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# AGENDA

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## **DEVELOPMENT AND INFRASTRUCTURE SERVICES COMMITTEE MEETING**

**Wednesday 10 March 2021**

6.00pm

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) **Functions:** The Committee is responsible for:

Development Services:

The delivery of the “*Liveable Environmental Objectives*” contained in the City of Albany Strategic Plan:

- Advocate, plan and build connected, liveable communities.
- Create a community that supports people of all ages and backgrounds.
- Create vibrant neighbourhoods which are safe yet retain our local character and heritage.

Infrastructure Services:

The delivery of the “*Clean and Green Objectives*” contained in the City of Albany Strategic Plan:

- To protect and enhance our pristine natural environment.
- To promote environmental sustainability.
- To promote our region as clean and green.

(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) **Membership:** Open to all elected members.

(4) **Meeting Schedule:** Monthly

(5) **Meeting Location:** Council Chambers

(6) **Executive Officers:** Executive Director Infrastructure, Development & Environment

(7) **Delegated Authority:** None

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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 past, present and emerging”.*

**3. RECORD OF ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE**

Mayor

D Wellington

**Councillors:**

Member

E Doughty (Chair)

Member

R Sutton (Deputy Chair)

Member

P Terry

Member

M Benson-Lidholm JP

Member

J Shanhun

Member

S Smith

Member

A Goode JP

Member

C Thomson

Member

R Hammond

Member

T Sleeman

**Staff:**

Chief Executive Officer

A Sharpe

Executive Director Infrastructure, Development  
and Environment

P Camins

Manager Planning & Building Services

J van der Mescht

Coordinator Planning Services

J Wardell-Johnson

Meeting Secretary

A Paulley

**Apologies:**

Member

R Stephens

Member

G Stocks (Deputy Mayor)

**4. DISCLOSURES OF INTEREST**

<b>Name</b>	<b>Committee/Report Item Number</b>	<b>Nature of Interest</b>

**5. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

Responses to questions raised by Mr Anthony Thomas at the Development and Infrastructure Services Committee held on 10 February 2021 have been provided in writing to Mr Thomas.

**6. PUBLIC QUESTION TIME**

**7. PETITIONS AND DEPUTATIONS**

**8. CONFIRMATION OF MINUTES**

**DRAFT MOTION**

**THAT the minutes of the Development and Infrastructure Services Committee meeting held on 10 February 2021 as previously distributed, be CONFIRMED as a true and accurate record of proceedings.**

**9. PRESENTATIONS**

**10. UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS**

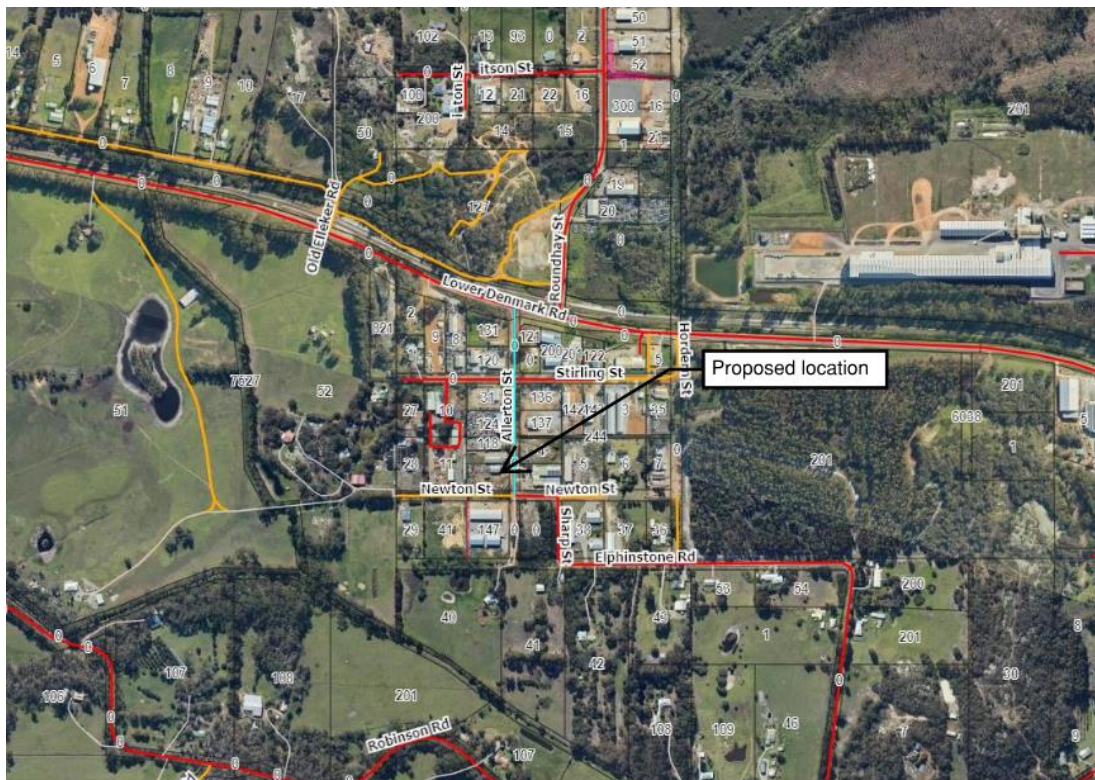
## DIS252: TELECOMMUNICATIONS INFRASTRUCTURE

<b>Land Description</b>	: Lot 141, 32 Allerton Street, Robinson WA 6330
<b>Property Owner</b>	: J.A and K.A .Quinlan
<b>Proponent</b>	: Visionstream Australia Pty Ltd on behalf of Telstra Corporation
<b>Business Entity Name</b>	: Visionstream Australia Pty Ltd
<b>Attachments</b>	: <ol style="list-style-type: none"><li>1. Applicant Planning Assessment Report</li><li>2. Planning Assessment Report Appendix A – Certificate of Title</li><li>3. Planning Assessment Report Appendix B – Plans</li><li>4. Planning Assessment Report Appendix C – EME Report</li><li>5. Planning Assessment Report Appendix E – EPBC Act Protected Matters Report</li><li>6. Schedule of Submissions</li><li>7. Applicant response to submissions</li></ol>
<b>Supplementary Information &amp; Councillor Workstation</b>	: Letters of submission from the public
<b>Report Prepared By</b>	: Senior Planning Officer (J Anderson)
<b>Responsible Officers:</b>	: Executive Director Infrastructure, Development and Environment (P Camins)

### STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. This item relates to the following elements of the City of Albany *Strategic Community Plan 2030*:
  - Theme:** Smart, Prosperous and Growing
  - Objective:** To strengthen and grow our region's economic base
  - Community Priority:** Work with business and other stakeholders to attract investment, diversify the economy, create jobs and support small business growth.
  - Theme:** A connected and safe built environment.
  - Objective:** To develop vibrant neighbourhoods which retain local character and heritage.
  - Community Priority:** Develop and implement a contemporary Local Planning Strategy that reflects our identity and supports economic growth.
3. When exercising its discretion in relation to planning matters, the pertinent strategic document is the *Albany Local Planning Strategy 2019* (the Planning Strategy).
4. The proposal is consistent with the objectives identified in the Planning Strategy, specifically: *Meet the service infrastructure requirements for settlement growth*.

**Maps and Diagrams: 32 (Lot 141) Allerton Street, Robinson**



**In Brief:**

- Council is asked to consider an application for development approval for Telecommunications Infrastructure at 32 (Lot 141) Allerton Street, Robinson.
- The land use is considered a 'D' use within the 'General Industry' zone in accordance with City of Albany *Local Planning Scheme No. 1* (LPS1).
- The application was advertised for public comment via direct mail out to surrounding landowners within a 500m radius and a notice posted on the City's website.
- Forty-two (42) submissions were received in relation to the proposal. All 42 submissions objected to or raised concerns regarding the proposal.
- The submissions received outlined the following concerns:
  - Health concerns;
  - The visual impact of the proposal on the amenity of the area;
  - Inconsistency of site selection with state and local planning framework and non-compliance with relevant regulations and industry codes;
  - Environmental concerns;
  - Noise;
  - Potential impacts on property values;
  - Aspects of the consultation process.
- The applicant submitted a response to address concerns raised during advertising.
- Due to the number of concerns raised, the application is being referred to Council for determination.
- Staff recommend the proposal be supported subject to conditions. The proposed development has been assessed against the applicable statutory framework including *State Planning Policy 5.2 – Telecommunications Infrastructure* (SPP5.2), and is generally consistent with the City of Albany LPS1.



## RECOMMENDATION

### DIS252: RESPONSIBLE OFFICER RECOMMENDATION

**THAT Council resolves to ISSUE a notice of determination granting development approval with conditions for Telecommunications Infrastructure at Lot 141, 32 Allerton Street, Robinson.**

#### Conditions:

1. All development shall occur in accordance with the stamped, approved plans referenced P2200433, unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.
2. If the development, the subject of this approval, is not substantially commenced within a period of 2 years from the date of approval, the approval shall lapse and be of no further effect.
3. Unless otherwise agreed in writing with the City of Albany, no additional lighting is permitted on the telecommunications tower.
4. 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.

#### Advice:

- a. *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.*

## BACKGROUND

5. The City of Albany has received a development application for Telecommunications Infrastructure at 32 (Lot 141) Allerton Street, Robinson.
6. The subject site is located approximately 3.7km west of the Albany CBD.
7. The subject site is 4,019m<sup>2</sup> in area and situated on the corner of Allerton Street and Newton Street.
8. The subject site is zoned General Industry under LPS1 and is currently developed with an industrial workshop/shed.
9. The subject site is adjoined by land zoned General Industry' to the north, south, east and west. A mixture of Rural Small Holdings and Rural Residential lots lie approximately 200m-400m to the east, south and west.
10. Telecommunications Infrastructure is classified as a 'D' use within the General Industry zone, meaning that the use is not permitted unless the local government has exercised its discretion by granting development approval.
11. The location is over 1.3kms from Princess Royal Harbour, 300m from Lower Denmark Road and over 1km Frenchman Bay Road.
12. The subject land is not identified as being within an area of high landscape protection, nor does it contain any places of heritage significance.

## DISCUSSION

13. According to the applicant's Planning Assessment Report, the development application for the proposed telecommunications infrastructure was lodged on the basis of improving network services to the Robinson locality and will make Robinson and the greater Albany region 5G ready.

14. The proposed development involves installation of the following telecommunications infrastructure at the subject site.
  - 1 monopole measuring 41.25m high with a triangular headframe;
  - 9 panel antennas (no greater than 2.8m in length);
  - 72m<sup>2</sup> compound area which is propose to be enclosed by security chain-mesh fencing;
  - Equipment shelter with a maximum height of 3m and floor area of 7.5m<sup>2</sup> located in the compound area;
15. The applicant has proposed a monopole rather than a lattice style tower as it is less obtrusive. It is also proposed to leave the infrastructure unpainted in a grey colour which is the preferred finish for telecommunication infrastructure as it blends as far as practical against lighter background such as the sky.
16. The existing development (industrial workshop/shed) on-site are to be retained.
17. The location is over 1.3kms from Princess Royal Harbour, 300m from Lower Denmark Road and over 1km Frenchman Bay Road.
18. The subject land is not identified as being within an area of high landscape protection, nor does it contain any places of heritage significance.
19. The infrastructure is located within an existing cleared area and does not require the removal of any native vegetation.
20. The proposal has been assessed against LPS1 and SPP 5.2.
21. As outlined under SPP5.2, when determining telecommunications infrastructure, it is necessary to assess the impact on amenity against the overall public benefit of the infrastructure.
22. The acceptable boundary setbacks for General Industry land listed under Table 8 – Site Requirements of LPS 1 require development to be setback 9m from the front boundary, with nil setbacks required to the rear and side boundaries.
23. The proposed infrastructure and compound shelter are proposed to be located to the north-east portion of the lot, with the pole setback:
  - 9m from the eastern boundary abutting Allerton Street
  - 6m from the northern boundary;
  - Approximately 80m from the western boundary; and
24. Approximately 50 metres to the southern boundary abutting Newton Street.
25. The applicant's Planning Assessment Report (Attachment 1) outlines the process utilised by Telstra regarding the site selection process and criteria used to identify potential suitable sites.
26. As outlined in the Planning Assessment Report, Telstra considers the following as part of its site selection process:
  - The technical viability of potential sites, including prediction of coverage that may be expected from identified sites using computer modelling;
  - The potential to co-locate on an existing telecommunications facility.
  - The potential to locate on an existing building or structure.
  - Visual impact and the potential to obtain relevant town planning approvals.
  - Proximity to community sensitive locations and areas of environmental heritage.
  - The potential to obtain tenure at the site.

- The cost of developing the site and the provision of utilities (power, access to the facility and transmission links).
27. Following the process outlined in its report and consideration of a number of potential candidate sites, Telstra concluded that the subject site was the most appropriate solution to provide necessary mobile phone coverage to the Robinson locality. As outlined in the report, the conclusion was based on:
- The site is appropriately located and sited to minimise visual and environmental impacts on the immediate and surrounding areas;
  - Well setback from sensitive uses;
  - The site will achieve the required capacity and indoor coverage objectives for the area;
  - The site will help to make the Robinson and Albany region 5G ready;
  - The site will meet design and construction considerations; and
  - The proposal operates within the regulatory framework of Commonwealth, State and Local Government.
  - There is a willing landowner.
28. In assessing the merits of the proposal, Council are to consider the overall public benefit of the proposal on balance with the potential impacts on amenity from the proposed development.
29. The proposed development has been assessed against the applicable statutory framework including SPP5.2 and LPS1.
30. Although not specifically required under LPS1, the application was advertised for a period of twenty-seven (27) days (between the dates of 18/09/2020 – 14/10/2020). All landowners within a 500m radius of the site were notified directly by letter, and a notice was placed on the City of Albany website.
31. During the advertising period a total of 42 submissions were received. All objected or raised concerns regarding the proposal.
32. The concerns raised relate primarily to the following:
- Health concerns;
  - The visual impact of the proposal on the amenity of the area;
  - Inconsistency of site selection with state and local planning framework and non-compliance with relevant regulations and industry codes;
  - Environmental concerns;
  - Noise;
  - Potential impacts on property values;
  - Aspects of the consultation process.
33. The main concerns raised during the submission period will be broadly addressed under the headings below.

**Health concerns**

34. Concerns were raised during in relation to the potential for detrimental health effects from the proposed tower was consistently raised, particularly 5G.
35. Concerns were specifically raised that there were a number of residents and children living within 250m of the proposed development. In addition to this there was concerns that the workers within the area would be exposed 6 days per week up to 10 hours per day.

36. The subject site is zoned General Industry. Although a dwelling is not a permitted use within this zone, it is acknowledged that there are a number of dwellings within the Rural Small Holdings and Rural Residential zones to the east, south and west of the subject lot. The closest dwelling is approximately 220m to the south from the proposed development.
37. The applicant has provided the following response in relation to the concerns raised in relation to health. A full copy of the applicant's response to the submissions received can be viewed under Attachment 7 to this report.

*"Please be assured that Telstra take the responsibilities regarding the health and safety of their customers and the community very seriously. Telstra also acknowledge that some people are genuinely concerned about the possible health effects from electromagnetic energy (EME).*

*There are many sources of EME (often called electromagnetic radiation). They occur naturally as well as having artificial sources. Natural sources of EME include light from the sun, lightning and the earth's magnetic field. Refrigerators, hairdryers and computers, TVs, radios, mobile phones, WiFi, remote control devices, emergency services systems, baby monitors and microwave ovens.*

*The Australian Communications and Media Authority (ACMA) has set mandatory limits for EME exposure for all devices that produce Radiofrequency signals. Mobile phones and their base stations are included in these mandatory limits, as are AM/FM radio and TV broadcast stations. The ACMA conduct regular audit operations to test for compliance against these limits. The levels are set by the Australian Radiation Protection and Nuclear Safety Agency - ARPANSA Maximum Exposure Levels to Radiofrequency Fields -3kHz to 300 GHz' (RPS3), which is derived from the International Commission Non-Ionizing Radiation Protection (ICNIRP) Guidelines. The Australian Communications and Media Authority (ACMA) has extensive information on health and mobile phone technology.*

*ICNIRP has recently undertaken an extensive review of the available scientific evidence and research on EME and health. As a result, new ICNIRP Guidelines were published on 11 March 2020 with a focus on the overall depth of research and safety of the guidelines. It is the responsibility of these expert authorities to continually review the science on electromagnetic energy (EME) and to protect public safety.*

*ARPANSA's position is: "Based on current research there are no established health effects that can be attributed to the low RF EME exposure from mobile phone base station antennas."*

*Additionally, the safety regulations operate by placing a limit on the strength of the signal (or radiofrequency EME) that Telstra can transmit. They are not based on distance, or creating "buffer zones" for residential areas, places of employment, schools or any other specific environment. The environmental standard limits the network signal strength to a level low enough to protect all people, in all environments, 24-hours a day. The safety limit itself, has a significant safety margin, or precautionary approach built into it.*

*The ACMA's regulatory arrangements require base stations to comply with the exposure limits in the ARPANSA RF Standard. The ARPANSA Standard is designed to protect people of all ages and health status against all known adverse health effects from exposure to RF EME. This standard is the same for infants/children, seniors and pregnant women."*

38. It is necessary to note that the City is not a regulatory body in respect to electromagnetic energy (EME). The Federally established Australian Protection and Nuclear Safety Agency (ARPANSA) enforce the *Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields – 3kHz to 300GHz*. The EME report submitted by the applicant states that the maximum calculated EME level from the site will be 1.65% of the maximum public exposure level.

**Visual amenity**

39. A number of concerns were received in relation to the impact on visual amenity of the area from the proposed development, including the visual impact from nearby residents.
40. When assessing impacts on amenity, it is necessary to determine the level of existing amenity within the immediate area and secondly, within wider the locality.
41. The existing amenity of Allerton Street can be classified as having an industrial landscape, defined by industrial workshops and storage yards. The wider area can be classified as having a rural residential landscape defined by dispersed dwellings located within areas of open paddocks and areas of dense vegetation.
42. The applicant has provided a photo montage of the proposal taken from a number of surrounding properties (refer Appendix D under Attachment 1 Applicant's Planning Assessment Report).
43. SPP 5.2 outlines a number of considerations in the assessment of the visual impact of telecommunications infrastructure proposals.
44. Considerations include that visual impact assessments should be made on a case by case basis, that proposals should be sited and designed to minimise visual impact, that proposals should not be located on sites that may compromise sites of cultural, environmental, social or visual landscape value and the proposal should display design features, including scale, materials, external colours and finishes that are sympathetic to the surrounding landscape.
45. In line with the above, the proposed site is not located in a prominent topographical location (such as on a ridge line). The applicant has also proposed to leave the monopole unpainted (resulting in a dull grey colour) in order to assist in reducing the visual impact of the proposed development.
46. The applicant has proposed a monopole rather than a lattice style tower as it is less obtrusive. It is also proposed to leave the infrastructure unpainted in a grey colour which is the preferred finish for telecommunication infrastructure as it blends as far as practical against lighter background such as the sky.
47. It is acknowledged that while the proposal will be partially visible when viewed from a number of properties within the area, it is necessary to consider that although part of the proposed development will be visible, this aspect does not, in itself, mean that the proposed development will have a negative impact on the visual amenity of the locality.
48. Furthermore, and as outlined above, the location is over 1.3kms from Princess Royal Harbour, 300m from Lower Denmark Road and over 1km Frenchman Bay Road. It is not anticipated the facility will be visually dominant from any of these locations
49. The subject land is not identified as being located within an area of high landscape protection, nor does it contain any places of heritage significance.
50. As outlined above, the proposal demonstrates compliance with the policy objectives and measures set out under SPP 5.2. A full assessment of the policy is outlined under the Policy Implications section below.

**Site selection and inconsistency with State Planning Policy 5.2 – Telecommunications Infrastructure**

51. A number of concerns received during advertising were raised regarding the proposal not meeting the SPP5.2 in relation to the following:
  - a) Address the needs of the community - There is already acceptable coverage within the area and therefore residents do not want it.
  - b) Should be co-located wherever possible – Panels should just be added to the existing towers rather than constructing a new tower.
  - c) Site selection

52. As outlined above, SPP 5.2 identifies a clear direction under the state planning framework in order to facilitate the roll out of an efficient telecommunications network
53. According to the applicant's Planning Assessment Report, the development application for the proposed telecommunications infrastructure was lodged on the basis of improving network services to the Robinson locality and will aid in making Robinson and the greater Albany region 5G ready.
54. The proposal has been assessed against SPP5.2. SPP 5.2 provides guiding principles for the location, siting and design of telecommunications infrastructure.
55. Along with the considerations outlined above, SPP 5.2 also outlines that proposed infrastructure should be co-located whenever possible and also located where the infrastructure will facilitate continuous network coverage and/or improved telecommunication services to the community.
56. The applicant stated in their assessment against SPP5.2 requirements as outlined under the Planning Assessment Report (Attachment 1), that there were no existing facilities within the vicinity that would allow co-location to occur while still meeting the operational requirements for the infrastructure.
57. The applicant provided justification stating that the existing NBN tower was investigated during the site selection process as a potential co-location site, however it was determined that the site was too far away to meet the capacity requirements.
58. As outlined above, the applicant provided rationale contained under the Planning Assessment Report (Attachment 1) outlining the process to determine the subject site being the most appropriate solution to provide mobile phone coverage to the Robinson locality.
59. The proposal demonstrates compliance with the policy objectives and measures under SPP 5.2. A full assessment of the policy is outlined under the Policy Implications section below.

**Inconsistency with LPS1**

60. Concerns were raised during advertising that the proposal was not appropriate for the General Industry zone under LPS1.
61. Telecommunications Infrastructure is classified as a 'D' use within the General Industry zone under the LPS1 Zoning table, meaning that the use is not permitted unless the local government has exercised its discretion by granting development approval.
62. The proposed development aligns with the objectives of the General Industry zone under LPS1, in that:
  - It is a use in keeping with existing uses on site and directly adjoining the subject site; and
  - That the proposed infrastructure is intended to improve upon existing telecommunication services in the locality, that would further contribute to Albany's economic growth and its regional centre status within the Great Southern region.
63. SPP 5.2 provides the direction that telecommunication infrastructure should not be prohibited in any zone, hence why it is discretionary within all zones throughout the City of Albany. SPP 5.2 also outlines that buffer zones and or setback distances are not to be included in planning schemes or policies.
64. As outlined above, SPP 5.2 identifies parameters that a local planning framework is required to address in order to facilitate the roll out of an efficient telecommunications network.
65. Local planning schemes and relevant local planning policies are required to adhere to the parameters set out under SPP5.2, including that local planning schemes and relevant local planning policies should not incorporate buffer zones and/or setback distances for installation of telecommunications infrastructure.

66. LPS1 addresses the requirements set out under SPP5.2 in relation to land use permissibility of telecommunications infrastructure.
67. The applicant provided justification in its Planning Assessment Report (Attachment 1) that the proposal has been sited to retain the land for its current use and to minimise visual impacts upon the amenity of the area by being placed on an established industrial site, surrounded by other established industrial developments.
68. The applicant indicated that detailed siting was undertaken to ensure the primary use of the land and any potential future use of surrounding land was not negatively impacted upon.
69. The proposal is considered to meet the provisions of LPS1.

**Does not meet the requirements of the C564:2018 Industry Code – Mobile Phone Base Station Deployment**

70. A number of submissions make reference to the applicant not satisfying the requirements of the *C564:2018 Industry Code – Mobile Phone Base Station Deployment* (the Deployment Code) in relation to the following:
  - Submissions contested the applicant's statement that that they complied with the Deployment Code.
  - Submissions raised concerns in relation to the applicant not providing transparency to residents and the local community on the proposed development.
  - Submissions raised concerns regarding a signed agreement occurring between the landowner and the applicant without planning approval and without community and council discussion or involvement.

Submissions raised concerns that the 'Precautionary Principle' hadn't been applied. Submissions raised concerns that as young children would be exposed to radiation emitted from the proposed telecommunications infrastructure, that the Precautionary Principle should be applied, in that if there is any perceived doubt about the safety of the technology, in this case EME radiation exposure to people, the implementation of such technology (infrastructure) should be paused or halted until it can be deemed to be safe.
71. It should be noted that the consultation requirements of the Deployment Code do not apply to Mobile Phone Radio Telecommunications Infrastructure that require development approval. Where a development approval is required for telecommunications infrastructure, Public consultation for the proposal is undertaken though the development application process undertaken by the relevant authority (City of Albany in this instance).
72. The applicant provided justification in the Planning Assessment Report (Attachment 1) outlining that although the Code doesn't specifically apply to the subject proposal, the site was selected and the proposed infrastructure designed in order to comply with the Code in regards to design and adherence to a precautionary approach.
73. The applicant provided further justification in their response to the submissions, in that the mandatory limits set by the Australian Communications Media Authority (ACMA) for EME exposure have a safety margin or precautionary approach built into the safety limit, which the proposed telecommunications infrastructure is required to adhere to.

**Environmental concerns - Risk on endangered species and EMR impacts on wildlife**

74. Concerns were raised in relation to the risk on endangered species and EMR impacts on wildlife, specifically:
  - Habitat for endangered Western Ringtail Possum;
  - Red and white tailed cockatoos frequent this area (red on critical list);
  - Barn Owls (sonar);
  - Sacred kingfisher;

- Can it be guaranteed that the proposal will not affect the above?
  - Can you guarantee that the Barn Owl who located food by sound will not be affected by this tower?
  - Local apiarists live nearby and this will impact the bees breeding and pollinating capacity, collapsing their colonies.
75. It is noted that the submissions received during consultation reference 'EMR'. The City's consideration of the submissions referencing EMR assume the reference is to EME. Subsequently, officer comments below in response to the submissions received reference EME, noting the submitters' use of EMR.
76. The applicant has provided the following response in relation to the concerns listed above. A full copy of the applicant's response is available under Attachment 7 to this report.

*With respect to possible biological effect of RF EME, in 2019 Telstra asked ARPANSA for their response on the issue of possible effects on flora and fauna. They replied, "There is no established evidence that EME exposure from wireless telecommunications sources is harmful to flora or fauna. It should be remembered that many studies investigating human health are performed in the laboratory on animals and plant cells."*

*Specifically, in relation to bees we are not aware of any evidence that 5G harms bees.*

### **Property value**

77. Decreased property values were raised during the consultation process.
78. Property values are not within the matters to be considered under clause 67 of the *Planning and Development (Local Planning Schemes) Regulations 2015*; and therefore are not a valid planning consideration.

### **Noise**

79. Concerns were raised regarding constant humming from the proposed development.
80. It is anticipated that there will be some low-level noise from the ongoing operation of air conditioning equipment associated with the equipment shelter. This is comparable to a domestic air conditioning unit.
81. The proposed development is considered to be appropriately setback from residential properties mitigating any associated noise.
82. 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.
83. The proposed development is also required to be installed and operated in accordance to prescribed levels set out under the *Environmental Protection Act 1986*, and the *Environmental Protection (Noise) Regulations 1997*. 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).

### **Insufficient consultation undertaken by the City of Albany**

84. Although not specifically required under LPS1, the application was advertised for a period of twenty-seven (27) days (between 18 September 2020 – 14 October 2020). All landowners within a 500m radius of the site were notified directly by letter, and a notice was placed on the City of Albany website.
85. Public consultation of the proposal was undertaken in accordance with clause 64 of the Planning Regulations which requires a proposal to be advertised for a minimum period of 14 days to surrounding landowners within the vicinity of the proposal.
86. A copy of the proposal was also made available on the City of Albany's website during the consultation period.



## GOVERNMENT & PUBLIC CONSULTATION

### 87. Community Engagement

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Consult	<ul style="list-style-type: none"> <li>Mail out to landowners</li> <li>City of Albany website</li> </ul>	18/09/2020 to 14/10/2020	42 submissions received	No Consultation process undertaken in accordance with cl. 64 of the Planning Regulations

88. Although not specifically required under LPS1, due to the nature of the proposal, the development application was advertised for a period of twenty-seven (27) days (between 18 September 2020 – 14 October 2020).
89. All landowners within a 500m radius of the site were notified directly by letter, and a notice was placed on the City of Albany website. Advertising was undertaken in accordance with clause 64 of Planning Regulations.
90. During the advertising period a total of 42 submissions were received, all objecting or raising concerns regarding the proposal.
91. The content of the submissions is summarised in more detail in the attached schedule of submissions. Staff comments and recommendations are provided in the attached schedule, while the broad issues are discussed in the Discussion section above.

## STATUTORY IMPLICATIONS

92. Telecommunications Infrastructure is classified as a “D” use within the ‘General Industry’ zone under the LPS1 Zoning table, meaning that the use is not permitted unless the Local Government has exercised its discretion by granting planning approval.
93. Voting requirement for this item is **SIMPLE MAJORITY**.

## POLICY IMPLICATIONS

94. The proposal has been assessed against SPP 5.2. SPP 5.2 provides guiding principles for the location, siting and design of telecommunications infrastructure.
95. It is important to note that SPP 5.2 provides the direction that telecommunication infrastructure should not be prohibited in any zone, hence why it is discretionary within all zones throughout the City of Albany.
96. Furthermore, buffer zones and or setback distances are not to be included in planning schemes or policies.
97. There is a clear direction in the SPP 5.2 to facilitate the roll out of an efficient telecommunications network, unless the location and siting unreasonably affects places of cultural or environmental significance, or the visual impact on balance has not been mitigated to outweigh the community benefit of the service it will provide the community.
98. Comment in reference to the key guiding principles for the location, siting and design of telecommunications infrastructure from SPP 5.2 are as follows:

*“Telecommunications infrastructure should be sited and designed to minimise visual impact and whenever possible:*

- a) Be located where it will not be prominently visible from significant viewing locations such as scenic routes, lookouts and recreation sites;

- b) Be located to avoid detracting from a significant view of a heritage item or place, a landmark, a streetscape, vista or a panorama, whether viewed from public or private land;
  - c) Not be located on sites where environmental, cultural heritage, social and visual landscape values maybe compromised and
  - d) Display design features, including scale, materials, external colours and finishes that are sympathetic to the surrounding landscape;”
99. As outlined above, the applicant provided rationale within the Planning Assessment Report (Attachment 1) outlining the process and measures undertaken to select a site and location that aims to minimise perceived negative impacts from the proposed development on the visual amenity of the area.
100. The location is over 1.3kms from Princess Royal Harbour, 300m from Lower Denmark Road and over 1km Frenchman Bay Road. It is not anticipated the facility will be visually dominant from any of these locations
101. The subject land is not identified as being within an area of high landscape protection, nor does it contain any places of heritage significance.
102. The infrastructure is located within an existing cleared area and does not require the removal of any native vegetation.
103. The applicant has proposed a monopole rather than a lattice style tower as it is less obtrusive. It is also proposed to leave the infrastructure unpainted in a grey colour which is the preferred finish for telecommunication infrastructure as it blends as far as practical against lighter background such as the sky.
- “Telecommunications infrastructure should be located where it will facilitate continuous network coverage and/or improved telecommunications services to the community;”
104. The site has been chosen to address the existing coverage issues in the Robinson and surrounding areas.
105. There are no existing facilities which would allow co-location to occur while still meeting the operational requirements for the infrastructure.
106. The proposal demonstrates compliance with the policy objectives of SPP 5.2.

## RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Reputation</b> <i>The perception that the approval may generate unacceptable impacts on the amenity on the area.</i>	<i>Possible</i>	<i>Moderate</i>	<i>Medium</i>	<i>The application has been assessed against the relevant statutory framework and sited to minimise any impacts on the amenity of the area.</i>
<b>Opportunity:</b> <i>Responds to community for improving mobile telecommunications in the municipality.</i>				

## FINANCIAL IMPLICATIONS

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

## LEGAL IMPLICATIONS

109. The proponent has the right to seek a review of the Council’s decision, including any conditions attached to an approval, conferred by the *Planning and Development Act 2005*. The City of Albany may be required to defend the decision at a State Administrative Tribunal hearing.

## ENVIRONMENTAL CONSIDERATIONS

110. The proposed development is required to comply with parameters set out under the Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields – 3kHz to 300GHz. The Federally established Australian Protection and Nuclear Safety Agency (ARPANSA) enforce these Standards.

## ALTERNATE OPTIONS

111. Council has the following alternate options in relation to this item, which are:
- To resolve to refuse the proposal subject to reasons; and
  - To resolve to approve the proposal subject to additional or modified conditions.

## CONCLUSION

112. The proposal has been assessed against LPS1 and SPP5.2 relating to telecommunications infrastructure.
113. In determining the application, it is necessary to consider and potential impacts on amenity against the long term benefit of improved mobile telecommunication services and coverage.
114. It is therefore recommended that Council approve the proposed development, subject to the conditions provided.

<b>Consulted References</b>	:	<ol style="list-style-type: none"> <li>1. Local Planning Scheme No. 1</li> <li>2. Albany Local Planning Strategy 2010</li> <li>3. State Planning Policy 5.2 - <i>Telecommunications Infrastructure</i></li> <li>4. Visual Landscape Planning in Western Australia – a manual for assessment, siting and design <i>Planning and Development (Local Planning Schemes) Regulations 2015</i></li> </ol>
<b>File Number (Name of Ward)</b>	:	A66676 (Vancouver Ward)
<b>Previous Reference</b>	:	N/A

## DIS253: AQUACULTURE FACILITY (STAGE 1)– 2 SWARBRICK STREET, EMU POINT

<b>Land Description</b>	: 2 (Reserve No. R 42964) Swarbrick Street, Emu Point, WA 6330
<b>Proponent</b>	: Element Advisory Pty Ltd
<b>Business Entity Name</b>	: Harvest Road
<b>Attachments</b>	: 1. Copy of Application 2. Schedule of Submissions 3. Planning Report
<b>Supplementary Information &amp; Councillor Workstation</b>	: Public submissions Agency submissions Development Application Report – Stages 1 and 2 (revised)
<b>Report Prepared By</b>	: Planning Officer - (D Ashboth)
<b>Responsible Officers:</b>	: Executive Director Infrastructure, Development and Environment (P Camins)

### STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. This item relates to the following elements of the City of Albany *Strategic Community Plan 2030*:  
**Theme:** Smart, Prosperous and Growing  
**Objective:** To strengthen and grow our region's economic base  
**Community Priority:** Work with business and other stakeholders to attract investment, diversify the economy, create jobs and support small business growth.  
**Theme:** A connected and safe built environment.  
**Objective:** To develop vibrant neighbourhoods which retain local character and heritage.  
**Community Priority:** Develop and implement a contemporary Local Planning Strategy that reflects our identity and supports economic growth.
3. The item relates to the following strategic objectives of the City of Albany *Local Planning Strategy* (the Planning Strategy):
  - a) *Enable tourist growth and diversification through land use planning mechanisms.*
  - b) *Facilitate the sustainable development of the agricultural sector and maximise opportunities for diversification of agriculture and downstream processing.*



**Maps and Diagrams:** Lease area - 2 (Reserve No. R 42964) Swarbrick Street, Emu Point

**In Brief:**

- The City of Albany has received a development application for 2 Swarbrick Street, Emu Point. The proposal is for an “Aquaculture” Facility to operate within an existing Parks and Recreation Reserve (Marine and Associated Purposes) Reserve No. R 42964, that is under the ownership of the Department of Planning, Lands and Heritage. The Reserve is vested to the City of Albany with the power to lease.
- The initial application submitted proposed a three stage development of the site, with ‘Stage 3’ consisting of a restaurant and tourism facility. Substantial amendments have been undertaken since the original proposal was submitted, with the restaurant and tourism facility being deleted from the proposal. The proposal the subject of this report deals with Stage 1 of the proposal only, with Stage 2 (revised) to be assessed as part of a separate development application.
- The subject site is located within the RU2 Restricted Uses area outlined under Schedule 3 of the City of Albany *Local Planning Scheme No.1* (LPS1). ‘Aquaculture’ is listed as a restricted use within the RU2 area, meaning that the use is permitted on this specific portion of land.
- The proposed Aquaculture Facility (Stage 1) has been assessed on its merits against the objectives and purpose of the Reserve and the general development requirements of LPS1.
- The proposal was advertised in its original form, encompassing all three stages, to the public via direct mail out to landowners within the suburb of Emu Point, tenants of Emu Point Boat Harbour reserve leases and City boat pens, along with a sign installed on site and a notice published on the City of Albany website.
- Twenty-two (22) responses were received, two of which were received outside of the consultation period. Of the 22 submissions, eight (8) objected to the proposal and twelve (12) supported the proposal subject to modifications.
- The submissions received outlined the following concerns:
  - Concerns with environmental impact
  - Coastal erosion and inundation

- Lack of consultation
  - Car parking shortfall
  - Public access to the waterfront restricted
  - Public access to the service and finger jetty blocked
  - Increased vehicle traffic
  - Impact on existing activities within the reserve
  - Impact on safety of other users of the reserve
  - Use of adjacent A-class reserve for parking and access.
- Due to the number of concerns raised regarding the overall proposal for the site, the application for Stage 1 of the proposal is being referred to Council for determination.
  - The original application was also referred to state agencies and authorities for their review and comment. Responses received specifically in relation to Stage 1 of the proposal, are discussed in greater detail throughout the report.
  - The applicant has submitted a number of revised plans over the course of assessment of the application in order to address submissions raised during advertising and respond to comments received from state agencies and authorities. During assessment and in consultation with the applicant, it was determined for Stage 1 of the proposal to be assessed and determined separately to Stage 2.
  - The revised information submitted by the applicant in relation to Stage 1 of the proposal and proposed conditions are considered to address the concerns raised through the public advertising process and comments received from state agencies and authorities.
  - Stage 1 of the proposed development has been assessed against relevant state regulations and guidelines and is consistent with LPS1. Staff recommend that Council approve the Stage 1 component of the proposed Aquaculture Facility, subject to conditions.
  - The consideration of this application relates to land based activities only as it relates to the subject site. Any other Aquaculture related activities currently being considered by the State Government are not part of this application and cannot be considered in this assessment.

## RECOMMENDATION

### **DIS253: RESPONSIBLE OFFICER RECOMMENDATION**

**THAT Council resolves to ISSUE a notice of determination granting development approval, subject to the following conditions, for Aquaculture Facility (Stage 1) at 2 (Reserve No. R 42964) Swarbrick Street, Emu Point:**

#### **Conditions:**

- 1. All development shall occur in accordance with the stamped, approved plans referenced P2200417, unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.**
- 2. If the development, the subject of this approval, is not substantially commenced within a period of 2 years from the date of approval, the approval shall lapse and be of no further effect.**

3. Prior to the commencement of development, an updated Coastal Hazard Assessment shall be submitted to the City of Albany for approval. Prior to occupancy, the coastal protection measures identified in the approved Coastal Hazard Assessment shall be implemented, completed and maintained thereafter to the satisfaction of the City of Albany.

**Advice:**

- *The Coastal Hazard Assessment shall include an inspection of the existing seawall by a suitably qualified expert to confirm its condition and suitability to adequately protect the site. Any requirements for repairs or extension of the seawall shall be implemented at the lessee's cost.*

4. Satisfactory arrangements for the provision of landscaping being made with the City of Albany and implemented prior to occupancy of use.

**Advice:**

- *The total landscaped area should reflect approximately 10% of the site area.*
- *The following plants are not to be used:*

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

5. Prior to the commencement of development, a vehicular parking, pedestrian and access plan shall be submitted for approval. Prior to occupancy, the approved vehicular parking, pedestrian and access plan shall be implemented, completed and maintained thereafter to the satisfaction of the City of Albany.

**Advice:**

- *The plan should include detailed specifications the cul-de-sac vehicle turnaround area*
- *Car parking and access is to be designed in accordance with the Australian Standard 2890.*
- *The plan shall clearly indicate the intended use of all parking bays (eg disabled bay, loading bay etc), access areas, line marking, kerbing and sealing*
- *A turnaround/reversing area shall be provided on site to allow vehicles to enter the street in forward gear.*

6. Parking areas shall be illuminated when they are in use during hours of darkness, to the satisfaction of the City of Albany.

7. All heavy vehicles arrivals and departures shall be limited to 7.00am to 7.00pm Monday to Sunday, unless otherwise agreed to in writing by the City of Albany.

8. Prior to commencement, an updated Waste Management Plan indicating the location and type of refuse storage shall be submitted to the City of Albany for approval. Prior to occupation, the approved refuse storage plan shall be implemented, completed and thereafter maintained to the satisfaction of the City of Albany.

**Advice:**

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

9. Prior to commencement of development, a Stormwater Management Plan, consistent with the Stormwater Management Manual for Western Australia (Department of Water 2004-2007) including details and calculations shall be submitted to the City of Albany for approval. Prior to occupation the approved Stormwater Management Plan shall be implemented, completed and maintained to the satisfaction of the City of Albany.
- Advice:
- With respect to the Stormwater Management Plan;*
- *The stormwater management system is to be designed and certified by a practicing Civil Engineer to the satisfaction of the City of Albany.*
  - *The stormwater management approach should include a description of storm events to be managed including strategies to address water quality.*
10. Satisfactory arrangement being made with the City of Albany prior to occupancy of use for a public art work commission to the value of 1% (or cash in lieu off) to reflect or enhance local cultural identity as part of the development hereby approved.
- Advice:
- *Please refer to the City of Albany Policy - Art in the Public Domain for further information.*
11. Detailed drawings/specifications of the proposed new fence shall be submitted for approval in writing and implemented to the satisfaction of the City of Albany.
- Advice:
- *Gates shall be included at various points along the fence to allow for emergency service access in case of a fire.*
12. Prior to commencement of development, a written acknowledgment shall be submitted to the City of Albany, accepting the buildings and their contents may be subject to periodic flooding and/or inundation.
- Advice:
- *The City recommends designing structures in a way which anticipates flooding in peak periods*
13. Prior to commencement of development, a revised Bushfire Management Plan and Bushfire Emergency Evacuation Plan, shall be prepared to the City's satisfaction and thereafter implemented in accordance with State Planning Policy 3.7- Planning in Bushfire Prone Areas.
- Advice:
- *The revised Bushfire Management Plan and Bushfire Emergency Evacuation Plan shall appropriately address matters raised by Department of Fire and Emergency Services in their correspondence dated 2 March 2021.*
14. Firebreaks, firefighting equipment and other appropriate fire protection measures shall be maintained in accordance with the City's Fire Management Plan, to the satisfaction of the City of Albany.



15. A suitable asset protection zone shall be provided and maintained around the development hereby approved in accordance with the City's Fire Management Notice, to the satisfaction of the City of Albany.
16. No goods, materials or equipment shall be stored, either temporarily or permanently, in the parking or landscape areas or in access driveways, unless otherwise agreed in writing by the City of Albany.
17. All loading and unloading of goods shall occur entirely within the site and be undertaken in a manner so as to cause minimum interference with other vehicular traffic.  
  
Advice:
  - *Boat loading/unloading required to be undertaken outside of the lease area is excluded from this requirement.*
18. 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.
19. Prior to occupancy, the premises shall be connected to the Water Corporation sewerage system, or alternative arrangements made to the satisfaction of the City of Albany.
20. Sign(s) shall not be erected on the lot without the prior approval of the City of Albany.  
  
Advice:
  - *Please refer to the City of Albany Local Planning Policy Signs for further information.*
21. This development approval is granted for a limited period and shall expire upon the earliest occurrence of any one of the following events:
  - i. The expiration date of the lease;
  - ii. access no longer being available to the Lot;
  - iii. or when appropriate infrastructure to service the lot is no longer available as the service has been removed or decommissioned by the relevant authority due to a coastal hazard.
22. Upon the expiry of the development approval the owner/operator shall at their cost:
  - i. remove the development; and
  - ii. rehabilitate the land to its predevelopment condition to the specifications of the local government.
23. A Construction Management Plan is to be prepared by the Applicant and submitted to the City for approval at least 30 days prior to the commencement of works. The Construction Management Plan shall detail how the construction of the development will be managed including the following:
  - *public safety and site security;*
  - *hours of operation,*
  - *noise and vibration controls;*
  - *air and dust management;*

- *stormwater, groundwater and sediment control;*
- *waste and material disposal;*
- *Traffic Management Plans prepared by an accredited personnel for the various phases of the construction, including any proposed road closures;*
- *Parking Management Plan prepared by an accredited personnel;*
- *the parking arrangements for contractors and sub-contractors;*
- *on-site delivery times and access arrangements;*
- *the storage of materials and equipment on site (no storage of materials on the verge will be permitted); and*
- *any other matters likely to impact upon the surrounding properties or road reserve.*

Once approved, the development is to be constructed in accordance with the Construction Management Plan to the satisfaction of the City.

**Advice Note:** The proposed seawater intake and discharge activities may require an additional license. The applicant is advised to contact the Department of Water and Environmental Regulation for confirmation on this matter.

**Advice Note:** The applicant is advised that the subject site is at risk of coastal erosion and/or inundation. The City recommends development on the lot should have a minimum finished floor level of 3.02 AHD to ensure adequate protection from inundation, in accordance with the *City of Albany Development in Flood Prone Areas Policy*.

**Advice Note:** The City of Albany has no obligation to protect against coastal hazards, and is not liable for any harm caused by coastal hazards.

**Advice Note:** Prior to the commencement of development, the landowner/applicant is advised to investigate whether or not approval is required pursuant to the Aboriginal Heritage Act 1972. The landowner/applicant should conduct a search of the Register of Aboriginal Sites to determine if any aboriginal sites have been recorded in the vicinity of their application, and this heritage information should be submitted to the Department of Planning Lands and Heritage (Indigenous Affairs) with a request for advice. (DPLH)

**Advice Note:** The City has been made aware of some encroachment of previous site operations into the adjacent reserve to the north. The applicant is advised to consider re-surveying the lease area to ensure the development hereby approved does not encroach outside of lease boundaries.

**Advice Note:** 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*.

**Advice Note:** The proponent securing necessary approvals and licenses to use the northernmost public jetty maintained by DoT, including making necessary arrangements to rehouse current pens that will be displaced by the proposal.

## BACKGROUND

4. The City of Albany has received a development application for an Aquaculture Facility at 2 Swarbrick Street, Emu Point. The original proposal involved three stages. The applicant submitted revised plans and information during assessment of the proposal, which included deletion of Stage 3. The proposal for Stage 1 of the Aquaculture Facility, incorporating revisions to the original application submitted, is the subject of this report.
5. The subject site lies to the north of the Swarbrick Street termination, approximately 6.5kms to the north-east of the Albany City centre.
6. The subject site has an area of approximately 3.52 hectares and is reserved as a 'C' Class Parks and Recreation Reserve for the purpose of 'Marine and Associated Purposes' (Reserve No. R 42964). The Reserve is vested to the City of Albany.
7. A number of lessees occupy the reserve, which predominantly consist of marine and associated businesses. These include the Squid Shack, Watercraft Marine, Kalgan Queen Cruises, Albany Sea Rescue Squad, Albany Boating and Offshore Fishing Squad and Emu Point Slipway Services.
8. The lease area subject to this application is the northern most lease area within the Reserve. The lease for this site was previously held by 'Ocean Foods International', a Singaporean company who utilised the site for the production of rock oysters.
9. Harvest Road has recently entered into a formal agreement to acquire the 'Ocean Foods International' tenancy, and plan to utilise the site for the production of Native Rock Oysters, Akoya Oysters and mussels.
10. In order to facilitate the above operations, Harvest Road have demolished the existing Ocean Food International infrastructure (with the exception of the office and amenities building) and are now proposing to redevelop the site to meet their requirements.
11. The applicants have indicated the redevelopment of the site will occur in two stages. As outlined above, this report relates only to Stage 1 of the redevelopment. A separate development application will be required for consideration of Stage 2.
12. The initial development application submitted proposed a three stage development of the site, with 'Stage 3' consisting of a restaurant and tourism facility. The applicant has since decided against pursuing the restaurant and tourism facility, deleting Stage 3 from the proposal.
13. A summary of the Stage 1 activities are as follows:

Stage 1

- Nursery
  - Oyster and mussel shed
  - Pump house
  - Sea water intake and discharge
  - Hardstand and stormwater infrastructure
  - Access to the hardstand from the car park and from the berthing
  - Fencing
  - Public access route
14. The existing office / amenities building to the south of the site will maintained and utilised throughout Stage 1 operations.
  15. The proposal was advertised in its original form, encompassing all three stages, to the public via direct mail out to landowners within the suburb of Emu Point, tenants of Emu Point Boat

Harbour reserve leases and City boat pens, along with a sign installed on site and a notice published on the City of Albany website.

16. A planning notice was also placed on site notifying of the planning proposal and a public briefing note was placed on the City of Albany website. Through this process a total of 22 responses were received; 8 objections and 12 letters of support subject to modifications. Two objections were received outside of the consultation period.
17. The comments, including the proponent's and officer recommendations are provided in the attached 'Schedule of Submissions'. The broad issues are identified and discussed later in this report.
18. Council is now requested to consider the submissions received during the public advertising period and determine whether to grant development approval.

## **DISCUSSION**

### Land use

19. The applicant has provided the following (summarised) outline of how the proposed facility will operate once complete (Stages 1 and 2):
20. The proposed development comprises a marine base/aquaculture facility for the farming and processing of shellfish along with associated car parking.
21. The marine base will include a processing/packing building, nursery shed and a workshop within three separate buildings.
22. The aquaculture processing facility will be farming Native Rock Oysters, Akoya Oysters and Mussels.
23. Rock Oysters will be grown from larvae to spat size (the juvenile age of an oyster) within one of the proposed warehouses on site. Once they have grown to 5mm they are large enough to be grown in open water and are filled into oyster baskets. They remain on water for the grow-out period and are graded for size every 6-8 weeks to find the fully grown oysters, which are then transferred to the packing facility.
24. Akoya Oysters and Mussels are seeded onto ropes (offsite) and are loaded into truck booms at the berthing platform and transferred to areas to grow for 12 to 15 months. They are then stripped from the ropes and collected in 400kg bulk bins which are then stored for dispatch.
25. Product will be stored in cool rooms for up to two days before being dispatched from site. Live rock oysters are stored at 15 degrees while Akoya and Mussels are stored at 4 degrees.
26. Stage 1 (the subject of this application) primarily involves the farming portion of the operation, which includes the nursery, where Rock Oyster spat will be grown along with an Oyster and Mussel shed, where preliminary processing of the Akoya Oysters and Mussels will occur.
27. The subject site is located within the RU2 Restricted Uses area under Schedule 3 of LPS1. 'Aquaculture' is listed as a restricted use within the RU2 area which means this use is permitted on this specific portion of land.
28. Stage 1 of the development is consistent with the 'Aquaculture' land use which is defined as per the *Fish Resource Management Act 1994* as follows:  
*'means the keeping, breeding, hatching, cultivating or harvesting of fish'.*

29. As a result of the above, the application is also consistent with the designated purpose of the subject Parks and Recreation Reserve, being 'Marine and Associated Purposes'.

In this instance the designated reserve purpose is considered more pertinent to the land use assessment than the overall objective applied to 'Parks and Recreation' reserves as follows:

*'Public Purposes which specifically provide for a range of public recreational facilities'.*

30. It is therefore considered that as the 'Aquaculture' land use is consistent with both the purpose of the Reserve, and is identified as a restricted use in the RU2 area, the land use is appropriate within the lease area.

#### Heritage

31. The subject site is identified as a site of Aboriginal Heritage significance and is listed as an Aboriginal Heritage Site (Oyster Harbour (total)) and is included within the City of Albany Kinjarling Report (Oyster Harbour and Rivers) published in 2013.
32. The application was referred to the Aboriginal Heritage Section of the Department of Planning, Lands and Heritage who recommended that any ground disturbing works on the site will require a prior application for consent under Section 18 of the *Aboriginal Heritage Act 1972*. This is recommended to be implemented as an advice note and attached to the development approval.
33. The subject site is also identified as on the City's Heritage List (Oyster Harbour Reserve). However, City records indicate the identified local cultural heritage significance to be limited to Green Island (approximately 1km offshore), therefore referral to the City's local heritage advisor was not considered necessary.

#### Car and bicycle parking

34. Phase 1 operations are best described as Industry – General which requires the provision of 1 car park per 100m<sup>2</sup> net lettable area (NLA). The NLA of Stage 1 buildings totals 673m<sup>2</sup>. Therefore, eight formalised carparks are required for this component under LPS 1.
35. The existing office/amenities building has a total NLA of approximately 167m<sup>2</sup> and is best described as 'Office', which requires one carpark per 30m<sup>2</sup> NLA. This component requires six carparks under LPS1.
36. A total of 14 carparks are therefore required under LPS1. No formally marked carparks have been proposed for Stage 1 of the development however, a new concrete hardstand will be provided to the north of the site, while the existing hardstand behind the office/amenities building will remain. This is considered sufficient space to achieve the 16 carparks required under LPS 1. However, as there are no certainties that the 'Stage 2' application will progress, it is recommended that provision of a car parking and access plan, including formal line marking being implemented, should be applied as a condition of planning approval and implemented by the applicant to the satisfaction of the City of Albany.
37. As the farming operation is proposed to operate 12 hours per day, six days a week it is also recommended that parking areas shall be illuminated in hours of darkness.

#### Vehicle movement

38. Trucks delivering goods and transporting produce will require access to the site. Upon completion of Stage 1 and 2, transport frequency will vary between eight total truck movements per day (arrival and departure) during the peak period (November to May) to four total truck movements per day during the low season (June to October).
39. A further 20 additional truck movements (arrival and departure) per week will result from waste collection trucks upon completion of both Stage 1 and Stage 2 of the development.

40. Given the limited number of additional traffic movements per day, traffic is not expected to adversely impact the amenity of the existing residences along Swarbrick Street and Emu Point Drive. However, a condition that all truck delivery/collections and waste collection shall occur between the hours of 7.00am and 7.00pm is recommended to be applied.
41. All loading/unloading will occur on site and vehicles are able to enter and exit the site in a forward direction as per LPS1 requirements.
42. The adjacent leaseholder, Emu Point Slipway Services, has a licenced area extending to the waterfront to provide for boat lifting and launching services as well an area to wash boats before they are moved to the hardstand area.
43. In order to reduce the impact of vehicle movements on the day to day operations of Emu Point Slipway Services, a condition that the applicant must provide a marked vehicle turnaround area and associated signage prior to Emu Point Slipway Services boat lifting and launching area is recommended.
44. It is recommended that the provision and implementation of a vehicular parking, pedestrian and access plan to the satisfaction of the City of Albany should be applied as a condition of planning consent.
45. This should include, amongst other things, detailed specifications the cul-de-sac vehicle turnaround area and the on-site turnaround/reversing area to allow large vehicles to enter and exit the site in forward gear.

#### Pedestrian movement

46. The application proposes to retain the existing public access route to the north of the lease area to enable public access to the mudflats.

#### Waste

47. It is anticipated that the aquaculture operations will produce significant waste. A Waste Management Plan was submitted with the initial application, however, staff recommend an amended plan indicating the location and type of refuse storage shall be submitted for approval by, and implemented to the satisfaction of the City of Albany to reflect subsequent changes to the proposal.

#### Landscaping

48. The application does not propose any landscaping for Stage 1 of the development. No landscaping requirements are applicable to Reserves, however, LPS1 gives the local government power to determine the amount of landscaping to be provided where no formal landscaping is indicated within Table 9 of LPS1.
49. It is considered that the provision of landscape should be implemented as a condition of planning approval to improve the appearance of the development when viewed from the public realm. As a guide, the applicant will be advised that approximately 10% of the site area should be landscaped, which is consistent with LPS1 requirements for most zones.

#### Environment

50. LPS1 states that in considering a development application adjacent a conservation area (includes Class A reserves), the local government may request an environmental management plan or additional setbacks / buffer areas to the conservation area.

51. However, as the development involves the replacement and upgrading of existing infrastructure in the same location, is separated from the Class A reserve by a 5m (approx.) fire break and a future public access route, this was not considered necessary.
52. It should also be noted that the application was referred to the Department of Biodiversity, Conservation and Attractions and the Department of Water and Environmental Regulation who had no objection to the proposal, despite acknowledging the conservation values of the Class A Reserve.
53. An estuarine water body is located to the north-west of the subject site. A 100m setback is required from this water body under provision 4.3.6 – Setbacks from Watercourses of LPS 1. The application is setback over 200m from the main body of the estuary with the setback reduced to as little as 40m to the offshoots of the main estuary body.
54. It is considered that as this development involves the upgrading of existing infrastructure in the same location and will be located further from the offshoots of the main estuary body than the previous lease, the setback is considered acceptable.
55. The application was referred to both Department of Water and Environmental Regulation (DWER) and the Department of Planning, Lands and Heritage (DPLH) coast processes branch who provided no objection to this aspect of the proposal.

Coastal hazard risk management

56. The City of Albany *Development in Flood Prone Areas* local planning policy (the Policy) applies to the site which requires all habitable buildings within the vicinity of Oyster Harbour to be constructed with a minimum finished floor level of 3.02AHD. The buildings proposed within the Stage 1 application have a finished floor level of 2.1AHD.
57. The applicant has advised that increasing the finished floor levels of buildings to 3.02AHD would significantly impact the ability of forklifts and other machinery to access the buildings.
58. They have also advised that they have designed buildings in a way which will allow them to safely withstand a flood event, with all sensitive equipment and electrics located above the required finished floor level.
59. Provision 4.3.7.4 of LPS1 allows the Local Government to grant development approval for non-habitable buildings below the levels identified in the Policy under exceptional circumstances, which have been achieved by this proposal.
60. It is recommended that the City request the lessee provide written acknowledgement that they accept that the building and its contents may be subject to periodic flooding and/or inundation if they wish to proceed with the building at these levels.
61. It is also recommended that an advice note be attached indicating the City's preference that all buildings be built up to 3.02AHD as per the Policy requirement.
62. A Coastal Hazard Assessment against *State Planning Policy 2.6 – State Coastal Planning Policy* (SPP 2.6) was submitted with the initial application however, staff recommend a new assessment be submitted for approval by, and implemented to the satisfaction of the City of Albany, to reflect subsequent changes to the proposal.
63. The application proposes to make use of the council's rock revetment wall to the east of the subject site, the condition of which is currently unknown.

64. Staff, and the DPLH Coastal Planning branch recommend that existing rock revetment wall be inspected by a suitably qualified expert to confirm its condition and suitability to adequately protect the site. Any requirements for repairs or extensions to the seawall should be implemented at the lessee's cost. This will be required to be addressed as part of the updated Coastal Hazard Assessment.

Lease Area

65. The Stage 1 lease area remains unchanged from the lease area occupied by Ocean Foods International, however the previous lessee extended their operations outside of the lease area to the north without approval.
66. Therefore, a condition restricting all development and operations to the current lease area is recommended. It is also recommended that the applicant is advised of the creep of the previous lessee to ensure they don't mistake this area to be part of their lease.
67. In their submission on the proposal, the Department of Planning, Lands and Heritage (DPLH) indicated that commercial development is discouraged on Crown reserves.
68. It was suggested that in order to facilitate the proposed development, the land may need to be excised out of Reserve 42964 for a commercial lease direct from the State. This issue is being considered separate to the development application and the City is currently in talks with DPLH in order to resolve this matter.

Bushfire

69. The BAL Contour Plan provided by the applicant show the Oyster and Mussel Shed, the Nursery and the Pump House (Stage 1) to be located in within an area assigned BAL-FZ rating. However, due to existing site constraints it is considered Stage 1 structures achieve the following definition of 'unavoidable development' under SPP 3.7: *'Development that in the opinion of the decision-maker represents exceptional circumstances where full compliance with SPP 3.7 would be unreasonable as no alternative location exists and it can be proven that it is not contrary to the public interest'*.
70. Under SPP 3.7 Element 1: Location (P1) 'Unavoidable Development' can be considered within areas where BAL-FZ or BAL-40 apply provided it can be demonstrated that the risk can be appropriately managed to the satisfaction of DFES.
71. Within the BMP it was argued that the Stage 1 buildings within the BAL-FZ area will have a lower level of occupancy than the previous buildings and will not increase the bushfire threat or the vulnerability of the land use within the BAL-FZ area, citing a recent SAT case in which it was found that there was a sound basis for departing from SPP 3.7 to allow a Bunnings addition to be located in a BAL-40 and BAL-FZ area.
72. The applicant has also advised that they are willing to construct the Stage 1 buildings in accordance with the construction requirements for BAL-40/FZ, despite the proposal being exempt from the Australian Standard 3959 'Construction of Buildings in Bushfire – Prone Areas' requirements.
73. The application was referred to DFES who were not satisfied that the performance principle had been suitably demonstrated. An updated BMP was provided as part of the revised proposal submitted for Stage 1.



74. It is noted that the Stage 1 proposal is a redevelopment of the previous operations on site. The redevelopment of the site, as part of the Stage 1 proposal, provides an improvement to fire safety to what previous industrial development operating on site.
75. The revised proposal and updated BMP incorporates the following mitigation measures to address bushfire safety requirements:
- The revised proposal involves increasing the set back of buildings to 2.1m from the western boundary.
  - Consolidation of originally proposed open-air storage of the plastic oyster baskets (that are vulnerable to bushfire attack and have the potential to burn intensely and produce toxic smoke) in an enclosed out-building (floor areas 670 m<sup>2</sup>) located furthest from the high occupancy buildings. The building has a vertical wall located 2m from the northern and western boundary with a non-combustible construction specified (see condition of approval).
  - Construction of buildings to a specified Fire Rating Level (BAL FZ FRL 30/30/30) to reduce the risk of damage to stored materials from radiant heat transferred internally from standard uninsulated construction materials (steel sheeting).
  - Mitigation measures related to Stage 2 of the proposal are also outlined under the revised BMP, however these are not the subject of assessment of the Stage 1 proposal, and will be subject to assessment as part of an application for Stage 2.
  - The revised BMP outlines that the consolidation of buildings, replacing the ad hoc storage of potentially flammable items, also improves the orderly movement within the site during an emergency.
  - The proposed minimum 2m setback of buildings from the western boundary is in addition to an existing 4m wide firebreak within the adjoining reserve, that extends the perimeter of the site.
  - Additional fire hoses to be provided along the western and northern boundaries of the site.
76. Conditions are recommended to be imposed to address bushfire requirements, including:
- Gates being installed within the existing (and any proposed new) boundary fencing to allow access for emergency service vehicles.
  - Measures and actions identified in the BMP and BEEP being implemented and maintained.
  - Firebreaks, firefighting equipment and other appropriate fire management protection measures required to be maintained in accordance with the City's Fire Management Plan;
  - Asset protection zone to be provided and maintained in accordance with the City's Fire Management Notice.
77. On 2 March 2021 DFES provided comments on the updated BMP dated January 2021. In their comments, DFES reiterated their previous advice regarding the proposal, but recommended further updates to the BMP be undertaken. Subsequently, it is recommended that a condition be imposed requiring a revised BMP and BEEP being prepared to the City's satisfaction, prior to commencement of development, to appropriately address the matters raised by DFES.
78. The revised development application for Stage 1, including the measures outlined above as part of the updated BMP, along with conditions recommended to be applied as part of development approval are considered to address the matters raised by DFES, to the City's satisfaction.

79. The main concerns raised during the advertising period and officer response, including mitigation measures are outlined in the table below.

Summary of submissions	Officer comment
<b>Concerns with Environmental Impact</b>	<p>Additional approvals are required from other agencies for environmental aspects of the application including sea water discharge and intake (DWER), seabed leases and jetty licences (DoT) and an aquaculture licence will need to be obtained from DPIRD.</p> <p>The application was referred to DWER, DPLH, DoT, the Department of Biodiversity Conservation and Attractions and the Department of Primary Industry and Regional Development, none of whom identified any major environmental issues associated with the Stage 1 planning proposal.</p>
<b>Coastal erosion and inundation</b>	<p>A Coastal Hazard Assessment (CHA) was prepared by M P Rogers &amp; Associates Pty Ltd (MRA) to support the proposal. A preliminary coastal hazard assessment of the site was conducted to satisfy the requirements of the State Coast Planning Policy (SPP 2.6) and Coastal Hazard Risk Management and Adaptation Planning Guidelines (CHRMAP Guidelines). A condition is recommended that requires the proponent to submit an updated Coastal Hazard Assessment for the approval of the City of Albany to reflect subsequent changes to the proposal.</p> <p>A condition is also recommended requiring the proponent to get the seawall inspected by a suitably qualified expert to confirm its condition and suitability to adequately protect the site. Any repairs to seawall should be paid for by the proponent.</p> <p>It is also recommended that the proponent submit written acknowledgment to the City, accepting the buildings and their contents may be subject to periodic flooding and/or inundation, prior to the commencement of development as finished floor levels below those required under the City of Albany Development in Flood Prone Areas Policy are proposed.</p>
<b>Lack of Consultation</b>	<p>Consultation has been extensive and in excess of the statutory requirements established by the City of Albany and the <i>Deemed Provisions of Planning and Development (Local Planning Schemes) Regulations 2015</i>. Both the proponent and the City of Albany have held numerous discussions with interest groups and members of the public before and after the lodgement of the development application.</p> <p>The application was directly mailed to all Emu Point landholders, penholders and tenants of the Reserve. A planning notice was placed on site and a public briefing note was placed on the City of Albany website. This City was available to answer any questions on the advertised plans, and worked through the plans and implications of the project with a number of members of the public.</p>

<b>Car parking shortfall</b>	As a result of amendments to the application following the consultation period, the proposal is now compliant with LPS 1 car parking requirements.
<b>Public access to the waterfront restricted</b>	As a result of amendments to the application following the consultation period, a public access route will now be provided through the site to allow public access to the mudflats to the north of the lease area. This increases public access to the waterfront in comparison to the previous lease.
<b>Public access to the service and finger jetty blocked</b>	As a result of amendments to the application following the consultation period, public access to the finger jetty and the service jetty will be retained.
<b>Increased vehicle traffic</b>	<p>The removal of stage three from the development application will reduce total weekly vehicle movements by just under 70% (approximately 72 traffic movements per week).</p> <p>Given the now limited number of required traffic movements per day, traffic is not expected to impact the amenity of the existing residences along Swarbrick Street and Emu Point Drive. A condition that all truck delivery/collections and waste collection shall occur between the hours of 7.00am and 7.00pm is also recommended. It should also be noted that a number of truck movements would have also been required to service the previous Ocean Foods Internationals facility.</p> <p>The Engineering Section have confirmed the roads are capable of accommodating the vehicle movements required, and the City does not have the statutory authority to restrict an 'as of right vehicle' from using public roads.</p>
<b>Impact on existing activities within the Reserve</b>	<p>As a result of amendments to the application following consultation, all required car parks for the Stage 1 development are able to be provided on-site. This should alleviate concerns over parking pressures within the Reserve.</p> <p>A condition is also recommended requiring the applicant to provide a marked vehicle turnaround area and associated signage restricting pedestrian vehicle access to the Emu Point Slipway Services boat lifting and launching area and beyond.</p> <p>The operation of other businesses within the Reserve is not likely to be significantly impacted by Stage 1 development which is essentially upgrading existing outdated infrastructure, with impacts contained on-site.</p>
<b>Impact on safety of other users of the reserve</b>	<p>Additional signage will be implemented to regulate traffic movements and to provide safe turning circles away from pedestrian orientated areas and boat lifting and launching areas.</p> <p>As a result, it is considered that the Stage 1 development will have a positive impact on the safety of other users of the reserve.</p>

<b>Use of adjacent A-class for parking and access.</b>	The City has not considered the release / clearance of the A-class reserve, nor does it have the statutory authority to permit this. The application achieves car parking requirements, the roads are capable of supporting the proposed vehicle movements and public access to the mudflats has been retained.
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80. It is recommended that Council approve the proposed development, subject to the conditions recommended.

## GOVERNMENT & PUBLIC CONSULTATION

81. The application was advertised for public comment for a period of 26 days with Emu Point landowners, Pen Holders and Tenants directly notified by letter.
82. A planning notice was also placed on site notifying of the planning proposal and a public briefing note was placed on the City of Albany website.
83. It should be noted that a combined application (Stage 1 to Stage 3) was advertised via the above process. Stage 3 has since been removed from the proponents plans for the site, while Stage 2 will require a separate application. As a result, much of responses received from advertising do not relate to the Stage 1 application.
84. Through this process a total of 22 responses were received; eight objections and twelve letters of support subject to modifications. Two objections were received outside of the consultation period.
85. The comments, including the proponent's and staffs' recommendations are provided in the attached 'Schedule of Submissions'. The broad issues are summarised and discussed above.

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Consult	Mail out	25/09/2020 to 21/10/2020	22 submissions received	No
Consult	Notice on site	25/09/2020 to 21/10/2020		No
Consult	Public Comment – City website	25/09/2020 to 21/10/2020		No

86. The application in its original form was also referred to the Department of Biodiversity, Conservation and Attractions, the Department of Water and Environmental Regulation, the Department of Planning Lands and Heritage, the Department of Transport, the Department of Primary Industries and Regional Development and the Department of Fire and Emergency Services for comment.
87. The comments received as they relate to Stage 1 of the development are summarised below. Staff comments and recommendations are provided in the attached schedule, while broad issues are discussed above under the Discussion section.

### **Department of Biodiversity, Conservation and Attractions**

88. No objection or recommended conditions to the proposal noting the majority of development occurs on alienated land and has no direct impact on natural values protected under the Biodiversity Conservation Act 2016 or any lands managed by the department under the Conservation and Land Management Act 1984.

***Department of Water and Environmental Regulation***

89. Request further information about the seawater intake and discharge points to ascertain whether this activity should also be licenced. To be addressed through advice note and processes outside of development application.
90. The department also expressed support for the stormwater management principles and design criteria, particularly the use of rainwater tanks to capture rainwater for use on the site and the use of permeable paving to increase infiltration.

***Department of Water and Environmental Regulation (Site Contamination Branch)***

91. No objection or recommended conditions to attach to the proposal. In 2015 investigations identified hydrocarbon impacted soil on site.
92. However, the department now believes that the stockpiled hydrocarbon-impacted soil was removed from site in June 2020 and as a result the site now appears suitable for the proposed development.

***Department of Transport***

93. A number of conditions were also proposed by the Department of Transport relating to the extension of the leased area into the seabed, dredging and use of the DoT owner finger jetty as they stated these issues have not yet been suitably resolved.
94. The requirements to ensure the necessary approvals are obtained in order to use the DoT owned jetty will be included as an advice note. The remainder of these conditions are either not relevant to the Stage 1 development, or relate to aspects that have subsequently been removed from the application.

***Department of Primary Industries and Regional Development:***

No response received.

***Department of Fire and Emergency Services:***

95. The Department of Fire and Emergency Services provided comment on the original development application referred in September 2020. As part of the initial referral DFES reviewed the Bushfire Management Plan (BMP) prepared for all three stages of development. DFES comments were based on State Planning Policy 3.7 Planning in Bushfire Prone Areas (SPP3.7) and the Guidelines for Planning in Bushfire Prone Areas (Guidelines). DFES did not assess the proposal against the DPLH 2019 Position Statement relating to Tourism Land Uses in Bushfire Prone Areas.
96. DFES original comments were based on the restaurant (original Stage 3 of the proposal) being classified as a vulnerable land use and therefore the requirements under SPP3.7 being triggered. DFES identified the following matters to be considered by the decision maker in determining the application or matters that were required to be addressed in order to comply with SPP3.7 and the Guidelines:
  - **BAL contour map** – clarification or required amendments identified to the BAL/BMP to address aspects such as staging of development, vegetation classification and designated refuge building to be constructed to AS3959 Building Standards (Refuge Building originally identified as the restaurant, since deleted)
  - **Bushfire protection criteria** – clarification or required amendments identified to address aspects such as location and siting & design and vehicular access. DFES indicated in their assessment the proposal in its current form did not comply with development located in areas exposed to BAL-40/BAL-FZ nor vehicle access requirements in relation to two-way access not being provided to the site (as the site is

located at the end of a non-compliant cul-de-sac outlined under SPP3.7 and the Guidelines). Further clarification was required regarding onsite refuge.

- **Vulnerable land uses** – clarification to address aspects such as details outlined Bushfire Emergency Evacuation Plan (BEEP) regarding nominated shelter-in-place.

97. The revised plans for Stage 1, including a revised BMP was referred to DFES for comment.
98. It is noted that the Stage 1 proposal is a redevelopment of the previous operations on site. The redevelopment of the site, as part of the Stage 1 proposal, provides an improvement to fire safety to what previous industrial development operating on site.
99. The updated BMP was submitted as part of the revised proposal for Stages 1 and 2. Assessment of the updated BMP relates to Stage 1 of the proposal, the subject of this development application.
100. The BMP outlines the following aspects of the proposal in regards to assessment against bushfire protection criteria:
- Historic use: the site has been historically (since 1996) used for industry. This includes development located within BAL-40 and BAL-FZ areas.
  - Constrained site development parameters:
    - The site is adjoined by an A-class reserve to the west (classified Forest under bushfire regulations) and adjoins the harbour to the east. As a result of the A-class reserve, some development will be located within area assessed as BAL-40/BAL-FZ. Previous development on-site was located within a similar location.
    - The Stage 1 proposal, involves development that will remain within BAL-40 and BAL-FZ (Oyster and Mussel Shed/Nursery). The location of the development is to address operational requirements to provide sufficient hardstand area adjoining the harbour for the launch and retrieval of vessels associated with the facility.
  - Location and design response of development to address operational and bushfire requirements:
    - The applicant has outlined and provided rationale in the updated BMP outlining that there is no practical alternative available for the location of the development the subject of Stage 1 proposal (Oyster and Mussel Shed/Nursery) other than along the western boundary. These elements required assessment against the relevant Performance Principles contained under SPP3.7 and the Guidelines.
    - It is noted that other development forming part of the Stage 2 proposal (Processing/Amenities Building and bulk fuel container), are to be located outside of the BAL-40/BAL-FZ areas. The location and design of these buildings (including shielding construction requirements) result in compliance with the acceptable solutions of SPP3.7 and the Guidelines.
101. As outlined above, the Stage 1 proposal involves redevelopment of the site. The redevelopment and associated reconfiguration of buildings and operations on site will result in an improvement upon the site's previous fire safety.
102. The revised proposal and updated BMP incorporates the following mitigation measures to address bushfire safety requirements:
- The revised proposal involves increasing the set back of buildings to 2.1m from the western boundary.
  - Consolidation of originally proposed open-air storage of the plastic oyster baskets (that are vulnerable to bushfire attack and have the potential to burn intensely and produce

toxic smoke) in an enclosed out-building (floor areas 670 m<sup>2</sup>) located furthest from the high occupancy buildings. The building has a vertical wall located 2m from the northern and western boundary with a non-combustible construction specified (see condition of approval).

- Construction of buildings to a specified Fire Rating Level (BAL FZ FRL 30/30/30) to reduce the risk of damage to stored materials from radiant heat transferred internally from standard uninsulated construction materials (steel sheeting).
- Mitigation measures related to Stage 2 of the proposal are also outlined under the revised BMP, however these are not the subject of assessment of the Stage 1 proposal, and will be subject to assessment as part of an application for Stage 2.
- The revised BMP outlines that the consolidation of buildings, replacing the ad hoc storage of potentially flammable items, also improves the orderly movement within the site during an emergency.
- The proposed minimum 2m setback of buildings from the western boundary is in addition to an existing 4m wide firebreak within the adjoining reserve, that extends the perimeter of the site.
- Additional fire hoses to be provided along the western and northern boundaries of the site.

103. Conditions are recommended to be imposed to address bushfire requirements, including:

- Gates being installed within the existing (and any proposed new) boundary fencing to allow access for emergency service vehicles.
- Measures and actions identified in the BMP and BEEP being implemented and maintained.
- Firebreaks, firefighting equipment and other appropriate fire management protection measures required to be maintained in accordance with the City's Fire Management Plan;
- Asset protection zone to be provided and maintained in accordance with the City's Fire Management Notice.

104. On 2 March 2021 DFES provided comments on the updated BMP dated January 2021. In their comments, DFES reiterated their previous advice regarding the proposal, but recommended further updates to the BMP be undertaken. Subsequently, it is recommended that a condition be imposed requiring a revised BMP and BEEP being prepared to the City's satisfaction, prior to commencement of development, to appropriately address the matters raised by DFES.

105. The revised development application for Stage 1, including the measures outlined above as part of the updated BMP, along with conditions recommended to be applied as part of development approval are considered to address the matters raised by DFES, to the City's satisfaction.

***Department of Planning Lands and Heritage***  
***Land Use Management***

106. No in-principle objections to the proposal, however, commercial development is discouraged on Crown reserves. It is suggested that to facilitate the proposed development, the land required may need to be excised out of Reserve 42964 for a commercial lease direct from the State.

107. It is also recommended that the lease area be re-surveyed based on land markings to ensure there is no encroachment over time from changing water levels.

Aboriginal Heritage

108. Any ground disturbing works on the site will require a prior application for consent under Section 18 of the Aboriginal Heritage Act 1972.

Coastal Planning

109. No objection to the Stage 1 development on the basis that the assumptions in relation to the jetties are not included or required to progress Stage 1.
110. The application proposes to mitigate erosion risk by extending the existing seawall to protect the unprotected shoreline. The seawall should therefore be inspected to confirm its condition and suitability to the site.
111. In the event of a new lease being issued for Stages 1 and 2, the timeframe of development approval may need to be amended so that development approval shall be limited to 2045 and no later than 2070, reflecting the erosion hazard lines in MP Rogers & Associates' report.
112. The assessment also highlights the risk of inundation over the planning timeframe and recommends taking measures through the design, construction and management of the site to acknowledge risk. It is recommended that the development should have a minimum finished floor level of 3.02AHD in accordance with the City of Albany Development in Flood Prone Areas Policy.

Land Use Planning

113. The proposal generally aligns with the strategic directions of the Western Australian Planning Commissions (WAPC) Lower Great Southern Strategy (2016) and the City's Local Planning Strategy 2019 regarding expansion and diversification of the aquaculture industry, tourism and economic growth.
114. The Department is supportive of the notion of a paved 2m pedestrian access way (PAW) with fencing along the development boundary and bollards on the southern side of the PAW. This should include the requirement of gates at various points to allow for emergency service access in case of a fire.

**STATUTORY IMPLICATIONS**

115. The proposal is for "Aquaculture" within a Parks and Recreation Reserve under the ownership of the Department of Planning, Lands and Heritage. Ownership of the Reserve has been vested to the City of Albany. The purpose of the Reserve is 'Marine and Associated Purposes'.
116. The subject site is located within the RU2 Restricted Uses area under Schedule 3 of the City of Albany Local Planning Scheme No.1. 'Aquaculture' is listed as a restricted use within the RU2 area which means this use is permitted on this specific portion of land.
117. Stage 1 of the development is consistent with the 'Aquaculture' land use which is defined as per the Fish Resource Management Act 1994 as follows:  
"means the keeping, breeding, hatching, cultivating or harvesting of fish"
118. Voting requirement for this item is **SIMPLE MAJORITY**.

**POLICY IMPLICATIONS**

119. The proposal is assessed in the context of the *State Planning Policy 3.7 – Planning in Bushfire Prone Areas*, the Department of Planning, Lands and Heritage Position Statement: *Tourism Land Uses in Bushfire Prone Areas*, *State Planning Policy 2.6 – State Coastal*



*Planning Policy and the City of Albany Development in Flood Prone Areas Local Planning Policy.*

120. The proposal is not consistent with the 'Acceptable Solutions' for bushfire protection established within State Planning Policy 3.7. However, the Department of Fire and Emergency Services have reviewed the proposal and believe the associated 'Performance Principles' for Stage 1 have been achieved.
121. The application is consistent with the Department of Planning, Lands and Heritage Position Statement: Tourism Land Uses in Bushfire Prone Areas.
122. The initial application submitted a Coastal Hazard Assessment against *State Planning Policy 2.6 – State Coastal Planning Policy*.
123. A condition is recommended that this report be updated to reflect subsequent amendments to the application before the commencement of development.
124. As the development proposes to make use of the existing rock revetment wall, it is also recommended that a conditions requiring the lessee to engage a suitably qualified expert to inspect the wall and confirm its condition to adequately protect the site.
125. Any requirements for repairs of the seawall should be implemented at the lessee's cost.
126. The City of Albany *Development in Flood Prone Areas Policy* applies to the site which requires all habitable buildings within the vicinity of Oyster Harbour to be constructed with a minimum finished floor level of 3.02AHD.
127. The buildings proposed within the Stage 1 application have a finished floor level of 1.8AHD. It was therefore recommended that the City request the lessee provide written acknowledgement that they accept that the building and its contents may be subject to periodic flooding and/or inundation, in accordance with provision 4.3.7.4 of LPS 1.

## RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Community</b> Increased vehicular movements may disrupt the operations of existing businesses.	Likely	Minor	Medium	The application has been assessed against the relevant statutory framework.
<b>Property</b> The proposed development may be subject to inundation of flood waters during a significant flood event.	Rare	Major	Low	Mitigation of impacts to be achieved through adoption and enforcement of conditions.
<b>People Health and Safety</b> The proposed development may result in risk to human safety during a bushfire event.	Rare	Major	Low	The application has been assessed against the relevant statutory framework. The application has been referred to the relevant State Agency.
<b>Opportunity:</b> Responds to the need to stimulate growth of the aquaculture industry to benefit the City economy.				

## **FINANCIAL IMPLICATIONS**

129. All costs associated with the development will be borne by the proponent.
130. 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**

131. 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*.
132. 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**

133. The proposal is located adjacent a conservation area (Class A reserve). The application was referred to the Department of Biodiversity, Conservation and Attractions who had no objection to the proposal, despite acknowledging the conservation values of the Class A Reserve.
134. An estuarine water body is located to the north-west of the subject site. A 100m setback is required from this water body under provision 4.3.6 – Setbacks from Watercourses of LPS1. The application is setback over 200m from the main body of the estuary with the setback reduced to as little as 40m to the offshoots of the main estuary body.
135. It is considered that as this development involves the upgrading of existing infrastructure in the same location and will be located further from the offshoots of the main estuary body than the previous lease, the setback is acceptable.
136. The application was referred to both DWER and the DPLH coast processes branch who provided no comment/objection to this aspect of the application.
137. In 2015 investigations submitted to DWER identified hydrocarbon impacted soil on site. However, DWER now believes that the stockpiled hydrocarbon-impacted soil was removed from site in June 2020 and as a result the site now appears suitable for the proposed development.
138. The aquaculture facility will connect to the Water Corporation sewerage system, which currently terminates at the end of Swarbrick Street, prior to the completion of Stage 1 development. It is recommended that this is implemented as a condition of planning consent.

## **ALTERNATE OPTIONS**

139. Council has the following alternate options in relation to this item, which are:
- To resolve to refuse the proposal subject to reasons; and
  - To alter, amend, remove or add conditions to the approval to address potential impacts from the development.

## CONCLUSION

140. The application is essentially upgrading dated Ocean Foods International infrastructure and replacing with new, modernised infrastructure for the same purpose.
141. The application is consistent with the purpose of this Parks and Recreation Reserve, being 'Marine and Associated Purposes' and is listed as a restricted use within the RU2 area which means this use is permitted on this specific portion of land.
142. The application generally complies with all site and development requirements established under Local Planning Scheme No. 1.
143. Bushfire risk is largely a result of existing site constraints. Management of the bushfire risks can be controlled through implementation of the BMP, BEEP and requirements from the City's Fire Management Notice. Conditions are recommended to ensure implementation and maintenance of these requirements.
144. The lessee is willing to accept risk of coastal inundation and will be required to prepare an undated Coastal Hazard Assessment for the City's approval.
145. The proposal is consistent with the City of Albany *Local Planning Strategy 2019* and the *Lower Great Southern Strategy 2016*.
146. The majority of matters raised in agency and public submissions received during the advertising period have been broadly addressed by the proponent and can be mitigated through the application of appropriate planning conditions.
147. It is therefore recommended that Council approved the proposed development, subject to the conditions provided.

<b>Consulted References</b>	:	<ol style="list-style-type: none"> <li>1. Local Planning Scheme No. 1</li> <li>2. Albany Development in Flood Prone Areas Policy</li> <li>3. State Planning Policy 3.7 – Planning in Bushfire Prone Areas</li> <li>4. State Planning Policy 2.6 – Coastal Planning</li> <li>5. Department of Planning, Lands and Heritage Position Statement: Tourism Land Uses in Bushfire Prone Areas.</li> <li>6. Albany Local Planning Strategy 2019</li> <li>7. Lower Great Southern Strategy 2016</li> </ol>
<b>File Number (Name of Ward)</b>	:	A150506 Breaksea Ward
<b>Previous Reference</b>	:	CCS225 - Surrender of Ocean Foods International Pty Ltd Two Leases and Replace with New Lease to Harvest Road Oceans Pty Ltd – Portion Crown Reserve 42964 Emu Point Marina.

- 11. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**
- 12. MEETING CLOSED TO THE PUBLIC**
- 13. CLOSURE**