



AGENDA

DEVELOPMENT AND INFRASTRUCTURE SERVICES COMMITTEE MEETING

Wednesday 11 August 2021

6.00pm

City of Albany Council Chambers

CITY OF ALBANY
COMMUNITY STRATEGIC PLAN (ALBANY 2023)



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 | G Stocks (Deputy Mayor) |
| Member | Vacant |
| Member | P Terry |
| Member | R Hammond |
| Member | M Benson-Lidholm JP |
| Member | J Shanhun |
| Member | S Smith |
| Member | A Goode JP |
| Member | T Sleeman |
| Member | C Thomson |

Staff:

| | |
|--|----------------------------|
| Chief Executive Officer | A Sharpe |
| Executive Director Infrastructure, Development and Environment | P Camins |
| Manager Planning & Building Services | J van der Mescht |
| Manager Reserves | J Freeman |
| Manager Engineering and Sustainability | R March |
| Manager Major Projects | A McEwan |
| Technical Support Officer | A James (Minutes Observer) |
| Meeting Secretary | A Paulley |

Apologies:

4. DISCLOSURES OF INTEREST

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

5. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

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:

- 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.*

7. PETITIONS AND DEPUTATIONS

8. CONFIRMATION OF MINUTES

RECOMMENDATION

THAT the minutes of the Development and Infrastructure Services Committee meeting held on 9 June 2021 as previously distributed, be CONFIRMED as a true and accurate record of proceedings.

There was no DIS Committee meeting held in July 2021.

9. PRESENTATIONS

10. UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS

DIS265: LAKE MULLOCULLUP - POST GAZETTAL ENVIRONMENTAL MONITORING

| | |
|-----------------------------|--|
| Land Description | : Lake Mullocullup - Reserve 16367 (NR083). |
| Proponent / Owner | : City of Albany (Land vested in the care and control of the City of Albany). |
| Attachments | : 1. Lake Mullocullup, Reserve 16367, Post Gazettal Environmental Monitoring Report (May 2021) 2. Avian Fauna Survey at Lake Mullocullup Reserves February 2021 3. Lake Mullocullup Water-Ski Zone Monitoring Report: Summary of Results from April 2021 |
| Report Prepared By | : Reserves Officer (V Jackson) and Manager City Reserves (J Freeman) |
| Authorising Officer: | : 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 2030 and Corporate Business Plan 2018 - 2022:
 - **Themes:** Leadership and Clean, Green & Sustainable.
 - **Objectives:** To engage effectively with our community, and to protect and enhance our natural and built environment in a changing climate.
 - **Community Priority:** Sustainably protect and enhance our iconic coastline and reserves flora and fauna by delivering projects and programs that reflect the importance of our coastline and natural reserves.

Maps and Diagrams:



Figure 1. Lake Mullocullup – Warriup Road



Figure 2. Signage installed at Lake Mullocullup.

In Brief:

- Reference is made to Council resolution items DIS035 - August 2017, DIS092 - May 2018, DIS123 – October 2018 and DIS212 – June 2020.
- The purpose of this report is to update Council on the progress of condition 3 ‘*An annual environmental monitoring program be developed by the City. The results of the monitoring shall be reviewed every two (2) years*’ under DIS035.
- The results of the annual monitoring program over the last two years’ post gazettal indicates no significant increased activity, change or adverse environmental impacts as per the attached report.

RECOMMENDATION

DIS265: AUTHORISING OFFICER RECOMMENDATION

THAT Council:

1. **NOTES** the Lake Mullocullup Post-Gazettal Environmental Monitoring Report April 2021.
2. **RESOLVES** to:
 - a) **Reduce** the annual monitoring to bi-annual (twice a year) site inspections and visitation data collection only to monitor the vegetation and use of the launch and camping areas in peak times between September and March.
 - b) **Undertake** water monitoring and bird surveys on an as-required basis only.
 - c) **Receive** updates on request as required.

BACKGROUND

2. Annual monitoring has been undertaken since the gazettal of Lake Mullocullup by the Department of Transport (DoT) to allow water skiing in March 2019, which has included:
 - a) Regular site inspections to determine any impacts such as use, litter, presence of algae and vegetation damage.
 - b) Annual water monitoring by staff from UWA School of Agriculture and Environment. Sampling for the physical and biological aspects of water quality, as well as chemical contamination (polycyclic aromatic hydrocarbons (PAHs)) of the lake sediment.
 - c) Annual bird surveys.
 - d) Track counters to determine visitation.

DISCUSSION

3. Over the 20/21 period of monitoring there have been some constraints that have prevented the monitoring being undertaken as it was the previous year in 2019/20 such as:
 - The COVID pandemic affecting resources with reduced hours for staff and less visitors in the region during this time;
 - Main Roads construction works along South Coast Highway which closed the access to Warriup Road and Lake Mullocullup; and
 - The track counters failing and no data available.
4. The above has affected the data available on the use of the area although the water quality and bird survey results have shown no significant impact.
5. Water monitoring results indicate that water-skiing has had no detectable impact on the water quality at Lake Mullocullup, suggesting that historical use of powered boats has had little to no impact on the lake sediment and no additional impact since 2018.
6. The Avian Fauna survey was undertaken in February 2021. A total of 47 species were recorded, of which 21 species were waterbirds (478 individuals counted in total). There were a higher number of waterbirds observed than in 2016 and 2019. The Great Crested Grebe was also recorded for the first time in 2021.
7. The traffic counter that was installed to measure visitation failed with no data recorded over the 2020/21 summer period.
8. Details of all the monitoring is provided in the attached reports.

GOVERNMENT & PUBLIC CONSULTATION

9. N/A.

STATUTORY IMPLICATIONS

10. Nil.

POLICY IMPLICATIONS

11. Nil.

RISK IDENTIFICATION & MITIGATION

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

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|--|-----------------|--------------|---------------|---|
| Environment <i>If monitoring is not continued, any impacts to the values may not be identified or mitigated.</i> | <i>Unlikely</i> | <i>Minor</i> | <i>Low</i> | <i>Continue to undertake site observations to ensure significant values are not being impacted.</i> |
| Opportunity: <i>to collect ongoing data to inform management of the reserve</i> | | | | |

FINANCIAL IMPLICATIONS

13. The reduction of monitoring to site observations and visitation only during peak times will reduce the costs from approximately \$18,500 to \$1,000 under existing operational budgets.

LEGAL IMPLICATIONS

14. Nil.

ENVIRONMENTAL CONSIDERATIONS

15. Any evidence observed of impacts to the environment will be assessed and addressed as required.

ALTERNATE OPTIONS

16. The Council could decide to maintain the current annual monitoring program with results reviewed every two (2) years.

CONCLUSION

17. The previous two (2) years of monitoring has shown no impacts on the significant environmental and cultural values of Lake Mullocullup post-gazettal for water-skiing.

| | | |
|-----------------------------------|---|---|
| Consulted References | : | <ul style="list-style-type: none"> • Avian Fauna Survey at Lake Mullocullup Reserves February 2021. • Lake Mullocullopp Water-ski Zone Monitoring Report: Summary of Results from April 2021. |
| File Number (Name of Ward) | : | EM.MON.10 (Kalgan Ward) |
| Previous Reference | : | DIS035 – OCM 22/08/2017 DIS092 – OCM 22/05/2018 DIS123 – OCM 23/10/2018 DIS212 – OCM 23/06/2020 |

DIS266: VEHICLES ON BEACHES

| | |
|----------------------------|---|
| Land Description | : City of Albany |
| Proponent / Owner | : City of Albany |
| Attachment | : Schedule of Submissions |
| Report Prepared By | : Manager City Reserves (J Freeman) Manager Governance & Risk (S Jamieson) |
| Authorising Officer | : 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 or Corporate Business Plan informing plans or strategies:
 - **Theme:** Leadership.
 - **Objective:** To provide strong, accountable leadership supported by a skilled and professional workforce
 - **Community Priority:** Provider positive leadership that delivers community outcomes.

In Brief:

- Council resolved on 22 June 2021 to given public notice to the proposed determination.
- At the time of writing this report, three (3) comments have been received which are detailed in the body of this report.

RECOMMENDATION

DIS266: AUTHORISING OFFICER RECOMMENDATION

THAT Council:

- (1) **NOTE** the submissions received during the public submission period.
- (2) **ADOPT** the proposed determination under the City of Albany Property Local Law 2011:

Vehicles Permitted:

| Reserve Name & Number | Proposed Determination |
|---------------------------------|------------------------|
| Bettys Beach (North) - R52825 | Vehicles Permitted |
| Emu Point Marina Beach - R22698 | Vehicles Permitted |
| Nanarup Beach (West) - R45631 | Vehicles Permitted |
| Shoal Bay - R25295 | Vehicles Permitted |

Vehicles Prohibited:

| Reserve Name & Number | Proposed Determination |
|--|------------------------|
| Anvil Beach - R30883 | Vehicles Prohibited |
| Black Swan Point - R25551 | Vehicles Prohibited |
| Boronia Reserve Foreshore - R6862 | Vehicles Prohibited |
| Brambles West - R25295 | Vehicles Prohibited |
| Cosy Corner West - R24547 | Vehicles Prohibited |
| Emu Point Beach South - R22698 | Vehicles Prohibited |
| Middleton Beach - R14789 & R26149 | Vehicles Prohibited |
| Normans Beach - R2031 | Vehicles Prohibited |
| Nullaki Peninsula (Ocean Beach) - R30883 | Vehicles Prohibited |
| Rushy Point - R35754 | Vehicles Prohibited |
| Whaleworld Beach - R21337 | Vehicles Prohibited |

Vehicles Prohibited other than for boat launching:

| Reserve Name & Number | Proposed Determination |
|--|---|
| Cheyne Beach (Central) - R878 | Vehicles Prohibited other than for boat launching or commercial fishing |
| Bettys Beach (South) - R52825 | Vehicles Prohibited other than for boat launching. |
| Cape Riche - R1010 | Vehicles Prohibited other than for boat launching. |
| Frenchman's Bay (Whalers Beach) - R21337 | Vehicles Prohibited other than for boat launching. |

BACKGROUND

- On 22 June 2021, Council resolved to give public notice on the subject determination.

DISCUSSION

- There was a mistake in the advertisement / Public Notice for the Proposed Vehicles on Beaches Determination which appeared in The Weekender on 1 July 2021. This notice had the Frenchman's Bay and Nanarup Beaches around the wrong way.
- The Weekender apologised for these mistakes and agreed to place the appropriate correction notices free of charge. The corrected advertisement was published in the 8 July 2021 edition.

Public Consultation Period:

- As the planned consultation period exceeded the statutory period of time of 21 days, the closing date for submission remained as 30 July 201.
- To accommodate the misinformation, the Council allowed for late submissions to be accepted up to 10 days from the closing date.
- At the close of the public comment period, there were sixteen (16) submissions opposing and one (1) submission in support of the proposed determination. Due to the advertising error, submissions will be received up to 10 days after the closing date of 30 July 2021. Any further submissions will be emailed to Elected Members prior to the DIS Committee meeting on 11 August.
- Refer to attached Schedule of Submissions document.

GOVERNMENT & PUBLIC CONSULTATION

- Additional consultation was made post the 22 June 2021 with the Department of Local Government.
- On 14 July 2021, the Manager Governance & Risk, confirmed that with the amendment of local laws (though determination) the delegation sits within the remit of the City of Albany, and does not require the involvement of the Department of Premier and Cabinet.

STATUTORY IMPLICATIONS

11. The Local Government Property Local Law 2011, prescribes the determination process.

Clause 2.2 Procedure for making a determination

- (1) The local government is to give local public notice of its intention to make a determination.
- (2) The local public notice referred to in subclause (1) is to state that—
 - (a) the local government intends to make a determination, the purpose and effect of which is summarised in the notice;
 - (b) a copy of the proposed determination may be inspected and obtained from the offices of the local government; and
 - (c) submissions in writing about the proposed determination may be lodged with the local government within 21 days after the date of publication.
- (3) If no submissions are received in accordance with subclause (2)(c), the Council is to decide to—
 - (a) give local public notice that the proposed determination has effect as a determination on and from the date of publication;
 - (b) amend the proposed determination, in which case subclause (5) will apply; or
 - (c) not continue with the proposed determination.
- (4) If submissions are received in accordance with subclause (2)(c) the Council is to—
 - (a) consider those submissions; and
 - (b) decide—
 - i. whether or not to amend the proposed determination; or
 - ii. not to continue with the proposed determination.
- (5) If the Council decides to amend the proposed determination, it is to give local public notice—
 - (a) of the effect of the amendments; and
 - (b) that the proposed determination has effect as a determination on and from the date of publication.
- (6) If the Council decides not to amend the proposed determination, it is to give local public notice that the proposed determination has effect as a determination on and from the date of publication.
- (7) A proposed determination is to have effect as a determination on and from the date of publication of the local public notice referred to in subclauses (3), (5) and (6).
- (8) A decision under subclause (3) or (4) is not to be delegated by the Council.

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

POLICY IMPLICATIONS

13. There are no direct policy implications.
14. Note under the City of Albany Local Government Property Local Law 2011 (clause 4.8 – Signs):

4.8 Signs

- (1) A local government may erect a sign on local government property specifying any conditions of use which apply to that property.
- (2) A person shall comply with a sign erected under subclause (1).
- (3) A condition of use specified on a sign erected under subclause (1) is—
 - (a) not to be inconsistent with any provision of this local law or any determination; and
 - (b) to be for the purpose of giving notice of the effect of a provision of this local law.

RISK IDENTIFICATION & MITIGATION

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

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|--|------------|-------------|---------------|--|
| Reputation <i>Risk: Changes to beach access may not be accepted by some residents.</i> | Likely | Moderate | High | Provide clear signage, information and education on any changes. |
| People Health & Safety <i>Risk: Vehicle access to beaches can pose a risk to other beach users</i> | Possible | Moderate | Medium | Install Code of Conduct signage and provide information and education. |
| Environment: <i>Vehicle access to dunes causing damage to environment</i> | Likely | Moderate | High | Monitor and undertake a dune protection plan and provide signage and education |
| Opportunity: <i>To manage coastal reserves for current use and consolidate compliance requirements.</i> | | | | |

FINANCIAL IMPLICATIONS

16. The cost of updated and new signage can be accommodated within existing budget lines.

LEGAL IMPLICATIONS

17. There are no direct legal implications.
18. Compliance will be administered under the City of Albany Local Government Property Local Law 2011.
19. Infringements will be administered by City of Albany Authorised Persons (i.e. Rangers).
20. Non-payment of fines will be administered through the Fines & Enforcement Registry.

ENVIRONMENTAL CONSIDERATIONS

21. Environmental considerations were explored in previous reports and briefings.

ALTERNATE OPTIONS

22. Council may choose not to support the proposal to change beach access for vehicles, in which case ongoing enforcement will be required to manage vehicular access.

CONCLUSION

23. It is recommended that the Council approve the determination to allow better management and compliance of our coastal reserves.

| | | |
|-----------------------------------|---|--|
| Consulted References | : | <ul style="list-style-type: none"> Local Government Act 1995 City of Albany Property Local Law 2011 |
| File Number (Name of Ward) | : | EM.PLA.5 (All Wards) |
| Previous Reference | : | <ul style="list-style-type: none"> Council Presentation 12 May 2021, post DIS Committee meeting. OCM 22 June 2021 Resolution DIS260. |

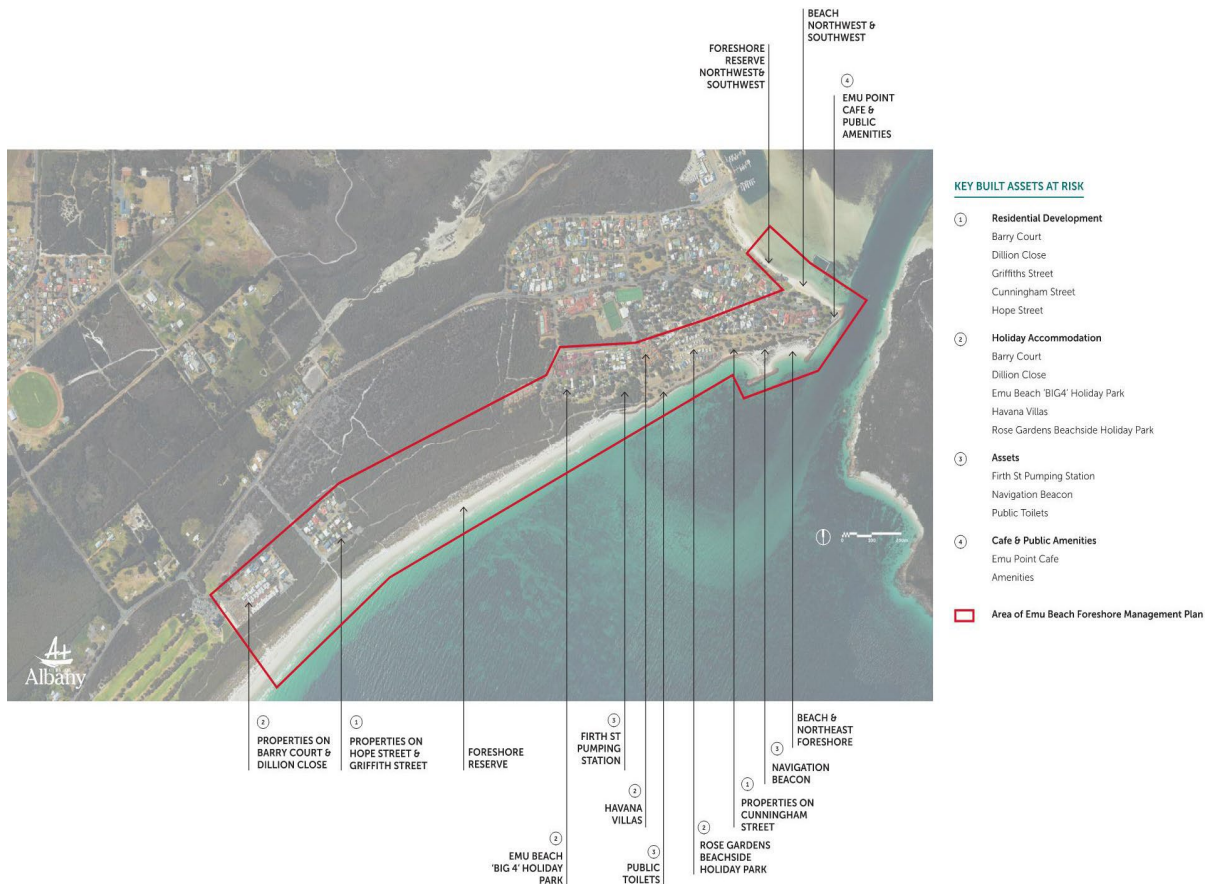
DIS267: EMU BEACH FORESHORE MANAGEMENT PLAN

| | |
|---|---|
| Land Description | : Area of coast from the Emu Point Café to east of the Albany Golf Course |
| Proponent / Owner | : City of Albany (Management Order or Vested Crown Land) |
| Attachments | : 1. Emu Beach Foreshore Management Plan (FMP) 2. Schedule of Submissions |
| Supplementary Information & Councillor Workstation | : 1. Public Submissions 2. Briefing Note – Emu Beach Foreshore Management Plan (FMP) |
| Report Prepared By | : Manager Major Projects (A McEwan) |
| Authorising Officer: | : Executive Director Infrastructure, Development & Environment (P Camins) |

STRATEGIC IMPLICATIONS

- This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
 - Theme 3:** Clean, Green and Sustainable
 - Objective 3.1:** To protect and enhance our natural and built environment in a changing climate
 - Community Priority 3.1.1:** Deliver effective practices that reduce risk to property, infrastructure and the natural environment and improve community awareness and resilience.

Maps and Diagrams: Subject Site and Key Assets



In Brief:

- A key recommendation from the Coastal Hazard Risk Management and Adaptation Plan (CHRMAP), adopted Dec 2019, was to develop a Foreshore Management Plan (FMP) for the Emu Beach area.
- The Emu Beach FMP is an important guiding document for the management of coastal erosion and hazards between the Albany Golf Club and Emu Point.
- The purpose of this report is to seek Council adoption of the final Emu Beach FMP prepared for the City of Albany.

RECOMMENDATION

DIS267: AUTHORISING OFFICER RECOMMENDATION

THAT Council, in accordance with *State Planning Policy No. 2.6 – State Coastal Planning Policy*, ADOPT the final Emu Beach Foreshore Management Plan.

BACKGROUND

2. A key recommendation from the Coastal Hazard Risk Management and Adaptation Plan (CHRMAP), adopted December 2019, was to develop a Foreshore Management Plan (FMP) for the Emu Beach area.
3. A key objective of the FMP is to integrate the Coastal Adaptation recommendations from the CHRMAP with Environmental and Landscape Management.
4. The Emu Beach FMP has been funded 50:50 by City of Albany and WA Planning Commission through Dept. Planning, Lands and Heritage. Work was produced by a consultant team comprising *RPS Group* (Environmental/Planning), *Seedesign Studio* (Landscape Architecture) and *Bluecoast Consulting Engineers* (Coastal Engineering).
5. The Emu Beach FMP is an important guiding document for the management of coastal erosion and hazards between the Albany Golf Club and Emu Point.
6. The 90% complete draft document was presented to Council via online presentations and Strategic Briefing on 15 June 2021.

DISCUSSION

7. This FMP is consistent with State Planning Policy 2.6 - State Coastal Planning Policy and the endorsed CHRMAP. Whilst the CHRMAP makes broad recommendations about what to do to manage the coast over the long-term, this FMP essentially details the how – identifying a series of key management actions.
8. This FMP details key infrastructure and governance management actions to be implemented over the short term (0-5 years) and medium term (5-10 years) planning horizons.
 - a) Infrastructure:
 - Undertake the capital works for the Landscape Master Plan and granite boulder groyne field establishment (short term)
 - Undertake sand nourishment in Emu Beach and Oyster Harbour (short term)
 - Undertake the capital works for the upgrades to the existing coastal protection structures, including the Emu Point rock revetment (medium term).

b) Governance:

- Approve the advertisement of the Emu Beach FMP for the purpose of advertising/public consultation (short term)
- Complete the CoA's LPS No.1 review, which is currently being progressed, to include the vulnerable zone (the modelled hazard area to 2120) in a Special Control Area (short term)
- Updated lease arrangement for the southern portion of the Emu Beach 'BIG4' Holiday Park (medium term)
- Investigate the opportunity to acquire at risk land as it becomes available on the public market (medium term)

GOVERNMENT & PUBLIC CONSULTATION

9. The project governance structure included a Project Steering Group, comprising City of Albany staff and relevant government and community, business stakeholders (incl.: Department of Planning, Lands and Heritage, Department of Water and Environmental Regulation, Department of Biodiversity, Conservation and Attractions, Department of Primary Industries and Regional Development, Department of Transport, Southern Aboriginal Corporation, Southern Ports Authority, South Coast Natural Resource Management, Friends of Emu Point, Middleton Beach Group).
10. The City of Albany conducted community engagement between July-Sept 2020. Draft documents have been updated to incorporate community and Council feedback (ref: Briefing Note – Emu Beach Foreshore Management Plan).
11. The FMP was advertised for public comment from 22nd June 2021 to 14th July 2021. Two submissions were received during this period and three submissions have recently been received in regards to coastal erosion at Emu Beach. These submissions have been provided on the Councillors Workstation.
12. Overall, engagement across the project was extensive and over a long period of time. The community has been at the forefront of the City's planning for this area, and there have been multiple opportunities and processes to be engaged and input on project outcomes.
13. **Community Engagement:**

| Community Engagement (Examples) | |
|---------------------------------|---|
| Involve | Project Steering Group |
| Consult | Community Engagement July to September – online and in situ |
| Inform | Emu Point Meet and Greet |
| Consult | Comment Period 22/06/2021 – 14/07/2021 |

STATUTORY IMPLICATIONS

14. *State Planning Policy No. 2.6 State Coastal Planning Policy* and associated Guidelines is the most pertinent policy to inform and guide decision-making for coastal planning; including managing development and land use change; establishment of foreshore reserves; and to protect, conserve and enhance coastal values.
15. The most relevant section of the policy is section 5.5 and deals with Coastal hazard risk management and adaptation planning.
16. The FMP includes a number of actions which will lead to further amendments and controls being introduced into the Planning framework over the area, these include:
 - a) Disclosure of risk through the planning process.
 - b) Adaptation measures.

POLICY IMPLICATIONS

17. Should the Emu Beach FMP be adopted and recommendations progressed in the future, Federal and State policy may apply to the project implementation phase.

RISK IDENTIFICATION & MITIGATION

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|---|-----------------|-----------------|---------------|--|
| Reputation and Business Operation <i>Risk: The FMP is not adopted.</i> | <i>Possible</i> | <i>Moderate</i> | <i>Medium</i> | <i>The FMP will be reviewed and re-presented for adoption.</i> |
| Opportunity: <i>Confidence in the City of Albany to deliver outcome from funding body and confidence with the community and key stakeholders is maintained.</i> | | | | |
| Financial <i>Risk: The project is unable to be delivered.</i> | <i>Possible</i> | <i>Moderate</i> | <i>Medium</i> | <i>The FMP will be reviewed and re-presented for adoption.</i> |
| Opportunity: <i>There is an opportunity for the City to advocate and lobby for funds from State and Federal Government for contribution to implement control measures.</i> | | | | |

FINANCIAL IMPLICATIONS

18. There are no financial implications related to this report.
19. This project was funded 50:50 by Western Australian Planning Commission and City of Albany. The Emu Beach FMP was completed within the agreed budget allocation.
20. The implementation of recommendations of the Emu Beach FMP will be subject to further funding.

LEGAL IMPLICATIONS

21. Governments at all levels and private parties (individuals, businesses and the community) each have important, complementary and differentiated roles in managing risk arising from coastal hazards.
22. Local government decision making on coastal planning and development is steered by state government policy and legislation.
23. There are no direct legal implications related to this report. However, it should be noted that the City is responsible for:
- a) Local land use planning;
 - b) Significant aspects of environmental management in the coastal zone, including the provision of waste removal and treatment services, and working with state government for the provision of water, drainage and sewerage services
 - c) Land management of coastal reserves and other coast buffer areas; and
 - d) Provision and management of public infrastructure such as roads, recreational areas and parks in the coastal zone.
24. Governments, on behalf of the community, are primarily responsible for managing risk to public goods and public assets which they own and manage.
25. The City has access to a document recently produced for WALGA titled *Legal Response to the Local Government Coastal Hazard Planning Issues Paper*. Whilst not a formal legal opinion this document provides a legal opinion in regard to issues that WA Local Governments are experiencing in meeting coastal hazard planning responsibilities established by SPP 2.6.

ENVIRONMENTAL CONSIDERATIONS

26. Implementation of individual recommendations will require further environmental consideration.

ALTERNATE OPTIONS

27. Council may choose not to support the adoption of the Emu Beach FMP.

CONCLUSION

28. The City of Albany has undertaken development of a FMP for Emu Beach to guide the management of coastal erosion and hazards between the Albany Golf Club and Emu Point. This area has been identified by the community as highly valued for economic, social and environmental reasons.

29. The report proposes several key management actions relating to infrastructure and governance. Adoption of these will allow the City and its community to become more resilient to coastal hazards such as coastal erosion and coastal inundation.

30. It is recommended that Council ADOPT the final Emu Point FMP.

| | | |
|--|----------|--|
| <p>Consulted References</p> | <p>:</p> | <ul style="list-style-type: none"> • <i>Local Government Act 1995, Planning and Development Act 2005. State Planning Policy No. 2.6 State Coastal Planning Policy and Guidelines.</i> • Coastal hazard risk management and adaptation planning guidelines, July 2019 |
| <p>File Number (Name of Ward)</p> | <p>:</p> | <p>EM.PLA.33 (Breaksea Ward)</p> |
| <p>Previous Reference</p> | <p>:</p> | <p>Strategic Briefing - 15 June 2021. CHRMAP- Coastal Hazard Risk Management Adaptation Plan RPT12420 adopted 17/12/2019.</p> |

DIS268: LOCAL PLANNING SCHEME AMENDMENT NO.38 – LOTS 33, 35, 37 & 121 COCKBURN ROAD AND LOTS 100 & 122 PRIOR STREET, CENTENNIAL PARK.

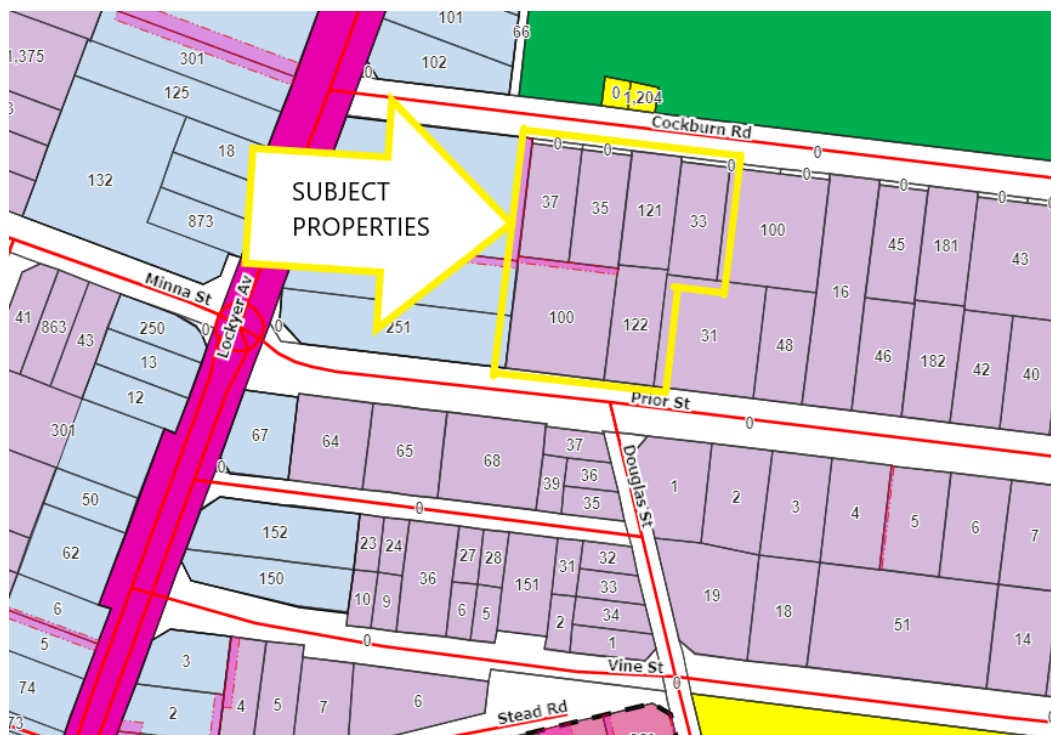
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|---|---|
| Land Description | : Lots 33, 35, 37 & 121 Cockburn Road and Lots 100 & 122 Prior Street, Centennial Park. |
| Proponent / Owner | : Proponent/s: Edge Planning & Property/Great Southern Endeavour Projects Owner/s: Lot 33 - Gary and Lee Ironmonger Lot 35 - Crusti Pty Ltd Lot 37 - Andreotti Nominees Pty Ltd Lot 121 - Rita McLean Lot 100 - Three Of A Kind Pty Ltd Lot 122 - Wanslea Family Services Incorporated |
| Business Entity Name | : <ul style="list-style-type: none">• Edge Planning & Property (Family Partnership) Holders being Stephen Thompson and Corinne Thompson• Great Southern Endeavour Projects Director being Edwin McLean• Crusti Pty Ltd Director being Stanley Date• Andreotti Nominees Pty Ltd Directors being Orano Andreotti, Mauro Andreotti and Giuseppe Andreotti• Three of a Kind Pty Ltd Directors being John Boccamazzo and Nicole Boccamazzo• Wanslea Limited Directors being Michael W Clare, Kaye M Mazzoleni, Paul I Malcolm, Andrew B Hall, Amanda K Gadson, Robin L Cohen, Edna J Fahy and Rodney S O’Dea. |
| Attachments | : Scheme Amendment 38 Report (27 May 2021). |
| Supplementary Information & Councillor Workstation | : Alternate Recommendation |
| Report Prepared by | : Senior Planning Officer – Strategic Planning (A Nicoll) |
| Authorising Officer | : Executive Director Infrastructure, Development and Environment (P Camins) |

STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. This item relates to the following elements of the City of Albany *Strategic Community Plan 2030*:
 - **Theme 2:** Smart, Prosperous and Growing.
 - **Objective 2.1:** To strengthen and grow our region’s economic base.
 - **Community Priority 2.1.1:** Work with business and other stakeholders to attract investment, diversify the economy, create jobs and support small business growth.
 - **Theme 5:** A connected and safe built environment.
 - **Objective 5.2:** To advocate, plan for and build friendly and connected communities
 - **Community Priority 5.2.2:** Create infrastructure and connected streetscapes that are consistent and reflect our unique heritage.

3. When exercising its discretion in relation to planning matters, the pertinent strategic document is the *Albany Local Planning Strategy 2019* (the Planning Strategy), which identifies Centennial Park for urban renewal.

Maps and Diagrams:



In Brief:

- The City has received a proposal to amend its current Local Planning Scheme No.1 (LPS1) to amend the zone of Lots 33, 35, 37 & 121 Cockburn Road and Lots 100 & 122 Prior Street, Centennial Park. from 'Light Industry' to 'Mixed Use'.
- The City is concurrently in the process of preparing draft Local Planning Scheme No. 2 (LPS2). Staff have substantially progressed the preparation of draft LPS2 and anticipate reporting to Council in November seeking endorsement to advertise the new draft scheme.
- LPS2 is required to follow the 'Model Provisions' set out under the Planning and Development (Local Planning Schemes) Regulations 2015 (the Planning Regulations), with the Mixed Use zone and development provisions related to the zone required to be introduced and considered as part of preparation of LPS2. The Mixed Use zone is not a zone in LPS1.
- It is recommended that Council do not initiate the amendment for the following reasons:
 - a) Although in principle, the scheme amendment proposal aligns with the strategic direction set out under the Planning Strategy and meets the Model Provisions of the Planning Regulations, the resourcing required to process a scheme amendment at the same time as progressing LPS2 results in duplication of workflows that have the same intended outcome, a dilution of staff resourcing currently dedicated to processing draft LPS2 and subsequent unintended delays in finalising LPS2.
 - b) Potential confusion within the community as to what changes are being made, when a scheme amendment to LPS1 is advertised at a similar time when the City is engaging with the community on draft LPS2 (during advertising and considering submissions).
 - c) As the proposal is generally supported in principle, it is recommended that Council request the CEO in consultation with staff to incorporate elements of the scheme amendment proposal as part of its consideration of draft LPS2, relating to the rezoning and application of residential density to the land the subject of the scheme amendment.

RECOMMENDATION

DIS268: AUTHORISING OFFICER RECOMMENDATION

THAT Council RESOLVE to:

1. **NOT INITIATE Standard Amendment No. 38 to amend City of Albany Local Planning Scheme No. 1, for the following reasons:**
 - a) **The processing of the amendment is expected to conflict with the processing of the new Local Planning Scheme No. 2.**
2. **ADVISE the proponent of its decision and reasons to NOT INITIATE Scheme Amendment No. 38.**
3. **REQUEST that the CEO, in consultation with staff, includes elements of the amendment in the new draft Local Planning Scheme No.2, relating to the rezoning of Lots 33, 35, 37 and 121 Cockburn Road and Lots 100 and 122 Prior Street, Centennial Park from 'Light Industry' to 'Mixed Use' and allocating an R-Code density of R60 in accordance with the Scheme Amendment Map).**

BACKGROUND

4. In May 2021 the City received a scheme amendment application (No. 38), proposing to rezone subject lots in Centennial Park from 'Light Industry' to 'Mixed Use'.
5. The *Planning and Development (Local Planning Schemes) Regulations 2015* (the Planning Regulations) require local governments to undertake a review of their local planning scheme every five (5) years.
6. In accordance with the Planning Regulations, a review of LPS1 was undertaken in 2019, with the recommendation to seek formal agreement from the WAPC to repeal LPS1 and prepare a replacement LPS2.
7. Council at its Ordinary Meeting in November 2019, resolved to adopt the LPS1 review report, and also agreed to formally request the WAPC to receive the report and to agree with the recommendation of the report to repeal LPS1, and the City to prepare the replacement LPS2.
8. Staff have substantially progressed the preparation of draft Local Planning Scheme No. 2 (LPS2) and envisage reporting to Council in November seeking endorsement to advertise the new draft scheme.
9. The Election Caretaker Period Policy will limit Council's ability to make decisions on any scheme amendments and also draft LPS2 until the November 2021 Committee and Ordinary Council Meetings.
10. As preparation of draft LPS2 has reached a critical phase, it should be noted that a separate item is presented at this same meeting requesting Council to consider imposing a moratorium on considering future amendments submitted to LPS1. If Council agree to imposing the moratorium, staff are recommending it commences the day following the August OCM.
11. The requested moratorium is intended to ensure orderly and proper planning outcomes for the new LPS2, avoid additional confusion within the community by ensuring planning processes are streamlined and focused on progressing LPS2, and also to maintain adequate levels of staff resourcing to the project by ensuring the project continues to be progressed and delivered in a timely manner.

12. City and DPLH officers met with the proponent in April 2021 to discuss the proposed scheme amendment prior to formal lodgement. The City and DPLH officers provided preliminary advice to the proponent at that time, indicating that due to the progress of the preparation of the draft LPS2, the City's preferred option was for imminent scheme amendments to be considered as part of draft LPS2, and not submitted and referred to Council as formal amendments to LPS1.
13. The proponent subsequently decided to proceed with lodging the scheme amendment. At that time of lodgement, City staff reiterated its position regarding processing the proposal as part of draft LPS2. The proponent requested the City to proceed in accepting the formal application, indicating their concern that if the proposal were incorporated into the preparation of draft LPS2, the intended development outcomes resulting from the proposed rezoning could be significantly delayed.
14. Now that the applicant has lodged the formal scheme amendment documentation, Council must decide on whether to adopt the scheme amendment or not.

DISCUSSION

15. Scheme Amendment No. 38 proposes to rezone Lots 33, 35, 37 and 121 Cockburn Road and Lots 100 and 122 Prior Street, Centennial Park from 'Light Industry' to 'Mixed Use'.
16. The proposed rezoning of the subject lots aligns in-principle with directions of the Planning Strategy, which identifies the precinct where the subject lots are located and the broader Centennial Park area for urban renewal, due to its proximity to the activity centre.
17. Actions identified under the Planning Strategy to implement the strategic direction of the area include further investigations being undertaken and the development of a structure plan or the like to guide the transition of the locality to medium density mixed use development, that includes delivery of a diverse range of well-designed medium residential density in appropriate locations.
18. It should be noted that as the Mixed Use zone is not currently incorporated into LPS1, Scheme Amendment No. 38 also involves introduction of the new zone and associated provisions into LPS1 text and map.
19. Following lodgement of the application with the City, the proponent requested the City to seek written advice from the Department of Planning, Lands and Heritage (DPLH) on whether to progress or withdraw the scheme amendment. DPLH's response outlined that:
 - The City's comments and likely recommendation to Council on the proposal reflected previous discussions and advice between the City, DPLH and the proponent;
 - It was Council's prerogative whether to initiate the amendment or not;
 - DPLH would consider the proposal on its merits, within the applicable strategic and statutory planning context;
 - Regardless of the process undertaken to consider the proposal, the same land use planning elements would need to be addressed, with supporting documentation expected to be provided, addressing the requirements either through:
 - a) a structure plan prepared for the specific precinct; or
 - b) detailed evidence that the proposal will not prejudice future structure planning within the locality, and/or realisation of the overall objective for Centennial Park, as outlined under the Planning Strategy.

20. In response the proponent provided the following comments:

- The area has a permeable road system that can more effectively deal with land use change;
- Overall, traffic numbers are expected to be similar with land use change including that more residents living in the area will support various trips by cycling and walking. The current road network has capacity to accommodate traffic associated with land use change in the area;
- Land use change in the area will occur over decades;
- There are limited environmental issues given the area is connected to reticulated sewerage;
- Provisions can be included in the scheme to address matters such as amenity (noise). The following are examples of provisions associated with subdivision and or development applications:
 - Quiet house design requirements may be required to apply where considered appropriate by the Local Government.
 - While lawful operating industrial uses remain within a 300 metre radius of the application site, the Local Government will require, at subdivision and/or development stage, the landowner/developer to undertake and implement all noise attenuation measures necessary to ensure indoor noise levels for proposed residential or short stay development comply with the relevant 'satisfactory' design sound level specified by *AS 2107:20016 Acoustics – Recommended Design Sound Levels and Reverberation Times for Building Interiors* (or any updates) to ensure compliance with *Environmental Protection (Noise) Regulations 1997*.
 - Development should incorporate design elements and materials which break down the bulk of development, and provide visual interest through the articulation of the built form.
 - Building facades should be articulated to provide increased surveillance of streets, balconies and terraces will be encouraged.
 - Site access should be limited to a single driveway.
 - Prior to the issue of development approval for an application involving residential accommodation in the Mixed Use zone, Local Government may require the applicant to:
 - Provide a legal mechanism to notify the owner, their heirs and successors in title, of the possible loss of amenity from adjoining land uses;
 - Undertake a land use, acoustic and traffic analysis; and
 - Design the residential building and provide a site layout responsive to the analysis.
 - Noise attenuation measures may include but are not limited to:
 - Lodgement of an acoustic report specific to the proposed development design;
 - Detailed design guidelines and method of implementation;
 - Design and construction requirements;
 - Notification to prospective purchasers and on all Certificates of Title advising of the potential noise impacts and the requirement for appropriate noise attenuation measures.

21. Staff also propose to further liaise with DPLH as part of preparation of LPS2 to develop an approach to appropriately guide the transition of the area to mixed use, in accordance with the actions of the Planning Strategy.

22. It is acknowledged that the proposal outlined under Scheme Amendment No. 38 to rezone the subject lots to Mixed Use under LPS1:
 - a) Aligns with the strategic direction identified under the Planning Strategy for the subject lots and broader Centennial Park locality;
 - b) Is generally in accordance with the Model Scheme provisions outlined under the Planning Regulations, regarding the introduction of the new zone 'Mixed Use' and insertion of associated objectives;
 - c) Identifies additional provisions to LPS1 to address and manage potential land-use conflict within the locality between existing and proposed new development whilst the area is in transition, when development and subdivision applications for land within the new Mixed Use zone are considered.
23. New planning schemes (and where relevant, amendments to current local planning schemes) are required to follow the 'Model Provisions' set out under the Planning Regulations.
24. It is noted that the Mixed Use zone is one of the zones required to be introduced to the new draft LPS2, along with relevant provisions for the zone, in accordance with the Model Provisions of the Planning Regulations.
25. As outlined above, staff have substantially progressed the preparation of draft LPS2 and anticipate reporting to Council in November seeking endorsement to advertise the new draft scheme.
26. Although Scheme Amendment No. 38 proposal to introduce the new Mixed Use zone and associated provisions is generally in accordance with the Model Provisions of the Planning Regulations, the introduction of a new zone to a current local planning scheme should also require a substantially greater level of consideration than what would be required where rezoning land from an existing zone to another under a current scheme. Furthermore, consideration should be given to the broader implications of the new zone and associated provisions when applied to other areas across the municipality.
27. In addition to implementing the requirements from the Model Provisions of the Planning Regulations, consideration needs to be given to:
 - a) Identifying other areas /land to be rezoned across the municipality, in accordance with the strategic directions outlined under the Planning Strategy and also any relevant state planning policy or strategic documents;
 - b) Determining appropriate permissibility of uses under the land use table, as the permissibility applies to all land identified within the zone, not just within a specific precinct;
 - c) The application of appropriate ranges of residential densities within the new zone, in accordance with identified strategic directions of the Planning Strategy, to ensure desired maximum and minimum densities provide a diverse range of well-designed housing outcomes across the municipality.
 - d) Additional development provisions applicable to all areas/land across the municipality zoned Mixed Use, as well as specific sub-precincts requiring specific provisions (such as where adjoining Centennial Park light industrial areas), and where not addressed by other scheme provisions, local planning policies or state planning policies, such as *SPP7.3 - Residential Design Codes (Volumes 1 and 2)*, including height, plot ratio, street and side setbacks; and
 - e) The implications of changes in land use and development outcomes as a result of rezoning land to the new zone, and the potential impacts on the surrounding existing and potential new zones.

28. Based on the above, where a new zone was introduced to a current local planning scheme, that only involved rezoning of a small number of lots, without due consideration being given to the broader application of the zone and associated development provisions across the municipality, would not be considered orderly and proper planning.
29. It should also be noted that a substantial extent of the work required relating to the introduction of the Mixed Use zone to LPS2 and resulting implications is already being undertaken as part of the preparation of draft LPS2.
30. If the City were to progress in considering the subject scheme amendment, staff indicate this would mostly likely result in:
 - a) A duplication of work that is already underway as part of preparation of draft LPS2,
 - b) The dilution of staff resources and time currently dedicated to progressing and delivering LPS2 in a timely manner;
 - c) Potential confusion amongst the community if/when the City consulted with the community on both the draft LPS2 and a scheme amendment to LPS1 at a similar time.
31. Council are responsible for managing its local planning scheme and subsequently are under no obligation to initiate a scheme amendment lodged for consideration. Furthermore, there is no statutory requirement under the Planning and Development Act 2005 or the Planning Regulations for Council to agree to initiate a scheme amendment. On this basis, there should be no expectation that Council was required to amend its scheme, if Council did not support an amendment in its current form, or considered that the scheme amendment was not warranted in that instance.
32. For these reasons, City staff have recommended that the proposal be considered through the new draft LPS2 (rather than an amendment to the current scheme).
33. Based on the above, it is recommended that the Council agree to not initiate the Scheme Amendment Application for the following reason:

The processing of the amendment is expected to conflict with the processing of the new Local Planning Scheme No.2.
34. It is also recommended that Council agree to request the CEO in consultation with staff to consider elements of Scheme Amendment No. 38 (including rezoning Lots 33, 35, 37 and 121 Cockburn Road and Lots 100 and 122 Prior Street, Centennial Park from 'Light Industry' to 'Mixed Use' and allocating an R-Code density of R60 in accordance with the Scheme Amendment Map) as part of the preparation of draft LPS2.

GOVERNMENT & PUBLIC CONSULTATION

35. The *Planning and Development (Local Planning Schemes) Regulations 2015* require that a local planning scheme amendment be adopted by a resolution of Council prior to the proposal being advertised for public comment.
36. If Council resolves under regulation 35(1) to initiate an amendment to a local planning scheme, the local government must advertise the amendment and refer to government agencies for comment, following referral and agreement by the Western Australian Planning Commission.
37. If Council resolves under regulation 35 (1) to adopt an amendment to a local planning scheme, Section 81 of the *Planning and Development Act 2005* requires a local government to refer an amendment to the Environmental Protection Authority to determine if it should be formally or informally assessed.

| Type of Engagement | Method of Engagement | Engagement Dates | Participation (Number) | Statutory Consultation |
|--------------------|--|-------------------------|------------------------|---|
| Consult | Email – Environmental Protection Authority | Post Council Initiation | N/A | Section 81 of the <i>Planning and Development Act 2005</i> |
| Consult | Mail out - Public and Government Agencies | Post Council Initiation | N/A | <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> |

STATUTORY IMPLICATIONS

38. There is no statutory requirement under the *Planning and Development Act 2005* or the Planning Regulations for Council to agree to initiate a scheme amendment.
39. Council are responsible in managing its local planning scheme and subsequently are under no obligation to initiate a scheme amendment lodged for consideration.
40. Scheme amendments undergo a statutory process in accordance with the *Planning and Development Act 2005* and *Planning and Development (Local Planning Schemes) Regulations 2015*.
41. Regulation 50(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015* allows Council to adopt a standard scheme amendment for advertising and referral to relevant public authorities.
42. The proposal is considered to be a standard scheme amendment as it is consistent with the City of Albany Local Planning Strategy.
43. Voting requirement for this item is **SIMPLE MAJORITY**.

POLICY IMPLICATIONS

44. The amendment is generally consistent with the *State Planning Policy 4.1 State Industrial Buffer Policy*, as development can mitigate impacts to ensure land use compatibility.

RISK IDENTIFICATION & MITIGATION

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

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|--|-----------------|--------------|---------------|---|
| Reputational <i>It may be perceived that the City does not support urban growth in well located areas.</i> | <i>Possible</i> | <i>Minor</i> | <i>Low</i> | <i>Following the due process to ensure a more strategic focus resulting in consistent and comprehensive planning outcomes. Proposed changes would be more comprehensively considered as part of LPS2.</i> |
| Opportunity: <i>Simplify process by assessing via development of the City's new Local Planning Scheme No.2.</i> | | | | |

FINANCIAL IMPLICATIONS

46. There are no financial implications relating to this proposal.

LEGAL IMPLICATIONS

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

ENVIRONMENTAL CONSIDERATIONS

48. The amendment is generally consistent with the 'EPA Guidance Statement No. 3 – Separation Distances between Industrial and Sensitive Land Uses', as development can mitigate impacts to ensure land use compatibility.

ALTERNATE OPTIONS

- 49. Council may resolve to proceed to initiate the scheme amendment to advertise.
- 50. It should be noted that DPLH have indicated the need for comprehensive structure planning within the subject area or further detailed information being provided in support of a scheme amendment, to coordinate and facilitate a transition to mixed use.

CONCLUSION

- 51. Scheme Amendment No. 38 is proposing to make the following fundamental change:
Rezoning Lots 33, 35, 37 and 121 Cockburn Road and Lots 100 and 122 Prior Street, Centennial Park from ‘Light Industry’ to ‘Mixed Use’ and allocating an R-Code density of R60 in accordance with the Scheme Amendment Map.
- 52. The proposed rezoning of the subject lots aligns in-principle with directions of the Planning Strategy, which identifies the precinct where the subject lots are located and the broader Centennial Park area for urban renewal, due to its proximity to the activity centre.
- 53. The Mixed Use zone is not currently incorporated into LPS1, and subsequently Scheme Amendment No. 38 also involves introduction of the new zone and associated provisions into LPS1 text and map, in accordance with the Model Provisions set out under the Planning Regulations.
- 54. The City is currently in the process of preparing draft Local Planning Scheme No. 2 (LPS2). Staff have substantially progressed the preparation of draft LPS2 and envisage reporting to Council in November seeking endorsement to advertise the new draft scheme.
- 55. As preparation of draft LPS2 has reached a critical phase as outlined above, a separate item is presented at this same meeting requesting Council to consider imposing a moratorium on considering future amendments submitted to LPS1.
- 56. If the City were to progress in considering the subject scheme amendment, staff indicate this would mostly likely result in:
 - a) A duplication of work that is already underway as part of preparation of draft LPS2,
 - b) The dilution of staff resources and time currently dedicated to progressing and delivering LPS2 in a timely manner;
 - c) Potential confusion amongst the community if/when the City consulted with the community on both the draft LPS2 and a scheme amendment to LPS1 at a similar time.
- 57. Due to the rationale outlined above, it is recommended that Council do NOT initiate Scheme Amendment No. 38 to the current scheme for the following reason:
The processing of the amendment is expected to conflict with the processing of the new Local Planning Scheme No.2.
- 58. It is also recommended that Council request the CEO in consultation with staff to include elements of the amendment in the new scheme (e.g. Rezoning Lots 33, 35, 37 and 121 Cockburn Road and Lots 100 and 122 Prior Street, Centennial Park from ‘Light Industry’ to ‘Mixed Use’ and allocating an R-Code density of R60 in accordance with the Scheme Amendment Map).

| | | |
|-----------------------------------|---|---|
| Consulted References | : | 1. <i>Local Planning Scheme No. 1</i> 2. <i>State Planning Policy 4.1 State Industrial Buffer Policy</i> 3. <i>EPA Guidance Statement No. 3 – Separation Distances between Industrial and Sensitive Land Uses</i> |
| File Number (Name of Ward) | : | LAMD38 (Frederickstown Ward) |
| Previous Reference | : | Nil |

DIS269: ANIMAL ESTABLISHMENT (DOG KENNELS)

| | |
|---|--|
| Land Description | : Lot 201, 1387 Lower Denmark Road, Elleker 6330 |
| Proponent / Owner | : B Whyatt |
| Attachments | : 1. Copy of Application 2. Copy of Acoustic Report 3. Schedule of Submissions |
| Supplementary Information & Councillor Workstation | : Public Submissions |
| Report Prepared By | : Senior Planning Officer (J Anderson) |
| Authorising Officer: | : Executive Director Infrastructure, Development and Environment (P Camins) |

STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. This item relates to the following elements of the City of Albany *Strategic Community Plan 2030*:

Theme 2: Smart, Prosperous and Growing

Objective 2.1: To strengthen and grow our region's economic base

Community Priority 2.1.1: Work with business and other stakeholders to attract investment, diversify the economy, create jobs and support small business growth.

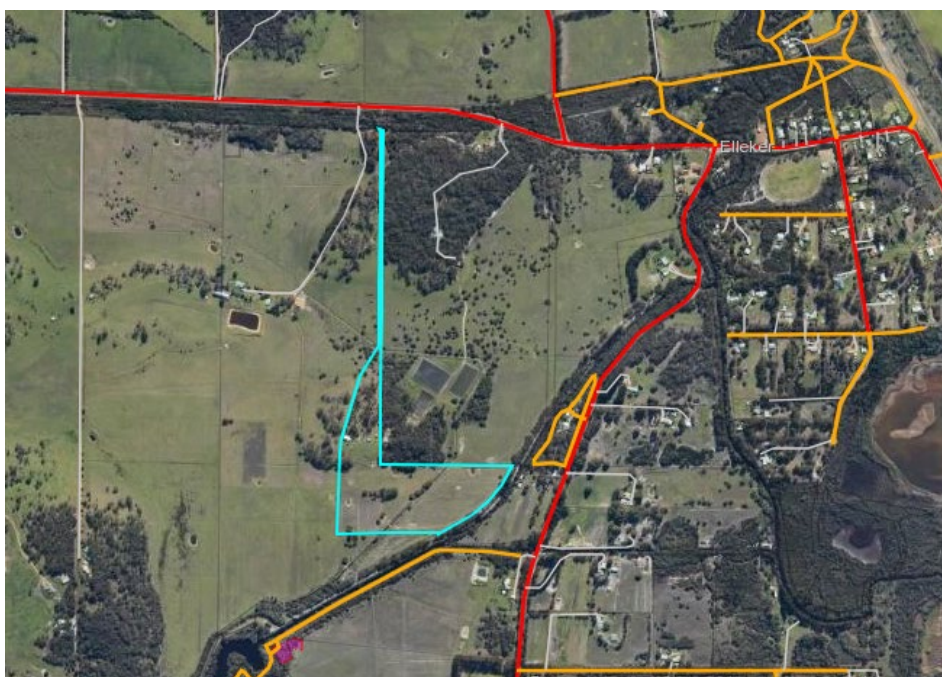
Theme 5: A connected and safe built environment.

Objective 5.1: To develop vibrant neighbourhoods which retain local character and heritage.

Community Priority 5.1.1: 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 City of Albany *Local Planning Strategy 2019* (the Planning Strategy).
4. The proposal is consistent with the strategic directions identified in the Planning Strategy.

Maps and Diagrams: 1387 Lower Denmark Road, Elleker 6330



In Brief:

- Council is asked to consider an application for development approval for an Animal Establishment (Dog Kennels) at 1387 (Lot 201) Lower Denmark Road, Elleker.
- The land use is considered a 'D' use within the 'Priority Agricultural' 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 500 metre radius.
- Three (3) submissions were received in relation to the proposal. All 3 submissions raised concerns in relation to the proposal.
- The applicant has submitted additional information to clarify and address concerns raised during advertising. The additional information, which includes an Acoustic Report, outlines specific mitigation measures to address concerns in relation to noise generated by the operation.
- Due to the concerns raised during advertising, the application is being referred to Council for determination.
- The application was also referred to the Department of Water and Environmental Regulation (DWER). DWER indicated that it has no objections to the proposal, however, did recommend an Acoustic Report be obtained to ensure that the proposed noise mitigation measures would be sufficient in compliance with the *Environmental Protection (Noise) Regulations 1997* (EPNR).
- The revised information submitted by the applicant and proposed conditions are considered to address the concerns raised through the public advertising process.
- Staff recommend that Council approve the proposed development, subject to conditions.

RECOMMENDATION

DIS269: AUTHORISING OFFICER RECOMMENDATION

THAT Council ISSUE a notice of determination granting development approval with conditions for Animal Establishment (Dog Kennels) at 1387 (Lot 201) Lower Denmark Road, Elleker.

Conditions:

- 1. All development shall occur in accordance with the stamped, approved plans referenced P2200615, being signed and dated by a designated Authorised Person, 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 commencement, all measures and actions identified in the Development Application and Management Plan, being implemented and maintained to the satisfaction of the City of Albany, including but not limited to the following:**
 - a) The operations of the approved Animal Establishment (Kennels) shall be contained within the area nominated on the stamped, approved plans referenced P2200207, unless otherwise agreed in writing by the City of Albany.**
 - b) Animal wash down bays to be connected to an approved onsite effluent system, to the satisfaction of the City of Albany.**
 - c) The owner/manager/operator of the Animal Establishment (Dog Kennels) shall reside on-site.**
 - d) The applicant shall prepare and provide a complaints response procedure to all adjoining landowners, to the satisfaction of the City of Albany.**

Advice:

- ***The approved Management Plan shall be reviewed and updated at the time of any change of ownership or management, in consultation and to the satisfaction of the City of Albany.***

- ***The complaints response procedure shall include current contact details of the business manager/operator.***
 - ***The proponent shall ensure that the complaints response procedure is updated and maintained when required and made available to current adjoining landowners for the life of the development.***
4. **The approved Animal Establishment (Kennels) shall be constructed and operated in accordance with the details and recommendations within the Acoustic Report dated 11 June 2021, specifically incorporating all noise attenuation measures, including, but not limited to the following:**
 - a) **Construction measures shall be in accordance with the recommendations specified within the Acoustic Report dated 11 June 2021, or alternative recommendations by a suitably qualified Acoustic Engineer.**
 - b) **Dogs shall be housed inside their kennels with no access to the external runs except between 7am and 5.30pm Monday to Saturday, and between 9am and 5.30pm on Sundays.**
 - c) **The external exercise area shall only be used under supervision and between the hours of 10am and 3pm, with no more than 4 dogs to occupy the exercise area at any time.**
 - d) **Staff shall provide activities for the dogs so they are occupied during exercise times.**
 - e) **Staff shall pay particular attention to anxious dogs and those that may suffer from separation anxiety.**
 5. **No remnant vegetation shall be removed in association with the approved Animal Establishment (Kennels), without the prior approval of the Department of Water and Environment Regulation. (DWER)**
 6. **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.**
 7. **Compliance with the relevant clauses and provisions including but not limit to the keeping of animals, limits of number of animals, waste and nuisance, management and conditions of approved kennel establishment of the City of Albany Local Laws relating the *City of Albany Dog Local Law 2017 and Animals Local Law 2001.***
 8. **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.***

Advice Note: The level of noise emanating from the development shall not exceed that prescribed in the *Environmental Protection Act 1986*, and the *Environmental Protection (Noise) Regulations 1997*.

Advice Note: The development is required to comply with all relevant Health Regulations, in particular, regard should be paid to Noise Regulations.

BACKGROUND

5. Council is asked to consider an application for development approval for an Animal Establishment (Dog Kennels) at 1387 (Lot 201) Lower Denmark Road, Elleker.
6. The subject site lies to the southern side of Lower Denmark Road, approximately 15km west of the Albany City centre. The lot has an area of approximately 10 hectares and is zoned 'Priority Agriculture' under LPS1.
7. The topography of the area within direct proximity to the site is undulating to the north and west and consisting of low lying areas to the east and south. Unnidup Creek is located south of the site, Broke Inlet to the south west of the site and Lake Powell to the south east.

8. The existing amenity within the immediate area can be classified as having a rural landscape, defined by large open paddocks with clusters of remnant vegetation.
9. The existing dwelling and proposed development is situated at the top of a hill that is approximately 17m above Australian Height Datum (AHD). The land slopes down approximately 13m on all elevations to low lying areas located approximately between 2-3m above AHD.
10. The dwelling and proposed development is surrounded by mature remnant vegetation on the subject site and adjoining properties. The remnant vegetation on the eastern adjoining property consists of mature trees and understorey, extending north and south along the boundary fence line. The remnant vegetation within the subject property directly to the north of the dwelling and proposed development and in the western adjoining property could be described as 'parkland cleared' with mature trees and minimal understorey.
11. The adjacent property to the east is an operational strawberry farm ('Agriculture – Intensive'), with the operations area of the farm located to the north-east of the proposed development. The property to the north-west consists of a dwelling and Bed and Breakfast set amongst an operating rural property ('Agriculture-Extensive').
12. The wider area can be classified as having a rural residential landscape defined by dispersed dwellings located within areas of open paddocks, areas of remnant vegetation, drainage lines, wetlands and watercourses.
13. The subject site is adjoined by 'Priority Agriculture' zoned land to the north, south, east and west.
14. Animal Establishment (Dog Kennels) is considered a 'D' use within the 'Priority Agricultural' zone, meaning that the use is not permitted unless the local government has exercised its discretion by granting development approval.
15. Although not specifically required under LPS1, the application was advertised for a period of twenty-three (23) days (between the dates of 4/01/2021 – 28/01/2021). All landowners within a 500m radius were notified directly by letter.
16. The proposal was also referred to the Department of Water and Environmental Regulation (DWER).

DISCUSSION

17. The proponent seeks to operate an Animal Establishment (Dog Kennels) for up to 30 dogs.
18. The proponent has provided the following (summarised) outline of how the proposed Animal Establishment will operate:
19. The dogs will be housed within a purpose built, fully enclosed and insulated structure. The structure also includes an on-site office, reception area and dog grooming facilities.
20. The entire structure will be insulated with acoustic insulation to mitigate noise.
21. The operation involves dogs being housed within individual lockable kennels within the structure, plus individual external runs/play areas accessed from each kennel, consisting of covered and uncovered areas.
22. The internal kennel enclosures would be separated by a solid wall (6mm fibro sheeting or brick), while the outdoor runs for each kennel would be separated by chain mesh to allow for socialising.
23. Dogs would be housed internally in their kennels with no access to the external runs between 5.30pm and 7.00am.
24. A communal dog exercise area is also proposed to be located adjacent to the kennels to the north. The dogs would be exercised daily within this area between 10am and 3pm, in small groups of no more than 4 dogs at one time.
25. The kennels would be operated by the two landowners who will permanently reside on-site.
26. The proposed kennels would be located 20 metres from the landowners' existing dwelling

27. The kennels are proposed to be located 15 metres from the eastern boundary, 370 metres from the south-east boundary, approximately 800 metres from the northern boundary, 270 metres from the southern boundary, and 35 metres from the western boundary.
28. The kennels would be cooled and heated by reverse cycle air conditioning.
29. The kennels are proposed to operate 24/7 throughout the year, however check-ins would only occur during daytime hours, between 7.30am to 9.30am and again from 3.30pm to 5.00pm.
30. The dog numbers would fluctuate during the year, with full capacity (30 dogs) only occurring during peak holiday periods.
31. Dogs will be washed on arrival, and full vaccination records will be required for all dogs before they are accepted.
32. The *EPA Separation Distances between Industrial and Sensitive Land Uses 2005 Guidelines for Dog Kennels* stipulates a buffer distance of 500 metres between this type of use and sensitive land uses, such as dwellings. This buffer is intended as providing guidance only in the absence of site specific studies.
33. The closest dwellings measured from the kennel enclosure are approximately 500 metres to the north-west, 500 metres to the east and 535 metres to the south-east. All other dwellings are in excess of 700 metres.
34. The closest dwellings measured from the outdoor exercise area are 430m to the north-west and 490m to the east.
35. The proposal was referred to nearby landowners and DWER. DWER have no objections to the proposal, however did recommend an Acoustic Report be obtained to ensure that the proposed noise mitigation measures would be sufficient in compliance with the EPNR.
36. An Acoustic Report was obtained by the applicant. The Acoustic Report confirmed that based on the proposed noise mitigation measures, that general compliance with the EPNR may be achieved. It has however been predicted that there may be a marginal exceedance of the daytime level by 1 dB during daytime exercise times for receptor 1 (Bed and Breakfast) to the north-west (based on the Sunday/Public Holiday criterion). It is expected that this marginal exceedance may be appropriately managed with the following proposed management measures:
 - A member from Management will be on site at all times to closely monitor the dogs. It is also noted that the proponents (Management) currently live on site.
 - Particular attention will be made by Management to:
 - Monitor the dogs during exercise times in the outdoor exercise area.
 - Providing activities for the dogs during exercise times, as active dogs are less likely to bark.
 - Monitoring anxious dogs and those that may suffer from separation anxiety, to ensure management of potential barking/noise.
37. It should be noted that receptor 1 (Bed and Breakfast) has not raised any concerns in relation to the proposal.
38. Access will be via Lower Denmark Road, using the existing access crossover.
39. Dog Kennels are controlled under the *City of Albany Dog Local Law 2017* and *Animals Local Law 2001*. Should development approval be granted, the applicant is then required to make an application under the *City's Animals Local Law 2001* and *Dog Local Law 2017* to obtain a license for the kennels. The proposal appears to meet the relevant requirements of the local laws.
40. The Department of Primary Industries and Regional Development have recently released for consultation the draft *Health and Welfare of Dogs in Western Australia Standards & Guidelines*. Whilst the document is in draft format and could be subject to change, the proposal appears to comply with the relevant requirements for an Animal Establishment.

41. A total of three submissions were received in relation to the proposal, all raising concerns in relation to the proposal.
42. The concerns relate primarily to the following:
- Amenity (noise) – excessive barking and concerns the 500m EPA buffer is not sufficient or accurate.
 - Zoning – zoned Priority Agriculture and doesn't feel domestic animals fit with the intent of the zone.
 - Environmental – concerns waste management isn't sufficient given that they are located within the Marbelup Catchment Priority Drinking Water Area.
 - Property Value.
43. As a result of the concerns raised during the submission period, the applicant has provided an Acoustic Report and further details addressing the issues raised.
44. The main concerns raised and the proposed mitigation measures are addressed in more detail in the following paragraphs.

Amenity (noise) – excessive barking and concerns the 500m buffer is not sufficient or accurate.

45. The concern regarding the operation having a negative impact on amenity was consistently raised within the submissions on the proposal, due to the proposed operation's proximity to existing dwellings and potential impacts from noise (excessive barking).
46. When assessing impacts on amenity, it is necessary to determine the level of existing amenity within the immediate area and secondly, within the wider locality.
47. As outlined in the Background section above, the existing amenity within the immediate area can be classified as having a rural landscape, defined by large open paddocks with clusters of remnant vegetation. The adjacent property to the east is an operational strawberry farm ('Agriculture – Intensive'), whilst the property to the north-west consists of a dwelling and Bed and Breakfast (receptor 1). 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 remnant vegetation.
48. The closest dwellings measured from the kennel enclosure (purpose built structure) are approximately 500m to the north-west, 500m to the east and 535m to the south-east. All other dwellings are in excess of 700m.
49. The closest dwellings measured from the outdoor exercise areas are 430m (receptor 1) to the north-west and 490m (receptor 2) to the east.
50. The Environmental Protection Authority's *Separation Distances between Industrial and Sensitive Land Uses* guidelines (2005) set out a generic buffer of 500 metres for this type of use and sensitive land uses, in accordance with the *Environmental Protection Act 1986* and *Environmental Protection (Noise) Regulations 1997* (EPNR). This buffer is intended as providing advice guidance only in the absence of site specific noise modelling reports.
51. The proposal was referred to DWER for comment. DWER have no objections to the proposal, however did recommend the applicant obtained an Acoustic Report to ensure the proposed noise mitigation measures were sufficient in ensuring the proposal would meet the EPNR.
52. An Acoustic Report was subsequently submitted by the applicant. The noise assessment and scenario modelling undertaken in the report predicted that general compliance with the EPNR may be achieved. Furthermore, that marginal exceedance of 1dB at receptor 1 may be appropriately managed with mitigation measures (as outlined above).
53. The Acoustic Report further noted that compliance with EPNR does not require complete inaudibility to be achieved, but that noise levels are controlled to generally satisfactory levels for most people.

54. Staff consider that the proposed construction and management mitigation measures outlined above and detailed within the Acoustic Report, in addition to the separation distances to the neighbouring dwellings, that any impacts on adjoining landowners will be satisfactorily mitigated. In addition to the above, the application of appropriate planning conditions requiring the proposed development to operate in accordance with the approved management plan and recommendations within the Acoustic Report will ensure this concern has been adequately addressed and mitigated.

Zoning – Zoned Priority Agriculture and doesn't feel domestic animals fit with the intent of the zone.

55. The subject site is zoned Priority Agriculture. City of Albany LPS1 classifies an Animal Establishment (Dog Kennels) as a use that can be considered within this zone.

56. The objectives of the Priority Agriculture zone are as follows:

- (a) Identify agricultural land resources that are considered to be of local, State and/or regional significance;
- (b) Provide for a diversity of sustainable intensive and extensive agriculture activities or rural industries that do not impact upon agricultural activities and protect those land uses from incompatible developments;
- (c) Manage in a sustainable manner the soil and water resources available in the zone;
- (d) Prevent land uses and development within the zone that may adversely impact on the continued use of the zone for a diversity of agricultural purposes; and
- (e) Provide for value-adding opportunities to agricultural and rural products on-site.

57. Staff consider the proposed Animal Establishment (Dog Kennels) to be a form of rural activity. Given that the proposed use is clustered with the existing dwelling on-site, in addition to the proposed separation distances to the neighbouring dwellings, it is considered that the proposal will not conflict with farming interests, nor the amenity of the area. Given that the proposal is unlikely to hinder agricultural production, and staff are satisfied that the proposal is consistent with the objectives of the zone.

Environmental - concerns waste management isn't sufficient given that they are located within the Marbelup Catchment Priority Drinking Water Area.

58. The subject site falls outside of the Marbelup Catchment Priority Drinking Water Area, however the proposal was referred to the Department of Water and Environmental Regulation who have no objections to the proposal.

59. The applicant is proposing to provide appropriate drainage surrounding the kennels to enable the concrete floor to be cleaned/mopped daily. The applicant is proposing that all effluent is disposed of within the proposed septic system.

60. It is considered that the proposed on-site waste management plan will mitigate the concerns and the proposed use will not detrimentally affect the amenity of the area.

Value of property

61. One resident raised concerns that their property value would be affected.

62. Property value is not a matter to be considered under the Planning Regulations 2015.

63. In summary, Council is requested to consider the submissions received during the public advertising period and determine whether to grant development approval, subject to appropriate conditions.

GOVERNMENT & PUBLIC CONSULTATION

64. The proposal was advertised for public comment for a period of 23 days. Surrounding landowners within 500 metres of the proposed Animal Establishment were notified directly by letter.
65. A total of three (3) submissions were received in relation to the proposal, all raising concerns in relation to the proposal. Staff comments and recommendations are provided in the attached schedule, while the broad issues are discussed in the paragraphs 45-63 above.
66. In addition to the public consultation, the proposal was also referred to DWER.
67. DWER have no objections to the proposal, however did recommend an Acoustic Report be obtained to ensure that the proposed noise mitigation measures would be sufficient in compliance with the EPNR.
68. An Acoustic Report was subsequently provided which suggests general compliance with the EPNR can be achieved.

STATUTORY IMPLICATIONS

69. Animal Establishment (Dog Kennels) is considered a “D” use within the “Priority Agricultural” zone, meaning that the use is not permitted unless the local government has exercised its discretion by granting development approval.
70. Voting requirement is a **Simple Majority**.

POLICY IMPLICATIONS

71. There are no specific Local Planning Policies that relate to Animal Establishments, however Dog Kennels are controlled under the City of Albany Dog Local Law 2017 and Animals Local Law 2001. Should development approval be granted, the applicant is then required to make an application under the City’s Animals Local Law 2001 and Dog Local Law 2017 to obtain a license for the kennels. The proposal appears to meet the relevant requirements of the local laws.

RISK IDENTIFICATION & MITIGATION

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

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|---|-----------------|--------------|---------------|--|
| Reputation <i>The approval may generate unacceptable impacts on the amenity on the area.</i> | <i>Unlikely</i> | <i>Minor</i> | <i>Low</i> | <i>The application has been assessed against the relevant statutory framework. The proposed use is considered a form of rural activity. Potential amenity impacts from the development can be mitigated through identified measures.</i> |
| Opportunity: <i>Facilitate the sustainable development of the agricultural sector and maximise opportunities for diversification of agriculture and downstream processing.</i> | | | | |

FINANCIAL IMPLICATIONS

73. All costs associated with the development will be borne by the proponent.
74. 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

- 75. 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*.
- 76. 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

- 77. The subject lot is under pasture with a small area of scattered remnant vegetation to the north. The removal of vegetation is not proposed as part of this proposal.
- 78. The subject site falls outside of the Marbelup Catchment Priority Drinking Water Area, however the proposal was referred to the Department of Water and Environmental Regulation who have no objections to the proposal.
- 79. There is a drainage line, that runs through the lot to the south. The drainage line connects to Unnidup Creek. The proposed development is approximately 225 metres from the drainage line.
- 80. Wastewater and on-site effluent disposal will be managed through the provision of appropriate drainage surrounding the kennels, enabling the concrete floor to be cleaned/mopped daily and for all effluent to be disposed of within the proposed septic system.

ALTERNATE OPTIONS

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

CONCLUSION

- 82. The proposal is considered to be consistent with the objectives of the zone and the requirements of the City of Albany LPS1.
- 83. The matters raised in the public submissions have also been broadly addressed by the proponent through revised plans and mitigated through the application of appropriate planning conditions.
- 84. On this basis, it is considered the proposal can be approved and appropriately managed through ongoing compliance with conditions.
- 85. It is therefore recommended that Council approve the proposed development, subject to the conditions provided.

| | | |
|-----------------------------------|---|--|
| Consulted References | : | <ul style="list-style-type: none"> 1. <i>Local Planning Scheme No. 1</i> 2. <i>Environmental Protection (Noise) Regulations 1997</i> 3. <i>Environmental Protection Authority Separation Distances between Industrial and Sensitive Land Uses 2005</i> 4. <i>City of Albany Dog Local Law 2017</i> 5. <i>City of Albany Animal Local Law 2001</i> |
| File Number (Name of Ward) | : | A214368 (West Ward) |
| Previous Reference | : | Nil |

**DIS270: MIXED USE DEVELOPMENT (MULTIPLE DWELLINGS (X6)
AND SHOP (X1)) – 1-7 FLINDERS PARADE, MIDDLETON BEACH**

| | |
|---|---|
| Land Description | : 1-7 Flinders Parade (Lot 9001), Middleton Beach, WA 6330 |
| Proponent / Owner | : Proponent: Taylor Burrell Barnett Owner: Western Australian Land Authority t/a DevelopmentWA (<i>Government Entity</i>) |
| Business Entity Name | : Taylor Burrell Barnett (<i>Planning Consultant</i>) Business Name Holder being Toddville Prospecting Pty Ltd |
| Attachments | : 1. Copy of Application 2. Schedule of Submissions |
| Supplementary Information & Councillor Workstation | : 1. Public submissions 2. Agency submissions 3. Activity Centre Precinct Landscaping Plan 4. Local Design Review Panel Minutes 5. Plans submitted to Local Design Review Panel |
| Report Prepared By | : Planning Officer (D Ashboth) |
| Authorising Officer: | : Executive Director Infrastructure, Development and Environment (P Camins) |

STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. This item relates to the following elements of the City of Albany *Strategic Community Plan 2030*:
 - **Theme 5:** A connected and safe built environment.
 - **Objective 5.1:** To develop vibrant neighbourhoods which retain local character and heritage.
 - **Community Priority 5.1.1:** Develop and implement a contemporary Local Planning Strategy that reflects our identity and supports economic growth.
 - **Community Priority 5.1.2:** Provide proactive planning and building services that support sustainable growth while reflecting our local character and heritage.
3. The item relates to the following strategic objectives of the City of Albany Local Planning Strategy 2019 (the Planning Strategy):
 - a) Plan for predicted population growth to 2026.
 - b) Consolidate existing urban form and improve land use efficiency.
 - c) Deliver a diverse and affordable housing market.

Maps and Diagrams: 1-7 (Lot 9001) Flinders Parade, Middleton Beach



In Brief:

- The City of Albany has received a development application at 1-7 Flinders Parade, Middleton Beach for a mixed use development including six (6) multiple dwellings and a commercial tenancy (restaurant/café or consulting rooms).
- The site is zoned Special Use 25 (SU25) under the *City of Albany Local Planning Scheme No. 1* (LPS1) and is located within the Middleton Beach Activity Centre. The site is located within the Mixed Use (2-5 storeys) Precinct of the *Middleton Beach Activity Centre Structure Plan* (the Structure Plan) that applies to the site.
- The proposal was also required to be assessed against the *Middleton Beach Activity Centre Design Guidelines* (the Guidelines), that were prepared to guide development and built form within the Middleton Beach Activity Centre.
- The Guidelines outline requirements for preliminary development proposals to be assessed by an Estate Architect appointed by the City, and formal referral to a Local Design Review Panel (LDRP) for assessment against the provision of the Guidelines, prior to formal lodgement of the development application.
- Following assessment against the Guidelines, the proposed mixed use development has been assessed on its merits against the provisions of LPS1 and the Structure Plan. The proposal seeks to vary the following provisions the Structure Plan:
 - Minimum building height (overall).
 - Minimum building height (internal floor to floor at ground level).
 - Car parking configuration.
- Due to previous involvement in preparation of the Structure Plan, the Department of Planning, Lands and Heritage (DPLH) were involved in the pre-lodgement consultation process and provided in-principle support to the concept design. Once submitted, the formal application was referred to the DPLH for comment.
- The proposal was referred to adjoining landowners within a 100m radius, a sign was erected on site and the plans were uploaded to the City website. At the closing of the public advertising period, six responses were received, three objections, one support and two supports subject to modifications.
- The submissions received outlined the following:
 - Site would be better suited to a community use.
 - A federation style design would be more suited to the locality.
 - Greater heights should be considered.
 - Existing peppermint trees should be retained.
 - Street parking should not be used for residential purposes.
 - Concerns no visitor parking proposed.
- Due to the concerns raised and the extent of variations to the assessment framework, the application is being referred to Council for determination.

RECOMMENDATION

DIS270: AUTHORISING OFFICER RECOMMENDATION

THAT Council resolves to ISSUE a notice of determination granting development approval, subject to the following conditions, for the Two Storey Mixed Use Development (Six Multiple Dwellings and Shop) at 1-7 Flinders Parade, Middleton Beach.

Conditions:

- 1. All development shall occur in accordance with the stamped, approved plans referenced P2210221, 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. The proposal is to comply with any details and/or amendments marked in red on the stamped, approved plans.
4. Prior to occupation of the development, car parking spaces and manoeuvring areas shall be designed and constructed in accordance with Australian Standard 2890, to the satisfaction of the City of Albany.
5. Prior to occupation of the development, new crossovers shall be constructed to the City of Albany's specifications, levels and satisfaction.
Advice:
 - *A 'Permit for Vehicle Crossover Construction' is required from the City of Albany prior to any work being carried out within the road reserve.*
6. All stormwater to be connected to the individual lot connections provided by the subdivision works.
7. Prior to the commencement of development, satisfactory arrangements being made with the City of Albany for the provision of appropriately designed shading devices to openings on the east and western elevations, to reduce the morning / afternoon heat loads. Prior to occupation of the development, the shading devices shall be implemented and maintained in perpetuity, to the satisfaction of the City of Albany.
Advice:
 - *The provision of L-shaped awnings/fins would fulfil this condition.*
8. Prior to the commencement of development, suitable arrangements shall be made with, and to the satisfaction of the City of Albany, for payment of a cash-in-lieu contribution or joint use of another parking facility to compensate for the shortfall of one (1) car parking bay.
Advice:
 - *At current land values, staff estimate that the cash-in-lieu payment would equate to approximately \$3,300 per bay excluding GST.*
9. Satisfactory arrangements 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.*
10. The development hereby approved shall be constructed in accordance with Australian Standard 3959 'Construction of Buildings in Bushfire – Prone Areas'.
Advice:
 - *To ensure compliance with condition 10, the development hereby approved shall be constructed in accordance with the construction requirements for BAL-29, as per the recommendation of the "AS Bushfire Management Plan" dated February 2021 by Lush Fire and Planning.*
11. Prior to the commencement of development, the Applicant is to satisfactorily demonstrate to the City of Albany that the proposed development can be implemented without disturbance of known Acid Sulphate Soils material and that an Acid Sulphate Soils Management Plan is not required. Should the City not be satisfied, then prior to commencement of development, an Acid Sulphate Soils Management Plan shall be submitted to the City of Albany for approval, in consultation with the Department of Water and Environmental Regulation. The approved Acid Sulphate Soils Management Plan shall be implemented to the satisfaction of the City of Albany.

12. Prior to the commencement of development, a Landscaping Plan detailing the size, species and location of trees/shrubs shall be submitted to the City of Albany for approval. The approved Landscaping Plan shall be implemented prior to occupancy or within the next available planting season, and maintained thereafter to the satisfaction of the City of Albany.

Advice:

- *A minimum of one (1) tree shall be planted per unit.*
- *The development shall provide a minimum 10% of each site area as deep soil area, with the deep soil area to have a minimum dimension of 1.5m.*
- *The Landscaping Plan shall include details of proposed outdoor lighting to adjoining public spaces, including in the rear ROW. Details to include location and light shed.*
- *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.”*

13. A Construction Management Plan shall be prepared 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 of Albany.

14. 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.*

Advice: This approval is for permanent residential use only for Lots 2-6 inclusive and the upper floor of Lot 1, and Shop in the ground floor of Lot 1. Any future conversion of the ground floor units to a non-residential use will be subject to further development approval.

BACKGROUND

4. The City of Albany has received a development application at 1-7 Flinders Parade, Middleton Beach for a two storey mixed use development including six (6) multiple dwellings and a ground floor commercial tenancy.
5. The site forms part of Lot 9001, otherwise known as the Middleton Beach Activity Centre Precinct and owned by DevelopmentWA. The site lies approximately 2.8kms to the west of the Albany CBD.
6. The subject site has an area of approximately 12,926m² (prior to subdivision) and is zoned Special Use 25 (SU25) under LPS1. The site is located within the Mixed Use (2-5 storeys) Precinct of the Structure Plan that applies to the site.
7. The proposal was also required to be assessed against the *Middleton Beach Activity Centre Design Guidelines* (the Guidelines), that were prepared to guide development and built form within the Middleton Beach Activity Centre.
8. Lot 9001 is intersected by Flinders Parade, which separates the subject site from the site marked for a future hotel, located adjacent to the Middleton Beach foreshore and public open space. The subject site is also bound by Marine Terrace to the west, Adelaide Crescent to the south and a proposed right of way (ROW) identified located directly to the north.
9. Each dwelling of (future) Lots 2-6 within the development are designed with dual access, with individual vehicle points accessed from the rear ROW and pedestrian access to each unit (future) Lots 1-6 provided from Adelaide Crescent.
10. Properties adjoining the subject site to the east and north are also zoned Special Use (SU25) and are located within the Middleton Beach Activity Centre, under the Structure Plan. The subject site is located opposite the base of Mount Clarence to the south across Adelaide Crescent (with Parks and Recreation Reserve R 27068, vested to the City of Albany). The western side of Marine Terrace is zoned Local Centre zone, including commercial tenancies Rats Bar, Bay Merchants and Body Beam. The nearest Residential zoned property is located approximately 20m to the west of the subject site, across Marine Terrace.
11. The proposal consists of consists of five two (2) storey multiple dwellings across (future) Lots 2-6, that have been designed to allow for adaptability at ground floor, to enable conversion to other residential or non-residential land uses, at a later date and subject to further development approval and assessment against the provisions of the zone of LPS1.
12. A further multiple dwelling and commercial unit is proposed to (future) Lot 1, on the corner of Adelaide Crescent and Marine Terrace. Separate pedestrian access from Adelaide Crescent is provided to the multiple dwelling (upper floor) and commercial tenancy (ground floor) of Lot 1, with on-site vehicle parking provided only to the multiple dwelling, accessed from the ROW to the rear of the Lot.
13. The development plans demonstrate the intended adaptability of the commercial unit of (future) Lot 1, showing potential 'options' for the tenancy to operate a small scale Restaurant/Café or Consulting Rooms. For the purposes of assessment, the proposal was assessed under the provisions of Shop, which is classified as a 'D' use under SU25 provisions of LPS1. Further development approval would be required to change the use of the commercial tenancy, and assessed against the provisions of the zone under LPS1.
14. As outlined above, the proposed mixed use development has been assessed on its merits against the provisions of LPS1 and the associated Middleton Beach Activity Centre Structure Plan and Design Guidelines.

15. The proposal generally complies with the relevant provisions of the above, with the exception of the Structure Plan provisions relating to the following:
 - Minimum building height (overall).
 - Minimum building height (internal floor to floor at ground level).
 - Car parking configuration.
16. The application was referred to adjoining landowners within a 100m radius, a sign was erected on site and the plans were uploaded to the City website. At the closing of the public advertising period, six responses were received, three objections, one support and two supports subject to modifications.
17. Due to previous involvement in preparation of the Structure Plan and associated subdivisions, DPLH were involved in the pre-lodgement consultation process and provided in-principle support to the concept design. Once submitted, the formal application was referred to the DPLH for further comment
18. 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.
19. Council is now requested to consider the submissions received during the public advertising period and determine whether to grant development approval.

DISCUSSION

Land use

20. The 'Multiple Dwelling' land use as a 'P' (permitted) use within the zone. It should be noted that a subdivision application for the site has been conditionally approved by the WAPC (#160524) to provide a freehold lot for each proposed unit. Following subdivision, the residential component would be considered 'Single Attached Dwellings' under LPS1 which is identified as a 'D' (discretionary) land use.
21. Despite the above, both the Multiple Dwelling and Single Attached Dwelling lands uses are prohibited within the Mixed Use Precinct where the use *'fronts the street at pedestrian level within the Primary Active Frontage Area depicted on the Precinct Plan'*. As the proposal is located away from the 'Primary Active Frontage Area, the residential component can be considered as a 'P' (permitted) use.
22. The ground floor of (future) Lots 2-6 have been designed to allow for adaptability at ground floor with potential conversion to other residential or non-residential land uses in the future. The ground and upper floor of the development of Lots 2-6 were assessed as 'Multiple Dwellings' for the purpose of this application, with any future conversion subject to further development approval.
23. The adaptable ground floor units of (future) Lots 2-6 were identified on the plans for potential 'Home Office' or 'Short Stay Accommodation' uses. As outlined above, the ground floor elements of Lots 2-6 were considered as Multiple Dwellings for the purposes of assessment of this development application, with any future conversion subject to further development approval.
24. The development plans demonstrate the intended adaptability of the commercial unit of (future) Lot 1, showing potential 'options' for the tenancy to operate a small scale Restaurant/Café or Consulting Rooms. For the purposes of assessment, the proposal was assessed under the provisions of Shop, which is classified as a 'D' use under SU25 provisions of LPS1. Further development approval would be required to change the use of the commercial tenancy, and assessed against the provisions of the zone under LPS1.
25. Given the above, it is considered that all land uses proposed are considered appropriate for the site.

26. Car parking for the proposed Shop use to the ground floor commercial tenancy of (future) Lot 1 is discussed in further detail below.

Assessment Framework

27. In addition to the applicable zone provisions under LPS1, the application is also required to be assessed against the provisions of the Middleton Beach Structure Plan and the Middleton Beach Activity Centre Design Guidelines, that have been prepared to guide development and built form within the Middleton Beach Activity Centre.
28. There is no residential density coding applied to the site. However, *State Planning Policy 7.3 – Residential Design Codes (Volume 2)* (SPP7.3 Volume 2) has been referred to as a relevant informing document, when undertaking an assessment of the application.

Middleton Beach Design Guidelines

29. The Middleton Beach Design Guidelines require all proposals within the Middleton Beach Activity Centre to be submitted for preliminary assessment by an Estate Architect appointed by the City, and formal referral to a Local Design Review Panel (LDRP) for consideration, prior to formal lodgement of the development application.
30. MJA Architects were engaged by the City as the Estate Architect to review the proposal. In accordance with the design compliance process outlined under the Guidelines, the preliminary proposal was presented to a formal Local Design Review Panel (LDRP) meeting, following initial discussions and review of the preliminary proposal by the Estate Architect.
31. Members of the LDRP included representatives from the City of Albany, the Estate Architect and the State DRP. At the meeting, the LDRP generally supported the preliminary proposal however, a number of minor weaknesses were identified for the architect to resolve prior to lodging the development application.

Following the lodgement of the formal development application, plans were referred to the LDRP panel members for follow up review and consideration. Members advised that the proposal was supported, noting that the recommendations and matters requiring clarification had been adequately resolved. See identified weaknesses along with architect and LDRP comment below.

| Design Review Report | | |
|---|--|--|
| Weaknesses of proposal | Architects comments / amendments | LDRP comments |
| The breeze blocks to the front of the dwellings cause concern for what this area may be used for, potentially a dumping ground or rubbish trap. | The space behind the breeze blocks has been widened and changed into a paved area including a bike rack. The gap is now easier to access and maintain. | This is an improvement and is supported. |
| Signage needs more consideration and thought into how this can be managed and not take away from the amenity of the building. | Clearly legible street numbers are provided at the entrance to each terrace house as part of a larger signage place holder design. The place holder is to be a removable portion of the wall cladding and is defined by a 10mm negative detail. This enables the street frontage to be consistent even in the case of a mix of numbers and larger signs being installed. A space for signage to the commercial space on lot 1 is provided in the same way adjacent to the entry door. All commercial signage is to be designed by the tenant in conjunction with the City of Albany Signs Policy. | This all seems reasonable and is supported. The key will be to ensure that the City's policy and approval process will provide a good signage outcome. |

| | | |
|--|---|---|
| Public art/shade canopy doesn't appear to meet the requirements for rain/shade protection that is required for the climate and there is potential for issues arising in the future with lack of cover for the proposed business and patrons. | Refer Development Application Plans – DA10 (East elevation) – 650mm deep L-shaped awning/fin. | This is an improvement and is supported. What now happens with the public art budget? |
| East and west elevations have significant glass, more consideration needs to be put into these in terms of energy efficiency and shading. | Refer Development Application Plans – DA10 for altered design to upper level windows, vertical window profile can be shaded through external vertical shading devices appropriate for east and west elevations. | These vertical windows will require vertical or preferably L-shaped shading devices to reduce the morning / afternoon heat loads. |
| Proposal lacks information on the elevator component, would like to see more information on this at the development application stage. | Plans provide for ageing in place through provision to retrofit domestic lift into the hallway as per the below image. | This is acceptable |

32. The LDRP identified vertical window to the east and west elevation require vertical or preferably L-shaped shading devices to reduce the morning / afternoon heat loads. It is recommended this is marked in red on any approved plans and implemented as a condition of planning approval.

33. Noting the amendments to the plans and LDRP members comment, the proposal is considered to be consistent with the Middleton Beach Activity Centre Design Guidelines.

Land Use Compatibility

34. Both the provisions of LPS1 and the Structure Plan require land use conflict between residential and other uses to be minimised.

35. Whilst the adaptability of the building provides flexibility for a variety of uses, the proposed adaptable spaces are not intended for night time hospitality or entertainment use, with the main functionality limited to day time activation.

Construction to Plate Height

36. LPS1 provisions require any approved development to be constructed to plate height prior to the submission of any diagram or plan of survey. This has been implemented as a condition of the subdivision approval.

Building Height

37. The proposal is located within the 'Mixed Use' (2-5 Storeys) area of the Middleton Beach Activity Centre Precinct Plan.

38. Despite being consistent with the minimum height (storeys) established within the Precinct Plan, LPS1 provides a minimum height of 11m for development fronting Adelaide Crescent.

39. The application proposes a height of 6.7m from natural ground level, however the 11m minimum height does not appear workable for a two-storey terrace house typology.

40. It appears this minimum height was based on a ground floor ceiling height of 4.5m (discussed below), along with subterranean parking protrusion and a pitched roof.

41. The proposal includes a flat roof, a reduced ground floor ceiling height and no subterranean car parking. As the application achieves the minimum height (storeys) requirements and provides satisfactory alternative arrangements relating to car parking, roof form and ground floor adaptability, it is considered the overall height of the structures is supportable.

42. The Structure Plan requires a minimum internal floor to floor height of 4.5m at ground level to allow for adaptable building design and flexibility of use, with the application proposing a ground floor height of 3.25m.
43. However, the Structure Plan describes this provision of advice only, rather than a mandatory requirement. During the design review process (see above) the Local Design Review Panel were satisfied the ground floor has been appropriately designed to enable adaptability at ground level and facilitate non-residential uses.

Car parking

44. Clause 4.2.4 of the Structure Plan requires 'single entry car parking to be provided, with no private garages.'
45. The proposal provides rear loaded garages to each multiple dwelling, with access provided off a ROW.
46. The garages are setback from the ROW and integrated into the design of the individual units, mitigating the visual impact of the garage structures to the future ROW/streetscape and openings to living areas on the upper floor providing passive surveillance.
47. It is acknowledged that the Structure Plan provision aimed to respond to initial design concepts prepared for the Mixed Use Precinct, that considered proposals of a greater scale that encompassed the entire lot, compared to what is proposed as part of the subject development application. Subsequently, the requirements aren't reflective of a functional design outcome for the smaller scale development proposed.
48. No specific car parking requirements are applicable to the site, with the provisions of LPS1 indicating resident parking rates shall be determined by the Local Government.
49. No minimum car parking provisions for permanent residential development are specified for the subject site under LPS1, the Structure Plan or Design Guidelines.
50. A total of two car parking bays have been provided for each Multiple Dwelling to (future) Lots 1-6. As there is no specific requirement under the abovementioned provisions, the proposal has been assessed against and is consistent with relevant acceptable outcomes contained under SPP 7.3 Volume 2.
51. Visitor car parking is not required to be provided for permanent residential developments within the Hotel / Mixed Use precinct in accordance with the provisions of LPS1 and the Structure Plan.
52. It is noted that the ground floor commercial unit (assessed as Shop as part of the development application) proposed in association with Lot 1, does not include on-site car parking. Separate on-site car parking is provided to the Multiple Dwelling to (future) Lot 1, however this parking is not associated with the commercial tenancy, with no shared access arrangements provided.
53. As outlined above, the commercial tenancy to the ground floor of (future) Lot 1 has been considered as a Shop for the purposes of assessment of the development application.
54. The Structure Plan provides for a 50% reduction in LPS1 car parking requirements for retail purposes, with parking requirement for 'Shop' designated as 1 car park per 20m² net lettable area (NLA).
55. No on-site car parking is proposed to be provided for the commercial tenancy. The design of the development in its current form does not provide sufficient or appropriate space for provision of car parking on-site for the commercial tenancy.
56. As the commercial unit has a NLA of 38m², the applicant will be required to organise suitable arrangements with the City of Albany for the provision of one additional car parking bay. As the proposal achieves LPS1 criteria in which cash-in-lieu of car parking may be considered, the City may accept a cash-in-lieu payment to be put towards the provision of future car parking elsewhere within the precinct.
57. At current land values, engineering staff estimate that a cash-in-lieu payment would equate to approximately \$3,300 per bay excluding GST.

58. It is also noted that the Structure Plan identifies future provision of public parking across the Activity Centre, that will be implemented as development of the broader precinct progresses.

Bicycle parking

59. LPS1 requires '1 bicycle parking space per residential dwelling and 1 bicycle parking space per 10 dwellings for residential visitors.

60. The application provides secure bicycle parking for each dwelling, along with the integration of public bicycle racks into the landscaping of the Adelaide Crescent and Marine Terrace intersection.

Setbacks

61. The provisions of LPS1 states that 'generally nil street and side setback should be provided'.

62. Nil setbacks are provided for internal side boundaries.

63. Setbacks between 2m-2.2m are proposed to the rear laneway (ROW), with minimum of 0.9m to greater than 2m setbacks provided to the western and eastern boundaries where facing Flinders Parade and Marine Terrace. Primary street setbacks between 1.2m-3m are provided to the front facade of the development facing Adelaide Crescent.

64. The applicant has provided the setbacks outlined above in order to provide articulation to the building form and add interest to the public realm.

65. The proposed setbacks are therefore considered appropriate and in accordance with LPS1 requirements.

Active frontages

66. The section of Adelaide Crescent where the development is located is designated 'Secondary Active Frontage' as shown on Figure 2: MBAC Precinct Plan in accordance with the Structure Plan and Guidelines.

67. The ground floors of Units 2-6 are designed to allow future adaptability at ground level and facilitate uses such as small scale active uses such as offices or short term holiday accommodation.

68. A commercial tenancy is proposed on the corner of Adelaide Crescent and Marine Terrace. This unit has been designed to facilitate future restaurant/café or consulting room uses which offers further activation to the secondary active frontage.

69. It should also be noted that the Structure Plan states 'Secondary Active Frontages should not dilute or detract from the development of Flinders Parade as the priority zone of activation.'

Landscaping

70. A landscape masterplan encompassing the entire precinct has been submitted to the City of Albany, and will be determined separately to the development application. This plan is currently being reviewed by the City's Major Projects and Engineering teams.

71. On-site landscaping has been proposed along street frontages, in addition to tree planting within the ground floor courtyards of the Multiple Dwellings to Lots 1-6.

72. Submission and approval of a landscaping plan to ensure delivery minimum requirements of on-site landscaping the satisfaction of the City of Albany is recommended to be applied. Advice for the condition outlines the requirement for inclusion of deep soil areas that are a minimum of 10% of the site area for each lot being provided for each dwelling. The minimum deep soil area reflects the contemporary approach to the provision of on-site landscaping, in alignment with Acceptable Outcomes of SPP7.3 Volume 2.

Bushfire

73. The subject site is considered bushfire prone. A BAL assessment has been provided by the applicant which indicated the BAL rating to be BAL-29. Appropriate conditions for development to be constructed in accordance with relevant requirements and the Bushfire Management Plan prepared for the development are recommended to be applied in this regard.

Waste

74. A Waste Management Plan was submitted with the development application which has outlined appropriate bin store locations for each unit, as well as bin collection points along both Adelaide Crescent and Flinders Parade.
75. A number of meetings were held between the applicant and City of Albany staff regarding bin store locations and vehicle pickup locations. Following formal submission of the application, the plans were referred to the City's Engineering and Sustainability Section who confirmed the proposal is workable, despite expressing some minor concern with the distance between the dwellings and bin collection points.

Other Applicable Policies

76. The subject site is also located within the *Significant Tourist Accommodation Sites Policy* and the *Middleton Beach Tourist Precinct Policy* areas.
77. The *Significant Tourist Accommodation Sites Policy* identifies the subject site as suitable for residential development, however contains no other provisions relevant to the assessment of this proposal.
78. The *Middleton Beach Tourist Precinct Policy* contains a number of built form outcomes applicable to the site, however these provisions are superseded by the LPS1 and Structure Plan provisions applicable to the site.

Public Advertising

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 |
|---|--|
| The site would be better suited to a community use. | The land uses are consistent with Structure Plan and LPS1 provisions. |
| A federation style design would be more suited to the locality | The design has been assessed against the Middleton Beach Design Guidelines by an appointed Estate Architect and a Design Review Panel who expressed support for the proposal. |
| Greater heights should be considered | The development is one component of a larger precinct that will contain greater height and building mass. As such the extent of this proposal is intended to provide a transitional height edge to this south western frontage. |
| Existing peppermint trees on the corner of Adelaide Terrace should be retained. | The existing peppermint trees in this location have been identified for retention. |
| Street parking should not be used for residential purposes | No specific car parking rates are identified, with the provisions of LPS1 stating car parking rates shall be determined by the Local Government. The proposal provides two car parks per residence which would be consistent with the requirements of the R-Codes. A comprehensive approach to the parking surrounding the development has been prepared which will increase the existing parking quantity and enable the bay locations to be more accessible to the public. Payment-in-lieu of parking is recommended for the commercial tenancy. |
| Concerns no visitor parking proposed | This application is consistent with the provision of the LPS1 which state 'No visitor car parking requirements or permanent residential development' within the Mixed Use Precinct. |

80. In summary, Council is requested to consider the submissions received during the public advertising period and determine whether to grant development approval, subject to appropriate conditions.

GOVERNMENT & PUBLIC CONSULTATION

81. The application was advertised for public comment for a period of 25 days with adjoining landowners within a 100m radius directly notified by letter, a sign was erected on site and the plans were uploaded to the City website.
82. At the closing of the public advertising period, six (6) responses were received, three (3) objections, one (1) support and two (2) supported the proposal subject to modifications.

| Type of Engagement | Method of Engagement | Engagement Dates | Participation (Number) | Statutory Consultation |
|--------------------|-------------------------------|--------------------------|--|------------------------|
| Consult | Mail out | 30/04/2021 to 24/05/2021 | Submissions Received: 6 Public 1 from DPLH | Yes |
| Consult | Notice on site | 30/04/2021 to 24/05/2021 | | Yes |
| Consult | Public Comment – City website | 30/04/2021 to 24/05/2021 | | Yes |

83. Due to previous involvement in preparation of the Structure Plan, the Department of Planning, Lands and Heritage (DPLH) were involved in the pre-lodgement consultation process and provided in-principle support to the concept design. Once submitted, the formal application was referred to the DPLH for comment.
84. 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.
85. In response, DPLH highlighted a number of variations to the to the Structure Plan and Design Guidelines. Variations to the Structure Plan are identified above, whilst other matters raised are considered to have been addressed through the Design Review process.

STATUTORY IMPLICATIONS

86. 'Multiple Dwelling' is listed as a 'P' (permitted) use within the zone.
87. A permitted ('P') use means the use is permitted if it complies with any relevant development standards and requirements of LPS1.
88. All six dwellings, the subject of the development application have been assessed as Multiple Dwellings.
89. As part of the development application, adaptable ground floors have been identified for potential 'Office' or 'Short Stay Accommodation' use, which are considered 'D' (discretionary) and 'A' (advertising) uses respectively. However, further development approval will be required for future proposed non-residential uses of the ground floor of these dwellings.
90. The commercial tenancy of (future) Lot 1 has been assessed as 'Shop'. As part of the development application, the proposal identifies potential adaptable layouts to enable operation of a (Café/Restaurant) or Consulting Room uses, which are considered 'D' (discretionary) uses. However, further development approval will be required for uses other than a 'Shop'.
91. The proposal, as submitted is not consistent with the minimum building heights and car parking configuration provisions pertinent to the site. As these provisions are not entirely reflective of a functional design outcome for the proposal, a pragmatic approach has been undertaken for an assessment against these requirements.
92. Voting requirement for this item is **SIMPLE MAJORITY**.

POLICY IMPLICATIONS

93. The proposal has been assessed in the context of the *State Planning Policy 3.7 – Planning in Bushfire Prone Areas* and is compliant with the relevant provisions of the Policy.

RISK IDENTIFICATION & MITIGATION

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

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|---|-----------------|-----------------|---------------|---|
| Community <i>The proposed development may contribute to a lack of car parking availability within the Middleton Beach Precinct.</i> | <i>Likely</i> | <i>Minor</i> | <i>Medium</i> | <i>Mitigation of impacts to be achieved through adoption and enforcement of conditions.</i> |
| Reputation <i>The proposed development may appear unsympathetic to character of surrounding buildings.</i> | <i>Possible</i> | <i>Moderate</i> | <i>Medium</i> | <i>The application has been assessed against the relevant statutory framework.</i> |
| Opportunity: <i>Responds to the need to deliver vibrancy to the area and diversity to the housing market.</i> | | | | |

FINANCIAL IMPLICATIONS

95. The proposed relaxation to the Scheme provision for on-site car parking has as estimated cash-in-lieu value of \$3,300.
96. All costs associated with the development will be borne by the proponent.
97. However, should the proponents be aggrieved by Council's decision or any attached conditions and seek a review of that decision or conditions through the State Administrative Tribunal, the City could be liable for costs associated with defending the decision at a State Administrative Tribunal hearing.

LEGAL IMPLICATIONS

98. Council is at liberty to use its discretion to approve or refuse the proposal. An applicant aggrieved by a decision or condition may apply for a review to the State Administrative Tribunal, in accordance with Section 252 of the *Planning and Development Act 2005*.
99. The proponent has the right to seek a review of the Council's decision, including any conditions attached to an approval. The City of Albany may be required to defend the decision at a State Administrative Tribunal hearing.

ENVIRONMENTAL CONSIDERATIONS

100. The subject lot is currently vacant and clear of all endemic vegetation. Acid Sulfate Soils (ASS) are identified across the site from 1.5m below the current groundwater surface. It is recommended the applicant demonstrate to the satisfaction of the City of Albany that the proposed development can be implemented without disturbance of known Acid Sulphate Soils material and that an Acid Sulphate Soils Management Plan is not required. Should the City not be satisfied, then prior to commencement of development, an Acid Sulphate Soils Management Plan shall be submitted to the City of Albany for approval, in consultation with the Department of Water and Environmental Regulation.

ALTERNATE OPTIONS

101. 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

102. The proposal is largely consistent with the LPS1, Structure Plan and Design Guidelines, with the exception of those matters relating to minimum height and car parking configuration.
103. As these provisions are not entirely reflective of a functional design outcome for the proposal, a pragmatic approach has been undertaken for an assessment against these requirements.
104. The application has been assessed by an Estate Architect appointed by the City, and formal referral to a Local Design Review Panel (LDRP) for consideration, who expressed support for the proposal.
105. 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.
106. It is therefore recommended that Council approved the proposed development, subject to the conditions provided.

| | | |
|-----------------------------------|---|--|
| Consulted References | : | 1. Local Planning Scheme No. 1 2. Middleton Beach Activity Centre Design Guidelines 3. Middleton Beach Activity Centre Structure Plan 4. State Planning Policy 3.7 – Planning in Bushfire Prone Areas 5. Middleton Beach Tourist Accommodation Sites 6. Middleton Beach Tourist Precinct Policy 7. Albany Local Planning Strategy 2019 |
| File Number (Name of Ward) | : | A217508 (Frederickstown Ward) |
| Previous Reference | : | Nil |

DIS271: LOCAL PLANNING SCHEME NO. 1 - MORATORIUM ON SCHEME AMENDMENTS

| | |
|---|--|
| Attachments | : Indicative LPS2 Processing Timeline |
| Supplementary Information & Councillor Workstation | : 1. Draft Local Planning Scheme Text and Maps 2. Process for preparation or adoption of new local planning schemes flowchart |
| Report Prepared By | : Senior Planning Officer – Strategic Planning (A Nicoll) |
| Authorising Officer: | : Executive Director Infrastructure, Development and Environment (P Camins). |

STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany *Strategic Community Plan 2030*:
 - **Theme 5:** A connected and safe built environment.
 - **Objective 5.2:** To advocate, plan for and build friendly and connected communities.
 - **Community Priority 5.2.2:** Create infrastructure and connected streetscapes that are consistent and reflect our unique heritage.
2. The item aligns with the implementation of the strategic objectives and actions identified under the City of Albany *Local Planning Strategy 2019* (the Planning Strategy).

In Brief:

- At its Ordinary Meeting in November 2019, Council agreed that the City should prepare a new Local Planning Scheme No. 2 (LPS2), to replace the current Local Planning Scheme No. 1 (LPS1). In August 2020, the Western Australian Planning Commission (WAPC) formally agreed with the Council recommendation to prepare a new scheme.
- Staff have substantially progressed the preparation of draft LPS2 and anticipate reporting to Council in November seeking endorsement to advertise the new draft scheme.
- The Election Caretaker Period Policy will limit Council's ability to make decisions on any scheme amendments until the November 2021 Committee and Ordinary Council Meetings.
- As preparation of draft LPS2 has reached a critical phase, Council is requested to consider imposing a moratorium on considering future amendments submitted to LPS1. If Council agree to imposing the moratorium, staff recommend it commences the day following August OCM.
- The requested moratorium is intended to ensure orderly and proper planning outcomes for the new LPS2, avoid additional confusion within the community by ensuring planning processes are streamlined and focused on progressing LPS2, and also to maintain adequate levels of staff resourcing to the project by ensuring the project continues to be progressed and delivered in a timely manner.
- To ensure consistency and due consideration is given to proposed changes to development provisions between LPS1 and LPS2, and also avoid unintended delays in progressing LPS2, staff are of the view that any further formal amendments to LPS1 should be treated as submissions through the process of considering draft LPS2, rather than treated independently as amendments to LPS1.

RECOMMENDATION

DIS268: AUTHORISING OFFICER RECOMMENDATION

THAT Council

- 1) **AGREE to a moratorium on further amendments to Local Planning Scheme No. 1.**
- 2) **ADVISE locally operating town planning consultancies and advertise publicly that as of 25 August 2021, the City has imposed a moratorium on considering any new scheme amendment requests and/or scheme amendments to City of Albany Local Planning Scheme No. 1 (current scheme) to allow for the processing of a draft new Local Planning Scheme No. 2.**

BACKGROUND

3. The *Planning and Development (Local Planning Schemes) Regulations 2015* (the Planning Regulations) require local governments to undertake a review of their local planning scheme every five (5) years.
4. In accordance with the Planning Regulations, a review of LPS1 was undertaken in 2019, with the recommendation to seek formal agreement from the WAPC to repeal LPS1 and prepare a replacement LPS2.
5. Council at its Ordinary Meeting in November 2019, resolved to adopt the LPS1 review report, and also agreed to formally request the WAPC to receive the report and to agree with the recommendation of the report to repeal LPS1, and the City to prepare the replacement LPS2.
6. In August 2020, the WAPC formally agreed with Council's request to agree in the repeal of LPS1 and preparation of replacement LPS2.
7. The Council Election Caretaker Period Policy comes into effect at 4.00pm on Thursday 09 September 2021, and remains in effect until 6.00pm 16 October 2021. During this time Council will not be in a position to make decisions on any scheme amendments until the November 2021 Committee and Ordinary Council Meetings
8. Staff have substantially progressed the preparation of draft LPS2 and envisage reporting to Council in November seeking endorsement to advertise the new draft scheme.

DISCUSSION

9. As preparation of draft LPS2 has reached a critical phase, Council is requested to consider imposing a moratorium on considering future amendments submitted to LPS1.
10. With the imminent advertising of the new LPS2 in late 2021 / early 2022, the City needs to consider the impact of considering any future amendments to the City's current operative planning scheme LPS1.
11. Imposing a moratorium is considered normal planning practice where a local government has been recommended to develop a new scheme. A moratorium is intended to:
 - a) Ensure orderly and proper planning outcomes, by maintaining a level of consistency between a current and the proposed amendments to the planning framework as part of the replacement scheme.
 - b) Ensure the community is provided consistent information and advice to assist in their understanding and expectations of proposed changes to the planning framework, including potential impacts zoning and provisions related to their property.
 - c) Avoid additional confusion within the community by ensuring planning processes are streamlined and focused on progressing LPS2.
 - d) Ensure staff resourcing is dedicated appropriately in progressing the project and ensuring delivery of LPS2 in a timely manner.

12. The following logistical reasons for imposing a moratorium are outlined below:
- It is possible that an amendment to the current scheme, that is being considered at the same time as the advertising of a new scheme may cause confusion to the public. An example scenario would be when an amendment to LPS1 were advertised, whilst LPS2 was being advertised, and the proposed changes to LPS1 as part of the amendment were inconsistent with the proposed changes to LPS2.
 - Any amendments to LPS1, that are not approved/gazetted before gazettal of LPS2 would not be incorporated into the new scheme. This would effectively mean that staff time and resources dedicated to processing the amendment would be of no effect.
 - Staff resources can be prioritised on ensuring delivery of LPS2 in a timely manner, rather than processing amendments to LPS1. Final delivery of LPS2 is expected to occur within 12-18 months. Upcoming phases in progressing LPS2 involve advertising of the draft scheme, collating and reviewing submissions received, undertaking modifications based on submissions, and referral of updated draft LPS2 back to Council for endorsement. An increase in customer enquiries is expected over this period, with staff requiring to respond to requests for information on the new scheme process, proposed provisions, and what potential impacts proposed changes between LPS1 to LPS2 may have on private property.
13. An alternative to an amendment to the current scheme is for landowners to provide a submission on the draft new scheme during advertising, requesting the City consider their proposal under LPS2. A benefit of this alternative for the landowner is avoiding the requirement to pay scheme amendment fees.
14. In recommending the imposition of a moratorium on amendments to the current scheme, staff do not intend for this to affect any of those existing amendments listed in the table below, which have already been the subject of previous decisions of Council.

| Amendment No. | Affected Property | Stage of Processing |
|---------------|--|--|
| 6 | Lot 105 and a portion of Lot 106 Nanarup Road, Lower King | Awaiting final gazettal |
| 9 | Lot 5 Lowanna Drive, Lots 9 & 110 George Street and Lot 16 South Coast Highway, Gledhow | Awaiting final gazettal |
| 27 | Lots 84, 85, 86 and portion of Lots 87 & 98 Home, Harding & Frenchman Bay Road, Robinson | Awaiting final gazettal |
| 12 | Lot 1879 Davies Road, Kalgan | Awaiting Bushfire Management Plan in preparation for reporting to Council for final approval |
| 34 | Lot 105 Frenchman Bay Road, Big Grove | Awaiting environmental assessment in preparation for reporting to Council for final approval |
| 35 | Lot 5780 Down Road South, Drome | Awaiting final gazettal |
| 36 | Lots 201, 202 And 203 Chester Pass Road and Lot 1004 Viastra Drive, Lange | Awaiting final gazettal |
| 38 | Cockburn Road | Refer DIS268 – subject to Council's resolution |

15. Given the expected timeframe for the processing of the new scheme, including the advertising, consideration of submissions, completing modifications to text/maps and approval by the Minister is approximately between 12-18 months, this should allow time for the above affected amendments to be completed.
16. Where a scheme amendment outlined above is gazetted whilst LPS2 is progressed, the content of the amendment will be captured under draft LPS2.

17. The imposition of any moratorium is entirely for the City to determine and there is no legislative requirement to impose a moratorium. The timing of any moratorium is also entirely for the City to determine.
18. Staff also recommend that if a scheme amendment to LPS1 is received prior to the imposition of a moratorium, these are also to be considered as part of LPS2.
19. It should also be noted that in the event of a moratorium not being imposed, and a scheme amendment application was formally lodged outside of opportunities for consideration as part of draft LPS2 (following closure of advertising, review of submissions and modifications to the draft), that even if the application were initiated by Council for consideration, if LPS2 was gazetted prior to final consideration of a scheme amendment to LPS1, then the proposal and any work progressed on the application would be automatically cancelled, without the proposed changes being considered or incorporated into LPS2.
20. Based on the above, staff recommend that the moratorium commence at the earliest opportunity and at least prior to LPS2 being referred to Council in the coming months for endorsement to advertise, following approval by the WAPC.

GOVERNMENT & PUBLIC CONSULTATION

21. During preparation of LPS2, staff sought comment from DPLH on the idea of imposing a moratorium. Although DPLH have no formal position or advice to offer on the matter, they are aware that local governments routinely implement them during the advertising of local planning schemes and have indicated that a moratorium is an operationally appropriate mechanism to ensure orderly and proper planning outcomes and ensure consistency between repealed (current) and replacement (new) schemes.
22. There are no statutory requirements for consultation to notify the imposition of a moratorium. However, it is recommended that the community and locally operating town planning consultants are advised of the moratorium as soon as possible following resolution of Council and also made aware of upcoming advertising of draft LPS2.

| Type of Engagement | Method of Engagement | Engagement Dates | Participation (Number) | Statutory Consultation |
|--------------------|--|---|------------------------|------------------------|
| Inform | Notice in local newspaper | The two weeks following OCM | n/a | n/a |
| Inform | Mail out – locally operating town planning consultants | Week following OCM | To be determined | n/a |
| Inform | Notice on City website | Following OCM and ongoing until LPS2 gazetted | n/a | n/a |

STATUTORY IMPLICATIONS

23. There is no statutory requirement for a local government to impose a moratorium on accepting scheme amendments during preparation of a new replacement local planning scheme.

POLICY IMPLICATIONS

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

RISK IDENTIFICATION & MITIGATION

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

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|--|---------------|-------------|---------------|---|
| <i>Reputational. Landholders may object to a moratorium being imposed.</i> | <i>Likely</i> | <i>Low</i> | <i>Low</i> | <i>Consider incorporating landholder intentions in new Local Planning Scheme No.2 where appropriate</i> |
| <i>Opportunity: Enables staff resources to concentrate on advertising and explaining the new scheme, answering enquiries about the new scheme and its effects on land and compiling/assessing submissions. This should be a priority over dealing with amendments to the current scheme.</i> | | | | |

FINANCIAL IMPLICATIONS

26. The City will not receive Scheme Amendment application fees due to moratorium.

LEGAL IMPLICATIONS

27. There are no expected legal implications in agreeing to a moratorium on scheme amendments for a temporary period whilst a new scheme is processed.
28. The imposition of a moratorium is not a legislative requirement; it is rather an adopted local government practice to ensure consistency in the planning framework and appropriately transition from an existing Schemes to a new Scheme.

ENVIRONMENTAL CONSIDERATIONS

29. There are no environmental considerations relating to this item.

ALTERNATE OPTIONS

30. Council has the following alternate options in relation to this item:
- To impose a moratorium following Council's endorsement to advertise LPS2 when it is presented at a later meeting; or
 - To not impose a moratorium and continue to accept scheme amendments for consideration whilst LPS2 is progressed.

CONCLUSION

31. It is recommended that Council impose a moratorium on amendments to LPS1, as staff continue to progress delivery of LPS2.
32. Imposing a moratorium on considering amendments to LPS1 will ensure orderly and proper planning outcomes between the new LPS2 and repealed (current) LPS1, avoid confusion within the community on planning process and outcomes whilst LPS2 is being progressed, and staff resourcing is dedicated to progressing the delivery of LPS2 in a timely manner.
33. Progressing delivery of LPS2 should be treated as the priority, over dealing with amendments to LPS1.
34. Staff also recommend that if a scheme amendment to LPS1 is received prior to the imposition of a moratorium, these are also to be considered as part of LPS2.
35. It is recommended that Council agree to a moratorium on further amendments to LPS1, with the moratorium in place on the day following August OCM.
36. Were Council to agree to imposing the moratorium, the City will proceed in advising locally operating planning consultancies and notifying the community that the moratorium is in place by placing a notice in the local newspaper and on the City's website.
37. This moratorium will not affect those scheme amendments already being considered.

| | | |
|-----------------------------------|---|--|
| Consulted References | : | Local Planning (Local Planning Schemes) Regulations 2015 |
| File Number (Name of Ward) | : | DB.PLA.8 (All Wards) |
| Previous Reference | : | DIS184 – OCM – November 2019. |

DIS272: BUDGET AMENDMENT REQUEST

| | |
|----------------------------|---|
| Proponent | : City of Albany |
| Report Prepared by | : Manager, Engineering & Sustainability (R March) |
| Authorising Officer | : 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 or Corporate Business Plan informing plans or strategies:
 - **Theme 3:** Clean, Green & Sustainable.
 - **Objective 3.2:** To build, maintain and renew city assets sustainably
 - **Community Priority 3.2.2** Design, construct and maintain infrastructure cost effectively in a manner that maximises its life, capacity and function

In Brief:

- In early 2021, Main Roads WA completed their five yearly inspection of Lower King Bridge (4630) and Lower Kalgan Bridge (4332). In April 2021, the City received the Detailed (Level 2) inspection Reports for both bridges which outlined unanticipated maintenance requirements that must be undertaken in order for the City to be eligible to receive future funding for any bridge replacement works.
- There is a budget shortfall for this Bridge Maintenance of \$230,000.

RECOMMENDATION

DIS272: AUTHORISING OFFICER RECOMMENDATION

THAT the annual budget for Bridge Maintenance (account number 1330620) be INCREASED from \$228,609 to \$458,609 by transferring \$230,000 from the 'Roadworks and Drainage Reserve' to Budget Line 1330620

BACKGROUND

2. In April 2021 the City received Detailed (Level 2) Inspection Reports for the Lower King Bridge (4630), the Lower Kalgan Bridge (4332) and the Wheeldon Road Bridge (4682) following the five yearly Main Roads inspection of bridges.
3. These reports included unanticipated maintenance requirements for the Lower Kalgan and Lower King Bridges, with no funding currently allocated for that maintenance. In order for the City to receive future funding for replacement of the Lower Kalgan and Lower King bridges, these maintenance requirements must be carried out by the City.
4. A budget amendment is required to re-allocate \$230,000 from the "Roadworks and Drainage Reserve" to the "Bridge Maintenance" budget line item 1330620.

DISCUSSION

5. The maintenance required for the Lower Kalgan and Lower King Bridges requires additional unbudgeted expenditure by the City.
6. Total Budget for the works on all three bridges is as follows:

| Item | Quoted price ex-GST |
|---|---------------------|
| Traffic management (all bridges) | \$50,000 |
| Under bridge machine hire (all bridges) | \$75,000 |
| Wheeldon Road maintenance works | \$27,885 |
| Lower Kalgan maintenance works | \$119,475 |
| Lower King maintenance works | \$76,370 |
| Contingency 10% | \$32,270 |
| Total: | \$370,000 |

7. There is sufficient funding in account number 1330620 Bridge Maintenance for the maintenance requirements for Wheeldon Road bridge (TR811 Wheeldon Road bridge 4682).
8. There is a budget shortfall in account number 1330620 Bridge Maintenance for works on TR803 (Kalgan bridge 4332) and TR805 (Lower King bridge 4630), totalling \$245,000.

Wheeldon Bridge 4682

9. This bridge is a high ten span bridge requiring routine maintenance to the timber bridge as specified in Main Roads WA document 04/6129 and in accordance with the Main Roads WA 'Timber Bridge Preventative Maintenance Standards' (Document No L6706-02-2226) including:
 - a) End-coating of Stringers, Corbels and Half-caps, Cross-braces and Whalers and any notches;
 - b) Fungal treatment to piles at above high water leave and ground zone;
 - c) Bolt tightening and greasing.

The following specific maintenance is required:

 - a) Pack using steel Shims to nine Stringer and Corbel locations exhibiting gaps;
 - b) Installation of three steel bands.
10. The current budget in account number 1330620 Bridge Maintenance for TR811 (Wheeldon Bridge 4682) is \$89,942. The estimated cost for the works at this location is \$75,000 which is sufficient to cover the works required, with the remaining \$15,000 available for reallocation to the works on the Lower Kalgan and Lower King Bridges.

Lower Kalgan Bridge 4332

11. This bridge is a 27 span bridge with headroom between 1.6m – 5.5m. Routine maintenance similar to Wheeldon bridge is required on this bridge. Additionally, the following specific maintenance is also required:
 - a) Install bolts to nine Stringers and four Corbels;
 - b) Pack using galvanised steel Shims 136 Stringers, 95 Corbels and 11 Half-caps;
 - c) Installation of one steel band to Wingwall pile;
 - d) Replacement of Fabric protection to Wingwall Pile tops;
 - e) Abutment 1 sheeting repair to main face and left had Wingwall;
 - f) Abutment 2 sheeting repair to main face and left had Wingwall.
12. An amount of \$37,611 is currently budgeted for maintenance of the Lower Kalgan Bridge (line item 1330620). A total of \$170,000 is required to undertake the increased scope of maintenance work to the Lower Kalgan Bridge.

Lower King Bridge 4630

13. This bridge is a 68 metres long, 9.4 metres wide, 11 span bridge with headroom of between 1.6 metres and 3.9 metres. Routine maintenance similar to Wheeldon bridge is required. Additionally, the following specific maintenance is required:
 - a) Replacement of Fabric protection to Wingwall Pile tops;
 - b) Pack 37 Stringers, 38 Corbels and 13 Half-caps using galvanised steel Shims;
 - c) Installation of 17 steel bands to Abutment and Wingwall Piles;
 - d) Abutment 2 sheeting repair to main face capping to Wingwall.
14. An amount of \$12,405 is currently budgeted for the maintenance of the Lower King Bridge (line item 1330620). A total of \$125,000 is required to undertake the increased scope of maintenance to the Lower King Bridge.

General

15. To undertake the work on all three bridges would require either extensive scaffolding or the use of an underbridge, which is not available locally and will need to be sourced from interstate. By undertaking these works together, the cost of mobilisation of the underbridge can be split between the bridges. The use of this underbridge is cheaper and safer than installing scaffolding.
16. Despite numerous requests to Contractors, and requests for assistance from Main Roads WA, there is only one contractor that has shown any interest or is available to undertake these works.

GOVERNMENT & PUBLIC CONSULTATION

17. Department of Local Government guidelines were followed in the preparation of this report.

STATUTORY IMPLICATIONS

18. Under the *Local Government Act 1995*, section 6.8, a local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure:
 - a) Is incurred in a financial year before the adoption of the annual budget by the local government
 - b) Is authorised in advance by a resolution (absolute majority required) or;
 - c) Is authorised in advance by the Mayor in an emergency.
19. The voting requirement of Council is **Absolute Majority**.

POLICY IMPLICATIONS

20. There are no policy implications related to this report.

RISK IDENTIFICATION & MITIGATION

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

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|---|------------|-------------|---------------|--|
| <p>Reputation & Organisation's Operations. Risk: Unless the repairs to the Lower King and Lower Kalgan bridges are completed, the City will not be eligible to receive funding for replacement of those bridges when required.</p> | Unlikely | Moderate | Medium | Re-allocate the funds (\$230,000) from the 'Roadworks and Drainage Reserve' to the 'Bridge Maintenance' budget line and schedule and complete the repairs as required. |
| <p>Opportunity: Opportunity to complete the maintenance works required in order for the City to qualify for applications to Main Roads WA for assistance with future bridge replacement costs.</p> | | | | |

LEGAL IMPLICATIONS

22. Bridges on Local Government roads and footpaths are the responsibility of Local Governments.

23. In order to be eligible for Special Project funding from the State Road Funds to Local Government Agreement (SRFLGA), Local Governments must be able to show that Level 1 inspections have been performed and that adequate routine and preventative maintenance have been undertaken to prevent undue deterioration.

ENVIRONMENTAL CONSIDERATIONS

24. Nil.

ALTERNATE OPTIONS

25. Council may:

- a) Approve the Budget Amendment as recommended; or
- b) Approve the Budget Amendment with changes.

SUMMARY CONCLUSION

26. That the Authorising Officer Recommendation to increase the budget for account number 1330620 Bridge Maintenance by \$230,000 in order to undertake the necessary bridge maintenance on TR803 (Kalgan Bridge) and TR805 (Lower King Bridge 4630) be approved.

| | | |
|-----------------------------------|---|---|
| Consulted References | : | Adopted Budget 2021/2022 Local Government Act 1995 |
| File Number (Name of Ward) | : | FM.BUG.12 (Kalgan Ward) |
| Previous Reference | : | Annual Budget – OCM 27 July 2021 Resolution CCS367 |

DIS273: AQUACULTURE FACILITY (STAGE 2) – 2 SWARBRICK STREET, EMU POINT

| | |
|---|--|
| Land Description | : 2 (Reserve No. R 42964) Swarbrick Street, Emu Point, WA 6330 |
| Proponent / Owner | : Proponent/s: Element Advisory Pty Ltd and Harvest Road Pty Ltd Owner: Crown (City of Albany under Management Order) |
| Business Entity Name | : <ul style="list-style-type: none">• Element Advisory Pty Ltd Directors being Andrew Howe, Gaetano Paduano, Catherine Blake-Powell, Matthew Raymond, David Read, Murray Casselton• Harvest Road Oceans Pty Ltd Directors being Stephen Daly, John Hartman & Ann Atkins |
| Attachments | : <ol style="list-style-type: none">1. Copy of Application2. Schedule of Submissions |
| Supplementary Information & Councillor Workstation | : <ol style="list-style-type: none">1. Public Submissions2. Agency Submissions3. Draft Emu Point Car Parking, Pedestrian and Vehicle Movement Plan |
| Report Prepared By | : Planning Officer (D Ashboth) |
| Authorising Officer: | : Executive Director Infrastructure, Development and Environment (P Camins) |

STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. This item relates to the following elements of the City of Albany *Strategic Community Plan 2030*:
 - **Theme 2:** Smart, Prosperous and Growing
 - **Objective 2.1:** To strengthen and grow our region's economic base
 - **Community Priority 2.1.1:** Work with business and other stakeholders to attract investment, diversify the economy, create jobs and support small business growth.
 - **Theme 5:** A connected and safe built environment.
 - **Objective 5.1:** To develop vibrant neighbourhoods which retain local character and heritage.
 - **Community Priority 5.1.1:** 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 'Stage 2' of a proposed Aquaculture Facility at 2 Swarbrick Street, Emu Point.
- At its Ordinary Council Meeting on 23 March 2021, Council resolved to approve 'Stage 1' of the proposed Aquaculture Facility.
- The subject site is zoned Parks and Recreation under City of Albany *Local Planning Scheme No. 1* (LPS1). The land is allocated Crown Land and designated as a C-Class Reserve, under Management Order issued to the City of Albany with the power to lease or licence for the purpose of 'Marine and Associated Purposes' for a term not exceeding 50 years, subject to the consent of the Minister for Lands.
- The subject site is located within the RU2 Restricted Uses area outlined under Schedule 3 of LPS1. 'Aquaculture' is listed as a restricted use within the RU2 area, meaning that the use is permitted on this specific portion of land.
- An existing lease applies to the site. Stage 2 of the Aquaculture Facility involves the proposed expansion of the existing lease area, within the C Class Reserve.
- Stage 2 of the proposal was advertised to the public and was also referred to state agencies and authorities for their comment
- Twenty-three (23) responses were received, along with two requests to extend the advertising period. Of the 23 submissions, 10 supported the proposal, 11 objected to the proposal and 2 supported the proposal subject to modifications.
- Due to the number of concerns raised regarding the overall proposal for the site, the application for Stage 2 of the proposal is being referred to Council for determination.
- The proposed Aquaculture Facility (Stage 2) has been assessed on its merits and is considered to be consistent with local and state planning frameworks.
- Concerns raised during advertising and comments received from state agencies and authorities are considered to have been addressed through the submission of revised plans and the application of relevant conditions.
- Based on this and the above, the proposal is therefore recommended for approval, subject to relevant conditions.

RECOMMENDATION

DIS273: AUTHORISING OFFICER RECOMMENDATION

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

Conditions:

1. All development shall occur in accordance with the stamped, approved plans referenced P221088, 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. The proposal is to comply with any details and/or amendments marked in red on the stamped, approved plans.
4. Prior to the commencement of development, an updated Coastal Hazard Assessment, including final designs for any coastal protection measures, shall be submitted to the City of Albany for approval, in consultation with relevant state government agencies.

Advice:

- *The updated Coastal Hazard Assessment shall include an inspection of the existing seawall by a suitably qualified expert to confirm its condition and determine its suitability to adequately protect the site.*

5. Prior to occupancy, the approved coastal protection measures shall be implemented and maintained thereafter to the satisfaction of the City of Albany.

Advice:

- *All works and/or structures to be implemented as part of identified coastal protection measures are to be wholly contained within the lease boundary.*
- *Any requirements for repairs or extension of the existing seawall shall be implemented at the lessee's cost.*

6. 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.*
- *Landscaping is to comply with Schedule 1: Standards for Asset Protection Zones continued in the Guidelines and referenced in Appendix A of the Bushfire Management Plan.*
- *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."*

7. Prior to the commencement of development, a Vehicular Parking, Pedestrian and Access Plan shall be submitted to the City of Albany 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 of 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.*

8. Prior to the commencement of development, a Parking Management Plan shall be submitted to the City of Albany for approval. The development shall operate in accordance with the approved Parking Management Plan, to the satisfaction of the City of Albany.

Advice:

- *The Parking Management Plan shall outline how all staff parking shall be managed and maintained on-site, including use of the tandem bays.*
- *Public car parks outside of the lease area shall not be used for Harvest Road employees.*

9. Satisfactory arrangements being made with the City of Albany for the provision of a sealed surface /informal parking area (measuring approximately 1,145m² in size) within the precinct.

Advice:

- *The proposed development results in the removal of an existing sealed area, that in its current form is being used for informal parking, and that also had the potential to be upgraded to a formal parking area. This condition is expected to deliver the provision of a similarly sized area to the same standard for this purpose, elsewhere in the precinct.*
- *The calculation for construction costs is approximately \$55 per square metre. The total contribution amount is therefore \$62,975.*

10. Prior to occupancy, satisfactory arrangements being made with the City of Albany for the construction and maintenance of the pedestrian access route as shown on the approved plans.

Advice:

- *The pedestrian access route shall have a minimum width of 2 metres.*
- *Crushed limestone is considered an appropriate surface treatment for the western and northern sections.*
- *The southern and eastern sections of the path are to be sealed, drained and line marked for pedestrian safety.*
- *Unfettered access shall be provided to the City of Albany and pedestrians to the portion of the pedestrian access route within the lease area.*
- *Once constructed, the pedestrian access route shall be maintained by the City of Albany.*

11. Satisfactory arrangements being made with the Department of Transport for the for the provision of a 5m wide service corridor to service Jetty C, to the satisfaction of the City of Albany.

Advice:

- *The service corridor shall be levelled in order to allow vehicle and plant access as required.*

12. **Parking areas shall be illuminated when they are in use during hours of darkness, to the satisfaction of the City of Albany.**
13. **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.**
14. **The development shall comply with the *Environmental Protection (Noise) Regulations 1997* at all times, to the satisfaction of the City of Albany.**
15. **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 Waste Management Plan shall be implemented, completed and thereafter maintained to the satisfaction of the City of Albany.**

Advice:

 - ***Refuse storage shall be capable of accommodating all waste produced by the development and shall be screened from the public view.***
16. **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.***
17. **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.***
18. **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.***
19. **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.***
20. **Prior to the occupation of the development, a Site Servicing and Fuel Storage Management Plan shall be submitted to the City of Albany for approval, on the advice of DWER. Prior to occupancy the approved Site Servicing and Fuel Storage Management Plan shall be implemented, completed and maintained thereafter to the satisfaction of the City of Albany.**

- 21. 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:**
- *Compliance with the BMP does not exempt the applicant/proponent from adherence to the City's Fire Management Plan.*
- 22. 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.**
- 23. 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.**
- 24. 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.*
- 25. 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.**
- 26. Prior to occupancy, the premises shall be connected to the Water Corporation sewerage system.**
- 27. Prior to occupancy, the premises shall be connected to a Water Corporation reticulated water supply.**
- 28. 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.*
- 29. This development approval is granted for a limited period and shall expire upon the earliest occurrence of any one of the following events:**
- a) The expiration date of the lease;
 - b) Access no longer being available to the Lot; or
 - c) 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.
- 30. Upon the expiry of the development approval the owner/operator shall at their cost:**
- a) remove the development; and
 - b) rehabilitate the land to its predevelopment condition to the specifications of the local government.
- 31. 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 over the next 100 years. 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: The applicant is advised to contact the Department of Transport prior to the demolition of the storage shed to the south of the site, outside of the existing lease area as this may contain Department of Transport property.

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. The existing fence and any other items/materials located within the encroachment area shall be removed.

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.

Advice Note: The proponent is to initiate negotiations with DoT for approval to gain access into the water within two years of the date of Development Approval (DoT).

Advice Note: Any seawater intake or water discharge piping infrastructure in the harbour for this project is to be approved by DoT. (DoT)

BACKGROUND

4. Harvest Road has entered into a formal agreement to acquire the 'Ocean Foods International' tenancy, and plan to utilise the site for the processing of Native Rock Oysters, Akoya Oysters and mussels. 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.
5. An application for the redevelopment of the site was originally submitted in 2020, that outlined a three stage development of the site. Substantial amendments have been undertaken since the original proposal was submitted, with a restaurant and tourism facility proposed as 'Stage 3' being deleted.
6. It was determined during assessment of the original application, that each stage should be determined separately. Subsequently, Stage 1 was determined by Council at its Ordinary Meeting in March 2021, with Stage 2 the subject of this development application. As outlined above, this report relates only to Stage 2 of the redevelopment.
7. A summary of the Stage 2 activities are as follows:
Stage 2
 - Packing building, Amenities and Office
 - Demolition of existing office and amenities building
 - Workshop
 - Loading apron
 - Hardstand
 - Car parking
 - Public access route
8. The City of Albany has received a development application for 'Stage 2' of an Aquaculture Facility at 2 Swarbrick Street, Emu Point. The City of Albany approved 'Stage 1' of the facility at the Ordinary Council Meeting of 23 March 2021.
9. The subject site lies to the north of the Swarbrick Street termination, approximately 6.5kms to the north-east of the Albany City centre.
10. 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.
11. The subject site is bound by Crown Land designated as an A-Class Reserve (R 6862) to the north and west, extending across the salt marsh to Collingwood and Battle Roads to the north west. The A-Class Reserve is vested to the City of Albany for the purpose of Protection of Boronia.
12. To the north east on the water side of the A and C Class Reserves, the subject site is bound by Unallocated Crown Land, and subsequently the responsibility of the Lands Division of the Department of Planning, Lands and Heritage.
13. To the south east on the water side of the subject site, the site is bound by an adjoining C Class Reserve (R 49354), encompassing the marine infrastructure of Emu Point Boat Harbour, that is allocated Crown Land under Management Order issued to Department of Transport (DoT) for the purpose of *Marine and Harbours Act 1981*.
14. A number of lessees occupy the subject reserve under the Management Order of the City of Albany, which predominately consists 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.

15. The lease area the subject of 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.
16. The operations of Stage 2 of the Aquaculture Facility requires a proposed expansion of the existing lease area, within the C Class Reserve.
17. Although the expansion of the lease area informs the consideration of the subject development application, the process required to be undertaken by the proponent to seek approval for the expansion of the lease area is a separate process, and does not form part of the assessment or determination of the subject development application.
18. The proponent envisages future operations of the Aquaculture Facility to utilise 'Jetty C'. Access and leasing arrangements by the operation of the marine harbour infrastructure, including Jetty C for the operations of Aquaculture Facility do not form part of the subject development application.
19. It is the proponent's responsibility to liaise with the DoT to resolve any access or leasing arrangements of the marine harbour infrastructure. Comments were also provided by DoT on the subject development application, indicating that the proponent was required to obtain further approvals to gain access to the water.
20. The proposal was advertised 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. 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.
21. Through this process a total of 23 responses were received; 10 support, 11 objections and 2 letters of support subject to modifications. Two requests to extend the advertising period were also received from the Friends of Emu Point. The City agreed to one of the requests, to provide further time for submission of comments outside of the closing date.
22. 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.

DISCUSSION

Assessment framework

23. The assessment and determination of the subject development application applies to the land based activities only. The development application has been assessed on its merits under the local planning framework, specifically against the relevant provisions of LPS1 and any relevant state or local planning policies.

Land use

24. The applicant has provided the following (summarised) outline of how the proposed facility will operate once complete (Stages 1 and 2):
25. Stage 2 (the subject of this application) primarily involves the packing, processing, administration and maintenance portion of the operation and includes a two storey packing building (including admin and amenities) and a workshop.
26. The proposed development comprises a marine base/aquaculture facility for the farming and processing of shellfish along with associated car parking.
27. The marine base will include a processing/packing building, nursery shed and a workshop within three separate buildings.
28. The aquaculture processing facility will be farming Native Rock Oysters, Akoya Oysters and Mussels.

29. 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.
30. Akoya Oysters and Mussels are seeded onto ropes (offsite) and are loaded into truck boasts 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.
31. 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.
32. 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.
33. Stage 2 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"
34. 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"
35. 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 considerations

36. 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.
37. The application was referred to the Aboriginal Heritage Section of the Department of Planning, Lands and Heritage who noted that the proposal abuts a registered Aboriginal site ID 636 (Oyster Harbour) but does not encroach on the area. As such no comment was made on the application.
38. 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

39. The 'Aquaculture' land use is not listed under Table 6 – Car and Bicycle Parking Requirements under LPS 1. Provision 4.8.5.3 of LPS 1 states the following:
'Where a particular parking requirement for a use class is not specified in Table 6 or the Scheme provisions, the Local Government shall determine the number of car parking bays to be provided having regard to:
 - a) *The nature of the proposed development;*
 - b) *The recommendations of the Building Code of Australia;*
 - c) *The number of employees and visitors/clients to be associated with the development;*
and
 - d) *The orderly and proper planning of the locality.'*

40. The applicant has confirmed that a maximum of 38 staff will occupy the site at any one time. This number represents a reduction from the 56 staff originally stated due to a reduction in the volume of oysters to be processed and improvements to workflow efficiencies.
41. The applicant has therefore proposed 38 carparks for the site (stage 1 and 2) which represents a car park for every staff member during peak periods. This also exceeds the 32 bays which would be required for the 'best fit' land use (Industry – General) under Table 6 of LPS 1. The proposed number of on-site car parking is therefore considered reasonable.
42. Of the 38 car parks, the car parking proposal includes eight (8) tandem car parking bays which are expected to require utilisation during peak periods.
43. Due to difficulties arising in the use of tandem car parks, the applicant was requested to provide a management plan to prove these bays can be used successfully. In order to ensure no net reduction in car parking bays within the Reserve, a condition is recommended requiring Harvest Road staff to park within their lease area at all times.
44. Due to a proposed southern extension of the lease area, approximately 1,145m² of sealed surface area, and associated public car parking opportunities between Jetty C and the Service Jetty will be lost. A condition requiring suitable arrangements being made for the provision of 1,145m² of sealed surfaced area to offset the loss due to the expansion of the leased area is recommended.
45. The City has prepared a draft Concept Plan to improve car parking, pedestrian and vehicle manoeuvring within the reserve. It is recommended the proponent partially contribute to the implementation of this concept.

Vehicle movement

46. Trucks delivering goods and transporting produce will require access to the site. Upon completion of Stage 1 and 2, transport frequency will vary between four total truck movements per week (arrival and departure of two trucks) during the peak period (November to May) to two total truck movements per week during the low season (June to October). An additional one to two truck movements are anticipated for delivery of consumables and other operation equipment.
47. A further 10 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 (see waste collection frequency table below).

Table 2: Total number & size of bins to be stored in bin compound

| Waste stream | Bin size (L) | Number of bins | Collection frequency |
|---|--------------|----------------|----------------------|
| General waste | 660 | 2 | Twice weekly |
| General waste (seafood processing shell waste – refer table 3)* | 660 | 2 | Twice weekly |
| Commingled recycling | 1,100 | 1 | Twice weekly |

*Separate general waste bin for bagged, non-sterilised items from bio secure area (i.e. shells, gloves, eyewear, masks, gowns, head covers, earplugs and other personal protective equipment).

48. 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.
49. 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.
50. 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.

51. In order to reduce the impact of vehicle movements on the day to day operations of Emu Point Slipway Services, the provision of a marked vehicle and pedestrian turnaround area and associated signage prior to Emu Point Slipway Services boat lifting and launching area is recommended. The City has prepared a suitable concept for the turnaround area and the implementation of this concept at the expense of the leaseholder is recommended.
52. It is recommended that the provision and implementation of a final vehicular parking, pedestrian and access plan to the satisfaction of the City of Albany should be applied as a condition of planning consent.
53. This should include, amongst other things, detailed specifications for 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

54. Direct unfettered public pedestrian access is to be retained to existing Jetty C as part of the proposal, that will extend through a portion of the proposed expanded lease area.
55. The application also proposes to redirect pedestrian access to the mudflats from the waterfront to the rear of the site.
56. The application was referred to the City' Asset Management team for comment. Concerns were raised specifically regarding the interface between the southern portion of the pedestrian access route and Emu Point Slipway Services.
57. To address the concerns, the applicant agreed to amend the reduce the extent of the existing sublease area to the south, west and north to provide formal pedestrian access to mudflats outside of the existing lease boundary. Following construction by the applicant at their cost, the pedestrian access route will be managed by the City of Albany within the existing C Class Reserve.
58. It should also be noted that it is not considered desirable to encourage more people to be walking in the vegetation along the foreshore of the A Class Reserve, as it is a Threatened Ecological Community Coastal Saltmarsh. Given the purpose of this path is to cater for existing user levels (i.e. number of people using the track on the water side of the lease area), crushed limestone is considered an appropriate surface treatment for the portion of the path adjacent the A Class Reserve.

Coastal hazard risk management

59. 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.
60. 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.
61. 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.
62. 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.
63. 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.
64. 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.

65. The proponent has previously indicated their intention to make use of the existing rock revetment wall installed to the east of the subject site, the condition of which is currently unknown. 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.
66. A Coastal Hazard Assessment prepared against State Planning Policy 2.6 – State Coastal Planning Policy (SPP 2.6) was submitted with the initial application. However, due to the subsequent changes to the proposal, a condition is recommended to be imposed requiring submission of an updated Coastal Hazard Assessment for approval by the City, in consultation with DPLH.
67. The Coastal Hazard Assessment is to include consideration of the existing rock revetment wall, and identify coastal protection measures (including any requirements for repairs or extensions to the existing rock revetment wall) that will be required to be implemented by the applicant at their cost, prior to occupancy of the development.
68. Furthermore, any works or structures associated in implementing coastal protection measures identified under the Coastal Hazard Assessment would be required to be wholly contained within the subject lease area.

Waste

69. It is anticipated that the aquaculture operations will produce significant waste. A Waste Management Plan (WMP) 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 amendments to the proposal which have not been considered within the WMP.

Landscaping

70. No landscaping requirements are applicable to Reserves, however LPS1 provides the local government power to determine the amount of landscaping to be provided where no formal landscaping is indicated within Table 9 of LPS1.
71. It is considered additional landscaping should be provided along the southern portion of the site visible to the public, as well as to the west adjacent the pedestrian access route.
72. Additional landscaping is recommended as a condition of planning consent 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

73. 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.
74. 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 2m public access route, this was not considered necessary.
75. 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 (DWER) who had no objection to the proposal, despite acknowledging the conservation values of the Class A Reserve.
76. 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 250m from the main body of the estuary with the setback reduced to as little as 100m to the offshoots of the main estuary body.

77. 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.
78. The application was also referred to the Department of Planning, Lands and Heritage (DPLH) coastal processes branch who provided no objection to this aspect of the proposal.

Amenity

79. The Environmental Protection Authorities *Guidance for the Assessment of Environmental Factors Separation Distances between Industrial and Sensitive Land Uses* recommends a buffer distance of 100-300m should be provided between Aquaculture activities and sensitive land uses depending on the size and scale, with impacts of noise and odour considered.
80. Eight (8) of the residences bound by Swarbrick, Miller and Bedwell Streets are located within the 300m buffer. The closest residence is located approximately 260m from the facility.
81. In considering the above, it is noted that the component of the proposed facility likely to generate the most significant odour impacts, the nursery and oyster and mussel shed (Stage 1), are located to the rear of the site, away from the residences and outside of the buffer area.
82. It is also noted that once Rock Oysters have grown past juvenile size, they are transferred to be grown in open water. Impacts of odour are therefore considered to be significantly reduced in comparison to Aquaculture operation propagating / rearing fauna in land based ponds or tanks.
83. Akoya Oysters and Mussels are seeded onto ropes (offsite) and are loaded into truck boasts at the berthing platform and transferred to areas to grow for 12 to 15 months, therefore odour impact on this portion of the operation is also expected to be minimal.
84. Stage 2 operations are considered to be most likely to generate noise impacts. To address this, a condition is recommended to be imposed requiring the development to comply with the requirements of *Environmental Protection (Noise) Regulations 1997 (WA)* at all times, to the satisfaction of the City of Albany.
85. Furthermore, to ensure the amenity of residences is protected, a condition that the development shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust is also recommended.
86. The Department of Water and Environmental Regulation (responsible agency) raised no concern with the proposed separation distance in their referral responses.

Lease area

87. The application proposed an extension to the existing lease area to facilitate the required improvements to the revetment wall and an increase in operating capacity from the previous lessee.
88. The Department of Planning, Lands and Heritage have supported a head lease /sublease land tenure model. The City will enter into a head lease with the State of WA and a sublease with Harvest Road Oceans Pty Ltd. This arrangement was supported by Council at its meeting 27 April 2021.
89. It is considered preferable that the rock revetment wall and any required improvements to the wall be entirely located within the sublease area, to address any uncertainty of responsibility or maintenance going forward. The sublease area is therefore proposed to increase seaward to the east, with pedestrian and vehicle access to Jetty C to be retained. Pedestrian access to the mudflats has been redirected to the south west of the site.

90. The extension of the sublease area to the south is required in order to provide space required for the packing building and on-site vehicle manoeuvring. It is recommended suitable arrangements be made with the City to offset the resulting loss of sealed surface area and associated parking opportunities.

Bushfire

91. The subject site is located in a bushfire prone area. A BAL contour plan was subsequently provided which indicated a large portion of the site to be subject to BAL-FZ or BAL-40 levels. As a result, a Bushfire Management Plan (BMP) was required to be prepared to accompany the development application.
92. The application was referred to DFES who were not satisfied that the BMP adequately addressed the performance principles relating to the location of the workshop and vehicular access.
93. The BAL Contour Plan provided by the applicant shows the Workshop, (Stage 2) to be located in within an area assigned BAL-FZ rating.
94. However, due to existing site constraints (adjacent Class A Reserve unable to be cleared) it is considered the workshop achieve the following definition of ‘unavoidable development’ under *State Planning Policy 3.7 Planning in Bushfire Prone Areas* (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*’.
95. 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.
96. Within the BMP it was argued that as the workshop will consolidate works into a single structure constructed in accordance with the construction requirements for BAL-40/FZ, the need for external works will be minimised and therefore, the risk of ignition to the adjacent vegetation, or fire spread from the site will be reduced.
97. The subject site fails to achieve the ‘Acceptable Solution’ of SPP 3.7 Element 5: Vehicle Access which requires development to have through road access or be located within 200m of a public road providing alternative destination options for evacuation outside of the site and for emergency services to be able to attend the site if necessary. This is considered a legacy situation and there is no practical means of providing secondary vehicle access.
98. SPP 3.7 Element 5: Vehicle Access was addressed under the performance principles in which it was stated the single access route is located between an area of ‘low threat’ coast, is within a BAL-19 area and is unlikely to become closed by fallen objects such as trees. The road will only be impassable for 2 minutes during the ‘fire peak’, in which time the coast can provide pedestrian access to a BAL-Low area for refuge and retreat.
99. In their comments, DFES recommended the Stage 2 development application be deferred to allow the BMP to be updated to reflect the staging of the development, the change in lease area and confirm the responsibilities for the establishment and maintenance for the eastern public access reserve, adjacent the existing fire break. Subsequently, it is recommended that a condition be imposed requiring a revised BMP and Bushfire Emergency Evacuation Plan (BEEP) being prepared to the City’s satisfaction, prior to commencement of development, to appropriately address the matters raised by DFES.
100. 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.

101. 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 |
|---|--|
| Concerns with environmental impact | <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 Department of Primary Industries and Regional Development (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 2 planning proposal.</p> |
| Concerns with the expansion of the facility outside of the previous lease area | <p>A larger lease area is required to facilitate improvements to the revetment wall and cater for an increase in operating capacity from the previous lessee.</p> <p>The lessee will be required to redirect public access to the mudflats to the south west of the site at their expense and ensure suitable arrangement are made with the City to offset the resulting loss of sealed surface area and associated parking opportunities.</p> |
| Absence of clear precinct and land use plan for Emu Point | <p>Requests for the preparation of a precinct and land use plan for the wider Emu Point area are noted, however the application must be assessed against the applicable planning framework at the time of submission.</p> <p>Land uses considered appropriate for the Reserve are identified in the ‘Restricted Use 2’ (R2) provisions of LPS1. The ‘Aquaculture’ use is consistent with R2 requirements.</p> <p>The City has prepared a draft concept plan for improvements to vehicle parking, manoeuvrability and pedestrian movement within the Reserve.</p> |
| Scale of development incompatible with the Reserve. | <p>No maximum size requirement applies to the R2 area or the Reserve. The height of the structures is compatible with height of other structures within the Reserve and the facility is broken up into a number of buildings in order to minimise visual impact.</p> |
| Congestion and impact of extra traffic on the Reserve | <p>The applicant has advised that all staff parking will be accommodated on site. This is recommended to be implemented as a condition of planning consent. The City has developed a concept plan to add additional parking bays to the Reserve and improve existing vehicle movements.</p> |
| Restricting of public access to the waterfront | <p>Pedestrian access to the mudflats will be formalised and redirected to the rear of the site.</p> <p>Direct unfettered public pedestrian access is to be retained to existing Jetty C as part of the proposal.</p> |
| Privatisation of foreshore | <p>Upgrades or additions to the seawall will be at the applicant expense and entirely located within the lease area, to address any uncertainty of responsibility or maintenance going forward.</p> |

| | |
|---|--|
| Extent of oyster production and carry capacity of Oyster Harbour | The aquaculture licence, offshore lease areas and production capabilities of the operators will be determined through the aquaculture licence and offshore lease application. |
| Land use better suited to other locations | Aquaculture is listed as a restricted use within the RU2 area which means the use is permitted in this location. |
| Waste Management Plan inadequate | Staff recommend an amended Waste Management Plan (WMP) be submitted to reflect amendments to the proposal which were not considered in the WMP provided. |
| Application should be assessed by Development Assessment Panel. | The applicant may choose to have the application determined by a Development Assessment Panel (DAP) where the value is between \$2 - \$10 million, however the applicant has chosen to have the application assessed and determined by the City of Albany. |
| Adverse impact on existing activities within the Reserve | <p>The applicant has advised that all staff parking will be accommodated on site. This is recommended to be implemented as a condition of planning consent.</p> <p>The City has development a concept plan to add additional parking bays to the Reserve and improve existing vehicle movements.</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>Heavy vehicle movements (arrival and departure) are limited to approximately 8 per day during peak season which is not considered to be of a volume likely to adversely impact any existing activities within the Reserve.</p> |
| Adverse impact on public safety within Reserve | <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>The City has development a concept plan to add additional parking bays to the Reserve and improve existing vehicle movements.</p> <p>A formalised pedestrian access way to the mud flats has been provided.</p> <p>As a result, it is considered that the development will have a positive impact on the safety of other users of the reserve.</p> |
| Expanded lease are not advertised or put to tender | The sublease area is determined outside of the planning application and will be advertised to comply with the Local Government Act. |
| Proposed public access to the mudflats unsafe and unsightly | The public access will be formalised at the rear of the site which is considered an improvement on the existing informal access over the seawall and across the foreshore. |
| Impact of additional vehicle movements on Emu Point residents | <p>The Engineering Section have confirmed the roads are capable of accommodating the vehicle movements required.</p> <p>Heavy vehicles arrivals and departures shall be limited to 7.00am to 7.00pm Monday to Sunday to mitigate impacts of vehicular noise on Swarbrick Street residents.</p> |
| Bushfire safety | A Bushfire Management Plan has been prepared by a Level 3 BPAD practitioner. It is considered the proposal can proceed without pedestrian safety being compromised in the event of a bushfire. |

| | |
|---|--|
| Swarbrick Street unsuitable for proposed heavy vehicle movements | 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. Heavy vehicles arrivals and departures shall be limited to 7.00am to 7.00pm Monday to Sunday to mitigate impacts of vehicular noise on Swarbrick Street residents. |
| Lease of waterfront land to private/commercial entity | The sublease area is determined outside of the planning application and will be advertised to comply with the Local Government Act. |
| Noise and odour | Impacts of odour are likely to be minimal as shellfish are predominately propagated / reared in coastal waters rather than land based ponds or tanks. A condition is recommended to be imposed requiring the development to comply with the <i>Environmental Protection (Noise) Regulations 1997 (WA)</i> at all times. |
| Operating hours | As above, condition is recommended to be imposed requiring the development to comply with the <i>Environmental Protection (Noise) Regulations 1997 (WA)</i> at all times. Therefore, restrictions on opening hours are not considered necessary. |

102. Based on the above, it is recommended that Council approve the proposed development, subject to the conditions recommended.

GOVERNMENT & PUBLIC CONSULTATION

103. The application was advertised for public comment for a period of 23 days with Emu Point landowners, Pen Holders, Tenants and respondents to the previous Aquaculture (Stage 1) application directly notified by letter. 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.
104. Throughout the consultation period, City officers have held numerous discussions with interest groups and members of the public before and after the lodgement of the development application. City Officers were also available to take public questions at a Community Information Session on the proposal hosted by Harvest Road.
105. The City also agreed to extend the consultation period for the 'Friends of Emu Point' by an additional seven (7) days in order to allow them to engage public support prior to lodging a submission.
106. Following the close of the extended consultation period, the Friends of Emu Point requested the advertising period be extended until 3 weeks following finalisation of a report on Aquaculture into the South Coast Aquaculture Zone (timeframe unknown). This request was not accepted as the planning application relates to the land based operations only. The aquaculture licence and lease areas within Oyster Harbour waters and production capabilities of the operators are determined by DPIRD through the assessment process for the aquaculture licence and lease applications.
107. Through this process a total of 23 responses were received; 10 letters of support, 11 objections and two supported the proposal subject to modifications.
108. 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 | 12/05/2021 to 04/06/2021 | 23 submissions received | No |
| Consult | Notice on site | 12/05/2021 to 04/06/2021 | | No |
| Consult | Public Comment – City website | 12/05/2021 to 04/06/2021 | | No |
| Note: Friends of Emu Point were granted a seven (7) day extension to the consultation period. | | | | |

109. The application in its original form was 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, the Department of Health and the Department of Fire and Emergency Services for comment.
110. The comments received as they relate to Stage 2 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

111. No objection or recommended conditions to the proposal noting any potential environmental impacts will be appropriately addressed through the existing planning framework.

Department of Water and Environmental Regulation

112. No objection to the proposal with some suggestions relating to car parking and stormwater management put forward. Some key issues were also raised for consideration as below:

Acid Sulfate Soils

113. The submission advised that acid sulfate soils exist within the area and should be investigated. However, as a response to the Stage 1 referral, the Site Contamination branch of DWER advised that stockpiled hydrocarbon-impacted soil was removed from site in June 2020 and as a result the site now appears suitable for the proposed development.

Waterways Conservation Act 1976

114. DWER should be consulted regarding dredging, dewatering or construction of the boat ramp, jetties and sea wall to determine if certain activities require approval. It is recommended this is implemented as an advice note.

Mechanical servicing

115. There should be no machinery servicing at the site to avoid the risk of hydrocarbon spills. Only small quantities of fuels should be stored within bunded areas (<500 l) and refuelling restricted to a fully bunded areas where oil wastewater separation traps are installed. It is recommended this is implemented as an advice note.

Coastal risk management and adaption strategy

116. Recommendations to accommodate short term flooding and inundation through development design and management including appropriate management plans/measures for events need to be addressed to protect water quality in the estuary.

Department of Transport

117. No objections to the proposal with a number of conditions relating to water access and seawater intake and discharge piping infrastructure recommended. It is recommended that these be attached as advice noted to the decision notice.

118. DoT have also advised that no obstructions of vehicle and pedestrian access by any building, structure, fencing or retaining will be permitted within 15m from DoT's Harbour Boundary along the sea wall / revetment.
119. Further discussions with DoT revealed that a 5m wide, level service corridor from the water line would be sufficient to meet DoT requirements. This requirement is recommended to be implemented as a condition of planning consent.

Department of Primary Industries and Regional Development

120. No objection to the proposal.

Department of Fire and Emergency Services

121. Reiterated previous advice that development not be supported due to non-compliance with the performance criteria relating to Element 1: Location and Element 5: Vehicle Access of *SPP 3.7 Planning in Bushfire Prone Areas*.
122. However, due to the existing legacy situation, compliance with these elements is unable to be realistically achieved.
123. These elements have been addressed extensively by a Level 3 BPAD practitioner and it is considered the proposal can proceed without pedestrian safety being compromised in the event of a bushfire.
124. In their comments, DFES also recommended the Stage 2 development application be deferred to allow the BMP to be updated to reflect the staging of the development, the change in lease area and confirm the responsibilities for the establishment and maintenance for the eastern public access reserve, adjacent the existing fire break.
125. It is recommended that an updated BMP be provided to the satisfaction of the City of Albany to appropriately address the matters raised by DFES.
126. A number of comments were also provided on the Stage 1 conditions relating to bushfire safety. These comments have been taken into consideration when preparing conditions for the Stage 2 development.

Department of Health

127. No objection to the proposal with the requirement that the development connect to scheme water and reticulated sewer. It is recommended this requirement be implemented as a condition of planning consent.
128. Advice was also provided relating to compliance with relevant Environmental Health Legislation. This is recommended to be applied as an advice note to any planning consent.

Department of Planning Lands and Heritage (Aboriginal Heritage)

129. No comment to make on the proposal given the proposal abuts a registered Aboriginal Site ID 636 (Oyster Harbour) but does not encroach on the area.

Department of Planning Lands and Heritage

Land Use Management

130. No in principle objections to the proposal, however, it is suggested that to facilitate the proposed development, the land required may need to be excised out of Reserve 42964 to facilitate the full extent of the development application.
131. It was also recommended that the City progress an excision to ensure the seawall is captured under Reserve 42964 to address any uncertainty of responsibility of maintenance going forward.

Heritage

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

Land Use Planning

133. 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. The Western Australian Planning Commissions suite of State Planning Policies should also be used to guide consideration of site specific matters, where relevant.

Coastal Planning

134. It was noted that the proposed development area would likely be impacted by erosion between 2045 and 2070. This existing revetment/seawall should be inspected to confirm its condition and suitability to adequately protect the site, as well as upgrading if deemed necessary, and extension.
135. The area of development between the existing finger jetty and the service jetty is not currently or proposed to be protected by a revetment/seawall and DPLH advise that satisfactory extension of the revetment/seawall to include this portion should be included as a condition of approval. As the applicant will be required to engage a suitably qualified professional to inspect the seawall and confirm its suitability protect the site, the above concern is considered to be addressed.
136. The assessments also highlight 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.

STATUTORY IMPLICATIONS

137. 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'*.
138. 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.
139. 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"
140. Voting requirements for this item is **SIMPLE MAJORITY**.

POLICY IMPLICATIONS

141. The proposal is assessed in the context of the *State Planning Policy 3.7 – Planning in Bushfire Prone Areas, Environmental Protection Authorities Guidance for the Assessment of Environmental Factors Separation Distances between Industrial and Sensitive Land Uses, State Planning Policy 2.6 – State Coastal Planning Policy* and the *City of Albany Development in Flood Prone Areas Local Planning Policy*.
142. The proposal is not consistent with the 'Acceptable Solutions' relating to Element 1: Location and Element 5: Vehicle Access of *SPP 3.7 Planning in Bushfire Prone Areas*. However, due to the existing legacy situation, compliance with these elements is unable to be realistically achieved.

143. These elements have been addressed extensively by a Level 3 BPAD practitioner and it is considered the proposal can proceed without pedestrian safety being compromised in the event of a bushfire.
144. The proposal, as submitted is not consistent with the buffer distance provided within the *Environmental Protection Authorities Guidance for the Assessment of Environmental Factors Separation Distances between Industrial and Sensitive Land Uses* with noise and odour identified as likely impacts.
145. As the majority of the growing and rearing process is undertaken in coastal waters rather than ponds or tanks, the impacts of odour are likely to be minimal.
146. The initial application submitted a Coastal Hazard Assessment against *State Planning Policy 2.6 – State Coastal Planning Policy*.
147. A condition is recommended that this report be updated to reflect subsequent amendments to the application before the commencement of development.
148. 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.
149. Any requirements for repairs or extensions to the seawall should be implemented at the lessee's cost.
150. 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.
151. The buildings proposed within the Stage 2 application have a finished floor level of 2.1AHD. It is 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

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

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|--|------------|-------------|---------------|---|
| Community Increased vehicular movements may disrupt the operations of existing businesses. | Likely | Minor | Medium | The application has been assessed against the relevant statutory framework. |
| Property 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. |
| People Health and Safety 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. |
| Reputation The approval may generate unacceptable impacts on the amenity of nearby residences. | Unlikely | Minor | Low | The application has been assessed against the relevant statutory framework. |
| Opportunity: Responds to the need to stimulate growth of the aquaculture industry to benefit the City economy. | | | | |

FINANCIAL IMPLICATIONS

153. All costs associated with the development will be borne by the proponent.
154. 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

155. 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*.
156. 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

157. 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.
158. 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 250m from the main body of the estuary with the setback reduced to as little as 100m to the offshoots of the main estuary body.
159. 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.
160. The application was referred to both DWER and the DPLH coast processes branch who provided no comment/objection to this aspect of the application.
161. 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.
162. 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

163. 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

164. 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.

165. The application generally complies with all site and development requirements established under Local Planning Scheme No. 1.
166. 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.
167. Impacts of odour and noise on nearby sensitive receivers is likely to be minimal and can be mitigated through the application of appropriate planning conditions.
168. 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.
169. The proposal is consistent with the City of Albany *Local Planning Strategy 2019* and the *Lower Great Southern Strategy 2016*.
170. 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.
171. It is therefore recommended that Council approve the proposed development, subject to the conditions provided.

| | | |
|-----------------------------------|---|--|
| Consulted References | : | <ol style="list-style-type: none"> 1. Local Planning Scheme No. 1 2. Albany Development in Flood Prone Areas Policy 3. State Planning Policy 3.7 – Planning in Bushfire Prone Areas 4. State Planning Policy 2.6 – Coastal Planning 5. Environmental Protection Authority: Separation Distances between Industrial and Sensitive Land Uses 6. Albany Local Planning Strategy 2019 7. Lower Great Southern Strategy 2016 |
| File Number (Name of Ward) | : | A150506 (Breaksea Ward) |
| Previous Reference | : | DIS253: Aquaculture Facility (Stage 1) |

DIS274: WASTE LOCAL LAW - DETERMINATIONS

| | |
|----------------------------|--|
| Land Description | : City of Albany |
| Report Prepared By | : Manager Governance & Risk (S Jamieson) Manager Engineering and Sustainability (R March) |
| Authorising Officer | : 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 or Corporate Business Plan informing plans or strategies:
 - **Theme:** Leadership.
 - **Objective:** To provide strong, accountable leadership supported by a skilled and professional workforce
 - **Community Priority:** Provider positive leadership that delivers community outcomes.

In Brief:

- Determination 1: Verge Collection for Commercial Purpose: The current determination to allow verge collection for non-commercial purposes is required to be given to remain in effect.
- Determination 2: Council consider the proposed determination to enforce kerbside bin lid colour coding.

RECOMMENDATION

DIS274: AUTHORISING OFFICER RECOMMENDATION

THAT Council:

- (1) **ADOPT the following determination, in accordance with the City of Albany Waste Local Law 2017 (as amended):**

Local Government Act 1995
Waste Avoidance and Resource Recovery Act 2007
CITY OF ALBANY
WASTE LOCAL LAW 2017

DETERMINATIONS

The following determinations will come into effect 14 days after the day on which public notice is given:

Determination 1: Verge Collection for Commercial Purpose:

Clause 2.10 (2) of the City of Albany Waste Local Law 2017 is suspended to allow for the lawful collection of waste deposited on the verge for commercial purposes.

The removal of the waste must be conducted in accordance with clause 2.10(3), which states in part:

“a person must not disassemble or tamper with any waste deposited on a verge for a verge waste collection so as to increase the risk of harm to any person.”

Determination 2: Kerbside Bin Lid Colour Coding

It is the property owner's responsibility:

- (a) to provide and maintain kerbside bins for their property.
- (b) to ensure the kerbside bin lids are colour coded in accordance with Australian Standard 4123.7–2006 Mobile Waste Containers—Colours, markings and designation requirements (Australian Standard) as follows:
 - General Waste: 140L capacity, dark green or black base with a red lid.
 - Recycling: 240L capacity, green base with a yellow lid.
 - Organics (FOGO): 240L capacity, dark green or black base with a lime-green lid.

It is the residents (owner or occupier) responsibility to make their bin available and allow the City to provide or upgrade their bin to ensure they have a LG approved receptacle

(2) NOTE that under Delegated Authority, City of Albany Authorised Persons is authorised to advise residents:

- A consequence of residents (owner or occupier) not making their bin available for upgrade, may result in their receptacle (bin) not being emptied by the City's Waste Contractor; and
- An Authorised Person, may determine if efforts to facilitate compliance is not met, direct the City's Waste Contractor to not empty non-compliant receptacles (bins).

BACKGROUND

2. The Waste Local Law prescribes that determinations must be reviewed and re-adopted annually.

Determination 1: Verge Collection for Commercial Purpose

3. The current determination allows for the lawful collection of waste deposited on the verge to be picked up and upcycled.

Determination 2: Kerbside Bin Lid Colour Coding

4. Determination is a new proposed determination.

DISCUSSION

Determination 1: Verge Collection for Commercial Purpose

5. It was not the intent of Council when proposing the Waste Local Law 2011 to stop residents who are seeking to re-use, recycle or upcycle items placed for collection on the roadside.

Determination 2: Kerbside Bin Lid Colour Coding

6. It was identified that it would be quite difficult and potentially cost prohibitive for the upgrade of bin lids to be borne by the individual property owners and occupiers.
7. Therefore, State Government grant funding was secured to facilitate the process.
8. A minority of community members are refusing to allow the City's nominated contractor to attach stickers, change lids, or upgrade their waste bin.
9. The City had hoped that the community would act in good faith to assist us in managing waste to the national standard by ensuring bins are colour coded to a national standard, in order to minimise waste contamination.

10. The City's approach was based on a voluntary acceptance of the bin standardisation program.
11. The City's Waste Local Law, places the waste bins are "the property owner's responsibility".
12. Residents who want to retain their existing bin lid can advise the City and the non-compliant lids can be left at the property.

GOVERNMENT & PUBLIC CONSULTATION

13. Consultation was made with the Western Australian Local Government Association (WALGA).
14. Extensive education and publication of the bin lid changeover has been communicated in both printed media (local newspapers, letters) and on the City's website and social media pages.

Residents were advised:

15. Residents who don't have a yellow lid on their recycling bin or a red lid on their general waste bin will receive a one-off free lid replacement to comply with Australian Standards.

From 17 May residents must leave their bins out from 6am to 6pm on their normal bin day to enable the City's contractor to change lids where required, and attach a new sticker to recycling bin lids.

Householders are asked to do this each week until their changeover is complete, with the entire process expected to take up to eight weeks.

At the same time households will receive a kitchen caddy, roll of compostable liners, Waste Guide and FOGO bin sticker to help residents sort their waste when the FOGO system starts.

When the new service starts the lime-green lidded green waste bin will become the FOGO bin for food scraps as well as garden prunings, pet poo, pizza boxes, meat bones and seafood.

Bin collection days will remain the same but the frequency of bin collection will change so FOGO and general waste bins will be collected one week and recycling bins the alternate week.

The FOGO bin will be collected weekly for eight weeks between mid-December and mid-February each year when the weather is warmer and seasonal celebrations take place.

The Better Bins project is funded by the State Government through the Waste Avoidance and Resource Recovery Account, and administered by the Waste Authority.

STATUTORY IMPLICATIONS

- 16. The Waste Local Law 2017, prescribes the determination process.
- 17. Local public notice of determinations:

Clause 1.6 Local public notice of determinations
Where, under this local law, the local government has a power to determine a matter—

- (a) local public notice, under section 1.7 of the LG Act, must be given of the matter determined;
- (b) the determination becomes effective only after local public notice has been given;
- (c) the determination remains in force for the period of one year after the date that local public notice has been given under paragraph (a);
- (d) after the period referred to in paragraph (c), the determination continues in force only if, and for so long as, it is the subject of local public notice, given annually, under section 1.7 of the LG Act; and
- (e) the determination must be recorded in a publicly accessible register of determinations that must be maintained by the local government.

- 18. Voting requirement for this item is **SIMPLE MAJORITY**.

POLICY IMPLICATIONS

- 19. The provision of domestic waste services is not an opt-in or opt-out service.
- 20. Residents who refuse to upgrade bin lids to the adopted standard will be deemed Non-compliant.
- 21. Non-compliant receptacles will not be emptied by the City’s waste contractor.
- 22. Residents who are non-compliant will have to arrange for their own rubbish collection.

RISK IDENTIFICATION & MITIGATION

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

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|---|---------------|-----------------|---------------|--|
| Reputation Risk: <i>If the need for the proposed local law determinations are not articulated and justified, negative community feedback may result.</i> | <i>Likely</i> | <i>Moderate</i> | <i>High</i> | <i>Communicate and justify rationale..</i> |

FINANCIAL IMPLICATIONS

- 24. The Better Bins project is funded by the State Government through the Waste Avoidance and Resource Recovery Account, and administered by the Waste Authority.

LEGAL IMPLICATIONS

- 25. Legal principles do not permit waste local laws to be drafted to further delegate to a specified person or body the legislative power that has been delegated to the local government under section 61(1) of the WARR Act.
- 26. However, if a power, function or discretion under a waste local law is granted to a third party (e.g. an authorised person), this would be valid if of an administrative nature; an important indicator is whether the discretion is circumscribed by guidelines within which that person must act.

27. The City's Waste Local Law 2017 states:

receptacle, means a receptacle—

- a) which has been approved by the local government; and
- b) the waste from which is collected and removed from the premises by the local government or its contractor.

28. Therefore, it is considered appropriate for the City of Albany to:

- a) Determine the type of receptacle to be used to facilitate the waste collection.
- b) Determine the bin lid cover that has to be used.
- c) Authorised persons (which includes contractors) to change over the bin lids to meet the new colour coded standard.

ENVIRONMENTAL CONSIDERATIONS

29. The intention behind having a standard lid colour are to ensure that residents put the correct items in the correct receptacle.
30. Standardisation across Australia means that it is more likely that residents who move to different areas will make it easier to identify what goes in which receptacle therefore reducing contamination and increasing diversion from landfill which is better for the environment.
31. Consistent lid colours also make it easier for the collection contractor to easily identify bins for collection also reducing the risk of contamination by collecting the wrong bin.

ALTERNATE OPTIONS

32. Council may choose not to support the determination, in which case the City of Albany will receive less funding and a potential for increased contamination resulting in increased material ending up in landfill.

CONCLUSION

33. It is recommended that the Council approve the determination to allow better bin management and compliance of our bin services.

| | | |
|-----------------------------------|---|---|
| Consulted References | : | <ul style="list-style-type: none"> • <i>Local Government Act 1995</i> • <i>Waste Avoidance and Resource Recovery Act 2007</i> • <i>Waste Local Law 2017:</i> https://www.albany.wa.gov.au/documents/228/waste-local-law-2017 |
| File Number (Name of Ward) | : | (All Wards) |
| Previous Reference | : | <ul style="list-style-type: none"> • OCM 28/03/2017 Resolution DIS014 • OCM 27/02/2018 Resolution DIS078 • OCM 23/02/2021 Resolution DIS248 |

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