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# MINUTES

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## PLANNING AND DEVELOPMENT COMMITTEE

**02 November 2016**

6.00pm

City of Albany Council Chambers

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

**VISION**

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

**VALUES**

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

**Focused: on community outcomes**

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

**United: by working and learning together**

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

**Accountable: for our actions**

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

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

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

**TERMS OF REFERENCE**

**(1) Function:**

The Planning and Development Committee will be responsible for the delivery of the following Liveable Environmental Objectives contained in the City of Albany Strategic Plan:

- (a) To advocate, plan and build connected, liveable communities;
- (b) To create a community that supports people of all ages and backgrounds;
- (c) To create vibrant neighbourhoods which are safe yet retain our local character and heritage.

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

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

**(3) Chairperson:** Councillor N Mulcahy

**(4) Membership:** Open to all elected members, who wish to be members

**(5) Meeting Schedule:** 1<sup>st</sup> Wednesday of the Month

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

**(7) Executive Officer:** Executive Director Development Services

**(8) Delegated Authority:** None

PLANNING AND DEVELOPMENT COMMITTEE  
MINUTES –02/11/2016

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PLANNING AND DEVELOPMENT COMMITTEE  
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1. **DECLARATION OF OPENING** [6:01:54 PM](#)

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

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

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

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

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

**Mayor**

Mayor D Wellington

**Councillors:**

Member

N Mulcahy (Chair)

Member

A Goode JP

Member

R Hammond

Member

J Shanhun

Member

R Sutton

**Staff:**

Chief Executive Officer

A Sharpe

Executive Director Development Services

D Putland

Manager Building and Engineering Services

P Camins

Manager Planning Services

J van der Mescht

Minutes

J Cobbold

**Apologies/Leave of Absence:**

Member

G Stocks

Member

B Hollingworth (Deputy Chair)

PLANNING AND DEVELOPMENT COMMITTEE  
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4. **DISCLOSURES OF INTEREST - Nil**
5. **REPORTS OF MEMBER- Nil**
6. **RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE - Nil**
7. **PUBLIC QUESTION TIME**

[6:02:37 PM](#) Bede Harold PD128 Speaking against – 315 Emu Point Drive –  
Annexe A

[6:08:39 PM](#) Nick Ayton PD128 Speaking For – 59 Peel Place

[6:13:54 PM](#) Bill Skipper PD145 Speaking against – 14 View St

[6:17:14 PM](#) Graeme Pike PD145 – Speaking against - 15 Cliff St

[6:19:41 PM](#) Tabled statement – PD145 Helen Weston – Annexe B

[6:20:00 PM](#) Public question time - Closed

8. **APPLICATIONS FOR LEAVE OF ABSENCE - Nil**
9. **PETITIONS AND DEPUTATIONS - Nil**
10. **CONFIRMATION OF MINUTES**

**DRAFT MOTION**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR SHANHUN**

**SECONDED: COUNCILLOR SUTTON**

**THAT the minutes of the Planning and Development Committee Meeting held on 05 October 2016 as previously distributed, be CONFIRMED as a true and accurate record of proceedings.**

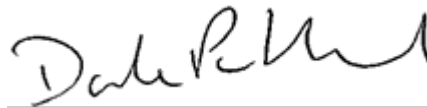
**6-0**

11. **PRESENTATIONS - Nil**
12. **UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS - Nil**

**PD128: PROPOSED HOME BUSINESS AND FILL – LOT 355, 307-321 EMU POINT DRIVE, COLLINGWOOD PARK**

**Land Description** : Lot 355, 307-321 Emu Point Drive, Collingwood Park  
**Proponent** : F G Liva  
**Owner** : F G Liva and K J Liva  
**Business Entity Name** : N/A  
**Directors**  
**Attachments** : 1. Area Plan  
2. Site Plan  
3. Earthworks Plan  
4. Schedule of submissions  
**Supplementary Information & Councillor Workstation** : Copy of submissions  
**Report Prepared by** : Senior Planning Officer (A Bott)  
**Responsible Officer** : Executive Director Development Services (D Putland)

**Responsible Officer's Signature:**



**STRATEGIC IMPLICATIONS**

1. Council is required to exercise its quasi-judicial function in this matter.
2. When exercising its discretion in relation to planning matters, the pertinent strategic document is the *Albany Local Planning Strategy*.
3. The proposal is consistent with the strategic directions identified in the *Albany Local Planning Strategy*.

Maps and Diagrams:



**In Brief:**

- Council is asked to consider a development application for a Home Business and Fill at Lot 355, 307-321 Emu Point Drive, Collingwood Park.
- The application was advertised for public comment and referred to surrounding landowners in writing.
- Thirteen letters of objection have been received from nearby residents. The objections primary relate to concerns over traffic, amenity impacts and environmental impacts.
- The application was originally deferred at the June Planning Committee and was consequently withdrawn from the agenda pending a review of the application.
- The originally proposed dam has consequently been removed from the application. The proponent has also engaged an engineer and prepared an earthworks plan for the subject lot.
- Staff recommend that Council approve the proposed development, subject to conditions.

**RECOMMENDATION**

**PD128 COMMITTEE RECOMMENDATION**

**MOVED: MAYOR WELLINGTON  
SECONDED: COUNCILLOR HAMMOND**

**THAT the Responsible Officer Recommendation is ADOPTED**

**LOST 2-4**

**VOTED AGAINST – Councillor Mulcahy, Councillor Sutton, Councillor Goode, Councillor Shanhun**

**Reason:**

**Preservation of the amenity of the locality, and the impact on the neighbouring property.**

The meeting discussed the Amended Responsible Officer Recommendation. Following discussion, there was no mover or seconder for the Amended Responsible Officer Recommendation, and the motion lapsed.

The committee then moved to consideration of the original Responsible Officer Recommendation.

**PD128: RESPONSIBLE OFFICER RECOMMENDATION (AMENDED)**

THAT Council resolves to ISSUE a notice of determination granting development approval, subject to the following conditions, for a Home Business and Fill at Lot 355, 307-321 Emu Point Drive, Collingwood Park:

Conditions:

- (1) Prior to occupancy of use, unless varied by a condition of approval or a minor amendment to the satisfaction of the City of Albany, all development shall occur in accordance with the stamped, approved plans dated (*\*insert date\**).
- (2) Earthworks shall be undertaken in accordance with the earthworks plan, including proposed levels
- (3) Surface water management shall be undertaken to ensure that the vehicle storage area is suitably drained and sealed.
- (4) All vehicle wash-downs shall be undertaken off-site at the appropriate commercial facilities and there shall be no direct discharges from the vehicle storage area.
- (5) **No major servicing of vehicles shall be undertaken on the premises, any routine maintenance of vehicles shall be confined to the proposed shed in order to minimise potential noise and contain any possible contaminants.**
- (6) A landscaping plan detailing the size, species and location of trees/shrubs shall be submitted for approval in writing and implemented to the satisfaction of the City of Albany.



- (7) All landscaped areas shall be maintained as per the approved landscaping plan(s) to the satisfaction of the City of Albany.
- (8) The 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, which shall be in accordance with drawing nos. 97024 1/3 – 97024 3/3 (refer to the City of Albany's Subdivision and Development Guidelines).*
- (9) The level of noise emanating from the premises shall not exceed that prescribed in the Environmental Protection Act 1986, and the Environmental Protection (Noise) Regulations 1997.
- (10) The development hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust.
- (11) No preparation of bitumen shall be undertaken on the premises.
- (12) There shall be no storage or dumping of construction waste (including asphalt) on the premises. **Minor storage of materials used by the business shall be confined to the storage area shown on the site plan to the satisfaction of the City.**

PD128: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council resolves to ISSUE a notice of determination granting development approval, subject to the following conditions, for a Home Business and Fill at Lot 355, 307-321 Emu Point Drive, Collingwood Park:

Conditions:

- (1) Prior to occupancy of use, unless varied by a condition of approval or a minor amendment to the satisfaction of the City of Albany, all development shall occur in accordance with the stamped, approved plans dated (*\*insert date\**).
- (2) Earthworks and management of stormwater drainage shall be undertaken in accordance with the earthworks plan, including proposed levels
- (3) Surface water management shall be undertaken to ensure that the vehicle storage area is suitably drained and sealed.
- (4) All vehicle wash-downs shall be undertaken off-site at the appropriate commercial facilities and there shall be no direct discharges from the vehicle storage area.
- (5) No servicing of vehicles shall be undertaken on the premises.
- (6) A landscaping plan detailing the size, species and location of trees/shrubs shall be submitted for approval in writing and implemented to the satisfaction of the City of Albany.
- (7) All landscaped areas shall be maintained as per the approved landscaping plan(s) to the satisfaction of the City of Albany.
- (8) The 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, which shall be in accordance with drawing nos. 97024 1/3 – 97024 3/3 (refer to the City of Albany's Subdivision and Development Guidelines).*

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- (10) The development hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust.
- (11) No preparation of bitumen shall be undertaken on the premises.
- (12) There shall be no storage of construction materials or dumping of construction waste (including asphalt) on the premises.

## BACKGROUND

4. *Local Planning Scheme No. 1* was gazetted on 28 April 2014 and consists of the Scheme Text and the Scheme Maps. The Scheme divides the Local Government district into zones to identify areas for particular uses and identifies land reserved for public purposes. Most importantly, the Scheme controls the types of uses and development allowed in different zones. There are particular controls included for heritage and special control areas. The Scheme Text also sets out the requirements for planning approval, enforcement of the Scheme provisions and non-conforming uses.
5. The subject lot lies to the north side of Emu Point Drive, approximately five kilometres north-east of Albany city centre. The lot has an area of approximately 1.44 hectares and is zoned 'General Agriculture' under *City of Albany Local Planning Scheme No. 1*.
6. The land to the south is zoned 'Future Urban' and is bounded by 'Parks and Recreation' local scheme reserve. The land to the north and west is zoned 'General Agriculture', while the land to the east is covered by the 'Parks and Recreation' local scheme reserve.
7. The application was advertised for public comment, in accordance with Schedule 2, clause 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015* and clause 9.4 of *Local Planning Scheme No. 1*. Surrounding landowners were directly notified in writing. A total of 13 submissions were received, all of which objected to, or raised concerns around the proposal.
8. The proponent was granted a clearing permit by the Department of Environmental Regulation on 29 May, 2014. The permit granted clearing of an area of vegetation within the north-western quadrant of the property. Clearing has occurred, and all vegetation within the clearing area removed.
9. The application was originally laid on the table at the June Planning Committee meeting and was consequently withdrawn from the June Ordinary Council meeting pending a review of the application.
10. The application has subsequently been amended by the proponent, with an earthworks plan developed and the originally proposed dam removed from the proposal.
11. Council is now requested to consider whether to grant development approval.

## DISCUSSION

12. The proposal now consists of the two elements, being earthworks and truck parking/ storage.
13. The truck and equipment storage is associated with the proponent's bitumen spraying business, which has operated within Albany for the past ten years.
14. The proponent does not propose to mix bitumen material on the site and the current zoning does not allow the City of Albany to approve this use on the site.

15. As outlined above, a total of 13 letters of submission were received during the public advertising period, all of which raised concerns around the proposal.

The main concerns that have been raised and the proposed mitigation measures are addressed as follows:

Traffic

16. A number of submissions have raised concerns regarding the truck movements from the site.
17. The proponent has stated in the application that at most, two trucks would leave and return to the premises on a daily basis. The business will be run by the landowners, with no additional employees. All business is undertaken off site and there are no customers attending the premises.
18. In terms of restricting the use of Emu Point Drive, the City of Albany does not have the statutory authority to control the direction of vehicles which are classified as 'as of right' vehicles by Main Roads WA. An 'as of right' vehicle is defined as any vehicle that is not a Restricted Access Vehicle. Rigid trucks and semi-trailers are not classed as Restricted Access Vehicles and do not require any permits or exemptions from regulatory requirements.

Amenity

19. Impact on amenity is a concern consistently raised in the submissions. Concerns primarily relate to noise generated from the proposed development and impacts on visual amenity.
20. With regard to noise issues: Any operations would be subject to ongoing compliance with the *Environmental Protection (Noise) Regulations 1997*. All work will be undertaken off the premises, including the cleaning and servicing of vehicles and machinery, and the preparation of bitumen. Therefore, the only noise generated would be from vehicles travelling to and from the premises.
21. In terms of mitigating visual impact, the location of the storage area has been proposed at the rear of the premises.
22. There is also a 70 metre section of established screening vegetation which runs east from the crossover along Emu Point Drive, which will also reduce the visual impact from public vantage points.
23. In addition to the above, the proponent has submitted a landscaping plan for the lot. The proponent has proposed to plant peppermint trees and Melaleucas along the road verge, adjoining property and storage areas.
24. It is considered that the landscaping, in conjunction with the stated scale of the operation, will assist in mitigating amenity issues. However, it is recommended that the implementation and ongoing maintenance of the landscaping and rehabilitation planting be stipulated as a condition of development approval.

Environment

25. Concerns regarding environmental impacts were consistently raised in the submissions.
26. The proposed dam on the original proposal was the subject to a number of concerns raised in submissions. The dam has now been removed from the application.
27. The Department of Water was consulted and has advised the City that standard water control conditions are applicable to the proposal, which includes surface water management being undertaken by the developer. It is recommended that water management measures are applied as condition of development approval.
28. City of Albany engineers have reviewed the proponent's engineers plan request to fill sections of the lot. The proposed plan will allow fill to be undertaken to expand the useable area of the

land, while maintaining the natural floodplain and drainage functions of the area. Compliance with the submitted earthworks plan is recommended as a condition of development approval.

29. A number of submissions have also raised the issue of clearing of native vegetation. It is apparent from these submission that there is a level of misunderstanding within the community regarding the approval of the clearing that has taken place. Some members of the community believe that the City of Albany had granted approval for clearing. To clarify, the Department of Environmental Regulation is the statutory authority for clearing permits within Western Australia and has issued approval for clearing within the north-western quadrant of the subject lot.
30. The proponent has submitted a landscaping details for the planting of additional native vegetation. The planting and ongoing maintenance is recommended as a condition of consent.

### GOVERNMENT & PUBLIC CONSULTATION

31. The proposal was advertised for public comment for a period of 21 days, in accordance with Schedule 2, clause 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015* and clause 9.4 – *Advertising of Applications* within *Local Planning Scheme No. 1*. Surrounding landowners were directly notified in writing.
32. A total 13 submissions were received during the public advertising period. All 13 submissions objected or raised concerns around the proposal. Staff comments are provided in the attached schedule of submissions, while the broad issues are discussed above.

### STATUTORY IMPLICATIONS

33. A ‘Home Business’ is classified as a ‘D’ use within the ‘General Agriculture’ zone under *Local Planning Scheme No. 1*, meaning that the use is not permitted, unless the local government has exercised its discretion by granting planning approval.
34. Voting requirement is a **Simple Majority**.

### POLICY IMPLICATIONS

35. The site is within the City of Albany’s *Development in Flood Prone Areas Policy*. In the context of this application, the primary objectives of the policy are to ensure that there are no interruptions to the natural drainage system of the area.
36. The proposed earthworks plan relating to fill have been developed in consultation with City of Albany engineers. The plan has the with the intention of allowing the proponent to increase the levels on the site and subsequent useability of the site, while maintaining the natural drainage function of the area. It is recommended a condition be applied requiring compliance with the approved earthworks plan.

### RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Organisational Operations and Reputation</b> The proposed use could give rise to unacceptable detrimental impacts on the environment and or amenity of the area.	Possible	Moderate	Medium	Mitigation of impacts to be achieved through adoption and enforcement of appropriate planning conditions.

### FINANCIAL IMPLICATIONS

38. All costs associated with the development will be borne by the proponent.
39. Should the proponents seek a review of Council's decision or any attached conditions through the State Administrative Tribunal, the City could be liable for costs associated with defending the decision at a State Administrative Tribunal hearing.

### LEGAL IMPLICATIONS

40. Council may use its discretion to approve or refuse the proposal. An proponent 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*.
41. 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

42. The subject lot is largely cleared and slopes downward from Emu Point Drive towards the north-west. The lot was subject to a clearing permit issued by the Department of Environment Regulation. The permit was fulfilled and has now expired.

### ALTERNATE OPTIONS

43. Council may consider alternate options in relation to this item, such as:
  - To determine that the proposed use is unacceptable and to resolve to refuse the application; or
  - To alter, amend, remove or add conditions to the approval to address potential impacts from the development.

### SUMMARY CONCLUSION

44. The matters raised in the submissions received during the public advertising period have been broadly addressed and can be mitigated through the application of appropriate planning conditions.
45. It is therefore recommended that Council approve the proposed development, subject to the conditions provided.

<b>Consulted References</b>	:	1. <i>Local Planning Scheme No. 1</i> 2. <i>Albany Local Planning Strategy 2010</i> 3. <i>City of Albany Development in Flood Prone Areas</i> local planning policy
<b>File Number (Name of Ward)</b>	:	A145789 (Breaksea Ward)
<b>Previous Reference</b>	:	O.C.M. 28/06/2016 – Item PD128 (withdrawn by proponent)

**PD145: PROPOSED BED AND BREAKFAST – LOT 3, 13 CLIFF STREET, ALBANY**

**Land Description** : Lot 3, 13 Cliff Street, Albany  
**Proponent** : H L Moyle  
**Owner** : H L Moyle  
**Business Entity Name** : N/A  
**Directors** : N/A  
**Attachments** :  
1. Copy of development application  
2. Schedule of submissions  
**Supplementary Information & Councillor Workstation** : 3. Copy of submissions  
4. Copy of legal advice  
**Report Prepared by** : Planning Officer (J Anderson)  
**Responsible Officer** : Executive Director Development Services (D Putland)

**Responsible Officer's Signature:**



**STRATEGIC IMPLICATIONS**

1. Council is required to exercise its quasi-judicial function in this matter.
2. When exercising its discretion in relation to planning matters, the pertinent strategic document is the *Albany Local Planning Strategy*.
3. The proposal is consistent with the strategic directions identified in the *Albany Local Planning Strategy*.

**Maps and Diagrams:**



**In Brief:**

- Council is asked to consider a development application for a Bed and Breakfast at Lot 3, 13 Cliff Street, Albany.
- The proposal is to let one room, with a maximum of three guests.
- Due to the site's topography, vehicular access can only be gained via a privately owned Right of Way from View Street, to the south.
- The application was advertised for public comment and referred to surrounding landowners in writing.
- Two letters of objection have been received from surrounding landowners. The objections primarily relate to concerns over the use of the privately owned Right of Way; specifically, whether Council can approve a use with a commercial element when the only means of access is via a privately owned Right of Way, the condition of the Right of Way, the lack of contribution to its maintenance and the possibility of guests reversing down the Right of Way. Other concerns relate to the compounding parking issues, the possibility of motorhomes parking on the verge of Cliff Street and pets being permitted on the premises.
- Legal advice was received with regard to whether Council has the right to approve a use with an incidental commercial element when access is gained via a privately owned Right of Way. This advice stated that *"all registered proprietors, as well as their guests and invitees, have an implied right to use the right of way. There is no prohibition on guests or invitees using the right of way as a means of access to a lot with a minor commercial element."*
- One neighbour has since agreed that the planning conditions proposed mitigate the issues they raised.
- The second concerned resident does not think the use should be approved on the grounds that it will generate too much traffic on the Right of Way and has requested that the proposal is determined at an Ordinary Council Meeting.
- Staff recommend that Council approve the proposed development, subject to conditions, which will mitigate the concerns raised.

**RECOMMENDATION**

**PD145: COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR WELLINGTON  
SECONDED: COUNCILLOR HAMMOND**

**THAT the Officer Recommendation is ADOPTED**

**CARRIED 6-0**

**PD145: RESPONSIBLE OFFICER RECOMMENDATION**

THAT Council resolves to ISSUE a notice of determination granting development approval, subject to the following conditions, for a Bed and Breakfast at Lot 3, 13 Cliff Street, Albany:

Conditions:

- (1) The vehicular access way shall be sealed and constructed to the City of Albany's specifications, levels and satisfaction, as specified for vehicular crossovers, to a minimum width of four metres within four months from the date of this approval, unless otherwise agreed in writing by the City of Albany.
- (2) The operator/manager of the Bed and Breakfast accommodation hereby approved shall ensure that a copy of the House Rules is provided to all guests, and enforced to the satisfaction of the City of Albany.
- (3) One parking space shall be provided per guest bedroom, in addition to the two (2) bays required for the full-time occupants of the dwelling.
- (4) Vehicular parking must be contained within the lot boundaries at all times.
- (5) Prospective guests shall be advised that there is no capacity to park motorhomes, caravans, trailers, boats or similar large vehicles or trailers.
- (6) Guests shall be notified that they must leave the premises in a forward gear.
- (7) The maximum number of persons residing in the Bed and Breakfast accommodation shall not exceed three (3) at any one time, exclusive of the owner/operator, unless otherwise agreed in writing by the City of Albany.
- (8) The owner/operator of the Bed and Breakfast accommodation shall reside on-site.
- (9) The Bed and Breakfast 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.
- (10) The owner/operator of the Bed and Breakfast accommodation hereby approved shall maintain an annual register and receipt book, containing the details of all persons who stay on the premises, to the satisfaction of the City of Albany.
- (11) The Bed and Breakfast accommodation hereby approved shall be used for short-stay accommodation only, and shall not be occupied by the same person or persons for more than three months in any 12 month period.

**BACKGROUND**

4. *Local Planning Scheme No. 1* was gazetted on 28 April 2014 and consists of the Scheme Text and the Scheme Maps. The Scheme divides the Local Government district into zones to



identify areas for particular uses and identifies land reserved for public purposes. Most importantly, the Scheme controls the types of uses and development allowed in different zones. There are particular controls included for heritage and special control areas. The Scheme Text also sets out the requirements for planning approval, enforcement of the Scheme provisions and non-conforming uses.

5. The subject site lies to the south side of Cliff Street, approximately 550 metres west of Albany city centre. The lot has an area of 553m<sup>2</sup> and is zoned 'Residential' under *City of Albany Local Planning Scheme No. 1*. The surrounding lots are also zoned 'Residential'.
6. Due to topography the subject lot can only gain pedestrian access from Cliff Street. Vehicular access is via a privately owned Right of Way from View Street, to the south.
7. The application was advertised for public comment, in accordance with Schedule 2, clause 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015* and clause 9.4 of *Local Planning Scheme No. 1*. Surrounding landowners were directly notified in writing. Two written submissions were received, both of which raised concerns with the proposal.
8. These matters were discussed with the proponent, who subsequently revised the proposed house rules in an attempt to mitigate the concerns.
9. One of the concerned residents has since confirmed that the proposed planning conditions would mitigate their concerns. However, the second concerned resident does not think the use should be approved on the grounds that it will generate too much traffic on the Right of Way and has requested that the proposal is determined at an Ordinary Council Meeting.
10. Council is now requested to consider whether to grant development approval.

## DISCUSSION

11. *City of Albany Local Planning Scheme No. 1* defines Bed and Breakfast accommodation as “a dwelling, used by a resident of the dwelling, to provide accommodation for no more than six guests away from their normal place of residence on a short-term commercial basis within the dwelling and may include the provision of meals”.
12. The City's *Bed and Breakfast Accommodation* local planning policy states that “*Bed and Breakfast accommodation should occupy a maximum of two bedrooms of a dwelling house and be made available for short-stay accommodation for a maximum of six guests at any one time and will only be approved on a lot where it can be demonstrated that:*
  - 1) *The proposal is consistent with surrounding land use activities and can demonstrate general support from adjoining landowners;*
  - 2) *The owner/manager of the Bed and Breakfast accommodation will reside on-site;*
  - 3) *The proposal provides addition on-site car parking bays at the ratio of 1 bay per bedroom and shall not interfere with vehicular access; and*
  - 4) *Access/egress to the site and car parking shall not adversely impact on with local vehicular or pedestrian access.”*
13. The existing dwelling has three bedrooms, inclusive of the proposed guest room. It is proposed to let this room, which is housed in an existing standalone structure with ensuite, to a maximum of three guests at any one time.
14. The City's *Bed and Breakfast Accommodation* local planning policy requires one car parking bay per room for let, in addition to the required two bays for the single dwelling. The proponent is currently constructing a double garage and an additional parking bay will be provided for the exclusive use of guests.

15. During the public comment period, two written submissions were received from surrounding landowners, both objecting to the proposal. The objections are summarised and addressed in the attached schedule of submissions.
16. The main concerns raised and the proposed mitigation measures are addressed as follows:

I. Use of the Right of Way

One submission raised concerns that the guests will use the Right of Way and stated that the use of the Right of Way does not extend to a commercial use. They claim that the use should not be supported as it involves the use of someone else's land, which is only to be used for personal access to their properties and not for commercial use. The City has sought legal advice in this regard and was advised that *"all registered proprietors, as well as their guests and invitees have an implied right to use the right of way. There is no prohibition in guests or invitees using the right of way as a means of access to a lot with a minor commercial element."*

II. The condition of the Right of Way and lack of contributions towards its upkeep

As the proponent is introducing an additional use, City Engineering Staff have recommend that a condition is placed on the approval requiring the proponent to upgrade a portion of the Right of Way to an acceptable driveway standard. In relation to the ongoing upkeep of the Right of Way, this is a civil matter and the City strongly recommends that the landowners liaise with each other to reach an amicable solution.

III. Parking

Limited off-street parking is available and there is a concern that inviting additional traffic onto the property will compound the existing shortage of parking. It has also been suggested that vehicles, including motorhomes, may park on Cliff Street, obstructing traffic and lines of sight. Furthermore, there is no suitable parking available for large vehicles and caravans or trailers. In order to address these issues, the proponent is currently constructing a double garage and one additional car parking bay for the exclusive use of the guests, which will meet the minimum car parking requirement for the proposed development. The proponent has also updated the House Rules to require parking in the designated guest bay and to prohibit parking on Cliff Street. Additionally, the proponent has agreed to notify any prospective guests at the time of booking that there is no parking available for motorhomes, caravans, trailers, etc. This will be required by application of an appropriate planning condition.

IV. Safety

Concerns were raised over the possibility of guests reversing down the Right of Way due to a lack of turning space. To address this issue, the proponent has revised the house rules to include information for guests that they should leave the premises in a forward gear.

V. Dogs being permitted

Concern was raised that guests may be permitted to bring their dogs to the premises. The keeping of domestic animals is permitted on a residential property and the proponent has amended the house rules to ensure that guests are only permitted to bring small or medium dogs to the premises, that they must be contained on the premises, or on a lead when out walking and that all litter is to be picked up (litter bags will be provided).

17. The proposed condition requiring the upgrade of a portion of the Right of Way has been raised with the proponent, who has stated that this will affect the viability of the proposed Bed and Breakfast accommodation. The proponent believes that it is unjustified, due to the scale of the development and the relatively small increase in traffic that it will generate.

18. Staff subsequently discussed the revised house rules and proposed planning conditions with the owner of the Right of Way, who is still not comfortable with the proposal and the potential effects that it could have on the use of the Right of Way.
19. The second concerned resident has confirmed that he is satisfied that the proposed planning conditions would mitigate his concerns.
20. The application is considered to be generally consistent with the City of Albany's *Bed and Breakfast Accommodation* local planning policy.
21. Council is now requested to consider the submissions received during the public advertising period and determine whether to grant development approval.

#### GOVERNMENT & PUBLIC CONSULTATION

22. The proposal was advertised for public comment for a period of 21 days, in accordance with Schedule 2, clause 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015* and clause 9.4 – *Advertising of Applications* within *Local Planning Scheme No. 1*. Surrounding landowners were directly notified in writing.
23. A total of two submissions were received during the public advertising period. Both submissions objected to the proposal. Staff comments and recommendations are provided in the attached schedule, while the broad issues are discussed in paragraphs 18 – 33 above.

#### STATUTORY IMPLICATIONS

24. A Bed and Breakfast is classified as an 'A' use within the 'Residential' zone under *Local Planning Scheme No. 1*, meaning that the use is not permitted, unless the local government has exercised its discretion by granting planning approval after giving special notice in accordance with clause 9.4 of the Scheme.
25. Voting requirement is a **Simple Majority**.

#### POLICY IMPLICATIONS

26. Proposals for the development of Bed and Breakfast accommodation are assessed in the context of the City of Albany's *Bed and Breakfast Accommodation* local planning policy.
27. In this instance, the proposed Bed and Breakfast accommodation is considered to be consistent with the objectives and provisions of the policy. These matters are discussed in more detail in paragraphs 9 to 23 above.

#### RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b><i>Organisational Operations and Reputation</i></b> The proposed use could give rise to unacceptable detrimental impacts on the amenity of the area.	Possible	Moderate	Medium	Mitigation of impacts to be achieved through adoption and enforcement of conditions.

### FINANCIAL IMPLICATIONS

29. All costs associated with the development will be borne by the proponent.
30. Should the proponents seek a review of Council's decision or any attached conditions through the State Administrative Tribunal, the City could be liable for costs associated with defending the decision at a State Administrative Tribunal hearing.

### LEGAL IMPLICATIONS

31. Council may use its discretion to approve or refuse the proposal. A proponent 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*.
32. 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

33. The subject lot is developed with a residential dwelling and garden ground. There are no environmental considerations relating to this proposal.

### ALTERNATE OPTIONS

34. Council may consider alternate options in relation to this item, such as:
  - Determine that the proposed use is unacceptable and to resolve to refuse the application; or
  - Alter, amend, remove or add conditions to the approval to address potential impacts from the development.

### SUMMARY CONCLUSION

35. The proposal is considered to be consistent with the objectives of the zone and the requirements of the City of Albany's *Bed and Breakfast Accommodation* local planning policy.
36. The matters raised in the public submissions received during the advertising period have also been broadly addressed by the proponent and can be mitigated through the application of appropriate planning conditions and the yearly licence renewal process.
37. It is therefore recommended that Council approve the proposed development, subject to the conditions provided.

<b>Consulted References</b>	:	1. <i>Local Planning Scheme No. 1</i> 2. <i>Albany Local Planning Strategy 2010</i> 3. <i>Bed and Breakfast Accommodation</i> local planning policy
<b>File Number (Name of Ward)</b>	:	A105416 (Frederickstown Ward)
<b>Previous Reference</b>	:	Nil.

**PD146: CONSIDERATION OF ADOPTION OF LOCAL PLANNING SCHEME AMENDMENT – LOTS 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550 AMITY QUAYS, ALBANY**

**Land Description** : Lots 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550 Amity Quays, Albany

**Proponent** : Ayton Baesjou Planning

**Owner** : LandCorp

**Business Entity Name** : LandCorp

**Attachments** : Local Planning Scheme Amendment No. 20 report

**Supplementary Information & Councillor Workstation:** : Nil

**Report Prepared by** : Planning Officer (C McMurtrie)

**Responsible Officer** : Executive Director Development Services (D Putland)

**Responsible Officer's Signature:**



**STRATEGIC IMPLICATIONS**

1. Council is required to exercise its quasi-judicial function in this matter.
2. When exercising its discretion in relation to planning matters, the pertinent strategic document is the *Albany Local Planning Strategy*.
3. This proposal is consistent with the strategic direction set in the *Albany Local Planning Strategy*.

**Maps and Diagrams**



**In Brief:**

- A request has been submitted for Council to adopt a local planning scheme amendment to:
  - Incorporate Lots 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550 Amity Quays, Albany within a ‘Special Control Area’ and change the residential density code from R30 to R60;
  - Incorporate the Amity Quays Special Control Area within Part 6 – Special Control Areas of the Scheme Text; and
  - Amend the Scheme Maps accordingly.
- City planning Staff support the local planning scheme amendment, as it is consistent with the strategic direction set in the *Albany Local Planning Strategy*.
- The proposal will facilitate the development of higher density dwellings in close proximity to the City centre with the attendant amenity benefits that this will bring.
- Council is requested to adopt the amendment for the purpose of public advertising and referral to public authorities.

**RECOMMENDATION**

**PD146 COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR HAMMOND  
SECONDED: COUNCILLOR SUTTON**

**THAT the Officer Recommendation is ADOPTED**

**CARRIED 6-0**

**PD146 RESPONSIBLE OFFICER RECOMMENDATION**

THAT Council, pursuant to section 75 of the *Planning and Development Act 2005*, resolves to:

1. Adopt Amendment No. 20 to amend *City of Albany Local Planning Scheme No. 1* by:
  - (1) Incorporating Lots 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550 Amity Quays, Albany within a ‘Special Control Area’ and change the residential density code from R30 to R60;
  - (2) Incorporating the Amity Quays Special Control Area within Part 6 – Special Control Areas of the Scheme Text; and
  - (3) Amending the Scheme Maps accordingly.
2. Note that the Amendment is standard under the provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* for the following reasons:
  - The amendment is consistent with the *Albany Local Planning Strategy*, which sets a strategic objective to support urban infill development based on compatibility of land uses and infrastructure capacity;
  - The amendment would have minimal impact on land in the scheme area that is not the subject of the amendment; and

- The amendment does not result in any significant environmental, social, economic or governance impacts on land in the scheme area.

## BACKGROUND

4. *Local Planning Scheme No. 1* was gazetted on 28 April 2014 and consists of the Scheme Text and the Scheme Maps. The Scheme divides the Local Government district into zones to identify areas for particular uses and identifies land reserved for public purposes. Most importantly, the Scheme controls the types of uses and development allowed in different zones. There are particular controls included for heritage and special control areas. The Scheme Text also sets out the requirements for planning approval, enforcement of the Scheme provisions and non-conforming uses.
5. Amendment No. 20 has been prepared to seek:
  - Incorporation of Lots 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550 Amity Quays, Albany within a 'Special Control Area' and change the residential density code from R30 to R60;
  - Incorporation of the Amity Quays Special Control Area within Part 6 – Special Control Areas of the Scheme Text; and
  - Amendment of the Scheme Maps accordingly.
6. The subject lots are located approximately 500 metres west-south-west of York Street and have a cumulative area of approximately 1.1 hectares. The land slopes very slightly upward in a northerly direction, from Amity Quays toward the railway line. The land has been cleared and extensive remediation works have been undertaken to remove soil contamination resulting from its former use as a gasworks.
7. The subject land is bounded on its western, southern and eastern sides by Amity Quays. It is bounded by the railway line to the north. The land to the south of Amity Quays is occupied by a strip of public open space and a public parking area within a 'Parks and Recreation' local scheme reserve. Princess Royal Drive extends along the southern edge of the public open space within a 'Major Roads' local scheme reserve and Princess Royal Harbour lies beyond.
8. The land to the west of the subject lots is covered by a 'Parks and Recreation' local scheme reserve and is partly developed with a cluster of buildings currently occupied by the Community Living Association. The land to the east of the subject lots is covered by a 'Public Purposes' local scheme reserve and is occupied by the Navy Cadet Hall, the Brig Amity, the Residency Museum and a large area of public open space. The land to the north of the subject lots is zoned 'Residential' with an R30 Residential Density Code and largely developed with single houses on individual lots, although some vacant lots remain.
9. The amendment document states that:

*"The subject land is currently zoned 'Residential with an R30 density code. However, the site has been subdivided into 18 lots of approximately 600m<sup>2</sup> each which equates to an R15 density code. While each lot can be developed as a duplex lot with two dwellings per lot, a potential buyer has no idea what might be built within the estate or next to or in some cases, in front of their property.*

*Given the unique nature of the site, its location near the CBD and the general amenity available in terms of water views and strategic siting, it is considered that a higher density coding is warranted and should be encouraged. This would be in accord with the key planning documents guiding development within the City which encourages;*

- *The consolidation of urban development;*
- *Infill development;*
- *Increased densities up to R60 around the periphery of the CBD; and*
- *Provision of a variety of housing to accommodate the increasing proportion of smaller households.*

*In order to ensure the site specific issues...are addressed, it is recommended that the subject land be incorporated within a 'Special Control Area' which will facilitate the incorporation of conditions to address those issues."*

## DISCUSSION

10. The City's planning Staff support the incorporation of Lots 1533-1550 Amity Quays, Albany within a 'Special Control Area', changing the residential density code from R30 to R60 and incorporating the Amity Quays Special Control Area within Part 6 – Special Control Areas of the Scheme Text, as it is consistent with the *Albany Local Planning Strategy*.
11. The amendment documents include a concept plan and indicative built form examples to illustrate how the site could be developed to an R60 density. A Services Investigation Report prepared by a consulting engineer has also been submitted in support of the proposal. It indicates that there are no technical difficulties associated with developing the site to a higher residential density.
12. Additionally, a Bushfire Attack Level Contour Plan prepared by an accredited bushfire assessor has been provided, identifying the fire risk associated with the vegetation surrounding the site. The majority of the site has been identified as being subject to Bushfire Attack Level 12.5, which can be managed by the application of appropriate building standards. A higher risk has been identified in the north-western and north-eastern corners of the subject land and a notation has been provided on the indicative concept plan, identifying the need for further detailed planning work to establish suitable building setbacks to mitigate the risk.
13. The *Albany Local Planning Strategy* identifies the site as part of the 'Existing Urban' area and sets strategic objective to support urban infill development based on compatibility of land uses and infrastructure capacity.
14. The proposal is consistent with the Albany Local Planning Strategy's objective of supporting urban infill development, as it will facilitate the development of higher density dwellings in close proximity to the City centre with the attendant amenity benefits that this will bring.

## GOVERNMENT & PUBLIC CONSULTATION

15. The *Planning and Development (Local Planning Schemes) Regulations 2015* require that a local planning scheme amendment be adopted by a resolution of Council prior to the proposal being advertised for public comment. Consequently, no other consultation has been undertaken at this stage.

## STATUTORY IMPLICATIONS

16. Scheme amendments undergo a statutory process in accordance with the *Planning and Development Act 2005* and *Planning and Development (Local Planning Schemes) Regulations 2015*.
17. Section 75 of the *Planning and Development Act 2005* allows a local government authority to amend its local planning scheme with the approval of the Minister for Planning. Section 81 of the Act requires a local government to refer an adopted local



planning scheme amendment to the Environmental Protection Authority to determine if it should be assessed.

18. Regulation 35 of the *Planning and Development (Local Planning Schemes) Regulations 2015* allows Council to adopt a standard scheme amendment for advertising and referral to relevant public authorities.
19. The proposal is considered to be a standard scheme amendment for the following reasons:
  - The amendment is consistent with the *Albany Local Planning Strategy*, which identifies the site as ‘Existing Urban’ and sets a strategic objective to support urban infill development based on compatibility of land uses and infrastructure capacity;
  - The amendment would have minimal impact on land in the scheme area that is not the subject of the amendment; and
  - The amendment does not result in any significant environmental, social, economic or governance impacts on land in the scheme area.
20. Voting requirement for this item is **SIMPLE MAJORITY**

**POLICY IMPLICATIONS**

21. There are no policy implications directly relating to this item.

**RISK IDENTIFICATION & MITIGATION**

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<p><b>Organisational Operations and Reputation</b></p> <p>The proposal may not be accepted by the Western Australian Planning Commission or the Minister for Planning.</p>	Possible	Minor	Medium	If not supported by the WAPC or Minister, the amendment will not be progressed and the City will advise the proponent that they may submit a modified proposal.
<p><b>Community, Organisational Operations and Reputation</b></p> <p>The proposal may attract objections from members of the public or other public authorities.</p>	Possible	Minor	Medium	Widely consulting with all parties who may be affected and all relevant public authorities should mitigate any risk in this regard. If necessary, further information can be requested from the proponent as part of the amendment process.

**FINANCIAL IMPLICATIONS**

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

**LEGAL IMPLICATIONS**

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

**ENVIRONMENTAL CONSIDERATIONS**

25. The subject land was formerly the site of Albany Gasworks. Extensive remediation works have been undertaken to remove soil contamination. As per Section 48(A) of the *Environmental Protection Act 1986*, the proposal will be referred to the Environmental Protection Authority to determine if environmental assessment is necessary, prior to public advertising and referral to public authorities.

**ALTERNATE OPTIONS**

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

- To resolve not to adopt the amendment to the local planning scheme.

**SUMMARY CONCLUSION**

27. It is recommended that Council adopt Local Planning Scheme Amendment No. 14, as the proposal is consistent with the current strategic direction set within the *Albany Local Planning Strategy* and will facilitate the development of higher density dwellings in close proximity to the City centre with the attendant amenity benefits that this will bring.

<b>Consulted References</b>	:	<ol style="list-style-type: none"> <li>1. <i>Local Planning Scheme No. 1</i></li> <li>2. <i>Albany Local Planning Strategy 2010</i></li> <li>3. <i>City of Albany Strategic Community Plan 2023</i></li> <li>4. <i>City of Albany Corporate Business Plan 2013-2017</i></li> <li>5. Western Australian Planning Commission <i>State Planning Policy 1 – State Planning Framework Policy (Variation No. 2)</i></li> </ol>
<b>File Number (Name of Ward)</b>	:	LAMD20 (Frederickstown Ward)
<b>Previous Reference</b>	:	Nil

**PD147: SERVICE STATION AND LUNCH BAR - LOT 40 AND 41 , 342-346 ALBANY HIGHWAY, ORANA WA 6330**

**Land Description** : Lot 40 and 41, 342-346 Albany Highway Orana WA 6330.  
**Proponent** : Peter Webb and Associates  
**Owner** : Procon Investments 7 Pty Ltd  
**Business Entity Name** : Procon Investments 7 Pty Ltd  
**Directors** : David Leon Key  
**Attachments** : 1. Application  
2. Area Plan  
3. Site Plan  
4. submissions  
  
**Supplementary Information & Councillor Workstation** : Additional correspondence  
**Report Prepared by** : Manager Planning services (J van der Mescht)  
**Responsible Officer** : Executive Director Planning & Development Services (Dale Putland)

**Responsible Officer's Signature:**



**STRATEGIC IMPLICATIONS**

1. Council is required to exercise its quasi-judicial function in this matter.
2. When exercising its discretion in relation to planning matters, the pertinent strategic document is the *Albany Local Planning Strategy*.
3. The proposal is consistent with the strategic directions identified in the *Albany Local Planning Strategy*.

Maps and Diagrams:



**In Brief:**

- Council is asked to consider a development application for a Service Station and Lunch Bar at Lots 40 and 41, 342-346 Albany Highway Orana WA 6330.
- Both of the uses are “p” permitted land uses within the “Highway Commercial” zone in accordance with LPS1.
- A permitted (“P”) use means that the use is permitted by the Scheme providing the use complies with the relevant development standards and the requirements of the Scheme.
- The application was referred to Main Roads for comment as this section of Albany Highway falls under their control and they regulate access onto roads under their control.
- Main Roads objected to the proposed development. The objections primarily relate to concerns regarding safety and efficiency of the state road network.
- Main Roads have also stated that they will only support one crossover of up to 11m wide.
- Staff recommend that Council approve the proposed development, subject to conditions.

**RECOMMENDATION**

**PD147: COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR SUTTON  
SECONDED: COUNCILLOR WELLINGTON**

**THAT the Officer Recommendation is ADOPTED**

**CARRIED 6-0**

**PD147: RESPONSIBLE OFFICER RECOMMENDATION**

- THAT Council resolves to ISSUE a notice of determination granting development approval, with conditions, for a Service Station and Lunch Bar at Lots 40 and 41, 342-346 Albany Highway Orana WA 6330.

Conditions:

1. All development shall occur and be maintained in accordance with the stamped, approved plans referenced P2160267(subject to variations to plans necessary for condition 7 to be met) and/or unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.

2. The proposal shall comply with any details and/or amendments marked in red on the stamped, approved plans.

*Advice:*

Notwithstanding the submitted detail the pylon sign shall be reduced to a maximum height of 6m above ground level in accordance with the City’s Signs Policy, to the satisfaction of the City of Albany.

3. Prior to commencement of development, a schedule of materials and colours to be used on the buildings/structures hereby approved shall be submitted for approval. The development shall be constructed in accordance with this approved detail to

the satisfaction of the City of Albany.

4. Prior to commencement of development, a landscaping plan detailing the size, species and location of trees/shrubs shall be submitted for approval in writing by the City of Albany. The approved landscaping shall be implemented in the first planting season following occupancy of the development to the satisfaction of the City of Albany.
5. Prior to commencement of development, stormwater disposal plans, details and calculations shall be submitted for approval by the City of Albany. The development shall be constructed in accordance with this approved detail to the satisfaction of the City of Albany.

*Advice:*

*Stormwater disposal is to be designed in accordance with the 'City of Albany's Subdivision and Development Guidelines';*

*The stormwater disposal system is to be designed and certified by a practicing Civil Engineer to the satisfaction of the City of Albany.*

6. Prior to commencement of development, a vehicular and bicycle parking and access plan shall be submitted for approval by the City of Albany and shall be implemented and constructed to the satisfaction of the City of Albany.

*Advice:*

*Car parking and access is to be designed in accordance with the Australian Standard 2890.*

*The plan shall clearly indicate the intended use of all parking bays (eg disabled bay, loading bay etc), access areas, line marking, kerbing and sealing.*

*A minimum of 1 bicycle parking bay shall be provided for the development hereby approved.*

*This plan shall reflect and be in accordance with Main Roads approved crossover location(s).*

7. Vehicle access points, traffic movements and stormwater management onto Albany Highway and/or Chester Pass Road, shall be provided to the specification agreed by Main Roads Western Australia.
8. All landscaped areas shall be maintained as per the approved landscaping plan/s to the satisfaction of the City of Albany.
9. All vehicular parking and access areas shall be maintained as per the approved details and plans, to the satisfaction of the City of Albany.
10. The loading and unloading of goods shall occur entirely within the site and be undertaken in a manner so as to cause minimum interference with other vehicular traffic.
11. No goods or materials shall be stored, either temporarily or permanently, in the parking or landscape areas or in access driveways, unless otherwise agreed in

writing by the City of Albany.

12. The development hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust.
13. Lighting devices are to be positioned and shielded so as not to cause any direct, reflected or incidental light to encroach beyond the property boundaries, in accordance with Australian Standard AS4282/1997.
14. Unless otherwise agreed in writing with the City of Albany, the level of illumination of the fuel price pylon sign information shall not exceed a maximum luminance of:
  - a. 6000 cd/m<sup>2</sup> during hours of full daylight;
  - b. 600 cd/m<sup>2</sup> at dawn and dusk; and
  - c. 300 cd/m<sup>2</sup> during hours of darkness.

15. 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.*

16. Prior to occupancy of use lots 40 and 41 Albany Highway, shall be amalgamated into one lot and the necessary Certificate of Title created, to the satisfaction of the City of Albany.

17. Prior to occupancy of use a public art work commission to the value of 1% (or cash in lieu off) to reflect or enhance local cultural identity shall be provided as part of the development hereby approved, to the satisfaction of the City of Albany.

*Advice: please refer to the City of Albany policy - Art in the Public Domain for further information*

18. A plan indicating the location and type of bin and refuse storage shall be submitted for approval by the City of Albany, and shall be implemented to the satisfaction of, the City of Albany prior to occupancy of the use.

## BACKGROUND

4. *Local Planning Scheme No. 1* was gazetted on 28 April 2014 and consists of the Scheme Text and the Scheme Maps. The Scheme divides the Local Government district into zones to identify areas for particular uses and identifies land reserved for public purposes. Most importantly, the Scheme controls the types of uses and development allowed in different zones. There are particular controls included for heritage and special control areas. The Scheme Text also sets out the requirements for planning approval, enforcement of the Scheme provisions and non-conforming uses.

5. The subject lots are located on the northern side of the Albany Highway and Chester Pass Road junction/roundabout, approximately 1.3 kilometres from the Albany city centre.
6. The lots have a combined area of approximately 3219 m<sup>2</sup> and are zoned 'Highway Commercial' under *City of Albany Local Planning Scheme No. 1*.(LPS1)
7. The subject lots are currently developed and contain derelict buildings, a hardstand and fencing associated with a used car sales business that has not operated for a number of years.
8. The Service Station and Lunch Bar uses are listed as ("p") permitted land uses within the "Highway Commercial" zone in LPS1.
9. A permitted 'P' use means that the use is permitted by the Scheme providing the use complies with the relevant development standards and the requirements of the Scheme.
10. The application was referred to Main Roads for comment who objected to the proposed development. The objections primarily relate to concerns regarding safety and efficiency of the state road network.
11. Council is now requested to consider whether to grant development approval given the impact and concerns regarding the access to the development.

## DISCUSSION

12. An assessment of the proposed development is required to ensure that the development (and not the use) complies with the development standards and the requirements of the Scheme.
13. When considering a permitted 'P' use the City does not have the ability to refuse the use. However the City may impose conditions on the use of the land to comply with any relevant development standards or requirements of the Scheme, and may refuse or impose conditions on any development of the land.
14. The most pertinent development standards and requirements of the Scheme to be considered include;
  - a. vehicle access and egress;
  - b. vehicle parking;
  - c. Site requirements
  - d. bin and refuse storage areas
  - e. landscaping requirements
  - f. Signs (policy)
  - g. Public Art (policy)
15. The application was assessed and the proposed development complies (or through satisfying standard conditions will comply) with all but two of the development standards and requirements of the Scheme.
16. The applicant has requested variations to the standards and requirements for vehicle access & egress and advertising Signs have been requested.  
Vehicle access and egress
17. The application proposes the amalgamation of the two existing lots and a rationalisation of the existing driveway provision on Albany Highway from three to two; one for entry which will be 10m wide and another for exit which will be 11m wide.

18. The applicant contends that it is likely that the proposed development will attract 226 vehicles per day (452 movements) including 34 vehicles in the peak hour. Most of the vehicles will be pass by trips that use this facility because they are already passing the site and form part of the existing traffic flow, or linked trips combining multiple trip purposes at a number of destinations (i.e. already travelling on the road network in this area).
19. The LPS1 provisions for Highway Commercial zoned areas include the following provision;  
"5.5.9.1 Within the Highway Commercial zone: ...  
(d) Any access/egress point(s) onto adjoining roads requires the approval of the relevant road control authority. "
20. The application was referred to Main Roads for comment as this section of Albany Highway and Chester Pass Road fall under their jurisdiction.
21. Main Roads have objected to the proposed development and also required further information. Their objections and concerns primarily relate to safety and efficiency of the state road network.
22. Main Roads state that "A fuel station will be a high demand development that will generate high traffic movements at this location. Main Roads considers this to be a major safety issue and will also impact the efficiency to the State Network at this location."
23. Main Roads also provided advice stating that (in accordance with their relevant policy) that they will only support one crossover up to 11m wide.
24. The applicant was informed of the Main Roads response. The proposed responses and restrictions were unacceptable to the applicant and they requested the City to defer its decision until they could discuss the matter with the relevant Minister for Transport and Main Roads.
25. The applicant and their traffic engineers have since held a number of discussions with Main Roads and provided further information in an attempt to resolve Main Roads concerns without success. (Please refer to the correspondence attached to this report for more detail on the responses.)
26. The applicant contends that the proposed driveways are in accordance with the current MRWA (Main Roads Western Australia) "Driveways" Policy, which allows two 11m driveways for a Service Station in this situation.
27. The applicant insists on the need for two (2) driveway crossovers to the development to enable a fuel tanker to safely access, circulate and exit the site and to safely allow other vehicles to enter and exit the site. If restricted to a single crossover, any fuel tanker would be unable to negotiate the site safely. The applicants contend that this situation will have a far greater impact on Albany Highway with respect to traffic operations and safety.
28. Main Roads have reemphasised their concerns and need to restrict the number of driveway access points to single access.
29. The applicant has now requested the City to make a decision on the matter and has requested the use of two (2) driveway access point (crossovers).
30. The applicant's arguments over the need and benefit of having the two access points for vehicle circulation is acknowledged by Staff. However these roads are under control of Main Roads and the number of access points remains their decision.
31. City Staff therefore recommend that a condition requiring Main Roads approval for access/egress point(s) onto the adjoining roads be placed as a condition of any approval.
32. This condition will allow the Applicant to alter their plans in accordance with Main Roads comments or negotiate an alternative outcome with Main Roads.



Signage

33. As part of the application a pylon sign 7.30 m in height is proposed.
34. The maximum height allowed for a pylon sign under the City's Signs policy is 6m in height. There is no planning merit or local precedence to warrant a variation to this policy requirement.
35. City Staff therefore recommend that a condition requiring the pylon sign to be amended to a maximum of 6 m height be placed as a condition of any approval.

**GOVERNMENT & PUBLIC CONSULTATION**

36. The proposal was referred to Main Roads for comment as this section of Albany Highway and Chester Pass Road fall under their jurisdiction and they regulate access to roads under their control.
37. Main Roads objected to the proposed development. The objections primarily relate to concerns regarding safety and efficiency of the state road network.
38. Main Roads also stated that in accordance with their relevant policy, they will only support one crossover up to 11m wide.

**STATUTORY IMPLICATIONS**

39. The "Service Station" and "Lunch Bar" land uses are both listed as ("p") permitted land uses within the "Highway Commercial" zone in LPS1.
40. A permitted 'P' use means that the use is permitted by the Scheme providing the use complies with the relevant development standards and the requirements of the Scheme.
41. According to City of Albany *Local Planning Scheme No. 1*;
  - a. **lunch bar** means premises or part of premises used for the sale of takeaway food (in a form ready to be consumed without further preparation) within industrial or commercial areas;
  - b. **service station** means premises used for:
    - i. (a) the retail sale of petroleum products, motor vehicles accessories and goods of an incidental/convenience retail nature; and
    - ii. (b) the carrying out of greasing, tyre repairs and minor mechanical repairs to motor vehicles,
    - iii. but does not include premises used for a transport depot, panel beating, spray-painting, major repairs or wrecking;
42. City of Albany *Local Planning Scheme No. 1* clause 4.2.11 lists the following objectives for the Highway Commercial zone:
  - (a) Provide along the main transport spines into the CBD, a range of services and activities that support the main CBD commercial areas including automotive trades, car sales, showrooms, vehicle servicing and repairs, storage and similar activities that cannot be accommodated in other commercial or industrial related zones;
  - (b) Ensure that the lot sizes, the built form and layout of the development is robust and adaptable, and the built form provides attractive, complementary street façades and adjoining developments promote the joint use of crossovers and parking areas; and
  - (c) Restrict the sizes and location of signs and encourage landscaping of front setbacks to improve the amenity of highway commercial areas.

43. City of Albany *Local Planning Scheme No. 1* clause 4.2.11 lists the following pertinent objectives for the Highway Commercial zone:

“5.5.9.1 Within the Highway Commercial zone:

...

(d) Any access/egress point(s) onto adjoining roads requires the approval of the relevant road control authority.

(e) Signage associated with an approved development should be incorporated into the fabric of buildings and structures on-site and the use of bunting should be avoided.”

44. Voting requirement is a **Simple Majority**.

### POLICY IMPLICATIONS

45. The proposal is assessed in the context of the City of Albany’s Local Planning Scheme, Signs policy and Public Art policy.
46. The proposal, as submitted, is not consistent with the signs policy. It is therefore recommended that a condition requiring the plans for the proposed pylon sign to be amended to have a height of 6 m maximum be placed on any approval.
47. It is recommended that a condition requiring a 1% Public art contribution in accordance with the Public Art policy be placed on any approval.

### RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<p><b>Organisational Operations and Reputation</b></p> <p>The proposed use could give rise to unacceptable detrimental impacts on the safety and efficiency of the road network.</p>	Possible	Moderate	Medium	Mitigation of impacts to be achieved through adoption and enforcement of appropriate planning conditions.

### FINANCIAL IMPLICATIONS

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

### LEGAL IMPLICATIONS

51. Council is at liberty to use its discretion to approve or refuse the proposal. An applicant aggrieved by a decision or condition may apply for a review to the State Administrative Tribunal, in accordance with Section 252 of the *Planning and Development Act 2005*.
52. 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**

53. The subject lot is developed with derelict buildings and a hardstand associated with used car sales business that has been vacant for a number of years. There are no environmental considerations relating to this proposal.

**ALTERNATE OPTIONS**

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

- To determine that the proposed development as proposed is unacceptable and to resolve to request the applicant to submit a proposal that is acceptable to Main Roads. This option may be considered by the applicants as a “deemed refusal” and brought before the State Administrative Tribunal for a review.
- To alter, amend, remove or add conditions to the approval to address potential impacts from the development.

**SUMMARY CONCLUSION**

55. The subject lots have been neglected for a number of years. The proposed development will result in the removal of the derelict buildings, hardstand and fencing and thereby improving the street scape appearance of this highly visible approach to the City.

56. The proposed land uses are permitted (“P”) uses within Local Planning Scheme number 1. When considering a permitted ‘P’ use the City cannot refuse the use because of the unsuitability of the use for the zone.

57. The City may impose conditions on the use of the land to comply with any relevant development standards or requirements of the Scheme.

58. The proposed development generally complies with all except two of the development standards and the requirements of the Scheme as discussed in this report.

59. These matters can however be resolved through appropriate conditions of approval.

60. It is therefore recommended that Council approve the proposed development, subject to the conditions provided.

<b>Consulted References</b>	:	1. <i>Local Planning Scheme No. 1</i> 2. <i>Albany Local Planning Strategy 2010</i> 3. <i>Signs Policy</i> 4. <i>Public Art policy</i>
<b>File Number (Name of Ward)</b>	:	A119358 (Yakamia Ward)
<b>Previous Reference</b>	:	

14. **NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF COUNCIL - NIL**
15. **MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN - NIL**
16. **REPORTS OF CITY OFFICERS - NIL**
17. **MEETING CLOSED TO PUBLIC**
18. **CLOSURE [7:06:06 PM](#)**

Your Worship

FROM B. B. H. A. R. O. O.  
ANNEXE A

Dennis Wellington Mayor OF ALBANY TOWN COUNCIL

Re Home Business and Fill on Lot 355 Emu Point Drive

Information on Home Business Ref.CMTD.5 Synergy ref nis/16555826

Version Document owner, Planning Team Version 29/7/2016.

This application does not conform with the rules laid down in this Pamphlet(read).The home business as it is not operating it's business operations at the site, would only require an office for operational paperwork to comply with councils regulations so a permit could be given for this. at the house area . The property is gazetted as General Agriculture. Is there any regulation in council stopping parking of vehicles or machinery on the block? What would be the difference between a trucking company applying for a Home business if the owner lived on the premises. They could have ten trucks , but all the business is maintained and done off site. Only office and bookings on site. The limit for home business is 50squ. Metres. They knew the regulations when purchasing the site, otherwise why buy it.

I have previously supplied 2 letters since May 2015 concerning this application. . The first one was regarding the fill that was being placed around my house approx. 3metres. It is now almost 800ml higher than the level of the base of the fence which was the natural height of the block. No notice came back from council, he had not put in a application at that time for development. I do have considerable photos of the block before purchase and after purchase.

Another point is the neither of the photos which have been produced for the application are the original of the area bought, at the time of purchase. All fill that took place was done before their application. Austin Rogerson at Mercer road ATC. Office supplied me with the current photo as at 27<sup>th</sup> January 2015. He was referred to me after being told by the town planning that it was the Water Authority that controlled the flood water on the area. The Water authority gave me his direct phone number and informed me that the flood plain area councils responsibility. This map has changed every time an application has been made .Some areas look as though they have been changed by hand.

Going through this Application.

**IN BRIEF.Dam removed from application,On section Background 10 environment 26, Is this dam to be permanently removed, if not being so close to a future residential area, it should be fully safely enclosed.In item 10 in this section it states that it shall not prejudicially(damage) the amenity of the neighbourhood. It has already done this Why has the area that has been used as a dam not checked for ASS. That area was shown on page 30 ,with a map showing where this area is situated in Emu Point Development Plan 007-Harley Global 3.4.6 Page 30. According to Envirolab (read this Health and mosquitos can be a big problems. Policy Implications the earthworks already do have longer risk as ASS soil was dumped from the dam area within 3 metres of boundary fences on lot 4/355 and lot 305. Recomendation re crossover which is already done and shown on surveyors plan which evidently going by the planning comment has not been certified with council as yet. The surveyors plan does not include the crossover to the house, which is already there. Is this to be closed?.**

Discussion section. Truck Parking, the height and closeness this is ANNEXE A is not acceptable . Under his surveyors plan they aim to build a shed on this area. Under Council regulations if a shed is to be erected it has certain qualifications .Non Habitable structure should be located away from primary or secondary street areas ( ie. At the rear of the lot) and not half way, as this would be. Constuction being the height from original natural surfaces area, this should be adhered to.

Amenity quotes visual impact. How does a shed fit in where it is planned and not have visual impact.This should be applied to both shed and parking area. Already materials for the business are stored on the site. Twice now I have videod loading of materials being taken away. My granddaughter took a photograph of ashphalt being dropped on the block , which I have. If this development is approved as who will consistently police the project.

Piping has been laid under sections of the block, but it is not known whether this has correct bedding and covering. This would allow whether it is working or not. The piping is not 300 ml as stated in drainage at the rear of my location. What size would the piping be next to lot 305.

At the present time mosquitoes are a major problem on that site.

Also If this application is approved it could open a can of worms. Colin Tricolori could apply for similar fill. He would probably have a legal case, if he was refused ,and maybe other residents could apply for similar approvals from Troode Street to the end of lot 355.

Thank you your worship and councillors for listening

Bede Harold

Lot 4/355 Known as 315 Emu Point Drive

## Acid Sulphate Soil Testing

### phate Soils

e soils or sediments that when exposed to air can rapidly form sulphuric acid. This acid can leach into ng environments, possibly causing damage to concrete and steel structures such as foundations and y pools. These soils occur predominantly on coastal low lands with elevations generally below 5m.

Services has **NATA Accreditation** for the full SPOCAS suite (Suspension Peroxide Oxidation d Acidity & Sulphur) and the SCR suite (chromium reducible sulphur). This will provide results for both trail and the 'sulphur' trail allowing comparison of results to guideline values





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## The Impact of Acid Sulphate Soil, sediments and Rock

03/02/2015

### What are acid sulphate soils?

Acid sulphate soils (ASS), sediments and rocks contain iron sulfides. The presence of iron sulfides in soils and rocks occurred naturally around 10,000 years ago, after the last major sea level rise. In Australia, these soils were formed predominantly on coastal lowlands with elevations generally below 5m.

If left undisturbed, these soils and rocks are harmless and are called potential acid sulphate soils (PASS). However if soils and rocks containing iron sulfides are disturbed by actions including, excavation and draining, these soils will rapidly form sulphuric acid by reacting with oxygen in the air. Acid sulphate soils that have been disturbed are called actual acid sulfate soils (AASS), which may result in certain hazards and impacts.

### Impact of acid sulphate soils on the use and development of land

The disturbance of potential acid sulphate soils (PASS) can affect the development and use of land. For example, sulphuric acid can leach into surrounding environments, possibly causing damage to concrete, iron and steel structures such as building foundations and swimming pools. Acid sulphate soils can cause bricks and mortar to break down or crack at a more rapid rate. Buried metal pipes may corrode at an accelerated rate due to the presence of acidity in the surrounding soil.

The development of farming and agricultural areas, drainage canals, marinas, golf courses and various other coastal developments similarly can expose acid sulphate soils to air and cause the soils to be very acid and toxic.

The effects of sulphate soils on the use and development of land may lead to increased replacement and maintenance costs of buildings and other constructions. Acid soils can result in the degradation of drainage systems, recreational fisheries and losses in farming and rural productivity.

For this reason, environmental investigations and contamination testing for acid sulphate soils need to be considered before land is cleared, drained or construction works commence.

### Impact of acid sulphate soils on the environment

*Handwritten signatures: "Curo" and "KAB"*



the water. Furthermore, populations of mosquitoes will thrive in areas affected by acid sulphate soil drainage because of how in the breakdown of the aquatic ecosystem, the natural predators of mosquitoes including fish become displaced by the acid conditions. Therefore sulphate soil poses a health hazard to humans, animals and the environment because mosquitoes carrying diseases including Ross River Virus (RRV) are attracted to higher levels of acidity in the water.

Based on the hazards that acid sulphate soils pose to the environment, it is important that action is taken to test soil for contamination.

### **Impact of acid sulphate soils on health and wellbeing**

Human health and wellbeing may be affected by acid sulfate soils in a number of ways. Water quality may reduce, so that water becomes unsafe to drink and food may become contaminated.

Construction sites and drying wetlands or draught can be affected by acid sulphate soils, which can increase skin irritation and dermatitis. Dust in the air from acid sulphate soils may result in various eye and throat irritations.

Considering the health risks associated with acid sulphate soils, it is worth conducting investigations of sites suspected to be contaminated.

### **Benefits of testing for acid sulphate soils**

[Envirolab Services](#) has [NATA Accreditation](#) for the full SPOCAS suite (Suspension Peroxide Oxidation Combined Acidity and Sulphur) and the SCR suite (Chromium reducible sulphur). This will provide results for both the 'acid' trail and the 'sulphur' trail allowing comparison of results to guideline values.

### **How to prepare a sample for the testing of acid sulphate soils**

For the testing of acid sulphate soils, a minimum of 200g should be collected in zip-lock bags to minimise contact with air. Large shells, wood, charcoal and stones should be removed in the field, but biological remnants such as roots should not be removed.

Samples should be kept cold in the field and should reach an [Envirolab Services](#) lab within 24 hours of sampling. Where this is not possible samples should be either frozen or dried at 85°C and stored in zip lock bags.

Get in touch with [Envirolab.com.au](#) for all basic and comprehensive soil testing procedures.

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### 3.4.8 Plant Pathogens

*Phytophthora cinnamomi* is a plant pathogen which threatens different plant species in Western Australia. Once the pathogen infects the roots, the plant may begin to show symptoms of 'dying back', hence the common name use for the pathogen, Dieback. Dieback affects indigenous species including the families of Proteaceae, Epacridaceae, Papilionaceae and Myrtaceae. Not all genera within a family or species within a genus are necessarily susceptible.

There is evidence of Dieback occurring within the subject site. Further investigations to determine the extent of Dieback have been undertaken by GHD and Ficifolia Consulting. The assessment identified the following:

- ~33% of the site is infested;
- ~24% of the site is 'uninfested', with approximately 13% of the site being 'unprotectable'; and
- ~42% of the site is 'uninterpretable' due to the absence of susceptible species.

Discussion on the management of Dieback during the construction phases of the development is presented in Section 4.6.8. The extent of the Dieback within the site is shown at Figure 3.8. A full assessment of the Dieback within the site is found at Appendix 17 "Phytophthora cinnamomi Mapping" GHD in conjunction with Ficifolia Consulting and Bio Diverse Solutions.

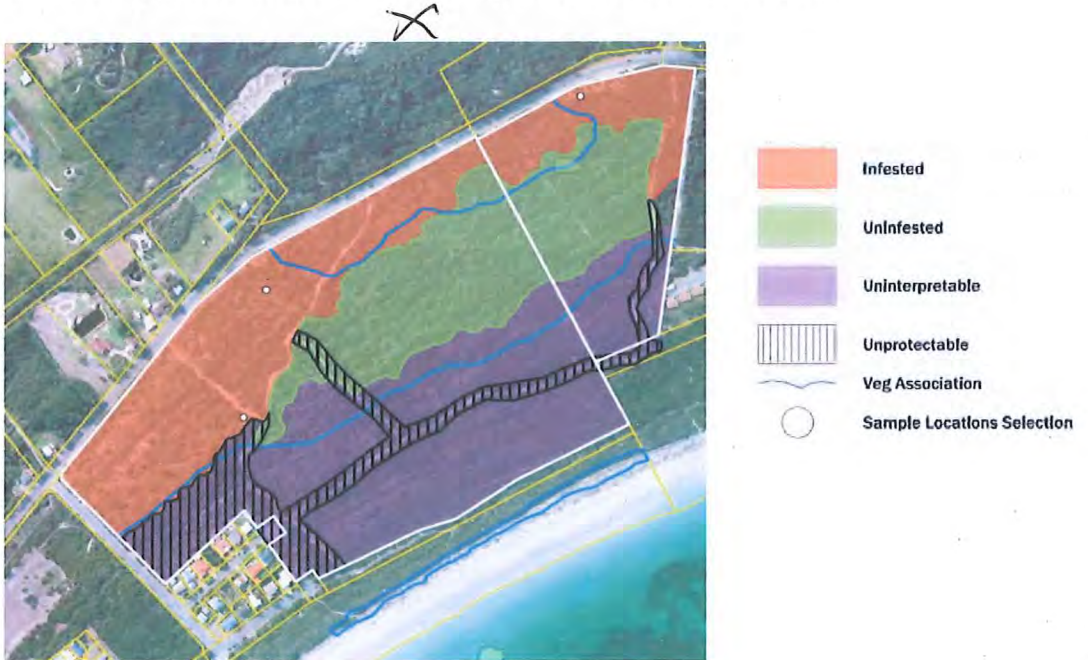


Figure 3.8: Extent of Dieback identified within the subject site

### 3.4.9 Fauna

Majority of the vertebrate fauna habitat on the subject site is considered to be in a very good condition based on the vegetation structure, extent of vegetation cover and refugia available to fauna. The habitat within the verge of Emu Point Drive and at the south eastern corner of the site is considered to be in poor condition.

The subject site, from a regional context, is significant as a habitat area as it forms part of an unbroken coastal corridor of uncleared vegetation from Walpole east across the region to the Australian border. This area is recognised in a (DEC initiative called the 'Southern Coast Macro Conservation Project'.

Five species of significant fauna have been recorded on the subject site, including Carnaby's Cockatoo, Baudin's Black Cockatoo, Western Ringtail Possum, Quenda and Osprey. The Osprey is



### 3.3.1.3 State Planning Policy No. 3 – Urban Growth and Settlement

State Planning Policy No. 3 (SPP3) is designed to facilitate the sustainable growth and development of urban and settlement areas throughout WA. The objectives of SPP3 are:

- To promote a sustainable and well planned pattern of settlement across the State, with sufficient suitable land to provide for a wide variety of housing, employment, recreation facilities and open spaces.
- To build on existing communities with established local and regional economies, concentrate investment in the improvement of services and infrastructure and enhance the quality of life in these communities.
- To manage the growth and development of urban areas in response to the social and economic needs of the community and in recognition of relevant climatic, environmental, heritage and community values and constraints.
- To promote the development of a sustainable and liveable neighbourhood form which reduces energy and water and travel demand whilst ensuring safe and convenient access to employment and services by all modes, provides choice and affordability of housing and creates an identifiable sense of place for each community.
- To coordinate new development with the efficient, economic and timely provision of infrastructure and services.

The Lower Great Southern and Albany Local Planning Strategies discussed elsewhere in this report are designed to meet these objectives. The Emu Point development strives to create a sustainable development that responds to its environment, build on existing communities and infrastructure and provide a living environment that seeks to create an identifiable sense of place.

### 3.3.1.4 Lower Great Southern Strategy (2007)

This Strategy aims to set the broad strategic direction for planning in the Lower Great Southern Region for the next 20 to 30 years. Its purpose is to guide regional land use and infrastructure planning and development, especially on matters of regional significance. The Strategy is designed to provide the regional context and ensure consistency when local governments are setting priorities for their respective areas through local planning strategies and schemes.

Of particular relevance to the subject site is that it makes general recommendations regarding sustainable settlements and community development and makes reference to consolidating settlements and infrastructure in a sustainable manner.

The Regional Land Use Plan incorporated into the Strategy shows the subject site as part of the Albany Regional Centre and Emu Point Drive as a Secondary Regional Road.

### 3.3.1.5 Liveable Neighbourhoods (2007)

Liveable Neighbourhoods (LN) is an operational policy of the WAPC that implements the objectives of the State Planning Strategy and to guide the sustainable development of urban areas. LN provides guidance on a number of elements including the movement network, lot layout, public parkland, urban management and utility planning.

This development has been designed in accordance with the various elements of LN and is compliant with all relevant requirements. Of particular relevance to this ODP document is the requirement for a Structure Plan (i.e. development area of less than 300ha). It is noted that the ODP required by the Planning Scheme is defined as a Local Structure Plan by LN.

Table 1 of LN provides a checklist for the information and detail to be provided in Local Structure Plans. A completed checklist for this development proposal is included in Appendix 9.





**3.4.5 Surface Water and Drainage**

The geology of the subject site comprises permeable, medium grained sand which facilitates the infiltration of water through the shallow aquifer into the ocean. There are no surface water bodies including wetlands such as sump lands or damp lands within the subject site.

There are no distinct surface drainage lines onsite and water tends to accumulate in swales prior to infiltrating. Along the northern boundary, the subject site drains into the swales along Emu Point Drive. Stormwater disposal is expected to be facilitated through the aquifer, with no direct discharge into the Foreshore Reserve or Oyster Harbour.

**3.4.6 Acid Sulphate Soils (ASS) and Contamination**

Acid Sulphate Soils (ASS) are naturally occurring soils containing iron sulphides. These soils are typically benign with an anaerobic environment, however, when they become oxidised through disturbance, acidification of soil and groundwater can occur. This results in sulphuric acid which can break heavy metal bonds, releasing metals such as aluminium, iron and arsenic into the groundwater.

According to the ASS risk mapping for Albany-Torbay, the subject site has no known risk of ASS. Geotechnical and Preliminary ASS Investigation confirmed that ASS Management is not required for excavations less than 3m below the existing ground level at the subject site. There is the potential for ASS to occur off-site near Troode Street and Emu Point Drive, as the ASS risk mapping is classified as high risk, which would require an ASS investigation and management prior to future excavation and associated with the installation of sewer and water mains at the site. The ASS risk mapping for the immediate area is depicted in Figure 3.6.

There are no registered contaminated sites within or adjacent to the site and no evidence of contamination within the subject site. Groundwater sampling was collected and analysed for heavy metals including arsenic, cadmium, chromium, copper, lead, mercury, nickel and zinc. The concentrations of these metals were below the drinking water guidelines.

Arsenic levels were recorded which exceeded the drinking water guideline value of 7µg/L by a maximum of 2 µg/L, however arsenic levels are thought to be naturally high, but there is no evidence of contamination of the subject site. There are no known historic land uses which may have resulted in contamination.

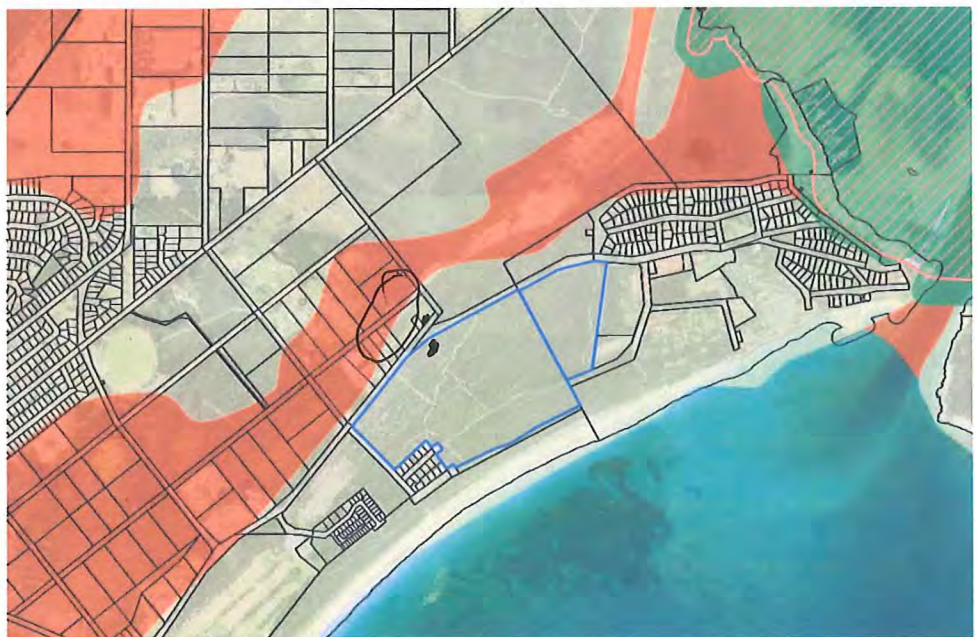


Figure 3.6 – Acid Sulphate Soils Risk Mapping - Medium to High risk shown in red (Landgate)

## Approval of Air B n B - 13 Cliff Street Albany

After much consulting and successful liaison with the Planning Department, I fully accept the Items listed No. 2 to No. 11 as conditions of approval and that they have become part of my 'Updated House Rules' .

I am confused as to why Item 1 is a condition of my approval for a B & B and I am asking for it to be removed from the list of conditions .

### Item 1 states :

*The vehicular access way shall be sealed and constructed to the City of Albany's specifications, levels and satisfaction specified for vehicular crossovers to a minimum width of 4m within 4 months from the date of this approval unless otherwise agreed in writing by the City of Albany.*

On 11<sup>th</sup> July 2016, I sought permission to be one of the 107 other B n B's operating out of residences in Albany and I am asking to operate under the same conditions the approvals given the other 106 .

### Note the following which are relevant to my B & B application .

1. I , like the owner of the right of way , my fellow neighbours friends and visitors are dependent on the privately owned ROW for access to my residence.
2. There is no doubt it's condition has deteriorated over many years . It has primarily been used by its owner and other neighbours. There is no doubt it needs upgrading **irrespective of my B & B application** or not.
3. Over the past 15 years efforts to upgrade its condition have been reject by a very contrite and somewhat aggressive owner.
4. Council has gained legal advice Item 16. 1 - advise that guests or invitees have an 'implied right to use the right of way irrespective of the minor commercial element and not be treated differently to anyone else'.
5. Officers Comment – Item 16 ii - “ As the proponent is introducing a new use “ – which is a perfectly legal use . Why must the proponent upgrade the driveway because of B & B users? Legal advice agrees that the B & B uses are not to be treated differently.
6. Officers Comment 3 – The ROW be upgraded to a driveway standard. The “staff recommendation” then states this must be a “Sealed Driveway.” Is crushed limestone not suitable . Is compacted gravel not suitable. (road mix). Are the shire drainage requirement associated with increased run-off met . Must all run off be contained on the owners land. Is a road sub-base required . Are all access roads to other B & B's sealed. All these conditions would normally be provided by the

developer or land owner. These issues existed long before the B & B application and as such should NOT be a condition of its approval.

7. The owner (Agenda Item 9 ) or the second objector ( & owner) “does not think the use should be considered as it will generate **to much traffic** on the ROW.
  - What is too much traffic? When the B & B proponent is a single pensioner who owns one car and could be in more typical situation i.e. Have a partner or second car. Would this be considered too much traffic or is this considered normal traffic flow.
  - If it is considered normal traffic flow is the same amount of traffic generated by the single pensioner and a B & B visitor considered normal traffic flow.
8. Agenda 16 IV – The Commercial element of the access has already been stated as legal by the council’s lawyer. Reversing bay requirement have been met by the proponent satisfying AS/NZ 2890 Pt 1 – Off street Parking.
9. The sale of the ROW while currently “under offer” further complicates the issue .
10. It is hoped this is not seen as an opportunity of the owner to use this B & B application to force the ROW to be upgraded after all these years of trying to sell his property, and not to be responsible thereby refusing to participate .
11. As the ROW is up for sale and currently under offer, the main instigator and only reason this matter is being heard before the full council meeting on the 22<sup>nd</sup>, may not be the owner of the ROW at time of council meeting. He will definitely not be the owner should the matter go to Arbitration .

## FINAL

The owner of the ROW appears to be under no pressure in this scenario to do anything about the ROW’s condition , one which he has created by objecting to my B & B application. The state of the driveway is due to his harassment’s and intimidation when anyone has tried to maintain it.

My application is being jeopardised by the condition **Item 1**, and I am at the mercy of the ROW owner .

Will the City of Albany direct the owner to co-operate with the upgrade and work within the TIME RESTRICTION put on the works. Would these same conditions apply to other home based businesses’.

I ask that the His Worship the Mayor, and councillors consider that I may continue to accept guests during this period. I have permission to use a private space on my ‘over the road’ neighbours property for guests parking.

**I firmly believe we have two separate issues.**

Item **1 should not be a condition of my B & B application.** And is a separate issue, I am being treated unfairly and have sought further professional advise.

I fully appreciate the opportunities offered by the powers of The Arbitration Tribunal.

**1 Copy of Correspondence from Council.**

**From:** Jessica Anderson [<mailto:jessicaa@albany.wa.gov.au>]

**Sent:** Thursday, 11 August 2016 1:04 PM

**To:** Helen Weston <[wesm@westnet.com.au](mailto:wesm@westnet.com.au)>

**Subject:** RE: EF16231467 - A105416 - RE: Bed and Breakfast 13 Cliff St

Hi Helen

As discussed on the phone, I have circulated the application around and have received comments from all our departments.

There were a number of objections raised during the submission period that related to the access leg. After discussing these with the other departments, it was decided that although there have been concerns raised, these concerns can be mitigated through appropriate planning conditions.

One of the conditions will be as follows:

*Arrangements are made with the City of Albany and adjoining owner for land resumption (for widening and corner truncation) to pave, drain and seal the private right-of-way to a width of 4m with passing opportunities, for the entire lot frontage to View St.*

*Once appropriate arrangements have been made to upgrade the Private Right of Way to a standard acceptable to the COA, the COA will seek to acquire ownership of the ROW, to ensure ongoing maintenance and to allow servicing of current and future created lots. The developer may wish to obtain contributions from other adjoining landowners.*

I have set up a meeting on Monday at 9am at the City of Albany offices. I will see you then, however in the meantime you may want to start the ball rolling and get quotes and see if there is interest from any of the other landowners in regards to contributing to the cost.

Regards Jess

**1 Copy of Correspondence from Council.**

**From:** Jessica Anderson [<mailto:jessicaa@albany.wa.gov.au>]

**Sent:** Thursday, 22 September 2016 1:01 PM

**To:** Helen Weston <[wesm@westnet.com.au](mailto:wesm@westnet.com.au)>

**Subject:** 13 Cliff St - access way upgrade.

Hi Helen

As discussed on the phone, I can now advise you the City is willing to support the proposed Bed and Breakfast, subject to conditions.

As the condition of the access way needs to be addressed, there are two options that you will need to consider.

Option 1)

A portion of the access leg (see attached aerial for the required portion) shall be upgraded to a driveway standard to the satisfaction of the City of Albany. This would need to be completed within 6 months from the date of the approval.

Option 2)

**If the same portion of the access leg was widened and upgraded to a road standard, the City would be willing to seek to acquire ownership of the right of way to ensure ongoing maintenance and to allow servicing of current and further created lots. Arrangements would need to be made with the City of Albany and adjoining landowner for land resumption. Landowners would need to enter into an agreement with the City of Albany prior to any works being undertaken.**

It should be noted that the City of Albany would only be willing to seek ownership of the access way if it was widened and upgraded to a road standard. As contributions are a civil matter, I suggest you liaise with all landowners.

Hope this clarifies what was discussed.

Regards

Jess