



AGENDA

DEVELOPMENT AND INFRASTRUCTURE SERVICES COMMITTEE MEETING

Wednesday 14 March 2018

6.00pm

City of Albany Council Chambers

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

VISION

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

VALUES

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

Focused: on community outcomes

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

United: by working and learning together

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

Accountable: for our actions

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

Proud: of our people and our community

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

TERMS OF REFERENCE

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

Development Services:

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

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

Infrastructure Services:

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

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

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

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

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

(4) **Meeting Schedule:** Monthly

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

(6) **Executive Officers:** Executive Director Works & Services, Executive Director Development Services

(7) **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 both past and present”.

3. RECORD OF APOLOGIES AND LEAVE OF ABSENCE

Mayor D Wellington

Councillors:

| | |
|--------|-------------------------|
| Member | P Terry |
| Member | J Shanhun (Chair) |
| Member | S Smith |
| Member | A Goode JP |
| Member | A Moir |
| Member | R Sutton (Deputy Chair) |
| Member | B Hollingworth |
| Member | E Doughty |
| Member | R Hammond |
| Member | R Stephens |
| Member | T Sleeman |
| Member | G Stocks |

Staff:

| | |
|---|-----------|
| Chief Executive Officer | A Sharpe |
| Executive Director Development Services | P Camins |
| Executive Director Works and Services | M Thomson |
| Meeting Secretary | A Paulley |

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

7. PETITIONS AND DEPUTATIONS

8. CONFIRMATION OF MINUTES

DRAFT RESOLUTION

THAT the minutes of the Development and Infrastructure Services Committee meeting held on 14 February 2018, as previously distributed, be CONFIRMED as a true and accurate record of proceedings.

9. PRESENTATIONS

10. UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS

DIS082: REQUEST FOR NOMINATION TO WASTE MANAGEMENT WORKING GROUP

- Attachments** : Terms of Reference - Waste Management Working Group
Report Prepared By : Manager City Operations (M Richardson)
Responsible Officers: : Executive Director Infrastructure & Environment (M Thomson)

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:
 - a. **Theme 1:** Leadership
 - b. **Objective:**
 - 1.1. To establish and maintain sound business and governance structures.
 - 1.3. To engage effectively with our community.
 - c. **Community Priorities:**
 - 1.1.2. Provide informed and transparent decision making that is consistent with our strategic direction, meets our legal obligations, reflect the level of associated risk and are adequately explained to the community.
 - 1.3.1. Develop structures and processes that engage the community and engender community confidence, and trust that their input is valued and used to inform decisions and priorities.

In Brief:

- The City is establishing a Waste Management Working Group.
- This report is to call for nominations from Elected Members and to appoint up to three members to this group.

RECOMMENDATION

DIS082: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council APPOINT the nominated Elected Members to the Waste Management Working Group:-

| |
|----|
| 1. |
| 2. |
| 3. |

BACKGROUND

2. In accordance with section 5.11(1)(d) of the *Local Government Act 1995* (the Act), a person's membership of a Committee continues until the next ordinary election.
3. All reports for consideration by Council should be referred through a Standing Council Committee. Standing Committees provide a functional, transparent and legally compliant meeting framework that allows Elected Members to engage in policy and strategy development, and provide accurate and relevant information which enables informed decision making by elected members.
4. Committees are charged with the responsibility of reporting to the whole of Council with recommendations on matters it considers.

5. Committees report to Council, and are subject to the requirements of the *Local Government Act 1995* (the Act).
6. The purpose of the Waste Management Working Group (Terms of Reference) is defined in the attached Terms of Reference.

DISCUSSION

7. During the course of the next 10 years, the City will be making strategic decisions and undertaking large capital infrastructure projects in the area of waste services which will ultimately shape the way the City will manage its waste until 2065 and possibly beyond.
8. The major projects to be delivered during this period will be the decommissioning of the Hanrahan landfill, and the siting and construction of an alternative waste facility to take its place.
9. These projects will require a significant capital investment from the City and intensive community consultation over a period of time that will span several Councils.
10. The formation of a working group made up of Elected Members and City officers will ensure that Council has ownership and a confident understanding of its future waste developments.

GOVERNMENT & PUBLIC CONSULTATION

11. The Waste Management Working Group is an internal City committee and no government or public consultation is required.

STATUTORY IMPLICATIONS

12. In accordance with s5.11(1)(d) of the *Local Government Act 1995*, a person’s membership of a committee continues until the next ordinary Local Government election.
13. Division 2, Part 5 of the *Local Government Act 1995* deals with Council Meetings, committees and their meetings.
14. Appointment to committees is by **Absolute Majority** in accordance with s5.10 of the Act.

POLICY IMPLICATIONS

15. There are no policy implications related to this item, unless the Terms of Reference for a committee are to be amended. For example: the number of committee members.

RISK IDENTIFICATION & MITIGATION

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

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|---|-----------------|-----------------|---------------|--|
| <p>Business Operation <i>Risk: Members are not appointed to the Waste Management Working Group</i></p> | <i>Unlikely</i> | <i>Moderate</i> | <i>Medium</i> | <p><i>Elected Members are appointed to the Working Group.</i> <i>Officer reports and recommendations will be considered by Council at Ordinary Council Meetings when required.</i></p> |

FINANCIAL IMPLICATIONS

17. A budget line exists for the cost of administering committees, including representation on external committees.

LEGAL IMPLICATIONS

18. There are legal implication related to compliance with specific provisions of the *Local Government Act 1995*, including subdivision 2 – Committees and their meetings.

ENVIRONMENTAL CONSIDERATIONS

19. There are no direct environmental considerations related to this item. However, an efficient meeting schedule may reduce wasted resources (time, travel and office consumables).

ALTERNATE OPTIONS

20. Elected Members may reserve the right to nominate for committee membership at a later date.

| | | |
|-----------------------------------|---|---|
| Consulted References | : | <ul style="list-style-type: none">• <i>Local Government Act 1995</i>• <i>Planning and Development (Development Assessment Panels) Regulations 2011</i>• Department of Local Government Guidelines• Governance and Meeting Framework Policy |
| File Number (Name of Ward) | : | All Wards |
| Previous Reference | : | • OCM 27/10/2015 Report Item CSF202 |

DIS083: TENDER C18003 - UPGRADE OF EMU POINT BOAT PENS

| | |
|---|---|
| Land Description | : Seabed Lease, Emu Point, Oyster Harbour |
| Proponent / Owner | : City of Albany |
| Attachments | : Concept Design |
| Supplementary Information & Councillor Workstation | : <i>Confidential Briefing Note and Financial Attachments A & B have been distributed under separate cover.</i> |
| Report Prepared By | : Manager City Engineering (David King) |
| Responsible Officers: | : Director of Works and Services (Matthew Thomson) |

Note: A Confidential Briefing Note has been distributed under separate cover in accordance with section 5.23 of the Local Government Act 1995(2)(e)(iii), being a matter that if disclosed, would reveal information about the commercial affairs of a person other than the local government

STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan:
 - a. **Theme 3:** Clean Green and Sustainable
 - b. **Objective:**
 - 3.2 To build, maintain and renew city assets sustainably.
 - c. **Community Priorities:**
 - 3.2.1 Design, construct and maintain infrastructure cost effectively in a manner that maximises its life, capacity and function.

In Brief:

- Elected Members will be briefed on this matter prior to consideration of this item.
- Emu Point Boat Pens have reached the end of their useful life.
- This report recommends that the structure is upgraded to a modern floating boat pen facility.
- Tender Award for C18003 - Emu Point Boat Pens – Design and Construction of a Pontoon Marina System to SMC Marine.
- Budget allocation to be loan funded.

RECOMMENDATION

**DIS083: RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT: ABSOLUTE MAJORITY**

THAT Council:

1. **AGREES** to take a loan for a period of up to 20 years term, at prevailing interest rates, for \$1,800,000 to facilitate the construction and upgrade of the Emu Point Boat Pens, subject to compliance with Clause 6.20 of the Local Government Act 1995;
2. **AMEND** the 2017/2018 budget to include an allocation of \$1,800,000 for the Upgrade of Emu Point Boat Pens;
3. **AUTHORISE** the Chief Executive Officer to accept the tender from SMC Marine and award Contract C18003 - Emu Point Boat Pens – Design and Construction of a Pontoon Marina System, subject to loan requirements being met.

BACKGROUND

2. The Emu Point Marina is located within a dredged basin on the northern shore of Emu Point.
3. The marina comprises of a number of separately controlled boat pens. City of Albany (CoA) boat pens and boat pens being managed by the Department of Transport (DoT).

4. Both areas are generally well-managed. However, the jetties within the CoA area have reached the end of their useful life.
5. The CoA recently relocated a number of pen holders within the facility due to part of the mooring structure being in an unserviceable.
6. The CoA, since 2013, has been in ongoing discussions with the DoT with a view to negotiating the transfer of control and management of the entire Emu Point Marina complex to the DoT.
7. To inform these discussions, the DoT commissioned Transfield Services to provide a comprehensive condition report. This report identified a significant spend on the marina in order to bring it to a minimum standard considered acceptable for a facility of this type.
8. Although no formal offer was ever put on the table, it was inferred that significant spend or contribution would be required by the City of Albany if the facility was to be handed over.
9. The expected contribution results in the handover to the Department an unviable option and so alternative management options, independent from the Department, have been investigated since.
10. Consultation with the major stakeholders has been undertaken throughout, with their preference noted for the ongoing management to be with the City of Albany.
11. Previous tenders to refurbish the existing structures were unviable due to the large costs and poor return on investment.

DISCUSSION

12. Major stakeholders expressed a preference in the replacement of the structure with a floating pontoon system.
13. Floating pontoon structures are susceptible to damage from excessive wave climates. A feasibility study to determine suitability of a floating structure was undertaken by Seashore engineering during 2017 and addressed the concern of an unsuitable wave climate. The outcomes from the study deemed the wave climate suitable.
14. Based on the feasibility study, budget estimates, and preliminary business modelling the City of Albany went to Tender for the design and construction of a floating pontoon facility.
15. A total of 38 tender documents were issued by City of Albany.
16. Six (6) completed tender documents were submitted on or before the stipulated closing date and time.
17. The tenderers were evaluated using the weighted attributes methodology. This method scores the evaluation criteria and weights their importance to determine an overall point's score for each tender. The criteria are tabled below.

| Criteria | % Weighting |
|-----------------------------------|-------------|
| Cost | 50% |
| Relevant Experience | 20% |
| Key Personnel Skills & Experience | 10% |
| Demonstrated Understanding | 15% |
| Corporate Social Responsibility | 5% |
| Total | 100% |

18. The following table summarises the top tenderers and their weighted scores:

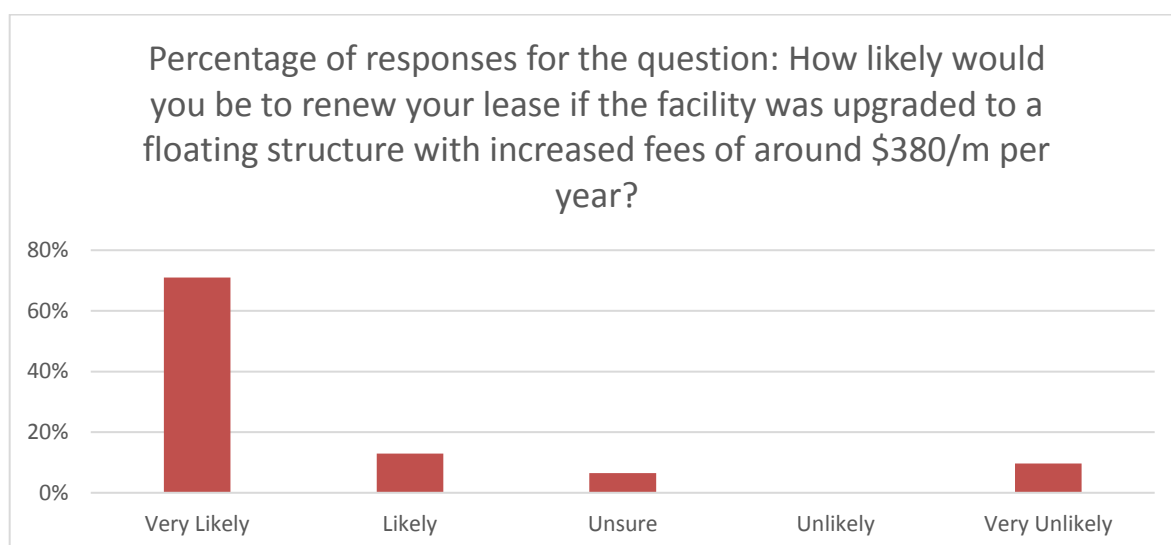
| Tenderers | Weighted Score |
|------------|----------------|
| SMC Marine | 712.88 |
| Tenderer B | 620.56 |
| Tenderer C | 546.87 |
| Tenderer D | 507.48 |
| Tenderer E | 464.05 |
| Tenderer F | 458.89 |

19. Attachment 1 shows the proposed layout of the new pens. To keep capital costs down, it is proposed to omit Jetty B from the construction. Jetty B can be installed at a later date if the customer demand exceeds the capacity of A and C. Jetty B has been included in the Tender as a specified provisional item, and therefore can be removed from the contract if deemed necessary.

GOVERNMENT & PUBLIC CONSULTATION

20. Pursuant to Section 6.20(2)(a) of the Local Government Act 1995, the City of Albany must give notice that it proposes to borrow money.
21. A request for tenders was published in the West Australian on 24 January 2018 and the Albany Weekender on 25 January 2018. The closing date of tenders was 21 February 2018 at 2pm.
22. Further consultation will be required with the Department of Transport in renewal of the seabed lease to at least the expected lifespan of the new structure.
23. Numerous meetings have been held with both the boat pen leaseholders and the Friends of Emu Point Group to keep them informed and up to date on the situation.

A survey of the existing boat penholders was undertaken in May 2017. The survey was carried out in order to gauge the likelihood of lease holders continuing with their lease under a number of circumstances. For the purposes of this item, the question: How likely would you be to renew your lease if the facility was upgraded to a floating structure with increased fees of around \$380/m per year? Their responses are provided in the graph below.



24. The results of the survey indicated that there was majority support for the increase service level and increase of fees associated.

STATUTORY IMPLICATIONS

25. Clause 6.20 of the *Local Government Act 1995* allows a local government to borrow money. Where this power is exercised and the details of the proposal have not been included in the annual budget, the local government must give one month's public notice of the proposal and the resolution to exercise that power must be by absolute majority.
26. Clause 6.21(2) states that when a local government borrows money, it may only be secured by giving security over the general funds of the local government.
27. Regulation 11 of the Local Government (Functions and General) Regulations 1996 (Regulations) requires Council to publicly tender if the contract is, or is expected to be, more, or worth more than \$150,000.
28. 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 any tender.
29. Regulation 19 of the Regulations requires Council to advise each tenderer in writing about the result of Council's decision.

POLICY IMPLICATIONS

30. Council's Policy – Long Term Borrowing applies to this item. This policy provides for the prudent use of loan borrowings for the acquisition of City assets. It is considered this proposed project, (as detailed in this report and the attached business case), is compliant with this policy.
31. Councils Purchasing Policy (Tenders & Quotes) and Buy Local Policy (Regional Price Preference) are applicable to this item.

RISK IDENTIFICATION & MITIGATION

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

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|--|------------|-------------|---------------|---|
| Financial: There is a risk that the required occupancy (80%) is not met which will result in a negative NPV | Possible | Major | High | Advertisement of the service , Survey of existing lease holders |
| Finance: Non-compliance with contract. | Unlikely | Moderate | Medium | Standard general conditions of contract protect the City by allowing for contractual remedies on the basis of failure to execute works in accordance with contract. |
| Reputational Opportunity: There is an opportunity to upgrade the facility to bring it in line with modern expectations. This has the potential to improve the City's reputation with regards to this service. | | | | |
| Financial Opportunity: The business model is highly sensitive to occupancy. Occupancy in excess of 80% will result in an exponentially positive NPV. | | | | |

FINANCIAL IMPLICATIONS

33. The total project cost is estimated at \$1,800,000. The City will facilitate this by borrowing \$1,800,000 with a loan from the WA Treasury Corporation (WATC). Both the existing reserve funds and lease fees from the service will repay this loan. Given the favourable interest rates which can be fixed over the term of the loan, a term of 20 years is suggested. An interest rate of 3.77% is expected based on the WATC Borrowing Rates issued in February 2018.
34. In order to comply with the provisions of the *Local Government Act 1995*, the intent to borrow needs to be advertised for public comment, if not endorsed in the annual budget. Any loan is also subject to WATC internal risk assessment process.

35. Fees and charges for the boat pens upon completion of the project will be in line with similar facilities at the Department of Transport town marina of around \$380/metre per year. This is a significant increase from current rates of approximately \$215/metre per year but is in line with an increased level of service of the floating pontoon system proposed.
36. To achieve a positive Net Present Value (NPV) over 25 years, the occupancy is required to average 78% capacity, equating to 377 metres of boat on the proposed design.
37. At 78% capacity, yearly balance would still require an approximate average annual subsidy from other revenue streams of \$43,000 for the next 10 years. The positive NPV is mostly generated by the profits in years 20-25.
38. The business model is highly susceptible to alteration in the occupancy and a reduction to 60% capacity would result in a 25-year NPV of minus -\$562,561 and an average annual subsidy from other revenue streams of around \$72,000 for the next 10 years.
39. The business model is highly susceptible to alteration in the occupancy and an increase to 90% capacity would result in a 25 year NPV of \$359,156 and an average subsidy from other revenue streams of \$23,000 for the next 10 years.
40. For reference, in the 2016/17 year, the total metre of boat being leased at the City's Emu Point facility was approximately 300 metres.
41. The Emu Point Reserve currently has a balance of \$401,133 as of 30 June 2017. It is proposed to use these funds to offset the subsidy required in the early stages of the project life.
42. During reconstruction of the boat pens, the existing boat pen lease holders will need to be relocated to Department of Transport facilities. This cost is incorporated into the total project cost of \$1.8 million.

LEGAL IMPLICATIONS

43. By adopting the recommendation, Council is contractually obliged to honour the contract.

ENVIRONMENTAL CONSIDERATIONS

44. Oyster Harbour is controlled by the Department of Water. Environmental controls during construction will adhere to Department of Water requirements.

ALTERNATE OPTIONS

45. Discontinue the service of boat pens after 30 June 2018.
46. Non-renewal of current boat pen leases and demolition of the structure in July 2018.

CONCLUSION

47. In order to maintain delivery of the boat pen service, the structure requires replacement to modern standards. A number of options have been explored over the past 12 months and the preferred solution of replacement with a floating pontoon system is proposed in this report.
48. For the project to proceed it will need to be funded by a loan that will be repaid by the current Emu Point Reserve and income generated from the service.

| | | |
|-----------------------------------|---|----------------------------------|
| Consulted References | : | <i>Local Government Act 1995</i> |
| File Number (Name of Ward) | : | CP.DEC.31 (Breaksea) |
| Previous Reference | : | Nil |

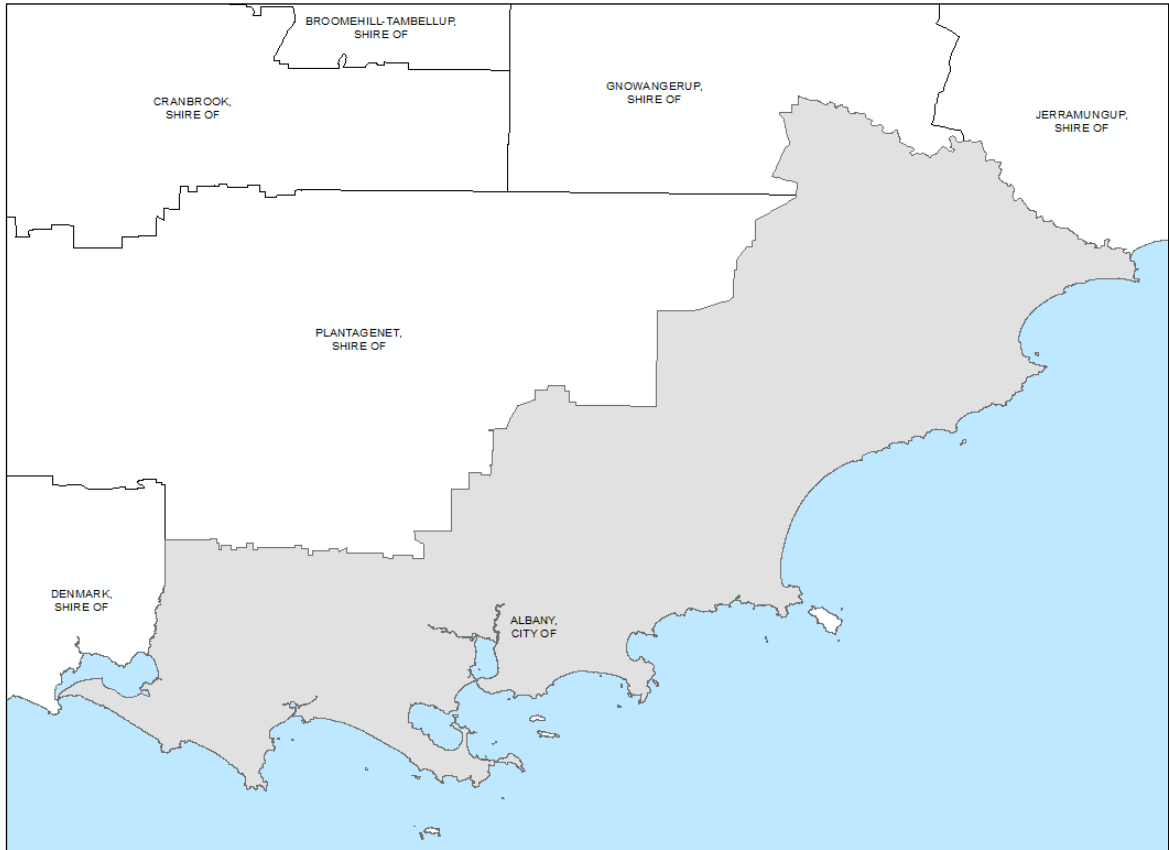
**DIS084: CONSIDERATION OF ADOPTION OF LOCAL PLANNING
SCHEME AMENDMENT NO.29 – CITY OF ALBANY**

| | | |
|-----------------------------|---|--|
| Land Description | : | <ul style="list-style-type: none">• City of Albany• Lot 5 #437 Chester Pass Road, Warrenup WA 6330• Lot 21 #312 Albany Highway, Centennial Park WA 6330• Lot 304 # 63 Pioneer Road, Centennial Park WA 6330• Lot 250 #255 Lancaster Road, McKail WA 6330• Lots 871, 410, 411, 868 and 869 Chester Pass Road, Milpara WA 6330.• Lot 26 #71 Shell Bay Road, Lower King WA 6330• Lot 6906 # 11-13 Nind Street, Spencer Park WA 6330 (Reserve 26860)• Lot 350 # 11 Shelley Beach Road, Kronkup WA 6330• Nullaki Conservation Zone |
| Proponent | : | City of Albany |
| Owner | : | See attached |
| Business Entity Name | : | Nil |
| Attachments | : | <ul style="list-style-type: none">• Local Planning Scheme Amendment No. 29 – Report and Amendment Schedule• Schedule of submissions and recommended modifications• Submissions |
| Report Prepared By | : | Senior Planning Officer – Strategic Planning (A Nicoll) |
| Responsible Officer: | : | Executive Director Development Services (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 *Albany Local Planning Strategy 2010* and *Community Strategic Plan – Albany 2030*.
3. The amendment complies with strategic planning requirements for the following reasons:
 - a) The *Albany Local Planning Strategy 2010* recommends the preparation of an up-to-date Local Planning Scheme; and
 - b) The *Community Strategic Plan – Albany 2030* recommends providing informed and transparent decision making that meets our legal obligations (Leadership: 1.1.2).

Maps and Diagrams:



In Brief:

- Amendment No.29 seeks to alter various parts of the *Local Planning Scheme No. 1* text and mapping to:
 - Remove any duplication of the ‘deemed’ provisions outlined in Schedule 2 of the *Local Planning (Local Planning Schemes) Regulations 2015*;
 - Include any proposed supplemental ‘deemed’ provisions within a ‘Schedule A’;
 - Align the structure and content of the City’s scheme with the ‘model’ provisions outlined in Schedule 1 of the *Local Planning (Local Planning Schemes) Regulations 2015*;
 - Rezone various land parcels not included in error at the time of gazettal of the scheme; and
 - Change the permissibility in the zoning table for various use and development classes to improve the operation of the scheme.
- Council previously initiated the amendment for advertising at the October 2017 Ordinary Council Meeting.
- One submission raised issues pertaining to the proposed amendment. In considering issues raised, modifications to the amendment have been recommended.
- Council is now requested to consider submissions received and to recommend that the Western Australian Planning Commission support the amendment with modifications.

RECOMMENDATION

DIS084: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council, pursuant to section 75 of the *Planning and Development Act 2005* and regulation 50. (3) (standard amendment) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, resolves to:

1. Adopt, with modifications, the proposed Amendment No.29 to *Local Planning Scheme No.1*, to:
 - a) Remove provisions, terms and definitions from *Local Planning Scheme No.1* that are superseded by the ‘Deemed’ provisions contained in the *Planning and Development (Local Planning Schemes) Regulations 2015*;
 - b) Introduce supplemental provisions to the ‘Deemed’ provisions;
 - c) Replace and introduce new provisions consistent with the ‘Model’ provisions contained in the *Planning and Development (Local Planning Schemes) Regulations 2015*;
 - d) Rezone various land parcels not included in error at the time of gazettal of the scheme; and
 - e) Change the permissibility in the zoning table for various use and development classes.
2. Forward Amendment Document, Amendment Schedule, Council Report, Schedule of Submissions and Modification, and Submissions to the Western Australian Planning Commission with a request that the Hon. Minister for Planning grant approval to the amendment (with modifications) and its gazettal.
3. Advise the applicant/owner and those who lodged a submission of the Council decision accordingly.

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

BACKGROUND

4. *Local Planning Scheme No. 1* was gazetted on 28 April 2014 and consists of the Scheme Text and the Scheme Maps. The Scheme divides the Local Government district into zones to identify areas for particular uses and identifies land reserved for public purposes. Most importantly, the Scheme controls the types of uses and development allowed in different zones.
5. The Council resolved in October 2017 to advertise Amendment No.29, which is prepared as an omnibus of matters in respect to ‘model’ and ‘deemed’ provisions contained in the *Local Planning (Local Planning Schemes) Regulations 2015*.
6. Prior to advertising, the amendment was referred to the Environmental Protection Authority (EPA), where it was determined that the scheme amendment is unlikely to have a significant effect on the environment and does not warrant formal assessment under Part IV of the *Environmental Protection Act 1986*.
7. Following notice from the EPA, the amendment was advertised in accordance with the requirements of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

8. At the close of advertising, nine (9) submissions were received. One submission recommended modifications to the amendment. The 'Large Format Retail Association' requested modifications to ensure compliance with the requirements of legislation and Commission guidelines, and in the interest of maximising clarity, consistency and certainty for the industry.

DISCUSSION

Amendment 29

9. The City of Albany seeks the support of the Council to amend the City of Albany *Local Planning Scheme No. 1* to bring in-line with state legislation and to fix various errors and anomalies.
10. The *Planning and Development (Local Planning Schemes) Regulations 2015* (WA) (Regulations) came into force on 25 August 2015. The Regulations introduce new "deemed provisions" and "model provisions".
11. As a consequence of section 257B of the *Planning and Development Act 2005* (WA), the deemed provisions in Schedule 2 of the Regulations are now taken to be built into every local planning scheme in the State. To the extent that a local planning scheme is inconsistent with the deemed provisions, the deemed provisions are taken to prevail.
12. The model provisions provide a template for schemes. It is expected that local government planners and industry review or amend their local planning scheme to align with the model provisions.
13. Since the scheme gazettal on 28 April 2014, various errors, anomalies and inconsistencies have been documented in *Local Planning Scheme No.1*. While many of these are simple typographical errors, some do alter development potential.

Submission

14. The 'Large Format Retail Association' requested the following modifications to the Amendment No.29:
- *Replicate all model terms and definitions contained in 'Schedule 1 Part 6' of the 'Planning and Development (Local Planning Schemes) Regulations 2015' within 'Schedule 1 of LPS1'.*
 - *Delete any existing defined words and expressions from 'Schedule 1 of LPS1' which duplicate or contradict the model terms and definitions contained in 'Schedule 1 Part 6' of the 'Planning and Development (Local Planning Schemes) Regulations 2015'. This should specifically include deletion of the 'Showroom' land use definition currently contained in 'Schedule 1 of LPS1'.*
 - *Within the 'LPS1 Zoning Table', replace 'Showroom' with 'Bulky Goods Showroom' and establish land use permissibility as follows within the 'LPS1' zones:*
 - *'P' within the Regional Centre Mixed Business and Highway Commercial zones.*
 - *'D' within the Regional Centre, Neighbourhood Centre and Light Industry zones.*
 - *'X' within all other zones (with the exception of the Future Urban, Rural Residential and Conservation Zones, for which no permissibility is established by the 'LPS1 Zoning Table').*
 - *Within the 'LPS1 Zoning Table', add 'Trade Supplies' as a new line entry, with permissibility as follows within the 'LPS1' zones:*
 - *'P' within the Regional Centre Mixed Business, Highway Commercial and Light Industry zones.*

- 'D' within the Regional Centre and Neighbourhood Centre zones.
 - 'X' within all other zones (with the exception of the Future Urban, Rural Residential and Conservation Zones, for which no permissibility is established by the 'LPS1 Zoning Table').
15. The Amendment No.29 proposes to adopt model scheme terms and definitions simply by reference, through modification to 'clause 1.7' of the current *Local Planning Scheme No.1* Scheme Text.
16. The 'Large Format Retail Association' submission has revealed the following specific issues, which unless corrected, have the potential to create significant confusion and inconsistency in the way such terms are to be applied:
- *The inclusion of model provisions by reference is contradictory to the 'Planning and Development (Local Planning Schemes) Regulations 2015' and supporting guidelines published by the WA Planning Commission (WAPC). Specifically, 'page 15' ('question 52') of the WAPC's 'Frequently Asked Questions' states that the model provisions cannot be included within schemes by reference, and instead "the model provisions Schedule 1, Parts 1-6 are to be replicated within the scheme."*
 - *The proposed new wording of 'LPS1' clauses '1.7.1 (b) (i)' and '1.7.2' does not correctly and accurately reference 'Schedule 1 Part 6' of the 'Planning and Development (Local Planning Schemes) Regulations 2015'.*
 - *The proposed 'LPS1' modifications do not remove or replace the existing 'LPS1' 'Showroom' land use from either the zoning table or dictionary of defined words and expressions. If the old 'Showroom' land use is kept within the 'LPS1' as proposed by 'A29', this would cause significant conflict and confusion with the new 'Bulky Goods Showroom' land use contained in 'Schedule 1 Part 6' of the 'Planning and Development (Local Planning Schemes) Regulations 2015'.*
17. To ensure the model definitions are applied as required by legislation and Commission guidelines, the City recommends that the Amendment No.29 is modified as follows:
- With the exception of the definition 'Showroom', delete existing defined words and expressions from 'Schedule 1 of LPS1' which duplicate or contradict the model terms and definitions contained in 'Schedule 1 Part 6' of the *Planning and Development (Local Planning Schemes) Regulations 2015*;
 - With the exception of the term 'Bulky Goods Showroom', replicate model terms and definitions contained in 'Schedule 1 Part 6' of the *Planning and Development (Local Planning Schemes) Regulations 2015* within Schedule 1 of the City's *Local Planning Scheme No.1*.
18. The model scheme definition for 'Bulky Goods Showroom' includes a number of uses in addition to uses currently included in the 'Showroom' definition. The additional uses could have unforeseen detrimental impacts on retail in the "Regional centre zone". This change is therefore beyond the scope of the current amendment that is focused on low impact changes and fixing anomalies within the scheme.
19. Changes to LPS1 to include the 'Bulky Goods Showroom' and 'Trade supplies' use and definitions can be considered in a future scheme amendment, after consultation and due consideration.

GOVERNMENT & PUBLIC CONSULTATION

20. Amendment No.29 was advertised in accordance with the requirements of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
21. Nine (9) submissions were received from agencies and members of the public.

22. The submissions received are considered in a schedule available as an attachment to this report.

STATUTORY IMPLICATIONS

23. Scheme amendments undergo a statutory process in accordance with the *Planning and Development Act 2005* and *Planning and Development (Local Planning Schemes) Regulations 2015*.
24. Section 75 of the *Planning and Development Act 2005* allows a local government authority to amend its local planning scheme with the approval of the Minister for Planning.
25. Regulation 50(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015* allows Council to support a standard amendment, with or without modification.
26. Voting requirement for this item is **SIMPLE MAJORITY**

POLICY IMPLICATIONS

27. There are no policy implications relating to the proposed amendment.

RISK IDENTIFICATION & MITIGATION

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

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|---|------------|-------------|---------------|--|
| Reputation. The proposal may not be accepted by the Western Australian Planning Commission or the Minister for Planning. | Possible | Minor | Low | If not supported by the WAPC or Minister, the amendment will not be progressed and the City may be required to make modifications. |
| Reputation. The proposal may attract objections from members of the public or other public authorities. | Possible | Minor | Low | Agree to support the proposed Scheme Amendment subject to provisions to address community and agency concerns. |
| Opportunity: Increase consistency and alignment with State Planning Legislation | | | | |

FINANCIAL IMPLICATIONS

29. There are no known financial implications relating to the proposal to amend the *Local Planning Scheme No. 1*.

LEGAL IMPLICATIONS

30. There are no known legal implications directly relating to this item.

ENVIRONMENTAL CONSIDERATIONS

31. There are no environmental implications relating to the proposal to amend the *Local Planning Scheme No. 1*.
32. As per Section 48(A) of the *Environmental Protection Act 1986*, the proposal was referred to the Environmental Protection Authority and environmental assessment was not deemed necessary.

ALTERNATE OPTIONS

33. Council may consider alternate options in relation to this item, such as:

- To resolve to support the scheme amendment without modification(s); or
- To resolve to support the scheme amendment with additional modification(s); or
- To resolve not to support the scheme amendment and advise the Western Australian Planning Commission, in writing, of the reasons for doing so.

CONCLUSION

34. The Scheme Amendment No.29 is proposing to update the City's *Local Planning Scheme No.1* to conform with the recently amended *Local Planning (Local Planning Schemes) Regulations 2015*.
35. The amendment was advertised and nine submissions were received. In light of comments received, modifications have been recommended.
36. The Amendment No.29 adheres with the City's *Community Strategic Plan – Albany 2030*, which recommends providing informed and transparent decision making that meets our legal obligations.
37. It is recommended that Council adopt Local Planning Scheme Amendment No.29, as the proposal will improve the functionality of *Local Planning Scheme No. 1*, thereby ensuring consistent decision-making in line with current best practice.

| | | |
|-----------------------------------|---|--|
| Consulted References | : | 1. <i>Local Planning Scheme No. 1</i> 2. <i>Albany Local Planning Strategy 2010</i> 3. <i>Community Strategic Plan – Albany 2030</i> 4. <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> . 5. |
| File Number (Name of Ward) | : | City of Albany (All Wards) |
| Previous Reference | : | OCM – 31/10/2017 - DIS049 |

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