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# MINUTES

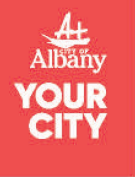
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## DEVELOPMENT AND INFRASTRUCTURE SERVICES COMMITTEE MEETING

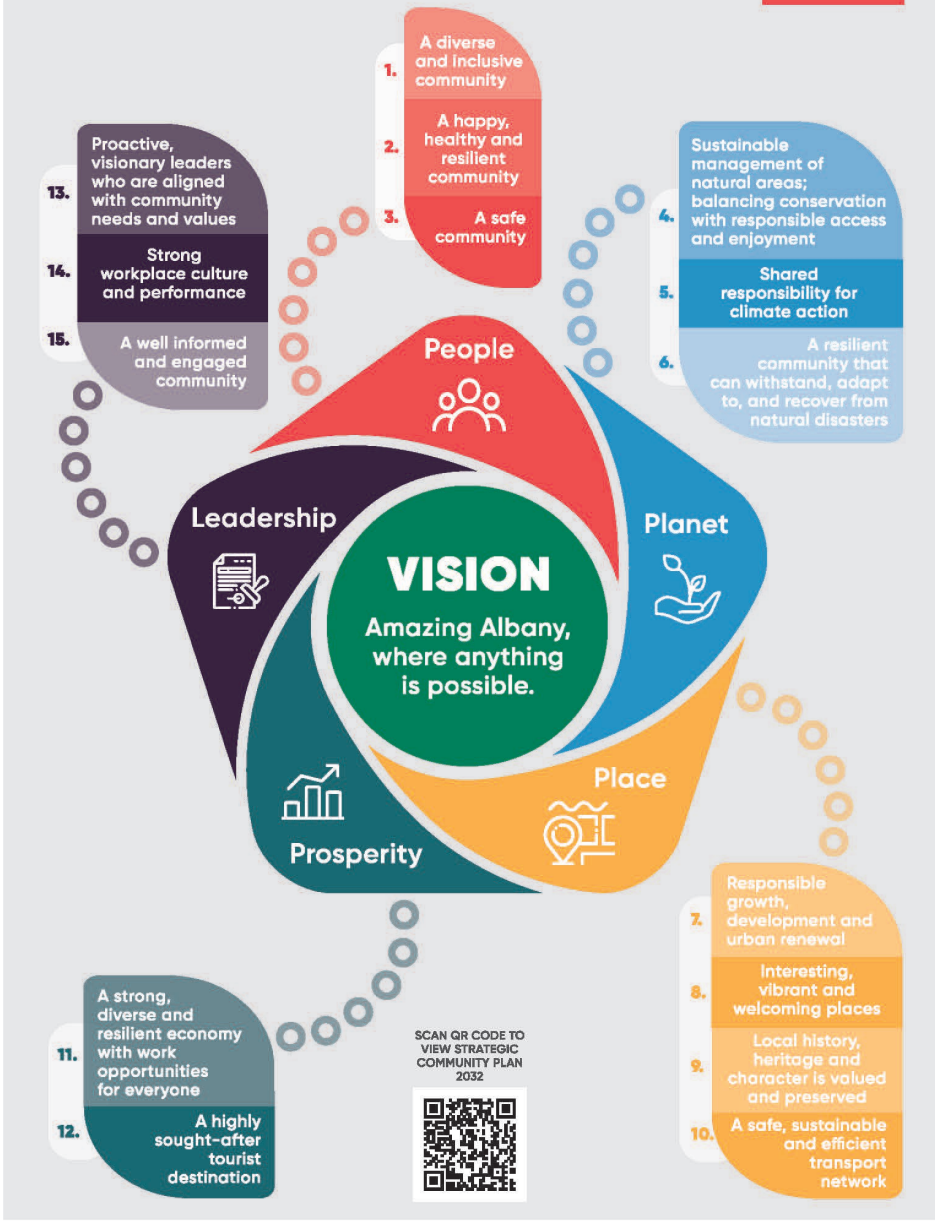
**Wednesday 10 May 2023**

6.00pm

Council Chambers



**STRATEGIC COMMUNITY PLAN 2032**



**Development & Infrastructure Services Committee**  
**Terms of Reference**

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

The Development and Infrastructure Services Committee is responsible for delivery of the outcomes defined in the Strategic Community Plan 2032 under the **Planet Pillar** and **Place Pillar**:

- Sustainable management of natural areas, balancing conservation with responsible access and enjoyment;
- Shared responsibility for climate action;
- Responsible growth, development and urban renewal;
- Interesting, vibrant and welcoming places;
- Local history, heritage and character is valued and preserved; and
- A safe sustainable and efficient transport network.

**It will achieve this by:**

- Developing policies and strategies;
- Establishing ways to measure progress;
- Receiving progress reports;
- Considering officer advice;
- Debating topical issues;
- Providing advice on effective ways to engage and report progress to the Community; and
- Making recommendations to Council.

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

**Meeting Schedule:** Monthly

**Meeting Location:** Council Chambers

**Executive Officers:** Executive Director Infrastructure, Development & Environment

**Delegated Authority:** None

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DEVELOPMENT AND INFRASTRUCTURE SERVICES COMMITTEE  
MINUTES – 10/05/2023

1. **DECLARATION OF OPENING** The Chair declared the meeting open at 6:00pm

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            |
| <b>Councillors:</b>   |                         |
| Member  | C Thomson (Chair)       |
| Member  | R Sutton (Deputy Chair) |
| Member  | M Traill                |
| Member  | G Stocks                |
| Member  | T Brough                |
| Member  | J Shanhun               |
| Member  | D Baesjou               |
| Member  | A Cruse                 |
| Member  | S Smith                 |
| Member  | S Grimmer               |
| Member  | M Benson-Lidholm JP     |
| <b>Staff:</b>   |                         |
| Chief Executive Officer   | A Sharpe                |
| Executive Director Infrastructure, Development<br>& Environment | P Camins                |
| Manager Planning and Building                                   | J van der Mescht        |
| Meeting Secretary   | N Banyard               |
| <b>Apologies:</b>   |                         |
| Member  | P Terry                 |

4. DISCLOSURES OF INTEREST

| Name | Committee/Report<br>Item Number | Nature of Interest |
|------|---------------------------------|--------------------|
| Nil  |                                 |                    |

5. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE – Nil

6. PUBLIC QUESTION TIME

In accordance with City of Albany Standing Orders Local Law 2014 (as amended) the following points apply to Public Question Time:

- Clause 5) The Presiding Member may decide that a public question shall not be responded to where—*
- (a) the same or similar question was asked at a previous Meeting, a response was provided and the member of the public is directed to the minutes of the Meeting at which the response was provided;*
  - (b) the member of the public asks a question or makes a statement that is offensive, unlawful or defamatory in nature, provided that the Presiding Member has taken reasonable steps to assist the member of the public to rephrase the question or statement in a manner that is not offensive, unlawful or defamatory.*

[6:02pm](#) Ms Diana Caley – Franklin Court, Bayonet Head

**Summary of Key Points**

Ms Caley addressed council regarding DIS348 - Land Excision for dedication of Keith Road affecting A Class Reserve 23579.

The following question from Ms Caley was taken on notice:

***Can you advise if the Department of Biodiversity, Conservation and Attractions still intends to change the purpose of the Reserve from camping and recreation to Conservation Park?***

**Response by Executive Director Infrastructure, Development and Environment:**

“The Department of Biodiversity, Conservations and Attractions plans to change the purpose of the Reserve from camping and recreation to Conservation Park at the same time that this matter will be presented to Parliament.”

***Can the City confirm that it will protect the native vegetation within the excised 4.5 hectares of this A Class Reserve?***

**Response by Executive Director Infrastructure, Development and Environment:**

“This decision does not mean that Keith Road (that has existed and been maintained as a track for many years) will be upgraded. The City has no plans to upgrade Keith Road at this time, and any future clearing would require a clearing permit from DWER.”

***Why did it say there are no environmental concerns in the report?***

**Response by Executive Director Infrastructure, Development and Environment:**

“The administrative process of creating a road reserve on the alignment of an existing road does not change any environmental conditions that exist for that road.”

There being no further speakers the Chair declared Public Question Time closed at 6:06pm

7. PETITIONS AND DEPUTATIONS – Nil

**8. CONFIRMATION OF MINUTES**

**RESOLUTION**

**MOVED: COUNCILLOR SUTTON  
SECONDED: COUNCILLOR SMITH**

**THAT the minutes of the Development and Infrastructure Services Committee meeting held on 12 April 2023 as previously distributed, be CONFIRMED as a true and accurate record of proceedings.**

**CARRIED 12-0**

**9. PRESENTATIONS - Nil**

**10. UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS - Nil**

**DIS348: LAND EXCISION FOR DEDICATION OF KEITH ROAD  
AFFECTING A CLASS RESERVE 23579**

|                             |   |
|-----------------------------|---|
| <b>Land Description</b>     | : A Class Reserve 23579   |
| <b>Proponent / Owner</b>    | : Department of Biodiversity Conservation & Attractions /<br>State of Western Australia |
| <b>Attachments</b>          | : Keith Road Reserve map  |
| <b>Report Prepared By</b>   | : Lands Officer (A Veld)  |
| <b>Authorising Officer:</b> | : Executive Director Infrastructure, Development &<br>Environment                       |

**STRATEGIC IMPLICATIONS**

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
  - **Pillar:** Place.
  - **Outcomes:** A safe, sustainable and efficient transport network.

**In Brief:**

- The City is seeking to excise a portion of land from A Class Reserve 23579 for dedication as a road reserve, namely Keith Road.
- This is to give effect to the May 2011 Council resolution and Memorandum of Understanding made between the City of Albany, Shire of Denmark and the then Department of Conservation on this matter.

**RECOMMENDATION**

**DIS348: COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR BENSON-LIDHOLM  
SECONDED: COUNCILLOR BROUGH**

**THAT Council:**

1. **REQUEST the Minister for Lands to excise 4.5Ha of land from Reserve 23579 for dedication as Keith Road reserve, pursuant to section 56 of the *Land Administration Act 1997*, subject to final survey;**
2. **INDEMNIFY the Minister for Lands from any claims for compensation in an amount equal to the amount of all costs and expenses reasonably incurred by the Minister in considering and granting the request, pursuant to section 56(4) of the *Land Administration Act 1997***

**CARRIED 12-0**

**DIS348: AUTHORISING OFFICER RECOMMENDATION**

**THAT Council:**

1. **REQUEST the Minister for Lands to excise 4.5Ha of land from Reserve 23579 for dedication as Keith Road reserve, pursuant to section 56 of the *Land Administration Act 1997*, subject to final survey;**
2. **INDEMNIFY the Minister for Lands from any claims for compensation in an amount equal to the amount of all costs and expenses reasonably incurred by the Minister in considering and granting the request, pursuant to section 56(4) of the *Land Administration Act 1997***



## **BACKGROUND**

2. Previous discussions initiated by the then Department of Conservation (DEC) with the City of Albany and Shire of Denmark between 2007 and 2009 centred around the future management of A Class Reserve 23579 which spans the Hay River, on the boundary between the two local governments.
3. At that time there was no governing agency managing the land and despite the road name Keith Road having been formally registered by Landgate in May 1975, the road was never gazetted as a public road.
4. DEC sought to apply to the Minister for Lands to have management of the Reserve vested with the Conservation Commission of Western Australia so DEC could manage the land.
5. DEC also sought to change the purpose of the Reserve from Camping and Recreation to Conservation Park.
6. There are significant environmental conservation values to the land including being a conservation corridor linkage between Mt Lindsay National Park and Wilson Inlet.
7. The human pressure of high recreational use along Keith Road side of the Hay River has heavily degraded the native vegetation along this section river bank.
8. Council resolved in February 2009 to undertake local community consultation on the proposed Reserve vesting, sending letters to 23 adjoining landowners.
9. One landowner provided a submission, objecting to the proposal on the basis of historic public use of the Reserve for fishing and camping.
10. In May 2009, the Shire of Denmark resolved to seek management of the section of Reserve 23579 within their jurisdiction.
11. The Albany City Council resolution in July 2009 echoed the Shire of Denmark's decision, resolving to advise DEC that the City of Albany would seek a Management Order over the section of Reserve 23579 within the City's jurisdiction. This was against the Officer Recommendations of this report at that time which was to support the DEC request to have management of R23579 transferred to the Conservation Commission of WA for the purpose of Conservation Park.
12. DEC was advised of the Council resolution in August, with DEC responding that further internal discussions within their agency were taking place.
13. On September 22, 2009, the Shire of Denmark changed its decision to manage the Reserve, resolving to support DEC's original request with the addition of a memorandum of understanding (MOU) requiring the Shire to be consulted in the development of a Management Plan for the Reserve within their jurisdiction.
14. Further correspondence between DEC, the City of Albany, the Shire of Denmark and the Department of Lands Administration - State Lands Service occurred over the next two years.
15. In that time another area of Unallocated Crown Land (known as Morley Beach) was identified for consideration in these discussions.
16. A Memorandum of Understanding was drafted between DEC, The City of Albany and the Shire of Denmark.
17. In May 2011, the City of Albany Council resolved to;
  - Advise DEC that it is prepared to sign the MOU between DEC, the City of Albany and the Shire of Denmark in relation to Reserve 23579, and
  - Amend the MOU to state Keith Road be gazetted as a public road, for management by the City of Albany.

18. Following this resolution, Reserve 23579 was then identified by the State Government for consideration to become part of the lands transfer to the Noongar Boodja trust as part of the South West Native Title Settlement.
19. This process took 11 years to finalise with agreement between the State Government and the Noongar people ratified on 25 February 2021. As such, any land actions proposed by the MOU over Reserve 23579 were effectively on hold during this time.
20. In June 2022 the Department of Biodiversity Conservation & Attractions (DBCA), formally DEC, approached the City of Albany regarding Reserve 23579 and the MOU. The Reserve was no longer under consideration for lands transfer to the Noongar Boodja Trust, however there was some confusion as to whether the City of Albany was still in support of the dedication of Keith Road.
21. This matter was then referred to senior City of Albany staff for review and Elected Member consultation, with an in-principle agreement to gazette Keith Road confirmed in October 2022.

### **DISCUSSION**

22. The Council resolution of July 2011 and MOU between The City of Albany, the Shire of Denmark and DEC has not been brought into effect.
23. The City of Albany continues to receive numerous complaints by the public over the safety of Keith Road and illegal camping along the eastern shore of Hay River, within Reserve 23579.
24. Currently, the City of Albany grades the road at least four times per year, performs reach mowing once every three years, and receives regular requests for additional maintenance from local road users.
25. Formalising a road reserve over the constructed Keith Road will give effect to the MOU and Council resolution and allow the City of Albany to properly manage the road.

### **GOVERNMENT & PUBLIC CONSULTATION**

26. There is no requirement to undertake government or public consultation for this item however there have been three previous Council resolutions on matters relating to this item, where consultation with the public and other Government agencies was undertaken.

### **STATUTORY IMPLICATIONS**

27. Section 56 of the *Land Administration Act 1997* state that a local government can resolve to reserve land for use by the public as a road, under the care, control and management of the local government.
28. Section 8 of the *Land administration Regulations 1998* describe the process for a local government to follow in order to deliver a request to the Minister for Lands to dedicate land as a public road.

### **POLICY IMPLICATIONS**

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

## RISK IDENTIFICATION & MITIGATION

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

| Risk   | Likelihood            | Consequence     | Risk Analysis | Mitigation   |
|--|-----------------------|-----------------|---------------|--|
| <b>Business Operation, Reputation &amp; Financial.</b><br><i>Risk: There is a risk that by not progressing with the road dedication, there will be no clear management over this road.</i> | <i>Almost certain</i> | <i>Moderate</i> | <i>High</i>   | <i>Request the Minister for Lands to dedicate the land for the Keith Road reserve.</i> |
| <b>Opportunity:</b> <i>To honour the MOU and Council resolution over the dedication of Keith Road</i>  |                       |                 |               |  |

## FINANCIAL IMPLICATIONS

31. The City of Albany must cover the survey costs for the excision which will be accommodated from the Lands budget 1142970.
32. The cost to construct Keith Road to a higher standard will need to be considered in the long-term financial plan and is anticipated to be at least in the order of \$500,000.

## LEGAL IMPLICATIONS

33. There are no legal implications relating to this item.

## ENVIRONMENTAL CONSIDERATIONS

34. There are no environmental considerations in relation to this item.

## ALTERNATE OPTIONS

35. Council can either;
- Refuse this request; or
  - Support this request with modifications.

## CONCLUSION

36. Keith Road has been without formal management arrangements for decades.
37. Council passed a resolution in July 2011 and signed a Memorandum of Understanding to gazette this road.
38. Council is requested to support the request to excise 4.5 Hectares of land from Reserve 23579 for dedication as public road to allow the City of Albany to have care, control and management of this road.

|                                   |   |  |
|-----------------------------------|---|--|
| <b>Consulted References</b>       | : | Land Administration Act 1997<br>Land Administration Regulations 1998 |
| <b>File Number (Name of Ward)</b> | : | RD.ACQ.2   |
| <b>Previous Reference</b>         | : | OCM 2009/2/17 OCM 2009/7/21 OCM 2011/5/17                            |

## DIS349: DRAFT LOCAL PLANNING POLICY 1.10: PERCENT FOR ART

|   |  |
|---|--|
| <b>Land Description</b>                                       | : City of Albany   |
| <b>Proponent / Owner</b>                                      | : City of Albany   |
| <b>Business Entity Name</b>                                   | : City of Albany   |
| <b>Attachments</b>  | : 1. Draft LPP 1.10 Percent for Art<br>2. Percent for Art Developer's Guidelines |
| <b>Supplementary Information &amp; Councillor Workstation</b> | : City of Albany Public Art Local Planning Policy                                |
| <b>Report Prepared By</b>                                     | : Planning Officer (D Ashboth)   |
| <b>Authorising Officer:</b>                                   | : Executive Director Infrastructure, Development & Environment (P Camins)        |

### STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan 2032:
  - **Pillar:** Place
  - **Outcomes:** Interesting, vibrant and welcoming places.

### In Brief:

- The Planning and Visual Arts teams have been working together to update the existing Public Art Local Planning Policy to improve public art outcomes and ensure best practice is maintained.
- The City officers have identified a number of key matters relating to public art which will benefit from clarification and refinement, in the form of an amended Local Planning Policy 1.10: Percent for Art (LPP1.10). The draft LPP 1.10 proposes to replace the existing LPP and aims to:
  - Provide clarity on the scope of the policy.
  - Allow the applicant/landowner to choose from two contribution options.
  - Provide clarity on the planning and building framework relating to public art installations.
  - Provide a cap on the maximum public art contribution.
  - Allow the City to request a quantity survey to ensure the development value is not underestimated.
- The City officers have prepared the Percent for Art Developer Guidelines to assist in the implementation of the Draft LPP 1.10 Percent for Art.
- Council is requested to endorse the draft LPP1.10 for advertising.

### RECOMMENDATION

#### DIS349: COMMITTEE RECOMMENDATION

**MOVED: COUNCILLOR TRAILL**  
**SECONDED: COUNCILLOR SMITH**

**THAT Council, in pursuance of Schedule 2, clause 4 of the Planning and Development (Local Planning Schemes) Regulations 2015, RESOLVE to endorse draft Local Planning Policy 1.10: Percent for Art for the purpose of advertising and note the associated Draft Art in the Public Domain Developer Guidelines.**

**CARRIED 12-0**

DIS349: AUTHORISING OFFICER RECOMMENDATION

THAT Council, in pursuance of Schedule 2, clause 4 of the Planning and Development (Local Planning Schemes) Regulations 2015, RESOLVE to endorse draft Local Planning Policy 1.10: Percent for Art for the purpose of advertising and note the associated Draft Art in the Public Domain Developer Guidelines.

**BACKGROUND**

2. City officers have recently commenced periodic review of the City's existing LPP's. The last in-depth policy review occurred in 2014.
3. The Percent for Art scheme was introduced to the City of Albany in 2011 by way of the *Public Art LPP* and requires private proposals with a value of \$1,500,000 or above to allocate 1% of the project cost for the development of public artwork to reflect or enhance local cultural identity.
4. This requirement is also proposed for inclusion within the City of Albany *Local Planning Scheme No.2* which will provide additional statutory weight to the percent for art contribution.
5. The basis for the policy is the former State's Building Management Authority, now Building Management Works, percent for art policy. Local governments subsequently adopted this policy into their planning framework.
6. The scheme is considered a success with many developers working with artists to create visually pleasing aesthetics to the Albany landscape.
7. This requirement is applied through a condition of development approval. Following the application of this condition, developers are directed to the City of Albany Visual Arts Team to discuss their proposal.
8. The Visual Arts team have developed the *Percent for Art Developer Guidelines* (the Guidelines) to accompany the LPP and provide further clarification on best practice principles in commissioning, producing and installing high-quality public art.
9. New or amended LPP'S must be advertised in accordance with Schedule 2, clause 4 of the Planning and Development (Local Planning Schemes) Regulations 2015 prior to their formal adoption.
10. Following completion of advertising and review of submissions, a report must be prepared for council requesting formal adoption of the LPP and revocation of any superseded LPPs.

**DISCUSSION**

11. The Planning and Visual Arts teams have been working together to update the existing *Public Art Local Planning Policy* to improve public art outcomes and ensure best practice is maintained.
12. The Visual Arts team, have also prepared the *Percent for Art Developer Guidelines* (attached) to accompany the Percent for Art.
13. Whilst the Guidelines detail the process for commissioning, producing and installing high-quality public art, the LPP provides the planning framework to enable the City to request the contribution and also establishes the development types from which a contribution will be requested.
14. The Guidelines have been attached for noting however Council approval is not sought/required for these Guidelines.

### Percent for Art

15. The basis for the Guidelines and LPP is the *State Government's Percent for Art Scheme*. It is therefore considered more appropriate to title the LPP 'Percent for Art' rather than the current "Public Art" title which is slightly ambiguous. This is consistent with the actions of most other Local Governments.

### Objectives

16. The existing Public Art LPP contains a single objective relating to developing and promoting cultural identity within the City of Albany by requiring the provision of public art.
17. The amended LPP proposes additional objectives relating to facilitating unique and locally distinctive streets, open spaces and improving the quality and attractiveness of the City's built environment.
18. These additional objectives are considered important as they provide additional justification for the percent for art planning condition and will help ensure the condition stands up to scrutiny at development assessment panel meetings and challenges at the State Administrative Tribunal.

### Proposals Eligible for Public Art Contributions

19. Consistent with the existing LPP, private proposals with a value of \$1,500,000 or above are required to allocate up to 1% of the determined project cost for the development of public artwork to reflect or enhance local cultural identity.
20. The scope of the policy has been clarified to specifically detail residential developments as being exempt from the requirements of the Policy. Although this is currently the case, it was considered that the policy scope could benefit from additional clarity.
21. Agriculture and extractive/mining uses are also proposed to be made exempt, given these uses are generally located in rural areas hidden from the public realm where the benefits of public art would be limited.
22. Infrastructure works such as telecommunication towers and pumping stations have also been made exempt from public art contributions.
23. LPP1.10 also states that public art contributions may be waived for land within the General Industry Zone. This provision has been proposed since there is relatively little value in public art within the General Industry Zone, which is by definition a zone set apart for uses that do not attract the same number of general members of the public or tourists and also does not have comparable public realm expectations.
24. This requirement is also consistent with the finding of a recent case at the State Administrative Tribunal (SAT) which overturned public art requirements in a General Industry Zone, in part due to uncertainty regarding the number of additional people who would be visiting the area and question over the need for the development to improve visual amenity of the area.
25. The possibility of requiring public art contributions for land in the General Industry Zone if the land would be visible from high frequency transport routes and key township approach corridors (ie Albany Highway, Chester Pass Road and Lower Denmark Road) was explored, however it was found that the General Industry Zones abutting these roads all had separate screening measures put in place at the strategic planning stage, therefore this provision wasn't considered necessary.

### Form of Contribution

26. The new *Percent for Art Developer Guidelines* sets out two options for the public art contribution as follows:
  - Option 1: Developers choose to co-ordinate and deliver the artwork themselves with the engagement of an art consultant.
  - Option 2: Developers choose to pay the fee to the City of Albany and they will co-ordinate and deliver the artwork.
27. Option one is the only option currently available to developers under the existing LPP and Guidelines.
28. Option two has been developed in order to minimise workloads for developers/proponents in developing a public art concept. It is also expected to improve the quality of public art offerings by ensuring the contribution amount is maximised and funds not unnecessarily spent on external art consultants.
29. The amended LPP1.10 has been updated to reflect the two contribution options available to developers as set out within the Guidelines.

### Method of Determining Percent for Art Contribution

30. The amended LPP also contains a provision that allows the City to request a detailed cost estimate be provided with the application to confirm the declared development value. This provision has been developed in response to recent applications declaring an estimated project value of just below the \$1.5million threshold to avoid the contribution, then declaring a significantly increased project value when required at the building permit stage, when the public art contribution is unable to be applied.
31. It is considered this requirement will be requested very infrequently and only in instances where it is obvious the development value has been grossly under declared. Despite its expected infrequent use, this provision will ensure applicants are discouraged from attempting to avoid paying this contribution.
32. The proposed LPP1.10 also caps the public art contribution to a maximum value of \$200,000, which would equate to a development value of \$20 million as there is considered to be little additional value in the provision of public art contributions that exceed this cost.

### Implementation of Public Art

33. In order to provide further clarity on the location of the public art contribution, the amended policy includes a provision that states that public art shall be provided on site or on crown land immediately adjacent the site, in a location approved by the City.
34. The amended LPP recommends that the proponent and their selected artists (if applicable) consult with the City's Planning and Building teams early on in the project to ensure artworks are suitably located and installed in conjunction with the relevant planning and building framework.

### Method of Collecting Contribution

35. Should the LPP and Guidelines be approved, the developer will be required to complete the 'Developers Application for Artwork Approval' contained within the Guidelines following development approval. The Arts and Culture team will then be responsible for the assessment of the public art proposal or coordinating and delivering the artwork themselves (should option 2 be chosen).
36. The City's model development conditions will be updated require this form to be lodged with the Arts and Culture team prior to the commencement of development.
37. The development approval will also condition that the public art be provided prior to occupancy of the development.

## GOVERNMENT & PUBLIC CONSULTATION

38. Approval is sought to advertise the amended LPP1.10 in accordance with Schedule 2, clause 4 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
39. If the Council resolves to support the amended LPP1.10 for advertising, a notice of the proposed policy will be placed in a newspaper circulating in the LPS1 area for 2 consecutive weeks.
40. The policy will also be published on the City of Albany website for 21 days.
41. Both the newspaper and the website will give details of:
  - Where the draft Local Planning Policy can be inspected;
  - The subject and nature of the draft Local Planning Policy; and
  - In what form and during what period (21 days from the day the notice is published) submissions may be made.
42. A copy of the policy will also be made available for inspection at the City of Albany.
43. After expiry of the period within which submissions may be made, the Local Government is to:
  - Review the draft Local Planning Policy in light of any submissions made; and
  - Resolve to adopt the Local Planning Policy with or without modification, or not to proceed with the Local Planning Policy.

## STATUTORY IMPLICATIONS

### Voting requirements

44. Voting requirement for this item is **Simple Majority**.

### City of Albany Local Planning Policy Review

45. The City of Albany has a suite of LPP's which it uses to augment the provisions contained under LPS1 to guide land use and development across the City and inform the exercise of discretion when determining applications.
46. The State Administrative Tribunal has previously determined that the age of an LPP has direct relevance to the weight afforded to it. Therefore, regular reviews are warranted and necessary to ensure validity and relevance when used in decision-making.
47. Furthermore, it is critical that LPP's are maintained to be consistent with the latest legislation and State Planning Policies.

### Preparation and adoption of new and revocation of existing Local Planning Policies

48. The City of Albany *Local Planning Scheme No.1* (LPS1) is a prescriptive instrument that sets out the statutory provisions for how land may be used and developed. Sole reliance upon it for regulating all forms of development under all circumstances is not always practical.
49. To address this, the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Planning Regulations) contains provisions enabling local governments to adopt local planning policies (LPP's) in order to:
  - address specific planning and development matters unique to the local government's context.
  - amend or augment provisions set out by State Planning Policy, including the application of additional development controls or considerations for specific sites.
50. New or amended LPP's must be advertised in accordance with Schedule 2, clause 4 of the Planning Regulations prior to their formal adoption.
51. Following completion of advertising and review of submissions, a report must be prepared for council requesting formal adoption of the LPP, subject to modifications.



## POLICY IMPLICATIONS

52. There are no policy implications relating to endorsing the proposed amended LPP1.10 for advertising.

## RISK IDENTIFICATION & MITIGATION

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

| Risk  | Likelihood                | Consequence  | Risk Analysis | Mitigation   |
|---|---------------------------|--------------|---------------|--|
| <b>Operational</b><br><i>Not approving the amended policy for advertising would result in the continued use of an existing policy that is no longer considered fit for purpose.</i> | <i>Almost<br/>Certain</i> | <i>Minor</i> | <i>High</i>   | <i>Approving the amended policy for advertising. The policy can be amended once feedback from advertising is assessed.</i> |
| <b>Opportunity:</b> <i>Encourages art in the built environment to improve visual amenity and promote cultural identity.</i>   |                           |              |               |  |

## FINANCIAL IMPLICATIONS

54. There are no financial implications beyond what will be used for advertising.

## LEGAL IMPLICATIONS

55. There are no legal implications relating to endorsing the proposed draft LPP1.10 for advertising.

## ENVIRONMENTAL CONSIDERATIONS

56. There are no environmental implications relating to endorsing the proposed amended LPP for advertising.

## ALTERNATE OPTIONS

57. Council has the following alternate options in relation to this item, which are:
- To resolve to proceed with advertising the policy without modification;
  - To resolve to proceed with advertising the policy subject to modification; and
  - To resolve not to proceed with advertising the policy.

## CONCLUSION

58. The Planning and Visual Arts teams have been working together to update the existing *Public Art Local Planning Policy* and associated Guidelines to improve public art outcomes and ensure best practice is maintained.
59. The City has identified a number of key matters relating to public art which will benefit from clarification and refinement, in the form of an amended Local Planning Policy 1.10: Percent for Art.
60. Council is requested to endorse the draft LPP1.10 for advertising.

|                                   |   |  |
|-----------------------------------|---|--|
| <b>Consulted References</b>       | : | 1. <i>Local Planning Scheme 1</i><br>2. <i>Planning and Development (Local Planning Schemes) Regulations 2015</i><br>3. <i>City of Albany Public Art Local Planning Policy</i><br>4. <i>Draft City of Albany Percent for Art Developers Guidelines</i> |
| <b>File Number (Name of Ward)</b> | : | All  |
| <b>Previous Reference</b>         | : | N/A  |

**DIS350: PROPOSED CROWN ROW CLOSURE ALBANY CBD**

|                             |   |
|-----------------------------|---|
| <b>Land Description</b>     | : Lot 66 on Diagram 39435   |
| <b>Proponent / Owner</b>    | : Archduke Holdings P/L   |
| <b>Business Entity Name</b> | : Archduke Holdings Pty Ltd<br>Directors being Christopher & Aurora Plowman |
| <b>Attachments</b>          | : Crown ROW Closure Report Lot 66 D39435                                    |
| <b>Report Prepared By</b>   | : Lands Officer (A Veld)  |
| <b>Authorising Officer:</b> | : Executive Director Infrastructure Environment & Development (P Camins)    |

**STRATEGIC IMPLICATIONS**

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
  - **Pillar:** Place
  - **Outcomes:** Responsible growth, development and urban renewal.

**Maps and Diagrams:**



**In Brief:**

- The City has received a request from the adjoining landowners to purchase the whole of a vacant, unvested Crown Right of Way (ROW) to the rear of their property.
- A Crown ROW is considered a private road owned by the State Government, under the *Land Administration Act 1997* and needs to be permanently closed in order for adjoining landowners to purchase this land.
- City staff have investigated the request and recommend that the ROW be closed, as there is no future strategic benefit to the City or the greater community for the land to remain in its current land tenure.
- Council's resolution is required to formally commence these land actions, in accordance with the relevant legislation.
- Council is therefore recommended to:
  - Resolve to permanently close the vacant, unvested Crown ROW in Albany CBD; and
  - Request the Minister for Lands to amalgamate the whole of the subject land with adjoining Lot 5.

**RECOMMENDATION**

**DIS350: COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR SUTTON  
SECONDED: COUNCILLOR BROUGH**

**THAT Council:**

- 1) **RESOLVE** to permanently close the subject unvested Crown ROW described as Lot 66 on Diagram 39435 in Albany CBD, pursuant to s.58 of the *Land Administration Act 1997* and r.9 of the *Land Administration Regulations 1998*;
- 2) **REQUEST** the Minister for Lands to undertake suitable arrangements to dispose of the subject land, on the condition that the:
  - a) The whole of the closed Crown ROW as shown on the attached plan, is amalgamated with adjoining Lot 5 Earl Street.

**CARRIED 12-0**

**DIS350: AUTHORISING OFFICER RECOMMENDATION**

**THAT Council:**

- 1) **RESOLVE** to permanently close the subject unvested Crown ROW described as Lot 66 on Diagram 39435 in Albany CBD, pursuant to s.58 of the *Land Administration Act 1997* and r.9 of the *Land Administration Regulations 1998*;
- 2) **REQUEST** the Minister for Lands to undertake suitable arrangements to dispose of the subject land, on the condition that the:
  - b) The whole of the closed Crown ROW as shown on the attached plan, is amalgamated with adjoining Lot 5 Earl Street.

**BACKGROUND**

2. Where an adjoining landowner requests to purchase land that is an unvested Crown ROW, and where in the opinion of the City the request is acceptable and can proceed in that instance, the City is required to formally commence the associated land actions to implement the request, including a formal road closure process. The City of Albany, as the local government, has authority to undertake this action.
3. In accordance with the *Land Administration Act 1997 and Land Administration Regulations 1998*, Council's resolution is required to formally request the Minister for Lands to close a road for amalgamation into the adjoining land.

4. The landowners of Lot 5, 79 Earl Street approached the City to purchase a vacant lot to the rear of their property.
5. Following receipt of the request, the City of Albany subsequently commenced investigations into relevant the land matters.
  - a) The land is an unvested Crown ROW which potentially predates the original subdivision of the land in 1969 to create Lot 66.
  - b) The lot is currently landlocked, with the only access being through adjoining private freehold land.
  - c) There is no Structure Plan in place for the area whereby this ROW would be required for future public access.
  - d) Future development of the area is unlikely to require this ROW to create a road reserve, as it is currently situated.

### **DISCUSSION**

6. Based on the City’s investigations into the land matters of the subject site, it was found that there was no benefit to the local government or broader community in retaining the subject land as an unvested Crown ROW, as it was unlikely to be required to support or provide access for future development of the area.
7. The outcomes of the City’s investigations resulted in the following recommendations:
  - a) Commence formal proceedings to implement the closure of the unvested Crown ROW; and
  - b) Upon closure of the Crown ROW, liaise with relevant government departments to arrange for divesting of the whole of the subject land to the adjoining landowner for amalgamation into their property.
8. Council’s resolution is now required to close the road reserve before the City can forward the matter to the Department of Planning, Lands and Heritage to finalise the land disposal.

### **GOVERNMENT & PUBLIC CONSULTATION**

9. Pursuant to section 58 of the *Land Administration Act 1997* and regulation 9 of the *Land Administration Regulations 1998*, the City publicly advertised the proposal.
10. Community Engagement

| Type of Engagement | Method of Engagement                        | Engagement Dates               | Participation (Number) | Statutory Consultation |
|--------------------|---|--------------------------------|------------------------|------------------------|
| Consult            | Letter to adjoining landowners              | 1 August 2022 – 23 March 2023  | 9                      | Yes                    |
| Consult            | Emails to service providers                 | 3 February 2023– 10 March 2023 | 7                      | Yes                    |
| Consult            | Public notice                               | 3 February 2023– 10 March 2023 |                        | Yes                    |
| Consult            | Community Newsletter                        | 3 February 2023– 10 March 2023 |                        | Yes                    |
| Consult            | Public Comments page City of Albany website | 3 February 2023– 10 March 2023 |                        | Yes                    |

11. Letters were sent to the other landowners adjoining the Crown ROW. One response was received, with no objections to the proposal.
12. Public advertising of the proposal was initiated on 3 February 2023 and was open for public comment for 35 days until 10 March 2023. No submissions were received.
13. Emails were sent out to all service providers, seeking their comments. Replies were received from Main Roads, Water Corporation and ATCO Gas, all with no objection to the proposal.

### **STATUTORY IMPLICATIONS**

14. Section 58 of the *Land Administration Act 1997* gives authority to a local government to request the Minister for Lands to close a road.
15. Regulation 9 of the *Land Administration Regulations 1998* outlines the actions a local government must take to prepare and deliver a request to the Minister to close a road.

## POLICY IMPLICATIONS

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

## RISK IDENTIFICATION & MITIGATION

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

| Risk   | Likelihood            | Consequence  | Risk Analysis | Mitigation   |
|--|-----------------------|--------------|---------------|--|
| <i>Risk: There is a risk the landlocked, unvested Crown ROW will remain unused and unmanaged.</i>  | <i>Almost Certain</i> | <i>Minor</i> | <i>High</i>   | <i>Allow landlocked Crown ROW to be closed for amalgamation with adjoining private freehold land</i> |
| <i>Opportunity: To use legislative processes to change land tenure to reflect the current or future potential better use of land within the City of Albany</i> |                       |              |               |  |

## FINANCIAL IMPLICATIONS

18. The City of Albany has a fee schedule for Crown ROW closure requests that cover the costs associated with the road closure process.

### Regulatory Cost Implications:

19. There are no regulatory costs associated with this item.

## LEGAL IMPLICATIONS

20. There are no legal implications relating to this item.

## ENVIRONMENTAL CONSIDERATIONS

21. There are no environmental considerations relating to this item

## ALTERNATE OPTIONS

22. Council can either choose to;
- Refuse the proposed Crown ROW closure or;
  - Support the proposed Crown ROW closure with modifications

## CONCLUSION

23. The City of Albany has been approached by the landowners adjoining a vacant, unvested Crown ROW to purchase this land.
24. There is no requirement for this Crown ROW to support future development of the area. The closure of the Crown ROW and subsequent disposal of the land to amalgamate with adjoining private land is supported in this instance.
25. Staff have undertaken the required actions to close the Crown ROW, pursuant to the relevant legislation, and now seeks Council's resolution to formalise the closure and forward this request to the Minister for Lands for finalisation.
26. Council is recommended to support the officer's recommendation, as the Crown ROW closure will allow the adjoining landowner to incorporate this unmanaged vacant land into their property, with the outcome a better reflection of the current and future use of the land.

|                                   |   |  |
|-----------------------------------|---|--|
| <b>Consulted References</b>       | : | <i>Land Administration Act 1997</i><br><i>Land Administration Regulations 1998</i> |
| <b>File Number (Name of Ward)</b> | : | RD.RDC.9 (Frederickstown)  |
| <b>Previous Reference</b>         | : | None   |

**11. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN - Nil**

**12. MEETING CLOSED TO THE PUBLIC - 6:45pm**

**13. CLOSURE**

There being no further business the Chair declared the meeting closed at **6:45pm**

*(Unconfirmed Minutes)*

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Councillor Thomson  
**CHAIR**