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# AGENDA

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## DEVELOPMENT AND INFRASTRUCTURE SERVICES COMMITTEE MEETING

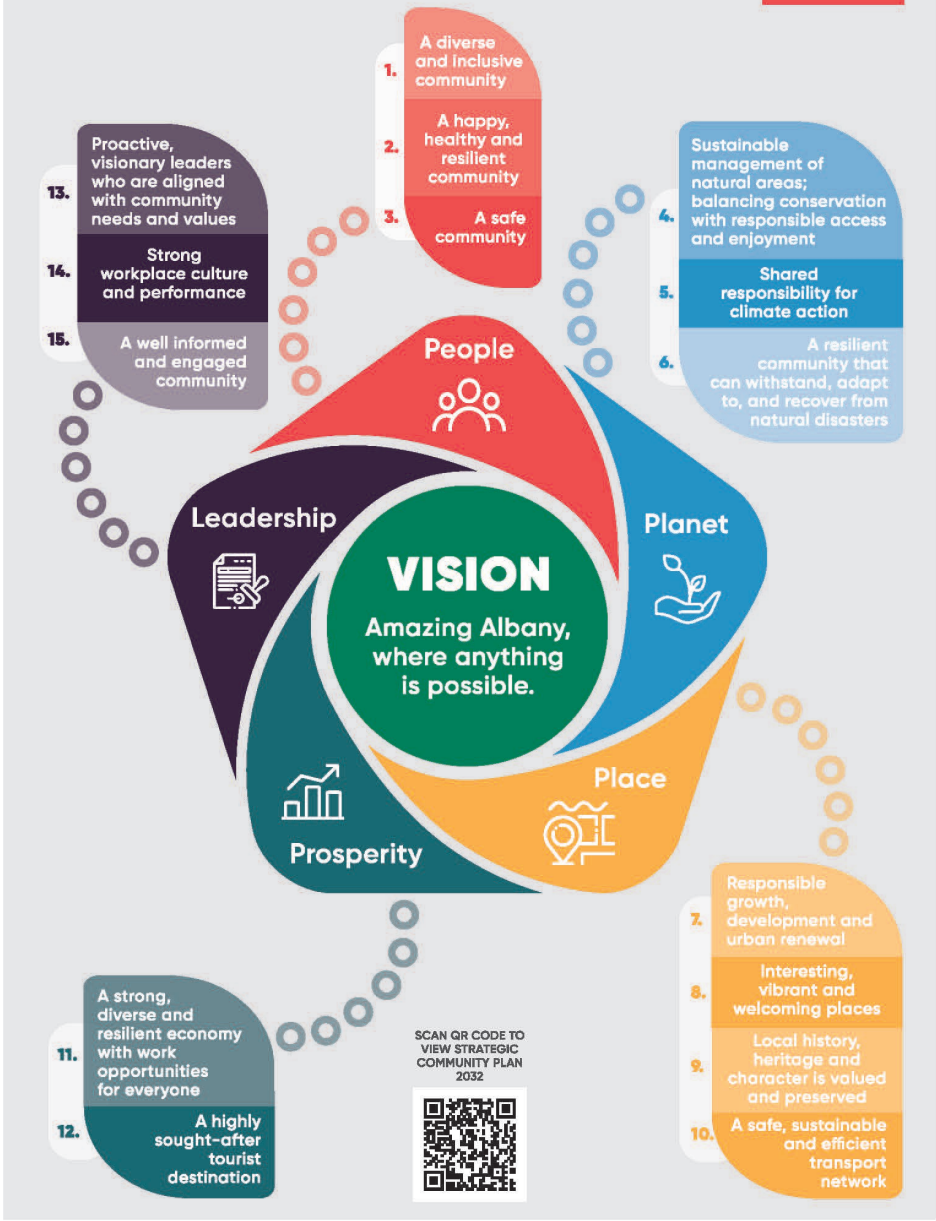
**Wednesday 14 September 2022**

6.00pm

Council Chambers



**STRATEGIC COMMUNITY PLAN 2032**



**Development & Infrastructure Services Committee**  
**Terms of Reference**

**Functions:** The Committee is responsible for:

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

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

**It will achieve this by:**

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

**Membership:** Open to all elected members.

**Meeting Schedule:** Monthly

**Meeting Location:** Council Chambers

**Executive Officers:** Executive Director Infrastructure, Development & Environment

**Delegated Authority:** None

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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

C Thomson (Chair)

Member

R Sutton (Deputy Chair)

Member

P Terry

Member

G Stocks

Member

M Traill

Member

T Brough

Member

M Benson-Lidholm JP

Member

J Shanhun

Member

D Baesjou

Member

S Smith

Member

A Cruse

**Staff:**

Chief Executive Officer

A Sharpe

Acting Executive Director Infrastructure, Development  
and Environment

D Lawrence

Manager Engineering and Sustainability

R March

Manager Planning and Building

J van der Mescht

Coordinator Planning Services

J Wardell-Johnson

Meeting Secretary

P Ruggera

**Apologies:**

**4. DISCLOSURES OF INTEREST**

Name	Committee/Report Item Number	Nature of Interest

**5. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

**6. PUBLIC QUESTION TIME**

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

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

**7. PETITIONS AND DEPUTATIONS**

**8. CONFIRMATION OF MINUTES**

**DRAFT MOTION**

**THAT the minutes of the Development and Infrastructure Services Committee meeting held on 10 August 2022 as previously distributed, be CONFIRMED as a true and accurate record of proceedings.**

**9. PRESENTATIONS**

**10. UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS**

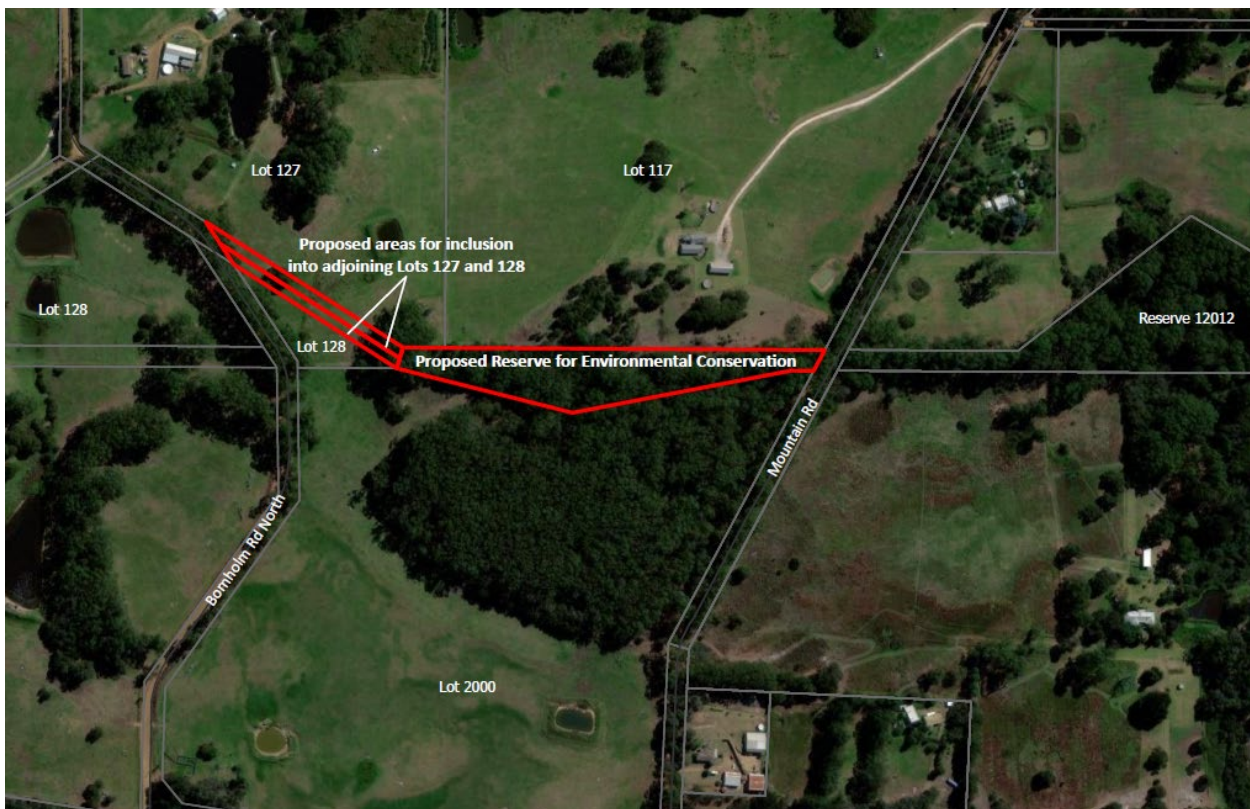
## DIS314: PROPOSED CLOSURE OF UNCONSTRUCTED UNNAMED ROAD RESERVE, BORNHOLM

<b>Land Description</b>	: An unconstructed, unnamed road reserve, Bornholm
<b>Proponent / Owner</b>	: Road reserve: City of Albany (responsible authority) Lot 127: R MacDonald Lot 128: C & B Smedley Reserve 12012: City of Albany (managed)
<b>Attachments</b>	: Map of proposed road closure
<b>Report Prepared By</b>	: Lands Officer (A.Veld)
<b>Authorising Officer:</b>	: Executive Director Infrastructure, Development and Environment (P.Camins)

### STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
  - **Pillar:** Place
  - **Outcomes:** A safe, sustainable and efficient transport network.
  - **Pillar:** Planet
  - **Outcome:** Sustainable management of natural areas; balancing conservation with responsible access and enjoyment

### Maps and Diagrams:



**In Brief:**

- The City has received a request from adjoining landowners to purchase portions of land that currently form part of an unconstructed road reserve in Bornholm.
- A road needs to be permanently closed in order for adjoining landowners to purchase land that is currently part of a road reserve.
- Staff have investigated the request and recommend that the unconstructed unnamed road reserve be closed, as there is no strategic benefit to the City for the land to remain as a road reserve. Further background and detail in the City's consideration of this request is outlined in the report below.
- Council's resolution is required to formally commence these land actions, in accordance with the relevant legislation.
- Council are recommended to support the officer's recommendation, as the road closure will:
- Allow the adjoining landowners to resolve a boundary issue by purchasing relevant portions of the road reserve, with the outcome a better reflection of the current use of these portions of the land; and
- Provide the City with the opportunity to retain an area of identified remnant native vegetation, to preserve and protect its environmental values, and also ensure ongoing management through its incorporation into existing Reserve 12012 and subsequent amendment of the existing reserve's purpose from Parkland and Recreation to Environmental Conservation.

**RECOMMENDATION**

**DIS314: AUTHORISING OFFICER RECOMMENDATION**

**THAT Council:**

- 1) **RESOLVE** to permanently close the subject unnamed and unconstructed road reserve in Bornholm;
- 2) **REQUEST** the Minister for Lands to undertake suitable arrangements to dispose of the subject land, on the condition that the:
  - a) **Western portions of the closed road reserve as shown on the attached plan, are amalgamated with adjoining Lots 127 & 128 Bornholm Road North, pursuant to s. 58 of the *Land Administration Act 1997* and r. 9 of the *Land Administration Regulations 1998*.**
  - b) **The eastern portion of the closed road reserve as shown on the attached plan, is incorporated into Reserve 12012, with the vested purpose of Reserve 12012 changed from Parkland and Recreation to Environmental Conservation, pursuant to s. 41 and s. 51 of the *Land Administration Act 1997*.**

**BACKGROUND**

2. Landowners adjacent to existing road reserves may request the purchase of land that is considered underutilised or unnecessary. When the City agrees that the land is no longer needed for its intended purpose, a number of land actions must be carried out, including a formal road reserve closure process. The City of Albany, as the local government, has the authority to carry out this action.
3. In accordance with the *Land Administration Act 1997 and Land Administration Regulations 1998*, a Council resolution is required to formally commence land actions to undergo a formal road closure process.



4. The landowners of No. 91 (Lot 128) Bornholm Road erected a fence between them and the adjoining landowners of No. 96 (Lot 127) Bornholm Road.
5. The Landowners realised that the fence may have been constructed within City managed land. To address this matter, both parties approached the City of Albany seeking assistance in identifying a way forward.
6. Following receipt of the request, the City of Albany subsequently commenced investigations into relevant the land matters and identified the following:
  - The fence line had been built within an unconstructed portion of an unnamed road reserve that extends between Bornholm Road North and Mountain Road.
  - That historic landowners of Lots 127 and 128 had been using the land as part of their properties, most likely since the formal construction of Bornholm Road North.
  - Although the date of formal construction of Bornholm Road North was unable to be determined, it was likely that it occurred during the earlier part of last century. A requirement for a formal connection between Bornholm Road North and Mountain Road in this location has never been identified, and the unconstructed portion of road reserve remains predominantly unchanged, with the western portion primarily cleared and used for rural purposes by the adjoining landowners.
  - The eastern section of the subject road reserve remains predominantly uncleared and identified as containing a pocket of remnant native vegetation, described in the Albany Regional Vegetation Survey 2010 as 'Tall Karri Open Forest'.
  - The remnant vegetation directly adjoins 6.5ha of the same vegetation on private property to the south, and is adjacent to City managed Reserve 12012 located to the east directly across Mountain Road.
7. The outcomes of the City's investigations into the land matters and subsequent recommended actions, including outcomes of associated public advertising and internal consultation, are discussed in detail below.

## **DISCUSSION**

8. Based on the City's investigations into the land matters of the subject site, it was found that there was no benefit to the local government or broader community in retaining the subject land as a road reserve, as it was unlikely to be required to support or provide access for future development of the area.
9. The outcomes of the City's investigations resulted in the following recommendations:
  - Commence formal proceedings to implement the closure of the unnamed unconstructed road reserve; and
  - Upon closure of the road reserve, liaise with relevant government departments to:
    - Arrange for divesting of the portions of the western section of the subject land and subsequent amalgamation of these portions with adjoining Lots 127 and 128
    - Incorporate the eastern portion of the portion of the subject land containing the remnant native vegetation, with Reserve 12012
    - The current vested purpose of Reserve 12012 be changed from 'Parkland and Recreation' to 'Environmental Conservation'

### Amalgamation of portions to Lots 127 and 128

10. The City notified the landowners of the outcomes from the investigations into the land matters of the subject site, with the City receiving a formal request from the landowners of Lots 127 and 128, Bornholm Road North, in March 2021, to purchase portions of an unconstructed road reserve located between their two properties.

11. The areas of the unconstructed unnamed road reserve that are sought to be amalgamated into the adjoining Lots 127 and 128 are predominantly cleared land used for rural purposes.
12. Amalgamation of these portions of the unnamed unconstructed road reserve into the adjoining lots will have no detrimental impact on the amenity of adjoining properties, nor will the disposal of the subject portions of land result in any disadvantage to the City or broader community.
13. Public advertising was undertaken on the proposed land actions between July and August 2022, during which time, no submissions were received.
14. Following the above, City officers support the landowners' request to purchase portions of this land for amalgamation into their respective properties and recommend that Council resolve to formally commence the associated land actions required to implement the request.

#### Incorporation into Reserve 12012

15. The area of remnant native vegetation within the eastern portion of the unnamed unconstructed road reserve is adjacent to City managed Reserve 12012, located to the east directly across Mountain Road.
16. The pocket of remnant native vegetation (including the subject land, the adjoining 6.5ha on private land to the south and Reserve 12012) is likely to be potential habitat for the three threatened species of black cockatoo, and the critically endangered Western Ringtail possum.
17. Reserve 12012 is currently reserved for the purpose of Parkland and Recreation. The City's onsite investigations in relation to the subject land matters found that the existing reserve and eastern portion of the subject road reserve land are both densely vegetated with limited access.
18. Following the above and internal consultation with the City's Reserves team:
  - There are no proposed actions or works proposed for Reserve 12012 relating to its current purpose. Discussions found that the current purpose therefore may not be the most appropriate purpose for the land.
  - It was requested that the City commence proceedings for the portion of the subject land incorporating the remnant native vegetation be vested as a reserve, incorporated with adjoining Reserve 12012;
  - The overarching purpose of Reserve 12012 be changed from Parkland and Recreation to Environmental Conservation;
  - The vesting of this portion of the land to reserve and the overarching purpose of the reserve being changed to Environmental Conservation, will add to the existing wildlife corridor to the east and better reflect the current use of Reserve 12012.
19. City officers recommend that Council resolve to close the road reserve so that relevant land action requests can be forwarded to the Department of Planning, Lands, and Heritage to finalise the land disposal and Reserve 12012 amendments.

#### **GOVERNMENT & PUBLIC CONSULTATION**

20. Pursuant to section 58 of the *Land Administration Act 1997* and regulation 9 of the *Land Administration Regulations 1998*, the City publicly advertised the proposal.

## 21. Community Engagement

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Consult	Letter to adjoining landowners		2	Yes
Consult	Public notice	8 July – 12 August 2022		Yes
Consult	Community Newsletter	8 July – 12 August 2022		Yes
Consult	Public Comments page City of Albany website	8 July – 12 August 2022		Yes

22. Letters were sent to the other landowners adjoining the unconstructed road reserve. Both were supportive of the proposal.
23. Public advertising of the proposal was initiated on 8 July and was open for public comment for 35 days until 12 August 2022. No submissions were received.

### STATUTORY IMPLICATIONS

24. Section 58 of the *Land Administration Act 1997* gives authority to a local government to request the Minister for Lands to close a road.
25. Regulation 9 of the *Land Administration Regulations 1998* outlines the actions a local government must take to prepare and deliver a request to the Minister to close a road.
26. Section 41 of the *Land Administration Act 1997* gives power to the Minister for Lands to reserve Crown land for the public interest
27. Section 51 of the *Land Administration Act 1997* gives power to the Minister for Lands to add lots to and change the purpose of a reserve.
28. Delegation 035 authorises the City of Albany for request the Minister for Lands to action Reserve requests, including adding land to or changing the purpose of an existing Reserve.

### POLICY IMPLICATIONS

29. Refer to Environmental Considerations below in relation to potential implications to the City's Environmental Policy.

### RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>Risk: There is a risk of the loss of protection of environmental values on public land if the closure of the road reserve results in all land being disposed and amalgamated with adjoining private land.</i>	<i>Unlikely</i>	<i>Minor</i>	<i>Low</i>	<i>Retaining portion of land incorporating environmental values with existing Reserve and changing purpose to Environmental Conservation.</i>
<b>Opportunity:</b> <i>To further to add natural reserves and protect environmental values</i>				

### FINANCIAL IMPLICATIONS

31. The City of Albany has a fee schedule for road closure requests that cover the costs associated with the road closure process.

#### Regulatory Cost Implications:

32. There are no regulatory costs associated with this item.

### LEGAL IMPLICATIONS

33. There are no legal implications relating to this item.

### ENVIRONMENTAL CONSIDERATIONS

34. The vegetation on the eastern portion of road reserve proposed for addition to Reserve 12012 is identified as Karri Tall Open Forest as described in the Albany Regional Vegetation Survey 2010. This complements the vegetation found within Reserve 12012 and on surrounding adjacent private properties.
35. The City's Reserves team has expressed an interest in having this portion of road reserve vested as a Reserve for Environmental Conservation to preserve the vegetation on site and create a wildlife corridor with the adjoining Reserve 12012.
36. The proposal to add portion of the road reserve to adjoining Reserve 12012 and change the purpose from Parkland and Recreation to Environmental Conservation compliments the City's Strategic Community Plan, Environmental Policy, Climate Change Action Declaration and Local Planning Strategy, and other associated strategic documents and policies, in relation to conserving and enhancing the region's natural reserves and protecting environmental values.

### ALTERNATE OPTIONS

37. Council may alternatively resolve to:
- Refuse the proposed road closure; or
  - Support the proposed road closure with modifications.

### CONCLUSION

38. By supporting the officer's recommendation, the road closure will:
- Allow the adjoining landowners to resolve a boundary issue by purchasing relevant portions of the road reserve, with the outcome a better reflection of the current use of these portions of the land; and
  - Provide the City with the opportunity to retain an area of identified remnant native vegetation, to preserve and protect its environmental values, and also ensure ongoing management through its incorporation into existing Reserve 12012 and subsequent amendment of the existing reserve's purpose from Parkland and Recreation to Environmental Conservation.

<b>Consulted References</b>	:	<i>Land Administration Act 1997</i> <i>Land Administration Regulations 1998</i> <i>Albany Regional Vegetation Survey 2010</i> <i>City of Albany Environmental Policy</i> <i>Natural Reserves Strategy and Action Plan 2017-2021</i> <i>State Planning Policy No. 3.7: Planning in Bushfire Prone Areas</i> <i>Environmental Protection Act 1986</i>
<b>File Number (Name of Ward)</b>	:	RD.RDC.2 West Ward
<b>Previous Reference</b>	:	n/a

## DIS315: 12-MONTH COMMERCIAL TRIAL OF HIREABLE ELECTRIC SCOOTERS

<b>Land Description</b>	:	City of Albany
<b>Proponent</b>	:	Beam Mobility Australia Pty Ltd (ACN 629 999 533) Bird Rides Australia Pty Ltd (ACN 628 452 399)
<b>Business Entity Names</b>	:	As above
<b>Attachments</b>	:	1. Activities on Thoroughfares and Public Places and Trading Local Law 2011 and Local Government Property Local Law 2011 2. WALGA Electric Scooter Shared Services Discussion Paper 3. <b>Confidential Attachments Under Separate Cover</b>
<b>Supplementary Information &amp; Councillor Workstation</b>	:	<ul style="list-style-type: none"><li>• Copy of Application (Bird)</li><li>• Copy of Application (Beam Mobility)</li><li>• Elected Member Briefing Note</li><li>• Beam Briefing Note</li><li>• A Little About Beam</li><li>• Beam Rider Research on Modal Transport</li><li>• Bird Additional Information</li><li>• Bird Local Government FAQ</li><li>• Western Australian Police (Albany) Comment</li></ul>
<b>Report Prepared By</b>	:	Planning Officer – (D Ashboth)
<b>Authorising Officer:</b>	:	Executive Director Infrastructure, Development & Environment (P Camins)

### CONFIDENTIAL ATTACHMENTS

*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. 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 2032:
  - **Pillar:** People
  - **Outcome:** A happy, healthy and resilient community
  - **Objective:** Improve access to sport, recreation and fitness facilities and programs
  - **Pillar:** Planet
  - **Outcome:** Shared responsibility for climate action.
  - **Objective:** Work towards net zero greenhouse gas emissions.
  - **Pillar:** Place
  - **Outcome:** A safe, sustainable and efficient transport network.
  - **Objective:** Encourage more people to use active transport.
3. The item relates to the following strategic objectives of the City of Albany Local Planning Strategy 2019 (the Planning Strategy).
  - Improve public transport, walking and cycling opportunities.

**In Brief:**

- The City has been separately approached by Beam Mobility and Bird Rides to undertake a 12-month commercial trial of hireable, shared electric scooters (e-scooters) within the City of Albany.
- The intent of committing for a one year trial ensures that the outcomes and impacts of operations can be evaluated before a decision is made around longer-term operations.
- Prior to deployment of e-scooters, the Permit Holder/s will deliver a public co-design and education session, in partnership with the City of Albany staff.
- City officers will have the ability to amend the e-scooter program throughout the operating period.
- It is recommended that Council resolve to ISSUE a notice of determination granting Bird Rides and Beam Mobility approval to operate a 12-month Commercial Trial of Hireable Electric Scooters under the *Activities on Thoroughfares and Public Places and Trading Local Law 2011* and *Local Government Property Local Law 2011 (ATPPTLL & LGPLL)*, subject to the conditions.

**RECOMMENDATION**

**DIS315: AUTHORISING OFFICER RECOMMENDATION**

**THAT Council resolves to AGREE to delegate to the CEO to issue permits to Beam Mobility and Bird Rides to operate a 12-month Commercial Trial of Hireable Electric Scooters under the Activities on Thoroughfares and Public Places and Trading Local Law 2011 and Local Government Property Local Law 2011, subject to the following conditions:**

**Conditions:**

1. **Following the expiry of this permit all e-scooters and associated infrastructure shall be removed from public roads and any other public lands, unless otherwise agreed to in writing by the City of Albany.**

**Advice:**

- *This permit is valid for a period of 12-months from the date of approval.*
2. **The Permit Holder shall ensure no more than 200 hireable e-scooters per permit holder are operational within the City of Albany at all times.**
  3. **Prior to deployment of e-scooters, the Permit Holder shall submit a complaints handling procedure to the City of Albany for approval. Following approval, the complaints management procedure shall be complied with to the satisfaction of the City of Albany.**

**The complaints handling procedure shall:**

- **Identify how the Permit Holder will respond to complaints and queries;**
  - **Identify appropriate communication channels for complaints and queries and advise how this information will be made available to the public;**
  - **Identify measures to limit complaints being directed to the City of Albany where the City is not the responsible authority; and**
  - **Provide the City with directions for re-directing complaints to the Permit Holder, where appropriate.**
4. **The Permit Holder shall provide users with terms and conditions of use which promote responsible and legal use, public safety and good behaviour. The Permit Holder shall have systems in place to penalise user non-compliance with the terms and conditions.**
  5. **Prior to deployment of e-scooters, the Permit Holder/s shall deliver a public co-design and education session, in partnership with the City of Albany staff. The co-design and education session shall:**
    - i. **Provide an on-ground community training session on safe e-scooter use;**
    - ii. **Capture community feedback on geofenced areas; and**

**iii. Inform a final e-scooter program**

**Advice:**

- *Notice of co-design and education session shall be placed in the Albany Advertiser at least 3 days prior to the date of the session.*
- *The session shall be attended and developed by all Permit Holders, in consultation with the City of Albany staff.*

6. The Permit Holder shall work in collaboration with the City of Albany to undertake ongoing community training sessions.
7. Prior to deployment of e-scooters, an e-scooter program shall be submitted to the City of Albany for approval. Thereafter the e-scooter program shall be maintained and updated, to the satisfaction of the City of Albany.

**Advice:**

- *Permit Holders shall submit matching e-scooter programs.*
  - *The e-scooter program shall indicate:*
    - *Operating areas*
    - *Slow zones*
    - *Parking and no parking zones*
    - *No ride zones*
  - *The e-scooter program should address feedback from community members received during the co-design/education session.*
  - *The e-scooter program shall demonstrate compliance with the ATPPTLL & LGPLL.*
  - *The e-scooter program shall ensure e-scooters are only capable of operating on public land.*
  - *The approved e-scooter program shall be distributed to the Albany Police prior to deployment of e-scooters.*
8. The Permit Holder shall maintain geofencing to ensure operations are consistent with the e-scooter program at all times.
  9. Permit Holders must adhere to any directives from the City of Albany to amend the e-scooter program and associated geofences. General modifications shall occur within 2 hours (120 minutes) of the initial request by the City of Albany, during business hours. Modifications required due to health and safety concerns shall occur within 30 minutes of the initial request by the City of Albany, during business hours.
  10. The Permit Holder shall not have any claim for compensation or damages as a result of any disruption to business or loss incurred due to any event, market, parade, thoroughfare works or amendments to the e-scooter program
  11. The Permit Holder shall have systems in place to incentivise good e-scooter parking behaviour and penalise non-compliance. The Permit Holder will monitor for and ensure that e-scooters that have not been parked in an upright position or are leaning or resting on other street furniture, buildings or infrastructure, are promptly reparked and/or relocated.
  12. The Permit Holder shall ensure all e-scooters are equipped with GPS trackers to enable e-scooters to be located at all times.
  13. The Permit Holder shall monitor the locations of all e-scooters at all times to avoid nuisance, clutter or congestion being caused by e-scooters.
  14. The Permit Holder shall ensure unused e-scooters are returned to the approved parking areas indicated within the e-scooter program.

**Advice:**

- *The Permit Holders will use all reasonable endeavours to ensure e-scooters that are not returned to approved parking areas are collected and redistributed to approved parking areas within 1 hour (60 minutes).*
- *Driveways, walkways and carparks shall not to be obstructed.*

15. The Permit Holder shall make it an operational priority to ensure a minimum 1800mm clearway for pedestrians is maintained on public walkways and thoroughfares, unobstructed by parked e-scooters at all times
16. The Permit Holder shall provide City of Albany staff and their representatives with the authority and ability to easily move or relocate e-scooters that are deemed to be in inappropriate locations without the need to contact the Permit Holder.
17. The City of Albany reserves the right to cancel the permit without compensation for reasons including, but not limited to:
  - *Non-compliance with Activities on Thoroughfares and Public Places and Trading Local Law 2011;*
  - *Non-compliance with the conditions of this permit; or*
  - *Non-compliance with the approved Operational Plan.*
18. The Permit Holder must ensure all e-scooters are legal and safe to operate under Australia laws and regulations.

**Advice:**

- *The Permit Holder must immediately disable faulty or damaged scooters when reported.*
19. Hireable electric scooters shall not be equipped with user operable audible alarms or air horn percussive signalling instruments.
  20. The Permit Holder must ensure hireable e-scooters are not able to exceed the maximum speed limits prescribed under Western Australia Australian laws and regulations.
  21. A public liability insurance policy of a minimum of \$20,000,000 is to be maintained at all times. The policy must cover any claim which arises as a result of the negligent act or omission of the permit holder.
  22. Personal accident insurance coverage for each trip that the customers of the Permit Holders undertake shall be maintained at all times.
  23. The Permit Holder shall indemnify and release Council from all liability arising from or in connection with this Permitted Activity or the conduct of the Permit Holders business by the Permit Holder or any of the Permit Holders Agents, including:
    - Any claim made by any person for injury, direct and indirect loss or damage arising in any manner
    - Any direct or indirect loss or damage to any property belonging to the permit holder or other persons located in the vicinity of the Permitted Location caused by the Permit Holder or the Permit Holders Agents.
    - Any direct and indirect loss, damage, injury or illness of any type sustained by any person in relation to or as a result of the Permitted Activity.
  24. Permit holders shall make good any damage caused and/or reimburse Council for any maintenance/repair costs that are caused by or in connection with Permit Holder's (or its agents) activity pursuant to the e-scooter scheme.



- 25. The Permit Holder shall grant the City of Albany with access to data through a custom dashboard or equivalent reporting methodology. The data shall include key metrics as agreed between the Permit Holder and the City.**
- 26. The Permit Holder must provide a monthly report on the statistics of their operations. The report must be provided electronically on the 15<sup>th</sup> of every month and provide statistics of the preceding month. The report must include, but is not limited to:**
  - **A summary of trips undertaken in the reporting month including trip duration, trip distance, trip start and end point, trip start and end times and dates.**
  - **The number of customer feedback received and categorised. The report shall include, to the best of the permit operators ability the number and type of complaints reported by users, non-users, Government Agencies or any other sources. The report should include the average time taken to resolve complaints and by type.**
  - **Statistics on known incidents, collisions, near misses and injuries including information about date, time, contributing factors and severity. This data should be categorised by property damage only, minor injury, serious injury and fatality and a summary of the change to policy, requirements or procedures as a result of the above safety incidents.**
- 27. The Permit Holder shall undertake rider surveys at appropriate intervals throughout the term of the permit to capture user feedback and demographic information.**
- 28. The Permit Holder shall notify and provide reports on any known incidents and injuries resulting in hospitalisation or paramedic attendance of a user or third party within 24 hours of the incident time to the City of Albany.**
- 29. No advertising other than the logo or name of the Permit Holder, is permitted on the e-scooters, helmets or any associated infrastructure.**
- 30. The Permit Holder shall provide, maintain and install signage, decals or similar identifiers to clearly indicate e-scooter parking areas, as directed by the City of Albany. Following conclusion of the trial, these should be removed at full cost of the Permit Holder, unless otherwise agreed to in writing by the City of Albany.**
- 31. Prior to the commencement of operations, the Permit Holder must pay a permit fee of \$2500 for the administration of the Permit.**

## **BACKGROUND**

4. Over the past few years, micro mobility programs that mainly include e-scooters, have rapidly expanded within Australia and across the world. Within Western Australia, other local government's trialling these programs include the City of Stirling, City of Perth, City of Rockingham, City of Bunbury and the Shire of Esperance.
5. The City of Albany has been approached by two micromobility companies Bird Ride and Beam Mobility with a request to undertake a 12-month commercial trial of hireable, shared e-scooters within the City of Albany.
6. Bird Ride (Bird) is a micromobility company based in Santa Monica, California and predominately services the United States and European markets. Within Australia, Bird has e-scooters located in Hervey Bay, Bunbury and Sydney.
7. Beam Mobility (Beam) is based in Singapore and claims to be the largest provider of micromobility in the Asia Pacific Region. Beam currently operate in 18 Australian locations, including in Esperance, Bunbury and Rockingham.

8. E-scooters are deployed as part of these programs and made available for hire within a predetermined area, developed in consultation with the local government.
9. Micromobility companies use GPS and GSM technology referred to as Geofencing to delineate virtual boundaries and manage the behaviour of the e-scooters e.g. operational area, speed limits and parking /docking areas.
10. Users of e-scooter programmes locate, register, pay, unlock and lock e-scooters through a mobile phone app.
11. At the end of the journey, users do not need to physically lock the device with a conventional chain or return it to a designated station or rack. E-scooters are designed to be dockless, meaning the user can choose where to end their journey, provided the area is approved for e-scooter parking.
12. Operators of e-scooter shared services remotely monitor the battery life of the devices and employ people to collect the devices for recharging and redistribution.
13. Throughout the day, local employees are also responsible for relocating misplaced scooters and retrieving damaged scooters for repairs.
14. The daily operations cycle of e-scooters can be summarised as follows:
  - a. E-scooters are made available for riding at docking points. Once the e-scooters reach a low charge, a GPS signal automatically flags the scooter for charging.
  - b. Throughout the day, e-scooters with a low charge are collected by a local employee and relocated to a fleet charging and maintenance facility. E-scooters generally take 6-12 hours to fully charge. During charging e-scooters are cleaned and maintained.
  - c. Once the e-scooter has finished charging, the local employee redeploys scooters to deployment location to be made available for riding.
15. While initially designed for short trips, providing options for the 'last mile' and links to public transport, data suggests e-scooters deployed in regional areas are frequently used for longer trips, with average trips in comparable regional areas being approximately 3.5kms.
16. Within Western Australia, operators require permission from the relevant Local Government to operate an e-scooter shared service. Within the City of Albany, a permit is required under the Activities on Thoroughfares and Public Places and Trading Local Law 2011 and Local Government Property Local Law 2011 (ATPPTLL & LGPLL).

## **DISCUSSION**

17. A 12-month trial has been proposed in order to enable both the operators and the City of Albany to evaluate operations before deciding on a longer term commitment.
18. The City of Albany must determine the applications from both Bird and Beam Mobility to operate a 12-month commercial trial of a hireable e-scooter scheme under the *ATPPTLL & LGPLL*.
19. The City may have recourse to limit the number of e-scooter operators to one within a 12-month trial period should this be identified as the best way to proceed. However it would be difficult to separate the two operators as both have almost identical technologies, and both are willing to work with the City in determining appropriate parking and geo-fencing.
20. It is therefore recommended that the City approve the applications of both Bird and Beam Mobility to operate a 12-month commercial trial of a hireable e-scooter scheme under the *ATPPTLL & LGPLL*.
21. If the 12-month trial is a success, council can revisit the number of operators permitted within the City of Albany and make any necessary changes.
22. Operators have advised they have the ability to deploy e-scooters and commence operations in the City of Albany within 3 weeks of the date of approval.

Benefits to the City of Albany

23. E-scooters offer a modern, convenient mode of transport and provide an alternative mobility choice to users. They are readily accepted, easy to use and are valued for being able to transport people to destinations quicker than walking.
24. E-scooters also appeal to the local tourist market, providing a quick and convenient option for tourists to explore a particular area. They will also provide linkages between strategic locations, where walking may otherwise be impractical, such as between the foreshore and the CBD.
25. The use of e-scooters may also contribute to less pollution and greenhouse gas emissions, which is a key consideration given the importance assigned to sustainability and climate action within the City of Albany Strategic Community Plan 2032 and Climate Change Action Declaration.
26. In addition, e-scooters particularly appeal to office workers because they do not require movement of the body and the user stands upright preventing perspiration and wrinkling of clothing. They are also useful for women wearing skirts and dresses, which can be an issue on bicycles.

E-Scooter Program

27. Both operators have the capability to implement 'geo-fencing' before commencing their service. Geo-fencing refers to the use of GPS to create virtual designated areas to support a wider e-scooter program. These areas are shown on a map in the operator's mobile phone app.
28. Both Beam Mobility and Bird have offered to co-design the e-scooter programs in consultation with the City of Albany. This consultation will involve working collaboratively to establish:
  - Operating Areas – If riders try to leave the area, their scooter will cut out.
  - Slow Zones – vehicles speed will automatically be limited to a predetermined speed.
  - No Parking Zones – riders attempting to end their trip here will be unable to end their trip and instead, directed to the closest parking spot in the mobile application.
  - No Ride Zones – vehicles will temporarily stop working if they enter this area. Riders will be notified and can unlock the vehicle to ride out of the area. If they remain in the area, the vehicle will continue to lock.
  - Slow & No Parking Zones – combines both slow and no parking elements.
  - Parking Areas – either fixed parking areas or areas where riders are incentivised to leave vehicle through reward credits.
29. In order to ensure the City is satisfied with the e-scooter program, a condition requiring the program to be approved by the City of Albany prior to the commencement of operations is recommended.
30. This will allow the City of Albany to ensure WA Police and community feedback following co-design sessions have been sufficiently incorporated into the programs.
31. To ensure both operators deliver a service that meets community needs and aligns with Council objectives, it is recommended that the e-scooter program be the same for both operators.
32. The agreed e-scooter program will be monitored on an ongoing basis with amendments to the program required to be made within 2 hours (120 minutes) following request by the City. However, it is recommended that modifications required due to health and safety concerns occur within 30 minutes of the initial request by the City of Albany. This will allow responsiveness to both opportunities that are identified during the period (including one-off changes for festivals and events) as well as enabling community concerns to be resolved quickly should they arise.

### Hardware

33. Specifications of the proposed e-scooters to be used by the operators, the Bird Three and the Beam Saturn X, are provided within the Councillor Workstation.
34. To ensure the safety of users, the permit holder must ensure all e-scooters are legal and safe to operate under Australia laws and regulations at all times. Faulty or damaged scooters must be disabled immediately.

### Density Requirements

35. Both potential operators have requested a fleet of approximately 250 battery operated e-scooters within the City of Albany. However, this was on the basis of being the sole e-scooter operator.
36. Should council resolve to proceed with both operators, it is expected the number of permitted e-scooters per operator would be reduced to avoid clutter and congestion. In this case, it is recommended that operators be limited to 200 e-scooters each.
37. Both potential operators have confirmed this number would be both acceptable and commercially viable.

### Speed

38. Within Western Australia, the speed of e-scooters is governed under State Government eRideables legislation, which established the following speed limits:
  - Footpaths: 10km/h or less
  - Bicycle paths and shared paths: 25km/h or less
  - Local roads with a speed limit of 50km/h or less: 25km/h or less
  - E-scooters not permitted on roads with a speed limit exceeding 50km/h.
39. Operators must ensure e-scooters are not able to exceed the maximum speed limits prescribed under eRideables legislation.
40. In addition to the requirements of the eRideables legislation, both potential operators have advised they are willing to work with the City of Albany to establish additional speed limits in key areas however; a balanced approach is required to identify speed limits that are both safe and practical.
41. Speed limits will be established within the e-scooter program, developed in consultation with the City of Albany, following the co-design session. Given the higher aged population within the City of Albany, consideration will be given to additional to the implementation of additional 'Slow Zones' in areas where there is a high mix of users.

### Age limit of e-scooter user

42. Users must be at least 16 years of age to ride an e-scooter under State Government eRideables legislation
43. Beam have advised they will not hire scooters to anyone younger than 16 years of age, whilst Bird have advised they will not hire to anyone younger than 18 years of age.
44. Age restrictions will be implemented through age verification when signing up to the app.

### Safety

45. As the number of e-scooter share services grow, the number of reported users sustaining injuries is increasing. There is limited reliable information regarding the number of injuries, however anecdotal feedback from other local governments indicates an increase in hospital visits due to e-scooter incidents.
46. Both operators have a number of measures in place to mitigate dangerous behaviour on e-scooters including:
  - Moving e-scooter deployment location away from pubs and clubs during evening hours;
  - Cognitive tests to ensure intoxicated people are unable to ride scooters (effectiveness unknown);
  - Ability to general public to report dangerous use of e-scooter;

- Rider training and coaching initiatives (at the City of Albany request)
  - Ability to detect dangerous driving (such as hard braking, fast turning jumps etc.) through vehicles sensor technology and fine or suspend unsafe drivers following a third strike.
47. Where e-scooters are allowed to operate is an important consideration i.e. on footpaths, shared paths, on-road cycle lanes, local roads, shared spaces, and malls. As more people choose e-scooters as a preferred mode of transport, there may be increased risks to pedestrians. The City of Albany will need to work with e-scooter operators to identify conditions for an e-scooter shared service e.g. prohibition of use in particular areas/places i.e. exclusion zones.
48. Operators will be required to demonstrate they have adequate insurance cover for any injuries or damage that may result from the use of e-scooters.
49. A condition is recommended requiring permit holders to notify and provide reports on any known incidents and injuries resulting in hospitalisation or paramedic attendance of a user or third party within 24 hours of the incident time to the City of Albany.

#### Insurance

50. In accordance with the *ATPPTLL & LGPLL* operators will be required to maintain public liability insurance. The sum required within the *Activities on Thoroughfares and Public Places and Trading Local Law 2011* is \$10,000,000, however given the high-risk nature of the proposed activity, this sum is recommended to be increase to Twenty Million Dollars (\$20,000,000).
51. A condition is also proposed that requires the permit holder to maintain personal accident insurance coverage for each trip that the customers of the Permit Holders e-scooters undertake.
52. Operators have confirmed they have, or are willing to obtain, the above mentioned insurances.
53. Given the number of serious e-scooter injuries recently reported in Western Australia, it is considered appropriate to require the Permit Holder to indemnify and release Council from all liability arising from or in connection with this Permitted Activity or the conduct of the Permit Holders business by the Permit Holder or any of the Permit Holders Agents.

#### Helmets

54. Regulation 209A (2) of the *Road Traffic Code 2000* states: A person shall not travel on a motorised scooter on a road or any path unless that person is wearing a protective helmet securely fastened on his or her head. Regulation 244 (2) of the *Road Traffic Code 2000* states: A person shall not drive a motor cycle unless — (a) that person is wearing securely on his or her head a protective helmet. There are no exemption from helmet legislation for e-scooter shared services.
55. Every e-scooter will have a helmet attached, and operators have different ways of ensuring helmet use, including requiring a 'helmet selfie' or ensuring helmet are removed from the smart-lock system before the scooter will operate. However, helmet use will ultimately be the responsibility of the individual as measures to ensure use are not foolproof.
56. The risk of helmets being inappropriately disposed of, and therefore e-scooters being available for hire without helmets being provided is mitigated by the requirement for riders to re-attach the helmet to the lock prior to the trip ending, i.e. riders will still get charged by the minute if they do not have the helmet lock reattached.

#### Damage and Vandalism

57. E-scooter vandalism is a commonly raised as a concern prior to e-scooter trials and risks can include defacing of e-scooters and e-scooters being thrown in inappropriate locations such as rubbish bins, water bodies and into trees. Despite operators enabling other users to report cases of vandalism to them given they have the ability to ban people from their platform; damage and vandalism of e-scooters will likely increase work for the local police.
58. Despite these immediate concerns, this issue did not seem to be frequently raised through consultation with other local government's trailing e-scooter programs. Despite vandalism being the primary issue during earlier trials, operator have now implemented a number of measures to mitigate this issue, including no-ride zones around waterbodies to prevent e-scooters being thrown in the water.

59. In addition, e-scooters are all fitted with GPS tracking which enables local employees to identify damaged or inappropriately located e-scooters for retrieval, repair (if necessary) and relocation back to parking areas. As a safeguard, e-scooters are immobilised in these instances (locked) and are temporarily rendered unusable. Operators may also be able to identify the person responsible for vandalism through a combination of GPS tracking and the mobile app.
60. In order to mitigate the dangers or unsightliness of e-scooter vandalism, a condition is recommended requiring the Permit Holder to monitor the locations of all e-scooters at all times to avoid nuisance, clutter or congestion caused by e-scooters.
61. It is also recommended that the Permit Holder provides City of Albany staff and their representatives with the authority and ability to easily move or relocate e-scooters that are deemed to be in inappropriate locations without the need to contact the Permit Holder. In addition to dangerously located e-scooters, this condition would also allow relocation for works and maintenance of City assets.

#### Parking

62. Parking areas are able to be controlled by the operator through geo-fencing. For example, when a user arrives in a designated parking area, the GPS software triggers a response notifying the user via the app they are at an appropriate parking location. If users fail to park their e-scooter inside the designated parking area, a notification will be received alerting the user to park in the designated zone or be penalised.
63. A key consideration for the City of Albany is whether to limit e-scooter parking to a number of specified docking areas, or allow more freedom for e-scooters to be docked at any location (excluding roads, carparks and private property) within the operating area.
64. Although allowing parking at any location would provide much more flexibility for the user, this may also increase the potential for clutter and the docking of scooters at inappropriate locations such as the middle of parks or across car parking bays.
65. A number of local governments have advised of issues with e-scooters being left across paths, however the operators offer a discounted fee for the next ride if e-scooters are returned to designated parking areas as an incentive.
66. The City of Rockingham has decided on fixed docking locations only, with trips unable to be ended outside of specified locations including the Rockingham Visitor Centre, Rockingham Arts Centre, CBD, Safety Bay, Palm Beach Jetty and Rockingham Aquatic Centre. This approach may discourage the use of e-scooters for purposes other than tourism and recreation; however, it would minimise clutter and instances of e-scooters being placed in inappropriate locations.
67. Permit holders will be required to obtain approval for designated e-scooter parking areas in accordance with the conditions of a permit. It is expected that the parking areas identified within the e-scooter program be informed by feedback from community members received during the co-design/education session and requirements of the *ATPPTLL & LGPLL*.
68. In order to ensure unobstructed pedestrian access through thoroughfares and verges, it is recommended that fixed parking locations are enforced during the initial 12-month trial period. The City can re-evaluate this position should an e-scooter program continue following the trial.
69. The City may request that the permit holder provide, maintain and install signage, decals or similar identifiers to clearly indicate approved e-scooter parking areas. Following conclusion of the trial, these should be removed at full cost of the Permit Holder, unless otherwise agreed to in writing by the City of Albany.
70. A condition is recommended requiring permit holders to use all reasonable endeavours to ensure e-scooters that are not returned to approved parking areas are collected and redistributed to approved parking areas within 1 hour.
71. The City has the ability to fine Permit Holders for any breaches of this requirements under the City's *ATPPTLL & LGPLL*, should non-compliance become a consistent issue.

Data

72. The City of Albany will be granted access to a centralised data point (dashboard) from each operator. This will include information on:
- Trip origin and destination
  - Rider frequency
  - Total rides
  - Total hours riding
  - Kilometres travelled
  - Co2 emissions avoided
  - Average ride minuted
  - Average ride distance.
73. In addition to this dashboard access, it is recommended the City request a monthly report from each operator summarising trip data, customer feedback and complaints and statistics on incidents/accidents. This will help the City of Albany interpret the dashboard data and identify any issues that need immediately addressing.

Public Advertising

74. Both potential operators have advised of a willingness to co-design e-scooter programs with the City of Albany and the community to ensure the program aligns with community needs and Council objectives.
75. The requirement to deliver a community co-design and education session is recommended as a condition of planning consent. The session shall be attended and developed by all Permit Holders, in consultation with the City of Albany staff.
76. The co-design and education session will capture community feedback on geofencing and inform a final e-scooter program. It is recommended that City staff attend co-design sessions, with particular emphasis on working to ensure community feedback is accurately captured.
77. The co-design and education session will also provide an on-ground community training session on safe e-scooter use.
78. Notice of co-design and education session shall be placed in the Albany Advertiser at least 3 days prior to the date of the session. Officers are also working to develop a potential media release to announce the e-scooter trial and co-design and education sessions (if required).

WA Police (Albany)

79. The Albany branch of WA Police were invited to comment on the applications and any potential e-scooter program area.
80. WA Police have advised they have no comment to make on any potential e-scooter program area given their role would be to will be to enforce the law relating to the use of the scooters. They indicated that as long as there is compliance with the law Police should have little say on where e-scooters are used.
81. WA Police also noted the trail period, and the ability to address any issues with the program during this period.
82. The onus will be on the operators to ensure all e-scooters are legal and safe to operate and unable to exceed the maximum speed limits prescribed under Australian laws and regulations.

Cancellation of permit

83. To ensure permit holders operate in an appropriate manner throughout the duration of the trial, it is recommended that the City of Albany reserves the right to cancel the permit for any reason, including but not limited to:
- Non-compliance with *ATPPTLL & LGPLL*;
  - Non-compliance with conditions of permit;
  - No compliance with e-scooter program.

Permit costs

84. Despite there being no direct costs, the administration of the e-scooter program is expected to require staff to spend time on the scheme through things such as attendance at co-design and check in sessions, work in developing and amending geofencing and the e-scooter program, reviewing reports and responding to public enquires about the scheme.
85. In order to help re-coup some of the indirect cost of the e-scooter program to the City, a permit fee of \$2,500 per operator is recommended to be implemented as a condition of approval. The ability to charge a permit fee is provided for under 7.3(a) of the *Activities on Thoroughfares and Public Places and Trading Local Law 2011* and under 3.4 of *Local Government Property Local Law 2011*. This amount is consistent with the about set by Council within the budget process.

**GOVERNMENT & PUBLIC CONSULTATION**

86. Approval is sought to proceed with a 12-month commercial trial of hireable e-scooters under the *ATPPTLL & LGPLL*.
87. If the Council resolves to support the 12-month commercial trial of hireable e-scooters, the permit holders will proceed with a community co-design and education session. This session will be designed to capture community feedback on geofencing and the e-scooter program.
88. A notice of the a community co-design and education session will be placed in a newspaper circulating the City of Albany at least 3 days prior to the date of the session.
89. Potential operators have provided a hardware trial and a briefing to Council and Executive Staff prior to this item being written.

**STATUTORY IMPLICATIONS**

90. The City may permit trading ;  
In accordance with the *Activities on Thoroughfares and Public Places and Trading Local Law 2011* and the *Local Government Property Local Law 2011*.
91. The operation and use of e-scooters must comply with WA Government eRideables legislation.
92. Voting requirements for this item is **SIMPLE MAJORITY**.

**POLICY IMPLICATIONS**

93. There are no policy implications relating to granting permits to Bird Rides and Beam Mobility to operate a 12-month commercial trial of a hireable shared e-scooter program.

**RISK IDENTIFICATION & MITIGATION**

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Community</b> <i>Community members may be concerned that consultation did not occur prior to approval of a 12-month trial.</i>	<i>Possible</i>	<i>Minor</i>	<i>Medium</i>	<i>Community members will be involved in co-designing e-scooter program and determining appropriate geofencing.</i>
<b>People Health and Safety</b> <i>E-scooters have the potential to cause injury to users and pedestrians.</i>	<i>Possible</i>	<i>Moderate</i>	<i>Medium</i>	<i>Permit holders will be required to hold appropriate public liability and personal accident insurance.</i>  <i>The Permit holder will also be required to indemnify and release Council from all liability arising from or in connection with the e-scooter scheme.</i>



Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<p><b>Operational</b> E-scooters may cause inconvenience through docking at inappropriate locations such as across carparks or access ways.</p> <p>Docked e-scooters may impact the amenity of public places through visual clutter.</p>	Possible	Moderate	Medium	<p>Appropriate geofencing to be determined in consultation with the City and local community.</p> <p>Permit holders must implement amendments to geofencing within 30 minutes.</p> <p>The City has the ability to fine Permit Holders for any breaches of the ATPPTLL &amp; LGPLL.</p>
<p><b>Property</b> Damage to council property could occur as a result of e-scooter accidents or vandalism.</p>	Possible	Minor	Medium	<p>Permit holders will be required to make good any damage caused and/or reimburse Council for any maintenance/repair costs that are caused by or in connection with the e-scooter scheme.</p>
<p><b>Opportunity:</b> Provides an environmentally friendly, active travel alternative to passenger vehicles with benefits to the local community and tourism industry.</p>				

## FINANCIAL IMPLICATIONS

95. All costs associated with the e-scooter program will be borne by the operator.
96. It is anticipated that costs associated with staff time spent on the administration aspects when considering an e-scooter program would be recouped through permit fees.

## LEGAL IMPLICATIONS

97. 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.
98. 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

99. Growth in microbility and the use of e-ridables potentially leads to the overall reduction in the use carbon emitting vehicles for short trips.

## ALTERNATE OPTIONS

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

**CONCLUSION**

101. The City has been separately approached by Beam Mobility and Bird to undertake a 12-month commercial trial of hireable, shared e-scooters within the City of Albany under the *ATPPTLL & LGPLL*.
102. The proposed e-scooter trial is seen as a positive offering to the City of Albany with the potential to benefit both the local community and the tourism industry.
103. The intent of committing for a one year trial ensures that the outcomes and impacts of operations can be evaluated before a decision is made around longer-term operations.
104. City officers will have the ability to amend the e-scooter program throughout the operating period.
105. It is recommended that Council resolve to ISSUE a notice of determination granting both Bird and Beam Mobility approval to operate a 12-month Commercial Trial of Hireable Electric Scooters under the *ATPPTLL & LGPLL*, subject to the conditions.

<b>Consulted References</b>	:	<ol style="list-style-type: none"> <li>1. <i>Activities on Thoroughfares and Public Places and Trading Local Law 2011</i></li> <li>2. Local Government Property Local Law 2011</li> <li>3. WALGA – Electric Scooter Shared Services Discussion Paper</li> <li>4. <a href="#">Road Traffic Code 2000</a></li> <li>5. <a href="#">Road Safety Commission – eRideables rules</a></li> </ol>
<b>File Number (Name of Ward)</b>	:	Various
<b>Previous Reference</b>	:	Elected member briefing note (July 2022)

**DIS316: SPLIT BUILDING ENVELOPE AT 49 (LOT 410) SHOAL BAY RETREAT, BIG GROVE**

<b>Land Description</b>	: Lot 410, 49 Shoal Bay Retreat Big Grove
<b>Proponent / Owner</b>	: S & A Ogg
<b>Attachments</b>	: 1. Development plans - building envelope proposal 2. Original development proposal 3. BAL Assessment and Bushfire Management Plan 4. Applicant further justification August 2022
<b>Councillor Workstation</b>	1. DFES technical advice February 2022 2. DFES technical advice July 2022 3. Applicant justification 18 October 2021
<b>Report Prepared By</b>	: Planning Officer (J Dallimore)
<b>Authorising Officer:</b>	: Executive Director Infrastructure, Development and Environment (P Camins)

**STRATEGIC IMPLICATIONS**

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
  - **Pillar:** Planet
  - **Outcome:** Sustainable management of natural areas; balancing conservation with responsible access and enjoyment.
  - **Pillar:** Place
  - **Outcome:** Responsible growth, development and urban renewal.

**Maps and Diagrams:**



**In Brief:**

- Council is asked to consider an application for a split building envelope at No. 49 (Lot 410) Shoal Bay Retreat, Big Grove. The southern building envelope is proposed to be located at the top of the hill, to support a habitable building (specifically the main dwelling for the property).
- The proposed split building envelopes and associated works required to implement the proposed development do not meet the requirements of SPP3.7 in relation to Element 1: Location and Element 2: Siting and Design, as the proposed development in its current form (specifically the southern building envelope for a habitable structure) is not located in an area on the subject site that poses the least possible risk of bushfire threat to people, property and infrastructure.
- The City's consideration of the proposal, including the documentation submitted by the applicant, the application of the precautionary principle in accordance with SPP3.7, and advice provided by DFES are discussed in detail within the report.
- Council is now requested to consider the matter, specifically in relation to whether the proposal is an acceptable outcome, taking into account:
  - That the proposal does not meet the intent of Element 1: Location nor Element 2: Siting and Design, as contained under the Guidelines for Planning in Bushfire Prone Areas version 1.4.
  - That the proposal does not meet the objectives of SPP3.7, specifically in relation to new development avoiding any risk from the threat of bushfire to people, property and infrastructure, and reducing vulnerability from bushfire to new and existing development through the identification of bushfire risks in decision-making at all stages of the planning and development process.
  - Application of the precautionary principle in considering the merits of the proposal, in accordance with SPP3.7 and the local government's role as decision-maker, in determining whether it has been demonstrated that the proposal facilitates the protection of people, property and infrastructure against the threat of bushfire as the primary objective, with the mitigation of the threat of bushfire to the development through the utilisation of appropriate bushfire protection requirements and measures, as the secondary objective.

**RECOMMENDATION**

**DIS316: AUTHORISING OFFICER RECOMMENDATION**

**THAT Council resolves to issue a notice of determination for REFUSAL for a split building envelope at Lot 410, 49 Shoal Bay Retreat, Big Grove, for the following reasons:**

1. **The proposal does not satisfy the following matters to be considered as identified in Schedule 2, Part 9, Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, namely:**
  - (c) **The objectives and provisions of State Planning Policy 3.7 Planning in bushfire prone areas, specifically:**
    - i. **Objectives 5.1, 5.2 and 5.3 of SPP3.7; and**
    - ii. **The intent of the following criteria outlined under Appendix Four Bushfire Protection Criteria of the Guidelines for Planning in Bushfire Prone Areas Version 1.4:**
      - **Element 1: Location – to ensure that development applications are located in areas with the least possible risk of bushfire to facilitate the protection of people, property and infrastructure**
      - **Element 2: Siting and Design – to ensure that the siting and design of development minimises the level of bushfire impact**
  - (q) **The suitability of the land for the development taking in account the possible risk of bushfire; and**
  - (r) **The suitability of the land for the development taking into account the possible risk to human safety.**

**BACKGROUND**

2. Site details:

<b>Local Planning Scheme:</b>	City of Albany Local Planning Scheme No. 1
<b>Zone:</b>	Rural Residential RR8
<b>Lot Size:</b>	Site Area 50,563m <sup>2</sup>
<b>LPS1 Use Class and Permissibility (Table 2):</b>	Building envelope not considered a land use under Table 2  Future uses proposed within building envelopes: Single House - P Ancillary Dwelling - D Outbuilding (shed) – I, incidental to the primary residential use of the site
<b>Existing Land Use:</b>	Vacant
<b>Bushfire Prone Area:</b>	Yes
<b>Local Planning Policies:</b>	N/A
<b>Other Relevant Plans and Policies:</b>	<ul style="list-style-type: none"> <li>• Subdivision Guide Plan RR8</li> <li>• State Planning Policy 3.7 – Planning in bushfire prone areas &amp; associated guidelines</li> </ul>

3. In January and February 2021, the City provided preliminary advice on a proposal for splitting the building envelope on site. Initial verbal feedback primarily related to minimising vegetation clearance and ensuring buildings and associated Asset Protection Zones remained outside of building exclusion areas identified in the local structure plan. Preliminary drawings were subsequently provided by the applicant, which included additional structures shown on the site that potentially resulted in additional vegetation clearance that were not identified in the initial discussions. In response to the preliminary drawings, the City indicated the proposal was unlikely to be supported in its current form, due to concerns in relation to vegetation clearance and effluent disposal. Following this advice from the City, a meeting was requested to discuss options to progress the proposal, during which the City reiterated matters previously raised and also noting that any development application would be required to demonstrate compliance with LPS1 provisions and other matters, including bushfire considerations and submission of relevant documentation.
4. Based on this advice, the applicant decided to proceed with lodging an application for split building envelopes. A Bushfire Management Plan (BMP) completed by a qualified practitioner was submitted as part of the application.
5. Shoal Bay Retreat is zoned Rural Residential with large lots covered in dense vegetation. This area of residential development is adjacent to Torndirrup National Park to the south, which contains a significant amount of unmanaged native vegetation.
6. In accordance with the City’s Local Planning Scheme No. 1 (LPS1) within the RR8 Rural Residential zone, all buildings, structures, water storage systems and low fuel zones are required to be confined to designated building envelopes, to a maximum area of 3,000m<sup>2</sup>, nominated by the landowner and approved by the local government.
7. The subject site is located at the end of Shoal Bay Retreat and has one-way access to Frenchman Bay Road via Quararup Road. The property is adjacent to Austin Road to the south; however, this is a gated road and cannot be used for regular access.

8. The development site is adjacent to two properties on the same ridgeline with the same Rural Residential Zoning. Both neighbouring properties have single house constructed on top of the ridge to access views over Frenchman Bay, with the western adjoining property containing a similar layout to this proposal, with the primary residence at the top of the hill, and other development at the base. These properties were both constructed prior to 2015, and therefore State Planning Policy 3.7 (Planning in Bushfire Prone Areas) did not apply.
9. The applicant submitted further written justification for the proposal on 31 August 2022, in relation to the proposal. Matters outlined in the justification, along with previous justification provided and advice provided by DFES are discussed below.

## **DISCUSSION**

10. The application for a split building envelope at 49 Shoal Bay Retreat was submitted to the City in August of 2021.
11. The proposal involves discretion sought to the following provisions, and are discussed in further detail below:
  - LPS1 Rural Residential Zone RR8 - splitting of a building envelope
  - State Planning Policy 3.7 Planning in bushfire prone areas - Guidelines (Version 1.4) Appendix Four Bushfire Protection Criteria
    - Element 1: Location
    - Element 2: Siting and Design
12. The applicant was initially informed as part of preliminary advice provided by the City that the southern building envelope, containing the primary residence, would likely not be supported due to the increase to bushfire risk, specifically in relation to the siting of vulnerable development in that location. However, staff indicated at the time that the installation of a non-habitable structure such as a 'viewing platform' for residents to use to access the view from the top of the hill, may be considered within the existing cleared area / proposed southern building envelope, as the use of a non-habitable structure in that location compared to a dwelling, was less likely to increase the risk from the threat bushfire on human safety.
13. The applicant provided the following justification in relation to the variation to split the building envelope:
  - The building design, materials, and colours will be in accordance with the scheme and respond to the landscape.
  - Splitting the building envelope will reduce the impact on visual amenity for surrounding landowners.
  - Less clearing of native vegetation to achieve an appropriate BAL would be necessary for a split building envelope than required for a single building envelope.
  - Development in both envelopes will have a shared ATU to be located at the bottom of the hill.
14. A split building envelope can be considered where there is no adverse environmental or neighbour impact.
15. In October 2021 and August 2022 the applicant submitted further justification in relation to the proposal for the split building envelope, the main points discussed in detail below.

Applicant Justification	Officer Response
<p>The Council approved a building envelope at its meeting on 16 September 2003 in the southern part of the property. The Council's approval was not time limited. I understand the various landowners, since 2003, have not requested relocating the building envelope. Instead, previous landowners have cleared the approved building envelope in conformity with the development approval and the Local Planning Scheme. Accordingly, it is suggested there is no requirement for our client to establish a southern building envelope given it currently exists and has been previously cleared and periodically maintained.</p>	<p>In accordance with the LPS1 RR8 provisions, development must be contained within a building envelope, which requires prior approval from the local government. The applicant has provided evidence of an approved building envelope issued by the City in September of 2003.</p> <p>The approval by the City was valid at the time the decision was made, however habitable structures that proposed on the site, even within an approved building envelope, require consideration against State Planning Policy 3.7 Planning in Bushfire Prone Areas. SPP3.7 was gazetted in 2015, with the Guidelines substantially updated in late 2021..</p> <p>SPP3.7 was gazetted in 2015, with the relevant decision-making authority required to give due regard to the provisions of SPP3.7 when considering a development proposal.</p>
<p>The approved southern building envelope and the proposed northern building envelope are importantly outside of the Building Exclusion Area shown on the approved Subdivision Guide Plan. Additionally, the southern and northern building envelopes meet City of Albany Local Planning Scheme No. 1 (LPS1) requirements including they have a combined area of below 3,000m<sup>2</sup>, they address LPS1 boundary setbacks and they are located on land which is already cleared.</p>	<p>Noted. No additional comment.</p>
<p>There is scope for the City to approve two building envelopes on a property as evidenced by the City's approval on adjoining Lot 411 (No. 48) Shoal Bay Retreat, plus other properties zoned 'Rural Residential'. There is no statutory provision in LPS1 limiting the City to only approving a single building envelope on a property.</p>	<p>Noted.</p> <p>The notion of a split building at the site is generally acceptable when considered against the objectives of the Rural Residential zone.</p> <p>However, the proposed location, siting and design of the southern building envelope and associated habitable structure to be contained within the envelope (assessed as a vulnerable use in accordance with SPP3.7) are not considered to meet the objectives or provisions of SPP3.7, specifically in relation to minimising the threat of bushfire to vulnerable development.</p>



Applicant Justification	Officer Response
<p>While noting City concerns regarding bushfire risks, it is highlighted that this estate and this property are 'legacy' development. The estate and the approved building envelope were in place well before changes to the bushfire standards. Accordingly, there is a need for the City to pragmatically address matters based on Planning Bulletin 111/2016 Planning in Bushfire Prone Areas. The proposals put forward by our client will lower bushfire risks compared to the historic and current situation.</p>	<p>Noted. The City accepts that the development site is a legacy site and residential development needs to be considered.</p> <p>Residential development is considered to be an acceptable outcome for this site, in accordance with the applicable zoning and permitted land uses. However a proposal is still required to meet relevant provisions, including state planning policies, or otherwise where variations are proposed to the provisions, the proposal suitably demonstrates that the development meets the intent of the provisions and overarching objectives of the policy.</p> <p>The proposed southern building envelope (and subsequent use for the construction of a habitable building) does not meet the intent of Element 1 - Location or Element 2 - Siting Design as outlined under Appendix Four of the SPP3.7 Guidelines, nor the overarching objectives outlined under clause 5 of SPP3.7.</p>
<p>Given the generous lot size of 5.05 hectares, the combined area of the southern and northern building envelopes represents only around 6% of the property.</p>	<p>Noted. No further comment.</p>
<p>It is expected that the proposed building envelopes will have negligible environmental impacts. This includes they have been previously cleared of remnant native vegetation, on-site sewerage disposal systems will be well setback from drainage lines and waterbodies and on-site sewerage disposal systems will have appropriate separation from groundwater.</p>	<p>There are some concerns at officer level of the potential detrimental impacts on existing environmental values from the proposed development, specifically as a result of the clearing and other works required to implement the proposed development in the southern building envelope. However, this is not the primary area of concern of the proposal and therefore does not form part of the reasons recommending refusal.</p>
<p>The Bushfire Attack Level (BAL) assessment reveals that BAL-29 can be achieved for a dwelling in the southern building envelope and BAL-19 for the ancillary dwelling in the northern building envelope subject to modest clearing of regrowth vegetation. From either envelope there is vehicular access upslope, to the south, via Austin Road.</p>	<p>The City accepts that through clearing BAL-29 can be achieved for a primary residence on the southern building envelope. Nevertheless, the southern building envelope does not represent the area with the least risk when taking into account the whole site. The proposed southern building envelope (for the purposes of a vulnerable use) does not meet the intent of Elements 1 or 2 of the bushfire assessment protection criteria of the Guidelines, nor when applying the precautionary principle in relation to ensuring development of the site is located, sited and designed in an area with the least risk to bushfire, to facilitate the protection of people, property and infrastructure. Additionally, it is worth noting that Austin Road is an unconstructed road at that location.</p>



Applicant Justification	Officer Response
<p>Based on the Council’s decision on 16 September 2003 and our client’s proposal, the dwelling and the ancillary dwelling will be single storey. Accordingly, landscape values will be effectively managed. The landscape impact of development on the site in two building envelopes will be less than existing development, approved by the City, on adjoining and nearby development.</p>	<p>Noted. The City acknowledges the applicant has taken into consideration the impact on visual amenity and the environment. The City accepts the justification on this aspect, with further assessment to be undertaken of potential visual impacts on the existing landscape and environment to be undertaken at the time of considering proposals for new buildings. This aspect of the proposal therefore does not form part of the reasons recommending refusal.</p>
<p>The current landowner undertook considerable due diligence with the City, prior to acquiring the property, and was not advised of issues associated with the southern building envelope. The property was advertised by Roy Weston with the southern envelope as a cleared and approved development site, in accordance with the Council decision outlined in Mr Fenn’s letter.</p>	<p>The City provided preliminary advice to the applicant on the split building envelope proposal in January and February 2021. As outlined above, the approval issued in 2003 is noted, however the City’s consideration of development of the site, including within existing approved building envelopes, requires consideration under SPP3.7. The proposal for a vulnerable use constructed in the southern building envelope is not considered to meet the requirements of SPP3.7.</p>
<p>The proposed dwelling, in the southern building envelope, is the most appropriate location to invest in constructing a dwelling. It will have a northern orientation to achieve a solar passive dwelling, it is elevated to obtain breezes and it will enjoy a wonderful outlook.</p>	<p>A northern orientation is still possible on the lower part of the lot.  SPP 3.7 must be given priority over building in an unsuitable location to achieve a view.</p>

DFES Advice

16. The application was referred to DFES for technical advice as part of the assessment of the proposal.
17. The applicant provided an updated BAL report and BMP (attached) to address matters raised by DFES in the initial response.
18. The updated BMP was able to address concerns around the provision of water on site and so this comment has been removed from further advice as discussed below.
19. The updated BAL and BMP were referred to DFES for further comment, with their response and the City’s comments outlined below.

Policy Measure 6.5 a) (i) Preparation of BAL assessment

Issue	Assessment & Action	Officer Comment
Vegetation classification	<p>Evidence to support the exclusion of Plot 3 as managed to low threat in accordance with AS3959 is required.</p> <p>An enforceable mechanism is required to provide certainty that the proposed management measures can be achieved in perpetuity and they are enforceable.</p> <p>If unsubstantiated, the vegetation classification should be revised to consider the vegetation at maturity as per AS3959, or the resultant BAL ratings may be inaccurate.</p> <p><b>Action:</b> Insufficient information. The decision maker to be satisfied with the vegetation exclusions and vegetation management proposed.</p>	<p>The submitted BAL and BMP has been completed by a suitably qualified bushfire practitioner in accordance with AS3959. Therefore, the submitted vegetation classification is considered to be acceptable.</p>
Vegetation Management	<p>DFES does not accept firebreak notices on adjoining land as part of the vegetation management required to achieve an APZ or low-threat classification. Firebreak notices may only apply for part of the year and may be varied from year to year by the responsible local government. The proponent is to provide a performance principle-based solution to achieve the required APZ should the APZ rely on the management of vegetation on adjoining land.</p> <p><b>Action:</b> Modification to the BMP is required.</p>	<p>The submitted BAL and BMP has been completed by a suitably qualified bushfire practitioner in accordance with AS3959. Therefore, the submitted vegetation classification is considered to be acceptable.</p>
Landscape Management Plan	<p>The BMP has identified that a significant amount of Class D Scrub will need to be modified to achieve an APZ compliant with Schedule 1: Standards for Asset Protection Zones contained in the Guidelines.</p> <p>The BMP has noted that an area around the indicative primary dwelling was previously cleared but has now revegetated therefore a Landscape Management Plan should be prepared to remove ambiguity for the landowner and to provide a compliance mechanism for the City if the location is supported.</p> <p><b>Action:</b> Modification to the BMP is required.</p>	<p>The subject proposal is for a split building envelope only.</p> <p>Further development approval, the subject of a future application, will be required to consider construction of buildings on the site. The local government may consider the requirement for preparation of a landscape management plan as part the future development application.</p>

Policy Measure 6.5 c) Compliance with Bushfire Protection Criteria

Issue	Assessment & Action	Officer Comment
<p>Location, and Siting &amp; Design</p>	<p><b>A1.1 &amp; A2.1 – not demonstrated</b></p> <p>The BAL ratings cannot be validated for the reasons outlined in the above table.</p> <p>The development is on a lot that has, and is surrounded by, an extreme hazard that, in the opinion of DFES, cannot be adequately managed. Compliance with the intent of Element 1: Location has not been demonstrated as the proposed primary dwelling is not located in the area with the least possible risk of bushfire to facilitate the protection of people, property and infrastructure.</p> <p>Compliance with the intent of Element 2: Siting and Design has not been demonstrated as the proposed primary dwelling does not minimise the level of bushfire impact. It is recommended that the siting of development be located on flat areas and away from ridge tops, crests or narrow gullies where possible (see Figure 17 of v1.4 of the Guidelines).</p> <p>Although BAL construction standards do not guarantee the survival of the occupants or building, DFES does support the improved bushfire resilience provided by AS 3959-2018 construction standards.</p> <p><b>Action:</b> Modification to the BMP is required. Decision maker to be satisfied.</p>	<p>The City as the decision maker is not satisfied that the proposed location of the southern building envelope at the top of the ridge (for the purposes of a dwelling) is the most suitable location for development, in regards to minimising the threat of bushfire and facilitating the protection of people, property and infrastructure on the site.</p> <p>DFES advice is consistent with the position of the City that the proposed primary dwelling is located in close proximity to an extreme hazard and is not the area on the lot with the least possible risk.</p> <p>The City agrees with the recommendation of DFES that in order to minimise the potential impact on bushfire development should be located away from ridge tops and instead be on flat ground.</p> <p>Given these issues, the City cannot consider the proposed building envelope for the primary residence for approval.</p> <p>The proposed building envelope at the bottom of the hill for the proposed ancillary dwelling and outbuilding is consistent with the DFES advice and can be considered.</p>

Issue	Assessment & Action	Officer Comment
<p>Vehicular Access</p>	<p><b>A3.2 – does not comply</b></p> <p>Access in two different directions to two different destinations, in accordance with the acceptable solution, is not available until the intersection of Frenchman Bay Road and Robinson Road approximately 13 kilometres from the development site. This exceeds the acceptable maximum length of 200 metres for a dead end road.</p> <p><b>Action:</b> Does not comply. Decision maker to be satisfied.</p>	<p>The City is aware that access to two different destinations is not possible for this lot.</p> <p>The development site was zoned for residential purposes prior to the current bushfire policy and guidelines coming into effect. While it is not possible to achieve evacuation to two destinations, the appropriate location, siting and design of any residential use on a site within a bushfire prone area (that is classified as a vulnerable use under SPP3.7) must still be considered.</p> <p>Given that a vulnerable use is proposed to be located in an area of high risk on the lot, the compounded risk in relation to non-compliance with the access requirements, is considered to be unacceptable by the City. The City would be more likely to support a revised proposal whereby all vulnerable uses were located in the area of least risk (on flat ground, away from ridge lines, and close to the property exit), and vehicular access to the site was revised to reflect this.</p>

20. Additional DFES comments:

*It is critical the bushfire management measures within the BMP are refined to ensure they are accurate and can be implemented to reduce the vulnerability of the development to bushfire.*

*The proposed development is not supported for the following reasons:*

1. *The development design does not meet the intent of – Element 1: Location, Element 2: Siting and Design, and Element 3: Vehicular Access.*
2. *The proposed development is not located in the area with the least possible risk of bushfire to facilitate the protection of people, property and infrastructure.*

*If the decision maker is of a mind to approve the proposal, it is critical that the bushfire management measures within a BMP are fully detailed, to ensure they are accurate and can be implemented to reduce the vulnerability of the development. The above assessment of compliance with SPP 3.7 is provided to aid decision making*

Officer Response and Recommendation

21. Under the Rural Residential (RR8) zoning of the land a Single House is a 'P' Permitted use for the land and so a Single House cannot be refused on the lot. As identified elsewhere in this report, Schedule 14 (RR8) of LPS 1 requires prior approval of a nominated building envelope to be obtained from the local government to a maximum area of 3,000m<sup>2</sup>, with all buildings, structures, water storage systems and low fuel zones confined to that designated building envelope.
22. Given the above, were a proposal to be submitted that involved just a new Single House proposed at the top of the hill, a development application would still be required for the approval of the building envelope.
23. As is the case with the current proposal, a proposal that involved siting of a Single House at the top of the hill (even if wholly confined to a single building envelope or an Ancillary Dwelling) would also be recommended for refusal on the basis of its location.
24. In consideration of the proposal, staff have applied the precautionary principle, in accordance with SPP3.7, that involves a conservative approach to decision-making, as the proponent has not satisfactorily demonstrated that the relevant policy measures have been addressed in avoiding or reducing the existing serious threat of bushfire to people, property, and infrastructure within the specific context of the subject site.
25. The proposed development site was zoned for residential purposes (LPS 1 gazetted April 2014) prior to the current bushfire policy and guidelines coming into effect in December 2015. Therefore, the City is required to consider a residential use on this lot.
26. The City is satisfied that a residential use could be effectively managed on this lot with appropriate design principles being met. However, the proposal in its current form, specifically the location of the southern boundary envelope for the purposes of a vulnerable use (dwelling) in this case poses an unnecessary risk that cannot be supported at officer level.
27. Given the above, the recommendation is for refusal of the proposed split building envelope at the subject site.

**GOVERNMENT & PUBLIC CONSULTATION**

28. Agency responses, concerns raised during advertising, staff comment and the proponent's justification for the proposal are summarised and discussed above.
29. The application did not require public advertising in accordance with the applicable requirements of the Planning Regulations.

**STATUTORY IMPLICATIONS**

30. The development site is covered under LPS and is zoned as Rural Residential (RR8).
31. The proposed split building envelope has been nominated by the landowner in accordance with Schedule 14 – RR8 provisions of LPS1.
32. 6.11 – Precautionary Principle of SPP 3.7 has been applied to this application. The precautionary principle is as follows:

*Where a landowner/proponent has not satisfactorily demonstrated that the relevant policy measures have been addressed, responsible decision-makers should apply the precautionary principle to all strategic planning proposals, subdivision and development applications in designated bushfire prone areas. For example, if a landowner/proponent cannot satisfy the performance principles of the relevant policy measures through either the application of the acceptable solutions outlined in the Guidelines, or through the alternative solutions endorsed by the WAPC and State authority/relevant authority responsible for emergency services, the application may not be approved.*

## POLICY IMPLICATIONS

33. No local planning policies apply to this application.

## RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analy	Mitigation
<b>Risk:</b> A decision that results in increased threat of bushfire on people, property and infrastructure may be seen as a misapplication of the provisions of the state and local planning frameworks.	Unlikely	Severe	High	If the application were to be approved as proposed the City would be endorsing a high level of risk to property and life in the case of a bushfire event that does not comply with best practice frameworks. Refusal is recommended as the appropriate level of mitigation

## FINANCIAL IMPLICATIONS

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

## LEGAL IMPLICATIONS

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

## ENVIRONMENTAL CONSIDERATIONS

38. The proposed southern building envelope has been largely cleared by previous owners and would not require any significant further clearing to accommodate a dwelling constructed to BAL-29 in accordance with AS-3959.
39. The northern building envelope will require some smaller trees to be removed but will not require significant clearing to accommodate BAL-29.

## ALTERNATE OPTIONS

40. Council has the following alternate options in relation to this item, including to modify the existing recommendation to:
- Approve the northern building envelope subject to conditions; and
  - Refuse the southern building envelope, as per the current officer recommendation; or
  - Approve the application as submitted, subject to conditions.

If approved, the following matters are to be addressed by conditions or advice notes:

- Suitable Asset Protection Zones to be provided and maintained
- How landscaping will address bushfire issues and fuel load management
- Implementation of the Bushfire Management Plan

**CONCLUSION**

41. The application is proposing a split building envelope with the primary residence at the top of the ridge and ancillary dwelling closer to the property entrance the bottom of the hill.
42. The application for a vulnerable use to be located in the proposed southern building envelope cannot be supported at officer level as it is not located in an area of the site with the least possible risk to the threat of bushfire. The officer’s recommendation for refusal is based on the proposal in its current form does not meet:
  - a. the precautionary principle in relation to a conservative approach to decision-making to minimise the risk of bushfire threat to people, property and infrastructure;
  - b. the objectives of State Planning Policy 3.7, and the provisions in relation to the bushfire protection criteria contained under Appendix Four of the SPP3.7 Guidelines; and
  - c. relevant planning matters to be considered by decision making authorities, including the suitability of the land taking into account the possible risk of bushfire risk and possible risk to human safety.

<b>Consulted References</b>	:	<ul style="list-style-type: none"> <li>• <i>Local Planning Scheme Number 1</i></li> <li>• <i>State Planning Policy 3.7 - Residential Development in Bushfire</i></li> <li>• <i>Prone Areas</i></li> <li>• <i>Residential Development in Bushfire Prone Areas - Guidelines Version 1.4</i></li> </ul>
<b>File Number (Name of Ward)</b>	:	Vancouver Ward
<b>Previous Reference</b>	:	Nil

## DIS317: RUFUS STREET RECONSTRUCTION

<b>Land Description</b>	: Rufus Street, Milpara, Albany
<b>Proponent / Owner</b>	: City of Albany
<b>Business Entity Name</b>	: City of Albany
<b>Attachments</b>	: <b>Commercial in Confidence - Confidential Briefing Note under separate cover.</b>
<b>Report Prepared By</b>	: Civil Infrastructure Contract Manager (A Henderson)
<b>Authorising Officer:</b>	: Executive Director Infrastructure, Development & 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 2032:
  - **Pillar:** Place
  - **Outcomes:** 10: A safe, sustainable and efficient transport network.
  - **Objective:** 10.1: Improve road safety, connectivity and traffic flow.

#### In Brief:

- Tender award for the reconstruction of Rufus Street (SLK 0.00 – 0.62) from Albany Highway to Havoc Road and path construction from Albany Hwy to Adelaide Street.
- Two (2) complying tenders were received, with Tenderer A being the recommended contractor.
- Construction is expected to commence in October 2022 with completion in late March 2023.

### RECOMMENDATION

#### DIS317: AUTHORISING OFFICER RECOMMENDATION

**THAT Council AWARD Contract C22013 – RUFUS STREET RECONSTRUCTION SLK 0.00 – 0.62 to the tenderer recommended by the evaluation panel, as detailed in the Confidential Briefing Note attached to this report.**

### BACKGROUND

2. Rufus Street is a local distributor road providing one of many links between Albany Highway and Chester Pass Road, as well as direct access to many residential properties.
3. The proposed work involves the upgrading of existing open drains to new piped drainage, road surface reconstruction from Albany Highway to Havoc Road and the installation of new kerb and footpath from Albany Highway to Adelaide Street. A major upgrade of the culvert servicing Willyung Creek will also be undertaken which will involve the renewal and realignment of the existing culvert to improve water flows during flood events.
4. Design and specification documentation was prepared by the City of Albany to the stage of 'Issued for Tender'.
5. The tender was open from 27<sup>th</sup> July 2022 to 23<sup>rd</sup> August 2022.



## DISCUSSION

6. A total of twelve (12) tender documents were issued by City of Albany.
7. Two (2) complete tender documents were submitted on or before the stipulated closing date and time.
8. The tenders were evaluated using the weighted attributes methodology. This method scores the evaluation criteria and weights their importance to determine an overall points score for each tender. The criteria are tabled below:

Criteria	% Weighting
Cost	25%
Relevant Experience	20%
Key Personnel Skills and Experience	20%
Demonstrated Understanding	20%
Tenderers Resources	10%
Corporate Social Responsibility	5%
<b>Total</b>	<b>100%</b>

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

Tenderer	Weighted Score
Tenderer A	650.06
Tenderer B	538.27

## GOVERNMENT & PUBLIC CONSULTATION

10. All relevant Government departments including DWER, Main Roads and Water Corporation have been consulted on the project.
11. A request for tenders was published in the West Australian on Wednesday 27<sup>th</sup> July 2022 and the Albany Advertiser on Thursday 28<sup>th</sup> July 2022.

## STATUTORY IMPLICATIONS

12. 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 \$250,000.
13. 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.
14. Regulation 19 of the Regulations requires Council to advise each tenderer in writing the result of Council's decision.

## POLICY IMPLICATIONS

15. Council's Purchasing Policy (Tenders & Quotes) and Buy Local Policy (Regional Price Preference) are applicable to this item.

## 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
<b>People Health and Safety</b> <i>A pedestrian accident occurs due to poor geometry, road condition and lack of dedicated pathway.</i>	<i>Possible</i>	<i>Major</i>	<i>High</i>	<i>Upgrade road and install dedicated pathway as funding is available.</i>
<b>Finance</b> <i>Non-compliance with contract or business failure</i>	<i>Unlikely</i>	<i>Moderate</i>	<i>Medium</i>	<i>Standard general conditions of contract protect the City by allowing for contract termination on the basis of failure to supply goods and services.</i>

## FINANCIAL IMPLICATIONS

17. The value of this tender is in excess of \$500,000 and therefore approval is referred to Council for consideration.
18. More detailed information regarding the financial implications are contained in the Confidential Briefing Note.
19. Funding for this project has been received from Road Projects Grants, Western Australian Bicycle Network Funds, Roads to Recovery, Developer Contributions and municipal funds allocated in the 2022-2023 budget.

## LEGAL IMPLICATIONS

20. There are no legal implications associated with this item.

## ENVIRONMENTAL CONSIDERATIONS

21. The City has submitted a Bed & Banks Permit application and a clearing permit application with the Department of Water and Environmental Regulation. We are expecting these permits to be issued to the City prior to works commencing.
22. Clearing of any vegetation is expected to be minimal with any disturbed vegetation being offset by native riparian vegetation to the creek line or by the planting of street trees.
23. Existing trees and vegetation lining the verge will remain, where possible, as these create a natural buffer to nearby residents.

## ALTERNATE OPTIONS

24. The options are:
- Council may elect to accept the recommended tender; or
  - Not approve any tender.

## CONCLUSION

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

<b>Consulted References</b>	<ul style="list-style-type: none"> <li>Local Government (Functions and General) Regulations 1995</li> <li>Council Policy – Purchasing</li> <li>Council Policy – Buy Local (Regional Price Preference)</li> </ul>
<b>File Number (Name of Ward)</b>	C22013 (West Ward)
<b>Previous Reference</b>	N/A

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