



AGENDA

PLANNING AND DEVELOPMENT COMMITTEE

02 December 2015

5.30pm

City of Albany Council Chambers

**CITY OF ALBANY
COMMUNITY STRATEGIC PLAN (ALBANY 2023)**

VISION

Western Australia's most sought after and unique regional city to live, work and visit.

VALUES

All Councillors, Staff and Volunteers at the City of Albany will be...

Focused: on community outcomes

This means we will listen and pay attention to our community. We will consult widely and set clear direction for action. We will do what we say we will do to ensure that if it's good for Albany, we get it done.

United: by working and learning together

This means we will work as a team, sharing knowledge and skills. We will build strong relationships internally and externally through effective communication. We will support people to help them reach their full potential by encouraging loyalty, trust, innovation and high performance.

Accountable: for our actions

This means we will act professionally using resources responsibly; (people, skills and physical assets as well as money). We will be fair and consistent when allocating these resources and look for opportunities to work jointly with other directorates and with our partners. We will commit to a culture of continuous improvement.

Proud: of our people and our community

This means we will earn respect and build trust between ourselves, and the residents of Albany through the honesty of what we say and do and in what we achieve together. We will be transparent in our decision making and committed to serving the diverse needs of the community while recognising we can't be all things to all people.

TERMS OF REFERENCE

(1) Function:

The Planning and Development Committee will be responsible for the delivery of the following Liveable Environmental Objectives contained in the City of Albany Strategic Plan:

- (a) To advocate, plan and build connected, liveable communities;
- (b) To create a community that supports people of all ages and backgrounds;
- (c) To create vibrant neighbourhoods which are safe yet retain our local character and heritage.

(2) It will achieve this by:

- (a) Developing policies and strategies;
- (b) Establishing ways to measure progress;
- (c) Receiving progress reports;
- (d) Considering officer advice;
- (e) Debating topical issues;
- (f) Providing advice on effective ways to engage and report progress to the Community ; and
- (g) Making recommendations to Council.

(3) Chairperson: Councillor N Mulcahy

(4) Membership: Open to all elected members, who wish to be members

(5) Meeting Schedule: 1st Wednesday of the Month

(6) Meeting Location: Council Chambers

(7) Executive Officer: Executive Director Planning & Development

(8) Delegated Authority: None

PLANNING AND DEVELOPMENT COMMITTEE
AGENDA –02/12/2015

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PLANNING AND DEVELOPMENT COMMITTEE
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1. DECLARATION OF OPENING

2. PRAYER AND ACKNOWLEDGEMENT OF TRADITIONAL LAND OWNERS

“Heavenly Father, we thank you for the peace and beauty of this area. Direct and prosper the deliberations of this Council for the advancement of the City and the welfare of its people. Amen.”

“We would like to acknowledge the Noongar people who are the Traditional Custodians of the Land.

We would also like to pay respect to Elders both past and present”.

3. RECORD OF APOLOGIES AND LEAVE OF ABSENCE

Mayor

Mayor D Wellington

Councillors:

Member

N Mulcahy (Chair)

Member

B Hollingworth (Deputy Chair)

Member

A Goode JP

Member

G Stocks

Member

R Hammond

Member

J Shanahun

Member

R Sutton

Staff:

Chief Executive Officer

A Sharpe

Executive Director Development Services

D Putland

Manager Planning

J van der Mescht

Planning Officer

C McMurtrie

Senior Planning Officer

A Bott

Minutes

J Cobbold

Apologies:

PLANNING AND DEVELOPMENT COMMITTEE
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4. DISCLOSURES OF INTEREST

| Name | Committee/Report Item Number | Nature of Interest |
|-------------|---|---------------------------|
| | | |

5. REPORTS OF MEMBERS

6. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

7. PUBLIC QUESTION TIME

8. APPLICATIONS FOR LEAVE OF ABSENCE

9. PETITIONS AND DEPUTATIONS

10. CONFIRMATION OF MINUTES

DRAFT MOTION

VOTING REQUIREMENT: SIMPLE MAJORITY

THAT the minutes of the Planning and Development Committee Meeting held on 04 November 2015, as previously distributed, be CONFIRMED as a true and accurate record of proceedings.

11. PRESENTATIONS / DISCUSSION

12. UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS

**PD104: INDUSTRY – EXTRACTIVE (GRAVEL AND SAND), LOT 110, 105
BON ACCORD ROAD, KING RIVER**

Land Description : Lot 110, 105 Bon Accord Road, King River.
Proponent : Palmer Earthmoving
Owner : David Palmer
Business Entity Name : Palmer Earthmoving Australia Pty Ltd
Directors : David Palmer
Attachments : 1. Area Plan
2. Schedule of Submissions
3. Proposed Extractive Area Map

Supplementary Information & Councillor Workstation: : Copy of submissions
Report Prepared by : Senior Planning Officer (A Bott)
Responsible Officer : Executive Director Planning & Development Services (D Putland)

Responsible Officer's Signature:



STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. When exercising its discretion in relation to planning matters, the pertinent strategic document is the *Albany Local Planning Strategy*.
3. The proposal is consistent with the strategic directions identified in the *Albany Local Planning Strategy*.

Maps and Diagrams:



In Brief:

- Council is asked to consider an application for development approval for an Industry – Extractive (Gravel and Sand), which would extend the existing extractive industry operations on Lot 110, 105 Bon Accord Road, King River.
- The application was advertised for public comment and referred to surrounding residents.
- Fourteen letters of objection have been received from nearby residents. The objections primary relate to concerns over traffic, amenity impacts and environmental impacts.
- Due to the objections, the application is being referred to Council for determination.
- At the November 2015 Planning Committee Meeting, the matter was deferred to allow a site visit to be undertaken.
- Two Councillor site visits were undertaken to the property.
- Staff recommend that Council approve the proposed development, subject to conditions, which are considered to mitigate the concerns raised through the public advertising process.

RECOMMENDATION

PD104: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council resolves to ISSUE a notice of determination granting development approval with conditions for Industry – Extractive (Gravel and Sand) at Lot 110, 105 Bon Accord Road, King River.

Conditions:

- (1) **Unless varied by written agreement with the City of Albany, all development shall occur in accordance with the stamped, approved plans dated XX XXXX 2015.**
- (2) **The operation of the extraction areas shall be contained within the area nominated on the stamped, approved plans dated XX XXXX 2015.**
- (3) **A revised plan shall be submitted for approval in writing by the City of Albany, identifying a 30 metre setback from all boundaries.**
- (4) **Weed management measures shall be incorporated into the Rehabilitation Management Plan, to the satisfaction of the City of Albany.**
- (5) **All Management Plans shall be implemented to the satisfaction of the City of Albany.**
- (6) **Operation of the extraction areas shall be restricted to the hours of 7.00am – 6.00pm Monday to Friday, 8.00am – 5.00pm Saturday, with no operation permitted on Sundays or Public Holidays.**
- (7) **Only one hectare of the extraction area identified on the stamped, approved plans dated XX XXXX 2015 shall be opened at any one time.**
- (8) **Top soil to a depth of 150mm, unless otherwise approved by the Director Works and Services, shall be removed from the extraction areas and stored on-site for use in later rehabilitation works.**
- (9) **A minimum of 150mm of top soil shall be left above any hard surface (i.e. clay/gravel) unless a lesser amount is approved by the Director Works and Services.**
- (10) **A refundable bond/bank guarantee of \$1550.00 per hectare shall be lodged with the**

City of Albany for remediation work if required.

- (11) The site shall be suitably rehabilitated and re-contoured on a per hectare basis, including re-battering of banks and reseeded and stabilising of former extraction areas.**
- (12) Surface water management shall be undertaken to ensure that extraction areas are suitably drained, with no direct discharge from the extraction area to any watercourse, without the prior approval of the Department of Water.**
- (13) No remnant vegetation shall be removed as part of this extraction operation, without the prior approval of the Department of Environment Regulation.**
- (14) Details of screen planting between the extraction areas and Chester Pass Road, Bon Accord Road and the surrounding lots shall be submitted for approval in writing by, and implemented to the satisfaction of the City of Albany.**
- (15) No blasting of material is permitted as part of extraction operations, unless a separate written approval has been obtained from the City of Albany.**
- (16) The developer shall liaise with school bus operators to establish a traffic schedule to avoid potential conflict with school bus operations, to the satisfaction of the City of Albany.**
- (17) The developer shall be responsible for the repair of any undue damage to Bon Accord Road caused by the extraction operations.**

BACKGROUND

4. *Local Planning Scheme No. 1* was gazetted on 28 April 2014 and consists of the Scheme Text and the Scheme Maps. The Scheme divides the Local Government district into zones to identify areas for particular uses and identifies land reserved for public purposes. Most importantly, the Scheme controls the types of uses and development allowed in different zones. There are particular controls included for heritage and special control areas. The Scheme Text also sets out the requirements for planning approval, enforcement of the Scheme provisions and non-conforming uses.
5. The proponent has previously held a Planning Scheme Consent for an extractive industry (gravel) on the subject lot. This Planning Scheme Consent was issued on 21 September 2004; however, in 2010 the proponent chose not to renew their annual Extractive Industry License.
6. The approval was subsequently renewed and extended following approval by Council at its Ordinary Meeting on 24 June 2014.
7. The subject lot lies to the northern side of Bon Accord Road, approximately 11km north-east of the Albany City centre. The lot has an area of approximately 28.6 hectares and is zoned 'General Agriculture' under City of Albany *Local Planning Scheme No. 1*.
8. A 'Rural Residential' area lies to the south-east and the large lot to the west is currently zoned for 'Rural Residential' lots; however, this lot is yet to be subdivided in accordance with the approved Subdivision Guide Plan.
9. The application was advertised for public comment for a period of 21 days. Nearby landowners were directly notified by letter, a site notice was placed on site and an advertisement was published in a local newspaper. A total of fourteen submissions were received, all of which raise objections to the proposal.
10. Council is now requested to consider the submissions received during the public advertising period and determine whether to grant development approval.

DISCUSSION

11. The subject lot is currently under pasture, with an area utilised for extractive industry purposes.
12. The proponents have provided the following (summarised) outline of how the proposed expansion of the extractive industry will operate:
 - The topsoil will be stripped by a bulldozer to a depth of approximately 100-150 millimetres and stockpiled along the edge of the extraction areas to create a bund that will screen the extraction area from sight. This topsoil re-laid once extraction is complete.
 - The total area open at any time would not exceed one hectare.
 - It is proposed to progressively rehabilitate the site back to the original pasture, upon completion of the extraction operations.
13. The proponents have submitted Dieback, Drainage, Rehabilitation and Noise Management Plans in support of the application.
14. The application is generally consistent with the City of Albany *Extractive Industry and Mining* local planning policy. Compliance with the policy is discussed in paragraph 48 below.
15. A total of fourteen submissions were received from members of the public during the advertising period, all of which objected to the proposal.
16. The objections relate primarily to the potential impacts on amenity, environment, and traffic from the proposed operations.
17. The main concerns raised and the proposed mitigation measures will be addressed via the headings below.

Traffic

18. A number of submissions have raised concerns regarding the anticipated number of truck movements and the use of Bon Accord Road as a haulage route.
19. The proponents have stated that the estimated number of truck movements would be eight per day. They have also stated that this figure represents the average number of truck movements per day over the previous 12 months, based on recorded data. In terms of vehicle numbers, it is often the case with extractive industries that vehicle movements are seasonal and vary according to construction demand.
20. The proposal states that the majority of vehicles movements would travel towards Chester Pass Road. Chester Pass Road is a designated Priority Heavy Freight Route under the Main Roads WA road hierarchy and is used daily by heavy vehicles, up to and including 36.5 metre long road trains. Bon Accord Road may be used by the proponents as a haulage route if a client requires a product to be delivered to Lower King or one of the surrounding localities.
21. A number of submissions have requested that the City of Albany apply a planning condition to any approval to prohibit trucks from using Bon Accord Road to travel east towards the Lower King and Kalgan localities.
22. In terms of restricting the use of Bon Accord Road, the City of Albany does not have the statutory authority to control the direction of vehicles which are classified as 'as of right' vehicles by Main Roads WA. An 'as of right' vehicle is defined as any vehicle that is not a Restricted Access Vehicle. Rigid trucks and semi-trailers are not classed as Restricted Access Vehicles and do not require any permits or exemptions from regulatory requirements.
23. If the proponent intends to use vehicles in excess of 'as of right' specifications they will be obligated to apply for permission from the City of Albany and Main Roads WA.

24. The potential for conflict between trucks and school buses was also raised as a concern. In order to mitigate the issue, it is common practice to apply a condition requiring extractive industry operators to liaise with school bus operators to commence a dialogue and establish a schedule to avoid potential conflict.
25. Officers recommend that a standard condition requiring the proponent to rectify any damage to Bon Accord road should also be applied.

Amenity

26. Impact on amenity is a concern consistently raised in the submissions. Concerns primarily relate to noise generated from the proposed development and impacts on visual amenity.
27. With regard to noise issues, the proponents have submitted a Noise Management Plan. The Plan contains a number of provisions to control noise impacts, including;
 - Use of topsoil on the perimeter of the pit area to act as a noise attenuation bund;
 - A noise complaint system will be established, whereby any complaints relating to noise will be reported to the site manager. Details of the site manager will be erected at the site gate; and
 - A commitment to respond to noise control instructions issued by the City of Albany.
28. It should also be noted that the nearest dwelling is located 500 metres from the extraction area and any operations would be subject to ongoing compliance with the *Environmental Protection (Noise) Regulations 1997*.
29. It is recommended that the implementation and ongoing compliance with the Noise Management Plan be applied as a condition of approval.
30. In terms visual amenity, the staging and rehabilitation of areas will serve to reduce the overall visual impact of the proposed works. Extractive industries are subject to an annual licence renewal inspection to ensure that rehabilitation work is correctly carried out.
31. Further to the above, the closest section of the proposed extraction area would be approximately 180 metres from Chester Pass Road. In terms of visual impact, it should be noted that a number of rural industries have been developed adjacent to the preceding section of Chester Pass Road.
32. There is also a 180 metre section of screening vegetation which runs north along Chester Pass Road from the intersection with Bon Accord Road. The scattered vegetation on the lot boundary adjoining Bon Accord Road will also reduce the visual impact from public vantage points.
33. It is recommended that a planning condition is applied to require the implementation of screen planting along sections of Bon Accord road that do not have existing vegetation.
34. Further planning conditions would be applied in accordance with the *Extractive Industry and Mining* local planning policy to ensure ongoing compliance with the required setback distances from boundaries and watercourses (30 metres and 50 metres respectively).
35. In terms of amenity, concerns were also raised over potential dust issues.
36. In response to these concerns, the proponents have submitted a Dust and Particle Management Plan. The plan incorporates a number of dust mitigation measures, including;
 - Limiting stockpiles to anticipated output for the following days;
 - Locating stockpiles away from prominent ridges or seasonal prevailing winds and limiting their heights no more than three metres;

- Crushing equipment and conveyors will utilise spray bars as required;
 - Timing of earthworks will coincide with low wind conditions; and
 - A dust complaint system will be established, any complaints will be forwarded to the site manager. Site manager details will be displayed on the gate.
37. It is recommended that the implementation and compliance with the Dust Management Plan is applied as a condition of approval.
38. It is considered that the Dust Management Plan, in conjunction with the distance to nearby dwellings, will mitigate any potential amenity issues resulting from dust.

Environment

39. Concerns regarding environmental impacts were raised consistently in the submissions.
40. A number of concerns were raised in relation to water runoff from the extraction area and the detrimental impacts that this could have on waterways.
41. The Department of Water was consulted and has advised the City that standard water control conditions are applicable to the proposal, which includes surface water management being undertaken by the developer.
42. The proponents have also submitted a Drainage Management Plan. While it is likely that surface water collecting in the excavation area will soak into the ground in-situ, it is also advised that cut off drains are installed as required, to guide any run off into the existing approved dams on the lot.
43. The proponents have indicated an intention to remove sections of vegetation, in order to extract the underlying material, and will be required to apply for a clearing permit from the Department of Environment Regulation if they wish to pursue this course of action.
44. Approval of an extractive industry by the City of Albany does not grant approval to clear the vegetation identified on the plan for removal. The Department of Environment Regulation does not generally consider applications for clearing permits until local government has made a determination on the development proposal.
45. A number of submissions raised concerns regarding weed management on the lot. In order to specifically manage this issue through the rehabilitation process, it is recommended a condition is applied requiring the inclusion of weed management measures within the Rehabilitation Management Plan.
46. The proponents have submitted a Dieback Management Plan in order to reduce the risk of Dieback Disease being spread. Among other controls, the plan states that equipment will be washed down upon entering/exiting the site and that the trucks carrying material from the site will be covered to ensure there is no spillage. It is recommended that implementation of, and compliance with, the Dieback Management Plan is required as a condition of approval.

GOVERNMENT & PUBLIC CONSULTATION

47. The proposal was advertised for public comment for a period of 21 days, in accordance with clause 9.4 – *Advertising of Applications of Local Planning Scheme No. 1*. A sign was placed on site, an advert was published in a local newspaper and surrounding landowners were directly notified in writing.
48. A total of fourteen submissions were received during the advertising period. All fourteen submissions objected to the proposal. Staff comments and recommendations are provided in the attached schedule, while the broad issues are discussed in paragraphs 13 – 43 above.

STATUTORY IMPLICATIONS

- 49. Extractive Industry is classified as an ‘A’ use within the ‘General Agriculture’ zone under *Local Planning Scheme No. 1*, meaning that the use is not permitted, unless the local government has exercised its discretion by granting planning approval after giving special notice in accordance with clause 9.4 of the Scheme.
- 50. Voting requirement is a **Simple Majority**.

POLICY IMPLICATIONS

- 51. The primary assessment criteria for the application are set out in the City of Albany *Extractive Industry and Mining* local planning policy.
 - a. The proposal is classified as a class 2 extractive industry under the policy. Class 2 extractive industries have site extraction areas of between 0.75 and 3 hectares with a maximum depth of 3 metres.
 - b. The Policy requires that buffer distances are to be in accordance with the setbacks outlined within the Environmental Protection Authority requirements. The Environmental Protection Authority’s *Separation Distances between Industrial and Sensitive Land Uses* guidelines set out a buffer of between 300-500 metres for these activities. Although this buffer is not contained within the lot boundaries, the closest dwelling is over 500 metres from both of the nominated extraction areas, and is therefore compliant with the intent of the *Separation Distances between Industrial and Sensitive Land Uses* guidelines.
 - c. A condition will be recommended in accordance with the policy which requires pits to be located 30 metres from any public road.
 - d. The proposed pit area complies with the requirement of being set back a minimum of 50 metres from a watercourse or body.

RISK IDENTIFICATION & MITIGATION

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

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|---|------------|-------------|---------------|--|
| <p>Organisational Operations and Reputation <i>The proposed use could give rise to unacceptable detrimental impacts on the amenity of the area.</i></p> | Possible | Moderate | Medium | <p><i>Mitigation of impacts to be achieved through adoption and enforcement of conditions.</i></p> |

FINANCIAL IMPLICATIONS

- 53. All costs associated with the development will be borne by the proponent.
- 54. 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

- 55. Council is at liberty to use its discretion to approve or refuse the proposal. An applicant aggrieved by a decision or condition may apply for a review to the State Administrative Tribunal, in accordance with Section 252 of the *Planning and Development Act 2005*.

56. 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

57. The subject lot is under pasture and slopes downward from north to south. There is a large stand of trees in the western half of the lot and scattered vegetation across the southern extent of the lot, adjacent to Bon Accord Road. The existing extraction sites lie to the east of the large stand of trees. A seasonal creekline runs across the western extent of the lot, approximately 140 metres from the proposed extraction area.

ALTERNATE OPTIONS

58. Council has the following alternate options in relation to this item, which are:
- To determine that the proposed use is unacceptable and to resolve to refuse the application; or
 - To alter, amend, remove or add conditions to the approval to address potential impacts from the development.

SUMMARY CONCLUSION

59. The proposal is considered to be consistent with the objectives of the zone and the requirements of the City of Albany’s *Extractive Industry and Mining* local planning policy. The matters raised in the public submissions received during the advertising period have also been broadly addressed by the proponent and can be mitigated through the application of appropriate planning conditions. On this basis, it is considered the proposal can be appropriately managed through ongoing conditions and the yearly licence renewal process.
60. It is therefore recommended that Council approve the proposed development, subject to the conditions provided.

| | | |
|-----------------------------------|---|--|
| Consulted References | : | 1. <i>Local Planning Scheme No. 1</i> 2. <i>Albany Local Planning Strategy 2010</i> 3. <i>City of Albany Extractive Industries and Mining local planning policy</i> 4. <i>Environmental Protection (Noise) Regulations 1997</i> 5. <i>Environmental Protection Authority Separation Distances between Industrial and Sensitive Land Uses</i> |
| File Number (Name of Ward) | : | A69488 (Kalgan Ward) |
| Previous Reference | : | OCM – 24/06/2014 – PD036 |

PD106: INDUSTRY – EXTRACTIVE INDUSTRY - ADDITION (ASPHALT PLANT), LOT 102, MINDIJUP ROAD, PALMDALE

Land Description : Lot 102, Mindijup Road, Palmdale.
Proponent : Spinifex Crushing and Screening Services Pty Ltd
Owner : Martin Shuttleworth
Business Entity Name : Spinifex Crushing and Screening Services Pty Ltd
Directors : Martin James Shuttleworth
Attachments : 1. Area Plan
 2. Copy of the application
 3. Schedule of Submissions
Supplementary Information & Councillor Workstation: Copy of submissions
 : Fact Sheet
 : Plan showing all approved uses
 : Traffic Log
Report Prepared by : Planning Officer (J Anderson)
Responsible Officer : Director Development Services (D Putland)

Responsible Officer’s Signature:

STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. When exercising its discretion in relation to planning matters, the pertinent strategic document is the *Albany Local Planning Strategy*.
3. The proposal is consistent with the strategic directions identified in the *Albany Local Planning Strategy*.

Maps and Diagrams:



In Brief:

- Council is asked to consider an application for development approval for an Industry – Extractive (Addition) - Processing (Mobile Asphalt Plant), at Lot 102, Mindijup Road, Palmdale.
- The application was advertised for public comment and referred to surrounding residents.
- Seven submissions were received in relation to the proposal. Five submissions objected to the proposal whilst two had no objections.
- The objections relate primarily to the cumulative impact from the proposed and existing non-agricultural activities onsite:
 - proximity to the Kalgan River
 - flora and fauna
 - increase in traffic
 - impact on the unsealed portion of Mindijup Road
 - visual amenity
 - emissions
 - increased risk of fire
 - not in line with the intent of the Community Strategic Plan (Clean Green and Sustainable)
 - lack of scrutiny by the City of Albany and claims that the proposal is being wrongly classified as an extractive industry.
- A number of existing uses currently occur on the lot. These include Tyre Disposal (P985168), Compost Manufacturing (P295102), Extractive Industry – Sand (P2115193), Extractive Industry – Granite (P2140482) and Charcoal Plant (P2150274).
- Due to the objections received and the cumulative nature of activities onsite, the application is being referred to Council for determination.
- Staff recommend that Council approve the proposed development, subject to conditions, to mitigate the concerns raised through the public advertising process.

RECOMMENDATION

PD106: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council resolves to ISSUE a notice of determination granting development approval with conditions for Industry – Extractive - Addition (Asphalt Plant) at Lot 102 Mindijup Road, Palmdale.

Conditions:

- (1) The applicant will be responsible for the repair of any undue damage to any road within the City of Albany, caused by the operations.**
- (2) The unsealed section of Mindijup Road, from the sand mine entrance to the north of the GSS Operations entrance (approximately 550m), is to be upgraded and drained at the full cost to the developer, to the specifications and satisfaction of the City of Albany.**

Advice: A typical cross section shall detail a gravel overlay, establish small v-drains

and 2 coat seal to a width of 6.2m and shall tie seamlessly into the existing seal.

- (3) Surface water management shall be undertaken to ensure that the operation area is suitably drained, with no direct discharge from the operation to any watercourse, without the prior approval of the Department of Water.
- (4) Surface water shall be directed away from the operation area into a contained area. Cut off drains shall be installed around the operation area to contain and direct flow into the dam.
- (5) Operation shall be restricted to the hours of 7.00am – 6.00pm Monday to Friday, 8.00am – 5.00pm Saturday, with no operation permitted on Sundays or Public Holidays.
- (6) The operation area shall be contained within the area nominated on the stamped, approved plans.
- (7) Firebreaks, fire fighting equipment and other appropriate fire protection measures shall be maintained in accordance with the Fire Management Plan approved 31 July 2015 (approved as part of the Charcoal Plant), to the satisfaction of the City of Albany.
- (8) All on-site operators shall be provided with fire fighting training.
- (9) No clearing or covering of overburden of any native vegetation is permitted without the prior approval from the Department of Environment and Conservation.
- (10) The Development is required to comply with all relevant Health regulations; in particular, regards should be paid to dust management and noise regulations.
- (11) Prevention of dust and sand blowing causing a nuisance to adjoining landowners, in accordance with the Department of Environmental Protection's Dust Control Guidelines and the City of Albany Prevention and Abatement of Sand Drift Local Law 2000.
- (12) The development hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust.
- (13) Compliance with the relevant clauses and provisions of the City of Albany Local Laws relating the Extractive Industries.

BACKGROUND

1. The City has received an application from the proponent for approval for an additional use to the approved Granite Extractive Industry (P2140482) operation, for the purpose of processing the extracted material (granite) onsite to manufacture asphalt. The asphalt is produced by processing the extracted granite through a mobile asphalt plant.
2. The subject lot lies to the northern side of Mindijup Road, approximately 35km north-east of the Albany City centre. Lot 102 has an area of approximately 584 hectares and is zoned 'Priority Agriculture' under City of Albany *Local Planning Scheme No. 1*.
3. The subject lot is bounded by 'Priority Agriculture' zoned land to the north, east and south and a portion of the west. The west also adjoins 'Parks and Recreation' Reserve, being the Kalgan River.
4. A number of existing uses are currently undertaken on the lot. These include;
 - Tyre Disposal (P985168);
 - Compost Manufacturing (P295102);
 - Extractive Industry – Sand (P2115193);
 - Extractive Industry – Granite (P2140482) and
 - Charcoal Plant (P2150274).
5. The application was initially advertised for public comment for a period of 21 days (15 September 2015 till 6 October 2015). Nearby landowners were directly notified by letter, a site notice was placed on site and an advertisement was published in a local newspaper.
6. In response to concerns raised regarding the cumulative impact of activities on the site, staff prepared and distributed a fact sheet on the proposal and circulated to landowners within a 3 kilometre radius. The submission period was consequently extended to 6 November, 2015.
7. A total of seven submissions were received, five of which raised objections to the proposal, and two which had no objections.
8. Council is now requested to consider the submissions received during the public advertising period and determine whether to grant development approval.

DISCUSSION

9. The subject lot is bounded by 'Priority Agriculture' zoned land to the north, east, south and a portion of the west. The west also adjoins 'Parks and Recreation' reserve, being the Kalgan River.
10. The subject lot (Lot 102) adjoins Lot 3 to the west which is also under ownership by the proponent.
11. The site is situated on the edge of a plateau element sloping towards the north and west where the Kalgan River is situated. The Kalgan River is located approximately 690m from the proposed operation area (to the west).
12. The proponent seeks approval for an additional use to the approved Granite Extractive Industry (P2140482) operation, for the purpose of processing the extracted material (granite) onsite to manufacture asphalt. The asphalt is produced by processing the extracted granite through a mobile asphalt plant.

13. The addition of an asphalt plant is covered by the definition of Industry – Extractive, as defined within *Local Planning Scheme No. 1* as follows:

'means an industry which involves the extraction, quarrying or removal of sand, gravel, clay, hard rock, stone or similar material from the land and includes the treatment and storage of those materials, or the manufacture of products from those materials on, or adjacent to, the land from which the materials are extracted, but does not include industry – mining.'
14. The application is generally consistent with the City of Albany Extractive Industry and Mining local planning policy. Compliance with the policy is discussed in paragraph 79 below
15. The proposed operation area is situated to the west of the lot within a previously cleared portion of land which formed part of a blue gum plantation.
16. The total proposed area required for this operation is 400m² which includes the aggregate bunkers, control room, mixing barrel, baghouse and finished product bins.
17. The mobile asphalt plant is 23 meters long with a height of approximately 7.1 meters.
18. The proposed (approximate) setbacks are as follows:
 - 750 metres from the southern boundary
 - 2000 metres from the northern boundary
 - 110 metres from the western boundary (adjoining lot 3 also under ownership of Martin Shuttleworth).
 - 1200 metres from the eastern boundary
19. The mobile asphalt plant will be situated 100 meters from the nearest vegetation.
20. The closest residence is located to the south-west, approximately 1.36 kilometres away from the proposed operation area.
21. Hotmix asphalt is a mixture of aggregates, crushed rock fines, additives and bitumen which is blended together for use as pavement surfacing.
22. The proponents have provided the following (summarised) outline of how the proposed asphalt plant will operate:
 - Asphalt will be manufactured in a batch mix process in which an enclosed conveyor feeds aggregate from a cold feed unit into a sealed, insulated and clad rotary dryer. The aggregates are stockpiled in three-sided, concrete bays (which are equipped with sprinklers for dust suppression) and are transferred to the feed unit via a loader.
 - In the diesel-fired dryer, aggregate is heated to approximately 160 degrees centigrade and is transferred to the pug mill. The remainder of the process occurs within the pug mill, which is fully insulated and enclosed to retain heat and minimise dust and odour emissions.
 - Bitumen is injected hot into the pug mill and is mixed into the hot aggregate with any other required materials (e.g. filler, colouring agents etc) via a twin-shaft paddle mixer. Bitumen is stored onsite in a sealed 40,000 litre tank which is kept heated to prevent the bitumen from solidifying. The mixture is deposited to an elevated heated storage vessel for discharge to asphalt trucks for transport.'
 - The combusted air is exhausted through a baghouse filter. The filter is self-cleaning and contains 224 bags, with a filter area of 240m². Total capacity of the baghouse filter is 27,000 cubic meters per hour. The bag house incorporates an automatic reverse-pulse cleaning system with fines returned to the mixer via a screw conveyor.

The manufacturer's specifications for the baghouse state that the dust concentration of the filtered air will be less than or equal to 20 milligrams per cubic metre.

- All aspects of the process are computer-controlled from a central control station.
 - With the exception of 1000 litres of diesel which would be stored in a fully bunded pod, no fuel or hydrocarbons associated with the mobile equipment will be stored onsite. A fuel/service truck will provide all fuel and servicing requirements for the site.
23. Other than bitumen, no other materials are required to be imported into the site.
24. Access to and from the site will be from the existing crossover which is located on the unsealed section of Mindijup Road.
25. All surface runoff will be contained onsite via the use of drains surrounding the operation area and directing all surface runoff to the holding dam to the north-west.
26. A total of seven submissions were received from members of the public during the advertising period, five of which objected to the proposal, and two which raised no objections.
27. The objections relate primarily to the following;
- Proximity to the Kalgan River, flora and fauna;
 - Impact on Flora and Fauna
 - The cumulative impact from the proposed and existing non-agricultural activities onsite;
 - Emissions from the plant (odour, dust, noise);
 - Increase in traffic, impact on the unsealed portion of Mindijup Road, visual amenity, emissions;
 - Impact on Visual amenity;
 - Operation times;
 - Lack of scrutiny on compliance;
 - Proposal is wrongly defined as an 'Extractive Industry';
 - Increased risk of fire;
 - Inconsistency with the intent of the Community Strategic Plan (Clean Green and Sustainable);
 - Risk Reduction; and
 - Not consistent with the objectives of the zone.
28. The main concerns raised and the proposed mitigation measures will be addressed via the headings below.

Proximity to the Kalgan River

29. Four submissions were received in relation to the proximity of the application to the Kalgan River and concerns that the river will become contaminated as a result of the operation.
30. The proposal was referred to the Department of Water. Department of Water provided no objections to the proposal on the basis that cut off drains are installed around the operation area to direct all surface runoff to the existing dam.

31. It is considered that the implementation of the Department of Water advice as a condition will mitigate any potential impact or risk to the Kalgan River.

Flora and Fauna

32. Two submissions were received raising concerns in relation to the potential detrimental impact on flora and fauna, particularly on the adjoining nature reserve.
33. In addition to the above, another submission requested that the City undertake a Strategic Assessment to identify the cumulative impacts of the proposed activities in relation to the landscape, flora, fauna, public amenity, soil, water, resources, wastes, noise, transport, and road safety.
34. The proposal was referred to all the relevant agencies, including Department of Environment Protection, and the Department of Water. No objections were received.
35. In terms of environmental assessment, the proposal requires a separate Works Approval from the Department of Environmental Regulation (DER). DER will assess the environmental acceptability of the all aspects of the application against standards and policies.
36. The Department of Environment Regulation does not consider applications for Works Approval until the local government has made a determination on the development proposal. Therefore, if approval is granted by the City of Albany, the asphalt plant is unable commence use until a separate DER works approval is granted.
37. It is considered that the proposed conditions, setback distances and operational guidelines, in conjunction with the DER Works Approval process, will mitigate and manage the environmental concerns raised.

Cumulative Impact

38. Two submissions were received raising concerns in regards to cumulative impact of non-agricultural activities on the site and that the City should be looking at the activities on the site as a whole, rather than in a piecemeal fashion.
39. The existing approved uses include –
- Tyre Disposal (P985168)
 - Compost Manufacturing (P295102)
 - Extractive Industry – Sand (P2115193)
 - Extractive Industry – Granite (P2140482) and
 - Charcoal Plant (P2150274).
40. Previous or expired uses include Asbestos Disposal and Extractive Industry (Sand).
41. The lot to the immediate north and east are currently used for Blue Gum Plantations, with the exception of a portion of the eastern boundary which is mostly pasture.
42. The lot to the immediate south of the subject lot is the Mineral Sands (Exploration) Mine.
43. All existing and proposed uses are permissible within this zone and can therefore be considered.
44. In addition to the substantial separation distances between adjoining properties, the current and proposed activities on the site are well screened from Mindijup Road meet all DER buffer distances and will be subject to the additional controls and assessment required via a DER Works Approvals.

45. Given the above information, it considered that the biggest cumulative impact would be in relation to the traffic resulting from the multiple approvals on the property.
46. In consultation with the City of Albany Engineering Department, officers recommend that the unsealed portion of Mindijup Road be widened and sealed at the developers cost. A condition for this requirement has been applied as a condition of approval.
47. In addition to the above, it is recommended that a standard condition be applied requiring the proponent to rectify any damage to local roads.

Emissions from the plant (odour, dust, noise)

48. Concerns were also raised regarding the potential for odour, dust and noise to be generated from the proposed asphalt plant.
49. The applicant has advised that with this new type of plant, as the process is fully contained within a sealed unit, the extent of the odours is restricted to the smell from the diesel heating burner which is equivalent to a running truck. In addition to this, the smell of asphalt is generally present within 20 – 30 metres of the plant, but would not exceed the amount you would experience being present when asphalt is being laid on a road.
50. The proposal was referred to Department of Environment Regulation who are the responsible body for assessing the environmental acceptability of the proposal. DER advised have no objections to the proposal and have confirmed they will assess the environmental acceptability of emissions and discharges against their policies and standards once planning approval is granted as part of the Works Approval process.
51. The applicant has advised that dust can be generated by the storage and transport of raw materials (sand and aggregate), and from the site along internal gravel roads. The closest dwelling to the access roads is 680m.
52. The asphalt plant area will be watered regularly for the comfort of workers and to prevent dust escaping the immediate area and therefore a water truck remains onsite for the purpose of dust suppression.
53. In terms of dust from the plant itself, the bag house collects all dust and then places it back into the mix.
54. The applicant has stated that the machine is itself does not exceed the sound typical of farm machinery. It should also be noted that the nearest dwelling is located 1.16 kilometres from the operation area and any operations would be subject to ongoing compliance with the *Environmental Protection (Noise) Regulations 1997*.
55. Officers recommend that the following standard conditions should be applied should the application be supported to mitigate any concerns:
 - *The development hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust.*
 - *Development is required to comply with all relevant Health regulations, in particular, regards should be paid to dust management and noise regulations.*
 - *Prevention of dust and sand blowing causing a nuisance to adjoining landowners, by the installation of sprinklers, utilisation of water tankers, mulching, or by the adoption and implementation of any other suitable land management system in accordance with the Department of Environmental Protection's Dust Control Guidelines and the City of Albany Prevention and Abatement of Sand Drift Local Law 2000.*

56. It is considered that the proposed mitigation measures (with the site being watered down) in conjunction with the distance to the closest dwelling will mitigate any potential amenity issues resulting from dust.

Increased Traffic, the Impact on Infrastructure and the Unsealed Portion of Mindijup Road

57. Four submissions indicated that the unsealed section of Mindijup Road was not adequately constructed to cater for heavy traffic. The submissions also claimed that the unsealed section of Mindijup Road is in a poor state as a result from current activities onsite. Concerns that this road will further deteriorate with frequent additional use by heavy vehicles.
58. The proponents have stated that the estimated number of truck movements associated with this use would be an average of 5 trucks (or 10 movements) per day. vehicle movements associated with extractive industries are in most cases seasonal and vary according to construction demand.
59. The vehicles would exit the site and travel south onto Mindijup Road then south-west along Palmdale Road to reach Chester Pass Road.
60. These vehicle movements would be undertaken by six wheel trucks and semi tippers. These vehicles are permitted on public roads without special permits and are referred to 'as of right' vehicles.
61. An 'as of right' vehicle is defined as any vehicle that is not a Restricted Access Vehicle. Rigid trucks and semi-trailers are not classed as Restricted Access Vehicles and do not require any permits or exemptions from regulatory requirements.
62. In terms of restricting the use of Mindijup Road and Palmdale Road, the City of Albany does not have the statutory authority to control the direction of vehicles which are classified as 'as of right' vehicles by Main Roads WA.
63. The applicant has provided a traffic log generated from the GPS which shows all traffic movements within the last 3 months for all operations. The full log is attached to the report however is summarized below:
- 674 total vehicle movements within the last three months (or 337 vehicles)
 - When broken down, this works out to be 11.2 vehicle movements per day (excluding Saturday and Sunday's as there are generally no operations apart from the occasional Saturday).
 - If you remove the service truck which is not a heavy vehicle and Site Supervisors movements, then the average vehicle movements are 7.6 per day.
64. The applicant has however advised that the proposal will not affect the daily vehicle movements as due to the restricted number of trucks available by the company, they will not occupy all the uses at the same time.
65. In consultation with the City of Albany Engineering Department, officers recommend as a condition of approval that the unsealed portion of Mindijup Road be widened and sealed at the developers cost.

Visual amenity

66. One submission raised concerns that the plant will be visually obtrusive.
67. Aerial Mapping, in conjunction with a site visit undertaken on 9 November, 2015, confirmed that the subject area is not visible from any other sites due to the location of vegetation.

Operation times

68. One submission raised concerns that the current and proposed activities resemble 24 hour a day operations.
69. this concern mitigated through the following standard condition that will control the hours of operation:

'The operation times would be restricted to that of an Extractive Industry, being Monday to Friday between the hours of 7.00am – 6.00pm and 8.00am – 5.00pm on Saturdays. No operation is permitted on Sundays or Public Holidays.'

Lack of scrutiny and concerns that the existing operations are not run in accordance with the approvals – requests that stakeholders are given the annual inspection reports and advised of any breaches.

70. Extractive Industries are subject to an annual inspection prior to the licence renewal. This process ensures work is being undertaken in accordance with planning conditions and that rehabilitation work is correctly carried out. In addition to this, a rehabilitation bond is held for all extractive industries.
71. A site visit on 9 November 2015 by City staff confirmed that all approvals were in accordance with the planning approvals and no breaches were found.
72. The Department of Environment Regulation has confirmed that they have an inspection schedule for this type of activity, however do not make their reports public.
73. The City of Albany Extractive Industry Inspection reports can be requested through the Freedom of Information Act.

The proposal is wrongly defined as an 'Extractive Industry' and it should be 'General Industry'

74. One submission suggests that the proposal has been wrongly classified as an 'Extractive Industry' and it should be assessed as a 'General Industry', which is a land use not permitted within this zone.
75. The definition of Extractive Industry includes the manufacturing of materials extracted as part of the extractive industry.

Industry – Extractive is defined within the *Local Planning Scheme No. 1* as follows:

'means an industry which involves the extraction, quarrying or removal of sand, gravel, clay, hard rock, stone or similar material from the land and includes the treatment and storage of those materials, or the manufacture of products from those materials on, or adjacent to, the land from which the materials are extracted, but does not include industry – mining.'

76. As the definition of an Extractive Industry includes the manufacture of products from the materials on, or adjacent to, the land from which the materials are extracted from, the Asphalt Plant can be considered as an ancillary use to the existing extractive industry (Granite).

Risk of fire

77. One submission raised concerns that the proposed use increases the risk of fire. It also stated that if there was a fire, the contaminated runoff would result in the river being contaminated. Within the submission they requested a Fire Management Report.
78. The proposal was referred to the City of Albany's Emergency Management team for comment. As the proposal is adjacent to the existing Charcoal Plant, they were satisfied that the existing Fire Management Plan approved 31 July, 2015, was sufficient. In addition to this, they requested that all operators on site are trained to some extent in fire-fighting and that there should be no operation during restricted/prohibited times.

Community Strategic Plan (Clean, Green and Sustainable)

79. One submission raised concerns that the proposal does not comply with the Community Strategic Plan on the basis that the plan states that we need to protect and enhance our natural environment by protecting and enhancing the health of our catchments and waterways.
80. Clean Green and Sustainable is one factor of the Community Strategic Plan. The pertinent document for the assessment of the statutory matters is Local Planning Scheme No.1. As outlined throughout this report, officers consider that that the large separation distances between adjoining properties, compliant buffer distances, proposed conditions and DER Works Approval obligations, mitigate and manage any environmental concerns.

Risk Reduction

81. One submission raised concerns that the instead of applying conditions to mitigate the risk, the proposal should be relocated where there is no risk.
82. Risk Mitigation forms a separate component to this report.

Not consistent with the objectives of the zone

83. The objectives of the Priority Agriculture zone is as follows;
- a) Identify agricultural land resources that are considered to be of local, State and/or regional significance.
 - b) Provide for a diversity of sustainable intensive and extensive agricultural activities or rural industries that do no impact upon the agricultural activities and protect those land uses from incompatible developments;
 - c) Manage in a sustainable manner the soil and water resources available in the zone;
 - d) Prevent land uses and development within the zone that may adversely impact on the continues use of the zone for a diversity of agricultural purposes; and
 - e) Provide for value-adding opportunities to agricultural and rural products on-site.
84. It is in the Officers opinion that the proposed use will not impact on agricultural activities.
85. Council is now requested to consider the submissions received during the public advertising period and determine whether to grant development approval.

GOVERNMENT & PUBLIC CONSULTATION

86. The proposal was advertised for public comment for a period of 21 days, in accordance with clause 9.4 – *Advertising of Applications of Local Planning Scheme No. 1*. A sign was placed on site, an advert was published in a local newspaper and surrounding landowners were directly notified in writing.
87. In addition to this, the City prepared a fact sheet on the proposal and distributed it to all landowners within a 3 kilometre radius of the site. The submission period was extended to the 6 November, 2015.
88. A total of seven submissions were received during the advertising period. Five submissions objected to the proposal and two had no objections. Staff comments and recommendations are provided in the attached schedule, while the broad issues are discussed in **paragraphs 28 – 83 above**.
89. In addition to the public consultation, the proposal was also referred to the Department of Water due to the proximity to the Kalgan River.
90. Advice was received from the Department of Water stating that they had no objections to the proposal. However, it was advised that surface runoff should be contained onsite and directed

to the holding dam. Cut off drains around the proposed area should also be implemented to ensure that natural runoff is directed to the dam.

91. The proposal was also referred to the Department of Environment Protection who are the responsible body for assessing the environmental acceptability of the proposal. A response was received advising that they had no objections and would assess the environmental acceptability of the proposal against their policies and standards as part of the Works Approval process.

STATUTORY IMPLICATIONS

92. Extractive Industry is classified as an 'A' use within the 'Priority Agriculture' zone under *Local Planning Scheme No. 1*, meaning that the use is not permitted, unless the local government has exercised its discretion by granting planning approval after giving special notice in accordance with clause 9.4 of the Scheme.
93. Voting requirement is a **Simple Majority**.

POLICY IMPLICATIONS

94. The primary assessment criteria for the application are set out in the City of Albany *Extractive Industry and Mining* local planning policy.
- a. The Policy requires that buffer distances are to be in accordance with the setbacks outlined within the Environmental Protection Authority requirements. The Environmental Protection Authority's *Separation Distances between Industrial and Sensitive Land Uses* guidelines set out a buffer of 1000 metres for these activity. The buffer is contained within the lot boundaries and the closest dwelling is 1.16 kilometres from the operation area, therefore the proposal is compliant with the intent of the *Separation Distances between Industrial and Sensitive Land Uses* guidelines.
 - b. The proposal is compliant with the provision of the policy that requires a 30 metre setback from any road.
 - c. The proposal is compliant with the requirement of being set back a minimum of 50 metres from a watercourse or body. The proposed setback from the Kalgan River is 690 metres.
 - d. The operation will not result in the removal of remnant vegetation.

RISK IDENTIFICATION & MITIGATION

95. The risk identification and categorisation relies on the City's Enterprise Risk Management Framework.

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|---|------------|-------------|---------------|---|
| <p>Organisational Operations and Reputation <i>The proposed use could give rise to unacceptable detrimental impacts on the amenity of the area.</i></p> | Possible | Moderate | Medium | <i>Mitigation of impacts to be achieved through adoption and enforcement of conditions.</i> |

FINANCIAL IMPLICATIONS

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

97. 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

98. Council is at liberty to use its discretion to approve or refuse the proposal. An applicant aggrieved by a decision or condition may apply for a review to the State Administrative Tribunal, in accordance with Section 252 of the *Planning and Development Act 2005*.

99. 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

100. The operation area is situated on the edge of a plateau element sloping towards the north and west where the Kalgan River is situated. The Kalgan River is located approximately 690m from the proposed site (to the west). There is a large cluster of native vegetation to the west and south and a blue gum plantation to the north.

101. The Department of Environment Regulation are the responsible body for assessing the environment acceptability of emissions and discharges, whilst the Department of Water are the responsible body for determining the risk to the Kalgan River.

ALTERNATE OPTIONS

102. Council has the following alternate options in relation to this item, which are:

- To determine that the proposed use is unacceptable and to resolve to refuse the application; or
- To alter, amend, remove or add conditions to the approval to address potential impacts from the development.

SUMMARY CONCLUSION

103. The proposal is considered to be consistent with the objectives of the zone and the requirements of the City of Albany's *Extractive Industry and Mining* local planning policy. The matters raised in the public submissions received during the advertising period have also been broadly addressed by the proponent and can be mitigated through the application of appropriate planning conditions. On this basis, it is considered the proposal can be appropriately managed through ongoing conditions and the annual licence renewal process.

104. It is therefore recommended that Council approve the proposed development, subject to the conditions listed.

| | | |
|-----------------------------------|---|--|
| Consulted References | : | <ol style="list-style-type: none"> 1. <i>Local Planning Scheme No. 1</i> 2. <i>Albany Local Planning Strategy 2010</i> 3. <i>City of Albany Extractive Industries and Mining local planning policy</i> 4. <i>Environmental Protection (Noise) Regulations 1997</i> 5. <i>Environmental Protection Authority Separation Distances between Industrial and Sensitive Land Uses</i> |
| File Number (Name of Ward) | : | A215306 (Kalgan Ward) |
| Previous Reference | : | |

In Brief:

- Council is asked to consider an application for development approval for an Industry – Extractive (Gravel and Clay), at Lot 102, Mindijup Road, Palmdale.
- The application was advertised for public comment and referred to surrounding residents.
- Six submissions were received in relation to the proposal. Three submissions raised concerns, 2 submissions had no objections but provided comment, and one submission had no objections.
- The submissions primarily relate to concerns over the cumulative impact of activities on the site, increased heavy haulage traffic, impact on infrastructure, and the condition of the unsealed section of Mindijup Road due to the existing operations. One submission also questioned the lack of scrutiny by the City of Albany and raised concerns that the operations are not run in accordance with the approvals.
- Two submissions received from the adjoining landowners had no objections to the proposal, however requested that Council consider widening and sealing the unsealed section of Mindijup Road given its poor state of repair caused by existing operations in the area.
- A number of existing uses already occur on the lot. These include a Tyre Disposal, Compost Manufacturing, Sand Extractive Industry, Granite Extractive Industry and a Charcoal Plant.
- Due to the cumulative nature of activities onsite, the application is being referred to Council for determination.
- Staff recommend that Council approve the proposed development, subject to conditions, which are considered to mitigate the concerns raised through the public advertising process.

RECOMMENDATION

PD107: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council resolves to ISSUE a notice of determination granting development approval with conditions for Industry – Extractive (Gravel and Clay) at Lot 102 Mindijup Road, Palmdale.

Conditions:

- (1) Top soil to a depth of 150mm, unless otherwise approved by the Director Works and Services, shall be removed from the extraction areas and stored on-site for use in later rehabilitation works.**
- (2) A minimum of 150mm of top soil shall be left above any hard surface (i.e. clay/gravel) unless a lesser amount is approved by the Director Works and Services.**
- (3) The applicant will be responsible for the repair of any undue damage to any road within the City of Albany, caused by the extraction operations.**
- (4) The unsealed section of Mindijup Road, from the sand mine entrance to the north of the GSS Operations entrance (approximately 550m), is to be upgraded and drained at the full cost to the developer, to the specifications and satisfaction of the City of Albany.**
A typical cross section shall detail a gravel overlay, establish small v-drains and 2 coat seal to a width of 6.2m and shall tie seamlessly into the existing seal.
- (5) Surface water management shall be undertaken to ensure that extraction areas are**

- suitably drained, with no direct discharge from the extraction area to any watercourse, without the prior approval of the Department of Water.
- (6) A refundable bond/bank guarantee of \$1550.00 per hectare shall be lodged with the City of Albany for remediation work if required.
 - (7) Operation of the extraction areas shall be restricted to the hours of 7.00am – 6.00pm Monday to Friday, 8.00am – 5.00pm Saturday, with no operation permitted on Sundays or Public Holidays.
 - (8) The site shall be suitably rehabilitated and re-contoured on a per hectare basis, including re-battering of banks and reseeded and stabilising of former extraction areas.
 - (9) Any off site fill must be clean soil, free of weed material or of non contaminated inert type 1 waste (as defined by Landfill Waste Classification and Waste Definition 2009).
 - (10) The operation of the extraction areas shall be contained within the area nominated on the stamped, approved plans.
 - (11) No remnant vegetation shall be removed as part of this extraction operation, without the prior approval of the Department of Environment Regulation.
 - (12) No blasting of material is permitted as part of extraction operations, unless a separate written approval has been obtained from the City of Albany.
 - (13) Only one hectare of the extraction area identified on the stamped, approved plans shall be opened at any one time.
 - (14) Development is required to comply with all relevant Health regulations, in particular, regards should be paid to dust management and noise regulations.
 - (15) Prevention of dust and sand blowing causing a nuisance to adjoining landowners, in accordance with the Department of Environmental Protection's Dust Control Guidelines and the City of Albany Prevention and Abatement of Sand Drift Local Law 2000.
 - (16) The development hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust.
 - (17) Compliance with the relevant clauses and provisions of the City of Albany Local Laws relating the Extractive Industries.

BACKGROUND

1. The City has received an application for development approval for an Industry – Extractive (Gravel and Clay), at Lot 102, Mindijup Road, Palmdale.
2. The subject lot lies to the northern side of Mindijup Road, approximately 35km north-east of the Albany City centre. The lot has an area of approximately 584 hectares and is zoned 'Priority Agriculture' under City of Albany *Local Planning Scheme No. 1*.
3. The subject lot is bounded by 'Priority Agriculture' zoned land to the north, east and south. The west adjoins 'Parks and Recreation' reserve, being the Kalgan River.
4. A number of existing uses are currently being undertaken on the lot. These include Tyre Disposal (P985168), Compost Manufacturing (P295102), Extractive Industry – Sand (P2115193), Extractive Industry – Granite (P2140482) and Charcoal Plant (P2150274).

5. The application was advertised for public comment for a period of 21 days (17 September 2015 till 08 October 2015). Nearby landowners were directly notified by letter, a site notice was placed on site and an advertisement was published in a local newspaper.
6. The submission period was later extended to the 06 November 2015 after staff prepared and distributed a fact sheet on the proposal and circulated it to landowners within a 3 kilometre radius after concerns were raised about the cumulative impact of existing and proposed activities. A total of six submissions were received, three of which raised concerns to the proposal, and three which had no objections.

DISCUSSION

7. The proposal seeks to extract gravel and clay from the subject site and truck the material off site for use within the Albany area.
8. The application is generally consistent with the City of Albany Extractive Industry and Mining local planning policy. Compliance with the policy is discussed in paragraph 48 below.
9. The total proposed extraction area is 3.5ha in area. The total area open at any time would not exceed one hectare.
10. It is estimated that the total resource available is 50,000m³ of gravel and 15,000m³ of clay, estimating the lifespan of the pit to be 3-5 years.
11. Surface runoff will be directed to the dam to the east, away from the river.
12. The proposed extraction area is situated to the east of the lot within a previously cleared portion of land which formed part of a blue gum plantation.
13. The proposed (approximate) setbacks are as follows:
 - 35m from the eastern boundary
 - 1100m from the northern boundary and
 - 1500m from both the southern and western boundaries.
14. The proposed extraction area is located approximately 1500m from the Kalgan River (situated to the west).
15. The closest residence is located to the east, approximately 2.1km away, which exceeds the required 200 meters specified within the Extractive Industry and Mining Policy.
16. Access to and from the site will be from the existing crossover which is located on the unsealed section of Mindijup Road.
17. The proponents have provided the following (summarised) outline of how the proposed extractive industry will operate:
 - Strip topsoil and store to the sides of the pit
 - Rip and push the lateritic gravel with a large bulldozer
 - Load out the resulting gravel with semi-trailers and road trains
 - Progressively rehabilitate the pit as stockpiled material is removed
18. A total of six submissions were received from members of the public during the advertising period, three of which objected to the proposal, and three which did not object, however requested that the City consider widening and sealing the unsealed portion of Mindijup Road.

19. The submissions primarily relate to concerns over the cumulative impact of activities on the site, increased heavy haulage traffic, impact on infrastructure, and the condition of the unsealed section of Mindijup Road due to the existing operations. One submission also questioned the lack of scrutiny by the City of Albany and raised concerns that the operations are not run in accordance with the approvals.
20. The main concerns raised and the proposed mitigation measures will be addressed via the headings below.

Increased Traffic, the Impact on Infrastructure and the Unsealed Portion of Mindijup Road

21. Three submissions indicated that the unsealed section of Mindijup Road was not adequately constructed to cater for heavy traffic. The submissions also states that the unsealed section of Mindijup Road is in a poor state as a result of current activities onsite. There is also a further concern that this road will deteriorate further with frequent additional use by heavy vehicles as a result of further uses being applied for.
22. One submission suggested that the impact of additional traffic and the suitability of the existing road system in the area were also of concern.
23. The proponents have stated that the estimated number of truck movements associated with this use would be an average of 5 trucks (or 10 movements) per day. It should also be noted that the number of vehicle movements associated with extractive industries is seasonal and vary according to construction demand.
24. The vehicles would exit the site and travel south onto Mindijup Road then south-west along Palmdale Road to reach Chester Pass Road.
25. These vehicle movements would be undertaken by six wheel trucks and semi tippers. These vehicles are permitted on public roads without special permits and are referred to 'as of right' vehicles.
26. An 'as of right' vehicle is defined as any vehicle that is not a Restricted Access Vehicle. Rigid trucks and semi-trailers are not classed as Restricted Access Vehicles and do not require any permits or exemptions from regulatory requirements.
27. In terms of restricting the use of Mindijup Road and Palmdale Road, the City of Albany does not have the statutory authority to control the direction of vehicles which are classified as 'as of right' vehicles by Main Roads WA.
28. The applicant has provided a traffic log generated from the GPS which shows all traffic movements within the last 3 months for all operations. The full log is attached to the report however is summarized below:
 - 674 total vehicle movements within the last three months (or 337 vehicles) or 11.2 vehicle movements per day (excluding Saturday and Sunday's as there are generally no operations apart from the occasional Saturday).
 - If the service truck which is not a heavy vehicle and Site Supervisors movements are excluded, the average vehicle movements are reduced to 7.6 movements a day.
29. The applicant has advised that the two proposals will not affect the daily vehicle movements due to the restricted number of trucks available by the company. It is also not the intention or likely for all the uses to be operational on the same day.
30. Officers recommend that a standard condition requiring the proponent to rectify any damage to Mindijup Road should be applied.
31. In consultation with the City of Albany Engineering Department, officers recommend as a condition of approval that the unsealed portion of Mindijup Road be widened and sealed at the developers cost.

Cumulative Impact

32. A number of existing uses already occur on the lot. The uses include; a Tyre Disposal, Compost Manufacturing, Sand Extractive Industry, Granite Extractive Industry and a Charcoal Plant.
33. Previous or expired uses include Asbestos Disposal and Extractive Industry (Sand).
34. The lot to the immediate north and east are currently used as blue gum plantations, with the exception of a portion of the eastern boundary which is mostly pasture.
35. The lot to the immediate south of the subject lot is the Mineral Sands (Exploration) Mine.
36. As the activities are well screened from Mindijup Road and adjoining properties, it is considered that the biggest cumulative impact would be in relation to the traffic. This impact can be dealt with through conditions as discussed in point 30 and 31.

Lack of scrutiny and concerns that the operations are not run in accordance with the approvals

37. Extractive industries are subject to an annual inspection prior to the licence renewal. This process ensures work is being undertaken in accordance with the approved plan and planning conditions and that rehabilitation work is correctly carried out. If a breach is found, the licence is not renewed until such a time as the breach has been rectified.
38. A site visit on 09 November 2015 by City staff confirmed that all approvals were in accordance with the planning approvals and no breaches were found.
39. Council is now requested to consider the submissions received during the public advertising period and determine whether to grant development approval.

GOVERNMENT & PUBLIC CONSULTATION

40. The proposal was advertised for public comment for a period of 21 days, in accordance with clause 9.4 – *Advertising of Applications of Local Planning Scheme No. 1*. A sign was placed on site, an advert was published in a local newspaper and surrounding landowners were directly notified in writing.
41. In addition to the above, the City prepared and distributed a fact sheet for the proposal to all landowners within a 3 kilometre radius of the site. The submission period was extended to the 6 November 2015.
42. A total of six submissions were received during the advertising period. Three submissions objected to the proposal and three did not object, but requested that the City seal the unsealed portion of Mindijup Road. Staff comments and recommendations are provided in the attached schedule, while the broad issues are discussed in paragraphs 20 – 40 above.
43. In addition to the public consultation, the proposal was also referred to the Department of Water due to the proximity to the Kalgan River.
44. Advice was received from the Department of Water stating that they had no objections to the proposal, however surface runoff should be contained onsite and directed to the holding dam through using cut off drains around the pit.

STATUTORY IMPLICATIONS

45. Extractive Industry is classified as an 'A' use within the 'Priority Agriculture' zone under *Local Planning Scheme No. 1*, meaning that the use is not permitted, unless the local government has exercised its discretion by granting planning approval after giving special notice in accordance with clause 9.4 of the Scheme.
46. Voting requirement is a **Simple Majority**.

POLICY IMPLICATIONS

47. The primary assessment criteria for the application are set out in the City of Albany *Extractive Industry and Mining* local planning policy.
- a. The proposal is classified as a class 2 extractive industry under the policy. Class 2 extractive industries have site extraction areas of between 0.75 and 3 hectares with a maximum depth of 3 metres.
 - b. The Policy requires that buffer distances are to be in accordance with the setbacks outlined within the Environmental Protection Authority requirements. The Environmental Protection Authority’s *Separation Distances between Industrial and Sensitive Land Uses* guidelines do not set out a specific buffer for this type of extraction, however the policy states 200 meters should be achieved between dwellings not on the subject property. Although this buffer is not contained within the lot boundaries, the closest dwelling is approximately 2.1 kilometres from the nominated extraction area, and is therefore compliant with the intent of the *Separation Distances between Industrial and Sensitive Land Uses* guidelines and Policy.
 - c. The proposed pit is compliant with the provision of the policy that requires pits be located 30m from any public road.
 - d. The proposed pit area complies with the requirement of being set back a minimum of 50 meters from a watercourse or body. The proposed setback from the Kalgan River is approximately 1500 meters.
 - e. The operations will not result in the removal of remnant vegetation

RISK IDENTIFICATION & MITIGATION

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

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|---|------------|-------------|---------------|--|
| <p>Organisational Operations and Reputation <i>The proposed use could give rise to unacceptable detrimental impacts on the amenity of the area.</i></p> | Possible | Moderate | Medium | <p><i>Mitigation of impacts to be achieved through adoption and enforcement of conditions.</i></p> |

FINANCIAL IMPLICATIONS

49. All costs associated with the development will be borne by the proponent.
50. 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

51. Council can use its discretion to approve or refuse the proposal. An applicant aggrieved by a decision or condition may apply for a review to the State Administrative Tribunal, in accordance with Section 252 of the *Planning and Development Act 2005*.
52. 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

53. The extraction area is situated to the west of the subject lot. The Kalgan River is located approximately 1500 metres from the proposed site (to the west). There proposed extraction area is located in a cleared portion of land which was previously used as a blue gum plantation.

ALTERNATE OPTIONS

54. Council has the following alternate options in relation to this item, which are:

- To determine that the proposed use is unacceptable and to resolve to refuse the application; or
- To alter, amend, remove or add conditions to the approval to address potential impacts from the development.

SUMMARY CONCLUSION

55. The proposal is considered to be consistent with the objectives of the zone and the requirements of the City of Albany’s *Extractive Industry and Mining* local planning policy.
56. The matters raised in the public submissions received during the advertising period have also been broadly addressed by the proponent and can be mitigated through the application of appropriate planning conditions and the yearly licence renewal process.
57. It is therefore recommended that Council approve the proposed development, subject to the conditions provided.

| | | |
|-----------------------------------|---|--|
| Consulted References | : | <ol style="list-style-type: none"> 1. <i>Local Planning Scheme No. 1</i> 2. <i>Albany Local Planning Strategy 2010</i> 3. <i>City of Albany Extractive Industries and Mining local planning policy</i> 4. <i>Environmental Protection (Noise) Regulations 1997</i> 5. <i>Environmental Protection Authority Separation Distances between Industrial and Sensitive Land Uses</i> |
| File Number (Name of Ward) | : | A215306(Kalgan Ward) |
| Previous Reference | : | |

PD108: APPROVAL OF LOCAL DEVELOPMENT PLAN NO. 2, LOT 1005, 35 CATALINA ROAD, LANGE

Land Description : Lot 1005, 35 Catalina Road, Lange 6330
Proponent : Edge Planning
Owner : Nigel and Leah Ryde
Attachments : 1. Location plan
 2. Local Development Plan No. 2 report
Supplementary Information & Councillor Workstation: : NIL
Report Prepared by : Senior Planning Officer (Alex Bott)
Responsible Officer : Executive Director Planning and Development Services (D Putland)

Responsible Officer’s Signature:

STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. When exercising its discretion in relation to planning matters, the pertinent strategic document is the *Albany Local Planning Strategy*.
3. The proposal is consistent with the strategic direction set in the *Albany Local Planning Strategy*.

Maps and Diagrams:



In Brief:

- A Local Development Plan (LDP) has been prepared to guide the development of Lot 1005, 35 Catalina Road, Lange 6330.
- The LDP proposes 35 Residential Lots.
- The draft Local Development Plan was advertised for public comment. A total of one submission was received.
- Council is requested to approve the Local Development Plan, without modification.

RECOMMENDATION

PD108: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council resolves to APPROVE Local Development Plan No.2 without modification.

BACKGROUND

4. The City of Albany has received an application for a Local Development Plan to provide development guidance and standards for the development of Lot 1005, 35 Catalina Road, Lange 6330.
5. The subject lot is located at 350m to the east of Chester Pass Road, approximately 4km north of the Albany town centre.
6. The surrounding land is zoned Neighbourhood Centre, Residential and Future Urban. The area has a developed shopping centre on the adjoining property to the east.
7. Council previously approved 86 Grouped dwellings on the site at the October, 2011 Ordinary Council Meeting.

DISCUSSION

8. The subject Lot is 1.62 hectares in size and zoned Future Urban under *Local Planning Scheme No. 1*.
9. The LDP will enable the creation of 35 Residential Lots, with a prevailing average lots size of 400m².
10. The application was advertised for public comment, with one submission received. The submission is discussed and addressed within the Public comment and Government Consultation section of this report.
11. The property is also subject to the *Catalina Central Planning Framework (CCPF)* and associated Structure Plan. The CCPF identifies the site as medium density residential development. In addition to this designation, the CCPF also identifies the site as a Special Development Area.
12. One of the primary aims of the Special Development Area is to ensure compatibility with the nearby Shopping Centre. The Special Control area provides multiple options for managing noise impacts from the shopping centre on the residential development area. The proponent has elected to develop a solid noise wall along the length of the western boundary of the subject property to mitigate noise issues. The design criteria for the site identify this as a suitable mitigation measure.
13. In addition to the above, it is of note that as part of the 2011 grouped dwelling development, an acoustic assessment of the nearby shopping centre was undertaken. It was determined

that the noise output of the Shopping Centre was in accordance with the *Environmental Protection (Noise Regulations) 1997*. The proposed noise wall will therefore reduce the noise impact from the shopping centre on the proposed residential area further.

14. It is necessary to note that under the recently introduced Planning and Development (Local Planning Schemes) Regulations 2015 Local Development plans are no longer binding statutory documents, as detailed within clause 56(1) below;

“A decision-maker for an application for development approval in an area that is covered by a local development plan that has been approved by the local government must have due regard to, but is not bound by, the local development plan when deciding the application.”

15. Therefore, the LDP has the function of providing a number of Residential Design Codes (R codes) guidance statements to vary 'deemed to comply' provisions and also provide development standards to be used and applied during the assessment and determination of planning applications for the site.
16. Future development of the site will require the lodgement of a development application. The development application would be assessed against the City of Albany Planning framework and the LDP adopted on the site.
17. The City planning Staff support the Local Development Plan, as it is consistent with the current strategic direction set in the *Albany Local Planning Strategy* and the relevant provisions of *Local Planning Scheme No. 1* and the City of Albany's Catalina Central Planning Framework.

GOVERNMENT & PUBLIC CONSULTATION

18. The Local Development Plan was advertised from 3 November 2015 to 18 November 2015 by direct referral to adjoining landowners.
19. One submission was received during the consultation process.
20. The submission raised the following concerns;
- Deficit in parking of nearby dwellings;
 - Request for sand dust be kept to a minimum during construction; and
 - Requesting uniform fencing for the development.
 - Request the possibility of having no homes west rental housing within the Brooks garden area.

Deficit in parking of nearby dwellings

21. The dwellings mentioned within the submission are subject to the R Codes and require two bays to be provided per dwelling. If there is parking issues occurring, the City of Albany has the ability to enforce parking infringements to ensure all parking occurs on property boundaries and does not affect the safety or amenity of the area. The LDP before Council does not impact on the parking requirements or compliance of adjoining properties.

Request for sand dust be kept to a minimum during construction

22. The planning/building and subsequent subdivision process provides the opportunity for dust suppression measures to be applied to development and dust suppression conditions are applied on all of the aforementioned stages. The responsibility lies with developers to ensure that appropriate dust mitigation measures are implemented in response to site conditions and weather.

Requesting uniform fencing for the development

23. The LDP discourages fencing within the front setback area. If fencing is proposed by a landowner, the general R Codes provisions apply. Generally uniform fencing is only applied to properties which directly adjoin public open space areas. Uniform fencing will be constructed by the developer along the proposed Public Access Way.

Request the possibility that there be no Homes west rental housing within the Brooks Garden area.

24. The City of Albany does not have the ability to control the location of Government housing.

STATUTORY IMPLICATIONS

25. Local Development Plans undergo a statutory process in accordance with Part 6 of *Planning and Development (Local Planning Schemes) Regulations 2015*
26. Clause 52 (1) of the *Planning and Development (Local Planning Schemes) Regulations 2015* allows Council to approve the Local Development Plan with or without conditions.
27. The approval of a local development plan has effect for a period of 10 years commencing on the day on which the local government approves the plan
28. Voting requirement for this item is **SIMPLE MAJORITY**

POLICY IMPLICATIONS

29. There are no policy implications pertaining to this item.

RISK IDENTIFICATION & MITIGATION

30. The risk identification and categorisation relies on the City's Enterprise Risk Management Framework.

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|---|------------|-------------|---------------|--|
| <p>Organisational Operations and Reputation <i>Noting that Local Development Plans are no longer binding, the LDP may not be given due regard by developers during the development application process.</i></p> | Likely | Moderate | Medium | <p><i>The Local Development plan is based on sound planning principles with logical variations to the Residential Design codes and associated development standards. Any further variation or request to deviate from the LDP would be assessed against intentions of the LDP and also the full statutory framework pertaining to the site, including the CCPF and Local Planning Scheme No.1.</i></p> |

FINANCIAL IMPLICATIONS

31. There are no financial implications related to the item.

LEGAL IMPLICATIONS

32. There are no legal implications related to the item.

ENVIRONMENTAL CONSIDERATIONS

33. There are no additional environmental controls on the property other than those contained within *Local Planning Scheme No. 1*.

ALTERNATE OPTIONS

34. Council has the following alternate option in relation to this item, which are:
- To resolve to approve the Local Development Plan subject to further conditions; or
 - Not to approve the Local Development Plan.

SUMMARY CONCLUSION

35. The matters raised in the submission can be adequately addressed through the Local Development Plan, or can be controlled through the application of planning conditions at the subdivision stage.
36. It is recommended that Council approve Local Development Plan No.1, subject to conditions.

| | | |
|-----------------------------------|---|--|
| Consulted References | : | <ol style="list-style-type: none"> 1. <i>Local Planning Scheme No. 1</i> 2. <i>Albany Local Planning Strategy 2010</i> 3. <i>SPP 3.1 - Residential Design Codes</i> 4. <i>City of Albany Strategic Community Plan 2023</i> 5. <i>City of Corporate Business Plan 2013-2017</i> 6. <i>Catalina Central Planning Framework</i> |
| File Number (Name of Ward) | : | LDP2 (Yakamia Ward) |
| Previous Reference | : | |

**PD109: SUPPORT OF SCHEME AMENDMENT – LOTS 1 AND 973
NANARUP ROAD, LOWER KING**

Land Description : Lots 1 and 973 Nanarup Road, Lower King
Proponent : Ayton Baesjou Planning
Owner : S C Lucas, G A & P M Clark
Business Entity Name : Nil
Attachments : 1. Schedule of Submissions and Modifications
: 2. Albany Local Planning Strategy Excerpts
: 3. Local Planning Scheme Amendment No. 7 report
Supplementary Information & Councillor Workstation: : Copy of submissions
Report Prepared by : Planning Officer (C McMurtrie)
Responsible Officer : Executive Director Planning and Development Services (D Putland)

Responsible Officer's Signature:

STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. When exercising its discretion in relation to planning matters, the pertinent strategic document is the *Albany Local Planning Strategy*.
3. This proposal is consistent with the strategic direction set in the *Albany Local Planning Strategy*.
4. Maps and Diagrams:



In Brief:

- A request has been submitted for Council to initiate a Local Planning Scheme Amendment to rezone Lots 1 and 973 Nanarup Road, Lower King from the 'General Agriculture' zone to the 'Rural Residential' zone and designating a portion of Lot 973 as an 'Additional Use Site' for the purpose of holiday accommodation.
- The local planning scheme amendment has been advertised for public comment and referred to public authorities in accordance with the requirements of the *Town Planning Regulations 1967*.
- City planning Staff support the proposal, as it is consistent with the current strategic direction set by the *Albany Local Planning Strategy* and State Planning Policy 2.5.
- Council is requested to consider the submissions received following public advertising and referral and to support the local planning scheme amendment.

RECOMMENDATION

PD109: RESPONSIBLE OFFICERS RECOMMENDATION

THAT Council, pursuant to section 75 of the *Planning and Development Act 2005*, resolves to support, with modifications, Amendment No. 7 to City of Albany Local Planning Scheme No. 1 for the purposes of:

- (1) Rezoning Lots 1 and 973 Nanarup Road, Lower King from the 'General Agriculture' zone to the 'Rural Residential' zone and incorporating them within area No. RR11, as set out in Schedule 14 – Rural Residential Zone of the Scheme text;**
- (2) Designating a portion of Lot 973 as an Additional Use Site and incorporating it within Schedule 2 – Additional Uses of the Scheme Text; and**
- (3) Amending the Scheme Maps accordingly.**

AND

That Council, pursuant to Schedule 2, Part 4, cl. 20 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, resolves to recommend to the Western Australian Planning Commission that the proposed structure plan for Lots 1 and 973 Nanarup Road, Lower King should be approved, subject to modification to:

- (1) Identify a '10-20-10' buffer on proposed lots 1, 2, 3, 4, 5, 24 and 29; and**
- (2) Identify an 'Additional Use' site for 'Aquaculture' over Lot 1 Nanarup Road.**

BACKGROUND

5. Local Planning Scheme No. 1 was gazetted on 28 April 2014 and consists of the Scheme Text and the Scheme Maps. The Scheme divides the Local Government district into zones to identify areas for particular uses and identifies land reserved for public purposes. Most importantly, the Scheme controls the types of uses and development allowed in different zones. There are particular controls included for heritage and special control areas. The Scheme Text also sets out the requirements for planning approval, enforcement of the Scheme provisions and non-conforming uses.

6. Amendment No. 7 has been prepared to seek the rezoning of Lots 1 and 973 Nanarup Road, Lower King from the 'General Agriculture' zone to the 'Rural Residential' zone and the designation of an additional use site over a portion of Lot 973.
7. Council has currently imposed a moratorium on the initiation of significant Local Planning Scheme amendments to rezone agricultural land, or intensify adjacent sensitive land uses, other than those that promote ongoing productive use of the land. However, this proposal does not conflict with the moratorium, as it was initiated by Council at its Ordinary Meeting on 24 February 2015, for the purpose of public advertising and referral to public authorities, prior to the introduction of the moratorium.
8. The 'Rural Residential' zone is intended to provide for large residential lots of between 2000m² and one hectare in area and is considered a form of rural living.
9. The subject lots are located approximately 11.1 kilometres north-east of Albany town centre and have an area of approximately 60.7 hectares.
10. The land to the east and west of the subject lots is zoned 'Rural Residential', while the land to the south, on the opposite side of Nanarup Road, is zoned 'Special Residential' and 'General Agriculture'. The land to the north is also zoned 'General Agriculture'.
11. The amendment document states that:

"In accordance with ALPS, it is proposed to rezone Lot 973 Nanarup Road from the 'General Agriculture' zone to 'Rural Residential' zone. As the adjoining lots in the south-west corner, Lot 1, is a defacto rural residential lot, it has also been included in the rezoning proposal at the request of the City."

"A 4 ha lot is proposed in the north east corner of the property for short stay tourist accommodation. The elevated land, attractive views over Johnson Creek and trough to Oyster Harbour, together with the remnant vegetation, provide an opportunity to provide an alternative land use to rural residential development. It is noted that Nanarup Road is a significant tourist route, providing access to attractions around King River, Oyster Harbour, the Kalgan River, Nanarup and Two Peoples Bay. It is recommended that up to twelve chalets could comfortably be accommodated on the site with appropriate setback from the remnant vegetation."

DISCUSSION

12. The City planning Staff support the rezoning of Lots 1 and 973 Nanarup Road, Lower King from the 'General Agriculture' zone to the 'Rural Residential' zone and the designation of a portion of Lot 973 as an 'Additional Use Site' for holiday accommodation, as it is consistent with the current strategic direction set by the *Albany Local Planning Strategy* (see Attachment 1) and State Planning Policy 2.5.
13. The western portion of the land, where the majority of the proposed lots would be located, is identified in the *Albany Local Planning Strategy* as suitable for Rural Residential Development. The lower-lying land adjacent to Johnston Creek is not identified in the *Albany Local Planning Strategy* for development and has been designated as a development exclusion area. This is proposed due to poor land capability to support development, protection of the creekline with adequate development setbacks and to protect a view corridor across Lot 973.
14. Similarly, the proposed lots on the eastern extent of Lot 973 are not identified in the *Albany Local Planning Strategy* for development. However, the remaining land would not be large enough to host a productive agricultural use. Its development for Rural Residential purposes would also be consistent with the adjacent land to the eastern side of Mead Road.

15. It is proposed to designate the largest of the proposed lots, at four hectares, as an Additional Use site for holiday accommodation. It is recognised that potential exists for the development of short-stay accommodation in this location due to its amenity, rural setting and proximity to a primary tourist route that connects Albany to Gull Rock National Park, Nanarup Beach, Two People's Bay and South Coast Highway.
16. The Department of Agriculture and Food WA have stated that they do not support the proposed amendment, as a proportion of the land is classed as Priority Agricultural Land under the Lower Great Southern Strategy, which infers that it is of good to high quality for intensive agriculture. The Department has also noted that the proposal includes a detailed land use capability assessment, which states that the overall analysis of the agricultural capacity for Lot 1 and 973 is generally fair to poor, with risk for nutrient export from the pale sands. However, the Department considers that the semi-detailed paddock scale mapping does not contradict the regional scale Priority Agricultural Land identification and that the land at present provides good quality grazing and agistment, because of a combination of good and stable soils together with access to consistently available high quality water, which presents excellent conditions for a range of agricultural pursuits including good pasture growth and production.
17. The Department does acknowledge that irrespective of the quality of the land, there are likely to be challenging issues for intensive agriculture on Lots 1 and 973, due to the risks of nutrient export and the 'sandwiched' location of the property. However, the Department considers that the subject land presents a 'unique situation' for the Albany area, in that it has the combination of consistently available and good quality water in association with generally good quality soils, which is a rare and shrinking resource in the Albany area and would be suitable for strawberry product and/or other forms of perennial horticulture.
18. The Department also notes that there is an excess of small rural land holdings currently available in Albany, and that rezoning the subject land to allow for further subdivision would add to that oversupply. The Department believes that much infilling could be done within the immediate city area without claiming more good quality agricultural land.
19. While the Department of Agriculture and Food WA's comments are acknowledged, the majority of the subject land has been identified within the Albany Local Planning Strategy for 'Rural Residential' development. Furthermore, the Priority Agriculture Land identified by the Department extends to two bands across the subject land, extending from 100 to 200 metres in width, which is relatively insignificant in the context of the wider area. Any intensive agricultural use would also risk nutrient export into Johnston Creek.
20. The Department of Health has indicated that existing and potential agricultural activities on surrounding land may impact on the proposed development, particularly where spray drift may result from chemical applications. The Department has recommended that the amendment acknowledge and adhere to the necessary buffer separation distances between agricultural and sensitive land uses.
21. City Staff support the Department of Health's advice and recommend that a '10-20-10' buffer (a 10 metre cleared fire break either side of a 20 metre band of vegetation) is accommodated on each of the proposed lots bounding the 'General Agriculture' zoned land to the north of Lot 973. This will mitigate the potential impact of any spray drift resulting from agricultural activities on the adjoining land. It is recommended that a new provision No. 6 is added under Rural Residential zone RR11 within Schedule 14 – Rural Residential Zone of *Local Planning Scheme No. 1*, requiring that a notification, pursuant to section 165 of the *Planning and Development Act 2005* is to be placed on the certificates of title of proposed lots 1, 2, 3, 4, 5, 24 and 29 advising of the existence of existing agricultural activity.

22. The Department of Mines and Petroleum have noted that there is a current extractive industry licence on Lot 3, to the north of the subject land. The current extraction area lies about 300 metres to the north of the subject land and the Department has expressed concerns that their relative proximity may lead to issues associated with noise, dust and road traffic. The Department has highlighted that the Environmental Protection Authority guidelines recommend a 300 to 500 metre separation distance between sand extraction and sensitive land uses, depending on size, and has requested that the City takes the staging plans in the extractive industry proposal and the Environmental Protection Authority guidelines into account when assessing this amendment.
23. City Staff have noted the presence of the current extractive industry on the adjoining lot to the north and are mindful of potential land use conflict. The extractive industry approval indicates that the extraction area will not extend within 300 metres of the subject lots. The 300 metre separation, combined with the '10-20-10' buffer to mitigate impact from agricultural activity will also mitigate impacts from the extractive industry. It is also recommended that a new provision No. 7 is added under Rural Residential zone RR11 within Schedule 14 – Rural Residential Zone of *Local Planning Scheme No. 1*, requiring that a notification, pursuant to section 165 of the *Planning and Development Act 2005* is to be placed on the certificates of title of the proposed lots within 500 metres of the existing extractive industry, advising of its existence.
24. The Department of Water has recommended that a suitable foreshore reserve is provided to Johnston Creek. The Department advises that the foreshore reserve should be determined through a biophysical assessment of the site and should be ceded to the Crown and managed as public open space.
25. The Department acknowledges that there is typically no requirement to give up public open space as a condition of rural residential development; however, they considers that the management of the waterway by the local government would provide better environmental outcomes for Johnston Creek and improved recreational and amenity outcomes for the local community. The Department also considers that there is an opportunity to create a green corridor to the harbour that can be completed when the downstream property is developed.
26. The Department has stated that the foreshore reserve will require the preparation of a foreshore management plan at the time of subdivision, which should identify restoration, public access and the on-going management requirements of the site.
27. City Staff acknowledge the Department of Water's concerns. However, the ceding of foreshore reserves to the Crown typically results in their vesting with the City of Albany, creating a significant maintenance burden. City Staff would support the Department's recommendation that a foreshore management plan be prepared at the time of subdivision and implemented by the two landholders who will assume responsibility for the management of the foreshore.
28. The owner of Lot 1 Nanarup Road has objected to the proposal, stating that he has no intention of rezoning his lot from 'General Agriculture', as he has plans to set up a small aquaponics/aquaculture business on the lot. He has also advised that he may wish to build a larger shed or extend the existing shed on the lot and does not want to be precluded from doing this. He has also stated that he considers the adjoining Lot 973 to be suitable for a fish hatchery or aquaculture, owing to the abundance of water on the lot and that to subdivide the lot would be a wasted opportunity. He notes that the lot could also continue being used for livestock grazing, as it has a high livestock carrying capacity, and that the proposed Additional Use site for tourist accommodation could compliment ongoing agricultural use, while being further supplemented by a café or restaurant. He also states that he considers that only "*infertile, sandy/rock properties should be considered for subdivision, for example at Bon Accord Road*" and

raises concern that traffic congestion on Nanarup Road is becoming more significant due to ongoing subdivision within the area.

29. While City Staff acknowledge this position, the exclusion of Lot 1 Nanarup Road from the proposed rezoning would create an isolated 'General Agriculture' zoned lot, completely surrounded by 'Rural Residential' and 'Special Residential' zoned land, which is considered to be a poor planning outcome that could lead to land use conflict. It is also noted that under the provisions of the City's *Non-habitable Structures* local planning policy, the same restrictions on the size of non-habitable structures would apply to Lot 1 Nanarup Road, regardless of whether it is zoned 'General Agriculture' or 'Rural Residential'. In view of these factors, City Staff would recommend that the proposal is modified to include an Additional Use site 'AU32' within Schedule 2 – Additional Uses of *Local Planning Scheme No. 1*, to designate Lot 1 Nanarup Road with the additional use of 'aquaculture' and a condition requiring that development shall be generally in accordance with the structure plan endorsed by the Western Australian Planning Commission, clause 5.5.13 and Schedule 14 – Rural Residential Zone RR11 of *Local Planning Scheme No. 1*.
30. The comments regarding the rezoning and subdivision of Lot 973 are noted; however, this land has been mostly identified within the Albany Local Planning Strategy for rural residential development, while the land along Bon Accord road is identified for general agriculture. It should also be highlighted that there are identified mineral deposits along Bon Accord Road and that extractive industries in the locality have led to land use conflicts with nearby residents.
31. In terms of land use on Lot 973, the provisions of Rural Residential area RR11 already list 'Restaurant' as a discretionary land use, which presents an opportunity for precisely the type of enterprise mentioned in the submission.
32. It is acknowledged that subdivision does lead to increased traffic; however, the level of traffic generated by the proposal is not considered sufficient enough to warrant significant road upgrades.
33. Great Southern Grammar has indicated support for the proposal in principle and has indicated that its School Master Plan anticipates a ring road through the school site with an intersection adjacent to the intersection of Nanarup and Mead Roads. It has been suggested that consideration is given to the installation of a roundabout at this location. However, in the absence of any firm proposal from the Great Southern Grammar, the City cannot impose such a requirement at this time.
34. The remaining public submissions raise objection due to a perception that the rezoning of land only financially benefits the landholder and the City of Albany, the proposed road linkages to the rural residential area to the west (Sheringa Park), the likely increase in traffic and noise and the potential for effluent disposal systems to impact on the creek and its environs.
35. While it is certainly true that the landowner will benefit financially from the subdivision of land, the City of Albany will only see a modest rates rise, while simultaneously becoming responsible for waste collection and the maintenance of additional roads and drainage infrastructure.
36. The proposed road linkages to Sheringa Park are for permeability and to provide a secondary means of access/egress in the event of a bushfire emergency. It is unlikely that these road connections would lead to a significant increase in traffic passing through Sheringa Park, as they would most likely carry local traffic between Chester Pass and Bon Accord Roads and the proposed development. The proposed development will not create any noise in excess of that normally experienced in a rural lifestyle development.

37. Regarding the potential impact of effluent disposal systems on the creek and its environs, *Local Planning Scheme No. 1* requires “the use of alternative treatment effluent disposal systems, in the following situations:
- (a) Where the setback requirements of clause 5.3.6 cannot be achieved;
 - (b) Where soil conditions are not conducive to the retention of nutrients on site;
 - (c) In low lying areas; and
 - (d) In areas where there is a perched winter water table.”
38. The Lower Kalgan Progress Association has objected to the proposal, highlighting that “with over 50 years’ supply (at our current growth rate) of lots currently available for development, there is no demonstrated demand for permitting this development and extending the existing development front”. The Progress Association have also expressed concern that the lower lying portion of the lot would be split between nine lots and how the management of these lots may impact on the creek and its environs.
39. While it is acknowledged that there is a significant supply of land available for housing within the City of Albany, the majority of the subject land has been identified for rural residential development within the *Albany Local Planning Strategy* and can be considered an infill development between the existing ‘Rural Residential’ zoned land at Sheringa Park and that to the east along Mead Road.
40. In terms of the fragmentation of the lower lying part of the lot, it must be noted that only two lots encompass the creekline, reducing the number of landowners responsible for the management of the foreshore. The implementation of a foreshore management plan, in accordance with the recommendation of the Department of Water, should ensure effective foreshore management on an ongoing basis.
41. Overall, it is considered that the proposed development represents a final ‘Rural Residential’ zoned infill in the established rural residential precinct that covers much of the locality and that the various concerns and objections raised can be managed by appropriate planning mechanisms.

GOVERNMENT & PUBLIC CONSULTATION

42. The amendment was advertised in accordance with the requirements of the *Town Planning Regulations 1967* from 30 March 2015 to 18 June 2015 by placement of a sign on-site, direct referral to affected and adjoining/nearby landowners and public authorities, and advertisement in the local newspaper.
43. Sixteen (16) submissions were received from public authorities and adjoining landowners and are summarised in the attached Schedule of Submissions. Staff comments and recommendations are also provided in the schedule and the broad issues are discussed in paragraphs 15 and 40 above.

STATUTORY IMPLICATIONS

44. Scheme amendments undergo a statutory process in accordance with the *Planning and Development Act 2005* and *Planning and Development (Local Planning Schemes) Regulations 2015*, which superseded the *Town Planning Regulations 1967* on 19 October 2015.
45. Section 75 of the *Planning and Development Act 2005* allows a local government authority to amend its local planning scheme with the approval of the Minister for Planning.
46. Regulation 50(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015* allows Council to support a standard amendment, with or without modification.

47. Regulations 79(2) and 80 of the *Planning and Development (Local Planning Schemes) Regulations 2015* require that any subdivision guide plan already in preparation is to be taken to be a structure plan under these regulations, and that any step taken under the Act and in accordance with the repealed regulations or a State planning policy before commencement day in the preparation of a planning instrument is to be taken to be a step taken in the preparation of a planning instrument of that type under these regulations.
48. In view of this change, it would be necessary for the subdivision guide plan included as a part of this scheme amendment to be referred to the Western Australian Planning Commission for consideration as a structure plan. Provision is made in the Officer's recommendation for this process to continue.
49. Voting requirement for this item is **SIMPLE MAJORITY**

POLICY IMPLICATIONS

50. The proposal is considered to be consistent with the key policy measures identified in Western Australian Planning Commission State Planning Policy 2.5 – *Agriculture and Land Use Planning*.
51. State Planning Policy 2.5 was gazetted in 2012 and has provided a comprehensive review and refinement of the previous Development Control Policy 3.4 – *Rural Land Use Planning* (1989). The Western Australian Planning Commission and Local Government are required to have regard to State Planning Policy 2.5 in planning for the development of rural areas.
52. The key objectives of State Planning Policy 2.5 are summarised as follows:
 - a) To protect rural land from incompatible uses by:
 - i) Requiring comprehensive planning for rural areas;
 - ii) making land use decisions for rural land that support existing and future primary production and protection of priority agricultural land, particularly for the production of food; and
 - iii) Providing investment security for the existing and future primary production sector.
 - b) To promote regional development through provision of ongoing economic opportunities on rural land.
 - c) To promote sustainable settlement in, and adjacent to, existing urban areas.
 - d) To protect and improve environmental and landscape assets.
 - e) To minimise land use conflicts.
53. The overarching policy requirements are:
 - a) land use change from rural to all other uses is to be planned and provided for in a planning strategy or scheme;
 - b) land identified as priority agricultural land in a planning strategy or scheme is to be retained for that purpose;
 - c) beyond its principle function for primary production, rural land is also required for public purposes, natural resource management, biodiversity conservation and protection of landscapes and views;

- d) the use of rural land for intensive or emerging primary production land uses does not warrant creation of new or smaller rural lots on an unplanned, ad hoc basis; and
- e) Creation of new rural lots will be by exception and in accordance with Development Control Policy 3.4 – *Subdivision of Rural Land*, or planned in a strategy or scheme.

RISK IDENTIFICATION & MITIGATION

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

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|---|-----------------|--------------|---------------|--|
| Organisational Operations and Reputation <i>Supporting this proposal could lead to other landowners seeking to rezone agricultural land for rural residential purposes.</i> | <i>Possible</i> | <i>Minor</i> | <i>Medium</i> | <i>The ALPS, as the principal land use planning strategy for the City, would guide Council’s decision-making in other instances.</i> |
| Organisational Operations and Reputation <i>The proposal may not be accepted by the Western Australian Planning Commission or the Minister for Planning.</i> | <i>Possible</i> | <i>Minor</i> | <i>Medium</i> | <i>If not supported by the WAPC or Minister, the amendment will not be progressed and the City will advise the proponent that they may submit a modified proposal.</i> |

FINANCIAL IMPLICATIONS

55. There are no financial implications directly relating to this item.

LEGAL IMPLICATIONS

56. There are no legal implications directly relating to this item.

ENVIRONMENTAL CONSIDERATIONS

- 57. Lot 1 and the western extent of Lot 973 cover a hillside that falls in a moderate slope to the east and south. Much of this hillside is covered by vegetation and a small house stands on the cleared lower slopes just to the south-west of the centre of Lot 973. A house and large shed stand near the top of the slope on Lot 1, amongst the trees.
- 58. Lot 1 levels out at approximately 120 metres north of Nanarup Road, with only a slight fall to the east. The lower reaches of the lot are vegetated and partly occupied by a pond, set back approximately 55 metres from Nanarup Road. Access to the lot is by means of two driveways; one from Milne Close to the west and the other from Nanarup Road.
- 59. Lot 973 levels out around its central axis, with only a slight fall to Johnson Creek, which traverses the lot in a north-north-west to south-south-east direction, approximately 170 metres from the eastern lot boundary. The creekline is edged by a thin band of trees, while most of the lot is cleared. The land in the north-east corner of Lot 973, slopes upward to a stand of trees. The remainder of the lot is dotted with dams, mostly on the lower-lying land around the creek. Access is by means of a track from Nanarup Road at the centre of the lot frontage, which runs to the north, before curving in a north-

westerly direction to the house. A shed stands to the north of the curve in the access track.

ALTERNATE OPTIONS

60. Council has the following alternate options in relation to this item, which are:
- To resolve to support the scheme amendment without modification; or
 - To resolve not to support the scheme amendment and advise the Western Australian Planning Commission, in writing, of the reasons for doing so.

SUMMARY CONCLUSION

61. It is recommended that Council support Local Planning Scheme Amendment No. 7, as the proposal is consistent with the strategic direction currently set within the *Albany Local Planning Strategy* and State Planning Policy 2.5.

| | | |
|-----------------------------------|---|--|
| Consulted References | : | <ol style="list-style-type: none"> 1. <i>Local Planning Scheme No. 1</i> 2. <i>Albany Local Planning Strategy 2010</i> 3. <i>City of Albany Strategic Community Plan 2023</i> 4. <i>City of Corporate Business Plan 2013-2017</i> 5. Western Australian Planning Commission State Planning Policy 1 – <i>State Planning Framework Policy (Variation No. 2)</i> 6. Western Australian Planning Commission State Planning Policy 2.5 – <i>Land Use Planning in Rural Areas</i> |
| File Number (Name of Ward) | : | LAMD7 (Kalgan Ward) |
| Previous Reference | : | OCM – 24/02/2015 – Item PD067 |

**PD110: CONSIDERATION OF SCHEME AMENDMENT – LOT 104
ROCKY CROSSING ROAD, WILLYUNG**

Land Description : Lot 104 Rocky Crossing Road, Willyung
Proponent : Harley Dykstra Pty Ltd
Owner : Achillies Pty Ltd
Business Entity Name : Shuttleworth & Associates; Great Southern Sands;
 Spinifex Crushing & Screening Pty Ltd
Directors : Martin James Shuttleworth
Attachments : 1. Schedule of Submissions and Modifications
 : 2. Proponent’s response to submissions
 : 3. Local Planning Scheme Amendment No. 4 report
Supplementary Information & Councillor Workstation: : Copy of submissions
Report Prepared by : Planning Officer (C McMurtrie)
Responsible Officer : Manager Planning Services (Jan van der Mescht)

Responsible Officer’s Signature:

STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. When exercising its discretion in relation to planning matters, the pertinent strategic document is the *Albany Local Planning Strategy*.
3. This proposal is broadly consistent with the strategic direction set in the *Albany Local Planning Strategy* and State Planning Policies 2.5 and 4.1.

Maps and Diagrams:



In Brief:

- At its Ordinary Meeting on 24 February 2015, Council initiated a local planning scheme amendment to designate an Additional Use site over Lot 104 Rocky Crossing Road, Willyung, to permit the additional uses of plant and equipment storage and maintenance; office (incidental); crushing; and storage of building/construction materials/products, over and above those uses normally permissible in the 'General Agriculture' zone, and amend the Scheme Maps accordingly.
- The local planning scheme amendment was advertised from 30 March 2015 to 11 June 2015 for public comment and referred to public authorities in accordance with the requirements of the *Town Planning Regulations 1967*.
- As the proposal will retain the base zoning over the lot, it will not preclude the future use of the land for agricultural purposes. However, it will allow the relocation of the Great Southern Sands (GSS) group of companies from their current site at John Street, Milpara.
- City planning staff support the proposal, as it is broadly consistent with the current strategic direction set within the *Albany Local Planning Strategy* and State Planning Policies 2.5 and 4.1.
- Council is requested to consider the submissions received following public advertising and referral and to support the local planning scheme amendment.

RECOMMENDATION

PD110: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council, pursuant to section 75 of the *Planning and Development Act 2005*, resolves to support, with modifications, Amendment No. 4 to City of Albany Local Planning Scheme No. 1 for the purposes of:

- (1) Designating an Additional Use Site over Lot 104 Rocky Crossing Road, Willyung including additional uses of Plant and Equipment Storage and Maintenance, Office (Incidental), Crushing, Mobile Asphalt Plant, and Storage of Building/Construction Materials/Products and amending the Scheme Maps accordingly; and**
- (2) Amending Schedule 2 – Additional Uses within the Scheme Text to incorporate provisions relating to Lot 104 Rocky Crossing Road, Willyung (AU31).**

BACKGROUND

4. *Local Planning Scheme No. 1* was gazetted on 28 April 2014 and consists of the Scheme Text and the Scheme Maps. The Scheme divides the Local Government district into zones to identify areas for particular uses and identifies land reserved for public purposes. Most importantly, the Scheme controls the types of uses and development allowed in different zones. There are particular controls included for heritage and special control areas. The Scheme Text also sets out the requirements for planning approval, enforcement of the Scheme provisions and non-conforming uses.

5. Amendment No. 4 has been prepared to seek the designation of an Additional Use site over Lot 104 Rocky Crossing Road, Willyung to permit a number of additional uses, over and above those uses that are normally permissible in the 'General Agriculture' zone.
6. Council has currently imposed a moratorium on the initiation of significant Local Planning Scheme amendments to rezone agricultural land, or intensify adjacent sensitive land uses, other than those that promote ongoing productive use of the land. However, this proposal does not conflict with the moratorium, as it was initiated by Council at its Ordinary Meeting on 24 February 2015, for the purpose of public advertising and referral to public authorities, prior to the introduction of the moratorium.
7. The subject lot is located approximately 7.2 kilometres north-north-west of Albany town centre and has an area of 46.8 hectares. The land slopes gently upward from Rocky Crossing Road for approximately 360 metres, before starting to rise more steeply into a hillock toward the western extent of the lot. This hillock dips into a valley, approximately 475 metres north of Menang Drive, before the land rises steeply again toward the base of Willyung Hill, which stands approximately one kilometre to the north-north-west of the lot.
8. All of the land surrounding the subject lot is zoned 'General Agriculture' or is occupied by the Menang Drive road reserve. Rural Residential area no. 12 lies approximately 185 metres to the south of the subject lot. The closest house to the subject lot is on Lot 3 Rocky Crossing Road, approximately 50 metres from the common boundary; however, this is approximately 320 metres from the proposed development area.
9. The amendment document states that:

"The primary purpose of the proposed amendment is to allow the GSS group of companies to expand the activities on the site to include the storage and maintenance of all its own plant and equipment. Secondly, it will allow the occasional crushing and recycling of construction materials to create useable road/building products (subject to approval from the Department of Environment Regulation). The operations proposed to be undertaken on the subject site include:

Workshop;

Office (incidental);

Machine Washdown Bay;

Receipt Point for Non-Asbestos Containing Materials (Non-ACM);

Proposed Crushing Area and Mobile Asphalt Plant; and

Laydown/Hardstand Area."

DISCUSSION

10. The City's planning Staff support the designation of an Additional Use site over Lot 104 Rocky Crossing Road, Willyung, to permit the additional uses of plant and equipment storage and maintenance; office (incidental); crushing; and storage of building/construction materials/products, as it is broadly consistent with the current strategic direction set by the *Albany Local Planning Strategy* and State Planning Policies 2.5 and 4.1.
11. The *Albany Local Planning Strategy* indicates potential for the future expansion of the Pendeen Industrial Area to the west, along the north side of Menang Drive. Although the subject land is approximately 2.6 kilometres west of the existing Pendeen Industrial Area, it is envisaged that development will gradually expand into this area in the future.

12. It is also significant that the proposal does not seek to rezone the land to the 'General Industry' zone, but rather it seeks to create an Additional Use site for a number of specific land uses, which build on the existing extractive industry on the site. The Additional Use site will retain the base zoning of 'General Agriculture' and so will not preclude the use of the land for agricultural purposes in future. This is seen as a more appropriate solution to GSS' needs for a larger site where it can consolidate its operations and undertake particular activities, such as screening and crushing, without undertaking a spot rezoning.
13. The location of the subject land is well-suited to GSS' operations, as it is adjacent the Menang Drive heavy freight route and is partly within the Willyung Hill hard rock quarry noise buffer area, which is identified in the *Albany Local Planning Strategy*. GSS' activities are not sensitive land uses and are considered to be compatible with this buffer area.
14. The proposal is considered to be consistent with the objectives of State Planning Policy 2.5, as it designates an Additional Use Site for uses allied to the existing extractive industry on the subject land, thereby providing an ongoing economic opportunity on the land. It will also help to minimise land use conflict, by allowing the GSS group to relocate from their present John Street premises, which are within 300 metres of a residential area. Furthermore, it will place the land uses most likely to create nuisance through noise and dust emissions within the existing Willyung Hill hard rock quarry noise buffer area.
15. The proposed land uses of crushing, screening and asphalt production are all listed in *Part 1 of Schedule 1 of the Environmental Protection Regulations 1987 as Prescribed Premises* for the purposes of *Part V of the Environmental Protection Act 1986*. These activities are all subject to a works approval and licence from the Environmental Protection Authority.
16. The submissions received during the advertising process highlighted a number of concerns around the proposal, which can be grouped by the following broad themes.

17. **Site suitability**

The proposed use of the subject lot for industrial purposes has been criticised, as the developers of the Pendeen industrial area have invested heavily in providing serviced industrial lots for industries of this nature and it is considered that industrial land uses should be steered towards established industrial areas.

However, the proponent is at liberty to apply to rezone the lot and have that proposal assessed against the relevant planning strategies and policies. In this instance, the proposal is considered to be broadly consistent with the strategic direction set by the *Albany Local Planning Strategy* and the objectives of State Planning Policies 2.5 and 4.1. Matters relating to commercial competition are not valid planning considerations and cannot be taken into account.

18. **Traffic**

Nearby residents, primarily to the south of Menang Drive, have objected to the proposal on the grounds of noise generated by additional heavy vehicles travelling to and from the site, the poor condition of Rocky Crossing Road, and the potential for dust to be generated by vehicles travelling on the internal access roads.

19. Menang Drive is designated as a priority heavy freight route within the Main Roads WA road hierarchy and was constructed as stage one of the proposed Albany Ring Road. While it is acknowledged that the proposal will lead to an increase in heavy vehicle numbers, this is consistent with the intended purpose of Menang Drive.

20. The City of Albany will consider the condition of Rocky Crossing Road and, if it is deemed necessary, seek the upgrade of this section of road as a condition of any future development approval on the site.
21. Since the time of public advertising, the proponent has confirmed the landowner's intention to seal the internal access road to minimise any dust generated by vehicle movements within the site. This can be further mitigated by wetting down access tracks and laydown areas with a water cart to suppress dust. City Staff recommend that the conditions of the Additional Use site are expanded to include the preparation of a dust management plan to accompany any future development application for the site.

22. **Noise**

Numerous objections have been raised about the noise levels that may be generated by the proposed concrete crushing and asphalt plant uses. City Staff have undertaken preliminary research into noise from crushing plant and have found that a typical crushing plant is likely to operate at approximately 110 dB (A) at the source. dB (A) refers to a measure of loudness in decibels with an 'A-weighting', which is applied arithmetically to instrument-measured sound levels in an effort to account for the relative loudness perceived by the human ear, as the ear is less sensitive to low audio frequencies.

23. The landowner has provided a report on the asphalt plant in support of their current application for its location at Lot 2 Mindijup Road, Palmdale, which states that it will operate at ~ 85 dB (A) at the source. The report also states that the loader used to feed the plant will operate at 105 dB (A) at the source, while at full revs, or with its backup alarm operating.
24. For comparative purposes, 40 dB (A) would be considered a quiet environment, such as a living room, while 60 dB (A) would be typical of a busy office environment. A rock concert would generate approximately 110 dB (A), while a jet aircraft taking off would generate around 120 dB (A). However, these are volumes measured close to the source, which will diminish over distance to varying degrees, dependant on tonality and frequency.
25. The Environmental Protection Authority's *Guidance for the Assessment of Environmental Factors – Separation Distances between Industrial and Sensitive Land Uses* prescribes a generic 1000 metre buffer to sensitive land uses for crushing and screening and the production of asphalt. This distance is based on scientific evidence, but anticipates a 'worst case scenario'. There are two dwellings located close to the proposed crushing area, one at 360 metres from the site and another at 450 metres. The remaining houses in the vicinity are located at between 800 and 860 metres from the crushing area. Although these houses are located within the 1000 metre buffer recommended by *Separation Distances between Industrial and Sensitive Land Uses*, it is unlikely that the noise levels at these locations would be considered high enough to detrimentally affect their amenity. However, the development of these uses will be subject to development approval from the City of Albany and a Works Approval from the Department of Environment Regulation, which would only be granted where emissions and discharges from the site can be regulated.
26. To further ensure that there will be no impact on nearby homes from noise emissions, it is recommended that the conditions of the Additional Use site are expanded to include the preparation of a noise assessment and a requirement to provide a noise management plan with any future development application for the site. It will be required that the noise management plan contains recommendations on noise mitigation measures to be implemented on-site, in order to minimise the potential for noise nuisance.

27. **Dust**

Similarly, a number of submissions raised objections based on the possible emission of dust from the site, as a result of the proposed concrete crushing and asphalt plant uses. Dust emissions from the crushing plant can be managed using spray bars, while the proposed asphalt plant utilises a ‘baghouse’ filter with a self-cleaning function, which returns captured fines back into the process. The specification for the proposed plant states that the dust concentration in the filtered air emitted will be no more than 20 milligrams per cubic metre. Dust generated by vehicles moving around the site can be controlled by wetting down any gravel surfaces using a water cart. As outlined above, the development of these uses will be subject to development approval from the City of Albany and a Works Approval from the Department of Environment Regulation, which would only be granted where emissions and discharges from the site can be regulated.

28. To further ensure that there will be no impact on nearby homes from dust emissions, it is recommended that the conditions of the Additional Use site are expanded to include a requirement to provide a dust management plan with any future development application for the site. It will be required that the dust management plan contains recommendations on dust mitigation measures to be implemented on-site, in order to minimise the potential for dust nuisance.

29. **Odour**

Several submissions have expressed objections to the proposal due to the potential for emission of unpleasant odours from the proposed asphalt plant. The proponent has clarified that the proposed plant utilises the latest technology to minimise emission of dust and odour, especially when compared with the asphalt plant currently operating within the nearby Willyung Hill hard rock quarry. The landowner has advised that the operation of the proposed plant is a fully sealed process, which is computer controlled from a central control cabin, while the baghouse filter system significantly reduces the emission of dust and particulate, which causes odour.

30. The landowner has also advised that an identical plant is currently in operation within the Narngulu general industrial area near Geraldton. The Department of Environment Regulation issued a works approval for this operation in 2013 and has subsequently granted licence renewals, the most recent of which was issued on 5 February 2015. The licence contains various conditions governing the operation and monitoring of the plant, including the following condition relating to odour:

“The Licensee shall ensure that odour emitted from the Premises does not unreasonably interfere with the health, welfare, convenience, comfort or amenity of any person who is not on the Premises.”

31. While it is acknowledged that the surrounding land uses at Narngulu are also of an industrial nature and are not classified as ‘sensitive’ under the provisions of the Environmental Protection Authority’s *Guidance for the Assessment of Environmental Factors – Separation Distances between Industrial and Sensitive Land Uses*, the plant is located on a relatively small lot of 3373m². The application of this condition by the Department of Environment Regulation indicates that it is possible to manage the emission of odour at this level.
32. To ensure that there will be no impact on nearby homes from odour emissions, it is recommended that the conditions of the Additional Use site are expanded to include the preparation of a odour modelling and a requirement to provide an odour management plan with any future development application for the site. It will be required that the odour management plan contains recommendations on odour mitigation measures to be implemented on-site, in order to minimise the potential for odour nuisance.

33. **Site operations**

Concern was raised over the potential for the use of the site to expand into a haulage depot and/or landscape supplies and the potential for the premises to be open on weekends. The proposed land uses and conditions to be applied to the Additional Use site specifically limit the permissible uses to restrict the use of the site to the Great Southern Sands group of companies, specifically to avoid any expansion into these areas, or sub-letting of the premises to other commercial operators. The operating hours of the proposed crushing activity are also restricted by the conditions to be applied to the Additional Use site, while general hours of operation would be controlled via a planning condition on any future development approval for the site.

34. **Lighting**

Concern has also been raised about light pollution from security floodlighting. However, the landowner has advised that permanent floodlighting will not be used when the premises is closed, only sensor-operated security lights around the workshop and office buildings. It is also standard practice for the City to implement the following planning condition on development approvals where external floodlighting may be used:

Lighting devices are to be positioned and shielded so as not to cause any direct, reflected or incidental light to encroach beyond the property boundaries, in accordance with Australian Standard AS4282/1997.

35. **Stormwater management**

Concerns have been raised over the potential for contaminated stormwater to run off into overland drainage lines or seep into the ground. However, the amendment document details the provision of a sealed machinery washdown bay, fitted with appropriate oil separators to capture contaminants.

36. **Visual amenity**

Some submissions have indicated concern over the visual impact of the land uses that may be permitted as part of the proposed Additional Use site. The subject land is largely hidden from view from the surrounding dwellings, with one or two exceptions, owing to topography and existing vegetation cover. However, much of the lot is clearly visible from Menang Drive. The conditions that will apply to the Additional Use site include the planting of screening vegetation to minimise the visual impact of any future development.

37. **Fencing**

The adjoining landowner to the north of the subject lot has raised concern over the lack of a boundary fence and the potential for encroachment. The proponent has committed to contributing to the erection of a new boundary fence to clearly delineate the boundary.

38. Overall, it is considered that the objections and concerns raised during the public advertising process can be adequately addressed by way of additional conditions that will apply to the Additional Use site. All development on the site will require development approval from the City of Albany, which will be subject to detailed conditions relating to the works or use, while the activities that have drawn the most objection will also require a Works Approval from the Department of Environment Regulation and will be subject to further operating conditions as a part of any subsequent licence.

39. Since the commencement of this scheme amendment process, changes to the *Planning and Development (Local Planning Schemes) Regulations 2015* mean that it

would be necessary for the development guide plan to be referred to the Western Australian Planning Commission for consideration as a structure plan. However, given the fact that the development guide plan covers a single lot and contains limited information, it is considered more appropriate to modify the conditions that will apply to the Additional Use site to remove references to the development guide plan and implement these conditions at the time of any future development application.

GOVERNMENT & PUBLIC CONSULTATION

40. The amendment was advertised in accordance with the requirements of the *Town Planning Regulations 1967* from 30 March 2015 to 11 June 2015 by placement of a sign on-site, direct referral to affected and adjoining/nearby landowners and public authorities, and advertisement in the local newspaper.
41. Twenty (20) submissions were received from public authorities and adjoining landowners and are summarised in the attached Schedule of Submissions. Staff comments and recommendations are also provided in the schedule and the broad issues are discussed in paragraphs 16 to 39 above.

STATUTORY IMPLICATIONS

42. Scheme amendments undergo a statutory process in accordance with the *Planning and Development Act 2005* and *Planning and Development (Local Planning Schemes) Regulations 2015*, which superseded the *Town Planning Regulations 1967* on 19 October 2015.
43. Section 75 of the *Planning and Development Act 2005* allows a local government authority to amend its local planning scheme with the approval of the Minister for Planning.
44. Regulation 50(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015* allows Council to support a standard amendment, with or without modification.
45. Regulations 79(2) and 80 of the *Planning and Development (Local Planning Schemes) Regulations 2015* require that any development plan already in preparation is to be taken to be a structure plan under these regulations, and that any step taken under the Act and in accordance with the repealed regulations or a State planning policy before commencement day in the preparation of a planning instrument is to be taken to be a step taken in the preparation of a planning instrument of that type under these regulations.
46. In view of this change, it would be necessary for the development guide plan included as a part of this scheme amendment to be referred to the Western Australian Planning Commission for consideration as a structure plan. However, given the fact that the development guide plan covers a single lot and contains limited information, it is considered more appropriate to modify the conditions that will apply to the Additional Use site to remove references to the development guide plan.
47. Voting requirement for this item is **SIMPLE MAJORITY**

POLICY IMPLICATIONS

48. The proposal is considered to be consistent with the key policy measures identified in Western Australian Planning Commission State of Planning Policy 2.5 – *Agriculture and Land Use Planning*. It is also considered to be consistent with the objectives of State Planning Policy 4.1 – *State Industrial Buffer Policy*.
49. State Planning Policy 2.5 was gazetted in 2012 and has provided a comprehensive review and refinement of the previous Development Control Policy 3.4 – *Rural Land Use Planning* (1989). The Western Australian Planning Commission and Local

Government are required to have regard to State Planning Policy 2.5 in planning for the development of rural areas.

50. The key objectives of State Planning Policy 2.5 are summarised as follows:
- a) To protect rural land from incompatible uses by:
 - i) Requiring comprehensive planning for rural areas;
 - ii) making land use decisions for rural land that support existing and future primary production and protection of priority agricultural land, particularly for the production of food; and
 - iii) Providing investment security for the existing and future primary production sector.
 - b) To promote regional development through provision of ongoing economic opportunities on rural land.
 - c) To promote sustainable settlement in, and adjacent to, existing urban areas.
 - d) To protect and improve environmental and landscape assets.
 - e) To minimise land use conflicts.
51. The relevant overarching policy requirements are:
- a) land use change from rural to all other uses is to be planned and provided for in a planning strategy or scheme;
 - b) land identified as priority agricultural land in a planning strategy or scheme is to be retained for that purpose; and
 - c) beyond its principle function for primary production, rural land is also required for public purposes, natural resource management, biodiversity conservation and protection of landscapes and views.
52. State Planning Policy 4.1 was gazetted in 1997 and its key objectives are summarised as follows:
- a) To provide a consistent State-wide approach for the definition and securing of buffer areas around industry, infrastructure and some special uses.
 - b) To protect industry, infrastructure and special uses from the encroachment of incompatible land uses.
 - c) To provide for the safety and amenity of land use surrounding industry, infrastructure and special uses.
 - d) To recognise the interests of existing landowners within buffer areas who may be affected by residual emissions and risk, as well as the interests, needs and economic benefits of existing industry and infrastructure which may be affected by encroaching incompatible land uses.
53. The Environmental Protection Authority's *Guidance for the Assessment of Environmental Factors – Separation Distances between Industrial and Sensitive Land Uses* prescribes a generic 1000 metre buffer to sensitive land uses for crushing and screening and the production of asphalt. Although the proponent has not provided any specific studies to justify a lesser buffer distance and the nearest house is approximately 350 metres from the proposed crushing area, the land uses of crushing, screening and asphalt production are all listed in Part 1 of Schedule 1 of the *Environmental Protection Regulations 1987* as "Prescribed Premises" for the purposes

of Part V of the *Environmental Protection Act 1986*. As such, these activities are all subject to a works approval and licence from the Environmental Protection Authority.

RISK IDENTIFICATION & MITIGATION

54. The risk identification and categorisation relies on the City's Enterprise Risk Management Framework.

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|--|-----------------|-----------------|---------------|---|
| Organisational Operations and Reputation <i>Supporting this proposal could set an undesirable precedent and lead to other landowners seeking to rezone or develop agricultural land for industrial purposes.</i> | <i>Possible</i> | <i>Minor</i> | <i>Medium</i> | <i>The proposal does not seek to rezone land, but rather designate an additional use site limited to a number of specific land uses allied to the existing extractive industry on the subject lot. The land is also identified in the ALPS as having potential for future industrial development. The ALPS, as the principal land use planning strategy for the City, would guide Council's decision-making in other instances.</i> |
| Organisational Operations and Reputation <i>The proposal may not be accepted by the Western Australian Planning Commission or the Minister for Planning.</i> | <i>Possible</i> | <i>Minor</i> | <i>Medium</i> | <i>If not supported by the WAPC or Minister, the amendment will not be progressed and the City will advise the proponent that they may submit a modified proposal.</i> |
| Community, Environment and Reputation <i>This proposal could generate impacts on the amenity of adjoining properties through emissions of noise, dust and/or odour.</i> | <i>Possible</i> | <i>Moderate</i> | <i>Medium</i> | <i>Consulting with the relevant environmental agencies and ensuring that necessary safeguards are put in place will mitigate any risk of unwanted impacts on amenity.</i> |

FINANCIAL IMPLICATIONS

55. There are no financial implications directly relating to this item.

LEGAL IMPLICATIONS

56. There are no legal implications directly relating to this item.

ENVIRONMENTAL CONSIDERATIONS

57. The lot is largely cleared, with stands of parkland cleared trees remaining only in the north-eastern corner and on the hillock to the west. There are also a number of individual trees dispersed across the central and southern parts of the lot. A wetland, containing a pond and edged by paperbark trees, lies at the end of the valley to the north-western extent of the lot.

58. An access track from Rocky Crossing Road traverses the lot in a westerly direction, before turning 90 degrees to the north across the hillside. It then follows the hillock around to the west, to an operational gravel pit near the northern lot boundary and areas to the north and west that have previously been used for gravel extraction. These areas have not been rehabilitated and have been used for turning vehicles, stockpiling gravel and the open-air storage of used earthmover tyres. There is a dam on each side of the extraction area and a third in the north-west corner of the lot. An older and now partly overgrown sand extraction area lies to the eastern side of the lot, adjacent to the south-west corner of Lot 3 Rocky Crossing Road. This area is accessed by a narrow track that runs to the north from the main access track.

ALTERNATE OPTIONS

59. Council has the following alternate options in relation to this item, which are:
- To resolve to support the scheme amendment without modification; or
 - To resolve not to support the scheme amendment and advise the Western Australian Planning Commission, in writing, of the reasons for doing so.

SUMMARY CONCLUSION

60. It is recommended that Council support Local Planning Scheme Amendment No. 4, as it is broadly consistent with the current strategic direction set within the *Albany Local Planning Strategy* and State Planning Policies 2.5 and 4.1.

| | | |
|-----------------------------------|---|---|
| Consulted References | : | <ol style="list-style-type: none"> 1. <i>Local Planning Scheme No. 1</i> 2. <i>Albany Local Planning Strategy 2010</i> 3. <i>City of Albany Strategic Community Plan 2023</i> 4. <i>City of Corporate Business Plan 2013-2017</i> 5. Western Australian Planning Commission State Planning Policy 1 – <i>State Planning Framework Policy (Variation No. 2)</i> 6. Western Australian Planning Commission State Planning Policy 2.5 – <i>Land Use Planning in Rural Areas</i> 7. Western Australian Planning Commission State Planning Policy 4.1 – <i>State Industrial Buffer Policy</i> |
| File Number (Name of Ward) | : | LAMD4 (Kalgan Ward) |
| Previous Reference | : | OCM – 24/02/2015 – Item PD066 |

PD093: YAKAMIA/LANGE STRUCTURE PLAN

| | | |
|--|---|--|
| Land Description | : | Various lots in the Yakamia and Lange localities. |
| Proponent | : | City of Albany |
| Owners | : | Various owners |
| Business Entity Name | : | Various business entities |
| Attachments | : | 1. Schedule of Submissions 2. <i>Yakamia/Lange Structure Plan</i> |
| Supplementary Information & Councillor Workstation: | : | 1. List of landowners and business entities 2. Copy of submissions 3. Appendices a) Local Water Management Strategy b) Environment Opportunities and Constraints Plan c) Road Contribution Plan d) Issues Background Paper |
| Report Prepared by | : | Senior Planning Officer, Strategic Planning (A Nicoll) |
| Responsible Officer | : | Executive Director Planning and Development Services (D Putland) |

Responsible Officer's Signature:

STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. When exercising its discretion in relation to planning matters, the pertinent strategic document is the *Albany Local Planning Strategy*.
3. This proposal is consistent with the strategic direction set in the *Albany Local Planning Strategy*.

In Brief:

- A Draft *Yakamia/Lange Structure Plan* was developed by the City of Albany to guide the future subdivision and development of land in the Yakamia and Lange localities.
- The City advertised the draft *Yakamia/Lange Structure Plan* from December 2014 to January 2015.
- Following advertising, the City reviewed submissions and recommended modifications.
- At the September 2015 Planning Committee meeting, the Structure Plan was deferred to allow the further consideration of issues through a Councillor workshop.
- In November 2015, a workshop was held with Councillors, the Department of Water and the Department of Parks and Wildlife. Attention was given to:
 - The procedure for defining flood boundaries (LIDAR); and
 - An overview of the City's Local Planning Strategy, which requires fully serviced urban development for the localities of Yakamia and Lange.

- Council is now requested to consider submissions and recommended modifications to the Structure Plan and to resolve to agree to provide a report to the Western Australian Planning Commission (WAPC), recommending that the WAPC approve the Structure Plan.

RECOMMENDATION

PD093: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council, pursuant to Schedule 2, Part 4, cl. 20 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, resolves to recommend to the Western Australian Planning Commission that the proposed Yakamia/Lange Structure Plan (as modified) should be approved, including the following supporting appendices:

- **Local Water Management Strategy;**
- **Environmental Opportunities and Constraints Plan;**
- **Road Contribution Plan; and**
- **Issues Background Paper.**

AND

Advise all landowners that:

- **They must consult the Department of Planning regarding its requirements for scheme amendments to normalise the zones and densities nominated in the Structure plan; and**
- **That the City of Albany will not be the applicant on their behalf for any further local planning scheme amendments.**

BACKGROUND

4. Various properties within the localities of Yakamia and Lange are zoned 'Future Urban' in accordance with the City's *Local Planning Scheme No. 1*.
5. Development and subdivision on land zoned 'Future Urban' under *Local Planning Scheme No. 1* is restricted, unless a Structure Plan has been prepared.
6. Due to requests from a number of landowners wishing to subdivide their land in the Yakamia and Lange localities and the Department of Parks and Wildlife indicating support for the alignment of a planned north-south local distributor road (Range Road) over vegetated land (Lot 4743 North Road), the City decided to develop a draft Structure Plan for the localities of Yakamia and Lange.
7. Prior to developing a draft Structure Plan, the City undertook extensive research of Environmental and Water Management issues pertaining to the localities. Key findings included:
 - No threatened flora identified (noting that detailed environmental investigations have not been undertaken for some areas);
 - Vegetated communities with *Banksia Coccinea* are possibly threatened;
 - There are remnant stands of vegetation (Jarrah/Mari) in excellent condition, which form natural corridors;
 - There are areas subject to flooding and erosion.
8. Following consideration of environmental and water issues, the City developed a draft *Yakamia/Lange Structure Plan*.

9. Council resolved at its November 2014 Council meeting to advertise the draft Structure Plan.
10. At the close of advertising, submissions were reviewed and modifications recommended.
11. Submissions included:
 - Reducing the width of foreshores to arterial drains;
 - Modifying the location of flood boundaries;
 - Enabling development for some degraded vegetated areas;
 - Reducing fire risk;
 - Modification of the location of public open space areas; and
 - Supporting unsewered rural residential development.
12. Recommended modifications included:
 - Changing foreshore boundaries to reflect land topography;
 - After consulting with environmental authorities, changing some degraded vegetation protection areas to residential;
 - After site visits and consultation with landholders, relocated some public open space areas;
 - Incorporating fire mitigation measures, including ensuring dwellings are constructed in accordance with *Australian Standard 3959 – Construction of Buildings in Bushfire Prone Areas*.
13. Recommended modifications did not include:
 - Changing location of flood boundaries; or
 - Supporting unsewered Rural Residential development.
14. At the September Planning Committee meeting it was resolved to defer making a decision on the Structure Plan to enable further consideration at a workshop.
15. In November 2015, a workshop was held with Councillors, the Department of Water and the Department of Parks and Wildlife. The Department of Water explained the rationale behind flood boundaries, advising the flood boundaries are an accurate reflection of LIDAR data modelling. LIDAR is an accurate measure of distance, accomplished by illuminating a target with a laser and analysing the reflected light.
16. Councillors were also advised that the City of Albany Local Planning Strategy (ALPS) advocates fully serviced urban development for land within the Structure Plan area. Furthermore, ALPS recommends that future rural living lots within the City of Albany only be located within areas designated on the ALPS maps, or within existing rural town sites. The Yakamia Structure Plan area does not meet the aforementioned criteria.
17. It should be noted that under the Schedule 2, Part 4, clause 27 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, which came into effect on 19 October 2015, structure plans are no longer binding statutory documents:

“27. Effect of a structure plan approved by Commission

(1) *A decision-maker for an application for development approval or subdivision approval in an area that is covered by a structure plan that has been approved by*

the Commission is to have due regard to, but is not bound by, the structure plan when deciding the application.

- (2) *A decision-maker for an application for development approval or subdivision approval in an area referred to in clause 15 as being an area for which a structure plan may be prepared, but for which no structure plan has been approved by the Commission, may approve the application if the decision-maker is satisfied that—*
- (a) the proposed development or subdivision does not conflict with the principles of orderly and proper planning; and*
 - (b) the proposed development or subdivision would not prejudice the overall development potential of the area.”*
18. Furthermore, under Schedule 2, Part 4, clause 28 of the Regulations, the approval of a structure plan has effect for a period of 10 years commencing on the day on which the Commission approves the plan.
19. Other regulatory changes include a requirement to rezone the land following approval of a structure plan to normalise the zones and R-Code densities nominated on the plan, within the Local Planning Scheme.
20. It is currently unclear, due to conflicting advice being given by Officers at the Department of Planning, whether this rezoning process will have to be completed prior to, at the time of, or post subdivision.
21. Therefore, City Staff recommend that applicants consult directly with the Department of planning to clarify this matter.

DISCUSSION

22. The subject land is divided into two precincts, with the largest extending from approximately 1.3km to 3.9km north of Albany town centre and covering an area of approximately 355ha. The second, smaller precinct lies approximately 2.4km north-north-west of Albany town centre and covers an area of approximately 10ha. The larger precinct includes land within the 'Future Urban', 'General Agriculture', 'Residential' and 'Yakamia Creek' zones and the 'Parks and Recreation' and 'Public Use' local scheme reserves. The land within the smaller precinct is included within the 'Future Urban' zone and 'Parks and Recreation' Local Scheme reserve.
23. The *Yakamia/Lange Structure Plan* is consistent with the current strategic direction set by the *Albany Local Planning Strategy* and *State Planning Policy 3*.
24. A portion of the land identified for 'Future Urban' development in the *Albany Local Planning Strategy* is currently zoned 'General Agriculture' under *Local Planning Scheme No. 1*. This land will have to be rezoned to the 'Future Urban' zone via a local planning scheme amendment, prior to being developed in accordance with the *Yakamia/Lange Structure Plan*.
25. The Structure Plan designates different uses for different areas based on characteristics of the land. For example, in environmentally sensitive areas such as those adjacent to creeks, the Structure Plan recommends that the land is reserved as 'Parks and Recreation' for a combination of purposes, including water management, recreation and environmental enhancement. In flat areas with no environmental constraints and in close proximity to the Brooks Garden shopping centre, the Structure Plan recommends that the land is used for medium-high density residential development.
26. Areas identified for 'Residential' development are divided into three types:

- ‘Residential (Yakamia Creek)’ – areas adjacent to the Yakamia Creek, where the minimum lot size shall be 3000m²;
 - ‘Residential R25’ – areas not within easy walking distance of a neighbourhood shop, where the average lot size shall be 350m²; and
 - ‘Residential R30’ – areas within easy walking distance to Brooks Garden shopping centre, where the average lot size shall be 300m².
27. ‘Private Conservation’ lots have been identified over land that is covered by remnant vegetation, worthy of protection because of the quality and extent of that vegetation. Development of these lots will be permitted on the condition that vegetation is protected.
28. ‘Public Use’ designations have been applied in locations suitable for public utilities, including for City of Albany administration, Western Power substations and Water Corporation pumping stations.
29. ‘Public Parkland’ has been identified to provide active recreation within walking distance to future development areas.
30. Strategic infrastructure requirements, including key roads, paths, intersection treatments and reticulated sewer lines and pump stations have been identified on the Structure Plan map. The Structure Plan specifically recommends the development of two major link roads between North Road and Mercer Road (Range Road) and North Road and Chester Pass Road (extension of Barnesby Drive).
31. The Structure Plan also requires subsequent applications to subdivide and develop land to be supported by information to address a variety of matters including fire risk, urban water management, acid sulphate soils, Aboriginal Heritage and access.
32. A substantial number of submissions were received from service providers, Government agencies, landowners and members of the public during the public advertising and referral process.
33. The Department of Planning advised that the subdivision and development of all land for residential purposes, other than the ‘Residential (Yakamia Creek)’ area, should be dependent on connection to reticulated sewer. Western Power and the Water Corporation both reiterated a need to designate areas for substations to facilitate power distribution and effluent disposal. Modifications to the Structure Plan have been completed to reflect this advice.
34. To allay concerns about financial contributions, a comprehensive *Road Contribution Plan* has been developed and is appended to the Structure Plan. It clarifies the methodology used in determining the contributions and the amounts that will be required.

GOVERNMENT & PUBLIC CONSULTATION

35. In 2012, the City undertook informal consultation with landowners within the structure plan area and received the following comments, as summarised:
- *The land should be planned to accommodate residential living.*
 - *Creek areas should be turned into public parkland.*
 - *A north-south transport link is greatly recommended.*
 - *Vegetation in designated wetland and public open space areas should be protected.*
 - *Valley areas should be reserved for recreation.*
 - *The area should be developed into a mixture of smaller and ‘special rural’ lots.*
 - *The creeks should be regenerated and a cycle-way developed to connect to the Brooks Garden shopping precinct.*

- *We would like to see an area flooded and lakeside lots created.*
36. Additionally, most of those who responded to the consultation exercise indicated that they would support the creation of smaller lots and were in full support of future development in the locality.
 37. Due to the presence of potential environmental impediments, the draft Structure Plan was specifically referred to the Office of the Environmental Protection Authority and property developers for appraisal, prior to formal advertising.
 38. Ongoing informal dialogue and on-site meetings have also taken place between the City and landowners to inform the planning process.
 39. The draft Structure Plan was formally advertised in accordance with the requirements of *Local Planning Scheme No. 1* from 4 December 2014 to 30 January 2015 by direct referral to affected landowners, service providers and State Government agencies, and advertisement in the local newspaper.
 40. Forty (40) submissions were received from service providers, State Government agencies and members of the public and are summarised and responded to in the attached Schedule of Submissions.

STATUTORY IMPLICATIONS

41. Structure Plans undergo a statutory process in accordance with Section 5.9 of *Local Planning Scheme No. 1* and Schedule 2 of the *Planning and development Regulations 2015*.
42. *Part 4 cl. 19* of the *Planning and Development Regulations 2015* states:
 - *The local government must prepare a report on the proposed structure plan and provide it to the Commission. The report on the proposed structure plan must include the following:*
 - *a list of the submissions...*
 - *any comments by the local government in respect of those submissions;*
 - *a schedule of any proposed modifications...*
 - *the local government's assessment of the proposal based on appropriate planning principles;*
 - *a recommendation by the local government on whether the proposed structure plan should be approved by the Commission.*

43. Voting requirement for this item is **SIMPLE MAJORITY**

POLICY IMPLICATIONS

44. The Western Australian Planning Commission's *Liveable Neighbourhoods* policy has been used to guide the development of the *Yakamia/Lange Structure Plan*. The following principles from *Liveable Neighbourhoods* are of particular relevance to the Structure Plan:
 - The ceding of a foreshore reserve will generally not be included in the calculation of a 10% contribution to the provision of public open space;
 - Increased integration of urban water management elements into the urban form will be promoted; and
 - A variety of lot sizes will be provided.

45. *State Planning Policy 2 – Environment and Natural Resources* has also been used to guide the development of the Structure Plan, particularly the following key policy measures:
- Avoid development that may result in unacceptable environmental damage;
 - Actively seek opportunities for improved environmental outcomes including support for development which provides for environmental restoration and enhancement; and
 - Protect significant natural, Indigenous and cultural features, including sites and features significant as habitats and for their floral, cultural, built, archaeological, ethnographic, geological, geomorphological, visual or wilderness values.
46. *State Planning Policy 2.9 – Water Resources* has also been considered in the preparation of the Structure Plan. The objectives of *State Planning Policy 2.9* are as follows:
- Protect, conserve and enhance water resources that are identified as having significant economic, social, cultural and/or environmental values;
 - Assist in ensuring the availability of suitable water resources to maintain essential requirements for human and all other biological life with attention to maintaining or improving the quality and quantity of water resources; and
 - Promote and assist in the management and sustainable use of water resources.
47. The Structure Plan has been prepared in accordance with *State Planning Policy 3 – Urban Growth and Settlement*. The objectives of *State Planning Policy 3* are as follows:
- To promote a sustainable and well planned pattern of settlement across the State, with sufficient and suitable land to provide for a wide variety of housing, employment, recreation facilities and open space.
 - To build on existing communities with established local and regional economies, concentrate investment in the improvement of services and infrastructure and enhance the quality of life in those communities.
 - To manage the growth and development of urban areas in response to the social and economic needs of the community and in recognition of relevant climatic, environmental, heritage and community values and constraints.
 - To promote the development of a sustainable and liveable neighbourhood form which reduces energy, water and travel demand whilst ensuring safe and convenient access to employment and services by all modes, provides choice and affordability of housing and creates an identified sense of place for each community.
 - To coordinate new development with the efficient, economic and timely provision of infrastructure and services.
48. *State Planning Policy 3.6 – Development Contributions for Infrastructure* states sets the following principles for the levy of development contributions:
- “1. Need and the nexus**
The need for the infrastructure included in the development contribution plan must be clearly demonstrated (need) and the connection between the development and the demand created should be clearly established (nexus).
- 2. Transparency**
Both the method for calculating the development contribution and the manner in which it is applied should be clear, transparent and simple to understand and administer.
- 3. Equity**
Development contributions should be levied from all developments within a development contribution area, based on their relative contribution to need.

4. Certainty

All development contributions should be clearly identified and methods of accounting for escalation agreed upon at the commencement of a development.

5. Efficiency

Development contributions should be justified on a whole of life capital cost basis consistent with maintaining financial discipline on service providers by precluding over recovery of costs.

6. Consistency

Development contributions should be applied uniformly across a Development Contribution Area and the methodology for applying contributions should be consistent.

7. Right of consultation and arbitration

Land owners and developers have the right to be consulted on the manner in which development contributions are determined. They also have the opportunity to seek a review by an independent third party if they believe that the calculation of the contributions is not reasonable in accordance with the procedures set out in the draft Model Scheme Text in appendix 2.

8. Accountable

There must be accountability in the manner in which development contributions are determined and expended.”

Part 5.3.2 of the Policy makes provision for development contributions to be calculated and applied:

“Development contributions are generally calculated and applied by way of conditions of subdivision, strata subdivision or development, particularly in greenfield areas. Development contributions may also be sought in infill and redevelopment areas at the time of subdivision, strata subdivision or development.

They may be calculated and applied as –

- *Standard conditions of subdivision or strata subdivision;*
- *Conditions of development.”*

The Policy states that it should be implemented through:

“...the day-to-day consideration of zoning, subdivision, strata subdivision and development proposals and applications, together with the actions and advice of agencies in carrying out their responsibilities.”

The WAPC and Local Government are required to have regard to *State Planning Policy 3.6* when seeking developer contributions for infrastructure.

RISK IDENTIFICATION & MITIGATION

49. The risk identification and categorisation relies on the City's Enterprise Risk Management Framework.

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|---|------------|---------------|---------------|--|
| Organisational Operations and Reputation | Likely | Insignificant | Low | <i>The City of Albany, in developing the Yakamia/Lange Structure Plan followed procedures as set out in Section 5.9 of Local</i> |

| | | | | |
|--|---------------|--------------|---------------|---|
| <p><i>The aspirations of some landowners may not have been met.</i></p> | | | | <p><i>Planning Scheme No. 1.</i></p> <p><i>The City has undertaken extensive consultation with service providers, Government agencies, landowners and members of the public, which exceeded the basic statutory requirements set out in Section 5.9 of the Scheme.</i></p> |
| <p>Community, Organisational Operations and Reputation</p> <p><i>Landowners may object to the recommendations made by the Structure Plan.</i></p> | <p>Likely</p> | <p>Minor</p> | <p>Medium</p> | <p><i>The City consulted widely in developing the Yakamia/Lange Structure Plan.</i></p> <p><i>The City understands that landowners expect to be able to use and develop their land as desired.</i></p> <p><i>However, there are instances where legislative requirements override landowners' expectations. Remnant vegetation and waterways exist throughout the Structure Plan area. The City of Albany and State Government Departments require development to be considerate of protecting the integrity of waterways and remnant vegetation.</i></p> <p><i>The Structure Plan seeks to find a balanced approach between landowner aspirations and conservation of the environment.</i></p> |

FINANCIAL IMPLICATIONS

50. Two new local distributor roads (Range Road and Barnesby Drive) and six major intersections will ultimately be required within the structure plan area. The Structure Plan makes provision for the City to obtain a financial contribution from developers towards the construction of these roads and intersections.
51. A comprehensive *Road Contribution Plan* has been developed and appended to the Structure Plan. Western Australian Planning Commission *State Planning Policy 3.6 – Development Contributions for Infrastructure* allows the City to implement the Road Contribution Plan, which has calculated the developer contribution on a per lot basis for each new lot created, as a condition of subdivision in accordance with *State Planning Policy 3.6*.
52. The 'Public Parkland' areas identified for public open space and foreshore reserves are to be ceded to the Crown and vested with the City for management purposes, at the time of subdivision. The City will incur costs associated with the ongoing maintenance of the 'Public Parkland' areas.

LEGAL IMPLICATIONS

53. There are no legal implications in relation to this item.

ENVIRONMENTAL CONSIDERATIONS

54. The Structure Plan has been informed by the Office of the Environmental Protection Authority, and seeks to provide a balanced approach to protect environmentally sensitive areas and to accommodate development.

55. The Structure Plan has clarified that:

If a developer proposes to take an action in a designated 'Private Conservation' area that is likely to have a significant impact on a matter of national environmental significance. For instance, clearing of vegetation that would affect the habitat of Carnaby's Black Cockatoo, the developer may need to obtain approval from the Commonwealth Environment Minister, prior to taking that action.

ALTERNATE OPTIONS

56. Council may resolve to advise the Commission to support the Structure Plan with a modification to allow rural residential living areas (large unsewered lots). Such a resolution would be contrary to the City's Local Planning Strategy, which recommends fully serviced urban development and is unlikely to be supported by the Commission. The Department of Planning has previously advised the following on behalf of the Commission:

A statement should...be included in the statutory section that all new lots must be connected to reticulated sewer.

SUMMARY CONCLUSION

57. Council is requested to agree to provide a recommendation to the commission to approve the Yakamia/Lange Structure Plan, as it is consistent with the current strategic direction set by the *Albany Local Planning Strategy* and *State Planning Policy 3* and has been developed with consideration of economic, environmental and social criteria.

| | | |
|-----------------------------------|---|--|
| Consulted References | : | <ol style="list-style-type: none"> 1. <i>Planning and Development Regulations 2015</i> 2. <i>Local Planning Scheme No. 1</i> 3. <i>Albany Local Planning Strategy 2010</i> 4. <i>City of Albany Strategic Community Plan 2023</i> 5. <i>City of Albany Corporate Business Plan 2013-2017</i> 6. <i>Western Australian Planning Commission Structure Plan Preparation Guidelines 2012</i> 7. <i>Western Australian Planning Commission Liveable Neighbourhoods 2009</i> 8. <i>Western Australian Planning Commission State Planning Policy 2 – Environment and Natural Resources</i> 9. <i>Western Australian Planning Commission State Planning Policy 2.9 – Water Resources</i> 10. <i>Western Australian Planning Commission State Planning Policy 3 – Urban Growth and Settlement</i> 11. <i>Western Australian Planning Commission State Planning Policy 3.6 – Development Contributions for Infrastructure</i> |
| File Number (Name of Ward) | : | LP.PLA.1 |
| Previous Reference | : | O.C.M. 25/11/2014 – Item PD060 O.C.M. 22/09/2015 – Item PD093 |

14. **NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF COUNCIL**
15. **MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**
16. **REPORTS OF CITY OFFICERS**
17. **MEETING CLOSED TO PUBLIC**
18. **CLOSURE**