



AGENDA

PLANNING AND DEVELOPMENT COMMITTEE

06 May 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
AGENDA –06/05/2015

TABLE OF CONTENTS

	Details	Pg#
1.	DECLARATION OF OPENING	4
2.	PRAYER AND ACKNOWLEDGEMENT OF TRADITIONAL LAND OWNERS	4
3.	RECORD OF APOLOGIES AND LEAVE OF ABSENCE	4
4.	DISCLOSURES OF INTEREST	5
5.	REPORTS OF MEMBERS	5
6.	RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE	5
7.	PUBLIC QUESTION TIME	5
8.	APPLICATIONS FOR LEAVE OF ABSENCE	5
9.	PETITIONS AND DEPUTATIONS	5
10.	CONFIRMATION OF MINUTES	5
11.	PRESENTATIONS	5
12.	UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS	5
13.	MINUTES AND RECOMMENDATIONS OF COMMITTEES	5
PD080	CONSIDERATION OF SINGLE HOUSE AT LOT 75 AND SINGLE HOUSE AT LOT 76 RANGE ROAD, YAKAMIA, 6330	6
14.	NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF COUNCIL	16
15.	MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN	16
16.	REPORTS OF CITY OFFICERS	16
17.	MEETING CLOSED TO PUBLIC	16
18.	CLOSURE	16

PLANNING AND DEVELOPMENT COMMITTEE
AGENDA –06/05/2015

1. DECLARATION OF OPENING

2. PRAYER AND ACKNOWLEDGEMENT OF TRADITIONAL LAND OWNERS

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

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

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

3. RECORD OF APOLOGIES AND LEAVE OF ABSENCE

Mayor

Mayor D Wellington (Deputy Chair)

Councillors:

Member

S Bowles

Member

A Hortin JP

Member

A Goode JP

Member

R Sutton

Member

G Gregson

Member

S Bowles

Member

N Mulcahy

Member

B Hollingworth

Member

R Hammond

Staff:

Executive Director Planning & Development

Services

D Putland

Manager Planning

J van der Mescht

Planning Officer

C McMurtrie

Minutes

J Cobbold

Apologies:

Member

V Calleja JP

PLANNING AND DEVELOPMENT COMMITTEE
AGENDA –06/05/2015

4. DISCLOSURES OF INTEREST

Name	Committee/Report Item Number	Nature of Interest

5. REPORTS OF MEMBERS

6. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

7. PUBLIC QUESTION TIME

8. APPLICATIONS FOR LEAVE OF ABSENCE

9. PETITIONS AND DEPUTATIONS

10. CONFIRMATION OF MINUTES

DRAFT MOTION

VOTING REQUIREMENT: SIMPLE MAJORITY

THAT the minutes of the Planning and Development Committee Meeting held on 04 March 2015, as previously distributed, be CONFIRMED as a true and accurate record of proceedings.

11. PRESENTATIONS

Craig McMurtrie - Scheme Amendment Request for Lot 734, 33 Barker Road, Centennial Park to include 'Park Home Park' as a 'D' (discretionary) use within Special Use Site SU17.

12. UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS

**PD080: CONSIDERATION 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. Site plans
2. Elevation Plans
3. Fire Management Plan
4. Guide to Bushfire Attack Level (BAL)
5. Letter OEPA
6. Vegetation associations and units map
Supplementary Information & Councillor Workstation: : Nil
Report Prepared by : Manager Planning Services (Jan van der Mescht)
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:

- Council is asked to consider proposals for the development of a Single House at lot 75 Range Road and a Single House at Lot 76 Range Road, Yakamia.
- The subject lots have been zoned 'Future Urban' since the 1970s.
- The Office of the Environmental Protection Agency (OEPA) provided advice that the sites have high conservation value that requires careful consideration before development approval.
- The proposed fire protection measures Building Protection Zone (BPZ) and Hazard Separation Zone (HSZ) for the two houses would result in an unacceptable impact on the ecological communities, flora and fauna habitats, and local visual amenity.
- Staff recommend that Council approve the development of the two Single Houses, subject to conditions that will provide greater protection to the vegetation on the subject lots.

RECOMMENDATION

PD080: 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**).**

Stormwater

- 2. Stormwater being managed to the satisfaction of the City of Albany.**

Access

- 3. 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).**

- 4. 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

- 5. The Building Protection and Hazard Separation Zones being implemented and maintained to a standard for BAL-40, to the satisfaction of the City of Albany.**
- 6. The dwellings being constructed to the appropriate Australian Standard (3959) Construction of Buildings in Bushfire-prone Areas for BAL-40.**

Location of Single Dwellings

- 7. 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

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

Covenant

9. A restrictive covenant being registered on the titles for Lots 75 and 76 Range Road for the protection and management of vegetation in accordance with Fire Management Plan, to the satisfaction of the City.

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 AND DISCUSSION

What the applicant is requesting

4. An application has been received for the development of a Single House and associated Building Protection Zone (BPZ) and Hazard Separation Zone (HSZ) on Lot 75 Range Road, Yakamia and another Single House with BPZ and HSZ at Lot 76 Range Road, Yakamia. (An explanation of BPZ and HSZ is included in the “Policy Implications” section of this report)

Reason brought to council

5. The proposals are presented to Council for determination given the likely impact that the decision will have on the environmental interests identified on the subject lots and the potential implications for the draft *Yakamia/Lange Structure Plan*.

Site description

6. The subject lots are approximately 2km north-north-west of Albany town centre and have a combined area of 10.18 ha. Lot 75 has an area of 3.12 ha and Lot 76 has 7.06 ha. The land slopes upward from the south-east to north-west, rising from approximately 13m AHD to 36m AHD across Lot 75 and from 9m AHD to 49m AHD across Lot 76. In their current condition, the lots appear as a ‘forested escarpment’ when viewed from the south.
7. The subject lots are zoned ‘Future Urban’ under *Local Planning Scheme No. 1* (LPS1). The majority of the land surrounding the subject lots is also zoned ‘Future Urban’, including the lot to the west, on the opposite side of an unconstructed road reserve. The south-eastern corner of Lot 75 abuts a portion of land zoned ‘Yakamia Creek’, while a narrow strip of land reserved for ‘Parks and Recreation’ adjoins the south-eastern corner of Lot 76.
8. The subject lots are both within the draft *Yakamia/Lange Structure Plan* area.

Zoning/Land use issues

9. Clause 5.5.3 *Future Urban Zone* in LPS1 deals with development on land within the ‘Future Urban’ zone and sub-clause 5.5.3.1 states that the Local Government *may* approve a Single House, among other associated uses, on land within the ‘Future Urban’ zone.

10. Sub-clause 5.5.3.2 expands on this by stating that:

“Apart from Home Office, all land uses mentioned in clause 5.5.3.1 and any development requires the planning approval of the Local Government and no land use or development shall be permitted if, in the opinion of the Local Government, such use or development would adversely impact on the potential of the land for future urban purposes.”

11. Clause 4.2.3 *Future Urban Zone* in LPS1 sets out the objectives for the ‘Future Urban’ zone, which include the following:

“(a) Maintain viable uses for existing lots until the land is required to be developed for the desirable ultimate long term use;

(c) Maintain and enhance the physical characteristics of, environmental qualities and scenic qualities in the land;

(d) Permit limited development which is in keeping with the existing character of the locality and compatible with the likely future use of the land for urban or other purposes as determined by the Local Government following the preparation of a Structure Plan.”

12. Should Council determine not to approve the development of a Single House on each of the subject lots, the landowner could contend that the lots are, in effect, reserved and should be formally identified as such. If the City formally reserved the land through the Yakamia structure plan, the landowner would have grounds to lodge a claim for compensation.

Environmental Issues

13. Clause 5.3.3 in LPS1 states that *“the Local Government may require the protection of existing vegetation on a site as a condition of planning approval”* in a variety of circumstances, including the following:

“(a) Protect a vegetation community;

(d) Maintain local visual amenity and the natural setting;

(e) Protect habitat, or a threatened species;

(f) Assist to provide vegetated corridors to maintain fauna and flora linkages.”

14. The vegetation the subject lots was identified in the *Albany Regional Vegetation Survey* (ARVS) as being in very good to excellent condition and potentially restricted to the ARVS area. Of particular note is a vegetation unit consisting of three principal flora species; *Banksia Coccinea*, *Eucalyptus Staeri* and Sheoak. This unit of vegetation is listed by Department of Parks and Wildlife (DPaW) as a Priority 1 Ecological Community (PEC) due to the susceptibility of *Banksia Coccinea* to dieback disease. The draft *Yakamia/Lange Structure Plan* area contains a total of 10.5 ha of this type of vegetation unit.

15. The Office of the Environmental Protection Authority (OEPA) has already provided strong advice that the City should prepare the draft *Yakamia/Lange Structure Plan* in a way that it protects the vegetation on the subject lots from being cleared. In accordance with this advice, the draft *Yakamia/Lange Structure Plan* identifies these lots as ‘Vegetation protection’ areas. It should be noted that if this advice was applied to the development applications under consideration, it would prevent both lots from being developed. However, these applications must be assessed under the provisions of LPS1 and with specific advice from the OEPA and DPaW.

16. In view of this, staff referred the development applications to the OEPA for assessment and comment. The OEPA noted that the subject lots “*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 OEPA also 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*” and expressed a preference that any development is consistent with the draft *Yakamia/Lange Structure Plan*; that is to say that the vegetation is protected from clearing. Furthermore, the OEPA have advised that “*referral to the Commonwealth is likely to be required as the developments may have a significant impact on Matters of National Environmental Significance.*”

Fire management issues

17. Clause 5.4 *Fire Protection Provisions* in LPS1 requires all planning proposals to incorporate appropriate fire protection measures, which may include “*incorporation of construction standards for buildings including those in AS 3959 – Construction of Buildings in Bushfire Prone Areas (as updated from time to time) and the Building Codes of Australia.*” Fire protection measures are also expected to be consistent with the methodology contained in the Western Australian Planning Commission’s *Planning for Bushfire Protection Guidelines*, or any document superseding it.
18. 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. An explanation of the methodology can be found in the “**POLICY IMPLICATIONS**” section of this report.
19. After receiving the applications, staff requested that the applicant provide a Fire Management Plan (FMP) for the lots, to satisfy the requirements of LPS1. The applicant subsequently provided an FMP that recommended BAL of 12.5, which would result in clearing of extensive amounts of vegetation. BAL 12.5 is also lower than what should be expected due to the slope of the land and the distance between the proposed developments and the type of vegetation. BAL 12.5 is the lowest BAL level provided for in the *Planning for Bushfire Protection Guidelines* and below BAL-40, as requested by the City Planning Staff.
20. The City requested that the FMP be changed to correct this anomaly and recommended that the HSZ be reduced and the BAL and associated construction standards be increased, to reduce the amount of clearing required.
21. A revised Fire Management Plan was submitted. However, it continued to recommend BAL-12.5 and the extensive amount of clearing that this level of construction would entail.
22. 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; for instance, where there is a significant environmental interest and the protection of vegetation is particularly important.

Options available to Council

23. In assessing these applications the matters detailed in this report have been taken into consideration. To progress these applications four options have been formulated. They are as follows:
- a) **Option 1** – Approve the development of a Single House on each lot to the relevant construction standard for BAL-40, in order to reduce the amount of clearing required for Hazard Separation Zones.

- b) **Option 2** – Refuse the applications on the grounds that the adverse impact on the environment and visual amenity are unacceptable. This option may lead to claims for compensation. Council may also consider purchasing these properties for the purposes of conservation.
- c) **Option 3** – Refuse the applications on the grounds that the development would have an adverse impact on the potential of the land for future urban purposes. Should Council adopt this option, it should recommend that the draft *Yakamia/Lange Structure Plan* be modified to identify these areas as suitable for full urban development. However, this will lead to a possible EPA environmental review of the plan. This may require Council to undertake a formal environmental assessment as part of the structure plan process.
- d) **Option 4** – Approve the applications as it was submitted.

Staff reason for recommendation

- 24. Staff's preference is for Option 1, as it provides a balanced approach that will allow the development of a Single House on each lot, while reducing the amount of clearing necessary for development.

GOVERNMENT & PUBLIC CONSULTATION

- 25. The City has referred the 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

- 26. The subject lots are zoned 'Future Urban' under LPS1.
- 27. Clause 4.2.3 *Future Urban Zone* in LPS1 sets out the objectives for the 'Future Urban' zone.
- 28. Clause 5.5.3 *Future Urban Zone* in LPS1 deals with development on land within the 'Future Urban' zone. and sub-clause 5.5.3.1 states that the Local Government *may* approve a Single House, among other associated uses, on land within the 'Future Urban' zone.
- 29. Clause 5.3.3 in LPS1 states that *"the Local Government may require the protection of existing vegetation on a site as a condition of planning approval"* in a variety of circumstances, including the following:
 - "(a) Protect a vegetation community;*
 - (d) Maintain local visual amenity and the natural setting;*
 - (c) Protect habitat, or a threatened species;*
 - (d) Assist to provide vegetated corridors to maintain fauna and flora linkages."*
- 30. Clause 5.4 *Fire Protection Provisions* in LPS1 requires all planning proposals to incorporate appropriate fire protection measures.
- 31. *Table 7: Site Requirements* in LPS1 require a minimum front setback of 20m and minimum side and rear setbacks of 10m for all development in the 'Future Urban' zone, in the absence of an adopted Structure Plan.

32. Clause 5.8.3 *Designated Building Envelope* in LPS1 states that “the Local Government may require that all development and on-site effluent disposal systems be contained within a designated building envelope shown on an approved plan.”

It further states that in determining the location and size of a building envelope, the Local Government shall apply various objectives including:

- “(a) *Protection of remnant vegetation;*
(d) *Enhancement of visual amenity.*”

Voting requirement

33. **Simple Majority**

POLICY IMPLICATIONS

34. Fire protection measures should be consistent with the methodology contained in the Western Australian Planning Commission’s *Planning for Bushfire Protection Guidelines*.
35. 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.
36. The starting point for this is a 20m wide cleared area around a dwelling, identified as a ‘Building Protection Zone’ or BPZ, which will have a fuel loading (understorey vegetation, leaf litter, etc.) of no more than two tons per hectare. Individual specimen trees are permitted within a BPZ if they stand at least two metres from a dwelling, their crowns are at least 10m apart and they are low pruned to a height of two metres.
37. Beyond this BPZ, a ‘Hazard Separation Zone’, or HSZ, is required. This is a parkland cleared area, where the understorey is slashed or mown, the crowns of trees are at least 10m apart and the fuel loading is maintained at between five and eight tons per hectare, although a fuel load of up to 15 tons per hectare may be permitted dependent on the type of vegetation present. As a minimum, a HSZ is expected to be 80m wide, if there are to be no implications on the construction of a dwelling. This will provide a combined 100m clearing around a dwelling.
38. 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

39. 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) against</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.

<p>any conditions placed on the approval. For instance, the applicant may seek to have the level of construction required under AS 3959 reduced, which would require a larger Hazard Separation Zone to be cleared. This would, in turn, may be viewed by EPA as having a detrimental impact on the vegetation on the subject lots.</p>				
<p>Community, Organisational Operations, Financial and Reputation If the applications are refused, in order to protect the vegetation, an appeal against the decision may be made to the SAT. The applicant may also seek compensation from the City.</p>	Likely	Severe	Extreme	Any decision based on proper planning grounds can be defended in SAT. The City may also enter into negotiations to purchase the land
<p>Organisational Operations, Financial If a decision is made that will result in the clearing of the vegetation and the <i>Yakamia/Lange Structure Plan</i> is modified to reflect this decision, the EPA may require the structure plan to go through a formal environmental review.</p>	Likely	Moderate	High	A decision to require the Yakamia Structure Plan to undergo a formal environmental review could be appealed, given the EPA's prior decision not to require a review following referral of the development applications for assessment and comment.

FINANCIAL IMPLICATIONS

40. There may be financial implications if a review of the decision or any conditions of approval is sought by the applicant through the SAT. However, these are unknown.

LEGAL IMPLICATIONS

41. An applicant aggrieved by a decision or a deemed refusal may apply for review to the SAT in accordance with Parts 252 and 253 of the *Planning and Development Act 2005*.

ENVIRONMENTAL CONSIDERATIONS

42. 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.
43. 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

44. Council has the following alternate options in relation to this item, which are:
- To refuse both applications, on the grounds that they will have an adverse impact on the environment and visual amenity;
 - To refuse both applications, on the grounds that the development would have an adverse impact on the potential use of the land for future urban purposes, with the option to further recommend that the draft *Yakamia/Lange Structure Plan* be modified to show these areas for full urban development; or
 - Approve the applications as submitted.

SUMMARY CONCLUSION

45. The proposals have been assessed against LPS1 and *Planning for Bushfire Protection Guidelines*.
46. In determining the applications it is necessary to consider the impacts on:
- Priority flora;
 - Habitat for threatened and endangered fauna;
 - Local visual amenity and the natural setting; and
 - Vegetated corridors that maintain fauna and flora linkages.

47. It is recommended that the applications are approved, subject to conditions that will require modification of the proposals, in order to provide protection to the vegetation on the subject lots.

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 4. Environmental Protection Act 1986 5. Environmental Defenders Office Fact Sheet No.4 6. Draft Yakamia/Lange Structure Plan
File Number (Name of Ward)	:	A86521 and A86503 (Yakamia Ward)
Previous Reference	:	PD060: Endorse advertising for the draft Yakamia/Lange Structure Plan (25/11/2014).

14. **NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF COUNCIL**
15. **MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**
16. **REPORTS OF CITY OFFICERS**
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