



AGENDA

DEVELOPMENT AND INFRASTRUCTURE SERVICES COMMITTEE MEETING

Wednesday 13 March 2024

6.00pm

Council Chambers

The Five Strategic Pillars



Development & Infrastructure Services Committee
Terms of Reference

Functions:

This Committee is responsible for:

- Sustainable management of natural areas, balancing conservation with responsible access and enjoyment.
- Shared responsibility for climate action.
- Responsible growth, development, and urban renewal.
- Creating interesting, vibrant, and welcoming places.
- Valuing and preserving local history, heritage, and character.
- Ensuring a safe, sustainable, and efficient transport network.

It accomplishes this by:

- Developing policies and strategies.
- Creating progress measurement methods.
- Receiving progress reports.
- Considering officer advice.
- Debating current issues.
- Offering advice on effective community engagement and progress reporting.
- Making recommendations to Council.

Membership: Open to all elected members.

Meeting Schedule: Monthly Meeting

Location: Council Chambers

Executive Officers:

- Executive Director Infrastructure, Development & Environment Services
- Manager Planning & Building Services
- Manager Engineering & Sustainability

Delegated Authority: None

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1. DECLARATION OF OPENING

2. PRAYER AND ACKNOWLEDGEMENT OF TRADITIONAL LAND OWNERS

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

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

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

3. RECORD OF ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE

Mayor	G Stocks
Councillors:	
Deputy Mayor Councillor	P Terry
Councillor	A Cruse (Chair)
Councillor	R Sutton
Councillor	T Brough
Councillor	D Baesjou
Councillor	S Grimmer
Councillor	M Traill
Councillor	L MacLaren
Councillor	C McKinley
Councillor	M Lionetti
Staff:	
Chief Executive Officer	A Sharpe
Executive Director Infrastructure, Development & Environment	P Camins
Manager Development Services	J van der Mescht
Co-ordinator Planning Services	J Wardell-Johnson
Meeting Secretary	P Ruggera

Apologies:

4. DISCLOSURES OF INTEREST

Name	Committee/Report Item Number	Nature of Interest

5. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

6. PUBLIC QUESTION TIME

In accordance with the City of Albany Standing Orders Local Law 2014 (as amended):

Clause 4 (6) The total time allowed for public question time will be no more than 30 minutes.

Any extension to the time period defined by the City of Albany Standing Orders Local Law 2014 (as amended) will be at the discretion of the Presiding Member.

In accordance with the City of Albany Standing Orders Local Law 2014 (as amended):

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.*

7. PETITIONS AND DEPUTATIONS

8. CONFIRMATION OF MINUTES

DRAFT MOTION

THAT the minutes of the Development and Infrastructure Services Committee meeting held on 14 February 2024 as previously distributed, be CONFIRMED as a true and accurate record of proceedings.

9. PRESENTATIONS

10. UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS

DIS388: HOLIDAY HOUSE AT 56 KARRAKATTA ROAD, GOODE BEACH

Land Description	: Lot 601, 56 Karrakatta Road, Goode Beach
Proponent / Owner	: CS & EM Bastian
Attachments	: 1. BMP & BEEP 2. Development Plans 3. DFES technical advice February 2023 4. DFES technical advice December 2023 5. Property Management Plan 6. Schedule of Submissions
Supplementary Information & Councillor Workstation	: Customer Complaint Form Objection State Planning Policy 3.7 – Planning in Bushfire Prone Areas Guidelines for Planning in Bushfire Prone Areas V1.4
Report Prepared By	: Senior Planning Officer (D Ashboth)
Authorising Officer:	: Executive Director Infrastructure, Development and Environment (P Camins)

STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. In making its decision, Council is obliged to draw conclusion from its adopted *Albany Local Planning Strategy 2019* (the Planning Strategy) and *Strategic Community Plan – Albany 2032*.
3. This item relates to the following elements of the City of Albany Strategic Community Plan 2032:
 - **Pillar:** People
 - **Outcome:** A safe community
 - **Pillar:** Planet
 - **Outcome:** A resilient community that can withstand, adapt to, and recover from natural disasters.
 - **Pillar:** Prosperity
 - **Outcome:** A highly sought-after tourist destination.

Maps and Diagrams:



In Brief:

- Council is requested to consider an application for a Holiday House at No. 56 (Lot 601) Karrakatta Road, Goode Beach.
- The application is consistent, or capable of consistency (through imposition of conditions) with Local Planning Scheme No.2 and the City of Albany Holiday Accommodation Local Planning Policy requirements.
- The proposed Holiday House does not achieve objectives 5.1, 5.2 and 5.3 of State Planning Policy 3.7 – Planning in Bushfire Prone Areas (SPP3.7).
- The proposed Holiday House also does not meet the performance solutions nor the intent of Element 5: Vulnerable Tourism Land Uses contained within the Guidelines for Planning in Bushfire Prone Areas (Bushfire Guidelines) relating to Siting and Design (P5iv) nor Vehicle Access (P5v).
- The City's consideration of the proposal, including the documentation submitted by the applicant and advice provided by DFES are discussed in detail within the report.
- Council is now requested to consider the matter, specifically in relation to whether the proposal is an acceptable outcome, taking into account the Objectives of SPP3.7 and the Elements and Objectives contained within v1.4 of the Guidelines for Planning in Bushfire Prone Areas.

RECOMMENDATION

DIS389: AUTHORISING OFFICER RECOMMENDATION

THAT Council resolves to issue a notice of determination for REFUSAL for a Holiday House at Lot 601, 56 Karrakatta Road, Goode Beach, 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:**
 - c) The objectives and provisions of State Planning Policy 3.7 Planning in bushfire prone areas, specifically:**
 - i. Objectives 5.1, 5.2 and 5.3 and Policy measure 6.6 of SPP3.7; and**
 - ii. The proposal does not meet the performance solutions nor the intent of Element 5: Vulnerable Tourism Land Uses contained within the Guidelines for Planning in Bushfire Prone Areas (v1.4) associated with the State Planning Policy 3.7 – Planning in bushfire prone areas. Specifically the performance solutions outlined under the BMP dated 19/09/2023 do not satisfactorily demonstrate in the opinion of the local government, in consultation with DFES, appropriate solutions for Siting and Design (P5iv) nor Vehicle Access (P5v).**
 - q) the suitability of the land for the development taking into account the possible risk of flooding, tidal inundation, subsidence, landslip, bush fire, soil erosion, land degradation or any other risk; and**
 - r) the suitability of the land for the development taking into account the possible risk to human health or safety.**

BACKGROUND

4. Site details:

Local Planning Scheme:	City of Albany Local Planning Scheme No. 2
Zone:	Residential (Site Specific Provisions 19)
Lot Size:	Site Area 4006m ²
LPS2 Use Class and Permissibility (Table 3):	Holiday House - A
Existing Land Use:	Single House
Bushfire Prone Area:	Yes
Local Planning Policies:	Holiday Accommodation
Other Relevant Plans and Policies:	State Planning Policy 3.7 – Planning in bushfire prone areas & associated guidelines

5. The applicant initially contacted the City in September 2021 to discuss requirements for a change in use application from 'Single House' to 'Holiday House'. The applicant was advised of the additional bushfire requirements that apply to the lot (amongst other considerations) and was directed to a bushfire consultant.
6. The application for 'Holiday House' at 56 Karrakatta Road was originally lodged with the City in December 2021 and in the same month, the applicant was advised that the application is unlikely to be supported due to the identified BAL rating of BAL-FZ (flame zone) resulting in non-compliance with SPP3.7 and associated Bushfire Guidelines. The applicant was subsequently given the opportunity to withdraw the application or proceed to a full assessment.
7. The applicant confirmed they wished to proceed with a full assessment and later that month, the application was referred to adjoining landowners and the Department of Fire and Emergency Services (DFES) for comment.
8. Following further discussions with the applicant, the application was placed on hold in January 2022 pending the provision of a Bushfire Emergency Evacuation Plan, an updated BAL assessment and a revised parking plan.
9. In the time that followed the application being placed on hold, the applicant began efforts (in consultation with their bushfire consultant and neighbours) to reduce the BAL-rating in an attempt to achieve the deemed-to-comply criteria relating to Element 5(P5iv) of the Bushfire Guidelines. However, despite their efforts, the applicant was unable to reduce the BAL rating below BAL-FZ, even with the cooperation of an adjoining landowner.
10. At the same time, the City sought advice from the Department of Planning, Lands and Heritage as custodians of SPP3.7 and associated Guidelines to ensure the City's interpretation of the documents was correct. The City was advised to refer to the DFES for technical information.
11. A referral response was received from the DFES on 15th February 2022 (refer attachment 1) which advised the application does not comply with the bushfire protection criteria within the Bushfire Guidelines and was therefore not supported.
12. Following the DFES advice, the applicant was again advised that the City is unable to support the application as currently proposed. The applicant subsequently requested a site meeting to discuss the outstanding bushfire matters, which was held on 25 February 2022, with City officers, the applicant and their bushfire consultant in attendance.

13. At the onsite meeting, when the City was asked how the application could move forward despite the DFES advice, City officers suggested that they may wish to consider exploring the preparation of a risk assessment in accordance with SPP3.7 Guidelines, which provides a potential alternative pathway via a performance principle-based solution to demonstrate the proposal can address the outstanding bushfire considerations. However, City officers also stressed at the time that this avenue would not guarantee a positive determination of the application, and further assessment and referral to DFES likely to be required.
14. The applicant and bushfire consultant indicated they would investigate the risk assessment approach suggested by City officers and would forward the document to the City once completed.
15. Following the meeting in February 2022 and early December 2022, the City contacted the applicant on multiple occasions, seeking an update on the progress with the preparation of a risk assessment, with the applicant indicating that it had still not been completed.
16. The bushfire consultant then contacted the City in mid-December 2022 seeking clarification on City officers suggestion for the applicant to consider preparing a risk assessment to support the development proposal. The consultant indicated that the document was more appropriate for a large-scale tourism development and suggested that an updated BMP and (Bushfire Emergency Evacuation Plan) BEEP in accordance with the performance principles in V1.4 of the Guidelines be provided in its place.
17. The City agreed and advised that upon receipt of these updated documents, the City would follow the required processes including re-referral to DFES, with a decision to be made based on the updated documentation and revised comments from DFES.
18. In September 2023 the applicant was again contacted as the required documentation had not been provided and the application could not be left on hold indefinitely.
19. They were also reminded that they did not have the necessary approvals to operate as a Holiday House following receipt of a complaint by a nearby landowner.
20. The applicant provided the requested documents at the end of October 2023. This information was then referred to DFES for a second round of comments and the assessment of the application was recommenced.
21. A second response was received from DFES in December 2023 with similar advice to the first referral response (refer attachment 2).
22. The applicant was again advised that the application cannot be supported. A meeting was arranged at the applicant's request to clarify the reasons for the anticipated refusal and discuss next steps. This meeting was also attended by the applicant's legal representative.
23. Following this meeting the applicant advised they wished to have the application determined by Council at the next available Ordinary Council Meeting, rather than under officer delegation.
24. It should be noted that this Holiday House has been operating without the necessary approvals for the duration of the application process (more than 2 years).
25. The City's Compliance and Planning team have advised the applicant that they do not have the necessary approvals to operate as a Holiday House.
26. The applicant had attempted to get their accommodation registered with the Albany Visitor's Centre. The Visitor Centre Team undertook their due diligence and checked with the Planning Department.
27. The Compliance Team advised that the Holiday House does not have the necessary approvals and as such any public liability insurances may be invalid.
28. It should also be noted that a similar application for a 'Holiday House' on the same street as this application was refused under officer delegation due to non-compliance with SPP 3.7 and the same aspects of Element 5 as this application.

DISCUSSION

Holiday Accommodation Local Planning Policy and Local Planning Scheme No.2

29. Applications for a change in land use to Holiday House require assessment against the City of Albany Holiday Accommodation Local Planning Policy (Holiday Accommodation Policy).
30. The Holiday Accommodation Policy requires the preparation of a Management Plan (attached), setting out on-going management procedures and methods to ensure the amenity of adjoining/nearby land uses are maintained.
31. The Management Plan has been reviewed by officers and is generally considered acceptable for this property, subject to some modifications to correct inconsistencies and address the implementation of measures required under the BMP.
32. As required under cl.64 of the *Deemed Provisions for Local Planning Schemes*, the application (including Management Plan) was referred to adjoining landowners for comment.
33. One (1) objection to the Holiday House was received at the close of advertising. Details of the objection, along with the officer response can be found within the Schedule of Submissions.
34. In accordance with the Holiday Accommodation Policy, where a neighbour objects to a proposal for Holiday Accommodation, the application is to be considered in view of the following:
 - a) The proximity of the holiday accommodation to key tourism attractions such as the beach or town centre/activity centre (typically a 5 minute walk – 400m); and/or
 - b) Location within a street(s) which facilitates safe, efficient and pleasant walking, cycling and driving; and/or
 - c) Location compatible with Figure A (refer to attachment - the areas illustrated are within close proximity to the town centre and popular swimming beaches); and
 - d) A management plan designed to facilitate community concerns.
35. It is considered the application meets the above-mentioned criteria for the following reasons:
 - a) The proposal is located in close proximity to Goode Beach as well as key tourist attractions such as Albany's Historic Whaling Station, the Gap and Frenchman Bay.
 - b) See above.
 - c) The property is located within a Preferred Area for Holiday Accommodation (Figure A)
 - d) An acceptable management plan has been prepared for the property to mitigate amenity impacts of the proposed Holiday House (refer above).
36. The application proposes accommodation for up to 8 guests which would require provision of three (3) designated car parking bays (1 per 3 guests) under the Holiday Accommodation Policy. Although the applicant has indicated seven (7) carparking bays on the site plan, some of these bays do not meet Australia Standards requirements.
37. Despite the above, there appears to be ample space on-site for the provision of at least 3 bays (likely more), therefore it is considered parking requirements could easily be met via the provision of a detailed car parking plan.
38. The application would be consistent with the remaining provisions of the Holiday Accommodation Policy subject to the imposition of standard conditions.
39. The application is consistent with the objectives of the Holiday Accommodation Policy being *'To encourage good quality, well managed holiday accommodation for use by short-term visitors generally in locations that will enhance the tourism experience while minimising potential impacts on adjoining residents.'*
40. The application is also consistent with the applicable provisions of LPS2, including the objectives of the Residential Zone.

Bushfire

41. A Bushfire Management Plan (BMP) and Bushfire Emergency Evacuation Plan (BEEP) were required to be prepared to accompany the application given the location in a bushfire prone area and is seeking a change of use to a vulnerable land use.
42. A vulnerable land use includes tourism or recreational land uses which involve visitors who are unfamiliar with the surroundings and/or where they present evacuation challenges. This reflects the increase in risk from a permanent residential use.
43. BMP's and BEEP's for vulnerable land uses are required to be completed by a Level 3 Bushfire practitioner under State Planning Policy 3.7 Planning in Bushfire Prone Areas and associated Guidelines version 1.4. These documents have subsequently been co-signed by a BPAD Level 3 Practitioner (Erika Dawson from Integrated Consulting).
44. The BMP is required to address the criteria contained within Element 5 of the Guidelines for Planning in Bushfire Prone Areas (the Guidelines) specifically those applying to 'Bed and Breakfast and Holiday Houses' outside of a residential built-out area.
45. The Guidelines define a 'residential built-out area' as:
"A locality serviced with reticulated water and is within or contiguous with an urban area or town (or similar), which incorporates a suitable destination."
46. A Suitable Destination is defined as:
"An area that is not classified as bushfire prone on the Map of Bush Fire Prone Areas, or is greater than 100 metres from classified vegetation as per AS 3959 and can provide shelter during a bushfire event."
47. Given Goode Beach is unable to achieve the definition of a residential built-out area (with the exception of a reticulated water supply) the application must be assessed against the more stringent criteria for land outside of a residential built-out area.
48. The BMP satisfactorily addresses the bushfire criteria relating to Provision of Water (P5vi) however, fails to achieve the criteria relating to Siting and Design (P5iv) and Vehicle Access (P5v).
49. In relation to Siting and Design (P5iv), the acceptable solutions contained within the Guidelines require an asset protection zone of sufficient size to ensure the radiant heat impact of a bushfire does not exceed BAL-29.
50. The BMP has indicated the property is unable to achieve a BAL rating below BAL-FZ (flame zone) which is the highest possible BAL rating.
51. Given the application was unable to achieve the acceptable solution, the BMP proposed assessment against the associated performance principle as follows:
Habitable buildings are sited and designed to:
 - *Minimise clearing of existing vegetation; and*
 - *Provide hazard separation between classified vegetation and a development site, that is managed in perpetuity, to prevent the spread of fire and direct flame contact to the building.*
52. The application proposes to address the performance criteria through the following:
 - Upgrading the building to limit ember ingress
 - Providing a nominated water tank for bushfire purposes
 - Closure on extreme and catastrophic fire days
 - Managing all vegetation on site and some on the neighbouring property to the west.
53. Whilst it can be argued that the above measure may increase safety in a bushfire event, these measures do not specifically address the performance criteria contained within the Guidelines.

54. Even if all the vegetation on the lot were to be managed (which would not meet the requirement to minimise vegetation clearance), the property would still be located within the 'flame zone' which entails direct flame contact with the building in a bushfire event.
55. This position was supported by the DFES referral response which noted that 'The additional mitigation measures do not improve the hazard separation for the building, and therefore do not demonstrate compliance with the performance principle'.
56. It should also be noted that although the BMP proposed clearance and maintenance of the adjoining lot through a notification on title (which staff raise concerns and have issues with) this would still not reduce the BAL-rating below BAL-FZ. These measures would only reduce the BAL-rating to the western face of the building, if they are able to be implemented.
57. The subject site is also located approximately 11m above the lots adjoining the subject site to the north which contain 'Class A Forest' designated vegetation.
58. Buildings located upslope from existing vegetation are considered to be in more danger in a bushfire event than those located on a downslope or on level land.
59. In relation to Vehicle Access (P5v), the acceptable solutions contained within the Guidelines require (amongst other attained criteria):
 - Public road access is to be provided in two different directions to at least two different suitable destinations; and
 - All public roads to be through roads. No-through roads are not recommended, however if required shall not be more than 200m in length for areas with an extreme bushfire hazard level (BHL).
60. Goode Beach is in a location on a peninsula, the entirety of which is declared bushfire prone.
61. Frenchman Bay Road is the only access in and out of the locality, so applications in Goode Beach are unable to achieve the acceptable Vehicle Access criteria of the Bushfire Guidelines.
62. There is no option to achieve the required public road access in two different directions to at least two suitable destinations.
63. This particular proposal is also located at the end of a no through road with a length of approximately 340m and an extreme BHL.
64. The application therefore proposes assessment against the associated performance principle as follows:

The design and capacity of vehicular access and egress is to adequately provided for the occupants to evacuate to a suitable destination before a bushfire arrives to the site, whilst allowing emergency service personnel to attend the site.
65. The application proposes to address the performance criteria through the following:
 - Closure on extreme and catastrophic fire days;
 - Local managers available to assist with the evacuation of the site, if necessary;
 - Local managers to educate guests on bushfire risk and measures to be undertaken in the event of a bushfire;
 - BEEP providing for early evacuation of the site to Albany Leisure and Aquatic Centre.
66. In response to this proposal, DFES have advised that this approach does not demonstrate how the performance principle has been met which requires vehicle access to adequately provide for the occupants to evacuate to a suitable destination before the bushfire arrives to the site, whilst allowing emergency services personnel to attend the site.
67. Both DFES and City officers are of the opinion that compliance cannot be achieved at this location. It is noted that the change of use is within an established building and located at the end of a single access road.

68. It is considered that the limitations associated with the access arrangements in conjunction with the risk that the access could be cut off in the event of a bushfire and the potential for landscape scale bushfire in this area makes the site unsuitable for vulnerable uses.
69. In addition to the specific assessment criteria contained within Element 5 of the Bushfire Guidelines, the overall intent of Element 5 is *'To provide bushfire protection for tourism land uses relevant to the characteristics of the occupants and/or the location, to preserve life and reduce the impacts of bushfire on property and infrastructure.'*
70. In their referral response, DFES have advised that the topography, type and extent of bushfire prone vegetation may result in landscape-scale destruction as it interacts with the bushfire hazard on and close to the site.
71. In conjunction with the remoteness of the site and limited access options, it is considered that development of a vulnerable land use at this location does not comply with the overarching intent of Element 5 of the Bushfire Guidelines.
72. It is considered that approving the application would also be inconsistent with **SPP3.7 specifically in relation to:**
- a. **Policy Objectives:**
 - 5.1 Avoid any increase in the threat of bushfire to people, property and infrastructure. The preservation of life and the management of bushfire impact are paramount.*
 - 5.2 Reduce vulnerability to bushfire through the identification and consideration of bushfire risks in decision-making at all stages of the planning and development process.*
 - 5.3 Ensure that higher order strategic planning documents, strategic planning proposals, subdivision and development applications take into account bushfire protection requirements and include specified bushfire protection measures; and*
 - b. **6.6 Vulnerable or high-risk land uses**
 - 6.6.2 In areas where BAL-40 or BAL-Flame Zone (FZ) applies**
 - Subdivision and development applications for vulnerable or high-risk land uses in areas of BAL-40 or BAL-Flame Zone (FZ) will not be supported unless they comply with policy measures 6.6.1 and 6.7.2.*
73. In relation to policy measure 6.6.2 listed above, policy measure 6.6.1 relates to BAL levels at BAL-29 or below (not applicable) whilst policy measure 6.7.2 relates to unavoidable development which the guidelines state may include development such as critical state infrastructure (railway lines, communication towers), development associated with preservation of historic or cultural sites or emergency services such as evacuation centres, fire stations or policy and ambulance facilities (not considered applicable).
74. The land use is considered an 'A' use, which is a use not permitted unless the local government has exercised its discretion by granting development approval after advertising the application in accordance with clause 64 of the deemed provisions. As such, the applicant does not have a right to use the land for this purpose unless otherwise approved by the local government, taking into consideration the relevant assessment framework.
75. Despite the identified need for more luxury tourist accommodation in the City of Albany, the desirable location and the high-quality, unique residence, the application is unable to achieve the requirements of State Planning Policy 3.7 and associated Bushfire Guidelines.
76. It is therefore considered introducing a vulnerable land use to this location would result in unacceptable risk to the safety of occupants.
77. Courts have previously emphasised the duty of care owed by local authorities to prevent harm, even if they lack a specific statutory duty.

78. It is recommended that Council resolves to issue a notice of determination for refusal for a Holiday House at Lot 601, 56 Karrakatta Road, Goode Beach, for the above-mentioned reasons.

GOVERNMENT & PUBLIC CONSULTATION

79. The application was advertised to adjoining landowners for a period of 30 days (extended due to Christmas and the New Year period) with adjoining landowners directly notified by letter.
80. One (1) response was received objecting to the application.
81. The comments, including officer response are provided in the attached ‘Schedule of Submissions’.

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Consult	Mail out	21/12/2021 to 20/01/2022	1 submission received	Yes

82. The application was also referred to the Department of Fire and Emergency Services (DFES) for comment. The comments have been included as an attachment to this item and summarised in the Discussion section above.

STATUTORY IMPLICATIONS

83. This application was submitted over two (2) years ago under Local Planning Scheme No.1 (LPS1). Whilst LPS1 has now been superseded by Local Planning Scheme No.2 (LPS2) and the zoning of the site has changed from Special Residential to Residential, the Scheme planning framework is not much different in terms of process. The most relevant planning consideration for this proposal is the State Planning Policy 3.7 and associated Bushfire Guidelines, which have not changed.
84. The subject site is located within the Residential Zone of the City of Albany Local Planning Scheme No.2. ‘Holiday House’ is listed as an ‘A’ use within the Residential Zone which means the use is not permitted unless the local government has exercised its discretion by granting development approval after advertising the application in accordance with clause 64 of the deemed provisions.
85. Voting requirement for this item is **Simple Majority**.

POLICY IMPLICATIONS

86. The property is located in a Bushfire Prone Area which means the application requires assessment against *State Planning Policy 3.7 – Planning in Bushfire Prone Areas (SPP3.7)*.
87. The proposal is not consistent with Objectives 5.1, 5.2 and 5.3 and **Policy Measure 6.6** of SPP3.7 and does not meet the performance solutions nor the intent of Element 5: Vulnerable Tourism Land Uses contained within the Guidelines for Planning in Bushfire Prone Areas (v1.4) associated with the SPP3.7.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<p>Reputations and People Health and Safety</p> <p><i>Increased threat to individuals, specifically visitors, residing on the premises during a bushfire. If the proposed 'Holiday House' is approved, there is an elevated risk to visitor safety in the event of a bushfire, as the application fails to comply with best practice frameworks.</i></p> <p><i>A holiday house is classified as a 'vulnerable land use'.</i></p> <p><i>Not applying Guidelines for Planning in Bushfire Prone Areas and the local planning provisions could lead to severe consequences, jeopardising the safety of individuals (visitors) on the premises.</i></p>	<i>Possible</i>	<i>Severe</i>	<i>High</i>	<p><i>Mitigation: The recommended approach is to refuse the application, aligning with best practice guidelines and prioritising visitor safety.</i></p> <p><i>This ensures adherence to established frameworks and avoids endorsing a heightened risk to life associated with potential bushfire events.</i></p> <p><i>Should council choose to support the application, it is recommended conditions be applied to enhance situational awareness, minimize risks, and contribute to a safer environment for visitors staying in the holiday house.</i></p>

FINANCIAL IMPLICATIONS

89. All costs associated with the development will be borne by the proponent.
90. Should the proponents be aggrieved by Council's decision and seek a review through the State Administrative Tribunal, the City may be liable for costs associated with defending the decision at a State Administrative Tribunal hearing.
91. Should Council elect to approve the development, there would be regulatory cost implications associated with such a decision. Compliance with, and adherence to, the Bushfire Management Plan (BMP) prepared for the property by the Applicant would be a condition of any approval as the BMP is part of the application.
92. The BMP states that bushfire education would be provided to all guests and that on catastrophic and extreme bushfire days the accommodation would be closed. The financial implications of ensuring compliance with this undertaking is yet to be quantified.

LEGAL IMPLICATIONS

93. Council may 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.
94. Should Council elect to approve the development, the Council may be exposed to potential liabilities under the *Civil Liability Act 2002, Section 5X* if harm occurs due to a bushfire.
95. Section 5X of the Civil Liability Act 2002 pertains to claims for damages related to public bodies or officers. In a claim for damages arising from a public body or officer's fault in performing or not performing a public function.
96. Council may be liable for damages if proposal is approved, and harm occurs due to a bushfire.
97. It should be noted that a policy decision cannot be used to prove that the defendant was at fault unless the decision was unreasonable to the point where no reasonable public body or officer in the defendant's position could have made it. Essentially, if the decision was within a reasonable range, it won't be considered at fault.

98. It is proposed that should Council resolve to APPROVE the application, the applicant should be encouraged to implement measures to mitigate the risk to visitors, particularly in the context of a lack of situational awareness related to the proposed 'Holiday House' in a bushfire-prone area.

ENVIRONMENTAL CONSIDERATIONS

99. Should the application be approved and the recommendations contained within the BMP subsequently implemented, significant clearing of vegetation on both 56 Karrakatta Road (the subject of this application) and the neighbouring property at 53 Karrakatta Road would be required.

ALTERNATE OPTIONS

100. Council has the following alternate options in relation to this item, which are:
- Approve the application as submitted, subject to conditions.
101. If approved, the following matters should be addressed by conditions or advice notes:
- Implementation of the Bushfire Management Plan
 - Implementation of Holiday House Management Plan, including an update to include the points raised in the Legal Implications section above
 - Implementation of Holiday Accommodation Local Planning Policy requirements

CONCLUSION

102. The application is proposing to introduce a vulnerable land use to a bushfire prone area.
103. The application for a Holiday House in the proposed location cannot be supported at officer level as the Holiday House is unable to provide an adequate asset protection zone (extreme bushfire hazard level), nor vehicle access (single access and egress route to a suitable destination). The officer’s recommendation for refusal is based on the proposal in its current form as it does not meet:
- a) objectives 5.1, 5.2 and 5.3 and **policy measure 6.6 of SPP3.7;**
 - b) the performance solutions nor the intent of Element 5: Vulnerable Tourism Land Uses contained within the Guidelines for Planning in Bushfire Prone Areas (v1.4) associated with the State Planning Policy 3.7 – Planning in bushfire prone areas. Specifically, the performance solutions outlined under the BMP dated 19/09/2023 do not satisfactorily demonstrate appropriate solutions for Siting and Design (P5iv) nor Vehicle Access (P5v).
 - c) the suitability of the land for the development taking into account the possible risk of flooding, tidal inundation, subsidence, landslip, bush fire, soil erosion, land degradation or any other risk; and
 - d) the suitability of the land for the development taking into account the possible risk to human health or safety.

Consulted References	:	<ol style="list-style-type: none"> 1. <i>Draft Local Planning Scheme No. 2</i> 2. <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> 3. <i>City of Albany Holiday Accommodation Local Planning Policy</i> 4. <i>State Planning Policy 3.7 – Planning in Bushfire Prone Areas</i> 5. <i>Guidelines for Planning in Bushfire Prone Areas (v1.4)</i>
File Number	:	A160896
Previous Reference	:	N/A

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