



MINUTES

DEVELOPMENT AND INFRASTRUCTURE SERVICES COMMITTEE MEETING

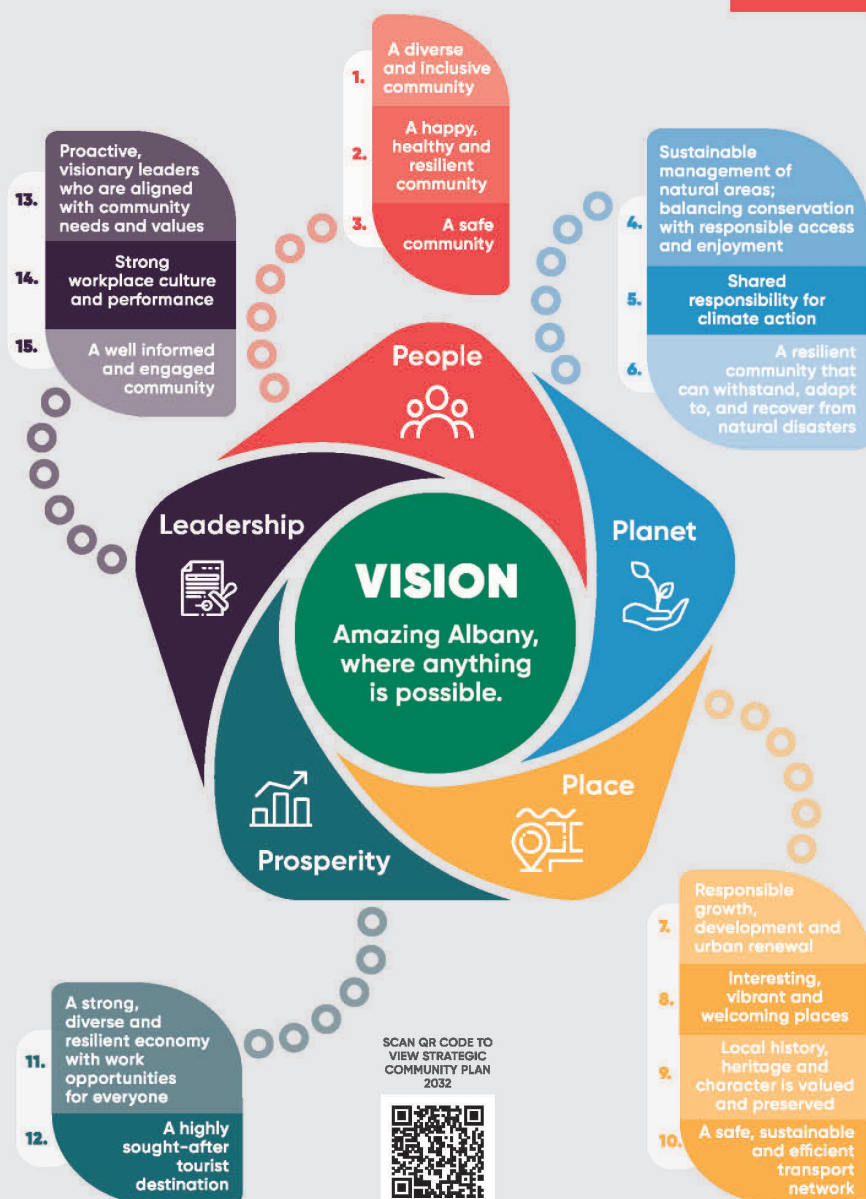
Wednesday 13 July 2022

6.00pm

Council Chambers



STRATEGIC COMMUNITY PLAN 2032



Development & Infrastructure Services Committee
Terms of Reference

Functions: The Committee is responsible for:

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

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

It will achieve this by:

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

Membership: Open to all elected members.

Meeting Schedule: Monthly

Meeting Location: Council Chambers

Executive Officers: Executive Director Infrastructure, Development & Environment

Delegated Authority: None

DEVELOPMENT AND INFRASTRUCTURE SERVICES COMMITTEE
MINUTES – 13/07/2022

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DEVELOPMENT AND INFRASTRUCTURE SERVICES COMMITTEE
MINUTES – 13/07/2022

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

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

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

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

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

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

Mayor

D Wellington

Councillors:

Member

C Thomson (Chair)

Member

P Terry

Member

G Stocks

Member

M Traill

Member

T Brough

Member

M Benson-Lidholm JP

Member

J Shanhun

Member

S Smith

Member

R Sutton (Deputy Chair)

Staff:

Chief Executive Officer

A Sharpe

Acting Executive Director Infrastructure, Development
and Environment

R March

Manager of Planning & Building Services

J van der Mescht

Coordinator Planning Services

J Wardell-Johnson

Major Projects Officer

M Randall

Meeting Secretary

S Herbert

Meeting Secretary

P Ruggera

Apologies:

Member

A Cruse (Apology)

Member

A Goode JP (Leave of Absence)

Member

D Baesjou (Apology)

Two media representative and 14 members of the public were in attendance.

4. DISCLOSURES OF INTEREST

Name	Committee/Report Item Number	Nature of Interest
Mr Jan van der Mescht Manager Planning and Building Services	DIS308	Impartiality. The nature of the interest being that Mr van der Mescht has known the proponent for a number of years on a personal basis. Mr van der Mescht remained in the Chamber during the discussion and vote for this item.
Councillor Terry	DIS308	Impartiality. The nature of the interest being that Councillor Terry attended a private function at this address prior to the Development Application being lodged. Councillor Terry remained in the Chamber and participated in the discussion and vote for this item.
Councillor Thomson	DIS307	Financial. The nature of the interest being that Councillor Thomson is involved in discussions about the commercial nature concerning the motorsport park. Councillor Thomson left the Chamber and was not present during the discussion and vote for this item.

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

6. PUBLIC QUESTION TIME

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

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

Mr James McLean, 14 Miramar Road, Mira Mar.

Summary of key points:

Mr McLean spoke against the Authorising Officer Recommendation DIS308: Recreation – Private (Treehouse)

Ms Colleen Donovan, 8 Stirling Terrace, Albany.

Summary of key points:

Ms Donovan spoke in support of the Authorising Officer Recommendation DIS308: Recreation – Private (Treehouse)

Ms Pauline Stevens, 4 Bridges Street, Albany.

Summary of key points:

Ms Stevens spoke in support of the Authorising Officer Recommendation DIS308: Recreation – Private (Treehouse)

Mr Peter Stevens, 4 Bridges Street, Albany.

Summary of key points:

Mr Stevens spoke in support of the Authorising Officer Recommendation DIS308: Recreation – Private (Treehouse)

Ms Belle Sivyer, used to live at 4 Bridges Street, Albany.

Summary of key points:

Ms Sivyer spoke against the Authorising Officer Recommendation DIS308: Recreation – Private (Treehouse)

Mr Steve Scott

Summary of key points:

Mr Scott spoke against the Authorising Officer Recommendation DIS308: Recreation – Private (Treehouse)

Mr George Doubikin,

Summary of key points:

Mr Doubikin spoke against the Authorising Officer Recommendation DIS308: Recreation – Private (Treehouse)

Ms Heather Malacari, 136 Brunswick Road, Albany.

Summary of key points:

Ms Malacari spoke against the Authorising Officer Recommendation DIS308: Recreation – Private (Treehouse)

7. PETITIONS AND DEPUTATIONS - Nil

8. CONFIRMATION OF MINUTES

RESOLUTION

MOVED: COUNCILLOR SUTTON

SECONDED: COUNCILLOR BENSON-LIDHOLM

THAT the minutes of the Development and Infrastructure Services Committee meeting held on 8 June 2022 as previously distributed, be CONFIRMED as a true and accurate record of proceedings.

CARRIED 10-0

9. PRESENTATIONS - Nil

10. UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS

DIS301: CLEARING IN COUNCIL CONTROLLED LAND

This report was listed for consideration by Council at the July 2022 DIS Committee, and will now be considered at the August 2022 DIS Committee.

DIS307: C22004 ALBANY MOTORSPORT PARK, RACE TRACK DESIGN SERVICES

Land Description	: Lot 5780 Down Road, Drome
Proponent / Owner	: City of Albany
Business Entity Name	: Great Southern Motorplex Group Incorporated
Attachments	: Confidential Briefing Note
Report Prepared By	: Manager Major Projects (A. McEwan) & Project Officer (M. Randall)
Authorising Officer:	: Executive Director Infrastructure & Environment (P. Camins)

CONFIDENTIAL ATTACHMENT

It was recommended that if discussion was required in regards to details contained within the Confidential Attachment, that the matters are discussed behind closed doors, in accordance with section 5.23(2)(c) & (e)(ii) of the Local Government Act 1995, being: a contract which may be entered into and information that has commercial value.

7:40PM: Councillor Thomson left the Chamber after declaring a Financial Interest in this item.

STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
 - **Pillar:** People
 - **Outcomes:** A diverse and inclusive community
 - **Pillar:** Place
 - **Outcomes:** Responsible growth, development and urban renewal; and
 - Interesting, vibrant and welcoming places
 - **Pillar:** Prosperity
 - **Outcomes:** A highly sought-after tourist destination

Maps and Diagrams:



Aerial photograph of Albany Motorsport Park

In Brief:

- Following a competitive tender process, Council approval is sought to award tender for Contract C22004 - Albany Motorsport Park, Race Track Design Services to Tenderer A.

RECOMMENDATION

DIS307: COMMITTEE RECOMMENDATION

MOVED: MAYOR WELLINGTON
SECONDED: COUNCILLOR TERRY

THAT the Authorising Officer Recommendation be ADOPTED.

CARRIED 9-0

DIS307: AUTHORISING OFFICER RECOMMENDATION

THAT Council ACCEPT the tender RECOMMENDED by the evaluation panel in the Confidential Briefing Note and AWARD Contract C22004 Albany Motorsport Park, Race Track Design Services Tender.

BACKGROUND

2. Tenders were called for Albany Motorsport Park, Race Track Design Services.
3. The intent of the tender invitation is for the successful Tenderer to carry out all works in accordance with every detail of the Request for Tender Documents for the completion of the Race Track Precinct detailed design.
4. It is preferable to commence design at the earliest possible time to ensure completion in accordance with funding requirements for the projects implementation.

DISCUSSION

5. The standard tender process as prescribed by the Local Government Act 1995 (the Act) and Local Government (Function and General) Regulations 1996 (the Regulations).
6. Tenders were advertised both state-wide and locally from the 30 March 2022 and closed on 4 May 2022.
7. Thirty one (31) tender documents were downloaded from the City of Albany website, with the City receiving one (1) conforming tender.

Evaluation of Tenders

8. The tender panel evaluated tenders using the weighted criteria methodology across four (4) key areas, shown in Table 1.

Table 1 – Evaluation Criteria

Criteria	% Weighting
Key Personnel Skills, Experience & Capacity	20%
Demonstrated Understanding	25%
Corporate Social Responsibility	5%
Cost	50%

9. The following table summarises the tenderers and the overall evaluation scores applicable.

Table 2 – Conforming Submissions

Tenderer	Total	Rank
Tenderer A	574	1

10. Tenderer A ranked highest, and was the only conforming submission.
11. A tender clarification meeting and value management discussion were undertaken with Tenderer A and the developer, the Great Southern Motorplex Group Incorporated.
12. From the evaluation scoring, clarification, negotiation and financial check processes, Tenderer A are the preferred tender and consequently it is recommended that their tender be accepted and the contract be awarded.
13. The developer, the Great Southern Motorplex Group Incorporated are supportive of a recommendation to award the tender to Tenderer A.

GOVERNMENT & PUBLIC CONSULTATION

14. There is no government consultation required for the award of Albany Motorsport Park, Race Track Design Services.
15. The funding bodies will be notified with regard to the outcome of the award and timeframe for implementation through reporting processes.

STATUTORY IMPLICATIONS

16. Regulation 11 of the Regulations requires Council to publicly tender if the contract is, or is expected to be, more, or worth more than \$250,000.00
17. Regulation 18 of the Regulations outlines a number of requirements relating to choice of tender. Council is to decide which of the acceptable tenders is the most advantageous to Council. It may also decline to accept any tender.
18. Regulation 19 of the Regulations requires Council to advise each tenderer in writing of Council's decision.
19. Voting Requirement: **Simple Majority.**

POLICY IMPLICATIONS

20. The City of Albany Purchasing Policy and Regional Price Preference Policy are applicable to this item.
21. The value of this tender is in excess of \$500,000.00 and therefore Council approval is required as this exceeds the CEO's delegation.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
City Operations and Financial <i>Risk: Failure to deliver project within specified timeframe may jeopardize the funding agreement.</i>	Possible	Major	High	Award tender as soon as possible to enable the design to be developed and implemented in the appropriate season to satisfy funding conditions.
Business Interruption <i>Risk: Appointment of the recommended tenderer is not supported.</i>	Possible	Major	High	City staff to work with preferred tenderer to address any concerns prior to awarding the tender.
Opportunity: Project developed and delivered on time for the benefit of the community and its use.				

FINANCIAL IMPLICATIONS

23. The recommended tender is within overall project budget.
24. The value of this tender is in excess of \$500,000.00 and therefore the approval is referred to Council for consideration.

LEGAL IMPLICATIONS

25. Responsibility has been assigned to ensure contractual terms for all aspects of this project are applied.

ENVIRONMENTAL CONSIDERATIONS

26. Should the tender be awarded, the consultant design will consider environmental responsibilities as they relate to the approved project development.

ALTERNATE OPTIONS

27. The options are:
- Council may choose to accept the recommended tender, or
 - Not approve any tender.

CONCLUSION

28. The City has undergone a competitive process in line with the relevant legislation and established policies.
29. It is recommended, based on the evaluation scoring, clarification, reference and financial check processes that the tenderer A be noted as being the preferred tender, and that the CEO is given the delegated authority to award the tender to the preferred Consultant.

Consulted References	:	<ul style="list-style-type: none">• <i>Local Government Act 1995</i>• <i>Local Government (Functions and General) Regulations 1996</i>• Council Policy: Purchasing Policy (Tenders and Quotes)<ul style="list-style-type: none">○ Tender Procedure○ Evaluation Procedure (Tenders and Quotations)• Council Policy: City of Albany Buy Local Policy (Regional Price Preference)
File Number (Name of Ward)	:	RC.PJT.2
Previous Reference	:	Council Confidential Briefing

7:45PM: Councillor Thomson returned to the Chamber. Councillor Thomson was not present during the discussion and vote for this item.

DIS308: RECREATION – PRIVATE (TREEHOUSE)

Land Description	: Lot 201, 6 Bridges Street, Albany WA 6330
Proponent / Owner	: J McLean & A Galante
Attachments	: 1. Plans 2. Management Plan 3. Schedule of submissions
Supplementary Information & Councillor Workstation	: Public submissions (in full)
Report Prepared By	: Senior Planning Officer (J Anderson)
Authorising Officer:	: Executive Director Infrastructure, Development and Environment (P Camins)

STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. In making a decision on the proposed amendment, the Council is obliged to draw conclusion from its adopted City of Albany Local Planning Strategy 2019 and City of Albany Strategic Community Plan 2032.
3. This item relates to the following elements of the Strategic Community Plan:
 - **Pillar:** People
 - **Outcome:** Plan a compact city with diverse land, housing and development opportunities.
 - **Pillar:** Place
 - **Outcome:** Responsible growth, development and urban renewal.
 - **Pillar:** Leadership.
 - **Outcome:** A well-informed and engaged community.

Maps and Diagrams: 6 (Lot 201) Bridges Street, Albany



In Brief:

- Council is asked to consider an application for existing development at No. 6 (Lot 201) Bridges Street, Albany, for the unauthorised construction of a treehouse and commencement of a Recreation-Private (Treehouse) use on site.
- The application for the Recreation-Private (Treehouse) was required to be advertised for a period of 21 days as the use is designated as an 'A' use under the Zoning Table of the City of Albany *Local Planning Scheme No. 1* (LPS1).
- 197 responses were received during the advertising period; 186 in support and 11 objections. Relevant matters raised during the advertising period have been taken into account as part of the City's assessment.
- Following conclusion of advertising, the proponent submitted a detailed response and updated management plan seeking to address concerns raised.
- The application is presented to Council for determination, due to the concerns raised during advertising.
- Council is now requested to consider the matter, specifically in regards to:
 - Whether the existing unapproved treehouse can remain in its current form, but for private use by the landowner and/or occupier only, or be modified and/or removed in its entirety; and
 - Whether the operation of the treehouse for commercial purposes as a Recreation – Private use is an acceptable intensification of a site in the Residential Zone, taking into account potential impacts on the amenity of residential properties directly adjoining and within proximity to the site, the objectives of the Residential Zone under LPS1 and submissions received during advertising.

RECOMMENDATION

DIS308: COMMITTEE RECOMMENDATION

MOVED: COUNCILLOR STOCKS

SECONDED: COUNCILLOR SHANHUN

THAT the Authorising Officer Recommendation be ADOPTED.

CARRIED 9-1

Record of Vote:

Against the Motion: Councillor Thomson

As Councillor Terry's Alternate Motion was lost, the Committee then considered the Authorising Officer Recommendation.

DIS308: ALTERNATE MOTION BY COUNCILLOR TERRY

MOVED: COUNCILLOR TERRY

SECONDED: COUNCILLOR SMITH

THAT Council resolves to ISSUE a notice of determination granting development approval with conditions for Recreation-Private (Treehouse) at Lot 201, 6 Bridges Street, Albany.

Conditions:

1. All development shall occur in accordance with the stamped, approved plans referenced P2220146 and dated **XX XXXXX 2022**, unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.
2. The proposal is to comply with any details and/or amendments marked in red on the stamped, approved plans.
3. The approval of Recreation – Private (Treehouse) is valid for a period of 12 months **from #### [dd/mm/yyyy]**. At the end of this period the Recreation – Private (Treehouse) shall cease, unless a new development approval has been granted to continue operating past this time.

4. *The operation of events at the Recreation – Private (Treehouse) shall be restricted to a maximum duration of one and a half hours per session, and subject to the following:*
 - *Monday – Friday: 10am – 5pm (1 session per day, maximum of 2 sessions Monday-Friday)*
 - *Saturday: 10am – 2pm (maximum 2 sessions)*
 - *No events permitted on Sundays or Public Holidays*
5. The maximum capacity of the Recreation- Private (Treehouse) shall not exceed the maximum capacity detailed within the approved Management Plan, or the maximum capacity determined under the *Health (Public Building) Regulations 1992*, whichever is lesser.
6. Prior to commencement of use, a screen with a minimum height of 1.6m from natural ground level shall be erected, as shown on the plans, between the southern edge of the car park and the southern lot. The screen shall be implemented and maintained to the satisfaction of the City of Albany.
7. Prior to commencement of operations of the development, stormwater management plans and details shall be submitted to the City of Albany for approval. Prior to formal occupation of the development, the approved stormwater management plans and details shall be implemented, completed and maintained thereafter to the satisfaction of the City of Albany.

Advice:

- *Stormwater management is to be designed in accordance with the ‘City of Albany’s Subdivision and Development Guidelines’.*
 - *All car parking areas to be drained and attenuation outflows directed to existing drain on Bridges Street. Stormwater not to impact adjacent properties.*
 - *Stormwater management plans shall include other relevant information and details as required by other conditions and amendments to the approved Management Plan (such as the location of toilet facilities and provision of on-site car parking areas).*
8. Prior to commencement of operations, a Vehicle Parking and Access Plan shall be submitted to the City of Albany for approval. Prior to formal occupation of the development, the approved Vehicle Parking and Access Plan, shall be implemented, completed and maintained thereafter to the satisfaction of the City of Albany.

Advice:

- *All required car parking contained on-site.*
 - *Car parking and access is to be designed in accordance with the Australian Standard 2890.*
 - *Parking bays and access driveway to be constructed with appropriate materials to the satisfaction of the City of Albany.*
 - *The Vehicle Parking and Access Plan shall:*
 - *Indicate the intended use of all parking bays (eg disabled bay, loading bay etc), access areas and line marking.*
 - *A turnaround/reversing area shall be provided on site to allow vehicles to enter the street in forward gear.*
 - *The Vehicular Parking and Access Plan is to include other relevant information and details as required by other conditions and amendments to the approved Management Plan (such as the location of toilet facilities).*
9. Prior to formal occupation of the development, the existing crossover shall be upgraded and constructed to the specifications, levels and satisfaction of the City of Albany.

Advice:

- *A ‘Permit for Vehicle Crossover Construction’ from the City of Albany is required prior to any work being carried out within the road reserve, which shall be in accordance with drawing nos. STD-05-01 – STD-05-03 (refer to the City of Albany’s Subdivision and Development Guidelines).*
 - *Existing Heritage rock-lined open stormwater drain to be protected at all times. Engineering details to be provided for crossover slab and supports traversing the drain.*
10. Prior to occupancy of the development the premises shall be connected to the Water Corporation sewerage system.

11. The development hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust.

Sign(s) shall not be erected on the lot without the prior approval of the City of Albany

Advice: Please refer to the City of Albany Local Planning Policy – Signs for further information.

12. Prior to commencement of use, a revised Management Plan shall be submitted to City of Albany for approval, incorporating the requirements as outlined in the above conditions and taking into account the following:

- The requirement for a manager to be present on site for the duration of an event, and a minimum of 30 minutes before and after the event
- Any further restrictions or limitations to the permitted number of events per week and maximum capacity of the use
- Car parking contained on-site
- Screening requirements to southern edge of the car park
- Any further amendments to details and information as a result of the requirements of this approval including capacity, site layout such as location of toilet facilities, car parking and vehicle access.

13. The development shall be operated and maintained in perpetuity, in accordance with the relevant measures and actions as detailed under the approved Management Plan, to the satisfaction of the City of Albany.

• *Advice:*

- *The approved Management Plan shall be reviewed and updated at the time of any change of ownership or management, in consultation and to the satisfaction of the City of Albany.*
- *The complaints response procedure shall include current contact details of the business manager/operator.*
- *The operator shall ensure that the complaints response procedure is updated and maintained when required and made available to current adjoining landowners for the life of the development.*
- *It is the responsibility of the operator to distribute an approved management plan to surrounding landowners/adjoining properties, prior to commencement of operations. The approved management plan shall be implemented and complied with at all times, whilst the approved use is in operation.*

General advice:

- *The level of noise emanating from the premises shall not exceed that prescribed in the Environmental Protection Act 1986, and the Environmental Protection (Noise) Regulations 1997.*
- *The premises must comply with the Health (Public Building) Regulations 1992.*
- *Prior to commencement of use, a verge development application is to be submitted for approval by the City for all works within the road reserve.*
- *Prior to commencement suitable arrangements being made of an accessible unisex toilet facility to be installed onsite and connected to the Water Corporation sewerage system. .*
- *An annual inspection & report by Kidsafe WA is to be provided to the City of Albany to ensure ongoing compliance with AS 4685.*

MOTION TIED 5-5

THE PRESIDING MEMBER EXERCISED CASTING VOTE

MOTION LOST 5-6

Record of Vote

For the Motion: Mayor Wellington, Councillors Terry, Smith, Brough and Trill

DIS308: AUTHORISING OFFICER RECOMMENDATION

THAT Council resolves to:

- A) ISSUE a notice of determination granting development approval with conditions for the Existing Development (Treehouse) at Lot 201, 6 Bridges Street, Albany.
- Conditions:
1. All development shall occur in accordance with the stamped, approved plans referenced P2220146 and dated XX XXXXX 2022, unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.
 2. The proposal is to comply with any details and/or amendments marked in red on the stamped, approved plans.
 3. The treehouse hereby approved shall not be used for any commercial use.
- General advice:
- All works within the road reserve require a verge development application to be submitted for approval by the City of Albany.
- B) ISSUE a notice of determination for REFUSAL for Recreation – Private (Treehouse) at Lot 201, 6 Bridges Street, Albany, for the following reasons:
1. The proposal does not satisfy the following matters to be considered as identified in Schedule 2, Part 9, Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, namely:
 - (a) The aims and provisions of the City of Albany Local Planning Scheme No. 1, specifically the following objectives of the Residential Zone, outlined under clause 3.2.1:
 - (b) Maintain the character and amenity of established residential areas and ensure that new development, is sympathetic with the character and amenity of those areas;
 - (c) the compatibility of the development with its setting, including —
 - the compatibility of the development with the desired future character of its setting; and
 - (d) the amenity of the locality including the following —
 - the character of the locality;
 - social impacts of the development;

BACKGROUND

4. Site details:

Local Planning Scheme	City of Albany Local Planning Scheme No. 1
Zone	Residential R30
LPS1 Use Class & Permissibility (Table 2)	Recreation – Private (Treehouse) – A
Lot Size:	Site area 984m ²
Existing Land Use:	Vacant
Bushfire Prone Area:	Yes
Local Planning Policies:	Albany Historic Town Design Policy

5. The construction of the treehouse on the subject site and subsequent use of the site as Recreation – Private (Treehouse) were both commenced without development approval. The treehouse was constructed within an existing mature tree located within the south-west corner of the lot.
6. In late March 2022 the City was made aware that a commercial business was operating from the subject site.
7. The City contacted the proponent, requesting that the use of the treehouse for private functions cease, with any existing bookings cancelled, until such time as the situation was resolved through determination of a development application.

8. Development approval is required for both elements as:
 - a. The treehouse does not meet the exemption criteria for certain works set out under the Planning and Development (Local Planning Schemes) Regulations 2015 (the Planning Regulations); and
 - b. Recreation – Private is designated as an ‘A’ use in the Residential zone in the Zoning Table under LPS1.
9. The proponent subsequently lodged a development application seeking approval of the existing treehouse and use of the treehouse as a recreation play space (assessed as ‘Recreation-Private’ under LPS1), available to hire to the public for various private functions and events, such as children’s birthday parties, high teas or the like.
10. The subject site is surrounded by land zoned Residential to the north, east, south and west. The Residential zone extends west to Spencer and Aberdeen Streets, where it meets the boundary of the Regional Centre and Regional Centre Mixed Use Zones of the Albany CBD; and extends east and north to the boundary of the Corndarup / Mt Clarence reserve (Parks and Recreation Reserve). South of Stirling Terrace and Brunswick Road is a mixture of land use zones, includes Lawley Park (Parks and Recreation Reserve), Rail Reserve, Port Industry and the Waterfront development.
11. Bridges Street is located at the base of the southern face of Corndarup / Mt Clarence and within the central historic town precinct, approximately 600m east of the CBD. Bridges Street is separated into two sections – the subject site is located towards the northern end of the southern section, which is a no through road ending in a cul-de-sac, accessed via Brunswick Road/Stirling Terrace at the southern end. References to Bridges Street throughout the remainder of the report relate to the southern section where the subject site is located.
12. Bridges Street is approximately 9m wide, consists of a moderate downwards slope from the top of the cul-de-sac towards Brunswick Road/Stirling Terrace, and incorporates historic open stone drains that extend either side for most of its length (approximately 90m).
13. Bridges Street is residential in character, with the streetscape generally informed by being located within the Albany Historic Town Precinct, the area’s topography and the short length of the street, plus long-term vacant sites situated at the northern eastern end (including the subject site). Notable features include the open stone drains on both sides of Bridges Street, wide footpath and street trees.
14. Eight properties have direct frontage to Bridges Street, six of which consist of single dwellings. An additional five lots have access via a private lane way accessed from the western side of Bridges Street. Bridges Street is considered to have low traffic volumes as it is a cul-de-sac that services up to 13 lots.
15. Existing dwellings fronting Bridges Street consist of varying historic or more recent architecture styles, with individual sites following the slope by gradually stepping downwards towards Brunswick Road/Stirling Terrace. Existing dwellings have been constructed either at grade with or lower than the road, sometimes utilising retaining walls or otherwise brick build up. The primary frontage of the dwellings at the southern end face of Bridges Street face Stirling Terrace / Brunswick Road, with their secondary street frontages facing Bridges Street, with dwelling frontages onto Bridges Street generally consisting of open garden areas, with minimal or open style front fencing, and/or mature vegetation.

DISCUSSION

16. As outlined above, the application relates to consideration of:
17. The unapproved treehouse constructed within an existing mature tree in the south-western corner of the site, and whether it should be:
 - a. Permitted to remain in its current form, for private use by the landowner and/or occupier only; or
 - b. Permitted to remain for private use by the landowner and/or occupier only, but with modifications; or
 - c. Removed in its entirety; and
 - d. If the existing treehouse is approved to remain, that it is permitted to be used for commercial purposes as a Recreation – Private use, with or without modifications to the current proposal.
18. In considering whether to approve use of the site as Recreation-Private (Treehouse), Council will need to consider whether the intensification of a site in the Residential Zone for commercial purposes is acceptable in this instance, taking into account:
19. The potential impacts on the amenity of residential properties directly adjoining and within proximity to the subject site, generated by the Recreation-Private use;
20. Submissions received during advertising; and
21. The objectives of the Residential Zone under LPS1.

Existing treehouse

22. The treehouse has been constructed within the existing mature tree, primarily using wooden materials. The treehouse is considered play equipment, not a building or structure, and therefore does not require building permit.
23. Access to the treehouse is via a ramp and door to the base platform, and steps using various materials connect to each level. Various play equipment (swings, pulleys etc) have been installed within and around the treehouse.
24. The treehouse has an overall height of 7.4m (approximate), consisting of six levels across four storeys, with distances between the treehouse and adjoining boundaries as follows:
 - a. 4.2m from the front boundary (measured from the trunk).
 - b. 4.2m to the southern boundary (measured from the trunk).
 - c. 7.7m from the main sitting area to the southern boundary.
25. The treehouse is enclosed within a 2m high visually permeable fence. The fence is considered to be substantially screened by the existing canopy.
26. Branches of the existing mature tree provide an element of screening from the upper levels of the treehouse to the southern adjoining property, however some of these branches potentially overhang the southern boundary, and could be removed by the neighbour at any time without notice, without requiring permission of the proponent.

Recreation – Private (Treehouse)

27. As outlined above, the site is proposed to be used for commercial purposes as a Recreation – Private (Treehouse) use.
28. In response to the concerns raised during advertising, the proponent has amended the operations of the Recreation-Private (Treehouse) use. The amended proposal involves the following (refer Attachments 1 and 2):
29. The treehouse is likely to be used for private events and functions such as birthday parties, reunions, high teas, baby showers, anniversaries, therapy sessions, meeting place for corporate customers or book clubs and tourists.
30. Functions are only permitted during daylight hours within the following timeframes as follows:
 - a. Monday to Friday: 10am to 5pm (1 function per day, maximum of 3 functions Mon-Fri)
 - b. Saturday: 10am to 4pm (maximum of 2 functions per day, minimum of 1 hour between functions)
 - c. Sunday: 11am to 2pm (1 function per day)

31. The treehouse is leased for a maximum of two hours for each function
32. Capacity:
 - a. No more than 12 children permitted at each event (with a maximum of one adult per child).
 - b. A maximum of 12 adults may attend an adult function.
33. Patrons are to remain within the fence during the length of an event.
34. Use of amplified music is not permitted.
35. Payment of a \$100 bond, to ensure compliance with lease conditions. Failure to comply with the conditions of lease will result in loss of the security bond.
36. Noise and disturbance outside of the treehouse perimeter fence shall be limited as a courtesy to surrounding landowners.
37. Should a neighbour complain then the customer shall be contacted immediately to rectify the situation. The operation management plan contains the contact details of the management of the use.
38. Patrons will be encouraged to walk or ride to the treehouse, with bike racks to be installed on site, and discounts provided to groups opting to ride to the site.
39. The proponent has installed a portable toilet on site, located in the north western corner for patrons of the Private-Recreation use.
40. No onsite management is currently proposed to be provided for the use.
41. There is currently no formal vehicle access or car parking provided on site. The proponent proposes to install 8 on-site car parking bays, with overflow car parking proposed to be located on the street directly in front of 6 Bridges Street.
42. In regards to capacity, the City's Health Officers have advised that should the Recreation-Private use be approved, further assessment is required as a 'Public Building' under the relevant public health legislation, and this will determine the permitted maximum capacity for the use. This may be above or below the capacity currently proposed by the proponent.
43. The assessment as a Public Building under the relevant legislation would also determine minimum requirements for accessibility and provision of formal permanent toilet facilities.
44. The proponent has also installed a footbridge over the open stone drain and a footpath on the road verge. Should Council support the proposal, these works are subject to the requirement for approval from the City as part of a formal verge development application.
45. The proponent states that the treehouse will form the central feature of a short-term accommodation development in the future. The short-term accommodation proposal does not form part of this application.
46. Were the proposed future short-term accommodation development proceed, the proponent has indicated that the intention would be for the Recreation-Private use to continue, with access to the treehouse by the short-term accommodation patrons coordinated/shared with the general public hiring the treehouse as part of the Recreation-Private use.

Public Consultation

47. The public consultation undertaken for the Recreation-Private (Treehouse) use at the subject site is discussed in detail below:
48. The Recreation-Private (Treehouse) use is designated as an 'A' use under the Zoning Table of LPS1, and was therefore required to be advertised for a timeframe of 21 days, surrounding landowners being notified directly by mail. The City also undertook additional methods of consultation, including placing a sign onsite, and a notice and online submission form published on the City of Albany website. A QR code linking to the online submission form was included in the letters and the sign onsite.
49. The submission period was open for a period of 27 days (06/04/2022 – 02/05/2022).

50. During the submission period 197 submissions were received representing surrounding landowners and members of the wider community, with a breakdown as follows:
- 11 objections (9 from directly affected properties).
 - 186 submissions of support or conditional of support (10 submissions representing 6 directly affected properties, as either landowner or tenant).
51. It should be noted that although the purpose of the advertising of the treehouse was specifically in regards to the Recreation-Private use, it was unclear from some submissions received if comments provided were in relation to the treehouse generally or specifically the use of the treehouse for commercial purposes.
52. A summary of key matters raised in either objection or support is provided below and also a schedule of submissions has been prepared, refer Attachment 3 to this report.
53. Key matters raised as part of submissions received in support or conditional support of the Recreation-Private use included the following:
- Innovative, unique and fun idea which promotes fun and learning in nature.
 - Suitable conditions have been applied to minimise impact on neighbours.
 - Based on recent experience as a previous neighbour, it was felt that previous parties didn't result in a loss of privacy or in any noise above what you would expect at a park, and was never inconvenienced in relation to the parking.
 - Previously hired the treehouse for a party and felt it allowed for sufficient parking and ease of access.
 - Amazing resource for the community. Fully supportive of controlled parties.
 - Draw card for tourists.
 - Need more party venues in Albany.
 - Disability inclusive.
 - Children need to spend more time outdoors.
 - Minimal risk to the community and should be supported. Although there may be a small degree of impact on the adjoining neighbour, this would be minimal compared to any convention residential development.
 - Enriches the built environment and the social fabric of the Albany community.
 - Supportive if they provide a safe structure, limit traffic and noise.
 - Supportive if it is during normal working day time hours.
 - Noise from kids can just as easily come from a neighbouring house.
 - Albany has a lack of play facilities.
 - Council should look at more of these being provided around town.
 - We live directly opposite, there are no issues regarding noise or parking.
 - No objections to the venture, as long as all conditions are met dutifully by the operator of the treehouse. There has already been children visiting the treehouse and their laughter and playful noise has no impact on us at all.
 - As a neighbour sharing one of the boundaries – I do not have any objections to the treehouse as long as all the restrictions of use in the proposal are adhered to. Off-street parking would be a requirement that would need to be met.
 - I live next door and I have been present for two parties and really have to strain to hear the kids.
 - Excellent use of conserving a tree.
54. Some comments received in submissions of support or conditional support related to the retention of the treehouse in principle (as part of domestic purposes only) or as a temporary interim use as Recreation-Private, prior to development of the site as future short-term accommodation, subject to the following:
- All parking and drop offs are contained on-site to avoid inconveniencing residents
 - Sufficient break between sessions to avoid any overlapping of the comings and goings

55. Key concerns raised as part of submissions received in objection of the Recreation-Private use primarily related to:
- Amenity – Proximity to surrounding lots, loss of privacy, noise, traffic, parking, incompatible land use and lack of on-site management.
 - Safety, lack of access to services and facilities and commencement of unauthorised development
 - Value of property
56. Submissions from nearby landowners also requested that Council not utilise its discretion to allow this use to operate at the subject site, that due regard be given to those directly affected by the use, and not to be unduly influenced by the opinions of those unaffected.
57. Noting the submissions received in support and condition support above, the concerns raised during the submission period in relation to relevant planning matters and officer assessment of the application are discussed in detail below.

Amenity – Proximity to surrounding lots, loss of privacy, noise, traffic and parking, incompatible land use and lack of on-site management

58. The potential impact on the amenity of existing residential properties was a concern consistently raised within the submissions against the proposal. Concerns raised in relation to amenity primarily relate to the following and are discussed in detail below:
- Recreation-Private being an incompatible land use / inappropriate development within this location.
 - Lack of on-site management.
 - Proximity of the treehouse to adjoining lots and subsequent loss of privacy.
 - Dominance of the treehouse to the southern adjoining property that reduces privacy (actual and perceived).
 - Noise (from guests and traffic).
 - Intensity of the use.
 - Traffic generated.
 - Parking within the street inconveniencing residents.

Incompatible land use / inappropriate development within this location

59. Concerns raised outlined that the intensification of the use of the treehouse as part of a Recreation – Private use, was inappropriate development that was incompatible within a residential zone in this location, and subsequently resulting in detrimental impacts on the privacy, quiet enjoyment and amenity that could be reasonably expected in a residential area.
60. Concerns were also raised that the resulting commercial nature of the site could also have an impact on the site's future desired residential outcomes, as outlined in the objectives for the Residential zone. If the 'Recreation-Private' use was retained to continue operating at the subject site, the works required to the site for the use to continue (such as provision of on-site car parking and vehicle access) could have a potential impact on future residential development capacity outcomes of the subject site.

Lack of onsite management

61. A number of concerns were raised in relation to there being no on-site management during events due to the owner not residing on-site. Concerns were raised that due to parties being self-managed, residents would be left dealing with non-compliance of rules such as noise, waste management, car parking and numbers of attendees.

Proximity of the treehouse to adjoining lots and loss of privacy

62. Concerns were raised in relation to the proximity of the treehouse and carpark to the southern boundary, resulting in adjoining landowners being negatively affected from noise and loss of privacy:
- Formal car park will be elevated and located within close proximity to the boundary, resulting in adjoining landowners experiencing a perceived loss of privacy to the rear private outdoor area.

- b. The proximity of the treehouse to the boundary results in the structure dominating private outdoor living areas and resulting in loss of privacy.
- c. Although there is a sizable canopy providing screening, the canopy overhangs the adjoining lot, therefore once pruned/removed the southern face of the treehouse would be exposed, increasing the dominance and decreasing the privacy.

Noise (from guests and traffic)

- 63. Concerns were raised that due to the proximity of the treehouse to the boundary, the development would result in increased noise and the perception of all activities such as comings and goings being viewed, and private conversations being overheard by adults and children potentially 7 days a week.
- 64. Some submissions indicated that properties located further up the hill had heard noise generated by previous parties held at the treehouse.
- 65. The concerns raised in relation to noise generated by the Recreation-Private use specifically related to:
 - a. Noise generated by 24 guests on the site (children and adults)
 - b. The car park on-site due to the proximity to surrounding lots
 - c. Increased traffic.
- 66. Concerns were also raised for night shift workers that live in the area, who may be impacted by the noise generated from the use during the day.

Intensity of the use

- 67. Concerns were raised in relation to the intensity of the use, relating to the number of people and amount of traffic that could reasonably be generated per day if operating at maximum capacity.

Traffic and parking

- 68. Submissions received raised the concerns stating that the running of these events has already resulted in residents being impacted by traffic, congestion and noise.
- 69. The following concerns were raised in relation to traffic and associated impacts on amenity:
 - a. The potential of 96 vehicle movements per day x 7 days per week (based on the original proposal) and the capacity of the road system to accommodate this.
 - b. Bridges Street being a cul-de-sac could not accommodate that many extra vehicle movements per day.
 - c. An increase of traffic would result in the amenity of the area being impacted by increased traffic not normally associated with a quiet residential street.
 - d. That the running of these events already has resulted in congestion within the street.
 - e. Pedestrian safety on and off-site with the vehicle movements.
- 70. The following concerns were raised in relation to parking and impacts on amenity:
 - a. There not being enough bays provided on-site, resulting in cars parking within the street and inconveniencing residents.
 - b. Residents were concerned that existing access ways and the private laneway (that services five dwellings) would be blocked, which for some of these lots was their only means of access.
 - c. Also due to being a cul-de-sac, if guests parked in the street it would result in there being no ability to turn around at the top of Bridges Street.

Officer comment: Retention of the treehouse for private use only

- 71. In considering the application, including the revised details and management plan submitted by the proponent, and relevant concerns during advertising, staff have formed the view that the existing treehouse in its current form could be considered an acceptable development and approved to be retained, but only to be used for private purposes by the landowner.

72. There are no specific development provisions outlined under LPS1 and therefore assessment of the treehouse in its current form, and specifically consideration of its retention for private purposes only by the landowner and/or occupier of the subject site, has been undertaken against the objectives of the Residential zone, as well as relevant matters to be considered as outlined under the Planning Regulations.
73. As outlined above, the treehouse is not considered a building or structure, and therefore provisions under the Residential Design Codes and Albany Historic Town Local Planning Policy that relate to requirements for residential development such as boundary setbacks, visual privacy, overshadowing or building height are not applicable in this instance.
74. The concerns raised in submissions in relation to the dominance or imposing nature of the treehouse to directly affected properties are acknowledged. Being located in the southwest corner of the site, the visual impact of the treehouse and associated perception of overlooking and noise generated by the use of the treehouse would primarily be experienced by the southern adjoining property. Although the treehouse can be viewed from the street, the western elevation of the treehouse facing Bridges Street is substantially screened by low branches and thick canopy cover.
75. It is also noted that concerns were raised during advertising that much of the screening to the upper levels of the treehouse are provided by branches from the existing tree, and that some of these branches overhang the southern boundary.
76. Where there is direct overlooking from the upper levels of the treehouse, screening by the branches should not be relied upon as a single method to address direct overlooking, as this screening could be pruned by the adjoining neighbour where they overhang the boundary, at any time without notice and without requiring permission of the proponent.
77. The proponent has verbally indicated that additional screening measures have been undertaken to the treehouse itself to further mitigate concerns relating to overlooking to the adjoining directly affected property.
78. Following the above, although the standard provisions for residential development do not specifically apply, consideration can be given to potential detrimental impacts on the amenity of the southern adjoining neighbour from a visual privacy perspective, and whether these impacts do not meet the objectives of the Residential zone or the relevant matters to be considered as outlined under the Planning Regulations.
79. To determine these impacts, the general principles contained under the R-Codes for the assessment of visual privacy have been utilised. The design principles in relation to visual privacy refer to designing the development to minimise direct overlooking to active outdoor spaces or openings to habitable rooms to adjacent properties, and providing maximum visual privacy to rear and side boundaries through various recommended methods.
80. Specifically, direct overlooking should be minimised to active outdoor spaces and major openings of adjacent properties that are located behind the street setback line.
81. There are no major openings on the northern elevation of the southern adjoining dwelling. It is also noted that the boundary fence between the subject site and southern adjoining property is less than a standard 1.8m in height, where behind the street setback line.
82. It is acknowledged that there is a courtyard located in the front of the southern adjoining dwelling. However as this is not the only active outdoor area for the southern adjoining dwelling, and this area is located forward of the southern adjoining property's setback line, the front courtyard is considered to form part of the public realm (i.e. visible from the street). Although there may be a perception of a detrimental impact from overlooking from the treehouse, it would be unreasonable to require screening from the treehouse to this area.
83. Additionally, as the treehouse is setback approximately 4.2m from the southern boundary, there is an expectation that in addition to the setback of the upper levels of the treehouse to the southern adjoining boundary, the remaining canopy would provide sufficient screening to minimise direct overlooking to any sensitive areas of the adjoining property located behind the street setback line. Further, as the foliage of the existing tree is fairly substantial, this statement even accounts for the concern that branches overhanging the southern boundary, could be legally removed by the neighbour.

84. Subsequently, were the treehouse to be retained for private purposes only, although the development is arguably more substantial than typical play equipment associated with domestic use, the treehouse is not considered to result in a detrimental impact on amenity of the southern adjoining property in relation to visual privacy.
85. In regards to bulk and scale and the impact of the treehouse on the streetscape and adjoining properties, although there are no specific provisions applicable as outlined above, the objectives relating to streetscape and building design outlined under the R-Codes are considered an appropriate tool. Refer to the Statutory Implications section of this report for further information.
86. As noted above, although the treehouse is substantially greater in size than typical play equipment, were the treehouse used for domestic/private purposes only, the impacts generated would be substantially less than if it were used for commercial purposes. Even though it is likely it would be used on a regular basis, it is likely to be occupied by a much lower number of children at any one time and with less frequency than experienced on a commercial basis.
87. It is acknowledged that the southern adjoining property is the most affected in regards to potential impacts of bulk and scale (visual dominance) from the treehouse. The overall perceived impacts from bulk and scale of the treehouse would also be compounded by the lower ground level of the southern adjoining site compared to the subject site, and the treehouse being constructed within an existing substantial tree that overshadows the adjoining property.
88. However on the other hand, as the treehouse is constructed within the tree, of wooden and similar coloured materials, it is considered that this contributes to reducing the perceived impact from its bulk and scale to the southern adjoining property and the streetscape, than what would be generated by a similar scale building or structure in the same location.
89. As the treehouse is substantially screened by the existing foliage, it is barely visible from the street and therefore it has minimal impact on the streetscape. Furthermore, although it is substantially larger in scale than typical play equipment, the treehouse itself is not considered to be inconsistent with the residential character or amenity of the street.
90. On this basis, it is acknowledged that the treehouse creates a visual impact when viewed from the southern adjoining property, however the bulk and scale of the treehouse itself is not considered to create a significant detrimental impact on amenity. In this instance, the treehouse is considered to contribute and even complement the character of the street and the area, and therefore is recommended to be retained in its current form for private/domestic purposes only.

Recreation-Private (Treehouse) use

91. In considering the application, including the revised details and management plan submitted by the proponent, and submissions received during advertising, staff have formed the view that the proposed intensification of the land for the purpose of Recreation – Private (Treehouse) use on site should not be supported. It is considered an unreasonable intensification of a site for commercial purposes, resulting in an inappropriate development within the specific context of the established residential inner urban area of Bridges Street.
92. In considering a use classified as an “A”, it is important to consider whether the proposed use meets the objectives of the Residential zone, and whether the proposed use is compatible with existing uses and within the specific context of the subject site.
93. When assessing impacts on amenity, it is necessary to determine the level of existing amenity within the immediate area.
94. The amenity of Bridges Street is generally consistent with an established inner urban residential area of a historic town, where the applicable residential zoning and density is consistent to its location and relative proximity to the CBD, and to areas of high amenity located within walking distance to the site (such as Stirling Terrace, the Waterfront, Lawley Park and Corndarup / Mt Clarence). Development in the context of Bridges Street specifically is of a residential character, with existing dwellings predominantly used for permanent residential uses.

95. The context and amenity of Bridges Street and the immediate vicinity within and in excess of 150m of the subject site, is also informed by Albany's maritime setting and subsequent proximity to the Albany Port and associated infrastructure, and other aspects such as the Albany Waterfront development.
96. This established inner urban context of a historic town within a maritime setting results in buildings and land uses that are predominantly consistent with an established inner urban residential area, along with a mix of other associated non-residential uses within this radius such as community or private clubs, recreational facilities, consulting rooms and holiday accommodation.
97. A treehouse hired on a regular and ongoing basis for the purpose of private events would have a range of differing impacts on the adjoining and nearby landowners, particularly including the intensity of use in terms number of people likely to be occupying the tree.
98. Therefore the intensification of the treehouse for the purpose of hiring for private events as a Recreation-Private use, compounded by the perception of impacts on privacy and associated noise generated by the use, would create an unreasonable level of detrimental impact on the amenity of the southern adjoining property. These resulting detrimental impacts do not maintain the existing character and amenity of the immediate or surrounding area of the subject site and therefore are inconsistent with the objectives of the Residential zone.
99. Although the proponent has made an attempt to decrease to impact on the surrounding area by incorporating stricter measures into the management plan and lease conditions, including the reduction in the number of events per week, it is pertinent to note that the lack of on-site management would essentially result in parties being self-managed. It is considered that the lack of on-site management could pose an unacceptable risk to the amenity of the area and on surrounding landowners.
100. Staff have also raised with the proponent whether they would potentially consider further limitations to the operation of the Recreation-Private use (such as reduced hours or days), in addition to the recent amendments submitted to address concerns raised during advertising.
101. The proponent indicated they could potentially consider additional limitations, however raised concerns as to what extent any further limitations might entail, as the proponent considered that the recent amended proposal already involved significant reductions in the operations of the use.
102. Should the proposal be supported it is considered that an approved Management Plan be revised to include matters such as the requirement for an onsite manager when events are being held and a further reduction in the number of events permitted each week, to address and mitigate concerns raised in relation to detrimental impact on amenity.
103. If the Recreation-Private (Treehouse) were supported, onsite car parking would also be recommended to be required and implemented prior to commencement of the use. A variation to car parking requirements would not be supported due to potential detrimental impacts on the existing functionality and residential character of the street. Formalised car parking and access to the site would also address safety concerns regarding conflict between pedestrians and vehicles accessing the site.
104. It should also be noted that a significant portion of the site will be required to be constructed as access and car parking bays to accommodate on site car parking generated as part of the proposal. Additionally, due to the level difference between the street and the site, substantial site works may be required that may impact on the functionality of car parking and manoeuvring on site. The onsite car parking requirements would most likely further detract from the residential character of the street and also potentially impact the future residential development potential of the site, especially were the Recreation-Private use proposed to be retained and continue operating.
105. It is also noted that due to existing constraints of the road reserve including mature street trees, the narrow width of the street, and the existing cul-de-sac design, there is currently minimal turning area within the street that would be further compounded by vehicles accessing the use, including parking on the street.

106. As the function and existing infrastructure of Bridges Street is already constrained, the intensification of the site from the Recreation-Private (Treehouse) use would further compound the detrimental impacts on the residential character of Bridges Street.
107. It is also unlikely that works or upgrades would be supported to be undertaken within the road reserve, such as removal of the mature street tree or upgrade works to the cul-de-sac design in order to mitigate the impacts from the Recreation-Private use, as the works are currently not required to support the predominant residential functions of the street.
108. Bridges St is located in an established inner urban residential area within an historic town, close to a regional activity centre and also a regional port and associated infrastructure. Accordingly the minimum expected amenity and characteristics of this area are fundamentally different to the minimum expected amenity and characteristics of more contemporary residential areas, especially located in a suburban context separated from sensitive land uses.
109. Therefore, any intensification of a site for commercial purposes within the specific context of the established residential setting of Bridges Street should not result in a further compounding on what would be considered an acceptable level of disturbance or detrimental impact on amenity, than what is already being experienced by existing sensitive land uses.

Safety, lack of access to services and facilities and commencement of unauthorised development

110. Some objections to the unauthorised construction of the treehouse and commencement of the Recreation-Private (Treehouse) outlined the following concerns:
 - a. The application should not be supported, as this would create a precedent used in the future to circumvent proper approval processes.
 - b. No regard had been given for the approval process and to nearby landowners.
 - c. No regard had been given for orderly and proper planning as required by the Planning Regulations.
 - d. The structure had received no scrutiny relative to the Building Codes because plans were not submitted to Council for development approval.
111. Objections received also raised concerns in relation to:
 - a. The use having a lack of access to suitable facilities, including accessible compliant toilets.
 - b. Patron safety, due to the existing design of the play equipment, even if certified by Kidsafe.
 - c. Non-compliant structures on public land creating a public safety hazard, making the City liable should there be an accident.
112. Although the works were undertaken without development approval, the proponent now seeks to rectify this by submitting a formal development application.
113. Development applications are assessed on their merits and informed by relevant considerations, including when development has commenced without proper approvals in place.
114. It should however be noted that regardless of the determination of the application, precedent is not a valid planning concern.
115. It is acknowledged that suitability of the land for development and possible risk to health and safety is a relevant matter for consideration. However in this instance, these matters are captured through various means, including:
 - a. The officer's recommendation that the treehouse if retained be used for private purposes only;
 - b. Kidsafe WA are the relevant body to certify play equipment and have certified its compliance with AS 4685 (refer to Statutory Implications section for further information);
 - c. The development on the verge does not form part of this application. Works within the road reserve require approval from the City via submission of a verge development application (refer to the Statutory Implications section of this report for more information); and
 - d. As outlined elsewhere in the report, were the Recreation-Private use be approved, the City's Health officers have advised that the treehouse would require a Public Building assessment, with requirements to be implemented prior to commencement of the use.

Property value

116. Concerns regarding decreased property values were raised during the consultation process.
117. Property values are not within the matters to be considered under clause 67 of the Planning Regulations; and therefore are not a valid planning consideration.

GOVERNMENT & PUBLIC CONSULTATION

118. Agency responses, concerns raised during advertising, staff comment and the proponent's justification for the proposal are summarised and discussed above.
119. The Recreation- Private use was advertised to nearby landowners of the site for a period of 27 days via direct mail out. A sign was also placed on-site and a copy of the proposal placed on the City of Albany website for the same time period.

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Consult	Mail Out	06/04/2022 – 02/05/2022	197 submissions received	Yes Planning Regulations
Consult	Public Comment – City of Albany website and survey	06/04/2022 – 02/05/2022		Yes – as above
Consult	Sign on-site	06/04/2022 – 02/05/2022		Yes – as above

120. Due to the potential heritage significance of the stone drain, the footbridge constructed over the drain was referred to the City of Albany Heritage Advisor, as per standard process. The Heritage Advisor indicated they were satisfied that the fabric of the drain was not impacted during the installation of the footbridge. The approval of development on the verge is however subject to a verge development application.
121. The proposal was referred to internal departments for consideration and comment, including Environmental Health, Building and Engineering.
122. Environmental Health advised that the premises must comply with the *Health (Public Building) Regulations 1992* and be connected to the Water Corporation sewerage system.

STATUTORY IMPLICATIONS

123. The treehouse in its current form does not meet exemptions for the requirement to obtain development approval under the Planning Regulations, LPS1 or relevant local planning policy. It is acknowledged that the proponent has indicated there were materials installed within the mature tree prior to construction of the treehouse that is the subject of this application. However, the City's position is that the existing treehouse as constructed to its current form is a substantial intensification of what may have previously been installed on site, and therefore has been assessed as new development.
124. It is also acknowledged that clause 61. of the Deemed Provisions of the Planning Regulations contains exemption criteria specifically for a 'cubbyhouse'. However due to the substantial scale of the treehouse and the associated intent for the use of the treehouse for both adults and children, is not considered to fall under the intent of this exemption criterion. In this instance, cubbyhouses or other play fixtures or equipment within a residential context are generally considered under the planning framework as being smaller scale constructions, associated with a domestic setting, for private use as play equipment primarily by children, and that are incidental to the overarching predominant residential use on site.
125. In accordance with LPS1 the definition for Recreation – Private is:
- 'means premises that are –*
- (a) *used for indoor or outdoor leisure, recreation or sport; and*
- (b) *not usually open to the public without charge;'*

126. Recreation – Private is classified as an ‘A’ use within the Residential zone in accordance with Table 2 Zoning Table of LPS1, meaning that the use is not permitted unless the local government has exercised its discretion by granting development approval after giving notice in accordance with clause 64 of the deemed provisions.
127. Although development approval is required for the existing treehouse and use, a building permit is not required, as the treehouse is considered nature play equipment and not a ‘structure’ under the relevant building legislation.
128. The treehouse is required to comply with *AS 4685.1:2021 Playground Equipment and Surfacing*. Kidsafe WA are the relevant body to certify play equipment and have certified its compliance with AS 4685, however this is a separate process and not a captured under the relevant planning legislation.
129. The objectives of the Residential zone under LPS1 that are relevant to the consideration of the Recreation-Private use of the treehouse at the subject site are as follows:
 - a. Maintain the character and amenity of established residential areas and ensure that new development, including alterations and additions, is sympathetic with the character and amenity of those areas;
 - b. Promote and safeguard the health, safety and convenience of residential areas and inhabitants by:
 - Providing for increased dwelling density and encouraging urban renewal and consolidation in areas where land is sufficiently close to existing or planned facilities and infrastructure available to service the development;
 - Providing a range of lot sizes in appropriate locations to meet the needs of the City and its anticipated growth in population;
 - Providing for adaptable housing in areas where facilities area available to meet the needs of aged and disables residents within the City;
 - c. Identifying those areas where a residential land use development requires additional development control standards to safeguard residents against an adjoining non-compatible land use activity or hazard;
 - d. Encourage high standards of innovative housing design, which recognise the need for privacy and energy efficient design, whilst ensuring the building bulk and scale is compatible with adjoining sites; and
 - e. In low density areas, ensure that development (including dwellings, structures, outbuildings and access) are sited and designed to:
 - Minimises the clearing of stands of remnant vegetation and promotes the replanting of endemic vegetation species;
 - Enhance the visual amenity of the area; and
 - Avoid areas affected by natural hazards or other impacts (including bushfire risk and/or floodplains, heavy haulage routes and the like) to reduce the potential for harm to buildings and their occupants.
130. Amenity is defined under LPS1 as:
 - All those factors which combine to form the character of an area and include the present and likely future amenity
131. The provisions under the R-Codes in relation to the streetscape and building design are as follows:

5.2 Streetscape objectives

(a) To contribute towards the character of streetscapes including their views and vistas and provides security for occupants and passers-by, a landscape to ensure adequate shade, privacy and open space for occupants, and an attractive setting for the collection of buildings.

5.4 Building design

(a) To design buildings and landscape to minimise adverse impact on the privacy of adjoining dwellings and private open space.

(b) To optimise comfortable living, access to sunlight and solar energy to facilitate sustainable housing development with particular regard for place and local conditions.

(c) To maintain the amenity of streetscapes and views along the street by ensuring that associated outbuildings and other fixtures attached to buildings do not detract from the streetscape and are not visually intrusive to neighbouring properties or adjoin public spaces.

132. It should be noted however that the viability of a business or potential loss of revenue from additional limitations being applied to an approved use are not relevant planning matters.
133. Matters such as the appropriateness of a development within its applicable land use zone and within the context of the site, its operational capacity and potential impacts on the immediate vicinity and within proximity to a site are taken into account at the preliminary or formal assessment stage of a proposed development.
134. Were preliminary advice obtained prior to commencement of the unauthorised construction and use of the treehouse as Recreation-Private, a development would have needed to demonstrate that these matters had been identified and how impacts from the development would be adequately mitigated. Where it is unable to be suitably demonstrated that a development proposal can adequately address issues either through redesign or mitigation measures, it would most likely be unable to be supported and recommended that a more suitable site be identified that can cater for the use.
135. Voting requirements for this item is **SIMPLE MAJORITY**

POLICY IMPLICATIONS

136. The subject site falls within the City of Albany - *Albany Historic Town Design Policy* area, however the proposed development does not fall within the scope of the policy.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>Risk: A decision that results in the detrimental impacts on amenity may be seen as a misapplication of the provisions of local planning scheme.</i>	<i>Likely</i>	<i>Moderate</i>	<i>High</i>	<i>Pragmatic decision based on the assessment in accordance with the provisions of the local planning scheme, taking into account the consideration the objectives of the Residential zone and submissions received during advertising.</i>

FINANCIAL IMPLICATIONS

138. All costs associated with the development will be borne by the proponent.
139. However, should the proponents be aggrieved by Council's decision and seek a review through the State Administrative Tribunal, the City could be liable for costs associated with defending the decision at a State Administrative Tribunal hearing.

LEGAL IMPLICATIONS

140. Council is at liberty to use its discretion to approve or refuse the proposal. An applicant aggrieved by a decision or condition may apply for a review to the State Administrative Tribunal, in accordance with Section 252 of the *Planning and Development Act 2005*.

ENVIRONMENTAL CONSIDERATIONS

141. No environmental impacts apply.

ALTERNATE OPTIONS

142. The Council has the following alternate options in relation to this item, which are:

- a. To resolve to refuse the proposal subject to reasons; and
- b. To alter, amend, remove or add conditions to the approval to address potential impacts from the development.

143. If Council were to not support the retention of the treehouse, the following matters are to be considered:

- a. Refusal of the unapproved treehouse; and
- b. Removal of the treehouse within a certain timeframe and the site returned to its original state (implemented through the compliance process)

144. If Council were to support the development, the following matters are to be considered that vary the proponent's application:

- a. Reduction in operator hours to address concerns and mitigate potential detrimental impact on amenity, including the recommendation for events not being permitted on Sundays or Public Holidays
- b. All car parking being contained on site, with submission of a Vehicle Parking and Access Plan required, prior to commencement of development, demonstrating all car parking being contained onsite and in accordance with relevant standards and for the Plan to be implemented, including construction of the car parking prior to formal occupation of the use.

145. If approved, the following matters are to be addressed via conditions or advice notes:

- a. Temporary approval and/or limiting hours of operation/number of events.
- b. Approval of Management Plan and submission of revised Management Plan if required, such as requirement for onsite manager.
- c. Car parking to be constructed to the satisfaction of the City and connected to appropriate services.
- d. Screening to car parking along southern boundary (submission).
- e. Acoustic report (Health).
- f. Submission of Kidsafe annual report (Building Services).
- g. Compliance with Public Health Act.
- h. Crossover permit and verge development application, including for bridge and footpath.

CONCLUSION

146. Based on the above detailed discussion, the authorising officer's recommendation is that Council:

- a. Approve the existing treehouse for private use only; and
- b. Refuse the Recreation – Private (Treehouse) use as it is inconsistent with the objectives of the Residential zone under LPS1, due to:
 - The use being an unreasonable intensification of the site for commercial purposes, and is therefore incompatible within its specific context of the residential nature of the Bridges Street cul-de-sac and would result in a detrimental impact on the residential amenity and character of the properties directly adjoining and within proximity to the subject site; and
 - That the intensification of the site for commercial purposes will have a detrimental impact on the existing residential amenity and character of the direct adjoining properties and the broader vicinity. The level of disturbance generated by the use, specifically in relation to noise (compounding an existing accepted level of disturbance due to the context of the site and proximity to existing commercial/port industry uses), is unlikely to be satisfactorily mitigated through additional limitations on the operations and management of the use.

Consulted References	:	<ul style="list-style-type: none"> • Local Planning Scheme No. 1 • Planning and Development (Local Planning Schemes) Regulations 2015 • Residential Design Codes Volume 1 • Residential Design Codes Explanatory Guidelines
File Number (Name of Ward)	:	A156891 (Frederickstown Ward)
Previous Reference	:	Nil

11. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN Nil

12. MEETING CLOSED TO THE PUBLIC

13. CLOSURE

There being no further business the Chair declared the meeting closed at **7:46pm**.

(Unconfirmed Minutes)

Councillor Chris Thomson
CHAIR