

**DIS312: RECREATION – PRIVATE (ALL-TERRAIN VEHICLE LESSONS)
VERSION TWO**

Land Description	:	290 (Lot 25) Piggott Martin Road, Lowlands WA 6330
Proponent / Owner	:	P Morgan
Attachments	:	1. Copy of the proposal (Site Plan, Operational Management Plan & Bushfire Management Plan) 2. Environmental Acoustic Assessment 3. Schedule of submission
Supplementary Information & Councillor Workstation	:	1. Public submissions (in full) 2. Previous SAT approval
Report Prepared By	:	Senior Planning Officer (J Anderson)
Authorising Officer:	:	Executive Director Infrastructure, Development and Environment (P Camins)

STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. In making a decision on the proposed amendment, the Council is obliged to draw conclusion from its adopted City of Albany *Local Planning Strategy 2019* and City of Albany *Strategic Community Plan 2032*.
3. This item relates to the following elements of the Strategic Community Plan:
 - **Pillar:** People
 - **Outcome:** Plan a compact city with diverse land, housing and development opportunities.
 - **Pillar:** Place
 - **Outcome:** Responsible growth, development and urban renewal.
 - **Pillar:** Leadership.
 - **Outcome:** A well-informed and engaged community.

Maps and Diagrams: 290 (Lot 25) Piggott Martin Road, Lowlands



In Brief:

- Council is asked to consider an application for Recreation – Private (All-Terrain Vehicle Lessons) at No. 290 (Lot 25) Piggott Martin Road, Lowlands.
- Recreation - Private is classified as a 'D' use within the General Agriculture zone, meaning the use is not permitted unless the Local Government has exercised its discretion by granting planning approval.
- The application was advertised to adjoining landowners via two rounds of consultation. A total of 18 submissions were received (across both rounds), all of which were in objection to the proposal. Relevant matters raised during the advertising period have been taken into account as part of the City's assessment.
- The application has been assessed on its merit, with relevant concerns raised during advertising taken into consideration. Staff consider the proposed Recreation-Private use in its current form is consistent with the relevant objectives of the General Agricultural zone, and is not considered to have a detrimental impact on the overarching amenity and desired character of the area.
- The application is presented to Council for determination, due to the concerns raised during advertising. It is recommended that Council approve the application for Recreation-Private (All-Terrain Vehicle Lessons) at 290 (Lot 25) Piggott Martin Road, Lowlands.

DIS312: AUTHORISING OFFICER RECOMMENDATION

THAT Council resolves to:

ISSUE a notice of determination granting development approval with conditions for the Recreation – Private (All-Terrain Vehicle Lessons) at Lot 25, 290 Piggott Martin Road, Lowlands.

Conditions:

1. All development shall occur in accordance with the stamped, approved plans referenced P2190543 and dated XX XXXXX 2022, unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.
2. The proposal is to comply with any details and/or amendments marked in red on the stamped, approved plans.

3. Prior to commencement of operations of the development, an updated Operational Management Plan shall be provided incorporating the following detail/changes:

- All riding associated with the Recreation – Private (All-Terrain Vehicle Lessons) shall be contained onsite within ‘predominate training area’ as indicated on the site plan. No riding associated with the Recreation - Private (All-Terrain Vehicle Lessons) shall be undertaken outside of this area.
- To limit emissions the ATVs used shall be restricted to a maximum engine capacity of 90cc and the exhaust systems maintained at all times so that the emissions comply with the manufacturers specifications.
- Complaint response procedure (who to contact and what action to be taken to resolve complaints).
- Any further amendments to details and information as a result of the requirements of this approval including capacity, site layout such as location of toilet facilities, car parking and vehicle access.
- **The operation of the Recreation – Private (All-Terrain Vehicle Lessons) shall be restricted to the following times and days:**
 - **Published school holidays 9am to 6pm**
 - **Saturdays 9am to 6pm**
 - **Sundays 9am to 5pm**
 - **No operation on Public Holidays, unless otherwise agreed to in writing by the City of Albany.**
- There will be no operation on public holidays, unless *otherwise agreed to in writing by the City of Albany.*
- A maximum of 12 ATV’s to be used per lesson, which shall predominately be 4-stroke (50cc), with a maximum of 2 machines being 2 stroke (80cc) which will only be ridden by 12 years or older.

Advice:

- Operation times of the use includes customers accessing the site, set up and pack down of lessons and riding times.
- It is the responsibility of the operator to distribute an approved Operation Management Plan to surrounding landowners/adjoining properties, prior to commencement of operations. The approved management plan shall be implemented and complied with at all times, whilst the approved use is in operation.

4. In accordance with the approved updated Operational Management Plan, the operation of the Recreation – Private (All-Terrain Vehicle Lessons) shall be restricted to the following times and days:

- Published school holidays 9am to 6pm
- Saturdays 9am to 6pm
- Sundays 9am to 5pm
- No operation on Public Holidays, unless otherwise agreed to in writing by the City of Albany.

5. In accordance with the approved updated Operation Management Plan, all riding associated with the Recreation – Private (All-Terrain Vehicle Lessons) shall be contained onsite within ‘predominate training area’ as indicated on the site plan. No riding associated with the Recreation - Private (All-Terrain Vehicle Lessons) shall be undertaken outside of this area.

6. The development shall be operated and maintained in accordance with the relevant measures, actions and recommendations as detailed under the approved Operational Management Plan. Prior to occupancy of the development, relevant operational measures, actions and recommendations shall be implemented and maintained in perpetuity to the satisfaction of the City of Albany.

7. 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.

8. **Sign(s) shall not be erected on the lot without the prior approval of the City of Albany.**
9. **The measures and actions identified in the Bushfire Management Plan and Bushfire Emergency Evacuation Plan dated 12 July 2021 prepared by Bio Diverse Solutions shall be implemented and maintained in perpetuity, to the satisfaction of the City of Albany.**
10. **Firebreaks, firefighting equipment and other appropriate fire protection measures shall be maintained in accordance with the approved Bushfire Management Plan dated 12 July 2021, to the satisfaction of the City of Albany.**
11. **In accordance with the Bushfire Management Plan, prior to occupation, vehicular access on site shall be designed and constructed, and maintained thereafter in accordance with State Planning Policy 3.7: Planning in Bushfire Prone Areas and to the specifications and satisfaction of the City of Albany.**

Advice:

- **The driveway is to be maintained at a trafficable standard at all times. The driveway is to have a minimum trafficable surface of 4m, horizontal clearance of 6m and vertical clearance of 4m.**
 - **Turn-around areas to allow type 3.4 fire appliances within 50m of the dwelling, and at 500m intervals along the driveway will be required.**
 - **Passing bays should be provided at 200 metre intervals along private driveways to allow two way traffic.**
12. **Prior to commencement a dedicated static water supply for fire-fighting purposes of at least 10,000 litres with a 75mm male 'camlock' fitting shall be provided and maintained thereafter on site, to the satisfaction of the City of Albany.**

Advice:

- **Any above-ground tank and associated stand should be constructed of non-combustible material.**
- **Polycarbonate is not considered a non-combustible material.**

General advice:

- **No clearing or covering by overburden of any native vegetation is permitted without the prior approval from the Department of Water and Environmental Regulation.**
- **The approved Operational Management Plan shall be reviewed and updated at the time of any change of ownership or management, in consultation and to the satisfaction of the City of Albany.**
- **The level of noise emanating from the premises shall not exceed that prescribed in the Environmental Protection Act 1986, and the Environmental Protection (Noise) Regulations 1997.**
- **Prior to commencement of use a permanent constructed sanitary convenience is to be provided on site, and constructed in accordance with the Building Code of Australia. The number and type of required sanitary facilities shall be as for a Class 9b sporting venue.**
- **The complaints response procedure shall include current contact details of the business manager/operator.**
- **The operator shall ensure that the complaints response procedure is updated and maintained when required and made available to current adjoining landowners for the life of the development.**
- **Consideration to operate on Public Holidays may be considered via the appropriate permit process through the Environmental Health Section where suitable rational has been provided.**

--

BACKGROUND

- The subject site lies to the northern side of Piggott Martin Road, to the eastern side of Thompson Road, and approximately 33km west of the Albany City centre. The topography of the area is generally undulating, defined by open paddocks that interface with areas of remnant vegetation, lakes and creeks.

- Site details:

Local Planning Scheme	City of Albany Local Planning Scheme No. 1 (LPS1)
Zone	General Agriculture
LPS1 Use Class & Permissibility (Table 2)	Recreation – Private (All-Terrain Vehicle Lessons) – D
Lot Size:	52ha
Area of use:	Approximately 6ha
Existing Land Use:	Single House and Agriculture-Extensive
Bushfire Prone Area:	Yes

- The existing house and associated structures on the subject site is situated at the upper end of the slope in the south-eastern area of the site. The ATV lessons are proposed to predominantly be held in a cleared grassland area, located on the downwards slope to the northwest of the house (refer to site plan in Attachment 1).
- In 2007 Council refused an application for Recreation – Private (Junior Motorcycle and All-Terrain Vehicle Training) at the subject site. The applicant subsequently lodged an appeal of the refusal at the State Administrative Tribunal (SAT), with the refusal being overturned and subsequently approved with conditions, in 2008.
- The development approval was not enacted upon within the required timeframe, and has therefore lapsed. As the previous approval has lapsed, the subject development application is required to be assessed on its merits, and in accordance with the current planning framework.
- The supporting documentation lodged with the subject application included the original Environmental Acoustic Assessment and Bushfire Management Plan prepared and considered as part of the development approval granted by SAT in 2008.
- The proposal including the supporting documentation was initially advertised during February and March 2020 and also referred to state agencies for technical advice. It was identified at that time that further information was required, specifically in relation to an updated Environmental Acoustic Assessment and modifications to the Bushfire Management Plan.
- The additional information was requested in April 2020, and the application placed on hold. Assessment recommenced in March 2022 following receipt of the outstanding information. As a substantial period of time had lapsed between the first round of advertising, the application was re-advertised during April-May 2022.
- Eighteen submissions were received during the two rounds of advertising, all of which were in objection to the proposal. Relevant matters raised during the advertising period have been taken into account as part of the City’s assessment.
- Following conclusion of the second round of advertising, the proponent was invited to provide a response or make further changes to the proposal, however the proponent opted for the proposal to be determined based on its current form.

DISCUSSION

Proposal

- The proposed Recreation-Private (ATV lessons) involves the following:

When	School holidays, weekends and public holidays only.
-------------	---

Hours of operation	<ul style="list-style-type: none"> • Published school holidays (Monday to Friday) 9am to 6pm • Saturdays 9am to 6pm • Sundays 9am to 5pm • Public holidays • Operation times of the use includes customers accessing the site, set up and pack down of lessons and rising times
Lesson duration	<ul style="list-style-type: none"> • Between 2-3.5 hours, dependent on customer requirements. • Maximum of 2.5 hours riding time • First half hour of each session generally a stationary introduction.
Maximum no. of riders per lesson	<ul style="list-style-type: none"> • 12 (including instructors)
ATV specifications:	<ul style="list-style-type: none"> • Predominately 4-stroke (50cc) • Two larger ATV's are 2-stroke (80cc)
Where:	<ul style="list-style-type: none"> • Lessons will be held predominately within the central area shown on the site plan. • At the end of each training session, a slow supervised ride around other areas of the lot may occur as a reward.

15. The proponent has further clarified the following aspects of the operation management plan:
- Maximum age of riders will be 14.
 - All riding to be supervised at all times.
 - Speeds of the ATVs will be restricted.
 - Riders will be beginners and unfamiliar with the machines.
 - All ATVs are beginner type units, are not performance orientated, nor high revving types such as motocross bikes.
 - Riders will not be permitted to bring their own machines
 - There will be no racing or competitive riding.
 - Parents will remain on-site during the lessons.
 - Frequency of the lessons operating during the timeframes outlined above will be dictated by customer demand.
 - The two 2-stroke (80cc) ATVs:
 - Will only to be ridden by riders 12 years or older.
 - It was anticipated that these wouldn't be used very often.
 - All exhaust systems to be maintained to standard specification.
 - There will be no motorcycle use (i.e. no 2 wheel machines)
16. No additional buildings or permanent structures are proposed as part of the Recreation-Private use. However, formal sanitary facilities would be required to be provided prior to commencement of the use, to satisfy Environmental Health and Building requirements.
17. No additional clearing is proposed to support the proposal.
18. The proponent has indicated that a key aim of the Recreation-Private use is to provide a controlled environment for children to be properly trained in the use of ATVs, so as to reduce the number of injuries or deaths from accidents through early intervention.

Public consultation

19. As outlined elsewhere in the report, the proposal was advertised to adjoining landowners within 650m of the boundary of the subject site, across two rounds of advertising. The second round of advertising also involved re-referral of the proposal with the updated information to previous submitters.
20. A total of 18 submissions were received across both rounds of advertising, all in objection to the proposal.
21. Key concerns raised in the objections received during advertising are listed below, and also under the Schedule of Submissions attached to this report (refer Attachment 3):
 - Impact on amenity, specifically noise
 - Increased traffic and condition of the road
 - Environmental – impact on flora, fauna, livestock and emissions
 - Concerns the use will intensify if approved and ongoing compliance
 - Fire risk
 - Qualifications, Insurance and Safety
 - Property value
 - Unsure of community benefit
 - Amenities

Planning assessment

22. The proposal has been assessed against the relevant provisions contained under LPS1, including the relevant objectives of the General Agricultural zone, as well as matters outlined under cl. 67 of the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* and relevant concerns raised during advertising. Detailed discussion of the proposal is outlined below.

Amenity

23. When assessing impacts on amenity, it is necessary to determine the level of existing amenity within the immediate area and secondly, within the wider locality.
24. The existing amenity of Piggott Martin Road and the wider area can be classified as being of an agricultural nature, consistent with the predominant General Agricultural zone that is defined by a rural landscape of pastured paddocks for stock grazing, interspersed with areas of dense vegetation, along with dwellings and buildings associated with agricultural uses.
25. The potential detrimental impact on the amenity of the area, particularly in relation to noise, was a concern consistently raised within the submissions against the proposal, specifically:
 - Use is inappropriate within this area as it will affect the amenity
 - Noise will impact rural amenity (peaceful and tranquil), quality of life, tourist accommodation will be impacted.
 - There are insufficient buffers. Noise from motorcycles and ATV's travel multiple km's on windy days.
 - Hours of operation - School holidays, weekends and public holidays are when people want to relax. Hours of operation are too long
 - Are they only using 4-stroke or will 2-stroke still be used?
26. The updated Environmental Acoustic Assessment prepared in October 2021 demonstrates that the proposal in its current form meets the requirements contained under the *Environmental Protection (Noise) Regulations 1997* (the Noise Regulations).
27. The scenario modelling undertaken in the updated Environmental Assessment Report was based on the 'worst case scenario' of noise emissions generated by the equivalent of twelve 2-stroke 80cc ATVs (Suzuki LT80).

28. This was undertaken at the discretion of the noise consultant, in order to apply a level of conservatism and also create a level of consistency with the scenario modelling undertaken for the previous development application.
29. The proposal was referred to the Department of Water and Environmental Regulation's (DWER) Environmental Noise Branch. DWER's consideration of the proposal and the updated Environmental Acoustic Assessment and their technical advice is provided in detail under the Government and Public Consultation section of this report. DWER are the responsible body to ensure compliance with the Noise Regulations.
30. Following consideration of the updated Assessment and revised proposal (to the SAT approval in 2008), DWER indicated that they are satisfied that the proposal will be able to adhere to the Noise Regulations, subject to riding being wholly contained within the designated training area.
31. The distance between the site boundary and dwellings off-site is an average of approximately 200m, with a minimum of 70m (south west) and maximum of 375m (south), when measured from the boundary of the subject lot to the sensitive receptor, and identified in the updated Environmental Acoustic Assessment.
32. When measured from the edge of the designated training area identified on the site plan, the closest dwellings range between approximately 300 metres to 800 metres.
33. The closest approved holiday accommodation use is approximately 700 metres to the southeast, when measured from the subject lot boundary to the closest habitable structure on the site.
34. The proponent clarified that the ATVs to be used for lessons will be primarily 4-stroke 90cc or less, predominately 50cc, however there will be two 2-stroke 80cc ATVs available for lessons. The two 2-stroke 80cc ATVs are not expected to be used often and riders of these will be subject to certain limitations.
35. It should also be noted however that 2-stroke 80cc ATVs are no longer commercially available to purchase new and therefore unlikely that additional 2-stroke 80cc ATVs will be added to the available vehicles for lessons.
36. The proponent has also indicated that speeds of the ATVs will be restricted, and that as the lessons are for children who are beginners and unfamiliar with the use of the vehicles, this will likely result in further reduced noise impacts than what might potentially be expected.
37. It is also recommended that all riding is contained on-site within the training area indicated on the site plan, as per the recommendation of DWER.
38. Further to this, the standard condition in relation to management of environmental impacts (including noise) in order to not prejudicially affect the amenity of the neighbourhood is proposed to be applied as a condition of approval should the proposal be supported.
39. The proposed development is required to operate in accordance to prescribed levels set out under the Environmental Protection Act 1986, and the Environmental Protection (Noise) Regulations 1997.
40. This requirement is identified through an advice note applied should the proposal be supported. The legislation is managed through the Department of Water and Environmental Regulation (DWER).
41. Due to the Acoustic Assessment being based on the worst case scenario using the Suzuki 80cc ATV LT80 2-stroke, and demonstrating compliance with the Noise Regulations with this type of ATV, officers do not see any purpose in restricting the use of ATV's to 4-stroke only.
42. Noting this concern, a condition restricting the number of 2-stroke ATV's could be incorporated into the revised OMP, reflecting the applicant's intention, however for the reasons outlined above, this further limitation has not been incorporated into the officer's recommendation.
43. Although the Acoustic Assessment indicates that the Noise Regulations can be met in relation to use of the ATVs being used throughout the site, staff recommend that the updated Operational Management Plan further limit riding of ATVs associated with the lessons be restricted to the designated Training Area only, in order to ensure impacts of noise to nearby adjoining dwellings are sufficiently mitigated.

44. Following this, it is recommended that the implementation and ongoing compliance with the Operational Management Plan be applied as a condition of approval, limiting the operation to Saturdays and Sundays, published school holidays, with no operation generally permitted on Public Holidays, subject to obtaining approval in writing from the City.
45. Mitigation of potential detrimental impacts on amenity from noise to adjoining sensitive receptors has been addressed through operational aspects of the proposal captured under the proposed Operational Management Plan, including the limited duration of the use throughout the year, the distance between the designated Training Area and the dwellings closest to the use (that will also be buffered to a degree by existing dense vegetation to the south and south-west of the training area).
46. In summary, noting the concerns raised during advertising, although it is acknowledged that there will be noise generated on-site from the operation of ATVs, the type of noise generated by the use is not considered to be out of character with the surrounding predominant agricultural setting and functions.
47. Furthermore, as the proposed use will be contained within cleared areas on the site, it is unlikely to impact current or future agricultural activities. The proposal in its current form demonstrates it will meet the requirements outlined under the Noise Regulations, including incorporating a number of changes to further reduce impacts from noise to adjoining properties, as permitted under the previous approval granted by SAT in 2008.
48. Therefore, proposal demonstrates it is consistent with the objectives of the General Agricultural zone in this instance, and is unlikely to have a detrimental impact the amenity of the area.

Impacts on road conditions from increased traffic

49. The increase in traffic and condition of the road was also raised within the submissions against the proposal. Concerns raised in relation to traffic and condition of the road primarily relate to the following and are discussed in detail below:
 - Road is a narrow gravel road and proposal would result in increased traffic
 - Road conditions - is already corrugated and full of pot holes from lack of maintenance
 - Increase in dust
50. Staff acknowledge the concerns raised during advertising regarding potential impacts from the use to the condition of the road. However, due to the scale of the proposal, the proposed use is considered minor in nature and unlikely to generate a large amount of traffic resulting in increased maintenance or dust issues.
51. Furthermore, the City of Albany does not have the statutory authority to restrict vehicles from using a public road which are classified as 'as of right' vehicles by Main Roads WA.
52. To ensure that the proposed use remains small scale, and thus limiting significant increases in traffic volumes of road users, it is recommended that a condition of approval be applied that limits the operation of the use.

Environmental impacts on flora, fauna, livestock and emissions

53. The potential impact on the environment was also raised within the submissions against the proposal. Concerns raised in relation to the impact on the environment primarily relate to the following and are discussed in detail below:
 - The noise from the ATV's will impact the Ringtail Possums, Black Cockatoos, eagles, snakes, livestock and domestic animals within the area.
 - The riding school will encourage unsupervised riders within the nearby reserve, Munda Bididi trail and Bibbulmun track, impacting the flora.
 - The ATV's will result in an increase of emissions. It was questioned how the owners proposed to offset this, and also whether electric ATV's have been considered to reduce emissions (noise and pollution).
54. The proponent has indicated that they investigated electric ATVs and actually purchased one for testing and suitability. The proponent outlined however that unfortunately the build quality, reliability and short life of the battery issues of electric ATVs make them unsuitable in this instance.

55. The proponent indicated that they that are using the smallest motors possible with the lowest possible levels of emissions and on a property where they have retained a large area of natural bush. The proponent further indicated that they have also allowed a large area of former pasture to become overgrown with regrowth as offsetting measures.
56. In order to limit emissions, it is recommended that the ATVs used be restricted to a maximum engine capacity of 90cc, and that the exhaust systems maintained at all times so that the emissions comply with the manufacturers specifications. It is recommended that the OMP be amended to reflect this.
57. Due to the concerns raised in relation to the impact on wildlife, the proposal was referred to the Department of Biodiversity, Conservation and Attractions (DBCA). DBCA have no objections to the proposal.
58. The concerns are noted, however given the small scale of the proposed operation, and that the use is contained within the cleared area, it is unlikely that that there will be an impact on livestock, native or domestic animals.
59. The concerns raised regarding the use encouraging unsupervised riders within the nearby reserve is noted, however this is not considered a relevant planning matter. Unauthorised riding in reserves should be reported to relevant management authority for investigation.

Increased fire risk

60. Concern that the use will increase the risk of fire within the area was raised within the submissions against the proposal. Concerns raised in relation to the increase in fire risk relate to the following and are discussed below:
 - Increased risk of fire within the area due to introduction of machines
 - Insufficient existing firebreaks
61. The subject site is identified as being within a bushfire prone area and the proposed use is considered a vulnerable land use. Subsequently, a Bushfire Management Plan (BMP) was required to be prepared for the use.
62. As outlined under the Government and Public Consultation section, the BMP prepared for the previous approval was submitted as supporting documentation for the subject development, and the proposal referred to the Department of Fire and Emergency Services (DFES) for comment. DFES requested minor modifications to the BMP, with a revised BMP submitted by the proponent to reflect these.
63. DFES advised they did not need to be referred the revised BMP, and indicated that ultimately the local government as the determining authority would need to be satisfied that the revised BMP satisfactorily meets the requirements of *State Planning Policy .7 Planning in Bushfire Prone Areas* (SPP3.7).
64. Following this, staff have reviewed the revised BMP and consider that it satisfactorily meets the requirements of SPP3.7, with some of the requirements outlined under the BMP to be implemented via the application of suitable planning conditions.
65. In relation to concerns raised regarding insufficient firebreaks, it should be noted that firebreaks are dealt with under the annual Firebreak Management Notice, and the management of these are not a relevant planning consideration.

Further intensification of the use

66. Concerns raised in relation to the intensification relate to the following and are discussed below:
 - Concerned that it will become a race track for adults
 - Concerned numbers will increase
 - Who will regulate that it complies with conditions
67. Any intensification outside of the proposal would be subject to a further development application and assessment on its merits.
68. It is considered that applying appropriate planning conditions that limit the use to its current form mitigate concerns raised, including incorporation of a complaints procedure within a revised Operational Management Plan.

69. It is the applicant's responsibility to ensure they are operating in accordance with a current approval at all times. Should the proposal be supported and the City receives a complaint about the operation not operating in accordance with the approval, the City would investigate accordingly.

Other matters

70. The following concerns were raised during advertising, that are not considered relevant planning matters:
- Qualifications, insurance, safety of operations and validity of evidence submitted by the proponent support the proposal
 - Property value
 - Unclear community benefit
 - Provision of amenities
71. It is acknowledged that suitability of the land for development and possible risk to health and safety is a relevant matter for consideration. Compliance in relation to safety of operations, obtaining of relevant qualifications and insurance, fall under separate legislation and requirements, and are not captured under the relevant planning legislation and therefore not a relevant planning matter.
72. However, the applicant has stated that they will investigate what is required and obtain all the necessary approvals.
73. The concerns raised questioning the validity of evidence submitted in support of a proposal, are noted. A proponent has the ability to submit supporting information outlining rationale for their proposal.
74. Development applications are assessed on their merits and informed by relevant matters including supporting information submitted provided by the proponent, consideration of submissions received during advertising, and assessment of the proposal against the objectives of the zone, and other relevant planning matters outlined under cl. 67 of the Planning Regulations.
75. Property values are not within the matters to be considered under clause 67 of the Planning Regulations; and therefore are not a valid planning consideration.
76. Demonstration of community benefit of the proposal was not required to be demonstrated in this instance, and is therefore not a relevant matter for consideration.
77. As outlined under the Government and Public Consultation section of this report, the proposal was referred to Environmental Health and Building who indicated that a properly constructed sanitary convenience is to be provided on site, and constructed in accordance with the Building Code of Australia. The number and type of required sanitary facilities shall be as for a Class 9b sporting venue. A condition of approval is recommended to be applied to reflect this requirement.

GOVERNMENT & PUBLIC CONSULTATION

78. Agency responses, concerns raised during advertising, staff comment and the proponent's justification for the proposal are summarised and discussed above.
79. Recreation-Private is designated as a 'D' use within the General Agriculture zone, with advertising of a proposal at the discretion of the local government.

80. Advertising of the proposal was undertaken in this instance, and undertaken during two rounds, based on further information being required.

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Consult	Mail Out to nearby landowners within approximately 650m of the subject site's boundary City website Public Comment page – copy of application made available and online submission form In addition to the above submitters on Round 1 of proposal were also re-referred proposal with updated documentation as part of Round 2 advertising	Round 1 - 21/02/2020–13/03/2020 Round 2 - 19/04/2022 – 13/05/2022	Total submissions received over both rounds: 18	As outlined above – advertising of the proposal was not mandatory, however the standard process was followed as per the Planning Regulations

81. In addition to the public consultation, the proposal was also referred to DWER, DBCA and DFES. DBCA advised there were no objections to the proposal, with responses from DWER and DFES outlined further detail below and discussed above under Planning Assessment.

DWER

82. The Environmental Acoustic Assessment that was prepared for the previous proposal approved by SAT in 2008 was submitted as part of the original supporting documentation for the subject development application, and referred to DWER for comment (April 2020).
83. At that time DWER advised that the assessment lacked critical information to determine whether noise from the proposed operations would comply with the Noise Regulations. An updated Environmental Acoustic Assessment was received by the City and subsequently re-referred to DWER for comment re-referred to DWER for comment May 2022.
84. A summary of the comments and technical advice provided by DWER's Environmental Noise Branch (ENB) based on the updated Environmental Acoustic Assessment and Operational Management Plan are as follows:
- It was noted that a maximum of 12 ATVs will be used, an increase from what was approved in the 2008 SAT Order, and therefore DWER considered that the increase would not significantly increase the overall noise emission levels, due to several other positive changes in terms of noise emissions.
 - It was acknowledged that one of the key changes involved no motorcycle use (i.e. no two-wheel), with only four-wheel ATVs to be used. DWER noted that the removal of motorcycles and the change to predominantly 4-stroke ATVs would lead to lower noise emission levels, as the 4-wheel ATV is generally considered quieter than the two-wheel motorcycle. The 4-stroke ATV is also considered quieter than the 2-stroke ATV with a similar engine capacity. DWER also noted that the proposal involved all ATVs will be 90cc or less in engine capacity, and most will be less than 50cc. Furthermore, the proposed changes will lead to lower noise emissions than what was approved in the 2008 SAT Order, which restricted the engine capacity to a maximum of 100cc.
 - The use of 'SoundPlan' noise modelling software was considered acceptable commercial computer software by DWER, and the assessed sound power level of 83dB(A) adopted for each of the ATVs (which was the sound power level of a Suzuki 80cc ATV LT80 2-stroke measured as part of the previous proposal) was considered a reasonable approach.

- DWER however did indicate there was difficulty in assessing the approach of using line noise sources in the noise modelling. The ENB raised concerns that the predicted noise emission levels from the 12 ATVs operating together was potentially too low at the closest neighbouring noise sensitive receivers. ENB further indicated they were not convinced that the predicted levels (Table 5.1 of the Assessment), represented the noise emission levels of the worst-case scenario, when all 12 ATVs are operating on the property boundary. Further discussion regarding this aspect of the Assessment in relation to the proposed operations of the use, is outlined under the assessment section above.
- However, based on information from the proponent, DWER also noted that the training will occur predominately at the centre of the property, which is clearly delineated as 'Predominate training area' in the map attached to the OMP. DWER further acknowledged that this 'Predominate training area' was generally consistent with the 'Training area' as specified in the 2008 SAT Order for the approved use area of motorcycles.
- Therefore, DWER concluded that as the proposed 'Predominate training area' was farther away from the neighbouring noise sensitive premises, noise emission levels generated by the ATVs operating within this area would be significantly less than what were modelled, in that the closest neighbouring residence is at least 260m away from this 'Predominate training area', but only 70m distance from the property boundary line.
- DWER subsequently confirmed that if the ATV operation was restricted inside the previously proposed SAT-restricted 'Training area', noise from the proposed operation would be able to comply with the assigned noise levels at all neighbouring residences. Furthermore, the potential noise impact on the neighbouring noise sensitive receiver, while likely to be audible (given the generally relatively low ambient levels of rural areas), would also not be significant.
- Subject to the above, it should be noted that a comment in the DWER advice indicated it was assumed that all ATVs to be used in the updated proposal would be 4-stroke engines only, however this is not stated in the Acoustic Assessment or Operational Management Plan. As outlined elsewhere in the report, two 2-stroke 80cc ATVs will be available, however this aspect does not materially change the consideration of the proposal, as the updated Assessment Acoustic Assessment identified the proposal will comply with the Noise Regulations, with the assessment based on the 'worst case scenario' of 12 2-stroke 80cc ATVs.

DFES

85. The Bushfire Management Plan that was prepared for the previous proposal approved by SAT in 2008 was submitted as part of the original supporting documentation for the subject development application, and referred to DFES for comment (in April 2020). At that time DFES requested some minor modifications to the BMP and provided the following technical advice:
- *Given that the proposed development application has the potential to increase the threat of bushfire to people, property and infrastructure, the decision maker should ensure that the bushfire risk and hazard reduction/bushfire protection measures are established and understood before making a determination.*
86. The modifications were undertaken by the bushfire consultant and submitted to the City for review. Staff discussed the requested modifications with DFES at the time, who confirmed that they did not require further referral to view the modified BMP, as the modifications did not affect the design of the proposal.
87. DFES indicated that ultimately the local government would need to be satisfied that proposal adequately addressed the requirements of SPP3.7 and associated guidelines, specifically the matters outlined in their technical advice.

City of Albany Environmental Health & Building Services

88. The proposal was also referred to internal departments for consideration and comment, including Environmental Health and Building.

Provision of sanitary facilities

89. Both Environmental Health and Building Services advised it is a requirement that a properly constructed sanitary convenience is to be provided on site, and constructed in accordance with the *Building Code of Australia*. Building further advised that an Uncertified or Certified Application for a Building Permit is required for sanitary facilities for participants and spectators and that the number and type of required sanitary facilities shall be as for a Class 9b sporting venue.

Operation on public holidays

90. Environmental Health advised that a blanket approval should not be granted as part of the development application for operation on public holidays. In accordance with the Noise Regulations, the proponent should seek approval for operation on individual public holidays via a permit.

STATUTORY IMPLICATIONS

91. The Recreation-Private use is designated as a 'D' use within the General Agriculture zone, meaning the use is not permitted unless the Local Government has exercised its discretion by granting planning approval.
92. The proposal was initially advertised as Recreation–Private (All-Terrain Vehicle Training), however the City's Environmental Health team recently received advice from Worksafe, that indicated the use of 'lessons' was more appropriate term than 'training', as the term training should only be used when there is a certain skillset to be gained from undertaking the 'training'.
93. In this instance, it is considered that change to the description of the type of Recreation-Private use proposed does not materially affect the consideration of the application.
94. Voting requirement for this item is **SIMPLE MAJORITY**

POLICY IMPLICATIONS

95. Not applicable

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>Risk: A decision that results in the detrimental impacts on amenity may be seen as a misapplication of the provisions of local planning scheme.</i>	<i>Likely</i>	<i>Moderate</i>	<i>High</i>	<i>Pragmatic decision based on the assessment in accordance with the provisions of the local planning scheme, taking into account the consideration the objectives of the General Agricultural zone and submissions received during advertising.</i>

FINANCIAL IMPLICATIONS

97. All costs associated with the development will be borne by the proponent.
98. However, should the proponents be aggrieved by Council's decision and seek a review 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

99. 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*.

ENVIRONMENTAL CONSIDERATIONS

100. The subject lot involves both cleared areas and remnant vegetation. The removal of vegetation is not proposed as part of this proposal.
101. The proposal was referred to DBCA in regards to concerns raised regarding potential impacts on native flora and fauna from the noise emissions of the ATVs. As outlined under the Government and Public Consultation section, DBCA indicated they have no objections to the proposal.
102. Wastewater and on-site effluent disposal will be managed through the provision of appropriate drainage associated with the required on-site facilities.
103. Concerns were raised during advertising emissions from the ATVs, and the potential impacts on the environment and associated offset requirements. These concerns are discussed in further detail under the Planning assessment section of this report.

ALTERNATE OPTIONS

104. As outlined above, were Council to consider that the use or number of the two 2-stroke 80ccs ATVs should be further restricted as part of an approval of the use, this could be reflected by adding this requirement to the proposed existing condition requiring submission of an updated Operational Management Plan.
105. Council has the following alternate options in relation to this item, which are:
 - a) To resolve to refuse the proposal subject to reasons; and
 - b) To alter, amend, remove or add conditions to the approval to address potential impacts from the development.

CONCLUSION

106. The proposal is considered to be consistent with the Local Planning Scheme No. 1 and the objectives of the zone.
107. The inclusion of an Environmental Acoustic Assessment demonstrating that compliance with the *Environmental Protection (Noise) Regulations 1997* can be achieved has satisfactorily addressed concerns in relation to noise.
108. It is considered that the matters raised in the public submissions can be mitigated through the application of appropriate planning conditions. On this basis, it is considered the proposal can be approved and appropriately managed through ongoing conditions.
109. It is therefore recommended that Council approve the proposed development, subject to the conditions provided.

Consulted References	:	<ul style="list-style-type: none"> • City of Albany Local Planning Strategy 2019 • City of Albany Local Planning Scheme No. 1 • <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> • State Planning Policy 3.7 • <i>Environmental Protection (Noise) Regulations 1997</i> • SAT Orders and Decision 12/09/2008 (DR 386 2007)
File Number (Name of Ward)	:	A70491 (West Ward)
Previous Reference	:	OCM - 16/10/2007 (Item 11.1.1)