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# MINUTES

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## DEVELOPMENT AND INFRASTRUCTURE SERVICES COMMITTEE MEETING

**Wednesday 11 November 2020**

6.00pm

City of Albany Council Chambers

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

**VISION**

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

**VALUES**

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

**Focused: on community outcomes**

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

**United: by working and learning together**

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

**Accountable: for our actions**

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

**Proud: of our people and our community**

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

## TERMS OF REFERENCE

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

Development Services:

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

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

Infrastructure Services:

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

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

(2) **It will achieve this by:**

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

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

(4) **Meeting Schedule:** Monthly

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

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

(7) **Delegated Authority:** None

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**1. DECLARATION OF OPENING**

The Chair declared the meeting open at **6:00PM**

**2. PRAYER AND ACKNOWLEDGEMENT OF TRADITIONAL LAND OWNERS**

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

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

*We would also like to pay respect to Elders past, present and emerging”.*

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

Mayor D Wellington

**Councillors:**

Member	E Doughty (Chair)
Member	R Sutton (Deputy Chair)
Member	P Terry
Member	R Stephens
Member	G Stocks (Deputy Mayor)
Member	M Benson-Lidholm JP
Member	J Shanhun
Member	S Smith
Member	A Goode JP
Member	C Thomson
Member	R Hammond

**Staff:**

Chief Executive Officer	A Sharpe
Executive Director Infrastructure, Development and Environment	P Camins
Manager Planning & Building Services	J van der Mescht
Meeting Secretary	S Cole
Business Support Officer	J Cobbold

**Apologies:**

Member	T Sleeman (Leave of Absence)
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**4. DISCLOSURES OF INTEREST - NIL**

Name	Committee/Report Item Number	Nature of Interest
Nil		

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

**6. PUBLIC QUESTION TIME**

**6:02pm – Ms Cheryl Weinert, 105 Hillman Street, Spencer Park**

**Summary of key points:**

Ms Weinert addressed Council regarding DIS237: Disposal of City Owned Right of Way to Adjoining Landowners-Lot 66 ROW on Diagram 26271. Ms Weinert supported the Responsible Officer Recommendation.

There being no further speakers, the Chair declared Public Question Time closed at **6.05pm**.

**7. PETITIONS AND DEPUTATIONS – Nil**

**8. CONFIRMATION OF MINUTES**

**RESOLUTION**

**MOVED: COUNCILLOR SUTTON**

**SECONDED: COUNCILLOR STEPHENS**

**THAT the minutes of the Development and Infrastructure Services Committee meeting held on 14 October 2020 as previously distributed, be CONFIRMED as a true and accurate record of proceedings.**

**CARRIED 12-0**

**9. PRESENTATIONS – Nil**

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

**DIS237: DISPOSAL OF CITY OWNED RIGHT OF WAY TO ADJOINING  
LANDOWNERS – LOT 66 ROW ON DIAGRAM 26271**

<b>Land Description</b>	: Lot 66 between David Street & Hillman Street
<b>Proponent / Owner</b>	: City of Albany / adjoining landowners 105 Hillman Street & 98 David Street Spencer Park
<b>Attachments</b>	: Diagram 26271 ROW photos
<b>Report Prepared By</b>	: Lands Officer (A Veld)
<b>Responsible Officers:</b>	: Executive Director Infrastructure Development & Environment (P Camins)

**STRATEGIC IMPLICATIONS**

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
  - **Theme:** A Connected & Safe Built Environment.
  - **Objective:** To advocate, plan for and build friendly and connected communities.
  - **Community Priority:** Improve connectedness and traffic flows via a well-designed and safe transport and pathway network that connects people and services and encourages pedestrians and cyclists.

**Maps and Diagrams:**



**In Brief:**

- Council is requested to consider the disposal of a City owned Right of Way to the adjoining landowners.
- This parcel of land is in freehold title to the City of Albany and is no longer serving the purpose for which it was intended.

**RECOMMENDATION**

**DIS237: COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR STOCKS  
SECONDED: COUNCILLOR TERRY**

**THAT Council AGREES to the disposal of Lot 66 on Diagram 26271, pursuant to section 3.58(3) of the Local Government Act 1995;**

**CARRIED 12-0**

**DIS237: RESPONSIBLE OFFICER RECOMMENDATION**

THAT Council AGREES to the disposal of Lot 66 on Diagram 26271, pursuant to section 3.58(3) of the Local Government Act 1995;

**BACKGROUND**

2. The City received a request from the owners of Lot 76 No.105 Hillman Street in February 2018 to consider closing the laneway adjoining their property.
3. Further investigations by City staff have determined the laneway is no longer serving the purpose for which it was intended.
4. The City has consulted with all adjoining landowners regarding to the disposal of the land. There was unanimous support for the laneway closure which included two landowners agreeing in principle to the purchase of this land for amalgamation into their properties.
5. This land is owned freehold by the City of Albany, and as such the City has undertaken the required public advertising, as required under section 3.58 of the *Local Government Act 1995*.
6. City staff have delegated authority (Delegation 2020:048) to dispose of local government property without Council resolution if no objections are received during the consultation process.
7. Four submissions were received, three in support and one against the laneway closure. City staff now seek a Council resolution on this matter.

**DISCUSSION**

8. The laneway was created in 1961 as part of the subdivision of a larger lot on David Street during early development of this part of Spencer Park.
9. This subdivision ceded freehold land to the Town of Albany for what would become the extension of a portion of public road, namely Hillman Street. The laneway was a balance lot on this freehold title.
10. In 1983 an adjoining landowner at 100 David Street requested the laneway be closed due to ongoing antisocial behaviour. This was not supported by Council at the time.
11. The current adjoining landowners have also had ongoing issues of antisocial behaviour including burglaries and damage to property.



12. The principle behind providing a pedestrian access way at this location is sound, however the extremely narrow width creates significant issues. The path is 1.5m wide, unsealed, unmaintained and does not meet the current planning guidelines which advocate for dual use path construction within a Right at of Way that is between 6-8m wide. There is also no feasible opportunity for passive surveillance over the ROW.

**GOVERNMENT & PUBLIC CONSULTATION**

13. It is a requirement under the *Local Government Act 1995*, to advertise any proposed disposal of local government owned land.

14. Community Engagement

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Consult	Public Notice	13 August – 25 September 2020	Weekender Extra	yes
Consult	Onsite signage	13 August – 25 September 2020	N/A	yes
Consult	Letter to surrounding landowner & residents	5 August	122 delivered 4 responses received	yes

15. Public Submissions

Proposal details: Disposal of Lot 66 ROW between David Street & Hillman Street to adjoining landowners	
No.	
1.	
2.	
3.	
5.	

**STATUTORY IMPLICATIONS**

16. Section 3.58 of the *Local Government Act 1995* allows for the disposal of land owned by the local government.

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

**POLICY IMPLICATIONS**

18. There are no policy implications in relation to this matter.

## RISK IDENTIFICATION & MITIGATION

19.

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>People Health &amp; Safety</b> <i>Antisocial behaviour may continue.</i>	<i>Almost Certain</i>	<i>Moderate</i>	<i>High</i>	<i>Encourage adjoining landowners to install and upgrade security options</i>
<b>People Health &amp; Safety</b> <i>Injury to a laneway user may occur.</i>	<i>Possible</i>	<i>Moderate</i>	<i>Medium</i>	<i>Manage existing maintenance issues</i>
<b>Property</b> <i>Damage to adjoining properties may continue</i>	<i>Likely</i>	<i>Moderate</i>	<i>High</i>	<i>Encourage landowners to upgrade fences and security</i>
<b>Financial</b> <i>Costs to upgrade and maintaining laneway to current City standards will outweighs cost to close and amalgamate given low community use.</i>	<i>Likely</i>	<i>Moderate</i>	<i>High</i>	<i>Schedule laneway upgrade into long term asset maintenance budget.</i>
<b>Opportunity:</b> <i>Improve community safety and remove City liability for the laneway that cannot be suitably upgraded to the current dual use path standards.</i>				

## FINANCIAL IMPLICATIONS

20. The City will enter into a cost sharing arrangement with the adjoining landowners for disposal of the land and any City expenditure has been allocated from the City's Lands budget for 2019/2020.

## LEGAL IMPLICATIONS

21. There are no legal implications in relation to this matter.

## ENVIRONMENTAL CONSIDERATIONS

22. There are no environmental implications in relation to this matter.

## ALTERNATE OPTIONS

23. Council may:

- a. Not support the officer recommendations to dispose of this land pursuant to section 3.58(3) of the *Local Government Act 1995*;
- b. Support the officer recommendations with modifications.

**CONCLUSION**

24. Council is requested to consider the disposal of a City owned Right of Way to the adjoining landowners.
25. This parcel of land is in freehold title to the City of Albany and is no longer serving the purpose for which it was intended.
26. Past and current adjoining landowners have had ongoing issues of antisocial behaviour including burglaries and damage to property.
27. The path is 1.5m wide, unsealed, unmaintained and does not meet the current planning guidelines which advocate for dual use path construction within a Right at of Way that is between 6-8m wide. There is also no feasible opportunity for passive surveillance.
28. Council is requested to consider supporting the disposal of the laneway to the adjoining landowners in the interests of public safety and to reduce the City's liability for infrastructure that cannot be suitably upgraded to current standards.

<b>Consulted References</b>	:	<i>Local Government Act 1995</i>
<b>File Number (Name of Ward)</b>	:	RD.RDC.7 (Breaksea)
<b>Previous Reference</b>	:	none

**DIS238: LOCAL STRUCTURE PLAN NO.12 – LOT 3 TOLL PLACE, ALBANY.**

<b>Land Description</b>	: Lot 3 Toll Place, Albany
<b>Proponent</b>	: Harley Dykstra
<b>Business Entity Name</b>	: Foreshore Investments Albany Pty Ltd ( P Lionetti)
<b>Attachments</b>	: 1. Proposed amendments to Local Structure Plan No.12 (advertised version). 2. Proposed amendments to Local Structure Plan No.12 (updated to include new acoustic assessment – post advertising). 3. 2011 Albany Waterfront Structure Plan Map. 4. Proposed modified Structure Plan Map. 5. Schedule of Submissions and Recommendations. 6. Albany Waterfront - Memorandum of Agreement (2007). 7. Notes (1999) Albany Foreshore Redevelopment Project. 8. Minutes (2004) Albany Waterfront Reference Group.
<b>Supplementary Information &amp; Councillor Workstation</b>	: 1. Submissions. 2. Transcore Traffic Assessment Report. 3. 2011 Albany Waterfront Structure Plan Report. 4. Guidelines State Planning Policy 5.4. 5. Design Guidelines Reducing noise and air impacts from road rail and mixed land use. 6. Proponent response to comments raised by Southern Ports. 7. Southern Ports response to additional work undertaken by consultant.
<b>Report Prepared By</b>	: Senior Planning officer – Strategic Planning (A Nicoll)
<b>Responsible Officers:</b>	: Executive Director Infrastructure, Development and Environment (P Camins)

**STRATEGIC IMPLICATIONS**

1. Council is required to exercise its quasi-judicial function in this matter.
2. In 2011, a structure plan was endorsed to guide land use and development at the Albany Waterfront.
3. The structure plan includes provisions to define land use types for different precincts, to ensure car parking is provided, to ensure safe vehicle movement and to ensure buildings are designed considerate of appealing facades, appropriate use of materials and colours, setbacks, height limits, resource efficiency, security, external lighting and landscaping.
4. An application has been received, proposing to modify the 2011 structure plan. Modifications apply to the 'Accommodation Precinct' at Lot 3 Toll Place (Albany Waterfront). Modifications include:
  - a) Introducing a flexible approach to the location of land uses on the subject lot;
  - b) Allowing permanent accommodation;
  - c) A Reduced building setback to Princess Royal Drive; and
  - d) Basement parking.
5. In making a decision on the proposed modified structure plan, the Council is obliged to draw conclusion from its adopted *Albany Local Planning Strategy 2019, Community Strategic Plan – Albany 2030* and *Albany Waterfront – Memorandum of Agreement (2007)*.

6. The structure plan complies with the Albany Community Strategic Plan.
  - The *Albany Community Strategic Plan – Albany 2030* recommends a proactive planning service that supports sustainable growth while reflecting our local character and heritage (Community Priority: 5.1.2).
7. The structure plan complies with the *Albany Local Planning Strategy 2019*, which states:  
*'The Strategy promotes urban consolidation by making better use of existing infrastructure and land. This will be achieved through building on the existing strengths of the regional centre and other activity centres, such as Middleton Beach and Albany Waterfront.'*
8. The structure plan does not principally comply with the *Albany Waterfront – Memorandum of Agreement (2007)*. The *Albany Waterfront - Memorandum of Agreement (2007)* seeks to prohibit permanent residential activity at the subject land. Nonetheless, Council may resolve to recommend that the State of Western Australia agree to amend the *Albany Waterfront Memorandum of Agreement (2007)*, by supporting permanent accommodation at the Albany Waterfront.

**Maps and Diagrams:** Subject Site – Lot 3 Toll Place, Albany.



**In Brief:**

- The City has received a request to modify the 2011 waterfront structure plan. Seven modifications are proposed. One of the modifications seeks to allow permanent accommodation at Lot 3 Toll Place.
- The Southern Ports and Port users submitted comment asserting that permanent accommodation will lead to complaints associated with transport noise, which will ultimately lead to restrictions in freight movement.
- An acoustic assessment was undertaken to indicate that development on Lot 3 Toll Place could potentially mitigate noise to achieve an acceptable internal noise level.
- Southern Ports remains unconvinced that there are adequate protections available to mitigate the risk to an acceptable level in relation to outdoor habitable areas.

- In relation to the matter of residential development, staff believe that it would not be unreasonable for Council to consider recommending that the Commission support the proposed structure plan modifications with conditions. The conditions would need to include methods to ensure that the concerns raised by the Port and Port users are satisfactorily addressed.
- The Department of Planning, Lands and Heritage has advised that an assessment of the site's vulnerability, using current standards, must be provided prior to any modifications being considered:
  - *...the key issue from a SPP2.6 perspective will be the results of the coastal vulnerability assessments. These will be necessary to enable the local government (and subsequently, the WAPC) to make a proper and complete assessment of the merits of the proposals against the Policy.*
- The applicant/landholder has not committed to undertake a coastal assessment. Consequently, the City is unable to make a proper and complete assessment of the merits of the proposal against the State Planning Policy 2.6.
- The WAPC has requested that the City make a determination on this matter. The City recommends that the application be REFUSED as the proponent has not undertaken a coastal vulnerability assessment.

#### **COVID-19 IMPACT**

- No identified implications.

#### **RECOMMENDATION**

##### **DIS238: COMMITTEE RECOMMENDATION**

**MOVED: MAYOR WELLINGTON**  
**SECONDED: COUNCILLOR SUTTON**

**THAT the Responsible Officer Recommendation be ADOPTED**

**CARRIED 12-0**

##### DIS238: RESPONSIBLE OFFICER RECOMMENDATION

1. THAT Council, pursuant to section 75 of the *Planning and Development Act 2005 and Regulation 20. (2)(e) of the Planning and Development (Local Planning Schemes) Regulations 2015*, resolves to:
  - a) Recommend that the Western Australian Planning Commission REFUSE Local Structure Plan No.12, for the following reason:
    - i. A coastal assessment has not been submitted to determine coastal vulnerability in accordance with the State Planning Policy 2.6.
2. Forward structure plan documentation and submissions to the Western Australian Planning Commission with a request that the Commission grant refusal to the structure plan.
3. Advise the applicant/owner and those who lodged a submission of the Council decision accordingly.

## **BACKGROUND**

### **1999**

9. In 1999, a briefing session was held to discuss the Albany Foreshore Redevelopment Project (Refer to attachment - Notes from Briefing Session 4 June 1999).
10. Key stakeholders were represented at the briefing session, including the Great Southern Development Commission, the Albany Port Harbours and Foreshore Preservation Group, the Foreshore Preservation Group, Department of Transport, Albany Waterways Management Authority, Accord Group, Albany Port Users Liaison Group, Albany City Heart, Albany Chamber of Commerce and Albany Port Authority.
11. The Albany Port Harbours and Foreshores Preservation Group stated at the 'briefing session' (Page 1 – last paragraph), that:
  - a) the community doesn't want port access hindered and that an 'accord' may not be enough to protect access.
12. The Albany Port Authority stated (Page 5– paragraph 2) at the briefing session, that:
  - a) It is opposed to residential development due to safety concerns over truck movements.

### **2004**

13. In 2004 the City of Albany entered into a Memorandum of Agreement, and also decided to adopt a Waterfront Concept Plan, which supported short stay accommodation but not permanent accommodation. The Memorandum of Agreement also supported 24/7 access to the Albany Port.
14. The rationale for the inclusion of short stay accommodation was that (Page 5 of 12 – paragraph 3);
  - a) Its inclusion will improve the project's overall financial viability, add robustness to the development, and provide a corridor of activity between the Albany Waterfront and the CBD.
15. Reasons for not supporting permanent accommodation were noted as follows (Page 10 of 12 – paragraphs for and against short stay accommodation):
  - a) Truck and train noise and fumes may impact on occupants;
  - b) Permanent occupants are more likely to complain about noise, fumes and traffic safety than short stay occupants.

### **2006**

16. In 2006 the Albany Waterfront Structure Plan was endorsed with a vision to;

*Actively link the CBD to Princess Royal Harbour by providing a people-focused development with a strong sense of vibrancy and excitement with a unique combination of entertainment, accommodation and mixed-use buildings facing a wide waterside promenade overlooking an active public marina.*



**2009**

17. In 2009 the State Planning Policy 5.4 *Road and Rail Transport Noise and Freight Considerations in Land Use Planning* was endorsed. The State Planning Policy 5.4 was introduced to protect people from transport noise via best practice design and construction standards.
18. The policy aims to promote a system in which sustainable land use and transport are mutually compatible. It seeks to minimise the adverse impact of transport noise, without placing unreasonable restrictions on noise-sensitive residential development.

**2011**

19. In 2011, the 2006 waterfront structure plan was amended to allow an increase in the floor area for the hotel, short stay apartments and mixed-use components of Lot 3 Toll Place.

**2013**

20. In 2013, an updated State Planning Policy No.2.6 *State Coastal Planning Policy* was adopted with changes to the method for calculating coastal processes.

**2018**

21. In 2018, the owner of Lot 3 Toll Place submitted a request to amend the 2011 waterfront structure plan. Seven modifications were proposed.
22. It should be noted that there were no changes proposed to existing building height or scale standards. Furthermore, the primary land use for the site would remain for tourist purposes, with measures proposed to permit a limited amount of permanent residential accommodation.
23. The modifications proposed to the structure plan are summarised in the below table:

<b>Structure Planning</b>		
	<b>Existing Provisions</b>	<b>Proposed Provisions</b>
1.	No permanent residential developments are permitted in the Albany Waterfront (c24.1).	1. <i>No permanent residential development is permitted in the Albany Waterfront Structure Plan Area, with the exception of Multiple Dwellings being a discretionary land use within the Accommodation Precinct. Multiple Dwellings are not permitted on the ground level fronting the Waterfront Promenade.</i>
2.	No provision for prioritising the location of tourism development.	2. (A) <i>The scale of any residential development is to complement the tourism component and priority is to be given to locating the tourism component(s) on those areas of the site providing the highest tourism amenity.</i>  2. (B) <i>Any staging of development is to occur so that the tourism development and provision of facilities occurs prior to, or concurrently with, any residential development.</i>  2. (C) <i>Multiple dwelling development shall not exceed a Gross Floor Area of 6,800m<sup>2</sup>.</i>

Structure Planning		
	Existing Provisions	Proposed Provisions
3.	Building footprints shown on Structure Plan.	<i>3. Revising the building footprints to the Accommodation Precinct to provide improved pedestrian connectivity through the Waterfront Area via revised pedestrian access points, and enable increased flexibility of building design and siting, while maintaining key principles of the Design Guidelines.</i>
4.	No basement or part basement parking is permitted (c4.6).	<i>4. Basement parking, or part basement parking, to protrude a maximum 1.5m above the natural ground level of the Accommodation Precinct, excluding the active ground floor interface with the Waterside Promenade.</i>
5.	All buildings will be setback a minimum of 25m from the Princess Royal Drive road reserve boundary (c2.1).	<i>5. Revise the building setback to Princess Royal Drive from 25m to 19m within the Accommodation Precinct to allow increased flexibility with design and siting of buildings.</i>
6.	Nil	<i>6. All Holiday Accommodation and Multiple Dwellings located within the Accommodation Precinct are to incorporate Quiet House Design Package B.</i>
7.	Nil	<i>7. (A) Prior to development commencing a Management Statement is to be prepared in consultation with the City of Albany to ensure all Holiday Accommodation units will be let out for tourism purposes, preferably by an on-site letting agent (manager). 7. (B) Prior to development commencing a Management Statement is to be prepared in consultation with the City of Albany to address amenity and mitigation measures associated with the Port and Entertainment Precinct. 7. (C) The Local Government may consider the use of a Section 70A notification being placed on the Title(s) to advise prospective purchasers of potential impacts that may arise from activities associated with the Albany Waterfront or Port of Albany.</i>

24. The structure plan was referred to the Department of Planning, Lands and Heritage (DPLH) for 'Preliminary Comment'.
25. The DPLH advised that a coastal vulnerability assessment will be necessary to enable the local government (and subsequently, the WAPC) to make a proper and complete assessment of the merits of the proposals against the State Planning Policy 2.6.
26. The applicant was requested to undertake a coastal vulnerability assessment, with the following response to the City:  
*'I have liaised with the land owner/client in terms of this project and he is not at all committed to doing a coastal assessment.'*

27. In 2018, the proposal to amend the waterfront structure plan was advertised and comments were received in relation to:
- Potable water and sewerage;
  - Stormwater;
  - Noise assessment;
  - Noise mitigation treatment;
  - Management statements;
  - Memorandum of agreement;
  - Buffers;
  - Permanent accommodation;
  - Heavy haulage access to the Port;
  - Vehicle access;
  - Setbacks to Princess Royal Drive;
  - Financial viability;
  - Economic value;
  - Boat harbour land;
  - Section 70A notifications;
  - Building height;
  - Multiple dwellings;
  - Glazing and balconies;
  - Parking;
  - Hotel; and
  - Quiet house design principles.
28. The Southern Ports were critical of the acoustic assessment that accompanied the proposal to allow multiple dwellings (permanent accommodation) at the subject Lot 3. Southern Ports believe that bedrooms within multiple dwellings should be designed to mitigate noise to achieve a 55  $L_{Amax}$  decibel rating and not a lower average rating.
29. Southern Ports also believe that outdoor areas should incorporate design to mitigate noise. The Southern Ports also commented that detailed building design drawings should be submitted at the structure planning stage, to prove that development can mitigate noise to achieve the 55  $L_{Amax}$  decibel rating whilst providing an aesthetically pleasing design (e.g. use of glazing and balconies).

Note: The  $L_{Amax}$  level represents the maximum energy during a measurement period. The proposal to use a maximum energy rating is not consistent with the State Planning Policy 5.4 standard. The SPP5.4 seeks to achieve compliance with an average energy output ( $L_{Aeq}$ ). The Minister recently refused to approve a City of Cockburn scheme amendment (No.118), on the basis that the proposed noise and vibration mitigation measures are predicated on methodology not consistent with the SPP 5.4 (i.e. using maximum noise levels and not average noise levels).

30. An updated acoustic assessment was provided, attentive to Southern Port's needs. The revised acoustic assessment shows a range of mitigation treatments that can be incorporated to ensure indoor night time noise levels do not exceed 55dB  $L_{Amax}$ .

31. A meeting was held between City staff, Southern Ports, the proponent (Harley Dykstra) and acoustic engineers to determine whether or not to require compliance with maximum energy ratings and whether or not to require detailed design drawings to accompany the structure plan.
32. All parties believe that mitigating to the 55  $L_{Amax}$  decibel rating (although inconsistent with the SPP5.4), provides a better outcome to permanent residents and that it is premature to expect detailed drawings at the structure planning stage.
33. Whilst the results of acoustic monitoring and modelling indicate that development on Lot 3 Toll Place could potentially achieve an internal noise level of 55dB  $L_{Amax}$ , Southern Ports remains unconvinced that there are adequate protections available to mitigate the risk to an acceptable level in relation to outdoor habitable areas.
34. Southern Ports remains concerned that the introduction of permanent residential (multiple dwelling) development at the Waterfront Precinct would result in an increased risk of noise complaints being made to Southern Ports and Port Users.

## **DISCUSSION**

### **Proposed Modifications**

35. In 2011, a structure plan was endorsed to guide land use and development at the Albany Waterfront. A new structure plan map and provisions propose to modify the 2011 structure plan for the 'Accommodation Precinct' at Lot 3 Toll Place. The following is a list of the key modifications:
  - a) The existing structure plan identifies where land uses should be located for the 'Accommodation' precinct. It is proposed that a flexible approach occur for locating land uses at the subject lot.
  - b) The existing structure plan supports short stay accommodation and not permanent accommodation. It is proposed that permanent accommodation is permitted subject to buildings being treated to mitigate noise from transport on adjacent freight routes.
  - c) The existing structure plan recommends a setback of 25m from the Princess Royal Drive Road Reserve. It is proposed to support projections beyond the primary setback, to a minimum 19m for development within the 'Accommodation' precinct to allow increased flexibility with design and siting of buildings.
  - d) The existing structure plan does not support below ground (basement) parking. It is proposed that basement parking is permitted to maximise use of the land.

### **Submissions**

36. The proposed modifications were advertised and key comments were received. The following paragraphs provide a summary of key comments. A summary of comments is also provided in an attached schedule of submissions.

### **Public Car Parking**

37. Members of the public voiced concern about the potential loss of parking due to on-site development. The public currently uses the private Lot 3 to park cars whilst visiting the waterfront and entertainment centre.
38. No changes are proposed to public car parking and therefore it is recommended that comments pertaining to public car parking are either noted or dismissed.
39. Public car parking has been set aside in various locations at the waterfront. Rather than parking at the private Lot 3, visitors to the Albany Entertainment Centre and foreshore may need to park adjacent to the Albany Boat Shed.
40. Some shared car parking will be available for the public as a result of private developments. For example, Lot 3 Toll Place is required to provide 38 bays for reciprocal (public) parking.

Otherwise, development is required to provide parking to accommodate customers and staff, in accordance with the 2011 adopted structure plan.

### **Building Height**

41. Some submissions raised concerns about building height and a resulting loss of views to the harbour.
42. No changes are proposed to building height already adopted via the 2011 structure plan and therefore it is recommended that comments pertaining to building heights are either noted or dismissed.

### **Amenity**

43. Some submissions expressed a desire to ensure that future development does not impact on the amenity of the area.
44. It is recommended that comments pertaining to a quality built product, are either noted or dismissed for reasons discussed below.
45. The 2011 structure plan has an extensive list of provisions to ensure that development occurs to protect the amenity of the area. The following overall design objectives apply:
  - a) Ensure building scale, materials and colours complement the Stirling Terrace interface with the Albany CBD.
  - b) Provision of an attractive, open and consistent streetscape to Princess Royal Drive.
  - c) Provision of an active edge to the waterside Promenade.
  - d) Design quality that reflects the significance of this precinct as a key destination in Albany and the broader region.
  - e) Serviced apartments must not front the Promenade at ground level.
46. Noise mitigation treatments proposed for permanent accommodation seek to maintain amenity as follows:
  - a) Inclusion of noise screening walls that incorporate appealing design measures.
  - b) Inclusion of a noise barrier integrated with entrance statement or public art.
47. The proposed modifications seek to maintain design measures and protection of the public marina area by keeping existing provisions, as follows:

*No permanent residential development is permitted in the Albany Waterfront Structure Plan Area, with the exception of Multiple Dwellings being a discretionary land use within the Accommodation Precinct. Multiple Dwellings are not permitted on the ground level fronting the Waterfront Promenade.*

*Revising the building footprints to the Accommodation Precinct to provide improved pedestrian connectivity through the Waterfront Area via revised pedestrian access points, and enable increased flexibility of building design and siting, while maintaining key principles of the Design Guidelines.*

### **Noise assessment data**

48. Southern Ports believe that the acoustic assessment included inaccurate assumptions in relation to traffic volumes, resulting in incorrect conclusions that could have fundamentally significant implications.

49. Southern Ports believe that further and better data collation would need to take place, during peak periods and for the freight rail marshalling yards.
50. Subsequent to the above, a second 'detailed acoustic assessment' with mitigation treatments was submitted. The detailed acoustic assessment includes:
  - Sound measurements undertaken by Hewshott (2017) and Southern Ports Authority (2016); and
  - Various noise mitigation measures available to the building design and construction to achieve a night time noise level of 55dB LAmax within all Multiple Dwellings.
51. The proponent and Southern Ports agreed that bedrooms should be designed to mitigate noise to achieve a 55 LAmax decibel rating. It was discussed that this rating will further reduce braking and horn noise occurring from trains.
52. The LAmax level represents the maximum energy during a measurement period. The proposed treatments go over and above SPP 5.4 requirements, which seeks to achieve compliance with the average energy output.
53. It has been concluded by the detailed acoustic assessment that, with appropriate attenuation measures, future development on Lot 3 Toll Place, Albany is able to comply with the provisions of State Planning Policy 5.4 and AS/NZS 2107.
54. However even though the level of noise mitigation will be higher using the LAmax measurement. The use of LAmax is not included and supported by SPP 5.4. The Department of Planning, Lands and Heritage may therefore not be in a position to support the proposed level of mitigation.
55. The Department of Water and Environmental Regulation assessed the detailed acoustic assessment and concluded that the methodology for noise and traffic modelling seems reliable and that with appropriate attenuation measures, the proposed development is able to comply with the provisions of State Planning Policy 5.4 and AS/NZS 2107.
56. The assessment incorporates Main Roads WA 2013 traffic counts on Princess Royal Drive undertaken during public holiday period (Easter Holidays), and factored up by 20% to offset a typical drop in traffic activity during holiday periods. A 2% p.a compound traffic growth was applied to the 2013 volumes in order to approximate the 2019 traffic volumes. This has resulted in robust assessment, and likely over representation of actual traffic volumes experienced and projected.
57. As required by the State Planning Policy 5.4, the assessment also took into account traffic projections to 2037. Based on the 2037 traffic projections the noise level will increase by approximately 2dB, meaning noise levels exceed noise limits by 1-5dB. As required by the State Planning Policy 5.4, mitigation treatments have been proposed to bring noise below target levels.

#### **Detailed design / Mitigation treatments**

58. Southern Ports requested that building design drawings be produced to show how mitigation against noise can be achieved (e.g. use of noise barriers or double glazing windows).
59. Southern Ports is concerned that adequate protection cannot be achieved to mitigate the risk to an acceptable noise level in relation to indoor and outdoor habitable areas.

60. City staff, the proponent and Southern Ports discussed the request for building design drawings and subsequently agreed that it is premature to expect detailed drawings at the structure planning stage.
61. It was agreed that control measures can be used to ensure buildings are designed and developed to mitigate noise. It is recommended that the following condition is included to ensure compliance with noise outputs (outdoor and indoor):
- *Any Multiple Dwelling(s) located within the Accommodation Precinct will ensure that inside noise levels to all habitable rooms does not exceed 55dB LAmax. Noise mitigation treatments proposed for permanent accommodation seek to maintain outdoor amenity as follows:*
    - *Inclusion of noise screening walls that incorporate appealing design measures (use of Glass).*
    - *Inclusion of a noise barrier integrated with entrance statement or public art.*
62. The State Planning Policy 5.4 references documents which seek to provide guidance on housing design and building techniques to reduce road traffic noise. The following document, referenced by the SPP5.4, provides examples of buildings designed with the use of glass and balconies, to mitigate against noise for transport:
- Government of South Australia Department of Planning, Transport and Infrastructure, reducing noise and air impacts from road, rail and mixed land use – A guide for builders, designers and the community (2013).*
63. The document (Pg.13) illustrates design features to help control noise quality, including ground floor podiums to shield upper floors, deep balconies with solid balustrades, closed solid balustrade with sound absorption and bi-fold glass windows enclosing balconies to reduce noise and to allow natural ventilation and sun penetration. This document is available to Councillors in the Councillors workstation.

#### **Curtailement to freight transport**

64. The Southern Ports and Port users submitted comment asserting that permanent accommodation will lead to complaints associated with transport noise, which will ultimately lead to restrictions in freight movement.
65. It is recommended that comments pertaining to complaints associated with allowing permanent accommodation, are either noted or dismissed for reasons discussed below:
- a) Noise associated with transport is exempt from compliance with the *Environmental Protection (Noise) Regulations 1997*. As long as development attenuates noise in accordance with the State Planning Policy 5.4, and as long as vehicles operate with silencing devices in accordance with Road Traffic (Vehicle Standards) Rules 2002, government authorities do not necessarily have an obligation to undertake noise compliance.
  - b) It is proposed that a Section 70A notification is placed on the title of Lot 3 Toll Place to advise prospective purchasers of potential impacts that may arise from activities associated with the Albany Waterfront, Port of Albany and Albany Waterfront Marina.
  - c) The proposed modifications do not propose to restrict 24/7 access to and from the Port. The 2007 memorandum of agreement acknowledges and respects 24 hour a day, 7 day a week haulage access to the Port of Albany.

**State Coastal Planning Policy 2.6 - Coastal hazard risk management**

66. Coastal hazard risk management and adaptation planning is intended to ensure an appropriate risk assessment and management planning framework for incorporating coastal hazard considerations into decision-making processes.
67. Coastal hazard risk management and adaptation planning should be undertaken by an appropriately qualified professional person and/or organisation applied at the earliest appropriate stage of any planning process.
68. Coastal hazard risk adaptation planning involves the development and implementation of a management plan (through the identification and selection of the most appropriate risk management and/or adaptation options) that includes consideration of unintended side effects, funding arrangements (initial and ongoing), maintenance requirements, ability to accommodate future uncertainties, other resources, site requirements and timeframes.
69. The landholder/applicant has indicated an unwillingness to undertake a coastal assessment, meaning the City is unable to make a proper and complete assessment of the merits of the proposal against the State Planning Policy 2.6.

**Concluding Remarks**

70. The proponent has specified that the modifications to the structure plan will:
  - a) Provide increased flexibility with the design and siting of development and land use;
  - b) Serve as a catalyst to promote further development within the Albany Waterfront area; and
  - c) Contribute towards providing the critical mass required to support the year round operation of other land uses such as shops, offices and restaurants.
71. Council may choose to recommend that the Commission support the proposed modifications, for the following reasons:
  - a) The proposed modifications are not expected to impact on existing structure plan objectives and provisions, which seek to ensure development occurs in an appealing manner;
  - b) Development is proposed to be designed to protect people from indoor and outdoor noise impacts;
  - c) The structure plan does not propose to modify the current Memorandum of Agreement to protect 24/7 access to the Port;
  - d) The proponent and the Southern Ports have agreed on an updated noise acoustic assessment and that conditions can be imposed to ensure development occurs to mitigate internal noise.
  - e) The *State Planning Bulletin No. 83 – Planning for Tourism* indicates that local governments may support permanent residential development as part of a tourist site subject to limiting the amount of permanent residential development. Tourism WA believe that the introduction of permanent accommodation is essential to the financial viability of the development.
72. Because a coastal assessment has not been submitted to determine coastal vulnerability in accordance with the State Planning Policy 2.6, it is recommended that Council agree to recommend that the Western Australian Planning Commission refuse the application to amend the structure plan.



## GOVERNMENT & PUBLIC CONSULTATION

73. Local Structure Plan No.12 was advertised in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015*. Structure Plans require advertising in accordance with Part 4, cl.18 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
74. The City advertised the structure plan in accordance with the Regulations as follows:
- By giving notice of the proposed structure plan to neighbouring landholders;
  - By giving notice of the proposed structure plan in the local newspaper;
  - By giving notice of the proposed structure plan via a sign on-site;
  - By making a copy of the structure plan available on the City's website and as hard copy at the City of Albany offices (102 North Road).
75. Submissions were received from government agencies and members of the public. Submissions have been provided to Council as an original and as summarised in the attached Schedule of Submissions.
76. Commentary on the submissions has been provided in this report item and in the attached Schedule of Submissions.
77. The proponent has also provided a response to comments raised by Southern Ports, which is available to Council.
78. The City sought comment from the Department of Planning, Lands and Heritage on whether or not a coastal assessment was necessary in accordance with the State Planning Policy 2.6. The Department of Planning, Lands and Heritage confirmed that a coastal vulnerability assessment is necessary to enable the local government (and subsequently, the WAPC) to make a proper and complete assessment of the merits of the proposals against the Policy.

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Inform	Mail out to landholders Notice in local newspaper Notice via sign on site Notice and copy of structure plan on City website	15 March – 12 April 2018	N/A	Part 4, cl.18 of the Planning and Development (Local Planning Schemes) Regulations 2015
Consult	Meeting between City staff, proponent (Harley Dykstra), acoustic engineers (Lloyd George Acoustic and Hewshott Acoustics) and Southern Ports	13 June 2019	9	N/A

## STATUTORY IMPLICATIONS

79. Local Structure Plans undergo a statutory process in accordance with Schedule 2, Part 4 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
80. Schedule 2, Part 4, clause 19 requires the local government to consider the submissions made within the period specified in the notice advertising the structure plan.
81. Schedule 2, Part 4, clause 20 requires the local government to prepare a report to the Western Australian Planning Commission, including a recommendation on whether the proposed structure plan should be approved by the Commission.
82. Voting requirement for this item is **SIMPLE MAJORITY**
83. Following endorsement of a structure plan, a proposal to introduce new zones, rezone land and / or introduce additional provisions into a scheme, to reflect structure plan requirements, may be undertaken.

## POLICY IMPLICATIONS

84. The following policies are applicable and have been considered for the assessment of the structure plan:

a) *State Planning Policy No.3 – Urban Growth and Settlement*

In accordance with SPP3, the structure plan proposes to support higher residential density within an accessible location.

b) *State Planning Bulletin No. 83 – Planning for Tourism*

In accordance with SPB83, the structure plan proposes to limit the amount of permanent residential accommodation to ensure development of tourist accommodation. Permanent residential development is to be developed incidental to tourist accommodation.

c) *State Planning Policy 5.4 Road and Rail Transport Noise and Freight Considerations in Land Use Planning*

The structure plan seeks to protect occupants from transport noise via quiet house design, external design features (high amenity wall) and notifications on title.

d) *State Planning Policy No.2.6 – Coastal Planning Policy*

The SPP2.6 seeks to ensure the identification of appropriate areas and uses, for the sustainable use of the coast. A vulnerability assessment is required to identify the exposure, sensitivity and adaptive capacity of a system.

The landholder/applicant has indicated an unwillingness to undertake a coastal assessment, meaning the City is unable to make a proper and complete assessment of the merits of the proposal against the State Planning Policy 2.6.

## RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>Without the proponent undertaking a coastal vulnerability assessment, it is unknown if the site is suitable for permanent accommodation.</i>	<i>Possible</i>	<i>Moderate</i>	<i>Medium</i>	<i>Recommend that the Commission not support the application due to insufficient information.</i>
<b>Reputational</b> <i>Council may recommend to the WAPC that the application be approved without sufficient information</i>	<i>Unlikely</i>	<i>Moderate</i>	<i>Medium</i>	<i>Development must comply with conditions imposed in development approval.</i>
<b>Opportunity:</b> <i>Increase opportunity for servicing, land use and development.</i>				

## FINANCIAL IMPLICATIONS

86. If the City of Albany does not provide a recommendation and report on the structure plan to the Commission, the Commission may take reasonable steps to obtain the services or information on its own behalf. All costs incurred by the Commission may, with the approval of the Minister, be recovered from the local government as a debt due to the Commission.

## **LEGAL IMPLICATIONS**

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

## **ENVIRONMENTAL CONSIDERATIONS**

88. Development is required to comply with relevant regulations to ensure that the environment is protected, including groundwater and the Princess Royal Harbour.

## **ALTERNATE OPTIONS**

89. Council may consider alternate options in relation to the structure plan, including;
- a) Recommend that the Western Australian Planning Commission approve the proposed structure plan.

## **CONCLUSION**

90. Local Structure Plan No.12 is proposing changes to the Albany Waterfront Structure Plan (2011).
91. Modifications proposed include:
- a) A flexible approach to the location of land uses on the subject lot;
  - b) Permanent accommodation;
  - c) A Reduced building setback to Princess Royal Drive; and
  - d) Basement parking.
92. The structure plan seeks to allow the introduction of a limited amount of permanent residential development (multiple dwellings) at the Albany Waterfront, to contribute towards providing the critical mass required to support the year round operation of other land uses such as shops, offices and restaurants.
93. The proposed structure plan modifications were advertised and comments received on a number of different matters, including car parking, building height, mitigation against noise from surrounding uses and building setbacks. The Southern Ports and Port user groups are concerned that, by allowing permanent accommodation, noise complaints will occur, which may then limit 24/7 freight access to and from the Port.
94. City staff, Southern Ports, the proponent and acoustic engineers met to discuss concerns around noise. It was decided to ensure indoor night time noise levels, within bedrooms, do not exceed a 55 decibel  $L_{Amax}$  rating. The proposed rating goes over and above State Planning Policy 5.4 requirements. The City is also recommending that development measures are introduced to reduce outdoor noise levels.
95. The use of  $L_{Amax}$  is not included or supported by SPP 5.4. The Department of Planning, Lands and Heritage may therefore still decide not support the proposed level of mitigation.
96. Proposed modifications are not expected to impact on existing structure plan objectives, including:
- a) Ensure building scale, materials and colours complement the Stirling Terrace interface with the Albany CBD.
  - b) Provision of an attractive, open and consistent streetscape to Princess Royal Drive.
  - c) Provision of an active edge to the waterside Promenade.
  - d) Design quality that reflects the significance of this precinct as a key destination in Albany and the broader region.
  - e) Serviced apartments must not front the Promenade at ground level.

97. The Waterfront is currently underutilised and operating well below its designed and intended capacity. The proposed changes will assist to activate the tourist precinct, and serve as a catalyst for development of other precincts within the Albany Waterfront in accordance with their intended use.
98. The State Planning Bulletin No. 83 – Planning for Tourism indicates that local governments may support permanent residential development as part of a tourist site subject to limiting the amount of permanent residential development.
99. Tourism WA is supportive of including permanent accommodation at the site as part of a measured development mix. Tourism WA believe that the inclusion will assist the financial viability of the development, as an essential piece of Albany accommodation infrastructure.
100. Residential dwellings currently exist adjacent to the primary road and rail freight corridors servicing the Port of Albany and other Ports throughout Australia (e.g. – Albany Highway, Leach Highway, Canning Highway, Stirling Highway, Leighton and North Coogee).
101. The structure plan acknowledges the ‘self-contained’ and ‘privileged’ characteristics that permanent accommodation may portray by:
  - a) Limiting the amount of permanent accommodation development to a Gross Floor Area of 6,800m<sup>2</sup>;
  - b) Restricting permanent accommodation from public domain areas including the ground floor area of the waterfront promenade; and
  - c) Giving priority to locating tourism components on those areas of the site providing the highest tourism amenity.
102. Notwithstanding the measures proposed to mitigate public concerns and to enable financial viability of the precinct, in accordance with the SPP2.6, a coastal vulnerability assessment has not been submitted to identify the exposure, sensitivity and adaptive capacity to coastal processes.
103. The landholder/applicant has indicated an unwillingness to undertake a coastal vulnerability assessment, meaning the City is unable to make a proper and complete assessment of the merits of the proposal.
104. The Department of Planning, Lands and Heritage has acknowledged the City’s concern relating to the need for a coastal assessment and has provided the following comment:

*...the key issue from a SPP2.6 perspective will be the results of the coastal vulnerability assessments. These will be necessary to enable the local government (and subsequently, the WAPC) to make a proper and complete assessment of the merits of the proposals against the Policy.*
105. Council is therefore requested to recommend that the Commission not support the proposed modifications to the 2011 Albany Waterfront Structure Plan.

<b>Consulted References</b>	:	<ol style="list-style-type: none"> <li>1. <i>Local Planning Scheme No. 1</i></li> <li>2. <i>Albany Local Planning Strategy (2019)</i></li> <li>3. <i>State Planning Policy No.3 – Urban Growth and Settlement</i></li> <li>4. <i>State Planning Bulletin No. 83 – Planning for Tourism</i></li> <li>5. <i>Western Australian Planning Commission Tourism Planning Guidelines 2014.</i></li> <li>6. <i>State Planning Policy 5.4 Road and Rail Transport Noise and Freight Considerations in Land Use Planning.</i></li> <li>7. <i>State Planning Policy No.2.6 – Coastal Planning Policy</i></li> <li>8. <i>Road Traffic (Vehicle Standards) Rules 2002.</i></li> <li>9. <i>Government of South Australia Department of Planning, Transport and Infrastructure, Reducing noise and air impacts from road, rail and mixed land use – A guide for builders, designers and the community (2013).</i></li> <li>10. <i>Notes (1999) Albany Foreshore Redevelopment Project.</i></li> <li>11. <i>Minutes (2004) Albany Waterfront Reference Group.</i></li> </ol>
<b>File Number (Name of Ward)</b>	:	LSP12 (Frederickstown Ward)
<b>Previous Reference</b>	:	OCM / 24 July 2018 / DIS105

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

**12. MEETING CLOSED TO THE PUBLIC - Nil**

**13. CLOSURE**

There being no further business the Chair declared the meeting closed at **6:18PM**

A handwritten signature in black ink, appearing to read 'Emma Doughty', written over a horizontal dotted line.

Councillor Emma Doughty  
**CHAIR**