Amphibian Plumbing Services is due to expire on 30 September 2017. It is necessary to establish a new contract for the provision of plumbing services.
3. Tenders were called for the provision of plumbing services from 1 October 2017 or date of award (whichever occurs latest) until 30 September 2019, with an option to extend for a further one (1) year.
4. The tender is for all work (up to the value of \$10,000.00 for any single project) necessary to provide reactive and/or preventative plumbing services for City assets. The Albany Leisure and Aquatic Centre, Western Oval Pavilion and the Centennial Football Stadium are the assets effected by the preventative maintenance programme.

DISCUSSION

5. A total of fourteen (14) 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	30%
Relevant Experience	30%
Key Personnel Skills and Experience	10%
Tenderer's Resources	10%
Demonstrated Understanding	15%
Corporate Social Responsibility	5%
Total	100%

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

Tender	Total Evaluation Score
Albany Plumbing and Gas	786.06
Tenderer B	732.64
Tenderer C	674.51
Tenderer D	602.21
Tenderer E	507.83
Tenderer F	46.11

GOVERNMENT & PUBLIC CONSULTATION

9. A request for tenders was published in the West Australian on 19 July 2017 and the Albany Weekender on 20 July 2017. The tender closed at 2pm on the 3 August 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
<i>Business Interruption</i> Non-compliance with contract or business failure resulting in asset failure	Unlikely	Moderate	Medium	General conditions of contract allow for contract termination on the basis of failure to supply goods and services.
<i>People Health and Safety</i> Increased risk of public health due to inadequate response times to asset failure	Possible	Major	High	Only tenders from reputable companies who have the required certification considered.

FINANCIAL IMPLICATIONS

16. The Cost (weighted 30%) was calculated by averaging the Cost Score for both the Hourly Rate (Schedule of Rates) and the Preventative Maintenance (Lump Sum).
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 Albany Plumbing and Gas as being the most suitable tenderer across the evaluation criteria in terms of cost, relevant experience, key personnel skills and experience, tenderer's resources, demonstrated understanding, and corporate and social responsibility.

Consulted References	:	<ul style="list-style-type: none"> • Local Government (Functions and General) Regulations 1995 • Council Policy – Purchasing (Tenders & Quotes) • Council Policy – Buy Local (Regional Price Preference)
File Number (Name of Ward)	:	C17020
Previous Reference	:	Nil

DIS045: FRENCHMAN BAY HERITAGE TRAIL – FEASIBILITY STUDY

- Land Description** : City of Albany Managed Reserve 21337
City of Albany Managed Reserve 26221
- Proponent / Owner** : City of Albany (Land vested in the care and control of the City of Albany)
- Attachments** : Attachment A: Proposed Frenchman Bay Heritage Trail Feasibility Study – H+H Architects (September 2015)
Attachment B: Revised trail map (May 2016)
Attachment C: Trail & dam sketch (June 2016)
- Report Prepared By** : Reserves Officer (A Tucker)
- Responsible Officers:** : Executive Director Works & Services (M Thomson)

Responsible Officer's Signature:	
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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 & Sustainable and 5 – Civic Leadership.
 - b. **Strategic Objectives:**
2.1 - To protect and enhance our natural environment and
 - c. **Strategy:**
2.1.3 – Sustainably protect and enhance our iconic coastline and reserves.

Maps and Diagrams:



Reserve 21337 – off Vancouver Road, Goode Beach

In Brief:

- Council consideration and approval is sought for the feasibility study and associated concept plans for Frenchman Bay Heritage Trail which will guide future development and improvements in the area, based on funding availability.

RECOMMENDATION

DIS045: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council:

- 1. APPROVE the Frenchman Bay Heritage Trail feasibility study and concept plan.**
- 2. NOTE that the City of Albany supports the Frenchman Bay Association in their efforts to secure funding for the Frenchman Bay Heritage Trail.**

BACKGROUND

2. The Frenchman Bay Heritage Trail is a project driven by the Frenchman Bay Association (FBA) which has been working on improving the trails within the area since 2015.
3. The feasibility study makes recommendations for \$380,000 of upgrades to improve and create a loop trail that showcases the spectacular coastline of Goode Beach.
4. This proposed trail is not included in the approved City of Albany Trails Hub Strategy 2015 – 2025 as there are a number of other priority projects in the vicinity within Torndirup National Park and Discovery Bay.
5. Council consideration and approval is sought for the Frenchman Bay Heritage Trail feasibility study and concept plan which will guide future trail development in the reserve depending on funding availability.

DISCUSSION

6. A feasibility study has been developed by H+H Architects on behalf of the FBA. This study was developed in close consultation with City Reserves staff and local Noongar Elders.
7. The objective of the document is to establish a plan for a loop trail and associated interpretative signage that acknowledges the Noongar and European cultural heritage of the area. The plan identifies a total of 11 interpretative nodes along the trail and the background information for these have been researched and included in the plan.
8. An indicative cost estimate for the full project is \$380,000. Funding would need to come from a number of external grants if the project is to proceed. Given that the project is not a priority in the Trails Hub Strategy, it is not proposed that the City contribute to the project at this stage, and the City would need to guide any funding submissions made, so as to not compete with existing City priorities.
9. The proposed trail has been developed as a standalone attraction and there may be potential to expand in the future (to Discovery Bay and Bald Head Island walk to the east and to Little Grove and the City centre to the west) to become a valuable section of a larger trail hub within the City. At this stage, the proposal is considered a worthwhile local community project however it is not considered a strategic priority.
10. The loop trail was initially proposed to pass in front of Lots 1 and 2 Frenchman Bay Road. However, since the completion of the report in September 2015, various meetings between the private property owners and FBA have not been successful in obtaining approval for public access through the property.
11. As a result of this, a revised map was submitted by the FBA in June 2016. This revised trail includes stairs down onto the beach from the Vancouver dam as a backup plan if access through Lots 1 and 2 cannot be successfully negotiated prior to construction.

12. Having an adopted feasibility study for the reserve will enable the FBA to apply for external funding opportunities in consultation with the for the construction of the trail.

GOVERNMENT & PUBLIC CONSULTATION

13. The study authors consulted with a number of stakeholders during the planning of the trail to ascertain their views on the type, location and potential impact of the trail. The organisations consulted include Albany Historical Society, Albany Museum, Department of Water, Department of Parks and Wildlife, Discovery Bay, Great Southern Development Commission, South Coast Natural Resource Management, Kinjarling Trail Project Committee and the City of Albany.
14. A site visit and walkover was held with two local Noongar Elders in early 2016 to discuss the plan. At this site visit, a number of concerns were raised about the underground water source that feeds the natural spring.
15. As a result of these concerns, the initial plan was amended and a new map showing the works around the spring and dam were altered. This amended plan was then presented to the Noongar Consultative Committee on 10 August 2017.
16. The committee supported the amended plan and the project, and noted that a formal heritage survey would be required as the next step prior to any onground works. A detailed archaeological survey of Noongar heritage has been included as a specific step in the feasibility study.

STATUTORY IMPLICATIONS

17. Voting requirement for this item is SIMPLE MAJORITY.

POLICY IMPLICATIONS

18. There are no policy implications for this matter.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Organisational Operations. <i>Infrastructure not planned and built in a co-ordinated way.</i>	<i>Possible</i>	<i>Moderate</i>	<i>Medium</i>	<i>Council prioritises and implements works in accordance with current priorities.</i>
Finance. <i>Funding opportunities missed due to lack of planning.</i>	<i>Possible</i>	<i>Moderate</i>	<i>Medium</i>	<i>Council adopt the feasibility study.</i>

FINANCIAL IMPLICATIONS

20. The construction of the trail and associated infrastructure will be funded through external funding bodies as opportunities arise. It is not proposed that City funds be directed to this project due to other priorities in the Trails Hub Strategy.
21. Once constructed, ongoing costs for maintenance and renewal will be the responsibility of the City of Albany and will be funded through the Reserves maintenance budget.

LEGAL IMPLICATIONS

22. There are no legal implications relevant to this item. All actions will be consistent with legislative requirements.

ENVIRONMENTAL CONSIDERATIONS

23. As a part of the feasibility study, Aurora Environmental undertook an initial environmental impact study of the area. They found four (4) potential threats that require further consideration prior to construction. These potential threats were spread of dieback, erosion, disturbance to rare and endangered flora, and fire.
24. All of above threats can be suitably mitigated as part of final trail design.
25. Prior to construction, all onground works will be referred to the City Reserves officers to ensure all appropriate approvals and permits are in place and there are no outstanding environmental issues.

ALTERNATE OPTIONS

26. Council may choose not to approve the Frenchman Bay Heritage Trail Feasibility Study and therefore the project will not proceed. Council may wish for plans to be altered or amended and represented to Council at a future time.

CONCLUSION

27. Frenchman Bay Heritage Trail feasibility study and concept plan is considered a worthwhile local community project which is currently not featured in the City of Albany Trails Hub Strategy.
28. This report recommends that the study be approved, allowing the Frenchman Bay Association further progress the project, and explore avenues for funding in consultation with the City of Albany.

Consulted References	:	Nil
File Number (Name of Ward)	:	Vancouver Ward
Previous Reference	:	Nil

DIS046: INDUSTRY – EXTRACTIVE (GRAVEL), LOT 56, BON ACCORD ROAD, KALGAN

Land Description : Lot 56, Bon Accord Road, Kalgan.
Proponent : Gary Howie
Owner : Gary Howie
Business Entity Name : N/A
Directors : N/A
Attachments : 1. Site Plan
2. Environmental Assessment Report and Operations Plan
3. Summary of Submissions
Supplementary Information & Councillor Workstation: : Copy of submissions
Report Prepared by : Planning Officer (J Anderson)
Responsible Officer : Director Development Services (P Camins)

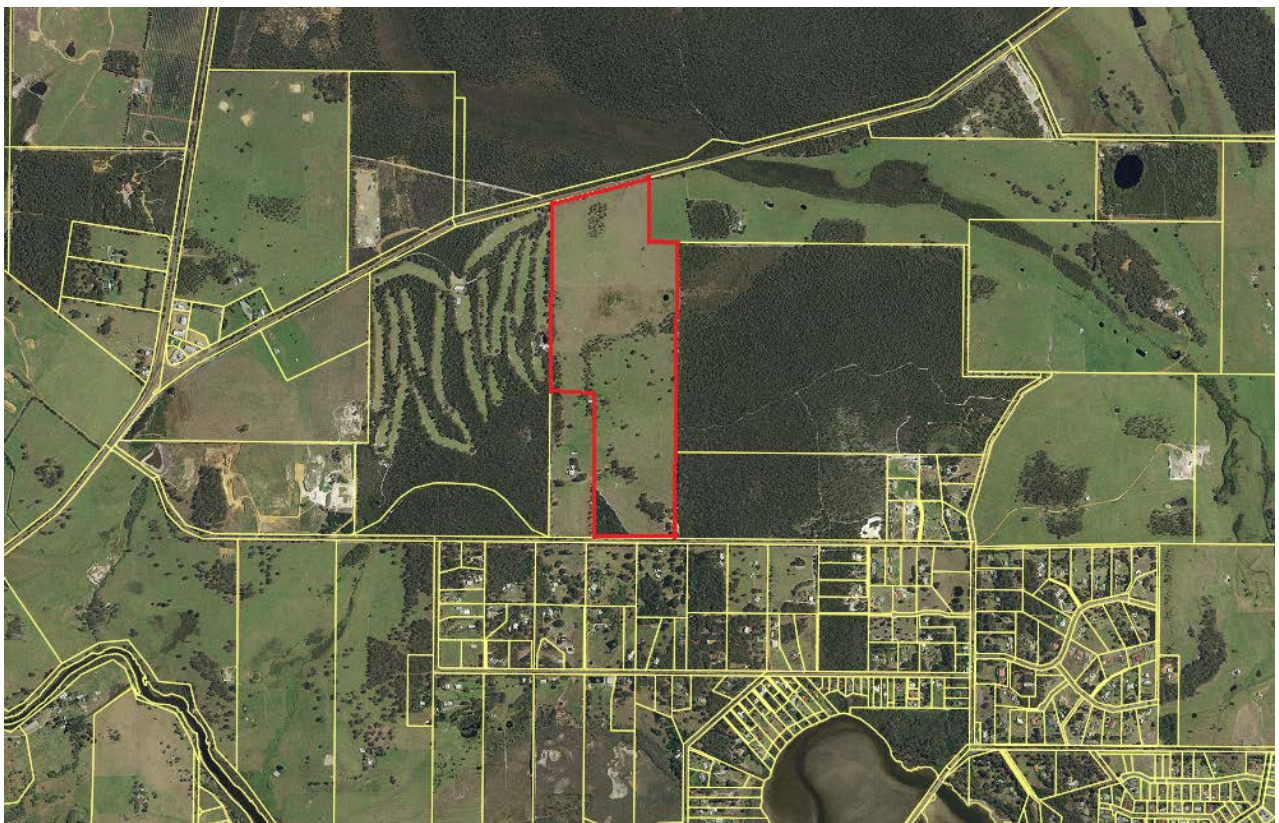
Responsible Officer's Signature:



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. The proposal is consistent with the strategic directions identified in the *Albany Local Planning Strategy*.

Maps and Diagrams:



** During the assessment of this application, a number of Government agencies have had name changes. In order to avoid confusion, all Government Departments will be referred to as they were at the time of consultation.*

In Brief:

- Council is asked to consider an application for development approval for an Industry – Extractive (Gravel), at Lot 56 Bon Accord Road, Kalgan.
- The application was advertised for public comment and referred to surrounding landowners.
- Ninety one submissions have been received within the submission period, with two in support of the proposal and eighty nine either raising concerns or objecting. The concerns or objections relate primarily to the potential impacts from traffic, safety of road users, current conditions of the road, proximity to residential area, impact on amenity and lifestyles of surrounding residents, health and safety of residents, noise, vibrations, dust and other emissions, visual amenity, contamination of drinking water, environmental concerns (adjoining reserve, dieback, weeds, threatened flora and fauna, water run-off and impact on waterways (acid sulphate soils), clearing of vegetation, mosquito spread, future agricultural uses being impacted, impact on adjoining land uses, property value, Aboriginal Heritage, compliance, inaccurate information and life of pit and the proposal exceeding the five years.
- Due to the nature of the objections, the application is being referred to Council for determination.
- Staff recommend that Council approve the proposed development, subject to conditions, which are considered to mitigate the concerns raised through the public advertising process.

RECOMMENDATION

DIS046: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council RESOLVES to ISSUE a notice of determination granting development approval with conditions for Industry – Extractive (Gravel) at Lot 56, Bon Accord Road, King River.

Conditions:

- (1) This consent is valid until 01/10/2022, after which an application for renewal will be required to be lodged with the City of Albany.**
- (2) All development shall occur in accordance with the stamped, approved plans referenced PXXXXXXX and dated XX XXXXX 201X, unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.**
- (3) A refundable bond/bank guarantee of \$3000.00 per hectare shall be lodged with the City of Albany for remediation work if required.**
- (4) Access shall be in accordance with the plan hereby approved and subject to Main Roads WA approval. No direct access to or from the site by heavy vehicles associated with the extractive operation is permitted via Bon Accord Road, unless otherwise agreed in writing by the City of Albany.**
- (5) The applicant shall liaise with Main Roads WA to establish a Memorandum of Understanding, to the satisfaction of Main Roads WA and the City of Albany.**

Advice:

A Memorandum of Understanding is signed between the landowner and Main Roads with respect to the length of time of use and the volume and type of trucking entering and leaving the site to the satisfaction of Main Roads WA.

A suitable bond is posted by the land owner to cover the future cost of the removal of the driveway and the reinstatement of the road reserve.

A maintenance agreement to prevent transport of clay, gravel or sand onto the road surface of South Coast Highway is signed by the land owner to the satisfaction of Main Roads WA

The design and location of the access crossover, including gate set back and gate type is approved by Main Roads

All other vehicular access to Lot 56, excluding trucks employed in extraction of gravel, shall utilise the existing access on Bon Accord Road.

- (6) The proponent shall liaise with Main Roads and the Noongar community in regards to the exact details of internal access.**
- (7) Any extraordinary damage to roads within the City of Albany, directly related and proven to be caused by the extraction operations shall be rectified at the full cost of the applicant.**
- (8) The operation of the extraction areas shall be contained within the area nominated on the stamped, approved plans.**
- (9) The extraction area shall be setback a minimum of 20 metres from the eastern boundary.**
- (10) Only one hectare of the extraction area identified on the stamped, approved plans shall be opened at any one time, unless otherwise agreed in writing by the City of Albany.**
- (11) The site shall be suitably rehabilitated and re-contoured on a per hectare basis (prior to the next extractive process), including re-battering of banks and reseeded and stabilising of former extraction areas.**
- (12) A minimum of 150mm of top soil shall be left above any hard surface (i.e. clay/gravel) unless a lesser amount is approved by the Director Works and Services.**
- (13) Top soil to a depth of 150mm, unless otherwise approved by the Director Works and Services, shall be removed from the extraction areas and stored on-site for use in later rehabilitation works.**
- (14) Operation of the extraction areas shall be restricted to the hours of 7.00am – 6.00pm Monday to Friday, with no operation permitted on Saturdays, Sundays or Public Holidays, unless otherwise agreed in writing by the City of Albany.**
- (15) All Management Plans shall be implemented to the satisfaction of the City of Albany.**
- (16) Topsoil bunds shall be established around the permitted of the extraction areas to aid in screening.**

- (17) The extraction areas shall be suitably drained, with no direct discharge from the extraction area to any watercourse, without the prior approval of the Department of Water.
- (18) Cut-off drains surrounding the extraction area shall be constructed to the satisfaction of the City of Albany.
- (19) In relation to weed management, control (spray) or remove all weed infestations (including Gorse) from around the extraction pit and ensure vehicles are brushed/washed down prior to entering the pit if they have been at a site affected by weeds, to avoid introducing weeds to the pit area.
- (20) The basic raw material source from this pit may contain *Phytophthora dieback* disease and should be used with due caution in areas where susceptible plant species and vegetation occur, in particular, locations where threatened flora are known to occur and roads that are promoted as “flora roads”.
- (21) All extraction, crushing and screening operations shall be conducted throughout the months of May to October, unless otherwise approved in writing by the City of Albany.
- (22) Topsoil shall be used to create earth bunds to screen the extraction area
- (23) No remnant vegetation shall be removed as part of this extraction operation, without the prior approval of the Department of Environment Regulation.
- (24) Compliance with the relevant clauses and provisions of the City of Albany Local Laws relating the Extractive Industries.
- (25) Any off site fill must be clean soil, free of weed material or of non-contaminated inert type 1 waste (as defined by Landfill Waste Classification and Waste Definition 2009).
- (26) Development is required to comply with all relevant Health Regulations, in particular, regards should be paid to dust management and noise regulations.
- (27) Prevention of dust and sand blowing causing a nuisance to adjoining landowners, by the installation of sprinklers, utilisation of water tankers, mulching, or by the adoption and implementation of any other suitable land management system in accordance with the Department of Environmental Protection’s Dust Control Guidelines and the City of Albany Prevention and Abatement of Sand Drift Local Law 2000.
- (28) 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.
- (29) The subject land is in a region that experiences significant problems with nuisance and disease carrying mosquitoes. The design, construction and maintenance of this development are to be completed so as to ensure that no additional mosquito breeding sites are produced to the satisfaction of the City of Albany Environmental Health Team.
- (30) No blasting of material is permitted as part of extraction operations, unless a separate written approval has been obtained from the City of Albany.

- (31) **The Aboriginal Heritage Directorate (AHD) of the Department of Planning Lands and Heritage advise developers to undertake due diligence using the Aboriginal Heritage Due Diligence Guidelines to assess the risk of the proposal in regards to Aboriginal heritage.**

BACKGROUND

1. *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.
2. The subject lot lies to the northern side of Bon Accord Road, approximately 15km north-east of the Albany City centre. The lot has an area of approximately 56.56 hectares and is zoned 'General Agriculture' under City of Albany *Local Planning Scheme No. 1*.
3. The lot is adjoined by 'Reserve' and 'General Agriculture' lots to the east and west. A 'Rural Residential' area lies to the south, on the opposite side of Bon Accord Road.
4. The application was advertised for public comment for a period of 21 days. Nearby landowners were directly notified by letter, a site notice was placed on site and a copy of the proposal was placed on the City of Albany's website. In addition to this, staff prepared and circulated a fact sheet summarising the proposal to surrounding landowners. A total of ninety one submissions were received, with two in support and eighty nine either raising concerns or objecting to the proposal.
5. While ninety one submissions have been received, seventy eight of these are considered unique submissions, as a number of these are considered pro forma or template based.
6. Council is now requested to consider the submissions received during the public advertising period and determine whether to grant development approval.

DISCUSSION

7. The subject lot is currently under pasture.
8. The applicant proposes to extract gravel from a cleared area of 10.93 hectares (original application as advertised was for 17.14 hectares) to enable the land to be better used for general agricultural purposes.
9. The proponents have provided the following (summarised) outline of how the proposed extractive industry will operate:
 - The proposed 10.93 hectares (originally 17.14 hectares) is divided into seven stages with each stage varying from 0.94 hectares to 2.37 hectares in area;
 - The applicant proposes to extract from one stage at a time, with a maximum of one to two and a half hectares exposed/operated at any given time;
 - The topsoil is proposed to be stripped to a depth of approximately 100-150 millimetres and stockpiled along the edge of the extraction area to create a bund that would screen the extraction area from sight. At the end of each stage, it is proposed that the land would be re-contoured and topsoil respread prior to opening the new stage;
 - The applicant proposes to progressively rehabilitate the site back to pasture upon the completion of each stage by re-contouring the land and re-spreading the topsoil. It is anticipated that there is enough seed bank within the topsoil for the pasture to regenerate during the growing/wetter months. The re-contouring and re-spreading of topsoil will be undertaken prior to the commencement of a new stage;

- The gravel would be extracted to a maximum depth of approximately 700 millimetres below natural ground level;
 - It is proposed that all extraction, crushing and screening operations would be conducted throughout the months of May to October, resulting in better crushing and screening efficiency, and aiding in the mitigation of noise and dust;
 - Operation times would be restricted to between 7.00am and 6.00pm Mondays to Fridays only, not including Public Holidays;
 - The applicant anticipates that an average of 10,000 tonnes would be extracted per year, however this would be dependent on demand, and could potentially increase to 15,000 tonnes during peak times;
 - Truck movements are also dependent on demand. However, it is anticipated that the maximum truck movements per day would be up to 30 for up to two weeks at a time, with the average being two per day;
 - The applicant initially proposed that truck movements would be via Bon Accord Road. However, Main Roads have since agreed to allow access directly onto South Coast Highway, subject to conditions;
 - The closest dwelling to the west was proposed to be 94 metres from the nominated stage 1 extraction area. This setback has since been increased to 200 metres to meet the *City of Albany Mining and Extractive Industries Policy*;
 - The closest dwelling to the south of Bon Accord Road was proposed to be 293 metres from the nominated extraction area. Although this exceeds the required 200 metre buffer within the *City of Albany Mining and Extractive Industries Policy*, the applicant has since revised the plan and increased this to 500 metres thereby changing the advertised 17.14 hectares to 10.93 hectares ;
 - A revised site plan has been received showing the revised setbacks and access and extraction area; and
 - It is proposed that the life of the pit would be approximately five years. Should the resource not be exhausted within this time, further extraction would be subject to a new application.
10. The application is generally consistent with the City of Albany *Extractive Industry and Mining* local planning policy. Compliance with the policy is discussed in paragraph 123 below.
11. A total of ninety two submissions were received from members of the public during the advertising period, two which supported the proposal, and ninety which either raised concerns or objected.
12. The concerns or objections relate primarily to the following:
- Potential impacts from traffic;
 - Safety of road users;
 - Current conditions of road;
 - Proximity to residential area;
 - Impact on amenity and lifestyles of surrounding residents;
 - Health and safety of residents;
 - Noise, vibrations, dust and other emissions;
 - Visual amenity;
 - Contamination of drinking water;
 - Environmental concerns (adjoining reserve, dieback, weeds, threatened flora and fauna, water run-off and impact on waterways (acid sulphate soils);

- Clearing of vegetation;
 - Mosquito spread;
 - Future agricultural uses being impacted;
 - Impact on adjoining land uses;
 - Property value;
 - Aboriginal / European Heritage;
 - Compliance;
 - Inaccurate information;
 - Life of pit and the proposal exceeding the five years;
 - Non-compliance with the City of Albany's Community Strategic Plan and Albany's Transport Network Strategy; and
 - Common Law – nuisance and negligence;
13. The proponents have submitted an Environmental Assessment Report, along with a Weed Management, Dieback and General Hygiene, Acid Sulphate Soil, Surface Water and Drainage, Bushfire Risks, Dust, Noise, Rehabilitation Seed Stock, and Topsoil Management Plans in support of the application.
14. The main concerns raised during the submission period and the proposed mitigation measures will be broadly addressed via the headings below.

Safety of road users due to the increase in vehicle movements combined with the existing road conditions of Bon Accord / Prideaux Roads

15. A number of submissions have raised concerns regarding the number of truck movements and the proposed use of Bon Accord / Prideaux Road as a haulage route. The specific concerns in relation to this issue primarily relate to the safety of other road users (vehicular and non-vehicular) due to the increase in heavy vehicles, width and conditions of Bon Accord / Prideaux Roads, poor visibility, proximity of proposed access to residential access points, safety concerns due to being a school bus route (children walking to bus stop), location of proposed access being dangerous, spillage onto roads resulting in slippage, trucks speeding, wear and tear of the road, ongoing maintenance and truck numbers not being monitored or enforced.
16. The proponents have stated that the estimated number of truck movements would vary between two to thirty per day, dependant on demand. In terms of vehicle numbers, it is often the case with extractive industries that vehicle movements are seasonal and vary according to construction demand.
17. The proposal initially stated that vehicle movements would travel from Bon Accord Road west towards Chester Pass Road. Chester Pass Road is a designated Priority Heavy Freight Route under the Main Roads WA Road Hierarchy and is used daily by heavy vehicles, up to and including 36.5 metre long road trains.
18. Although the proponent had not proposed to use Prideaux Road, a number of the submissions requested that the City of Albany apply a planning condition to any approval to prohibit trucks from using Bon Accord Road to travel east towards the Lower King and Kalgan localities.
19. In terms of restricting the use of Bon Accord Road, 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.

20. In relation to the concern raised in regards to speeding trucks, all vehicles are subject to adhering to the designated road rules and this is therefore not a planning consideration.
21. The potential for conflict between trucks and school buses was also raised as a concern. The proposal was referred to the Public Transport Authority who had no objections to the proposal. In order to mitigate the issue, it is common practice to apply a condition requiring extractive industry operators to liaise with school bus operators to commence a dialogue and establish a schedule to avoid potential conflict.
22. Bon Accord Road was initially proposed as the haulage route due to a restrictive covenant preventing vehicular access directly onto South Coast Highway. The City has met with Main Roads WA who have since revised their initial advice, and have now agreed to grant temporary access directly onto South Coast Highway subject to the following conditions.
 - A Memorandum of Understanding is signed between the landowner and Main Roads with respect to length of time of use and, the volume and type of trucking entering and leaving the site.
 - A suitable bond is posted by the land owner to cover the future cost of the removal of the driveway and the reinstatement of the road reserve.
 - A maintenance agreement to prevent transport of clay, gravel or sand onto the road surface of South Coast Highway is signed by the land owner
 - The design and location of the access crossover, including gate set back and gate type is approved by Main Roads
 - All other vehicular access to Lot 56, excluding trucks employed in extraction of gravel, shall utilise the existing access on Bon Accord Road.
23. It is considered that direct access onto South Coast Highway mitigates all concerns raised in relation to Bon Accord Road being the primary access. Therefore, officers recommend that a condition be applied to any approval which restricts heavy vehicles associated with the extractive operation having direct access from the site onto Bon Accord Road.
24. Officers recommend that advice requiring the proponent to rectify any damage to South Coast Highway or other roads within the City of Albany should also be applied.

General amenity of the area and lifestyle of residents being impacted by noise, dust, vibrations and other emissions from trucks and on-site operations. Proximity to residential area and visual amenity

25. Impact on amenity is a concern consistently raised in the submissions. Concerns primarily relate to the proximity to a residential area, noise, dust, vibrations and other emissions generated from the proposed development and impacts on visual amenity.
26. The concerns in relation to noise and dust specifically relate to on-site operations (including the location of the screening and crushing area), and truck movements off-site.
27. The subject site is zoned General Agriculture and under the Local Planning Scheme No. 1, an extractive industry is a use that can be considered within this zone. An extractive industry is a common use on Priority and General Agriculture zoned land.
28. With regard to noise issues, the proponent has submitted a Noise Management Plan. The Plan contains a number of provisions to control noise impacts, including;
 - All crushing and screening to occur within the designated boundary of the “Crushing/Screening” area indicated on the plan.
 - All extraction operations and vehicular movements are to be carried out only between 7.00am and 6.00pm, Monday to Friday, excluding Public Holidays.

- Use of topsoil on the perimeter of the pit area to act as a noise attenuation bund;
 - A noise complaint system will be established, whereby any complaints relating to noise will be reported to the site manager. Any noise related complaints will be recorded by the site manager and acted on immediately. Details of the site manager will be erected at the site gate; and
 - A commitment to respond to noise control instructions issued by the City of Albany;
 - Regular maintenance of on-site machinery to help reduce unnecessary noise pollution;
 - Education to employees and contractors to raise awareness of noise management issues; and
 - Excavation, crushing and screening operations to be carried out during southerly and south westerly winds to ensure that noise to adjacent neighbours is restricted.
29. With regard to dust issues, the proponent has submitted a Dust Management Plan. The plan incorporates a number of dust mitigation measures, including;
- All crushing and screening to occur within the designated boundary of the “Crushing/screening” area as defined in Appendix A;
 - Topsoil mounds to be no greater than 2.5 metres in height;
 - Stock piles to be located in pit areas and along the southern edge of pits to assist in noise reduction to the southern properties and should not exceed 2.5m;
 - Stockpile to be configured to accommodate easy access for watering/dust minimisation;
 - The access road, immediate extraction area and fixed plant (screen) to be watered as required to minimise dust emissions;
 - Education to employees and contractors to raise awareness of dust management issues;
 - Minimise area impacted on and the time between extraction and rehabilitation, a recommended maximum of 2 hectares of pit open at any one time;
 - Managing operations to minimise work in windy conditions to minimise dust emissions. Works only to occur in low velocity winds (i.e. less than 20km/hr);
 - Truck to be fully covered by tarpaulins when fully loaded; and
 - Dust complaint register in place to record any issues from neighbours. A contractor sign at the front gate to be erected clearly showing the contractors contact details.
30. In addition to the Dust and Noise Management Plans, it is proposed that all extraction, crushing and screening operations would be conducted throughout the months of May to October, resulting in better crushing and screening efficiency, and aiding in the mitigation of noise and dust.
31. The applicant is proposing to operate Monday to Friday between the hours of 7.00am and 6.00pm excluding Public Holidays which is less than the normal permitted hours for an extractive industry.

32. The *Extractive Industry and Mining Policy* requires that buffer distances are to be in accordance with the setbacks outlined within the Environmental Protection Authority requirements. The Environmental Protection Authority's Separation Distances between Industrial and Sensitive Land Uses guidelines do not set out a specific buffer for this type of extraction, however the policy states 200 metres should be achieved between dwellings not on the subject property.
33. In response to the number of concerns raised, the applicant has since increased the proposed setback from the nominated extraction area from 293 metres to 500 metres to the nearest dwelling to the south of Bon Accord Road. This buffer now exceeds the required 200 metre buffer within the *City of Albany Mining and Extractive Industries Planning Policy*. In conjunction with the proposed management plans, this is considered to mitigate all concerns raised in relation to amenity, dust, noise and emissions.
34. Although the adjoining owner to the west had agreed in writing to the proposed 94 metre setback, the applicant has since increased this setback to 200 metres from the dwelling, which now meets the *City of Albany's Mining and Extractive Industries Policy*.
35. Concerns were also raised specifically in regards to the noise, dust and other emissions from the crushing and screening operation and the proximity to the dwellings. Concerns were also raised in relation to the location of the screening and crushing area. The Department of Environment Regulation is the responsible body for the assessment of the emissions and buffers for screening and crushing plants. The applicant is responsible and obligated for ensuring that they have the required licences from DER prior to undertaking this activity onsite.
36. In relation to the proximity of dwellings to the nominated screening and crushing area, the closest dwelling to the west is proposed to be 313 metres away, and the closest dwelling to the south being 648 metres away. The required buffer for screening and crushing activities is considered on a case to case basis and is assessed and determined by the Department of Water and Environment Regulation (formerly known as Department of Environment Regulation) through the lodgement of a Works Approval
37. The proposal was referred to the Department of Environment Regulation. Advice was received that they have no comment on this matter in reference to regulatory responsibilities under the Environmental Protection Act 1986 and the Contaminated Sites Act 2003 and that the proposed works would be subject to a works approval
38. Visual amenity was also raised as a concern.
39. In addition to roadside vegetation, the subject site has strips of vegetation that suitably screen the extraction site from Bon Accord Road. In addition to this, the applicant has stated that the topsoil will be placed around the pit area as an additional measure to screen the site.
40. It is considered that the Dust and Noise Management Plan, in conjunction with the increased setbacks from dwellings will mitigate any potential amenity issues raised during the submission period.
41. It is considered that direct access onto South Coast Highway mitigates concerns raised in relation to the noise generated from traffic using Bon Accord Road.
42. It is recommended that the implementation and ongoing compliance with the Noise and Dust Management Plans be applied as a condition of approval.

Health and safety concerns due to dust and ongoing noise, vibrations and other emissions, drinking water being contaminated and mental health.

43. A number of concerns were raised in relation to health concerns due to the dust, noise, vibrations and other emissions. A number of concerns were also raised in relation to dust contaminating nearby residents drinking water.
44. The *Extractive Industry and Mining Policy* requires that buffer distances are to be in accordance with the setbacks outlined within the Environmental Protection Authority requirements. The Environmental Protection Authority's Separation Distances between

Industrial and Sensitive Land Uses guidelines do not set out a specific buffer for this type of extraction, however the policy states 200 metres should be achieved between dwellings not on the subject property.

45. In relation to the proximity of dwellings to the nominated extraction areas, the closest dwelling to the west is proposed to be 200 metres away, and the closest dwelling to the south being 500 metres away. The required buffer has been achieved and is therefore compliant with the policy.
46. Concerns were raised in regards to the noise, dust and other emissions from the crushing and screening operation and the proximity to the dwellings. The Department of Environment Regulation is the responsible body for the assessment of the emissions and buffers for screening and crushing plants. The applicant is responsible for ensuring that they have the required licences from DER prior to undertaking this activity onsite.
47. In relation to the proximity of dwellings to the nominated screening and crushing area, the closest dwelling to the west is proposed to be 313 metres away, and the closest dwelling to the south being 648 metres away. The required buffer for screening and crushing activities is considered on a case to case basis and is assessed and determined by the Department of Water and Environment Regulation (formerly known as Department of Environment Regulation) through the lodgement of a Works Approval.
48. The Department of Health state that unless adequately treated, rainwater is not reliably safe to drink and it is almost impossible to completely protect rainwater from contamination. However, our advice is that installing screens, filters and first flush devices will reduce contamination if people are using rainwater for this purpose.
49. It is considered that the Dust Management Plan, in conjunction with the increased setbacks from dwellings will mitigate any concerns in relation to dust, noise, vibrations and other emissions, as well as drinking water being contaminated.

Environmental concerns – proximity and impact on adjoining reserves (dieback, weeds, threatened flora and fauna), water run-off and impact on waterways (acid sulphate soils and other contaminants), clearing of vegetation and Mosquito spread.

50. Concerns in regards to the impact on the adjoining reserves were consistently raised within the submissions. The concerns primarily related to the spread of dieback, spread of weeds and the impact on threatened flora and fauna. In addition to this, concerns were raised in relation to water run-off and the impact on waterways due to acid sulphate soils and other contaminants.
51. The proponents have submitted a Dieback Management Plan in order to reduce the risk of Dieback Disease being spread. Among other controls, the plan states that equipment will be cleaned prior to entering the site. It is recommended that implementation of, and compliance with, the Dieback Management Plan is required as a condition of approval.
52. The proponents have submitted a Weed Management Plan in order to reduce the risk of the spread of weeds.
53. The proposal was referred to the City of Albany's Reserves team who were satisfied that the proposed setback in conjunction with the management plans would mitigate impact on the adjoining reserve. They recommended the following condition be applied should the proposal be supported:
 - *Control (spray) or remove all weed infestations (including Gorse) from around the extraction pit and ensure vehicles are brushed/washed down prior to entering the pit if they have been at a site affected by weeds, to avoid introducing weeds to the pit area.*
54. A number of concerns were raised in relation to the impact of flora and fauna, particularly protected species including the Green Pitcher Orchid which is vulnerable to fire, the Banksia coccinea and threatened ecological communities. It is claimed that there has been a decrease in fauna due to the existing extractive industries within the vicinity.

55. The proposal was referred to the Department of Biodiversity, Conservation and Attractions (formerly DPAW) who have stated that they have no objections to the proposal as it presents no direct impact on biodiversity conservation values as the area under the application is pasture and no native vegetation will be impacted. They recommend that as the gravel cannot be considered as dieback free that the following advice be applied:
- *The basic raw material source from this pit may contain Phytophthora dieback disease and should be used with due caution in areas where susceptible plant species and vegetation occur, in particular, locations where threatened flora are known to occur and roads that are promoted as “flora roads”.*
56. The proposal was referred to the City of Albany’s Reserves team who were satisfied that the proposed setback in conjunction with the management plans would mitigate impact on the adjoining reserve.
57. A number of concerns were raised in relation to nearby waterways being affected due to runoff due to the presence of acid sulphate soils and other contaminants.
58. The proponents have submitted a Surface Water and Drainage Management Plan.
59. The setback from the waterway is approximately 176 metres, which meets the required 50 metres under the Extractive Industry and Mining Local Planning Policy.
60. The proposal was referred to the Department of Water who are the body responsible for assessing the risk to the waterway. They have no objections to the proposal and were satisfied that the surface water management issues were satisfactorily addressed within the Environmental Assessment Report and that there are no ground water issues on the site.
61. Due to a number of specific concerns in relation to the spread of dieback via water runoff and acid sulphate soils contaminating the waterways being raised during the submission period, the specific concerns were re-referred to the Department of Water. The department stated that they had no further comments to make on the submission.
62. The Department of Health state that unless adequately treated, rainwater is not reliably safe to drink, it is almost impossible to completely protect rainwater from contamination. However, our advice is that installing screens, filters and first flush devices will reduce contamination if people are using rainwater for this purpose.
63. In regards to concerns with removal of vegetation, the land is currently under pasture and no removal of vegetation is proposed.
64. In relation to the concern raised with the spread of mosquitoes, the proposal was referred to the City of Albany’s Environmental Health team who have provided the following advice;
- *The subject land is in a region that experiences significant problems with nuisance and disease carrying mosquitoes. The design, construction and maintenance of this development are to be completed so as to ensure that no additional mosquito breeding sites are produced.*
65. It is considered that the Dust, Dieback, Weed, Surface Water Management, Acid Sulphate Soil and Bushfire Management Plans, in conjunction with cut-off drains will mitigate any concerns in relation to environmental concerns.

Impact on adjoining land uses – golf club, holiday accommodation/tourism, art gallery and people’s enjoyment of the reserve. Does not meet the intent of the zone:

66. A number of concerns were raised in relation to the proposal impacting patronage to the adjoining land uses such as the golf club, holiday accommodation and art gallery.
67. The closest nominated extraction area is approximately 510 metres from the golf club house and approximately 80 metres to the nearest fairway. It is believed that there is sufficient vegetation screening the site from the adjoining use.
68. The closest registered holiday accommodation is located in excess of 1000 metres to the south east.

69. Given the change in access and setbacks, the operation is unlikely to have a detrimental impact on any current or future art galleries or other tourism related uses within the vicinity of the proposal.
70. The proposal was referred to the City of Albany's Reserves team who have advised that it is unlikely that the proposal will have any impact on the reserve.
71. Overall officers believe the proposed setbacks in conjunction with the existing vegetation sufficiently mitigate any concerns raised in relation to the proximity to the golf club.
72. A number of submissions claimed that the proposal does not meet the objectives of the Rural Residential zone.
73. The subject site is zoned 'General Agriculture' and the objectives of the zone are as follows:
- *Provide for the sustainable use of land for agricultural and rural activities;*
 - *Support complementary land uses where those land uses do not detract from adjoining agricultural and rural activities and are compatible with the character and amenity of the area;*
 - *Prevent land uses and development within the zone that may adversely impact on the continued use of the zone for agricultural and rural purposes;*
 - *Provide for value-adding opportunities to agricultural and rural products on-site; and*
 - *Provide for tourism experiences where those developments do not impact upon adjoining agricultural and rural land uses.*
74. The subject site is zoned General Agriculture and under the Local Planning Scheme No. 1, an extractive industry is a use that can be considered within this zone. An extractive industry is a common use on Priority and General Agriculture zoned land. In fact these 2 zones are the only zones where this use is listed for consideration.

Future Agricultural uses will be impacted

75. A concern was raised in relation to the proposed development impacting on future agricultural uses due to the removal of subsoil.
76. The applicant is removing the gravel layer so that the land can be better used for pasture and planting.

Property value

77. A number of submissions claimed property value would be affected.
78. Property value is not a valid planning concern.

Compliance

79. A number of concerns were raised in relation to non-compliance of the proposal and that conditions of approval are not enforced by the City.
80. Extractive industries are subject to an annual inspection prior to the licence renewal. This process ensures work is being undertaken in accordance with the approved plan and planning conditions, and that rehabilitation work is correctly carried out. If a breach is found, the licence is not renewed until such a time as the breach has been rectified.
81. It should be noted that the lack of compliance, if any, is not a relevant planning matter for consideration, each application must be considered on its own merit in good faith.

Aboriginal / European Heritage

82. The site is currently not listed with the Department of Aboriginal Affairs as a place of Aboriginal heritage significance. The proposal was however referred to the Department of Aboriginal Affairs who have no objections to the proposal.
83. Due to a number of specific concerns raised during the submission period in relation to Aboriginal heritage, the proposal was re-referred to the Department of Aboriginal Affairs. The Department of Aboriginal Affairs stated that although it is recommended that the proponent

takes into consideration the DAA's Aboriginal Heritage Due Diligence Guidelines when planning specific developments associated with the proposal provides, requested that the proponent sought local knowledge in regards to the specific concerns raised.

84. Staff met with local Noongar representatives on-site to discuss the specific issues raised during the submission period. A consensus was made on-site that there were no Aboriginal Heritage matters and therefore the proposed development was considered acceptable. The applicant did request that the representatives had an input in relation to the location of the access leg due to the wetlands.
85. A concern was raised that the application made no mention of the adjacent farmhouse which is nearly 100 years old. There are no heritage listed properties within the immediate vicinity.

Life of pit and extent of resource has been underestimated resulting in extra truck movements.

86. A number of concerns were raised that the life of the pit will be extended or new pits will be opened on the site once this area has been exhausted.
87. The applicant is applying for a 5 year temporary approval. All extraction must be contained within the approved area indicated on the site plan. New areas outside of the approved area, or an extension beyond the 5 year period will be subject to a new approval.
88. Concerns were also raised in relation to the estimated volume of resource being extracted annually and the depth of the resource.
89. The proposed volume of resource to be extracted per year is anticipated to be 10,000 tonnes, however this could increase to 15,000 tonnes in times of high demand. It should be noted that these are estimates only.
90. The in ground volume BCM (Bank Cubic Metres) is the bulk volume of the material which is naturally compacted in the ground. Once aerated the material expands and the volume is essentially increased (referred to as LCM - Loose Cubic Metres).
91. Based on the revised area (10.93 hectares), the following calculation has been used to work out to the estimated truck movements:
- $110,000\text{m}^2$ (area) x 500mm depth (average) x 1.4 (bulking factor) = 77,000 LCM
 - $77,000 \text{ LCM} / 12.5\text{m}^3$ (m^3 that a Semi Tipper carries)
 - Total number of loads via a semi tipper over the 5 year period = 6,160 loads
 - $6,160 / 15$ (loads per day) = 411 days @ 15 loads per day to remove the entire estimated resource.
 - $411 \text{ days} / 5 \text{ years} = 82 \text{ days per year}$ where 15 truckloads will be removed off-site.
92. Based on the calculation above, it is considered that the estimated 15 loads (30 movements per day) is accurate.
93. The depth of the resource the proponent intends to extract within the nominated extraction areas varies from 0mm to 700mm. The estimated proposed maximum depth of extraction is 700mm. Class two extractive industries can be considered with a depth of extraction of up to 3 metres, therefore the proposed depth is considered acceptable.

Inaccurate information within application and fact sheet being misleading:

94. A number of concerns were raised in relation to the information within the proposal being inaccurate and the Environmental Assessment Report being bias. These concerns related to the property address, site details, zoning of surrounding properties, estimated truck movements, volume of gravel to be removed as well as details within the Environmental Assessment Report.
95. The full application lodged contained two key parts. The proposal (which is what we seek public comment on) and then also a full Environmental Assessment Report with associated maps (soils, bushfire, hydrology, wetlands, vegetation, database searches etc).

96. In accordance with Schedule 2, clause 64 (3) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, the City of Albany advertised the proposal for 21 days. Advertising involved referral to approximately 130 nearby lots and agencies, a sign on-site and a notice on the City of Albany website.
97. The fact sheet was an additional attachment to the proposal prepared by the City and was accompanied by a dated cover letter. The intent of the fact sheet was to summarise the proposal briefly and answer frequently asked questions only. Fact sheets have been found to be an effective tool in informing residents on proposals of this nature.
98. All stakeholders that were consulted (approximately 130 lots) received a covering letter, fact sheet, a copy of the proposed development/site plan and all the associated management plans. The stakeholders who were believed to be impacted the most received the full 77 page proposal with Environmental Report. Although the Environmental Report was not sent to all stakeholders, it was made clear that it was available on the City of Albany's website or also at the City of Albany offices.
99. The proposed volume of resource to be extracted per year is anticipated to be 10,000 tonnes, however this could increase to 15,000 tonnes in times of high demand. It should be noted that these are estimates only. On this basis it unlikely that the total resource will be exhausted within the approval period.
100. The depth of the resource the proponent intends to extract within the nominated extraction areas varies from 0mm to 700mm. The estimated proposed maximum depth of extraction is 700mm. Class two extractive industries can be considered with a depth of extraction of up to 3 metres, therefore the proposed depth is considered acceptable.
101. The City and relevant departments are satisfied with the accuracy of the information contained within the application and environmental assessment report, including the site details. It should be noted that a details such as volume and truck movements are estimated only.

Non-compliant with the City of Albany's Community Strategic Plan

102. A number of submissions raised concerns that the proposed development did not comply with the City of Albany's Community Strategic Plan, specifically the following objectives:
 - Protect and enhance our natural environment
 - To advocate for and support "green initiatives" within our region
 - We will listen our community and deliver outcomes that reflect their needs and expectations
 - Engage effectively with our community
103. In the case of a land use proposal, the City of Albany *Local Planning Scheme No 1* is the relevant statutory document to determine the appropriateness of a proposal.
104. The subject site is zoned General Agriculture and under the *Local Planning Scheme No. 1*, an extractive industry is a use that can be considered within this zone. An extractive industry is a common use on Priority and General Agriculture zoned land.
105. The proposal was advertised for public comment for a period of 21 days, in accordance with clause 9.4 – *Advertising of Applications of Local Planning Scheme No. 1*.

Common Law – nuisance and negligence

106. A submission raised concerns that the City could be seen as being negligent for approving a use that could result in a known nuisance.
107. In conjunction with the access being off South Coast Highway, staff are satisfied that the concerns raised within the submissions can be mitigated through appropriate planning conditions or through the appropriate buffers.

GOVERNMENT & PUBLIC CONSULTATION

108. The proposal was advertised for public comment for a period of 21 days, in accordance with clause 9.4 – *Advertising of Applications of Local Planning Scheme No. 1*. A sign was placed on site, surrounding landowners were directly notified in writing and a copy of the proposal was placed on the City of Albany's website. In addition to this, the City prepared a Fact Sheet which summarised the proposal.
109. A total of ninety one submissions were received during the advertising period. Two submissions were in support of the proposal and eighty nine either raised concerns or objected to the proposal. Staff comments and recommendations are provided in the attached schedule, while the broad issues are discussed in paragraphs 11 – 107 above.
110. While ninety one submissions have been received, seventy eight are considered unique submissions as a number of these are considered pro forma.
111. In addition to the public consultation, the proposal was also referred to the Department of Water. The DOW stated that they had no objections to the proposal as the surface water management issues are satisfactorily addressed in the Environmental Assessment Report and there are no ground water issues on the site. The DOW is satisfied that the water resources will be managed appropriately during the gravel extraction process and thus has no objections to the proposal.
112. The proposal was also referred to Main Roads WA. Main Roads advice was revised and have no objections subject to the following conditions:
- *A Memorandum of Understanding is signed between the landowner and Main Roads with respect to length of time of use and, the volume and type of trucking entering and leaving the site.*
 - *A suitable bond is posted by the land owner to cover the future cost of the removal of the driveway and the reinstatement of the road reserve.*
 - *A maintenance agreement to prevent transport of clay, gravel or sand onto the road surface of South Coast Highway is signed by the land owner*
 - *The design and location of the access crossover, including gate set back and gate type is approved by Main Roads*
 - *All other vehicular access to Lot 56, excluding trucks employed in extraction of gravel, shall utilise the existing access on Bon Accord Road.*
113. The Department of Primary Industries and Regional Development has no objection subject to the following conditions:
- *The staged extraction plan presented will be followed.*
 - *Dust and noise control measures included in the plan will be adhered to.*
 - *Control measures for water use / movement are included to prevent erosion on or off-site.*
 - *Site rehabilitation proposed after extraction activity will be completed and monitoring of rehabilitation is maintained to ensure success and prevention of erosion hazard.*
 - *The Weed Management Plan satisfies DPIRD guidelines.*
114. The Department of Biodiversity, Conservation and Attractions have no objections to the proposal, however recommended that the following advice be applied:
- *The basic raw material source from this pit may contain *Phytophthora dieback* disease and should be used with due caution in areas where susceptible plant species and*

vegetation occur, in particular, locations where threatened flora are known to occur and roads that are promoted as 'flora roads'.

115. The Department of Mines and Petroleum provided the following comment:

- *No objections. A continuing supply of low-cost basic raw materials is an important part of maintaining the lifestyle and infrastructure that all Western Australians enjoy.*

116. The Department of Environmental Regulation have no objections however stated that a works approval is to be obtained before constructing the prescribed premises.

117. The Public Transport Authority have no objections to the proposal and stated that any truck movements would have minimal impact on their services.

118. The Department of Aboriginal Affairs have no objections however recommend the following condition:

- *The DAA recommends that developers within the area of the proposal take into consideration the DAA's Aboriginal Heritage Due Diligence Guidelines when planning specific developments associated with the proposal. These guidelines have been developed to assist proponents to identify any risks to Aboriginal Heritage and to mitigate risk where heritage sites may be present.*

119. A Noongar engagement meeting occurred on site. No concerns were raised during this meeting. The applicant will be required to have a further discussion about the exact details of the internal access (where it dissects the creek area) with the Noongar community representatives.

STATUTORY IMPLICATIONS

120. Extractive Industry is classified as an 'A' 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 after giving special notice in accordance with clause 9.4 of the Scheme.

121. Voting requirement is a **SIMPLE MAJORITY**.

POLICY IMPLICATIONS

122. The primary assessment criteria for the application are set out in the City of Albany *Extractive Industry and Mining* local planning policy.

- a. The proposal is classified as a class 2 extractive industry under the policy. Class 2 extractive industries have site extraction areas of between 0.75 and 3 hectares with a maximum depth of 3 metres.
- b. The Policy requires that buffer distances are to be in accordance with the setbacks outlined within the Environmental Protection Authority requirements. The Environmental Protection Authority's *Separation Distances between Industrial and Sensitive Land Uses* guidelines do not set out a specific buffer for this particular type of extraction as it is assessed on a 'case by case' basis. The closest dwelling to the west is 200 metres from the nominated extraction area. The closest dwelling to the south is 500 metres from the nominated extraction area, and is therefore compliant with the City of Albany Mining and Extractive Industries policy and with the intent of the *Separation Distances between Industrial and Sensitive Land Uses* guidelines.
- c. A condition will be recommended in accordance with the policy which requires pits to be located 20 metres from boundary.
- d. The proposed pit area complies with the requirement of being set back a minimum of 50 metres from a watercourse or body.

RISK IDENTIFICATION & MITIGATION

123. 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 amenity of the area.</p>	Possible	Moderate	Medium	Mitigation of impacts to be achieved through adoption and enforcement of conditions.

FINANCIAL IMPLICATIONS

124. All costs associated with the development will be borne by the proponent.
125. 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

126. 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*.
127. 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

128. The subject lot is under pasture and slopes downward from north to south. There is a large stand of trees in the western half of the lot and scattered vegetation across the southern extent of the lot, adjacent to Bon Accord Road. A creekline runs across the northern extent of the lot, approximately 176 metres from the proposed northern extraction area.

ALTERNATE OPTIONS

129. Council has the following alternate options in relation to this item, which are:
- 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

130. The proposal is considered to be consistent with the objectives of the zone and the requirements of the City of Albany's *Extractive Industry and Mining* local planning policy. 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. On this basis, it is considered the proposal can be appropriately managed through ongoing conditions and the yearly licence renewal process.
131. 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 Extractive Industries and Mining local planning policy</i> 4. <i>Environmental Protection (Noise) Regulations 1997</i> 5. <i>Environmental Protection Authority Separation Distances between Industrial and Sensitive Land Uses</i>
File Number (Name of Ward)	:	A232629 (Kalgan Ward)
Previous Reference	:	NIL

**DIS047: INDUSTRY – EXTRACTIVE (LIME), LOT 9005 EDEN ROAD,
NULLAKI**

Land Description : 9005 Eden Road, Nullaki.
Proponent : Sam Williams
Owner : Graeme Robertson
Business Entity Name : N/A
Directors : N/A
Attachments : Area Plan
Site Plan
: Copy of Proposal
Schedule of Submissions
Supplementary Information & Councillor Workstation: : Copy of submissions
Report Prepared by : Coordinator Planning Services (A Bott)
Responsible Officer : 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. The proposal is inconsistent with the strategic direction identified in the *Albany Local Planning Strategy*.

Maps and Diagrams:



* *During the assessment of this application a number of Government agencies have had name changes. In order to avoid confusion, all Government Departments will be referred to as they were at the time of consultation.*

In Brief:

- Council is asked to consider an application for development approval for an Industry – Extractive (Lime), at Lot 9005 Eden Road, Nullaki.
- The proposal seeks to initially extract 20,000 tonnes of lime per a year, with a potential increase to 50,000 per year. It is proposed to cart the extracted lime from site via Lee Road.
- The applicant has proposed a yearly royalty of the lesser of 5% of revenue from the lime pit operation, or \$30,000 per financial year, being made to the Nullaki Wilderness Association.
- The application was advertised for public comment and referred to Government agencies.
- 75 public submissions were received in relation to the proposal. Six submissions supported the proposal, with 69 providing objections or serious concern.
- Support of the proposal was based on manageable environmental impacts and a need for lime within the agricultural sector.
- The submissions opposing the development relate to the non-compliance with the Conservation zone, proposed access route, noise, dust, proximity to dwellings and health issues.
- The proposal was referred to the Environmental Protection Authority (EPA) by the applicant, with the matter being deferred until a determination was made. The EPA determined on 16 August, 2017 that the proposal would not be assessed by the EPA, with the matter capable of being dealt with by the standard clearing permit process.
- While Extractive Industries are not a land use generally considered within the Conservation zone, as the proposed land use is not specifically prohibited within the zone, the City is obligated to consider the application as a use not listed.
- The Department of Planning made a submission to the City of Albany providing an objection to the matter. Officers consider the Department of Planning submission holds significant importance for the determination of the matter.
- While the proposal is broadly compliant with the City of Albany *Extractive Industries and Mining Local Planning Policy* it is considered that the proposal is not consistent with the objectives and provisions of Conservation zone CZ1, as contained within *Local Planning Scheme No.1*.
- Staff consider that the proposal is not consistent with the objectives and provisions of the Conservation zone, and recommend that Council refuse the proposed development.

RECOMMENDATION

DIS047: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council resolves to ISSUE a notice of REFUSAL for Industry – Extractive (Lime) at Lot 9005 Eden Road, Nullaki, for the following reasons;

(1) The proposal does not satisfy the following matters to be considered as identified in Schedule 2, Part 9, Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, namely;

(a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;

(b) the requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the Planning and Development (Local Planning Schemes) Regulations 2015 or any other proposed planning instrument that the local government is seriously considering adopting or approving

(n) the amenity of the locality including the following –

(i) environmental impacts of the development;

(ii) the character of the locality;

(iii) social impacts of the development;

(y) any submissions received on the application;

(za) the comments or submissions received from any authority consulted under clause 66;

(2) The proposal does not comply with the general objectives of the Conservation Zone, and also the objectives contained within Schedule 12 – Conservation Zone Provisions No. CZ1 of Local Planning Scheme No.1.

BACKGROUND

1. *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.
2. The subject lot lies to the western side of Lower Denmark Road and to the southern side of Eden Road, approximately 40km west of Albany City centre. The lot has an area of approximately 437 hectares and is zoned 'Conservation' and listed as No. CZ1 in Schedule 12 of City of Albany *Local Planning Scheme No. 1*.
3. The subject lot is bounded by reserved land to the south and east. The land to the north and west is zoned Conservation. The Bibbulmun Track runs to the east of the subject site.
4. Due to the environmental properties of the land, and in order to secure long term land use protection, the Nullaki Peninsula is zoned Conservation under *Local Planning Scheme No.1*.

5. In terms of permissibility, Extractive Industries are generally not considered on Conservation zoned land. However, as the provisions for the zone do not specifically prohibit the land use, the City of Albany is obligated to consider the proposal.
6. The application was advertised extensively for public comment, with landowners in the area directly notified by letter. Government agencies were also directly notified.
7. Six submissions supported the proposal. Support was largely based on the basis of the proposal potentially having a minimal environmental impact and the current lack of availability of lime within the Great Southern region.
8. 69 public submissions objected to the proposal.
9. The City of Albany has received advice from a number of Government agencies.
10. Council is now requested to consider the submissions received during the public advertising period and determine whether to grant development approval.

DISCUSSION

11. The subject site is 437 hectares in size and zoned Conservation under *Local Planning Scheme No.1*. The Conservation zone allows for controlled development in accordance with strict development provisions.
12. In addition to the Conservation zoning, and to further preserve environmental qualities of the area, the current owner has recently undertaken a conservation covenant with Department of Parks and Wildlife (DPAW) over a portion of the subject property. While located on the same title, the proposed extraction area is outside of the covenant area.
13. The applicant has advised that the site is a quality lime deposit, with the lime possessing a high neutralising value.
14. In terms of operation, the application proposes the following key elements;
 - Expected 20 year lifetime;
 - Lime being extracted from a 7.5 hectares area;
 - Stockpiled on a 2 hectares storage area
 - Anticipated to start at 20,000 tonnes per a year and increase to 50,000 per year;
 - Operating Monday - Saturday 6.30 am to 5.00 pm excluding public holidays.
 - Carted off site via Lee Road;
 - Lime products are to be transported from January to April.
 - The proponent seeks to contribute the lesser of 5% of revenue from the lime pit operation or \$30,000 per financial year to the Nullaki Wilderness Association.
15. The proposed operations proposed are broadly compliant with the City of Albany *Extractive Industries and Mining Local Planning Policy*. In the event of approval, it is considered that planning conditions and any subsequent environmental approvals would address matters in the event of approval.
16. However, noting the above, the primary issues with the development, and subsequent recommendation, relate to Local Planning Scheme No.1 matters, primarily in respect to permissibility and appropriateness within the zone.
17. The applicant has put forward the notion that the proposal can be considered to be in accordance with the objectives of the zone on the grounds that the works are environmentally acceptable and that the royalty proposed will ensure the long term provision of funds towards the Nullaki area.
18. As discussed in greater detail below, the Department of Planning has raised a number of issues with the proposal in respect to the planning framework.

19. A total of 75 public submissions were received from members of the public during the advertising period. Six of these supported the proposal, with sixty-nine objecting or raising concerns.
20. Support of the proposal identified a need for an accessible lime resource with the region and that any potential environmental impacts can be managed and mitigated.
21. The objections received primarily relate to non-compatibility with the zone, potential impacts on amenity, environment, and traffic from the proposed operations.
22. The matters raised both for and against the proposal during the advertising process are addressed in the attached schedule of submissions. The following key elements were raised during the assessment and referral of the proposal. The matters are discussed in details below;

Compliance with Conservation Zone Provisions and Objectives

23. The proposed land use is not listed as either a permitted or prohibited land use. Therefore, the City must consider the proposal on its merits against the objectives and provisions of the Conservation Zone.
24. Consideration of a proposal which is not listed within the zoning table, yet also not specifically prohibited within the attendant zone's Schedule shall be treated as a 'use not listed', which is consistent with State Administrative Tribunal findings.
25. The proposal is subject to the general Conservation Zone objectives of *Local Planning Scheme No. 1*, which are as follows;
 - a) *Provide for residential uses upon large lots adjoining significant environmentally sensitive areas such as coastal or conservation areas where there is a demonstrated commitment to protecting, enhancing and rehabilitating the flora, fauna and landscape qualities of the particular site; and*
 - (b) *Require innovative subdivision design and development controls to:*
 - (i) *Minimise visual impacts from subdivisional infrastructure, particularly roads;*
 - (ii) *Restrict access to any sensitive areas such as beaches, conservation areas or National Parks that adjoin the zone;*
 - (iii) *Prevent land uses and development that would adversely impact on the ecological values of the site for conservation purposes; and*
 - (iv) *Provide for the safety of future residents from the threat of wild fire.*
26. In addition to the abovementioned general conservation objectives, the objectives of Conservation zone CZ1 are as follows;
 - b) *Protect, enhance and rehabilitate the flora, fauna and landscape qualities of the Nullaki Peninsula;*
 - c) *Provide for controlled public access to the Peninsula, the Wilson Inlet Foreshore and Anvil Beach; and*
 - d) *Provide for limited wilderness retreat subdivision and development in a manner that is compatible with the conservation values of the Nullaki Peninsula.*
27. Any extractive industry operation will be in direct conflict with the scheme objective that requires Protection, enhancement and rehabilitation of the flora, fauna and landscape qualities of the Nullaki Peninsula.
28. The applicant has put forward the notion that the proposal is environmentally acceptable, and via the proposed monetary royalty, will contribute to the ongoing conservation efforts of the zone.

29. In respect to the above, if there was an intent within the zone for extractive industries to be considered as a bona fide land use within such a sensitive zone, there would be specific provisions as such. The absence of such provisions in this zone, in conjunction with the limited land uses which are identified as being permissible, further reinforces that the proposed land use is not suitable.
30. Given the abovementioned Local Planning Scheme matters pertinent to the proposal, the application was also referred to the Department of Planning for comment. The Department of Planning raised a number of concerns regarding the development and advised that the City of Albany should not approve the development.
31. The Department of Planning submission on the proposal outlines a number of areas of non-compliance with the development provisions of the zone, including, *inter alia*;
- The use would be contrary to *Local Planning Scheme No. 1*;
 - The primary objective of the zone is for Residential uses. The secondary objective (b) (iii) directs the local government to provide for land use and development provisions which prevent impacts to the zone's conservation purpose;
 - The application proposes a maximum of 4ha development area which exceeds the 1ha maximum allowable development footprint (cl 3.4 (e) and 4.3);
 - Proposed pit No.4 is within the 200 metre exclusion area of the foreshore reserve;
 - Pits are located along a significant ridgeline;
 - The land use is not supported within the *Albany Local Planning Strategy*;
 - The *Lower Great Southern Strategy* notes environmental or conservation considerations may have a higher priority than resource extraction in the region;
 - Approval would set an undesirable precedent for similar uses within all other lots within the Conservation Zone;
 - There is no mechanism that can guarantee proposed royalties from the sale of lime extracted will be reinvested across the whole of the Nullaki Peninsula Conservation zone;
 - The Department of Agriculture and Food (DAFWA) letter should only be considered regarding its comments on lime quality and resources within a greater context of the region and the State. It is not a letter of support for this particular proposal as more detail was requested on impacts of the proposal over the life of the project;
 - The original amendment over area CZ1 from Rural zone to Conservation zone was supported by the Environmental Protection Authority on the proviso that 'Extractive Industry' uses were removed from the permissible uses.
32. A number of public submissions have also noted that approval of the application would result in an undesirable precedent being set for development within the Conservation zone. Approval of the development would not automatically create a precedent, as there are very specific elements which are required to be in place for a precedent to be applicable. However, it is considered that approval of the proposed use would create a risk of precedent within all conservation zones which would not otherwise exist. If a lime pit is approved on the basis of environmental acceptability in conjunction with an environmentally based monetary contribution, it is not inconceivable that that other land uses inconsistent with the zone may follow.

Impact on Amenity

33. A majority of the submissions against the proposal raised concerns with noise, dust and vibration resulting from the operations and the impact it will have on residents adjacent to the subject site.

34. Amenity is defined within Local Planning Scheme No.1 as

“All those factors which combine to form the character of an area and include the present and likely future amenity”

35. The *Extractive Industry and Mining Policy* requires that buffer distances are to be in accordance with the setbacks outlined within the Environmental Protection Authority requirements - the Environmental Protection Authority's Separation Distances between Industrial and Sensitive Land Uses guidelines. The closest dwelling is approximately 1200 from haul road on the subject site.

36. The Department of Environment Regulation is the responsible body for the assessment of the emissions and buffers for screening and crushing plants. The applicant is therefore responsible and obligated to ensure that they have the required licences from DER prior to any activity onsite.

37. A number of landowners within the CZ1 zone have raised the issue that irrespective of separation distances, they have purchased properties (at a significant cost) within the conservation zone, on the reasonable expectation of a high level of amenity, and on the basis that the zone would not be shared with an extractive industry or similar uses.

Road Realignment and Vehicle Movements

38. The applicant has proposed to re-align and construct the western portion of Lee Road and utilise the connection as a haulage route.

39. In respect to the construction of Lee road, the applicant has advised that *“subject to the continual operation of the lime pit, the proponent will undertake to upgrade Lee Road at a rate of 500 metres a year”*. In the event of approval being granted, the City of Albany would require all necessary upgrades to be made prior to the commencement of operation.

40. A large number of submissions have stated that there are concerns that if the proposed land use is approved that the road network would not be able to safely operate.

41. If the applicant was to be granted approval they would be required to fully construct Lee Road and upgrade associated roads/infrastructure along the route to accommodate trucks. Upgrades may be substantial as it could potentially involve bridges and road widening. If approved, it is recommended the applicant be required to undertake a road infrastructure audit to identify roads and infrastructure that require upgrading to accommodate the proposal.

42. Concerns were raised by both the community and Government agencies regarding the proposed use and realignment of Lee Road.

43. The Department of Parks and Wildlife and the Bibbulmun Track Foundation raised significant concerns in relation to the potentially detrimental impact the realignment and use of Lee Road would have on the track and associated facilities. The concerns related to the following matters;

- The extension of Lee Road comes to within approximately 140m of an overnight track Shelter, 80 metres from the emergency helicopter extraction point and will cross over the Bibbulmun Track;
- If the proposal was to proceed the Bibbulmun Track Shelter would need to be relocated. Relocation of the Bibbulmun Shelter and possible track re-alignments would be at a significant cost due to not only the physical removal and relocation but the rehabilitation of existing site and alteration of associated publications (maps, guidebooks).

44. The potential amenity impact on Bibbulmun Track and the impact of the road alignment on the overnight shelter form an important consideration for the matter.

Lime Availability

45. The need for a readily available lime source was raised in a number of submissions on the proposal.
46. The applicant has submitted a copy of previous correspondence from DAFWA in respect to lime availability in the Great Southern. The submission outlines that soil acidity is a major degradation issue across the Western Australia. It is then outlined that the application of lime is the most cost effective way to manage acidic soils.
47. The correspondence also details that lime within the Nullaki resource possesses a high neutralising value.
48. While at the time of preparation of the proposal the Denmark lime pit was closed, it has been recently publicised that the Denmark Lime pit is reopening.
49. While it is acknowledged the availability of lime is a key resource for construction and soil management, the shortage or abundance and quality of a commodity is not a consideration within the planning framework. Furthermore, noting the Department of Planning advice, it also does not justify the extraction of a resource on inappropriately zone land.

GOVERNMENT & PUBLIC CONSULTATION

50. The proposal was advertised for public comment, in accordance with clause 64 – *Advertising Applications* of part two of the *Planning and Development (Local Planning Schemes) Regulations*.
51. A total of 75 submissions were received during the advertising period. Sixty-nine submissions objected to the proposal and six submissions had no objections and supported the proposal. Staff comments and recommendations are provided in the attached schedule, while the broad issues are discussed above under the relevant issue heading.
52. As discussed within an earlier section of this report in greater detail, the Department of Planning made a submission to the City of Albany on the matter, recommending the City of Albany not support the proposal.
53. The matter was referred to the EPA by the applicant. The EPA advised that the proposal would not be assessed, and could be considered under the standard clearing permit process. The EPA process and response will be discussed further within the environmental consideration section of this report.
54. In addition to the public consultation and EPA referral, the proposal was also sent to the applicable government agencies for comment.
55. Advice was received from the Department of Water stating that they had no objections that in the event of approval being granted that the rehabilitation plan is strictly adhered to.
56. The Department of Environmental Regulation has advised that depending on operational output, the proposal may be a prescribed activity and require a licence. It should be noted that screening and crushing are subject to a separate licence and assessment through the Department of Environment Regulation.
57. DER advice has also been reaffirmed by the EPA outcomes. That is, the proposal does not benefit from an exemption under clearing controls, and will require a clearing permit.
58. The Department of Parks and Wildlife has advised that they object to the proposal on the basis of the following;
 - Proximity of the proposal to the Bibbulmun track
 - Potential impact on the Bibbulmun track and the amenity of the users, noting that there is a campsite in the proximity of the proposed haulage road.
59. The Bibbulmun Track Foundation has also supported the abovementioned matters raised by the Department of Parks and Wildlife in a separate submission.

60. The Department of Mines have advised that they had previously supported in principle a now defunct Scheme amendment request to include extractive industry as a discretionary land use within the zone, on the basis that the continued supply of lime is an important resource. The Department has noted the proposal falls outside of the *Mining Act 1978*.
61. The Department of Aboriginal Affairs (DAA) has advised that there are no reported Aboriginal sites or heritage places within the area of the proposal. However, the DAA recommends the developers utilise the Aboriginal Heritage Due Diligence guidelines when undertaking developments.

STATUTORY IMPLICATIONS

62. The land use of Extractive Industry is not identified as either a permissible or prohibited use within the CZ1 Conservation Zone. On this basis, and the proposal has been processed as a 'use not listed' and advertised accordingly. The processing of the proposal in this manner is consistent with State Administrative Tribunal reasoning on similar issues.
63. Cl 4.4.2 of *Local Planning Scheme No.1* provides guidance for the assessment of a use not listed. Consideration of such a land use is largely dependent on the consistency with the objectives of the zone.
64. It is necessary to consider that the EPA decision on the matter does not alter or remove the Council decision making process of the matter against *Local Planning Scheme No.1* and the associated policies.
65. The Department of Planning has advised that the approval of the application could potentially create an undesirable precedent.
66. Furthermore, the Department of Planning has advised that approval of the application could give rise to a representation being made to the Minister for Planning under s211 of the *Planning and Development Act* on the basis of a failure by the City to enforce or implement effectively the observance of its Local Planning Scheme.
67. Voting requirement is a **Simple Majority**.

POLICY IMPLICATIONS

68. The primary assessment criteria for the application are set out in the City of Albany *Extractive Industry and Mining* local planning policy. The proposal is broadly compliant with the policy.
69. The Policy requires that buffer distances are to be in accordance with the setbacks outlined within the Environmental Protection Authority requirements. The Environmental Protection Authority's *Separation Distances between Industrial and Sensitive Land Uses* guidelines do not set out a specific buffer for this type of extraction and therefore the proposal was referred to the Department of Environment Regulation who have advised that they have no comments on the proposal. It should be noted that a separate licence through DER is required to be obtained for screening and crushing plants and therefore a full assessment by DER will be undertaken at this time.
70. The primary consideration in the determination in this instance is the provisions of *Local Planning Scheme No.1*

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Organisational Operations and Reputation Refusal could result in a shortage of lime within the City of Albany.	Possible	Moderate	Medium	Mitigation through the consideration of proposals on suitably zoned land

FINANCIAL IMPLICATIONS

72. All costs associated with the development will be borne by the proponent.
73. 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

74. Noting the restriction outlined within the statutory implications section, 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*.
75. 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

76. The applicant referred the proposal to the Environmental Protection Authority for consideration. As per the EPA Act, the City of Albany was constrained from approving the development until the EPA process was finalised. In order to allow full consideration of the proposal, and the ability to form a decision in either the positive or negative, the matter was deferred until a determination of the environmental acceptability of the proposal was made.
77. In respect to the above, consideration of the proposal was deferred for a number of months while the EPA process was completed.
78. As mentioned previously, the EPA concluded that the proposal does not require formal assessment. The EPA has advising that the substantive environmental considerations can be dealt with through the standard clearing permit process, and in the event planning approval being granted, in conjunction with planning conditions.
79. It is necessary to consider that the EPA advice is in respect to environmental matters only, and is only one consideration within the assessment of the proposal against the statutory framework. In respect to Local Planning Scheme No.1 requirements, officers consider the Department of Planning submission holds significant importance for the determination of the matter.

ALTERNATE OPTIONS

80. Council has the following alternate options in relation to this item, which are:
 - To resolve to approve the proposal subject to conditions.

SUMMARY CONCLUSION

81. The proposal seeks to establish an extractive industry for lime within the Nullaki Conservation Zone.
82. The proposal was advertised to the Community and Government agencies.
83. The Department of Planning submission raised a number of issues relevant to the proposal in respect to the planning framework.

84. The primary consideration leading to the recommended determination is not whether the proposal complies with the *Extractive Industry and Mining Policy*. Rather, that the application is considered to be inconsistent with the objectives and provisions of the CZ1 zone under Local Planning scheme No.1 and the matters to be considered in the *Planning and Development (Local Planning Schemes) Regulations 2015*.
85. While the provision of lime has been identified as a necessary farming resource within the Great Southern region, the current state of supply does not justify the approval of a lime resource within a zone which is not suitable.
86. It is therefore recommended that Council refuse the the proposed development, subject to the reasons provided.

Consulted References	:	<ol style="list-style-type: none"> 1. <i>Local Planning Scheme No. 1</i> 2. <i>Albany Local Planning Strategy 2010</i> 3. <i>City of Albany Extractive Industries and Mining local Planning policy</i> 4. <i>Environmental Protection (Noise) Regulations 1997</i> 5. <i>Environmental Protection Authority Separation Distances between Industrial and Sensitive Land Uses</i>
File Number (Name of Ward)	:	A200151 (West Ward)
Previous Reference	:	Nil

DIS048: MINOR AMENDMENT TO 'NON-HABITABLE STRUCTURE POLICY'

Land Description	: City of Albany
Proponent	: City of Albany
Owner	: City of Albany
Business Entity Name	: N/A
Attachments	: Non-Habitable Structures Policy
Supplementary Information & Councillor Workstation	N/A
Report Prepared by	: Senior Planning Officer, Strategic Planning (A. Nicoll)
Responsible Officer	: Executive Director Planning & Development (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. The proposal is consistent with the strategic direction set in the *Albany Local Planning Strategy*.

In Brief:

- A minor inconsistency currently exists within the City's 'Non-Habitable Structures Policy'.
- The permitted outbuilding size is smaller for properties zoned 'General Agriculture' and 'Priority Agriculture' than for properties zoned 'Rural Small Holding'.
- The 'Non-Habitable Structures Policy' has been revised, allowing for consistent sized structures amongst the 'Rural Small Holding', 'General Agriculture' and 'Priority Agriculture' zones.
- Council is requested to endorse the amended 'Non-Habitable Structures Policy'.

RECOMMENDATION

DIS048: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council APPROVE the minor amendment to the 'Non-Habitable Structures Policy', which involves increasing the permitted size of a structure in the 'General Agriculture' and 'Priority Agriculture' zones from 220m² to 240m² for lots between 2ha and 3.99ha and from 200m² to 220m² for lots less than 2ha.

BACKGROUND

4. Landholders and applicants have questioned why the Rural Small Holding zone allows for slightly larger outbuildings than those of similarly sized 'General Agriculture' and 'Priority Agriculture' zone land.

5. Due to the similar characteristics and objectives of the zones, it is considered appropriate that the outbuilding sizes allowable on 'General Agriculture' and 'Priority Agriculture' zone land be made consistent with that of the 'Rural Small Holding' zone.

DISCUSSION

6. The City's *Local Planning Scheme No.1* divides land into zones (e.g. residential, industrial) in which certain land uses are permitted or prohibited. Zones may also indicate the size and dimensions of land area as well as the form and scale of buildings.
7. The primary purpose of zoning is to segregate uses that are thought to be incompatible. Zoning is also used to prevent new development from interfering with existing uses and/or to preserve the character of a community.
8. The City has adopted a Non-Habitable Structures Policy, which indicates different size structures (sheds) that may be permitted within different zones.
9. In general terms, the size of the property dictates the size of structure permitted. Larger outbuildings are permitted on larger lots.
10. The following anomaly currently exists with the City's 'Non-Habitable Structures Policy':
 - a) A maximum 220m² structure is permitted at a lot zoned 'Rural Small Holding', with a land area less than 1ha, whereas a smaller 200m² structure is permitted at lots zoned 'General Agriculture' and 'Priority Agriculture' with a similar land area; and
 - b) A maximum 240m² structure is permitted at a lot zoned 'Rural Small Holding', with a land area of 4ha, whereas a smaller 220m² structure is permitted at lots zoned 'General Agriculture' and 'Priority Agriculture' with a similar land area.
11. Given the similar characteristics of the affected zones, it is considered appropriate that the outbuilding size allowable on 'General Agriculture' and 'Priority Agriculture' zoned areas be made consistent with the Rural Small Holding' zone.

GOVERNMENT & PUBLIC CONSULTATION

12. Part 2 (cl. 5 (2)) *Planning and Development (Local Planning Schemes) Regulations 2015* states:

"The local government may make an amendment to a local planning policy without advertising the amendment if, in the opinion of the local government, the amendment is a minor amendment."
13. The proposal to increase the permitted size of a structures allowable within the 'General Agriculture' and 'Priority Agriculture' zones is considered to be a 'minor amendment'. Government and public consultation is therefore deemed unnecessary.

STATUTORY IMPLICATIONS

14. There are no statutory implications relating to endorsing the proposed minor amendment to the 'City's 'Non-Habitable Structures Policy'.
15. Voting requirement for this item is **SIMPLE MAJORITY**.

POLICY IMPLICATIONS

16. The objective of the 'Non-Habitable Structures Policy' is:

"To achieve a balance between providing for various legitimate storage needs of residents whilst minimising any adverse impacts non-habitable structures may have on the locality."

17. There are no policy implications relating to endorsing the proposed minor amendment to the 'City's 'Non-Habitable Structures Policy'.

RISK IDENTIFICATION & MITIGATION

18. The following indicates the risk to the City in making a decision to support or not support the Policy:

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>Reputational: May result, if policy positions are not modified to address policy inconsistencies that impact upon agricultural activities.</i>	<i>Likely</i>	<i>Minor</i>	<i>Low</i>	<i>Endorse minor amendment as is or with conditions to Council's satisfaction.</i>

FINANCIAL IMPLICATIONS

19. There are no financial implications relating to endorsing the proposed minor amendment to the 'City's 'Non-Habitable Structures Policy'.

LEGAL IMPLICATIONS

20. There are no legal implications relating to endorsing the proposed minor amendment to the 'City's 'Non-Habitable Structures Policy'.

ENVIRONMENTAL CONSIDERATIONS

21. There are no environmental implications relating to endorsing the proposed minor amendment to the 'City's 'Non-Habitable Structures Policy'.

ALTERNATE OPTIONS

22. Council may determine that the proposal is unacceptable and may resolve not to endorse the 'minor amendment'.

CONCLUSION

23. The City's 'Non-Habitable Structures Policy' currently permits unequal size structures for properties of the same size for the 'Rural Small Holding' zone and 'General and 'Priority Agriculture' zones.
24. Similar characteristics exist amongst 'Rural Small Holding', 'General Agriculture' and 'Priority Agriculture' zone areas in Albany.
25. Council is requested to accept the policy modification to allow similar size structures within 'Rural Small Holding', 'General Agriculture' and 'Priority Agriculture' zones.

Consulted References	:	1. <i>Local Planning Scheme 1</i> 2. <i>Non Habitable Structures Policy</i> 3. <i>Planning and Development (Local Planning Schemes) Regulations 2015.</i>
File Number (Name of Ward)	:	N/A
Previous Reference	:	Item 1.1, OCM April 2011

11. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

12. MEETING CLOSED TO THE PUBLIC

13. CLOSURE