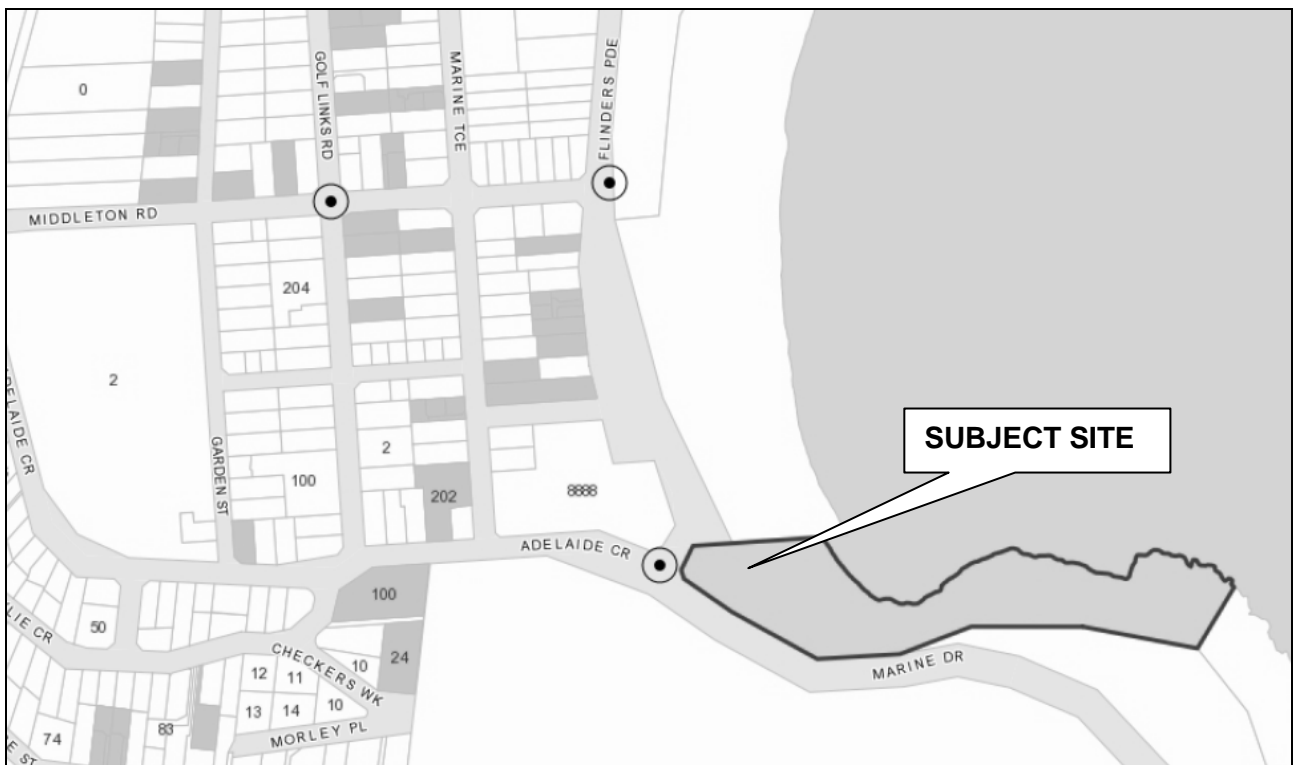


**2.3:DEVELOPMENT APPLICATION – TAVERN, FAST FOOD OUTLET,  
GALLERY AND MEETING PLACE – 2 FLINDERS PARADE,  
MIDDLETON BEACH, ALBANY**

|                                  |  |
|----------------------------------|--|
| <b>Land Description</b>          | : (Part of Reserve 26149 Lot 651) No.2 Flinders Parade, Middleton Beach, Albany      |
| <b>Proponent</b>                 | : Kate Marwick on behalf of Three Anchors Pty Ltd                                    |
| <b>Owner/s</b>                   | : City of Albany   |
| <b>Business Entity Name</b>      | : Three Anchors Pty Ltd  |
| <b>Director of Owner Company</b> | :  |
| <b>Attachment(s)</b>             | : Covering letter/justification<br>: Site plan & floor plan<br>: Copy of submissions |
| <b>Councillor Workstation</b>    | : Nil  |
| <b>Responsible Officer(s)</b>    | : E/Director Planning and Development Services (D Putland)                           |

**Maps and Diagrams:**



**IN BRIEF**

- A development application has been received for the change of use of the restaurant at Three Anchors to a Tavern. The existing hot food kiosk, gallery and meeting spaces are to remain unchanged.
- The change is sought to assist the operation of the premises in terms of service of liquor.
- Under Council Guideline 'Planning Applications', a Tavern is a "3C" whereby City staff have no delegation and the application is required to be determined by Council.

**RECOMMENDATION**

**ITEM 2.3: RESOLUTION**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR CALLEJA**

**SECONDED: COUNCILLOR STOCKS**

1. **THAT Council resolves to ISSUE a Notice of Planning Scheme Consent for Tavern, Fast Food Outlet, Gallery and Meeting Place at (Lot 651) 2 Flinders Parade, Middleton Beach, Albany subject to the following conditions:**
  - a) **The proposal is to comply with any details and/or amendments marked in red on the stamped, approved plans.**
  - b) **The loading and unloading of goods shall occur entirely within the site and be undertaken in a manner so as to cause minimum interference with other vehicular traffic.**
  - c) **Within 60 days of the date of this decision the developer shall prepare and submit for approval a Noise Management Plan for the premises to the satisfaction of the City of Albany. The Noise Management Plan shall detail practices and controls to ensure the level of noise emanating from the premises will not exceed that prescribed in the Environmental Protection Act 1986, and the Environmental Protection (Noise) Regulations 1997. The requirements of the approved Noise Management Plan shall be implemented and adhered to during the hours of operation of the premises.**
  - d) **The consumption of liquor within the alfresco area to the front (northeast) of the building shall be served by way of table service to patrons seated at tables only, unless otherwise agreed in writing by the City of Albany.**
2. **THAT Council AUTHORISES the Executive Director Planning and Development Services to ISSUE a Section 40 Certificate for a Tavern at (Lot 651) 2 Flinders Parade, Middleton Beach, Albany, subject to the following condition being imposed;**
  - a) **The consumption of liquor within the alfresco area to the front (northeast) of the building shall be served by way of table service to patrons seated at tables only, unless otherwise agreed in writing by the City of Albany.**

**CARRIED 12-0**

**BACKGROUND**

1. This application is for a tavern, fast food outlet, gallery and meeting room at the premises known as Three Anchors at 2 Flinders Parade, Middleton Beach.
2. The subject land is a reserve for parks and recreation under Town Planning Scheme 1A. It is owned by the Crown and vested with the City of Albany with the power to lease.
3. The subject land is primarily used for public recreation and includes public walk ways, public toilet facilities, a children's play park, picnic facilities in addition to the subject development.
4. The premises currently operate as a restaurant under a restaurant liquor licence.( with a liquor without a meal permit ). This operation and permit was considered by Council at its Ordinary Council Meeting on 20 April 2010 (Item 13.1.1) and was approved at a Special

Council Meeting on 6 May 2010 (Item 6.4) for the former operators when the site was known as Calamaris at Beachside.

5. Under the restaurant liquor licence (with liquor without a meal permit) consumption of liquor is limited to onsite only by way of table service to patrons seated at a table.
6. The renovations, alterations and additions to the premises by the current operators were considered by Council at its Ordinary Council Meeting on 19 June 2012 (Item 2.6). These works are nearing completion and the premises opened to the public just before Christmas 2012.
7. If approval is considered appropriate the applicant will also need to apply to the Department of Racing Gaming and Liquor (DRGL) for a 'Tavern' Liquor Licence. A tavern licence authorises:
  - *The sale and supply of liquor for consumption on the premises;*
  - *The sale and supply of packaged liquor to patrons for consumption off the licensed premises.*

Prior to the issuing of a Liquor Licence DRGL requires approval from the appropriate Local Authority, this is via a Section 40 Certificate under the Liquor Licensing Act.

8. As a Tavern is classified as "3C" application under Council Guideline 'Planning Applications', it is required to be determined by Council.

## **DISCUSSION**

9. This application seeks a partial change of use of the restaurant to tavern. As per the previous approval in 2012; the kiosk operation would continue outside of the tavern area as a fast food outlet. To the northwest of the kiosk/fast food outlet there is a gallery space and a meeting room.
10. The subject site is already developed and no further physical changes are proposed as a result of this application. The application to change from restaurant to tavern is motivated by a desire to alleviate issues and complexities of the operation imposed as a result of the liquor without a meal permit restrictions. Currently anyone going to the venue just to have an alcoholic drink, can order at the bar with a table number or are given a number to go and sit at a table to wait for the bar staff to bring the drink(s) over. During busy periods this can cause significant delay to service.
11. The proposed change to tavern would allow direct service at the bar.
12. In addition, a tavern approval under Racing, Gaming and Liquor can permit takeaway sales of packaged liquor and the proponent has stated a preference to have the ability to do this to allow people to take the remainder of their purchased bottle away with them. They have indicated how they would restrict this from general takeaway sales, by charging the same over the bar price.

13. Although there is merit in the suggestion; having takeaway sales at this venue may increase the potential for people to consume alcohol in surrounding public places that are frequented by children; namely the beach and lawn areas of Middleton Beach as well as the amphitheatre on the bank above the boardwalk path at Ellen Cove.
14. City staff also note that allowing takeaway sales would be contrary to the intent behind the direction given to staff by Council from the Ordinary Council Meeting 18/08/2009, Item 13.5.1, Recommendation 3, Guideline iii).

*iii) Support applications for restaurants to use small bar licences provided the licence area does not extend onto or incorporate public land (eg alfresco areas), the premises are not located adjacent to locations which have a high potential to be frequented by children (beaches, public parks, etc) and the licensed premises can be adequately demarcated.*

15. Council may also consider recommending a small bar licence, which is limited by the Department of Racing, Gaming and Liquor to a capacity of no more than 120 people. However, this may unduly restrict the operation of this venue.
16. With regard to use of the alfresco to the front of the renovated building, this area is clearly demarcated with a low wall abutting the newly re-paved boardwalk pathway. It is in close proximity to the children's play equipment and for this reason staff suggest that this alfresco be limited to table service only. This limitation on table service within an alfresco abutting public places is consistent with recent Council decisions for RATS Bar at 18 Adelaide Crescent (November 2010) and the proposed Waterfront Tavern at Lot 6 Toll Place (February 2013).
17. The proposed change of use was subject to public advertising and consultation and this is detailed further in this report. It was also referred to the City's Property and Leasing Team as the land and building is a leased City controlled property. The comment received is that this change of use if approved will require a variation to the lease for this property. A separate report covering the lease variation is included within this Council meeting agenda.
18. The proponent has requested hours of operation from 11am to midnight 7 days per week, although they have stated they do not intend to stay open until midnight every night, but would like to retain the option for special occasions/events. As the venue is setback a significant distance from the nearest residential property, this is not considered to be a concern and did not raised objection through the public consultation.
19. The proposed change of use from restaurant to include tavern will not give rise to additional parking requirements and there is sufficient parking provision in the immediate vicinity.

#### **GOVERNMENT CONSULTATION**

20. No government consultation was required or undertaken.

**PUBLIC CONSULTATION / ENGAGEMENT**

21. The application was advertised in the Public Notices section of the Albany Advertiser on 17 January 2013 with the public submission period closing on 7 February 2013. A total of 85 letters advising of the application were sent out to surrounding landowners within a 250m radius of the site.
22. Three written public submissions were received. One was an objection to the proposal and the other two were not objections but raised queries. The objections and queries are detailed as follows:

The objection raised:

- The proposed change does not benefit residents or tourists as Middleton Beach is a family venue.
- Parking difficulties.
- Anti-social behaviour, including littering, violence (including harmless/playful banter) and hoons.
- Against a tavern licence, but perhaps another licence for Sunday's only.

Queries raised:

- No overall objection, but questions the necessity of another tavern in this area and suggests the tavern operating hours be restricted until after 6pm.
- They have a bottle shop licence (liquor store licence) and would not be happy for packaged liquor sales to be included in this proposal if supported.

**STATUTORY IMPLICATIONS**

23. The Town Planning Scheme 1A Part II - reserved land includes the following clauses that is relevant to this application;

“Reservation of land and development thereof

- 2.1 Land set aside under this Scheme for the purposes of a reservation is deemed to be reserved for the purposes indicated on the Scheme Map.
- 2.2 Except as otherwise provided in this part a person shall not carry out any development on land reserved under this Scheme, other than the erection of a boundary fence, without first applying for and obtaining the written approval of the Council.
- 2.3 In giving its approval to carry out development the Council shall have regard to the ultimate purpose intended for the reserve and shall in the case of land reserved for the purposes of a public authority confer with that authority before giving its approval.
- 2.4 Subject to Part V of the Scheme, no provision of this Part shall prevent the continued use of land for the use for which it was being lawfully used immediately prior to the Scheme having the force of law, or the repair and maintenance, for which the prior consent in writing of the Council has been obtained, of buildings or works lawfully existing on the land.”
24. The proposed use is considered consistent with the purpose of this Reserve.

**STRATEGIC IMPLICATIONS**

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

**Key Focus Area**

*Sustainability and Development*

**Community Priority**

*Tourism development*

**Proposed Strategies**

- *Improve and expand tourism infrastructure and attractions.*
- *Encourage diversity in tourism product, including food and wine, indigenous tourism, heritage tourism, through partnerships with key tourism stakeholders.*

**POLICY IMPLICATIONS**

26. The subject site is in close proximity to but falls just outside of The City of Albany’s Middleton Beach Tourist precinct policy, there are therefore no policy implications directly related to this site.

**RISK IDENTIFICATION & MITIGATION**

27. 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 proponent may lodge an application for review to the State Administrative Tribunal of the City’s decision to refuse the proposal or any conditions of the Approval.</i> | <i>Likely</i>     | <i>Moderate</i>    | <i>High</i>          | <i>The decision is based on sound planning grounds.<br/><br/>If a decision is made to refuse the application sound reasoning is required to provide solid defence at a State Administrative Tribunal.</i> |
| <i>Concerns that a “Tavern” may cause anti social behaviour etc.</i>   | <i>Low</i>        | <i>Minor</i>       | <i>Low</i>           | <i>This will be monitored and controlled by the Licensee and Police.<br/>In reality the operation under the tavern licence will not be significantly different to the current approved operation.</i>     |
| <i>Concerns that takeaway sales of packaged liquor will lead to increased public drinking in the vicinity.</i>   | <i>Likely</i>     | <i>Moderate</i>    | <i>High</i>          | <i>Can be avoided by restricting tavern to prohibit takeaway sales.</i>   |

**FINANCIAL IMPLICATIONS**

- 28. The proponent has paid the appropriate fee as per the Planning Application Fees Schedule adopted by Council. This fee is non-refundable.
- 29. Planning staff have processed this application within accepted timeframes and the scope of existing budget lines.

**LEGAL IMPLICATIONS**

- 30. If Council refused the application or the Applicant objects to any of the conditions of approval, the proponent would then be entitled to seek a review of that decision with the State Administrative Tribunal.

**ALTERNATE OPTIONS**

- 31. Council has the option to refuse to grant Planning Scheme Consent for the proposed Tavern and the venue would continue to operate under its current restrictions.
- 32. Council can determine to approve the Tavern use, but prohibit takeaway sales as proposed in the application, authorising the issuing of a Section 40 Certificate for a restricted Tavern.
- 33. Should Council consider the requested hours of operation (closing at midnight on limited occasions) is cause for concern, this can be the subject of a suitable condition to be determined by Council or the number of occasions per calendar year when the venue closes at midnight can be limited.

**SUMMARY CONCLUSION**

- 34. The proposal seeks Planning Scheme Consent for change of use to include tavern together with existing uses at (Lot 651) 2 Flinders Parade, Middleton Beach, Albany.
- 35. This change is sought to assist with the operation and function of the venue by removing the restriction on service of liquor to table service only. There are no other substantial implications arising from this other than the possibility of takeaway sales of packaged liquor as discussed in the report.
- 36. Staff recommend that the tavern be approved.

|                                   |                               |
|-----------------------------------|-------------------------------|
| <b>Consulted References</b>       | Town Planning Scheme No. 1A   |
| <b>File Number (Name of Ward)</b> | A223660 (Frederickstown Ward) |
| <b>Previous References</b>        | OCM 19/06/2012 Item 2.6       |

Tom Wenbourne  
Senior Planning Officer  
City Of Albany  
PO Box 484  
ALBANY WA 6331

Dear Sir,

**Three Anchors application for change of use to include tavern at 2 Flinders Parade Middleton Beach.**

We have submitted an application to the City of Albany for change of use to 2 Flinders Parade Middleton Beach to include tavern and to enable a full report to be prepared for Council, we supply the following information.

Hours of operation:

Kiosk and gallery: 9am to 5pm

Bistro/restaurant (including tavern licence): 11am to midnight

We do not intend to stay open to mid night every night. We would like option for special occasions/events.

Monday to Sunday.

Separation of uses:

The function room will have a separate entrance and will cater for groups up to 30 for private hire. This area can be closed off from the rest of the building.

Gallery and kiosk

Gallery is open when the kiosk is operating. Gallery is available for local artists to show and offer their works for sale.

Kiosk sells takeaway food and drinks and has a separate entrance. There is a lockable door, between the kiosk and restaurant.



The Alfresco to the front of the building is not currently being used. It is intended in time for the alfresco to be dining with table service only for food and beverages. We acknowledge the front alfresco area's close proximity to beaches and playgrounds with the high potential to be frequented by children. We intend the area to be policed and patrons are not able to drink without a meal.

We do not intend to include a bottleshop element and have no intention to vary the submitted plan in any way in the foreseeable future. We would however like the option of limited takeaway sales to be available. We will offer our current range of local and imported wines, beer and cider but aimed at more of a restricted market for tourists staying in the area who wish to take the remainder of their purchased bottle away with them. While we cannot police where consumption occurs once it leaves the property, prices for takeaway purchases will be the same as over the bar prices which should encourage patrons to consume drinks on site.

Our plan is to operate our business as we have since opening in December 2012, but with the use changed to include tavern, we intend to apply to Dept of Racing Gaming and Liquor for an unrestricted tavern licence.

We hope this will improve efficiency of staff in the bar area as the requirement to have all drinks served to the table will be eliminated. A Tavern Licence will also assist in hosting larger cultural/music events where our patrons do not have to wait for staff to bring their beverages to their table.

Hope you find the above information is what is required.

Please don't hesitate to contact me for any queries.

Kind Regards

Kate Marwick  
General Manager  
Three Anchors

24<sup>th</sup> January 2013

Mr Graham Foster  
Chief Executive Officer  
PO Box 484  
Albany WA 6331



City of Albany Records  
Doc No: ICR1387752  
File: DB.PSC.6  
Date: 25 JAN 2013  
Officer: AOP1 EDPD ACEO3

Attach:  
Box:  
Vol:  
Box+Vol:

Re Proposed Change of Use/P2130009- Tavern, Fast Food Outlet, Gallery & Meeting Room

Dear Mr Foster:

I am a long-time resident of our town, and I am writing to express my concern about recent discussion and the pending decision to allow the proposed change of the Three Anchors at Ellen Cove Middleton Beach.

Firstly I would like to say that the refurbishment from the formerly Calamari's to the Three Anchors is very good. I feel it has given Middleton Beach another dimension and should be congratulated.

However, I do not believe that the benefits of the change of use favourably benefits any resident or tourist that come here, Middleton beach is a Family Venue, I have been to the Three Anchors many times since it's opening and understand the problem with people that need to have a table allocation so that they can be served drinks, this I believe can be easily remedied at a very modest cost, as I explained and pointed out to friends of mine when we were there last night.

At present there is not enough parking for the Beach goers' the Three Anchors and the New Tapas Bar in Adelaide Crescent, this change of licence would just make parking impossible, I know it could be said that most people would walk to the venue but in reality this does not happen.

I believe that it would change the dynamics of Middleton Beach to its detriment if allowed to proceed. There are many Families that do go to the Beach in the evening and children do use the playground right outside of the Three Anchors only yesterday evening whilst I was there people came from the back of the Three Anchors out the entrance by the toilets to smoke when finished they just flicked there cigarette butts across the play area, these people were also "play boxing" on the walk way so when a young family came through they had to dodge the boxers. Yes all harmless behaviour but when you add a Tavern to the vicinity it might not be so harmless.

Here at Middleton Beach we have had numerous issues with "Hoon" drivers this has seen a great decline since Calamari's closed, however last Sunday there was what is called the Sunday Session at the Three Anchors and the Hoon's came out again in force.

The person that has the lease is a local person and therefore would have known the use allowed for the premises before entering into an agreement to lease; I see no reason why this should be changed now.

With regard to fast food I thought that is what the kiosk provided.

I am aware that security guards were present on Sunday but they cannot be everywhere, see everything all the time.

Very many people take the view that if security is needed that it is probable that trouble is expected.

Although I am against a Tavern licence for this venue I would be prepared to compromise to allow a different licence for Sunday's only.

Are these tradeoffs that we really want to make? I am looking forward to your response.