



AGENDA

DEVELOPMENT AND INFRASTRUCTURE SERVICES COMMITTEE MEETING

Wednesday 14 October 2020

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 Infrastructure, Development & Environment

(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 past, present and emerging”.

3. RECORD OF ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE

Mayor D Wellington

Councillors:

Member	E Doughty (Chair)
Member	R Sutton (Deputy Chair)
Member	P Terry
Member	R Stephens
Member	G Stocks (Deputy Mayor)
Member	M Benson-Lidholm JP
Member	J Shanhun
Member	S Smith
Member	A Goode JP
Member	C Thomson
Member	R Hammond

Staff:

Chief Executive Officer	A Sharpe
Executive Director Infrastructure, Development and Environment	P Camins
Manager Planning & Building Services	J van der Mescht
Secretary	J Cobbold

Apologies:

Member	T Sleeman (Leave of Absence)
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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 MOTION

THAT the minutes of the Development and Infrastructure Services Committee meeting held on 9 September 2020 as previously distributed, be CONFIRMED as a true and accurate record of proceedings.

9. PRESENTATIONS

10. UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS

DIS219: ADOPTION OF THE CITY OF ALBANY LOCAL HERITAGE SURVEY AND THE HERITAGE LIST

Land Description	: Multiple properties throughout the City of Albany Municipal Area
Proponent / Owner	: Multiple owners
Business Entity Name	: N/A
Attachments	: Schedule of Submissions Local Heritage Survey List Scheme Heritage List Community Update (April 2020)
Report Prepared By	: Senior Planning and Development Compliance Officer (T Wenbourne)
Responsible Officers:	: Executive Director Infrastructure 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 survey and list, Council is obliged to draw conclusions from its adopted *Albany Local Planning Strategy 2019* and *Community Strategic Plan – Albany 2030*.
3. 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).

In Brief:

- The Local Heritage Survey (previously referred to as the Municipal Heritage Inventory) was adopted in April 2018 following a review that commenced in 2010. Further modification and update of this has occurred as part of preparation of the Heritage List.
- The City has followed the City of Albany Heritage List procedure in selecting the places of heritage value recommended to be included in the Heritage List.
- Both documents have now been advertised. The majority of submissions received supported the heritage listing of their property or included additional/correcting information.
- The updated Local Heritage Survey and proposed Heritage List were referred to Council in July 2020 under report item DIS219. A decision was deferred to allow a further review of 2 properties (18b Finlay Street & 1207 Nanarup Road) taking into consideration their current condition.
- The review of these properties has now been undertaken with the assessment and recommendation reported below.
- It is recommended that Council adopt both the Local Heritage Survey and Heritage List.

COVID-19 IMPACT

- No identified implications.

RECOMMENDATION

DIS219: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council, resolves to:

- 1. ADOPT the City of Albany Local Heritage Survey subject to modifications as set out in the Schedule of Submissions.**
- 2. ADOPT the Heritage List subject to modifications as set out in the Schedule of Submissions, specifically including the following:**
 - a. EXCLUDE 18b Finlay Street, Albany.**
 - b. INCLUDE Springmount, 1207 Nanarup Road, Kalgan.**
 - c. KEEP 52 Frederick Street, Albany.**
 - d. INCLUDE 86 Aberdeen Street, Albany.**
 - e. INCLUDE 11 Parade Street, Albany.**
- 3. INFORM the Heritage Council (DPLH) of the City's decision to adopt the Local Heritage Survey and Heritage List.**
- 4. AUTHORISE the Chief Executive Officer to WAIVE the fees for Development Applications, where these applications are solely required because a property is on the Heritage List.**

BACKGROUND

4. The City of Albany Municipal Heritage Inventory (MHI) was last reviewed in December 2000 and represented a combination of the 1994 Heritage Inventories of the Town and Shire following the 1998 amalgamation. A review thereof commenced in 2010.
5. At the OCM of June 2017, Council endorsed the Heritage List procedure, which guides the selection of places for inclusion on the Heritage List from the Heritage Survey review process. The Local Heritage Survey informs the preparation of the Heritage List.
6. Council adopted the current Local Heritage Survey at the April 2018 OCM.
7. Both the Local Heritage Survey and Heritage List were publicly advertised for a period of 4 weeks in March/April 2020. Twenty-four submissions were received of which the vast majority are in support of heritage listing of their places or provided additional/correcting information.

DISCUSSION

8. The Local Heritage Survey is prepared under the *Heritage Act 2018* and in accordance with the *Guidelines for Local Heritage Surveys* (July 2019) by the Heritage Council.
 - a. Local Heritage Surveys are compiled to 'tell the stories' of their districts – it provides an understanding of the history and development of the local government area, identifies the key themes and storylines that have shaped it and the places that reflect or encapsulate this. It is in essence a stock-take of a community's heritage places. Inclusion in the Local Heritage Survey is an acknowledgement of a place's heritage value.
 - b. Owners are free to develop their properties in accordance with the normal planning requirements which apply to all properties in the City.
 - c. There are 327 places on the Local Heritage Survey of which 54 are new places that have been added through the review process.

9. The deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* require that local governments establish and maintain a heritage list of places assessed as having cultural heritage significance.
10. The Local Heritage Survey is the first point of identification of heritage places and is used, amongst other functions, to inform the preparation of a heritage list. The threshold for inclusion in the Heritage List are based on the City's adopted procedure (OCM June 2017). The procedure allowed for consistency and transparency for the inclusion of places on the Heritage List.
 - a. The current Heritage List was inherited from Town Planning Scheme 1A (former Town of Albany Scheme). There is only one (1) place included from the former Shire area. The 'Schedule of Places of Heritage Value' under Town Planning Scheme 1A was recognised as a starting point for the required heritage list.
 - b. Of the 327 places on the Local Heritage Survey, 275 places have met the threshold for inclusion in the Heritage List as set out under the Heritage List Procedure. Inclusion in the Heritage List is based on an assessment of cultural heritage significance as follows:

Level of significance	Category	Description	Heritage List status
Exceptional significance	1	Essential to the heritage of the locality. Rare or outstanding example.	All places included in the heritage list.
Considerable significance	2	Very important to the heritage of the locality. Show a high degree of integrity/authenticity.	All places included in the heritage list.
Some/moderate significance	3	Contributes to the heritage of the locality. Has some altered or modified elements, not necessarily detracting from the overall significance of the place.	Places may be included in the heritage list.
Little significance	4	Has elements or values worth noting for historical interest but otherwise makes little contribution.	Below the threshold for inclusion in the heritage list.

11. The Heritage survey and list are subject to statutory requirements for advertising, the process which was followed will be discussed further below.
12. It is considered that the implementation of the Heritage List and Survey will put in place a framework of cataloguing and protecting the heritage places within the City of Albany.
13. Inclusion on the Heritage List affords statutory protection to the place under the *Planning and Development (Local Planning Schemes) Regulations 2015*. This means it cannot simply be altered or demolished, but any change must be approved by the City through a development application. The requirement for approval ensures that any proposed alteration or redevelopment is sympathetic to the heritage of the place. It also gives the City the opportunity to record and document anything of note about the place before it is altered or removed.
14. In recognition of the requirement to apply for development approval in circumstances where an unlisted property does not need approval, staff are recommending that development application fees be waived.
15. As well as providing statutory protection, Heritage Listing brings with it a duty and expectation to maintain a property. There have been examples where owners of heritage properties have attempted 'demolition through neglect'. There are elements of the legislation that deal with this and action that can be taken to require upkeep of a property.
16. Having said this however, the routine maintenance requirement is not much different to any other property in use by an owner. As an owner, you invest in maintenance to preserve the

useability and value of the asset. However, where a property is not in regular use the ongoing maintenance requirement could be viewed as a burden, particularly if the property requires lots of regular maintenance. Again, this is not necessarily any different for a non-heritage listed property.

17. At the July Ordinary Council Meeting, Council deferred making a decision on the updated Heritage Survey and Heritage List to allow a review of the current condition of two (2) properties – 18b Finlay Street and Springmount, 1207 Nanarup Road.

18b Finlay Street

18. 18b Finlay Street was inspected on Monday 24 August 2020. It was noted that the small timber framed dwelling is in poor condition which appears to have been contributed to by onsite drainage conditions. It is unlikely the drainage can be addressed with the current dwelling in situ, particularly as part of the wall is constructed directly on exposed rock on the side of Mount Clarence. In places the external walls are also retaining external ground levels. Much of the framing and other timber elements have deteriorated and are no longer plumb or level, in part due to weathering. Ceiling heights in the rear rooms do not meet head clearance requirements.
19. It is considered that the dwelling is structurally compromised by the prevailing onsite conditions and it would not be viable to undertake the substantial repairs necessary without addressing the underlying issues that would continue to impact those repairs.
20. In these circumstances it would be unreasonable to require this extensive maintenance that Heritage Listing would bring on the property owners.
21. This property has an interesting story behind it and is still owned by the family of the widow it was originally constructed for through community support. This story is not currently documented on the place record form. The owner has indicated support and a desire for this history to be recorded. This story adds to the charm of the property, but the structure is not essential to the telling of the story.
22. It is the considered view of City Staff that the Heritage Survey level of significance remain unchanged, but that this property should not be included in the Heritage List. The City, through its Heritage Advisor, should liaise with the current owner to further document the story and history of the property prior to its eventual demolition.

Springmount, 1207 Nanarup Road

23. The property Springmount at 1207 Nanarup Road was inspected on Wednesday 29 July 2020. This large and generously proportioned dwelling is showing some signs of deteriorating fabric, most notably the external timber stairs, balustrades and some of the verandah decking. It is understood the stairs and balustrades were replaced during the 1991 renovation and an inappropriate or untreated timber may have been used resulting in the current issues. There was no obvious cause for the verandah decking boards being 'springy' and this was not explored further.
24. The stone fireplace foundations have differing extents of vertical cracking and some mortar deterioration. Remedial work to repair this could be undertaken by a competent stonemason.
25. Some of the verandah roof sheeting has been replaced, but without the supporting structure underneath, which has caused it to sag under its own weight. In addition, there is evidence of minor roof leaks inside the house, but the owner advises they have carried out repairs above these and stopped the leaks.
26. Other issues include the shower tiling requiring re-grouting, timber framing on the partial verandah enclosure has failed and caused the pane of glass to crack and some of the internal wall linings have become detached from the wall to become loose and rippled.
27. Whilst there are numerous issues identified, it is considered that the dwelling on a whole is structurally sound. Whilst it would not have the living comfort of a new build, it would not

take much work to make this building liveable again. If this dwelling were being regularly or permanently occupied many of these issues may have been identified and addressed earlier as part of routine maintenance before they got to their current extent.

28. The owner also offered conjecture that some of the references to use of the place as a holiday retreat or guesthouse may not be correct, although the layout of the rooms along the corridors would support this type of use. This may require further research, but does not alter the assessment or level of significance.
29. It is the considered view of City Staff that the Heritage Survey level of significance remain unchanged and the property should be included in the Heritage List.

Other Objections

30. The other objections to listing were minor in nature and were not part of the reason for Council deferring a decision on this item at the July OCM.
31. The owners of 52 Frederick Street raised an objection to the Heritage Listing (objection No.16) pending a structural assessment of a wall and sought a delay for this to occur. The City has not heard anything further with regard to the owner progressing the structural assessment. This property was already included in the 2000 Inventory and is already on the Scheme Heritage List carried over from Town Planning Scheme 1A. It is recommended this property remain on the Heritage List.
32. The owners of 86 Aberdeen Street raised objection to the Heritage Listing (objection No.22) on perceived property value impact. The recommendation of staff is for all the suggested places on Aberdeen Street to be included on the Heritage List to guide future development and protect the heritage environment of Aberdeen Street. The protection of a streetscape or heritage environment has been found to improve property values due to the perceived prestige this protection brings.
33. The owners of 11 Parade Street raised objection to the Heritage Listing (objection No.23) on spiritual grounds and family memories. This property was already on the 2000 Inventory, but was not in the Scheme List carried over from Town Planning Scheme 1A. The property is a fine example of the period with a high level of authenticity and one of the earliest houses in this southern portion of Parade Street. In addition, together with other buildings, it has a positive contribution on the streetscape and is recommended to be included on the Heritage List. Whilst the spiritual connect of the owner is acknowledged, the Heritage Listing will not interfere with or disrespect this personal connection.

GOVERNMENT & PUBLIC CONSULTATION

34. Under the *Heritage Act 2018*, local governments are required to prepare a Heritage Survey. Consultation requirements with landowners are set out under the *Guidelines for Local Heritage Surveys* released by the Heritage Council in July 2019.
35. The deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*, require a local government to write to each owner with a description of the place and the reasons for the proposed entry and invite them to make a submission on the proposal. The City is also required to carry out any other consultation considered appropriate.
36. The Heritage Survey and Heritage List was on public advertising for a period of 4 weeks from 9 March to 3 April 2020. Public notices were placed in local newspapers and letters were sent to each landowner which included the relevant place record form and a detailed information sheet with frequently asked questions (Community Update April 2020 attached).
37. Community Engagement

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Inform – Heritage Survey	Mail Out	9 March – 3 April 2020	Written submissions = 24	Yes

Consult – Heritage List	Public Notice in Newspaper Interviews		Interviews held = 14	
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38. The majority of submissions received supported the heritage listing of their property or included additional/correcting information.
39. Six submissions objected to heritage listing of their property and it is recommended that four remain on the Heritage List predominately due to their level of significance having met the threshold for inclusion (i.e. of considerable or exceptional heritage value) or because the place is located in a street where all places are heritage listed. This ensures that proposed alterations or redevelopment is in sympathy with the heritage streetscape.
40. Heritage Listing does not preclude substantial alterations or demolition of a place. The requirement that a development application be submitted allows the City to assess the proposal on its merits and where approved, condition that an archival record be prepared.
41. An archival record is made of a heritage place as a way of contributing to our understanding and appreciation of our heritage.
42. They record place details for the future such as:
 - the location;
 - historical drawings or photographs;
 - a history of the place;
 - current drawings and photos;
 - internal details such as layout, significant interior details; and
 - a bibliography.
43. The City does not promote the demolition of heritage places, but being Heritage Listed does not absolutely prevent demolition where it can be demonstrated there is no viable alternative or as part of an appropriate re-development proposal.

STATUTORY IMPLICATIONS

44. Inclusion of a place on a Heritage List means that the City will receive applications for developments that would otherwise be exempt from the requirement for development approval under the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*. This includes applications for internal building works, single dwellings, ancillary buildings, and outbuildings and other external structures.
45. The inclusion of a place on the Heritage List gives the place recognition and protection under the City’s Local Planning Scheme. The City will give due regard to the heritage significance of the listed place when determining a related development application. Proposals that respect and retain the heritage values of the place are likely to be encouraged and may, where appropriate, be required.
46. Importantly, the inclusion of a place on a Heritage List does not limit the ability of an applicant to propose any works, nor does it limit the ability of the City to determine an application in the manner it considers most appropriate.
47. Heritage Listing brings with it a duty and expectation to maintain a property. There have been examples where owners of heritage properties have attempted ‘demolition through neglect’. There are elements of the Planning and Development (Local Planning Schemes) Regulations 2015 that deal with this and the action that can be taken to require upkeep of a property.
48. Voting requirements for this item is **SIMPLE MAJORITY**

POLICY IMPLICATIONS

49. There are no policy implications relating to the adoption of the Local Heritage Survey and Heritage List.
50. The Heritage List and Heritage Survey can be used to further inform the preparation of heritage precinct plans or place planning policies in respect to heritage matters.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<p>Community, Organisational Operations and Reputation Inclusion on the Heritage Survey may attract objections from property owners or members of the public or other public authorities.</p>	Possible	Moderate	Medium	<p>The selection and assessment criteria is an established process. The City's assessment has been carried out in accordance with the State guidelines.</p> <p>Continue dialogue with affected parties as required.</p>
<p>Opportunity: provide a framework for the long term protection of heritage places within the City of Albany.</p>				

FINANCIAL IMPLICATIONS

52. Inclusion of a place on a Heritage List means that the City will receive applications for developments that would otherwise be exempt from the requirement for development approval under the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
53. Given the additional cost implication to owners of places on the Heritage List, and as an incentive to preserve the heritage thereof, it is recommended that Council waive the cost of application fees for proposals that would have otherwise not required a development application.

LEGAL IMPLICATIONS

54. There are no legal implications directly relating to this item.

ENVIRONMENTAL CONSIDERATIONS

55. Many places on the Heritage List are parks and gardens (for example, Alison Hartman Gardens, Balston Gardens and RSL Memorial Gardens), trees (for example, the Oak trees on Drew Street and the Peruvian Pepper Tree on Grey Street), lakes (for example, Lake Seppings) and places of Aboriginal significance (for example, Kalgan River fish traps and Scarred Tree at Oyster Harbour). Heritage Listing recognises the heritage significance of these places and adds an additional layer of statutory protection.

ALTERNATE OPTIONS

56. Council may consider an alternate option in relation to the Officer Recommendations on this item, such as resolving:
 - a. To adopt the Local Heritage Survey subject to additional modifications;
 - b. To adopt the Heritage List subject to additional modifications;
 - i. In relation to 18b Finlay Street, Council may resolve to include this property on the Heritage List;

- ii. In relation to Springmount, 1207 Nanarup Road, Council may resolve to exclude this property from the Heritage List;
 - iii. In relation to 52 Frederick Street, Council may resolve to remove this property from the Heritage List;
 - iv. In relation to 85 Aberdeen Street, Council may resolve to exclude this property from the Heritage List;
 - v. In relation to 11 Parade Street, Council may resolve to exclude this property from the Heritage List.
- c. To not waive application fees for development applications in relation to Heritage Listed places.

CONCLUSION

- 57. The Local Heritage Survey recognises the heritage value of places that showcase the development of Albany since settlement. There are no statutory planning implications imposed.
- 58. The Local Heritage Survey is the basis from which the Heritage List is prepared. Places of exceptional and considerable heritage value are included on the Heritage List. Places of some/moderate heritage value may also be included where it is located on a street where all places are included on the Heritage List in order to guide future development and protect the heritage values within the streetscape. Places on the Heritage List are afforded statutory planning protection under the deemed provisions of the *Planning and Development (Local Planning Schemes Regulations 2015)*.
- 59. The Local Heritage Survey and Heritage List are important tools to honour Albany's heritage and protect places of heritage value for future generations to enjoy.
- 60. The Heritage Survey and Heritage List were publicly advertised for a period of 4 weeks from 9 March to 3 April 2020.
- 61. The majority of submissions received supported the heritage listing of their property or included additional/correcting information.
- 62. Council deferred its decision on this item at the July 2020 OCM for a review to be undertaken on two (2) properties based on their current condition. These properties have been inspected with the findings summarised in this report.
- 63. Staff recommend that 18b Finlay Street not be included in the Heritage List and it is recommended that Springmount, 1207 Nanarup Road still be included in the Heritage List.
- 64. It is recommended that Council adopt both the Local Heritage Survey and Heritage List as presented.

Consulted References	:	<ul style="list-style-type: none"> • <i>Heritage Act 2018</i> • <i>Guidelines for Local Heritage Surveys (July 2019)</i> • <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>
File Number (Name of Ward)	:	All
Previous Reference	:	DIS031 – June 2017 OCM DIS088 – April 2018 OCM DIS219 – July 2020 OCM

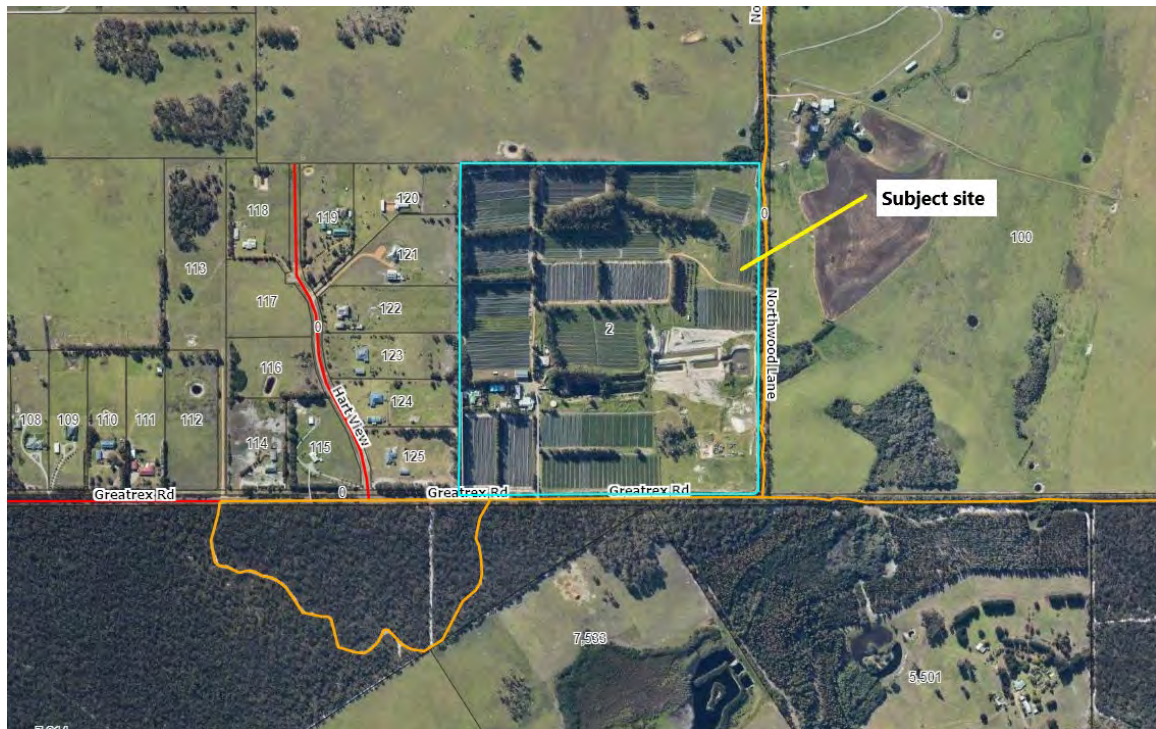
**DIS232: ANIMAL HUSBANDRY – INTENSIVE (EGG PRODUCTION) -
154 GREATREX ROAD, KING RIVER**

Land Description	: 154 Greatrex Road, King River Albany WA 6330
Proponent	: Neil Malcom Handasyde
Business Entity Name	: Handasyde Strawberries Albany
Attachments	: 1. Copy of Application 2. Schedule of Submissions
Report Prepared By	: Planning Officer (D Ashboth)
Responsible Officers:	: Executive Director Infrastructure, Development and Environment (P Camins)

STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. This item relates to the following elements of the City of Albany Strategic Community Plan 2030:
 - Theme:** Smart, Prosperous and Growing
 - Objective:** To strengthen and grow our region's economic base
 - Community Priority:** Work with business and other stakeholders to attract investment, diversify the economy, create jobs and support small business growth.
 - Theme:** A connected and safe built environment.
 - Objective:** To develop vibrant neighbourhoods which retain local character and heritage.
 - Community Priority:** Develop and implement a contemporary Local Planning Strategy that reflects our identity and supports economic growth.
3. The item relates to the following Strategic Objectives of the Albany Local Planning Strategy (ALPS):
 - a) Facilitate the sustainable development of the agricultural sector and maximise opportunities for diversification of agriculture and downstream processing.
 - b) Protect rural land and soil resources through appropriate planning mechanisms.

Maps and Diagrams: 154 Greatrex Road, King River



In Brief:

- The City of Albany has received a development application for free range egg production at 154 Greatrex Road, King River.
- The land use is considered a “D” discretionary use within the “General Agriculture” zone in accordance within the *City of Albany Local Planning Scheme No.1*.
- A discretionary (‘D’) use means that the use is not permitted unless the local government has exercised its discretion by granting development approval.
- The proposal was advertised to the public via direct mail out. Through this process, a total of three (3) responses were received. The submissions are discussed in detail throughout the report.
- The application was also referred to the Department of Water and Environmental Regulation, the Department of Biodiversity Conservation and Attractions and the Department of Primary Industries and Regional Development who stated no objections to the proposal, subject to conditions.
- Staff recommend that Council approve the proposed development, subject to conditions.

RECOMMENDATION

DIS232: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council resolves to ISSUE a notice of determination granting development approval, subject to the following conditions, for Animal Husbandry – Intensive (Egg Production) at 154 Greatrex Road, King River:

Conditions:

- 1. All development shall occur in accordance with the stamped, approved plans referenced P2200159, unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.**

2. If the development, the subject of this approval, is not substantially commenced within a period of 2 years from the date of approval, the approval shall lapse and be of no further effect.
3. The development hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust.
4. The level of noise emanating from the premises shall not exceed that prescribed in the Environmental Protection Act 1986, and the Environmental Protection (Noise) Regulations 1997.
5. The measures and actions identified in the Environmental Management Plan dated 7 April 2020 being implemented and maintained to the satisfaction of the City of Albany.
6. No poultry shall be permitted within 50m of the waterway running through the centre of the property as indicated in red on the stamped, approved plans.
7. The number of poultry on site shall not exceed 750 at any time unless otherwise agreed to in writing by the City of Albany.
8. Weeds shall be controlled and native vegetation allowed to regenerate in the 50m buffer around the water way indicated in red.

Advice: The applicant is advised to contact the Oyster Harbour catchment group for advice on weed control and revegetation.

9. No clearing or covering by overburden of any native vegetation is permitted without the prior approval from the Department of Water and Environmental Regulation.
10. The grazing of the western paddocks abutting the properties to the east of Hart View shall be limited to 10 weeks of every year, unless otherwise agreed to in writing by the City of Albany.

Note: The applicant is recommended to undertake soil testing on an annual basis to understand the soil nutrient levels in the chicken grazing areas. Should nutrient levels exceed the requirements of the pastures then changes should be made to the grazing practices e.g. rotate the chicken grazing areas more frequently.

BACKGROUND

4. The City of Albany has received a development application for free range egg production at 154 Greatrex Road, King River.
5. The development application is a result of a routine inspection of the existing horticultural use (strawberry production) by the Environmental Health team. Whilst on site, the egg production activities were identified. The applicant was advised that this use would require planning approval and preparation of an Environmental Management Plan.
6. The subject site lies to the northern side of Greatrex Road and to the western side of Northwood Lane, approximately 7.5kms to the north-north-east of the Albany City centre.

7. The subject site has an area of approximately 36 hectares and is zoned 'General Agriculture' under the *City of Albany Local Planning Scheme No. 1* (LPS 1).
8. The subject site is adjacent to 'Rural Residential' zoned land to the west and 'General Agriculture' zoned land to the north, east and south. A Parks and Recreation Reserve is also located to the south of the subject site.
9. The subject site contains an approved horticultural use, with approximately 300,000 strawberry plants yielding 375 tons of strawberries per year. There is also a small orchard consisting of 60 lemon trees, 30 lime trees, 45 avocado trees and 250 passion fruit vines.
10. Over the last 15 years, the landowner has diversified into the small scale production of free range eggs to complement the existing horticulture activities. Current production levels have been maintained for the last 10 years.
11. The application was advertised for public comment for a period of 21 days, with nearby landowners directly notified by letter.
12. Three submissions were received during advertising which raised concerns in respect to the proposal.
13. The comments, including the proponent's and staffs' recommendations are provided in the attached 'Schedule of Submissions'. The broad issues are identified and discussed later in this report.
14. Council is now requested to consider the submissions received during the public advertising period and determine whether to grant development approval.

DISCUSSION

15. The applicant has provided the following (summarised) outline of how the egg production operates:
 - The egg production typically utilises 400 - 500 free range laying chickens to produce around 6,000 dozen eggs per year.
 - In order to maintain production, successive groups of birds are brought in as chicks and raised up until they are ready to lay at 7 months. They are then sold as backyard layers at 18 months of age. The number of chickens can climb as high as 750 for 6 months as the young birds and older birds are both laying. This typically occurs between July and December.
 - Each group of birds (2 groups) typically has a 1-hectare paddock for adult birds with ready access to water and a mobile chicken coup and light weight fencing. These paddocks are shifted monthly and the mobile coups are shifted within the paddocks weekly.
 - Chickens tend to spend most of their time either in or near their coup. This leads to a concentration of manure in that location that is removed with a loader when the coup is shifted and used to fertilise the strawberries and the orchard.
 - The stocking rate is consistent with free range organic poultry standards with the goal of maintaining grass coverage over most of the paddock during the grazing cycle.
 - Each flock is guarded by two (2) Maremma livestock guardian dogs which ensure protection from raptors and foxes.

16. The egg production activities complement the horticultural activities on site and have a regenerative effect on areas of the farm previously used for strawberry production as the grazing of the chickens adds organic nutrients, bacteria and aeration to the soil.
17. The egg production also provides organic fertilizer for the strawberries and orchard that would be otherwise trucked in.
18. The City of Albany Local Planning Scheme No.1 provides the ability for the Local Government to request a number of documents or studies to support applications for Animal Husbandry - Intensive, however these activities are primarily regulated under State policies and guidelines.
19. Many animal premises are subject to environmental regulation, but others, including poultry farms, are not. Where animal premises are not subject to environmental regulation, planning decision-makers may need to consider a broader range of environmental factors and resolve potential land use conflict.
20. As such the Environmental Protection Authorities *Guidance for the Assessment of Environmental Factors Separation Distances between Industrial and Sensitive Land Uses*, *State Planning Policy 2.5 – Rural Planning* and the WAPC Poultry Farms Fact Sheet have been the primary instruments used in the assessment of this application.
21. The *State Planning Policy 2.5 – Rural Planning* states animal premises are a rural land use, and are generally supported and encouraged on rural land provided rural amenity and environmental impacts can be effectively managed.
22. *State Planning Policy 2.5 – Rural Planning* also states that rural land uses are to be considered compatible with the preservation of rural character and amenity in rural zones.
23. An Environmental Management Plan has been submitted with this application in accordance with LPS 1 provision 4.7.2.2. This report concludes that the poultry operation is not causing or contributing to the deterioration of the environment and is adequately managing its impact on adjoining properties.
24. The Environmental Protection Authorities *Guidance for the Assessment of Environmental Factors Separation Distances between Industrial and Sensitive Land Uses* stipulates a buffer distance of 300-1000m should be provided between poultry farms and sensitive land uses depending on the size and scale. However, it should be noted that this separation distance is for intensive farming (not free range organic) and includes higher intensity and more impactful forms of chicken farming such broiler farms, or caged or barn hens.
25. Currently, the egg production activities are set back approximately 100m from the nearest dwelling to the west, on Hart View.
26. The WAPC Poultry Farms fact sheet states that substantial reductions to buffer distances prescribed in Government Policy and Industry standards may be appropriate with careful site planning or contemporary management techniques such as:
 - Vegetation screening and landscaping: *Vegetation buffer established along the western boundary of the subject site;*
 - Optimal shed location and design: *Small scale “chicken caravan” rotated on a weekly basis;*
 - Mechanised approach to shed ventilation: *open, moveable “chicken caravan”. Manure is removed with a loader when the caravan is shifted.*

27. During the creation of the lots on Hart View, potential impacts of the existing horticultural activities on subject site and the new lots was discussed. Mitigation measures applied at the subdivision stage include:
 - A 30m 'Vegetation Protection Area' between the eastern boundary of the lots on Hart View and the subject site;
 - A 100m 'Development Exclusion Zone' restricting development within 100m of the new lots and the subject site; and
 - Notification of potential landowners of lots 120-125 (Hart View) that the land is in close proximity to an intense horticulture business.
28. The proponent has provided correspondence between himself and the City in 2001 expressing concern with the subdivision and requested that future landowners be made aware of the extremely close proximity to an intensive horticulture activity to avoid any potential future problems.
29. Whilst noting the policy was not in existence at the time of the subdivision, *State Planning Policy 2.5 – Rural Planning* seeks to limit the introduction of sensitive land uses that may compromise existing and future primary production on rural land and states “*when determining application for rural living land, the proposal shall not conflict with the primary production of nearby land, or reduce its potential*”
30. It is also worth noting that a number of rural uses can also be considered on the adjacent Rural Residential Area 17 (Hart View) and these uses include “Free Range Poultry Farming”.
31. Issues raised through the advertising process primarily relate to the nuisance caused by barking dogs at night, particularly when the western paddocks adjacent to Hart View are grazed.
32. A landowner on Hooper Road also held concerns with the nuisance caused by barking dogs, however this residence is located in excess of 650m from the nearest grazing paddock, which is considered an appropriate buffer under the Environmental Protection Authorities *Guidance for the Assessment of Environmental Factors Separation Distances between Industrial and Sensitive Land Uses*.
33. The western paddocks will only be grazed for 6-10 weeks of the year however, in order to label eggs as organic, the chickens must be raised on certified organic feed. The western paddocks are grazed when that side of the farm is not used for Certified Organic strawberries. This enables the chickens to be raised on 97% certified feed and also help the organic strawberry production as chickens are used for organic pest and insect control.
34. Maremma dogs bark loudly at any fox or other predator that comes near the flock and are very effective at repelling foxes. The use of Maremma dogs eliminates predator related bird deaths and the more disruptive need to shoot these animals. Barking reduction collars have been fitted to the dogs in response to neighbour complaints.
35. Despite the above, the keeping of dogs is managed under the *Dog Act 1976* and the *City of Albany Dog Local Law 2017*, therefore not a matter relevant to the assessment of the proposal. The proposal is required to be compliant with the *Environmental Protection (Noise) Regulations 1997*.
36. One adjoining landowner mistakenly believed the application was for an increase in production levels and expressed concerns this may result in noise from both chickens and dogs, offensive smell, potential for ticks and other pests and visual pollution to the rear of the property.

37. This landowner was contacted and informed that the application is for an existing use and no increase in production levels is proposed. When questioned about current impacts they stated the barking of dogs is the only issue experienced at current production levels.

GOVERNMENT & PUBLIC CONSULTATION

38. The application was advertised for public comment for a period of 21 days, with nearby landowners directly notified by letter.
39. Three submissions were received during advertising which raised concerns in respect to the proposal. The broad issues are discussed in the paragraphs above and in the attached schedule of submissions.

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Consult	Mail Out	15/05/2020 to 05/06/2020	3 Submissions received	No

40. The proposal was referred to the Department of Biodiversity, Conservation and Attractions and the Department of Primary Industries and Regional Development who had no comment or conditions to provide.
41. The application was also referred to the Department of Water and Environmental Regulation who state that the proposal is generally low risk from a nutrient export position. They also recommended a 50m buffer around the waterway excluded to livestock and planted with native vegetation, particularly sedges to increase nutrient uptake. The 50m exclusion area around the waterway will be implemented as a condition of planning consent.
42. The applicant disputed the requirements for native vegetation planting within this 50m area stating it will provide inferior environmental performance. This was discussed with the Department of Water and Environmental Regulation and it was agreed that excluding grazing from this area and controlling the invasive Taylorina and Sydney Golden Wattle, would allow native vegetation to naturally regenerate.
43. This will be implemented as a condition of planning consent and the applicant will be required to contact Department of Water and Environmental Regulation before undertaking any clearance of native vegetation.

STATUTORY IMPLICATIONS

44. The “Animal Husbandry – Intensive” land use is listed as a (“D”) discretionary land use within the “General Agriculture” zone in LPS1.
45. A discretionary (‘D’) use means that the use is not permitted unless the local government has exercised its discretion by granting development approval.
46. City of Albany Local Planning Scheme No. 1 clause 3.2.20 lists the following objectives for the General Agriculture Zone:
- a) Provide for the sustainable use of land for agricultural and rural activities;
 - b) Support complementary land uses where those land uses do not detract from adjoining agricultural and rural activities and are compatible with the character and amenity of the area;
 - c) Prevent land uses and development within the zone that may adversely impact on the continued use of the zone for agricultural and rural purposes;
 - d) Provide for value-adding opportunities to agricultural and rural products onsite; and

- e) Provide for tourism experiences where those developments do not impact upon adjoining agricultural and rural land uses.
47. The proposal complies with the relevant zone provisions listed under 4.5.16 of LPS 1 pertinent to the site.
48. Voting requirements for this item is **SIMPLE MAJORITY**.

POLICY IMPLICATIONS

49. The proposal is assessed in the context of the *City of Albany Local Planning Scheme No. 1, Environmental Protection Authorities Guidance for the Assessment of Environmental Factors Separation Distances between Industrial and Sensitive Land Uses, State Planning Policy 2.5 – Rural Planning* and the WAPC Poultry Farms Fact Sheet.
50. The proposal, as submitted is not consistent with the buffer distance provided within the *Environmental Protection Authorities Guidance for the Assessment of Environmental Factors Separation Distances between Industrial and Sensitive Land Uses*. However, as the poultry industry is not intensive (free range organic), is ancillary to the horticultural activities on site and objections are generally not relevant to the planning assessment, approval has been recommended.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<p>Reputation <i>The approval may generate unacceptable impacts on the amenity on the area.</i></p>	<i>Unlikely</i>	<i>Minor</i>	<i>Low</i>	<i>The application has been assessed against the relevant statutory framework. Poultry numbers and grazing areas can be limited to current operational levels.</i>
<p>Opportunity: <i>Facilitate the sustainable development of the agricultural sector and maximise opportunities for diversification of agriculture and downstream processing.</i></p>				

FINANCIAL IMPLICATIONS

52. All costs associated with the development will be borne by the proponent.
53. However, should the proponents be aggrieved by Council's decision or any attached conditions and seek a review of that decision or conditions through the State Administrative Tribunal, the City could be liable for costs associated with defending the decision at a State Administrative Tribunal hearing.

LEGAL IMPLICATIONS

54. Council is at liberty to use its discretion to approve or refuse the proposal. An applicant aggrieved by a decision or condition may apply for a review to the State Administrative Tribunal, in accordance with Section 252 of the Planning and Development Act 2005.
55. The proponent has the right to seek a review of the Council's decision, including any conditions attached to an approval. The City of Albany may be required to defend the decision at a State Administrative Tribunal hearing.

ENVIRONMENTAL CONSIDERATIONS

- 56. The waterway on the property is utilised for crop irrigation and is a direct tributary to the King River, 1.4 km downstream. The Department of Water and Environmental Regulation has recommended a 50m setback, and maintenance of native vegetation around this waterway.
- 57. The land use may result in excessive nutrient levels in the soil. The applicant is recommended to undertake soil testing on an annual basis to understand the soil nutrient levels in the chicken grazing areas. Should nutrient levels exceed the requirements of the pastures then changes should be made to the grazing practices e.g. rotate the chicken grazing areas more frequently.
- 58. The Environmental Management Plan concludes that the poultry operation is not causing or contributing to the deterioration of the environment and is adequately managing its impact on adjoining properties.

ALTERNATE OPTIONS

- 59. Council has the following alternate options in relation to this item, which are:
 - To resolve to refuse the proposal subject to reasons; and
 - To alter, amend, remove or add conditions to the approval to address potential impacts from the development.

CONCLUSION

- 60. The proposal has been assessed against LPS 1, the Environmental Protection Authorities *Guidance for the Assessment of Environmental Factors Separation Distances between Industrial and Sensitive Land Uses*, State Planning Policy 2.5 – Rural Planning and the WAPC Poultry Farms Fact Sheet.
- 61. The majority of matters raised in the public submissions are not regulated under the planning system. Additional amenity impacts can be mitigated through the application of appropriate planning conditions.
- 62. In determining the application, it is necessary to consider relevant impacts on amenity against the need to facilitate the sustainable development of the agricultural sector and maximise opportunities for diversification of agriculture and downstream processing.
- 63. It is therefore recommended that Council approved the proposed development, subject to the conditions provided.

Consulted References	:	1. Local Planning Scheme No. 1 2. Separation Distances between Industrial and Sensitive Land Uses 3. State Planning Policy 2.5 – Rural Planning 4. WAPC Poultry Farms Fact Sheet
File Number (Name of Ward)	:	A55730 Yakamia Ward
Previous Reference	:	Nil

DIS233: MARKET – 131 YORK STREET, ALBANY

Land Description	: 131 York Street, Albany WA 6330
Proponent	: Michael William Keeler
Business Entity Name	: N/A
Attachments	: 1. Copy of Application 2. Schedule of Submissions
Report Prepared By	: Planning Officer (D Ashboth)
Responsible Officers:	: Executive Director Infrastructure, Development and Environment (P Camins)

STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. This item relates the following elements of the City of Albany Strategic Community Plan 2030:

Theme: Smart Prosperous and Growing

Objective: To strengthen and grow our region's economic base

Community Priority: Work with business and other stakeholders to attract investment, diversify the economy, create jobs and support small business growth.

Maps and Diagrams: 131 York Street, Albany



In Brief:

- The City of Albany has received a development application for 131 York Street, Albany. The proposal is to establish “Market” (food and event venue) for a 6-month trial on private land on York Street between Peels Place and Stirling Terrace.
- The “Market” land use will include rotating food vans, pop-ups and daily stalls with regular additional food, music or other similar micro-events.
- The land use of “Market” is considered a “D” discretionary use within the “Regional Centre” zone in accordance with LPS1.
- A discretionary (‘D’) use means that the use is not permitted unless the local government has exercised its discretion by granting development approval.
- The proposal was advertised to the public via direct mail out, a sign was erected on site and a Public Briefing Note was published on the City of Albany website. Through these processes, a total of twenty-six (26) responses were received. The submissions are discussed in detail throughout the report.
- The application was also referred to the Department of Planning, Lands and Heritage and the City of Albany’s Heritage Advisor who stated no objections to the proposal.
- Staff recommend that Council approve the proposed development, subject to conditions.

RECOMMENDATION

DIS233: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council resolves to ISSUE a notice of determination granting development approval, subject to the following conditions, for a “Market” at 131 York Street, Albany:

Conditions:

1. All development shall occur in accordance with the stamped, approved plans referenced P2200078, unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.
2. This development approval is for a fixed term of six-month (as a trial only).

Advice:

The six-month trial period begins from the date of council approval

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

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

4. The level of noise emanating from the premises shall not exceed that prescribed in the Environmental Protection Act 1986, and the Environmental Protection (Noise) Regulations 1997.
5. The development hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust.
6. The loading and unloading of goods shall occur entirely within the site and be undertaken in a manner so as to cause minimum interference with other vehicular traffic.
7. Aside from refuse storage, ablution facilities and goods stored within the storage container, no overnight storage of goods or materials will be permitted, unless otherwise agreed in writing by the City of Albany.

Advice: This includes tables and chairs, shelter, stages, speakers and/or other goods which may be related to the general operations or special events held on the premises.

8. The development hereby approved shall be illuminated when sought to be used by patrons during hours of darkness, to the satisfaction of the City of Albany.
9. No person shall install or cause or permit the installation of outdoor lighting otherwise than in accordance with the requirements of Australian Standard AS 4282 - 2019 Control of the Obtrusive Effects of Outdoor Lighting.
10. Hours of operation shall be limited to 11:00am to 2.00pm Monday to Saturday and 6.00pm and 10.00pm on Friday and Saturday evenings, unless otherwise agreed in writing by the City of Albany.

Advice: The City may be open to considering additional opening hours on weekends if requested.

11. The number of vendors operating on site shall be limited in number to six at all times, and seating numbers shall be restricted to 20 at all times, unless otherwise agreed in writing by the City of Albany.

Advice: The provision of on-site ablution facilities has not been conditioned on the basis of seating numbers being limited to 20 people. Should seating numbers exceed 20, a minimum of one (1) on-site accessible ablution facility will be required at all times of food service and preparation.

12. Vendors shall be limited to those serving food and non-alcoholic beverages and or selling regional produce, unless otherwise agreed to in writing by the City of Albany.

13. The storage container and ablution facilities shall remain located to the rear (west) of the site at all times, unless otherwise agreed in writing by the City of Albany.

14. Suitable arrangements shall be made with, and to the satisfaction of the City of Albany, to fund the monitoring of car parking levels.

Advice: The estimated cost of this activity to the City is approximately \$300 for the trial period.

15. Prior to the commencement of the development, details of the materials and colours to improve the appearance of the storage container hereby approved shall be submitted and implemented to the satisfaction of the City of Albany.

Advice: Repainting the container in a single colour will not be sufficient, it is expected that a local artist will be commissioned to paint the container in a way that is complementary to the locality. The City may also consider recladding of the storage container in materials which complement other buildings in the locality.

16. A plan indicating the location and type of refuse storage shall be submitted for approval by, and implemented to the satisfaction of the City of Albany.

Advice: The refuse storage shall be capable of accommodating all waste produced by the development and shall be screened from the public view.

Note: Any future site improvement work will require an additional development application. Site improvements identified within the Public Briefing Note would require consideration of the potential archaeology, especially if this will require the removal of the current hard surface.

Note: This approval relates only to the day to day operations of the market. Written permission is required from the City of Albany if the applicant seeks to alter the operating hours or product offerings from those conditioned within the development approval.

BACKGROUND

3. The City of Albany has received an application for development approval for a Market at 131 York Street, Albany.
4. The subject site is located within the Albany CBD along the City's High Street (York Street), approximately 35m north of the Stirling Terrace intersection.
5. The subject site is 598m² in area and zoned Regional Centre *under Local Planning Scheme No.1* (LPS 1). The subject site also falls within the City of Albany's *Albany Town Centre Policy Area* and is considered a City of Albany Heritage Site.
6. The subject site is currently vacant and used as overflow vehicle parking for a number of businesses to the north of the site including Blush Retail Gallery and Keston Technologies. The site contains a gate preventing vehicular access from York Street and remains largely unoccupied by vehicles.
7. The subject site is surrounded by commercial businesses within the Regional Centre Zone in all directions. The nearest Residential zoned land is located approximately 150m to the west. The adjacent Regional Centre Mixed Use Zone provides a buffer between the Regional Centre Zone and Residential Zone.
8. The application was advertised for public comment for a period of 23 days, with landowners of commercial businesses within a 350m radius of the premises directly notified by letter. A planning notice was also placed on site notifying of the planning proposal and a public briefing note was placed on the City of Albany website.
9. Through this process, a total of twenty-six (26) responses were received; fourteen (14) objections, eleven (11) letters of support and one had no objections however requested more rangers on duty during operating hours to ensure parking time limits are not exceeded.
10. The comments, including the proponent's and staffs' recommendations are provided in the attached 'Schedule of Submissions'. The broad issues are identified and discussed later in this report.
11. Council is now requested to consider the submissions received during the public advertising period and determine whether to grant development approval.

DISCUSSION

12. The applicant has provided the following (summarised) outline of how the proposed market will operate:
 - The vacant land subject to this application will be leased in the interest of establishing a private market for individual food and beverage stall holders.
 - It is intended that the market would operate between 11.00am and 2.00pm Monday to Saturday and between 6.00pm and 10.00pm Friday and Saturday evenings.
 - Vendors will be able to pre-book a site at the markets for each operational period, with fees charged accordingly. Vendors will be required to arrive before the operational period with movement and setup to be coordinated by a site manager.
 - All vendors will be required to hold appropriate individual licences and uphold all legal requirements and obligations.
 - Beyond general food and beverage operations, the space may allow for live music, movie screenings, performing arts, pop-up bars, arts and craft markets etc. Depending on the requirements for each type of event, special licences and permissions will be applied for through the City of Albany and/or other relevant state government departments.
 - A sea container is proposed to be placed at the rear (west) of the site for storage of tables, chairs, bins and other items required for operations. The structure will be anchored to the ground and painted by a local artist to improve appearance from York Street. No other fixed structures are proposed.

13. The application was assessed and the proposed development complies (or through satisfying standard conditions will comply) with all but one of the development standards and requirements of the Scheme. The non-compliant matter relates to the provision of car parking.

Car Parking

14. The application does not propose any on-site car parking, therefore the applicant has requested a complete exemption to the standards and requirements for vehicle parking.
15. The parking rates for the scheme area are set under the City of Albany Local Planning Scheme No.1 (LPS). The City of Albany's Town Centre Policy however relaxes the scheme requirements for parking in the CBD to facilitate appropriate new private development.
16. The City of Albany's Town Centre Policy requires 'Other Retail' to provide parking a rate of 1 bay per 35m² gross floor area.
17. As the entire site will be used for food sales and pedestrian circulation, it was considered appropriate to calculate parking requirements against the total area of the site. The market is therefore required to provide 18 carparks under the *Albany Towns Centre Policy*.
18. It should be noted that this parking rate is consistent with the Policy parking requirements for 'Restaurant' and the smaller LPS1 requirement for 3 bays per stall for 'Market' but not the larger scheme requirement of 1 bay per 10m².
19. The Policy allows for a relaxation of car parking requirements in the following circumstances:
- *the shortfall in required parking bays is not substantial (5 or less); or*
 - *there are on-street parking bays available in close proximity to those bays for use by the intended workers, visitors or customers of the proposed development, or sufficient parking bays are available on nearby private land and permission has been given for the applicant to use or share those bays; and*
 - *There will be a minimal disruption to the amenity of the area for residents or businesses by permitting the on-site shortfall in parking to occur.*
20. Staff calculated approximately 112 on-street car parking bays and 3 motorcycle bays within a 100m proximity of the subject site. In addition to these on-street parking bays a considerable amount of off-street parking is available within the public parking area to the north of Peels Place.
21. The markets are in close proximity to a number of alternative transport options with the Peels Place Bus Interchange and Albany City Cabs and Transport both located less than 100m from the subject site.
22. In support of the car parking variation the applicant has highlighted that:
- The majority of patrons are expected to walk to the site as the target audience for lunchtime operations are employees of CBD businesses and persons already in and around the CBD;
 - The markets will only be open for three hours during lunchtime trade. During evening operations and on weekends, it is expected that patrons will come from external locations to the CBD and hence a greater number of parking will be required for this period. However, during these times available parking bays in the CBD increase significantly.

23. The *Albany Town Centre Policy* also provides for Cash-in-lieu of parking to be considered where non-residential developments have a shortfall of parking bays. If cash in lieu were to be considered, the proponents would have to contribute an approximate amount of \$3200 per bay, or a total payment of \$57,600.
24. Given the temporary nature of the use and the trial period, a requirement for Cash in Lieu of parking is not considered appropriate and would diminish the viability of the proposal. This may be an option in future for a more permanent form of commercial development or use on the subject site.
25. The application is for a 6-month trial period only. The trial period will allow the impact on CBD parking to be monitored and a decision on any potential extension period or permanent land use to be made accordingly. A condition is recommended to ensure suitable arrangement are made with the City to fund the monitoring of car parking availability.
26. In assessing the car parking shortfall, it was considered that the expected benefits of the development including increased vibrancy and foot traffic throughout the City high street outweigh the potential implications of the car parking relaxation for a temporary use.

Relationship to the Street

27. The *Albany Town Centre Policy* requires buildings to address the street, while blank walls, heavy planting, screen walls or opaque roller shutters are to be avoided.
28. City staff therefore recommend a condition requiring the sea container to be located to the rear (west) of the site and its appearance improved in a manner that is complementary to the locality be placed as a condition of any approval.
29. The *Albany Town Centre Policy* requires buildings present an interesting and attractive edge to the public domain. It is considered that temporary structures including, but not limited to, tables, chairs, stalls, bins etc. may threaten the attainment of this provision, as well as present a safety hazard if left out while the site is unoccupied. Staff therefore recommend a condition to ensure no temporary structures, aside from the storage container and its contents therein are left on site outside of periods of occupation.

Amenity

30. The site is within the Albany CBD and main commercial hub. From an amenity perspective it would be expected noise, smell and impacts on amenity will be most prominent to the offices and gallery to the north, the offices to the south and the hostel to the west of the subject site.
31. These businesses were either supportive or provided no objection to the application. Nevertheless, staff recommend a condition ensuring the development shall not prejudicially affect the amenity of the neighbourhood by but not limited to, the emission of noise, vibration, smell, smoke or dust be placed as a condition of any approval.
32. The applicant will also be required to ensure the level of noise emanating from the premises does not exceed that prescribed in the Environmental Protection Act 1986, and the Environmental Protection (Noise) Regulations 1997.

Waste

33. It is anticipated that the market will produce a considerable amount of waste. The applicant has advised that small bins will be provided on site during operational hours and permission has been received from the adjacent landowners to the north to place a large lidded skip bin behind their building.
34. Staff recommend that a plan indicating the location and type of refuse storage shall be submitted for approval by, and implemented to the satisfaction of the City of Albany.
35. No ablution facilities are proposed on site during normal operating hours with the applicant noting the location of public toilets at the Women’s Rest Centre to the south of the site which would be available for use by patrons.
36. The Environmental Health Team have noted that under the National Construction Code (NCC), Sanitary Facilities (toilets) are to be provided if the building (premises) will accommodate more than 20 patrons. The applicant has therefore agreed to limit patron seating to 20 in order to avoid this requirement. This is recommended as a condition of planning consent.

Number of stall holders

37. Due to a limited site area, staff recommend a condition restricting the number of stall holders to six as per the indicative site plan, unless otherwise agreed to by the City of Albany. The applicant was contacted regarding this condition and is satisfied this will not adversely affect the general operation of the market provided there is flexibility to apply to increase this limit for special events.
38. The main concerns raised during the advertising period and staff’s response to these concerns, including mitigation measures are outlined in the table below.

Summary of submissions	Officer comment
Car parking deficiency	A significant number of available on-street car parks were recorded within the proposed operating hours of the market. In addition, the site is located in close proximity to a number of off-street car parks, Albany City Cabs and the Peels Place Bus Interchange. The applicant has stated majority of patrons are expected to walk to the site as the target audience for lunchtime operations are those already located within, or in close proximity to the CBD. During evening hours, the number of vacant car parks greatly increases. The trial period will allow the impact on CBD parking to be monitored and a decision on any potential extension to the trial period to be made accordingly.
Concerns with impact on existing businesses	The planning system does not allow for consideration of financial impact on other businesses in the assessment of planning applications. Statements that the proposed application will have a negative impact on other food and beverage operators are unverified and a neutral or positive financial impact cannot be ruled out. It is also possible that the proposal could have a positive financial impact on other forms of CBD retail due to increased foot traffic. Council will have the ability to re-assess this following the conclusion of the 6-month trial period.
Suggestions that alternative locations are better suited for food trucks.	Council must assess the application as it is placed before them. The proposal is considered a ‘D’ discretionary use within the Regional Centre Zone and must be assessed as such. The

	City provides alternative locations for food trucks through its Trading in Public Places Policy.
Requests for support for food and beverage vendors through community events supported by the City of Albany.	Request noted however, this is unable to be considered as part of the planning assessment.
Concerns with lack of toilet facilities	Under the National Construction Code Sanitary Facilities (toilets) are to be provided if the building (premises) will accommodate more than 20 patrons. The applicant has therefore agreed to limit patron seating to 20 in order to avoid this requirement. This is recommended as a condition of planning consent.
Impacts on the amenity of the area especially as it relates to noise	While the potential does exist for an increase in noise, the proposal is located within the centre of the Albany CBD where a certain level of noise is expected. It is noted that the landowners most likely to be impacted by the noise either supported, or had no objection to the proposal. The operation of the venue would also be required to comply with the <i>Environmental Protection (Noise) Regulations 1997</i> .
Concerns with alcohol service and resultant antisocial behaviour	In the public briefing note the applicants have stated the provision of a pop-up bar will be explored in the longer term, following the trial period. A condition restricting the service of alcoholic beverages unless otherwise approved in writing by the City of Albany is recommended. Any anti-social behaviour, such as disorderly conduct or criminal damage would fall under the jurisdiction of Western Australia Police.
Concerns with litter and waste disposal	Bins will be placed throughout the premises and the applicant will be required to ensure overflow rubbish does not litter the site. It is recommended that a condition requiring a plan indicating the location and type of refuse storage be submitted for approval by, and implemented to the satisfaction of the City of Albany.

39. It is recommended that Council approve the proposed development, subject to the conditions recommended.

GOVERNMENT & PUBLIC CONSULTATION

40. The application was advertised for public comment for period of 23 days, with landowners of commercial businesses within a 350m radius of the premises directly notified by letter. A planning notice was also placed on site notifying of the planning proposal and a public briefing note was placed on the City of Albany website.
41. Twenty-six (26) responses were received during advertising; fourteen (14) objections, eleven (11) letters of support and one (1) letter of support subject to modifications.

42. The comments, including the proponent’s and staffs’ recommendations are provided in the attached ‘Schedule of Submissions’. The broad issues are summarised and discussed above.

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Consult	Mail out	28/07/2020 to 20/08/2020	26 Submissions received	Yes
Consult	Notice on site	29/07/2020 to 20/08/2020		No
Consult	Public Comment – City website	28/07/2020 to 20/08/2020		No

43. The proposal was referred to the Department of Planning, Lands and Heritage for comment as the site was considered a State Heritage Site (Law Offices fmr).
44. State Heritage had no objection or additional comments to add to the proposal. The site has since been removed from the State Heritage List.
45. The proposal was also referred to the City’s heritage advisor as the site is considered a City of Albany Heritage Site.
46. The City’s heritage advisor had no objections to the proposal however, suggested no structures should be placed in front of the south elevation of the Law Offices (York House) to maintain visibility. However, as the structures will not be permanent fixed structures it is considered applying this as a condition would unnecessarily restrict the operations of the markets.
47. The City’s heritage advisor also recommended a consideration of potential archaeology be advised for any future resurfacing of the carpark or site redevelopment.

STATUTORY IMPLICATIONS

48. The “Market” land use is listed as a (“D”) discretionary land use within the “Regional Centre” zone in LPS1.
49. A discretionary (‘D’) use means that the use is not permitted unless the local government has exercised its discretion by granting development approval.
50. City of Albany Local Planning Scheme No. 1 clause 3.2.8 lists the following objectives for the Regional Centre zone:
- a) Provide for a broad range of commercial, entertainment, administrative, government, cultural, inner-city residential and social activities, consistent with the zone’s status as the regional centre for the Great Southern region;
 - b) Ensure that development within the zone recognises and complements surrounding land uses and existing streetscape elements, in particular:
 - (i) The height, scale, character and fine-grained nature of buildings;
 - (ii) Incorporates spaces for public art, social interaction and street activities that add vibrancy and vitality to the City;
 - (iii) Promotes the renovation, adaptation and re-use of recognised heritage buildings and places; and
 - (iv) Weather protection.

- c) Support and promote transport modes to and access through the zone to achieve better travel efficiency and develop synergies between streets and parking areas;
 - d) Ensure adequate provision is made for the parking of vehicles and the landscaping of lots; and
 - e) Retain heritage buildings, features and characteristics for the protection of Albany’s historic values.
51. City of Albany Local Planning Scheme No.1 (LPS 1) includes a parking requirement for a “Market “of 3 spaces/stall or 1 space per 10m² whichever is greater and Bicycle Parking at a rate of 1 per 10 car bays.
52. The proposal complies (except for parking) with the relevant zone provisions listed under 4.5.6 of LPS 1.
53. Voting requirement for this item is **SIMPLE MAJORITY**.

POLICY IMPLICATIONS

54. The proposal is assessed in the context of the City of Albany’s Local Planning Scheme and Albany Town Centre Policy.
55. The City of Albany’s Town Centre Policy relaxes the scheme requirements for parking in the CBD to facilitate appropriate new private development.
56. The proposal, as submitted is not consistent with the parking requirements of the Albany Town Centre Policy. As the proposed market is small in scale, its operation will be limited to three daylight hours (for lunch service) and targeting patrons already within the CBD a pragmatic approach has been undertaken for an assessment against the Policy. The six-month trial period will allow impact on CBD parking to be monitored and a decision on any potential extension to the trial period to be made accordingly.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Reputation and Community <i>The approval may result in a lack of car parking availability on lower York Street and the immediate vicinity.</i>	<i>Likely</i>	<i>Minor</i>	<i>Medium</i>	<i>The application has been assessed against the relevant statutory framework. Potential impacts on car parking can be mitigated by the application of a six-month trial period.</i>
Opportunity: <i>Responds to need to maintain the Albany City Centre as a vibrant and active regional centre.</i>				

FINANCIAL IMPLICATIONS

58. All costs associated with the development will be borne by the proponent.
59. However, should the proponents be aggrieved by Council’s decision or any attached conditions and seek a review of that decision or conditions through the State Administrative Tribunal, the City could be liable for costs associated with defending the decision at a State Administrative Tribunal hearing.

LEGAL IMPLICATIONS

- 60. Council is at liberty to use its discretion to approve or refuse the proposal. An applicant aggrieved by a decision or condition may apply for a review to the State Administrative Tribunal, in accordance with Section 252 of the Planning and Development Act 2005.
- 61. The proponent has the right to seek a review of the Council's decision, including any conditions attached to an approval. The City of Albany may be required to defend the decision at a State Administrative Tribunal hearing.

ENVIRONMENTAL CONSIDERATIONS

- 62. The subject lot is currently vacant with a hardstand used as overflow parking for occupants of the northern office and retail building. There are no environmental implications directly relating to this item.

ALTERNATE OPTIONS

- 63. Council has the following alternate options in relation to this item, which are:
 - To resolve to refuse the proposal subject to reasons; and
 - To alter, amend, remove or add conditions to the approval to address potential impacts from the development.

CONCLUSION

- 64. The proposal, except for the parking requirements are consistent with all the provisions of the *Local Planning Scheme No.1* and the *Albany Town Centre Policy*.
- 65. The majority of matters raised in the public submissions received during the advertising period have been addressed and can be mitigated through the application of appropriate planning conditions.
- 66. The application does not propose any on-site car parking, therefore the applicant has requested a complete exemption to the standards and requirements for vehicle parking.
- 67. Given the the temporary nature of the use and the trial period, a requirement for Cash in Lieu of parking is not considered appropriate
- 68. The trial period will allow the impact on CBD parking to be monitored and a decision on any potential extension to the trial period to be made accordingly.
- 69. The expected benefits of the development including increased vibrancy and foot traffic throughout the City high street outweigh the potential implications of the car parking relaxation for a temporary use.
- 70. It is therefore recommended that Council approved the proposed development, subject to the conditions provided.

Consulted References	:	1. <i>Local Planning Scheme No. 1</i> 2. <i>Albany Town Centre Policy</i> 3. <i>Albany Local Planning Strategy 2019</i>
File Number (Name of Ward)	:	A248042 Frederickstown Ward
Previous Reference	:	Nil

DIS235: • C20013 - Construction of Skate Plaza at Centennial Park, Albany WA

Land Description	: Youth Challenge Park, Sanford Road, Centennial Park.
Proponent / Owner	: City of Albany
Attachments	: Confidential Attachment Under Separate Cover
Report Prepared By	: Major Projects Officer (R. Taylor)
Responsible Officers:	: Executive Director Infrastructure & Environment (P. Camins)

CONFIDENTIAL ATTACHMENT

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.

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:** Community Health and Participation
 - **Objective:** To create interesting places, spaces and events that reflect our community's identity, diversity and heritage.
To develop and support a healthy inclusive and accessible community.
 - **Community Priority:** Provider positive leadership that delivers community outcomes.
Develop a range of activities and facilities that connect people, promote a healthy community and are appropriate for all ages.

Maps and Diagrams:



In Brief:

- Following a competitive tender process, Council approval is sought to award the tender for the Contract C20013 - Construction of Skate Plaza at Centennial Park, Albany WA to Tenderer A.

COVID-19 IMPACT

2. No anticipated impacts.

RECOMMENDATION

DIS235: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council ACCEPT the tender RECOMMENDED by the evaluation panel in the Confidential Briefing Note and AWARD contract C20013 – Construction of Skate Plaza at Centennial Park, Albany WA.

BACKGROUND

3. Tenders were called for Construction Works; Skate Plaza at Centennial Park, Albany WA.
4. It is preferable to commence works at the earliest possible time to ensure practical completion in accordance with funding requirements.

DISCUSSION

5. The standard tender process as prescribed by the Local Government Act 1995 (the Act) and Local Government (Function and General) Regulations 1996 (the Regulations).
6. Tenders were advertised both state-wide and locally from the 2 September 2020 and were closed on 23 September 2020.
7. Twenty (20) tender documents were downloaded from the City of Albany website, resulting in the City receiving three (3) conforming tender submissions with three (3) tenderers submitting conforming offers.

Evaluation of Tenders

8. 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 and Key Personnel	25%
Demonstrated Understanding	20%
Corporate Social Responsibility	5%
Cost	50%
Total	100%

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

Table 2 – Summary of Tender Submissions

Tenderer	Total	Rank
Tenderer A (Preferred)	705.97	1
Tenderer B	624.68	2

Tenderer C	538.10	3
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10. From the evaluation scoring, clarification and financial check processes, Tenderer A are the preferred tender and consequently it is recommended that their tender be accepted and the contract be awarded.

GOVERNMENT & PUBLIC CONSULTATION

11. There is no government consultation required for the award of Construction Works for the Skate Park.
12. The funding body and public will be notified with regard to the outcome of the award and timeframe for implementation.
13. Community Engagement through Design Development:

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)
Consult	Survey/Face to Face/Workshop	18 December 2018	56
Consult	Survey/Face to Face/Workshop	2-3 February 2019	80
Consult	Survey/Face to Face/Workshop	15 February 2020	87
Consult	Community Working Group	10 October 2019, 16 December 2019, 21 January 2020, 11 February 2020	10

STATUTORY IMPLICATIONS

14. 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.
15. 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.
16. Regulation 19 of the Regulations requires Council to advise each tenderer in writing of Council's decision.
17. Voting Requirement: Simple Majority

POLICY IMPLICATIONS

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

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
City Operations: Failure to deliver project within specified timeframe	Possible	Major	High	Award construction tender as soon as possible to satisfy funding conditions for project completion.
Business Interruption: Council does not support recommendation for tender award	Possible	Major	Medium	City Officer address any issues / concern, to facilitate Council making a timely decision.
Opportunity: Project developed and delivered on time for the benefit of the community use and precinct activation.				

FINANCIAL IMPLICATIONS

20. The recommended tender is within budget.

LEGAL IMPLICATIONS

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

ENVIRONMENTAL CONSIDERATIONS

22. The contractor’s environmental sustainability policy will apply to this contract.

23. Site management controls will be enforced to mitigate adverse any possible environmental impacts.

ALTERNATE OPTIONS

24. The options are:

- Council can elect to accept the recommended tender;
- Council can elect to award an alternative tender; or
- Not approve any tender.

CONCLUSION

25. It is recommended, based on the evaluation scoring, clarification and financial check processes that the tender is awarded to Tenderer A.

Consulted References	:	<ul style="list-style-type: none"> • <i>Local Government Act 1995</i> • <i>Local Government (Functions and General) Regulations 1996</i> • <i>Council Policy: Purchasing Policy (Tenders and Quotes)</i> <ul style="list-style-type: none"> ○ <i>Tender/Contract Procedure</i> ○ <i>Evaluation Procedure (Tenders and Quotations)</i> • <i>Council Policy: City of Albany Buy Local Policy (Regional Price Preference)</i>
File Number (Name of Ward)	:	CP.DEC.40
Previous Reference	:	N/A

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