



MINUTES

PLANNING AND DEVELOPMENT COMMITTEE

05 August 2015

5.30pm

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 V Calleja JP
- (4) Membership:** Open to all elected members, who wish to be members
- (5) Meeting Schedule:** 1st Wednesday of the Month
- (6) Meeting Location:** Council Chambers
- (7) Executive Officer:** Executive Director Planning & Development
- (8) Delegated Authority:** None

PLANNING AND DEVELOPMENT COMMITTEE
MINUTES –05/08/2015

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PLANNING AND DEVELOPMENT COMMITTEE
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Executive Director Dale Putland called for nominations for the Chair
Councillor Hortin nominated Councillor Hollingworth
Councillor Hollingworth accepted to Chair

1. DECLARATION OF OPENING - [5:31:06 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

Councillors:

Member	A Hortin JP
Member	R Sutton
Member	B Hollingworth
Member	A Goode JP
Member	G Gregson
Member	N Mulcahy

Staff:

Executive Director Planning & Development Services	D Putland
Manager Planning	J van der Mescht
Planning Officer	T Gunn
Minutes	J Cobbold

Apologies:

Member	V Calleja JP (Chair)
Member	R Hammond
Mayor	Mayor D Wellington (Deputy Chair)
Member	S Bowles

PLANNING AND DEVELOPMENT COMMITTEE
MINUTES –05/08/2015

4. DISCLOSURES OF INTEREST - Nil
5. REPORTS OF MEMBERS - Nil
6. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE - Nil
7. PUBLIC QUESTION TIME – Five Public in attendance
8. APPLICATIONS FOR LEAVE OF ABSENCE - Nil
9. PETITIONS AND DEPUTATIONS - Nil
10. CONFIRMATION OF MINUTES

DRAFT MOTION

VOTING REQUIREMENT: SIMPLE MAJORITY

MOVED: Councillor Gregson

SECONDED: Councillor Hortin

THAT the minutes of the Planning and Development Committee Meeting held on 08 July 2015, as previously distributed, be CONFIRMED as a true and accurate record of proceedings.

Carried 6:0

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

**PD087: CONSIDERATION OF SCHEME AMENDMENT – LOT 1879
DAVIES ROAD, KALGAN**

Land Description : Lot 1879 Davies Road, Kalgan
Proponent : Ayton Baesjou Planning
Owner : M J & B J O’Dea
Business Entity Name : Nil
Attachments : 1. Map
: 2. Albany Local Planning Strategy excerpts
: 3. Local Planning Scheme Amendment No. 12 report
Supplementary Information & Councillor Workstation: : Nil
Report Prepared by : Planning Officer (C McMurtrie)
Responsible Officer : Executive Director Planning and 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*.
4. The City has currently imposed a moratorium on the initiation of significant Local Planning Scheme amendments to rezone agricultural land, or intensify adjacent sensitive land uses, other than those that promote ongoing productive use of the land.
5. Although this proposal seeks to create lots for rural living purposes, it is considered relatively minor and would constitute an area of infill in the established ‘Rural Residential’ planning unit. Therefore, it is considered that the proposal may be entertained, as it does not conflict with the current moratorium.

In Brief:

- A request has been submitted for Council to initiate a Local Planning Scheme Amendment to rezone Lot 1879 Davies Road, Kalgan from the ‘General Agriculture’ zone to the ‘Rural Residential’ zone and amend the Scheme Maps accordingly.
- City planning Staff support the proposal, as it is consistent with the strategic direction set in the *Albany Local Planning Strategy* and *State Planning Policy 2.5*.
- The proposal is considered to be relatively minor and would constitute an area of infill in the established ‘Rural Residential’ planning unit. As such, it may be entertained, as it does not conflict with the current moratorium on the initiation of significant Local Planning Scheme amendments to rezone agricultural land, or intensify adjacent sensitive land uses, other than those that promote ongoing productive use of the land.

RECOMMENDATION

PD087: COMMITTEE RECOMMENDATION

MOVED: Councillor Gregson
SECONDED: Councillor Sutton

THAT the Officer Recommendation is RECEIVED.

CARRIED:6:0

PD087: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council in pursuance of Section 75 of the Planning and Development Act 2005, amend the Local Planning Scheme by:

- (1) Rezoning Lot 1879 Davies Road, Kalgan from the 'General Agriculture' zone to the 'Rural Residential' zone; and
- (2) Amending the Scheme Maps accordingly.

BACKGROUND

6. *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.
7. Amendment No. 12 has been prepared to seek the rezoning of Lot 1879 Davies Road, Kalgan from the 'General Agriculture' zone to the 'Rural Residential' zone. The 'Rural Residential' zone is intended to provide for large residential lots in excess of one hectare in area and is considered a form of rural living.
8. Council has previously considered a Scheme Amendment Request to rezone Lot 1879 Davies Road, Kalgan from the 'Rural' zone to the 'Special Rural' zone, under former *Town Planning Scheme No. 3*, at its Ordinary Meeting on 18 May 2004, where it resolved:
"THAT Council advise the applicant that it is prepared to support the request for an Amendment to Town Planning Scheme No. 3 to rezone Pt Lot 1879 Davies Road, Kalgan from 'Rural' to 'Special Rural' subject to the Scheme Amendment addressing the following to the satisfaction of Council:
 - i) *detailed land capability assessment;*
 - ii) *protection of the creekline;*
 - iii) *protection of remnant vegetation;*
 - iv) *preparation of a Subdivision Guide Plan;*
 - v) *preparation of a Fire Management Plan;*
 - vi) *preparation of a Revegetation Plan;*
 - vii) *servicing details and arrangements; and*
 - viii) *visual amenity."*
9. These matters have been addressed within the amendment document.

10. The subject lot covers an area of 14.16ha and lies approximately 12km north-east of the Albany central area and approximately 300m north of Davies Road. The lot is landlocked and accessed via a driveway from Davies Road, across lot 331, to the south.
11. The surrounding land to the north and west is zoned 'Rural Residential' and is subject to the same planning controls that are proposed for the subject lot, while the land to the south and east is zoned 'General Agriculture'.
12. The amendment document states that:

“As the adjoining properties to the north and west have already been zoned for rural residential purposes and are currently subject to detailed subdivision application, the owners of Lot 1879 wish to extend that zoning so that infrastructure planning can be co-ordinated with the adjoining developer”.

DISCUSSION

13. The City's planning Staff support the rezoning of Lot 1879 Davies Road, Kalgan from the 'General Agriculture' zone to the 'Rural Residential' zone, as it is consistent with the current strategic direction set by the *Albany Local Planning Strategy* (see Attachment 2) and *State Planning Policy 2.5*. It is also considered that the proposed rezoning is relatively minor, affects land that has been largely cleared of native vegetation, and that it would constitute an area of infill in the established 'Rural Residential' planning unit. In this context, the proposal can be entertained, as it does not conflict with the current moratorium on the initiation of significant Local Planning Scheme amendments to rezone agricultural land, or intensify adjacent sensitive land uses, other than those that promote ongoing productive use of the land.
14. The matters identified in Council's resolution of 18 May 2004 on the previous Scheme Amendment Request have been adequately addressed in the amendment document and the subject lot is identified in the *Albany Local Planning Strategy* as being suitable for Special Residential development. The subject lot is located adjacent to Lots 11 and 1301 Nanarup Road, which form Rural Residential area No. 9. Lot 1301, to the west, is currently undergoing subdivisional works.
15. Fire management implications on the subject lot have been addressed through a fire management plan; all lots will be subject to an additional Scheme provision that will require construction of dwellings to *Australian Standard 3959 – Construction of Buildings in Bushfire-Prone Areas*. As the lot is currently landlocked and accessed via a driveway and easement over Lot 331 Davies Road, the proposed subdivision guide plan indicates a new access road from Lot 11, to the north.
16. The proposed subdivision guide plan indicates that the creekline will be covered by a creekline protection area and subject to a foreshore management plan.

GOVERNMENT & PUBLIC CONSULTATION

17. The *Town Planning Regulations 1967* require that a Local Planning Scheme amendment is initiated by a resolution of Council and that the consent of the Environmental Protection Authority and the Department of Planning is obtained, prior to the proposal being advertised for public comment. Consequently, no consultation has been undertaken at this stage.

STATUTORY IMPLICATIONS

18. Scheme amendments undergo a statutory process in accordance with the *Planning and Development Act 2005* and *Town Planning Regulations 1967*.
19. 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. Council resolution is sought for the initiation of a local planning scheme amendment.

20. *Regulation 25 of the Town Planning Regulations 1967* sets out the process for amending the LPS.
21. Voting requirement for this item is **SIMPLE MAJORITY**

POLICY IMPLICATIONS

22. The proposal is considered to be consistent with the key policy measures identified in Western Australian Planning Commission *State Planning Policy 2.5 – Land Use Planning in Rural Areas*.
23. *State Planning Policy 2.5* was gazetted in 2012 and has provided a comprehensive review and refinement of the previous *Development Control Policy 3.4 Rural Land Use Planning* (1989). The Western Australian Planning Commission and Local Government are required to have regard to *State Planning Policy 2.5* in planning for the development of rural areas.
24. The overarching policy requirements of *State Planning Policy 2.5* are:
- a) land use change from rural to all other uses is to be planned and provided for in a planning strategy or scheme;
 - b) land identified as priority agricultural land in a planning strategy or scheme is to be retained for that purpose;
 - c) beyond its principle function for primary production, rural land is also required for public purposes, natural resource management, biodiversity conservation and protection of landscapes and views;
 - d) the use of rural land for intensive or emerging primary production land uses does not warrant creation of new or smaller rural lots on an unplanned, ad hoc basis; and
 - e) Creation of new rural lots will be by exception and in accordance with *Development Control Policy 3.4 – Subdivision of Rural Land*, or planned in a strategy or scheme.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<p>Organisational Operations, People Health and Safety and Reputation Subdivision and development of the subject lot could create additional dwelling entitlements at risk of bushfire.</p>	Possible	Severe	High	The proposal contains a Fire Management Plan and attendant Scheme provisions that are designed to mitigate the risk of bushfire and its impacts on any future dwellings and their residents. This will be achieved through adequate separation distances from remnant vegetation, implementation of relevant construction standards and other fire management measures.
<p>Organisational Operations and Reputation Supporting this proposal could lead to other landowners seeking to rezone agricultural land for rural residential purposes.</p>	Possible	Minor	Medium	The <i>Albany Local Planning Strategy</i> , as the principal land use planning strategy for the City, would guide Council's decision-making in other instances.

<p>Organisational Operations and Reputation The proposal may not be accepted by the Western Australian Planning Commission or the Minister for Planning.</p>	Unlikely	Minor	Low	If not supported by the Western Australian Planning Commission or Minister, the amendment will not be progressed and the City will advise the proponent that they may submit a modified proposal.
<p>Community, Organisational Operations and Reputation The proposal may attract objections from members of the public or other Government agencies.</p>	Unlikely	Minor	Low	Widely consulting with all parties who may be affected and all government agencies 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

26. Nil.

LEGAL IMPLICATIONS

27. Nil.

ENVIRONMENTAL CONSIDERATIONS

28. The subject lot is largely cleared, with only small stands of trees remaining in the south-western quarter and in the north-eastern quarter, around the existing house and shed. The land slopes steeply downward from the north-east to the creekline that runs across the south-western corner of the lot. The proposed subdivision guide plan indicates that the creekline will be covered by a creekline protection area and subject to a foreshore management plan.

ALTERNATE OPTIONS

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

- To resolve to initiate the scheme amendment with modification; or
- To resolve not to initiate the scheme amendment.

SUMMARY CONCLUSION

30. It is recommended that Council initiate Local Planning Scheme Amendment No. 12, as it as the proposal is consistent with the strategic direction currently set within the *Albany Local Planning Strategy* and *State Planning Policy 2.5*.

Consulted References	:	<ol style="list-style-type: none"> 1. <i>Local Planning Scheme No. 1</i> 2. <i>Albany Local Planning Strategy 2010</i> 3. <i>City of Albany Strategic Community Plan 2023</i> 4. <i>City of Albany Corporate Business Plan 2013-2017</i> 5. <i>WA Planning Commission State Planning Policy 1 – State Planning Framework Policy (Variation No. 2) and State Planning Policy 2.5 – Land Use Planning in Rural Areas.</i>
File Number (Name of Ward)	:	LAMD12 (Kalgan Ward)
Previous Reference	:	OCM 18/05/04 – Item 11.3.2

PD088: CHANGE OF USE – USE NOT LISTED – PRIVATE FUNCTION CENTRE, LOT 100, 1 SHELLEY BEACH ROAD, KRONKUP

Land Description : Lot 100, 1 Shelley Beach Road, Kronkup
Proponent : Ayton Baesjou Planning
Owner : Femic Pty Ltd Atf Femic Trust
Business Entity Name : Femic Pty Ltd Atf Femic Trust
Attachments : 1. Site and Floor Plan
2. Draft Management Plan
3. Planning Report
4. Traffic Access Study Report
5. Submissions
Supplementary Information & Councillor Workstation: : Nil
Report Prepared by : Planning Officer (Taylor Gunn / C McMurtrie)
Responsible Officer : Executive Director Planning and 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*.

In Brief:

- Council is asked to consider an application for Planning Scheme Consent for a Private Function Centre located at Lot 100, 1 Shelley Beach Road, Kronkup.
- The application was advertised for public comment and referred to surrounding residents.
- Three letters of objection have been received from nearby residents. The objections primarily relate to the impacts that noise emanating from the premises and the likely increase in traffic will have on local amenity.
- Due to the objections, the application is being referred to Council for determination.
- Staff recommend that Council approve the proposed development, subject to conditions, which are considered to mitigate the concerns raised through the public advertising process.

RECOMMENDATION

**PD088: RESOLUTION (AMENDED RESPONSIBLE OFFICER RECOMMENDATION)
VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: Councillor Gregson
SECONDED: Councillor Goodes**

THAT Council resolves to issue Planning Scheme Consent for a Change of Use – Use not Listed – Private Function Centre at Lot 100, 1 Shelley Beach Road, Kronkup and carry out development in accordance with the approved plans, subject to the following Schedule of Conditions:

General

- 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 and be maintained in accordance with the stamped, approved plans.**
- 2. The proposal is to comply with any details and/or amendments marked in red on the stamped, approved plans.**
- 3. 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.**
- 4. 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.**

Stormwater

- 5. Stormwater from the lot shall be managed to the satisfaction of the City of Albany.**

Access

- 6. The new 'exit' crossover shall be located to reduce headlight glare into neighbouring properties, to the satisfaction of the City of Albany.**
- 7. The new and existing crossovers shall be constructed/upgraded to the City of Albany's specifications, levels and satisfaction.**

Advice:

- A 'Permit for Vehicle Crossover Construction' is required from the City of Albany 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 City of Albany Subdivision and Development Guidelines).**
- 8. Any existing crossovers that do not form part of the development hereby approved shall be closed and the kerb, footpath and the verge reinstated to the satisfaction of the City of Albany.**

Car Parking

- 9. All vehicular parking and access areas shall be constructed and maintained as per the approved details and plans, to the satisfaction of the City of Albany.**
- 10. The landowner shall enter into an agreement with the City of Albany to ensure that suitable shared vehicular access arrangements are secured over Lots 100 and 101 Shelley Beach Road.**

Signs

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

Advice:

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

Amenity & Noise

12. Prior to commencement of use, the operator shall prepare and submit for approval a Noise Management Plan for the premises, detailing practices and controls to minimise noise emissions, to the satisfaction of the City of Albany.

13. The premises shall be operated in accordance with the approved Noise Management Plan to the satisfaction of the City of Albany.

14. 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.

15. 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.

Patron Numbers and Hours of Operation

16. A maximum of 120 patrons shall be on site for any evening function/event, unless otherwise agreed in writing by the City of Albany.

17. Functions shall cease no later than 12.00am, unless otherwise agreed in writing with the City of Albany after suitable neighbourhood consultation is undertaken.

18. The applicant will advise nearby residents if more than two evening events/functions are proposed to be held in any calendar month and will undertake suitable measures to mitigate concerns relating to noise and amenity impacts.

CARRIED: 6:0

Officer's Reason (Executive Director Planning and Development):

The applicant has advised that the previous condition limiting the centre to 2 functions per calendar month are likely to adversely impact on the viability of the centre.

The amended recommendation provides more flexibility for the applicant, whilst offering a level of protection to local amenity.

PD088: COMMITTEE RECOMMENDATION

THAT Council resolves to issue Planning Scheme Consent for a Change of Use – Use not Listed – Private Function Centre at Lot 100, 1 Shelley Beach Road, Kronkup and carry out development in accordance with the approved plans, subject to the following Schedule of Conditions:

General

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 and be maintained in accordance with the stamped, approved plans.

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

3. 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.
4. 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.

Stormwater

5. Stormwater from the lot shall be managed to the satisfaction of the City of Albany.

Access

6. The new 'exit' crossover shall be located to reduce headlight glare into neighbouring properties, to the satisfaction of the City of Albany.
7. The new and existing crossovers shall be constructed/upgraded to the City of Albany's specifications, levels and satisfaction.
Advice:
 - A 'Permit for Vehicle Crossover Construction' is required from the City of Albany 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 City of Albany Subdivision and Development Guidelines).
8. Any existing crossovers that do not form part of the development hereby approved shall be closed and the kerb, footpath and the verge reinstated to the satisfaction of the City of Albany.

Car Parking

9. All vehicular parking and access areas shall be constructed and maintained as per the approved details and plans, to the satisfaction of the City of Albany.
10. The landowner shall enter into an agreement with the City of Albany to ensure that suitable shared vehicular access arrangements are secured over Lots 100 and 101 Shelley Beach Road.

Signs

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

Advice:

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

Amenity & Noise

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14. 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.
15. 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.

Patron Numbers and Hours of Operation

16. A maximum of 120 patrons shall be on site for any evening function/event, unless otherwise agreed in writing by the City of Albany.
17. No more than two evening events/functions shall be held in any calendar month, and these shall cease no later than 12.00am, unless otherwise agreed in writing with the City of Albany.

PD088:RESPONSIBLE OFFICERS RECOMMENDATION

THAT Council resolves to issue Planning Scheme Consent for a Change of Use – Use not Listed – Private Function Centre at Lot 100, 1 Shelley Beach Road, Kronkup and carry out development in accordance with the approved plans, subject to the following Schedule of Conditions:

General

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 and be maintained in accordance with the stamped, approved plans.
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Access

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7. The new and existing crossovers shall be constructed/ upgraded to the City of Albany's specifications, levels and satisfaction.

Advice:

- A 'Permit for Vehicle Crossover Construction' is required from the City of Albany 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 City of Albany Subdivision and Development Guidelines).
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9. All vehicular parking and access areas shall be constructed and maintained as per the approved details and plans, to the satisfaction of the City of Albany.
10. The landowner shall enter into an agreement with the City of Albany to ensure that suitable shared vehicular access arrangements are secured over Lots 100 and 101 Shelley Beach Road.

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Advice:

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Patron Numbers and Hours of Operation

16. A maximum of 120 patrons shall be on site for any evening function/event, unless otherwise agreed in writing by the City of Albany.
17. No more than two evening events/functions shall be held in any calendar month, and these shall cease no later than 12.00am, unless otherwise agreed in writing with the City of Albany.

BACKGROUND

4. The application seeks to change the use of the former Woodbury Boston School hall at Lot 100, 1 Shelley Beach Road, Kronkup to a private function centre. The hall has been previously sold off by the school and the land subdivided so that it stands on its own lot.
5. In 2013 and 2014 the hall facilities were upgraded so that it could be used as a private function centre. However, the owners were not aware that this would constitute a change of use in the premises and formal Planning Scheme Consent has not yet been granted by the City.
6. The subject lot is located at the south-east corner of the intersection of Shelley Beach Road and Coombes Road. The lot has an area of 1.43ha and is zoned 'General Agriculture' under *Local Planning Scheme No. 1*.
7. With the exception of the Woodbury Boston School, which stands to the south on a 'General Agriculture' zoned lot, the surrounding land is zoned 'Rural Residential' and supports rural living on lots of approximately 2ha in area. A number of large 'Priority Agriculture' zoned lots

lie approximately 150m to the south-west of the subject lot and a 'Conservation' zoned lot lies approximately 550m to the south-east.

8. The application was advertised for public comment for a period of 21 days. Nearby landowners were directly notified by letter, a site notice was placed on site and an advertisement was published in a local newspaper. A total of five submissions were received on the application; two of which were in support and three of which raised objections.
9. Council is now requested to consider the submissions received during the public advertising period and determine whether to grant Planning Scheme Consent.

DISCUSSION

10. The hall was used for a variety of functions and community activities when it was owned by the school. The proponent is now seeking to use the hall for a variety of functions, which will be held both during the day and in evenings, and will include weddings.
11. The subject lot slopes downward from west to east, with scattered trees and shrubs across the western extent of the block, which serve to screen the hall from Shelley Beach Road.
12. The proponent has provided a draft management plan, outlining the intended hours of operation, the estimated number of patrons that the premises can accommodate and the estimated number of vehicle movements that their attendance will generate (see Attachment 2).
13. Access to the property is currently via a crossover on the corner truncation of the lot at the intersection of Shelley Beach Road and Coombes Road. City engineers have deemed this to be an unsafe location for the crossover, due to poor sightlines and potential for traffic conflict. Following advice from City staff, the proponent has provided a Traffic Assessment Study Report (see Attachment 4), which acknowledges the safety concerns around the current access arrangements.
14. The Traffic Study Report recommends that a one-way system of access and egress should be implemented. It is proposed to utilise an existing crossover from Shelley Beach Road to a school service driveway for access, and to create a new crossover for egress at a point approximately 50m from the intersection of Shelley Beach Road and Coombes Road. The existing crossover at the intersection will be closed. Part of the existing access driveway extends over the adjoining school site (Lot 101 Shelley Beach Road) and formal legal agreements will have to be secured over the relevant Certificates of Title in order for this arrangement to remain.
15. The submitted site plan indicates the provision of 26 on-site car parking bays, a disabled access parking bay, a bus parking bay and an informal overflow parking area, which can be used if required. This is compliant with *Table 5 – Car and Bicycle Parking Requirements of Local Planning Scheme No. 1*.
16. As outlined above, a total of five submissions were received from members of the public during the advertising period; two letters in support of the proposal and three raising objections.
17. The objections relate primarily to the impacts that noise emanating from the premises and the likely increase in traffic will have on local amenity.
18. While the potential does exist for an increase in noise and disturbance, Staff consider that the issues can be mitigated by responsible management of the premises. The draft management plan that has been submitted with the application details various aspects of the operation of the premises, responsibilities of the hirer, fire prevention measures and the process for dealing with complaints.

19. The venue manager also resides in the area and neighbours will be given the manager’s contact details, so that they may report any concerns or complaints about an ongoing function. The proponent has also advised that the venue manager will be available during all functions.
20. Staff recommended that planning conditions relating to noise management are applied to any grant of Planning Scheme Consent, including the submission of finalised noise and management plans to the City for approval. The operation of the venue would also be required to comply with the *Environmental Protection (Noise) Regulations 1997*.
21. To further mitigate any potential impacts from noise and disturbance, Staff have also recommend the application of planning conditions to limit the number of evening functions to two per month with a maximum of 120 patrons and to restrict the hours of operation to no later than 12.00am.
22. It is acknowledged that the proposal will generate additional traffic movements in the area. However, Coombes Road and Shelley Beach Roads already carry a significant amount of local, school and tourist traffic, in addition to visitors to West Cape Howe National Park. Furthermore, traffic associated with the proposal is likely to arrive and depart within short periods of time, meaning that there would not be a significant increase in traffic over the course of the day. As outlined above, the proposed alterations to the vehicular access and egress arrangements will address the safety concerns around the existing crossover to the subject lot.
23. It is recommended that Council approve the proposed development, subject to the conditions provided.

GOVERNMENT & PUBLIC CONSULTATION

24. The proposal was advertised for public comment for a period of 21 days, in accordance with clause 9.4 – *Advertising of Applications of Local Planning Scheme No. 1*. A sign was placed on site, an advert was published in a local newspaper and surrounding landowners were directly notified in writing.
25. A total of five submissions were received during the advertising period. Two submissions were in support of the proposal, while three objected to it. The submissions are summarised as follows:

Summary of submissions	Officer comment
The Woodbury Boston School fully supports the application. In the past, the building was used for end-of-year family dances and other sporadic events, and we look forward to be being able to use the centre for these community-building events in the future.	The Woodbury Boston School’s support for the proposal is noted.
The facility has hosted innumerable events and functions. On no occasion have lights and sound from the hall ever been a problem.	The comment is noted.
The recently completed renovations have transformed the building into an ideal venue, which should be welcomed by the local community.	The comment is noted.
Unfortunately, new landowners within the area have failed to appreciate that the building has had a history of use as a public facility.	The comment is noted.

<p>We feel the potential difficulties from the function centre have been more than adequately addressed in the management plan.</p>	<p>The comment is noted.</p>
<p>Our purpose in buying this house and moving to the area was to live in peace and quiet; the proposal will impact on the amenity of the area.</p>	<p>The proposed use can be considered in the 'General Agriculture' zone and function and community halls are commonly located within rural areas.</p> <p>The closest dwelling is over 130m from the building and screening vegetation is already in place along the north, south and west boundaries.</p>
<p>The increase in noise from loud music, people yelling and buses reversing, etc. are of concern.</p>	<p>While the potential does exist for an increase in noise and disturbance, Staff consider that the issues can be mitigated by responsible management of the premises. The draft management plan that has been submitted with the application details various aspects of the operation of the premises, responsibilities of the hirer, fire prevention measures and the process for dealing with complaints.</p> <p>The venue manager also resides in the area and neighbours will be given the manager's contact details, so that they may report any concerns or complaints about an ongoing function. The proponent has also advised that the venue manager will be available during all functions.</p> <p>Staff recommend that planning conditions relating to noise management are applied, including the submission of finalised noise and management plans to the City for approval. The operation of the venue would also be required to comply with the <i>Environmental Protection (Noise) Regulations 1997</i>.</p> <p>This approach will retain the option for hours of operation and patron numbers to be increased, at the City's discretion.</p> <p>The proposed one-way vehicular access and egress arrangements should minimise the nuisance caused by reversing alarms on buses and service vehicles.</p>
<p>The proposal will generate additional traffic on the road network, which will increase road and vehicle noise.</p>	<p>It is acknowledged that the proposal will generate additional traffic movements in the area. However, Coombes Road and Shelley Beach Roads already carry a significant amount of local, school and tourist traffic, in addition to visitors to West Cape Howe National Park.</p> <p>Traffic associated with the proposal is likely to arrive and depart within short periods of time, meaning that there would not be a significant increase in traffic over the course of the day.</p>
<p>With the traffic exiting from the new driveway, headlights will shine directly across onto neighbouring properties and into dwellings.</p>	<p>To reduce the impact on the neighbouring properties to the west, Staff recommend that the crossover used by traffic exiting the lot is suitably positioned and angled to direct headlight glare away from adjacent dwellings.</p>
<p>We are concerned with the management plan, in particular, music being allowed until 1.00am in the morning from Friday and Saturday evening functions. In the metropolitan area these events are restricted to 11.00pm and 12.00pm.</p>	<p>In an effort to minimise these potential impacts, Staff recommend the application of a planning condition to limit the number of evening functions to two per month.</p> <p>Staff also recommend the application of a planning condition to limit the maximum number of patrons at any evening function to 120 and restrict the hours of operation</p>

	to no later than 12.00am.
How will the behaviour of patrons be regulated, especially when they are under the affects of alcohol? It will be impossible to guarantee that patrons remain on the property and adhere to the 'rules'.	The operators of the premises will be responsible for managing patrons in accordance with the management plan and the provisions of the <i>Liquor Control Act 1988</i> .
There is already a function centre in the area (Bornholm-Kronkup Community Centre) which is a much more suitable site. Why should the City approve another?	The City is obliged to entertain any application for planning approval, unless the land use or development is expressly prohibited in the zone.
The proposal will impact on the value of many surrounding properties.	Property values are a not a valid planning consideration and cannot be considered by Staff in the assessment of this application.
The increased possibility of fire, including from patrons smoking within the grounds, and traffic incidents and the delayed responses from fire and emergency services from Albany is a problem.	<p>The draft management plan that has been submitted in support of the application outlines a number of fire mitigation measures that will be implemented.</p> <p>The proposed alterations to the vehicular access arrangements to the site will reduce the risk of traffic incidents by removing a potentially unsafe crossover and replacing it with two crossovers that have better sightlines.</p>
Would like to see extra conditions added, and closing times adjusted significantly for this proposal to be better suited to the surrounding area.	As outlined above, Staff recommend the application of a planning condition to limit the maximum number of patrons at any evening function to 120 and restrict the hours of operation to no later than 12.00am.
The traffic assessment report fails in a number of regards: how service vehicles will exit the school; lines of sight; impacts on vegetation and power poles; speed of vehicles; overflow parking; and affects on other users of Shelley Beach Road.	<p>Service vehicles will still be able to exit the school via the driveway across Lot 100 Shelley Beach Road. Formal legal agreements will have to be secured over the relevant Certificates of Title to ensure that this arrangement remains in place.</p> <p>Sightlines onto Shelley Beach Road from the proposed exit point are generally good and the exact location of this crossover will be agreed, prior to the issue of a crossover permit by the City.</p> <p>The proposed location for the exit point is cleared of trees and significant vegetation and there are no power poles present.</p> <p>The proposed exit point would be located approximately 50m from the intersection of Shelley Beach Road and Coombes Road. It is likely, due to its proximity to this intersection, that traffic speeds will be relatively low on this section of Shelley Beach Road.</p> <p>It is acknowledged that the proposal will generate additional traffic movements in the area. However, as outlined above, Coombes Road and Shelley Beach Roads already carry a significant amount of local, school and tourist traffic, in addition to visitors to West Cape Howe National Park. Furthermore, the traffic associated with the proposal is likely to arrive and depart within short periods of time, meaning that there would not be a significant increase in traffic over the course of the day.</p>
The proposal will result in anti-social behaviour, and increase damage to nearby	As outlined above, the operators of the premises will be responsible for managing patrons in accordance with the management plan and the provisions of the <i>Liquor Control</i>

properties including the school.	<i>Act 1988</i> . However, anti-social behaviour, such as disorderly conduct or criminal damage would fall under the jurisdiction of Western Australia Police.
There is potential for an increase in traffic accidents as a result of drink-driving and the number of kangaroos that congregate in the area.	As outlined above, the operators of the premises will be responsible for managing patrons in accordance with the management plan and the provisions of the <i>Liquor Control Act 1988</i> . Responsible service of alcohol should minimise incidences of drink-driving. Should someone commit a drink-driving offence, this would fall within the jurisdiction of Western Australia Police. The risk of kangaroo strikes should be minimal in the immediate vicinity of the proposed function centre, as traffic associated with the development is likely to be travelling at low speed.

STATUTORY IMPLICATIONS

26. Clause 4.4.2 of *Local Planning Scheme No. 1* states that:

“If a person proposes to carry out on land any use that is not specifically mentioned in the Zoning Table and cannot reasonably be determined as falling within the type, class or genus of activity of any other use category, the Local Government may:

- (a) Determine that the use is consistent with the objectives of the particular zone and is therefore permitted;*
- (b) Determine that the use may be consistent with the objectives of the particular zone and thereafter follow the advertising procedures of clause 9.4 in considering an application for planning approval; or*
- (c) Determine that the use is not consistent with the objectives of the particular zone and is therefore not permitted”.*

27. This application has been determined in accordance with sub-clause (b) above.

28. The subject site is zoned ‘General Agriculture’ under *Local Planning Scheme No. 1*.

29. The objectives of the ‘General Agriculture’ zone are as follows:

- (a) Provide for the sustainable use of land for agriculture and rural activities;*
- (b) Support complimentary land uses where those land uses do not detract from adjoining agricultural and rural activities and are compatible with the character and amenity of the area;*
- (c) Prevent land uses and development within the zone that may adversely impact on the continued use of the zone for agricultural and rural purposes;*
- (d) Provide for value-adding opportunities to agricultural and rural products on site; and*
- (e) Provide for tourism experiences where those developments do not impact upon adjoining agricultural and rural land uses.*

30. Voting requirement **Simple Majority**.

POLICY IMPLICATIONS

31. Nil.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<p>Organisational Operations and Reputation The proponent may lodge an application for review to the State Administrative Tribunal if the Council's decision was to refuse the proposal.</p>	Likely	Moderate	Medium	<p>The decision is based on sound planning grounds.</p> <p>If a decision is made to refuse the application, Council must provide sound reasons for the decision. These reasons would be necessary to defend the decision at a State Administrative Tribunal hearing.</p>
<p>Community, Organisational Operations, Financial and Reputation Approving the proposed use could give rise to unacceptable impacts on the amenity of the area.</p>	Possible	Moderate	Medium	<p>Potential impacts on local amenity can be mitigated by the application of appropriate planning conditions.</p>

FINANCIAL IMPLICATIONS

33. All costs associated with the development will be borne by the proponent.
34. However, the proponents have the right to seek a review of that decision or conditions through the State Administrative Tribunal (SAT), the City could be liable for costs associated with defending the decision at a State Administrative Tribunal hearing.

LEGAL IMPLICATIONS

35. 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 SAT, in accordance with Section 252 of the *Planning and Development Act 2005*.
36. 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

37. Nil.

ALTERNATE OPTIONS

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

- 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

39. The matters raised in the public submissions received during the advertising period have been broadly addressed by the proponent and can be mitigated through the application of appropriate planning conditions.

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

Consulted References	:	1. <i>Local Planning Scheme No. 1</i> 2. <i>Albany Local Planning Strategy 2010</i>
File Number (Name of Ward)	:	A182155 (West Ward)
Previous Reference	:	Nil

**PD089: RECONSIDERATION OF SINGLE HOUSE AT LOT 75 AND
SINGLE HOUSE AT LOT 76 RANGE ROAD, YAKAMIA, 6330**

Land Description : Lot 75 and 76 Range Road, Yakamia 6330
Proponent : MGA Town Planners
Owners : Bohemia Estates Pty Ltd
Business Entity Name : Bohemia Estates Pty Ltd
Attachments : 1. Copy of original item PD080 from May 2015 OCM
2. Revised Site plans
Supplementary Information & Councillor Workstation: : Nil
Report Prepared by : Senior Planning Officer (Alex Bott)
Responsible Officer : Executive Director Planning and 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 (ALPS)*.
3. The proposals are consistent with the strategic direction set in ALPS.

In Brief:

- The State Administrative Tribunal has invited the City of Albany to reconsider the decision made at the May 2015 Ordinary Council Meeting for the development of a Single House at lot 75 Range Road and a Single House at Lot 76 Range Road, Yakamia.
- Council conditionally approved the proposals subject to a number of conditions relating to vegetation protection and bushfire control.
- The applicant sought review of a number of conditions at the State Administrative Tribunal. Through this process the applicant has provided the City of Albany with revised plans and clarified condition wording.
- Staff recommend that Council approve the development of the two Single Houses, subject to revised conditions.
- *Post Committee meeting, Planning staff contacted the Applicant and Mover of Amendment to have the condition applied as a condition under the Fire Management Plan which they accepted.*

RECOMMENDATION

PD089: COMMITTEE RECOMMENDATION (AMENDED)

THAT Council resolves to issue Planning Scheme Consent for the purpose of a Single House at Lot 75 Range Road, Yakamia and a Single House at Lot 76 Range Road, Yakamia and carry out development in accordance with the approved plans subject to the following Schedule of Conditions:

General

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 and be maintained in accordance with the stamped, approved plans dated (**insert date**).
2. No vegetation outside of the approved building envelope area shall be removed or disturbed unless otherwise agreed in writing with the City of Albany.

Stormwater

3. Stormwater being managed to the satisfaction of the City of Albany.

Access

4. A new crossover to Target Road shall be constructed to the City of Albany's specifications, levels and satisfaction.

Advice:

- A 'Permit for Vehicle Crossover Construction' is required from the City of Albany 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 City of Albany Subdivision and Development Guidelines).

5. Range Road being constructed to a battleaxe lot access leg standard from the access point to Target Road to the satisfaction of the City of Albany.

Advice:

- All works to be completed in accordance with City of Albany Subdivision and Development Guidelines (specifically section 11.6).

Building Protection and Hazard Separation Zone

6. The Building Protection and Hazard Separation Zones being implemented and maintained to a standard for BAL-29, to the satisfaction of the City of Albany.
7. The dwellings being constructed to the appropriate Australian Standard (3959) Construction of Buildings in Bushfire-prone Areas for BAL-29.

Location of Single Dwellings

8. The location of the single dwellings and Building Protection Zones being modified (relocated to the west) as per the attached plan, to the satisfaction of the City of Albany.

Fire Management Plan

9. The Fire Management Plan being modified to conform with conditions of this planning scheme consent, to the satisfaction of the City.

Advice:

- **The revised Fire Management is to include provision for a suitable turnaround area for fire and emergency vehicles within the driveway and vehicle circulation area of the dwelling to the satisfaction of the City of Albany.**

Notification

10. A notification, pursuant to section 70A of the *Transfer of Land Act 1893* is to be placed on the certificate(s) of title of the Lots 75 and 76. The notification is to state as follows:

"No development is to take place outside the defined building envelope(s), unless otherwise approved by the local government. The building envelope refers to the area

within which all development on each lot (including the dwelling, sheds, water storage, low fuel area and effluent disposal areas) must be confined.”

General advice regarding the EPBC Act

- The owner/developer is advised to liaise with the Commonwealth Department of Environment regarding the requirements of the *Environment Protection and Biodiversity Conservation Act 1999* prior to any clearing and/or development taking place.

PD089: COMMITTEE RECOMMENDATION

MOVED: Councillor Gregson
SECONDED: Councillor Sutton

THAT the Responsible Officers Recommendation is adopted with an additional condition under Access:

- Provision shall be made for a suitable turnaround area for fire and emergency vehicles within the driveway, and vehicle circulation area of the dwelling, to the satisfaction of the City of Albany

CARRIED 6:0

Councillor Gregson proposed to move the Responsible Officers Recommendation with a minor amendment.

Reason: Safety for the Emergency Services Staff

PD089: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council resolves to issue Planning Scheme Consent for the purpose of a Single House at Lot 75 Range Road, Yakamia and a Single House at Lot 76 Range Road, Yakamia and carry out development in accordance with the approved plans subject to the following Schedule of Conditions:

General

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 and be maintained in accordance with the stamped, approved plans dated (**insert date**).
2. No vegetation outside of the approved building envelope area shall be removed or disturbed unless otherwise agreed in writing with the City of Albany.

Stormwater

3. Stormwater being managed to the satisfaction of the City of Albany.

Access

4. A new crossover to Target Road shall be constructed to the City of Albany's specifications, levels and satisfaction.

Advice:

- A 'Permit for Vehicle Crossover Construction' is required from the City of Albany 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 City of Albany Subdivision and Development Guidelines).

5. Range Road being constructed to a battleaxe lot access leg standard from the access point to Target Road to the satisfaction of the City of Albany.

Advice:

- All works to be completed in accordance with City of Albany Subdivision and Development Guidelines (specifically section 11.6).

Building Protection and Hazard Separation Zone

6. The Building Protection and Hazard Separation Zones being implemented and maintained to a standard for BAL-29, to the satisfaction of the City of Albany.
7. The dwellings being constructed to the appropriate Australian Standard (3959) Construction of Buildings in Bushfire-prone Areas for BAL-29.

Location of Single Dwellings

8. The location of the single dwellings and Building Protection Zones being modified (relocated to the west) as per the attached plan, to the satisfaction of the City of Albany.

Fire Management Plan

9. The Fire Management Plan being modified to conform with conditions of this planning scheme consent, to the satisfaction of the City.

Notification

10. A notification, pursuant to section 70A of the *Transfer of Land Act 1893* is to be placed on the certificate(s) of title of the Lots 75 and 76. The notification is to state as follows:

“No development is to take place outside the defined building envelope(s), unless otherwise approved by the local government. The building envelope refers to the area within which all development on each lot (including the dwelling, sheds, water storage, low fuel area and effluent disposal areas) must be confined.”

General advice regarding the EPBC Act

- The owner/developer is advised to liaise with the Commonwealth Department of Environment regarding the requirements of the *Environment Protection and Biodiversity Conservation Act 1999* prior to any clearing and/or development taking place.

BACKGROUND DISCUSSION

4. The application was conditionally approved by Council at the May 2015 Ordinary Council meeting.
5. The applicant referred the review of a number of conditions to the State Administrative Tribunal for review.
6. The applicant sought review to refine a number of conditions and review the required Bushfire Attack Level (BAL) of 40 which was applied.
7. As a result of mediation the following information has been put forward;
 - A reduction from BAL 40 to BAL 29;

- Introduction of a building envelope in line with the clearing required to facilitate a BAL 29; and
 - Introduction of a section 70A on title advising of the building envelope in lieu of a restrictive covenant.
8. The proposed items for reconsideration are reflected in conditions of the responsible officer recommendation above.

DISCUSSION

9. The methodology set out in *Planning for Bushfire Protection Guidelines* seeks to strike a balance between clearing of vegetation and fire resistant construction techniques, which may be varied dependent on the circumstances.
10. The original approval required construction to a BAL 40 level. The Planning for Bushfire Protection Guidelines note that locating residential development where BAL-40 is identified is not recommended due to the level of fire risk, though it may be permitted in exceptional circumstances
11. The proposed reduction to BAL 29 does result in an increased level of clearing. However, BAL 29 is generally considered be the highest development standard which can be reasonably applied to residential development. The proposed BAL 29 level will still achieve a significant reduction of clearing in comparison to the originally proposed BAL 12.5.
12. If approved via reconsideration, a condition will remain requiring the fire management plan to be amended to reflect the revised BAL 29.
13. Officers consider that the revised BAL 29 level provides a balance between vegetation protection and bushfire protection.
14. The current approval contains a restrictive covenant which prohibits clearing outside of the bushfire protection area.
15. The applicant contended the validity of such a condition and the associated wording.
16. The option of replacing the restrictive covenant with a notification of title was put forward. A section 70A notification on title would operate in conjunction with a building envelope. The proposed wording for a notification is as follows:
- “No development is to take place outside the defined building envelope(s), unless otherwise approved by the local government. The building envelope refers to the area within which all development on each lot (including the dwelling, sheds, water storage, low fuel area and effluent disposal areas) must be confined.”*
17. In terms of vegetation protection, a section 70A notification on title is not as enforceable and prescriptive as a restrictive covenant. Essentially, a section 70A would notify a landowner that they cannot clear outside of the building envelope area. A restrictive covenant provides an ongoing obligation for vegetation to be protected and binds the owner as such.
18. Acknowledging that a notification provides a reduced vegetation protection control, it is recommended that an additional ongoing condition of consent be applied stating that no native vegetation is to be cleared outside of the approved building envelope area. An ongoing condition of this nature requires ongoing compliance and provides the City with the ability to undertake compliance action due to breach of condition in the event that vegetation is cleared outside of the building envelope area.

GOVERNMENT & PUBLIC CONSULTATION

19. The City has referred the original development applications to the Office of the Environmental Protection Authority (OEPA). The OEPA elected not to formally review the applications but noted a preference for development to be consistent with the draft Yakamia/Lange Structure Plan. While the OEPA advice notes that vegetation on these lots should be preserved due to their environmental significance. (More explanation is included under “Environmental Considerations”)

STATUTORY IMPLICATIONS

- 20. The subject lots are zoned ‘Future Urban’ under LPS1.
- 21. Clause 4.2.3 *Future Urban Zone* in LPS1 sets out the objectives for the ‘Future Urban’ zone.
- 22. **Voting requirement** - Simple Majority

POLICY IMPLICATIONS

- 23. Fire protection measures should be consistent with the methodology contained in the Western Australian Planning Commission’s *Planning for Bushfire Protection Guidelines*.
- 24. The methodology set out in *Planning for Bushfire Protection Guidelines* seeks to strike a balance between clearing of vegetation and fire resistant construction techniques, which may be varied dependent on the circumstances.
- 25. The Guidelines also identify various vegetation types and ‘Bushfire Attack Levels’, or BALs, which relate to a level of construction under AS 3959. Dependent on the vegetation type and the degree of slope between it and the proposed development, the HSZ may be reduced from 80m (100m when combined with the BPZ), with a corresponding increase in the BAL and the level of construction required.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<p>Organisational Operations and Reputation If the applications are approved, the applicant may appeal to the State Administrative Tribunal (SAT)</p>	Likely	Moderate	High	Any decision based on proper planning grounds can be defended in SAT. If the conditions are upheld, the impact on the environment can be minimised.

FINANCIAL IMPLICATIONS

27. There may be financial implications if review of the decision proceeds through to a hearing at the SAT.

LEGAL IMPLICATIONS

28. The applicant has the ability to continue mediation or proceed to a hearing at the State Administrative Tribunal.

ENVIRONMENTAL CONSIDERATIONS

29. The subject lots are entirely covered in native vegetation that has been identified in the *Albany Regional Vegetation Survey* (ARVS) as being in very good to excellent condition. The vegetation also includes priority flora species and provides a habitat for threatened and endangered fauna species. The applications were therefore referred to the Office of the Environmental Protection Authority (OEPA) for their comment.

30. The OEPA provided the following response:

“Lots 75 and 76 Range Road hold vegetation in 'Very Good' to 'Excellent' condition which supports significant ecological communities, priority flora and habitat for threatened fauna protected under State and Commonwealth legislation. The vegetation within these Lots is part of a consolidated area of native vegetation which contains multiple vegetation units (catena from upland to wetland) identified as having high conservation value in the Albany Regional Vegetation Survey. It is noted that clearing for building envelopes and bushfire protection will impact 3.1205 hectares of native vegetation on Lot 75 and 7.0608 hectares on Lot 76...the OEPA's preference is that development be consistent with the draft Yakamia/Lange Structure Plan. Referral to the Commonwealth is likely to be required as the developments may have a significant impact on Matters of National Environmental Significance.”

ALTERNATE OPTIONS

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

- To refuse the reconsideration of both applications, on the grounds that they will have an adverse impact on the environment and visual amenity;
- To approve both applications while maintaining the restrictive covenant condition of the original approval.

32. If the reconsideration is refused, the original approval would stand.

SUMMARY CONCLUSION

33. Council has been invited to reconsider the original consent approved at the May 2015 Ordinary Council Meeting.

34. The applicant has requested review of a number of conditions pertaining to Bushfire controls and associated detail. The amended application includes the following;

- Reduction from BAL 40 to BAL 29;
- Introduction of a building envelope in line with the clearing required to facilitate a BAL 29;and
- Introduction of a section 70A on title advising of the building envelope in lieu of a restrictive covenant.

35. Officers recommend Council approve the amended application on the grounds that they provide a pragmatic balance between vegetation protection and bushfire protection.

Consulted References	:	<ol style="list-style-type: none"> 1. Planning and Development Act 2015 2. Local Planning Scheme No. 1 3. Albany Local Planning Strategy 2010
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		<ul style="list-style-type: none"> 4. Environmental Protection Act 1986 5. Draft Yakamia/Lange Structure Plan 6. Planning for Bushfire Protection Guidelines
File Number (Name of Ward)	:	A86521 and A86503 (Yakamia Ward)
Previous Reference	:	<p>PD080: Consideration Of Single House At Lot 75 And Single House At Lot 76 Range Road, Yakamia</p> <p>PD060: Endorse advertising for the draft Yakamia/Lange Structure Plan (25/11/2014).</p>

UNCONFIRMED

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 -[6:16:45 PM](#)**
18. **CLOSURE** There being no further business the Chair declared the meeting closed at [6:16:45 PM](#)

UNCONFIRMED