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# ATTACHMENTS

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## **Development and Infrastructure Services Committee Meeting**

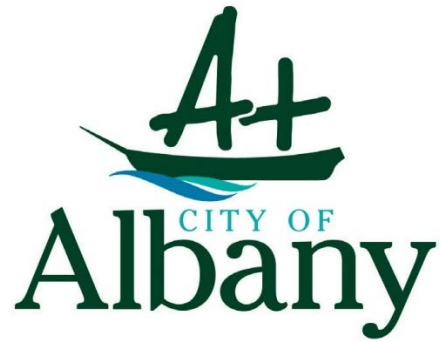
**11 October 2017**

6.00pm

City of Albany Council Chambers

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Local Planning Scheme No. 1  
Amendment No. 29

Addressing the *Planning and Development (Local Planning Schemes) Regulations 2015*, Schedule 1 – Model Provisions and Schedule 2 - Deemed Provisions, and including omnibus amendments.

Development Services

## AGENDA ITEM DIS049 REFERS TO

| <b>Document Approval</b>             |                   |  |                       |
|--------------------------------------|-------------------|--|-----------------------|
| <b>Document Development Officer:</b> |                   | <b>Document Owner:</b>   |                       |
| Planning Officer                     |                   | Executive Director Planning and Development Services   |                       |
| <b>Document Control</b>              |                   |  |                       |
| <b>File Number - Document Type:</b>  |                   | LAMD29 – Local Planning Scheme Amendment   |                       |
| <b>Synergy Reference Number:</b>     |                   | PSA1770888   |                       |
| <b>Meta Data: Key Search Terms</b>   |                   | Local Planning; All; Whole; Scheme Amendment   |                       |
| <b>Status of Document:</b>           |                   | <b>Council decision: ??</b>  |                       |
| <b>Document file details:</b>        |                   | Location of Document:<br><a href="\\albany.city\data\Planning &amp; Development\PLANNING\03 Amendments and structure plans\2LPS1">\\albany.city\data\Planning &amp; Development\PLANNING\03 Amendments and structure plans\2LPS1</a> |                       |
| <b>Quality Assurance:</b>            |                   | Executive Management Team; Planning and Development Committee; Council   |                       |
| <b>Distribution:</b>                 |                   | Public Document.   |                       |
| <b>Document Revision History</b>     |                   |  |                       |
| <b>Version</b>                       | <b>Author</b>     | <b>Version Description</b>   | <b>Date Completed</b> |
| 1.0                                  | Strategic Planner | <i>Adopted by Planning and Development Committee on ?? 2017.</i><br><br><i>Adopted by Council for the purpose of referral to the Environmental Protection Authority on ?? 2017.</i>  | Sept 2017             |

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- c. Ownership
- d. Current and Surrounding Land Uses
- e. Physical Characteristics
- f. Infrastructure

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- c. Local Planning Policies

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PLANNING AND DEVELOPMENT ACT 2005

RESOLUTION TO PREPARE AMENDMENT  
TO LOCAL PLANNING SCHEME

LOCAL PLANNING SCHEME NO. 1  
AMENDMENT NO. 29

Resolved that the Local Government pursuant to section 75 of the *Planning and Development Act 2005*, prepare the above Local Planning Scheme by:

1. Removing provisions, terms and definitions from *Local Planning Scheme No.1* that are superseded by the 'Deemed' provisions contained in the *Planning and Development (Local Planning Schemes) Regulations 2015*;
2. Introducing supplemental provisions to the 'Deemed' provisions;
3. Replacing and introducing new provisions consistent with the 'Model' provisions contained in the *Planning and Development (Local Planning Schemes) Regulations 2015*;
4. Rezoning various land parcels not included in error at the time of gazettal of the scheme; and
5. Changing the permissibility's in the zoning table for various use and development classes.

Note: The amendment is a standard amendment in accordance with part (a), (b), (e) and (f) of the standard amendment definition contained in Regulation 34 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
(Chief Executive Officer)

## 1. INTRODUCTION

This amendment seeks to alter various parts of the *Local Planning Scheme No. 1* text and mapping to:

- (a) Remove any duplication of the ‘deemed’ provisions outlined in Schedule 2 of the *Local Planning (Local Planning Schemes) Regulations 2015*;
- (b) Include any proposed supplemental ‘deemed’ provisions within a ‘Schedule A Supplemental provisions to the ‘deemed’ provisions’ and include this within the scheme text;
- (c) Align the structure and content of the City’s scheme with the ‘model’ provisions outlined in Schedule 1 of the *Local Planning (Local Planning Schemes) Regulations 2015*;
- (d) Rezone various land parcels not included in error at the time of gazettal of the scheme; and
- (e) Change the permissibility’s in the zoning table for various use and development classes.

The new “deemed provisions” and “model provisions” under the *Planning and Development (Local Planning Schemes) Regulations 2015* (WA) (Regulations) came into force on 25 August 2015.

As a consequence of section 257B of the *Planning and Development Act 2005* (WA), the deemed provisions in Schedule 2 of the Regulations are now taken to be built into every local planning scheme in the State. To the extent that a local planning scheme is inconsistent with the deemed provisions, the deemed provisions are taken to prevail.

The model provisions provide a template for schemes. It is expected that local government planners and industry review or amend their local planning scheme to align with the model provisions.

Since the scheme gazettal on 28 April 2014, various errors and anomalies have been documented in *Local Planning Scheme No. 1*. While many of these are simple typographical errors, some have more significant implications, such as zoning changes that have reduced development potential for some landowners.

The City of Albany seeks the support of the Western Australian Planning Commission (WAPC) and the approval of the Hon. Minister for Planning to amend the *City of Albany Local Planning Scheme No. 1* (LPS1).

## AGENDA ITEM DIS049 REFERS TO

- a) **Location**  
City of Albany
- b) **Site Area**  
City of Albany
- c) **Ownership**  
Proposed amendments listed in schedule (No's 162- 169):

| <b>Amendment No</b> | <b>Address</b>   | <b>Owner(s)</b>   |
|---------------------|--|---|
| 162                 | Lot 5 #437 Chester Pass Road<br>Warrenup WA 6330                         | D Carter<br>A Carter  |
| 163                 | Lot 21 #312 Albany Highway<br>Centennial Park WA 6330                    | M Webb  |
| 164                 | Lot 304 # 63 Pioneer Road<br>Centennial Park WA 6330                     | Ameroo Care Services Inc  |
| 165                 | Lot 250 #255 Lancaster Road<br>McKail WA 6330                            | M Vilkuna   |
| 166                 | Lots 871, 410, 411, 868 and 869<br>Chester Pass Road, Milpara WA<br>6330 | Panelli, Franey, Wallis and<br>Waltoy Pty Ltd, Hysnex Pty<br>Ltd and Osborne Metroof. |
| 167                 | Lot 26 #71 Shell Bay Road<br>Lower King WA 6330                          | C & M House   |
| 168                 | Lot 6906 # 11-13 Ninde Street<br>Spencer Park WA 6330<br>Reserve 26860   | Vested to City of Albany  |
| 169                 | Lot 350 # 11 Shelly Beach Road<br>Kronkup WA 6330                        | J & D Woodbury  |

- d) **Current and Surrounding Land Uses**  
N/A
- e) **Physical Characteristics**  
N/A
- f) **Infrastructure**  
N/A

## 2. LOCAL PLANNING CONTEXT

- a) **State & Regional Planning Context**  
The Planning and Development (Local Planning Schemes) Regulations 2015 came into force on 25 August 2015 to introduce 'model' and 'deemed' provisions. The 'model' provisions provide a template for schemes. Local Governments are required to include the 'model' provisions within their scheme(s). The 'deemed' provisions are taken to be built into every local planning scheme in the State. To the extent that a local planning scheme is inconsistent with the 'deemed' provisions, the 'deemed' provisions are taken to prevail. It is expected that local



## AGENDA ITEM DIS049 REFERS TO

government planners prepare their local planning scheme to align with the 'deemed' provisions.

**b) Local Planning Strategy**

The amendment is in keeping with the City's Local Planning Strategy 2010.

**c) Local Planning Policies**

The amendment is in keeping with Local and State Planning Policy.

### 3. PROPOSAL

The amendment seeks to bring about greater consistency with model and deemed provisions of the *Local Planning (Local Planning Schemes) Regulations 2015*. In particular, the Amendment:

- Removes provisions, terms and definitions from *Local Planning Scheme No.1* that are superseded by the Regulations;
- Replaces and introduces new provisions consistent with the model provisions; and
- Introduces supplemental provisions to the Deemed provisions.

The amendment also seeks to correct identified anomalies and errors in the Local Planning Scheme No.1 text, zoning table and mapping. In particular the Amendment No.29 proposes to:

- (a) Rezone Lot 5 Chester Pass Road, Warrenup from the General Agriculture zone to the Light Industry zone on Map 20 to correct a mapping error. Lot 5 was zoned Light Industry under former *Town Planning Scheme No. 3* and was rezoned to General Agriculture in *Local Planning Scheme No. 1* in error. As the lot is still occupied by a business and the zoning change has removed potential commercial development rights, it has been determined that the Light Industry zoning should be reinstated.
- (b) Rezone Lot 21 Albany Highway, Centennial Park from the 'Hotel/Motel' zone to the 'Highway Commercial' zone on Map 21 to correct a mapping error. Lot 21 was zoned Residential under former Town Planning Scheme No. 1A and was rezoned to Hotel/Motel in Local Planning Scheme No. 1 in error. As the lot is still occupied by an approved, non-conforming Veterinary Centre, the zoning change has impacted the potential for it to be developed. It has been determined that the Highway Commercial zone would be more suited to the existing development and approved use of the land as a Veterinary Centre.
- (c) Rezone Lot 304 Pioneer Road, Centennial Park from the Hotel/Motel zone to the Residential zone on Map 21 to correct a mapping error. Lot 304 was zoned Tourist Residential under former Town Planning Scheme No. 3 and was rezoned to Hotel/Motel in Local Planning Scheme No. 1 in error. As this change does not reflect the current use of the lot as an Aged Persons' Village and would preclude its planned expansion, it has been determined that the Residential zone should be applied.

## AGENDA ITEM DIS049 REFERS TO

- (d) Modify the Water Corporation Wastewater Treatment Plant Odour Buffer Special Control Area boundary around the Timewell Road Wastewater Treatment Plant on Map 21. The Water Corporation Wastewater Treatment Plant Odour Buffer Special Control Area boundary currently encompasses the residence on Lot 250 Lancaster Road McKail, which resulted from the Special Control Area boundary being modified in accordance with the recommendations of the Water Corporation during the review of the Albany Local Planning Scheme. The former owners of Lot 250 contacted the City of Albany with concerns about this situation and were referred to the Water Corporation as the responsible authority. After protracted discussions between the former owners and the Water Corporation, a meeting was organised between those parties, along with representatives from the City of Albany and a representative from the office of the Minister for Water. It was acknowledged by the Water Corporation that the inclusion of the residence on Lot 250 within the Special Control Area boundary was an 'unintended consequence' of the expansion of the Wastewater Treatment Plant Odour Buffer, in line with the recommendations of an odour modelling report prepared in March 2009. The Water Corporation advised that if the City was not opposed, it could realign the Special Control Area boundary to excise the residence on Lot 250.
- (e) Modify the Industrial Area IA3 boundary around the Milpara Light Industrial Estate, John Street and Morris Road, Milpara on Map 21 to correct a mapping error and to correspond with the Scheme text. Industrial Area IA3 applies to Lots 870, 876 and 877 John Street and Lots 873, 874 and 875 Morris Road but not Lots 410, 411, 868, 869 and 871 Chester Pass Road, which have been included within the Industrial Area boundary in error.
- (f) Rezone a portion of Lot 26 Shell Bay Road, Lower King from the Parks and Recreation local scheme reserve to the Residential zone with the R5 residential density code on Map 22 to correct a mapping error. Lot 26 was zoned Rural under former Town Planning Scheme No. 3 and was rezoned to the Parks and Recreation local scheme reserve in Local Planning Scheme No. 1 in error. Although much of the lot extends across a portion of the King River foreshore, including a large tidal wetland area, this zoning change did not reflect the fact that approximately 5800m<sup>2</sup> of the lot is developed with a single house, outbuilding and garden ground. On this basis, it has been determined that the developed portion of the lot should be rezoned to the Residential zone with the R5 residential density coding, which is consistent with the adjoining lots to the north.
- (g) Rezone Lot 6906 Nind Street, Spencer Park from the Parks and Recreation local scheme reserve with the R80C residential density code to the Public Use:

## AGENDA ITEM DIS049 REFERS TO

Community purpose local scheme reserve with the R80C residential density code on Map 23 to correct a mapping error. Lot 6906 was zoned Private Clubs and Institutions under former Town Planning Scheme No. 1A and was rezoned to the Parks and Recreation local scheme reserve in Local Planning Scheme No. 1 in error. As Crown Land vested in the City of Albany for Community Purposes and currently used for a Community Purpose and as an Educational Establishment, it has been determined that the Public Use: Community Purpose local scheme reserve would be a more appropriate designation. The R80C density code is a result of the lot's inclusion within the Spencer Park Improvement Special Control Area and should be retained.

- (h) Rezone Lot 350 Shelley Beach Road, Kronkup from the General Agriculture and Rural Residential zones to the Clubs and Institutions zone on Maps 29 and 30 to correct a mapping error. Lot 350 was zoned Private Clubs and Institutions and Rural Residential under former Town Planning Scheme No. 3; however, the Private Clubs and Institutions zoned portion was rezoned to the General Agriculture zone in Local Planning Scheme No. 1 in error. As this change does not reflect the current use of the lot as an Educational Establishment and could preclude its future expansion, it has been determined that the Clubs and Institutions zone should be reinstated and expanded to encompass the entire lot.

#### **4. CONCLUSION**

The amendment is in keeping with proposes to bring about greater consistency with model and deemed provisions of the *Local Planning (Local Planning Schemes) Regulations 2015* and to correct identified anomalies and errors.

The support of the WAPC and the approval of the Minister for Planning are respectfully requested.

AGENDA ITEM DIS049 REFERS TO

**Planning and Development Act 2005  
RESOLUTION TO AMEND LOCAL PLANNING SCHEME**

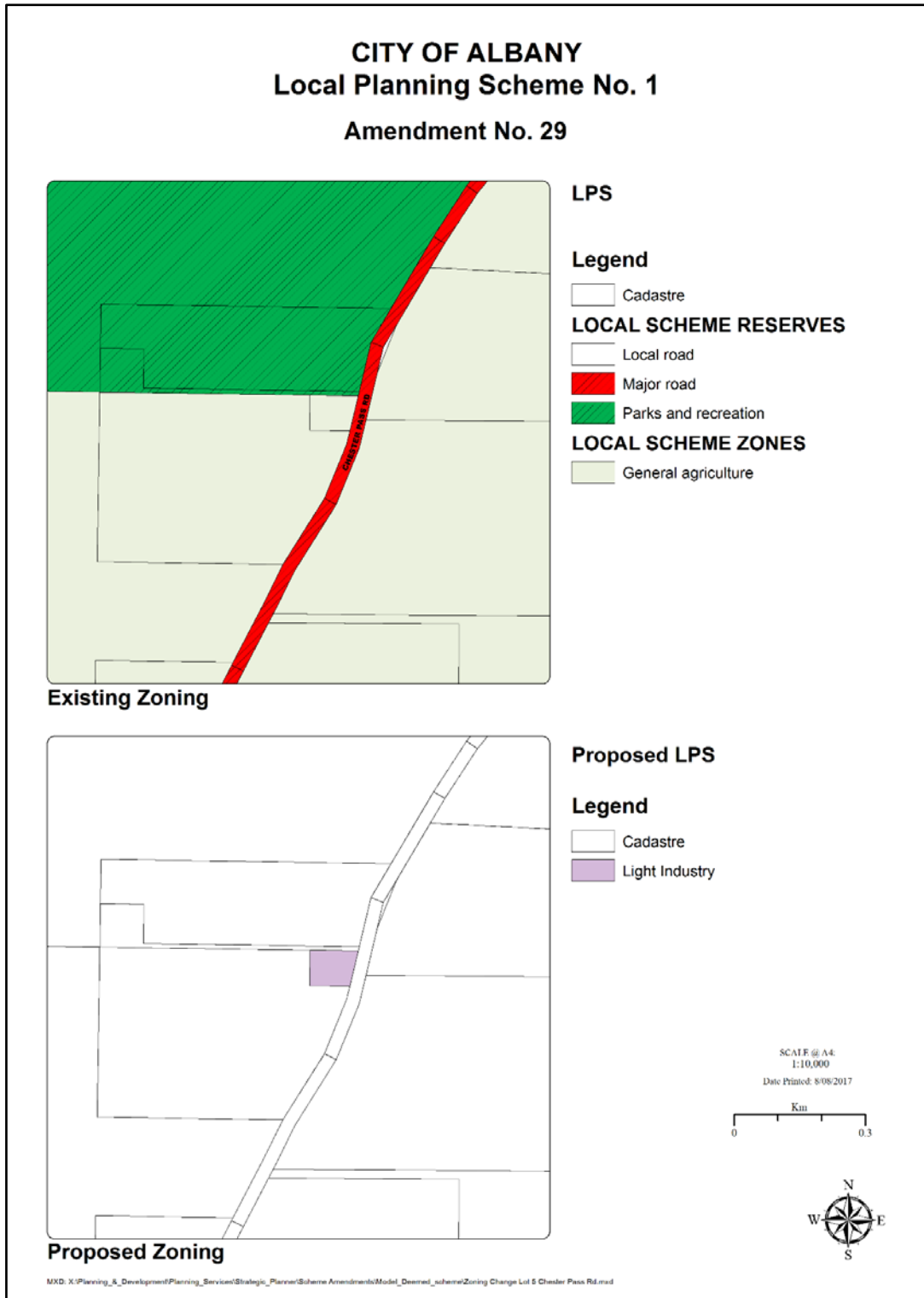
**LOCAL PLANNING SCHEME NO. 1**

**AMENDMENT NO. 29**

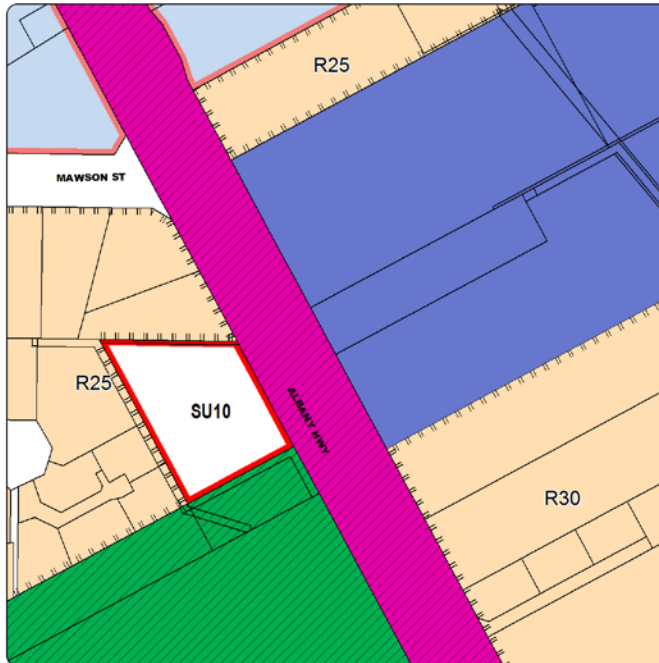
**Resolved that the Local Government pursuant to section 75 of the *Planning and Development Act 2005*, prepare the above Local Planning Scheme by:**

**LIST COMPREHENSIVE DETAILS OF PROPOSED AMENDMENT AS IT WAS ADVERTISED.**

5. AMENDMENT MAPs



**CITY OF ALBANY  
Local Planning Scheme No. 1  
Amendment No. 29**



**Existing Zoning**

**LPS**

**Legend**

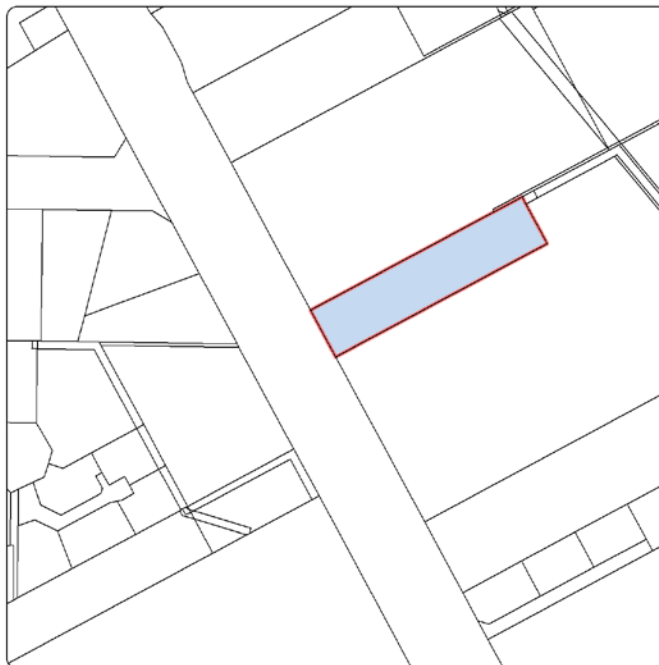
- Cadastre
- R Codes
- Special use *SU1*

**LOCAL SCHEME RESERVES**

- Local road
- Parks and recreation
- Priority road

**LOCAL SCHEME ZONES**

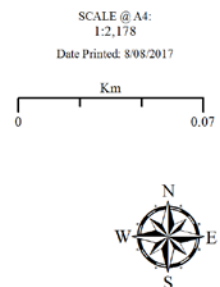
- Highway commercial
- Hotel / motel
- Residential
- Special use



**Proposed Zoning**

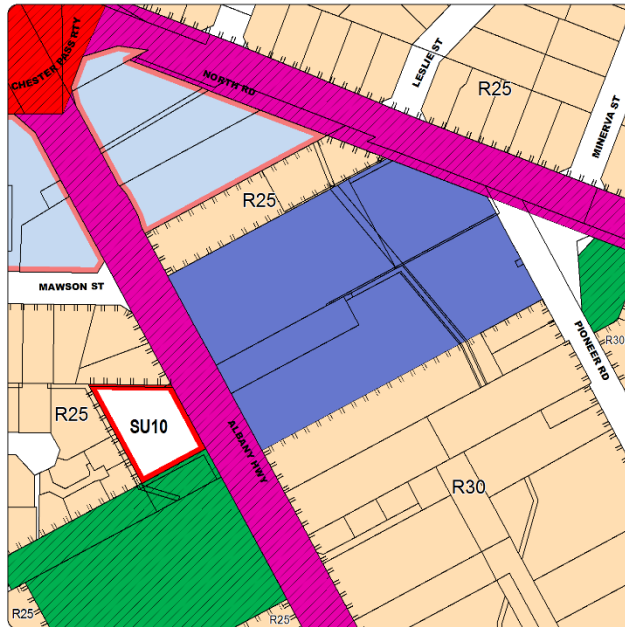
**Proposed LPS  
Legend**

- Cadastre
- Name**
- Highway Commercial



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**CITY OF ALBANY  
Local Planning Scheme No. 1  
Amendment No. 29**

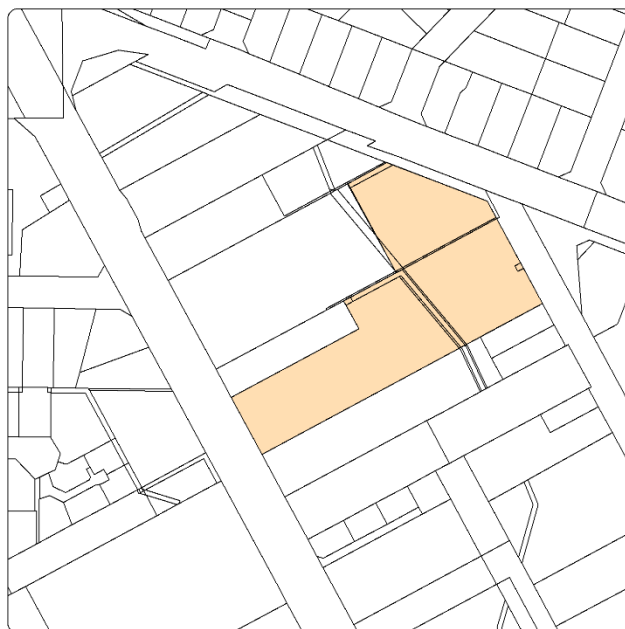


**Existing Zoning**

**LPS**

**Legend**

- Cadastre
  - R Codes
  - Special use *SU1*
- LOCAL SCHEME RESERVES**
- Local road
  - Major road
  - Parks and recreation
  - Priority road
- LOCAL SCHEME ZONES**
- Highway commercial
  - Hotel / motel
  - Residential
  - Special use



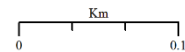
**Proposed Zoning**

**Proposed LPS**

**Legend**

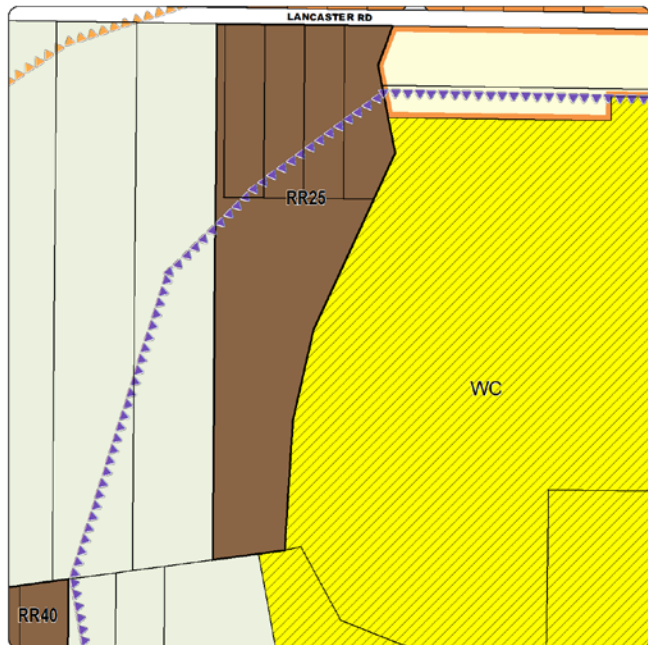
- Cadastre
- Residential

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1:3,407  
Date Printed: 8/08/2017



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**CITY OF ALBANY  
Local Planning Scheme No. 1  
Amendment No. 29**



**Existing Zoning**

**LPS**

**Legend**

- Cadastre
- Other Areas**
- Albany speedway noise special control area (see c.6.5)
- Water corporation waste water treatment plant odour buffer special control area (see c.6.6)
- Rural residential RR1
- LOCAL SCHEME RESERVES**
- Local road
- Public use : Water corporation WC
- LOCAL SCHEME ZONES**
- Future urban
- General agriculture
- Rural residential

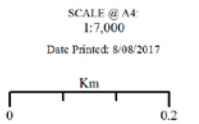


**Proposed Zoning**

**Proposed LPS**

**Legend**

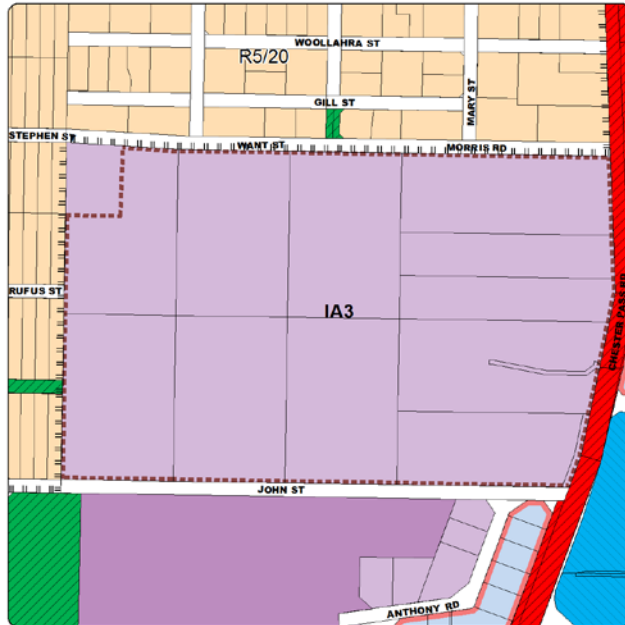
- Cadastre
- Water corporation waste water treatment plant odour buffer special control area (see c.6.6)



MXD: X:\Planning\_& Development\Planning\_Services\Strategic\_Planner\Scheme Amendments\Model\_Deemed\_scheme\Waste Water Treatment Buffer.mxd



# CITY OF ALBANY Local Planning Scheme No. 1 Amendment No. 29



**Existing Zoning**

**LPS**

**Legend**

- Cadastre
- R Codes
- Other Areas**
- Industrial area IA1
- LOCAL SCHEME RESERVES**
- Local road
- Major road
- Parks and recreation
- LOCAL SCHEME ZONES**
- General industry
- Highway commercial
- Light industry
- Neighbourhood centre
- Residential



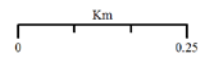
**Proposed Zoning**

**Proposed LPS**

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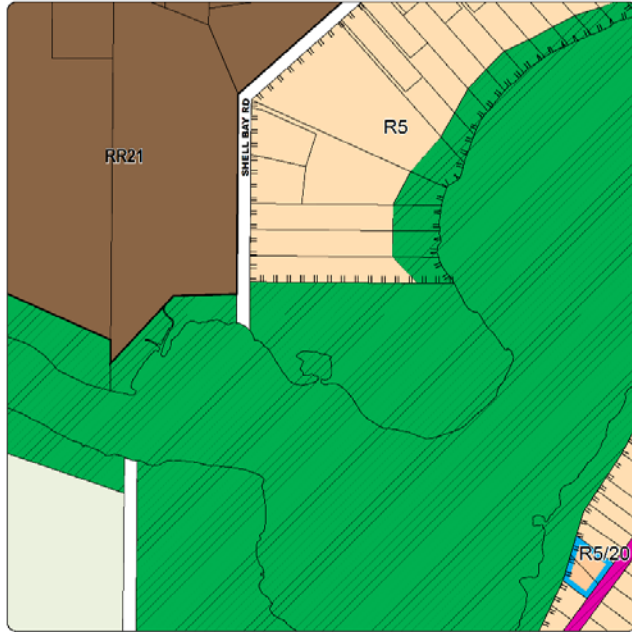
- Industrial area
- Cadastre

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1:8,000  
Date Printed: 8/08/2017



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**CITY OF ALBANY**  
**Local Planning Scheme No. 1**  
**Amendment No. 29**



**Existing Zoning**

**LPS**

**Legend**

- Cadastre
- R Codes
- Rural residential *RR1*
- LOCAL SCHEME RESERVES**
- Local road
- Parks and recreation
- Priority road
- LOCAL SCHEME ZONES**
- General agriculture
- Local centre
- Residential
- Rural residential



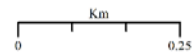
**Proposed Zoning**

**Proposed LPS**

**Legend**

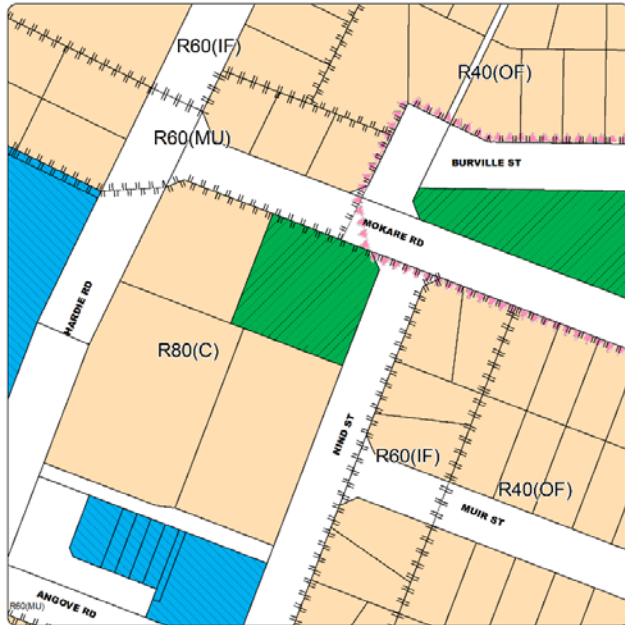
- Cadastre
- Residential
- R Codes

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 Date Printed: 3/08/2017



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**CITY OF ALBANY  
Local Planning Scheme No. 1  
Amendment No. 29**



**Existing Zoning**

**LPS**

**Legend**

- Cadastre
- R Codes

**Other Areas**

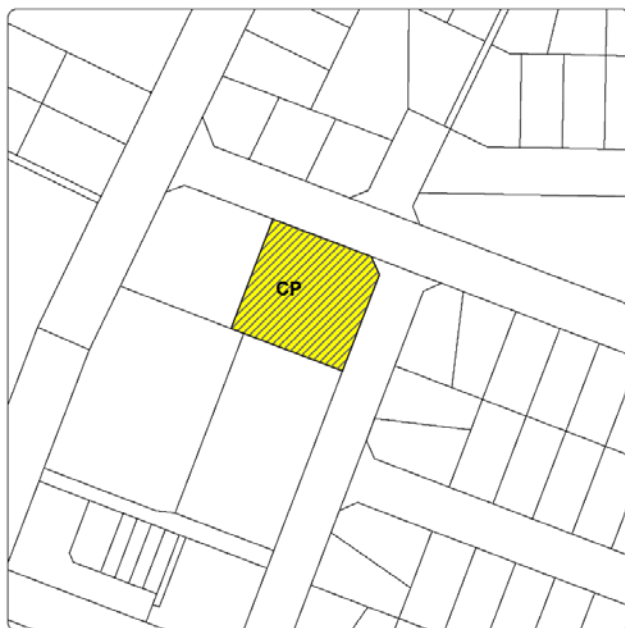
- Spencer Park improvement special control area (see c.6.7)

**LOCAL SCHEME RESERVES**

- Local road
- Parks and recreation

**LOCAL SCHEME ZONES**

- Neighbourhood centre
- Residential



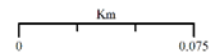
**Proposed Zoning**

**Proposed LPS**

**Legend**

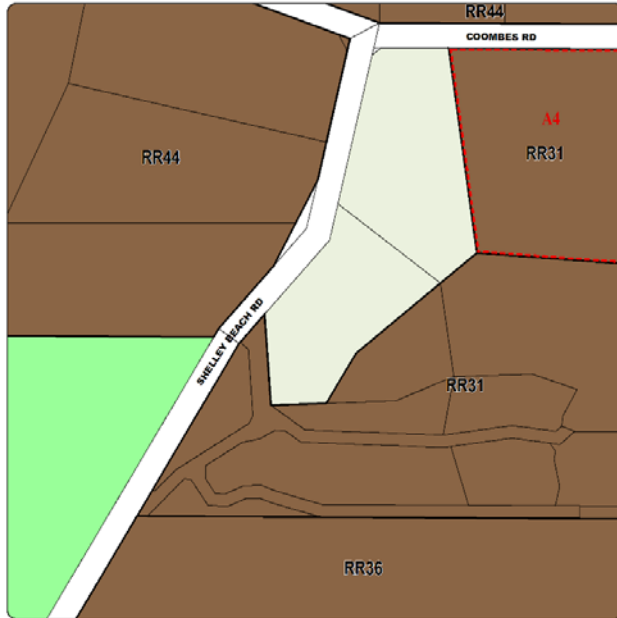
- Cadastre
- Public Use: Community purpose

SCALE @ A4:  
1:2,319  
Date Printed: 8/08/2017



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**CITY OF ALBANY  
Local Planning Scheme No. 1  
Amendment No. 29**



**Existing Zoning**

**LPS**

**Legend**

- Cadastre\_Dissolved
- Additional use A1
- Rural residential RR1

**LOCAL SCHEME RESERVES**

- Local road

**LOCAL SCHEME ZONES**

- General agriculture
- Priority agriculture
- Rural residential



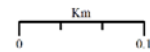
**Proposed Zoning**

**Proposed LPS**

**Legend**

- Cadastre\_Dissolved
- Clubs and Institutions

SCALE @ A4  
1:4,294  
Date Printed: 8/08/2017



MXD: X:\Planning\_& Development\Planning\_Services\Strategic\_Planner\Scheme Amendments\Model\_Deemed\_scheme\Zoning Change Lot 350 Shelly Beach Rd.mxd

**COUNCIL ADOPTION**

This Standard Amendment was adopted by resolution of the Council of the City of Albany at the Ordinary Meeting of the Council held on the [ day ] day of [ month ], 2017.

.....

MAYOR/SHIRE PRESIDENT

.....

CHIEF EXECUTIVE OFFICER

**COUNCIL RESOLUTION TO ADVERTISE**

by resolution of the Council of the City of Albany at the Ordinary Meeting of the Council held on the [ day ] day of [ month ], 2017, proceed to advertise this Amendment.

.....

MAYOR/SHIRE PRESIDENT

.....

CHIEF EXECUTIVE OFFICER

**COUNCIL RECOMMENDATION**

This Amendment is recommended [for support/ not to be supported] by resolution of the City of Albany at the Ordinary Meeting of the Council held on the [ number ] day of [ month ], 20[ year ] and the Common Seal of the City of Albany was hereunto affixed by the authority of a resolution of the Council in the presence of:

.....

MAYOR/SHIRE PRESIDENT

.....

CHIEF EXECUTIVE OFFICER

**WAPC ENDORSEMENT (r.63)**

.....

DELEGATED UNDER S.16 OF  
THE P&D ACT 2005

DATE.....

AGENDA ITEM DIS049 REFERS TO

FORM 6A - CONTINUED

APPROVAL GRANTED

.....

MINISTER FOR PLANNING

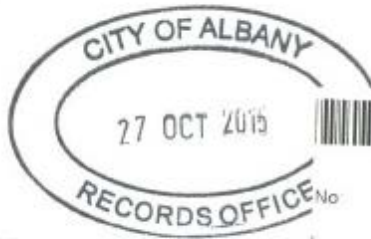
DATE.....

**APPENDIX 1 – Water Corporation**

Your Ref:  
Our Ref: JT1 2008 17948 v01  
Enquiries: Ian Kininmonth  
Telephone: (08) 9420 2617



22<sup>nd</sup> October 2015



Mr Jan Van Der Mescht  
Manager Planning Services  
City of Albany  
PO Box 484  
ALBANY W A 6331

City of Albany Records  
ICR15199921  
A167692  
27 OCT 2015  
PLA,MPS  
No  
:er  
:h  
#Vol

Dear Jan

**Modification to Water Corporation Waste Water Treatment Plant Odour Buffer Special Control Area**

Further to our meeting on 13<sup>th</sup> August 2015 in relation to the odour buffer impacting the Perry's property at lot 255 Lancaster Road, please find attached a copy of the modified odour buffer for the Albany Wastewater Treatment Plant.

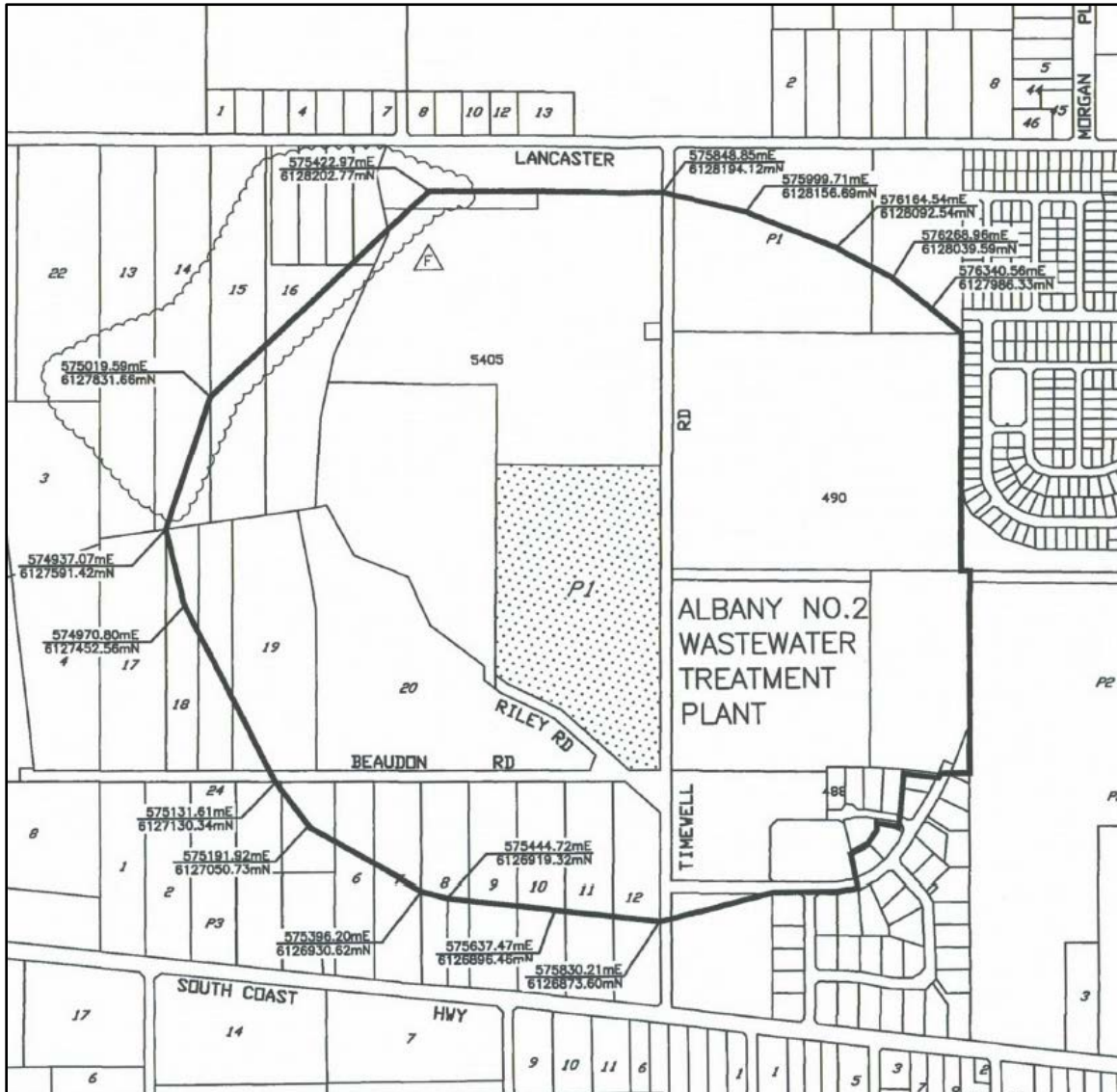
The modification only impacts the north west section of the existing odour buffer.

As discussed, we request that the Council include the modification be included in the next omnibus amendment to the town planning scheme.

Please do not hesitate to contact Ian Kininmonth if you require any further information.

Yours sincerely

John Todd  
Manager  
Development Services Branch





AGENDA ITEM DIS049 REFERS TO

| <b>Name</b>                         | <b>Init</b> |
|-------------------------------------|-------------|
| SMITH                               | CF          |
| SMITH                               | JM          |
| SHARP                               | TW          |
| SHARP                               | GM          |
| ROGERSON                            | LM          |
| JOHNSTON                            | RS          |
| MACFARLANE                          | M           |
| CIELAK                              | DL          |
| OBREMSKI                            | DP          |
| FORMAN PTY LTD                      |             |
| CAMARRI NOMINEES PTY LTD            |             |
| BICKNELL                            | P           |
| ALBIOL                              | PA          |
| LANGSLOW                            | CJ          |
| JOHN MILLS HOLDINGS PTY LTD         |             |
| YAN                                 | MMH         |
| ASHBURTON AIR SERVICES PTY LTD      |             |
| TASKER                              | SM          |
| MORENO                              | FE          |
| ATKINS                              | CD          |
| PATON                               | EL          |
| CARTER                              | CM          |
| PATEMAN                             | DJ          |
| MARSHALL                            | MJ          |
| TINAPPLE                            | WL          |
| KEHLET                              | DK          |
| SOUTHERN EQUITY INVESTMENTS PTY LTD |             |
| PATEMAN                             | DJ          |
| A AITKEN PTY LTD                    |             |
| ROBERTSON                           | GJ          |
| RICHARDS                            | CA          |
| GILES                               | MC          |
| BURTON                              | AJ          |
| BEENY                               | DJ          |
| REDMOND                             | BR          |
| MCCLINTOCK                          | BJ          |
| BUSSELL                             | BM          |
| BARTLETT                            | RD          |
| OLIVER                              | LD          |
| GENO                                | LM          |
| GENO                                | BJ          |
| BARNDON                             | DL          |
| O'DONNELL                           | GM          |
| MANSON                              | JS          |
| LEMMENS                             | JM          |
| ABELIA INVESTMENTS PTY LTD          |             |
| WALTON                              | MRH         |

AGENDA ITEM DIS049 REFERS TO

|   |     |
|---|-----|
| BARR  | DJ  |
| GROSVENOR   | JP  |
| ROBERTSON   | GJ  |
| ROBERTSON   | GJ  |
| SNOW  | GGR |
| ROBERTSON   | GJ  |
| AVERN   | LA  |
| SPIERS  | RR  |
| CITY OF ALBANY (MANAGEMENT ORDER<br>OR VESTED CROWN LAND) |     |
| GILBERT   | HC  |
| MCINTOSH  | TS  |
| RULE  | AF  |
| CROWN LAND  |     |
| WEAVER  | JR  |
| CROWN LAND  |     |
| AVERN   | LA  |
| CARTER  | AS  |
| CARTER  | D   |
| WEBB  | MP  |
| AMAROO CARE SERVICES INC                                  |     |
| VILKUNA   | ML  |
| HOUSE   | CB  |
| HOUSE   | MT  |
| WOODBURY  | JW  |
| WOODBURY  | DF  |
| PANELLI   | E   |
| PANELLI   | GO  |
| FRANEY  | PG  |
| WALLIS  | NJ  |
| WALTOY PTY LTD  |     |
| HYSNEX PTY LTD  |     |
| OSBORNE METROOF   |     |



Justcrash Enterprises t/as Albany Hotel  
244 York Street Albany WA 6330  
T: (08) 9842 3337 F: (09) 9842 3338  
E: [nevwalton@thealbanymotel.com.au](mailto:nevwalton@thealbanymotel.com.au)



20 September 2017

City of Albany Records  
Doc No ICR17275847  
File CS LIC 5  
Date 22 SEP 2017  
Officer MBHC.MPLIS

Mr S Reitsema  
Manager Building, Health and Compliance  
City of Albany  
102 North Road  
YAKAMIA WA 6330

Attach  
Box  
Vol  
Box+Vol

Dear Scott,

**FORMAL SUBMISSION - EXTENDED TRADING PERMIT ALFRESCO-DINING AREA**

The Department of Racing, Gaming and Liquor approved the transfer of the Albany Hotel liquor licence to Justcrash Enterprises Pty Ltd on 30 December 2016. An Extended Trading Permit (Permit No. 0200406615) was issued on 13 January 2017 pursuant to approval by the City of Albany to allow the restricted service of alcohol with a meal in the hotels alfresco-dining area.

A submission to the City of Albany, by the previous licensee's, requesting an amendment to the liquor licence conditions for the Albany Hotel alfresco-dining area was lodged in June 2008. The submission was denied.

As part of the McGowan Governments priority to elevate tourism in WA, changes to Liquor Control Regulations have been approved. On 12 September 2017, the Minister for Tourism; Racing and Gaming; Small Business; Defence Issues; Citizenship and Multicultural Interest, the Hon Paul Papalia CSC MLA, was in Albany to announce a new liquor reform for tourism operator's as the first of many changes to come that will bring WA's liquor laws in line with current policy.

Given the State Governments liquor reform proposals, this is a formal request to the City of Albany to support an application by Justcrash Enterprises Pty Ltd trading as Albany Hotel to the Department of Racing, Gaming and Liquor for an amendment to the Extended Trading Permit to allow the service of alcohol in the alfresco-dining area without the requirement for it to be ancillary to a meal.

## AGENDA ITEM DIS050 REFERS TO

Support for this submission is as follows;

- The Albany Hotel House Management Plan and House Management Policy and Code of Conduct support this application (attached).
- Referencing the City of Albany's Economic Development Strategy 2013-2017; are the strategic initiatives for the revitalisation of the Central Business District (CBD) and the development and promotion of Albany as a sought after visitor destination.
- Council is encouraging a more vibrant CBD for both locals and visitors alike. The Albany Hotel Managing Director supports these initiatives and has joined the newly formed CBD Focus Group.
- The Albany Visitor Centre co-location with the existing library in York Street under the banner of 'The Albany Tourism and Information Hub' will be directly opposite the Albany Hotel.
- Established in 1835, the Albany Hotel is one of the oldest continually operating hotels in Western Australia. It is steeped in local history making it a sought after tourist attraction in Albany.
- International trends and influences and a multicultural society have created the expectation of a more sophisticated drinking culture allowing locals and tourists to responsibly enjoy liquor. The liquor licencing reform promises to align WA with our Eastern State counterparts and the world stage.
- The Port of Albany has become a destination on the Cruise Ship calendar bringing increasing numbers of international visitors to Albany.
- The alfresco-dining area is a priority service area under the hotels main roof and is contained within the parameters of a low wall forming a barrier between hotel patrons and pedestrians. The area is limited to 9 tables seating 18 people. There have been no reportable incidences of interference to pedestrians by patrons in this area under the current licencing conditions.
- Tea and coffee and other non-alcoholic beverages can also be enjoyed in the alfresco-dining area and patrons will still be able to purchase food and meals.
- The Department of Racing, Gaming and Liquor has approved an Extended Trading Permit to the Albany Hotel for the annual Albany Classic Motor Event for many years without incident. This allows the service of alcohol beyond the alfresco-dining area onto York Street.
- Management and staff have a social responsibility to individuals and the community to minimise any harm or ill health to individuals, or any group of people due to

## AGENDA ITEM DIS050 REFERS TO

alcohol consumption as contained in the House Management Plan and House Management Policy and Code of Conduct.

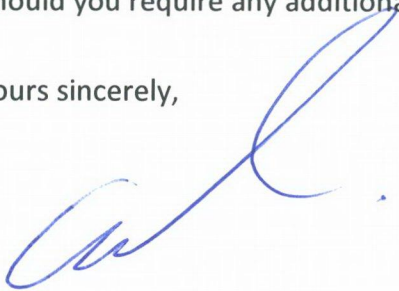
- All staff must have completed training in Responsible Service of Alcohol (RSA) and hold a current certificate. In-house training is also provided to staff.
- A Duty Manager is onsite at the Hotel at all times. Duty Managers must have completed the Australian Hotel Associations Approved Managers Course, provide a clear and current National Police Clearance and have their application approved by the Director of Racing, Gaming and Liquor.
- There have been no reportable incidences of offense, annoyance, disturbance or inconvenience caused to people who reside or work in the vicinity of the hotel. Letters of support for the proposed amendments to the licencing conditions from neighbouring businesses; Merrifield Real Estate, OPSM, Paperbark Merchants and Professionals Real Estate are attached to this submission.
- The WA police do not object to this application. Michael Russell, Liquor Enforcement Officer 9824 acknowledges in his email to S Reitsema dated 12 September 2017, that 'It is my experience that the hotel general manager, Mr Neville Walton is running the hotel in a professional and responsible manner. I do not have concerns with drunken and/or anti-social activity and Mr Walton has a good working relationship with myself and Albany police'.

The proposed amendment to the Extended Trading Permit to allow the consumption of alcohol in the alfresco-dining area without a meal would allow the hotel to meet current consumer and tourist expectations and assist in creating a much more vibrant CBD, particularly around the Tourism and Information Hub and Town Square which supports strategies within the City of Albany's Economic Development Strategy 2013-2017.

We look forward to Councils support and thank you for the opportunity to present this submission. In the event that Council offer 'support in principle' to this proposal, we would welcome a six month trial period to demonstrate appropriate management of the new conditions with a view to permanent approval on achieving mutually desirable outcomes.

Should you require any additional information please do not hesitate to contact me.

Yours sincerely,



Neville Walton  
Managing Director

# *Albany Hotel*

## House Management Policy

It is the policy and intent of the licensee and management of these premises to provide a licenced venue where the public can enjoy the hospitality, which includes the purchase and consumption of alcoholic beverages, in a responsible and friendly environment.

We aim to provide services of the highest quality by staff properly trained in the performance of their duties. The obligations and rights of the licensee relating to the sale and consumption of alcohol on licenced premises will be politely but firmly enforced.

## Code of Conduct

1. The sale of alcohol and its consumption in our premises is an essential part of our business. Management and staff are committed to operating our business in accordance with the laws and legislation pertaining to the sale and supply of liquor at and from these premises.
2. It is recognised and acknowledged that the excessive or irresponsible consumption of alcohol can be harmful to individuals and the community.
3. It is not our intention or desire to permit or allow our patrons to consume alcohol on our premises to the extent that it is harmful to themselves or harmful to others. We are committed to serving alcohol to our patrons in a responsible manner in accordance with the Guidelines by the Director of Liquor Licencing.
4. It is my responsibility as licensee and the duty of our employees to identify patrons who are consuming alcohol in excess or in an irresponsible manner. Management aims to discourage the irresponsible or excessive consumption of alcohol by implementing strategies to prevent or reduce such activity on the part of our patrons. Such strategies will include the provision of lunchtime and evening meals seven days per week and the availability of non-alcoholic beverages such as water and soft drinks.
5. We encourage and require our patrons to consume alcohol on our premises in a responsible manner. Management will require any patron who consumes alcohol irresponsibly or behaves in a disorderly manner to leave the premises in an orderly fashion when requested to do so.
6. We do not permit juveniles who are not accompanied by or under the supervision of a responsible adult to patronise our premises. The law in respect of juveniles will be enforced at all times.
7. We respect the rights of our neighbours not to be unduly disturbed or inconvenienced as a result of the operation of our premises. We expect and encourage our patrons to also respect the rights of our neighbours and to behave in an appropriate manner whilst patronising and leaving our premises.
8. Management is committed to addressing any complaint that may arise from activities at the licenced premises or as a result of the behaviour of our patrons in the vicinity of the licenced premises. We will attempt to deal with and resolve any such complaint in an expeditious and appropriate manner.
9. Our staff will be fully trained and hold the appropriate Responsible Service of Alcohol certification. We will adopt management guidelines on responsible promotion of alcohol ensuring only acceptable promotional practices are used.

# *Albany Hotel*

## House Management Plan

The House Management Plan has been established to ensure both the House Management Policy and the Code of Conduct are imbedded within the fabric of the Albany Hotel. Hotel Management will work towards creating a culture of responsible service practices where patrons can be assured of a friendly and hospitable environment. To this end, the following measures will be observed;

### **1. Staff Training**

The licensee and approved managers will complete the appropriate course in Management of Licenced Premises (52735WA). Managers will hold a current Approved Manager Unrestricted Identification Card and at least one approved manager shall be on the premises at all times. Training will be regularly reviewed to maintain relevancy. Bar staff will hold a minimum Responsible Service of Alcohol accreditation as per legislative requirements.

A register will be maintained recording details as follows;

- Employees name
- Employment commencement date
- Course provider name
- State of Territory accreditation acquired
- Date of training certification
- Copy of certification

Staff will receive in-house training in the following areas and will be empowered to act accordingly in any situation within their authority;

- Customer service
- Complaints handling
- Refusal of service procedure

### **2. Responsible Server Practices**

The approved manager will ensure there are sufficient staff on duty and that the performance of individual staff is adequate to maintain the smooth operation of the hotel.

It is management's intention to serve alcoholic beverages in a manner to minimise harm or ill health to people or groups of people. Only standard measures will be used to pour alcoholic beverages.

Acceptable promotion of alcohol practices will be observed (i.e. traditional happy). To minimise intoxication, shooters will be restricted to two per person per night and will be required to be consumed at the bar. Promotional practices to increase alcohol consumption will not be offered.

All bar staff will be trained to be vigilant in recognising signs of intoxication by hotel patrons. Where a patron is deemed to be showing signs of intoxication, Refusal of Service Procedure's will be implemented.

The approved manager will be notified and every refusal of service 'move-on' notice will be recorded in an incident register. Transport home or otherwise will be arranged on behalf of the patron.

**3. Responsible Service Poster**

Responsible service posters will be displayed in full view for patrons in bar areas, common areas and in the washrooms of the hotel premises at all times.

**4. Crowd Controllers**

Crowd controllers or security personnel will be contracted on occasions when patron numbers are expected to exceed 100 persons at any one time. CCTV cameras are used in the top bar, lounge bar and alfresco area.

**5. Juveniles**

Juveniles will be permitted on the hotel premises when in the company of a responsible adult, parent or guardian. Any person who appears under the age of 25 will be asked for acceptable photographic identification as proof of age. The hotel has a 'No ID = NO ENTRY' policy.

To verify age, a four step identification check will be used as follows;

- Request primary identification
- Request secondary identification
- Request a sample signature
- Record in the ID register

Acceptable forms of identification are;

- Current Australian Drivers Licence (with photo)
- Current Passport
- Current WA Learners Permit (with photo)
- WA Proof of Identity Card or State equivalent
- Photo ID Card

If age cannot be verified, service will be refused and the patron will be requested to leave the hotel premises.

**6. Intoxicated Patrons**

The Albany Hotel Management Plan is in place to primarily avoid the intoxication of patrons and to effectively deal with patrons who may become intoxicated and behave in an inappropriate manner.

Responsible service of alcohol practices will be adhered to. Patrons who appear to be under the influence of drugs, presenting in an intoxicated manner or behaving in an inappropriate, anti-social manner will be refused service and requested to leave the premises immediately. Police will be called if a patron refuses to leave the premises as requested.



Albany Hotel staff will be vigilant in identifying signs of a patron's level of intoxication. If a patron's speech is slurred, they are excessively loud, their balance or coordination is noticeably impaired, their behaviour is anti-social or aggressive and/or it is reasonable in the circumstances for staff to believe the patron to be intoxicated, the patron will be refused service and requested to leave the hotel premises. Staff will assist the patron by offering to call a taxi if required.

A person's medical condition will be taken into consideration by staff in determining a person's level of intoxication.

When assessing a patron's level of intoxication, staff will make an assessment based on;

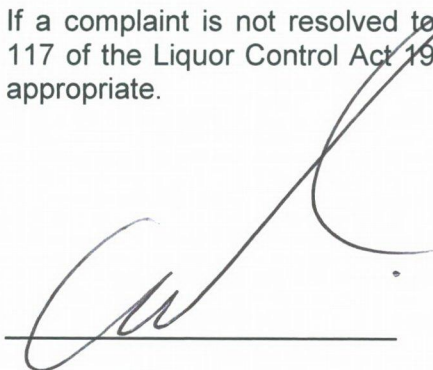
- The type of alcoholic beverages consumed and the alcohol content
- The volume of alcoholic beverages consumed within a certain timeframe
- The patrons previous history
- If food has been consumed
- The physical condition of the patron, and
- In consultation with other hotel staff

#### **7. Complaints**

All complaints will be handled by the Licensee or in the absence of the Licensee, the Duty Manager. Management will undertake to handle all complaints in a timely and appropriate manner and try to resolve the complaint to the satisfaction of all parties involved.

Management commits to using complaint resolution practices to resolve complaints at a local level before the need to escalate and lodge a complaint with the Director Racing, Gaming and Liquor, The Police or the City Council.

If a complaint is not resolved to the satisfaction of the complainant, under Section 117 of the Liquor Control Act 1988 (the Act), the complaint can be lodged as deemed appropriate.



Neville Walton  
Licensee

## Refusal of Service Procedure

### **Move-On Notice**

Patrons exhibiting signs of intoxication will be refused service and a verbal 'move- on' notice issued. The patron will be expected to leave the hotel premises immediately.

Staff will assist patrons by calling a taxi on their behalf if required.

Police will be called if a patron becomes aggressive and/or refuses to leave the premises.

It is the responsibility of the staff member issuing the 'move- on' notice to alert the approved manager and other bar staff.

Move-on notices will be recorded in an Incident Register.

Management reserves the right to refuse entry to patrons who are repeat offenders, regardless of their level of intoxication.

### **Slow Down Warning**

Staff will monitor patrons exhibiting early signs of intoxication.

Patrons will be engaged in conversation to assist the staff member to make an assessment as to the level of intoxication.

Staff will advise a patron if they are considered to be exhibiting early signs of intoxication and a slow- down warning will be provided.

If a 'slow-down' warning is given, water will be offered to patrons to prevent further intoxication. Lower level alcoholic beverages will be offered as an alternative to high level alcoholic beverages.

Staff will suggest the patron consider consuming food and the food menu will be provided.

It is the responsibility of the staff member issuing a slow-down warning to advise other bar staff.

Patrons on a slow-down warning will be closely monitored by all bar staff.

Patrons who comply with a 'slow-down' warning and do not exhibit signs of further intoxication will continue to be served alcoholic beverages.

Patrons who do not comply with a slow-down warning and exhibit further signs of intoxication will be given a 'move-on' notice.

21<sup>st</sup> September 2017

To Whom It May Concern

As a Business, located nearby to Albany Hotel, I have no objection to Mr Neville Walton, As Licensee of the Albany Hotel, gaining a license to responsibly serve alcohol (without a meal) in his outside Alfresco area in the York Street precinct.

Yours sincerely



Mr Doug Pearson

**PRINCIPAL – PROFESSIONALS ARTHUR JOHNSTON SNOWBALL**

14<sup>th</sup> September 2017

City Of Albany  
Manager Building Health & Compliance  
102 North Road  
Yakamia WA 6330

Dear Sir,

**RE: Albany Hotel - Liquor Licence Application - Alfresco area without a meal**

As a neighbouring business to the Albany Hotel at 244 York Street, we have NO objection to the Albany Hotel being licenced to have the consumption of liquor in the alfresco area at the front of the hotel without a meal being supplied.

We have not had any issues of ant-social behaviour occurring in the area or any adverse effect from alcohol consumption at the hotel, on our business.

We fully support this initiative and see it as an enhancement to making the central business district more vibrant.

Regards,

  
Jeremy Stewart  
Director

Cooloolie Pty Ltd

ABN: 91 092 403 775  
240 York St Albany. WA 6330  
Ph: 08 98428044  
Fax: 08 98421136  
Email: books@paperbarks.com.au



---

City of Albany  
Manager Building  
Health & Compliance  
102 North Rd  
Yakamia WA 6330

19<sup>TH</sup> September 2017

Dear Sir,

RE: Albany Hotel Liquor License Application for Alfresco area without a meal.

We support the Albany Hotel's lodgment of the above application for consumption of Liquor without the requirement of a meal being incorporated in the existing Alfresco Area.

We feel this will enhance the vibrancy of upper York St and the CBD, assisting with the focus on the Town Square area and assist with offerings to support the revitalized Visitors Centre.

Of recent times we have not had issues with anti-social behavior or adverse affects from alcohol consumption at the premises on our business.

If you would like any clarification please feel free to contact me on the details below.

We would like to note due to the impending sale of our business this is explicitly Cooloolie Pty Ltd's view and not that of the purchasing entity.

Kind regards,

Lockie Cameron  
0429985515  
Director  
Cooloolie Pty Ltd

OPSM Albany  
238 York St  
Albany WA 6330  
Telephone: 08 9842 3356  
Facsimile: 08 9842 3358  
ABN: 44 166 100 545

City of Albany  
Manager Building, Health and Compliance,  
102 North Road. Yakamia WA 6330

21/9/2017

Dear Sir,

**Re Albany Hotel - Liquor Licence Application - Alfresco area without a meal**

As a neighbouring business to the Albany Hotel at 244 York Street, we have NO objection to the Albany Hotel being licenced to have the consumption of liquor in the alfresco area at the front of the hotel without a meal being supplied.

We have not had any issues of anti-social behaviour occurring in the area or any adverse effect from alcohol consumption at the hotel, on our business.

We fully support this initiative and see it as an enhancement to making the central business district more vibrant.

Regards



Brian McNamee (Store Manager)

AGENDA ITEM DIS050 REFERS TO



WESTERN AUSTRALIA POLICE

Great Southern District Liquor Enforcement

Albany Police Station  
210 Stirling Terrace, Albany  
WESTERN AUSTRALIA 6330  
Telephone: (08) 98929329  
Facsimile: (08) 98929350

Your ref:  
Our ref:  
Enquiries: Sgt Michael Russell Liquor Enforcement Supervisor



City of Albany  
Att: Mr Scott REITSEMA  
102 North Road  
YAKAMIA WA 6330

City of Albany Records  
Doc No IAP17275686  
File CS LIC 5  
Date 21 SEP 2017  
Officer MBHC, MPLIS

Attach  
Box  
Vol  
Box+Vol

Subject: Albany Hotel

Dear Scott

I am aware of an application by Mr Neville WALTON who is the General Manager of the Albany Hotel to submit a proposal to council involving changes to his liquor licence.

He and I has been involved in discussions regarding the alfresco area at the front of the hotel which as you are aware forms part of York Street pedestrian walk way.

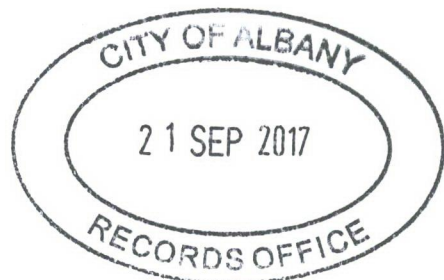
It is his application to make this alfresco area a licensed area only where patrons can consume liquor without the need to purchase a meal. At present only patrons of the hotel who purchase a meal can consume liquor in this alfresco area.

I do not support this proposal but in saying that I do not object to it. Albany Hotel is not a licensed premises that police attend on a regular basis to deal with violent or anti-social activity.

Kind regards

MICHAEL RUSSELL  
SGT 9824  
GREAT SOUTHERN LIQUOR ENFORCEMENT

15 SEPTEMBER 2017



## Beach Closure Policy & Procedure

### Objective

The purpose of this policy is to:

- Provide direction for responding to shark attacks and shark sightings, as well as the broader approach to safety warnings and information provided to the public.
- Guide the administration of the City of Albany Local Government Property Local Law 2011, under which a sign may be erected to regulate, prohibit or restrict specific activities on the beach or in the water and the giving of directions to swimmers to leave the water if a shark is suspected of being in the vicinity of the beach.
- Provide a manageable response, while also giving the public the option of making an informed decision about personal safety with regards to entering the water after a confirmed shark sighting / attack.

### Policy Statement

The City of Albany is committed to providing a safe and welcoming place for residents and visitors.

The City's actions will be guided by the following considerations:

- Warning the public and closing beaches is a strategy to reduce the likelihood of shark human encounters however complete protection from sharks can never be guaranteed.
- Sharks are very mobile and are capable of travelling large distances in a short period of time.
- Authorised Persons should access credible information to inform response strategies – primarily from Water Police (9442 8600).

### Scope

This policy applies to beach areas under the care, control and management of the City, excluding privately owned land and land in National Parks.

### Legislative Context

Compliance with the:

- *Local Government Act 1995*, section 2.7(2)(b) Council determines local government policies; and
- *Local Government Property Local Law 2011, Part 5 – Matters Relating to Particular Local Government Property, Division 2 – Beaches*, Clause 5.4 Powers of authorised persons or surf life saving club members.

### Responsibility, Review Position and Date

This policy and procedure must be reviewed every two years.

Responsibility for the implementation of this policy rests with the Chief Executive Officer and Executive Management Team and is to inform all strategic and plans of the City.

### Associated Documents

The following procedures, references, guidelines compliment this policy:

- City of Albany Ranger Procedure – Beach Closures (attached)



### Definitions

Key terms and acronyms used in the policy, and their definitions:

- **Authorised Person** means a person authorised by the local government under section 9.10 of the Local Government Act for the purpose of administering the City of Albany local laws.
- **District** means the district of the local government.
- **SLSWA** means Surf Life Saving Western Australia.
- **Patrolled Beach** means a beach that has a SLSWA beach safety and surveillance service in operation.
- **Confirmed Shark Sighting** means a shark sighting reported to the City by the WA Government Shark Monitoring Network.

## PROCEDURE – BEACH CLOSURES

### 1. Objective

The following procedure provides guidelines for beach closures in response to shark sightings and shark attacks at City of Albany managed beaches.

Actions taken will be dependent on jurisdiction and available resources.

### 2. Scope

This procedure applies to authorised persons appointed by the local government under section 9.10 of the *Local Government Act 1995* to perform any of the functions of an authorised person under the Local Government Property Local Law 2011.

### 3. Legislative Context

Compliance with the City of Albany Beach Closure Policy position.

### 4. Responsibility, Review Position and Date

This procedure must be reviewed every two years.

Responsibility for the implementation of this procedure rests with the Executive Director Development Services.

### 5. Associated Documents

The following procedures, references, guidelines compliment this policy:

- City of Albany Beach Closure Policy
- Surf Life Saving WA Shark Incident Management Protocol

### 6. Definitions

Key terms and acronyms used in the procedure:

- **Authorised Person** means a person authorised by the local government under section 9.10 of the Local Government Act for the purpose of administering the City of Albany local laws.
- **District** means the district of the local government.
- **SLSWA** means Surf Life Saving Western Australia.
- **Patrolled Beach** means a beach that has a SLSWA beach safety and surveillance service in operation.
- **Confirmed Shark Sighting** means a shark sighting reported to the City by the WA Government Shark Monitoring Network.

## 7. Shark Alerts

*All shark sightings are to be reported to Water Police on 9442 8600.*

Shark sightings reported to Water Police, or where a tagged shark activates a receiver, an automatic SMS message alert is triggered. Authorised persons will receive these alert messages to their mobile phones. The messages contain information regarding location of the shark, however the species or size may not be identified in the message.

This information is also posted on the SharkSmart website at [www.sharksmart.com.au](http://www.sharksmart.com.au). Beach users should be encouraged to check this website before making a decision about water use.

## 8. Shark Response Criteria

The City will mobilise Authorised Persons to respond to a confirmed shark sighting where it meets the following criteria:

- **Tagged shark:** Two or more activations of receiver within one hour;
- **Department of Fisheries Notification:** Confirmed sighting of a 3 metres or greater in length or 2 or more sharks 2-3 metres in length;
- **Location:** Within 1km of shore of a category 1 beach, or within 500m of shore of a category 2 beach.

## 9. Beach Categories

### Category 1

Patrolled beaches. These are limited to the following:

- Middleton Beach (when patrolled by Surf Life Saving); and
- Ellen Cove (Swimming Enclosure).

### Category 2

Non-patrolled beaches located on the shores of King George Sound which are managed by the City of Albany. It excludes any beaches on land managed by the Department of Biodiversity, Conservation & Attractions. The following beaches are included:

- Emu Point;
- Emu Beach;
- Whaler's Cove (Frenchman Bay); and
- Goode Beach.

### Category 3

Not patrolled. No amenities provided.

- All other beaches within the City of Albany not identified as a category 1 or category 2 beach.

## 10. Response – Confirmed Shark Sightings

### Category 1 Response:

- Erect “Sharks. Beach Closed” signage at pre-identified beach access points (refer map in appendix 1).
- Alert beach users where possible.
- The beach will be closed for a minimum of one hour.
- Beach may be re-opened 1 hour after the last confirmed sighting.
- Surf Life Saving life guards will operationally respond to shark sightings on patrolled beaches as per current Surf Life Saving WA Shark Incident Management protocols.

### Category 2 Response:

- Erect “Caution Recent Shark Activity in This Area” signage at pre-identified beach access points (refer map in appendix 2).
- Alert beach users where possible.
- Warning signs will remain in place for a minimum of two hours from the time of reported sighting, not from the time of arrival at site.
- If the sighting occurs at dusk, or Authorised Persons are responding to other priority matters, warning signs will stay in place for the remainder of that day, to be removed the following day.

### Category 3 Response

- No action will be taken by Authorised Officers.
- Permanent signage may be considered to alert beach goers that this is a non-patrolled beach and that sharks frequent the waters of the south coast.

## 11. Response – Confirmed Shark Attack

### Category 1 Response

- Surf Life Saving life guards will operationally respond to shark sightings on patrolled beaches as per current Surf Life Saving WA Shark Incident Management protocols.
- An Authorised Person will erect “Sharks. Beach Closed” signage at appropriate locations (see appendix 1)
- In consultation with WA Police and Department of Fisheries, the beach may either be re- opened by an Authorised Person the following morning, or remain closed for another 24 hours.
- Where resources allow, an Authorised Person may walk the relevant beach area to notify beach goers of the potential danger.

### Category 2 and 3 Response

- An Authorised Person will erect “Sharks. Beach Closed” signage at appropriate locations (key car parks and entry points)
- Where resources allow, an Authorised Person may walk the relevant beach area to notify beach goers of the potential danger.
- In consultation with WA Police and Department of Fisheries, the beach may either be re- opened by an Authorised Person the following morning, or remain closed for another 24 hours.

## AGENDA ITEM DIS051 REFERS TO

### 12. Roles & Responsibilities

- The City will support other agencies such as the Department of Fisheries, Department of Parks and Wildlife, WA Police, Surf Life Saving WA and other local government authorities to respond to shark threat within their jurisdictions subject to resource availability.
- WA Police is the hazard management authority for shark fatality on behalf of the coroner. The City will assist with beach closures, media coordination, as well as community recovery initiatives where relevant.
- Department of Fisheries is responsible for any actions related to the attempted capture and or destruction of a potentially dangerous shark(s).
- The Department for Parks and Wildlife is responsible for shark response protocols associated with beaches / coastline under its jurisdiction.
- The Department for Child Protection & Family Support is available to provide referrals to counselling services for impacted community members where required.
- In the event of a shark related fatality, a debriefing will be organised by the City post event, inclusive of response and support agencies, as well as the public (where relevant), to review and refine response protocols / areas of improvement.

### 13. Prioritisation of response activities

- Where priority activities or other resource constraints divert City resources from dealing with immediate shark matters, secondary support resources may be activated as soon as possible to assist from the following:
  - Other on-duty City Rangers / other Authorised Persons, other City staff.
  - WA Police and other Emergency Service agencies (where relevant)
  - Neighbouring Local Governments.




### 14. Communications

- The City will promote to the public relevant information sources to assist education, awareness raising and informed personal decision making.
  - Report Shark Sightings to Water Police on 9442 8600
  - <http://twitter.com/SLSWA> - Surf Life Saving WA Twitter
  - <http://www.sharksmart.com.au> – Department of Fisheries information portal.
- City of Albany website / media releases
- The City may consider installing permanent static signs to notify the public of the potential risk posed by sharks.
- Permanent signage may contain relevant information provided by the Department of Fisheries and Surf Life Saving WA outlining safer water use practices / considerations.

AGENDA ITEM DIS051 REFERS TO




Appendix 1 – Middleton Beach & Ellen Cove



|   |   |   |
|---|---|---|
|  | <p>Flagged Bunting across access tracks.</p>                          |  |
|  | <p>Beach Closed" sign attached to star picket or other structure.</p> |   |

Appendix 2 – Emu Point



|   |  |   |
|---|--|---|
|  | <p>Flagged Bunting across access tracks.<br/>(Approximately 250m in length attached to star picket posts, sufficient to hold bunting.)</p> |  |
|  | <p>“Shark Sighted in area, swim at own risk” sign attached to star picket or other structure.</p>  |   |

## AGENDA ITEM DIS051 REFERS TO

| <b>Document Approval</b>  |  |   |                       |
|---|--|---|-----------------------|
| <b>Document Development Officer:</b>  |  | <b>Document Owner:</b> <i>(Member of EMT)</i>   |                       |
| Manager Governance & Risk (MGR)<br>Manager Ranger & Emergency Services (MRES) |  | Executive Director Works & Services   |                       |
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DOG ACT 1976  
LOCAL GOVERNMENT ACT 1995

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# **CITY OF ALBANY**

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## **DOG LOCAL LAW 2017**

**DOG ACT 1976**  
**LOCAL GOVERNMENT ACT 1995**  
 CITY OF ALBANY  
**DOG LOCAL LAW 2017**  
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**DOG ACT 1976  
LOCAL GOVERNMENT ACT 1995**

CITY OF ALBANY

**DOG LOCAL LAW 2017**

Under the powers conferred on it by the *Dog Act 1976* and the *Local Government Act 1995* and under all other enabling powers, the Council of the City of Albany resolved on [.....] to make the following local law.

**Part 1 - PRELIMINARY**

**1.1 Short title**

This is the *City of Albany Dog Local Law 2017*.

**1.2 Commencement**

This local law commences 14 days after the day on which it is published in the *Government Gazette*.

**1.3 Application**

This local law applies throughout the district.

**1.4 Repeal**

Parts 2, 3 and Schedule 2 and 3 of the *City of Albany Animals Local Laws 2001*, published in the *Government Gazette* on 15 January 2002, is repealed.

**1.5 Meaning of terms used in this local law**

(1) In this local law —

*Act* means the *Dog Act 1976*;

*application* means the completed form lodged by an applicant as required by this local law;

*applicant* means the owner or occupier of premises who makes an application for a permit under this local law;

*assistance dogs* has the meaning given in the Act.

*authorised person* means a person authorised by the local government to perform all or any of the functions conferred on an authorised person under this local law;

*CEO* means the Chief Executive Officer of the local government;

*Council* means the Council of the City of Albany;

*dangerous dog* has the meaning given to it in the Act

*district* means the district of the local government;

*dog management facility* has the meaning give to it in section 3(1) of the Act.

*kennel establishment* means any structure or land used for the boarding or breeding of dogs;

*local government* means the *City of Albany*;

*local planning scheme* means a local planning scheme made by the local government under the *Planning and Development Act 2005* which applies throughout the whole or a part of the district;

*LG Act* means the *Local Government Act 1995*;

*lot* has the meaning given to it in the *Planning and Development Act 2005*;

*nuisance* – has the meaning given under section 38 of the Act.

*Planning Approval* means an approval issued under the local planning scheme as amended from time to time;

*public place* has the same meaning given in the Act.

*premises* has the same meaning given in the Act.

*Regulations* means the *Dog Regulations 2013*;

*Schedule* means a schedule in this local law;

*seized* means a dog seized by an authorised person, but not having been placed in a pound;

*thoroughfare* has the meaning given to it in section 1.4 of the LG Act; and

*valid* in relation to a licence issued under this local law means current and for which all the associated fees have been paid in full.

## Part 2 - IMPOUNDING OF DOGS

### 2.1 Charges and costs

The following are to be imposed and determined by the local government under sections 6.16 to 6.19 of the LG Act –

- (a) the charges to be levied under section 29(4) of the Act relating to the seizure and impounding of a dog;
- (b) the additional fee payable under section 29(4) of the Act where a dog is released at a time or on a day other than those determined under clause 2.2;
- (c) the cost of implantation of a microchip referred to in section 30A(3) of the Act; and
- (d) the costs of the destruction and the disposal of a dog referred to in section 29(15) of the Act.

## Part 3 - REQUIREMENTS AND LIMITATIONS ON THE KEEPING OF DOGS

### 3.1 Dogs to be confined

- (1) An occupier of premises on which a dog is kept must —
  - (a) cause a portion of the premises on which the dog is kept to be fenced in a manner capable of confining the dog;
  - (b) ensure the fence used to confine the dog and every gate or door in the fence is of a type, height and construction which having regard to the breed, age, size and physical condition of the dog is capable of preventing the dog at all times from passing over, under or through it;
  - (c) ensure that every gate or door in the fence is kept closed at all times when the dog is on the premises (unless the gate is temporarily opened in a manner that ensures that the dog remains confined) and is fitted with an effective operational latch or other means of fastening it;
  - (d) maintain the fence and all gates and doors in the fence in good order and condition; and
  - (e) where no part of the premises consists of open space, yard or garden or there is no open space or garden or yard of which the occupier has exclusive use or occupation, ensure that other means exist on the premises (other than the tethering of the dog) for effectively confining the dog within the premises.
- (2) An occupier who fails to comply with subclause (1) commits an offence.

- (3) Notwithstanding subclause (1) and (2), the confinement of dangerous dogs is dealt with in the Act and Regulations

### 3.2 Limitation on the number of dogs

- (1) This clause does not apply to dangerous dogs (declared) or dangerous dogs (restricted breeds).
- (2) This clause does not apply to premises which have been—
- (a) licenced under Part 4 as an approved kennel establishment; or
  - (b) granted an exemption under section 26 (3) of the Act.
- (3) For the purpose of section 26 (4) of the Act, a person shall not, without a permit, keep or permit to be kept —
- (a) on premises situated on a lot having an area of 4 hectares or more – 6 dogs over the ages of 3 months and the young of those dogs under that age; or
  - (b) on premises situated on any other lot – 2 dogs over the age of 3 months and the young of those dogs under that age.

## Part 4 - APPROVED KENNEL ESTABLISHMENTS

### 4.1 Interpretation

In this Part and in Schedule 2—

***adjoining land*** means land or premises which have a common boundary or portion of a boundary with a lot or is separated from that lot by a right-of-way, pedestrian access way, access leg of a battle-axe lot or the equivalent not more than 6 metres in width;

***fit and proper person*** means a person who does not have an unspent conviction under the *Animal Welfare Act 2002* or a history of contravention of the *Dog Act 1976*;

***licence*** means a licence to keep an approved kennel establishment on premises;

***premises***, in addition to the meaning given to it in section 3 of Act, means the premises described in the application for a licence; and

***transferee*** means a person who applies for the transfer of a licence to him or her under clause 4.14 of this local law.

### 4.2 Application for licence for approved kennel establishment

An application for a licence must be made in the form of that in Schedule 1, and must be lodged with the local government together with—

- (a) plans and specifications of the kennel establishment, including a site plan;
- (b) copies of the notices to be given under clause 4.3;
- (c) written evidence that either the applicant or another person who will have the charge of the dogs, will reside on the premises or, in the opinion of the local government or CEO, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare;
- (d) a written acknowledgment that the applicant has read and agrees to comply with any code of practice relating to the keeping of dogs adopted or nominated by the local government;
- (e) the fee for the application for a licence referred to in clause 4.10 (1) of this local law; and
- (f) a copy of a Planning Approval issued by the local government under a local planning scheme.

### 4.3 Notice of proposed use

- (1) An applicant for a licence must give notice of the proposed use of the premises as an approved kennel establishment after the application for a licence has been lodged—

- (a) once in a newspaper circulating in the district; and
  - (b) to the owner and occupiers of any premises adjoining the premises.
- (2) The notices in subclause (1) must specify that—
- (a) any written submissions as to the proposed use are to be lodged with the CEO within 14 days of the date the notice is given; and
  - (b) the application and plans and specifications may be inspected at the offices of the local government.
- (3) Where—
- (a) the notices given under sub clause (1) do not clearly identify the premises; or
  - (b) a notice given under subclause (1) (a) is of a size or in a location in the newspaper which, in the opinion of the CEO, would fail to serve the purpose of notifying persons of the proposed use of the premises, then the local government may refuse to determine the application for a licence until the notices or notice, as the case may be, is given in accordance with its directions.

#### **4.4 Exemption from notice requirements**

Where an application for a licence is made in respect of premises on which an approved kennel establishment is either a—

- (a) permitted use; or
- (b) use which the local government may approve subject to compliance with specified notice requirements,

under a local planning scheme, then the requirements of clauses 4.2(b), 4.3 and 4.5(a) do not apply in respect of the application for a licence.

#### **4.5 When application can be determined**

An application for a licence is not to be determined by the local government until —

- (a) the applicant has complied with clause 4.2;
- (b) the applicant submits proof that the notices referred to in clause 4.3 (1) have been given in accordance with that clause; and
- (c) the local government has considered any written submissions received within the time specified in clause 4.3 (2) (a) on the proposed use of the premises.

#### **4.6 Determination of application**

In determining an application for a licence, the local government is to have regard to—

- (a) the matters referred to in clause 4.8;
- (b) any written submissions received within the time specified in clause 4.3 (2) (a) on the proposed use of the premises;
- (c) any economic or social benefits which may be derived by any person in the district if the application for a licence is approved;
- (d) the effect which the kennel establishment may have on the environment or amenity of the neighbourhood;
- (e) the extent to which the kennel establishment may create a nuisance for the owners and occupiers of adjoining premises; and
- (f) whether or not the imposition of and compliance with appropriate conditions of a licence will mitigate any adverse effects of the approved kennel establishment identified in the preceding paragraphs.

#### **4.7 Where application cannot be approved**

The local government cannot approve an application for a licence where—

- (a) an approved kennel establishment cannot be permitted by the local government on the premises under a local planning scheme; or
- (b) an applicant for a licence or another person who will have the charge of the dogs will not reside on the premises, or in the opinion of the local government, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare; or
- (c) if the applicant is not a fit and proper person to keep an approved kennel establishment.

#### **4.8 Conditions of approval**

- (1) The local government may approve an application for a licence subject to the conditions contained in Schedule 2 and to such other conditions as the local government considers appropriate.
- (2) In respect of a particular application for a licence, the local government may vary any of the conditions contained in Schedule 2.

#### **4.9 Compliance with conditions of approval**

- (1) A licensee who does not comply with the conditions of a licence commits an offence.
- (2) Notwithstanding clause 6.8, the penalty for an offence under this clause is \$5000 and where the offence is of a continuing nature, an additional daily penalty of \$100.

#### **4.10 Fees**

- (1) On lodging an application for a licence, the applicant is to pay a fee to the local government.
- (2) On the issue or renewal of a licence, the licensee is to pay a fee to the local government.
- (3) On lodging an application for the transfer of a valid licence, the transferee is to pay a fee to the local government.
- (4) The fees referred to in subclauses (1) to (3) are to be imposed and determined by the local government under sections 6.16 to 6.19 of the LG Act.

#### **4.11 Form of licence**

The licence is to be in the form determined by the local government and is to be issued to the licensee.

#### **4.12 Period of licence**

- (1) The period of effect of a licence is set out in section 27 (5) of the Act.
- (2) A licence is to be renewed if the fee referred to in clause 4.9 (2) is paid to the local government prior to the expiry of the licence.
- (3) On the renewal of a licence the conditions of the licence at the time of its renewal continue to have effect.

#### **4.13 Variation or cancellation of licence**

- (1) The local government may through a written notice to the licensee vary the conditions of a licence.
- (2) The local government may cancel a licence—
  - (a) on the request of the licensee;
  - (b) following a breach of the Act, the Regulations or this local law; or
  - (c) if the licensee is not a fit and proper person.
- (3) The date a licence is cancelled is to be, in the case of—
  - (a) paragraph (a) of subclause (2), the date requested by the licensee; or
  - (b) paragraphs (b) and (c) of subclause (2), the date determined under section 27 (6) of the Act.

- (4) If a licence is cancelled the fee paid for that licence is not refundable for the term of the licence that has not yet expired.

#### **4.14 Transfer**

- (1) An application for the transfer of a valid licence from the licensee to another person must be—
- (a) made in the form determined by the local government;
  - (b) made by the transferee;
  - (c) made with the written consent of the licensee; and
  - (d) lodged with the local government together with —
    - (i) written evidence that a person will reside at or within reasonably close proximity to the premises the subject of the licence; and
    - (ii) the fee for the application for the transfer of a licence referred to in clause 4.10 (3).
- (2) The local government is not to determine an application for the transfer of a valid licence until the transferee has complied with subclause (1).
- (3) The local government may approve, whether or not subject to such conditions as it considers appropriate, or refuse to approve an application for the transfer of a valid licence.
- (4) Where the local government approves an application for the transfer of a valid licence, then on the date of approval, unless otherwise specified in the notice issued under clause 4.15 (b), the transferee becomes the licensee of the licence for the purposes of this local law.

#### **4.15 Notification**

The local government is to give written notice to—

- (a) an applicant for a licence of the local government's decision on her or his application;
- (b) a transferee of the local government's decision on her or his application for the transfer of a valid licence;
- (c) a licensee of any variation made under clause 4.13(1);
- (d) a licensee when her or his licence is due for renewal and the manner in which it may be renewed;
- (e) a licensee when her or his licence is renewed;
- (f) a licensee of the cancellation of a licence under clause 4.13(2)(a); and
- (g) a licensee of the cancellation of a licence under paragraphs (b) or (c) of clause 4.13(2), which notice is to be given in accordance with section 27(6) of the Act.

#### **4.16 Inspection of kennel**

With the consent of the occupier, an authorised person may inspect an approved kennel establishment at any time.

### **Part 5 - MISCELLANEOUS**

#### **5.1 Offence to excrete**

- (1) A dog must not excrete on—
- (a) any thoroughfare or other public place; or
  - (b) any land which is not a public place without the consent of the occupier.
- (2) Subject to subclause (3), if a dog excretes contrary to subclause (1), every person liable for the control of the dog at that time commits an offence.
- (3) The person liable for the control of the dog does not commit an offence against subclause (2) if any excreta is removed immediately by that person.



## Part 6 - ENFORCEMENT

### 6.1 Interpretation

In this Part—

*infringement* notice means the notice referred to in clause 6.3; and

*notice of withdrawal* means the notice referred to in clause 6.6(1).

### 6.2 Modified penalties

- (1) The offences contained in Schedule 3 are offences in relation to which a modified penalty may be imposed.
- (2) The amount appearing in the fourth column of Schedule 3 directly opposite an offence is the modified penalty payable in respect of that offence if —
  - (a) the dog is not a dangerous dog; or
  - (b) the dog is a dangerous dog, but an amount does not appear in the fourth column directly opposite that offence.
- (3) The amount appearing in the fifth column of Schedule 3 directly opposite an offence is the modified penalty payable in respect of that offence if the dog is a dangerous dog.

### 6.3 Issue of infringement notice

Where an authorised person has reason to believe that a person has committed an offence in respect of which a modified penalty may be imposed, he or she may issue to that person a notice.

### 6.4 Failure to pay modified penalty

Where a person who has received an infringement notice fails to pay the modified penalty within the time specified in the notice, or within such further time as may in any particular case be allowed by the CEO, he or she is deemed to have declined to have the offence dealt with by way of a modified penalty.

### 6.5 Payment of modified penalty

A person who has received an infringement notice may, within the time specified in that notice or within such further time as may in any particular case be allowed by the CEO, send or deliver to the local government the amount of the penalty, with or without a reply as to the circumstances giving rise to the offence, and the local government may appropriate that amount in satisfaction of the penalty and issue an acknowledgment of receipt.

### 6.6 Withdrawal of infringement notice

- (1) Whether or not the modified penalty has been paid, an authorised person may withdraw an infringement notice by sending a notice.
- (2) A person authorised to issue an infringement notice under clause 6.3 cannot sign or send a notice of withdrawal.

### 6.7 Service

An infringement notice or a notice of withdrawal may be served on a person personally, or by leaving it at or posting it to her or his address as ascertained from her or him, or as recorded by the local government under the Act, or as ascertained from inquiries made by the local government.

### 6.8 Penalty

Any person who contravenes any provision of this local law or fails to comply with a notice issued under this local law commits an offence not exceeding \$2,000.

SCHEDULE 1 - APPLICATION FOR A LICENCE FOR AN APPROVED KENNEL ESTABLISHMENT

(clause 4.2)

I/we (full name): ..... of (postal address)

.....  
.....  
.....

(telephone number) .....  
(facsimile number) .....  
(E-mail address) .....

Apply for a licence for an approved kennel establishment at (address of premises)

For (number and breed of dogs)

\* (insert name of person) ..... will be residing at the premises on and from (insert date) .....

\* (insert name of person) ..... will be residing (sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare) at ..... (insert address of residence) on and from ..... (insert date).

Attached are:

- (a) a site plan of the premises showing the location of the kennels and yards and all other buildings and structures and fences;
- (b) plans and specifications of the kennel establishment;
- (c) copy of notice of proposed use to appear in newspaper;
- (d) copy of notice of proposed use to be given to adjoining premises;
- (e) written evidence that a person will reside -
  - (i) at the premises; or
  - (ii) sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare; and
- (f) if the person in item (e) is not the applicant, written evidence that the person is a person in charge of the dogs.

I confirm that I have read and agree to comply with the Code of Practice known as ....., in the keeping of dogs at the proposed kennel establishment.

Signature of applicant ....., Date .....

\*delete where inapplicable. Note: a licence if issued will have effect for a period of 12 months – section 27.5 of the Dog Act.

OFFICE USE ONLY

Application fee paid on: .....  
[insert date].

SCHEDULE 2 - CONDITIONS OF A LICENCE FOR AN APPROVED KENNEL  
ESTABLISHMENT

(clause 4.8(1))

An application for a licence for an approved kennel establishment may be approved subject to the following conditions:

- (a) each kennel, unless it is fully enclosed, must have a yard attached to it;
- (b) each kennel and each yard must be at a distance of not less than -
  - (i) 25m from the front boundary of the premises and 5m from any other boundary of the premises;
  - (ii) 10m from any dwelling; and
  - (iii) 25m from any church (place of worship), school room, hall, factory, dairy or premises where food is manufactured, prepared, packed or stored for human consumption;
- (c) each yard for a kennel must be kept securely fenced with a fence constructed of link mesh or netting or other materials approved by the local government;
- (d) the minimum floor area for each kennel must be calculated at 2.5 times the length of the breed of dog (when it is fully grown), squared, times the number of dogs to be housed in the kennel and the length of the dog is to be determined by measuring from the base of the tail to the front of its shoulder;
- (e) the floor area of the yard attached to any kennel or group of kennels must be at least twice the floor area of the kennel or group of kennels to which it is attached;
- (f) the upper surface of the kennel floor must be -
  - (i) at least 100mm above the surface of the surrounding ground;
  - (ii) smooth so as to facilitate cleaning;
  - (iii) rigid;
  - (iv) durable;
  - (v) slip resistant;
  - (vi) resistant to corrosion;
  - (vii) non-toxic;
  - (viii) impervious;
  - (ix) free from cracks, crevices and other defects; and
  - (x) finished to a surface having a fall of not less than 1 in 100 to a spoon drain which in turn must lead to a suitably sized diameter sewerage pipe which must be properly laid, ventilated and trapped in accordance with the health requirements of the local government;
- (g) all kennel floor washings must pass through the drain in item (f)(x) and must be piped to approved apparatus for the treatment of sewage in accordance with the health requirements of the local government;
- (h) the kennel floor must have a durable upstand rising 75mm above the floor level from the junction of the floor and external and internal walls, or internal walls must be so constructed as to have a minimum clearance of 50mm from the underside of the bottom plate to the floor;
- (i) where a yard is to be floored, the floor must be constructed in the same manner as the floor of any kennel;
- (j) from the floor, the lowest internal height of a kennel must be, whichever is the lesser of -
  - (i) 2m; or
  - (ii) 4 times the height of the breed of dog in the kennel, when it is fully grown, measured from the floor to the uppermost tip of its shoulders while in a stationary upright position;
- (k) the walls of each kennel must be constructed of concrete, brick, stone or framing sheeted internally and externally with good quality new zincalume or new pre-finished colour coated steel sheeting or new fibrous cement sheeting or other durable material approved by the local government;
- (l) all external surfaces of each kennel must be kept in good condition;
- (m) the roof of each kennel must be constructed of impervious material;
- (n) all kennels and yards and drinking vessels must be maintained in a clean condition and must be cleaned and disinfected when so ordered by an authorised person;
- (o) all refuse, faeces and food waste must be disposed of daily into the approved apparatus for the treatment of sewage;
- (p) noise, odours, fleas, flies and other vectors of disease must be effectively controlled;
- (q) suitable water must be available at the kennel via a properly supported standpipe and tap; and
- (r) the licensee or the person nominated in the application for a licence, must, in accordance with the application for the licence, continue to reside -
  - (i) at the premises; or
  - (ii) in the opinion of the local government, sufficiently close to the premises so as to control the dogs, and to ensure their health and welfare.

SCHEDULE 3— OFFENCES IN RESPECT OF WHICH MODIFIED PENALTY APPLIES

(clause 7.2)

| Item | Clause | Nature of offence   | Modified penalty \$ | Dangerous Dog Modified Penalty \$ |
|------|--------|---|---------------------|-----------------------------------|
| 1    | 4.9    | Failing to comply with the conditions of a kennel establishment licence | 200                 |                                   |
| 2    | 5.1    | Failing to remove dog excrement.  | 100                 | 100                               |

Dated this: ..... day of ..... 2017.

The Common Seal of the )  
*City of Albany* was affixed )  
 by the authority of the )  
 resolution of Council )  
 in the presence of: )

.....  
 Dennis Wellington, Mayor

.....  
 Andrew Sharpe, Chief Executive Officer

| PROPOSED <b>CITY OF ALBANY</b> DOG LOCAL LAW 2017  | REMARKS / ACTION TAKEN |
|--|------------------------|
| <p style="text-align: center;"><b>DOG ACT 1976</b><br/><b>LOCAL GOVERNMENT ACT 1995</b><br/><i>City of Albany</i><br/><b>DOG LOCAL LAW 2017</b></p> <p>Under the powers conferred by the <i>Dog Act 1976</i>, the <i>Local Government Act 1995</i> and under all other powers enabling it, the Council of the <i>City of Albany</i> resolved on [insert date] to make the following local law.</p> <p style="text-align: center;"><b>PART 1 – PRELIMINARY</b></p> <p><b>1.1 Short title</b><br/>This is the <i>City of Albany Dog Local Law 2017</i>.</p> <p><b>1.2 Commencement</b><br/>This local law commences 14 days after the day on which it is published in the <i>Government Gazette</i>.</p> <p><b>1.3 Application</b><br/>This local law applies throughout the district.</p> |                        |
| <p><b>1.4 Repeal</b><br/>Parts 2, 3 and Schedule 2 and 3 of the <i>City of Albany Animals Local Law 2001</i>, published in the <i>Government Gazette</i> on 15 January 2002, is repealed.</p>  |                        |
| <p><b>1.5 Meaning of terms used in this local law</b><br/>(1) In this local law —</p>  |                        |
| <p><b>Act</b> means the <i>Dog Act 1976</i>;</p>   |                        |
| <p><b>application</b> means the completed form lodged by an applicant as required by this local law;</p>   |                        |
| <p><b>applicant</b> means the owner or occupier of premises who makes an application for a permit under this local law;</p>  |                        |
| <p><b>assistance dogs</b> has the meaning given to it in the Act.</p>  |                        |
| <p><b>authorised person</b> means a person authorised by the local government to perform all or any of the functions conferred on an authorised person under this local law;</p>   |                        |
| <p><b>CEO</b> means the Chief Executive Officer of the local government;</p>   |                        |
| <p><b>Council</b> means the Council of the <i>City of Albany</i>;</p>  |                        |
| <p><b>dangerous dog</b> has the meaning given to it in the Act;</p>  |                        |
| <p><b>district</b> means the district of the local government;</p>   |                        |
| <p><b>dog management facility</b> has the meaning give to it in section 3(1) of the Act. <del>For the purpose of this local law, Pound means a dog management facility under the Act.</del></p>  |                        |
| <p><b>kennel establishment</b> means any structure or land used for the boarding or breeding of dogs;</p>  |                        |
| <p><b>local government</b> means the <i>City of Albany</i>;</p>  |                        |
| <p><b>local planning scheme</b> means a local planning scheme made by the local government under the <i>Planning and Development Act 2005</i> which applies throughout the whole or a part of the district;</p>  |                        |
| <p><b>LG Act</b> means the <i>Local Government Act 1995</i>;</p>   |                        |
| <p><b>lot</b> has the meaning given to it in the <i>Planning and Development Act 2005</i>;</p>   |                        |
| <p><b>nuisance means</b>—has the meaning given under section 38 of the Act;</p>  |                        |

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| <b>Planning Approval</b> means an approval issued under the local planning scheme as amended from time to time;   |  |
| <del><b>Prohibited places.</b> Under s.31(2B) of the Act, a local government may, by absolute majority as defined in the Local Government Act 1995 section 1.4, specify a public place, or a class of public place, that is under the care, control or management of the local government to be a place where dogs are prohibited—<br/>(a) at all times; or<br/>(b) at specified times.</del>   |  |
| <b>public place</b> has the same meaning given in the Act.  |  |
| <b>premises</b> has the same meaning given in the Act;  |  |
| <b>Regulations</b> means the <i>Dog Regulations 2013</i> ;  |  |
| <b>Schedule</b> means a schedule in this local law;   |  |
| <b>seized</b> means a dog seized by an authorised person, but not having been placed in a pound;  |  |
| <b>thoroughfare</b> has the meaning given to it in section 1.4 of the LG Act; and   |  |
| <b>valid</b> in relation to a licence issued under this local law means current and for which all the associated fees have been paid in full.   |  |
| <b>PART 2—IMPOUNDING OF DOGS</b>  |  |
| <p><b>2.1 Charges and costs</b><br/>The following are to be imposed and determined by the local government under sections 6.16 to 6.19 of the LG Act –</p> <ul style="list-style-type: none"> <li>(a) the charges to be levied under section 29(4) of the Act relating to the seizure and impounding of a dog;</li> <li>(b) the additional fee payable under section 29(4) of the Act where a dog is released at a time or on a day other than those determined under clause 2.2;</li> <li>(c) the cost of implantation of a microchip referred to in section 30A(3) of the Act; and</li> <li>(d) the costs of the destruction and the disposal of a dog referred to in section 29(15) of the Act.</li> </ul>   |  |
| <b>PART 3—REQUIREMENTS AND LIMITATIONS ON THE KEEPING OF DOGS</b>   |  |
| <p><b>3.1 Dogs to be confined</b></p> <p>(1) An occupier of premises on which a dog is kept must —</p> <ul style="list-style-type: none"> <li>(a) cause a portion of the premises on which the dog is kept to be fenced in a manner capable of confining the dog;</li> <li>(b) ensure the fence used to confine the dog and every gate or door in the fence is of a type, height and construction which having regard to the breed, age, size and physical condition of the dog is capable of preventing the dog at all times from passing over, under or through it;</li> <li>(c) ensure that every gate or door in the fence is kept closed at all times when the dog is on the premises (unless the gate is temporarily opened in a manner that ensures that the dog remains confined) and is fitted with an effective operational latch or other means of fastening it;</li> <li>(d) maintain the fence and all gates and doors in the fence in good order and condition; and</li> <li>(e) where no part of the premises consists of open space, yard or garden or there is no open space or garden or yard of which the occupier has exclusive use or occupation, ensure that other means exist on the premises (other than the tethering of the dog) for effectively confining the dog within the premises.</li> </ul> <p><del>(f) where a dog is a dangerous dog, the enclosure must meet the specifications of s.33GA(2) of the Act.</del></p> <p>(2) An occupier who fails to comply with subclause (1) commits an offence.</p> <p>(3) <i>Notwithstanding subclause (1) and (2), the confinement of dangerous dogs is dealt with in the Act and Regulations.</i></p> | <p>Department’s comments:</p> <p><b>1. Clause 3.1 – Confinement of dangerous dogs</b></p> <p>Section 33GA(2) of the Dog Act provides that a dangerous dog must be confined whenever it is not tethered or leashed and under the direct control of an adult.</p> <p>This section provides for the maximum penalty of \$10,000. Since the penalty is twice the maximum penalty which a local law can impose, local governments are required to enforce the penalty directly rather than via a local law.</p> <p>It is suggested that the City <del>delete paragraph (f)</del> in clause 3.1 and <i>insert the following subclause:</i><br/> <i>(3) Notwithstanding subclause (1) and (2), the confinement of dangerous dogs is dealt with in the Act and Regulations.</i></p> <p>It is also suggested that the City delete the modified penalty for the confinement of dangerous dogs in item 1 of Schedule 3.</p> |

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| <p><b>3.2 Limitation on the number of dogs</b></p> <p>(1) This clause does not apply to dangerous dogs (declared) or dangerous dogs (restricted breeds).</p> <p>(2) This clause does not apply to premises which have been—</p> <p>(a) <b>licence</b>d under Part 4 as an approved kennel establishment; or</p> <p>(b) granted an exemption under section 26(3) of the Act.</p> <p>(3) For the purpose of section 26(4) of the Act, a person shall not, without a permit, keep or permit to be kept —</p> <p>(a) on premises situated on a lot having an <b>area</b> of 4 hectares or more – 6 dogs over the ages of 3 months and the young of those dogs under that age; or</p> <p>(b) on premises situated on any other lot – 2 dogs over the age of 3 months and the young of those dogs under that age.</p>  | <p>Department comment:</p> <p><b>2. Clause 3.2 – Limitation on the number of dogs</b></p> <p>Clause 3.2 provides the limit on the number of dogs that can be kept on premises for the purposes of section 26(4) of the Dog Act.</p> <p>As regulation 33 of the Dog Regulations already provides the modified penalties for the keeping of more than the prescribed number of dogs under section 26(4), it is suggested that the City <b>deletes the modified penalties in item 2 of Schedule 1</b>. The City should enforce the modified penalties under the Dog Regulations directly.</p> |
| <p><b>PART 4—APPROVED KENNEL ESTABLISHMENTS</b></p>  |  |
| <p><b>4.1 Interpretation</b><br/>In this Part and in Schedule 2—</p> <p><b>adjoining land</b> means land or premises which have a common boundary or portion of a boundary with a lot or is separated from that lot by a right-of-way, pedestrian access way, access leg of a battle-axe lot or the equivalent not more than 6 <b>metres</b> in width;</p> <p><b>fit and proper person</b> means a person who does not have an unspent conviction under the <i>Animal Welfare Act 2002</i> or a history of contravention of the <i>Dog Act 1976</i>;</p> <p><b>licence</b> means a <b>licence</b> to keep an approved kennel establishment on premises;</p> <p><b>premises</b>, in addition to the meaning given to it in section 3 of Act, means the premises described in the application for a <b>licence</b>; and</p> <p><b>transferee</b> means a person who applies for the transfer of a <b>licence</b> to him or her under clause 4.14 of this local law.</p>  |  |
| <p><b>4.2 Application for licence for approved kennel establishment</b><br/>An application for a <b>licence</b> must be made in the form of that in Schedule 1, and must be lodged with the <b>local government</b> together with—</p> <p>(a) plans and specifications of the kennel establishment, including a site plan;</p> <p>(b) copies of the notices to be given under clause 4.3;</p> <p>(c) written evidence that either the applicant or another person who will have the charge of the dogs, will reside on the premises or, in the opinion of the local government or CEO, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare;</p> <p>(d) a written acknowledgment that the applicant has read and agrees to comply with any code of practice relating to the keeping of dogs adopted or nominated by the local government;</p> <p>(e) the fee for the application for a <b>licence</b> referred to in clause 4.10(1) of this local law; and</p> <p>(f) a copy of a Planning Approval issued by the local government under a local planning scheme.</p> |  |
| <p><b>4.3 Notice of proposed use</b></p> <p>(1) An applicant for a <b>licence</b> must give notice of the proposed use of the premises as an approved kennel establishment after the application for a <b>licence</b> has been lodged—</p> <p>(a) once in a newspaper circulating in the district; and</p> <p>(b) to the owner and occupiers of any premises adjoining the premises.</p> <p>(2) The notices in subclause (1) must specify that—</p> <p>(a) any written submissions as to the proposed use are to be lodged with the CEO within 14 days of the date the notice is given; and</p> <p>(b) the application and plans and specifications may be inspected at the offices of the local government.</p> <p>(3) Where—</p> <p>(a) the notices given under <b>subclause (1)</b> do not clearly identify the premises; or</p>  |  |

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| <p>(b) a notice given under <b>subclause (1)(a)</b> is of a size or in a location in the newspaper which, in the opinion of the CEO, would fail to serve the purpose of notifying persons of the proposed use of the premises, then the local government may refuse to determine the application for a <b>licence</b> until the notices or notice, as the case may be, is given in accordance with its directions.</p>   |  |
| <p><b>4.4 Exemption from notice requirements</b><br/>Where an application for a licence is made in respect of premises on which an approved kennel establishment is either a—</p> <ul style="list-style-type: none"> <li>(a) permitted use; or</li> <li>(b) use which the local government may approve subject to compliance with specified notice requirements, under a local planning scheme, then the requirements of clauses 4.2(b), 4.3 and 4.5(a) do not apply in respect of the application for a licence.</li> </ul>   |  |
| <p><b>4.5 When application can be determined</b><br/>An application for a <b>licence</b> is not to be determined by the local government until —</p> <ul style="list-style-type: none"> <li>(a) the applicant has complied with clause 4.2;</li> <li>(b) the applicant submits proof that the notices referred to in clause 4.3(1) have been given in accordance with that clause; and</li> <li>(c) the local government has considered any written submissions received within the time specified in clause 4.3(2)(a) on the proposed use of the premises.</li> </ul>   |  |
| <p><b>4.6 Determination of application</b><br/>In determining an application for a <b>licence</b>, the local government is to have regard to—</p> <ul style="list-style-type: none"> <li>(a) the matters referred to in clause 4.8;</li> <li>(b) any written submissions received within the time specified in clause 4.3 (2) (a) on the proposed use of the premises;</li> <li>(c) any economic or social benefits which may be derived by any person in the district if the application for a <b>licence</b> is approved;</li> <li>(d) the effect which the kennel establishment may have on the environment or amenity of the neighbourhood;</li> <li>(e) the extent to which the kennel establishment may create a nuisance for the owners and occupiers of adjoining premises; and</li> <li>(f) whether or not the imposition of and compliance with appropriate conditions of a <b>licence</b> will mitigate any adverse effects of the approved kennel establishment identified in the preceding paragraphs.</li> </ul> |  |
| <p><b>4.7 Where application cannot be approved</b><br/>The local government cannot approve an application for a <b>licence</b> where—</p> <ul style="list-style-type: none"> <li>(a) an approved kennel establishment cannot be permitted by the local government on the premises under a local planning scheme; or</li> <li>(b) an applicant for a <b>licence</b> or another person who will have the charge of the dogs will not reside on the premises, or in the opinion of the local government, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare; or</li> <li>(c) if the applicant is not a fit and proper person to keep an approved kennel establishment.</li> </ul>  |  |
| <p><b>4.8 Conditions of approval</b></p> <ul style="list-style-type: none"> <li>(1) The local government may approve an application for a <b>licence</b> subject to the conditions contained in Schedule 2 and to such other conditions as the local government considers appropriate.</li> <li>(2) In respect of a particular application for a <b>licence</b>, the local government may vary any of the conditions contained in Schedule 2.</li> </ul>   |  |
| <p><b>4.9 Compliance with conditions of approval</b></p> <ul style="list-style-type: none"> <li>(1) A <b>licencee</b> who does not comply with the conditions of a <b>licence</b> commits an offence.</li> <li>(2) <b>Notwithstanding clause 6.8, the penalty for an offence under this clause is \$5000 and where the offence is of a continuing nature, an additional daily penalty of \$100.</b></li> </ul>   | <p>Department comment:</p> <p><b>3. Clause 4.9 – Compliance with conditions of approval</b></p> <p>This clause provides that a person must comply with the conditions of a kennel licence. Under clause 7.8, the local law establishes a penalty of \$2000 and no daily penalty.</p> <p>This penalty is inconsistent with section 27(2) of the <i>Dog Act 1976</i>, which sets a penalty of \$5000 and a daily penalty of \$100.</p> <p>Note: Numbering changed due to deletion of Part 5.</p> |



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|  | <p>Since clause 7.8 establishes a general penalty, it is suggested that the following subclause be added to clause 4.9:</p> <p style="padding-left: 40px;">(2) Notwithstanding clause 7.8, the penalty for an offence under this clause is \$5000 and where the offence is of a continuing nature, an additional daily penalty of \$100.</p> <p>Alternatively, the City can delete the clause entirely and enforce the penalties in the Act directly. If the City chooses to delete the clause, the modified penalty in item 3 of Schedule 3 should also be deleted.</p> |
| <p><b>4.10 Fees</b></p> <p>(1) On lodging an application for a <b>licence</b>, the applicant is to pay a fee to the local government.</p> <p>(2) On the issue or renewal of a <b>licence</b>, the <b>licencee</b> is to pay a fee to the local government.</p> <p>(3) On lodging an application for the transfer of a valid <b>licence</b>, the transferee is to pay a fee to the local government.</p> <p>(4) The fees referred to in <b>subclauses</b> (1) to (3) are to be imposed and determined by the local government under sections 6.16 to 6.19 of the LG Act.</p>  |  |
| <p><b>4.11 Form of licence</b></p> <p>The <b>licence</b> is to be in the form determined by the local government and is to be issued to the <b>licencee</b>.</p>   |  |
| <p><b>4.12 Period of licence</b></p> <p>(1) The period of effect of a <b>licence</b> is set out in section 27(5) of the Act.</p> <p>(2) A <b>licence</b> is to be renewed if the fee referred to in clause 4.9(2) is paid to the local government prior to the expiry of the <b>licence</b>.</p> <p>(3) On the renewal of a <b>licence</b> the conditions of the <b>licence</b> at the time of its renewal continue to have effect.</p>  |  |
| <p><b>4.13 Variation or cancellation of licence</b></p> <p>(1) The <b>local government</b> may through a written notice to the <b>licencee</b> vary the conditions of a <b>licence</b>.</p> <p>(2) The <b>local government</b> may cancel a <b>licence</b>—</p> <p style="padding-left: 20px;">(a) on the request of the <b>licencee</b>;</p> <p style="padding-left: 20px;">(b) following a breach of the Act, the Regulations or this local law; or</p> <p style="padding-left: 20px;">(c) if the <b>licencee</b> is not a fit and proper person.</p> <p>(3) The date a <b>licence</b> is cancelled is to be, in the case of—</p> <p style="padding-left: 20px;">(a) paragraph (a) of <b>subclause</b> (2), the date requested by the <b>licencee</b>; or</p> <p style="padding-left: 20px;">(b) paragraphs (b) and (c) of <b>subclause</b> (2), the date determined under section 27 (6) of the Act.</p> <p>(4) If a <b>licence</b> is cancelled the fee paid for that <b>licence</b> is not refundable for the term of the <b>licence</b> that has not yet expired.</p>  |  |
| <p><b>4.14 Transfer</b></p> <p>(1) An application for the transfer of a valid <b>licence</b> from the <b>licencee</b> to another person must be—</p> <p style="padding-left: 20px;">(a) made in the form determined by the local government;</p> <p style="padding-left: 20px;">(b) made by the transferee;</p> <p style="padding-left: 20px;">(c) made with the written consent of the <b>licencee</b>; and</p> <p style="padding-left: 20px;">(d) lodged with the local government together with —</p> <p style="padding-left: 40px;">(i) written evidence that a person will reside at or within reasonably close proximity to the premises the subject of the <b>licence</b>; and</p> <p style="padding-left: 40px;">(ii) the fee for the application for the transfer of a <b>licence</b> referred to in clause 4.10 (3).</p> <p>(2) The local government is not to determine an application for the transfer of a valid <b>licence</b> until the transferee has complied with subclause (1).</p> <p>(3) The local government may approve, whether or not subject to such conditions as it considers appropriate, or refuse to approve an application for the transfer of a valid <b>licence</b>.</p> <p>(4) Where the local government approves an application for the transfer of a valid <b>licence</b>, then on the date of approval, unless otherwise specified in the notice issued under clause 4.15 (b), the transferee becomes the <b>licencee</b> of the <b>licence</b> for the purposes of this local law.</p> |  |
| <p><b>4.15 Notification</b></p> <p>The local government is to give written notice to—</p> <p style="padding-left: 20px;">(a) an applicant for a licence of the local government’s decision on her or his application;</p> <p style="padding-left: 20px;">(b) a transferee of the local government’s decision on her or his application for the transfer of a valid licence;</p> <p style="padding-left: 20px;">(c) a <b>licencee</b> of any variation made under clause 4.13(1);</p> <p style="padding-left: 20px;">(d) a <b>licencee</b> when her or his licence is due for renewal and the manner in which it may be renewed;</p> <p style="padding-left: 20px;">(e) a <b>licencee</b> when her or his licence is renewed;</p>   |  |

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| <p>(f) a <b>licencee</b> of the cancellation of a licence under clause 4.13(2)(a); and<br/>                     (g) a <b>licencee</b> of the cancellation of a licence under paragraphs (b) or (c) of clause 4.13(2), which notice is to be given in accordance with section 27(6) of the Act.</p>   |  |
| <p><b>4.16 Inspection of kennel</b><br/>                     With the consent of the occupier, an authorised person may inspect an approved kennel establishment at any time.</p>  |  |
| <b>PART 5—DOGS IN PUBLIC PLACES</b>  |  |
| <p><del><b>5.1—Places where dogs are prohibited absolutely</b><br/>                     (1) The owner or person liable for the control of a dog, other than an assistant dog as defined in s.8 of the Act, shall not allow a dog to enter or be in or on any of the following places—<br/>                     (a) a public building unless permitted by a sign;<br/>                     (b) a theatre or picture gardens;<br/>                     (c) all businesses or vehicles classified as food business or food transport vehicles under the <i>Food Act 2008</i>; and<br/>                     (d) a public swimming pool.<br/>                     (2) In accordance with s.31(2B) of the Act, the local government may, by absolute majority as defined in the <i>Local Government Act 1995</i> section 1.4, specify a public place, or a class of public place, that is under the care, control or management of the local government to be a place where dogs are prohibited.<br/>                     (3) If a dog enters or is in a place specified in subclauses (1) or (2), every person liable for the control of the dog at that time commits an offence.<br/><br/> <i>Penalty: Where the dog is a dangerous dog, \$2,000; otherwise \$1,000.</i></del></p> | <p>Department Comment:</p> <p><b>4. Dog prohibited areas and dog exercise areas</b></p> <p>As a result of recent amendments, dog local laws can no longer prescribe dog exercise or dog prohibited areas.</p> <p>Local governments now have the power to specify dog exercise areas and dog prohibited areas by an absolute majority resolution. The relevant offences and penalties are located in section 31 and 32 of the Dog Act, while the relevant modified penalties are specified in regulation 33 of the Dog Regulations.</p> <p>It is suggested that the City should delete clause 5.1, 5.2, the relevant modified penalties in item 4 of Schedule 3 and the definition of “<b>Prohibited places</b>” under clause 1.5. The relevant offences and penalties in the Act must be enforced directly, rather than by a local law.</p> <p>If these clauses are not removed, they are likely to be invalid and may be raised as an issue by the Delegated Legislation Committee.</p> <p><b>Public submission: ICR17275297.</b></p> <p>Comment: Attached to Officer Report for Comment.</p> |
| <p><del><b>5.2—Places which are dog exercise areas</b><br/>                     In accordance with the s.31(3A) of Act, the local government may, by absolute majority as defined in the <i>Local Government Act 1995</i> section 1.4, specify a public place, or a class of public place that is under the care, control or management of the local government to be a place where dogs are can exercise.</del></p>   |  |
| <p><del><b>5.3—Place which are rural leashing (leash compulsory) areas</b><br/>                     In accordance with s.31(3B) of the Act, the local government may, by absolute majority as defined in the <i>Local Government Act 1995</i> section 1.4, specify a public place, or a class of public place, that is under the care, control or management of the local government to be a rural leashing area.<br/><br/> <i>Penalty: Where the dog is a dangerous dog, \$2,000; otherwise \$1,000.</i></del></p>  | <p>Department Comment:</p> <p><b>5. Clause 5.3 – Places which are rural leashing (leash compulsory) areas</b></p> <p>It is suggested that this clause (including the penalty) and the relevant modified penalty at item 5 of Schedule 3 is deleted.</p> <p>Section 51 of the Dog Act provides a list of subjects on which local laws can be made. This section does not appear to provide any power for local laws regarding the leashing of dogs.</p> <p>Section 31 of the Dog Act deals with the leashing of dogs and establishes penalties for non-compliance. The Dog Regulations set out the modified penalties for these offences. These offences and penalties should be enforced directly instead of via a local law.</p> <p><b>Public submission: ICR17275297.</b></p> <p>Comment: Attached to Officer Report for Comment.</p>  |
| <b>PART 5—MISCELLANEOUS</b>  |  |
| <p><b>5.1 Offence to excrete</b><br/>                     (1) A dog must not excrete on—<br/>                     (a) any thoroughfare or other public place; or<br/>                     (b) any land which is not a public place without the consent of the occupier.<br/>                     (2) Subject to subclause (3), if a dog excretes contrary to subclause (1), every person liable for the control of the dog at that time commits an offence.<br/>                     (3) The person liable for the control of the dog does not commit an offence against subclause (2) if any excreta is removed immediately by that person.</p>   |  |

| PROPOSED <i>CITY OF ALBANY</i> DOG LOCAL LAW 2017  | REMARKS / ACTION TAKEN  |
|--|---|
| <b>PART 6—ENFORCEMENT</b>  |   |
| <p><b>6.1 Interpretation</b><br/>                     In this Part—<br/> <i>infringement notice</i> means the notice referred to in clause 6.3; and<br/> <i>notice of withdrawal</i> means the notice referred to in clause 6.6(1).</p>  |   |
| <p><b>6.2 Modified penalties</b><br/>                     (1) The offences contained in Schedule 3 are offences in relation to which a modified penalty may be imposed.<br/>                     (2) The amount appearing in the fourth column of Schedule 3 directly opposite an offence is the modified penalty payable in respect of that offence if —<br/>                     (a) the dog is not a dangerous dog; or<br/>                     (b) the dog is a dangerous dog, but an amount does not appear in the fourth column directly opposite that offence.<br/>                     (3) The amount appearing in the fifth column of Schedule 3 directly opposite an offence is the modified penalty payable in respect of that offence if the dog is a dangerous dog.</p> |   |
| <p><b>6.3 Issue of infringement notice</b><br/>                     Where an authorised person has reason to believe that a person has committed an offence in respect of which a modified penalty may be imposed, he or she may issue to that person a notice. <del>in the form of Form 8 of the First Schedule of the Regulations.</del></p>   | <p>Department Comment:</p> <p><b>6. Infringement notices</b></p> <p>Clauses 7.3 and 7.6 refer to Form 8 and Form 9 in Schedule 1 of the Regulations, to be used by an authorised person under the local law.</p> <p>While the <i>Dog Regulations 2013</i> have infringement notices, these notices are designed to be used for offences under the <i>Dog Act</i> or <i>Dog Regulations</i>. If the City wishes to use this Form, it should modify the “Alleged offence” box on the form to refer to an offence under the local law instead.</p> <p>Alternatively, the City can create its own forms for infringement notices and withdrawal notices, or can use the relevant forms prescribed by regulation 26(2) and regulation 27(2) of the <i>Local Government (Functions and General) Regulations 1996</i>.</p> |
| <p><b>6.4 Failure to pay modified penalty</b><br/>                     Where a person who has received an infringement notice fails to pay the modified penalty within the time specified in the notice, or within such further time as may in any particular case be allowed by the CEO, he or she is deemed to have declined to have the offence dealt with by way of a modified penalty.</p>  |   |
| <p><b>6.5 Payment of modified penalty</b><br/>                     A person who has received an infringement notice may, within the time specified in that notice or within such further time as may in any particular case be allowed by the CEO, send or deliver to the local government the amount of the penalty, with or without a reply as to the circumstances giving rise to the offence, and the local government may appropriate that amount in satisfaction of the penalty and issue an acknowledgment of receipt.</p>  |   |
| <p><b>6.6 Withdrawal of infringement notice</b><br/>                     (1) Whether or not the modified penalty has been paid, an authorised person may withdraw an infringement notice by sending a notice. <del>in the form of Form 9 of the First Schedule of the Regulations.</del><br/>                     (2) A person authorised to issue an infringement notice under clause 6.3 cannot sign or send a notice of withdrawal.</p>   | <p>Department Comment:</p> <p><b>6. Infringement notices</b></p> <p>Clauses 7.3 and 7.6 refer to Form 8 and Form 9 in Schedule 1 of the Regulations, to be used by an authorised person under the local law.</p> <p>While the <i>Dog Regulations 2013</i> have infringement notices, these notices are designed to be used for offences under the <i>Dog Act</i> or <i>Dog Regulations</i>. If the City wishes to use this Form, it should modify the “Alleged offence” box on the form to refer to an offence under the local law instead.</p> <p>Alternatively, the City can create its own forms for infringement notices and withdrawal notices, or can use the relevant forms prescribed by regulation 26(2) and regulation 27(2) of the <i>Local Government (Functions and General) Regulations 1996</i>.</p> |
| <p><b>6.7 Service</b></p>  |   |

| PROPOSED <i>CITY OF ALBANY</i> DOG LOCAL LAW 2017   | REMARKS / ACTION TAKEN |
|---|------------------------|
| An infringement notice or a notice of withdrawal may be served on a person personally, or by leaving it at or posting it to her or his address as ascertained from her or him, or as recorded by the local government under the Act, or as ascertained from inquiries made by the local government. |                        |
| <p><b>6.8 Penalty</b><br/>                     Any person who contravenes any provision of this local law or fails to comply with a notice issued under this local law commits an offence not exceeding \$2,000.</p>  |                        |

**Proposed Schedules Follow**

| <p align="center"><b>Proposed Schedules:</b></p>  | <p align="center"><b>Remarks/Comments:</b></p> |
|---|--|
| <p align="center"><b>Schedule 1 - Application for a licence for an approved kennel establishment</b><br/>(clause 4.2)</p> <p>I/we (full name): ..... of (postal address) .....</p> <p>.....</p> <p>(telephone number) .....(facsimile number).....</p> <p>(E-mail address) .....</p> <p>Apply for a licence for an approved kennel establishment at (address of premises)</p> <p>For (number and breed of dogs)</p> <p>* (insert name of person) ..... will be residing at the premises on and from (insert date) .....</p> <p>* (insert name of person) ..... will be residing (sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare) at<br/>..... (insert address of residence) on and from<br/>..... (insert date).</p> <p>Attached are:</p> <p>(a) a site plan of the premises showing the location of the kennels and yards and all other buildings and structures and fences;</p> <p>(b) plans and specifications of the kennel establishment;</p> <p>(c) copy of notice of proposed use to appear in newspaper;</p> <p>(d) copy of notice of proposed use to be given to adjoining premises;</p> <p>(e) written evidence that a person will reside -<br/>(i) at the premises; or<br/>(ii) sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare; and</p> <p>(f) if the person in item (e) is not the applicant, written evidence that the person is a person in charge of the dogs.</p> <p>I confirm that I have read and agree to comply with the Code of Practice known as ....., in the keeping of dogs at the proposed kennel establishment.</p> <p>Signature of applicant ....., Date .....</p> <p>* delete where inapplicable.</p> <p><u>Note:</u> a licence if issued will have effect for a period of 12 months – section 27.5 of the Dog Act.</p> <p align="center"><b>OFFICE USE ONLY</b></p> <p align="center">Application fee paid on: ..... [insert date].</p> |  |

| <p align="center"><b>Proposed Schedules:</b></p>   | <p align="center"><b>Remarks/Comments:</b></p> |
|--|--|
| <p align="center"><b>Schedule 2 - Conditions of a licence for an approved kennel establishment</b><br/>(clause 4.8(1))</p> <p>An application for a licence for an approved kennel establishment may be approved subject to the following conditions:</p> <ul style="list-style-type: none"> <li>(a) each kennel, unless it is fully enclosed, must have a yard attached to it;</li> <li>(b) each kennel and each yard must be at a distance of not less than - <ul style="list-style-type: none"> <li>(i) 25m from the front boundary of the premises and 5m from any other boundary of the premises;</li> <li>(ii) 10m from any dwelling; and</li> <li>(iii) 25m from any church (place of worship), school room, hall, factory, dairy or premises where food is manufactured, prepared, packed or stored for human consumption;</li> </ul> </li> <li>(c) each yard for a kennel must be kept securely fenced with a fence constructed of link mesh or netting or other materials approved by the local government;</li> <li>(d) the minimum floor area for each kennel must be calculated at 2.5 times the length of the breed of dog (when it is fully grown), squared, times the number of dogs to be housed in the kennel and the length of the dog is to be determined by measuring from the base of the tail to the front of its shoulder;</li> <li>(e) the floor area of the yard attached to any kennel or group of kennels must be at least twice the floor area of the kennel or group of kennels to which it is attached;</li> <li>(f) the upper surface of the kennel floor must be – <ul style="list-style-type: none"> <li>(i) at least 100mm above the surface of the surrounding ground;</li> <li>(ii) smooth so as to facilitate cleaning;</li> <li>(iii) rigid;</li> <li>(iv) durable;</li> <li>(v) slip resistant;</li> <li>(vi) resistant to corrosion;</li> <li>(vii) non-toxic;</li> <li>(viii) impervious;</li> <li>(ix) free from cracks, crevices and other defects; and</li> <li>(x) finished to a surface having a fall of not less than 1 in 100 to a spoon drain which in turn must lead to a suitably sized diameter sewerage pipe which must be properly laid, ventilated and trapped in accordance with the health requirements of the local government;</li> </ul> </li> <li>(g) all kennel floor washings must pass through the drain in item (f)(x) and must be piped to approved apparatus for the treatment of sewage in accordance with the health requirements of the local government;</li> <li>(h) the kennel floor must have a durable upstand rising 75mm above the floor level from the junction of the floor and external and internal walls, or internal walls must be so constructed as to have a minimum clearance of 50mm from the underside of the bottom plate to the floor; <ul style="list-style-type: none"> <li>(i) where a yard is to be floored, the floor must be constructed in the same manner as the floor of any kennel;</li> </ul> </li> <li>(j) from the floor, the lowest internal height of a kennel must be, whichever is the lesser of - <ul style="list-style-type: none"> <li>(i) 2m; or</li> <li>(ii) 4 times the height of the breed of dog in the kennel, when it is fully grown, measured from the floor to the uppermost tip of its shoulders while in a stationary upright position;</li> </ul> </li> <li>(k) the walls of each kennel must be constructed of concrete, brick, stone or framing sheeted internally and externally with good quality new zincalume or new pre-finished colour coated steel sheeting or new fibrous cement sheeting or other durable material approved by the local government;</li> <li>(l) all external surfaces of each kennel must be kept in good condition;</li> <li>(m) the roof of each kennel must be constructed of impervious material;</li> <li>(n) all kennels and yards and drinking vessels must be maintained in a clean condition and must be cleaned and disinfected when so ordered by an authorised person;</li> <li>(o) all refuse, faeces and food waste must be disposed of daily into the approved apparatus for the treatment of sewage;</li> <li>(p) noise, odours, fleas, flies and other vectors of disease must be effectively controlled;</li> <li>(q) suitable water must be available at the kennel via a properly supported standpipe and tap; and</li> <li>(r) the <b>licencee</b> or the person nominated in the application for a licence, must, in accordance with the application for the licence, continue to reside - <ul style="list-style-type: none"> <li>(i) at the premises; or</li> <li>(ii) in the opinion of the local government, sufficiently close to the premises so as to control the dogs, and to ensure their health and welfare.</li> </ul> </li> </ul> |  |

| <p align="center"><b>Proposed Schedules:</b></p> | <p align="center"><b>Remarks/Comments:</b></p> |
|--|--|
|--|--|

**Schedule 3 - Offences in respect of which modified penalty applies**  
(clause 7.2)

| Item | Clause | Nature of offence   | Modified penalty \$ | Dangerous Dog Modified Penalty \$ |
|------|--------|---|---------------------|-----------------------------------|
| 4    | 3.1    | <del>Failing to provide means for effectively confining a dog</del>         | 100                 | 200                               |
| 2    | 3.2    | <del>Failure to limit number of dogs</del>                                  | 200                 | 400                               |
| 1    | 4.9    | Failing to comply with the conditions of a kennel establishment licence     | 200                 |                                   |
| 4    | 5.1    | <del>Dog in a place from which it is prohibited absolutely.</del>           | 200                 | 400                               |
| 5    | 5.3    | <del>Dog in a rural leashing (leash compulsory) area without a leash.</del> | 200                 | 400                               |
| 2    | 6.1    | Failing to remove dog excrement   | 100                 | 100                               |

Department Comments:

**7. Minor edits**

The following minor edits are suggested:

- a) Replace all instances of "license" with "licence".
- b) Replace all instances of "sub clause" with "subclause".
- c) **Clause 1.1:** italicise "City of Albany".
- d) **Clause 1.4:** replace "City of Albany Animals Local Laws 2001" with "*City of Albany Animals Local Law 2001*".
- e) Defined terms should appear in the format used throughout the local law. Replace the defined terms **Application, Applicant, Assistance dogs, Public Place** and **Seized** with **application, applicant, assistance dog, public place** and **seized**, respectively.
- f) For best drafting principles, it is suggested the City remove the spaces between the numbers of clause references. For example in clause 4.2(e), replace "4.10 (1)" with "4.10(1)".
- g) For best drafting principles, it is suggested the City replace all instances of "s." with "section". For example in clause 5.1, replace "s.8" with "section 8".
- h) **Clause 1.5:**
  - o In the definition of "assistance dog", replace "given in the Act" with "given to it in the Act".
  - o In the definition of **dangerous dog**, insert a semicolon after "Act".
  - o In the definition of **dog management facility**, it is suggested that "For the purpose of this local law, Pound means a dog management facility under the Act" is deleted. The use of "pound" in the definition of **seized**, can then be replaced with "dog management facility".
  - o In the definition of **nuisance**, delete "means –"
  - o In the definition of **premises**, replace the full stop with a semicolon.
  - o In the definition of **thoroughfare**, insert the word "and" after the semicolon.
  - o In the definition of **valid**, replace the semicolon with a full stop.
- i) **Clause 2.1(c):** replace "30A.(3)" with "30A(3)".
- j) **Clause 3.2(3)(a):** replace "areas" with "area".
- k) **Clause 4.1:**
  - o In accordance with best drafting principles, defined terms should be in **bold**, and *italicised*. The defined terms "premises" and "transferee" should be amended accordingly.
  - o In the definition of "**adjoining land**", replace "6m" with "6 metres".
- l) **Clause 4.2:** Replace "City" with "local government".
- m) **Clause 4.13:** Replace "City" with "local government".
- n) **Clause 5.1:** In subclause (1), replace "assistant" with "assistance".
- o) **Schedules:**
  - o It is suggested that schedule titles not be in block print.
  - o Schedule 3: in items 4-6 delete the full stop in the offence description.

Dated: .....

The Common Seal of the *City of Albany* was affixed by the authority of the resolution of Council in the presence of:

.....  
Dennis Wellington, Mayor

.....  
Andrew Sharpe, Chief Executive Officer