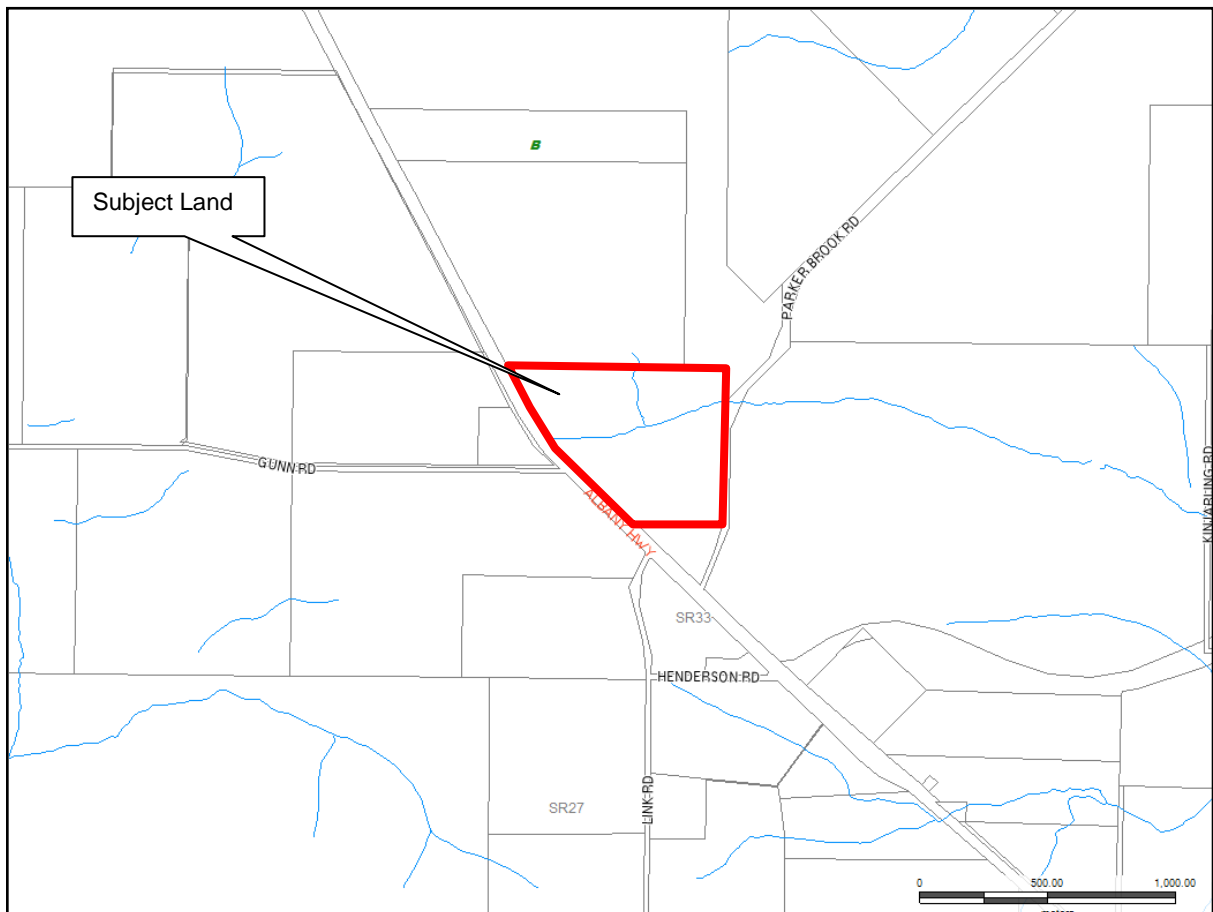


**2.1: DEVELOPMENT APPLICATION – MOTOCROSS FACILITY – PARKER BROOK ROAD, WILLYUNG**

- Land Description** : Reserve 1947 Parker Brook Road, Willyung
- Proponent** : Albany Motorcycle Club Incorporated
- Owner** : Crown (vested in City of Albany)
- Business Entity Name** : Albany Motorcycle Club Inc.
- Directors** : N/A
- Attachments** : 1. Application for Planning Scheme Consent  
: 2. Plan of overall Motorplex Proposal  
: 3. Approved Subdivision Guide Plan (Lot 2 Gunn Road)  
: 4. Approved Subdivision Guide Plan (Lot 6 Link Road)
- Appendices** : Noise Management Plan (September 2011)  
: Copies of Submissions
- Councillor Workstation** : Environmental Management Plan  
: Clearing Permit
- Responsible Officer(s)** : E/Director Planning and Development Services (G Bride)

**Maps and Diagrams:**



<b>CEO:</b>	<b>RESPONSIBLE OFFICER:</b>
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**IN BRIEF**

- Consideration of an application for Planning Scheme Consent for a Motocross Facility at Reserve 1947 Parker Brook Road, Willyung.
- The predicted motorcycle noise levels defined in the submitted Noise Management Plan, accompanying the application, are non compliant with assigned noise levels at noise sensitive premises as defined in the *Environmental Protection (Noise) Regulations 1997*.
- A total of nine (9) submissions, six from government agencies and three from neighbouring property owners, were received.

**RECOMMENDATION**

**ITEM 2.1 RESPONSIBLE OFFICER RECOMMENDATION  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**THAT Council issue a Notice of Planning Scheme Refusal for “Private Recreation – Motocross Facility” at Reserve 1947 Parker Brook Road, Willyung as the predicted motorcycle noise levels, as identified in the submitted Noise Management Plan, will exceed the levels at noise sensitive premises as identified in the *Environmental Protection (Noise) Regulations 1997*, which is likely to detrimentally impact on the amenity of the locality.**

**BACKGROUND**

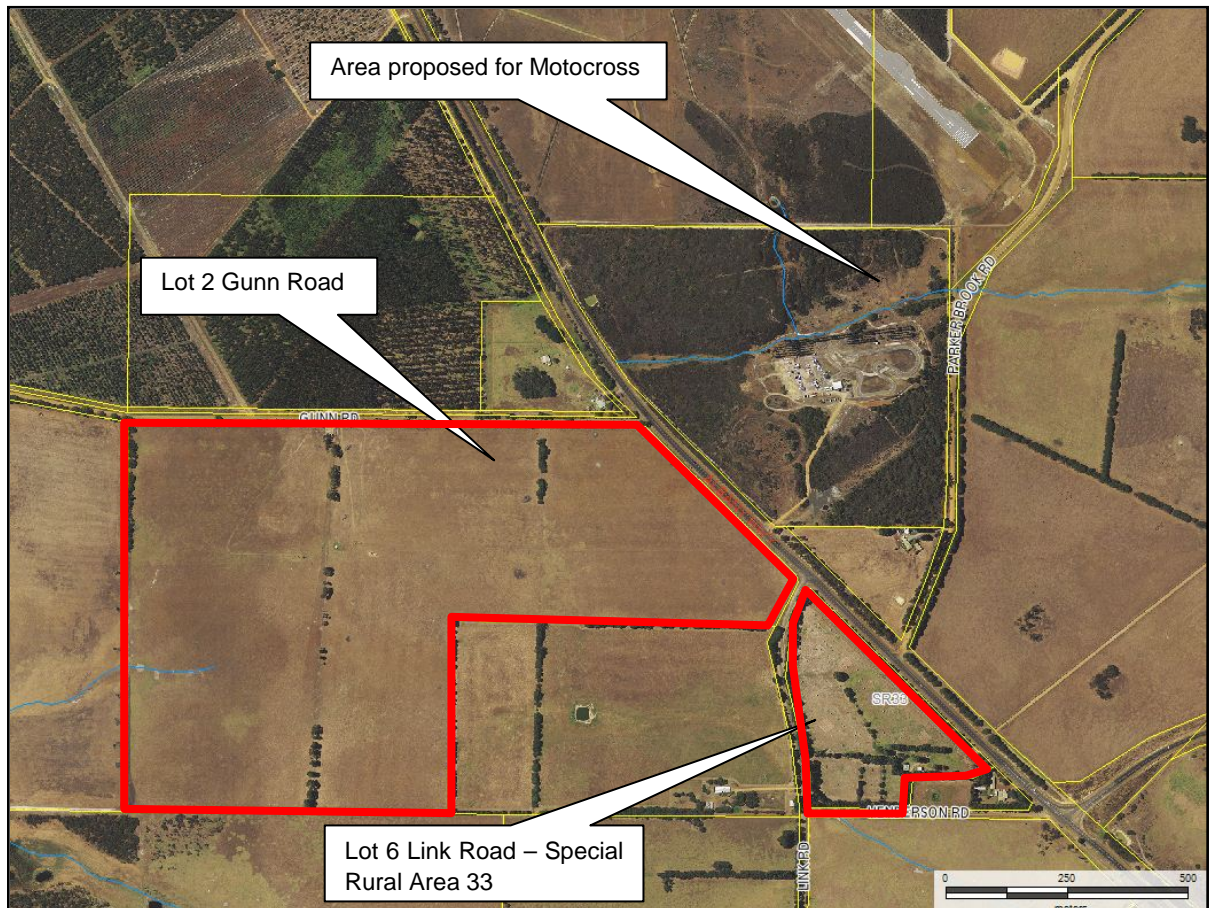
1. In 1992 the former Shire of Albany granted a new lease to the Albany Motorcycle Club Inc. over Reserve 30495 in Robinson (west of Albany) for the purpose of the establishment of a track for the riding of motorcycles and conducting other motorcycle events.
2. The Club developed a motocross track and infrastructure upon the Reserve in Robinson.
3. Due to numerous noise complaints from neighbouring properties the City, with the support of the Department of Environment and Conservation, undertook noise measurements of the Club’s motocross activities. The City concluded that the noise levels did not comply with the *Environmental Protection (Noise) Regulations 1997* assigned levels.
4. On the basis of the results the City issued the Club with an Environment Protection Notice (EPN), which required the Club to reduce noise emissions so that they meet the requirements of the *Environmental Protection (Noise) Regulations*.
5. The Club appealed the Notice to the Minister for Environment and the Minister in determining the appeal allowed the Club to operate for ten days in the 2009 calendar year subject to complying with the *Environmental Protection (Noise) Regulations*. This provided the opportunity for the Club to further monitor noise and to prove to the City and Minister that the Club’s activities could be carried out in compliance with the Regulations.
6. Further noise monitoring by acoustic engineers was undertaken in 2009 and the results confirmed earlier investigations by the City that the level of noise emanating from the site was well in excess of the noise levels prescribed under the regulations.

7. At the OCM held on 17 February 2009, Council received the 'Motor Sports Complex Feasibility Study' and resolved:
- (A) *THAT Council RECEIVES the 'Motor sports Complex Feasibility Study' and supports the concept of the development of a Motor-Sport Complex on Parker Brook Reserve (reserve 1947), subject to achievement of and council's satisfaction with the following:*
1. *'Environmental Noise Impact Assessment' demonstrating the design and management/ operational measures required and the ability of the concept to meet:*
    - *Environmental Protection Authority (EPA) Environmental Impact Assessment Requirements;*
    - *Requirements of the Environmental Protection Act 1986; and*
    - *Requirements of the Environmental Protection (Noise) Regulations 1997.*
  2. *Site Design and Full 'Environmental Management Plan' of sufficient detail to be submitted to the EPA for Environmental Impact Assessment Approval.*
  3. *Approval of the Site Design and 'Environmental Management Plan' by the EPA.*
  4. *A facility/ operational management plan specifying and demonstrating the sustainable operation of the facility including but not limited to:*
    - *operation and functionality of the site management group*
    - *responsibilities and entitlements of co-located tenants*
    - *driver education and training facilities*
    - *noise management*
    - *waste management*
    - *water management*
    - *facility access and security management*
    - *asset maintenance and management*
    - *reserve flora and fauna management*
    - *principles for major event management at the site*
  5. *The achievement of sufficient external funding to undertake each stage of the proposal.*
  6. *A new/amended lease over the site containing provisions that the facility is constructed and operated in accordance with EPA approval, council determinations in relation to the items above and any other relevant council strategies, policies, procedures and determinations.*
8. At the OCM held on 20 April 2010, Council supported the Club operating a further ten days in the 2010 calendar year.
9. In January 2011, the Club wrote to the City requesting approval to hold two non-complying events under Regulation 18 of the *Environmental Protection (Noise) Regulations 1997* within their existing lease area in Robinson.
10. Council considered the request at OCM held on 15 February 2011 and resolved to undertake community consultation with residents and property landowners within a radius of 1.5km.
11. In March 2011, Council granted the Albany Motorcycle Club Incorporated approval to hold two non-complying events under Regulation 18 of the *Environmental Protection (Noise)*

*Regulations 1997* in 2011 conditional on no further breaches of the Environmental Protection Notice previously served on the Albany Motorcycle Club Incorporated.

12. The Club has formally requested a new lease over portion of Reserve 1947 for a term of 10 years and the surrender the existing lease over Reserve 30495.
13. This request was consistent with Council's resolution of 17 February 2009 (specifically part A6 of the resolution) as per Paragraph 7 above.
14. Council resolved at its OCM held on 15 March 2011 to surrender the existing lease over Reserve 30495 (Robinson) and support a new lease over portion of Reserve 1947 (Willyung) subject to the following being completed:
  1. *Lease surrender date to be as soon as practical.*
  2. *Lease surrender subject to remediation of Reserve 30495 to the satisfaction of the City of Albany.*
  3. *All costs associated with the remediation of Reserve 30495 to be payable by the proponent.*
  4. *Lease term being 10 years commencing as soon as practical.*
  5. *Lease purpose being establishment of grounds suitable for the riding of motorcycles and conducting motorcycle events.*
  6. *Lease rental being equivalent to Minimum Land Rate as set by Council per annum. This is currently \$725.00 plus GST per annum.*
  7. *All relevant approvals including Planning Scheme Consent being obtained prior to development or riding activities within the leased area.*
  8. *Lease area being approximately 5 hectares in area, and not encroaching on Aboriginal Heritage listed creek site.*
  9. *The Club received the approval of the appropriate Departments (State and Commonwealth) regarding usage of land next to an Aboriginal Heritage listed site.*
  10. *Lease is subject to a 5 metre access easement for Grange Resources pipeline.*
  11. *Lease special condition will provide for the relinquishment of the lease once the Great Southern Motorplex Group has obtained all necessary approvals and is in a position to undertake the responsibility for the lease and management over the entire Reserve 1947 for development of the Motorsport complex.*
  12. *Section 3.58 of the Local Government Act 1995, advertising requirements.*
  13. *Section 18 of the Lands Administration Act 1997, Minister for Lands consent.*
  14. *All costs associated with the development, maintenance and operations of the leased area to be payable by the proponent.*
  15. *All costs associated with the development, execution and completion of the surrender and new lease to be payable by the proponent.*
15. At its OCM held on 21 June 2011 Council considered the adoption of a subdivision guide plan for 68 special rural allotments on Lot 2 Gunn Road, Drome. At the time the item was considered by Council no predicted noise levels were known for the overall Motorplex proposal, or the motocross facility in isolation; the noise management plan being lodged with Council in August 2011. The adoption of the subdivision guide plan followed a rezoning process that commenced in 2005.

16. The eastern boundary of Lot 2 Gunn Road is located approximately 500m from the closest point of the Motocross track. The predicted noise from a senior motorcycle race is anticipated to exceed the assigned levels defined in the *Environmental Protection (Noise) Regulations 1997* over this property.
17. Council has also approved the rezoning of Lot 6 Link Road from Rural to Special Rural which was gazetted on 17 August 2010. This land is approximately 670 metres from the proposed motocross facility and identifies the creation of nine special rural lots in excess of one hectare.



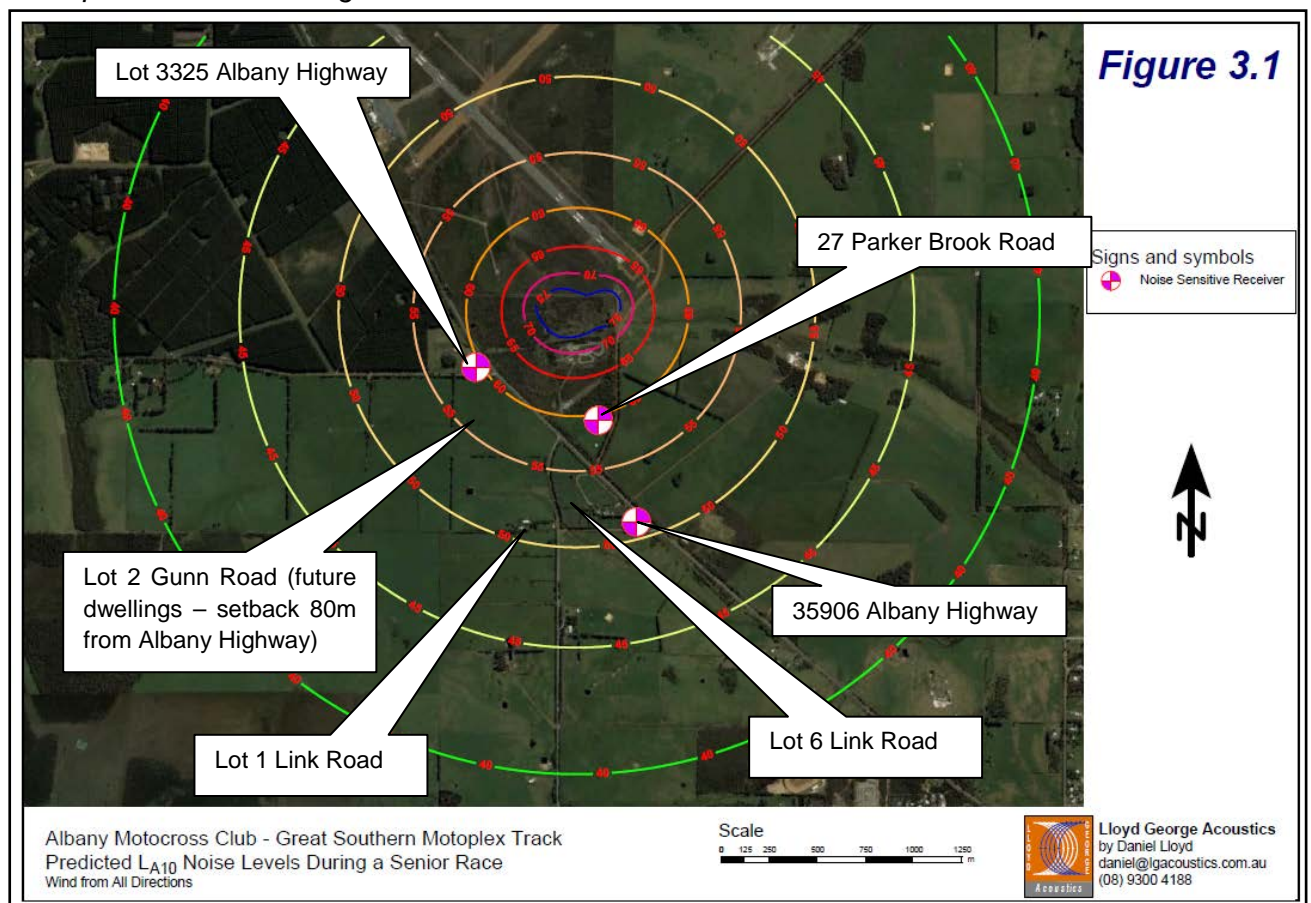
18. Based on condition 7 of the March 2011 resolution, in June 2011, the City received an application for Planning Scheme Consent to develop and use portion of Reserve 1947 (Willyung) for a Motocross Facility.

## DISCUSSION

19. The proponent is proposing to lease the north eastern portion of Reserve 1947 to develop a track, clubrooms, starting gates, toilets and showers, timing tower and access, car parking and pit areas. A copy of the development plan is attached to the rear of this report.
20. A Noise Management Plan (NMP) has been submitted to identify predicted noise levels as a result of the motocross facility and to define how the use of the site will be managed.

21. The NMP is proposing that the site be open for use on the weekends for a maximum of fourteen events per year (Saturday or Sunday). These events will be held between 8.30am and 5.00pm. In addition to the events, the proponent is proposing to be open during the week for training as follows:
- From March to November, training will occur on three days per week between 12pm and 6.30pm; and
  - From December to February, training will occur on two days per week between 12pm and 6.30pm.
22. The NMP makes predictions for noise at the proposed site using noise results previously attained from races at the Robinson facility. The NMP assessed the noise for a senior and junior race whilst considering wind blowing from either all directions or from the west.
23. Predicted noise levels during a senior race (wind from all directions) as per the NMP identifies that noise levels would exceed the *Environmental Protection (Noise) Regulations 1997* at four existing dwellings being 27 Parker Brook Road, Lot 1 Link Road and Lots 35906 and 3325 Albany Highway, in addition to future dwellings to be constructed on Lot 2 Gunn Road. As indicated on the Plan below, the predicted noise at the Parker Brook Road residence and Lot 3325 will be between 55 and 60dB, which is up to 20dB above the 40dB limit identified in the Regulations for noise generation on a Sunday between 9:00am and 7:00pm.

Excerpt from Noise Management Plan



24. Section 7 of the *Environmental Protection (Noise) Regulations 1997* states that noise emitted from any premises or public place when received at other premises must not cause, or significantly contribute to, a level of noise which exceeds the assigned levels. Section 8(2) of the *Environmental Protection (Noise) Regulations 1997* states that the assigned level for all premises is to be determined by reference to the following Table 1 (Assigned noise levels are the levels of noise allowed to be received at a premises at a particular time of the day or night).

*Table 1 (Assigned Noise levels affecting noise sensitive premises)*

Noise sensitive premises includes residential homes, schools, small hospitals, caravan parks, aged care, child care, veterinary clinics etc.	Time of day	Assigned level (dB)		
		LA 10 (Noise not to exceed this level for more than 10% of time)	LA 1 (Noise not to exceed this level more than 1% of time)	LA max (Noise never to exceed this level)
	0700 to 1900 hours Monday to Saturday	45 + influencing factor	55 + influencing factor	65 + influencing factor
	0900 to 1900 hours Sunday and public holidays	40 + influencing factor	50 + influencing factor	65 + influencing factor
	1900 to 2200 hours all days	40 + influencing factor	50 + influencing factor	55 + influencing factor
	2200 hours on any day to 0700 hours Monday to Saturday and 0900 hours Sunday and public holidays	35 + influencing factor	45 + influencing factor	55 + influencing factor
	All hours	60	75	80

25. Table 1 classifies assigned levels into the three different categories being LA10, LA1 and LAMax. The *EPA Noise Regulations 1997* allows increases in noise levels above the LA10 to the LA1 level although the higher the noise level up to the LA Max the smaller the time period that noise is permitted.
26. The events associated with the motocross facility are proposed to be held predominantly on a Sunday between the hours of 9am and 7pm. In this regard the *EPA Noise Regulations 1997* require noise levels affecting noise sensitive premises do not exceed:
- 40dB for more than 10% of the time on Sundays between 9am and 7pm;
  - 50dB for more than 1% of the time on Sundays between 9am and 7pm; and
  - 65 dB at no time on Sundays between 9am and 7pm.
27. As defined in the noise regulations, a representative assessment period means a period of time of not less than 15 minutes, and not exceeding four hours, or other time determined by an inspector or authorised person to be appropriate for the assessment of a noise emission, having regard to the type and nature of the noise emission. Using a four hour period as the representative assessment period, noise levels should not exceed 40dB for more than 24 minutes and should not exceed 50dB for more than 2.4 minutes.
28. The NMP identifies levels of between 55 and 60db will be experienced at two existing noise sensitive premises during the senior race which would exceed the periods of time set out in the Regulations.

29. The NMP identifies a number of measures to control the impact of the noise by:
- Noise testing motorcycles so that only those that meet Motorcycling Australia guidelines will be permitted on the track;
  - Restricting the operating times to fourteen (14) events per years and training days ranging from two to three days per week at various times of the year;
  - Notifying residents of the dates and times of events and training days;
  - A complaint response system; and
  - Noise bunding.
30. A reduction in operating times and the application of noise bunding are considered the only mechanisms that have the potential to reduce the impact of noise from the site. However, according to the acoustic consultant the use of a 5 metre high earth bund will not materially reduce noise levels external to the subject land. Figure 4.1 of the NMP (as per the Appendices Booklet) identifies the noise levels post construction of the earth bund. Besides a small reduction immediately adjacent to the bund, noise levels will effectively remain the same at existing noise sensitive premises.
31. Given the proponents are unable to control noise impacts associated with the proposal and objections have been received from adjacent landowners the impact of noise remains an unresolved issue.

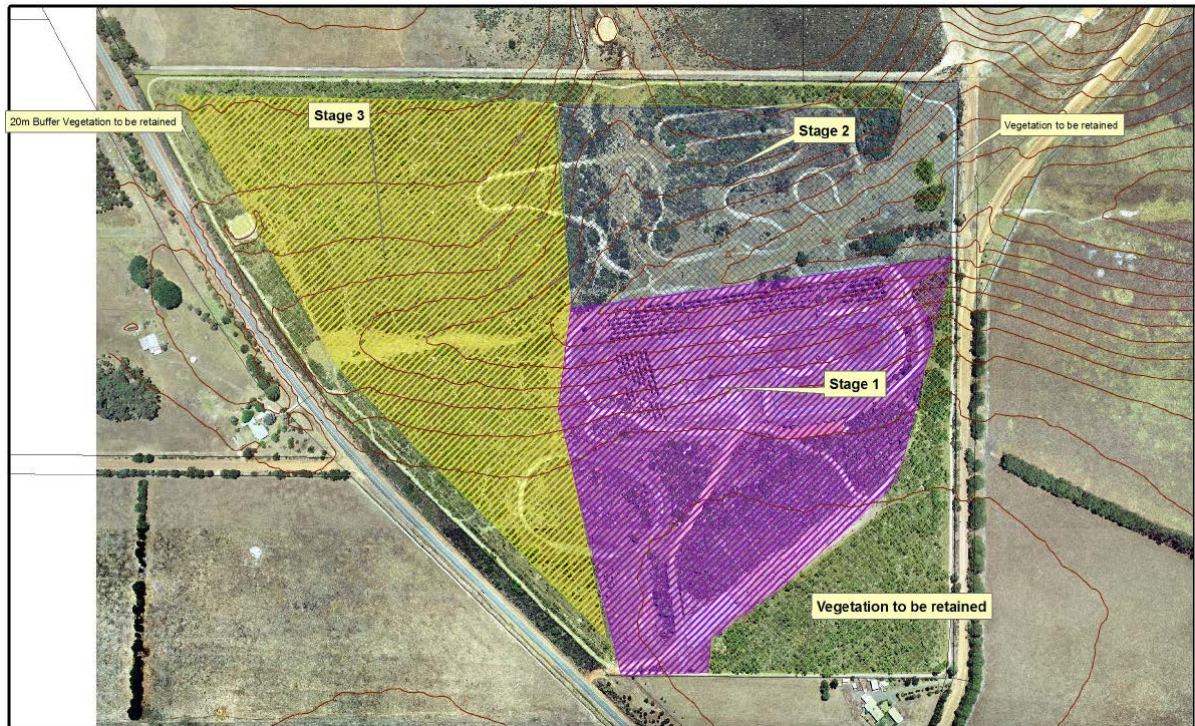
#### **GOVERNMENT CONSULTATION**

32. The application was referred to the following government agencies:
- Main Roads WA;
  - Department of Water;
  - Water Corporation;
  - Environmental Protection Authority;
  - Department of Environment and Conservation; and
  - Department of Indigenous Affairs.
33. Main Roads WA raised no objection to the proposal and is supportive of access being provided via Parker Brook Road.
34. The Department of Water raised no objection to the proposal subject to a stormwater management plan being prepared with objectives being to protect and rehabilitate the waterways on the site.
35. The Water Corporation owns land opposite the site, containing a residence approximately 380 metres from the proposed motocross facility. The Water Corporation has objected to the proposed motocross facility on the following grounds:
- The proposed motocross facility will cause noise levels at Lot 3325 Albany Highway that exceed the assigned levels stipulated within the *Environmental Protection (Noise) Regulations 1997*; and
  - The proposed motocross facility will result in unacceptable impacts to the amenity of Lot 3325 Albany Highway.



36. As per the February 2009 Council resolution, an Environmental Management Plan (EMP) has been submitted for the entire Motorplex proposal and been approved by the EPA.

*Excerpt from Environmental Management Plan*



37. A clearing permit issued by the Department of Environment and Conservation to the Great Southern Motorplex Group supports clearing of the site subject to a number of factors including:
- Obtaining development approval from the City prior to clearing;
  - Clearing selected areas only;
  - Fencing protected areas; and
  - Complying with an Assessment Sequence and Management Procedure.
38. The EMP identified a 20m buffer for vegetation protection (as per the above plan), however the development plan submitted identifies this same area for access and firebreak purposes. If Council is minded to approve the proposal a 20 metre vegetation buffer would need to be identified on the plans.
39. The City received comment from the Department of Indigenous Affairs with the following advice:
- An Aboriginal Heritage Ethnographic and Archaeological survey is to be undertaken; and
  - A minimum setback of 30m to the Creek is required (Registered DIA Site 21837 – Creek running east-west).
40. No response has been received from the Noise Branch of the Department of Environment and Conservation, despite repeated requests from staff at the City. Should a formal response be received the correspondence will be distributed to Councillors.

## **PUBLIC CONSULTATION / ENGAGEMENT**

41. The application was advertised with a sign on site, an advertisement in the local newspaper and letters sent to neighbouring properties within 2 kilometres of the proposed motocross site.
42. The owner of 27 Parker Brook Road objected to the proposed use of the site for motocross for the following reasons:
- The noise will be in excess of the assigned levels as defined in the Environmental Protection (Noise) Regulations 1997;
  - The duration of high noise is for long periods (race day 8.30-5.30 and training days 3 days/week 12pm – 6.30pm); and
  - The use will impact on their quality of life. The residents submit they are entitled to live in peace and quiet and not be subjected to excessive noise pollution.
43. The owner of Lot 2 Gunn Road objected to the proposed use of the site for motocross for the following reasons:
- Motor sports and residential developments do not happily co-exist and should be separated by a buffer of at least 1000m;
  - The proposed motorsports complex is less than 100m from Lot 2 Gunn Road, which received approval for residential development some years ago;
  - The motorplex activities will exceed EPA regulations for noise generated;
  - The extreme noise generated will adversely affect the amenity of existing and future homes in the locality;
  - The noise generated by motorplex will make it difficult, if not impossible to sell lots;
  - Council will be at serious risk of legal action and compensation for significant damages incurred by the owners of Lot 2 Gunn Road; and
  - Council will face ongoing complaints from new and existing residents.
44. The owner of Lot 1 (46) Link Road objected to the proposed use for the following reasons:
- A detrimental effect on future potential to subdivide;
  - A detrimental effect on property value; and
  - Potential restriction to development with the need to include a buffer zone on their property.

## **STATUTORY IMPLICATIONS**

45. The land is identified as a 'Reserve' under Town Planning Scheme No. 3. For land that is Reserved under the Scheme, Council is to have regard to the ultimate purpose of the reserve in determining the appropriateness of the planning proposal. In this case the Reserve is vested with the City of Albany for the purposes of 'Recreation' and therefore the proposed motocross facility is consistent with the ultimate purpose identified for the Reserve. This is further reinforced with Council's previous in principle support for the Motorplex proposal.
46. Clause 5.4 of Town Planning Scheme No. 3 (Matters to be Considered) requires Council to give due regard to the following matters relevant to this proposal:

*“(e) any approved Environmental Protection Policy under the Environmental Protection Act 1986.*

*(f) any relevant policy or strategy of the Commission or any relevant planning policy adopted by the Government of the State.*

*(i) the compatibility of a use or development with its setting.*

*(j) any social issues that have an effect on the amenity of the locality.*

*(n) the preservation of the amenity of the locality.*

*(z) the comments or submissions received from any authority consulted under Clause 5.1A.*

*(za) potential impacts of noise, dust, light risk and other pollutants on surrounding landuses.”*

47. The *Environmental Protection Act 1986* and the *Environmental Protection (Noise) Regulations 1997* are administered by Environmental Health Officers. The legislation aims to protect people from unnecessary noise while letting them carry out their business and social activities.
48. Section 7 of the *Environmental Protection (Noise) Regulations 1997* states that noise emitted from any premises or public place when received at other premises must not cause, or significantly contribute to, a level of noise which exceeds the assigned level.
49. Regulations 18(3), 18(7) and 18(11) of the *Environmental Protection (Noise) Regulations 1997* state:
- (3) *Where the Chief Executive Officer is satisfied that a proposed sporting, cultural or entertainment event that is to be open to the public —*
    - (a) *is likely to result in the emission of noise in contravention of the standard prescribed under regulation 7; and*
    - (b) *would lose its character or usefulness if it were required to comply with that standard,*
    - (c) *the Chief Executive Officer may approve the event, subject to such conditions as the Chief Executive Officer thinks fit, for the purposes of this regulation.*
  - (7) *Conditions imposed under subregulation (3) may —*
    - (a) *limit the duration of practice and rehearsal sessions, sound system tests and the event;*
    - (b) *specify starting and completion times for practice and rehearsal sessions, sound system tests and the event;*
    - (c) *specify times when facilities such as stages, temporary seating and lighting towers can be erected and dismantled; and*
    - (d) *specify any other requirements, including maximum allowable noise levels, considered necessary to maintain the impact of noise emissions on other premises at an acceptable level.*
  - (11) *The Chief Executive Officer is not to approve the holding of more than 2 approved non-conforming events in or at a particular venue in any period of 12 consecutive months unless the Chief Executive Officer is satisfied that the majority of occupiers on whom the noise emissions will impact have no objection to the holding of the additional events.*

**STRATEGIC IMPLICATIONS**

50. This item relates directly to the following element of the City of Albany Strategic Plan (2011-2021):

**Key Focus Area**

Community Focused Organisation

**Community Priority**

Support for community groups

**Proposed Strategy**

Assist with improving access to suitable venues close to CBD that are affordable for community groups.

**POLICY IMPLICATIONS**

51. The subject land is located within the Albany Airport Buffer (Local Planning Policy 7A). As the proposal does not involve the placement of noise sensitive premises within the Policy Area, the motocross facility is an acceptable use with the noise buffer of the airport.

**RISK IDENTIFICATION & MITIGATION**

52. The risk identification and categorisation relies on the City’s Risk Management Framework.

<b>Risk</b>	<b>Likelihood</b>	<b>Consequence</b>	<b>Risk Analysis</b>	<b>Mitigation</b>
<i>Considering the predicted noise at noise sensitive premises is over the assigned levels defined in the Environmental Protection (Noise) Regulations 1997, the health risk to neighbours and complaints risks to the City.</i>	<i>Likely</i>	<i>High</i>	<i>Extreme</i>	<i>Mitigation entirely dependent on Council.</i>

**FINANCIAL IMPLICATIONS**

53. The application has been assessed by staff within existing budget and resources. The appropriate planning fee has been paid by the proponent.

**LEGAL IMPLICATIONS**

54. If the City supports the proposal, which involves up to fourteen events per year and up to three training days per week, it is possible that neighbouring landowners will lodge a third party appeal with the State Administrative Tribunal (SAT).

55. Given landowners most affected by the non-complying noise levels envisaged have objected to the proposal would make it would be difficult for the proponents to establish that the majority of those affected have no objection, as per Regulation 18(11).

**ALTERNATE OPTIONS**

56. Council has the option of supporting the proposal (subject to conditions) with the frequency of events identified in the Noise Management Plan. The proponent has advised that should further restrictions on the number of events or training days be imposed this would not be sustainable and would not cater for newer members who need regular training days.
57. In deciding to approve the proposal Council should be satisfied that the majority of residents affected by the noise have no objection.

**SUMMARY CONCLUSION**

58. The City has supported in principle the proposal to develop Reserve 1947 Parker Brook Road, Willyung for a Motor-Sport Complex on the condition that any proposals comply with the *Environmental Protection (Noise) Regulations 1997*.
59. Four existing dwellings and a significant number of future dwellings have the potential to be affected by noise should the proposal be supported.
60. The proposal before Council is an application for Planning Scheme Consent as required under Council’s Town Planning Scheme No.3. Under Clause 5.4 of the Scheme, Council is to have due regard to noise pollution and more specifically the existing *Environmental Protection (Noise) Regulations 1997* in arriving at a decision on the proposal. Given the noise emissions associated with the proposal which are likely to be detrimentally affect the amenity of the locality.

<b>Consulted References</b>	Planning Application Noise Management Plan Environmental Management Plan Clearing Permit <i>Environmental Protection (Noise) Regulations 1979</i>
<b>File Number (Name of Ward)</b>	A171336 (Kalgan Ward)
<b>Previous Reference</b>	OCM 19.08.2008 Item 12.8.1 OCM 16.12.2008 Item 12.8.2 OCM 17.02.2009 Item 12.8.2 OCM 16.06.2009 Item 18.2 SCM 10.11.2009 Item 6.2.15 OCM 15.02.2011 Item 2.6 OCM 15.03.2011 Item 1.9 OCM 15.03.2011 Item 2.3 OCM 15.03.2011 Item 2.7 OCM 21.06.2011 Item 4.4 OCM 15.11.2011 Item 1.7