

PD010: DEVELOPMENT APPLICATION: INDUSTRY – RURAL AND SHOP (KANGAROO MEAT PROCESSING AND SALES) AT LOT 6, 795 LOWER DENMARK ROAD, CUTHBERT

Land Description	: Lot 6, 795 Lower Denmark Road, Cuthbert
Proponent	: Mr J G Nicholas & Ms L J McLennan
Owner	: Mr J G Nicholas & Ms L J McLennan
Business Entity Name	: N/A
Attachments	: Location plan Application details – site plan, elevations and covering letter Summary of public submissions
Appendices	: Nil
Councillor Workstation	: Copy of submissions
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"*:
 - a. **Key Theme:** 1. Smart, Prosperous & Growing
 - b. **Strategic Objective:** 1.1 To foster education, training and employment opportunities that support economic development.
2. Council's decision on the proposal should be consistent with the objectives of the *Albany Local Planning Strategy (ALPS)* as the principal land use planning strategy for the City.
3. Section 8.5.3 – Industry sets the following Strategic Objective:

"Provide the necessary land and supporting infrastructure to maintain an adequate supply and range of serviced industrial land in appropriate locations."

The ALPS expands on this by referring to a number of regionally important industrial sites, then states that *"other industrial land within Albany is constrained by the location of sites, environmental issues, accessibility, level of services and capacity to support a range of industrial activities."*
4. The proposal is for a small, isolated rural industry, rather than a significant industrial development. However, its location and environmental issues must be carefully considered. These matters are discussed in more detail in paragraphs 18 to 22 below.

In Brief:

- Planning Scheme Consent has been sought for the conversion of an existing small house and shed on the subject lot to a facility for the storage and processing of the carcasses of kangaroos culled in off-site locations and a shop for the sale of kangaroo meat pet food products.
- The proposed business will only employ the proponents.

- The application has been advertised for public comment and referred to surrounding residents.
- Eight objections to the proposal have been received.
- Due to the nature of these objections, the matter is being referred to Council for determination.
- recommend that Council do not support the proposal, due to potentially harmful effects that it will have on the amenity of the locality.

RECOMMENDATION

PD010: COMMITTEE RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY

THAT Council resolves to issue a Notice of Planning Scheme REFUSAL for Industry – Rural and Shop (Kangaroo meat processing and sales) at Lot 6, 795 Lower Denmark Road, Cuthbert.

PD010: COMMITTEE RECOMMENDATION

MOVED: MAYOR WELLINGTON
SECONDED: COUNCILLOR GREGSON

THAT the Responsible Officer Recommendation is ADOPTED.

CARRIED 5-0

PD010: RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY

THAT Council resolves to issue a Notice of Planning Scheme REFUSAL for Industry – Rural and Shop (Kangaroo meat processing and sales) at Lot 6, 795 Lower Denmark Road, Cuthbert.

BACKGROUND

5. The subject land lies to the south side of Lower Denmark Road, approximately 10km west of Albany city centre, and has an area of approximately 2ha. The lot is flat and cleared, with large trees along the western boundary and parts of the southern boundary. There are also some lower trees and shrubs in the road reserve along the front boundary of the lot.
6. The existing Colorbond shed and attached carport are setback approximately 35m from the road alignment towards the middle of the lot. The Colorbond house and attendant water tank stand approximately 5m further to the south, behind the shed. Both structures are accessed from Lower Denmark Road via a gravel driveway to their east.
7. The lot is zoned 'Rural' under *City of Albany Town Planning Scheme No. 3* and is surrounded on its east, west and southern sides by 'Rural' zoned land. The road reserve and rail reserve lie immediately to the north and the land beyond is also zoned 'Rural'.

8. The lots to the east and west of the subject lot are approximately 2ha in area and each has been developed with a private dwelling and associated outbuilding. The lots to the south are larger, at 4ha, and are also developed with private dwellings and associated outbuildings.
9. The surrounding lots are used primarily for residential purposes, with some owners operating hobby farms or undertaking rural pursuits, such as the keeping of horses.
10. The proposal seeks to convert the existing house and shed on the subject lot to a facility for the storage and processing of the carcasses of kangaroos culled in off-site locations, and a shop for the sale of kangaroo meat pet food products.
11. The proposal was advertised for public comment, in accordance with Clause 5.1.2.3 of *Town Planning Scheme No. 3*, between 4 July 2013 and 25 July 2013.
12. Council is now requested to consider submissions received during the public advertising period and determine whether to grant Planning Scheme Consent for the proposed business.

DISCUSSION

13. As explained above, the proposal seeks to convert the existing house and shed on the subject lot to a facility for the storage and processing of the carcasses of kangaroos culled in off-site locations and a shop for the sale of kangaroo meat pet food products.
14. The proponents have provided an outline of how the business would operate, which is summarised as follows:
 - Shooting is conducted off-site, on properties where Mr Nicholas has permission to cull, commencing at around 5pm in the evening and returning at any time up until midnight, dependent on the location of the shoot. Shoots will take place only approximately once per week.
 - Carcasses are cleaned at the site of the shoot, with internal organs, offal, arms and legs removed and left in-situ. The bare carcasses are carried on the back of a ute fitted with the appropriate racks to Department of Environment and Conservation (now Department of Parks and Wildlife) standards.
 - The carcasses are immediately put into a cool room upon returning to the property and are processed into pet food as quickly as possible to minimise odour nuisance. All parts of the carcass are used in the production of pet food, with the exception of skins, which are immediately bagged and frozen. The skins are then taken fortnightly to a wholesaler in Perth. The cool room and processing area will be located in the converted house, which is located furthest from Lower Denmark Road.
 - The business will only employ Mr Nicholas and Ms McLennan. Processing is undertaken mainly by hand and using a small mincing machine to minimise potential noise nuisance.
 - Wastewater from the processing operation will be discharged through a series of traps, designed to remove any meat or bone material, into a septic tank and leach drain.
 - The proposed shop will be located in the converted shed to the front of the property. A bituminised parking area will be provided and a one-way in/one-way out driveway arrangement. A disabled accessible car parking bay will be provided closest to the entrance to the shop and disabled accessible amenities will also be provided on-site.

- A delivery service will also be offered to reduce the number of customers who travel to the property to make purchases.
 - Mr Nicholas has been shooting professionally for four years and has undertaken the appropriate courses pertaining to the industry, including the processing of meat for human consumption, which the applicants hope to expand into in the future.
 - At the time of lodging their application, Mr Nicholas and Ms McLennan had been operating in Narrogin for twelve months and had not received any complaints, including those relating to nuisance factors, such as dust, noise or odour.
15. The proposal was defined as an 'Industry – Rural' and 'Shop' for purposes of assessment, as it was considered that of the various land uses listed in *Town Planning Scheme No. 3*, this was the most appropriate description of the proposed use. Although this use is listed in *Town Planning Scheme No. 3*, no definition is provided. However, it is defined in the *Town Planning Regulations 1967 Appendix B Model Scheme Text* as "an industry handling, treating, processing or packing rural products."
 16. A number of the submissions received from the public and a notice that was circulated to local residents by an unknown party during the public advertising period incorrectly describe the use as an 'Abattoir'. 'Abattoir' is not a use listed in the *City of Albany Town Planning Scheme No. 3* or *Town Planning Regulations 1967 Appendix B Model Scheme Text*. However, it is listed in a number of other Town Planning Schemes throughout the region and is typically defined, as in *Shire of Plantagenet Town Planning Scheme No. 3*, as "land and buildings used for the slaughter of animals for human consumption and the treatment of carcasses, offal and by-products." While this land use classification was considered, it was determined that it did not accurately describe the proposal, which is a small-scale processing operation and does not involve the holding of live animals, slaughter of live animals or handling and disposal of offal.
 17. The land use classification of 'Industry – Rural' is listed in the Zoning Table within *Town Planning Scheme No. 3* as an 'A' use in the 'Rural' zone, meaning that it is a use that is not permitted unless approval is granted by the Council. The land use classification of 'Shop' is listed in the Zoning Table within *Town Planning Scheme No. 3* as an 'AA' use in the 'Rural' zone, meaning that it is a use that is not permitted unless planning consent to it is granted by the Council after notice has been given in accordance with Clause 5.1.2.3 (see paragraph 30 below).
 18. Eight written submissions were received during the public consultation period. All objected to the proposal for reasons that are summarised in paragraph 26 below. Attachment PD010_aa_Sept13 provides a more detailed summary of the submissions, with staff providing responses to the matters raised. The proponents have also provided a written response to the submissions, which is included in the attachment.
 19. While the proposed land uses are permissible in the 'Rural' zone and can be supported in principle, there are concerns over the suitability of the location based on the content of the submissions.
 20. The exact scale and intensity of the proposal remains unknown, making it difficult to assess the impact of noise and disturbance caused by customers visiting the site and from late night deliveries. While these effects could be minimal, there is potential for a steady stream of customers visiting the site, which could generate sufficient demand to warrant more regular shoots. While the volume of animals processed could be restricted by a planning condition, the condition would be difficult to enforce and there is a risk that such a condition may be too punitive.

21. Many of the submissions relate to potential effects on amenity (the pleasant ambience and enjoyment – of their homes).that could result from the proposed business.
22. While the proposed business is intended to be small in scale, the *Environmental Protection Authority Guidance for the Assessment of Environmental Factors – Separation Distances between Industrial and Sensitive Land Uses* must be taken into account. This document refers to the separation of industries from sensitive land uses, including residential developments. In the case of 'food processing', the Guidelines recommend a generic 500m separation distance where the premises is processing meat products. This is attributed to potential nuisance from noise, dust and odour. The minimum recommended separation distance for other types of food processing is 200m.
23. In this instance it is not considered necessary to apply a 500m separation distance due to the scale of the proposed development. However, it is considered that at between approximately 70 and 135m to the nearest homes, the proposed business is too close to avoid - potentially avoid harming their amenity through noise and odour.
24. On balance, staff recommend refusal of the application.

GOVERNMENT & PUBLIC CONSULTATION

25. Consultation with State Government Departments was not required or undertaken.
26. The proposal was advertised in accordance with Clause 5.1.2.3 of *Town Planning Scheme No. 3* (see paragraph 30 below) from 4 July 2013 to 25 July 2013. An advertisement was placed in the public notice section of the *Albany & Great Southern Weekender*. The City also wrote directly to eight surrounding landowners, seeking their comments, and placed a site notice on the road verge at the end of the driveway into the property.
27. Ten letters of objection were received in response to the consultation. The broad issues and concerns raised in the objections relate to:
 - General odour nuisance;
 - General noise nuisance;
 - Noise and disturbance caused by additional traffic and visiting customers;
 - Loss of privacy due to increased activity and visiting customers;
 - Noise and disturbance caused by the late night delivery and unloading of carcasses;
 - Distress caused to horses by the scent of blood;
 - Potential processing of other animals;
 - Sanitation;
 - Facility standards;
 - Effluent disposal;
 - Contamination of groundwater;
 - Classification of the land use;
 - Scale of the proposed operation;
 - Compatibility of the proposed business with the character of the surrounding area;
 - Possibility of setting an unwanted precedent;

- Potential for the proposed business to expand;
 - Employment;
 - Lack of consultation;
 - Road safety issues;
 - Competitive fairness; and
 - Decreased property values (both domestic and commercial).
28. The content of the submissions is summarised in more detail in Attachment PD010_aa_Sept13, with staff providing responses to the matters raised.

STATUTORY IMPLICATIONS

29. 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.”*

30. Clause of *Town Planning Scheme No. 3* specifies the Responsible Authority as:

“The responsible authority for carrying out the Scheme is the Council of the Shire of Albany (hereinafter referred to as the Council).”

A note on the cover page of the Scheme states that:

“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 No. 3*.

31. Clause 5.1.2.3 of *Town Planning Scheme No. 3* states that:

“The Council shall in the case of an application for permission to carry on a use marked AA in the Zoning Table, cause:

- (a) notice of the proposed development to be sent by post or delivered to the owners and occupiers of land within an area determined by the Council as likely to be affected by the granting of the application;*
- (b) notice of the proposed development to be published in a newspaper circulating in the Scheme Area stating that submissions may be made to the Council within 21 days from the publication thereof; and*
- (c) a sign displaying notice of the proposed development to be erected in a conspicuous location on the land for a period of 21 days from the date of publication of the notice referred to in paragraph (b) hereof.”*

32. Clause 5.1.2.4 of *Town Planning Scheme No. 3* states that:

“Where notice is given in terms of clause 5.1.2.3, the Council shall, after the expiration of 21 days of publication of such a notice, consider the application together with any submissions which may be lodged in response to such notice, and decide whether to grant or refuse its planning consent, or to grant its planning consent subject to conditions.”

33. Clause 5.4 of *Town Planning Scheme No. 3* specifies the Matters to be Considered by Council and states that:

“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;*
- (l) the likely effect of the proposal on the natural environment and any means that are proposed to protect or to mitigate impacts on the natural environment;*
- (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.”*

34. These relevant matters have been considered and addressed by staff in arriving at the recommendation.

POLICY IMPLICATIONS

35. There are no policy implications relating to this item.

RISK IDENTIFICATION & MITIGATION

36. 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 amenity of the area.</i>	<i>Likely</i>	<i>Moderate</i>	<i>High</i>	<i>Mitigation entirely dependent on Council's determination.</i>
<i>Approving the proposed use could give rise to a third party appeal from adjoining landowners.</i>	<i>Unlikely</i>	<i>Moderate</i>	<i>Medium</i>	<i>Mitigation entirely dependent on Council's determination.</i>

FINANCIAL IMPLICATIONS

37. All costs associated with the development will be borne by the proponent.
38. 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

39. The Council is at liberty to use its discretion to approve the proposal with or without conditions; or to refuse the proposal. 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.
40. The proponents have 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.
41. Due to its location within the administrative boundaries of Town Planning Scheme No. 3, any third party aggrieved by the Council's decision has the right to appeal that decision. If an appeal is lodged, the City of Albany may also be required to defend the decision at a State Administrative Tribunal hearing.

ENVIRONMENTAL CONSIDERATIONS

42. A number of local residents have raised concerns over the septic tank discharge from the proposed development, both in terms of its content and the high water table in the area. If the application were to be approved, it is likely that significant upgrading or replacement of the existing effluent disposal system would be required, in order to avoid the discharge of nutrients to the groundwater.
43. It is also recommended that if Council determines to approve the application, a landscaping plan for the site should be required as a condition of approval to ensure that the development is adequately screened from surrounding properties.

ALTERNATE OPTIONS

44. Council may determine that the proposed use is acceptable and may resolve to approve the application. An alternative recommendation set of attendant conditions is provided below.

Council may determine that the proposed use is acceptable and may resolve to approve the application. Should this eventuate, staff would recommend:

THAT Council resolves to ISSUE a Notice of Planning Scheme Consent for Industry – Rural and Shop (Kangaroo meat processing and sales) at Lot 6, 795 Lower Denmark Road, Cuthbert, subject to the following conditions:

1. Prior to occupancy of use, unless varied by a condition of approval or a minor amendment to the satisfaction of the City of Albany, all development shall occur in accordance with the stamped, approved plans dated XX/XX/2013.
2. The unloading of kangaroo carcasses shall occur entirely under cover.
3. Any lighting device shall be positioned and shielded so as not to cause any direct, reflected or incidental light beyond the property boundaries.
4. A landscaping plan detailing the size, species and location of trees/shrubs shall be submitted for approval in writing and implemented to the satisfaction of the City of Albany.

Advice:

- *The area marked in red and notated on the approved plan shall be screened from view from the surrounding lots and adjacent road by the use of suitable trees and shrubs.*
- *The following plant species shall not be used:*

Pampas Grass, Watsonia, Purple Senecio, Sydney golden wattle, Victorian tea tree, Dolichos pea, Blackberry, Bridal creeper, Taylorina, Arum lily and Gorse.

A schedule of recommended plant species is attached.

5. All landscaped areas shall be maintained as per the approved landscaping plan(s) to the satisfaction of the City of Albany.
6. Stormwater from the lot shall be managed to the satisfaction of the City of Albany.
7. A vehicular parking and access plan shall be submitted for approval, implemented and constructed to the satisfaction of the City of Albany.

Advice:

- *Car parking and access is to be designed in accordance with the Australian Standard 2890.*
- *The plan 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. All vehicular parking and access areas shall be maintained as per the approved details and plans, to the satisfaction of the City of Albany.
9. The new crossover shall be constructed to the specifications, levels and satisfaction of the City of Albany.

Advice:

A 'Permit for Vehicle Crossover Construction' from the City of Albany is required prior to any work being carried out within the road reserve, which shall be in accordance with drawing nos. 97024 1/3 – 97024 3/3 (refer to the City of Albany's Subdivision and Development Guidelines).

10. The level of noise emanating from the premises shall not exceed that prescribed in the Environmental Protection Act 1986, and the Environmental Protection (Noise) Regulations 1997.
11. The development hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise, vibration or odour.
12. A plan indicating the location and type of refuse storage shall be submitted for approval by, and implemented to the satisfaction of, the City of Albany.

Advice:

The refuse storage areas shall be capable of accommodating all waste produced by the development and shall be screened from public view.

13. The City of Albany has recognised that the Cuthbert locality is an environmentally sensitive area that cannot reasonably be connected to a suitable reticulated sewerage service. The locality therefore requires appropriate consideration to the minimisation of nutrient inflow and contaminants to the identified sensitive areas. The on-site disposal system shall be designed for long-term usage and for processing solid and liquid waste in accordance with the requirements, and to the satisfaction, of the City of Albany's Health Department.

Advice:

A site-specific land capability assessment may be required in order to satisfy this condition. Please contact XXXX (Health Officer) on 9841 9XXX for further advice on this matter.

14. Temporary privacy screens (e.g. straw bales) shall be installed and maintained to the satisfaction of the City of Albany until screening vegetation has adequately matured.
15. Sign(s) shall not be erected on the lot without the prior approval of the City of Albany.

Advice:

Please refer to the City of Albany Local Planning Policy – Signs for further information.

16. Any advertisement or sign shall be maintained in good repair to the satisfaction of the City of Albany.
17. There shall be no more than two deliveries of kangaroo carcasses to the property per week.
18. Processing shall only be undertaken between the hours of 8am to 5pm Monday to Friday.
19. Trading shall only be undertaken between the hours of 9am to 6pm Monday to Saturday.

SUMMARY CONCLUSION

45. The proposal seeks to convert the existing house and shed on the subject lot to a facility for the storage and processing of the carcasses of kangaroos culled in off-site locations and a shop for the sale of kangaroo meat pet food products.
46. The proposal has been advertised as required, with eight objections received during the advertising period.
47. Although the land use may be permissible in the 'Rural' zone, in principle, it is considered that in this instance there is a high likelihood of the proposed business having a harmful effect on the amenity of the locality.
48. On balance, staff recommend refusal of the application.

Consulted References	:	<i>City of Albany Town Planning Scheme No. 3; Environmental Protection Authority Guidance for the Assessment of Environmental Factors – Separation Distances between Industrial and Sensitive Land Uses.</i>
File Number (Name of Ward)	:	A215293 (West Ward)
Previous Reference	:	Not Applicable