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# AGENDA

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**For the Ordinary Meeting of Council  
To be held on  
Tuesday, 15 November 2011  
7.00pm  
City of Albany Council Chambers**

## **CITY OF ALBANY STRATEGIC PLAN (2011-2021)**

The City of Albany Strategic Plan was adopted by Council on 16 August 2011 and is available at [www.albany.wa.gov.au](http://www.albany.wa.gov.au)

The Plan states our vision and values as:

### **VISION**

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

### **VALUES**

The values of the City of Albany apply to elected members and staff who commit to:

- Results
- Ethical behaviour
- Accountability
- Leadership

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**I. DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS**

**II. OPENING PRAYER**

*“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.”*

Councillor Elect Holden will make his declaration.

**ITEM 2.0: MOTION 1**

- 1. THAT Standing Order 3.1 be SUSPENDED to allow recording of proceedings.**

**III. ANNOUNCEMENTS BY MAYOR AND COUNCILLORS WITHOUT DISCUSSION**

**ITEM 3.0: MOTION**

**The Mayor’s Report be RECEIVED.**

**IV. RESPONSE TO PREVIOUS UNANSWERED QUESTIONS FROM PUBLIC**

**V. PUBLIC QUESTION AND STATEMENT TIME**

Each person asking questions or making comments at the Open Forum will be **LIMITED** to a time period of **4 MINUTES** to allow all those wishing to comment an opportunity to do so.

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**VI. RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE (PREVIOUSLY APPROVED)**

Mayor	D Wellington
<b>Councillors:</b>	
Breaksea Ward	R Hammond
Breaksea Ward	V Calleja
Frederickstown Ward	Vacant
Frederickstown Ward	G Stocks
Kalgan Ward	C Holden
Kalgan Ward	Y Attwell
West Ward	G Gregson
West Ward	D Dufty
Yakamia Ward	A Hortin JP
Yakamia Ward	R Sutton
Vancouver Ward	D Bostock
Vancouver Ward	S Bowles

**Staff:**

Chief Executive Officer	F James
Acting Executive Director Corporate Services	P Wignall
Acting Executive Community Services	L Hill
Executive Director Planning & Development Services	G Bride
Minutes	J Williamson

**Apologies:**

**VII. APPLICATIONS FOR LEAVE OF ABSENCE**

**VIII. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

**ITEM 8.0: MOTION 1**

**THAT the minutes of the Ordinary Council Meeting held on 11 October 2011, as previously distributed, be CONFIRMED as a true and accurate record of proceedings.**

**ITEM 8.0: MOTION 2**

**THAT the minutes of the Special Council Meeting held on 18 October 2011, as previously distributed, be CONFIRMED as a true and accurate record of proceedings.**

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**IX. DECLARATIONS OF INTEREST**

<b>Name</b>	<b>Item Number</b>	<b>Nature of Interest</b>
Councillor R Hammond	2.2	<b>Impartiality.</b> Councillor Hammond has a common and minor shareholding in an entirely unrelated entity.
Councillor R Sutton	2.2	<b>Impartiality.</b> Councillor Sutton is brother to the applicant.
Councillor V Calleja	2.3	<b>Proximity.</b> The proponent is a contractor working on a building contract for Councillor Calleja.

- X. **IDENTIFICATION OF MATTERS FOR WHICH THE MEETING MAY SIT BEHIND CLOSED DOORS**
  
- XI. **PETITIONS, DEPUTATIONS AND PRESENTATIONS**  
A petition was tabled by Ms Jay Klinac on behalf of residents.
  
- XII. **ADOPTION OF RECOMMENDATIONS EN BLOC**

## **RISK MANAGEMENT FRAMEWORK**

**The City of Albany Organisational Risk Management Framework, which will be used as a Reference Document for the “Risk Identification and Mitigation” Section for all Papers in the Agenda, has been previously distributed to all Elected Members.**

**1.2: PLANNING AND BUILDING REPORTS OCTOBER 2011**

**Responsible Officer** : Executive Director Planning and Development  
Services (G Bride)  
**Attachment** : Planning and Building Reports October 2011

**IN BRIEF**

- Receive the contents of the Planning and Building Report for October 2011.

**ITEM 1.2: RESPONSIBLE OFFICER RECOMMENDATION**

**THAT the Planning and Building Report for October 2011 be RECEIVED.**

CEO:

RESPONSIBLE OFFICER:

**1.3: COMMON SEAL AND EXECUTED DOCUMENTS UNDER DELEGATION REPORTS**

**Responsible Officer** : Chief Executive Officer (F James)  
**Attachments** : Common Seal Report

**IN BRIEF**

- Receive the Common Seal Report for October 2011, which include decisions made by Delegated Authority

**ITEM 1.3: RESPONSIBLE OFFICER RECOMMENDATION**

**THAT the Common Seal Report for October 2011 be RECEIVED.**

**CEO:**

NCSR1120092 DB.LEG.2  
COPY OF COMMON SEAL  
ITEM: 2.3 OCM 16/08/2011  
REF: ACTIVITIES ON THOROUGHFARES AND PUBLIC PLACES AND TRADING LOCAL  
LAW 2011  
PARTIES: N/A  
MAYOR AND CEO F JAMES 3 COPIES

NCSR1120094 C11004  
COPY OF COMMON SEAL  
ITEM: 5.1 OCM 20/09/2011  
REF: TENDER C11004: PROVISION OF SECURITY SERVICES  
PARTIES: CITY OF ALBANY AND RE WRIGHT TRADING AS SOUTHCOAST SECURITY  
SERVICE  
MAYOR AND CEO F JAMES 2 COPIES

NCSR1120095 PRO357  
COPY OF COMMON SEAL  
ITEM: 4.6 OCM 15/03/2011  
REF: CONTRACT FOR THE SALE OF LOT 455 (36) CULL ROAD LOCKYER  
PARTIES: CITY OF ALBANY AND HUDSON HENNING AND GOODMAN LEGAL GROUP  
MAYOR AND CEO F JAMES 1 COPY

NCSR11120360 PRO244  
COPY OF COMMON SEAL  
ITEM: N/A SIGNED UNDER DELEGATION  
REF: DEED OF ASSIGNMENT OF LEASE FOR AIRPORT HANGAR SITE 21, ALBANY  
AIRPORT  
PARTIES: CITY OF ALBANY, BERNHARD PETER LULLFITZ, AUDREY ELIZABETH  
LULLFITZ, JAMES MURRAY KING AND MARGARET ELSIE KING (ASSIGNOR) AND  
WHIPSTICK INVESTMENTS PTY LTD AS TRUSTEES FOR WHIPSTICK  
SUPERANNUATION FUND (ASSIGNEE) AND GREGORY RODERICK MCFARLANE AND  
BARBARA CHRISTINE MCFARLANE (GUARANTOR)  
MAYOR AND CEO F JAMES 4 COPIES

NCSR1120362 A5985  
COPY OF COMMON SEAL  
ITEM: N/A SIGNED UNDER DELEGATED AUTHORITY  
REF: ABSOLUTE CAVEAT TO BE WITHDRAWN AND REPLACED BY NOTIFICATION  
UNDER SECTION 70A FOR LEGAL AGREEMENT TO LIMIT OCCUPATION OF  
ANCILLARY ACCOMMODATION TO FAMILY MEMBERS OF THE MAIN DWELLING.  
PARTIES: CITY OF ALBANY, RONAL DOUGLAS WILKINSON AND ERIN PATRICIA  
WILKINSON  
MAYOR AND CEO 1 COPY

NCSR1120413 PRO357  
COPY OF COMMON SEAL  
ITEM: 4.6 15/03/2011  
REF: SALE OF LOT 409 (18) GIFFORD STREET LOCKYER  
PARTIES: CITY OF ALBANY AND HUDSON HENNING AND GOODMAN LEGAL GROUP  
MAYOR AND CEO 2 COPIES

NCSR1120426        PRO200  
COPY OF COMMON SEAL  
ITEM: N.A SIGNED UNDER DELEGATION  
REF: DEED OF ASSIGNMENT OF LEASE. LOT 8 BAXTERI ROAD  
PARTIES: CITY OF ALBANY AND BARRY FRANCIS WILSON AND JUDITH ANNE  
WILSON AND KEVIN WILLIAM RONEY AND JUDY MARIE RONEY  
MAYOR AND CEO F JAMES 3 COPIES

NCSR1120427        140704  
COPY OF COMMON SEAL  
ITEM: N/A CONDITION 9 OF SUBDIVISION WAPC 140704  
REF: SECTION 70A NOTIFICATION AS REQUIRED IN ASSOCIATION WITH A  
CONDITION OF SUBDIVISION PLANNING APPROVAL.  
PARTIES: CITY OF ALBANY AND REZELICO DEVELOPMENT PTY LTD  
MAYOR AND CEO F JAMES 1 COPY

NCSR1120428        RD.ACQ.1  
COPY OF COMMON SEAL  
ITEM: 13.2.3 OCM 16/06/2009  
REF: RESUMPTION OF LAND FROM 946 MILLBROOK ROAD.  
PARTIES: CITY OF ALBANY AND MARK AND HEATHER ADAMS  
MAYOR AND CEO F JAMES 1 COPY

EDR1120070        RD.PRG.1  
EXECUTED DOCUMENT  
ITEM: N/A SIGNED UNDER DELEGATED AUTHORITY  
REF: COMMONWEALTH SPECIAL PROJECT FUNDS 2012/13 ALLOCATIONS FOR  
BRIDGE PRESERVATION  
PARTIES: CITY OF ALBANY AND DEPARTMENT OF LOCAL GOVERNMENT  
CEO 1 COPY

EDR1120093        ES.AWP.1  
EXECUTED DOCUMENT  
ITEM: 4.6 OCM 15/03/2011 SIGNED UNDER DELEGATION  
REF: KALGAN BUSH FIRE BRIGADE RECOGNISE A BRIGADE MEMBER FOR  
SERVICES TO THE BRIGADE OVER THE LAST 26 YEARS  
PARTIES: FIRE AND EMERGENCY SERVICE AUTHORITY  
CEO F JAMES 1 COPY

EDR1120361        GS.PRG.43  
EXECUTED DOCUMENT  
ITEM: N/A SIGNED UNDER DELEGATED AUTHORITY  
REF: AGREEMENT FOR REGIONAL AIRPORTS DEVELOPMENT SCHEME  
PARTIES: CITY OF ALBANY, STATE GOVERNMENT-DEPARTMENT OF TRANSPORT  
CEO F JAMES 2 COPIES

EDR1120412        DES268  
EXECUTED DOCUMENT  
ITEM: 4.3 OCM 14/12/10 SIGNED UNDER DELEGATED AUTHORITY  
REF: DEPARTMENT OF TRANSPORT FUNDING FOR EMU POINT EROSION  
INVESTIGATION  
PARTIES: CITY OF ALBANY AND DEPARTMENT OF TRANSPORT  
CEO F JAMES 1 COPY

EDR1120414 138258

EXECUTED DOCUMENT

ITEM: N/A SIGNED UNDER DELEGATION

REF: RESTRICTIVE COVENANT PURSUANT TO SECTION 129BA OF THE TRANSFER OF LAND ACT. PROPOSED LOTS 3, 4 & 5 (LOT 800) PRINCESS ROYAL DRIVE, ALBANY. CAN ONLY BE USED FOR SHORT STAY ACCOMMODATION.

PARTIES: CITY OF ALBANY AND WESTERN AUSTRALIAN LAND AUTHORITY  
MAYOR AND CEO F JAMES 1 COPY

**1.4: LOCAL LAW (MEETING PROCEDURES)**

**Proponent** : City of Albany  
**Attachments** : Draft Local Law Meeting Procedures 2011  
**Responsible Officer** : Chief Executive Officer, Faileen James

**IN BRIEF**

- Give public notice of the Councils intent to make a new City of Albany Local Law (Meeting Procedures).

**RECOMMENDATION**

**ITEM 1.4: RESPONSIBLE OFFICER RECOMMENDATION**  
**VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**THAT Council in accordance with section 3.12 of the *Local Government Act 1995*, agrees to GIVE PUBLIC NOTICE of its intention to MAKE the City of Albany Local Law Meeting Procedures 2011.**

**BACKGROUND**

1. The Standing Orders Local Law 2009 was gazetted on 24 June 2009.
2. Given identified deficiencies in the current Standing Orders, Council conduct a review of these Standing Orders and has proposed a new Local Law (Meeting Procedures).
3. Council has conducted an extensive review of the current standing orders over the past 12 months and has proposed a new Standing Orders Local Law (Meeting Procedures).

**DISCUSSION**

4. Feedback from the majority of Council members indicates the desire to have this matter considered by the Council who has “lived with” the inadequacies of the current Standing Orders.
5. A series of workshops have been conducted to allow elected member participation into the Local Law Meeting Procedures and policies with the final workshop being conducted on 27 September 2011.
6. The Local Law Meeting Procedure was based on a variety of model Meeting Procedures recommended by the Department of Local Government including City of Mandurah, City of South Perth and City of Greater Geraldton.

CEO:

RESPONSIBLE OFFICER:

7. While many Councillors gave feedback in the workshops and individually, the “majority view” of Councillors was incorporated into the final version. For example, while one Councillor was keen for the opportunity (at item (e) of clause 3.2(1) of the Meeting Procedures) to make statements of opinion (whether true or not), the majority of councillors believed that such statements should be restricted to a report of Councillor activity to advise constituents of business individual Councillors have undertaken in the prior month. Accordingly, item (e) of clause 3.2(1) of the Meeting Procedures reflects that majority review for a “Report”.

### GOVERNMENT CONSULTATION

8. The Joint Standing Committee on Delegated Legislation was contacted on 19 September 2011 in order to verify actions required to make a new local law and ensure compliance.

### PUBLIC CONSULTATION / ENGAGEMENT

9. Statewide and local public notice of the proposed new local law will invite submission from the public.
10. Copies of the proposed local law will be made available on the internet and hardcopy at the City of Albany public library.

### STATUTORY IMPLICATIONS

11. Section 3.12 (3)(a)(iii) of the *Local Government Act 1995* requires local governments to advertise their proposed local laws and provide the public with a statutory period of ‘not less than six weeks after the notice is given’ in which to lodge submissions.
12. The presiding member is to give notice to the Council meeting of the purpose and effect of the proposed local law.

### Purpose and Effect

13. Purpose. The purpose of this local law is to provide a set of procedures to assist in the good conduct of meetings of the Council and committees.
14. Effect. This local law is intended to result in:
  - better decision-making by the Council;
  - orderly and efficient conduct of meetings dealing with business of the Council;
  - greater community participation and understanding of the business of the Council; and
  - more open and accountable local government.

### STRATEGIC IMPLICATIONS

15. The introduction of a new Local Law (Meeting Procedures) directly links to the City’s Vision and Values (2011-2021), being: Results: Strive for business excellence and continuous improvement.

### Key Focus Areas

- **Community Priorities:** Policy and procedures
- **Proposed Strategies:** Regularly review all policies in consultation with community and key stakeholders.

## POLICY IMPLICATIONS

16. This new local law will replace the Standing Orders Local Law 2009 (as amended) 15 September 2009.

## RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>Proposed local law contains clauses that will be disallowed by the Joint Standing Committee on Delegated Legislation.</i>	<i>Unlikely</i>	<i>Medium</i>	<i>Medium</i>	<i>The local law has been modelled on what the Department of Local Government considers to be "Best Practice" meeting procedures.</i>
<i>Council fails to make the new local law</i>	<i>Unlikely</i>	<i>Medium</i>	<i>Medium</i>	<i>Local Law will be further reviewed and resubmitted to a future Council meeting.</i>

## FINANCIAL IMPLICATIONS

18. The cost of government gazettal, state-wide and local public notices will be undertaken by the Office of the CEO using staff resources within existing budget lines.

## LEGAL IMPLICATIONS

19. Section 3.12 of the Act prescribes the procedures for making local laws.
20. In accordance with section 3.13 of the Act if during the procedure for making a proposed local law the local government decides to make a local law that would be significantly different from what it first proposed, the local government is to recommence the procedure.

## ALTERNATE OPTIONS

21. Council can chose to adopt the new local law or continue to use the current standing orders.
22. If Council chooses to continue to use the current standing orders, the City will require finalise the outstanding undertaking resolved by Council on 15 September 2009 to the Parliament of Western Australia, Joint Standing Committee on Delegated Legislation, being:

*"THAT Council give a written undertaking that the City of Albany will affect the following amendments within the **next two years** and not rely or use the following clauses and sub clauses in the interim, being:*

- a. Delete clause 4.8 and clause 4.12;*
- b. Amend sub clause 4.15(3) by deleting the words "and must be accepted by the meeting without argument or comment" after the word "final";*
- c. Amend sub clause 4.16(3) by deleting the words "that meeting" after the words "part in" and insert the words "the debate of the item"; and*
- d. Delete sub clause 5.11(3)."*

<b>Consulted References</b>	<a href="#">Local Government Operational Guidelines – Number 16, September 2006</a> <a href="#">Circular No. 04-201. Minister's Directions – Local Laws Explanatory Memoranda (EM) Directions 2010</a>
<b>File Number (Name of Ward)</b>	<a href="#">CM.STD.2 (All Wards)</a>
<b>Previous Reference</b>	<a href="#">OCM 15/09/2009 - Item 19.1</a>

## 1.5: NEW COMMITTEES OF COUNCIL

**Attachments** : Terms of Reference for the following Committees of Council:

- Airport Emergency Committee
- Cultural and Community Development Committee
- Environment and Reserves Committee
- Governance Committee
- Local Emergency Management Committee
- Marketing Albany Committee
- Planning and Development Committee

**Responsible Officer** : Chief Executive Officer (Faileen James)

### IN BRIEF

- Establish Committees of Council.

### RECOMMENDATION

#### ITEM 1.5: RESPONSIBLE OFFICER RECOMMENDATION VOTING REQUIREMENT: ABSOLUTE MAJORITY

Council ENDORSE appointment of Elected Members and Members of the Community to the following Committees of Council:

1. Airport Emergency Committee
2. Cultural and Community Development Committee
3. Environment and Reserves Committee
4. Governance Committee
5. Local Emergency Management Committee
6. Marketing Albany Committee
7. Planning and Development Committee

#### ITEM 1.5: RESPONSIBLE OFFICER RECOMMENDATION VOTING REQUIREMENT: SIMPLE MAJORITY

Council ENDORSE appointment, along with the Chief Executive Officer, of Elected Members to the soon-to-be-created Albany Entertainment Centre Committee (or similarly named), with Terms of Reference yet to be determined by Perth Theatre Trust, in partnership with Committee members:

1. \_\_\_\_\_;’ and
2. \_\_\_\_\_.

CEO:

## BACKGROUND

1. As part of the governance review conducted by the Chief Executive Office and feedback from some Councillors it was identified that possible changes to the current Committee structure is required to better reflect functions and responsibilities, improve governance generally, and to better utilise Council Members' time and participation in Council Committees.

## DISCUSSION

### Proposed City of Albany Council Committees:

2. **Local Emergency Management Committee (LEMC) and Airport Emergency Committee** to operate as a subcommittee to the LEMC.
3. The LEMC needs to be established under legislation, by the local government to overview, plan and test the local community emergency management arrangements. The LEMC also:
  - a. considers strategic matters relating to the preventing, controlling and extinguishing of bush fires;
  - b. facilitates training and exercises for community emergency management.
  - c. ensures the capabilities of agencies involved in emergency responses, and the process of emergency responses, are adequately documented and understood by all stakeholders
  - d. should review the City of Albany's Emergency Management Plan as required.
4. It is proposed that the LEMC be immediately followed by a (sub) committee meeting of the Airport Emergency Committee, with both Committees being convened every three months.
5. It is proposed both Committees have the same two members of Council as members, with both Committees chaired by a member of Council.
6. The LEMC Committee should also include representatives of agencies, organisations and community groups with expertise relevant to the identified community hazards and risks and emergency management arrangements. Members of the City of Albany LEMC have previously included representatives from FESA, St John Ambulance, Police, Health Service, Albany State Emergency Unit, Main Roads Western Australia and other State government departments.
7. The City of Albany currently also has separate Bushfire Management and Bush Fire Advisory Committees. It is proposed that these two committees be disbanded as Committees of Council, and become operational working groups of LEMC, with operational officers, including volunteer fire brigade members, meeting as required to consider operational issues arising out of LEMC or other emergency operational matters and reporting to LEMC as necessary. These operational committees would consider issues such as:
  - a. the operational planning and maintenance of fire-breaks across the district;
  - b. the preparedness of the City in regards to its obligations under the *Bush Fires Act 1954*;
  - c. the operational effectiveness and efficiency of bushfire brigades

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- d. improving / enhancing opportunities, and addressing deficiencies in the levels of co-operation and co-ordination of the City of Albany, volunteer bushfire brigades and other fire management agencies;
  - e. any other matter relating to bush fire control and management.
8. **Airport Emergency Committee** – This Committee needs to be established under legislation. Under legislation the Committee does not necessarily need to be a Committee of Council, and could be an operational committee with City of Albany staff representatives. The Executive Director of Community Services and the Senior Airport Reporting Officer are of the opinion that an operational committee structure would be more time effective, particularly regarding implementation of operational matters.
  9. The CEO is of the view that an emergency situation at the airport is a significant incident for this community, and therefore should have Council Member leadership (as the Chair of the Committee) and input to the considerations of this committee.
  10. Its purpose would be to:
    - a. To oversight the development of and compliance with the Airport Emergency Plan and procedures in accordance with the Civil Aviation Safety Regulations 1998 and the Emergency Management Act 2005.
    - b. To consider the post activity report of the annual emergency exercise and any report recommendations.
    - c. Consider strategic matters relating to the planning, compliance and implementation of the Federal and State Governments' airport security requirements as they relate to emergency situations.
  11. It is proposed that the Committee will convene as required, immediately following LEMC meetings.
  12. **Planning and Development Committee.** This proposed Committee would be a new Committee of Council. Given that planning and development issues constitute a large portion of the business of Council meetings, pre-consideration of Officer reports and issues by a Committee may assist better Council's deliberations at the Council meeting.
  13. The nature of the reports presented to this Committee would cover:
    - a. Planning matters (Scheme amendments, group developments, policy development, planning studies, non conforming applications);
    - b. Health issues (Liquor Licensing, Noise, Prosecutions); and
    - c. Building license requests (non conforming).
  14. The proposed Planning and Development Committee could consist of at least six members being one Councillor from each Ward as a minimum. It is also suggested that three–four members of the community (who would not regularly have conflicts of interest with the business under consideration) be invited to contribute as members representing different community views, to the Committee's deliberations.
  15. Executive Directors and other senior staff members would attend the meeting according to the business to be discussed.

16. It is proposed that the Planning and Development Committee meets on the fourth Tuesday of the month to allow sufficient time to prepare and collate papers for the Ordinary Council Meetings.
17. The Committee meetings would be open to the public, and members of the public could speak on matters listed on the agenda. This could further enhance public input, and debate and transparency of deliberations of planning and development matters. This would contribute to increased confidence in Council processes.
18. **Governance Committee** – a proposed new Committee of Council which would oversee the following functions:
  - a. Review of Council's policies;
  - b. Matters relating to supporting Elected Members;
  - c. Drafting changes or additions to existing or new local laws;
  - d. Preliminary consideration of the Council's draft Strategic Plan;
  - e. Preliminary consideration of the Council's draft Annual Report;
  - f. Matters pertaining to the conduct of the Council's Annual General Meeting;
  - g. Consideration of the proposed meeting schedule for Council and its Committees;
  - h. Receiving reports from Council representatives on outside bodies and from other bodies as determined by Council;
  - i. Considering matters not falling within the terms of reference of other Council committees.
  - j. Chief Executive Officer (CEO) Performance Appraisal.
19. Section 5.38 of the Act requires an annual review of the performance of the CEO.
20. It is proposed that the Chief Executive Officer would present reports to this Committee, either self-initiated or on the recommendation of Councillors, but once that business was finalised, the Chief Executive Officer would depart the Committee and Council would have "in camera" time to discuss issues as a Council team.
21. The proposed Governance Committee could consist of all members of Council who wish to nominate.
22. It is proposed that the Governance Committee meets at least two-monthly, on the first Tuesday of the month to allow sufficient time to prepare and collate papers for the Ordinary Council Meetings.

23. **Environment and Reserves Committee** – a proposed new Committee which would include the current functions of the Bush Carers Advisory Committee.
24. Currently the Bush Carers Advisory Committee is responsible for coordinating external assistance and resources to community bush care groups including:
  - a. Promote the value, conservation and management of bushland within the community.
  - b. Promote policy development for the protection and management of bush land.
  - c. Seek legislative changes for bush land protection.
  - d. Provide a forum and support to local groups, including funding, training and activities.
25. The Environment and Reserves Committee could be responsible for setting the strategic direction for developed and natural reserves in the care and control of the City of Albany, working in partnership with community groups who have the same objectives.
26. The proposed Environment and Reserves Committee could consist of four members of Council and three–four members of the environmental / bushcare community group representatives.
27. Senior City of Albany staff members would attend the meeting according to the business to be discussed.
28. It is proposed that the Environment and Reserves Committee meets at least quarterly on the second Tuesday of the month.
29. **Cultural and Community Development Committee** – a proposed new Committee which would consolidate the membership and current functions of the following Committees:
  - a. Aboriginal Advisory Committee (with the to-be-reviewed Indigenous Accord to be used as the platform for the Cultural and Community Development Committees considerations of issues in this area);
  - b. Albany Arts Development Committee;
  - c. Community Financial Assistance Committee;
  - d. Sports Person of the Year Judging Panel;
  - e. Premiers Australia Day Active Citizenship Award Committee;
  - f. Senior's Advisory Committee; and
  - g. Youth Advisory Committee.
30. This proposed Committee's role would be to:
  - a. Encourage the involvement of the community in the City of Albany's art and cultural development.
  - b. Provide strategic direction regarding development of community spaces, including the future and utilisation of the Town Hall, in partnership with other community spaces, including Albany Entertainment Centre, the proposed development at Discovery Bay and other community venues.

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- c. Provide a forum for the sharing of ideas and resources between the City of Albany and the community, and provide mutual support and assistance in developing and implementing public art and cultural activities in Albany.
  - d. Identify community development projects to seek funding for projects.
  - e. Community Development enhancement, including community safety, cultural diversity, civic awards and equality and access;
  - f. Consider services for special needs groups such as children, youth and older people;
  - g. Consider Sister City Relationships;
  - h. Facilitate Community, Cultural and Major Event Grants;
  - i. Facilitate Sports person of the year judging panel;
  - j. Facilitate the Premiers Australia Day Active Citizenship Award;
31. The proposed Cultural and Community Development Committee could consist of at least four members of Council and four members of the community with varied interests and/or representation from various community groups.
  32. Senior City of Albany staff members would attend the meeting according to the business to be discussed.
  33. It is proposed that the Cultural and Community Development Committee meets on the fourth Tuesday of the month.
  34. **Marketing Albany Committee** – a proposed new Committee which would consolidate the membership and current functions of the Albany Tourism Marketing Advisory Committee (ATMAC) and the Streetscape Committee.
  35. The proposed Committee's role would be to make recommendations to Council on matters pertaining to marketing Albany as a liveable and tourism destination, and to enhance economic development opportunities for Albany and the region, including enhanced tourism (as one significant economic development opportunity).
  36. The composition of the Committee is proposed at:
    - a. four Council members;
    - b. two tourism industry representatives from the community,
    - c. two business representatives from the Community, including the President or the Chief Executive of the Albany Chamber of Commerce and Industry;
    - d. a senior officer of the Great Southern Development Commission; and
    - e. a senior officer of local office of Regional Development Australia.
  37. Senior City of Albany staff members would attend the meeting according to the business to be discussed.
  38. It is proposed that the Marketing Albany Committee meets on the second Tuesday of the month.
  39. It is proposed that involvement of Council Members in the following be ceased:

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- a. The Great Southern Motorplex Group Committee – it appears that this intended regional Committee has not progressed, with work on this initiative resting with the three clubs who have an interest in the Motorplex proceeding leading work on the matter. Currently appointed Council members have not attended for some time, although City Staff represent the City in discussions with the three clubs from time to time.
  - b. Great Southern Regional Recreation Advisory Group – this Group, with Department of Sport and Recreation appears to have been inactive for some time.
  - c. South Coast Management Group. As this is an operational Group, which currently appointed Council members have not attended for some time, although City Staff do, it is proposed that City staff only continue to represent the City on this Group.
  - d. Airport Users Focus Group Committee. It is proposed that the issues this Committee considered be consolidated into the Airport Transport Security Committee, and that City staff continue to meet separately with this group of stakeholders regarding User needs generally, as part of the master planning and ongoing operations of the Airport.
40. At the Albany Entertainment Centre Operational Committee meeting on 20 October 2011, on the request of the City's Chief Executive Officer, the Committee members discussed the composition and Terms of Reference of that Committee. The Committee believed that the current Committee should be amended, with revised Terms of Reference to reflect both strategic, operational and public relations' matters.
41. As such the Albany Entertainment Centre Operational Committee members, and in particular the Perth Theatre Trust, requested that two members of the Council be requested to join the to-be-created new Committee. Perth Theatre Trust will revise the existing Terms of Reference to reflect this new composition and objectives, which includes advocacy with the community and strategic purpose.

#### GOVERNMENT CONSULTATION

42. Nil

#### PUBLIC CONSULTATION / ENGAGEMENT

43. Nil

#### STATUTORY IMPLICATIONS

44. The following Committees have a statutory requirement for establishment:
- Local Emergency Management Committee (LEMC)
  - Airport Emergency Committee
  - Airport Security Committee
  - Governance Committee, in so far as the function of appraising the performance of the Chief Executive Officer
45. In accordance with section 5.11(1)(d) of the *Local Government Act 1995*, a person's membership of a Committee continues until the next ordinary election. Therefore, all Committee members will be appointed after the 15 October 2011 ordinary election, and remain members until the 2013 ordinary election.

## STRATEGIC IMPLICATIONS

46. The introduction and trial a new committee structure directly links to the City's Vision and Values (2011-2021), being: Results: Strive for business excellence and continuous improvement.

### Key Focus Areas

- **Community Priorities:** Policy and procedures
- **Proposed Strategies:** Regularly review all policies in consultation with community and key stakeholders.

## POLICY IMPLICATIONS

47. The introduction of the new committee structure will amend associated policies and terms of reference.

## RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>Council does not support the proposed committee structure</i>	<i>Unlikely</i>	<i>Medium</i>	<i>Medium</i>	<i>The proposed committee structure will be further reviewed and resubmitted to a future Council meeting.</i>

## FINANCIAL IMPLICATIONS

49. Committee meetings will be advertised where appropriate, and the cost of preparing local public notices will be undertaken by the Office of the CEO using staff resources within existing budget lines.

## LEGAL IMPLICATIONS

50. There are no legal implications related to this item except for compliance with specific provisions of the *Local Government Act 1995*, including Subdivision 2 – Committees and their meetings.

## ALTERNATE OPTIONS

51. Council can continue to with existing Committee structures, or create different Committees to that proposed.

<b>Consulted References</b>	<i>Local Government Act 1995</i>
<b>File Number (Name of Ward)</b>	All Wards
<b>Previous Reference</b>	OCM 11/10/2011 Item 1.8

**1.6: DEVELOPMENT ASSESSMENT PANEL – REPLACEMENT COUNCILLOR REPRESENTATIVE ON THE GREAT SOUTHERN JOINT DEVELOPMENT ASSESSMENT PANEL**

- Land Description** : N/A  
**Proponent** : City of Albany  
**Attachments** :
  - Incoming correspondence from Minister for Planning, Culture and the Arts requesting Local Government Nominations for Development Assessment Panels.
  - Planning Bulletin 106/2011 – New legislative provisions for development assessment panels.
  - Previous Council Report (dated 17 May 2011)**Responsible Officer** : E/Director Planning and Development Services (G Bride)

**IN BRIEF**

- The implementation of Development Assessment Panels required the City to nominate two Councillors and two Alternate members to be City of Albany representatives on the Great Southern Joint Development Assessment Panels (GSJDAP).
- At the Ordinary Council Meeting held on 17 May 2011 Council resolved to nominate Councillors Wolfe and Duffy as the City of Albany representatives on the Great Southern Joint Development Assessment Panel and Councillors Wellington and Holden as the required alternate GSJDAP members.
- As a result of the recent Council elections held in October 2011, one of the approved City of Albany representatives (Councillor Wolfe) is no longer eligible to be a representative for the City of Albany.
- The recommendation is to nominate replacement representatives for appointment by the Minister onto the GSJDAP.

**ITEM 1.6: RESPONSIBLE OFFICER RECOMMENDATION**

**THAT Council;**

1. **Nominates Councillor \_\_\_\_\_ as a City of Albany representative on the Great Southern Joint Development Assessment Panel; and**
2. **Directs the CEO to advise the Minister for Planning of such nominations.**

**CEO:**

**RESPONSIBLE OFFICER:**

## **BACKGROUND**

1. For the benefit of new incoming Councillors the previous report considered by Council at its Ordinary Meeting held on 17 May 2011 is attached to the rear of this report.

## **DISCUSSION**

2. Refer to the OCM report dated 17 May 2011.

## **GOVERNMENT CONSULTATION**

3. No consultation with government is required to be undertaken in relation to this item.

## **PUBLIC CONSULTATION / ENGAGEMENT**

4. No consultation with the public is required to be undertaken in relation to this item.

## **STATUTORY IMPLICATIONS**

5. The statutory implications associated with this item are:
  - *Planning and Development Act 2005 and associated Regulations*
  - *Planning and Development (Development Assessment Panels) Regulations 2011*
  - *Local Planning Scheme No's 1A,2, 3, 3.2B & 7*
  - *Local Government Act 1995 and associated Regulations*

## **STRATEGIC IMPLICATIONS**

6. This item relates to the following elements of the City of Albany Strategic Plan (2011-2021):

### **Key Focus Area**

Organisational Performance

### **Community Priority**

Policies and procedures

### **Proposed Strategies**

Develop clear processes and policies and ensure consistent, transparent application across the organisation.

## **POLICY IMPLICATIONS**

7. Council has recently updated its local planning policies to ensure that they are current and contemporary. Whilst Council will no longer be the body that will assess certain development applications the local planning policies set by Council will guide the decision making of the GSJDAP.

## **FINANCIAL IMPLICATIONS**

8. Refer to the OCM report dated 17 May 2011.

**ALTERNATE OPTIONS & LEGAL IMPLICATIONS**

9. Council has the following options in relation to this information:

Option A

To nominate a replacement member for appointment as a City of Albany representatives on the GSJDAP.

Option B

To decline to nominate a replacement member for appointment as City representatives on the GSJDAP. Option B will result in one of the existing alternate members being required to fulfil the required responsibilities.

10. It is recommended that Option A be pursued to ensure that the City is adequately represented at GSJDAP proceedings.

**SUMMARY CONCLUSION**

11. Council have previously resolved to nominate the required two Councillors as members and two Councillors as alternate members for appointment onto the GSJDAP. Because of recent Council elections a new GSJDAP representative is required.

<b>Consulted References</b>	Planning and Development (Development Assessment Panels) Regulations 2011
<b>File Number (Name of Ward)</b>	GR.STL.25 (All Wards)
<b>Previous Reference</b>	OCM 20/10/2009 – Item 13.1.2 OCM 17/05/2011 – Item 2.1

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<b>1.7: GREAT SOUTHERN MOTORPLEX GROUP INC. PROPOSAL AND REQUEST FOR LEASE OVER CROWN RESERVE 1947 PARKER BROOK ROAD, WILLYUNG</b>
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- |                            |   |  |
|----------------------------|---|--|
| <b>Land Description</b>    | : | Lot 8122 on Plan 26510 and being whole of the land contained in Certificate of Title LR3124 Folio 121 – Crown Reserve 1947 Parker Brook Road, Willyung   |
| <b>Proponent</b>           | : | Great Southern Motorplex Group Inc.  |
| <b>Owner</b>               | : | Crown  |
| <b>Appendices</b>          | : | Meeting Notes 27 June 2007<br>Resolution of Council 19 August 2008 Item 12.8.1<br>Resolution of Council 16 December 2008 Item 12.8.2 including Motor Sport Complex Feasibility Study Project Brief<br>Resolution of Council 17 February 2009 Item 12.8.2 with Motor Sport Complex Feasibility Study and appendices<br>Resolution of Council 16 June 2009 Item 18.2<br>Resolution of Council 10 November 2009 Item 6.2.15<br>Resolution of Council 15 February 2011 Item 2.6 including updated Great Southern Motorplex Group Design Study<br>Resolution of Council 15 March 2011 Item 2.7<br>Great Southern Motorplex Group Inc. letter of request seeking lease and other requirements 14 September 2011<br>Department of Environment and Conservation Clearing Permit CPS 3968/1<br>Resolution of Council 15 March 2011 Item 1.9<br>Resolution of Council 15 March 2011 Item 2.3<br>Resolution of Council 21 June 2011 Item 4.4<br>Albany Motorcycle Club Noise Management Plan<br>Airport fact sheet – Lighting in the vicinity of Aerodromes |
| <b>Responsible Officer</b> | : | Chief Executive Officer (F James)  |

CEO:
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**Maps and Diagrams** :**IN BRIEF**

- In 2009, Council received the Motor Sport Complex Feasibility Study and supported the concept of the development of a Motor Sport Complex on Crown Reserve 1947 Parker Brook Road, Willyung.
- The 2009 resolution specified that Council's support was subject to achievement of, and Council's satisfaction with, numerous conditions and approvals including but not limited to an Environmental Noise Impact Assessment, a Site Environmental Management Plan and an Operational Management Plan. Sufficient external funding and the attainment of Planning Scheme Consent were also required prior to executing a lease.
- Council's support was affirmed at the Ordinary Council Meeting 15 February 2011, with Council resolving to affirm its support for the concept plan, subject to achievement of and Council's satisfaction with the following:
  - a. Environmental Noise Impact Assessment including Environmental Protection Authority (EPA) Assessment, requirements of the Environment Protection Act 1986 and the Environmental Protection (Noise) Regulations 1997.
  - b. Site Design and Full Environmental Management Plan to be submitted to the EPA for approval.
  - c. Approval of the Site Design and Environmental Management Plan by the EPA.
  - d. A facility/operational management plan specifying and demonstrating the sustainable operation of the facility.
  - e. The availability of sufficient external funding by the Great Southern Motorplex Group to undertake each stage of the proposal.
  - f. A new/amended lease over the site containing provisions relating to EPA approval etc.
  - g. Community consultation occurring and Council considering that feedback.

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- As the Great Southern Motorplex Group Inc. (Motorplex) has recently received a Department of Environment and Conservation (DEC) Clearing Permit, subject to conditions, over Crown Reserve 1947 they are now seeking a lease over the Reserve.
- Motorplex is also seeking in-principle consent to display third party signage viewable from Albany Highway. Council's Signage Policy and Main Roads Policy would not permit the third party signage envisaged by the Motorplex.
- Motorplex is also seeking the City's undertaking not to approve or permit any new development within the vicinity of Reserve that may compromise Motorplex activities.
- Crown Reserve 1947 is affected by a registered Aboriginal Heritage site that passes through the Reserve.
- This report provides a collated history and other information on the Motor Sport Complex proposal and asks Council to holistically reconsider the many issues surrounding the implementation of the Motor Sport Complex.

**ITEM 1.7: RESPONSIBLE OFFICER RECOMMENDATION****VOTING REQUIREMENT: SIMPLE MAJORITY**

1. **THAT Council notes the Officer's Report detailing the history and other information on the Great Southern Motorplex Group Inc. proposal and the suitability of Crown Reserve 1947 for Motor Sport activities;**
2. **THAT Council directs the CEO and Councillors \_\_\_\_\_ and \_\_\_\_\_ to meet with the four key stakeholder groups of:**
  - Albany Motorcycle Club;
  - Albany City Kart Club;
  - Great Southern Street Machine Association; and
  - Albany Motorsport Group.

**To further discuss progression of a Motor Sport Complex at a site that is more appropriate.**

3. **Should the Great Southern Motorplex Group Inc. wish to progress with that lease execution, and Council believes Crown Reserve 1947 continues to be the most appropriate site, THAT Council ENDORSE the Chief Executive Officer to negotiate and execute an Agreement to Lease, giving the Great Southern Motorplex Group Inc. sufficient security to seek funding for their proposal while ensuring all requirements specified in resolution of Council 17 February 2009 Item 12.8.2 are met.**

**BACKGROUND**

1. Crown Reserve 1947 is under a Management Order H680343 issued to the City of Albany with the power to lease, sub-lease or licence for the purpose of “Recreation” for a term not exceeding 21 years, subject to the consent of the Minister for Lands.
2. Crown Reserve 1947 is located at Lot 8122 Parker Brook Road, Willyung, adjacent to, and south of, the Albany Regional Airport. Land to the west of the subject site, on the opposite side of Albany Highway is zoned for Special Rural development, with the surrounding area being rural in nature.
3. The development of a Motor Sport Complex in Albany has been considered periodically since 2004. Preliminary investigation came about as a response to potential solutions to “hoon” problems in Albany.
4. The project was initially postponed by Council due to concerns regarding the magnitude of this project, the infrastructure required, the financial commitment by Council and how the venue would be managed.
5. There is a registered Aboriginal Heritage site (No. 21837) on the subject site following the creek traversing the Reserve. Further, one of the tributaries for the creek is situated within the subject site.
6. The impact of a registered site within the Motor Sport Complex presents various challenges. The proposed Motorplex design will significantly impact on the registered site and will require referral to the Department of Indigenous Affairs and South West Aboriginal Land and Sea Council for consideration.
7. In June 2007, the City of Albany facilitated a meeting with stakeholders regarding a potential Motor Sport Complex. The stakeholders at this meeting were representatives from the Albany Motorcycle Club, Albany City Kart Club, Great Southern Street Machine Association, the Department of Water and the Water Corporation.
8. At the Ordinary Council Meeting 19 August 2008 under Item 12.8.1, Council ratified the Community and Economic Development Strategy and Policy Committee minutes of 16 July 2008 that determined that the need and location of a motor sport facility be assessed as part of the Recreation Planning Strategy and Recreation Masterplan process and that the City undertakes a motor education and training complex feasibility study.
9. The feasibility study of the Motor Sport Complex and driver education and training facility was developed ‘in-house’ by the City’s Manager of Community Development and the Recreation Planning Officer.
10. As part of that work, site options were investigated. Crown Reserve 1947 was identified as the preferred site for the proposed Motor Sport Complex for the following reasons:
  - Existing Reserve purpose ‘Recreation’.
  - Albany City Kart Club currently occupy site for kart racing activities.
  - A Motor Sport Complex design could be implemented with minimal impact on the environment of the Reserve.
  - A portion of the Reserve is currently allocated in the Airport Noise Buffer Zone with the Speedway Noise Buffer Zone ceasing a minimal distance to the south of the Reserve.

11. The following factors were also considered during the assessment phase of determining the suitability of Crown Reserve 1947 as the preferred site for the proposed Motor Sport Complex:
  - The Albany Motorcycle Club had been previously operating on Crown Reserve 1947 but due to noise issues was relocated to Crown Reserve 30495, Roberts Road Robinson in 1992.
  - Residents noise concerns and the need to ensure any future proposal could meet the EPA *Noise Regulations 1997*.
  - Environmental concerns, particularly the clearing of vegetation within the Reserve.
  - Developers' concerns regarding the impact of the Motor Sport Complex on rural subdivision on the opposite side of Albany Highway (Lot 2 Gunn Road) which will result in the creation of around 70 lots.
12. The noise impact on surrounding land owners of the proposed Motor Sport Complex has always been considered the most important issue that required addressing.
13. An environmental noise impact assessment/noise management plan for the site to satisfy the EPA conditions for noise, has consistently been recognised by Council as a prerequisite to determine the suitability of the Motor Sport Complex at the subject site.
14. At the Ordinary Council Meeting 16 December 2008 Council ratified the Community and Economic Development Strategy and Policy Committee minutes of 25 November 2008 Committee Recommendation that considered the scoping minutes and the Motor Sport Complex Feasibility Study Project Brief and resolved:

*“THAT Council ADOPT the concept of a co-located Motor-Sport facility in the current Go-Kart lease area”.*
15. In 2008, in response to noise complaints regarding the Albany Motorcycle Club activities on Crown Reserve 30495 Roberts Road, Robinson, the City with the support of the Department of Environment and Conservation (DEC) undertook noise measurements of the Club's motocross activities. On the basis of the results the City issued the Club with an Environment Protection Notice (EPN) on 14 November 2008.
16. The EPN prevents the Club from using the site and the Notice provisions required the Club to reduce noise emissions so that they meet the requirements of the *Environmental Protection (Noise) Regulations*. The City required the preparation and implementation of a plan to abate noise and monitor the effectiveness of the actions taken.
17. The Club appealed the Notice to the Minister for Environment; the Minister in determining the appeal allowed the Club to operate for ten days in the 2009 calendar year. This provided the opportunity for the Club to further monitor noise and provide evidence to the City and the Minister that the Club's activities could be carried out in compliance of the regulations.
18. The EPN remains in force until the Notice is removed or complied with. At the Ordinary Council Meeting 20 April 2010, Council supported the Club operating a further ten days in the 2010 calendar year on the same basis as 2009.
19. At the Ordinary Council Meeting 15 March 2011 Council supported a request to allow two non-complying events to be held within the 2011 calendar year.

20. The Albany City Kart Club currently leases Crown Reserve 1947 Parker Brook Road for the purposes of Recreation for a term of ten years which commenced on 1 November 2002 and is to expire on 31 October 2012.
21. The Albany Motor Sport Facility Feasibility Study recommended that Council **does not support** the construction of separate facilities for the purpose of driver training as research indicated that it is not economically or environmentally sustainable, due to the capacity of the infrastructure and the amount of land required.
22. The completed Motor Sport Complex Feasibility Study was considered at the Community and Economic Development Strategy and Policy Committee meeting on 18 January 2009.
23. At the Ordinary Council Meeting 17 February 2009 Council ratified the Community and Economic Development Strategy and Policy Committee minutes of 18 January 2009 (Item 5.4) and resolved:

*“A) THAT Council RECEIVES the ‘Motor sports Complex Feasibility Study’ and supports the concept of the development of a Motor-Sport Complex on Parker Brook Reserve (reserve 1947), subject to achievement of and council’s satisfaction with the following:*

1. *‘Environmental Noise Impact Assessment’ demonstrating the design and management/ operational measures required and the ability of the concept to meet:*
  - *Environmental Protection Authority (EPA) Environmental Impact Assessment Requirements;*
  - *Requirements of the Environmental Protection Act 1986; and*
  - *Requirements of the Environmental Protection (Noise) Regulations 1997.*
2. *Site Design and Full ‘Environmental Management Plan’ of sufficient detail to be submitted to the EPA for Environmental Impact Assessment Approval.*
3. *Approval of the Site Design and ‘Environmental Management Plan’ by the EPA.*
4. *A facility/ operational management plan specifying and demonstrating the sustainable operation of the facility including but not limited to:*
  - *- operation and functionality of the site management group*
  - *- responsibilities and entitlements of co-located tenants*
  - *- driver education and training facilities*
  - *- noise management*
  - *- waste management*
  - *- water management-*
  - *- facility access and security management*
  - *- asset maintenance and management*
  - *- reserve flora and fauna management*
  - *- principles for major event management at the site*
5. *The achievement of sufficient external funding to undertake each stage of the proposal.*
6. *A new/ amended lease over the site containing provisions that the facility is constructed and operated in accordance with EPA approval, council determinations in relation to the items above and any other relevant council strategies, policies, procedures and determinations.*

*(B) The feasibility study is handed over to the ‘Great Southern Motorplex Group’ consisting of City of Albany, Albany Motorcycle Club, Great Southern Street Machine Association and Albany City Kart Club who will:*

- *lead and undertake responsibility for the development of the project (including but not limited to the items in recommendation A).*
- *undertake responsibility for the lease and management of the site.*

- (C) *Council funding, if any, towards the project being directed towards the components of the driver training and education.*”
24. The Great Southern Motorplex Group Inc. is a not-for-profit incorporated organisation consisting of the following four motor sport entities:
- i. Albany City Kart Club Inc.
  - ii. Albany Motorcycle Club Inc.
  - iii. Great Southern Street Machine Association Inc.
  - iv. Albany Motorsport Group Inc.
25. At the Ordinary Council Meeting dated 16 June 2009 Council appointed Mayor Evans and Cr Wolfe as Council representatives to the Great Southern Motorplex Group committee and confirmed the terms of reference for Council’s role in the Great Southern Motorplex Group committee as:
- “Elected representatives:
- a. *To act in an advocacy capacity for the Motorplex project; and*
  - b. *To report back to Council in relation to the status of the proposal and outcomes discussed at the Great Southern Motorplex Group.*
- City Staff representatives:
- c. *To provide technical, procedural and scheduling advice specific to the Motorplex project proposals.”*
26. At the Special Council Meeting 10 November 2009 Council nominated Mayor Evans and Cr Sutton to the Great Southern Motorplex Group Committee.
27. To date that Committee has not actively met with Council representatives.
28. In August 2010, Motorplex applied to DEC for a permit to clear vegetation from Crown Reserve 1947, Parker Brook Road as they were not prepared to enter into a lease without clear indication that the Reserve would be able to be cleared in the manner required.
29. In February 2011, Motorplex, the Albany Motorcycle Club and the Albany City Kart Club were advised by the City of the requirement for a future easement within the northern boundary of Crown Reserve 1947 for the Grange Resources pipeline. The easement will form part of any new lease over this area. The Albany City Kart Club lease area is not impacted by the easement, although other areas of the site may be.
30. At Ordinary Council Meeting 15 February 2011, Council resolved to affirm its previous support for the Motorplex Design Study concept plan for the development of Crown Reserve 1947 Parker Brook Road, subject to achievement of, to Council’s satisfaction, a number of conditions (being the same conditions as set out in Council’s resolution 17 February 2009).
31. Additionally at the 15 February 2011 Council meeting, Council considered an Officer’s Recommendation to refuse the Motorplex request for funds of \$4,730 to complete a Fauna Assessment and Site Environmental Management Plan (required by DEC to assess August 2010 Motorplex clearing application) as there was no budget allocation for this proposal and such funding allocation would not align with Council’s previous decision in relation to funding
32. An alternate motion by Cr Sutton at the time, to lay the matter on the table for one month to allow further investigation by Council of funding options, was carried 11-0.

33. Also at the February 2011 meeting, Council considered an Officer's Recommendation to support the surrender of the Albany City Kart Club Inc. existing lease over the entire Crown Reserve 1947 and replace it with a new ten year lease over portion of the Reserve subject to certain conditions.
- a. *That the Albany City Kart Club will surrender their new lease over a portion of Reserve 1947, Parker Brook Road when the Great Southern Motorplex Group Inc. have received all available approvals and funding in order to develop Reserve 1947, Parker Brook Road, for the purposes of Motorsport as detailed in the Design study Motorplex concept plan; and*
  - b. *The Albany City Kart Club Inc. obtain **all relevant planning and construction approvals before commencing** any alterations to their existing track and/or site."*
34. The Albany City Kart Club Inc. surrender of lease and new lease documents are currently being executed by all parties. Once completed the lease documents will be forwarded to the Minister for Lands for endorsement of consent.
35. The City staff under delegation granted approval to the Albany City Kart Club for extensions to its existing track (under application P2105312) on 22 February 2011. The planning consent requires the submittal of a noise management plan and evidence that a clearing permit and aboriginal heritage approval has been received. The Club is aware of these requirements and is attending to these three matters.
36. At the February 2011 meeting, Council also considered Officer's Recommendation regarding the Albany Motorcycle Club's request to operate two non-complying events at the Roberts Rd site on Crown Reserve 30495 and resolved that:
1. *The Council note that in relation to the request by the Albany Motorcycle Club to hold two non-complying events on Reserve 30495, Roberts Road, community consultation will be undertaken with residents and property landowners within a radius of 1.5km;*
  4. *Where objections are received as a result of the community consultation the request shall be considered at the March Ordinary Council Meeting;*
  5. *Where no objections are received Council notes that the CEO will grant approval for the two non-complying events in accordance with Regulation 18 of the Environmental Protection (Noise) Regulations 1997."*
37. At the Ordinary Council Meeting 15 March 2011 Council considered community members submissions received regarding the Albany Motorcycle Club request to operate two non-complying events at the Roberts Road site on Crown Reserve 30495 and resolved:
- "THAT Council GRANT the Albany Motorcycle Club Inc approval to hold two non-complying events under Regulation 18 of the Environmental Protection (Noise) Regulations 1979 conditional on no further breaches of the Environmental Protection Notice previously served on the Albany Motorcycle Club Inc. Should further breaches occur this approval will be withdrawn."*
38. At the Ordinary Council Meeting 15 March 2011 Council considered Motorplex's funding request to complete a Fauna Assessment and Site Environmental Management Plan (required by DEC to assess the August 2010 Motorplex clearing application) and resolved:
- "THAT Council AGREE to provide \$4,730 to the Great Southern Motorplex Group for the preparation of the Fauna Assessment and Site Environmental Management Plan of the Parker Brook reserve (Reserve 1947)."*

39. At the Ordinary Council Meeting 15 March 2011 Council also considered the request from the Albany Motorcycle Club Inc. to surrender the existing lease over Crown Reserve 30495 located at Roberts Road, Robinson and a new ten year lease over portion of Crown Reserve 1947 Parker Brook Road, Willyung and resolved:

*“The request from the Albany Motorcycle Club Inc. to surrender existing lease over Reserve 30495 and a new lease over portion of Reserve 1947 be SUPPORTED subject to:*

1. *Lease surrender date to be as soon as practical.*
  2. *Lease surrender subject to remediation of Reserve 30495 to the satisfaction of the City of Albany.*
  3. *All costs associated with the remediation of Reserve 30495 to be payable by the proponent.*
  4. *Lease term being 10 years commencing as soon as practical.*
  5. *Lease purpose being establishment of grounds suitable for the riding of motorcycles and conducting motorcycle events.*
  6. *Lease rental being equivalent to Minimum Land Rate as set by Council per annum. This is currently \$725.00 plus GST per annum.*
  7. *All relevant approvals including Planning Scheme Consent being obtained prior to development or riding activities within the leased area.*
  8. *Lease area being approximately 5 hectares, and not encroaching on Aboriginal Heritage listed creek site.*
  9. *The Club received the approval of the appropriate Departments (State and Commonwealth) regarding usage of land next to an Aboriginal Heritage listed site.*
  10. *Lease is subject to a 5 metre access easement for Grange Resources pipeline.*
  11. *Lease special condition will provide for the relinquishment of the lease once the Great Southern Motorplex Group has obtained all necessary approvals and is in a position to undertake the responsibility for the lease and management over the entire Reserve 1947 for development of the Motorsport complex.*
  12. *Section 3.58 of the Local Government Act 1995, advertising requirements.*
  13. *Section 18 of the Lands Administration Act 1997, Minister for Lands consent.*
  14. *All costs associated with the development, maintenance and operations of the leased area to be payable by the proponent.*
  15. *All costs associated with the development, execution and completion of the surrender and new lease to be payable by the proponent.”*
40. At Ordinary Council Meeting 21 June 2011 Item 4.4 Council considered the three submissions received regarding the Albany Motorcycle Club surrender and new lease and resolved:
- “THAT Council:*
- 1) *NOTES its previous resolution (OCM 15.03.2011 – Item 2.3 – Attachment A).*
  - 2) *GRANTS the final lease approval to the Albany Motorcycle Club Inc. over portion of Reserve 1947 Parker Brook Road, Willyung subject to the Club **obtaining all remaining approvals and complying to all conditions** detailed in OCM 15 March 2011 Council resolution and satisfying all conditions of the Planning Scheme Consent prior to any development and riding activities within the lease area.”*
41. The Albany Motorcycle Club lease documents are currently being drafted prior to forwarding to the Club for review.

42. An application for Planning Scheme Consent (P2115122) has been made by the Albany Motorcycle Club for a motorcycle track facility on Crown Reserve 1947 and is currently being assessed by the City. This proposal is on advertising with the submission period closing on 3 November 2011.
43. These submissions will be made available to the public and Councillors prior to the November Council Meeting.
44. Submissions have been sought from the public and relevant government agencies such as the Department of Water, Department of Environment and Conservation, Main Roads WA and the Department of Indigenous Affairs.
45. The noise management plan as submitted by the Albany Motorcycle Club's acoustic consultant has identified that for the 'Seniors Race' noise levels are likely to be as high as 60dB at two adjacent dwellings which would exceed the *EPA Noise Regulations 1997*. The *EPA Noise Regulations 1997* require noise levels affecting premises do not exceed:
- 40dB for more than 10% of the time on Sundays between 9am and 7pm (ie.1 hour);
  - 50dB for more than 1% of the time on Sundays between 9am and 7pm (ie. six minutes);
  - 65 dB at no time on Sundays between 9am and 7pm.
46. Notwithstanding the above, Council will need to consider the overall merits of the Albany Motorcycle Club proposal and has the ability to approve non-complying events if such events are deemed by Council to be an overall benefit to the community. The Club has proposed to restrict the number of events to 14 events per year and training of 3 days per week. The surrounding landowners have received a copy of the noise management plan which identifies the events and training days proposed.
47. There are concerns that the Motorplex car racing will generate similar or greater noise levels and if operated concurrently with other motor sport activities (motorcycle and kart events) the accumulative noise impact further impacts the amenity of existing residents.
48. No overall noise management plan has been prepared for the entire Motorplex proposal by the site users.
49. The Motorplex has recently been granted clearing permit number CPS 3968/1 over Crown Reserve 1947 subject to following conditions prior to clearing:
- Vegetation management – construct a fence enclosing the areas not to be cleared.
  - Fauna management – area to be inspected by fauna specialist to identify, remove and relocate fauna.
  - Dieback and weed control – minimise risk of the introduction and spread of weeds and dieback.
  - Wind erosion management – shall not clear unless construction begins within one month of clearing.
  - Retain vegetative material and topsoil, revegetation and rehabilitation – stockpile the vegetative material and topsoil for rehabilitation.
  - Records must be kept and reporting undertaken – to be submitted to DEC annually on or before 30 June.
50. The Motorplex seeks to lease Crown Reserve 1947 as detailed in a letter received by the City on 14 September 2011.

51. The Albany Motorcycle Club and the Albany City Kart Club have been made aware of the Motorplex Design Study and the requirement to agree not to carry out permanent works or install infrastructure that may prevent or impede the future development as indicated in the Design Study.
52. The Albany Motorcycle Club will also be made aware of and be provided with a copy of the City's Airport requirements for lighting in the vicinity of Aerodromes.

## **DISCUSSION**

53. Given the Motorplex requirements detailed in the letter received by the City on 14 September 2011 and the numerous approvals and funding required to satisfy conditions set out in Council's resolution of 17 February 2009, City representatives including the Mayor and CEO and Motorplex representatives met on 15 September 2011 to discuss the matters in the letter.
54. At that meeting, Motorplex advised that the single most significant factor in determining its financial ability to progress with development of the site was the right to display third party signage on this site, such signage being viewable from outside of the site along Albany Highway.
55. Council's Signage Policy does not allow third party signage (signage where products and services associated with the advertisement are not available from the site). Motorplex have indicated that a singular large sign or a series of signs along the entire frontage, which is around 870 metres in length, will be sought.
56. A planning application has not yet been lodged with the City by Motorplex for the signage. If received this application will need to be considered by Council as it is outside of Council's adopted policy position.
57. Several years ago the Council set a precedent regarding signage by taking action against all landowners fronting Albany Highway and Chester Pass Roads to remove third party signage. This directive resulted in a loss of revenue to such landowners. The removal was based on concerns regarding visual amenity and driver safety. Around fifty signs were removed as part of the enforcement action.
58. In assessing any application for signage the proposal would also need to be referred to Main Roads WA. Main Roads WA need to be consulted for any signage within 50 metres of the Albany Highway road reserve to ensure that any signage due to size and positioning does not pose a distraction to motorists and compromise traffic safety.
59. The Motorplex is also seeking a City of Albany undertaking not to approve or permit any new development within the vicinity of the Reserve that may compromise Motorplex activities.
60. Acceptance of this request is unachievable unless the City imposes a noise buffer via a scheme amendment or local planning policy over adjacent land parcels. Without the preparation of a holistic noise management plan for all activities identified in the Motorplex proposal such a buffer could not be identified.
61. Furthermore should the City commence such action, which results in development restrictions on land owners, the City would be liable to claims for compensation. Such a buffer is likely to impact on several adjacent lots, including the special rural subdivision on the opposite side of Albany Highway (the imposition of a buffer could impact on the ability of this developer to sell those lots).

62. The current rateable value of the new development land is \$633,000.
63. It was discussed and acknowledged at the meeting on 15 September 2011 that the Motorplex Design Study concept plan will also significantly impact on the registered Aboriginal Heritage creek site (No. 21837) traversing Crown Reserve 1947.
64. In City staff's experience when dealing with *Aboriginal Heritage Act 1972* and *Native Title Act 1993* matters the preference is that any development plans be modified to avoid damaging or altering any site, and Motorplex at this stage has not considered how it will address such matters.
65. In order to avoid committing an offence under the *Aboriginal Heritage Act 1972* Motorplex will require a Section 18 Notice approach under the Act from the Minister of Indigenous Affairs. Consent will be required prior to any development/activity on the site.
66. Any new lease request will be referred to both the South West Aboriginal Land and Sea Council and the Department of Indigenous Affairs for any considerations under the *Native Title Act 1993* and the *Aboriginal Heritage Act 1972* respectively.
67. Taking into consideration the numerous approvals and external funding required by Motorplex in the immediate future, rather than entering into a lease, an Agreement to Lease with the Motorplex is more appropriate. The Agreement to Lease will detail all conditions that must be satisfied by Motorplex prior to executing a lease.
68. The Agreement to Lease eliminates the cost implications of terminating the existing Albany City Kart Club and in progress Albany Motorcycle Club leases on the Reserve and associated costs should Motorplex not be able to satisfy all of the required conditions.
69. An Agreement to Lease should provide the Motorplex with the security of tenure that is required by funding bodies when pursuing funding.
70. When considering all of the above, it is questionable whether Crown Reserve 1947 is the most suitable site for the Motor Sport Complex.

#### GOVERNMENT CONSULTATION

71. Nil.

#### PUBLIC CONSULTATION / ENGAGEMENT

72. Section 3.58 of the Local Government Act 1995 deals with the disposal of property including leased land and buildings.
73. This Section requires there to be local public notice of any lease proposal for a period of two weeks inviting submissions from the public. Any submissions are to be considered by Council and their decision with regard to those submissions, to be recorded in the minutes.
74. Section 30 of the *Local Government (Functions & General) Regulations 1996* deals with dispositions to which the advertising requirements of section 3.58 of the Act does not apply. Section 30 (2) (b) (i & ii) states that Section 3.58 of the Act is exempt if:  
(b) *The land is disposed of to a body, whether incorporated or not –*
  - (i) *the object of which are charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature; and*

(ii) *the members of which are not entitled or permitted to receive any pecuniary profit from the body's transactions;*

75. Motorplex is a recreational association, therefore exempt from the advertising requirements of Section 3.58 of the *Local Government Act 1995*.
76. However, in this instance given:
- a) the nature of the proposed lease;
  - b) implications for residents and landowners within the vicinity;
  - c) that the Motorplex intends to seek significant commercial sponsorship; and
  - d) that the City may be required to pay compensation to affected landowners.

it is recommended that any Agreement to Lease be advertised for a period of at least two weeks inviting submissions from the public. Any submissions received will be considered by Council at the next available meeting.

77. The subject land is identified as a Reserve under Town Planning Scheme No. 3. Whilst any proposals for motor sport activities should be consistent with the purpose of the Reserve and advertising is not specifically required under the Scheme, the City has the power to seek public comments if deemed appropriate.

#### **STATUTORY IMPLICATIONS**

78. In addition to the statutory obligations stated above, all leases undergo a statutory process in accordance with the *Land Administration Act 1997* and *Local Government Act 1995*.
79. Section 18 (1) of the *Land Administration Act 1997* states that a person must not, without the prior approval in writing of the Minister assign, sell, transfer or otherwise deal with interests on crown land.
80. As this is Crown land, South West Aboriginal Land and Sea Council consideration and consent under the *Native Title Act 1993* for the new lease will be required.
81. Under the City's Town Planning Scheme No. 3, the area is zoned "Parks and Recreation". The proposed use for motor sport activities is permitted use in accordance with the Scheme.

#### **STRATEGIC IMPLICATIONS & ALIGNMENT TO COPORATE PLAN**

82. This item relates to the following elements of the City of Albany Strategic Plan (2011-2021):

**Key Focus Area**

Lifestyle and Environment.

**Community Priority**

A built environment for active lifestyles.

**Proposed Strategies**

Nil.

**POLICY IMPLICATIONS**

83. Council adopted a Property Management - Leases Policy in 2008. This policy aims to ensure that all requests for leases, for whatever purpose, will be treated in a fair and equitable manner using open and accountable methodology and in line with statutory procedures.

**RISK IDENTIFICATION & MITIGATION**

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

<b>Risk</b>	<b>Likelihood</b>	<b>Consequence</b>	<b>Risk Analysis</b>	<b>Mitigation</b>
Council withdraw their support of the Motorplex on Crown Reserve 1947 – Reputational	Possible	High	Medium	Work with stakeholders to meet needs
Non-compliance with conditions attached to Council resolution 17 February 2009 Item 12.8.2 – Operational and community impact	Almost Certain	Extreme	Extreme	Council continued support by possible investigation of alternatives
Non-compliance with lease (assuming lease is issued after all conditions have been met) – Environmental	Possible	High	Extreme	City resources applied for monitoring and compliance
Approval of Motorplex third party signage viewable from Albany Highway may set precedent for other landowners to apply for such signage. Landowners that were required to remove their signage due to enforcement action of Council could express dissatisfaction and seek recompense/ restitution with perceived 'double standards'.	Likely	Medium	High	Council to consider these aspects should an application for third party signage be received.
City undertaking to restrict development within the vicinity of the Reserve via Scheme Amendment of Local Planning Policy – claims for compensation by affected landowners	Likely	High	Extreme	Council to consider these aspects should the Motorplex propose a policy or scheme amendment to impose a noise buffer on surrounding private landholdings.

could be made.				
Non-compliance with EPA Noise Regulations 1997 – compliance burden on Council staff should complaints be received.	Almost Certain	High	Extreme	Continual monitoring of noise levels at adjacent noise sensitive premises – where ongoing breaches occur enforcement action under the EPA Noise Regulations 1997 may be required, requiring increased City resources.

### FINANCIAL IMPLICATIONS

85. All costs associated with the development, execution and completion of any new Agreement to Lease and lease documentation including but not limited to legal, advertising, valuation and survey will be borne by the proponent, the Motorplex.
86. Any new lease rental will be determined by Council based on the category of lease. For community leases rent for true not-for-profit with little commercial sponsorship opportunity, is the equivalent to Minimum Land Rate as set by Council per annum. This is currently \$725.00 plus GST per annum.
87. Where there is a significant commercial sponsorship or lease conditions, rent is determined by current market valuation.
88. Previous Council expenditure of \$4,520.00 (incl GST) for Motorplex Fauna Assessment and Site Environmental Management Plan in May 2011, and other work on this matter is being funded from staff time within existing budgets.

### ALTERNATE OPTIONS & LEGAL IMPLICATIONS

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

#### Option A

To continue its support for Motor Sport Complex proposal over Crown Reserve 1947, Parker Brook Road, Willyung although it is highly unlikely EPA and Council conditions can be satisfied.

#### Option B

To continue its support for the Motor Sport Complex proposal with investigations for a possible alternate suitable site commencing.

90. Should Council continue its support for Motorplex's occupancy of Crown Reserve 1947, it is recommended an Agreement to Lease with Motorplex be agreed requiring Motorplex to satisfy all conditions prior to executing a lease.

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**SUMMARY CONCLUSION**

91. Over a period of three years Council has taken action to support use of Crown Reserve 1947 for the use of a Motor Sport Complex. However, given noise nuisance issues, possible compensation claims against the City and other issues relating to approvals it is questionable if this site is appropriate.
92. Motorplex wish to proceed with their project having received a DEC Clearing Permit. Motorplex are now seeking a lease over Crown Reserve 1947 for motor sport activities.
93. Motorplex has numerous approvals and funding requirements as defined in resolution of Council 17 February 2009 to be satisfied prior to executing a lease on the Reserve. It is questionable whether these terms can be satisfied.
94. Should the Council determine to proceed with this site, an Agreement to Lease is the most appropriate mechanism to enable Motorplex to pursue funding opportunities and to allow time for Motorplex to meet all conditions required prior to entering into a lease.

<b>Consulted References</b>	<ul style="list-style-type: none"> <li>• Council's Policy – Property Management – Leases</li> <li>• <i>Local Government Act 1995</i></li> <li>• <i>Land Administration Act 1997</i></li> </ul>
<b>File Number (Name of Ward)</b>	PRO384 (Kalgan Ward)
<b>Previous Reference</b>	OCM 19.08.2008 Item 12.8.1 OCM 16.12.2008 Item 12.8.2 OCM 17.02.2009 Item 12.8.2 OCM 16.06.2009 Item 18.2 SCM 10.11.2009 Item 6.2.15 OCM 15.02.2011 Item 2.6 OCM 15.03.2011 Item 1.9 OCM 15.03.2011 Item 2.3 OCM 15.03.2011 Item 2.7 OCM 21.06.2011 Item 4.4

## 1.8: EXTRAORDINARY ELECTION – FREDERICKSTOWN WARD

**Attachments** : Proposed Extraordinary Election Time Line.  
**Responsible Officer** : Chief Executive Officer (Faileen James)

### RECOMMENDATION

#### ITEM 1.8: RESPONSIBLE OFFICER RECOMMENDATION VOTING REQUIREMENT: ABSOLUTE MAJORITY

##### THAT Council:

1. **RESOLVE**, in accordance with section 4.61 (2) of the *Local Government Act 1995*, that the method of conducting the required extraordinary election will be as a postal election.
2. **REQUEST**, in accordance with section 4.20 (4) of the *Local Government Act 1995*, the Electoral Commissioner to be responsible for the conduct of extraordinary elections in 2012.
3. **REQUEST**, in accordance with section 4.9(2) of the *Local Government Act 1995*, the Electoral Commissioner hold an extraordinary election for the Frederickstown Ward on Thursday 23 February 2012.
4. **NOTE** the conduct of the extraordinary election has not been budgeted for but that amount will be subject to the next quarterly review.

### BACKGROUND

1. As a result of a serving member of Council being elected as the popularly elected Mayor there is a requirement for the City to conduct an extraordinary election for the Frederickstown Ward.

### DISCUSSION

2. To ensure maximum number of returns and ensure ballots are issued after the school holidays it is proposed that the extraordinary election is held on 23 February 2012.
3. The proposed date for the Extraordinary Election is outside the prescribed time of four months since the vacancy occurred, therefore the Electoral Commissioner's agreement is required to be sought.

CEO:

4. The Electoral Commissioner is responsible for conducting postal elections in Western Australia and conducts elections on request under the *Local Government Act 1995*.
5. By making the Electoral Commissioner responsible for the extraordinary election, the City of Albany can ensure that the election is conducted by professional, experienced staff who are independent and impartial.
6. Other advantages for the City of Albany having the election conducted by the Western Australian Electoral Commission;
  - (a) Ensures that all statutory requirements are fulfilled, noting that it is not the core business of a CEO to run elections;
  - (b) A full election report (including statistics) is prepared by the Electoral Commissioner for presentation to Council;
  - (c) The vast majority of elector and candidate enquiries are received and resolved by either the Returning Officer or the Electoral Commissioner; and
  - (d) Processes, materials and equipment used meet contemporary electoral standards.

#### GOVERNMENT CONSULTATION

7. Consultation has been conducted with Western Australian Electoral Commission, and its suggested time line is attached.

#### PUBLIC CONSULTATION / ENGAGEMENT

8. There is no requirement to conduct public consultation for this item.

#### STATUTORY IMPLICATIONS

9. Section 4.61 of the *Local Government Act 1995*, states in part as follows:

***“4.61 Choice of methods of conducting the election***

*(1) The election can be conducted as a –*

***“Postal election”*** which is an election at which the principal method of casting votes is by posting or delivering them to an electoral officer on or before the election day, or

***“voting in personal election”*** which is an election at which the principal method of casting votes is by voting in person on election day, or posted and delivered, in accordance with regulations.

(2) *The local government may decide\* to conduct the election as a postal election.*

**\*Absolute majority required**

10. Section 4.20 (4) of the Act states as follows:

*(3) A local government may, having first obtained the written agreement of the Electoral Commissioner, declare\* the Electoral Commissioner to be responsible for the conduct of an election, or all elections conducted within a particular period of time, and, if such a declaration is made, the Electoral Commissioner is to appoint a person to be the returning officer of the local government for the election or elections.*

**\*Absolute majority required**

11. There is no option under the *Local Government Act 1995* to have the vacancy remain unfilled.

### STRATEGIC IMPLICATIONS

12. The introduction and trial a new committee structure directly links to the City's Vision and Values (2011-2021), being: Results: Strive for business excellence and continuous improvement.

#### Key Focus Areas

- **Organisation Performance:** Local Government standards must be ethical, transparent and include democratic decision making.

### POLICY IMPLICATIONS

13. Nil.

### RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>Council does not support appointing the WAEC to conduct the election.</i>	<i>Unlikely</i>	<i>Medium</i>	<i>Medium</i>	<i>The Extraordinary Election would be run by City of Albany staff.</i>
<i>Council does not support the proposed extraordinary election date.</i>	<i>Unlikely</i>	<i>Low</i>	<i>Low</i>	<i>The date will be set by the Western Australian Electoral Commissioner at a time not of Council's choosing.</i>

### FINANCIAL IMPLICATIONS

15. The cost for the WAEC to conduct the election will be based on the following assumptions;

- 3,634 electors
- Response rate of approximately 47%
- Count to be conducted in Albany

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16. An accurate cost at this time is not know but could be as much as \$15,000.
17. Costs not incorporated in the estimate include (approx \$2 000);
- Non statutory (i.e. additional advertising in community newspapers and promotional advertising
  - One local government staff member to work in the polling place on Election Day
18. The cost of running the extraordinary election has not been budgeted for.

**LEGAL IMPLICATIONS**

19. There are no legal implications related to this item except for compliance with specific provisions of the *Local Government Act 1995*, including Subdivision 2 – Committees and their meetings.

**ALTERNATE OPTIONS**

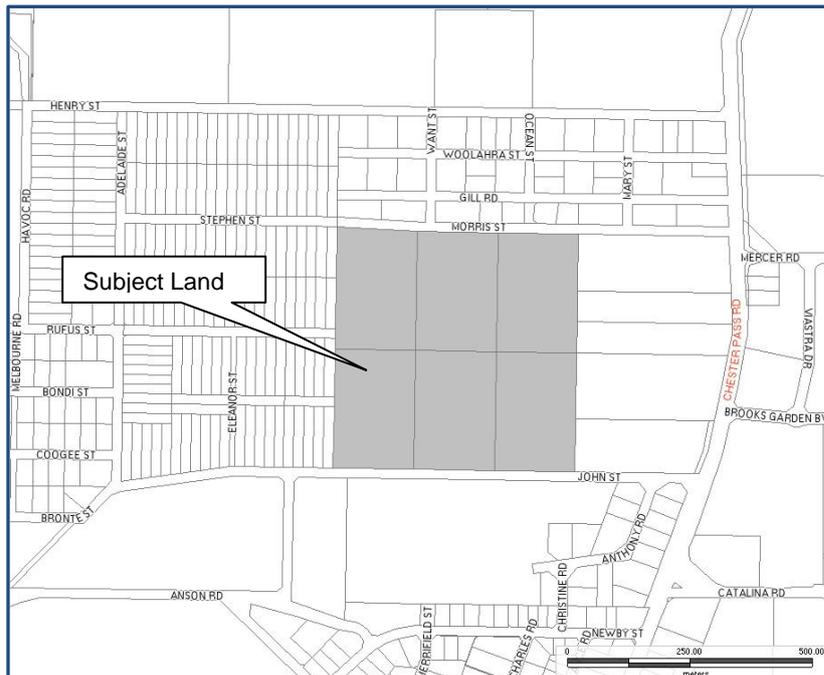
20. Council can chose to set the proposed date for the extraordinary election or abdicate this responsibility to the Electoral Commissioner.

<b>Consulted References</b>	<i>Local Government Act 1995</i>
<b>File Number (Name of Ward)</b>	All Wards
<b>Previous Reference</b>	OCM 11/10/2011 Item 1.8

**2.1: FINAL APPROVAL OF DEVELOPMENT GUIDE PLAN – LOTS 873 – 875 JOHN STREET AND 870, 876 AND 877 MORRIS ROAD, MILPARA**

- Land Description** : Lots 873 – 875 John Street and 870, 876 and 877 Morris Road, Milpara
- Proponent** : Harley Global
- Owner/s** : Hysnex Pty Ltd and PG, EM & SJ Franey
- Business Entity Name** : Hysnex Pty Ltd
- Directors:** : Peter George Franey & Stephen John Franey
- Attachment(s)** : Schedule of Submissions  
ODP009 – Plan Only  
Amended ODP Plan (Attachment A)  
Exert plan from Traffic Study
- Appendices** : ODP009 – Full Report
- Councillor Workstation** : Copy of submissions  
Copy of AMD285 supporting documents
- Responsible Officer(s)** : E/Director Planning and Development Services (G Bride)

**Maps and Diagrams:**



<b>CEO:</b>	<b>RESPONSIBLE OFFICER:</b>
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**IN BRIEF**

- Consider submissions received from Government Agencies and members of the public on the proposed Development Guide Plan for Lots 873 – 875 John Street and 870, 876 and 877 Morris Road, Milpara and determine whether to grant final approval.
- It is recommended that the Development Guide Plan be finally approved, subject to modifications.

RECOMMENDATION

**ITEM 2.1: RESPONSIBLE OFFICER RECOMMENDATION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

THAT Council:

- 1) **ADOPT** the Development Guide Plan for Lots 873 – 875 John Street and 870, 876 and 877 Morris Road, Milpara for final approval, subject to the following:
  - i. **Modification of Development Guide Plan provision 2(d) to read as follows:**  
*“Appropriate fire management principles and mechanisms, including minimising impacts upon Vegetation Retention and Protection Zones, to be implemented within the industrial development.”*
  - ii. **Modification of Development Guide Plan provision 2(f) to read as follows:**  
*“The ‘Development Exclusion Zone – Vegetation Retention and Protection’ and ‘Development Exclusion Zone – Landscape Buffer’ to be surveyed and demarcated prior to subdivision and/or development. No further development and clearing will be permitted in these areas.”*
  - iii. **Modification of Development Guide Plan provision 2(g) to read as follows:**  
*“The protection of remnant vegetation outside Development Exclusion Zones in road reserves and within lots where practicable.”*
  - ii. **Modification of Development Guide Plan provision 2(h) to read as follows:**  
*“The protection and maintenance of an ecological corridor through the ‘Development Exclusion Zone – Vegetation Retention and Protection’.”*
  - iii. **Modification of the Development Guide Plan to show a temporary cul-de-sac on the northern end of the future north-south future neighbourhood contributor to prevent vehicular access onto Morris Street with the following notification being added:**  
*‘Continuation of north-south distributor to connect with Henry Street, through Want Street, will be considered at a later stage after a traffic study addressing the local traffic impacts are undertaken which includes extensive public consultation’.*
  - iv. **Correction of the drafting error on the Development Guide Plan legend by removing the red markings within the POS reserve and replacing the word *Stylidium Plantagineum* in the legend with ‘*Stylidium Plantagineum*’ (which is a priority 4 declared rare flora species)’ for the purposes of clarity.**
- 2) **Formally REFER** the Development Guide Plan to the Western Australian Planning Commission recommending endorsement.

## **BACKGROUND**

1. A Scheme Amendment (AMD 285) to rezone Lots 873 – 875 John Street and 870, 876 and 877 Morris Road, Milpara from the 'Rural' zone to the 'Light Industry' zone and 'Parks and Recreation' reserve was initiated by Council at its ordinary meeting held on 17 March 2009.
2. Following public advertising and referral to State Government agencies, the Amendment was considered by Council for final approval at its ordinary meeting held on 20 October 2009 whereby it was resolved:

*i) THAT Council in pursuance of section 75 of the Planning and Development Act 2005 and regulation 25(1)(c) of the Town Planning Regulations 1967 resolves to ADOPT WITH MODIFICATIONS Amendment No. 285 to Town Planning Scheme No. 3 as follows:*

*(a) Rezoning Lots 873 – 875 John Street and 870, 876 and 877 Morris Road, Milpara from the 'Rural' Zone to the 'Light Industry' Zone and the 'Parks and Recreation' Reserve;*

*(b) Inserting Schedule VII – Light Industry Zone into the scheme text, subject to "Bulky Goods Outlet" under provision 2c being moved under provision 2f; and*

*(c) Modifying the scheme maps accordingly;*

*AND*

*ii) THAT Council RECEIVE the Schedule of Submissions and ADOPTS the officer's recommendation to either dismiss, uphold or note each individual submission as contained within the Schedule of Submissions.*

3. The Amendment was subsequently referred to the Minister for Planning for final approval. The Minister responded with instructions for final modifications to be made to the Amendment, which when implemented, allowed the Minister to grant final approval on 29 June 2011. The Amendment was then published in the Government Gazette on 8 July 2011.
4. The proponent had prepared a Development Guide Plan as required by the Town Planning Scheme which has been referred to adjoining landowners and relevant state government agencies for comment.
5. Council is now required to consider the submissions received and determine whether to grant final approval to the Development Guide Plan and seek the endorsement of the Western Australian Planning Commission.

## **DISCUSSION**

6. The subject lots cover a total area of 24.4 hectares and are located approximately 5km north of the Albany central area. The land slopes from east to west across the lots, from 53.1m AHD to 40.4m AHD, at the northwest corner of Lot 873 John Street. There is remnant native vegetation on all of the subject lots, with significant stands on Lots 870 and 877 John Street

and parkland cleared vegetation on portions of Lots 874 Morris Road and 876 John Street. Lot 877 John Street has a significant amount of vegetation cover, primarily to the north and east of the lot. Lot 870 John Street is almost entirely covered by vegetation, with the exception of boundary firebreaks, and an access way from the south-east corner following the eastern boundary to a cleared area of approximately 2200m<sup>2</sup>, which lies to the eastern boundary and the centre of the lot.

7. The subject lots have recently been rezoned from the 'Rural' zone to the 'Light Industry' zone, with 'Parks and Recreation' Reserve 'buffers' on the periphery, in order to remove the potential for land use conflicts with the adjoining 'Residential' zoned area to the north and west.
8. The Development Guide Plan has generally been supported by government agencies. However, the Department of Environment and Conservation has raised some minor concerns in relation to the proposal and a number of objections have been received from neighbouring landowners. The issues raised in the submissions can be effectively addressed through modifications to the development guide plan and the future subdivision and/or development application processes, as listed and discussed in the Schedule of Submissions.
9. The main concern raised through the public submission period involved the notation on the Development Guide Plan which states '*Future Connection to Henry Street*'. Two petitions signed by forty two residents has objected to a north-south distributor extending to the north of Morris Street through to Henry Street due to the increase in traffic and type of traffic (industrial/commercial) that will be diverted through existing residential areas. It is likely that the future distributor road to the north of Morris Street will not be needed for many years and will only be required when land to the north of Henry Street is developed. Henry Street will become an important east-west connection ultimately connecting Albany Highway with Chester Pass Road as the City continues to grow to the north (an exert from the traffic study prepared by Opus Consultants identifying the road hierarchy for the area is attached). Whilst it is good planning to cater for a future road connection it is considered that the Development Guide Plan could be altered to identify a temporary cul-de-sac in the interim period. The notation could then read:

*'continuation of north-south distributor to connect with Henry Street, through Want Street, will be considered at a later stage after a traffic study addressing the local traffic impacts are undertaken which includes extensive public consultation'*.

10. Other issues relevant to the amendment raised within the submissions are as follows:
  - Protection of native vegetation;
  - Inadequate road infrastructure;
  - Inadequate drainage infrastructure;
  - Potential noise nuisance;
  - Potential road safety hazards; and
  - Loss of residential amenity.

11. The Albany Local Planning Strategy (ALPS) identifies the subject land as 'Existing Urban'.

12. ALPS states that the existing Industrial zoned land to the south and east of the subject lots is intended to “*maintain an adequate supply and range of serviced industrial land in appropriate locations*”. However, the majority of this land has already been developed, leaving little potential for further growth.
13. The characteristics and location of the subject land and its designation within the ALPS make it suitable for ‘Light Industrial’ uses. This expansion would also help to overcome the increasingly limited development potential within the existing industrial areas to the south and east.
14. By agreeing to the scheme amendment to create the ‘Light Industry’ zone which has since been applied to the subject land (through Amendment No. 285 to Town Planning Scheme No.3), Council’s role now is to review the future subdivision layout and development control mechanisms that should apply to these lots.
15. The scheme report associated with Amendment No. 285, contained a number of appendices with supporting information, which are as follows:

#### **Land Capability Assessment**

16. The Land Capability Assessment report prepared by Opus International Consultants advises that the site has a moderate capability for light industrial development.
17. The report highlights the poor drainage of the area, in particular the susceptibility of buildings in the area to foundation soundness issues and waterlogging/inundation. The Development Guide Plan, through provision 3(c) has recommended that a geotechnical analysis be required at the time of subdivision to confirm the land capability and determine whether further remediation is required.

#### **Technical Buffer Assessment**

18. The Technical Buffer Assessment report prepared by Opus International Consultants recommended a 30 metre and 20 metre wide fully vegetated buffer areas or setbacks from existing residential properties to the west and north respectively. The Development Guide Plan identifies a 40 metre wide landscape buffer/setback along the western boundary of the subject site, incorporating a 20 metre road reserve and two 10 metre landscape buffers either side of the road reserve. A 20 metre wide landscape buffer has been provided along the northern boundary of the subject land.
19. The allocated buffers are consistent with the Technical Buffer Assessment and are further strengthened by identifying two land use precincts, with the precinct closest to existing residential areas (Precinct A) accommodating lighter industrial uses than those permitted within Precinct B which adjoins existing industrial premises. The boundary of Precinct B is more than 150 metres from existing residential areas.

20. In a state context it is also important to note that under the Western Australian Planning Commission's *Statement of Planning Policy 4.1 – State Industrial Buffer*, there is no requirement for a buffer area between 'Light Industrial' and 'Residential' development.

### **Vegetation, Flora and Fauna Assessment**

21. The Vegetation, Flora and Fauna Assessment report prepared by Opus International Consultants contains a number of recommendations, inclusive of the retention of good stands of remnant vegetation on Lots 870 and 877 in Public Open Space (POS). A Spring Declared Rare Flora, Priority Listed Flora and Threatened Ecological Communities Addendum was also produced by Opus International Consultants which confirmed the identification of Priority 4 flora species (specifically *Stylidium plantagineum*) across part of Lots 870 and 877.
22. Before Amendment No. 285 was completed, further vegetation and flora survey work was undertaken by Bio Diverse Solutions in order to provide final guidance on the retention and protection of remnant vegetation across Lots 870 and 877. This in turn necessitated a redesign of the road layout and broad lot arrangements across the subject land, from the original draft Development Guide Plan that was provided with Amendment No. 285.
23. The final version of the Development Guide Plan indicates the proposed road structure and landscaped buffers to the western and northern boundaries. In addition, it retains the inner and outer precincts from the original version of the plan, with restrictions on land uses in each, as set out in Schedule VII of Town Planning Scheme No. 3. This is intended to ensure that any land uses that could cause amenity issues are located further from the adjacent residential areas. The plan also makes provision for the retention and protection of remnant vegetation across the subject land and specifically across Lots 870 and 877 through development exclusion areas, which has been supported by the Department of Environment and Conservation.

### **GOVERNMENT CONSULTATION**

24. The Development Guide Plan was referred to WA Gas Networks (WestNet Energy), Telstra, Water Corporation, Western Power, Department of Agriculture and Food, Department of Health, Department of Environment and Conservation, Fire and Emergency Services Authority (FESA), and Main Roads WA for assessment and comment. Responses were received from Water Corporation, Western Power, Department of Agriculture and Food, Department of Environment and Conservation and FESA and are summarised in the attached Schedule of Submissions.

## **PUBLIC CONSULTATION / ENGAGEMENT**

25. The DGP was advertised in accordance with the requirements of clause 6.9.2(A) of Town Planning Scheme No. 3 by advertisement in the local newspaper. Additionally, a sign was placed on-site, and letters were sent to affected and adjoining/nearby landowners and relevant State Government agencies.
26. A total of eleven (11) written submissions were received as attached. The submissions received are summarised and discussed with a recommendation for each submission in the attached Schedule of Submissions.

## **STATUTORY IMPLICATIONS**

27. Clause 2(a) of Light Industry Zone No. 1 within Schedule VII of Town Planning Scheme No. 3 requires the approval by the City of Albany and endorsement of the WAPC of a Development Guide Plan prior to subdivision and/or development of the land.
28. Clause 2(b) requires such a Development Guide Plan to have regard to the following:
  - The proposed road layout and impacts on the district distributor road system;
  - The requirement for a north-south neighbourhood connector;
  - Restrictions on vehicular access;
  - The proposed pedestrian and cycling layout and impacts on the existing network;
  - Topographic conditions, particularly drainage implications;
  - Preservation of the environment including the need to protect remnant vegetation on Lot 870 John Street in particular;
  - Landscaping and re-vegetation requirements;
  - Distribution of uses and appropriate setbacks to residential development and other sensitive uses; and
  - Designation of Development Exclusion Zones – ‘Vegetation Retention and Protection’ and ‘Landscaping Buffer’.
29. The Development Guide Plan as submitted by the proponent does address all the above issues identified in Clause 2(b) of the Scheme as it:
  - Includes a legible road network that seeks to pick up existing connections to the east of the subject land. Road reserve widths of 20 metres for internal roads have been provided to the City of Albany’s specifications.
  - Identifies and provides for the future north-south neighbourhood connector.
  - Restricts vehicular access along Morris Street and Rufus Street will not connect through to the industrial estate.
  - Identifies a Dual Use path (2.5 metres wide) along John Street with footpaths provided along the major internal roads.
  - Includes detailed contour information and identifies a drainage reserve in the north-west corner which represents the lowest level of the subject land. The Drainage Study that accompanied the Amendment Document is referenced in the Plan.
  - Identifies the retention of a significant portion of the vegetation on Lot 870 John Street which has been supported by the Department of Environment and Conservation and is identified as Development Exclusion Areas on the Plan.

- Identifies a 40 metre minimum setback distance between the boundaries of the residential and industrial allotments with at least 20 metres of this buffer being fully vegetated and acknowledges that land uses within Precinct A are lighter in nature than those identified for Precinct B.
- Includes vegetation protection and landscape buffer zones as development exclusion areas.

## **STRATEGIC IMPLICATIONS**

30. The subject land has been identified within the ALPS as 'Existing Urban'. This allows rezoning for a variety of purposes, provided that the land is capable and the use is appropriate in an urban context.
31. Council in supporting the rezoning of the subject land to 'Light Industry', via Amendment No. 285 to Town Planning Scheme No. 3, has already identified that this zone is appropriate for the area. The zoning will provide for a range of employment opportunities for the growing residential expansion of the City.
32. This item relates directly to the following element of the City's Strategic Plan (2011-2021):

### **Key Focus Area**

Sustainability and Development

### **Community Priority**

A diversified industrial base

### **Proposed Strategy**

Encourage an increase in Albany's industry base to ensure employment for school leavers and university graduates.

## **POLICY IMPLICATIONS**

33. The most relevant policies that apply to this proposal are Statement of Planning Policy 3 – Urban Growth and Settlement and Statement of Planning Policy 4.1 – Industrial Buffers.

### **SPP 3 – Urban Growth and Settlement**

34. SPP 3 sets out the key principles and planning considerations that apply to planning for urban growth and expansion of settlements in the State.
35. The key policy objectives in SPP 3 are as follows:
  - *"To promote a sustainable and well planned pattern of settlement across the State, with sufficient and suitable land to provide for a wide variety of housing, employment, recreation facilities and open space.*
  - *To build on existing communities with established local and regional economies, concentrate investment in the improvement of services and infrastructure and enhance the quality of life in those communities.*

- *To manage the growth and development of urban areas in response to the social and economic needs of the community and in recognition of relevant climatic, environmental, heritage and community values and constraints.*
- *To promote the development of a sustainable and liveable neighbourhood form which reduces energy, water and travel demand whilst ensuring safe and convenient access to employment and services by all modes, provides choice and affordability of housing and creates an identifiable sense of place for each community.*
- *To coordinate new development with the efficient, economic and timely provision of infrastructure and services.”*

36. It is considered that the proposal:

- builds on existing communities with established local and regional economies;
- manages the growth and development of urban areas in response to the social and economic needs of the community and in recognition of relevant climatic, environmental, heritage and community values and constraints;
- promotes the development of a sustainable and liveable neighbourhood form which reduces energy, water and travel demand whilst ensuring safe and convenient access to employment and services by all modes (of transport); and
- coordinates new development with the efficient, economic and timely provision of infrastructure and services.
- coordinates new development with the efficient, economic and timely provision of infrastructure and services.

#### **SPP 4.1 – State Industrial Buffer**

37. SPP 4.1 sets out the requirements for buffers between industrial and sensitive land uses across the State. With regard to light industry, the policy contains the following statement:

*“Light and service industry and technology parks should retain all emissions and hazards on-site or at least within the zone or park area.*

*On-site buffer areas should be sufficient to address local amenity. Local governments should ensure that sufficient setback distances (including the treatment of setbacks, e.g. landscaping) are included in their town planning schemes to retain residual emissions and risks within site boundaries. Easements to provide protection for infrastructure such as drainage lines, transmission lines and gas and petroleum pipes should also be shown as these are one form of on-site buffer. Provisions should also be included to ensure acceptable levels of visual amenity.”*

38. It is considered that the proposal meets the objective of this policy, as it provides an off-site buffer area between the light industrial development area and the surrounding residential area. This buffer will also help to protect the visual amenity of the surrounding residential area.

**RISK IDENTIFICATION & MITIGATION**

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

<b>Risk</b>	<b>Likelihood</b>	<b>Consequence</b>	<b>Risk Analysis</b>	<b>Mitigation</b>
<i>Fire (threat to future buildings on the south-eastern quarter of the DGP area, which are adjacent to the Development Exclusion Zone – Vegetation Protection and Retention).</i>	<i>Possible</i>	<i>High</i>	<i>Extreme</i>	<i>The City of Albany will request that the Western Australian Planning Commission impose a condition at the time of subdivision, requiring the preparation of a Fire Management Plan in accordance with Planning for Bushfire Protection Guidelines Edition 2 or any policy or guidelines superseding it.</i>  <i>Furthermore, the provisions of the Planning for Bushfire Protection Guidelines Edition 2 will be considered on a site-specific basis at the Development Application stage.</i>
<i>Environmental (loss of remnant native vegetation).</i>	<i>Possible</i>	<i>Medium</i>	<i>High</i>	<i>Issues surrounding the loss of remnant native vegetation were resolved with Amendment No. 285. The proposed DGP incorporates a Development Exclusion Zone – Vegetation Protection and Retention, primarily to protect a Priority 4 flora species. Other DGP provisions direct that other remnant native vegetation should be protected without this area wherever practicable. This is consistent with advice given by the Department of Environment and Conservation.</i>
<i>Traffic safety/management (inadequacy of road network, in particular the intersection of John Street and Chester Pass Road, to support future development).</i>	<i>Possible</i>	<i>Medium</i>	<i>High</i>	<i>The proposed DGP includes potential future road links to channel traffic north and south away from John Street to east-west Integrator Arterial and Neighbourhood Connector Roads (Henry Street and Anson Road/Newbey Street) to alleviate traffic problems.</i>

**FINANCIAL IMPLICATIONS**

40. There are no direct financial implications directly relating to this item, except that when subdivision occurs the City will be responsible for managing the roads and public open space constructed and created by the proponent.

**LEGAL IMPLICATIONS**

41. There are no legal implications relating to this item. Should Council approve the Development Guide Plan the Western Australian Planning Commission will consider whether the plan should be ultimately endorsed.

**ALTERNATE OPTIONS**

42. Council has the following options in relation to this item, which are:
- To finally approve the Development Guide Plan without modification;
  - To finally approve the Development Guide Plan subject to modifications; or
  - To not grant final approval of the Development Guide Plan.
43. If Council was to not grant final approval no development and subdivision of the land could occur and the proponent would need to resubmit the guide plan to Council; in this instance specific guidance should be provided as to why the guide plan cannot be supported or could not be modified. Should Council be concerned with any aspect of the Development Guide Plan it is recommended that this issue be rectified by requesting an additional or altered modification to that included in the responsible officer recommendation.
44. In relation to the future north-south connector Council may wish to modify the Development Guide Plan to limit any future access from the site through to Henry Street, via Want Street through a restrictive covenant on the title. This would not be consistent with the existing Scheme provisions associated with the subject land, which required the Development Guide Plan cater for this road connection. If this option was pursued the Western Australian Planning Commission will ultimately decide whether such a modification is appropriate.

**SUMMARY CONCLUSION**

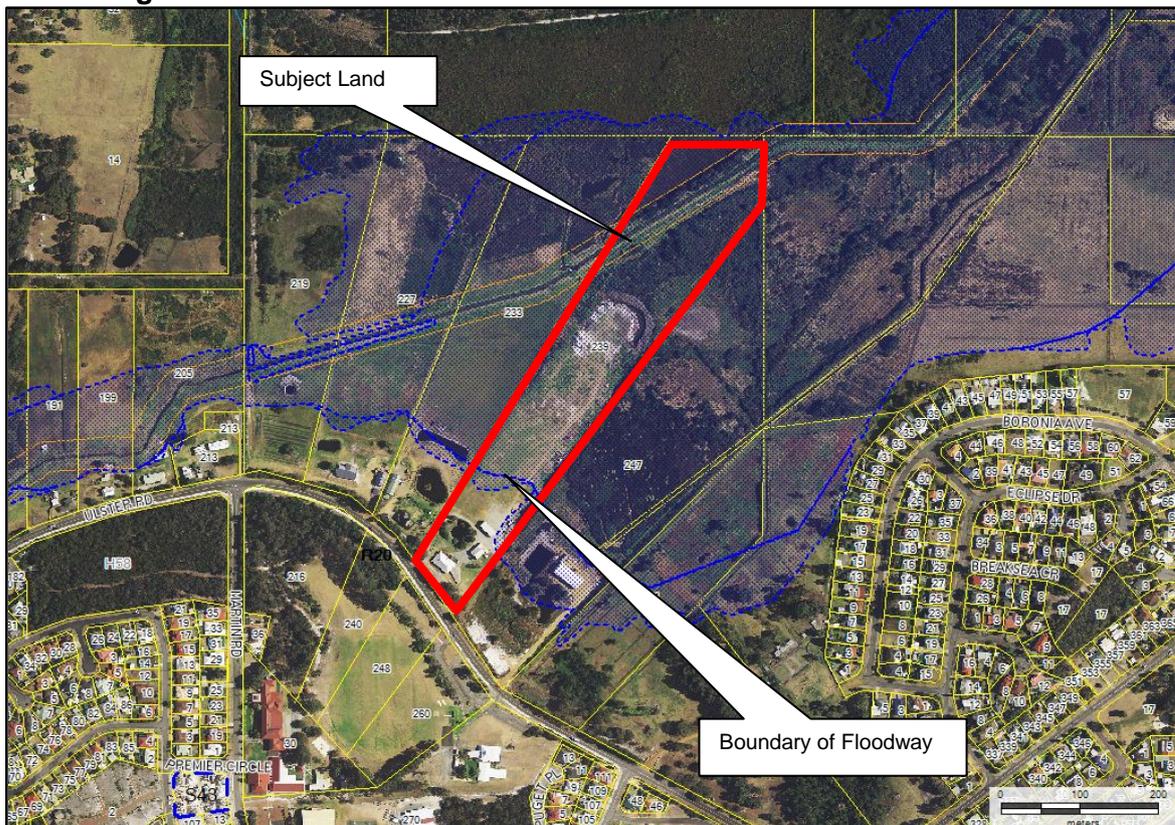
45. The Development Guide Plan indicates the proposed road structure and lot layout across the subject land also defines the extent of the landscaped buffers to the western and northern boundaries. In addition, it sets out the inner and outer precincts, with restrictions on land uses in each, as set out in Schedule VII of Town Planning Scheme No. 3. This is intended to ensure that any land uses that could impact on the amenity of the adjacent residential areas are located away from them, towards the established industrial areas to the south and east. The plan also makes provision for the retention and protection of remnant vegetation across the subject land and specifically across Lots 870 and 877.
46. Overall it is recommended that the plan be finally approved, subject to modifications, and referred to the Western Australian Planning Commission for endorsement.

<b>Consulted References</b>	WA Planning Commission (WAPC) Statements of Planning Policy (SPP's) SPP1, SPP 3 & SPP4.1
<b>File Number (Name of Ward)</b>	ODP009 (Kalgan Ward)
<b>Previous References</b>	OCM 20/10/2009 – Item 13.2.1 (AMD285)

**2.2: DEVELOPMENT APPLICATION – JUNK YARD (TIMBER SALVAGE ONLY) – 235 – 239 ULSTER ROAD, COLLINGWOOD HEIGHTS**

**Land Description** : 235-239 Ulster Road, Collingwood Heights  
**Proponent** : G Sutton  
**Owner** : G & V Sutton  
**Business Entity Name** : Nil  
**Attachments** : • Application for Planning Scheme Consent  
 • Copies of Submissions  
**Councillor Workstation** : Yakamia Creek Flood Study 2001 (Plans)  
**Responsible Officer(s)** : E/Director Planning and Development Services (G Bride)

**Maps and Diagrams:**



**IN BRIEF**

- The proponent seeks consent to receive and store timber from building demolition on 235-239 Ulster Road, Collingwood Heights. The timber would be processed, graded and sorted on site for sale and re-use. Lower quality wood would be used for fence posts, railings and pallets with the excess used for firewood.
- The activity is proposed to be located within the floodplain of the Yakamia Creek. The location for the timber stockpiles together with the associated infrastructure, have floodwater capacity implications for the drainage system.
- Objections have been received from the community and government agencies primarily based on the impact on flood flows as well as implications of the junk yard use.

<b>CEO:</b>	<b>RESPONSIBLE OFFICER:</b>
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**RECOMMENDATION**

**ITEM 2.2: RESPONSIBLE OFFICER RECOMMENDATION 1  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**THAT Council ISSUE a Notice of Planning Scheme REFUSAL for a ‘Junk Yard (Timber Salvage Only)’ at 235 – 239 Ulster Road, Collingwood Heights as the proposed development is located within the Flood Way of the Yakamia Creek and therefore does meet:**

- A. Clause 5.4 of Town Planning Scheme No. 3 (Matters to be considered) as the proposed development is subject to a flooding risk and is not supported by consulted state government agencies.**
- B. Council’s Policy 5E – Development in Flood Prone Areas as the nature of the proposal and its associated infrastructure would likely disrupt and reduce the floodwater capacity of the natural drainage system and is likely to give rise to increased flood risk upstream.**

**ITEM 2.2: RESPONSIBLE OFFICER RECOMMENDATION 2  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**THAT Council ADVISE the proponent that the existing stockpile of timber is to be used for personal use only on the property (ie. firewood) and that should any additional timber be placed on the site Council will undertake prosecution action in accordance with *Section 214 of the Planning and Development Act 2005*.**

**BACKGROUND**

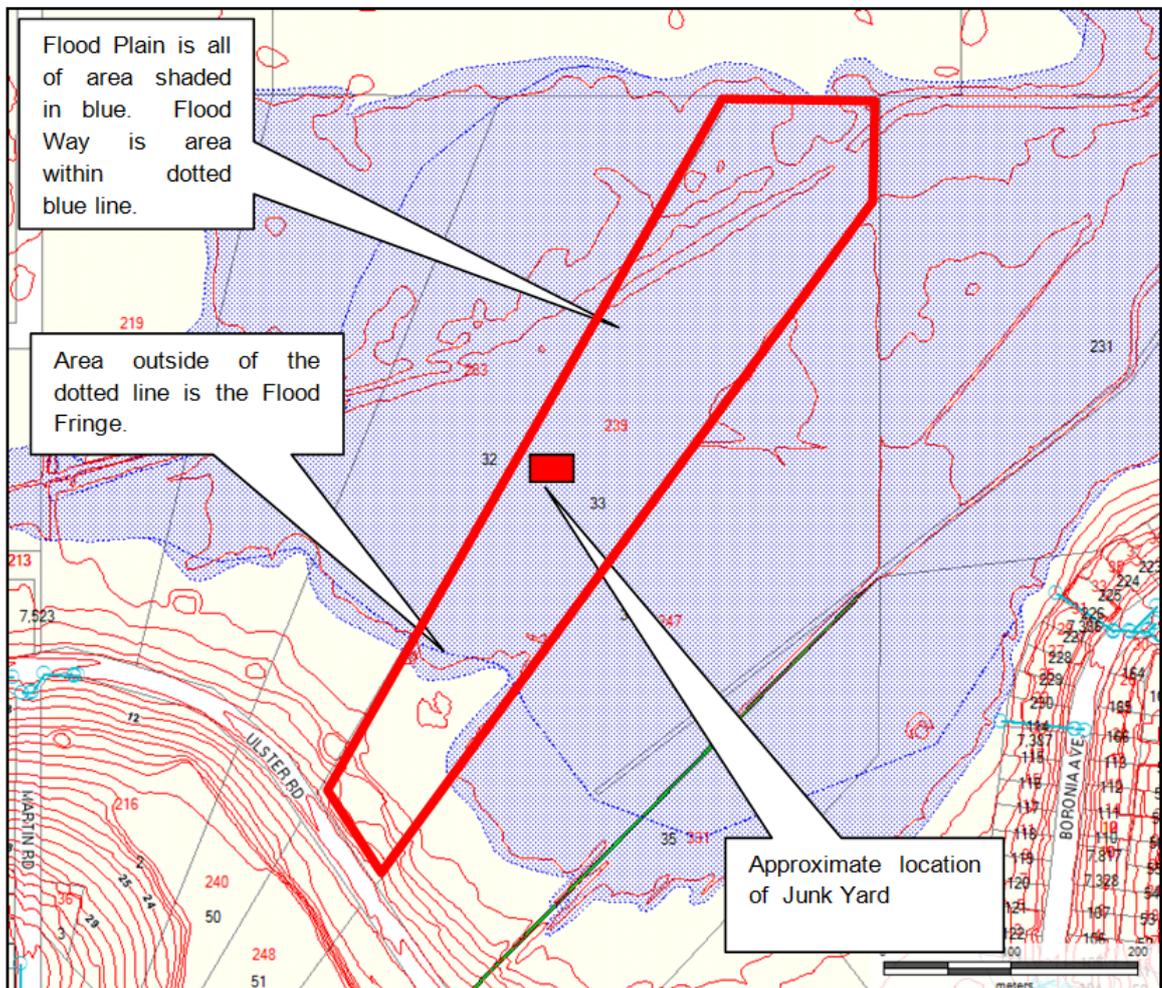
1. At its meeting dated 20 September 2011 Council resolved to lay the item on the table for a period of one month to allow the City to make further enquiries. The item has been brought back to Council for a decision.
2. The subject site is around 7.75ha in area and is zoned ‘Rural’ under Town Planning Scheme No. 3. It is located on the north side of Ulster Road opposite St Joseph’s College. The land is low lying and the flood way of the Yakamia Creek extends over the site from the north as far as 150m from the Ulster Road boundary. The flood fringe area extends over more of the site in a couple of places.
3. Both the flood way and flood fringe as a whole are known as the ‘flood plain’. The floodplain is representative of the extent of flooding that would be caused in a 1 in 100 year storm event. Whilst the floodway is not suitable for development, the flood fringe can be developed subject to limited filling above the 1:100 flood level.
4. A Junk Yard is defined in Town Planning Scheme 3 as *‘Land used for the collection, storage, abandonment or sale of scrap metal, building materials, waste paper, rags, bottles or other scrap materials or goods, or used for the collecting, dismantling, storage, salvaging or abandonment of buildings, automobiles or other vehicles or machinery or for the sale of parts thereof’.*

5. The proposal has been classified as a junk yard limited to timber salvage only. The term 'Junk Yard' is required to be used as it is the most applicable land use class listed within Council's Town Planning Scheme No. 3 which describes the activity proposed.
6. The Junk Yard land use is an 'AA' use in the rural zone, which is a use that is not permitted unless planning consent is granted by Council after a period of public consultation and advertising.
7. This application is referred to Council in accordance with the Planning Processes Guidelines as the use class of Junk Yard can only be considered by Council.

## **DISCUSSION**

8. The proponent seeks planning scheme consent for the use of part of his land as a Junk Yard, specifically for timber salvage. The application has arisen primarily as a result of the re-development of the Albany Regional Hospital whereby significant amounts of timber from demolished buildings (roof frames etc) were sorted by the demolition contractor and identified for disposal at landfill. The proponent negotiated for the delivery of the timber (several truckloads) onto the subject site.
9. The proponent intends to sort and grade the wood according to its quality for re-use. The timber would then be processed (de-nailed, etc) and stacked neatly in close proximity to the delivered unsorted stockpiles. The processed wood would not be used for any manufacture onsite, but sold to a retailer. It is envisaged that the best quality lengths of timber would be used for such things as furniture making with the lower grade timber used for fence posts, railings and pallet manufacture. Off-cuts and other scraps would be sold for firewood and retailed by the truck load from the subject property.
10. This operation is proposed to be conducted approximately 300m into the site away from Ulster Road and would require construction of an access road (haul road) and turning area for the trucks delivering and collecting the timber. No buildings are proposed with the storage and processing activity intended to be undertaken in the open air. Although it is proposed to be carried out without significant alteration to the site, it is likely that due to the site conditions some isolated filling would be needed to raise the level of the land to keep the area dry during winter and to accommodate access by vehicles, particularly for moving and loading timber onto trucks. According to spot height levels taken from the *Yakamia Creek Flood Study 2001* (prepared by the then Water and Rivers Commission) the area designated for the timber stockpile and access is at a level of approximately 2.3 metres AHD which is 700mm lower than the boundary of the floodplain/fringe, which sits at around 3 metres AHD on the subject site.
11. At the September Council meeting there was some confusion over whether the proponent intended to operate the use on a temporary or more permanent basis. Staff have sought clarification from the proponent who has advised that the timber salvage operation will only source timber from the demolition of the remaining buildings from the Albany Hospital site. The completion of stage 2 and 3 demolition works at the Albany Hospital site is scheduled to finish in 2013 (once the new hospital has been built). Council has the ability to limit the collection of timber products from the demolition of the Albany Hospital site only and could time limit any approval for say 3 years.

12. In relation to the type of timber to be collected the proponent has confirmed that he will not accept or deal with chemically treated timber; this can also be conditioned accordingly.
13. The Department of Environment and Conservation (DEC) only have an interest in the operation if the use involves chemically treated timber or the volume of material exceeds 500 tonnes per annum. The proposal complies with these requirements and could be conditioned accordingly.
14. The Department of Water has objected to the proposal given the operation will be located within the floodway of the Yakamia Creek (refer to the map below). This has been relayed to the proponent and he has been requested to reconsider the location, moving it closer to Ulster Road to the higher portion of the lot out of the flood way. The proponent does not wish to relocate the operation out of the designated flood way. An aerial photograph is also identified below for the purposes of clarity.



15. With regard to the submissions from the public, many of these raised the same concerns to those expressed by the Department of Water. Several submissions refer to other items being placed on the site such as unsightly car bodies and general junk/rubbish, however such comments are not relevant to the proposal, and were raised due to misconceptions associated with the term 'Junk Yard'. The proposal is for timber salvage only.

16. Although a full list of concerns is outlined in Paragraph 25, the major concerns raised by the public included:
- the storage of chemically treated timber and resultant environmental concerns via contamination;
  - the future expansion of the stockpiled areas outside of those areas identified on the site plan;
  - the height of stockpiles and the visual impact from the surrounding residential area which overlook the floodplain (parts of Spencer Park and Collingwood Heights); and
  - truck movements involving dust, noise and traffic safety concerns on Ulster Road.
17. In relation to the above concerns it is anticipated that these issues can be adequately controlled through the application of planning conditions. A condition restricting the use to untreated timber would address possible contamination concerns. Likewise restricting the areas used for storage to stated dimensions and setting a maximum height would control and minimise visual amenity and landscape impact concerns. With controlled or limited stacks of wood and the one person operating nature of the proposal, it would have minimal impact when assessed against the overall size of the lot and would not necessarily be discernable or distinguishable from other rural type activities. The hours of operation and days when activity is permitted could also be controlled by condition.
18. The traffic impacts associated with the proposal primarily relate to the suitability of access from Ulster Road by trucks and or other vehicles delivering and collecting the timber. The City's Works and Services Department have reviewed the proposal and are satisfied that suitable sight lines for exiting vehicles would exist and that the crossover and access driveway can be suitably upgraded to meet relevant standards. It is envisaged that the frequency of deliveries would be insignificant and is unlikely to pose any adverse impacts on Ulster Road traffic.
19. The significant issue raised in the majority of responses, including those from statutory bodies is the location of the proposal within the flood way. Such a location is unsuitable for this type of activity due to high possibility of inundation rendering access and use of the land problematic during significant stormwater events. If approved in this location, this is likely to result in a request for further filling of the land to maintain access and keep the operation above sub-surface water levels. According to the Department of Water such filling would have significant impacts on the drainage system water flows and floodwater storage capacity of the flood plain. In extreme events it is also likely any timber stored onsite could move or be washed away creating potential hazards offsite.
20. Given the location of the proposed timber salvage yard, inclusive of access and parking within the flood way staff are of the opinion that the proposal should be refused. However, should the proponent reconsider its location outside of the flood way, the proposal could be considered acceptable subject to appropriate conditions.

#### **GOVERNMENT CONSULTATION**

21. The proposal was referred to the Department of Water and the DEC.

22. The Department of Water objected to the proposal being within the flood way and was concerned that the bulky nature of the timber storage would constitute an obstruction to flood flows and exacerbate the impact of flooding upstream of the site.
23. The DEC raised concerns over the development being within the flood plain of Yakamia Creek, however they advised that provided the timber being processed is not chemically treated and is less than 500 tonnes per year, they have no direct interest.

#### **PUBLIC CONSULTATION / ENGAGEMENT**

24. A standard consultation letter was sent to surrounding landowners as well as a sign being placed on the road verge outside the site and an advertisement being placed in the Public Notices section of the Albany Advertiser.
25. A total of 27 responses were received from members of the public and surrounding landowners. Three of these raised no objections, one gave comment without expressing a particular opinion and the remaining twenty-three raised the following objections/issues/concerns:
  - The land should be considered as Special Rural, not Rural. A Junk Yard is not permitted in Special Rural areas.
  - Impact on views.
  - Increased noise from this site.
  - What will the impact be on the wildlife of the flood plain and wetland?
  - Ulster Road would need widening to accommodate increased vehicle use.
  - Reduce property values in the area.
  - This is a residential area, not industrial.
  - Possible pollution/contamination of the wetland and Yakamia Creek system.
  - Heavy truck movements, including being in close proximity to the schools.
  - Detrimental to visual amenity with unsightly piles of scrap, flood lighting, fencing and barking guard dogs.
  - Road safety and poor access arrangements.
  - Amenity of residential properties in the vicinity.
  - Concerns of this activity being within the floodplain.
  - In a flood situation the open stored timber would be carried off into Oyster Harbour.
  - Not attractive for visitors driving around town.
  - Such a use should be on a sealed drainage system to prevent runoff. The ongoing monitoring of such a system would become a Council obligation.
  - Regulated hours would be required to give local residents some peace at weekends.
  - The site may be an attractive playground for children.
  - An approval would lead the way to an expectation to expand the business in the future.
  - This is incompatible with the existing low-key activities on surrounding lots.
  - The land either side of the creek should become a riparian park for the enjoyment of future generations, not this.
  - The noise from machinery will cause more stress to the dogs at the kennels making them bark more.

- The timber is proposed stored on the grass, but may in the future be requested to be on a hard surface. The fill required and works for this would have a significant impact on the water dynamics.
26. Since the September Council meeting was held several additional letters have been received raising similar concerns to those raised above. Although these letters have been received outside of the public submission period a copy of these letters are also attached for Councillors perusal.

### **STATUTORY IMPLICATIONS**

27. A 'Junk Yard' is an 'AA' use within the Rural zone of Town Planning Scheme 3 (ie. a use that is not permitted unless planning consent to it is granted by the Council after notice has been given in accordance with Clause 5.1.4).

28. Clause 5.4 of the Scheme details the matters to be considered by Council and states:

*5.4 The Council in considering an application for planning consent is to have due regard to such of the following matters as are in the opinion of the Council relevant to the use or development the subject of the application:*

- (i) the compatibility of a use or development with its setting;*
- (l) the likely effect of the proposal on the natural environment and any means that are proposed to protect or to mitigate impacts on the natural environment;*
- (m) whether the land to which that application relates is unsuitable for the proposal by reason of it being, or likely to be, subject to flooding, tidal inundation, subsidence, landslip, bush fire or any other risk;*
- (n) the preservation of amenity;*
- (o) the relationship of the proposal to development on adjoining land or on other land in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the proposal;*
- (p) whether the proposed means of access to and egress from the site are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring, and parking of vehicles;*
- (q) the amount of traffic likely to be generated by the proposal, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;*
- (y) any relevant submission received on the application;*
- (z) the comments or submissions received from any authority consulted under clause 5.1A;*

(zb) *any other planning consideration the Council considers relevant.*

**STRATEGIC IMPLICATIONS**

29. The land is identified in the Albany Local Planning Strategy as ‘Regional Reserve’ noting that the subject site is part of the Yakamia Creek flood plain.
30. This item relates to the following elements of the City of Albany Strategic Plan (2011-2021):

**Key Focus Area**

Sustainability

**Community Priority**

Adopt “Green City” principles

**Proposed Strategies**

Reduce the amount of landfill waste by allowing the use of recycled/second hand building materials in new homes.

**POLICY IMPLICATIONS**

31. Policy 5E of the City’s Local Planning Policy Manual titled ‘Development in Flood Prone Areas’ is relevant to the proposal.
32. Whilst the Policy is broad in nature it notes that in areas subject to periodic inundation or flooding, that development should:
  - 1) *Prevent disruption to the natural drainage system or the modification of the flood levels that would be experienced within the drainage system;*
  - 3) *Maintain the natural ecological and drainage function of the area to store and convey stormwater and floodwater within the watercourse, drainage system or floodplain;*
33. This proposal does not meet these policy requirements as the proposed junk yard is within the mapped floodway as determined through the *Yakamia Creek Flood Study 2001*.

**RISK IDENTIFICATION & MITIGATION**

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

<b>Risk</b>	<b>Likelihood</b>	<b>Consequence</b>	<b>Risk Analysis</b>	<b>Mitigation</b>
<i>The development within the Flood Way may be prone to inundation in severe storm events and cause an obstruction which could exacerbate the impact of flooding upstream.</i>	<i>Possible</i>	<i>Major</i>	<i>High</i>	<i>Entirely dependent on Council.</i>

**FINANCIAL IMPLICATIONS**

35. The appropriate planning fee has been paid by the proponent and staff have processed the proposal within existing budget lines.

**LEGAL IMPLICATIONS**

36. Should Council refuse the proposal, the proponent has the ability to seek review of Council's decision at the State Administrative Tribunal. Such an appeal would be a Class 1 appeal which does not involve legal representation, and therefore such costs would be mainly staff time.

37. Council also has the ability to issue a Section 214 Notice under the *Planning and Development Act 2005* for the removal of the existing timber stockpile. The proponent has advised however if the application is refused they would not accept any further timber deliveries and would utilise the existing stockpile for personal use (ie. firewood) so that no commercial gain (retailing) from the timber would be permitted. Any breach of such commitments would result in prosecution action, which is identified in Recommendation 2 of the Responsible Officer Recommendation.

38. The proponent would also be able to appeal any such enforcement notice to the State Administrative Tribunal.

**ALTERNATE OPTIONS**

39. Council could determine that the location and type of proposal is acceptable and would not have a significant impact of flood flows and cause an obstruction during severe storm events. However the consequences of such a decision could present a precedent for future requests from landowners in the area to fill their land and or undertake similar activity in known floodplains. Any changes to the existing ground levels could have a significant impact on surrounding landowners in terms of floodwater capacity and visual amenity.

40. Should Council wish to approve the proposal as submitted and allow the development within the designated flood way the following alternate motion could be considered by a Council member:

*That Council issue a Planning Scheme Consent for a 'Junk Yard (Timber Salvage)' at 235-239 Ulster Road, Collingwood Heights subject to the following conditions:*

- A. The approval is valid for a period of 3 years only from the date of approval, after which the land use is to cease operation;*
  - B. Timber products are to be sourced only from the demolition of the Albany Hospital site;*
  - C. The approval is for the collection, storage, abandonment or sale of timber only;*
  - D. The business should not employ any person other than members of the proponent's household;*
  - E. The timber stored on the site shall not be chemically treated;*
  - F. The timber is to be stored within the stockpile areas identified on the site plan submitted with the application for planning scheme consent;*
  - G. The height of the timber stockpiles shall not exceed 3 metres in height;*
  - H. The timber stockpile being screened along its eastern side with a dense planting of mature trees to the satisfaction of Council.*
  - I. No manufacturing (processing) of the timber is to occur on site, except for the removal of nails and sorting of timber without the prior approval of Council;*
  - J. The crossover and access is to be upgraded prior to the operation of the use to the satisfaction of the Council.*
  - K. The operating hours associated with the use, inclusive of deliveries and sale of salvaged timber, shall be limited to Monday to Saturday 8am to 6pm with no trading on Sundays.*
41. Council may wish to grant planning scheme consent in accordance with the conditions outlined in Paragraph 40 above, except that Condition F could be reworded to ensure the development is located wholly outside of the floodplain area:

*'The area identified for the storage of timber shall be repositioned outside the identified floodplain identified in the Yakamia Creek Flood Study 2001 and City of Albany Local Planning Policy 5E, with the same site area dimensions to that submitted within the application of planning scheme consent, to the satisfaction of Council.'*

42. Council also has the ability to add further reasons for refusal to that list identified in the Responsible Officer Recommendation 1; an alternative motion to this effect could be put to the meeting.

### **SUMMARY CONCLUSION**

43. This application is for a Junk Yard, limited to timber only, whereby the timber from building demolition would be stockpiled, processed and graded for re-use. It is intended that only timber that has not been chemically treated would be received onsite. The activity would be a singular person operation utilising a small portion of the 7.75ha site.

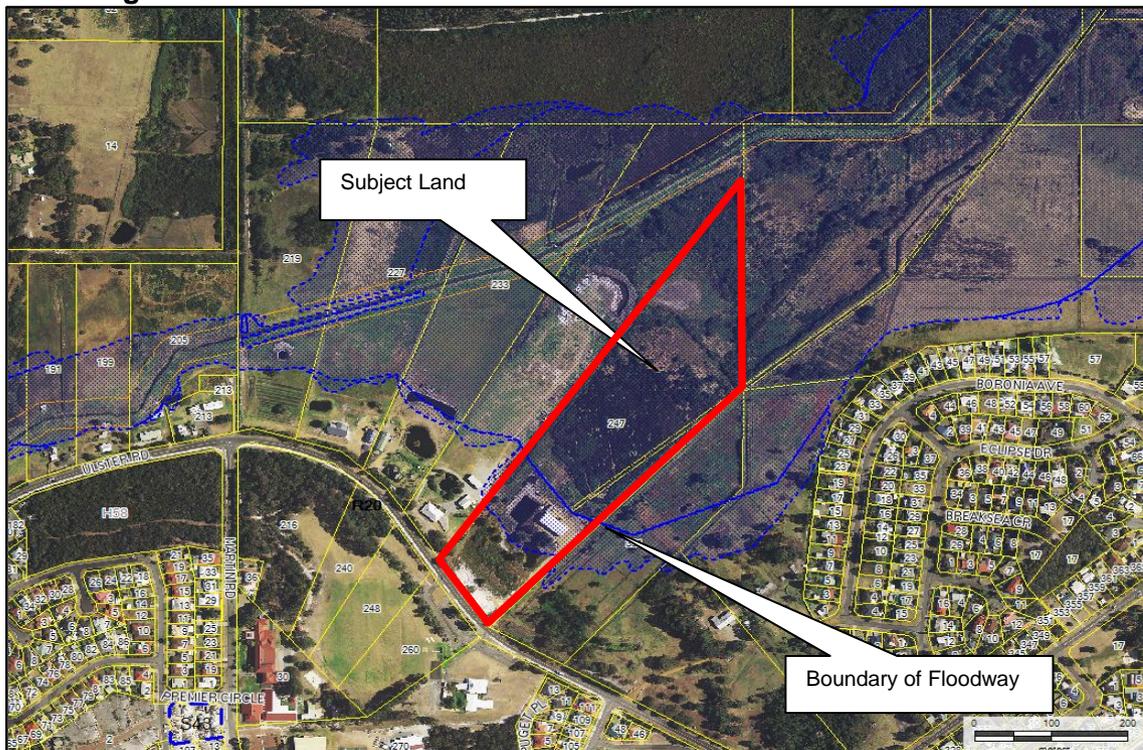
44. Given the scale of the operation and restrictions applying to timber only, the activity and use is considered acceptable subject to the application of several planning conditions. The intended location is however entirely located within the floodway of the Yakamia Creek. Accordingly, the use and its associated infrastructure in this location raises significant concerns regarding water flows in the flood plain and the flood water capacity of the drainage system.
45. Staff are of the opinion that the proposal is unacceptable in its current location and recommends the application be refused.

<b>Consulted References</b>	Town Planning Scheme 3 Yakamia Creek Flood Study Local Planning Policy Manual – Policy 5E
<b>File Number (Name of Ward)</b>	A67452 (Yakamia Ward)
<b>Previous Reference</b>	OCM 20 September 2011 - Item 2.2

**2.3: DEVELOPMENT APPLICATION – LANDFILL (INERT WASTE FROM BUILDING DEMOLITION) – 241 TO 247 ULSTER ROAD, COLLINGWOOD HEIGHTS**

- Land Description** : 241-247 Ulster Road, Collingwood Heights  
**Proponent** : R Barker  
**Owner** : R Barker  
**Business Entity Name** : Nil  
**Attachments** :
  - Application for Planning Scheme Consent
  - Recommended Floodplain Development Strategy
  - Correspondence from John Holland that spoil is free from asbestos/contaminants
  - Copies of Submissions**Councillor Workstation** : Photographs of waste material onsite  
 : Legal Advice from Mcleods Solicitors  
**Responsible Officer(s)** : E/Director Planning and Development Services (G Bride)

**Maps and Diagrams:**



**IN BRIEF**

- Demolition spoil, consisting mainly of concrete and brick rubble, associated with the Albany Hospital redevelopment was used by the proponent to fill approximately 2500m<sup>2</sup> of the subject land. The spoil is classed as a waste material under the Town Planning Scheme and its deposit requires planning scheme consent. Retrospective consent is now sought for the imported demolition spoil.
- Objections have been received from the public and agencies due to the impact on flood flows and capacity and risk of contamination.

<b>CEO:</b>	<b>RESPONSIBLE OFFICER:</b>
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RECOMMENDATION

**ITEM 2.3: RESPONSIBLE OFFICER RECOMMENDATION 1**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

**THAT Council resolves to ISSUE a Notice of Planning Scheme Consent for a ‘Use Not Listed – Landfill (inert waste from building demolition)’ at 241 – 247 Ulster Road, Collingwood Heights, subject to the following conditions at the proponents expense:**

- A. The proponent within a period of 60 days from the date of the approval is to complete the Western Australian Planning Commission’s Acid Sulfate Soils Self Assessment Form to the satisfaction of the City and the Department of Environment and Conservation for the retrospective works.

**Advice:**

***Where an Acid Sulfate Soils report is required under the Assessment Form such a report needs to be prepared in accordance with the Department of Environment’s Guidelines titled ‘Investigation of Acid Sulfate Soils’.***

- B. Where an Acid Sulfate Soils report is prepared and subsequently endorsed and actions are identified in an accompanying management plan, such actions stated in that management plan are to be completed within 60 days of the Acid Sulfate Self Assessment Form being received by the City.
- C. The approval is limited to the existing demolition spoil deposited on the site (as per the approved site plan) and no further waste material is to be deposited on the site without the prior authorisation of Council.
- D. The proponent within a period of 60 days is to the satisfaction of the City, place a notification, pursuant to Section 70A of the *Transfer of Land Act 1893* on the Certificate of Title of the lot advising of the existence of the fill site and that a geotechnical report to determine the suitability of the site to support structures would be required should development be contemplated on or adjacent to the fill.
- E. The extent of the landfill material being surveyed by a licensed surveyor to properly inform the notification on the title as required under Condition D.
- F. The survey plan should be overlaid with the boundary of the flood way as designated within the *Yakamia Creek Flood Study 2001* and where any spoil has encroached into the flood way, such material shall be removed and the remaining fill appropriately battered to the satisfaction of the City of Albany as per the *Recommended Flood Plain Strategy* within a period of 90 days from the date of the approval.
- G. The proponent proving that the timber content within the spoil does not exceed unavoidable quantities. To this end the proponent shall dig random inspection pits in accordance with a methodology agreeable to the City and the Department of Environment and Conservation. If the timber content is found to be excessive further screening will be required.

**ITEM 2.3: RESPONSIBLE OFFICER RECOMMENDATION 2  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**THAT the proponent is ADVISED that the current enforcement notices issued will not be pursued, however:**

- 1) should the proponent fail to comply with the above conditions of planning scheme consent, and/or**
  - 2) any further unauthorised fill is placed on the site,**
- new enforcement action under the *Planning and Development Act 2005* will be actioned.**

**BACKGROUND**

1. The subject site is just over 8.5ha in area and is zoned Rural under Town Planning Scheme No. 3. It is located on the north side of Ulster Road opposite St Joseph's College. The land is low lying and the flood plain of the Yakamia Creek extends over the site from the northeast as far as 180m from the Ulster Road boundary. The flood fringe area extends a further 80m to within 100m of the Ulster Road boundary.
2. Clause 5.1.2.2(b) of Town Planning Scheme No. 3 permits land owners to alter the natural contours of their land through excavation or filling provided this does not exceed 600mm in height, however under part (a) of the same Clause the deposit of any refuse or waste materials requires planning scheme consent.
3. Following complaints from the public regarding truck movements to and from the site, City staff visited the site and found demolition waste from the redevelopment of the Albany Hospital was being used to fill an area of approximately 2500m<sup>2</sup> within 180 metres of the front boundary of the subject land.
4. Given a waste material was being deposited without prior planning scheme consent, the City served Direction Notices under Sections 214(2) and 214(3) requiring the activity to stop and not recommence and for the material to be removed within a period of 60 days. However, within this timeframe the proponent lodged a retrospective planning application seeking Council's support to retain the demolition spoil onsite as inert fill.
5. The enforcement notices have been held in abeyance pending the outcome of Council's decision on this application.
6. This application is referred to Council in accordance with the Planning Applications Guidelines. The activity is classified as a landfill, for which staff do not have delegation to make a decision.

**DISCUSSION**

7. The proponent has excavated the topsoil and back filled with demolition spoil. Although the imported material is deeper than 600mm, this has not increased the new level beyond 600mm above the pre-existing natural ground level.

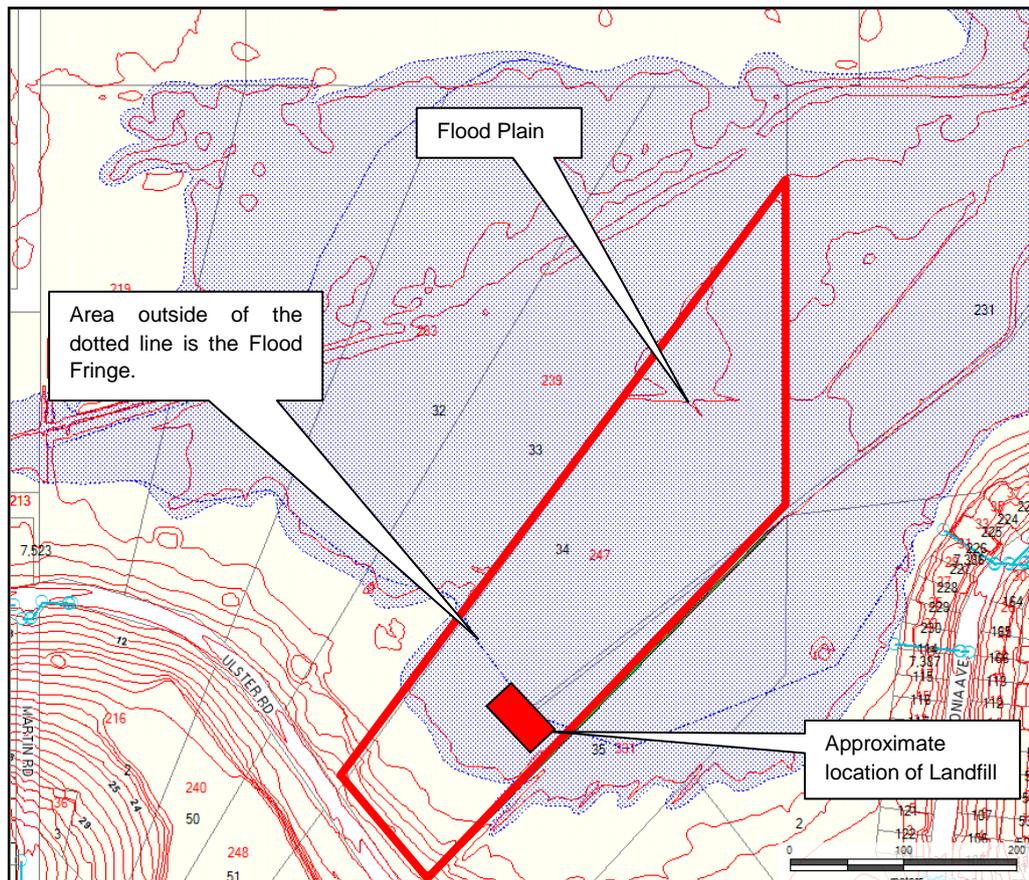
8. The waste materials were inspected by City staff whereby it was observed that the materials were predominantly bricks, concrete and general demolition rubble. Other materials consisting of carpet, electrical cabling, timber, metal sheets and strapping as well as plastic pipes were also observed, albeit in smaller quantities. Staff deemed the demolition spoil to be a waste material for the purposes of the Scheme.
9. Legal advice obtained by the City confirmed that the deposit of this material required planning scheme consent and should correctly be classified as a 'Use Not Listed (Inert Waste from Building Demolition)'.
10. "Uses that are not listed" in the Zone Development Table of Council's Town Planning Scheme No. 3 are required to be advertised. Such advertising was undertaken which involved referral to surrounding landowners and relevant government agencies.
11. Objections were received raising the following broad issues:
  - Heavy truck movements in close proximity to the schools;
  - Road safety and poor access arrangements;
  - Amenity of residential properties in the vicinity and
  - Concerns of this activity being within the floodplain.
12. The Department of Water (DOW) has objected to the proposal on the grounds that the fill straddles the floodway and flood fringe which may present an obstacle to flood flows and could exacerbate the impact of flooding upstream of the site.
13. The Department of Environment and Conservation (DEC) advised that the subject land has a moderate to high risk of Acid Sulfate Soils. The Acid Sulfate Soils status would require further investigation for ongoing excavation and burial activities that may require liaison with the DEC Contaminated Sites Branch in Perth. However, their main concern was the stated up to 10% timber content of the material. Treated timber is excluded from being buried at an inert landfill site and any timber (treated or not) is not considered to be inert and is only allowed in 'unavoidable' quantities.
14. The DEC further add that a licence under the *Environmental Protection Act 1986* is required for a landfill with a capacity of 500 tonnes per year.
15. The proponent was informed of the objections and concerns raised through the consultation process and was invited to reply or provide further information or clarification on the application in light of the comments received.
16. In response to the concerns over truck movements, proximity to schools and road safety, the proponent advised that the trucks delivering the material have now ceased and no more are envisaged. He also advised that the route from the Albany Hospital site was much shorter than that to the City Hanrahan Road tip, so the distance travelled and time spent on the road was much less and reduced the possibility for traffic conflict. Whilst the trucks were entering his property he had signs up advising and warning traffic travelling along Ulster Road.

17. In response to the fill in the flood plain and obstruction to flood flows, the proponent has provided photographs and advances the argument that the diversion drain is severely restricted downstream where it has had little or no maintenance resulting in flood waters backing up and flooding. He is doing relatively minor work to his land, yet the drain and creek are required to cope with increased stormwater flows from development and impermeable surfaces upstream within the catchment, with little or no upgrade to the drain infrastructure.
18. In response to the DEC comment on the quantity of timber present in the waste, the proponent advises he has further screened the building rubble onsite and has removed a lot of the timber. He estimates the timber content is now less than 1% by volume and would meet the DEC's requirements for 'unavoidable quantities'.
19. Although the application is classified as a landfill operation, it is not comparable to a typical landfill activity. It is not intended to be set up to receive all manner of waste materials and in fact the landfill activity as an operation has ceased. The application merely covers the area where the waste material has already been deposited and no further areas for landfill have been identified under the application. The proponent has accepted delivery of demolition waste/rubble as fill to raise the level of his land by less than 600mm. As no more of the demolition spoil will be brought onto the site many of the objections received (relating to vehicle movements and road safety) are no longer relevant.
20. Due to the nature of the demolition spoil and the way it was deposited, it may not have been adequately compacted to offer a sufficient base for any possible future construction. Such a construction may or may not be intended at this point in time on this area of the site, but this may compromise the use of this part of the site by current and/or subsequent owners. In this regard it is recommended that a notification be placed on the title of the lot to ensure that future purchasers are aware that prior to development occurring within the area subject to fill, a geotechnical engineer would need to confirm that the site is adequately stabilised/compacted for the development envisaged.
21. As the landfill activity was undertaken within the flood fringe and not the flood way it is unlikely to present a major obstacle to flood flows and exacerbate the impact of flooding upstream. The two main issues associated with the proposal are:
  - (i) The site is located in an area with a moderate to high possibility of acid sulfate soils which if present may have been disturbed as part of the excavation process prior to the placement of the landfill; and
  - (ii) Whether the proponent has adequately demonstrated that the demolition spoil is free of harmful contaminants, such as asbestos.

#### **GOVERNMENT CONSULTATION**

22. The proposal was referred to the DOW and the DEC.
23. The DOW has objected to the proposal on the grounds that the fill straddles the floodway and flood fringe which may present an obstacle to flood flows and could exacerbate the impact of flooding upstream of the site.

24. On closer inspection of the map associated with the *Yakamia Creek Flood Study 2001* (as shown below) and the site plan submitted by the proponent, the area of land affected by the land fill is located within the flood fringe (although a surveyed drawing will verify this beyond doubt). The DOW's Recommended Floodplain Development Strategy, which accompanied the Flood Study, does indicate that development such as filling and building can encroach into the flood fringe area and would be acceptable with respect to major flooding. A copy of the Recommended Floodplain Development Strategy is attached.



25. The response received from the DEC advises that the land is located within the Yakamia Creek drainage flats with a history of flooding and has a high to moderate risk of Acid Sulfate Soils. In relation to the specific details of the application, the DEC was concerned that the timber content could be as high as 10%. DEC guidelines exclude treated timber from being buried as inert landfill and any timber (treated or not) is not considered inert, but is allowed in 'unavoidable' quantities. A 10% content exceeds this intent and the DEC recommends that further separation of timber be undertaken for re-use or disposal elsewhere if the application is approved. Since this submission was received and communicated to the proponent, the proponent has advised that further screening has been undertaken and quantities of timber would now be in the realm of 1%. As the subsequent screening was not observed by staff it is recommended that sample holes are dug to prove the timber content has been reduced to around 1% of overall content. It should be noted that the timber was not likely to be chemically treated as it was made up of jarrah or karri (commonly used in buildings of that period) rather than pine.

26. The DEC further advised that given the Acid Sulfate Soils risk status, further investigation in liaison with the DEC Contaminated Sites Branch in Perth should be considered with the possibility of a management plan being required. Ongoing licensing under the *Environmental Protection Act 1986* is required if a landfill receives more than 500 tonnes of waste per year. If this threshold is not reached / exceeded then DEC has advised that they have no direct interest.
27. As suggested by the DEC Albany Office, further consultation has been undertaken with the DEC Contaminated Sites Branch. In relation to the issue of Acid Sulfate Soils, the Contaminated Sites Branch has recommended an acid sulfate self-assessment form be completed and depending on the outcomes of that assessment, an acid sulfate soils report and management plan may be required.
28. The Contaminated Sites Branch have also advised that given the material is demolition rubble from the Albany Regional Hospital site there is potential for asbestos containing materials to be mixed in with this waste. As suggested by the Contaminated Sites Branch, Staff have liaised with the demolition contractor (Delta Group) who was responsible for the demolition of the buildings at the Hospital site. John Holland Pty Ltd (builders of the hospital) have advised that the removal of the asbestos was undertaken prior to the demolition of the buildings. A copy of the evidence in this regard is attached to the rear of this report. John Holland Pty Ltd have also advised that a contamination investigation over the whole Albany Hospital site was undertaken prior to demolition and revealed only a small area of the site was contaminated (most likely from an isolated oil/fuel leakage). This area of the site has not yet been disturbed and is a considerable distance from the buildings that were demolished. Staff have sought a copy of the overall site contamination report which details this information; if received the report will be circulated to Councillors.
29. Based on the advice from John Holland Pty Ltd staff are satisfied that the fill can be classified as 'inert'. The DEC Contaminated Sites Branch have reviewed the evidence and are also confident that no contamination would be present in the fill.
30. The Contaminated Sites Branch has advised that should Council be satisfied that the proponent has adequately demonstrated that the landfill was 'inert', no further conditions would be required. If Council however is not satisfied with the level of information provided, Council may wish to either:
  - (a) Place a condition on the development requesting the proponent at his cost submit an environmental report to determine whether any contaminants such as asbestos are present within the inert waste material and surrounding soil; or
  - (b) Report the site to the DEC under the *Contaminated Sites Act 2003* as a potential contaminated site. The DEC will then assess the available information and classify the site accordingly.
31. The Contaminated Sites Branch has advised that Option (a) above may be an expensive undertaking for the proponent and Council may wish to consider Option (b) as an alternative. Option (b) will allow the Contaminated Sites Branch, who has expertise in this area, to determine whether the waste material is free from potential contamination. It will also provide a ruling in perpetuity from the appropriate government department that the concerns relating to contamination have been thoroughly investigated in accordance with legislative

requirements. From the proponent's perspective the DEC, based on the evidence provided, may be satisfied that a more detailed environmental investigation as identified in Option (a) is not required. Further details on the process identified in the *Contaminated Sites Act 2003* are outlined in Paragraph 47 below, under the heading of Legal Implications. If Council is not satisfied that the spoil is inert and Option (b) is pursued it is recommended that the application be deferred pending the outcome of the DEC investigation.

### **PUBLIC CONSULTATION / ENGAGEMENT**

32. The surrounding landowners were consulted, a sign was placed on the road verge outside the site and an advertisement was placed in the Public Notices section of the Albany Advertiser.
33. A total of five (5) responses were received from members of the public and surrounding landowners. Two (2) of these raised no objections, the remaining three (3) raised the following issues/concerns:
  - Heavy truck movements in close proximity to the schools.
  - Road safety and poor access arrangements.
  - Amenity of residential properties in the vicinity.
  - Concerns of this activity being within the floodplain.

### **STATUTORY IMPLICATIONS**

34. The use 'Landfill – inert waste from building demolition' is not a use that is listed within Town Planning Scheme No. 3.
35. Clause 3.2 of the Scheme details how uses that are not listed are to be considered and states:
  - 3.2 ... *Where an application is received for permission to use land for a proposed use which is not contained in the "Use Class" table and the table does not, in the opinion of the Council contain a use class with which the proposed use is comparable, Council may determine that the proposed use:*
    - a) *is considered to be consistent with the objectives of the zone and is therefore permitted;*
    - b) *may be consistent with the objectives of the particular zone and thereafter follow the advertising procedures of Clause 5.1.4 in considering an application for planning approval; or*
    - c) *is not consistent with the objectives of the particular zone and is therefore not permitted.*
36. The objective of the 'Rural' zone as stated within Town Planning Scheme No. 3 is:

*To ensure that high quality agricultural land is retained for primary production. To regulate uses which might conflict with farming interests, and foster uses which are complementary to such interests. To preserve rural land within easy reach of urban areas.*

37. In relation to the objective stated above, the subject land is not high quality agricultural land, being predominantly affected by the Yakamia Floodplain, and the nature of the proposal is unlikely to conflict with farming interests as the surrounding rural lots are not used for agricultural production. The proposal also does not result in a loss of rural land.

38. Clause 5.4 of the Scheme details the matters to be considered by Council and states:

*5.4 The Council in considering an application for planning consent is to have due regard to such of the following matters as are in the opinion of the Council relevant to the use or development the subject of the application:*

*(i) the compatibility of a use or development with its setting;*

*(l) the likely effect of the proposal on the natural environment and any means that are proposed to protect or to mitigate impacts on the natural environment;*

*(m) whether the land to which that application relates is unsuitable for the proposal by reason of it being, or likely to be, subject to flooding, tidal inundation, subsidence, landslip, bush fire or any other risk;*

*(y) any relevant submission received on the application;*

*(z) the comments or submissions received from any authority consulted under clause 5.1A;*

*(zb) any other planning consideration the Council considers relevant.*

## **STRATEGIC IMPLICATIONS**

39. The land is identified in the Albany Local Planning Strategy as 'Regional Reserve' noting that the subject site is part of the Yakamia Creek Floodplain.

## **POLICY IMPLICATIONS**

40. Policy 5E of the City's Local Planning Policy Manual titled 'Development in Flood Prone Areas' is relevant to the proposal.

41. Whilst the Policy is broad in nature it notes that in areas subject to periodic inundation or flooding, that development should:

*1) Prevent disruption to the natural drainage system or the modification of the flood levels that would be experienced within the drainage system;*

- 3) *Maintain the natural ecological and drainage function of the area to store and convey stormwater and floodwater within the watercourse, drainage system or floodplain;*

42. This proposal is located within the flood fringe and not the flood way and the impact of the natural drainage system is unlikely to be significant. The conditions identified in the responsible officer recommendation will ensure compliance with the DOW's Recommended Floodplain Development Strategy.

**RISK IDENTIFICATION & MITIGATION**

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

<b>Risk</b>	<b>Likelihood</b>	<b>Consequence</b>	<b>Risk Analysis</b>	<b>Mitigation</b>
The demolition spoil and excavation works may present an asbestos risk.	Possible	Medium	High	The City notes the evidence supplied by John Holland that asbestos was removed prior to and during demolition.
The excavation works may have disturbed the acid sulphate soils, exposing such soils to the open air which can turn the soil acidic.	Possible	Medium	High	Request the proponent complete an Acid Sulfate Soils Self Assessment Form as recommended by DEC Contamination Branch.

**FINANCIAL IMPLICATIONS**

44. The appropriate planning fee has been paid by the proponent and staff have processed the application within existing budgetary lines.

**LEGAL IMPLICATIONS**

45. Should Council accept the Responsible Officer Recommendation the proponent may seek a review of any of the conditions by the State Administrative Tribunal (SAT). Such an appeal would be a Class 1 appeal which does not involve legal representation, and therefore such costs would be mainly staff time.

46. Should Council accept the Responsible Officer Recommendation the existing notices held in abeyance would not be pursued as the fill will be able to be retained on site. This does not mean that the City cannot issue new notices in the future if the proponent does not comply with the conditions of planning scheme consent or brings further waste materials onto the site. If Council refuses the proposal the existing enforcement notice will remain in place.

47. As per Paragraph 30(b) Council has the ability to refer the site under Section 11 of the *Contaminated Sites Act 2003* to the CEO of the DEC advising that the portion of the site subject to the deposited demolition spoil could possibly be contaminated. The CEO of the DEC will then be required to classify the site within 45 days and may deem that the site is '*possibly contaminated — investigation required*'. This classification, which is subject to appeal, would be placed on the certificate of title of the subject land (as a Section 70A Notification) and remain until evidence was provided that the site is not contaminated or remedial actions to the satisfaction of the DEC have been undertaken. Based on the evidence that asbestos was removed from the site and that no other contaminants were found through a pre-demolition contamination survey within or adjacent to the buildings that were demolished in Stage 1, this action is not considered necessary.

### **ALTERNATE OPTIONS**

48. Council has the following alternate options to the responsible officer recommendation:

#### Option 1

Determine that Conditions A, B and/or D in the Responsible Officer Recommendation No. 1 are not required if Council is satisfied that there is likely to be no adverse impacts associated with the disturbance of the soil which is at a moderate to high risk for acid sulfate soils. The Acid Sulfate Soil Assessment Form is a relatively straight forward process (Condition A). If the excavation work involved less than 100m<sup>3</sup> of soil removal no further acid sulfate soil reports or management plans are required (Condition B).

Condition D is a notification so that should the area subject to the landfill be considered for development (dwellings/outbuildings) a geotechnical engineers report would be required to assess soil stability for construction. This notification ensures that all future purchasers are aware of this requirement.

Condition E and F have been requested to accurately map the area subject to the landfill and ensure that all landfill is located outside of the flood way of the Yakamia Creek.

Condition G will give Council further security that the timber content is now at a level that can be considered an unavoidable quantity.

#### Option 2

Determine that the application should be refused if Council is concerned that the proposal will have a detrimental impact on the floodplain of the Yakamia Creek.

#### Option 3

Formally refer the proposal under Section 11 of the *Contaminated Sites Act 2003* to the DEC Contamination Branch if Council is not satisfied with the evidence that the spoil is not likely to be contaminated and defer making a decision on the proposal until the DEC has finalised their investigations under the Act. Alternatively Council could place a condition on the

approval requiring testing of the soil for asbestos any other potential contaminants by a relevant professional.

**SUMMARY CONCLUSION**

- 49. This application is for retrospective approval for a landfill – inert waste from building demolition. The application is not seeking support for ongoing use as a landfill facility and merely seeks Council’s consent to retain the deposited fill on site.
- 50. The imported material is classified as waste material, being demolition spoil, and there was evidence that low quantities of other materials within the landfill on inspection by staff. In unavoidable quantities timber, metal and plastic is allowed, however it is difficult to determine from the photographs taken whether the criteria of the DEC has been met. It is clear however that the amount of landfill deposited is well within the 500 tonnes per year annual restriction set down by the DEC. The demolition contractor has advised however that all asbestos was removed prior to demolition and therefore the fill would not contain this contaminant.
- 51. Whilst the DOW has raised concerns on the impact on the proposal on flood water storage capacity of the land, filling within the flood fringe is considered acceptable according to Recommended Floodplain Development Strategy which accompanied the *Yakamia Creek Flood Study 2001*. On this basis it is difficult to sustain the position that the height of the fill involved is likely to cause a significant impact on the drainage function of the Yakamia Creek.
- 52. Accordingly staff are of the opinion that the proposal can be supported subject to appropriate conditions being placed on the development.

<b>Consulted References</b>	Town Planning Scheme 3 Yakamia Creek Flood Study
<b>File Number (Name of Ward)</b>	A37843 (Yakamia Ward)
<b>Previous Reference</b>	Nil

## 4.1: LIST OF ACCOUNTS FOR PAYMENT

**File Number (Name of Ward)** : FM.FIR.2 - All Wards  
**Appendices** : List of Accounts for Payment  
**Responsible Officer** : Acting Executive Director Corporate Services (P Wignall)

### ITEM 4.1: RESPONSIBLE OFFICER RECOMMENDATION

The list of accounts authorised for payment under delegated authority to the Chief Executive Officer for the period ending 18 October 2011 totalling \$3,418,739.75 be RECEIVED.

### BACKGROUND

- Council has delegated to the Chief Executive Officer the exercise of its power to make payments from the City's municipal and trust funds. In accordance with Regulation 13 of the Local Government (Financial Management) Regulations 1996, a list of accounts paid by the Chief Executive Officer is to be provided to Council.

### DISCUSSION

- The table below summarises the payments drawn from the municipal fund during the month of October 2011. Further details of the accounts authorised for payment by the Chief Executive Officer is included within the Elected Members Report/Information Bulletin.

#### Municipal Fund

Trust	Totalling	\$7651.66
Cheques	Totalling	\$30,197.95
Electronic Fund Transfer	Totalling	\$2,528,763.28
Credit Cards	Totalling	\$4,523.59
Payroll	Totalling	\$847,603.27
	<b>TOTAL</b>	<b><u>\$3,418,739.75</u></b>

- As at 15<sup>th</sup> October 2011, the total outstanding creditors, stands at **\$524,079.90** and made up follows:

Current	\$ 279,298.32
30 Days	\$220,746.20
60 Days	\$24,035.38
90 Days	\$0.00
<b>TOTAL</b>	<b>\$524,079.90</b>

CEO:

RESPONSIBLE OFFICER:

4. Cancelled cheques – 27559 – not required and 27628 - replacement cheque 27636 and EFT 70198 issued due to mix up Guest Town when issuing cheques.

#### **STATUTORY IMPLICATIONS**

5. Regulation 12(1)(a) of the Local Government (Financial Management) Regulations 1996, provides that payment may only be made from the municipal fund or a trust fund if the Local Government has delegated this function to the Chief Executive Officer or alternatively authorises payment in advance.
6. The Chief Executive Officer has delegated authority to make payments from the municipal and trust fund.
7. Regulation 13 of the Local Government (Financial Management) Regulations 1996 provides that if the function of authorising payments is delegated to the Chief Executive Officer, then a list of payments must be presented to Council and recorded in the minutes.

#### **FINANCIAL IMPLICATIONS**

8. Expenditure for the period to 18 October 2011 has been incurred in accordance with the 2011/2012 budget parameters.

#### **POLICY IMPLICATIONS**

9. The City's 2011/2012 Annual Budget provides a set of parameters that guides the City's financial practices.

#### **SUMMARY CONCLUSION**

10. That list of accounts have been authorised for payment under delegated authority.

<b>File Number (Name of Ward)</b>	FM.FIR.2 - All Wards
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## 4.2: FINANCIAL ACTIVITY STATEMENT – 31 OCTOBER 2011

**Responsible Officer** : Acting Executive Director Corporate Services (P Wignall)

### IN BRIEF

- Statement of Financial Activity reporting on the revenue and expenditure of the City of Albany for the reporting period ending 31 October 2011.

### ITEM 4.2: RESPONSIBLE OFFICER RECOMMENDATION

**The Financial Activity Statement for the period ending 31 October 2011 be RECEIVED.**

### BACKGROUND

1. The Statement of Financial Activity for the period ending 31 October 2011 has been prepared and is attached.
2. In addition to the statutory requirement to provide Council with a Statement of Financial Performance, the City provides Council with a monthly investment summary to ensure the performance of the investment portfolio is in accordance with anticipated returns and complies with the Investment of Surplus Funds Policy.

### DISCUSSION

3. In accordance with section 34(1) of the Local Government (Financial Management) Regulations 1996, the City of Albany is required to prepare each month a Statement of Financial Activity reporting on the revenue and expenditure of the local authority.
4. The requirement for local governments to produce a Statement of Financial Activity was gazetted in March 2005 to provide elected members with a greater insight in relation to the ongoing financial performance of the local government.
5. Additionally, each year a local government is to adopt a percentage or value to be used in Statements of Financial Activity for reporting material variances. Variations in excess of \$100,000 are reported to Council.

*“Please note that rounding errors may occur when whole numbers are used, as they are in the reports that follow. The ‘errors’ may be \$1 or \$2 when adding sets of numbers. This does not mean that the underlying figures are incorrect.”*

**CEO:**

**RESPONSIBLE OFFICER:**

**6. STATEMENT OF FINANCIAL ACTIVITY – AS AT 31 OCTOBER 2011**

FINANCIAL DETAIL NOT  
AVAILABLE AT TIME OF  
PRINTING

**7. CITY OF ALBANY - NET CURRENT ASSETS – 31 OCTOBER 2011**

FINANCIAL DETAIL NOT  
AVAILABLE AT TIME OF  
PRINTING

**8. PORTFOLIO VALUATION – MARKET VALUE – AS AT 31 OCTOBER 2011**

FINANCIAL DETAIL NOT AVAILABLE AT TIME OF  
PRINTING

**9. FINANCIAL RATIOS - AS AT 31 OCTOBER 2011**

FINANCIAL DETAIL NOT  
AVAILABLE AT TIME OF  
PRINTING

**STATUTORY IMPLICATIONS**

12. Section 34 of the Local Government (Financial Management) Regulations 1996 provides:
- I. *A local government is to prepare each month a statement of financial activity reporting on the source and application of funds, as set out in the annual budget under regulation 22 (1)(d), for that month in the following detail –*
    - a) *annual budget estimates, taking into account any expenditure incurred for an additional purpose under section 6.8(1)(b) or (c);*
    - b) *budget estimates to the end of the month to which the statement relates;*
    - c) *actual amounts of expenditure, revenue and income to the end of the month to which the statement relate*
    - d) *material variances between the comparable amounts referred to in paragraphs (b) and (c); and*
    - e) *the net current assets at the end of the month to which the statement relates.*
  - II. *Each statement of financial activity is to be accompanied by documents containing –*
    - a) *an explanation of the composition of the net current assets of the month to which the statement relates, less committed assets and restricted assets;*
    - b) *an explanation of each of the material variances referred to in sub regulation (1)(d); and*
    - c) *such other supporting information as is considered relevant by the local government.*
  - III. *The information in a statement of financial activity may be shown –*
    - a) *according to nature and type classification;*
    - b) *by program; or*
    - c) *by business unit*
  - IV. *A statement of financial activity, and the accompanying documents referred to in sub regulation (2), are to be –*
    - a) *presented at an ordinary meeting of the council within 2 months after the end of the month to which the statement relates; and*
    - b) *recorded in the minutes of the meeting at which it is presented.*

**FINANCIAL IMPLICATIONS** *Expenditure for the period ending 31 October 2011 has been incurred in accordance with the 2011/12 proposed budget parameters. Details of any budget variation in excess of \$100,000 (year to date) follow. There are no other known events which may result in a material non recoverable financial loss or financial loss arising from an uninsured event.*

**13. VARIANCES TO BUDGET IN EXCESS OF \$100,000 - AS AT 31 OCTOBER 2011**

FINANCIAL DETAIL NOT AVAILABLE AT TIME OF  
PRINTING

**POLICY IMPLICATIONS**

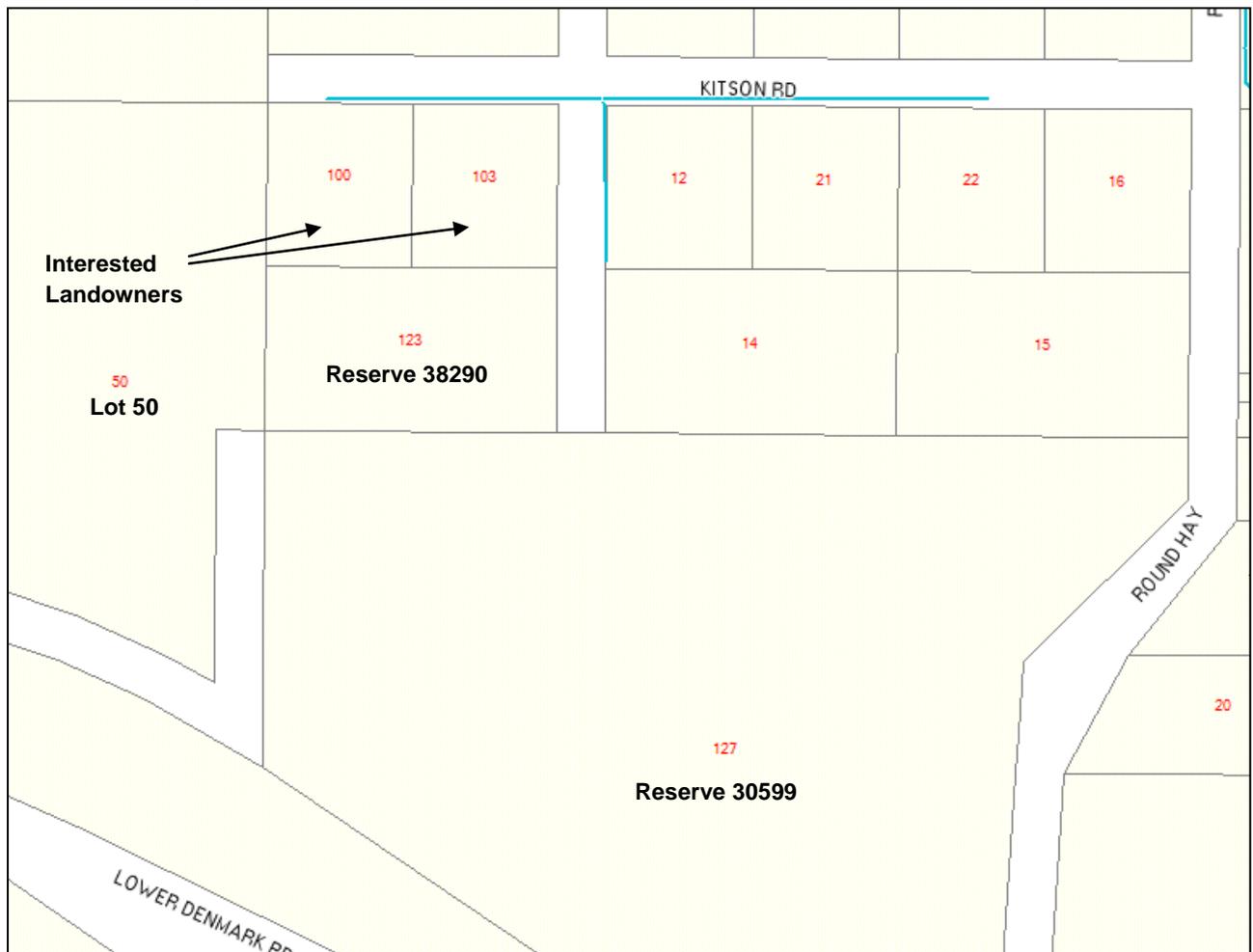
14. The City's 2011/12 Annual Budget provides a set of parameters that guides the City's financial practices.
15. The Investment of Surplus Funds Policy stipulates that the status and performance of the investment portfolio is to be reported monthly to Council.

<b>File Number (Name of Ward)</b>	FM.FIR.2 - All Wards
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### 4.3: PROPOSED DISPOSAL OF CROWN LAND - RESERVE 38290 LOT 123 GIPTON STREET, GLEDHOW

<b>Land Description</b>	: Lot 100 No 37 Kitson Road, Gledhow Lot 103 No 25 Kitson Road, Gledhow Lot 123 No 62 Gipton Street, Gledhow (Reserve 38290)
<b>Proponent</b>	: Department for Regional Development and Lands
<b>Owner</b>	: F Burns & S Gorman A & J Goodall
<b>Responsible Officer(s)</b>	: Chief Executive Officer (F James)

#### Maps and Diagrams:



#### IN BRIEF

- At the request of the Department for Regional Development and Lands, Council is requested to consider the disposal of Crown Reserve 38290 to the adjoining landowners. This reserve is vested in the City of Albany for the purpose of 'Rubbish Disposal Site'.

CEO:

RESPONSIBLE OFFICER:

**4.3: RESPONSIBLE OFFICER RECOMMENDATION  
VOTING REQUIREMENT: SIMPLE MAJORITY****THAT Council:**

- i) **ADVISE the Department for Regional Development and Lands that it has no objection to the sale of Reserve 38290 Lot 123 Gipton Street, Gledhow to the adjoining landowners, subject to the following conditions:**
- a) **A Memorial being placed on any resultant freehold title advising current landowners and any future prospective purchasers that the land may be contaminated; and**
  - b) **The prospective purchasers of the subject land being advised that the future use and development of the land must comply with the City's Town Planning Scheme and any relevant policies.**
- ii) **AGREES to revoke the Management Order for Reserve 38290 held by the City of Albany, pursuant to section 50 of the *Land Administration Act 1997*.**

**BACKGROUND**

1. The Department of Regional Development and Lands has been approached by the owners of Lot 103 Kitson Road about the potential to purchase the land adjoining their property at Lot 123 Gipton Street.
2. Lot 123 Gipton Street is a designated Crown Reserve (R38290). It was reserved in March 1983 for the Shire of Albany to use as a Rubbish Disposal Site, in conjunction with the adjoining Lot 50, which is owned in freehold title by the Shire (now owned by City of Albany).
3. In investigating the disposal of R38290 Lot 123 Gipton Street, the Department for Regional Development and Lands asked whether this land has ever been used for its designated purpose.
4. City staff has researched the former Shire of Albany records to determine whether the land has ever been used for Rubbish Disposal purposes. It has not been possible to identify whether this use has ever occurred on the land, therefore it is uncertain whether the land is contaminated. It has been noted that the adjoining Reserve 30599 was the Regional Saleyards and is a contaminated site in the City's register.
5. The Department for Regional Development and Lands had asked the City to sign a statutory declaration pursuant to the *Contaminated Sites Act 2003* to clarify the potential contamination of the land. The City advised the Department that, as no information exists on how the land has been used or what contaminants might exist on the land, that it was not possible to sign a Statutory Declaration about its past use.

6. Separate to the issue of the contamination of the land, the Department for Regional Development and Lands has asked the City to determine whether it agrees to the sale of the land, as the Department cannot progress the proposal without the City's consent.
7. The Department for Regional Development and Lands has advised that it has also sought the comments of the adjoining landowner of Lot 100 Kitson Road who may be interested in obtaining a portion of the subject area of land depending on associated costs.

## DISCUSSION

8. Lot 100 and 103 Kitson Street both have existing residences and appear to be used for residential purposes only. It is noted that a single dwelling is designated as an 'A' use in the City of Albany Town Planning Scheme No 3 Table 1 – Zones, which means that it is a use not permitted unless approval is granted by the Council. The appropriate approvals of Council were obtained prior to the construction of these dwellings.
9. In considering the disposal of R38290 Lot 123 Gipton Street, the City has considered and discussed with the owner of Lot 103 Kitson Street the future use of the land. The owner has been advised that the land is zoned 'General Industry' under the City's Town Planning Scheme No 3 and can only be used for the uses permitted under the Scheme.
10. It is noted that Gipton Street is currently unconstructed and any development of R38290 Lot 123 Gipton Street for industrial purposes would require the construction of this road as a condition of development.
11. The owner of Lot 103 Kitson Street has advised that they would like to purchase the land so that more space is available for the construction of an outbuilding and as additional storage space in conjunction with their existing residence. They do not propose to operate any business from this property at this time.
12. With regard to the issue of the possible contamination of the land, the Department for Regional Development and Lands are currently seeking legal advice on placing a Memorial on title to advise of the potential for the land to be contaminated. This is a matter for the Department to resolve and does not require any action by the City.
13. While it is noted that the land is reserved for Rubbish Disposal purposes, it is noted that there would be a number of constraints to developing the land for this purpose. In particular, there are four residential properties within 100m of Lots 50 and 123. The minimum recommended buffer for landfill sites to sensitive uses (including residences) is 150m (as specified by the Department for Environment and Conservation). There are no plans by the City to use or develop this reserve for waste disposal purposes.

## GOVERNMENT CONSULTATION

14. This matter was initiated by the Department for Regional Development and Lands as a result of a public query from the owners of Lot 103 Kitson Road. The City has consulted with the Department throughout the process of investigating the disposal of the subject land. No other government agency has been contacted.

## PUBLIC CONSULTATION / ENGAGEMENT

15. This matter has been initiated by a private landowner. Both the City and the Department for Regional Development and Lands have discussed the matter with the owner Lot 103 Kitson Road. The Department has also been in contact with the owner of Lot 100 Kitson Road. No other surrounding owners have been contacted, though it is noted that majority of the surrounding properties are under the ownership or management of the City of Albany.

## STATUTORY IMPLICATIONS

16. Section 50 of the *Land Administration Act 1997* allows the Minister for Lands to revoke a management order for a Crown Reserve where the management body agrees that it should be revoked. The City of Albany is the management body for the subject reserve.
17. Section 74 of the *Land Administration Act 1997* allows the Minister for Lands to sell Crown land.
18. Table 1 of the *City of Albany Town Planning Scheme No 3* sets out the land uses that are permitted in a General Industry zone. In this table, a single dwelling is specified as an 'A' use, which means it is a use only permitted with the approval of Council.

## STRATEGIC IMPLICATIONS

19. This item relates directly to the following elements of the City of Albany Strategic Plan (2011-2021)

### **Key Focus Area**

Organisational Performance

### **Community Priority**

Policy and Procedures

### **Proposed Strategies**

Develop clear processes and policies and ensure consistent, transparent application across the organisation.

The Albany Local Planning Strategy maintains that the subject land and surrounding area will continue to be set aside for Industry purposes (Map 9B). Clause 5.3.1 of the Albany Local Planning Strategy provides the planning objective for existing industrial sites, as follows:

*"To maintain the sustainable use of existing industrial sites."*

The sale of the land is consistent with the strategic directions sets by the Albany Local Planning Strategy, provided that the future development of the land is consistent with the Town Planning Scheme provisions for the General Industry zone.

**POLICY IMPLICATIONS**

20. There are no policy implications relevant to this item.

**RISK IDENTIFICATION & MITIGATION**

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

<b>Risk</b>	<b>Likelihood</b>	<b>Consequence</b>	<b>Risk Analysis</b>	<b>Mitigation</b>
Council does not support the sale of the land to adjoining landowners and the land remains in the management of the City.	Possible	Insignificant – This land is not regularly maintained, so it would have little impact if it was to remain under the City's management.	Low	Council supports the sale of the unused Crown Reserve to adjoining landowners and reduces the amount of land required to be maintained by the City.

**FINANCIAL IMPLICATIONS**

22. Beyond staff time involved in organising land matters, there are no financial implications relevant to this item. The Department for Regional Development and Lands will be responsible for the actions associated with the disposal of the land.

**LEGAL IMPLICATIONS**

23. The only legal implication associated with the sale of the land is if the owner purchases contaminated land without being duly advised. In the circumstance where an owner buys contaminated land without being notified of such, the owner could make a claim for compensation against the Crown.

24. As it cannot be clearly identified whether the land has been contaminated or not, the Department for Regional Development and Lands is proposing to place a Memorial on title to advise the current owner and any prospective purchasers that the land has potentially been contaminated. In this case, the landowner would have no potential to make a claim for compensation against the Crown.

**ALTERNATE OPTIONS**

25. Council can:

- a) Not support the sale of R38290 Lot 123 Gipton Street and the land will remain under the care, control and management of the City of Albany; or
- b) Support the sale of the subject land and agree to the revocation of the Management Order held by the City of Albany.

**SUMMARY CONCLUSION**

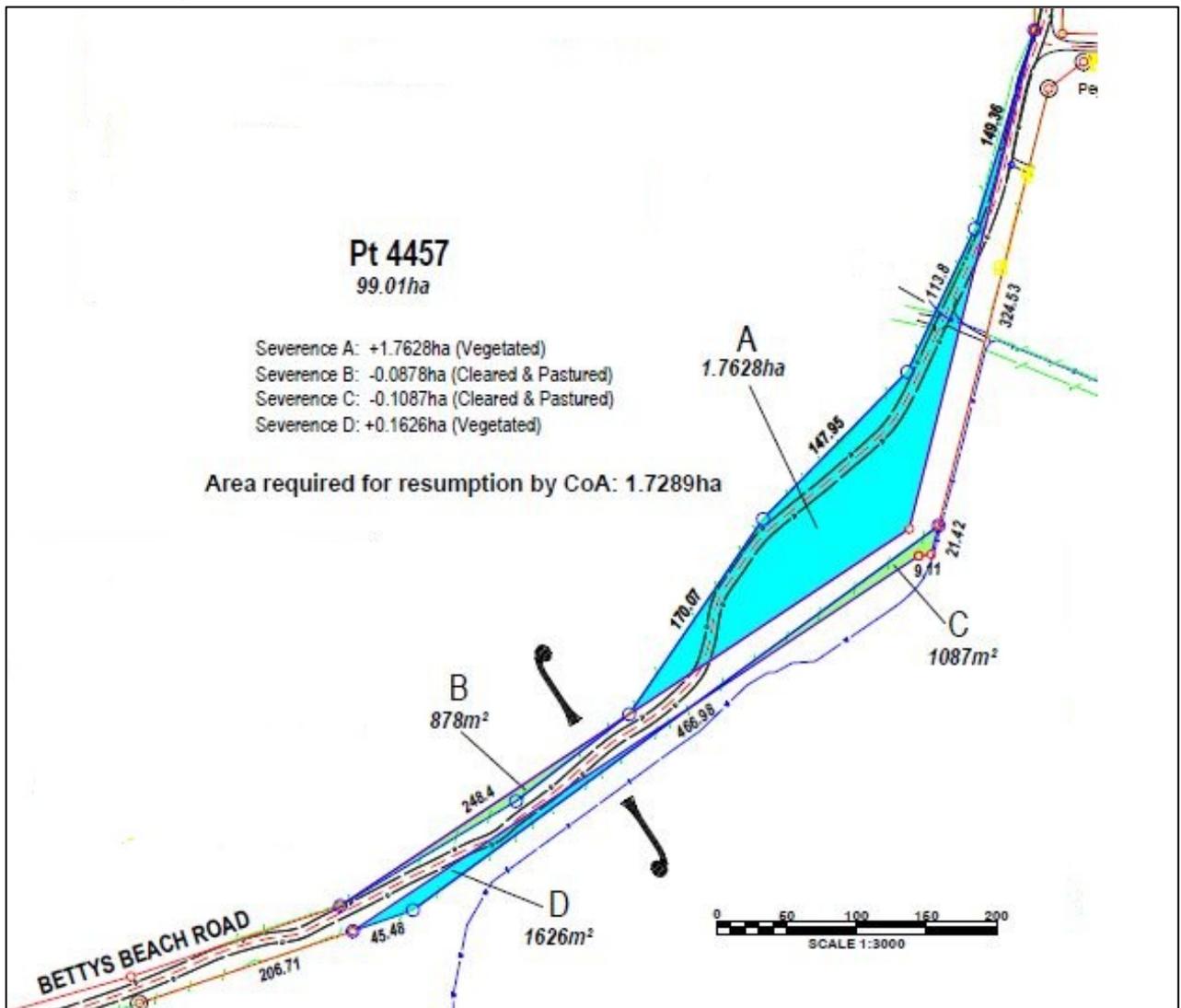
26. Reserve 38290 Lot 123 Gipton Street is not used or actively managed by the City of Albany and there are no plans at this time for the City to develop the land as a Rubbish Disposal site, particularly given the proximity of nearby residences. The issues of contamination and the use of the land may be adequately managed by the placement of a Memorial on title and compliance with the City's Town Planning Scheme and Policies. Accordingly, the sale of the land is supported and to facilitate the sale, the City must revoke the management order held for Reserve 38290.

<b>Consulted References</b>	City of Albany Town Planning Scheme No 3 City of Albany Local Planning Strategy Land Administration Act 1997 Contaminated Sites Act 2003
<b>File Number (Name of Ward)</b>	CU.PRA.60
<b>Previous Reference</b>	No previous references

**4.4: RECONSIDERATION OF THE PROPOSED ROAD WIDENING OF BETTY'S BEACH ROAD AFFECTING 905 HOMESTEAD ROAD, MANYPEAKS**

**Land Description** : Lot 4457 No 905 Homestead Road, Manypeaks  
**Proponent** : City of Albany  
**Owner** : E & L Stone  
**Attachment** : Item 5.1 OCM 21/06/2011  
**Responsible Officer(s)** : Executive Director Corporate Services (P Wignall)

**Maps and Diagrams:**



<b>RESPONSIBLE OFFICER:</b>	<b>CEO:</b>
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**IN BRIEF**

- Council previously resolved, at its meeting on 21 June 2011, to widen a portion of Betty's Beach Road to accommodate the section of the road that has been constructed outside of the road reserve.
- The detailed survey of the land has identified issues that could not be detected as part of the preliminary assessment. These changes impact on Council's previous resolution and an amended resolution is now required.

**ITEM 4.4: RESPONSIBLE OFFICER RECOMMENDATION  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**THAT subject to Council rescinding its resolution at the Ordinary Council Meeting held on 21 June 2011, Council:**

- i) **SEEKS** the Minister for Lands approval, under section 58 of the *Land Administration Act 1997*, to permanently close a portion of Betty's Beach Road Reserve (shown as areas B and C on Drawing 110826, dated 01-03/08/2011);
- ii) **AUTHORISE** the Chief Executive Officer of the City of Albany to forward the required applications to the Minister for Lands without the need for a further item to Council, should there be no objections received during the required advertising period (legislative requirement);
- iii) **SUPPORTS** the Taking by Agreement, under section 168 of the *Land Administration Act 1997*, of a 1.9254ha portion of land from Lot 4457 No 905 Homestead Road, Manypeaks to allow the widening of the Betty's Beach Road Reserve (shown as areas A and D on Drawing 110826, dated 01-03/08/2011);
- iv) **SEEKS** approval under Section 168 of the *Planning & Development Act 2005* to dedicate the 1.9254ha portion of land to be taken from Lot 4457 No 905 Homestead Road, Manypeaks as a public road, through the lodgement of a subdivision application; and
- v) **INDEMNIFIES** the Minister for Lands from any claims for compensation, as is required under Section 56 of the *Land Administration Act 1997*.

## **BACKGROUND**

1. In November 2009, the City was approached by Albany Mapping & Surveying Services, on behalf of the owners of 905 Homestead Road, Manypeaks, advising that a significant portion of Betty's Beach Road had been constructed outside of the dedicated road reserve.
2. The proponent requested that this situation be resolved through either re-construction of Betty's Beach Road in the correct alignment or the resumption of land to widen the road reserve and protect the constructed road.
3. The matter was considered by Council at its meeting on 21 June 2011 and it was resolved:

*THAT Council:*

- i) SUPPORTS the Taking by Agreement, under section 168 of the Land Administration Act 1997, of a 1.57ha portion of land from Lot 4457 No 905 Homestead Road, Manypeaks to allow the widening of the Betty's Beach Road Reserve;
  - ii) SEEKS approval under Section 168 of the Planning & Development Act 2005 to dedicate the 1.57ha portion of land to be taken from Lot 4457 No 905 Homestead Road, Manypeaks as a public road, through the lodgement of a subdivision application; and
  - iii) INDEMNIFIES the Minister for Lands from any claims for compensation, as is required under Section 56 of the Land Administration Act 1997.
4. The area of 1.57ha was identified by Albany Survey and Mapping Services, based on aerial photography and the original land survey.
  5. A detailed survey of the land is not undertaken prior to obtaining Council's resolution on a road widening action, as this would be an unnecessary expense if Council did not support the proposal.

## **DISCUSSION**

6. The appointed surveyor has now undertaken a detailed survey of the land. It is a requirement of the subdivision process, which is used as the conduit to acquire the subject land, that a feature survey be undertaken and that the subdivision plan is based on this survey.
7. The survey has shown that the original area of 1.57ha to be taken from Lot 4457 No 905 Homestead Road, Manypeaks is incorrect and that the required area is 1.7628ha. In addition, there is a minor incursion of 1626m<sup>2</sup> of Betty's Beach Road (based on the existing fence lines) into Lot 4457 No 905 Homestead Road, Manypeaks (shown as Areas A and D on the map). This means the total area of land to be resumed is 1.9254ha.

8. The survey has also shown that portion of the Betty's Beach Road reserve, based on the existing fence line, is being privately used by the owners of Lot 4457 No 905 Homestead Road (shown as areas B and C on the map and constituting a total area of 1965m<sup>2</sup>).
9. The differing information now provided is partly because of the inaccuracy of aerial photography relative to ground features. The surveyor also only managed to locate two reliable survey pegs and all other survey marks in this location now no longer exist. The surveyor advised that the original survey of this land is very old (dating back to 1911) and the ground features as they exist today did not correlate with the original survey. None of this information would have been available until such time as the detailed survey of the land was undertaken.
10. If the portion of Betty's Beach Road being used by the subject landowners was closed as part of the road widening action and included in their landholding, this land swap would leave a difference of 1.7289ha.
11. Council has previously been advised that the relocation of the existing road reserve was more cost effective than re-constructing the road in the correct alignment. Similarly, the landowners would also like to maintain their existing fence lines and save the expense of relocating this infrastructure.
12. The landowners have previously agreed to financial compensation of \$15,700 for the land to be taken, which was based on the valuation of an area of 1.57ha. The landowner has entered into a Taking by Agreement with the City on this basis.
13. The outcomes of the survey and the differing area have been discussed with the affected landowners. It has been agreed that the closure of portion of the Betty's Beach Road and ceding that land back to their title compensates for the additional land to be taken and they are willing to proceed with the land resumption based on the original valuation of the land.
14. While the negotiations on compensation for the taking of the land can be dealt with under the Road Widening Delegation (OCM 14/12/10 Item 4.3.21), the provisions of the *Land Administration Act 1997* require Council's resolution to indemnify the Minister for Lands from any claims from compensation.
15. As this action now also includes closing portion of the Betty's Beach Road reserve, the *Land Administration Act 1997* also requires Council's resolution to close a road.

#### **GOVERNMENT CONSULTATION**

16. This matter has been discussed with the Department for Regional Development and Lands to seek their support to ceding the closed road back to the title of Lot 4457 No 905 Homestead Road without the need to purchase the land. In this circumstance, the land would be "swapped", however this is dependent upon the valuation of the land areas. The Department is further investigating this matter through Landgate Valuation Services.

17. As part of the subdivision application process, the Western Australian Planning Commission will refer the proposal to all the relevant servicing and government agencies for comment.
18. Depending on Council's resolution, notification will be sent to the Department for Regional Development and Lands at the same time as lodging the subdivision application to advise of the Minister's indemnification and compliance with the *Land Administration Act 1997*.

#### **PUBLIC CONSULTATION / ENGAGEMENT**

19. Section 58 of the *Land Administration Act 1997* sets the procedure for permanently closing roads. It is a requirement of the Act that the proposed road closure be advertised in a local newspaper for 35 day period and that nearby owners and public utility service providers be provided written notification of the proposal.
20. The landowner's written consent to the resumption of the land for road widening purposes and supporting the amendment to the original area has been obtained.

#### **STATUTORY IMPLICATIONS**

21. Section 56 of the *Land Administration Act 1997* allows the dedication of land as a road. In doing so, the Local Government must indemnify the Minister for Lands against any claim for compensation.
22. Section 58 of the *Land Administration Act 1997* allows the local government to request the Minister for Lands to close a road (or portion thereof).
23. Section 168 of the *Land Administration Act 1997* sets the procedure for acquiring land for public works through a Taking by Agreement. Part 10 of the Act states that every person having an interest in land taken under the Act is entitled to compensation.
24. The creation of a road occurs through the subdivision process detailed under Part 10 of the *Planning and Development Act 2005*. Section 168 of this Act states all land shown on a diagram or plan of survey of a subdivision shown as a new road or road widening will be dedicated as a road.

#### **STRATEGIC IMPLICATIONS**

25. This item relates directly to the following elements of the City of Albany Strategic Plan (2011-2021):

**Key Focus Area**

Organisational Performance

**Community Priority**

Policy and Procedures

**Proposed Strategies**

Develop clear processes and policies and ensure consistent, transparent application across the organisation.

**POLICY IMPLICATIONS**

26. There are no policy implications relevant to this item.

**RISK IDENTIFICATION & MITIGATION**

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

<b>Risk</b>	<b>Likelihood</b>	<b>Consequence</b>	<b>Risk Rating</b>	<b>Mitigation</b>
If road widening not obtained, Council assets would be contained in freehold title.	Possible	Moderate	Medium	Support the modified Taking by Agreement of land providing for the widening of Betty's Beach Road.

**FINANCIAL IMPLICATIONS**

28. The payment of \$15,700 for the land to be resumed from Lot 4457 No 905 Homestead Road, Manypeaks can be accommodated in the current 2011/12 budget.
29. The lodgement of a subdivision application for road widening purposes does not require the payment of fees to the Western Australian Planning Commission.
30. There are fees associated with the advertising of the road closure, the feature survey of the area, the creation of an initial plan for the subdivision application, the creation of a final deposited plan, the lodgement of the plan with Landgate and settlement fees. This is expected to be in the order of \$9,500 and can also be accommodated in the current budget line item for land acquisition.

**LEGAL IMPLICATIONS**

31. The widening of the Betty's Beach Road reserve will legitimise the road infrastructure currently situated in freehold title.

**ALTERNATE OPTIONS**

32. Council may:
- a. Support the modified proposal for the taking of land to widen Betty's Beach Road, including the closure of the portion of the road reserve being used by the adjoining owners; or

- b. Not support the modified proposal and the previous resolution of Council from its meeting held 21 June 2011 will stand, however in this circumstance portion of the City's assets will be contained in freehold title.

**SUMMARY CONCLUSION**

33. The proposed widening of Betty's Beach Road will ensure that Council's road is contained in a dedicated road reserve and the closure of the portion of the road contained within the fence line of Lot 4457 No 905 Homestead Road will ensure that Crown land is not used for private purposes.
34. The affected landowner of Lot 4457 No 905 Homestead Road, Manypeaks has agreed to the modified area at the original compensation value included in the Taking by Agreement.
35. Council's resolution to enact the road closure and dedication processes is sought to meet the requirements of the *Land Administration Act 1997* and the *Planning & Development Act 2005*.

<b>Consulted References</b>	Land Administration Act 1997 Planning and Development Act 2005
<b>File Number (Name of Ward)</b>	RD.ACQ.1 (Kalgan Ward)
<b>Previous Reference</b>	Item 5.1 OCM 21/06/2011

**4.5: REQUEST TO ADOPT FIRST QUARTER 2011-12 BUDGET REVIEW**

- Attachments** : First Quarter 2011-12 Budget Review (to be provided prior to OCM)
- Responsible Officer** : Acting Executive Director Corporate Services (P Wignall)

**IN BRIEF**

- Adoption of the First Quarter 2011-12 Budget Review.

**ITEM 4.5: RESPONSIBLE OFFICER RECOMMENDATION  
VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**THAT Council ADOPT the First Quarter 2011-12 Budget Review.**

**BACKGROUND**

1. The Audit Committee met on 25 October 2011 and considered the First Quarter Review of the 2011-12 Budget.

**DISCUSSION**

2. The net position of the Budget following the first quarterly 2011-12 Budget review is a deficit of \$1,578,775, which is a \$15,565 better result than anticipated result.
3. There were a number of required amendments resulting from changed circumstances since the 2011-12 Annual Budget was adopted.

**GOVERNMENT CONSULTATION**

4. Nil

**PUBLIC CONSULTATION / ENGAGEMENT**

5. Nil

**STATUTORY IMPLICATIONS**

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

**STRATEGIC IMPLICATIONS**

7. This item relates directly to the following elements of the City of Albany Strategic Plan (2011-2021 *Community Vision*):

**Key Focus Area**

Organisational Performance

**Community Priority**

Financial Management

**Proposed Strategies**

Reduce debt through careful financial management, prioritisation of expenditure and investments in secure portfolios.

**POLICY IMPLICATIONS**

8. Nil

**RISK IDENTIFICATION & MITIGATION**

Risk	Likelihood	Consequence	Risk Rating	Mitigation
Council does not approve the First Quarter 2011-12 Budget Review	Unlikely	Moderate	Medium	The existing Annual Budget would apply and proposed amendments would not apply.

**FINANCIAL IMPLICATIONS**

9. A summary of the proposed First Quarter 2011-12 Budget Review follows:

	Original Budget	Current Budget	Proposed Q1 Budget	Variance from Current Budget
Office of the CEO	4,706,321	4,706,321	5,362,425	646,104
Community Serv.	4,364,720	4,364,720	3,845,378	(519,342)
Corporate Services	3,630,264	3,630,264	3,964,768	334,504
Development Services	1,492,137	1,492,137	1,584,440	92,303
Works & Services	15,374,415	15,374,415	14,795,281	(579,134)
General Purpose Income	(28,837,247)	(28,837,247)	(28,837,247)	0
Loans	863,730	863,730	863,730	0
<b>Total (Surplus)/Deficit</b>	<b>1,594,340</b>	<b>1,594,340</b>	<b>1,578,775</b>	<b>(15,565)</b>

**LEGAL IMPLICATIONS**

10. Nil

**ALTERNATE OPTIONS**

11. The First Quarter 2011-12 Budget Review is not adopted by Council and the proposed re-allocation of budget line items therefore could not be applied.
12. The First Quarter 2011-12 Budget Review may be adopted subject to specific changes directed by Council. The proposed deficit would be affected by any changes directed by Council.

**SUMMARY CONCLUSION**

13. Nil

<b>Consulted References</b>	Adopted Budget 2011-12 <a href="#">Local Government Act 1995</a>
<b>File Number (Name of Ward)</b>	FM.BUG.2
<b>Previous Reference</b>	<ul style="list-style-type: none"><li>• Annual Budget – OCM 9<sup>th</sup> August 2011</li></ul>

**5.1: INSTALLATION OF A SLURRY WATER PIPE FOR SOUTHDOWN  
MAGNETITE PROJECT**

<b>Land Description</b>	: Various Crown reserves
<b>Proponent</b>	: Harley Global on behalf of Grange Resources Ltd
<b>Owners</b>	: Crown
<b>Attachment(s)</b>	: Letter from Harley Global, and diagrams depicting pipeline easements across and parallel to road reserves, and across reserves dated 13 October 2011 Letter from Grange Resources – Peace Park slurry pipeline dated 5 October 2011
<b>Responsible Officer(s)</b>	: Chief Executive Officer (F James)

**IN BRIEF**

- Council's support is sought from Grange Resources Ltd for approval to utilise various road reserves in the Albany area, to install a slurry and return water pipeline from the proposed Southdown Mine to the Albany Port.

**CEO:**

**ITEM 5.1: RESPONSIBLE OFFICER RECOMMENDATION**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**THAT Council SUPPORTS the:**

- 1) Request to utilise various road reserves in the Albany area, namely Kojaneerup West Road (drawing 12937-102B), Corimup Road (drawing 12937-099A), Palmdale Road (drawing 12937-172A), Parker Brook Road (drawing 12937-264A), Toll Place (drawing 12937-263A), Link Road (drawing 12937-265A), Charles Street (drawing 12937-184A), Harrogate Road (drawing 12937-183A), Cumming Road (drawing 12937-079C), Harden Road (drawing 12937-182A and 12937-180A), Elphinstone Road (drawing 12937-179A), Robinson Road (drawing 12937-077B), Frenchman Bay Road (drawing 12937-076B), and Woolstores Place (drawing 12937-075C), - (as per the drawings in the Bulletin) to install a slurry and return water pipeline from the proposed Southdown Mine to the Albany Port;**
- 2) Request to access Reserve 46686- Anzac Peace Park (drawing 12937-270A), subject to –**
  - i) construction of the pipeline within the Peace Park, being completed before the end of 2013 calendar year**
  - ii) reinstatement of all landscaping and hardscaping by Grange Resources Ltd such that by the end of March 2014, no visible evidence of construction is apparent**
  - iii) provision of a bond, payable to the City of Albany by Grange Resources Ltd, for the loss or damage of any of the Peace Park infrastructure; and**
- 3) Proposals to cross the above listed roads, in accordance with the provisions of the Local Government Act 1995, Local Government (Uniform Local Provisions) Regulations 1996 Schedule 9.1, clause 8, section 17 - Private works on, over, or under public places, to facilitate the proposed slurry pipeline request, subject to all roads being reinstated by Grange Resources Ltd to as-good-as (or better) pre-installation condition;**
- 4) Proposals subject to all costs being borne by Grange Resources Ltd**

**BACKGROUND**

1. Grange Resources Ltd proposes to construct and operate an open pit magnetite mine approximately 90 km east of Albany. The magnetite will to be pumped as a slurry via a pipeline approximately 105 km to the berth facilities at the Albany Port.
2. Two pipelines will be required, to pipe the slurry to the Port and a second to return the recycled water to the mine from the Port. Both pipes will use the same route, which has been sited mainly on cleared farmland, but will also require access along and across public roads in Albany. Grange Resources Ltd has also requested an optic fibre cable/communications cable to be included in the pipeline corridor.
3. A number of road crossings and road reserves have been identified, in the proposed pipeline corridor that will require both the Department for Planning and Infrastructure (DPI) and Council approval, to enable the project to develop.

**DISCUSSION**

4. Council has been briefed on a few occasions on the mine proposal by Grange Resources Ltd.
5. Previous Council items have addressed easement approvals across various Council owned lands, to allow the pipeline alignment to reach the Albany Port.
6. With most of the negotiations for pipeline access completed, Grange Resources Ltd has been able to identify those road reserves, where either road reserve access or crossings are requested. Copies of drawings for the various road reserves involved, detailing the dimensions of the works, are included in the Attachments.
7. Grange Resources Ltd now seeks approval from the City of Albany for the location of the slurry pipeline along the following routes:

Various Road Crossings:

- Kojaneerup West Road (drawing 12937-102B) – this road will be crossed in one of four possible places. As the precise crossing point has not yet been determined, Grange Resources seeks approval for one road crossing somewhere in the area as shown on drawing 12937-102B
- Corimup Road (drawing 12937-099A)
- Palmdale Road -drawing 12937-172A (previously approved in January 2009- but now slight change in alignment of crossing)
- Parker Brook Road (drawing 12937-264A)
- Toll Place (drawing 12937-263A)

Parallel in Road Reserves:

- Link Road (drawing 12937-265A)
- Charles Street (drawing 12937-184A)
- Harrogate Road (drawing 12937-183A)
- Cumming Road (drawing 12937-079C)
- Harden Road (drawing 12937-182A and 12937-180A)
- Elphinstone Road (drawing 12937-179A)
- Robinson Road (drawing 12937-077B)
- Frenchman Bay Road (drawing 12937-076B)
- Woolstores Place (drawing 12937-075C)

8. Reserves under the control of City of Albany:
  - Reserve 46686- Anzac Peace Park (drawing 12937-270A)

**B. DESALINATION PIPELINE and POWERLINE:**

- Gnowellen Road (drawing 12937-266A)
- Mettler/Cape Riche Road (drawing 12937-268A)
- Basil Road (drawing 12937-269A)
- Cape Riche Road - part of Reserve 14943 (as per drawing supplied to Council for October 2011 Council meeting)

9. Discussions with Grange Resources regarding the Peace Park highlighted concerns about the proposed works impacting on the ANZAC Centenary Celebrations. It was agreed the works could be supported subject to the following conditions –
- a. construction of the pipeline within the Peace Park being completed before the end of 2013 calendar year
  - b. reinstatement of all landscaping and hardscaping such that by the end of March 2014, no visible evidence of construction is apparent
  - c. provision of a bond, payable to the City of Albany by the Southdown Project, for the loss or damage of any of the Peace Park infrastructure.
10. As these road reserves are Crown land, the legal requirements for the use of the road reserves are with the Department for Planning and Infrastructure (DPI), who can approve easements with the following types of conditions (this information has been relayed to the applicant) –
- An Aboriginal heritage assessment;
  - Flora investigation;
  - Clearing requirements assessed;
  - Public utility approvals sought;
  - Applicant to pay all survey costs;
  - Crown to apply its various conditions;
  - Crown seeks local authority conditions;
  - Details of pipe condition, usage patterns, etc
  - Minimum of \$10 million public liability cover by an approved insurer;
  - Indemnification of the Crown, local authority, and public utilities from any claims relating to the provision and operation of the private irrigation pipe;
  - Rental assessment determined by the Department for Planning and Infrastructure's Valuation Services section;
  - All legal costs paid by the applicant; and
  - Caveat registered on properties to protect Crown interests.
11. Should Council support these requests, the type of conditions recommended for referral to the Crown for an easement are –
- Pipe to be installed at a depth of 750mm on road reserve;
  - Pipe alignment to be 1.5metres from property boundaries;
  - Appropriate signage along the length of the road reserve affected by the pipe installation, advising of the private pipe location;
  - Re-instate the site where to pipe is laid, to Council's satisfaction;
  - Applicant is responsible for any road reserve damage related to the irrigation pipe installation, operation or mal-function; and
  - A caveat be lodged on properties to protect Council's and other landholders interests.
12. Once DPI has approved the easements for the pipeline corridor on the various road reserves, Council would then be able to apply its Local Law - Activities in Thoroughfares and Public Places and Trading Local Law 2001, to protect its interests regarding the installation of the road crossings.

## GOVERNMENT CONSULTATION

13. Where Crown land access is required, Grange Resources Ltd have been liaising with the appropriate government instrumentality involved, including Department for Planning and Infrastructure, Department of Indigenous Affairs, Albany Port Authority, Western Power, etc.

## PUBLIC CONSULTATION / ENGAGEMENT

14. Grange Resources Ltd have liaised and/or negotiated with affected landowners to enable appropriate easements to be granted in the proposed pipeline corridor, to enable the slurry pipeline to be sited on appropriate cleared farmland.

## STATUTORY IMPLICATIONS

15. Under the Land Administration Act, Section 144, the Minister may grant easements –

- (1) *Subject to this section, the Minister may –*
  - (a) *With the consent of every management body of the relevant Crown land and of every person having any interest, right, title or power in respect of that land, grant to any person an easement, in on ,over, through or under that Crown land for a specified purpose or any other purpose the Minister thinks fit; and*
  - (b) *In that grant express that easement to be subject to specified conditions and the payment of specified consideration.*
- (2) *The grantee of an easement may, with the consent of any management body or lessee of the relevant Crown land, apply to the Minister for the easement to be varied or cancelled.*
- (2a) *An easement may be granted under this section despite the fact that the characteristics of the easement do not satisfy all of the characteristics that must be satisfied for an easement to be created under the common law.*
- (3) *The Minister may, on receiving an application under subsection (2) –*
  - (a) *By order or other instrument vary or cancel the relevant easement;*  
*or*
  - (b) *Refuse the application.*
- (4) *In this section –*  
*“specified purpose” means for –*
  - (a) *The provision of pipes, conduits, cables, transmission lines, and other services;*
  - (b) *The provision of any structure, plant, or equipment;*
  - (c) *The provision of access for carrying out of any works and the performance of any maintenance that is necessary for, or ancillary or incidental to, giving effect to any of the purposes referred to in paragraph (a) or (b);*
  - (d) *A prescribed purpose.*

16. Under the Local Government Act 1995, Local Government (Uniform Local Provisions) Regulations 1996 Schedule 9.1, clause 8, section 17 - Private works on, over, or under public places –
- (1) *A person who constructs anything on, over, or under a public thoroughfare or other public place that is local government property without first obtaining written permission from the local government commits an offence.*
  - (2) *A local government may –*
    - (a) *grant permission to construct anything on, over, or under a public thoroughfare or other public place that is local government property; and*
    - (b) *impose conditions in respect of the permission, which may include a condition imposing a charge for any damage to the public thoroughfare or public place resulting from the construction.*
  - (3) *It is a condition of the permission that the ordinary and reasonable use of the public thoroughfare or public place for the purpose to which it is dedicated is not to be permanently or unreasonably obstructed.*
  - (4) *A person who fails to comply with a condition of the permission commits an offence.*
  - (5) *A person who constructs anything in accordance with permission under this section is required to –*
    - (a) *maintain it; and*
    - (b) *obtain from an insurance company approved by the local government an insurance policy, in the joint names of the local government and the person, indemnifying the local government against any claim for damages which may arise in, or out of, its construction, maintenance or use.*
  - (6) *A person who fails to comply with sub regulation (5) commits an offence.*
  - (7) *The penalty for an offence under sub regulation (1), (4), or (6) is \$1,000.*
17. Should Council agree to the proposed pipe crossings across roads under the care, control and management of the Council, it would be appropriate to have a legal agreement prepared, addressing both parties obligations, and to protect all party's interests. All costs would be borne by the applicant.
18. Under the City of Albany's Activities in Thoroughfares and Public Places and Trading Local Law 2001, a permit is required to allow the installation and maintenance of a pipe on a verge, and various conditions applied, to protect Council's interests.

**STRATEGIC IMPLICATIONS**

19. This item directly relates to the following elements of the City of Albany Strategic Plan 2011-2012:

***Key Focus Area***

*Sustainability and Development*

***Community Priority***

*A diversified industrial base*

***Proposed Strategies***

*Advocate and promote Albany as a viable centre for diverse industries.*

**POLICY IMPLICATIONS**

20. There are no policy implications relevant to this item.

**RISK IDENTIFICATION & MITIGATION**

21. The risk identification and categorisation relies on the City's Risk management Framework.

<b>Risk</b>	<b>Likelihood</b>	<b>Consequence</b>	<b>Risk Rating</b>	<b>Mitigation</b>
Appropriate traffic management is not adhered to, while the pipeline is under construction on/along the road reserves	Possible	Medium	High	Request Grange Resources Ltd to submit traffic management plans for each location
Appropriate City of Albany road is not re-instated to applicable standard	Possible	Medium	High	Condition of Grange Resources Ltd approval that all roads are re-instated to current condition or higher, and that they submit appropriate quality assurance certificates where required

**FINANCIAL IMPLICATIONS**

22. Should Council agree to the request for any road crossings, there will be financial implications:
- a. as the proposed works will require Council approval and works inspection
  - b. ongoing maintenance for the pipe.
23. All such costs should be borne by the applicant.
24. Should easements be granted by the Crown, the legal costs, establishment costs (survey, etc) and any such rental fees determined by the Crown, would also be payable by the applicant.

**LEGAL IMPLICATIONS**

25. This item will facilitate compliance with the legislative requirements of the *Land Administration Act 1997*.

**ALTERNATE OPTIONS**

26. The Council has two options regarding this request:
- i) Support the request to utilise various road reserves in the Albany area, to install a slurry and return water pipeline from the proposed Southdown Mine to the Albany Port; or
  - ii) Decline the request.
27. The project would provide Albany with a new economic opportunity to expand its business base and also provide more work opportunities for the region.

**SUMMARY CONCLUSION**

28. In view of the financial opportunity the project offers for the region, Council support the request to utilise various road reserves in the Albany area, to install a slurry and return water pipeline from the proposed Southdown Mine to the Albany Port

<b>Consulted References</b>	Land Administration Act 1997
<b>File Number (Name of Ward)</b>	CS.PLA.5
<b>Previous References</b>	OCM 18.07.06 Item 13.7.2, OCM 15.05.07 Item 11.2.3 OCM 15.05.07 Item 13.7.2, OCM 11.10.11 Item 5.1

**5.2: CONTRACT C11003 – PURCHASE AND REMOVAL OF SCRAP METAL**

**Proponent** : City of Albany  
**Owner** : City of Albany  
**Responsible Officer(s)** : Executive Director Works and Services

**IN BRIEF**

- Contract C11003 – Purchase and removal of scrap metal be amended to Sims Metal for a one year period with a mutually agreed one year continuances of a further one plus one year.

**ITEM 5.2: RESPONSIBLE OFFICER RECOMMENDATION  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**THAT Council:**

1. **ACCEPT the Tender from Sims Metal and award contract C11003 for the purchase and removal of scrap metal from Hanrahan Road and Bakers Junction refuse sites for a period of one year with mutually agreed continuances a further one plus one year.**

**BACKGROUND**

1. Due to the expiry of the current scrap metal removal contract, tenders were called for the purchase and removal of scrap metal for a period of one year with a mutually agreed extension for a further two years (one year and one year). The tender applies to scrap metal received at both the Hanrahan Road and Bakers Junction refuse sites.
2. Quantities of scrap metal are estimated to be around 1,000 to 1,200 tonnes per annum and the contract provides for their removal at least every six months with the tenderer providing removal trucks and loading equipment.

**DISCUSSION**

3. Tenderers were asked to provide an annual price which they will pay to the City for scrap metal per tonne for the current and subsequent financial years.

<b>CEO:</b>	<b>RESPONSIBLE OFFICER:</b>
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4. The tender documents included tender evaluation criteria using the weighted attribute method. This method scores the evaluation criteria and weights their importance to determine an overall point score for each tender. The criteria are tabled below:

Criteria	% Weight
Cost	40%
Relevant Experience	30%
Tenderer's Reliability	30%
<b>TOTAL</b>	<b>100%</b>

5. A total of three tender applications were received. One company claimed against the City of Albany's Regional Price Preference Policy. However, this Policy is only applicable when the "City" is "purchasing" goods and services, not when the City is selling goods.
6. The tender evaluation panel was made up of the Manager, Waste Management Strategy and Operations and the Waste Coordinator. The following table details the evaluation ratings as scored on the weighted criteria and the resulting overall evaluation score applicable to each submission.

Tenderer	Cost Score	Relevant Experience	Tenderer's Reliability	Total Evaluation Score
One Steel	Non conforming tender			
Sims Metal	354.8	195	195	744.8
Agscrap	45.2	195	180	420.2

7. One Steel's tender was deemed as non-conforming due to its price submission. The contract requirement was for a fixed price for the financial year but One Steel's preferred pricing arrangement was for a price based on a monthly review of the "Tex Box" (US Ferrous Scrap Export Price).
8. Sims Metal is the current contractor to the City and has performed well using specialised equipment to shred scrap metal on site before removal.

#### GOVERNMENT CONSULTATION

9. Nil.

#### PUBLIC CONSULTATION / ENGAGEMENT

10. A request for tenders was published in the West Australian on 6 July 2011 and in the Albany Weekender on 7 July 2011.

**STATUTORY IMPLICATIONS**

11. Regulation 11 of the *Local Government (Functions and General) Regulations 1996 (Regulations)* requires Council to publicly tender if the contract is, or is expected to be, more, or worth more, than \$250,000.
12. Regulation 19 of the Regulations requires Council to advise each tenderer in writing the result of Council’s decision.

**STRATEGIC IMPLICATIONS**

13. This item directly relates to the following elements of the City of Albany Strategic Plan (2011-12):

**Key Focus Area**  
*Sustainability and Development*

**Community Priority**  
*Adopt “Green City” principles*

**Proposed Strategies**  
*Provide incentives and increased options for recycling and reuse of waste*

**POLICY IMPLICATIONS**

14. The City of Albany Tender Policy is applicable to this item and has been complied with.

**RISK IDENTIFICATION & MITIGATION**

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

<b>Risk</b>	<b>Likelihood</b>	<b>Consequence</b>	<b>Risk Rating</b>	<b>Mitigation</b>
Tenderer failure leaves scrap metal on site for extended period	Possible	Minor	Medium	Weighting was given to the maintenance support of the tenderer as shown in their experience and reliability
Non compliance with contract or business failure	Unlikely	Medium	Medium	General conditions of contract allow for contract termination on the basis of failure to supply services

**FINANCIAL IMPLICATIONS**

16. The value of this tender is in excess of \$250,000 and therefore the approval is referred to Council for consideration and award.

**LEGAL IMPLICATIONS**

17. Legal implications are addressed in the City of Albany General Conditions of Contract which forms part of the tender documents.

**ALTERNATE OPTIONS**

18. Council can accept or reject the tenders as submitted.

**SUMMARY CONCLUSION**

19. On reviewing the submissions the evaluation team assessed Sims Metal as being the most suitable tenderer across the evaluation criteria in terms of cost, resources, experience, and reliability.

<b>Consulted References</b>	Local Government (Functions and General) Regulations 1995 Council Policy – Purchasing (Tenders & Quotes) Council Policy – Buy Local (Regional Price Preference)
<b>File Number (Name of Ward)</b>	C11001 (All Wards)

**XIV. MOTIONS WITH NOTICE**

**14.1: MOTION WITH NOTICE BY MAYOR WELLINGTON-NOMINATION OF COUNCILLOR HOLDEN TO THE AUDIT AND FINANCE COMMITTEE**

**ITEM 14.1: MOTION WITH NOTICE BY MAYOR WELLINGTON**

**THAT Councillor Holden be nominated to the Audit and Finance Committee.**

**XV. MOTIONS OF WHICH NOTICE WAS GIVEN AT THE PREVIOUS MEETING**

**15.1: MOTION WITH NOTICE BY COUNCILLOR D BOSTOCK– MEMBERSHIP OF COMMITTEES**

**ITEM 15.1: Notice of Motion by Councillor D Bostock**

**THAT membership of the Audit and Finance Strategy, Planning and Development, Governance and CEO Performance Appraisal Committees be extended to all Elected Members.**

**Councillor's Reason:**

These four committees cover the central functions of Council and all Councillors should be able to attend, as full voting members, if they so desire.

**Officer's Comment (CEO Ms F James):**

All Elected Members have been elected to the Audit and Finance Committee at the Special Council Meeting held on 18 October 2011.

The CEO Performance Appraisal Committee will form part of the Terms of Reference for the Governance Committee, and will also be open to all Elected Members.

**XVI. URGENT BUSINESS TO BE APPROVED BY DECISION OF THE MEETING**

**XVII. REQUEST FOR REPORTS FOR FUTURE CONSIDERATION.**

Nil

**XVIII. ANNOUNCEMENT OF NOTICES OF MOTION TO BE DEALT WITH AT THE NEXT MEETING.**

Nil

**XIX. ITEMS TO BE DEALT WITH WHILE THE MEETING IS CLOSED TO MEMBERS OF THE PUBLIC**

**XX. NEXT ORDINARY MEETING DATE**

Tuesday 13 December 2011 at 7pm.

**XXI. CLOSURE OF MEETING**

**STATUS REPORT ON DEFERRED ITEMS  
 FROM PREVIOUS MEETINGS**

<b>Meeting Date</b>	<b>Item Number</b>	<b>Details/Status</b>
15/06/2010	15.2.3	Lot 5 Rufus Street - Claim for Subdivision Design Changes. <b>CEO LIAISING WITH LAND OWNER/DEVELOPER REGARDING POSSIBLE SOLUTIONS.</b>
16/11/2010	2.6	Surrender Lease over Hangar Site 2 at Albany Airport. <b>REQUIRES FURTHER CONSIDERATION BY COUNCIL PENDING THE COMPLETION OF THE AIRPORT MASTERPLAN/BUSINESS PLAN.</b>
15/02/2011	4.11	Padre White Lookout Project. CEO to undertake further investigation of this project, including detailed budget analysis for project scope and provide further advice to council. <b>AWAITING ANZAC ALLIANCE PROGRESS.</b>
19/04/2011	4.7	Audit Committee Recommendations. That Council request the Chief Executive Officer to further review the investment of Surplus Funds Policy through the Finance Strategy Committee, prior to recommendation to Council. <b>PENDING. - AWAITING DEVELOPMENT OF FIVE YEAR (FINANCE) PLAN.</b>
17/05/2011	3.1	Albany Leisure and Aquatic Centre. That the Business Plan be Brought back to Council for the Approval of the Recommendation. <b>PENDING COMPLETION OF BUSINESS PLAN TO BE PRESENTED TO FUTURE OCM.</b>
11/10/2011	5.2	Public Notice of Closure of Clydesdale Road at South Coast Highway. <b>LAI D ON THE TABLE FOR A PERIOD OF TWO MONTHS TO ALLOW FOR FURTHER CONSIDERATION BY COUNCIL.</b>