

**PD009: DEVELOPMENT APPLICATION: EDUCATION ESTABLISHMENT
(WITHIN EXISTING HOUSE OF WORSHIP) AT 107 – 135 WRIGHT
STREET, COLLINGWOOD PARK.**

Land Description	: 107 – 135 (Lot 697) Wright Street, Collingwood Park.
Proponent	: Christian Family Church (Troode Street Church
Owner	: Mr William & Mrs Joy White.
Business Entity Name	: Christian Family Church Inc. Reg No. A0823223J Alta-1
Attachments	: Site location plan at 1:10,000; Unconstructed Road Reserve Application details – site plan, elevations and covering letter; Letter of objection.
Appendices	: NIL
Councillor Workstation	: Provision for Access Deed.
Responsible Officer(s)	: Executive Director Planning & Development Services (D Putland).

Responsible Officer's Signature:	
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STRATEGIC IMPLICATIONS

1. This item relates directly to the following element of the *Community Strategic Plan "Albany 2023"*:

Key Theme: 1. Smart, Prosperous & Growing

Strategic Objective: 1.1 To foster education, training and employment opportunities that support economic development.

2. This item relates to the following Strategic Objective of the Albany Local Planning Strategy (ALPS):

Section 8.6.3 Community, Heritage and Cultural

Establish and protect sustainable community facilities and services located within or near centres in the Albany town site urban area and rural settlements.

In Brief:

- The members of the Troode Street Church are seeking to re-use an existing building on the site to operate a care school. This would cater for year 11 & 12 students that have been unsuccessful in mainstream schooling.
- The school is requested for 11 students with 3 associated staff.
- The application has been advertised to surrounding residents with one objection received.
- It is due to the nature of this objection that the matter is referred to Council for determination.

RECOMMENDATION

PD009: COMMITTEE RECOMMENDATION

VOTING REQUIREMENT: SIMPLE MAJORITY

THAT Council resolves to ISSUE a Notice of Planning Scheme Consent for Education Establishment at 107 – 135 (Lot 697) Wright Street, Collingwood Park subject to the following conditions:

- 1) Prior to occupancy of the use, unless varied by a condition of approval or a minor amendment to the satisfaction of the City of Albany, all development shall occur and be maintained in accordance with the stamped approved plans
- 2) Unless otherwise agreed in writing by the City of Albany, the number of students shall not exceed eleven (11) and the number of staff shall not exceed three (3).
- 3) Prior to the occupancy of the use a hard and soft landscaping plan shall be submitted to and approved in writing by the City of Albany. Such landscaping plan shall indicate the areas intended for outdoor activity and physical education of the students and shall incorporate a landscaped buffer between such areas and adjoining residential properties.
- 4) Any soft landscaping required to provide the buffer shall be planted in the first planting season prior to or following occupancy (whichever occurs first) and shall be maintained to the satisfaction of the City of Albany for a period of three years. Any plants, shrubs or trees that become damaged, diseased or die within that three year period shall be replaced in the next planting season.
- 5) Prior to the occupancy of the use a floor plan of the internal set up for the building shall be submitted to and approved in writing by the City of Albany.
- 6) Stormwater disposal plans and details shall be submitted for approval and constructed to the satisfaction of the City of Albany.

Advice relating to this condition:

- *Stormwater disposal is to be designed in accordance with the 'City of Albany's Subdivision and Development Guidelines';*
- *Soil capability testing will likely be required to determine if soakwell infiltration is the appropriate method of disposal for the site.*

- 7) A vehicular parking and access plan shall be submitted to and approved in writing by the City of Albany. The approved plan shall be implemented and constructed to the satisfaction of the City of Albany prior occupancy of the use.

Advice relating to this condition:

- *Car Parking and access is to be designed in accordance with the Australian Standard 2890;*
- *The plan (and subsequent construction when approved) shall clearly indicate the intended use of all parking bays (e.g. disabled bay, loading bay etc), access areas, line marking, kerbing and sealing.*

- 8) The development hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise.
- 9) No signs shall be erected on the lot without the prior approval of the City of Albany.

PD009: COMMITTEE RECOMMENDATION

MOVED: COUNCILLOR HAMMOND
SECONDED: COUNCILLOR DUFTY

THAT the Responsible Officer Recommendation is ADOPTED.

CARRIED 6-0

PD009: RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY

THAT Council resolves to ISSUE a Notice of Planning Scheme Consent for Education Establishment at 107 – 135 (Lot 697) Wright Street, Collingwood Park subject to the following conditions:

- 10) Prior to occupancy of the use, unless varied by a condition of approval or a minor amendment to the satisfaction of the City of Albany, all development shall occur and be maintained in accordance with the stamped approved plans
- 11) Unless otherwise agreed in writing by the City of Albany, the number of students shall not exceed eleven (11) and the number of staff shall not exceed three (3).
- 12) Prior to the occupancy of the use a hard and soft landscaping plan shall be submitted to and approved in writing by the City of Albany. Such landscaping plan shall indicate the areas intended for outdoor activity and physical education of the students and shall incorporate a landscaped buffer between such areas and adjoining residential properties.
- 13) Any soft landscaping required to provide the buffer shall be planted in the first planting season prior to or following occupancy (whichever occurs first) and shall be maintained to the satisfaction of the City of Albany for a period of three years. Any plants, shrubs or trees that become damaged, diseased or die within that three year period shall be replaced in the next planting season.
- 14) Prior to the occupancy of the use a floor plan of the internal set up for the building shall be submitted to and approved in writing by the City of Albany.
- 15) Stormwater disposal plans and details shall be submitted for approval and constructed to the satisfaction of the City of Albany.

Advice relating to this condition:

- *Stormwater disposal is to be designed in accordance with the 'City of Albany's Subdivision and Development Guidelines';*
- *Soil capability testing will likely be required to determine if soakwell infiltration is the appropriate method of disposal for the site.*

- 16) A vehicular parking and access plan shall be submitted to and approved in writing by the City of Albany. The approved plan shall be implemented and constructed to the satisfaction of the City of Albany prior occupancy of the use.

Advice relating to this condition:

- *Car Parking and access is to be designed in accordance with the Australian Standard 2890;*
- *The plan (and subsequent construction when approved) shall clearly indicate the intended use of all parking bays (e.g. disabled bay, loading bay etc), access areas,*

line marking, kerbing and sealing.

17) The development hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise.

18) No signs shall be erected on the lot without the prior approval of the City of Albany.

BACKGROUND

3. The subject site has frontage to the Wright Street road reserve along its southeast boundary. This section of Wright Street is unconstructed resulting in this lot being land locked with no means of access.
4. In 1983/4 the owners sought the consent of the Town of Albany for certain developments. The owners also owned the adjoining lot to the northeast fronting the same unconstructed section of Wright Street, but also having frontage and direct access to Troode Street. The Town of Albany resolved to give consent subject to the owners agreeing to the terms of a deed registered against both properties.
5. This deed provides a right of access to the subject site over the adjoining lot to the northeast. Such a right exists until such time as Wright Street is constructed or access becomes available via any other constructed road within the local road network. A plan attached to the deed stipulates where on the adjoining lot such access is to be provided.
6. It is within this provision for access stipulated in the deed that vehicular access is currently provided to the subject site.

DISCUSSION

7. The subject site is approximately 2ha in area and is zoned 'Clubs & Institutions' under Town Planning Scheme 1A. The site is relatively flat and is predominantly cleared except for a strip of remnant vegetation along the southeast and southwest boundaries.
8. Over time a number of buildings have been constructed on the site relating to its establishment as a Place of Worship. These buildings are set back within the lot, away from the adjoining residential properties beyond the northwest boundary. Between the buildings and the residential properties there is a large expanse of hardstand area that is used for car parking.
9. The current application for a change of use to Education Establishment relates to the eastern most existing building that was approved as a shed in 2001. This existing building is a green Colorbond shed 15.2m long, 12.16m wide with an eaves height of 3.81m and a 10° pitch to the ridged roof.
10. The proponents have been made aware of the Building Code requirements for the change in classification of the building. Internal upgrades are necessary to bring the shed up to the required standard for the proposed use. As well as the existing shed the proponents intend to use an existing disabled toilet, located in close proximity, to provide the required facilities for the use.
11. The proponents have provided a covering letter detailing the intended operation as an Alta-1 campus. In brief, Alta-1 is an organisation that provides an alternative education initiative aimed at students who for one reason or another have been marginalised and/or rejected mainstream education. Alta-1 offers an alternative programme to help such disadvantaged individuals receive an education and assist in maximising their potential.

12. The proposed use would operate as a day school during the regular 9am to 3pm Monday to Friday school day during school term dates. The initial number of students would be eleven with three members of staff being one teacher; an assistant and a chaplain. There are currently no intentions to expand to other years or multiple groups of students. Any expansion of the operation would be subject to further application for planning consent.
13. While there is sufficient space available onsite for recreation areas and physical education, these areas have not been specified. This has been discussed with the proponents and they have indicated they would accept a condition of approval to provide a detailed site plan showing such areas located away from adjoining residential properties. On such a plan they would also show areas to be landscaped to assist in providing a buffer.
14. In the zoning table of Town Planning Scheme 1A, an Education Establishment is a SA use in the Clubs & Institutions zone. SA uses require a 21 day public consultation period. The detail of the consultation undertaken is explained further in the relevant section of this report.
15. One letter of objection was received in response to the public consultation. This was a strong objection that raised the following concerns and issues:
 - Noise from the current use of the buildings – Generated from vehicles arriving and leaving as well as users of the facility and music. Noise/disturbance has resulted in sleep deprivation.
 - The access to the existing church is directly behind the back fences of properties in Ardross Crescent.
 - Heavy vehicles accessing the site cause the house to vibrate due to close proximity of the access road.
 - The noise of people and vehicles beyond the back fence upsets the dogs in the area at all hours.
 - If the proposal is approved the objector will take legal action for loss of property value and instigate a class action on behalf of residents for malfeasance and incompetence.
16. In response to the issue of property value, property values and the perceived impact of development on property values, is not a valid planning consideration.
17. It is considered that the traffic generated by this proposal will not be excessive and will be for limited duration at regular school opening and closing times during the school term. This is a proposed daytime use and will not be late at night, so will not cause disturbance to regular sleep patterns.
18. In regard to the location of the access road; this is in the location approved by the Town of Albany under the Deed arrangement. The City could seek to re-visit the terms of the Deed with the current owners of both sites, but a legal access is in place and the only other potential option would be for the City to construct Wright Street to provide direct road frontage to the subject lot.
19. The cost of constructing Wright Street would be substantial. It is considered by City staff that the proposed use is low key in terms of student numbers. Operation within a regular school day pattern is unlikely to impact significantly on local residents.
20. The proponents have stated there is a vetting/screening process before students can be enrolled at this proposed campus. In addition there are strong established rules governing behaviour. Although anti-social behaviour by students was not raised as an issue during the public consultation; measures in place to ensure this use will not pose any increased risk compared to any other small school type institution.

21. Overall, it is the opinion of City staff that the proposed use will not be detrimental to the amenity of the area and can be considered acceptable subject to general and specific conditions.

GOVERNMENT & PUBLIC CONSULTATION

22. Consultation with State Government Departments was not required or undertaken.
23. Under the Town Planning Scheme requirements a 21 day public consultation was undertaken.
24. This public consultation commenced on Thursday 21 March, 2013, with an advertisement appearing in the public notice section of the Albany Advertiser. The City also wrote letters to 21 surrounding landowners and placed a site notice on the Troode Street road verge at the vehicular access entrance to the property. The public consultation period was open until close of business on Thursday 11 April, 2013.
25. One letter of objection was received in response to the consultation. A copy of this objection is attached to this report. In summary, the issues and concerns raised in the objection are:
- Noise from the current use of the buildings – from vehicles arriving and leaving as well as users of the facility and music. This noise/disturbance has resulted in sleep deprivation.
 - The access to the existing church is directly behind the back fences of properties in Ardross Crescent.
 - Heavy vehicles accessing the site cause the house to vibrate due to close proximity of the access road.
 - The noise of people and vehicles beyond the back fence upsets the dogs in the area at all hours.
 - If the proposal is approved I will take legal action for loss of property value and instigate a class action on behalf of residents for malfeasance and incompetence.
26. The matters raised in the objection are discussed and addressed in the preceding discussion section above in this report.

STATUTORY IMPLICATIONS

27. Section 73 (1) of the *Planning and Development Act 2005* states that ‘A local planning scheme is to – (b) specify the local government to be responsible for enforcing the observance of the scheme, and for the execution of any works which, under the scheme or this Act, are to be executed by a local government.
28. Clause 1.5 of the City of Albany Town Planning Scheme 1A specifies the Responsible Authority as ‘The Authority responsible for enforcing the observance of the Scheme is the Council of the Town of Albany (hereinafter called “the Council”). A note on the cover page of the Scheme states ‘On 1/7/98 Shire of Albany and Town of Albany was amalgamated to form “City of Albany”. Therefore, the City of Albany is responsible for the administration and observance of Town Planning Scheme 1A.
29. Clause 7.8A of the City of Albany Town Planning Scheme 1A specifies the Matters to be Considered by Council and states:

The Council in considering an application for planning consent is to have due regard to such of the following matters as are in the opinion of the Council relevant to the use or development the subject of the application:

- (a) the aims and provisions of the Scheme and any other relevant town planning schemes operating within the Scheme Area;
 - (b) the requirements of orderly and proper planning including any relevant proposed new town planning scheme or amendment, or region scheme or amendment, which has been granted consent for public submissions to be sought;
 - (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;
 - (o) the relationship of the proposal to development on adjoining land or on other land in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the proposal;
 - (p) whether the proposed means of access to and egress from the site are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles;
 - (q) the amount of traffic likely to be generated by the proposal, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;
 - (u) whether adequate provision has been made for access by disabled persons;
 - (v) whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved;
 - (y) any relevant submission received on the application;
 - (za) potential impacts of noise, dust light, risk and other pollutants on surrounding land uses; and
 - (zb) any other planning consideration the Council considers relevant.
30. These relevant matters have been considered and addressed by staff in arriving at the recommendation.

POLICY IMPLICATIONS

31. This matter has no direct planning policy implications.

RISK IDENTIFICATION & MITIGATION

32. The risk identification and categorisation relies on the City's [Enterprise Risk Management Framework](#).

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>Approving the proposed use could give rise to unacceptable detrimental impacts on the residential amenity of the area.</i>	<i>Unlikely</i>	<i>Moderate</i>	<i>Medium</i>	<i>Proposed use is a daytime activity and suggested conditions should adequately mitigate the potential adverse impacts.</i>
<i>Approving the proposed use could give rise to a claim for compensation from adjoining landowners.</i>	<i>Unlikely</i>	<i>Minor</i>	<i>Low</i>	<i>Any decision must be made on a sound basis with reasoned justification. Perceived impact on property values is not a planning consideration. Suggested conditions should adequately mitigate potential adverse impacts.</i>

FINANCIAL IMPLICATIONS

33. All costs associated with the development will be borne by the proponent.
34. Should Council consider the objection related to proximity of the access requires further attention, the Council may wish to re-visit the terms of the Deed arrangement. However any requirement for an alternative access would be dependent on the City constructing Wright Street or an alternative and this would have substantial financial implications that have not been identified or forecast within the existing budget lines.

LEGAL IMPLICATIONS

35. The Council may use its discretion to approve the proposal with or without conditions. This application is being assessed on its individual merits and will not set a general precedent for future development of this or any other site.
36. 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

37. The proposed development seeks to re-use an existing building on a developed lot. As such, there are no significant Environmental Considerations. However, if the proposal is supported, it is recommended that a landscaping plan for the site be provided and implemented.

ALTERNATE OPTIONS

38. Council may determine that the proposed use is unacceptable and may resolve to refuse the application. A detailed reason for refusal would need to be provided as part of such a determination.
39. The proponent would be able to seek a review of Council's decision to refuse consent, and the City of Albany may be required to defend the reasons for refusal at a State Administrative Tribunal hearing.

SUMMARY CONCLUSION

40. The application seeks the upgrade and re-use of an existing shed on the subject site for use as an alternative education initiative. The school is proposed for 11 students with three members of staff. The proponents have indicated a willingness to provide additional landscaping to act as a buffer to the surrounding residential properties to the northwest. Such a landscaping requirement can be secured through an appropriate condition on any approval granted.
41. The proposal has been advertised as required, with one objection received as the only response.
42. Much of the content of the objection is general in nature. It is considered by staff that the use during the regular school day and term times will not be significantly detrimental to the amenity of surrounding residential properties. The number of students is relatively small, reinforcing the view that its location in this context is acceptable.
43. Accordingly, City staff are of the opinion the proposal can be supported and recommend approval subject to conditions.

Consulted References	:	City of Albany Town Planning Scheme 1A.
File Number (Name of Ward)	:	A148537 (Breaksea Ward)
Previous Reference	:	Not Applicable