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# MINUTES

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## **DEVELOPMENT AND INFRASTRUCTURE SERVICES COMMITTEE MEETING**

**Wednesday 13 May 2020**

6.00pm

Council Chambers

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

**VISION**

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

**VALUES**

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

**Focused: on community outcomes**

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

**United: by working and learning together**

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

**Accountable: for our actions**

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

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

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

## TERMS OF REFERENCE

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

Development Services:

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

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

Infrastructure Services:

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

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

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

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

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

(4) **Meeting Schedule:** Monthly

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

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

(7) **Delegated Authority:** None

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## 1. DECLARATION OF OPENING

The Chair declared the meeting open at 6.00pm.

## 2. PRAYER AND ACKNOWLEDGEMENT OF TRADITIONAL LAND OWNERS

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

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

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

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

Mayor

D Wellington

### Councillors:

Member

R Hammond

Member

P Terry

Member

R Stephens

Member

G Stocks (Deputy Mayor)

Member

M Benson-Lidholm JP

Member

J Shanhun

Member

E Doughty (Chair)

Member

S Smith

Member

A Goode JP

Member

C Thomson

Member

R Sutton (Deputy Chair)

### Staff:

Chief Executive Officer

A Sharpe

Executive Director Infrastructure,

Development and Environment

P Camins

Manager Planning and Building Services

J Van Der Mescht

Meeting Secretary

J Williamson

### Apologies:

Member

T Sleeman (Apology)

**4. DISCLOSURES OF INTEREST**

<b>Name</b>	<b>Committee/Report Item Number</b>	<b>Nature of Interest</b>
Councillor Terry	DIS207	<b>Financial.</b> The nature of the interest being that one of the tenderers would be classified as a closely associated person to Councillor Terry. Councillor Terry 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**

**6.02pm Mr David Palmer, Greatrex Road, King River**

**Summary of key points:**

Mr Palmer addressed Council regarding DIS210: Single House – Oversize Outbuilding-Lot 109, 248 Greatrex Road, King River.

Mr Palmer requested that Council support his application to erect an oversize outbuilding on his property.

There being no further speakers the Chair declared Public Question Time closed at 6.06pm.

**7. PETITIONS AND DEPUTATIONS Nil**

**8. CONFIRMATION OF MINUTES**

**RESOLUTION**

**MOVED: COUNCILLOR THOMSON**

**SECONDED: COUNCILLOR STEPHENS**

**THAT the minutes of the Development and Infrastructure Services Committee meeting held on 15 April 2020 as previously distributed, be CONFIRMED as a true and accurate record of proceedings.**

**CARRIED 12-0**

**9. PRESENTATIONS Nil**

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

## DIS207: C20005 - DESIGN AND CONSTRUCT GROUNDS MAINTENANCE SHED

<b>Land Description</b>	: Centennial Park – Western Precinct
<b>Proponent / Owner</b>	: City of Albany
<b>Attachments</b>	: <b>Commercial in Confidence:</b> Grounds Maintenance Shed, Tender Evaluation and Budget Reallocation
<b>Report Prepared By</b>	: Major Projects Manager (A. McEwan) Manager City Reserves (J Freeman)
<b>Report Prepared By</b>	: Executive Director Infrastructure, Development & Environment (P. Camins)

*It is recommended that if discussion is 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.*

Councillor Terry declared a Financial Interest in this report and left the Chamber.

### STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
  - **Theme:** Clean, Green and Sustainable
  - **Objective:** To build, maintain and renew city assets sustainably.
  - **Community Priority:** Design, construct and maintain infrastructure cost effectively in a manner that maximises its life, capacity and function.

### Maps and Diagrams:



### In Brief:

- Approval is sought to for the re-allocation of budget to this project in order to deliver this infrastructure.
- Noting the completion of the competitive tender process, approval is sought to award the tender for the Contract C20005 - Design and Construct Grounds Maintenance Shed to MCB Constructions.

## **COVID-19 IMPACT**

- No identified implications.

## **RECOMMENDATION**

### **DIS207: COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR SUTTON**

**SECONDED: COUNCILLOR SHANHUN**

**THAT the Responsible Officer Recommendation be ADOPTED.**

**CARRIED 11-0**

### **DIS207: RESPONSIBLE OFFICER RECOMMENDATION**

THAT Council:

- (1) APPROVE the Budget Reallocation of \$120,000.00 from account 15544 (Developed Parks & Reserves Capital Expenditure) to account 3869 (CPSP Stage 2 Western Public Realm Enhancements) – Gardener's Shed; and
- (2) ACCEPT the tender from MCB Constructions and AWARD Contract C20005 – Design and Construct Grounds Maintenance Shed to MCB Constructions.

## **BACKGROUND**

2. The shed facility has always been identified in the Precinct Master Plan as a requirement.
3. The proposed new shed facility will house all specialised equipment required for the ongoing maintenance of the Centennial Park Sporting Precinct (CPSP).
4. The current maintenance facility (Maintenance Shed) is an eclectic mix of ageing dongas and sheds placed over time as required for equipment plant and material storage.
5. The gardener's maintenance shed is in poor condition, looks unsightly and cannot house all of the specialised ground maintenance equipment, resulting in expensive equipment being exposed to weather.
6. The Centennial Park Grounds Maintenance Shed was originally planned to be located adjacent to the ALAC facility. Following feedback from key stakeholder engagement, it was agreed with Council that a tender award be postponed and an alternative site(s) be investigated.
7. A project update was presented to Elected Members on 12 February 2020 and the preferred site was identified to be at the same location as the existing facility. The new facility was subsequently modified to minimise impacts and suit requirements.
8. A significant portion of funds (\$250,000) has been allocated to this project from State funds, as part of the \$6.9Mil CPSP State Election Commitment.

## **DISCUSSION**

9. The standard tender process was undertaken as prescribed by the *Local Government Act 1995* (the Act) and *Local Government (Function and General) Regulations 1996* (the Regulations).
10. Tenders were advertised both state-wide and locally from the 18 March 2020 and were closed on 2 April 2020.
11. Thirteen (13) tender documents were downloaded from the City of Albany website, resulting in the City receiving two (2) conforming tender submissions.



## Evaluation of Tenders

12. The tender panel evaluated tenders using the weighted criteria methodology across five key areas, shown in Table 1.

**Table 1 – Evaluation Criteria**

Criteria	% Weighting
Relevant Experience	15%
Key Personnel Skills and Experience	15%
Demonstrated Understanding	15%
Corporate Social Responsibility	5%
Cost	50%
Total	100%

13. The following Table 2 summarises the tenders and the overall evaluation scores applicable.

**Table 2 – Summary of Tender Submissions**

Tenderer	Total	Rank
MCB Constructions	603.17	1
Tenderer B	581.83	2

14. MCB Constructions ranked highest with the highest total weighted score.
15. From the evaluation scoring, reference check, clarification, and financial check processes MCB Constructions are the preferred tender and consequently it is recommended that their tender be accepted and the contract be awarded.

## GOVERNMENT & PUBLIC CONSULTATION

16. Public Consultation: original engagement was held with the broader community during June 2019 regarding the siting of the shed facility near ALAC and its impacts to existing services, including the required relocation of existing playground. Further engagement was held with key community stakeholder (sporting) group during August 2019. Generally, the proposal was rejected.
17. Concerns that were noted included:
- The bulk and scale of the proposed shed;
  - Its orientation and siting affects public interface of hockey facility;
  - Removal of the existing playground not supports;
  - Relocation of playground would impact on other sporting codes (cricket/soccer);
  - Vehicle access and movements will create an unsafe environment;
  - Formalised access through carpark is required.
18. As a result of feedback, alternative siting options were analysed and the facility was re-designed to address concerns and minimise impacts. A project update was presented to Elected Members on 12 February 2020 and the preferred site was identified to be at the same location as the existing facility.
19. Lower Great Southern Hockey Association confirmed acceptance of the current proposed site location on 3rd Feb 2020 and nearby residents at Boronia Village have been informed. The proposed location does not affect any other sporting group.
20. The funding body and public will be notified with regard to the outcome of the award and timeframe for implementation.

21. The various funding bodies receive regular updates in accordance with individual agreements and will be advised of the outcome of the tender process and the timeframe for construction.

### STATUTORY IMPLICATIONS

22. Regulation 11 of the Regulations requires Council to publicly tender if the contract is, or is expected to be, more, or worth more than \$150,000.
23. 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.
24. Regulation 19 of the Regulations requires Council to advise each tenderer in writing of Council's decision.
25. Voting Requirement: **Absolute Majority**.

### POLICY IMPLICATIONS

26. The City of Albany Tender Policy and Regional Price Preference Policy are applicable to this item.

### RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>People Health &amp; Safety</b> <i>Risk: Continued use of the current shed will expose employees to unsafe working conditions.</i>	Possible	Moderate	Medium	Build new maintenance shed.
<b>Environment</b> <i>Risk: Current facility is not designed to contain hydrocarbon (oil, fuel) spills, which continue to put at risk contamination into adjacent waterway.</i>	Likely	Moderate	Medium	Build new maintenance shed and mitigate the likelihood of environmental contamination.
<b>Financial &amp; Sponsor Reputation</b> <i>Lost opportunity to replace and end of life asset with State funding being made available.</i>	Almost Certain	High	Moderate	Approve proposed project or alternatively reallocate to another projects within CPSP guidelines.
<b>Community Reputation</b> <i>Consultation has identified that this site is preferred. Selecting an alternative site locations were explored may not be deemed satisfactory to directly impacted key stakeholders, grounds staff, sporting groups (i.e. Cricket, Hockey etc.).</i>	Almost Certain	Medium	Minor	Build maintenance shed in current location.
<b>Works Operation</b> <i>Insufficient and inadequate storage and working facilities, to service precinct and increasing demands.</i>	Almost Certain	Medium	Moderate	Build maintenance shed to protect stored equipment and material, mitigating and/or reducing deterioration by exposure to weather.
<b>Opportunity:</b> Enable better service delivery and extend equipment serviceable lifespan.				

### FINANCIAL IMPLICATIONS

28. In summary, the financial status of the project funding can be reported as follows:

Item	Budget	Price excl. GST	%
1	CPSP State Election Commitment (from \$7.9Mil)	\$ 250,000.00	83%
2	Reserves	\$ 50,000.00	17%
<b>Total Budget Total ex GST</b>		<b>\$ 300,000.00</b>	

29. In order to fully deliver this infrastructure in its new location, it is proposed that the anticipated overspend can be funded through a number of cost savings have been identified in non-essential areas of the project.
30. In addition, Council approval is sought to for the re-allocation of budget to this project as follows:

YR	RESERVES identified non-essential projects (*)	Budget Reallocation
19/20	1664 – Horse Exercise Areas	\$20,000.00
19/20	2695 – Visitor Info Bay Renewals	\$50,000.00
19/20	2693 – ALAC Garden Renewals	\$25,000.00
19/20	2918 – Lawley Park Heritage Concept Plan	\$25,000.00
Total amount to be reallocated ex GST		<b>\$120,000.00</b>

### LEGAL IMPLICATIONS

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

### ENVIRONMENTAL CONSIDERATIONS

32. The contractor's environmental sustainability policy will apply to this contract.
33. Site management controls will be enforced to mitigate adverse any possible environmental impacts.

### ALTERNATE OPTIONS

34. The options are:
- Accept the recommended tender;
  - Not approve any tender; or
  - Select an alternative tender.

### CONCLUSION

35. On reviewing the submissions, MCB Constructions are deemed the most advantageous tenderer across the evaluation criteria for the construction of the Grounds Maintenance Shed. Their tender was well detailed and demonstrated a good understanding of the project objectives.
36. MCB Constructions proposed tender be accepted and awarded.

Consulted References	:	<ul style="list-style-type: none"> <li>Local Government Act 1995</li> <li>Local Government (Functions and General) Regulations 1996</li> <li>Purchasing Policy (Tenders and Quotes), including procedures</li> <li>City of Albany Buy Local Policy (Regional Price Preference)</li> </ul>
File Number (Name of Ward)	:	CP.PLA.9
Previous Reference	:	<ul style="list-style-type: none"> <li>Grounds Maintenance Shed – Council Briefing Wednesday 12 February 2020</li> <li>Confidential Briefing Note to Elected Members, Tuesday 28 April 2020.</li> </ul>

## DIS209: SWIMMING ENCLOSURE REPLACEMENT

<b>Land Description</b>	: Ellen Cove, Middleton Beach, Albany
<b>Proponent / Owner</b>	: City of Albany
<b>Attachments</b>	: Confidential Briefing Note
<b>Report Prepared By</b>	: Senior Civil Engineering Officer (R Westerberg)
<b>Responsible Officers:</b>	: Executive Director Infrastructure, Development and Environment (P Camins)

### STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
  - **Theme:** Clean, Green and Sustainable
  - **Objective:** To build, maintain and renew city assets sustainably.
  - **Community Priority:** Design, construct and maintain infrastructure cost effectively in a manner that maximises its life, capacity and function.

#### In Brief:

- In March 2016 the City installed a Swimming Enclosure at Ellen Cove, Middleton Beach.
- The Swimming Enclosure has now been in place for 4 years and 2 months.
- The Swimming Enclosure has performed well and the community feedback has been positive.
- The condition of the Swimming Enclosure has deteriorated to a point where action must be taken.
- It is proposed to put to public tender the replacement of the enclosure.



### COVID-19 IMPACT

- No identified implications.

### RECOMMENDATION

#### DIS209: COMMITTEE RECOMMENDATION

**MOVED: COUNCILLOR STOCKS**  
**SECONDED: COUNCILLOR HAMMOND**

**THAT the Responsible Officer Recommendation be ADOPTED.**

**CARRIED 11-1**

#### Record of Vote

Against the Motion: Councillor Goode

DIS209: RESPONSIBLE OFFICER RECOMMENDATION

That Council:

1. AUTHORISE staff to proceed with advocating to the WA Minister for Fisheries to assist in funding the replacement of the swimming enclosure.
2. AUTHORISE the tendering for replacement of the Swimming Enclosure, noting award of tender will be subject to Council approval.

**BACKGROUND**

2. In March 2016 the City installed a Swimming Enclosure at Ellen Cove, Middleton Beach with a \$200,000 Grant from the State Government, Department of Premier and Cabinet.
3. Global Marine Enclosures (GME) won a competitive tender process to install the Swimming Enclosure and have since been maintaining the Swimming Enclosure.
4. The three-year trial of the Swimming Enclosure ended at the end of March 2019, with inspection and maintenance continuing to ensure the Swimming Enclosure remains secure.
5. The Swimming Enclosure at Ellen Cove has been very popular with the community. A past survey of the community in March 2017 found that 93.15% of people saw value in the City installing and maintaining the enclosure.
6. The City owns the swimming enclosure infrastructure including the anchoring system. The anchoring system has a longer lifespan (approximately 20 – 30 years) and could potentially be used to install a different product.
7. An open market tender was released on 13 February 2019 for the replacement of the existing swimming enclosure.
  - a. The tender was release with the intent to find a suitable supplier for a five (5) year period and that supplier would be responsible for the:  
*“supply, installation, inspection and maintenance of the Shark Exclusion Barrier, including design and approvals, insurance, installation (including fittings), contract management, labour, materials, plant and equipment, interest and profit and any item or cost considered relevant or required to fulfil the requirements of the contract.”*
  - b. The tendered price was based on a flat monthly fee for 60 months. This way the cost of the net would be amortised across the life of the contract.
  - c. The tender closed on 7 March 2019. The tendered total contract costs were well in excess of the budget allowances made for the replacement and maintenance costs.
  - d. Subsequently, the tender was not awarded.

**DISCUSSION**

8. Since the Swimming Enclosure trial has been installed, further research and development in the technology of the existing product and competing products has occurred.
9. The current swimming enclosure is showing signs of significant wear throughout the structure. The surf zone of the enclosure is showing more wear than other areas.
10. Given the results of the tender in 2019, City officers investigated other options to more cost-effectively retain the swimming enclosure.
11. Until recently, consideration had been given to a phased replacement strategy that would provide for effective expenditure and a completely replaced enclosure over a 2.5-year period. However, recent deterioration of the enclosure, evidenced by underwater inspections, has required a reassessment of the priority areas and the sequencing of the phases.

12. Due to the unpredictable rate of deterioration of the enclosure, a complete replacement is now recommended to significantly reduce the risk of a major failure of the enclosure.
13. The tender for the replacement of the swimming enclosure will be based on:
  - a. The removal of the existing swimming enclosure, excluding the existing anchor points, concrete anchor blocks, anchors and base chain;
  - b. The installation of a complete new swimming enclosure; and
  - c. The provision of inspection and minor maintenance (it will not require the tenderer to assume all responsibility and risk associated with maintenance of the enclosure, which led to the previously received high priced tender submissions).
14. Alternatives to replacing the enclosure are discussed in the “ALTERNATE OPTIONS” section.

## GOVERNMENT & PUBLIC CONSULTATION

15. No specific public consultation has been conducted, noting as detailed in the discussion section of the report a past survey of the community was conducted in March 2017, where 93.15% of respondents saw value in the City maintaining the enclosure
16. As part of any future works going forward, consultation will be conducted with Department of Transport, Department of Lands and the Great Southern Port Authority.

## STATUTORY IMPLICATIONS

17. The award of tender will be subject to the *Local Government Act 1995* and regulations.

## POLICY IMPLICATIONS

18. Not applicable to this report.

## RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Reputation and Financial:</b> <i>There is a risk that delays or inaction will result in major failure of the swimming enclosure resulting in reputational damage.</i>	<i>Possible</i>	<i>Moderate</i>	<i>Medium</i>	<i>Preparation for a tender process is underway. Consideration given to reduce tendering timeframes.</i>
<b>Environment and Financial</b> <i>Risk: Major failure in the structure (storm) will result in contamination of the seabed and potentially very costly to remove</i>	<i>Likely</i>	<i>Moderate</i>	<i>Medium</i>	<i>Dismantle and remove existing structure and replace with new fit for purpose structure</i>

## FINANCIAL IMPLICATIONS

20. The proposed budget, spread over several years has been established based on a staged replacement program and not on up-front full replacement. As identified in the background a full replacement is now the recommended option.
21. Should the full replacement be endorsed, a budget review to consolidate the staged figures will be required, subject to Council approval.
22. A monthly inspection will continue to be required with a minor maintenance program. With a new enclosure, the frequency of inspections may be able to be reduced, which would reduce the operational costs.

## **LEGAL IMPLICATIONS**

23. There are no direct legal implications related to this report.

## **ENVIRONMENTAL CONSIDERATIONS**

24. The required environmental approvals have been or will be sought to extend any existing permits required to maintain the deployment of the swimming enclosure.

## **ALTERNATE OPTIONS**

25. Removal of the swimming enclosure with no replacement.
26. Removal of the enclosure and the establishment of alternative shark mitigation measures (to be advised by Department of Fisheries).

## **CONCLUSION**

27. The swimming enclosure at Ellen Cove is considered a valued asset in the City of Albany community.
28. The existing enclosure has exceeded the minimum life expectancy and has performed well in its purpose of maintaining separation between large fauna and swimmers.
29. The recommendation is to:
- a. Continue to advocate for funding to assist the City in the replacement of the swimming enclosure.
  - b. Commence the tender process based on a complete replacement of the swimming enclosure.
  - c. Report back to Council.

Consulted References	:	<i>Local Government Act 1995</i>
File Number (Name of Ward)	:	Frederickstown Ward
Previous Reference	:	OCM June 2016 – Resolution DIS028 (Ellen Cove Swimming Enclosure – Three Year Trial) OCM October 2015 – Resolution WS091 (Shark Barrier Feasibility)

**DIS210: SINGLE HOUSE – OVERSIZE OUTBUILDING – LOT 109, 248 GREATREX ROAD, KING RIVER**

<b>Land Description</b>	: Lot 109, 248 Greatrex Road, King River WA 6330
<b>Proponent</b>	: DR & ME Palmer
<b>Business Entity Name</b>	: NIL
<b>Attachments</b>	: 1. Copy of Application 2. Aerial image.
<b>Report Prepared By</b>	: Senior Planning Officer - (T Gunn)
<b>Responsible Officers:</b>	: Executive Director Infrastructure, Development and Environment (P Camins)

**STRATEGIC IMPLICATIONS**

1. Council is required to exercise its quasi-judicial function in this matter.
2. In making a decision on the proposed development application, Council is obliged to draw conclusion from its adopted *Community Strategic Plan – Albany 2030*.
  - a) The *Albany Community Strategic Plan – Albany 2030* recommends a proactive planning service that supports sustainable growth while reflecting our local character and heritage (Community Priority: 5.1.2).
3. The item relates to the following Strategic Objectives of the Albany Local Planning Strategy (ALPS):
  - a) *Plan for the sustainable supply of land for rural living purposes and maximise land use efficiency within existing rural living areas.*

**Maps and Diagrams:** Lot 109, 248 Greatrex Road, King River





**In Brief:**

- The City of Albany has received a development application for an oversize outbuilding at lot 109, 248 Greatrex Road, King River.
- The application seeks variations to the City of Albany's Local Planning Policy - *Non-Habitable Structures*. The most significant of the proposed variations is for a 176.8m<sup>2</sup> floor area variation to the maximum that is allowed for in the policy.
- When assessed objectively against the principles of orderly and proper planning, staff can find no cogent reason or justification of why, in the particular circumstances of the proposal, a variation to the maximum floor space area for outbuildings on the site should be allowed.
- Staff recommend that Council refuse the application.

**COVID-19 IMPACT**

- No identified implications.

**RECOMMENDATION**

**DIS210: COMMITTEE RECOMMENDATION**

**MOVED: MAYOR WELLINGTON  
SECONDED: COUNCILLOR SMITH**

**THAT the Responsible Officer Recommendation be ADOPTED.**

**CARRIED 10-2**

**Record of Vote**

Against the Motion: Councillors Sutton and Goode

**DIS210: AMENDMENT BY COUNCILLOR THOMSON**

**MOVED: COUNCILLOR THOMSON  
SECONDED: COUNCILLOR BENSON-LIDHOLM**

**THAT the Responsible Officer Recommendation be AMENDED to include the following paragraph:**

“That the proponents be formally advised that a review of the City’s Non-Habitable Structures policy is underway, and once that review is complete be encouraged to liaise closely with City officers on matters including floor area, height, location, orientation and architectural finishing of the proposed structure should they wish to progress another application at that time.”

**LOST 2-10**

**Record of Vote**

For the Motion: Councillors Thomson and Benson-Lidholm

Councillor Thomson then proposed an amendment to the Responsible Officer Recommendation. Reason for the amendment being that the proponent should be encouraged to re-apply following the review of the City’s Non-Habitable Structures Policy.

**DIS210: RESPONSIBLE OFFICER RECOMMENDATION**

**MOVED: MAYOR WELLINGTON**

**SECONDED: COUNCILLOR SMITH**

THAT Council resolves to ISSUE a notice of determination refusing development approval, for Single House – Oversize Outbuilding at Lot 109, 248 Greatrex Road, King River, 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 this Scheme and any other local planning scheme operating within the Scheme area;
  - (b) the requirements of orderly and proper planning;
  - (g) any local planning policy for the Scheme area;
  - (m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;
  - (n) the amenity of the locality including the following –
    - (ii) the character of the locality;
2. The proposal does not comply with the objectives of the Rural Residential Zone, of Local Planning Scheme No.1.

**BACKGROUND**

4. The City of Albany has received a development application for an oversize outbuilding at Lot 109, 248 Greatrex Road, King River.
5. The subject site is 1.97 hectares in area and zoned Rural Residential Area 17 under Local Planning Scheme No.1 (LPS 1).
6. The subject site is located approximately 7km north of the Albany CBD. The subject site is predominantly cleared and flat. The property currently contains an existing dwelling and outbuilding.
7. The subject site is surrounded by developed Rural Residential properties to the east and west, City of Albany and Crown reserves to the south, and General Agriculture land to the north.
8. The application proposes an outbuilding 216m<sup>2</sup> (18mx12m) in size, with a wall and ridge height of 4.2m and 4.8m (from finished floor level) respectively. The outbuilding is proposed to be located at the front of the lot, between the existing dwelling and Greatrex Road.
9. The outbuilding is proposed to be finished in 'Paperbark' colorbond cladding for both the wall and roof sheets. A charcoal finish is proposed for the doors and gutters.
10. The application seeks a number of variations to the City of Albany's Local Planning Policy - *Non-Habitable Structures* (the Policy). The most pertinent variation is the request to vary the maximum outbuilding floor area permitted on site by 176.8m<sup>2</sup>, resulting in a total outbuilding area of area of 376.8m<sup>2</sup> on the lot. Noting that the policy provision is for 200m<sup>2</sup>.
11. The application was advertised for public comment for a period of 16 days, with nearby landowners directly notified by letter. Although no submissions were received as part of the advertising process, letters of support from the both the adjoining eastern and western landowners were garnered by the applicant and submitted with the proposal.

12. At the April 2020 Ordinary Council Meeting it was resolved to review the current Non Habitable Structures Policy, with a view to relaxing the current Maximum Floor Area requirements in certain circumstances.
13. Noting that the review has not yet occurred, the applicant was contacted and advised of the resolution. It was recommended that the proposal be deferred until after the review has taken place, as otherwise, the proposal will be required to be determined in accordance with the current policy. Due to the potential delays, the applicant seeks to have the application determined against the current Policy.
14. Council is now requested to consider the merits of the application and determine whether to approve or refuse the development application.

## DISCUSSION

15. The applicant is seeking approval to build the 216m<sup>2</sup> outbuilding approximately 35m from the front boundary and, 20m from the eastern boundary and 38m from the western boundary. The proposed setbacks are compliant with the setbacks listed under LPS 1.
16. The applicant has provided the following justification for the development:

*“The two main reasons for this request is that I currently have a caravan and car trailer that I leave outside, as I have no space left in my existing shed, and they are deteriorating due to this, I also have a real passion for old vintage machinery.*

*As I move towards my retirement, I would like to start preparing for it. The restoring of these old pieces of equipment and showing them at the vintage/tractor shows throughout the year is something I really want to do. I’m a member of the Great Southern Trachmac association and have already acquired a couple of vintage piece with the vision to expand on this, unfortunately I have to leave these outside as well in the weather, I try to cover them with tarps which isn’t easy with the weather Albany receives throughout the winter period.*

*The property has a bush reserve on the Southern side, we have two great neighbours that have written an approved letter for the 2<sup>nd</sup> outbuilding support, and finally we have farmland adjoining the bottom of our 5 acres to the North. This development will not spoil the current aesthetic of the area I believe it will be enhanced by it, as you only have to go two doors down to see if you don’t have adequate shed space you end up with a complete eye sore that I drive by every day, I certainly don’t want this happening on our block. Having said this if council feels some extra screening is required to assist with the approval decision, I am more than happy to work with council to reach a practical outcome for all.”*
17. The applicant was also given the opportunity to provide further justification of why they require the outbuilding size. They advised that they have a caravan, 2 x small dozers, 1 x ute, 2 x Trailers currently outside.
18. The inclusion of the dozers raises concerns from staff that the outbuilding may be used for purposes not consistent with a rural residential outbuilding. On this basis the use may be more correctly classified as ‘storage’, which is a land use not suitable for the zone.
19. The City of Albany *Non-Habitable Structures* Local Planning Policy is the primary policy document used to assess the proposal. By way of background, the policy was adopted unanimously by Council at the March 2013 Ordinary Council Meeting.
20. The objective of the Policy is:

*“To achieve a balance between providing for various legitimate storage needs of residents while minimising any adverse impacts non-habitable structures may have on the locality.”*

21. The primary methods that the policy utilises to achieve the aforementioned policy objective is by controlling maximum heights, floor areas and providing guidance on the appropriate siting of outbuildings.
22. Table 1 of the Policy outlines the maximum allowable height and floor area specifications for non-habitable structures throughout the municipality, based on the zoning and lot size. The table below outlines the provisions applicable to the subject site.

*For Rural Residential Zone lots less than 2 hectares*

Standard	Maximum	Proposed
Wall Height from natural ground level	4.2m	4.5m
Ridge Height from natural level	4.8m	4.9m
Floor Area (combined floor area of all non-habitable structures on lot)	200m <sup>2</sup>	Total floor area - 376.8m <sup>2</sup>

23. The policy provisions and dimensions in the above table were created to avoid unwanted built form, by providing a policy framework to balance the ability to build appropriate outbuildings against preventing inappropriately located and excessively large outbuildings being constructed
24. Setting aside the significant floor area variation which would be required to obtain approval, if Council were of the view of supporting the proposal, it would be recommend that condition be imposed requiring the outbuilding itself to be reduced in height, or marginally cut into the existing topography to comply with the Policy.
25. From a siting perspective, the policy outlines that non-habitable structures should be located towards the rear of the lot. The intent of this provision is to avoid large blank walls facing the street and to have the primary dwelling, which generally of a higher design standard and design, as the main focal point. Officers are of the view that this policy provision is not met, as the proposed outbuilding is located towards the front boundary, directly in between the dwelling and road. Further to this, the proposed outbuilding is a bland, metal-clad structure, devoid of any architectural features that may mitigate this significant departure from the policy position in respect to siting.
26. The first objective of the Rural Residential zone is to *'create small rural land holdings for residents who wish to enjoy a residential lifestyle within a rural landscape and environment'*. The site like the majority of others in the area is long and narrow. Built form is typically congested and clustered towards the street. While some boundary vegetation exists, fencing is typical rural post and wire railing. Notwithstanding the correspondence received from neighbours, built structures still have the potential to adversely affect adjoining properties in significant ways, at times undermining amenity and streetscape. Large and numerous outbuildings being constructed throughout the landscape are not acceptable nor appropriate within the area.
27. Whilst there is some vegetation along the road and front boundary, and the applicant is amicable to further screen planting, staff consider the proposal would still be unacceptably visible from public vantage points and neighbouring properties.
28. In terms of size, noting the existing 160.8m<sup>2</sup> outbuilding on site, staff consider the construction of an additional new standalone 216m<sup>2</sup> structure represents a significant departure from the overall policy allowance of 200m<sup>2</sup>.
29. It is important to note that that the floor space controls are contained within a Local Planning Policy. As such, it to be made clear that there is the ability to apply discretion to the proposal against the policy. While discretion to approve the proposal may exist, as a decision maker, it is incumbent on the City of Albany to ensure that decisions are made consistently and in accordance with proper and orderly planning principles.

30. If the exercise of discretion is to be considered orderly, the planning principles identified as relevant to an application (*Non habitable Structures Policy*) should not be lightly departed from without the demonstration of a sound basis for doing so. As such, the notion that the applicant has an abundance of possessions and requests a significantly larger shed than the policy allows, is not considered a cogent reason to depart from the policy. The lack of compliance with the siting measures outlined above further reinforce this finding.
31. As a decision maker it is critical to ensure that decisions are made consistently. There is a distinct risk that if variations to the policy are granted against limited planning grounds, such as this proposal, that the City of Albany will prejudice its position in being able to apply the policy consistently in the future.
32. Further to the above, the construction industry in general is well aware of the sizes contained within the policy and rarely requests variations to the size of non-habitable structures. This indicates that the vast majority are accepting of the generous sizes contained within the Policy.
33. Further to this, it would likely negatively impede on neighbouring properties, including visual amenity and potentially the enjoyment of their land. The proposal therefore directly conflicts with the objectives of the Rural Residential zone under clause 3.2.17 of LPS 1. It is noted that the primary objective of the zone is '*Provide for residential and limited incidental land uses*'.
34. Officers are of the view that giving consideration to this residential alignment of the zone, that 376m<sup>2</sup> of outbuildings is beyond what might be considered reasonable for the purpose of storing personal assets in the Rural Residential zone.
35. It is considered that there are limited orderly and proper reasons for such a significant departure from the policy and zone objectives. Staff are of the view that the sizes contained within the policy are considerably generous and that the City of Albany has some of the most liberal outbuilding sizes compared to other local governments within the State. If the applicant's storage needs are so significant, it may be appropriate for them to investigate off site storage measures.
36. Given the reasoning applied in the above paragraphs, after considering the matter against the statutory framework, including the discretion afforded when applying Local Planning Policies, officers are of the view that the proposal does not represent proper and orderly planning and should be refused.

## GOVERNMENT & PUBLIC CONSULTATION

37. The application was advertised for public comment for a period of 16 days, with nearby landowners directly notified by letter. No submissions were received as part of the advertising process, however letters of support from the both the adjoining eastern and western landowners were sought by the owner and submitted with the application detail.

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Consult	Mail Out	11/03/2020 to 27/03/2020	Nil Submissions received	No

## STATUTORY IMPLICATIONS

38. The subject land is zoned Rural Residential Area 17 under LPS 1.
39. The objectives listed under clause 3.2.17 of LPS for the Rural Residential Zone, are:
  - a) *Create small rural land holdings for residents who wish to enjoy a residential lifestyle within a rural landscape and environment; and*
  - b) *Provide for residential and limited incidental land uses which:*

- (i) *Are compatible with the preservation and protection of environmentally sensitive areas such as remnant vegetation and groundwater protection areas;*
- (ii) *Do not visually detract from the landscape and the visual amenity of the locality;*
- (iii) *Allow for uses and developments that are fit for purpose and minimise any on-site or off-site impacts such as soil erosion, nutrient loss, drainage and potential land use conflicts; and*
- (iv) *Are located in close proximity to existing urban areas and can enjoy appropriate urban servicing to the lots including rubbish disposal,*
- (v) *reticulated water, community facilities and fire infrastructure.*

40. As the review of the Non Habitable Structures Policy has not yet occurred, Council is required to consider the item against the current statutory framework.
41. From a governance perspective, approval of the current proposal, which is well in excess of the current of the Policy, could potentially prejudice an objective review of the Policy.
42. Voting requirements for this item is **SIMPLE MAJORITY**.

### POLICY IMPLICATIONS

43. The proposal is subject to assessment against the City of Albany *Non-Habitable Structures Local Planning Policy*.
44. Local Planning Policies are guidelines used to assist the local government in making decisions under the Local Planning Scheme. Although Local Planning Policies are not part of the Local Planning Scheme, they must be consistent with, and cannot vary, the intent of the Local Planning Scheme provisions.
45. In considering an application for Development Approval, the local government must have due regard to a Local Planning Policy as required under Schedule 2, Part 9, clause 67 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
46. For those reasons outlined within the officer comment section above, staff consider the proposal fails to meet the provisions and objectives of the Policy and that using discretion to approve the application would not represent proper and orderly planning.

### RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Operational and Reputation.</b> <i>If the application were to be approved it would create an undesirable precedent for future applications, and prejudice the City in being able to apply the policy consistently. It would also generate unacceptable impacts on the amenity on the area.</i>	<i>Possible</i>	<i>Moderate</i>	<i>Medium</i>	<i>The application has been assessed against the relevant statutory framework. The reasons provided do not adequately demonstrate a variation to the Policy. Not supporting the development would continue to uphold the City's position on the application of the Policy.</i>

### FINANCIAL IMPLICATIONS

48. There are no financial implications directly relating to this item.

## LEGAL IMPLICATIONS

49. The proponent has the right to seek a review of the Council's decision, including any conditions attached to an approval, conferred by the *Planning and Development Act 2005*. The City of Albany may be required to defend the decision at a State Administrative Tribunal hearing.

## ENVIRONMENTAL CONSIDERATIONS

50. There are no environmental implications directly relating to this item.

## ALTERNATE OPTIONS

51. Council has the following alternate options in relation to this item, which are:
- To resolve to approve the proposal subject to conditions; and
  - To resolve to refuse the proposal subject to additional or modified reasons;

## CONCLUSION

52. The applicant has exercised their right to lodge a planning proposal which results in the cumulative floor space of outbuildings on the property significantly exceeding the City of Albany Non Habitable Structures Local Planning Policy.
53. The planning proposal has been subject to significant review through its assessment, in a manner that has been objective, methodical, logical and systematic. The officer recommendation to refuse the planning proposal is not made without of a sound basis for doing so, and is grounded in the principles of orderly and proper planning.
54. If the exercise of discretion on a local planning policy is to be an orderly one, the planning principles identified as relevant to an application should not be lightly departed from without the demonstration of a sound basis for doing so.
55. The justification received from the applicant does not adequately demonstrate such a significant departure from the Policy. In addition to this, it is considered that a development of this scale does not comply with the objectives of the Rural Residential zone.
56. Supporting this application would erode the ability for the City to apply policy fairly and with equity. The policy sets out a very generous size, and the proposal does not provide any solid reasoning or justification to depart from this. If approved, it would be difficult to provide reasoning as to why this proposal was supported and others not. It would also likely encourage larger outbuildings on properties throughout the municipality, and could be used to set an undesirable precedent for future applications.
57. After carefully considering the proposal and for the reasons set out above, staff are not satisfied the objectives and development criteria of the policy are met. As a matter of orderly and proper planning, staff can find no cogent reason why, in the particular circumstances of the subject proposal, such a significant variation to the cumulative maximum outbuilding size should be allowed or approved.
58. It is therefore recommended that Council resolve to refuse the proposed development, in accordance with the reasons provided.

Consulted References	:	1. Local Planning Scheme No. 1 2. Albany Local Planning Strategy 2019 3. Planning and Development (Local Planning Schemes) Regulations 2015 4. City of Albany Local Planning Policy - <i>Non-Habitable Structures</i>
File Number (Name of Ward)	:	A181513 Yakamia Ward
Previous Reference	:	Nil

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

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

**13. CLOSURE**

There being no further business the Chair declared the meeting closed at **7.12PM**

*(Unconfirmed Minutes)*

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Councillor Emma Doughty  
**CHAIR**