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# MINUTES

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## DEVELOPMENT AND INFRASTRUCTURE SERVICES COMMITTEE MEETING

**Wednesday 15 May 2024**

6.00pm

Council Chambers

The Five Strategic Pillars



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

**Functions:**

This Committee is responsible for:

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

It accomplishes this by:

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

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

**Meeting Schedule:** Monthly Meeting

**Location:** Council Chambers

**Executive Officers:**

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

**Delegated Authority:** None

DEVELOPMENT AND INFRASTRUCTURE SERVICES COMMITTEE  
MINUTES – 15/05/2024

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DEVELOPMENT AND INFRASTRUCTURE SERVICES COMMITTEE  
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1. **DECLARATION OF OPENING** The Chair declared the meeting open at 6.00pm

2. **PRAYER AND ACKNOWLEDGEMENT OF TRADITIONAL LAND OWNERS**

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

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

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

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

Mayor	G Stocks
<b>Councillors:</b>	
Councillor	A Cruse (Chair)
Councillor	R Sutton
Councillor	T Brough
Councillor	M Traill (via Zoom)
Councillor	L MacLaren
Councillor	C McKinley
Councillor	M Lionetti
<b>Staff:</b>	
Chief Executive Officer	A Sharpe
Executive Director Infrastructure, Development & Environment	P Camins
Manager Development Services	J van der Mescht
Manager Operations	D Lawrence
Manager Engineering and Sustainability	R March
Meeting Secretary	P Ruggera
<b>Apologies:</b>	
Deputy Mayor Councillor	P Terry (Apology)
Councillor	S Grimmer (Apology)
Councillor	D Baesjou (Apology)

There were no media representatives, and 5 members of the public were in attendance.

#### 4. DISCLOSURES OF INTEREST

Name	Committee/Report Item Number	Nature of Interest
Councillor Brough	DIS394	<b>Impartiality:</b> The nature of the interest being that Councillor Brough is a member of the Kalgan Volunteer Bush Fire Brigade. Councillor Brough remained in the Chamber and participated in the discussion and vote for this item.
Mr Jan van der Mescht Manager Development Services	DIS395	<b>Impartiality.</b> The nature of the interest being that Jan van der Mescht is an acquaintance of the applicant. Mr Van Der Mescht remained in the Chamber and participated in the discussion for this item.

#### 5. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE Nil

#### 6. PUBLIC QUESTION TIME

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

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

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

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

*Clause 5) The Presiding Member may decide that a public question shall not be responded to where—*

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

**6.03pm Mr George Doubikin, 136 Brunswick Road, Albany**

#### **Summary of key points:**

Mr Doubikin spoke against the Authorising Officer Recommendation for Report DIS395: Holiday Accommodation – 6 Bridges Street, Albany.

**6.06pm Michael Pemberton, 9A Shorts Place Mira Mar**

**Summary of key points:**

Mr Pemberton spoke against the Authorised Officer Recommendation DIS392: Draft Council Policy: Trading In Public Places.

Mr Pemberton's tabled address is detailed in Appendix A. The following questions by Mr Pemberton were taken on notice.

- *Are conditions different between Monday to Friday and Saturday/Sunday? Time, position etc?*
- *Can food vans trade after regular business (brick and mortar) opens. Do they have to move to another place?*
- *If the sandwich bar opens Saturday and Sunday what happens to the food van operating nearby the Town Hall?*
- *Can someone set up a market in the Centrelink Carpark on Saturday and Sunday?*
- *How often and who checks compliance for food vans and traders in public places?*
- *Who is responsible for matters of personal and food hygiene, is someone available for late night traders?*
- *What are the time limits for the CBD? Does that vary for local food vans as opposed to itinerant food vans?*
- *What is the definition of a public place?*

**6.16 pm James McLean, 14 Miramar Road, Mira Mar**

**Summary of key points:**

Mr McLean, as the proponent, spoke in support of the Authorising Officer Recommendation – DIS395: Holiday Accommodation – 6 Bridges Street, Albany.

**7. PETITIONS AND DEPUTATIONS - Nil**

**8. CONFIRMATION OF MINUTES**

**RESOLUTION**

**MOVED: COUNCILLOR BROUGH**

**SECONDED: COUNCILLOR MCKINLEY**

**THAT the minutes of the Development and Infrastructure Services Committee meeting held on 13 March 2024 as previously distributed, be CONFIRMED as a true and accurate record of proceedings.**

**CARRIED 8-0**

There was no DIS Committee meeting held in April 2024 due to there being no items.

**9. PRESENTATIONS - Nil**

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

## **DIS392: DRAFT COUNCIL POLICY: TRADING IN PUBLIC PLACES**

<b>Land Description</b>	: City of Albany
<b>Proponent / Owner</b>	: City of Albany
<b>Business Entity Name</b>	: City of Albany
<b>Attachments</b>	: Draft City of Albany Policy: Trading in Public Places
<b>Supplementary Information &amp; Councillor Workstation</b>	: <ul style="list-style-type: none"><li>• DIS375 Agenda and Minutes OCM - December 2023</li><li>• Copies of submissions</li><li>• City of Albany Public Places Policy</li><li>• Activities on Thoroughfares and Public Places and Trading Local Law 2011</li><li>• Local Government Property Local Law 2011</li></ul>
<b>Report Prepared By</b>	: Senior Planning Officer (D Ashboth)
<b>Authorising Officer:</b>	: Executive Director Infrastructure, Development & Environment (P Camins)

### **STRATEGIC IMPLICATIONS**

1. This item relates to the following elements of the City of Albany Strategic Community Plan 2032:
  - **Pillar:** Place
  - **Outcomes:** Interesting, vibrant and welcoming places.
  - **Pillar:** Prosperity
  - **Outcomes:** A strong, diverse and resilient economy with work opportunities for everyone.

#### **In Brief:**

- Draft *Council Policy: Trading in Public Places* was advertised for public comment, following Council's endorsement to advertise at the December 2023 OCM.
- Concerns raised during the consultation period primarily relate to the impact of food vans on bricks and mortar businesses.
- Some general and administrative modifications are proposed to draft Trading in Public Places Council Policy, informed by submissions received and enquiries received by Officers.
- Staff recommend Council resolve to adopt the final draft (Attachment 1) with modifications.

### **RECOMMENDATION**

#### **DIS392: COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR BROUGH**

**SECONDED: MAYOR STOCKS**

**THAT the Authorising Officer Recommendation be ADOPTED**

**CARRIED 8-0**

#### **DIS392: AUTHORISING OFFICER RECOMMENDATION**

**THAT Council Policy - Trading in Public Places be ADOPTED.**



## **BACKGROUND**

2. Draft *Council Policy: Trading in Public Places* was endorsed for advertising by Council at its December 2023 OCM.
3. The Trading in Public Places Policy provides direction to City staff in the processing of enquiries and permit applications for trading in public places under the “*Activities on Thoroughfares and Public Places and Trading Local Law 2011*” and the “*Local Government Property Local Law 2011*”.
4. The policy also provides a clear set of controls for operators to trade under.
5. Refer to previous report item (DIS375) for further information and background on the draft policy.

## **DISCUSSION**

### Response to submissions

6. Draft Council Policy: *Trading in Public Places* was advertised for public comment throughout January and February 2024 via an advert in a local paper and was published on the City’s website.
7. Two (2) submissions on the Policy were received during the advertising period (refer Councillor workstation) which both broadly relate to the impact of food vans on existing bricks and mortar hospitality operations.
8. Both submissions raised concern with the implications of permitting food vans on private property and noted the provisions contained within this policy do not apply to private land.
9. In this respect, the City has updated the policy scope to remove reference to private property, given the City is only able to issue permits for the activities on public land under the *Activities on Thoroughfares and Public Places and Trading Local Law 2011* and the *Local Government Property Local Law 2011*.
10. Any application to trade on private land will need to be considered under the *Planning and Development Act 2005*. Officers are exploring the creation of a Local Planning Policy and other measures to offer direction, set standards for development, and possibly grant exceptions for food trucks and similar ventures on private premises.
11. One of the submissions states that the requirement for itinerant traders to be located a minimum of 200 metres away (previously 150m) from any shop or other permit holder, offering a similar product for sale remains inadequate.
12. In response officers are of the opinion that the small increase to 200m strikes the correct balance between encouraging entrepreneurship and start-up businesses whilst minimising impacts to existing bricks and mortar establishments.
13. This Policy does not seek to remove all competition to existing bricks businesses however, the minor increase in distance to 200m was considered to be warranted due to noted impacts of food vans on established businesses recently.
14. Both responses raised concern with monitoring compliance with this requirement and associated permit conditions.
15. In response to question over compliance, the City will undertake compliance matters as per the City of Albany Regulatory Compliance Policy. The City has the ability to cancel permits at any time it sees fit and will also take compliance with permit conditions into consideration when determining whether to renew and existing permit.
16. Given the above, it is therefore not considered that any changes to the draft Trading in Public Places Policy is required to address concerns raised during the advertising process.
17. However, the preparation of a Local Planning Policy to guide the assessment of mobile traders on private land is being considered to provide policy guidance on this increasingly prominent matter.

Non-food operators

18. In recent times, the number of enquiries relating to the use of public land for non-food operators (retail, services etc.) has increased significantly, perhaps due to the increased cost of living and an associated desire to minimise expenses.
19. The advertised version of the draft *Trading in Public Places Policy* and the existing version of this policy only assign only one fixed location to non-food operators which is at Middleton Beach and currently occupied by Albany Bicycle Hire.
20. Following this influx of enquiries relating to non-food operators, it is proposed to include a provision within the *Trading in Public Places Policy* that states '*aside from the above-mentioned location, applications for non-food itinerant traders will generally not be supported on public land.*'
21. This is due to the fact that non-food operators do not generally activate public places nor bring vibrancy or excitement to these areas in the same manner as food trucks. This is particularly the case for retail offerings and services such as massages or saunas etc.
22. Food vans are also generally not situated in one location for any significant time period, and generally come and go between lunch and dinner services.
23. It is also considered that bricks and mortar hospitality businesses are capable of offering a unique experience to separate themselves from food trucks through things such as table service, comfortable environment and an ability to make reservations however, this is generally not the case with many non-food offerings who are seeking to provide the same offering or service as bricks and mortar businesses, without the associated costs.
24. It is also much simpler for non-food offerings to piggy-back off existing businesses through things such as product placement at retail stores or partnering with similar businesses to reduce cost (e.g. a masseuse at a gym).
25. Any approval for a retail or service offering on public land would also set an undesirable precedent and is unlikely to be as palatable to the community as allowing a custom designed food van to activate an underutilized public place during mealtimes.
26. It is therefore considered that most non-food offerings do not provide the same community benefit as food vans and a policy position should be provided to clarify the matter and assist officers in responding to ever increasing number of questions on the issue.
27. That being said, officers consider it important to ensure the City does not inadvertently restrict the ability for exceptional non-food offerings providing substantial community benefit to apply for a permit to trade on public land.
28. It is therefore recommended that the following provisions is included to allow these offerings to be considered '*Notwithstanding the above, exceptional non-food offerings which can demonstrate they achieve the relevant criteria of this policy may be supported, at the discretion of the City.*'
29. An advice note has also been included to accompany the above provision stating that a resolution of council may be required in these circumstances. This is due to the complexity and uniqueness common to many of these non-food offerings and associated enquiries.

Other changes

30. The following text has also been added to the Special Conditions attached to the Chipana Drive Public Carpark '*Trader to park outside of area demarcated for vehicle and boat manoeuvring.*'
31. This has been added due to concerns that an inappropriately parked vehicle could impact the area required for vehicle and boat manoeuvrability.
32. However, there is still considered sufficient room for a food van or similar vehicle to park in the reserve, if located outside of the marked vehicle manoeuvring area.

### Other matters

33. There are other matters that relate to permits on public and private land, specifically the use of hiring of e-rideables and mobile vendors on private land. Given the complex nature of these, staff are continuing to investigate suitable regulatory mechanisms, such as preparation of separate Council and local planning policies.

### **GOVERNMENT & PUBLIC CONSULTATION**

34. The draft policy was advertised for public comment in accordance with the following:

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Consult	Notice in Local Paper	23/01/2024 – 20/02/2024	Open	No
Consult	Public comment – City website	23/01/2024 – 20/02/2024		No

35. Following the close of advertising two (2) public submissions were received; both suggesting the changes to the Trading in Public Places Council Policy were not sufficient to mitigate impacts on existing bricks and mortar businesses.

### **STATUTORY IMPLICATIONS**

36. There are no statutory implications related to adopting the amended Trading in Public Places Policy.
37. Voting requirement for this item is **Simple Majority**.

### **POLICY IMPLICATIONS**

38. The proposed updates to the Trading in Public Places aims to provide clarification and guidance to the existing regulatory framework for use of public places, taking into account community interest, and in accordance with the applicable local laws.
39. The revised policy will replace the previous version upon formal adoption.
40. The existing Trading in Public Places Policy will be revoked via a notice of revocation published on the City of Albany website.

### **RISK IDENTIFICATION & MITIGATION**

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Operational</b> <i>The amended policy is not adopted resulting in the continued use of an existing policy that is no longer considered fit for purpose.</i>	<i>Almost Certain</i>	<i>Minor</i>	<i>High</i>	<i>Staff work with Council to develop a policy which is fit for purpose.</i>
<b>Opportunity:</b> <i>Reduce conflict between street traders and bricks and mortar businesses. Ensure the use of public places for commercial purposes is consistent with community interest.</i>				

### **FINANCIAL IMPLICATIONS**

42. The policy clarifies the ability of Council to set fixed location site hire fees annually through the budget process and also to set different fees depending on the location/desirability of the site.

### **LEGAL IMPLICATIONS**

43. There are no legal implications relating to adopting the revised policy.

## **ENVIRONMENTAL CONSIDERATIONS**

44. There are no environmental implications relating to adopting revised policy.

## **ALTERNATE OPTIONS**

45. Council has the following alternate options in relation to this item, which are:

- To resolve to proceed with the policy subject to modification; or
- To resolve to proceed with the policy without modification; or
- To resolve not to proceed with the policy.

## **CONCLUSION**

46. The Trading in Public Places Policy has been amended and refined to better address the common issues which arise from informal trading operations and the implementation of the existing policy.
47. The Trading in Public Places was advertised for public comment, following Council's endorsement to advertise at the December 2023 OCM.
48. Some general and administrative modifications are proposed to draft Trading in Public Places Council Policy, informed by submissions received and enquires received by Officers.
49. Council is requested to adopt the amended Trading in Public Places Council Policy.

<b>Consulted References</b>	:	1. <i>Local Government Act 1995</i> 2. <i>Activities on thoroughfares and Public Places and Trading Local Law 2011</i> 3. <i>Local Government Property Local Law 2011.</i>
<b>File Number</b>	:	LP.POL.2
<b>Previous Reference</b>	:	OCM 19/12/2023 DIS375

## DIS395: HOLIDAY ACCOMMODATION – 6 BRIDGES STREET, ALBANY

<b>Land Description</b>	: Lot 201, 6 Bridges Street, Albany WA 6330
<b>Proponent / Owner</b>	: J McLean & A Galante
<b>Attachments</b>	: 1. Plans 2. Management Plan 3. Schedule of submissions 4. Heritage Advisor comments
<b>Supplementary Information &amp; Councillor Workstation</b>	: Public submissions (in full)
<b>Report Prepared By</b>	: Senior Planning Officer (J Anderson)
<b>Authorising Officer:</b>	: Executive Director Infrastructure, Development and Environment (P Camins)

*In accordance with Section 3.2(3) of the City of Albany Standing Orders Local Law 2014, Council will consider this report as the second order of business.*

Manager of Development Services Mr Jan van der Mescht declared an Impartiality Interest in this item. Mr van der Mescht remained in the Chamber and participated in the discussion.

### STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. In making a decision on the proposed amendment, the Council is obliged to draw conclusion from its adopted City of Albany *Local Planning Strategy 2019* and City of Albany *Strategic Community Plan 2032*.
3. This item relates to the following elements of the City of Albany Strategic Community Plan:
  - **Pillar:** People
  - **Outcome:** Plan a compact city with diverse land, housing and development opportunities.
  - **Pillar:** Place
  - **Outcome:** Responsible growth, development and urban renewal.
  - **Pillar:** Leadership.
  - **Outcome:** A well-informed and engaged community.

**Maps and Diagrams:** 6 (Lot 201) Bridges Street, Albany



**In Brief:**

- Council is being asked to consider an application for Holiday Accommodation at No. 6 (Lot 201) Bridges Street, Albany.
- The application for the Holiday Accommodation underwent a 14-day advertising period due to its designation as a 'D' use under the Zoning Table of the City of Albany Local Planning Scheme No. 2 (LPS2).
- During the advertising period, 9 responses were received: 5 in support, 1 in support of the land use but with concerns about the design, and 3 objections. Relevant matters raised during this period have been considered as part of the City's assessment.
- Following the conclusion of the advertising, the proponent submitted a detailed response and an updated management plan to address raised concerns.
- The application is presented to Council for determination due to concerns raised during advertising and an advice note included in a previous resolution (DIS308, July 2022) regarding a development proposal at the subject site.
  - *Advice Note: Notwithstanding exempted development provisions, any proposal for future development on the site associated with the treehouse, is subject to further consideration by Council.*
- Council is requested to consider whether the Holiday Accommodation use is acceptable for the site in the Residential Zone, and whether the variations to the Albany Historic Town Design Policy are consistent with its objectives, considering potential impacts on neighbouring properties and submissions received during advertising.

**RECOMMENDATION**

**DIS395: COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR SUTTON**

**SECONDED: COUNCILLOR MACLAREN**

**THAT the Authorising Officer Recommendation be adopted.**

**CARRIED 8-0**

**DIS395: AUTHORISING OFFICER RECOMMENDATION**

THAT Council resolves to ISSUE a notice of determination granting development approval with conditions for Holiday Accommodation at Lot 201, 6 Bridges Street, Albany.

1. All development shall occur in accordance with the stamped, approved plans referenced P2230514, being signed and dated by a designated Authorised Person, unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.
2. If the development, the subject of this approval, is not substantially commenced within a period of 2 years from the date of approval, the approval shall lapse and be of no further effect.
3. The operation of the Holiday Accommodation shall be in accordance with the approved management plan, which shall be reviewed and updated at the time of any change of ownership or management.
4. A minimum of six (6) parking spaces (2 for each chalet) shall be provided and maintained in good repair, to the satisfaction of the City of Albany.
5. The development hereby approved shall be constructed in accordance with National Construction Code (NCC) requirements for 'Construction in Bushfire Prone Areas'.  
*Advice: To ensure compliance with condition 6, the development hereby approved shall be constructed in accordance with the construction requirements for Chalet 1 & 2 BAL-12.5, Chalet 3 BAL-19, as per the "AS 3959 Bushfire Attack Level (BAL) Bushfire Management Plan" dated 12/12/2023 by Ecosystem Solutions.*

6. The measures and actions identified in the Bushfire Management Plan and Bushfire Emergency Evacuation Plan dated 12 December 2023 shall be implemented and maintained in perpetuity, to the satisfaction of the City of Albany.
7. The Holiday Accommodation hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust.
8. Prior to the commencement of development, a Stormwater Management Plan shall be submitted to the City of Albany for approval. Prior to final occupancy of the development, the approved Stormwater Management Plan shall be implemented, completed and maintained thereafter, to the satisfaction of the City of Albany.  
*Advice:*
  - *The Stormwater Management Plan shall be consistent with the City of Albany's Subdivision and Development Guidelines.*
  - *Soil capability testing (permeability and soil profile) will be required to determine if soakwell infiltration is the appropriate method of disposal for the site.*
  - *The plan is to consider overland flows in relation to the development and adjacent properties.*
9. Prior to occupation, car parking spaces and manoeuvring areas shall be designed, constructed and maintained in perpetuity in accordance with Australian Standard 2890, to the satisfaction of the City of Albany.
10. Prior to occupation, new crossover/s shall be constructed to the specifications, levels and satisfaction of the City of Albany.  
*Advice:*
  - *A 'Permit for Vehicle Crossover Construction' from the City of Albany is required prior to any work being carried out within the road reserve.*
  - *The crossover from the street to the property over the stone drain will need to be constructed in a way that acknowledges the heritage significance of these drains located throughout the town centre and in such a way that will have no adverse impact on the historic form, fabric and function of this drain.*
11. Sign(s) shall not be erected on the lot without the prior approval of the City of Albany.  
*Advice :*
  - *Please refer to the City of Albany Local Planning Policy – Signs for further information.*

## BACKGROUND

1. Site details:

<b>Local Planning Scheme</b>	City of Albany Local Planning Scheme No. 2
<b>Zone</b>	Residential R30
<b>LPS2 Use Class &amp; Permissibility (Table 3)</b>	Holiday Accommodation – D
<b>Lot Size:</b>	Site area 984m <sup>2</sup>
<b>Existing Land Use:</b>	Vacant
<b>Bushfire Prone Area:</b>	Yes
<b>Local Planning Policies:</b>	Albany Historic Town Design Policy Holiday Accommodation

2. The subject site is surrounded by land zoned Residential to the north, east, south, and west. The Residential zone extends west to Spencer and Aberdeen Streets, where it meets the boundary of the Regional Centre and Regional Centre Mixed Use Zones of the Albany CBD. It extends east and north to the boundary of the Corndarup / Mt Clarence reserve (Parks and Recreation Reserve).
3. South of Stirling Terrace and Brunswick Road is a mixture of land use zones, including Lawley Park (Parks and Recreation Reserve), Rail Reserve, Port Industry, and the Waterfront development.

4. Bridges Street is located at the base of the southern face of Corndarup / Mt Clarence and within the central historic town precinct, approximately 600m east of the CBD.
5. Bridges Street is separated into two sections – the subject site is located towards the northern end of the southern section, which is a no-through road ending in a cul-de-sac, accessed via Brunswick Road/Stirling Terrace at the southern end.
6. References to Bridges Street throughout the remainder of the report relate to the southern section where the subject site is located.
7. Bridges Street is approximately 9m wide, consists of a moderate downwards slope from the top of the cul-de-sac towards Brunswick Road/Stirling Terrace, and incorporates historic open stone drains that extend either side for most of its length (approximately 90m).
8. Bridges Street is residential in character, with the streetscape generally informed by being located within the Albany Historic Town Precinct, the area's topography, and the short length of the street, plus long-term vacant sites situated at the northern eastern end (including the subject site).
9. Notable features include the open stone drains on both sides of Bridges Street, wide footpath, and street trees.
10. Eight properties have direct frontage to Bridges Street, six of which consist of single dwellings. An additional five lots have access via a private lane accessed from the western side of Bridges Street. Bridges Street is considered to have low traffic volumes as it is a cul-de-sac that services up to 13 lots.
11. Existing dwellings fronting Bridges Street consist of varying historic or more recent architecture styles, with individual sites following the slope by gradually stepping downwards towards Brunswick Road/Stirling Terrace.
12. Existing dwellings have been constructed either at grade with or lower than the road, sometimes utilizing retaining walls or otherwise brick build up.
13. The primary frontage of the dwellings at the southern end face of Bridges Street face Stirling Terrace / Brunswick Road, with their secondary street frontages facing Bridges Street, with dwelling frontages onto Bridges Street generally consisting of open garden areas, with minimal or open style front fencing, and/or mature vegetation.

## **DISCUSSION**

14. When evaluating whether to approve the site for Holiday Accommodation, Council will carefully assess if the development is acceptable within the Residential Zone. This evaluation will take into account factors such as:
  - Submissions received during advertising; and
  - The objectives of the Residential Zone under LPS2 and the objectives of the Albany Historic Town Design Policy.
15. As outlined above, the site is proposed to be used for Holiday Accommodation which includes three "A" frame chalets for the purpose of short stay accommodation.
16. Each chalet is self-contained, has a floor area of 99m<sup>2</sup> and has provision for 2 car parking bays.
17. A Management Plan has been included in the proposal, outlining rules regarding the utilization of the existing tree house on the premises. It specifies that only guests staying in the chalets are permitted to use the tree house.
18. The subject site falls within the Albany Historic Town Design Policy area and is seeking variations to the maximum 8m ridge height permitted under the policy, as well as a variation to the roof pitch.
19. Under the Albany Historic Town Design Policy, the maximum ridge height permitted is 8m, while the roof pitch should be between 25 – 40 degrees.
20. The proposed ridge heights for the chalets are 8.94m (Chalet 1), 9.24m (Chalet 2) and 8.54m (Chalet 3).



21. The proposed roof pitch proposed is 60 degrees.
22. The proposal was referred to surrounding landowners, notice placed on the City of Albany website and referred to the City of Albany Heritage Advisor for comment.
23. During the submission period, the proposal attracted 9 submissions. Of the submissions, there were 5 submissions supportive of the proposal, 1 submission supportive of the use however objecting to the design, and 3 objections in relation to the design or land use.
24. In response to a request raised during the advertising, the proponent has amended the colour scheme to Woodland Grey and provided an overshadowing plan in response to concerns regarding overshadowing.

#### Public Consultation

25. The public consultation undertaken for the Holiday Accommodation use and policy variations at the subject site is discussed in detail below.
26. The Holiday Accommodation use is designated as a 'D' use under the Zoning Table of LPS2. Although not specifically required to be advertised, surrounding landowners were notified directly by mail. Due to the policy variations a notice was also published on the City of Albany website.
27. The submission period was open for a period of 14 days (31/01/2024 – 14/01/2024).
28. During the advertising period, a total of 9 submissions were received, categorized as follows:
  - a) 5 submissions supported the proposal.
  - b) 1 submission supported the land use but expressed concerns regarding the design.
  - c) 3 submissions objected to the land use and policy variations.
29. Relevant matters raised during the advertising period have been considered as part of the City's assessment.
30. A summary of key matters raised in objection is provided below and also a schedule of submissions has been prepared, refer Attachment 3 to this report.
31. Key matters raised as part of submissions received in objection of the proposal are included the following:
  - a) Land Use - Holiday Accommodation is not appropriate in Residential zone.
  - b) Design inconsistent with Albany Historic Town Design Policy
  - c) Overshadowing
  - d) Privacy from Chalet 3 landing
  - e) Stormwater concerns

#### Land use

32. A concern was raised that the proposed Holiday Accommodation land use was inappropriate within the Residential zone.

#### Officer Comment – Inappropriate land use

33. Holiday Accommodation is a 'D' use under the Zoning Table of LPS2, therefore means "that the use is not permitted unless the local government has exercised its discretion by granting development approval".
34. Holiday Accommodation is a common land use in the Residential zone and is generally regarded as appropriate when managed effectively. Furthermore, the site is in the preferred areas specified in the Local Planning Policy for Holiday Accommodation.
35. The applicant has submitted a Management Plan which satisfactorily addresses the ongoing management of the development. Furthermore, a standard planning condition is generally applied to Holiday Accommodation to ensure ongoing compliance with the Management Plan is achieved.

Design inconsistent with Albany Historic Town Design Policy

36. Design inconsistent with the Albany Historic Town Design Policy was a concern consistently raised within the submissions against the proposal. Concerns raised in relation to the policy relate specifically to the following and are discussed in detail below:
- a) Bulk and scale - “A” frame design is inconsistent and incompatible with the established streetscape and area.
  - b) The proposed roof form and pitch does not meet the criteria within the policy.
  - c) The proposed height does not meet the criteria within the policy, resulting in loss of views of significance and devaluing property value.

Officer comment: Design inconsistent with Albany Historic Town Design Policy

37. It is noted that there are a number of policy variations, which are discussed in detail below.
38. Bulk and Scale; The relevant provisions with the policy are as follows;
- a) New residences to be articulated to break down their perceived bulk and establish a scale appropriate to establish a scale appropriate to existing residences in the locality when seen from the street.
  - b) New residences shall not visually dominate, compete with or be incompatible with the form and scale of existing buildings in the street
  - c) Where development is adjoining a lot that contains a heritage listed building, the development should harmonise with the heritage building in relation to its basic shape, scale and mass, street presentation and alignment, roof pitch and materials, vertical door and window elements and wall finishes.
39. Roof Forms and Pitch; The relevant provisions within the policy are as follows;
- a) Roofs shall be articulated to ensure that the scale of individual roof elements is comparable with the scale of existing roofs in the locality.
  - b) Gabled or hipped roofs are encouraged wherever possible and their pitch shall be between 25 and 40 degrees.
40. The proposed pitch is 60 degrees, to accommodate a second floor within the “A” frame design, exceeding the permitted 25 and 40 degrees.
41. Building Height; In relation to height, the acceptable criteria within the policy is 8m to height of gable. The proposed chalet heights are 6.94m, however when measured from the natural ground due to the slope of the lot level a small portion of the chalets are as follows:
- Chalet 1 (8.94m)
  - Chalet 2 (9.24m)
  - Chalet 3 (8.54m)
42. The policy includes Performance Criteria that enables Council to assess building heights exceeding the standard under certain conditions.
43. To substantiate the request for height variations, the applicant has submitted a streetscape plan incorporating photomontage image illustrating the proposed development within the context of neighbouring buildings, along with a photomontage depicting the view from the waterfront looking up the hill.
44. While there are minor sections exceeding the maximum 8m height as per the policy, these instances are balanced out by areas falling below the maximum height.
45. Additionally, the applicant has provided streetscape views showing that the performance criteria can be satisfied. It's worth mentioning that the proposed heights are lower than the allowable heights within the Residential Design Codes, which permit a ridge height of up to 10m. The deviation in height is deemed minor and acceptable in this case.
46. The Albany Historic Town Design Policy objectives are as follows;
- a) Ensure that new residential development compliments the townscape character and residential streetscapes of central Albany.

- b) Ensure that new residences are articulated to break down their perceived bulk relative to the character and scale of adjoining buildings.
  - c) Retain the character of open streetscapes and landscaped breaks between buildings.
  - d) Ensure that new development responds sympathetically to the natural topography and local climatic conditions.
  - e) Ensure that alterations and additions are sympathetic to existing dwellings.
  - f) Encourage a diversity of housing stock to meet changing community needs.
47. The proposal was forwarded to the Heritage Advisor for assessment regarding its compliance with the Albany Historic Town Design Policy and other relevant policy areas nearby, specifically 14 and 16 Bridges Street. While the complete comments are provided in attachment 4, a brief summary is outlined below:
- The proposed units will unlikely pose physical or other adverse impacts on 14 and 16 Bridges Street, both of which are included on the City's Local Heritage Survey.
  - The crossover from the street to the property over the stone drain will need to be constructed in a way that acknowledges the heritage significance of these drains located throughout the town centre, and in such a way that will have no adverse impact on the historic form, fabric and function of this drain.
  - Although the design and aesthetic of the proposed units are very different to the existing surrounding built form in the immediate area – and the Policy area more generally - and will be visible from various points within the precinct areas, they would unlikely adversely or negatively disrupt the townscape character to an unacceptable level nor present as unsympathetic.
  - The development could be said to respond to several of the objectives and other requirements of the Policy:
  - They provide a diversity of housing stock into the historic town.
  - They will be clearly recognised as new elements.
  - Being designed as separate accommodation units and with slight variations in orientation on the Lot, disperses their bulk and form across the Lot, as does the tapering roof form.
  - The development maintains a sense of an open streetscape and landscaped breaks.
  - The roofs are essentially a gable form and do allow some articulation with the inclusion of the dormer windows.
  - The development responds to the topography of Bridges Street specifically but also the historic town area more broadly.
48. In terms of the policy variations, it is considered that the photomontage satisfactorily demonstrates that the bulk, scale and height are unlikely to detrimentally impact the surrounding area, and the variations are minor in nature.
49. Staff have formed the view that the objectives of the policy listed above have been achieved, therefore the policy variations are acceptable in context of the site.
50. In relation to the concern with decreased property values due to the height, property values are not within the matters to be considered under clause 67 of the Planning Regulations; and therefore are not a valid planning consideration.

### Privacy

51. A concern was raised in relation to privacy being impacted, specifically from the landing of Chalet 3 due to the elevation above NGL.
52. In accordance with 5.4.1 (Visual privacy) of the R-Codes, the required 7.5m privacy setback only applies to major openings and outdoor active habitable spaces, therefore the privacy element of the R-Codes does not apply in this instance. Nevertheless, the proposed 6.9m setback to the landing is considered an acceptable separation in this instance.

### Overshadowing

53. Concerns were raised that the development would overshadow adjoining lots.
54. In response to this concern, the applicant provided an overshadowing plan which demonstrates compliance with 5.4.2 (Solar Access for adjoining sites) of the Residential Design Codes.

### Stormwater

55. Concerns have been raised regarding the management of stormwater. To address this, stormwater management plans will be mandated as a condition for approval. These plans must be implemented during the building stage.

## **GOVERNMENT & PUBLIC CONSULTATION**

56. The proposal was advertised to nearby landowners of the site for a period of 14 days via direct mail out. A notice was also placed on the City of Albany website for the same time period.

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Consult	Mail Out	31/01/2024 – 14/01/2024	9 submissions received	Yes, policy variation
Consult	Public Comment – City of Albany website	31/01/2024 – 14/01/2024		

57. Concerns raised during advertising, staff comment and the proponent's justification for the proposal are summarised and discussed above.
58. Because of the possible heritage value of the stone drain and concerns regarding the design's impact on the area's character for not aligning with the Albany Historic Town Design Policy, the proposal was forwarded to the City of Albany Heritage Advisor following standard procedure.
59. The comprehensive comments are available in Attachment 4 and have been previously discussed; however, in brief, the Heritage Advisor has no objections to the proposal in its current state.
60. The proposal was referred to internal departments for consideration and comment, including Environmental Health, Building and Engineering. Comments will be incorporated as standard planning conditions.

## **STATUTORY IMPLICATIONS**

61. Holiday Accommodation is a 'D' use under the Zoning Table of LPS2, therefore means "that the use is not permitted unless the local government has exercised its discretion by granting development approval".
62. Voting requirement for this item is **Simple Majority**

## **POLICY IMPLICATIONS**

63. The subject site falls within the City of Albany – Albany Historic Town Design Policy area, and the proposed use falls within the scope of the Holiday Accommodation Policy.
64. The site falls within the preferred areas for Holiday Accommodation and is compliant with the City of Albany Holiday Accommodation policy.
65. Compliance with the Albany Historic Town Design Policy is discussed above.

## RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Reputation</b> <i>The approval may have negative impacts on the amenity, character, and heritage of the area.</i>	Unlikely	Moderate	Low	<i>The application has been assessed against the relevant statutory framework. Potential impacts from the development can be mitigated through identified measures.</i>
<b>Opportunity:</b> <i>The proposal has the potential to promote the growth of tourism activities within designated preferred areas.</i>				

## FINANCIAL IMPLICATIONS

67. All costs associated with the development will be borne by the proponent.
68. If the proponents disagree with the Council's decision and decide to seek a review through the State Administrative Tribunal, the city may be responsible for covering the costs associated with defending the decision during this process.

## LEGAL IMPLICATIONS

69. Council has the discretion to either approve or reject the proposal. If an applicant disagrees with a decision or condition, they can request a review by the State Administrative Tribunal, as outlined in Section 252 of the Planning and Development Act 2005.

## ENVIRONMENTAL CONSIDERATIONS

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

## ALTERNATE OPTIONS

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

## CONCLUSION

72. Based on the above discussion, the authorising officer's recommendation is that Council approve the proposal for Holiday Accommodation and policy variations, subject to conditions.

<b>Consulted References</b>	:	<ul style="list-style-type: none"> <li>▪ <i>Local Planning Scheme No. 2</i></li> <li>▪ <i>Planning and Development (Local Planning Schemes) Regulations 2015</i></li> <li>▪ <i>Albany Historic Town Design Policy</i></li> <li>• <i>Holiday Accommodation Policy</i></li> <li>• <i>Residential Design Codes Volume 1</i></li> </ul>
<b>File Number</b>	:	A156891
<b>Previous Reference</b>	:	DIS308 - Recreation-Private (Treehouse) - July 2022 OCM

**DIS393: BUDGET AMENDMENT REQUEST – ROADS AND DRAINAGE  
SUB PROGRAM AND ELLEN COVE SWIMMING ENCLOSURE  
MAINTENANCE**

**Proponent / Owner** : City of Albany  
**Attachments** : **Commercial in Confidence - Confidential Briefing Note**  
**Report Prepared By** : Manager Operations (D Lawrence)  
Manager Engineering and Sustainability (R March)  
**Authorising Officer:** : Executive Director Infrastructure, Development &  
Environment (P Camins)

**CONFIDENTIAL ATTACHMENT**

*It was recommended that if discussion was required in regards to details contained within the Confidential Attachment, that the matters be discussed behind closed doors, in accordance with section 5.23(2)(c) & (e)(ii) of the Local Government Act 1995, being: a contract which may be entered into and information that has commercial value.*

**STRATEGIC IMPLICATIONS**

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
  - **Pillar:** Place
  - **Outcome:** A safe, sustainable and efficient transport network.
  - **Objective:** Improve road safety, connectivity and traffic flow.
  - **Outcome:** Interesting, vibrant and welcoming places
  - **Objective:** Create vibrant, attractive and welcoming towns and activity centres.

**In Brief:**

- This is an additional budget review outside the normal budget review process.
- The review covers budget reallocation from the Roads and Drainage sub-programs to cover underspends and overspends for projects this financial year (2023/2024).
- The review also covers budget reallocation to cover an overspend on the Ellen Cove Swimming Enclosure Maintenance works.

**RECOMMENDATION**

**DIS393: COMMITTEE RECOMMENDATION 1**

**MOVED: COUNCILLOR MCKINLEY**

**SECONDED: COUNCILLOR BROUGH**

**THAT the Authorising Officer Recommendation 1 be ADOPTED.**

**CARRIED 8-0**

**DIS393: COMMITTEE RECOMMENDATION 2**

**MOVED: MAYOR STOCKS**

**SECONDED: COUNCILLOR MCKINLEY**

**THAT the Authorising Officer Recommendation 2 be ADOPTED.**

**CARRIED 8-0**

7.10pm The meeting was re-opened to members of the public.

**DIS393: RESOLUTION**

**MOVED: MAYOR STOCKS**

**SECONDED: COUNCILLOR BROUGH**

**That the meeting be reopened to the public.**

**CARRIED 8-0**

6.52pm the meeting was closed to the public.

**DIS393: RESOLUTION**

**MOVED: MAYOR STOCKS**

**SECONDED: COUNCILLOR MCKINLEY**

**THAT in accordance with 4.1 of the City of Albany Standing Orders Local Law the meeting be closed to the public to discuss Report Item DIS393: Budget Amendment Request-Roads and Drainage Sub Program and Ellen Cove Swimming Enclosure Maintenance.**

**CARRIED 8-0**

**DIS393: AUTHORISING OFFICER RECOMMENDATION 1**

THAT Council approve the following budget reallocation:

1. REDUCE budget for Job Number 2436 (Redhen Road SLK 0.00 – 3.6 Seal Gravel Road) from \$843,600 to \$770,000.
2. REDUCE budget for Job Number 0729 (Hillman Street SLK 0.88 – 1.2 Asphalt Overlay, kerbing and laybacks) from \$299,750 to \$200,000.
3. INCREASE budget for Job Number 4194 (Kuch Road Reconstruction) from \$190,000 to \$260,000.
4. INCREASE budget for Job Number 3979 (Centennial Drainage Project) from \$100,000 to \$200,000.

**DIS393: AUTHORISING OFFICER RECOMMENDATION 2**

THAT Council approve the following budget reallocation:

1. REDUCE budget for Job Number 3040 (Hunter Street SLK 0.0 – 0.23 Asphalt Overlay) from \$165,000 to \$110,000.
2. REDUCE budget for Job Number 3927 (Burt Street Asphalt Overlay, kerbing) from \$132,990 to \$88,000.
3. INCREASE budget for 1162540 (Ellen Cove Swimming Enclosure Maintenance Works) from \$80,000 to \$183,340.

**BACKGROUND**

2. City of Albany officers have received quotes for works to be undertaken, and some have come in under budget, and some will have potential overspends.

3. A review has been undertaken and reallocation of budgets within sub-programs is being sought.

## **DISCUSSION**

### Roads

#### *Redhen Road*

4. Redhen Road SLK 0.00 – 3.6 Seal Gravel Road (Job No 2436) had an original budget of \$843,600 with \$700,000 being Roads To Recovery (R2R) and the remaining amount of municipal funds.
5. These works are now completed with a saving of \$73,600. These savings are proposed to be used to cover shortfalls on other road projects.

#### *Hillman Street*

6. Hillman Street SLK 0.88 – 1.2 Asphalt Overlay, kerbing and laybacks (Job No 0729) had an original budget of \$299,750.
7. These works are now completed with a saving of \$99,750. It is proposed that these savings be used to cover shortfalls on the Centennial Drainage project.

#### *Hunter Street*

8. Hunter Street SLK 0.0 – 0.23 Asphalt Overlay (Job No 3040) had an original budget of \$165,000.
9. These works are now completed with a saving of \$55,000. It is proposed to use these savings to cover the shortfall to the budget on the Ellen Cove Swimming Enclosure maintenance works.

#### *Burt Street*

10. Burt Street Asphalt Overlay, kerbing (Job No 3927) had an original budget of \$132,990.
11. These works are now completed with a saving of \$44,990. It is proposed that these savings be used to cover the budget shortfall on the Ellen Cove Swimming Enclosure maintenance works.

#### *Kuch Road*

12. Kuch Road Reconstruction (Job No 4194) was required following storm damage in June 2023.
13. The original estimate for the works was \$190,000, but this estimate was put together when the exact extent of the work was not clearly defined.
14. These works are now complete but the project has gone over budget by \$70,000
15. It is proposed that the shortfall be funded with cost savings from other projects.

### Drainage

#### *Centennial Drainage*

16. Centennial Drainage (Tennis Centre) Project (Job No 3979) was required to provide urgent drainage renewal works before the Regional Tennis Centre installation in Centennial Park.
17. Works were done on short notice, and utilised pipes were already available in stock. Unfortunately, there was insufficient time to scope out the works; consequently, the funding initially applied for was inadequate.
18. The original budget was \$100,000 based on a design prepared for smaller-diameter pipes and a single drainage line. The opportunity was taken to duplicate the drainage line to future proof the drainage in the tennis precinct.
19. Work has now been completed and requires an additional \$100,000.
20. The shortfall is proposed to be funded with cost savings from road projects.



Ellen Cove Swimming Enclosure Maintenance Works

21. In August 2023, Global Marine Enclosures provided a quotation for modifications to the chain wall and 120m of the beach end to the Gen 3 specification.
22. In the December maintenance report significant damage was reported in the Surf Zone due to the accumulation of sediment which also buried the Chain in places.
23. It was also reported that the Back Wall of the Barrier had also come apart in the short term and the Barrier could not be relied upon.
24. On 27 December warning signs were erected to let residents and users know and works were planned for either the February or March inspection times.
25. In January 2024 a temporary fix was able to be undertaken and further works were planned for the Extraordinary Service planned for February/March 2024.
26. The works undertaken in February 2024 involved removing the barrier onto the beach and undertake some of the repairs.
27. In March 2024 the 120m of Gen 3 Surf Zone was delivered to site and assembled, a new section of Chain Wall was assembled and both were connected to the repaired Gen 2 back wall.
28. All sections were then re-installed including replacement of sections of ground chain plus the installation of two more 50kg Stingray anchors.
29. These works are now finalised, and the shortfall is proposed to be funded through savings from the road program.

Project Name in Approved Work Schedule	Current Budget 2023	Allocation	Updated Budget 2023
Redhen Road SLK 0.00 – 3.6 Seal Gravel Road (Job No 2436)	\$843,600	-\$73,600	\$770,000
Hillman Street SLK 0.88 – 1.2 Asphalt Overlay, kerbing and laybacks (Job No 0729)	\$299,750	-\$99,750	\$200,000
Kuch Road Reconstruction (Job No 4194)	\$190,000	\$70,000	\$260,000
Centennial Drainage (Tennis Centre) Project (Job No 3979)	\$100,000	\$100,000.00	\$200,000
Burt Street Asphalt Overlay, kerbing (Job No 3927)	\$132,990	-\$44,990	\$88,000
Hunter Street SLK 0.0 – 0.23 Asphalt Overlay (Job No 3040)	\$165,000	-\$55,000	\$110,000
Ellen Cove Swimming Enclosure Maintenance (1162540)	\$80,000	\$103,340	\$183,340
<b>TOTAL</b>	<b>\$1,811,340</b>	<b>\$0</b>	<b>\$1,811,340</b>

**GOVERNMENT & PUBLIC CONSULTATION**

30. Department of Local Government guidelines were followed in the preparation of this report.
31. City of Albany Executives, Managers and Officers with budget responsibility were consulted in the preparation of the Budget Review.

**STATUTORY IMPLICATIONS**

32. Under the *Local Government Act 1995* (the Act), section 6.8, a local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure:
  - a) is incurred in a financial year before the adoption of the annual budget by the local government
  - b) is authorised in advance by a resolution (absolute majority required) or;
  - c) is authorised in advance by the Mayor in an emergency.

33. The voting requirement of Council is **Absolute Majority**.

#### POLICY IMPLICATIONS

34. There are no policy implications related to this report.

#### RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Business Operation, Reputation &amp; Financial.</b> <b>Risk:</b> Community perception that savings realised should be used for other purposes	Possible	Moderate	High	Clear communication of City's current financial position, noting that the payment will not impact on the City's ability to adequately service its obligations and achieve its operational and financial objectives this financial year.
<b>Opportunity:</b> To complete projects already in Capital Works Program				

#### FINANCIAL IMPLICATIONS

36. Road and drainage works require reallocations within current funding allocations.

37. Ellen Cove Swimming Enclosure Maintenance Works require reallocation from cost savings within current funding allocations.

#### LEGAL IMPLICATIONS

38. Nil.

#### ENVIRONMENTAL CONSIDERATIONS

39. Nil.

#### ALTERNATE OPTIONS

40. Council may:

- Adopt the amendment as recommended; or
- Adopt the amendment with alterations (as specified by Council); or
- Reject the recommendation.

#### CONCLUSION

41. That the Authorising Officer's Recommendation to adopt the Budget Amendment be supported.

<b>Consulted References</b>	:	Adopted Budget 2023/2024 <a href="#">Local Government Act 1995</a>
<b>Previous Reference</b>	:	N/A

## DIS394: C24001 KALGAN FIRE SHED – DESIGN & CONSTRUCT

<b>Proponent / Owner</b>	: City of Albany
<b>Business Entity Name</b>	: Kalgan Fire Shed
<b>Attachments</b>	: <b>Confidential Briefing Note</b>
<b>Report Prepared By</b>	: Manager Major Projects (A. McEwan) Project Officer (N. Leggett)
<b>Authorising Officer:</b>	: Executive Director Infrastructure & Environment (P. Camins)

### CONFIDENTIAL ATTACHMENT

*It was recommended that if discussion was required in regards to details contained within the Confidential Attachment, that the matters be discussed behind closed doors, in accordance with section 5.23(2)(c) & (e)(ii) of the Local Government Act 1995, being: a contract which may be entered into and information that has commercial value.*

Councillor Brough declared an Impartiality Interest in this item. Councillor Brough remained in the Chamber and participated in the discussion and vote for this item.

### STRATEGIC IMPLICATIONS

- 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 - We are leaders in sustainability with a shared commitment to climate action and protecting our beautiful, natural environment.
  - Outcomes:** 6 - A resilient community that can withstand, adapt to, and recover from natural disasters.

#### In Brief:

- Following a competitive tender process, Council approval is sought to support an award for Contract C24001 for the final design and construction of Kalgan Fire Shed for the Kalgan Volunteer Bushfire Brigade (KVBB).
- DFES allocate funds from the Local Government Grants Scheme (LGGS) for Capital and Operating Grants related to Bushfire Services. The LGGS is funded by the Emergency Services Levy (ESL) that is collected by local governments.
- All figures within this Item are exclusive of GST.

### RECOMMENDATION

#### DIS394: COMMITTEE RECOMMENDATION (AMENDMENT BY MAYOR STOCKS)

**MOVED: MAYOR STOCKS**

**SECONDED: COUNCILLOR SUTTON**

**THAT Council:**

- AWARD** Contract C24001 – Kalgan Fire Shed D&C to Tenderer A (identified in the Confidential Briefing Note) contingent on confirmed additional LGGS funding of \$770,852.55.
- ALLOCATE** \$153,633.00 in the City's 2024-25 Draft Annual Budget for items ineligible for LGGS funding identified in the report.

**CARRIED 8-0**

**DIS394: AMENDMENT BY MAYOR STOCKS**

**MOVED: MAYOR STOCKS**

**SECONDED: COUNCILLOR SUTTON**

**THAT the Authorising Officer Recommendation be AMENDED to remove Point 3.**

**CARRIED 8-0**

**DIS394: AUTHORISING OFFICER RECOMMENDATION**

**THAT Council:**

1. **AWARD** Contract C24001 – Kalgan Fire Shed D&C to Tenderer A (identified in the Confidential Briefing Note) contingent on confirmed additional LGGS funding.
2. **ALLOCATE** \$153,633.00 in the City's 2024-25 Draft Annual Budget for items ineligible for LGGS funding identified in the report.
3. **APPROVE** the City taking out a loan for the amount of \$770,852.55 with West Australian Treasury Corporation, where DFES would reimburse interest and principal over a ten-year period. The loan would only be utilised if additional LGGS funding is not provided upfront by DFES for the project.

**BACKGROUND**

2. The City of Albany (City) seeks to engage a Contractor for the final design and construction of the Kalgan Fire Shed, as set out in the Request for Tender (RFT) documents.
3. Tenders closed on 28 February 2024. Two submissions were received.
4. The City, as Project Manager, is overseeing the delivery of this project, on behalf of Kalgan Volunteer Bush Fire Brigade (KVBB).
5. It is preferable to have approval to award a tender so that the unsuccessful tenderer can be advised early. Additionally, we seek to have additional funding approval prior to the tender expiry date (end of June 2024) to enable an immediate contract award.

**DISCUSSION**

6. The standard tender process as prescribed by the Local Government Act 1995 (the Act) and Local Government (Function and General) Regulations 1996 (the Regulations) was followed.
7. Tenders were advertised for a six-week period and closed on Wednesday 28 February 2024.
8. 20 tender documents were issued, and two conforming submissions were received.
9. The tender evaluation team evaluated tenders using the weighted criteria methodology across five key areas:

<b>Qualitative Criteria</b>	<b>Weighting (%)</b>
Cost	30
Demonstrated Understanding of Scope	30
Relevant Experience	10
Key Personnel Skills and Experience	25
Corporate Social Responsibility	5
<b>Total</b>	<b>100</b>

10. The following table summarises the final weighted scores of the tenders received:

Tenderer	Total Score	Rank
Tenderer A	686.54	1
Tenderer B	618.46	2

11. All Tenderers claimed the maximum Buy Local Policy reduction of \$50,000.
12. Tenderer A ranked highest with the highest score of 686.54.
13. A clarification process, interviews with both Tenderers, was undertaken to confirm the submissions and final pricing.
14. From the evaluation scoring and clarifications, Tenderer A are the preferred tenderer, and it is recommended that their tender be accepted and a contract award be supported.
15. KVBB are supportive of the recommendation to award the tender to Tenderer A.

#### GOVERNMENT & PUBLIC CONSULTATION

16. A request for tender was published in the West Australian on Wednesday 17 January 2024 and the Albany Extra on Friday 19 January 2024.
17. There is no government consultation required for the award of C24001, however the funding body DFES has been consulted regarding the project status and a request for additional funding. A response is anticipated by end of June 2024.
18. No other community consultation activities are envisioned.
19. The funding bodies and public will be notified about the outcome of the award and timeframe for implementation.

#### STATUTORY IMPLICATIONS

20. Regulation 11 of the Regulations requires Council to publicly tender if the contract is, or is expected to be, more, or worth more than \$250,000.
21. Regulation 18 of the Regulations outlines a number of requirements relating to choose 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.
22. Regulation 19 of the Regulations requires Council to advise each tenderer in writing of Council's decision.
23. Voting Requirement for this item is **Absolute Majority**.

#### POLICY IMPLICATIONS

24. The City of Albany Purchasing Policy and Regional Price Preference Policy are applicable to this item.
25. The value of this tender is more than \$500,000 and therefore Council approval is required as this exceeds the CEO's delegation.

## RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Reputation, Financial</b> <i>Risk: Failure to deliver project within specified timeframe may jeopardise multiple funding agreements for this project.</i>	Possible	Major	High	Award tender as soon as possible to enable construction (subject to additional funding) to proceed and the project completed in accordance with the funding agreements.
<b>Reputation &amp; Community</b> <i>Risk: Appointment of the recommended tenderer is not supported.</i>	Possible	Major	High	City staff to work with preferred tenderer to address any concerns from Council, prior to awarding the tender.
<b>Financial</b> <i>Risk: Tenders exceed available budget</i>	Likely	Major	High	Accepted risk from project commencement. De-scope during design process. D&C procurement model selected to achieve optimal build/cost. Keep funding body engaged.
<b>Financial</b> <i>Risk: Request for additional funding is unsuccessful. Funding money to be returned.</i>	Possible	Major	High	City staff to work with DFES to address any concerns and request timeframe extension to continue funding advocacy for shortfall.
<b>Opportunity:</b> Project will provide better infrastructure, capacity and capability to manage bush fire hazards. Increased benefit and amenity for the community.				

## FINANCIAL IMPLICATIONS

27. The Preferred Tenderer's price is not within the available project budget, and a significant budget shortfall remains.
28. The budget shortfall was disclosed to tenderers during the tender process.
29. Part of their response to the qualitative criteria was to assess the design and identify opportunities to deliver the scope in a more efficient and cost-effective manner.
30. To date, the funding shortfall has been sought from DFES through LGGS.
31. Additional financial assistance from the following project sponsors:
- Additional State Government (DFES) support for \$770,852.55 through the Local Government Grants Scheme (LGGS). Alternatively, DFES have suggested that if funding is unavailable an option may be for the City to consider a self-supporting loan to State Treasury, where DFES would cover interest and principal over a ten-year period.
  - A cash contribution from City of Albany for \$153,633.00. The financial contribution will go towards the road crossover and site works, items that are ineligible for funding through LGGS.
  - KVBB will continue to fundraise and are in the process of seeking donations for construction materials (sand and gravel) to assist.
32. The award of Contract C24001 is contingent on confirmed additional LGGS funding.

## LEGAL IMPLICATIONS

33. Nil.

## ENVIRONMENTAL CONSIDERATIONS

34. Should the tender be awarded, the Contractor will be required to prepare, implement and monitor a Construction and Environmental Management Plan, specific to the site.

## ALTERNATE OPTIONS

35. Council may:

- Choose to accept the recommended tender, or
- Not accept any tender.

## CONCLUSION

36. The City has undergone a competitive process in line with the relevant legislation and established policies.

37. The recommendation is to:

- a. Identify Tenderer A as the Preferred Tenderer.
- b. Subject to confirmation of additional funding, award the contract to Tenderer A, as supported by the evaluation scoring and clarifications provided.

<b>Consulted References</b>	:	<ul style="list-style-type: none"> <li>• <i>Local Government Act 1995</i></li> <li>• <i>Local Government (Functions and General) Regulations 1996</i></li> <li>• City of Albany Policies: <ul style="list-style-type: none"> <li>○ Purchasing Policy (Tenders and Quotes)</li> <li>○ Tender Procedure</li> <li>○ Evaluation Procedure (Tenders and Quotations)</li> <li>○ Buy Local Policy (Regional Price Preference)</li> </ul> </li> </ul>
<b>File Number</b>	:	CP.DEC.131
<b>Previous Reference</b>	:	Strategic Briefing (AM23163152) 18 April 2023 BFAC 10/09/2015 BFA005

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

**12. MEETING CLOSED TO THE PUBLIC**

**13. CLOSURE** The Chair declared the meeting closed at 7.58pm.

*(Unconfirmed Minutes)*

*Amanda Cruse*

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Councillor Amanda Cruse

**CHAIR**



## Hypothetical questions

1 Are conditions different between Monday to Friday and Saturday/Sunday? Times, positions etc

2 Can food vans trade on after regular business (bricks and mortar) opens up. Do they have to move to another place?

3 Apparently the sandwich bar in York street opposite the city library, has changed hands. If that business now elects to trade Saturday and Sunday, what happens to the current food van which is operating on a Sunday in the city square?

Best Kevin and Warwick believe that food bands have a place on special occasions but not to the detriment of the bricks and motor businesses.

In the more recent past the process between registering a complaint and getting remedial action was slow. They would appreciate a standard reporting

procedure so that they and others can resolve the perceived issues.

Thankyou for listening.

Mr mayor

Mr mayor and counsellors

SHORTS PLACE

My name is Michael Pemberton and I live in shorts space  
Mira Mar

I wanted to address the agenda item D IS392 trading  
in public places.

Before I commence I want to register a couple of  
apologies, Warwick Sherratt a Director from Joop  
Thai and Kevin lazar from Cosi's Café wanted to here  
I can only offer apologies for what are compelling  
reasons

I've spoken with both of them and hopefully I can  
precis in 4 minutes the reason why they wanted to be  
here.

1. the definition of public places needs to be explained  
a lot better than what it is.

I look at the Trading on Thoroughfares and Places

Does this mean I can go down to the Centrelink Car Park and set up a market there on Saturdays and Sundays.

2, The licencing and compliance in recent times has seen operators setting up in places that obviously contravene the standing orders with respect to food vans and trading in public places. Who and how often will someone check compliance?

3 .Who for example is responsible for matters like ingredient use by, personal and food hygiene , etc. **Bricks and mortar equivalents** of food retail certainly have their share of compliance. **Councillor Terry** , asked that some sites trade until late . Does that mean that someone will be available to check compliance during those hours if there is an issue.

Itinerant traders have been excluded from the CBD area. All of the other fixed places have a time limit on them. What are the time limits for the CBD area? Does this vary from local food vans as opposed to itinerant food vans?



**5.19 General prohibition on commercial wildflower harvesting**

Subject to clause 5.20, a person shall not commercially harvest native flora on a thoroughfare.

**5.20 Permit for revegetation projects**

- (1) A person shall not collect seed from native flora on a thoroughfare without first obtaining a permit.
- (2) The local government may approve an application for a permit under subclause (1) only where—
  - (a) the seed is required for a revegetation project in any part of the district; and
  - (b) the thoroughfare, or the relevant part of it, is not a special environmental area.
- (3) Unless the local government specifically provides to the contrary on a permit, if the local government approves an application for a permit for the purpose of subclause (1) it is to be taken to be approved subject to the following conditions—
  - (a) the collection of the seed is to be carried out so as not to endanger the long time survival of the native flora on the thoroughfare; and
  - (b) any licence or approval which may be required under any other written law is to be obtained by the applicant.

**PART 6—TRADING ON THOROUGHFARES AND PUBLIC PLACES***Division 1—Stallholders and traders**Subdivision 1—Preliminary***6.1 Interpretation**

In this Division, unless the context otherwise requires—

**“Competition Principles Agreement”** means the Competition Principles Agreement executed by each State and Territory of the Commonwealth and the Commonwealth of Australia on 11 April 1995;

**“public place”** includes—

- (a) any thoroughfare or place which the public is allowed to use whether or not the thoroughfare or place is on private property; and
- (b) local government property,

but does not include premises on private property from which trading is lawfully conducted under a written law;

**“stall”** means a movable or temporarily fixed structure, stand or table in, on or from which goods or services are sold, hired or offered for sale or hire;

**“stallholder”** means a person in charge of a stall;

**“stallholder’s permit”** means a permit issued to a stallholder;

**“trader”** means a person who carries on trading;

**“trader’s permit”** means a permit issued to a trader; and

**“trading”** includes—

- (a) the selling or hiring of, the offering for sale or hire of or the soliciting of orders for goods or services in a public place;
- (b) displaying goods in any public place for the purpose of—
  - (i) offering them for sale or hire;
  - (ii) inviting offers for their sale or hire;
  - (iii) soliciting orders for them; or
  - (iv) carrying out any other transaction in relation to them; and
- (c) the going from place to place, whether or not public places, and—
  - (i) offering goods or services for sale or hire; or
  - (ii) inviting offers or soliciting orders for the sale or the hire of goods or services,
 but does not include—
  - (iii) the delivery of pre-ordered goods or services; or
  - (iv) the taking of further orders for goods or services from the purchaser;
- (d) the setting up of a stall or the conducting of a business at a stall under the authority of a stallholder’s permit;
- (e) the selling or the offering for sale of goods and services to, or the soliciting of orders for goods and services from a person who sells those goods or services;
- (f) the selling or the offering for sale or hire by a person of goods of her or his own manufacture or services which he or she provides; and
- (g) the selling or hiring or the offering for sale or hire of—
  - (i) goods by a person who represents a manufacturer of the goods; or
  - (ii) services by a person who represents a provider of the services,
 which are sold directly to consumers and not through a shop.

- “**garden**” means any part of a thoroughfare planted, developed or treated, otherwise than as a lawn, with one or more plants;
- “**intersection**” has the meaning given to it in the *Road Traffic Code 2000*;
- “**kerb**” includes the edge of a carriageway;
- “**lawn**” means any part of a thoroughfare which is planted only with grass, or with a similar plant, but will include any other plant provided that it has been planted by the local government;
- “**liquor**” has the meaning given to it in section 3 of the *Liquor Control Act 1988*;
- “**local government**” means the City of Albany;
- “**local government property**” means anything except a thoroughfare—
- which belongs to the local government;
  - of which the local government is the management body under the *Land Administration Act 1997*; or
  - which is an “otherwise unvested facility” within section 3.53 of the Act;
- “**local planning scheme**” means a local planning scheme of the local government made under the *Planning and Development Act 2005*;
- “**lot**” has the meaning given to it in the *Planning and Development Act 2005*;
- “**owner**” or “**occupier**” in relation to land does not include the local government;
- “**permissible verge treatment**” means any of the treatments described in clause 2.8(2);
- “**permit**” means a permit issued under this local law;
- “**permit holder**” means a person who holds a valid permit;
- “**person**” does not include the local government;
- “**premises**” for the purpose of the definition of “public place” in both this clause and clause 6.1, means a building or similar structure, but does not include a carpark or a similar place;
- “**public place**” includes any thoroughfare or place which the public is allowed to use, whether or not the thoroughfare or place is on private property, but does not include—
- premises on private property from which trading is lawfully conducted under a written law; and
  - local government property;
- “**Regulations**” means the *Local Government (Functions and General) Regulations 1996*;
- “**sign**” includes a notice, flag, mark, structure or device on which may be shown words, numbers, expressions or symbols;
- “**thoroughfare**” has the meaning given to it in the Act, but does not include a private thoroughfare which is not under the management control of the local government;
- “**townsite**” means the townsites of Cuthbert, Elleker, Kalgan, Manypeaks, Redmond, South Stirling, Torbay, Youngs Siding and Wellstead which are—
- constituted under section 26(2) of the *Land Administration Act 1997*; or
  - referred to in clause 37 of Schedule 9.3 of the Act;
- “**vehicle**” includes—
- every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise; and
  - an animal being ridden or driven,
- but excludes—
- a wheel-chair or any device designed for use by a physically impaired person on a footpath; and
  - a pram, a stroller or a similar device; and
- “**verge**” means that part of a thoroughfare between the carriageway and the land which abuts the thoroughfare, but does not include any footpath.

## PART 2—ACTIVITIES ON THOROUGHFARES AND PUBLIC PLACES

### Division 1—General

#### 2.1 General prohibitions

A person shall not—

- plant any plant on a thoroughfare—
  - except grass or a similar plant within 6 metres of an intersection; and
  - which exceeds, or may exceed, 0.75 metres in height so that the plant is within 6 metres to 10 metres of an intersection;
- damage a lawn or a garden or remove any plant or part of a plant from a lawn or garden unless—
  - the person is the owner or the occupier of the lot abutting that portion of the thoroughfare and the lawn or the garden or the particular plant has not been installed or planted by the local government; or
  - the person is acting under the authority of a written law;