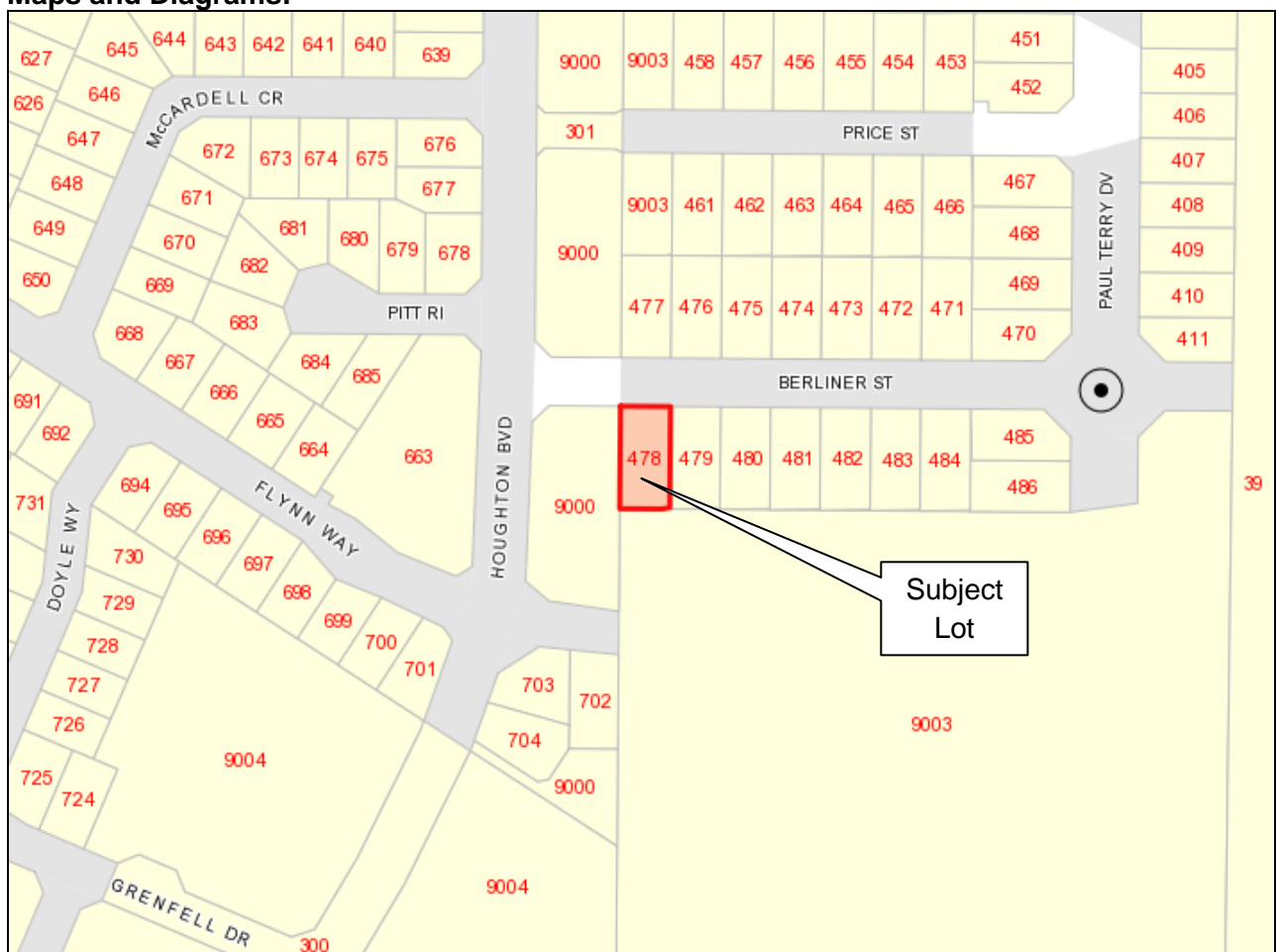


**2.3: DEVELOPMENT APPLICATION – SINGLE HOUSE LOT 478 (NO. 15)  
BERLINER STREET, BAYONET HEAD**

Land Description : (Lot 478) No. 15 Berliner Street, Bayonet Head  
Proponent : David Pyle and Gemma Hitchcock  
Owner : David Pyle and Gemma Hitchcock  
Business Entity Name : None given  
Attachments : Site Plan, Elevations and Covering Letter  
Neighbours Comments  
Responsible Officer(s) : Executive Director Planning and Development Services  
(D Putland)

**Maps and Diagrams:**



**IN BRIEF**

- This Lot is subject to the City of Albany Sloping Land Policy, which seeks to discourage the recontouring of land as the preferred method of construction, encourages sympathetic (split level) house design and restricts excessive cutting and filling.
- The application seeks consent for a cut within 4m of the boundary of this sloping site greater than the 1m permitted under the Sloping Land Policy.
- Although outside of the specific parameters of the policy, the design of the house is considered by City Staff to meet the objectives of the policy.

**RECOMMENDATION**

**ITEM 2.3: RESOLUTION  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR SUTTON  
SECONDED: COUNCILLOR BOWLES**

**THAT Council resolves to ISSUE a Notice of Planning Scheme Consent for a Single House at Lot 478 (15) Berliner Street, Bayonet Head subject to the following conditions:**

- a) Development shall be carried out in accordance with the approved plans, including any details and/or amendments marked in red.
- b) Stormwater disposal shall be designed and installed in accordance with the 'City of Albany's Subdivision and Development Guidelines'.
- c) The new crossover shall be constructed to the City of Albany specifications, levels and satisfaction in accordance with the 'City of Albany's Subdivision and Development Guidelines'. A 'Permit' from the City of Albany is required prior to any work being carried out within the road reserve.
- d) The windows in the west elevation shall be maintained with obscure glazing to a minimum height of 1.65m above internal floor level to the satisfaction of the City of Albany.

**CARRIED 9-0**

**BACKGROUND**

1. The subject site is in a Residential Development zoned area within Town Planning Scheme No.3. It is 705m<sup>2</sup> in area and is located on the south side of Berliner Street. Berliner Street has an approximate gradient of 10% with a resulting rise in ground level of 2m from east to west across the frontage of this lot. The lot also slopes with a 6m rise in ground level from front to rear. The result of this is a diagonal cross fall on this lot from southwest to northeast.
2. The City of Albany Sloping Land Policy came from a desire to promote development sensitive to the natural topography and character of Albany and to minimise the recontouring of land as being the preferred method of developing sloping sites. The Sloping Land Policy sets a maximum height for retaining cut and fill, depending on the proximity to the boundary of the lot. It also permits a building height bonus for house design that meets the requirements of the policy.
3. Sloping sites that the City considers require these controls and could benefit from inclusion in the Sloping Land Policy Schedule are identified at subdivision stage and are incorporated into the Policy Schedule. Currently there are only two subdivisions that have lots subject to the controls and requirements of the Sloping Land Policy.
4. This proposal is referred to Council as it seeks consent for retaining a cut greater than the permitted limit as set out in the policy. Such a relaxation is contrary to the policy and City staff have no delegation to approve such an application.

**DISCUSSION**

5. The proposed development is for a single house, which needs to be assessed against the Residential Design Codes of Western Australia as well as the Local Planning Scheme 1A and 3 Policy Manual, specifically policy 6D – Sloping Land.
- 6.

Assessment against the Residential Design Codes (R-Codes) Acceptable Development

Criteria	Codes Requirement	Compliance
Site Area for R20	<ul style="list-style-type: none"> <li>• Min 440m<sup>2</sup></li> </ul>	Yes, site is 705m <sup>2</sup> .
Setback of building generally	<ul style="list-style-type: none"> <li>• 6m primary street setback</li> </ul>	Yes, first floor setback 6m, lower ground floor set back 7.5m.
Setback of garage	<ul style="list-style-type: none"> <li>• Behind setback line</li> </ul>	Yes, undercroft element setback 8.35m from street.
Surveillance of the street	<ul style="list-style-type: none"> <li>• One habitable room window has clear view of street</li> </ul>	Yes, Main Bedroom and Family room overlook the street.
Garage doors	<ul style="list-style-type: none"> <li>• Garage doors and supporting structure not to exceed 50% of the frontage</li> </ul>	Yes, at 6.11m wide the garage is approximately 30% of the front boundary.
Building setback from the boundary	<ul style="list-style-type: none"> <li>• In compliance with R-Codes table based on wall length and height with or without major openings.</li> <li>• General setback from west boundary 1.7m</li> <li>• General setback from east boundary 4.9m</li> </ul>	No (see comment below table)  West boundary setback is 2.0m.  East boundary setback is 4.06m.
Setback of retaining walls	<ul style="list-style-type: none"> <li>• In compliance with R-Codes table based on wall length and height</li> <li>• Setback required 1.5m</li> </ul>	No, proposed 1m in from the east boundary (see comment below table).
Open Space (areas not covered by buildings)	<ul style="list-style-type: none"> <li>• 50% minimum open space.</li> </ul>	Yes, the footprint of the building is approximately 244m <sup>2</sup> which equates to 35% being covered
Outdoor Living Areas	<ul style="list-style-type: none"> <li>• Minimum 30m<sup>2</sup> with minimum dimension of 4m and directly accessible from a habitable room.</li> </ul>	No (see comment below table).
Onsite parking	<ul style="list-style-type: none"> <li>• 2 parking spaces</li> </ul>	2 car garage plus driveway.
Vehicular Access	<ul style="list-style-type: none"> <li>• Minimum width of 3m at street frontage boundary and no wider than 6m</li> <li>• No closer than 0.5m to side boundary</li> <li>• At right angles to the street</li> <li>• Avoids trees and poles</li> </ul>	Yes, meets all of these requirements.
Excavation or Fill	<ul style="list-style-type: none"> <li>• Excavation within a site</li> </ul>	Yes, but does not comply with

Criteria	Codes Requirement	Compliance
	and behind a street setback line shall have no limit.	Sloping Land Policy limit of maximum 1m within 4m of side boundary.
Building Height	<ul style="list-style-type: none"> <li>Category B of the R-Codes (buildings to be less than 9m in height to ridge and 6 m to eaves or 7m with a concealed roof such as parapet). This is varied by Sloping Land Policy to allow additional 1.5m where design meets policy objectives.</li> </ul>	Yes, maximum eaves height of 5.3m and maximum ridge height of 7.4m. Proposal does not seek to utilise additional height allowance under the sloping land policy.
Visual privacy	<ul style="list-style-type: none"> <li>Setback in direct line of sight within cone of vision from the boundary a minimum of: <ul style="list-style-type: none"> <li>4.5m from bedrooms and studies;</li> <li>6m for habitable rooms other than bedrooms and studies;</li> <li>7.5m for unenclosed outdoor active habitable spaces</li> </ul> </li> <li>Unless screened to restrict views within cone of vision</li> </ul>	<p>No, obscure glazing is proposed to windows on the west elevation to meet this requirement, but on the east elevation;</p> <ul style="list-style-type: none"> <li>the Bedrooms are setback 4.06m requiring a relaxation of 0.44m;</li> <li>the Family room is setback 5.36m requiring a relaxation of 0.64m;</li> <li>the Alfresco is setback 4.06m requiring a relaxation of 3.44m.</li> </ul> <p>The adjoining landowner has given their consent to these relaxations.</p>
Solar access for adjoining sites	<ul style="list-style-type: none"> <li>Development designed so its shadow cast at midday on 21 June does not exceed 25% of any one adjoining lot</li> </ul>	Yes, although not calculated by the proponent, the shadow would be cast to the rear and with the rising slope would not fall far beyond the site, if at all.
Stormwater disposal	<ul style="list-style-type: none"> <li>Where conditions allow to be retained onsite directed to garden areas, sumps and rainwater tanks</li> </ul>	Can be achieved and is subject of an appropriate planning condition.
Essential facilities	<ul style="list-style-type: none"> <li>Adequate clothes drying area screened from view from street</li> </ul>	Yes, space for clothes drying to rear of building accessed from laundry

7. There are parts of the R-Codes where this proposal does not meet the acceptable development criteria and consideration under the performance criteria or associated relaxations are required.

Building setback from the boundary

8. The setbacks from the east and west boundaries have already been stated at 4.06m and 2m respectively. The adjoining owner of Lot 479 to the east has given their consent to the requested 0.84m side setback relaxation.

Setback of Retaining Walls

9. The retaining wall is proposed to retain a cut of the slope 1m in from the west boundary. For the height and length of the wall the required setback is 1.5m. Given that the purpose of the retaining wall is to retain a cut of the slope rather than retain fill on the lot, the height of the retaining wall will have no visual impact on the future occupiers of this adjoining vacant lot. City staff consider this meets the performance criteria to minimize the impact on adjoining properties and is acceptable.

Outdoor Living Areas

10. The topography of the lot makes compliance with the acceptable development criteria difficult without further alteration of the landform. The design of the house, with the habitable space on one plane, results in only one corner of the habitable floor level meeting the ground. The laundry is located in close proximity to this corner and utilizes a ramp to provide external access. The laundry is not a habitable room and the ramp cannot be considered to provide direct access.
11. However, both the Family room and main bedroom 1 have access to the extensive alfresco deck area above the garage and workshop at the front of the house. This faces north and would be open to the winter sun. City staff consider this meets the performance criteria.

Visual Privacy

12. The required setbacks of these various elements and the requested relaxations are stated in table above. These all relate to the adjoining land to the east. The greatest relaxation requested is from the alfresco deck area and is a relaxation of 3.44m. The adjoining owner of Lot 479 to the east has given their consent to the requested 3.44m overlooking relaxation.

Sloping Land Policy

13. The sloping land policy sets clear objectives:
- Encourage a philosophy that discourages the recontouring of land as being the preferred method of undertaking the development of sloping sites.
  - Restrict excessive cutting and filling of steeply sloping land and encourage house design sympathetic (split level) to the natural topography.
  - Reduce neighbour conflict by encouraging a reduction in the level of cutting and filling on development sites and the size of the retaining walls that need to be constructed along the common property boundary(s).
  - Promote development that is sensitive to the natural topography and character of Albany.
  - Promote housing designs which complement the slope of the land to reduce the building's bulk and visual impact.

14. The policy aims to achieve this by limiting the extent of cut and fill to a maximum 1m change from the natural ground level within 4m of the property boundary and 1.5m elsewhere on a lot. Where such retaining is undertaken for the purpose of constructing a building any retaining shall be confined within the building footprint so as to be incorporated as part of the building. Where a building design accords with this requirement a height bonus of 1.5m over and above the Residential Design Codes (Category B) height limits is permitted.
15. The proposal seeks consent for retaining walls up to 1.7m high to retain a cut of the slope parallel with the west boundary 1m beyond the building footprint and across the lot below the proposed house. The retaining walls will taper in height along their lengths from the highest point where the two walls converge. The highest point of the walls will be set back into the slope of the hillside.
16. The proposed retaining walls do not comply with the Sloping Land Policy insofar as at their highest point they are higher than the policy limit of 1m within 4m of the boundary and are also outside the building footprint.
17. As the retaining walls are intended to retain a cut of the slope and not for imported fill, they will be set back into the slope and will not have a significant visual impact outside of the site. In addition, the house has been designed taking advantage of the slope incorporating the garage and workshop in an undercroft element with the habitable floorspace above. It is City staff opinion that the design of the house together with the proposed retaining walls meets the objectives of the policy despite not strictly meeting the policy requirements.

#### **GOVERNMENT CONSULTATION**

18. No government consultation was required.

#### **PUBLIC CONSULTATION / ENGAGEMENT**

19. The proponent provided a proforma signed by the adjoining landowner to the east stating they have no objection to the requested relaxations.
20. As the proposal is minor in nature and only affects the immediate adjoining landowners, no other public consultation was required.

#### **STATUTORY IMPLICATIONS**

21. The subject site is 705m<sup>2</sup> in area and is zoned "Residential Development" under Town Planning Scheme No. 3. A single house is a use/development that is not permitted unless approval is granted by the Council.
22. The Sloping Land Policy is a Town Planning Scheme Policy adopted under the Scheme. Clause 6.9.4 of TPS 3 states;
  - a) *A Town Planning Scheme Policy shall not bind the council in respect of an application for Planning Consent, however, it may require the Council to advertise its intention to relax the provisions of the policy once in a newspaper circulating in the district stating that submissions may be made to the Council within 21 days of the publication thereof.*
  - b) *Council shall take into account the provisions of the policy and objectives which the policy was designed to achieve and any submission lodged, before making its decision."*

23. The Sloping Land Policy does not require a requested relaxation to be advertised.

**STRATEGIC IMPLICATIONS**

24. This item relates to the following elements of the City of Albany Strategic Plan (2011- 2021):

**Key Focus Area**

*Organisational Performance*

**Community Priority**

*Policy and Procedures*

**Proposed Strategies**

- *Develop clear processes and policies and ensure consistent, transparent application across the organisation.*
- *Regularly review all policies in consultation with community and key stakeholders.*

**POLICY IMPLICATIONS**

25. Although not strictly complying with the policy requirements, it is considered that this proposal meets the objectives of the policy and a relaxation can be justified.

**RISK IDENTIFICATION & MITIGATION**

26. 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>The applicant appeals to a State Administrative Tribunal if the proposal is refused.</i>	<i>Likely</i>	<i>Minor</i>	<i>Medium</i>	<i>If a decision is made to refuse the application, sound reasoning is required to provide solid defence at a State Administrative Tribunal.</i>

**FINANCIAL IMPLICATIONS**

27. The proponent has paid the appropriate fee and the application has been processed within identified timelines and budget constraints.

**LEGAL IMPLICATIONS**

28. If Council refuses the application and the applicant appeals, the City of Albany may be required to defend reasons for refusal at a State Administrative Tribunal hearing.

**ALTERNATE OPTIONS**

29. Council may refuse the application as it does not strictly adhere to the requirements of the policy. A detailed reason for a refusal would need to be provided as part of the determination.

**SUMMARY CONCLUSION**

30. The proposal seeks planning scheme consent for a single house on a lot subject to the Sloping Land Policy requirements. The proposed house meets the Residential Design Codes of Western Australia requirements, but the associated earthworks and retaining walls do not strictly adhere to the requirements of the Sloping Land Policy. However, it is the opinion of City staff that the proposal does satisfy the objectives of the Sloping Land Policy.

<b>Consulted References</b>	:	City of Albany Sloping Land Policy Town Planning Scheme No. 3 Residential Design Codes
<b>File Number (Name of Ward)</b>	:	A210946 (Yakamia Ward)
<b>Previous Reference</b>	:	NIL