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# MINUTES

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Ordinary Meeting of Council

Tuesday 17 December 2019

6.00pm

City of Albany Council Chambers

ORDINARY COUNCIL MEETING  
MINUTES 17/12/2019

CITY OF ALBANY  
COMMUNITY STRATEGIC PLAN (ALBANY 2023)



ORDINARY COUNCIL MEETING  
MINUTES 17/12/2019

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ORDINARY COUNCIL MEETING  
MINUTES 17/12/2019

1. DECLARATION OF OPENING

The Mayor declared the meeting open at 6.00pm.

2. PRAYER AND ACKNOWLEDGEMENT OF TRADITIONAL LAND OWNERS

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

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

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

3. RECORD OF APOLOGIES AND LEAVE OF ABSENCE

Mayor	D Wellington
Councillors:	
Breaksea Ward	R Hammond
Breaksea Ward	P Terry
Frederickstown Ward	R Stephens
Frederickstown Ward	G Stocks (Deputy Mayor)
Kalgan Ward	E Doughty
Kalgan Ward	M Benson-Lidholm JP
Vancouver Ward	T Sleeman
Vancouver Ward	J Shanhun
West Ward	A Goode JP
West Ward	S Smith
Yakamia Ward	R Sutton
Yakamia Ward	C Thomson
Staff:	
Chief Executive Officer	A Sharpe
Acting Executive Director Corporate Services	D Olde
Executive Director Infrastructure, Environment & Development	P Camins
Executive Director Community Services	S Kay
Manager Planning and Land Information Services	J Van Der Mescht
Meeting Secretary	J Williamson
Apologies: Nil	

4. DISCLOSURES OF INTEREST

Name	Report Item Number	Nature of Interest
Councillor Smith	DIS190 & DIS191	Impartiality. The nature of the interest being that Councillor Smith owns short stay accommodation within the City of Albany. Councillor Smith remained in the Chamber and participated in the discussion and vote for these items.

5. REPORTS OF MEMBERS

6.01pm Councillor Sutton

Councillor Sutton recently attended the funeral service for Mr Alan Coyne. Mr Coyne was a great spokesman for the local Noongar community. Councillor Sutton also raised the issue of legalising or decriminalising cannabis, in an effort to reduce the addiction levels to methamphetamines.

Councillor Sutton wished everyone a safe and happy Christmas.

6.03pm Councillor Doughty

Councillor Doughty recently attended a number of school graduation ceremonies for smaller independent schools **such as Comet and Alta 1. Councillor Doughty stated that the City's Education Vision aligned very well with the** outcomes being demonstrated by these schools, which often led to practical outcomes such as traineeships or apprenticeships for students who may not have thrived in mainstream education.

6.05pm Councillor Stocks

Councillor Stocks spoke of his recent visit to a local business, Himac. Councillor Stocks said that it was inspiring to see a local business grow to the extent of a \$15m annual turnover, supplying earthmoving machinery attachments across Australia.

6.07pm Councillor Terry

Councillor Terry attended the Christmas Pageant and evening markets, and **congratulated the City's Event Team** for a successful Christmas event program.

Councillor Terry also attended the Infrastructure WA Workshop, and the opening of the Albany Health Campus Cancer Conservatory. The Conservatory will provide a restful area for oncology patients and their families and support persons during treatment.

Councillor Terry commented that the Great Southern Regional Trails Masterplan is now out for comment.

6.10pm Mayor Wellington

The Mayor advised that the City had recently been successful in two grant funding applications through the Department of Transport - \$220,000 for the Lower King boat ramp project and \$145,000 for the Emu Point boat ramp project.

The Mayor also congratulated staff on the successful Christmas Pageant.

6. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE Nil

7. PUBLIC QUESTION TIME Nil

8. APPLICATIONS FOR LEAVE OF ABSENCE Nil

9. PETITIONS AND DEPUTATIONS Nil

ORDINARY COUNCIL MEETING  
MINUTES 17/12/2019

10. CONFIRMATION OF MINUTES

RESOLUTION  
VOTING REQUIREMENT: SIMPLE MAJORITY

MOVED: COUNCILLOR THOMSON  
SECONDED: COUNCILLOR TERRY

THAT the minutes of the Ordinary Council Meeting held on 26 November 2019, as previously distributed, be CONFIRMED as a true and accurate record of proceedings.

CARRIED 13-0

11. PRESENTATIONS Nil

12. UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS Nil

**CCS197: DELEGATED AUTHORITY REPORTS – SEPTEMBER TO OCTOBER 2019**

<b>Proponent</b>	: City of Albany
<b>Attachments</b>	: Executed Document and Common Seal Report
<b>Report Prepared by</b>	: Personal Assistant to the ED Corporate Services (H Bell)
<b>Responsible Officer</b>	: Chief Executive Officer (A Sharpe)

**Background:**

In compliance with Section 9.49A of the *Local Government Act 1995* and Part IV of the *Local Government (Functions and General) Regulations 1996* the attached report applies to the use of the Common Seal and the signing of documents under Council's Delegated Authority:

- Delegation: 006 - SIGN DOCUMENTS ON BEHALF OF THE CITY OF ALBANY (Chief Executive Officer)
- Delegation: 009 - GRANT FUNDING, DONATIONS, SPONSORSHIP
- Delegation: 018 - CHOICE OF TENDER, AWARD CONTRACT

**RECOMMENDATION**

**CCS197: RESOLUTION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR STEPHENS**  
**SECONDED: COUNCILLOR SHANHUN**

**THAT the Delegated Authority Reports 16 October 2019 to 15 November 2019 be RECEIVED.**

**CARRIED 13-0**

**CCS197: COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR SLEEMAN**  
**SECONDED: COUNCILLOR SHANHUN**

**THAT the Responsible Officer Recommendation be ADOPTED.**

**CARRIED 11-0**

**CCS197: RESPONSIBLE OFFICER RECOMMENDATION**

**THAT the Delegated Authority Reports 16 October 2019 to 15 November 2019 be RECEIVED.**

## CCS198: PROPOSED NEW LEASE – TERRY HULKES – LOT 17 CHEYNE ROAD, CHEYNE BEACH – RESERVE 878

<b>Land Description</b>	: Portion Crown Reserve 878 Lot 7442 on Deposited Plan 214689, the subject of Head Certificate of Title Volume LR3082 Folio 959, Cheyne Beach
<b>Proponent</b>	: Terry Hulkas
<b>Owner</b>	: Crown (City of Albany under Management Order)
<b>Report Prepared By</b>	: Team Leader Property and Leasing (T Catherall)
<b>Responsible Officers:</b>	: Acting Executive Director Corporate & Commercial Services (D Olde)

### STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
  - **Theme:** Leadership.
  - **Objective:** To establish and maintain sound business and governance structures.
  - **Community Priority:** Provide informed and transparent decision making that is consistent with our strategic direction, meets our legal obligations, reflect the level of associated risk and are adequately explained to community.

### Maps and Diagrams:





**In Brief:**

- Council is requested to consider the renewal of lease to Terry Hulkes over Lot 17 Cheyne Road, Cheyne Beach for accommodation associated with the commercial fishing industry at Cheyne Beach.
- The previous 5 year lease expired on 31 July 2019. During the term of the lease the tenant was required to construct an accommodation building, as part of the development approval. While the tenant had developed the site a dwelling had not been completed.
- City Officers have been working with the tenant to satisfy the outstanding development condition. A further development approval and building permit have recently been issued in October 2019.
- It is proposed to include a development special condition that the tenant must complete the accommodation building to meet all lease, planning and building conditions within the initial 4 year term of the lease.
- It is recommended the new lease is approved.

**RECOMMENDATION**

**CCS198: RESOLUTION**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR DOUGHTY**

**SECONDED: COUNCILLOR BENSON-LIDHOLM**

**THAT Council APPROVE a lease over Lot 17 Cheyne Road, Cheyne Beach being portion of Reserve 878 to Terry Hulkes, subject to:**

- a) Lease purpose being “Accommodation associated with the Commercial Fishing Industry” in accordance with the Management Order for the reserve.**
- b) Lease is conditional upon the tenant continuing to operate under a commercial fisherman’s licence for the Cheyne Beach area issued by the Department of Fisheries Western Australia.**
- c) Lease area being approximately 2178m<sup>2</sup> as determined by survey.**
- d) Initial lease rent being \$2,950 plus GST per annum as determined by a current market valuation provided by a licensed Valuer.**
- e) Lease rent reviews by market valuation every 3 years with Consumer Price Index applied for intervening years.**
- f) Lease commencement date being 1 August 2019, for a term of 4 years with two further options of 6 years and 10 years.**
- g) Lease special condition to document that the tenant must complete the accommodation building within the initial 4 year term. Non-compliance with this condition will give the City the right to end the lease, with no further terms considered.**
- h) All costs associated with the ongoing operations of the lease property being payable by the tenant.**
- i) All costs associated with the preparation, execution and completion of the lease documentation being payable by the tenant.**
- j) Pursuant to Section 18 of the *Lands Administration Act 1997*, the Minister for Planning, Lands and Heritage consent being obtained.**
- k) Pursuant to Section 3.58 of the *Local Government Act 1995* advertising requirements.**
- l) Lease being consistent with City Policy – Property Management (Leases and Licences) and Cheyne Beach Planning Policy.**

**CARRIED 13-0**

**CCS198: COMMITTEE RECOMMENDATION**

MOVED: COUNCILLOR DOUGHTY

SECONDED: COUNCILLOR BENSON-LIDHOLM

THAT the Responsible Officer Recommendation be ADOPTED.

CARRIED 11-0

**CCS198: RESPONSIBLE OFFICER RECOMMENDATION**

THAT Council APPROVE a lease over Lot 17 Cheyne Road, Cheyne Beach being portion of Reserve 878 to Terry Hulkes, subject to:

- a) Lease purpose being “Accommodation associated with the Commercial Fishing Industry” in accordance with the Management Order for the reserve.
- b) Lease is conditional upon the tenant continuing to operate under a commercial fisherman’s licence for the Cheyne Beach area issued by the Department of Fisheries Western Australia.
- c) Lease area being approximately 2178m<sup>2</sup> as determined by survey.
- d) Initial lease rent being \$2,950 plus GST per annum as determined by a current market valuation provided by a licensed Valuer.
- e) Lease rent reviews by market valuation every 3 years with Consumer Price Index applied for intervening years.
- f) Lease commencement date being 1 August 2019, for a term of 4 years with two further options of 6 years and 10 years.
- g) Lease special condition to document that the tenant must complete the accommodation building within the initial 4 year term. Non-compliance with this condition will give the City the right to end the lease, with no further terms considered.
- h) All costs associated with the ongoing operations of the lease property being payable by the tenant.
- i) All costs associated with the preparation, execution and completion of the lease documentation being payable by the tenant.
- j) Pursuant to Section 18 of the *Lands Administration Act 1997*, the Minister for Planning, Lands and Heritage consent being obtained.
- k) Pursuant to Section 3.58 of the *Local Government Act 1995* advertising requirements.
- l) Lease being consistent with City Policy – Property Management (Leases and Licences) and Cheyne Beach Planning Policy.

## **BACKGROUND**

2. Lot 17 Cheyne Road is located within Crown Reserve 878 Cheyne Beach.
3. The reserve is under management order O202922 issued to the City of Albany with the power to lease or licence for any term not exceeding 21 years subject to the consent of the Minister for Planning, Lands and Heritage. The current purpose of this reserve is “Recreation, Camping, Holiday Accommodation, Accommodation Associated with the Fishing Industry, Fire Station and Supporting or Beneficial Communications Operations”.
4. The reserve currently hosts 29 holiday accommodation leases along Baxteri Road, 6 leases for accommodation associated with the commercial fishing industry along Cheyne Road and 2 commercial fishing licences for access and net drying operations. The City’s fire shed is situated on Lot 15 within this reserve.
5. In November 2012 Council approved a new 5 year lease to Terry Hulkes to enable the development of the site for fishing accommodation when fishing from Cheyne Beach. The term of the lease was considered appropriate to develop the site and the City was reviewing leases in coastal locations that may be subject to erosion, inundations and other adverse coastal conditions.
6. The lease commenced 1 August 2014 and expired 31 July 2019. The tenant continues to occupy under lease holding over provisions. Current annual lease rental payable to the City, being \$2,819 plus GST.
7. The tenant has requested a new lease for a maximum term in order to complete the accommodation building and secure long term tenancy to continue his commercial fishing activities at Cheyne Beach.

## **DISCUSSION**

### Development approval

8. To satisfy lease conditions and development approval the tenant was required to construct an accommodation building and associated infrastructure on the land to support the commercial fishing activities. The tenant was also responsible for providing adequate electricity supply, adequate potable water supply, an effluent disposal system and parking.
9. A development approval and building permit was issued in 2015 for the works. Noting the building permit was extended in February 2017.
10. While the tenant has developed the site with access driveway, work shed, rain water tank and septic, an accommodation building has not been completed within the term of the lease.
11. City Officers have been working with the tenant to satisfy the outstanding conditions prior to progressing a new lease. This has included discussions around a range of suitable accommodation buildings.
12. A way forward has been agreed and a new development approval (P2190530) and building permit (163789) have been issued in October this year, in accordance with the Cheyne Beach Planning Policy.

### Lease

13. A lease can be considered with commercial fisherman seeking fisherman accommodation at Cheyne Beach, provided they meet the following requirements:
  - a. The tenant is actively engaged in the Cheyne Beach commercial fishing industry;
  - b. The tenant holds a current commercial fishing licence issued by the Department of Fisheries Western Australia; and
  - c. The tenant will use the fisherman accommodation within the lease area for own or staff use only.

14. It is noted that the tenant has complied with the above lease preconditions.
15. It is recommended the lease term be an initial term of 4 years with two further options of 6 years and 10 years (20 years in total). The 20 year term is consistent with other commercial fishing leases at Cheyne Beach.
16. The initial 4 year term is based on the period allowable for a building permit of 2 years, with consideration for one 2 year extension.
17. Importantly, the lease will include a special condition that the tenant must build the accommodation associated with the tenant's permitted use of the leased area within the initial 4 year term.
18. In carrying out the construction of the accommodation building the tenant must comply with the terms of the lease, the Cheyne Beach Planning Policy, the building and planning approvals and the Management Order over the land.
19. If the tenant fails to comply the City may end the lease with no further terms considered.
20. As such the tenant will be required to vacate, remove all infrastructure and make good the land.
21. The table below summarises the essential terms of the proposed lease:

ITEM	DETAILS
Tenant	Terry Hulkes
Land Description	Portion Crown Reserve 878 Lot 7442 on Deposited Plan 214689, the subject of Head Certificate of Title Volume LR3082 Folio 959 Cheyne Beach
Lease Area	Lot 17 Cheyne Road, being an area of approximately 2178m <sup>2</sup>
Land Ownership	Crown (City of Albany under Management Order)
Building Ownership	Tenant
Permitted Use	Accommodation associated with the commercial fishing industry
Term	Initial term of 4 years with two further options of 6 years and 10 years (20 years in total)
Initial Rent	\$2,950 per annum plus GST
Rent Review	Market valuation every 3 years with Perth All Groups CPI applied on the anniversary for intervening years
Outgoings	Tenant responsible for all outgoings
Utilities	Tenant responsible for all utilities
Maintenance	Tenant responsible for all maintenance
Special Conditions	<ol style="list-style-type: none"> <li>1. Lease is conditional upon the tenant continuing to operate under a <b>commercial fisherman's licence issued by the Department of Fisheries WA.</b></li> <li>2. Tenant must complete the accommodation building within the initial 4 year term of the lease. Non-compliance gives the City the right to end the lease with no further term considered.</li> <li>3. Tenant acknowledges the land and services may be affected by adverse coastal processes given the proximity to the coast and occupy the land and buildings at own risk.</li> </ol>

22. The tenant has agreed in principle with the above position, subject to Council and Department of Planning, Lands and Heritage approval.
23. The remaining terms of the lease agreement will be developed in line with City Policy – Property Management (Leases and Licences).

#### GOVERNMENT & PUBLIC CONSULTATION

24. The Department of Planning, Lands and Heritage will be consulted as it is a requirement of Section 18 of the *Land Administration Act 1997* that the Minister's consent is obtained.
25. Section 3.58 of the *Local Government Act 1995* defines the requirements for the disposal of property, including leased land and buildings. The Act requires the following:
  - a. A local government must give local public notice of the proposed lease inviting submissions from the public, for a period of two weeks.
  - b. Any submissions are to be considered by Council and their decision with regard to those submissions, to be recorded in the minutes.
  - c. A local government can then proceed with the lease.
26. The new lease will be advertised to comply with the requirements of Section 3.58 of the *Local Government Act 1995*.
27. Community Engagement

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Consult	Advertise proposed lease in local newspaper inviting submissions from the public	A 2 week period following Council endorsement of agenda item	Open	Section 3.58 of the <i>Local Government Act 1995</i>

#### STATUTORY IMPLICATIONS

28. Section 18 of the *Land Administration Act 1997* states that a person shall not assign, sell, transfer or otherwise deal with interests on Crown land, create, or grant an interest in Crown land without the prior approval in writing of the Minister for Planning, Lands and Heritage.
29. As this is Crown land, under Management Order held by the City, the Minister's consent will be sought.
30. The *Aboriginal Heritage Act 1972* applies to any place or object of importance to persons of Aboriginal descent and Section 17 of this Act makes it an offence to destroy, damage or alter in any way an Aboriginal site or object. This Act applies to known and unknown sites.
31. In past discussions with the local Noongar community regarding the Cheyne Beach area, including visits on site, it is known to officers that there are areas in this locality of significance to the Noongar community. A full Aboriginal Heritage Survey was undertaken in 2015 to consider a range of future proposals in the Cheynes locality to manage any risk of disturbing Aboriginal cultural heritage.
32. Any future development needs to be considered in the context of the recommendation of the Heritage Survey. It is noted that these matters have been considered as part of the development application and approval has been provided for the proposed development.

## POLICY IMPLICATIONS

33. Council adopted a revised Property Management (Leases and Licences) Policy in July 2017.
34. The Policy aims to ensure that all requests for leases and licences will be treated in a fair and equitable manner using open and accountable methodology and in line with statutory procedures.
35. The recommendation is consistent with the Policy.
36. The proposed lease complies with the City's Cheyne Beach Planning Policy.

## RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Business Operation, Reputation &amp; Financial.</b> <i>Reputation: lease not approved – may limit fishing operations at Cheyne Beach</i>	Unlikely	Minor	Low	Seek to negotiate terms to Council satisfaction
<b>Reputation:</b> New lease not approved – tenant to remove all existing infrastructure and make good the land	Unlikely	Minor	Low	City to manage tenant's reaction in a measured way and ensure open communication
<b>Opportunity:</b> To provide support to the Cheyne Beach commercial fishing industry given the fishing industries historic and economic association with the Cheynes area and for the City to receive commercial rental income				

## FINANCIAL IMPLICATIONS

38. All costs associated with the lease documentation and development works are the responsibility of the tenant.
39. The lease rental of \$2,950 per annum plus GST will be placed into the Cheyne Beach Improvement Reserve for the purpose of facilitating community maintenance and enhancement projects in the Cheyne Beach locality.

## LEGAL IMPLICATIONS

40. The Deed will be prepared by City's lawyers with enforceable terms and conditions, at the tenant's expense.

## ENVIRONMENTAL CONSIDERATIONS

41. The City is currently considering a Coastal Hazard Risk Management and Adaption Plan (CHRMAP) to help plan the management of future coastal erosion at Emu Point to Middleton Beach.
42. It is noted that Cheyne Beach is not in the current plan however the new lease does provide an opportunity to ensure the tenant is aware of potential impact of coastal erosion inundation, sea level rises and other adverse conditions given the proximity to the coast.
43. Further, indemnification clauses will be included in the lease such that the City is not liable for any loss or damage by the tenant by any reason arising from adverse coastal processes.

## ALTERNATE OPTIONS

44. Council may:
  - a. Approve the new lease request; or
  - b. Decline the request.

45. Should Council decline the lease, the tenant will need to work with the City to find an alternate location should he wish to continue commercial fishing activities at Cheyne Beach. This may result in early closure of fishing operations given the limited availability of suitable land and the cost to relocate.
46. The tenant may be required to vacate the property, demolish and remove all infrastructure and make good the land.

### **CONCLUSION**

47. Terry Hulkes, the existing tenant over Lot 17 Cheyne Road, Cheyne Beach has requested a new lease to continue commercial fishing operations from Cheyne Beach.
48. To comply with planning and building approvals the tenant must complete an accommodation building within the initial 4 year term of the lease. Non-compliance with this special condition in the lease will give the City the right to end the lease.
49. Given the proximity of the site to the coast the tenant agrees to occupy the site at their own risk and indemnifies the City against any loss or claim resulting from occupation of the site.
50. The tenant has met all of the lease preconditions and the proposed lease is in accordance with the Management Order over the land.
51. Taking into consideration tenant investment in developing the site to date and agreement to comply with the lease, planning and building conditions it is recommended that a new lease be granted for a term of 4 years with two further options of 6 years and 10 years (20 years in total) be supported.

<b>Consulted References</b>	:	<ul style="list-style-type: none"> <li>• Property Management (Leases and Licences) Policy</li> <li>• Cheyne Beach Planning Policy</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>	:	PRO389, A5605 (Kalgan Ward)
<b>Previous Reference</b>	:	OCM 20/11/2012 Item 4.3 OCM 21/05/2013 Item 4.3 OCM 26/11/2013 CSF034

## CCS199: BUSH FIRE BRIGADE LOCAL LAW 2019

<b>Proponent / Owner</b>	: City of Albany
<b>Attachments</b>	: Proposed local law.
<b>Report Prepared By</b>	: Manager Governance and Risk (S Jamieson) Manager Public Health and Safety (S Reitsema) Community Emergency Safety Manager (B Gordon)
<b>Responsible Officers:</b>	: Acting Executive Director Corporate & Commercial Services (D Olde)

### STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
  - **Theme:** Leadership.
  - **Objective:** To establish and maintain sound business and governance structures.
  - **Community Priority:** Provide informed and transparent decision making that is consistent with our strategic direction, meets our legal obligations, reflects the level of associated risk and is adequately explained to the community.

#### In Brief:

- The purpose of the local law is to provide for the regulation, control and management of City of Albany Volunteer Bush Fire Brigades within the district of the City of Albany.
- The effect will formalise the administrative processes will govern the establishment, management, roles and responsibilities of bush fire brigades.
- Council is requested to approve the administrative process to MAKE the *City of Albany Bush Fire Brigade Local Law 2019*.

### RECOMMENDATION

**CCS199: RESOLUTION**  
**VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**MOVED: COUNCILLOR SHANHUN**  
**SECONDED: COUNCILLOR TERRY**

**THAT Council, in accordance with section 3.12 of the *Local Government Act 1995*:**

**(1) Resolves to MAKE the *City of Albany Bush Fire Brigades Local Law 2019*; and**

**(2) APPROVES the giving of State-wide public notice in order to seek public comment.**

**CARRIED 13-0**  
**ABSOLUTE MAJORITY**

**CCS199: COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR THOMSON**  
**SECONDED: COUNCILLOR SHANHUN**

**THAT the Responsible Officer Recommendation be ADOPTED.**

**CARRIED 11-0**



CCS199: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council, in accordance with section 3.12 of the *Local Government Act 1995*:

- (1) Resolves to MAKE the *City of Albany Bush Fire Brigades Local Law 2019*; and
- (2) APPROVES the giving of State-wide public notice in order to seek public comment.

**BACKGROUND**

2. In 2013 an independent review was conducted to improve support to the Volunteer Bush Fire Brigades and overall Emergency Management.
3. At the time it was recommended that:
  - a. The current “individual brigade constitution approach” should remain for brigades in the medium term as this arrangement suits the wide variation in commitments and time across the city.
  - b. In the long-term, the issue is to be investigated with the view to achieving consistency across brigades.
4. It has been identified by both City Officers and Volunteer Bush Fire Brigade leaders that a Bush Fire Brigades Local Law should be progressed to:
  - a. Achieve consistency across brigades;
  - b. Promote a common understanding of accountabilities for both City Officers (Administration) and Brigade Officers and members.
5. As detailed in the consultation section of the report, consultation been conducted over a number of years by City Officers, working with brigade Fire Control Officers and members.

**DISCUSSION**

6. To initiate the local law process, Council must first resolve to MAKE the Local Law.
7. Section 3.12 of the *Local Government Act 1995* (the Act) requires the person presiding at a Council meeting ensures the purpose and effect of the proposed local law is given.
  - a. **Purpose:** The purpose of the principal local law is to provide for the regulation, control and management of City of Albany Volunteer Bush Fire Brigades within the district of the City of Albany.
  - b. **Effect:** Formalise the administrative processes will govern the establishment, management, roles and responsibilities of bush fire brigades.
8. Simplified outline of the proposed local law:
  - a. This local law is about the establishment, management, roles and responsibilities and cancellation of bush fire brigades within the municipality of the City of Albany.
  - b. **Part 1** includes preliminary provisions including the commencement date and definitions of the terms used throughout this local law.
  - c. **Part 2** provides for the establishment and cancellations of bush fire brigades by the City of Albany. It also includes provisions for the transition of bush fire brigades existing prior to the date of effect of this local law.
  - d. **Part 3** defines the objectives of bush fire brigades and details the responsibilities of the City of Albany and the Bush Fire Advisory Committee. It also addresses how the local government considers the appointment of bush fire control officers, pursuant to section 38 of the Act.
  - e. The statutory powers and duties of bush fire control officers are defined in the Act. This part allows for the local allocation of those duties (as per s.62(1)(a) of the Act).
  - f. The managerial role of the Chief Bush Fire Control officer is also defined.

- g. **Part 4** defines the roles and responsibilities of brigade members.
- h. **Part 5** addresses the funding of bush fire brigades by the local government.
- i. **Part 6** provides that bush fire brigades, and bush fire brigade members are to comply with the Rules Governing the Operation of Bush Fire Brigades as contained in Schedule 1.
- j. **Schedule 1:** Contains the Rules Governing the Operation of Bush Fire Brigades.
  - (i) **Part 1** contains the definitions of the terms used in the Schedule.
  - (ii) **Part 2** provides for the rules governing the Committee of the bush fire brigade including the roles and responsibilities of the Committee, membership and termination of membership of the Committee, and the rules applicable to the conduct of Committee meetings.
  - (iii) **Part 3** defines the roles and responsibilities of brigade officers, including Committee members, and the hierarchy of command at a fire.
  - (iv) **Part 4** provides for the conditions of membership of a brigade and determines the membership application process.
  - (v) **Part 5** provides for the rules that govern the suspension and termination of membership of a bush fire brigade member, including the member's right of defence.
  - (vi) **Part 6** contains the rules governing the conduct of meetings of the bush fire brigade, including ordinary meetings and annual general meeting.
  - (vii) **Part 7** contains the rules relating to financial management, declaration of interest and the dispute resolution process.
  - (viii) **Part 8** is about notices and the rules regarding proxy votes, when a brigade member is unable to attend a meeting.

## GOVERNMENT & PUBLIC CONSULTATION

- 9. City of Albany – Fire Brigade Member Consultation:
  - a. Consultation has been facilitated over a number of years by City Officers, working with brigade Fire Control Officers and members.
  - b. Formal consultation initiated for the proposed local law on 15 January 2019.
  - c. The proposed local law was presented to a number of working groups/consultation meetings and brigade sector meetings.
  - d. On 6 May 2019, a briefing was given to the Bush Fire Advisory Group. At this meeting:
    - Brigade Member: R Lynn presented a short overview of the progress of the creation of the City of Albany Bush Fire Brigade Local Law.
    - Explained the process for the making of a local law, including the time required for public consultation.
  - e. On 1 October 2019, a report regarding the progress and status of the draft local law was prepared for the Bush Fire Advisory Committee.
  - f. The Committee was advised by City Officers that the local law is ready to be presented to Council.
- 10. Post Council resolution to make the local law:
  - a. A copy will be formally tabled at the next City of Albany – Bush Fire Advisory Committee (BFAC) and Local Emergency Management Committee (LEMC);
  - b. A copy of the proposed Local Law will be forwarded to the Department of Local Government; and

- c. In accordance with section 3.12 of the Act, the City will give State-wide publication of its intention to make the Local Law and will invite submissions from the public.

### STATUTORY IMPLICATIONS

11. Making a local law needs to be done in accordance with section 3.12 of the Act.
12. The resolution of Council to make the local law must be carried by **Absolute Majority**.
13. After making the local law a copy must be provided to the Minister for Local Government.

### POLICY IMPLICATIONS

14. There are no direct policy implications related to this report.

### RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>Legal &amp; Compliance Local law may be disallowed if content is considered inappropriate, being outside the remit of the Local Government Act 1995 and the Bush Fires Act 1954.</i>	<i>Unlikely</i>	<i>Moderate</i>	<i>Medium</i>	<i>Amend local law as requested.</i>
<i>Reputation: Perception by some brigade members of a lack of consultation.</i>	<i>Unlikely</i>	<i>Moderate</i>	<i>Medium</i>	<i>The proposed local law was prepared with considerable input from the volunteer brigade members and extensive consultation across the sector over a number of years.</i>  <i>If an individual believes there feedback and concerns have not been addressed, this can be formally communicated during the formal consultation period.</i>  <i>The consultation period, noting the festive season is being extended until 15 February 2020.</i>  <i>A copy of this report will be sent to all Bush Fire Control Members, via email and by post to Brigade Secretaries.</i>

### FINANCIAL IMPLICATIONS

16. Cost will be incurred with respect to the advertising and eventual publication in the Government Gazette of the Amendment Local Law.
17. This cost is estimated to be approximately \$400 in addition to staff time.

### LEGAL IMPLICATIONS

18. Bush Fires Act 1954, states in part:

#### **41. Bush fire brigades**

- (1) For the purpose of carrying out normal brigade activities a local government may, in accordance with its local laws made for the purpose, establish and maintain one or more bush fire brigades and may, in accordance with those local laws, equip each bush fire brigade so established with appliances, equipment and apparatus.

**62. Local government may make local laws**

- (2) A local government may make local laws in accordance with subdivision 2 of Division 2 of Part 3 of the Local Government Act 1995 for and in relation to —
- (a) the appointment, employment, payment, dismissal and duties of bush fire control officers; and
  - (b) the organisation, establishment, maintenance and equipment with appliances and apparatus of bush fire brigades to be established and maintained by the local government; and
  - (c) any other matters affecting the exercise of any powers or authorities conferred and the performance of any duties imposed upon the local government by this Act.

**ENVIRONMENTAL CONSIDERATIONS**

19. There are no direct environmental consideration related to this report.

**ALTERNATE OPTIONS**

20. The options are:
- a. Resolve to make the proposed local law a presented;
  - b. Resolve to make the proposed local law with amendments.
  - c. Council may wish to reconsider its position on the proposed local law.
21. It is recommended that amendments are considered post, public consultation.

**CONCLUSION**

22. It is recommended to MAKE the proposed Local Law.

<b>Consulted References</b>	:	<ul style="list-style-type: none"><li>• <i>Local Government Act 1995</i></li><li>• <i>Bush Fires Act 1954</i></li><li>• <i>Independent Review into improving support to the Volunteer Bush Fire Brigades and overall Emergency Management, Original Report 18 September 2013</i></li><li>• <i>WALGA Template Local Law</i></li></ul>
<b>File Number (Name of Ward)</b>	:	All Wards (LE.LOL.19)
<b>Previous Reference</b>	:	Nil

## CCS200: PROPOSED JETTIES, BRIDGES, BOAT PENS AND SWIMMING ENCLOSURES LOCAL LAW 2019

<b>Land Description</b>	: (All Wards)
<b>Attached</b>	: Finalised Proposed Draft - Jetties, Bridges, Boat Pens and Swimming Enclosures Local Law 2019
<b>Report Prepared By</b>	: Manager Governance & Risk (S Jamieson)
<b>Responsible Officers:</b>	: Chief Executive Officer (A Sharpe)

### STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan and Corporate Business Plan:
  - **Theme:** Leadership.
  - **Objective:** To establish and maintain sound business and governance structures
  - **Community Priority:** Provide informed and transparent decision making that is consistent with our strategic direction, meets our legal obligations, reflect the level of associated risk and are adequately explained to community.

#### Maps:

- Follow this report.

#### In Brief:

- To seek Council's approval to seek Governor's consent prior to adopting the local law.

### RECOMMENDATION

#### CCS200: RESOLUTION (AMENDED MOTION BY COUNCILLOR STOCKS) VOTING REQUIREMENT: ABSOLUTE MAJORITY

**MOVED: COUNCILLOR STOCKS**  
**SECONDED: COUNCILLOR HAMMOND**

- (1) **NOTE** that as previously advised on 28 May 2019, in accordance with section 3.6 of the Local Government Act 1995 (the Act), the Governor's consent is required for local laws that specify areas outside of the district.
- (2) **APPROVE** the minor changes made to the proposed local law to be provided as the **FINAL DRAFT** of the proposed local law.
- (3) **THAT** Section three of the proposed local law be amended to include (2) A person shall be permitted to live on board a vessel moored or anchored within a pen or pen system for no more than two consecutive days, providing that the occupation complies with the requirements of the relevant legislation.
- (4) **AUTHORISE** the Chief Executive Officer to make application to the Department of Local Government to make application to the Governor on the City's behalf.

**CARRIED 9-4**  
**ABSOLUTE MAJORITY**

#### Record of Vote

Against the Motion: Mayor Wellington, Councillors Goode, Thomson and Terry

**CCS200: AMENDMENT BY COUNCILLOR STOCKS**  
**VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**MOVED: COUNCILLOR STOCKS**

**SECONDED: COUNCILLOR HAMMOND**

**THAT Section three of the proposed local law be amended to include (2) A person shall be permitted to live on board a vessel moored or anchored within a pen or pen system for no more than two consecutive days, providing that the occupation complies with the requirements of the relevant legislation.**

**CARRIED 9-4**  
**ABSOLUTE MAJORITY**

**Record of Vote**

Against the Motion: Mayor Wellington, Councillors Thomson, Goode and Terry

**This Motion was not put to the vote as an amendment was proposed by Councillor Stocks.**

**CCS200: COMMITTEE RECOMMENDATION**  
**VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**MOVED: COUNCILLOR TERRY**

**SECONDED: COUNCILLOR SHANHUN**

- (1) NOTE that as previously advised on 28 May 2019, in accordance with section 3.6 of the Local Government Act 1995 (the Act), the Governor's consent is required for local laws that specify areas outside of the district.
- (2) APPROVE the minor changes made to the proposed local law to be provided as the FINAL DRAFT of the proposed local law.
- (3) AUTHORISE the Chief Executive Officer to make application to the Department of Local Government to make application to the Governor on the City's behalf.

**CCS200: COMMITTEE RECOMMENDATION**

**MOVED: MAYOR WELLINGTON**

**SECONDED: COUNCILLOR THOMSON**

**THAT the Responsible Officer Recommendation be ADOPTED.**

**CARRIED 6-5**

**Record of Vote**

Against the Motion: Councillors Sleeman, Doughty, Stocks, Stephens and Hammond

**CCS200: RESPONSIBLE OFFICER RECOMMENDATION**

- (1) NOTE that as previously advised on 28 May 2019, in accordance with section 3.6 of the Local Government Act 1995 (the Act), the Governor's consent is required for local laws that specify areas outside of the district.
- (2) APPROVE the minor changes made to the proposed local law to be provided as the FINAL DRAFT of the proposed local law.
- (3) AUTHORISE the Chief Executive Officer to make application to the Department of Local Government to make application to the Governor on the City's behalf.

## BACKGROUND

2. Governor's consent has to be sought prior to Council adopting the proposed local law.
3. On 25 September 2018, Council resolved to remake the *City of Albany Jetties, Bridges & Boat Pens Local Law 2005* (As amended).
4. On 28 May 2019, Council resolved to MAKE the proposed new local law, noting the requirement that prior to presentation for final adoption, in accordance with section 3.6 of the Local Government Act 1995 (the Act), the Governor's consent must be sought.

## DISCUSSION

5. The previous local law, which will be replaced by this proposed local law was approved by the Governor and Gazetted on 10 February 2004.
6. The Governor's approval extended the area of application to areas located outside of the City of Albany's district, such as the:
  - a. Albany Town Jetty Precinct; and
  - b. Emu Point Boat Pens.
7. The proposed local law updates areas and location descriptions.
8. On 13 November 2019, received advice from the Dept. of Local Government, being:

*"Once the City has finalized the draft of the local law and prior to submitting the final draft to council for adoption, the City should send a letter to the Minister formally requesting the Governor's approval.*

*This application should include:*

- *A copy of the final draft of the local law;*
- *Diagrams of the lots specified in clause 1.3; and*
- *A council resolution authorizing the City to make the application (either directly or via an appropriate delegation).*

*When this request is submitted, the Department will prepare a suitable application to the Governor on the City's behalf. Once the Governor's approval is obtained, the City will be notified and the final draft can be submitted to the council for adoption under section 3.12(4) of the Act."*

## GOVERNMENT & PUBLIC CONSULTATION

9. **Stakeholder engagement:** The local law making process provided members of the public and government departments to have their say on the proposed local law and their relevance within the community.
10. A copy of the Local Law was forwarded to the Department of Local Government and the Department of Transport on 20 June 2019.
11. Ongoing consultation has been conducted with the Department of Transport and the Department of Local Government with the latest advice being received on the 13 November 2019.
12. Comments and submission detailed below:

Proposed Local Law	Comments:
Clause 1.3 Application	Department of Transport: Clause 1.3 Application For clarity purposes for persons reading or applying the Local Law, it would still seem desirable for the Local Law to clearly indicate that it only applies to jetties, bridges boat pens and swimming enclosures that are under the care, control and management of the Local Government Authority. (This advice is

Proposed Local Law	Comments:
	<p>consistent with that previously provided on 26 August 2004 at the time that the current local law was being processed).</p> <p>The easiest way of achieving the abovementioned clarification of application of the Local Law would seem to be to include a specific opening provision under Clause 1.3 Application, with the wording  <b>“This local law applies to the jetties, bridges, boat pens and swimming enclosures under the control of the City of Albany”, prior to addressing the extension of application beyond the City of Albany’s district.</b></p> <p>Such a provision would also confirm what is understood to be your intended application of the local law to cover all jetties etc. under the control of the City.</p> <p>I am not aware of any overarching provisions of the Local Government Act, but the current wording of the draft would seem to limit the application of the local law to the specific areas identified within the 1.3 Application clause (which do not include any bridges or swimming enclosures).</p> <p><b>With respect to the application of the local laws beyond the City’s district, the reference to the Albany Waterfront Marina Precinct should be deleted as there are no jetties, bridges, boat pens or swimming enclosures under the care control or management of the City on either of the Lots 1583 or 1584.</b></p> <p><b>With respect to the Emu Point reference, the City’s facilities only occupy a portion of Lot 350 with DoT facilities and areas under control comprising the balance.</b></p> <p>It is therefore suggested that the wording be amended by adding the passage <b>“on land leased to the City of Albany by the Minister for Transport pursuant to the Marine and Harbours Act 1981 on portion of” between the words “located” and “Lot 350” in substitution of the word “at” in line 1 of item (a).</b></p> <p>Comment: Agreed, local law amended accordingly.</p> <p>You may also want to broaden this provision to refer to both jetties and boat pens noting that the City also controls a boat launching ramp with finger jetty, a universal access jetty and boat lifter jetties at this location.</p> <p>If the City needs this provision extending the application of its local laws at Emu Point, it may also need to consider the situation elsewhere as several jetties, ramps and the Ellen Cove swimming enclosure that are under the care control or management of the City extend beyond low water mark and are located within or partly within the declared Port of Albany under the control of the Southern Ports Authority.</p> <p>Comment: Agreed, local law amended accordingly.</p> <p>Although the 2015 Ward Boundary Change maps (DP 405587) generally depict the Low Water Mark as the seaward boundary of the LGA area, <b>mapping on Landgate’s viewer indicates that the City of Albany LGA area extends seaward so as to encompass the whole of the area to the Coastal Waters boundary.</b></p> <p>Comment: Agree, Request the Department of Local Government to confirm the boundaries, as part of the preparation for consent by the Governor.</p>
Clause 1.5 Definitions	<p>Department of Transport:</p> <p>With respect to the <b>definition “commercial vessel” it would seem that the only reference to commercial vessel within the draft local law is within the definition of “vessel”. It is suggested that the “commercial vessel” definition and the corresponding use of the term within the definition of “vessel” be deleted as it appears to serve no real purpose.</b></p> <p>Comment: Agree, amended accordingly.</p>



Proposed Local Law	Comments:
Clause 2.1 Use of jetty bridge or land	<p>Department of Transport: 2.1 (2)(b) should in our view be deleted as the closure referred to under section 6 of the Jetties Act 1926 only relates to a public jetty, whereas jetties owned by a LGA fall under the category of a private jetty. (The inclusion of this reference in your current local law was to recognise that the previous Town Jetty, which <b>was a public jetty, had been leased /licenced under the LGA's control</b>).</p> <p>Comment: Amended, clarified this applies only to structures owned by the local government, amended accordingly.</p> <p>Noting the definition of jetty is clarified by stating the structure must be under the care, control and management of the local government.</p>
Clause 2.10 Vehicles on Jetty	<p>Department of Transport: With respect to 2.10 (1) and (2), you may want to include a qualification with respect to the use of boat launching ramps as they fall within the definition of a jetty.</p> <p>Comment: Agree, definition added and sub-clause 2.10(2)(c) added.</p>
Clause 2.11 No fishing from jetties or swimming enclosures designated for Swimming	<p>Fishers with Disabilities - Volunteer The Ellen Cove Jetty is used by fishers and provides wheel chair access and easy access for the mobility impaired.</p> <p>Comment: Recommend support amendment, clause 2.11 (1) No fishing from jetties or swimming enclosures designated for Swimming, amended to include subclause: Subclause (1) does not apply to the Ellen Cove Jetty.</p>
Clause 3.1 – Licences issued under previous local law	<p>Department of Local Government: The City may wish to add a transitional clause in relation to licences or permissions granted by the City under the previous local law. <b>In particular, it appears that the City's current local law allows licences to live in boats, while the draft local law will prohibit this.</b> If anyone is currently living in a boat under a licence issued by the City, the City may wish to consider what status those licences will have under the new law.</p> <p>Comment: No current tenants live aboard. Therefore, not applicable.</p>
Clause 3.4 – Entry onto boat for purpose of inspection	<p>Department of Local Government: Clause 3.4(2)(a) provides that an authorized person may board a vessel at any time to inspect mooring lines. Currently, the Local Government Act 1995 does not provide local governments with any general right to enter vehicles or private property. While the Act grants some powers of entry, these powers are limited to specific circumstances. It appears that a <b>similar clause was present in the City's original version of the City's 2006 jetties local law. However, the Parliament's Delegated Legislation Committee objected to the clause and the City deleted it in a subsequent amendment.</b> It is suggested that clause 3.4(2)(a) be deleted, otherwise the Committee is likely to object to it in a similar manner.</p> <p>Comment: Agree, local law amended.</p>
Clause 3.6 General Prohibitions	<p>Department of Transport: In 3.6 (2) the reference to hull cleaning in the pen system and reference to <b>such hull cleaning only being undertaken within the licensee's pen is not</b> generally supported. particularly, with respect to any pens or any jetties that are within a Departmental Area as defined within the Marine and Harbours Act (includes the Emu Point facility).</p>

Proposed Local Law	Comments:
	<p>DoT does not allow/support the cleaning of vessel hulls (or any major repairs to the external surface of a vessel or its equipment where there is risk of material ending up in the water) within any of its boat harbours or mooring pens, whether by chemical means, high pressure cleaning, or other mechanical means. This is due to the inherent risk of pollution/contamination and spread of marine pests in addition to a potential nuisance being caused to adjacent penholders.</p> <p>Instead, DoT requires such hull cleaning and maintenance activities to be carried out at a shore based vessel maintenance facility where all waste can be isolated, collected and disposed of at approved land fill sites.</p> <p>It is noted that a boat lift facility and vessel maintenance area exist at the Emu Point Boat Harbour facility that could facilitate such out of water hull cleaning.</p> <p><b>(The City's lease of the area occupied by its pens and other jetties at Emu Point pursuant to the Marine and Harbours Act also contains obligations not to pollute or contaminate the leased area or allow such pollution or contamination by others.</b></p> <p>Comment: Concur, local law amended accordingly.</p>
<p>Clause 3.9 - Impoundment of vessel</p>	<p>Department of Local Government:</p> <p>Clause 3.9(h) of the local law provides that if a licensee breaches any provision of the local law, their vessel may be impounded in accordance with the Act.</p> <p>Currently the Act only allows for the impoundment of vehicles in circumstances when the vehicle is obstructing a public place, causing a hazard to public safety or the presence of the vehicle is unlawful.</p> <p>While paragraph (h) will apply for all breaches of the local law, this does not necessarily mean that all breaches of the local law will allow impoundment under the Act.</p> <p>The City should keep this in mind and ensure it has appropriate procedures in <b>place so it doesn't impound a vessel in the wrong circumstances.</b></p> <p>Comment: Noted. Any action is protected by clause 4.9 Objection and appeal rights.</p>
<p>Right of review for license decisions.</p>	<p>Department of Local Government:</p> <p><b>Currently, the local law doesn't provide for any right of review for decisions made under the local law.</b></p> <p>The City may wish to add a clause setting out a right of review for decisions relating to consent and licenses.</p> <p><b>While the City isn't obligated to do this, the absence of a right of review may be raised as an issue by the Parliament's Delegated Legislation Committee.</b></p> <p><b>It is noted that the City's current local law lacked such a clause and this wasn't raised as an issue when it was considered in 2006. However, this can't be taken as a guarantee of how the current Committee will consider the matter, since it isn't bound by decisions made by the Committees of previous Parliaments.</b></p> <p>Comment: Agree, right of review clause added, clause 4.9 and the definition for regulations.</p> <p><b>4.9 Objection and appeal rights</b></p> <p><b>When the local government makes a decision as to whether it will—</b></p> <p><b>(a) grant a person a licence under this local law; or</b></p> <p><b>(b) renew, vary, or cancel a licence that a person has under this local law,</b></p> <p><b>the provisions of Division 1 of Part 9 of the Act and regulation 33 of the Regulations shall apply to that decision.</b></p>

Proposed Local Law	Comments:
	Regulations mean the Local Government (Functions and General) Regulations 1996.
Minor editorial edits and recommendations.	Department of Local Government: Comment: Amended accordingly.

### STATUTORY IMPLICATIONS

13. Delegation to City Officers must be resolved by **Absolute Majority**.

### POLICY IMPLICATIONS

14. It is important that the local law not be submitted to council for final adoption under section 3.12(4) until the Governor's approval is confirmed. Otherwise, it may compromise the local law's ability to operate.

### RISK IDENTIFICATION & MITIGATION

15. Not applicable to this report.

### FINANCIAL IMPLICATIONS

16. Not applicable to this report.

### LEGAL IMPLICATIONS

#### Legislative Environment

17. It should be noted that Local Laws (which were once known as 'By Laws') are subsidiary legislation, made by Local Governments.
18. Local Laws must not contravene any State or Federal Act or Regulation, and in the event of any inconsistency, the Act or Regulation will override the Local Law to the extent of the inconsistency.

### ENVIRONMENTAL CONSIDERATIONS

19. Not applicable to this report.

### ALTERNATE OPTIONS

20. Not applicable to this report.

### CONCLUSION

21. It is recommended that the Responsible Officer Recommendation be adopted.

Consulted References	:	<ul style="list-style-type: none"> <li>Local Government Act 1995</li> <li>Local Government Operational Guidelines   Number 16 – November 2011 - Local Laws</li> </ul>
File Number (Name of Ward)	:	(All Wards)
Previous Reference	:	<ul style="list-style-type: none"> <li>OCM 25/09/2018 Resolution CCS087</li> <li>OCM 28/05/2019 Resolution AR062</li> </ul>

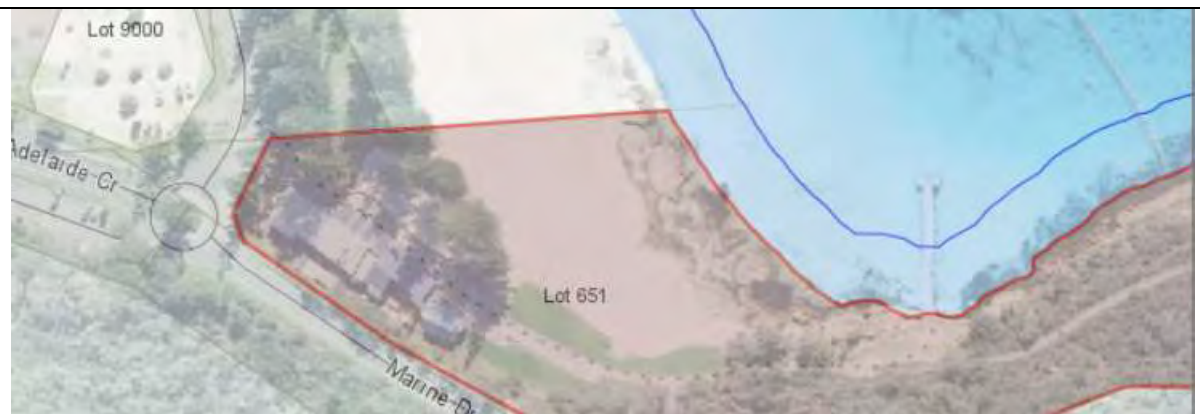
**Maps:** *(Note all maps are oriented grid north)*



**Ellen Cove Swimming Enclosure & Swimming Platform - Lot 1474, Flinders Parade Middleton Beach WA 6330, PI Parcel: P219850 1474 | Certificate of Title: LR3111/83**



**Ellen Cove Swimming Enclosure & Jetty - Lot 651, 2 Flinders Parade Middleton Beach WA 6330, PI Parcel: P191343 651 | Certificate of Title: LR3119/892**



## CCS202: ANIMALS LOCAL LAW 2020

<b>Land Description</b>	: (All Wards)
<b>Attached</b>	: Finalised Proposed Draft - Animals Local Law 2019
<b>Report Prepared By</b>	: Manager Governance & Risk (S Jamieson)
<b>Responsible Officers:</b>	: Acting Executive Director Commercial & Corporate Services (D Olde)

### STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan and Corporate Business Plan:
  - **Theme:** Leadership.
  - **Objective:** To establish and maintain sound business and governance structures
  - **Community Priority:** Provide informed and transparent decision making that is consistent with our strategic direction, meets our legal obligations, reflect the level of associated risk and are adequately explained to community.

#### Maps:

- Follow this report.

#### In Brief:

- To seek Council's approval to MAKE the local law.
- **Purpose and Effect**
  - (1) The purpose of this local law is to provide for the regulation, control and management of the keeping of dogs, cats, large animals, miniature horses and pigs, poultry, pigeons, and bees within the District.
  - (2) The effect of this local law is to establish the requirements with which owners and occupiers of land within the district must comply in order to keep domestic animals and birds, large animals, miniature horses and pigs, and bees and provides the means of enforcing the local law.

### RECOMMENDATION

#### CCS202: RESOLUTION VOTING REQUIREMENT: ABSOLUTE MAJORITY

**MOVED: COUNCILLOR THOMSON  
SECONDED: COUNCILLOR STOCKS**

#### THAT:

1. In accordance with section 3.12 of the Local Government Act 1995 (the Act), COUNCIL resolves to MAKE the City of Albany Animals Local Law 2020 and APPROVES the giving of State-wide public notice in order to seek public comment.
2. The Addendum to this report and its recommendations be included in the draft Local Law.
3. Point (f) be included at 8.2 to state: *All feed for poultry be stored in vermin proof containers.*

**CARRIED 11-2  
ABSOLUTE MAJORITY**

#### Record of Vote

Against the Motion: Councillors Sutton and Benson-Lidholm

**CCS202: AMENDMENT BY COUNCILLOR THOMSON  
VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**MOVED: COUNCILLOR THOMSON  
SECONDED: COUNCILLOR STOCKS**

**THAT:**

- 1. The Addendum to this report and its recommendations be included in the draft Local Law.**
- 2. Point (f) be included at 8.2 to state: *All feed for poultry be stored in vermin proof containers.***

**CARRIED 11-2  
ABSOLUTE MAJORITY**

**Record of Vote**

Against the Motion: Councillors Sutton and Benson-Lidholm.

**A further amendment to this amendment was proposed by Councillor Terry, and consented to by the mover and seconder of the first amendment.**

**CCS202: AMENDMENT BY COUNCILLOR THOMSON  
VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**MOVED: COUNCILLOR THOMSON  
SECONDED: COUNCILLOR STOCKS**

**THAT the Addendum to this report and its recommendations be included in the draft Local Law.**

**This motion was not put to the vote as Councillor Thomson proposed an amendment.**

**CCS202: COMMITTEE RECOMMENDATION  
VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**MOVED: COUNCILLOR THOMSON  
SECONDED: COUNCILLOR STOCKS**

In accordance with section 3.12 of the Local Government Act 1995 (the Act), COUNCIL resolves to MAKE the City of Albany Animals Local Law 2020 and APPROVES the giving of State-wide public notice in order to seek public comment.

**CCS202: COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR THOMSON  
SECONDED: COUNCILLOR STEPHENS**

**THAT the Responsible Officer Recommendation be ADOPTED.**

**CARRIED 11-0**

**CCS202: RESPONSIBLE OFFICER RECOMMENDATION**

In accordance with section 3.12 of the Local Government Act 1995 (the Act), COUNCIL resolves to MAKE the City of Albany Animals Local Law 2020 and APPROVES the giving of State-wide public notice in order to seek public comment.

## BACKGROUND

2. This Local Law was amended in 2017 with the adoption of the City of Albany Dog Local Law 2017.
3. On 25 September 2018, Council resolved to remake the *City of Albany Animals Local Law 2001* (As amended) and give consideration to the Officer Recommendation, being:

### **Animal Local Law:**

That the local law be fully reviewed, the current local law repealed and a new local law made.

That:

- (1) The provision to allow the keeping of bees be considered in the proposed new law.
- (2) Horse exercise areas and associated management conditions be reviewed.
- (3) Allow for the keeping of poultry with conditions be considered.
- (4) Animal control, for all animals in public places is extended to address:
  - Fouling of public places; and
  - Ensuring appropriate control.
- (5) That the review of the Animals Local Law is led by Health Team, noting the head of power for this local law is the new Health (Miscellaneous Provisions) Act 1911.

### **Repealed Cat Local Law:**

That the local law remain repealed, noting that additional control measures could be facilitated through an updated Animals Local Law.

### **Dog Local Law:**

There is no need to either amend or repeal this Local Law.

## DISCUSSION

4. The purpose of this Local Law is to provide for the regulation, control and management of the keeping of domestic animals and birds, large animals, miniature horses and pigs.
5. The previous local law, will be replaced by this proposed new local law.
6. Feedback received on the current Local Law is detailed in the Community Consultation section of the report.

## GOVERNMENT & PUBLIC CONSULTATION

7. **Stakeholder engagement:** The local law making process provided members of the public and government departments to have their say on the proposed local law and their relevance within the community.
8. A copy of the proposed Local Law was forwarded to the Department of Local Government for comment.
9. Additional consultation will be conducted during the public consultation period that will be extended from the prescribed period of 6 week, noting the festive season, to close by the end of February 2020.
10. **Stakeholder engagement (2018):** The review process enabled members of the public to have their say on the current local laws and their relevance within the community.
11. This opportunity also provided the opportunity to identify new matters that could be dealt with through the development of, or amendment to a local law.



12. Public Notices of the review was posted on the City's:
  - a. Website and social media feeds; and
  - b. Public Library Notice Boards.
13. In accordance with the Act, local government notices were advertised in The West, April 7 to 8, 2018, Page 100; and the Great Southern Weekender.
14. Consultation: All local laws were advertised for comment, with two submissions received during the consultation period.
15. To complement the review historic inquiries and comments specific to the City of Albany's existing local laws have been included.
16. An additional review of similar local laws across the sector was also conducted.
17. Comments and submission received are detailed below:

<p>Keeping of Bees:</p> <p>A petition was received in December 2017 to request Council to consider amending the Animals Local Law to allow the keeping of bees. This petition is detailed at attachment 1.</p> <p>Extract:</p> <p>We the undersigned, are calling on Albany Council to remove the local law which prohibits people in residential areas from beekeeping on their properties.</p> <p>The fundamental role honeybees play in the environment is becoming widely known, and the hobby beekeeper can be vital in supporting this. Well managed beehives are not aggressive and if positioned properly, are unnoticeable by neighbours and passers-by.</p> <p>The benefits of increased numbers of neighbourhood hives cannot be understated - increased fruit and vegetable production, improved health of native bushland and an opportunity for residents to engage in a productive and rewarding pastime.</p> <p>Backyard beekeeping has become extremely popular in recent times throughout Australia, and the Southwest of WA remains one of the healthiest environments for bees left anywhere in the world.</p>	<p>Officer Comment:</p> <p>The provision to allow the keeping of bees be considered in the proposed new law.</p> <p>People wishing to become hobbyist apiarists are reminded that by law they must firstly register with the Department of Agriculture and Food WA (DAFWA), which then provides a hive identifier with the Certificate of Registration.</p> <p>The registration of bee hives helps DAFWA in the control of pests and diseases, and also to notify hive owners of emerging threats.</p> <p>There are almost 1,000 registered beekeepers in WA with a combined total of nearly 29,000 hives.</p> <p>The DAFWA website has extensive information sheets, aimed at small landholders, for the keeping of bees.</p> <p>A constant and clean water supply, kept close to the hives, is an important in stopping bees becoming a nuisance to neighbours.</p> <p>Proposed in the local law:</p> <p>6.2 Restrictions on keeping Bees in Hives A person must not keep or permit the keeping of bees in a hive on a lot unless, at all times— (a) an adequate and permanent supply of water must be provided within 10m of the beehive; (b) the beehive is kept— (i) outside, and at least 10m from, any building other than a fence; (ii) at least 10m from any public place; and (iii) at least 5m from the boundary of the lot; and (c) the beehive is enclosed on all sides by a fence, wall or other enclosure.</p> <p>Similar to the Town of Cottesloe and City of Wanneroo.</p>
<p>Horse Exercise Areas:</p> <p>It is recommended that Council review and specify where horses are allowed to exercise.</p> <p>Feedback 1: Against exercising horses at Seawolf Road, Princess Royal Harbour:</p> <p>Horses could become a Nuisance under this law for interfering with enjoyment of adjacent land owners.</p>	<p>Officer Comment:</p> <p>Based on a review conducted by the Reserves Manager, it is recommended that the current situation remains unchanged and horse exercise areas are determined by Council as a Council Policy Position (Determination) under the proposed local law.</p>

<p>Feedback 2: In support of exercising horses at Seawolf Road, Princess Royal Harbour:</p> <p>This area has historically been used by horse riders for a <b>long time (over ten years that I'm aware of) and horse riding</b> has been noted in the Council adopted Black Swan Point Management Plan as being a commonly occurring activity at the Princes Royal Harbour (PRH).</p> <p>The plan notes the following:</p> <ul style="list-style-type: none"> <li>Horse floats are not commonly taken into the Reserve, with riders coming in from nearby bridle trails and private properties via Frenchman Bay Road – indicating that it is mainly used by residents and local people.</li> <li>The potential for conflict is lessened as different groups use different part of the reserve and require different conditions for their activities. In general users coexist well together.</li> </ul> <p>The plan recommends:</p> <ul style="list-style-type: none"> <li>The City of Albany should define the horse access ways to the beach area.</li> <li>That education should be provided to highlight the environmental protection of the area to avoid disturbing bird habitat etc.</li> </ul> <p>Little Grove Robinson Precinct is identified as special rural/residential (<i>current terminology: special residential or rural residential</i>) lots, the precinct has the bridle trails, equestrian centre, and families invest and move to the precinct specifically to engage in horse riding.</p> <p>With the harbour close by it makes it a unique lifestyle opportunity. Kids and riders can easily access the harbour as a horse exercise area without the need to float horses (i.e. not bothering Mum and Dad) improving and increasing the opportunities for physical activity and healthy lifestyles.</p> <p>I appreciate that there may be an issue with one or two residents but in general horse riding has been undertaken in the harbour without conflict between users.</p> <p>My preference is that in line with recommendations from the Black Swan Point Masterplan that we review the area and develop a solution that does not disadvantage one group of residents over another.</p>	<p>The current designated horse exercise areas (Middleton Beach &amp; the Stidwell Bridle Trail) are detailed at Schedule 3 of the proposed local law.</p> <p><b>Middleton Beach</b> Horses are allowed on Middleton Beach from Griffith Street south from dawn to 9am Horses have priority of way during these hours but should be aware the area is also utilised extensively by walkers and people exercising their dogs.</p> <p>Horse are also allowed to exercise in the water at this location between 9.00-11.00am and 1.00-3.00pm.</p> <p><b>Stidwell Bridle Trail</b> <b>The Stidwell Bridle Trail is Albany's premier horse riding trail.</b> Located in the suburbs of Robinson, Sandpatch and Torndirrup. The trail incorporates a number of loops <b>utilising purpose built "horse only" trails and a range of management and 4 wheel drive tracks.</b></p> <p>The Bridle trail is best accessed from the Albany Equestrian Centre on Roberts Road.</p> <p>The current exercise areas allocated for horses are detailed at Schedule 3 of the proposed local law.</p> <p>RE: Seawolf Road, Princess Royal Harbour</p> <p>It is recommended that further public consultation is required; therefore it is not recommended to be included in the current proposed local law.</p>
<p><b>Horse &amp; Dog Exercise Area Middleton Beach:</b></p> <p>Interaction between dogs and horses can be dangerous and near tragedies have been observed.</p> <p>Horses make more mess and disturb the environment more than dogs.</p> <p>Dog owners are expected to clean up after their dogs and the same is not expected of horse owners.</p>	<p><b>Officer Comment:</b></p> <p>This was investigated as part of a review across directorates, noting this also relates to recreational activities.</p> <p>Signage at Middleton Beach entrances used by dog owners and horse owners/trainers updated accordingly.</p> <p>Dog control is administered under the Dog Local Law and dog exercise areas and prohibited areas are determined by Council through a Council Policy position.</p> <p>The Dog Local Law specifies at clause 26 (6) A person may exercise a dog on an area of reserve or foreshore set aside as a horse exercise area <u>provided the dog remains under full control on a leash at all times.</u></p> <p>Clause 2.1 Dog Control points person to the appropriate legislation and dog local law.</p>

<p>Consider more beach exercise areas:</p> <p>Beach should be accessible to all and horses offer a unique <b>aspect to the Albany community's lifestyle.</b></p> <p>Time allocations for horses and dogs on the Middleton Beach horse exercise area of the beach have been <b>satisfactory under the current "time allocation" system.</b></p> <p>As a dog owner I have never had a problem with the horses.</p> <p>As a regular user of the animal exercise area, as dog owner and enjoy seeing horses at the beach.</p> <p>Consideration should be given to increasing horse exercise areas as they provide a positive benefit for occupational therapy and pleasure for children and adults with disabilities.</p>	<p>Officer Comment:</p> <p>Refer to previous comment.</p>
<p>Keeping of chickens:</p> <p>Can the City consider relaxing the conditions so that chickens be kept in town?</p> <p>Keeping chickens in your backyard can be a very enjoyable and rewarding experience. Chickens help by eating vegetable scraps and in return provide eggs and chicken manure.</p> <p>Chickens can be put to work in a 'chicken tractor' (a temporary enclosure for gardening purposes) to prepare garden beds for planting.</p> <p>If allowed to free range, they love to eat weeds and they also help to control insect pests. In addition, their natural behaviours such as scratching and dust bathing are just fun to watch.</p>	<p>Officer Comment:</p> <p><b>Keeping of chicken is allowed under the City's Animal Local Law.</b></p> <p>It was noted that the current conditions detailed at clause 46 (Keeping Poultry in Residential Areas) of the local law; may limit the keeping of chickens on a standard residential block.</p> <p>Conditions for keeping poultry (Basic objective)</p> <p>Keep conditions clean to prevent odour and fly breeding. Ensure persons keep or dispose of animals and animal waste in a manner that prevents a breeding place for pests. Persons consider the risk to the health or safety of surrounding persons and animals</p> <p>The following details the proposed conditions in the new local law:</p> <p>Proposed conditions:</p> <p>PART 8 - POULTRY, PIGEONS AND MISCELLANEOUS BIRDS</p> <p>8.1 Limitation on Numbers of Poultry and Pigeons</p> <p>(1) In this clause, Affiliated Person means a person who is a member of a properly constituted Poultry or Pigeon Club.</p> <p>(2) An owner or occupier of land—</p> <p>(a) who is not an Affiliated Person, must not keep a total of more than 6 poultry and 6 pigeons; and</p> <p>(b) who is an Affiliated Person, must not keep a total of more than 50 pigeons and 12 poultry, on any one lot of land.</p> <p>(3) An owner or occupier of land must not keep or suffer to remain in a residential area a rooster, turkey, goose, peacock or peahen.</p> <p>8.2 Conditions of Keeping Poultry</p> <p>(1) A person who keeps poultry or permits poultry to be kept must ensure that—</p> <p>(a) no poultry is able to approach within 10m of a dwelling, public building or food premises;</p> <p>(b) no poultry is able to approach within 10m of a public place other than a right of way unless, in the case of land at the junction of two or more streets, the local government has approved a lesser distance;</p> <p>(c) all poultry are kept in a properly constructed and securely fastened structure or enclosure;</p>

	<p>(d) no poultry is able to approach within 1m of any boundary;</p> <p>(e) the structure or enclosure does not exceed 2m in height;</p> <p>(f) there is a floor beneath the roofed area of the structure or enclosure which is constructed of smooth, impervious material and with a gradient of at least 1 in 50 to the front of the structure or enclosure;</p> <p>(g) the structure and enclosure is kept in a clean condition and good repair at all times;</p> <p>(h) all feed for the poultry is stored in vermin proof containers; and</p> <p>(i) the structure or enclosure must be in the yard having an otherwise unobstructed area of at least 30m2 .</p> <p>(2) The local government does not allow roosters on any premises in a residential area.</p>
<p>Miniature pigs:</p> <p>Does <b>the City of Albany's local law allow for the keeping of</b> miniature pigs?</p>	<p>Officer Comment:</p> <p>The current and proposed local law provide conditions on the keeping of miniature pigs.</p> <p>Proposed local law:</p> <p>Clause 4.5 Keeping of Pigs</p>
<p>Walking of animals in public:</p> <p>Can animals other than dogs (for example, cats, miniature horse etc.) be walked in public?</p>	<p>Officer Comment:</p> <p>This current and proposed local law does not prohibit the walking of <u>any animal</u> in public.</p> <p>The local law is silent, in regards to the walking of animals on public land. However, it should be noted that regardless of animal type, if a person in charge of an animal that harms a person, that act would be subject to criminal prosecution.</p>
<p>Number of Cats:</p> <p>Suggest decrease the number of cats to a maximum of two.</p>	<p>Officer Comment:</p> <p>Legislation regarding the keeping of cats was introduced in 2011. Control of cats is administered under the Cat Act 2011 and the current and proposed Local law; being:</p> <p>Clause XXX.</p> <ul style="list-style-type: none"> <li>• A person shall not keep more than 3 cats over the age of 3 months.</li> <li>• A person in a rural area, commercial area or industrial area may keep more than 3 cats with permission.</li> </ul>
<p>Cat Trapping:</p> <p>I have been informed that there is no cat laws in the City of Albany.</p> <p>Now I am aware you have more important things to worry about then some cats roaming around the streets getting hit by cars or getting barked at for hours by dogs, killing native wildlife for fun because no doubt their owners feed them.</p> <p>Now I have 2 dogs and I have neighbours with cats and the <b>fact these cats don't have collars and don't stay inside at</b> night and the other fact that no one can do anything about the multiple complaints (now I am referring to the complaints rangers get.... whose job it is to collect stray</p>	<p>Officer Comment:</p> <p>It was noted at the time and the person providing comment was advised all local laws are being reviewed and a discussion paper was prepared for consideration by Council and the feedback would be considered as a submission this review.</p> <p>The control of cats is administered under the Cat Act 2011 and the current and proposed Animal Local law.</p> <p>PART 9 – CATS</p> <p>9.1 Interpretation</p> <p>(1) In this Part, unless the context otherwise requires—</p> <p>Act means the Cat Act 2011;</p>

<p>dogs because of the hazard they are to people and wildlife) because the cat law which was put in place because of dogs barking in the middle of the night because of cats being able to wandering is not put in place by the City of Albany.</p> <p>Do you see what I'm saying you wanna make equality for women and men but aren't willing to do the same thing for cats and dogs which a hugely apart of our human lives.</p> <p>I will continue sending these messages to you until something <b>is done because it's not fair dogs should be</b> silenced by collars that shock them and make them feel like what they are meant to do is bad. Which is notify their pack of something on their territory. Such as an unwanted thief.</p> <p>I look forward to continuing to send you these emails until something is done like... cat traps you could find cats and hold them like you do stray dogs.</p>	<p>cat means an animal of the species felis catus or a hybrid of that species;</p> <p>9.2 Keeping of Cats for which a licence is required</p> <p>9.3 Cleanliness</p> <p>9.4 Application for licence</p> <p>9.5 Refusal to determine application</p> <p>9.6 Factors relevant to determination of application</p> <p>9.7 Decision on application</p> <p>9.8 Conditions</p> <p>9.9 Duration of licence</p> <p>9.10 Revocation</p> <p>9.11 Licence not transferable</p> <p>9.12 Licence to be kept at the premises and available for view</p> <p>Schedule 1 - Prescribed Offences</p> <p>Schedule 3 - ADDITIONAL CONDITIONS APPLICABLE TO PARTICULAR PERMITS</p> <p>Part 1: Permit to keep three or more cats Additional Conditions</p> <p>Part 2: Permit to use premises as a cat management facility Additional Conditions</p>
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**STATUTORY IMPLICATIONS**

18. Section 3.12 of the Local Government Act prescribes the process on how to make a local law.
19. The resolution of Council to MAKE the local law must be carried by **Absolute Majority**.

**POLICY IMPLICATIONS**

20. The proposed local law will have policy implications relating to the control of animals within the municipality, in particular:

**RISK IDENTIFICATION & MITIGATION**

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Compliance &amp; Reputation.</b> A local government is to carry out reviews and updated local laws to ensure they remain relevant.	Likely	Moderate	High	By making new local laws, Council are mitigating potential compliance, service interruption and reputational risks.
<b>Opportunity:</b> The opportunity to seek comment from both the public and stakeholders ensures the local law meets its purpose.				

**FINANCIAL IMPLICATIONS**

22. An appropriate budget line exists for the cost of giving public notice, advertising and gazettal of local laws.
23. This cost is estimated to be approximately \$500 in addition to staff time.

## LEGAL IMPLICATIONS

### Legislative Environment

24. In Western Australia Local Governments are created by, and are subject, to State law. Statutes are laws passed by the Parliament of Western Australia, a number of which are implemented by Local Governments.
25. In addition, many Acts of State Parliament also contain provision for subsidiary legislation (Regulations or Local Laws) to be made.
26. Regulations are intended to deal with the administrative detail or implementing a particular provision of an Act, or in an area that is not contentious such as setting of fees and charges.
27. Local Laws (which were once known as 'By Laws') are subsidiary legislation, made by Local Governments.
28. Local Laws must not contravene any State or Federal Act or Regulation, and in the event of any inconsistency, the Act or Regulation will override the Local Law to the extent of the inconsistency.

## ENVIRONMENTAL CONSIDERATIONS

29. Environmental considerations are an essential criteria, in particular those laws relating to the protection of our natural environment.
30. Environmental issues were considered as part of the internal review.

## ALTERNATE OPTIONS

31. Council may:
  - a. Proceed; or
  - b. Reconsider its position on the local law, in full or in part.

## CONCLUSION

32. It is recommended that the Responsible Officer Recommendation be adopted.

<b>Consulted References</b>	:	<ul style="list-style-type: none"><li>• <i>Local Government Act 1995</i></li><li>• Local Government Operational Guidelines   Number 16 – November 2011 - Local Laws</li></ul>
<b>File Number (Name of Ward)</b>	:	(All Wards)
<b>Previous Reference</b>	:	<ul style="list-style-type: none"><li>• OCM 25/09/2018 Resolution CCS087.</li></ul>

## CCS202: ANIMALS LOCAL LAW 2020

<b>Land Description</b>	: (All Wards)
<b>Attached</b>	: Finalised Proposed Draft - Animals Local Law 2019
<b>Report Prepared By</b>	: Manager Governance & Risk (S Jamieson) Manager Public Health & Safety (S Reitsma)
<b>Responsible Officers:</b>	: Chief Executive Officer (A Sharpe) Acting Executive Director Corporate & Commercial Services (D Olde)

## ADDENDUM

1. At the CCS Committee Meeting held on Tuesday 3 December 2019, City staff were requested to review the position of the Local Law relating to the keeping of pigs, keeping of bees and the keeping of poultry.
2. The following proposed amendment for the Keeping of Pigs, to reduce red tape for agricultural zoned properties and mitigate the impact on amenity on bordering residential zoned properties follows:

### 4.5 Keeping of Pigs

- (1) Except for a miniature pig, no lot shall keep a pig or pigs unless every portion of the area where the pig or pigs are kept is—
  - (a) greater than 200 metres from the lot boundary of the lot upon which the pig or pigs are to be situated; and
  - (b) greater than 100 metres from any dwelling house, dairy or other premises where food for human consumption is prepared, stored or sold.
- (2) The local government may prohibit the keeping of a miniature pig on any land or state the conditions under which they may be kept.
- (3) A person may keep one miniature pig in any residential area provided it is registered with the local government and the approved annual registration fee is paid.
- (4) The occupier of any premises where a miniature pig is kept must—
  - (a) only keep a sterilised animal and retain written proof of its sterilisation;
  - (b) confine the animal on the property at all times;
  - (c) ensure the animal does not cause a nuisance to any neighbour regarding noise, dust or odour; and
  - (d) maintain documentary evidence that the animal's veterinary treatment against roundworm and tapeworm is current.

3. The following proposed amendment for the Keeping of Bees, to address concern in regards to public health issues, due to bee stings follows:

## PART 6 - KEEPING OF BEES

### 6.1 Limitation on numbers and location of Hives

- (1) A person must not keep or permit the keeping of bees on a lot except in accordance with this Part and State Legislation.
- (2) A person may keep bees on a lot zoned for agricultural use.
- (3) The local government may, upon written application, consent, with or without conditions, to a person keeping up to 2 beehives on a lot which is not zoned for agricultural purposes.
- (4) A person keeping bees within a residential area must have undergone a responsible beekeeping training course or similar and have proof thereof.
- (5) A person must comply with any conditions imposed by the local government under subclause (3).

### **6.2 Restrictions on keeping Bees in Hives**

A person must not keep or permit the keeping of bees in a hive on a lot unless, at all times—

- (a) an adequate and permanent supply of water must be provided within 10m of the beehives;
- (b) the beehive is kept—
  - (i) at least 10m from any public place; and
  - (ii) at least 5m from the boundary of the lot; and
  - (iii) the beehive is screened from public view.

### **6.3 Bees which cause a nuisance not to be kept**

(1) A person must take reasonable measures to not keep, or permit the keeping of bees, which cause a nuisance.

(2) Whenever in the opinion of the local government, the keeping of bees is causing a nuisance, the local government may give written notice to an owner or occupier requiring the removal of any bees or beehives from the lot within the time specified in the notice.

4. The following proposed amendment for the Keeping of Poultry, to reduce compliance red tape follows:

### **8.2 Conditions of Keeping Poultry**

A person who keeps poultry or permits poultry to be kept shall ensure that -

- (a) they provide a properly constructed and securely fastened structure or coop;
- (b) all structures within which poultry are kept are maintained at all times in a clean condition;
- (c) the structure has an impervious floor to permit washing down;
- (d) subject to clause (a) poultry that have been released to free-range are otherwise confined to the property; and
- (e) the poultry do not cause or be a nuisance to any person.
- (f) All feed for poultry be stored in vermin proof containers.



## CCS203: ATTENDANCE AT EVENTS AND FUNCTIONS POLICY

<b>Land Description</b>	: (All Wards)
<b>Attached</b>	: Proposed Policy Position
<b>Report Prepared By</b>	: Manager Governance & Risk (S Jamieson)
<b>Responsible Officers:</b>	: Chief Executive Officer (A Sharpe)

### STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan and Corporate Business Plan:
  - **Theme:** Leadership.
  - **Objective:** To establish and maintain sound business and governance structures
  - **Community Priority:** Provide informed and transparent decision making that is consistent with our strategic direction, meets our legal obligations, reflect the level of associated risk and are adequately explained to community.

#### In Brief:

- To seek Committee review of proposed policy position and determine if appropriate to proceed for Council adoption.

### RECOMMENDATION

**CCS203: RESOLUTION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR DOUGHTY**  
**SECONDED: COUNCILLOR STEPHENS**

**THAT the Attendance at Events and Functions Policy be ADOPTED.**

**CARRIED 13-0**

CCS203: COMMITTEE RECOMMENDATION

MOVED: COUNCILLOR HAMMOND  
SECONDED: COUNCILLOR BENSON-LIDHOLM

THAT the Responsible Officer Recommendation be ADOPTED.

**CARRIED 11-0**

CCS203: RESPONSIBLE OFFICER RECOMMENDATION

THAT the Attendance at Events and Functions Policy be ADOPTED.

### BACKGROUND

2. As part of the Local Government Act Review it was recognised that a new gift framework should be developed to provide a transparent system of accountability where members of the community can have confidence in the decision-making of their elected representatives.
3. On 20 October 2019, the new gifts framework, contained within the *Local Government Legislation Amendment Act 2019* came into operation.

4. Local governments were advised by departmental circular 11-2019:

*Local governments must prepare and adopt a policy that relates to the attendance of council members and CEOs at events such as concerts, conferences and functions.*

*This policy must address the provision of tickets to events, payments in respect of attendance and approval of attendance by the local government and criteria for approval. New section 5.90A relates.*

*In essence, the policy deals with a council member's or CEO's attendance at events as a representative of the council. Tickets or the invitation to the event must be made to the council directly, not to the council member or CEO personally.*

*If a council member or CEO attends an event in accordance with the local government's policy, then no conflict of interest arises.*

## DISCUSSION

5. The purpose of this proposed policy is to establish guidelines for appropriate disclosure and management of acceptance of invitations to events or functions, or other hospitality occasions, where elected members and employees are invited free of charge, whether as part of their official duties as council or City representatives or not.
6. The content of the proposed policy position follows, noting the complete policy position is attached for review:

### **Policy Statements**

#### **A. Key issues to consider**

In considering whether a benefit such as an invitation to an event or hospitality given to an elected member or an employee is a gift for the purposes of the Act and Regulations, the key issues include:

- Who is a donor, the person who is offering or giving the benefit?
- What is the value of the benefit?
- Does the elected member or employee of the benefit contribute anything of value to the donor in return for the benefit such as formally opening or speaking at the event or presenting prizes/awards?
- If so, does the value of that contribution outweigh the value of the benefit? If so, it will not be a gift for the purposes of the Act and Regulations.

#### **B. Commercial entertainment events**

Any tickets accepted by an elected member or employee without payment for any commercial entertainment event, for which a member of the public is required to pay whether sponsored by the City or not will generally be classified as a gift for the purposes of the Act and Regulations.

An exception to this is where the Mayor or his / her representative attends the event in an official capacity to perform a civic or mayoral function.

Where there is a commercial entertainment event that, in the opinion of the Chief Executive Officer, it is in the interests of the City for one or more elected members or employees to attend in order to assess and understand first-hand the impacts on the community or business, then one or more tickets for that event will be purchased for the relevant elected member or employee by the City at full cost.

#### **C. Other commercial (non-entertainment) events**

For other commercial (non-entertainment) events, such as a conference or seminar, for which a member of the public is required to pay, where the Chief Executive Officer is of the opinion that it is in the interests of the City for one or more Elected Members or

employees to attend (such as for their professional development or to undertake a function as an Elected Member or employee), then one or more registrations or other benefits for that event will be purchased for the relevant Elected Member or employee by the City at full cost to enable attendance.

If the City does not pay for the event, free registration or any other benefit (such as hospitality) given to an Elected Member or employee would be classified as a 'gift' unless the contribution of the Elected Member or employee to the event (such as by way of a paper or speaking engagement) is reasonably considered to outweigh the value of registration or other benefit given to the Elected Member or employee.

#### **D. Community/local business events**

Acceptance of reasonable and modest hospitality by an Elected Member or employee at an unpaid event run by a local community group for local business would not generally be classified as a 'gift' where the contribution by the Elected Member or employee to the event is reasonably considered to outweigh the value of the hospitality.

This is more likely where the Elected Member or employee attends the event in his or her capacity as an Elected Member or employee - preferably where the attendance has been specifically authorised by the City, but otherwise where the person is performing his or her functions as an Elected Member or employee.

#### **E. Perceived or actual conflict**

Event attendance may create a perceived or actual conflict, which may preclude council members participating or employees providing advice at a future meeting.

If the amount of an event ticket (gift) is less than \$1,000, and relates to a matter before Council, under section 5.68 of the Act, Council may allow the disclosing council member to participate on the condition that the interest, the council's decision and the reasons for that decision are recorded in the minutes.

If the amount gift is above \$1,000 the council or CEO must apply to the Minister for permission to allow the member or employee to participate.

#### **Scope**

The policy provides guidance to elected members and employees when an invitation to an event or function, or other hospitality occasion, ticketed or otherwise, is offered free of charge. It does not provide guidance on the acceptance of a tangible gift or travel contribution.

**Travel and accommodation excluded:** This policy does not apply to tangible gifts or money, travel or accommodation. Any contribution to travel, subject to the exceptions in section 5.83 of the Local Government Act 1995 (the Act), must be disclosed in writing to the CEO within 10 days of receipt of the contribution.

Contributions to travel costs, whether financial or otherwise are now incorporated within the definition of gift.

The following situations are specifically excluded where the event ticket (gift) is received from one of the following organisations:

- WALGA (but not LGIS)
- Local Government Professionals Australia (WA)
- Australian Local Government Association
- A department of the public service
- A government department of another State, a Territory or the Commonwealth
- A local government or regional local government

The gift is still required to be recorded on the "gift register".

## GOVERNMENT & PUBLIC CONSULTATION

7. Public Consultation not applicable to this report.
8. Local government sector consultation was conducted in preparing this report, noting the proposed policy position was guided by the requirements of the Act and the policy position adopted by the City of Fremantle.

## STATUTORY IMPLICATIONS

### Local Government Act 1995:

9. As at 19 October 2019, section 5.90A(2), of the Act, states:  
*“A local government must prepare and adopt\* a policy that deals with matters relating to the attendance of council members and the CEO at events, including —*  
*(a) the provision of tickets to events; and*  
*(b) payments in respect of attendance; and*  
*(c) approval of attendance by the local government and criteria for approval; and*  
*(d) any prescribed matter.” Absolute Majority Required.*

## POLICY IMPLICATIONS

10. A new policy position is required to be adopted under the Act.
11. When preparing the policy or an amendment to the policy, the local government must comply with any prescribed requirements relating to the form or content of a policy under the act.
12. The CEO must publish an up-to-date version of the policy on the local government’s official website.
13. The recent changes to gifts outlined below **has not changed the current code of conduct gift provisions relating to employees** (regulation 34B of the *Local Government (Administration) Regulations 1996*).
14. These provisions will be reviewed when section 5.51A (Code of conduct for employees) of the Local Government Legislation Amendment Act 2019 is proclaimed in 2020.

## RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Compliance &amp; Reputation.</b> <i>Proposed policy is mandated under the revised local government act.</i>	<i>Likely</i>	<i>Moderate</i>	<i>High</i>	<i>By adopting the proposed policy position, Council are mitigating potential compliance and reputational risks.</i>

## FINANCIAL IMPLICATIONS

16. An appropriate budget line exists for administering this policy position.

## LEGAL IMPLICATIONS

### Legislative Environment

17. Policy positions must not contravene any State or Federal Act, Regulation or local law and in the event of any inconsistency, the Act, Regulation or local law will override the policy position to the extent of the inconsistency.

## ENVIRONMENTAL CONSIDERATIONS

18. Not applicable to this report.

## ALTERNATE OPTIONS

19. The Committee and/or Council may:

- a. Reconsider its position on the proposed policy position, in full or in part; or
- b. Recommend or adopt the proposed policy position.

## CONCLUSION

20. It is recommended that the proposed policy position be considered and pending no significant change proceed to Council for adoption.

<b>Consulted References</b>	:	<ul style="list-style-type: none"><li>• <i>Local Government Act 1995</i></li><li>• <i>Local Government (Rules of Conduct) Regulations 2007</i></li><li>• <i>Department Circular No 11-2019 – New Gifts Framework</i></li></ul>
<b>File Number (Name of Ward)</b>	:	(All Wards)
<b>Previous Reference</b>	:	<ul style="list-style-type: none"><li>• OCM 25/09/2018 Resolution CCS087.</li></ul>

**CCS204: LIST OF ACCOUNTS FOR PAYMENT – NOVEMBER 2019**

**Business Entity Name** : City of Albany  
**Attachments** : List of Accounts for Payment  
**Report Prepared By** : Manager Finance (S Van Nierop)  
**Responsible Officers:** : Executive Director Corporate Services (D Olde)

**RECOMMENDATION**

**CCS204: RESOLUTION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR GOODE**  
**SECONDED: COUNCILLOR TERRY**

**That Council RECEIVE the list of accounts authorised for payment under delegated authority to the Chief Executive Officer for the period ending 15 November 2019 totalling \$6,792,390.08.**

**CARRIED 13-0**

**CCS204: RESPONSIBLE OFFICER RECOMMENDATION**

**MOVED: COUNCILLOR SLEEMAN**  
**SECONDED: COUNCILLOR THOMSON**

**THAT the Responsible Officer Recommendation be ADOPTED.**

**CARRIED 11-0**

**CCS204: RESPONSIBLE OFFICER RECOMMENDATION**

**That Council RECEIVE the list of accounts authorised for payment under delegated authority to the Chief Executive Officer for the period ending 15 November 2019 totalling \$6,792,390.08.**

**BACKGROUND**

1. 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**

2. The table below summarises the payments drawn from the municipal fund for the period ending 15 November 2019. Please refer to the Attachment to this report.

<b>Municipal Fund</b>	
Trust	\$1,920.00
Credit Cards	\$17,096.18
Payroll	\$1,700,641.93
Cheques	\$38,862.10
Electronic Funds Transfer	\$5,033,869.87
<b>TOTAL</b>	<b>\$6,792,390.08</b>

As at 15 November 2019, the total outstanding creditors stands at \$190,647.61 and is made up as follows:-

Current	\$51,062.98
30 Days	\$139,304.48
60 Days	\$160.34
90 Days	\$119.81
<b>TOTAL</b>	<b>\$190,647.61</b>
<b>Cancelled Cheques</b>	<b>1</b>

**STATUTORY IMPLICATIONS**

3. 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.
4. The Chief Executive Officer has delegated authority to make payments from the municipal and trust fund.
5. 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.

**POLICY IMPLICATIONS**

6. Expenditure for the period to 15 November 2019 has been incurred in accordance with the 2019/2020 budget parameters.

**FINANCIAL IMPLICATIONS**

7. Expenditure for the period to 15 November 2019 has been incurred in accordance with the 2019/2020 budget parameters.

**CONCLUSION**

8. That list of accounts have been authorised for payment under delegated authority.
9. It is requested that any questions on specific payments are submitted to the Executive Director Corporate and Commercial Services by 4pm of the day prior to the scheduled meeting time. All answers to submitted questions will be provided at the Committee meeting. This allows a detailed response to be given to the Committee in a timely manner.

<b>File Number (Name of Ward)</b>	<b>:</b>	FM.FIR.2 - All Wards
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## CCS205: ORDINARY COUNCIL MEETING AND COUNCIL COMMITTEE MEETING CALENDAR 2020

**Report Prepared By** : Manager Governance and Risk (S Jamieson)  
**Responsible Officer:** : Chief Executive Officer (A Sharpe)

### STRATEGIC IMPLICATIONS

- This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:

**Theme:** Leadership

**Objectives:**

- To establish and maintain sound business and governance structures.
- To engage effectively with our community.

**Community Priorities:**

- Provide informed and transparent decision making that is consistent with our strategic direction, meets our legal obligations, reflect the level of associated risk and are adequately explained to the community.
- Develop structures and processes that engage the community and engender community confidence, and trust that their input is valued and used to inform decisions and priorities.

**In Brief:**

- Council is requested to adopt the proposed Ordinary Council Meeting and Committee Meeting schedule for 2020, in accordance with the *Local Government Act 1995* and the associated Regulations.

### RECOMMENDATION

**CCS205: RESOLUTION**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR THOMSON**

**SECONDED: COUNCILLOR SUTTON**

**THAT Council, for the purpose of giving Public Notice:**

- APPROVE the following Committee Meeting schedule for 2020:**

Community & Corporate Services Committee (CCS)	Development & Infrastructure Services Committee (DIS)
<i>No Meetings Scheduled for January 2020</i>	
Tuesday 11 February 2020	Wednesday 12 February 2020
Tuesday 10 March 2020	Wednesday 11 March 2020
Tuesday 14 April 2020	Wednesday 15 April 2020
Tuesday 12 May 2020	Wednesday 13 May 2020
Tuesday 9 June 2020	Wednesday 10 June 2020
Tuesday 14 July 2020	Wednesday 15 July 2020
Tuesday 11 August 2020	Wednesday 12 August 2020
Tuesday 8 September 2020	Wednesday 9 September 2020
Tuesday 13 October 2020	Wednesday 14 October 2020
Tuesday 10 November 2020	Wednesday 11 November 2020
Tuesday 1 December 2020	Wednesday 2 December 2020
Audit and Risk	
Tuesday 4 February 2020	
Tuesday 5 May 2020	
Tuesday 4 August 2020	
Tuesday 3 November 2020	



**2. APPROVE the proposed Ordinary Council Meeting schedule for 2020:**

- Tuesday 25 February 2020
- Tuesday 24 March 2020
- Tuesday 28 April 2020
- Tuesday 26 May 2020
- Tuesday 23 June 2020
- Tuesday 28 July 2020
- Tuesday 25 August 2020
- Tuesday 22 September 2020
- Tuesday 27 October 2020
- Tuesday 24 November 2020
- Tuesday 15 December 2020

**3. AFFIRM that all Council and Council Committee meetings commence at 6.00pm.**

**CARRIED 13-0**

**BACKGROUND**

2. Ordinary Council Meetings are held monthly, except January which has no meeting.
3. Ordinary Council Meetings commence at 6.00pm in the Council Chambers.
4. The Council Meeting Calendar is available on the City's website.
5. Terms of Reference for committees will be updated accordingly in the Governance and Meeting Framework to acknowledge the new corporate structure.
6. Committees will retain the same names.

**DISCUSSION**

7. Responsible Officer Reports (that form the Agenda for Ordinary Council meetings) are first presented to Council Committees for review and recommendation to Council.
8. These Committees are open to the public and held prior to the Ordinary Council meetings to provide the public the opportunity to address Council on matters that affect them personally or their community.
9. Meetings of Council which are open to the public commence at 6.00pm to help facilitate attendance by working members of the public and councillors.
10. Council may consider this an appropriate time to review the start time of meetings.

**GOVERNMENT & PUBLIC CONSULTATION**

11. **Meeting Start Times:** Previous community feedback requested that meetings be held at no earlier than 6.00pm.
12. Council may choose to engage with the community in order to receive feedback on the start time of meetings, and whether there is a desire within the community to hold meetings at a different time.

**STATUTORY IMPLICATIONS**

13. It is a statutory requirement for Council to give Local Public Notice at least once each year of when Council plans to hold Council and Committee meetings that are open to public attendance.
14. In accordance with *Local Government Act 1995*, section 5.25(1)(g) and as prescribed by the *Local Government (Administration) Regulations 1996*, Regulation 12:  
“(1) At least once each year a local government is to give local public notice of the dates on which and the time and place at which —  
(a) the ordinary council meetings; and

*(b) the committee meetings that are required under the Act to be open to members of the public or that are proposed to be open to members of the public, are to be held in the next 12 months.*

*(2) A local government is to give local public notice of any change to the date, time or place of a meeting referred to in sub-regulation (1).*

15. Voting requirement for this item is **Simple Majority**.

#### **POLICY IMPLICATIONS**

16. There are no policy implications related to this item.

#### **RISK IDENTIFICATION & MITIGATION**

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Legal and Compliance.</b> <i>Local Public Notice is not given of the dates and times at which the Ordinary Council Meetings and Council Committee Meetings will be held.</i>	<i>Unlikely</i>	<i>Moderate</i>	<i>Medium</i>	<i>Give Local Public Notice of the proposed dates and times or as amended by Council prior to January 2020.</i>
<b>Opportunity.</b> <i>Council has the opportunity to review the current meeting calendar.</i>				

#### **FINANCIAL IMPLICATIONS**

18. A budget line exists for the cost of Local Public Notice and advertising.

#### **LEGAL IMPLICATIONS**

19. Local Public Notice must be given to ensure legislative compliance.

20. Changes to dates and times must also be advertised publically.

#### **ENVIRONMENTAL CONSIDERATIONS**

21. There are no direct environmental considerations related to this item, however, an efficient meeting schedule will reduce wasted resources (time, travel and office consumables).

#### **ALTERNATE OPTIONS**

22. Council may consider alternate days, dates, committee meeting order and timings.

#### **SUMMARY CONCLUSION**

23. It is recommended that the proposed meeting schedule is approved.

<b>Consulted References</b>	:	<ul style="list-style-type: none"> <li><i>Local Government Act 1995</i></li> <li><i>Local Government (Administration) Regulations 1996</i></li> </ul>
<b>File Number (Name of Ward)</b>	:	All Wards
<b>Previous Reference</b>	:	<ul style="list-style-type: none"> <li>CCS103-OCM 27/11/2018</li> </ul>

## **CCS206: FINANCIAL ACTIVITY STATEMENT – NOVEMBER 2019**

<b>Proponent</b>	: City of Albany
<b>Attachments</b>	: Statement of Financial Activity
<b>Report Prepared by</b>	: Acting Manager Finance (S Van Nierop)
<b>Responsible Officer</b>	: Acting Executive Director Corporate and Commercial Services (D Olde)

### **RECOMMENDATION**

**CCS206: RESOLUTION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR SUTTON**  
**SECONDED: COUNCILLOR SHANHUN**

**THAT the Financial Activity Statement for the period ending 30 November 2019 be RECEIVED.**

**CARRIED 13-0**

### **BACKGROUND**

1. The Statement of Financial Activity for the period ending 30 November 2019 has been prepared and is attached.
2. In addition to the statutory requirement to provide Council with a Statement of Financial Activity, 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.
6. These financial statements are still subject to further yearend adjustments and have not been audited by the appointed auditor.

*“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.”*

### **STATUTORY IMPLICATIONS**

7. 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.

#### **POLICY IMPLICATIONS**

8. The City's 2019/20 Annual Budget provides a set of parameters that guides the City's financial practices.
9. The Investment of Surplus Funds Policy stipulates that the status and performance of the investment portfolio is to be reported monthly to Council.

#### **FINANCIAL IMPLICATIONS**

10. Expenditure for the period ending 30 November 2019 has been incurred in accordance with the 2019/20 proposed budget parameters.
11. 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.

<b>File Number (Name of Ward)</b>	FM.FIR.7 - All Wards
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## DIS188: PROPOSED ACCESS TO CITY-OWNED WATER STANDPIPES BY COMMUNITY USERS & COMMERCIAL OPERATORS

<b>Land Description</b>	: City of Albany Municipality
<b>Proponent / Owner</b>	: City of Albany
<b>Attachments</b>	: 1. Water Corporation Fixed Standpipes FAQs 2. Guidelines for the Bulk Cartage of Drinking Water 3. Water Corporation Fire Standpipes Fact Sheet
<b>Report Prepared By</b>	: Manager Governance and Risk (S Jamieson) Personal Assistant (A Paulley)
<b>Responsible Officers:</b>	: Executive Director Infrastructure Development & Environment (P Camins)

*Note: A Confidential Briefing Note has been distributed under separate cover in accordance with section 5.23 of the Local Government Act 1995(2)(e)(iii), being a matter that if disclosed, would reveal information about the commercial affairs of a person other than the Local Government.*

### STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
  - **Theme:** Leadership.
  - **Objective:** To provide strong, accountable leadership supported by a skilled and professional workforce
  - **Community Priority:** Provide positive leadership that delivers community outcomes.

### Maps and Diagrams:



### In Brief:

- On 1 July 2019, the Water Corporation introduced new charges for Local Government standpipes in order to regulate the use of and pricing for water as a valuable natural resource.
- Local Governments were asked to control access to their standpipes in order to manage water usage by community and commercial users.
- Local Governments are entitled to access concessional pricing for water used for their own purposes but the Water Corporation was aware that some commercial operators were accessing Local Government-owned standpipes at concessional rates, rather than at higher commercial rates.
- Council is requested to determine if the City should facilitate or not facilitate the selling of water to community and commercial users.
- Three policy positions have been prepared for Council review in relation to requested determination.

**RECOMMENDATION**

**DIS188: RESOLUTION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR SUTTON**  
**SECONDED: COUNCILLOR THOMSON**

**THAT Council:**

**(1) ADOPT the following policy position:**

*“Commercial access to City-owned standpipes be permitted, but limited to water carters on a cost recovery basis (including an administration/maintenance fee).” (Option 1 as detailed in the report).*

**(2) ENDORSE the Officers course of action to:**

- a) **APPROVE** use of the 40mm Chester Pass Road standpipe, meter number EK1800463, for access by commercial operators for the purpose of carting potable water to Albany residents who are not connected to scheme water.
- b) The creation of a City of Albany standpipe access administrative policy and approval process, which includes the requirement for commercial carters to be registered as a food business.
- c) **Permit** the use of potable water from standpipe meter number EK1800463 for residential supply only, except in a declared drought or major fire.

**CARRIED 13-0**

**DIS188: COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR SUTTON**  
**SECONDED: COUNCILLOR STOCKS**

**THAT the Responsible Officer Recommendation be ADOPTED.**

**CARRIED 11-0**

**DIS188: RESPONSIBLE OFFICER RECOMMENDATION**

**THAT Council:**

**(1) ADOPT the following policy position:**

*“Commercial access to City-owned standpipes be permitted, but limited to water carters on a cost recovery basis (including an administration/maintenance fee).” (Option 1 as detailed in the report).*

**(2) ENDORSE the Officers course of action to:**

- a) **APPROVE** use of the 40mm Chester Pass Road standpipe, meter number EK1800463, for access by commercial operators for the purpose of carting potable water to Albany residents who are not connected to scheme water.
- b) The creation of a City of Albany standpipe access administrative policy and approval process, which includes the requirement for commercial carters to be registered as a food business.
- c) **Permit** the use of potable water from standpipe meter number EK1800463 for residential supply only, except in a declared drought or major fire.

**BACKGROUND**

2. In September 2017, the Water Corporation conducted a review of fixed standpipe services in Western Australia. As part of the stakeholder consultation, City officers provided feedback that they had not experienced excessive use of City standpipes by community and commercial users, and suggested that the Water Corporation could install card systems to control use by commercial contractors.

3. At that time, the City owned and operated 17 standpipes, allowing access to some of them by commercial water carting contractors. There were 4 contractors who were charged \$2.50 per 1,000 litres of water. They were issued with documents to record their water usage and would submit them on an ad-hoc basis to City officers for invoicing.
4. In August 2018, the Water Corporation announced changes to pricing of potable water from Local Government-owned fixed standpipes in country areas, effective from 1 July 2019. LGAs were entitled to access concessional pricing for water used for their own purposes. However, high flow rate LGA standpipes (larger than 25mm) which were accessible to the public would be charged at higher commercial rates. There was, and still is, no charge for water consumption for fire-fighting purposes.
5. The Water Corporation asked Local Governments to re-categorise their standpipes and decide if they wanted to be in the business of selling water.
6. City officers identified 5 unrequired standpipes for decommissioning. They also concluded that the City should not be in the business of selling water for the following reasons:
  - a. It was not the City of Albany's core business to provide water.
  - b. Two commercial operators in Albany had already expended significant funds to install their own private standpipes and assisting other commercial operators could be viewed as inequitable.
  - c. This was perceived to be a cost shifting exercise from State Government to Local Government.
7. In December 2018, the Water Corporation advised LGAs to lock their dedicated fire-fighting standpipes in order to prevent public and commercial use at all times (Attachment 3). All the City's fire standpipes were padlocked in December 2018.
8. Standpipes are now only accessible to the City's emergency services staff together with bushfire brigade staff and volunteers. Signs were installed at fire standpipes advising the community that they were for fire-fighting and training use only. However, three commercial contractors were given keys to access water from the King River fire standpipe on Chester Pass Road as a temporary arrangement until 1 July 2019. This 40mm standpipe gave a sufficient flow rate for commercial operators. They were invoiced for their water usage only.
9. Contractors returned their standpipe keys in June 2019 and there has been no known access to any City-owned standpipes by community or commercial users since 1 July 2019.
10. The City of Albany currently operates 12 standpipes - 11 for fire-fighting and 1 located at the Mercer Road depot used for public works. The Mercer Road depot standpipe is located within the secure depot compound and is only accessible to City staff and authorised contractors working on City projects.
11. Officers obtained quotes for solar-powered, internet-connected standpipe controller systems with swipe cards for users. The price per standpipe system was approximately \$17,400 ex-GST plus plumbing costs. Ongoing charges for software, customer support, cloud-based server and annual inspection fees totalled \$1,305 ex-GST per annum.
12. Example of standpipe controller system:-

- Free standing unit ready for connection by local plumber.
- The frame requires a small concrete pad of 1 x 1m and about 150 mm thick.
- Each user has a swipe card to access the water supply.
- Once the user is provided with access (the light flashes green), the start button opens the motorised valve and the water meter will start recording the usage and logs that against the person linked to the access card.



## DISCUSSION

13. Changes in water charges by the Water Corporation on rural fixed water standpipes has facilitated a review of how the City manages its standpipe assets.
14. It is acknowledged that water is a valuable and scarce commodity, and that access to potable water is important to the community, essentially a human right.

### Fire Fighting:

15. Access to standpipes for a fire emergency will remain the same, with all Brigade Bush Fire Control Officers (BFCO's) being issued with a key to unlock padlocks on fire standpipes.

### Potable Water Access:

16. As stated in the Water Corporation's Frequently Asked Questions (FAQs) document (Attachment 1), Local Governments are able to set the price for on-selling water at their discretion. Charging GST on water is not permitted.
17. Consultation with local commercial water carting contractors identified only 2 operators who requested access to City-owned standpipes. The other 2 operators have installed their own standpipes.
18. Officers believe that, at this stage, the City can avoid installing costly standpipe control systems by setting up a basic user pays system, similar to the one being operated by the Shire of Augusta-Margaret River. Noting, an electronic standpipe control system, could be installed in the future if the number of community / commercial users increases.

### Public Health:

19. The City's Environmental Health Officers have advised that potable water carting businesses that transport quantities in excess of 100 litres of water need to comply with the Department of Health's *Guidelines for the Bulk Cartage of Drinking Water* (Attachment 2). The purpose of the guidelines is to ensure that equipment used to collect, contain and transport drinking water does not become a source of contamination which can cause illness or disease.
20. The Guidelines for Bulk Cartage of Drinking Water address the following issues:
  - responsibilities of the carrier
  - design, construction, maintenance of containers and fitments
  - selection of drinking water sources
  - collection, transportation and discharge
  - disinfection of drinking water
  - consumer advice
  - record keeping.



21. The water carrier is responsible for ensuring that the water provided to consumers complies with the *Australian Drinking Water Guidelines 2004*. This includes the chemical and bacterial quality of the water.
22. Potable water carriers must notify the local government in which the vehicles are normally kept, and must register as food business with the local government, prior to commencing operation. The Local Government Environmental Health Officer will undertake an inspection of the vehicle and check safe processes are in place and contamination risks are minimised, prior to issuing a Food Business Registration Certificate.
23. It is recommended that Commercial water carting operators who access City standpipes be registered as a food business if the water is intended for human consumption and use (i.e. showering).

**Proposed Process:**

24. **Option 1:** For each load of water taken, approved users would first obtain a standpipe key from the City's Mercer Road depot and later return the key with a completed standpipe record of readings form.
25. The standpipe would be accessible during depot office hours only, i.e. Monday to Friday, 7.30am – 4.30pm.
26. **Option 2:** Alternatively, users could be given a key to access the standpipe at any time and submit their completed standpipe record of readings forms every 2 months to coincide with billing times.
27. When the City receives bi-monthly invoices from the Water Corporation, it would on-charge the costs by:-
  - a) Equally dividing the annual service charges between commercial operators;
  - b) Allocating the water usage costs based on the litres stated on the record of readings forms completed by each operator; and
  - c) Adding a fee to cover administration and maintenance costs of operating this service for the public.

**GOVERNMENT & PUBLIC CONSULTATION**

**28. Community Engagement**

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Inform	Public Notice in newspapers Great Southern Weekender Albany Advertiser.	19 & 26 September 2019 17 & 26 September 2019	1 phone call from a resident who was on scheme water and wanted to complain about the proposed pipeline from Albany to Denmark.	N/A
Consult	Survey forms emailed to 4 known water carting contractors in Albany.	Surveys emailed on 10 September 2019. Deadline for return of completed surveys was 11 October 2019.	3 completed survey forms were returned.	N/A

## STATUTORY IMPLICATIONS

29. In accordance with section 6.19 of the Local Government Act 1995, changes to fees and charges: If a Local Government wishes to impose any fees or charges after the annual budget has been adopted, it must, before introducing the fees or charges, give local public notice of:
- its intention to do so; and
  - the date from which it is proposed the fees or charges will be imposed.

## POLICY IMPLICATIONS

30. It is recommended that the current arrangements for standpipe use remain in place until a policy position is made by Council.
31. The following proposed policy positions are proposed for review:-
- Commercial Standpipe:** Should City-owned standpipes be made available to commercial operators to purchase water? Yes or No.
  - Declared Drought Conditions:** That during a declared Water Deficiency Event (drought) made by the State Government, farmers will be provided access to water from any standpipe at a concessional rate, in accordance with the deficiency declaration.
  - Firefighting:** All standpipes be made available for firefighting. Bush Fire Brigades to be issued a key to unlock the padlocks during a fire incident. Noting farm fire-fighting tanks should be filled from a local water source from the owner's property (eg. dams) and not utilise potable water for that purpose. However, in the event of a fire, farmers can use any standpipe to fill their units.

## RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Business Operation, Reputation &amp; Financial.</b>  <b>Risk:</b> There is a risk that by not allowing community & commercial users access to City standpipes, those residents who are not connected to scheme water will find it difficult to access potable water.	Likely	Moderate	High	Establish a proposed policy position and allow access to a City-owned standpipe, balancing community need and cost recovery.
<b>Opportunity:</b> Facilitate the human right to access potable water for residents not connected to scheme water, while ensuring that the valuable resource is not exploited by commercial operators.				

## FINANCIAL IMPLICATIONS

### Water Charges

33. The City received advice from the Water Corporation that new pricing of water from Council-owned standpipes would come into effect and increase from 1 July 2019.
34. Currently, Council approved fee, charges \$2.53 per kilolitre and does not on-sell for profit.
35. Annual water service charges have not been on-charged to users in the past.

36. For the Chester Pass Road standpipe, meter number: EK1800463, The City would be charged the following based on current 2019/2020 rates:-

Chester Pass Road - Meter Number: EK1800463 (formerly meter number EK0700752 – the old faulty meter was recently replaced)	
40mm meter water service charge	\$1,088.27 annually or \$181.37 bi-monthly (based on 6 meter readings per year)
Water usage charge (per kilolitre = 1,000 litres)	Town Class Step 11 applies which is currently \$6.089 per kilolitre

37. Council will be required to amend its fee for the current and future budgets if it chooses to provide water.
38. GST must not be charged on the annual service charges or the water use charges. The City could only charge GST on its administration/infrastructure maintenance fee when invoicing community users or commercial operators.

#### **Commercial Water Access Facilities**

39. If Council chooses to upgrade and / or supplement its water standpipe system by installing controllers at standpipes, the following is proposed:-
- Access to any designated, metered City standpipe may be controlled with an electronic swipe card system, with all costs being passed on to community and commercial users.
40. The City has not set a proposed revised fee yet (*this will happen as part of a budgeting amendment process for the current budget*). However, the rate will not be less than the rate charged by the Water Corporation, which is currently up to \$8.353 per kilolitre depending on the size of the standpipe.

#### **LEGAL IMPLICATIONS**

41. It is a human right to have access to potable water.
42. The entity (Federal, State or Local) responsible for providing access to water is debateable.

#### **ENVIRONMENTAL CONSIDERATIONS**

43. It is considered appropriate to develop a policy position to ensure that the human right to access potable water for residents not connected to scheme water is maintained or improved, while ensuring that the valuable resource is not wasted.
44. The Water Corporation has decided not to decommission the 5 unrequired standpipes identified by the City. Instead, it will cap them to ensure easy access in case of future droughts and major fire events.

#### **ALTERNATE OPTIONS**

45. Council has three main options to consider:-
- **Option 1:** Provide commercial access to City-owned standpipes to Commercial water carters on a cost recovery basis plus an administration/maintenance fee; and/or
  - **Option 2:** Provide community / commercial users with access to City-owned standpipes via controlled standpipe infrastructure; or
  - **Option 3:** Not provide community / commercial users with access to City-owned standpipes and refer them to the Water Corporation.

**CONCLUSION**

46. It is recommended that the Chester Pass Road standpipe meter number EK1800463 be made available to identified commercial operators for the purposes of carting potable water to Albany residents who are not connected to scheme water, while complying with the conditions detailed above.

<b>Consulted References</b>	:	Further information from the Water Corporation on Fixed Standpipes can be accessed on <a href="#">their website</a> .
<b>File Number (Name of Ward)</b>	:	GR.STL.91 and CR.COC.66 (All Wards)
<b>Previous Reference</b>	:	Nil

## DIS189: ROAD WIDENING – INTERSECTION OF LOWER DENMARK ROAD & TENNESSEE ROAD SOUTH

<b>Land Description</b>	: Unallocated Crown land Lot 3663
<b>Proponent / Owner</b>	: State of WA
<b>Attachments</b>	: NIL
<b>Report Prepared By</b>	: Lands Officer (A Veld)
<b>Responsible Officers:</b>	: Executive Director Infrastructure, Development and Environment (P Camins)

### STRATEGIC IMPLICATIONS

1. This item relates to the following element of the City of Albany Strategic adopted *Community Strategic Plan – Albany 2030*:
  - **Theme:** A connected and safe built environment.
  - **Objective:** To advocate, plan for and build friendly and connected communities
  - **Community Priority:** Improve connectedness and traffic flows via a well-designed and safe transport and pathway network that connects people and services and encourages pedestrians and cyclists.

### Maps and Diagrams:



### In Brief:

- In 2016, the City of Albany sent a request to the Minister for Lands to dedicate a portion of Lot 3663 Unallocated Crown Land as road reserve.
- The dedication was subsequently put on hold pending finalisation of the South West Native Title Settlement matter, which is now under Judicial Review (delaying proceedings).
- The City now seeks to request the Minister for Lands to validate the proposal as a future act under section 24KA of the *Native Title Act 1993 (Cth)* so the land can be dedicated as road reserve independent of the South West Native Title Settlement.
- The Department of Planning Lands & Heritage now require a Council resolution in order to progress this matter under section 24KA of the *Native Title Act 1993 (Cth)*.

**RECOMMENDATION**

**DIS189: RESOLUTION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR GOODE**  
**SECONDED: COUNCILLOR SMITH**

**THAT Council;**

**SEEKS the Minister for Lands approval, under section 56 of the *Land Administration Act 1997*, to acquire a 351m<sup>2</sup> wide portion of land from Lot 3663 Unallocated Crown Land, Lowlands, for the purposes of dedicating it as a road reserve;**

**INDEMNIFIES the Minister for Lands from any claims for compensation, as is required under Section 56 of the *Land Administration Act 1997*; and**

**INDEMNIFIES and will keep indemnified the State of Western Australia, the Department of Planning Lands & Heritage and the Minister for Lands and hold them harmless from and against all liabilities, obligations, costs, expenses or disbursements of any kind including and without limitation, compensation payable to any party under the *Native Title Act 1993 (Cth)* which may be imposed on or incurred by the Indemnified Parties relating to or arising directly or indirectly from the road dedication.**

**CARRIED 13-0**

**DIS189: COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR STEPHENS**  
**SECONDED: COUNCILLOR SMITH**

**THAT the Responsible Officer Recommendation be ADOPTED.**

**CARRIED 11-0**

**DIS189: RESPONSIBLE OFFICER RECOMMENDATION**

**THAT Council;**

**SEEKS the Minister for Lands approval, under section 56 of the *Land Administration Act 1997*, to acquire a 351m<sup>2</sup> wide portion of land from Lot 3663 Unallocated Crown Land, Lowlands, for the purposes of dedicating it as a road reserve;**

**INDEMNIFIES the Minister for Lands from any claims for compensation, as is required under Section 56 of the *Land Administration Act 1997*; and**

**INDEMNIFIES and will keep indemnified the State of Western Australia, the Department of Planning Lands & Heritage and the Minister for Lands and hold them harmless from and against all liabilities, obligations, costs, expenses or disbursements of any kind including and without limitation, compensation payable to any party under the *Native Title Act 1993 (Cth)* which may be imposed on or incurred by the Indemnified Parties relating to or arising directly or indirectly from the road dedication.**

**BACKGROUND**

1. In 2016 the City of Albany sent a request to dedicate portion of Lot 3663 Unallocated Crown Land as road reserve.
2. Due to this land being Unallocated Crown Land, it was allocated for inclusion into the South West Native Title Settlement package.
3. As a result of this, the City's proposal was subsequently put on hold pending finalisation of the Settlement, which is now under Judicial Review. This review can potentially further delay City proceedings and operations.

**DISCUSSION**

4. The Department of Planning Lands & Heritage have requested that the City provide a Council resolution under Section 56 of the *Land Administration Act 1997* and indemnify the State of Western Australia, the Department of Planning Lands & Heritage and Minister for Lands, as is required under the *Native Title Act 1993 (Cth)*.

**GOVERNMENT & PUBLIC CONSULTATION**

5. A Public notice was placed in the Albany Advertiser on 22 November 2016 asking for submission on the proposal.
6. The public comment period was open for 45 days with no comments having been received by submission close on 6 January 2017.
7. The City also sent letters out to all service providers on 16 November 2016. Five responses were received with no objections to the proposal.
8. Community Engagement (Examples)

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Consult	Mail Out	22/11/2016 – 6/01/2017	0	Yes
Consult	Public Notice	16/11/2016- 06/01/2017	5	Yes

**STATUTORY IMPLICATIONS**

9. The City of Albany has delegated authority to forward road dedication requests to the Minister for Lands without a Council resolution.
10. Notwithstanding the above, in order for this proposal to be considered under section 24KA of the *Native Title Act 1993*, the Department of Planning Lands & Heritage require the matter to be put before Council.

**POLICY IMPLICATIONS**

11. There are no policy implications relating to this report.

**RISK IDENTIFICATION & MITIGATION**

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Financial</b>  <b>Risk:</b> There is a risk that by not progressing with the proposal under 24 KA of the Native Title Act 1993, the dedication may not be able to progress and will be dependent upon the South West Native Title Settlement being finalised.	Likely	Minor	Medium	If the proposal is not progressed, the City will have this matter pending finalisation of the South West Native Title Settlement.
<b>Opportunity:</b> To expend funds as per the 2016 Lands budget				

**FINANCIAL IMPLICATIONS**

13. Costs for advertising and preparation of a Deposited Plan were identified during the project planning process and allocated from the 2016/17 Lands budget. This allocation has now rolled over for 4 years.

## LEGAL IMPLICATIONS

14. There are no legal implications relating to this report.

## ENVIRONMENTAL CONSIDERATIONS

15. There are no environmental considerations relating to this report.

## ALTERNATE OPTIONS

16. Council may consider alternate options in relation to this item, such as
- a. Deny the request to dedicate the proposed portion of Unallocated Crown Land under section 56 of the *Land Administration Act 1997* and validate the proposal as a future act under section 24KA of the *Native Title Act 1993 (Cth)*; or
  - b. Support the request to dedicate the proposed portion of Unallocated Crown Land under section 56 of the *land Administration Act 1997* and validate the proposal as a future act under section 24KA of the *Native Title Act 1993 (Cth)* with modifications.

## CONCLUSION

17. In 2016 the City of Albany sent a request to dedicate portion of Lot 3663 Unallocated Crown Land as road reserve.
18. Due to this land being Unallocated Crown Land, it was allocated for inclusion into the South West Native Title Settlement package.
19. As a result of this, the City's proposal was subsequently put on hold pending finalisation of the Settlement, which is now under Judicial Review.
20. The City now seeks to request the Minister for Lands to validate the proposal as a future act under section 24KA of the *Native Title Act 1993 (Cth)* so the land can be dedicated as road reserve independent of the South West Native Title Settlement.
21. The Department of Planning Lands & Heritage now require a Council resolution in order to progress this matter under section 24KA of the *Native Title Act 1993 (Cth)*.

<b>Consulted References</b>	:	<i>Land Administration Act 1997</i> <i>Native title Act 1993 (Cth)</i>
<b>File Number (Name of Ward)</b>	:	RD.ACQ.1 (West)
<b>Previous Reference</b>	:	Nil



**DIS190: HOLIDAY ACCOMMODATION – 62 PARADE STREET,  
ALBANY WA 6330**

<b>Land Description</b>	: Lot 14, 62 Parade Street, Albany WA 6330
<b>Proponent</b>	: JP & CJ Mead
<b>Business Entity Name</b>	: NIL
<b>Attachments</b>	: 1. Area Plan 2. Copy of Application 3. Schedule of Submissions
<b>Report Prepared By</b>	: Coordinator Planning Services - (A Bott)
<b>Responsible Officers:</b>	: Executive Director Infrastructure, Development and Environment (P Camins)

**STRATEGIC IMPLICATIONS**

1. Council is required to exercise its quasi-judicial function in this matter.
2. In making a decision on the proposed development application, Council is obliged to draw conclusion from its adopted *Community Strategic Plan – Albany 2030*.
  - a) The *Albany Community Strategic Plan – Albany 2030* recommends a proactive planning service that supports sustainable growth while reflecting our local character and heritage (Community Priority: 5.1.2).
3. The item relates to the following Strategic Objective of the Albany Local Planning Strategy (ALPS):
  - a) *Enable tourist growth and diversification through land use planning mechanisms.*

**Maps and Diagrams:** Subject Site – 62 Parade Street, Albany



**In Brief:**

- On 2 October, 2019, the City of Albany received a planning application for Holiday Accommodation at 62 Parade Street, Albany.
- The matter was subject to public advertising. Through this process, three submissions raising concerns with the proposal were received.
- Due to the provisions of the City of Albany's Holiday Accommodation Policy, the proposal is required to be referred to Council for determination.
- Staff consider that the proposal is in accordance with City of Albany Holiday Accommodation policy and recommend the proposal be supported subject to conditions.

**RECOMMENDATION**

**DIS190: RESOLUTION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

**Moved: Councillor Stocks**  
**Seconded: Councillor Stephens**

**THAT Council resolves to ISSUE a notice of determination granting development approval, subject to the following conditions, for Holiday Accommodation at 62 Parade Street, Albany:**

**Conditions:**

1. All development shall occur in accordance with the stamped, approved plans referenced P2190481 and dated **XX XX 2019**, unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.
2. If the development, the subject of this approval, is not substantially commenced within a period of 2 years from the date of approval, the approval shall lapse and be of no further effect.
3. A revised management plan shall be submitted, approved and implemented to the satisfaction of the City of Albany, the revised plans to address the following;
  - Reducing number of guests to eight;
  - Additional measures in relation to pets creating disturbance.
4. The operation of the holiday accommodation hereby approved shall be in accordance with the approved management plan, which shall be reviewed and updated at the time of any change of ownership or management, to the satisfaction of the City of Albany.
5. The holiday accommodation hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust to any extent greater than what is to be expected within a residential zone.
6. The holiday accommodation hereby approved shall only be used for short stay accommodation, with any single tenant permitted to stay for no more than three months in any twelve month period.
7. The operator or manager of the holiday accommodation hereby approved shall maintain an annual register of all guests to the satisfaction of the City of Albany. A receipt book must also be kept.
8. Each bedroom utilising beds shall have a floor space of not less than four square metres per person; each bedroom utilising bunks shall have a floor space of not less than 2.5 square metres.
9. Sign(s) shall not be erected on the lot without the prior approval of the City of Albany.

**Advice Condition 10:**

***Please refer to the City of Albany Local Planning Policy 2B – Signs for further information.***

- 10. Two tandem parking spaces shall be provided per approved holiday accommodation on the lot.**
- 11. Vehicular parking must be contained within the lot boundaries at all times.**
- 12. Lighting devices are to be positioned and shielded so as not to cause any direct, reflected or incidental light to encroach beyond the property boundaries, in accordance with Australian Standard AS4282/1997.**

**CARRIED 13-0**

DIS190: COMMITTEE RECOMMENDATION  
VOTING REQUIREMENT: SIMPLE MAJORITY

MOVED: COUNCILLOR THOMSON  
SECONDED: MAYOR WELLINGTON

THAT the Responsible Officer Recommendation be ADOPTED.

**CARRIED 11-0**

DIS190: COMMITTEE RECOMMENDATION

THAT Council resolves to ISSUE a notice of determination granting development approval, subject to the following conditions, for Holiday Accommodation at 62 Parade Street, Albany:

Conditions:

1. All development shall occur in accordance with the stamped, approved plans referenced P2190481 and dated **XX XX 2019**, unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.
2. If the development, the subject of this approval, is not substantially commenced within a period of 2 years from the date of approval, the approval shall lapse and be of no further effect.
3. A revised management plan shall be submitted, approved and implemented to the satisfaction of the City of Albany, the revised plans to address the following;
  - Reducing number of guests to eight;
  - Additional measures in relation to pets creating disturbance.
4. The operation of the holiday accommodation hereby approved shall be in accordance with the approved management plan, which shall be reviewed and updated at the time of any change of ownership or management, to the satisfaction of the City of Albany.
5. The holiday accommodation hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust to any extent greater than what is to be expected within a residential zone.
6. The holiday accommodation hereby approved shall only be used for short stay accommodation, with any single tenant permitted to stay for no more than three months in any twelve month period.
7. The operator or manager of the holiday accommodation hereby approved shall maintain an annual register of all guests to the satisfaction of the City of Albany. A receipt book must also be kept.
8. Each bedroom utilising beds shall have a floor space of not less than four square metres per person; each bedroom utilising bunks shall have a floor space of not less than 2.5

square metres.

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

*Advice Condition 10:*

*Please refer to the City of Albany Local Planning Policy 2B – Signs for further information.*

10. Two tandem parking spaces shall be provided per approved holiday accommodation on the lot.
11. Vehicular parking must be contained within the lot boundaries at all times.
12. Lighting devices are to be positioned and shielded so as not to cause any direct, reflected or incidental light to encroach beyond the property boundaries, in accordance with Australian Standard AS4282/1997.

## BACKGROUND

4. Local Planning Scheme No. 1 was gazetted on 28 April 2014 and consists of the Scheme Text and the Scheme Maps. The Scheme divides the Local Government district into zones to identify areas for particular uses and identifies land reserved for public purposes. Most importantly, the Scheme controls the types of uses and development allowed in different zones. There are particular controls included for heritage and special control areas. The Scheme Text also sets out the requirements for planning approval, enforcement of the Scheme provisions and non-conforming uses.
5. The site is located approximately 300m west of the Albany CBD. The property is 1012m<sup>2</sup> in size and zoned Residential R30 under Local Planning Scheme No.1.
6. The immediate surrounding properties are also zoned Residential R30.
7. The application was advertised for public comment for a period of 21 days, with nearby landowners directly notified by letter.
8. Three submissions were received during advertising which raised concerns in respect to the proposal. The concerns raised are summarised later in this item.
9. Council is now requested to consider the submissions received during the public advertising period and determine whether to grant development approval.

## DISCUSSION

10. The applicant has provided the following (summarised) outline of how the proposed holiday house will operate:
- The property will be managed by the landowners, with additional management and maintenance assistance provided from a resident based in Albany.
  - A maximum of eight guests is proposed (originally 12).
  - Parties and functions are prohibited, further to this, excessive noise will result in eviction
  - No functions or parties being permitted that would conflict with residential amenity.
  - Pets are proposed to be permitted if kept outside.
  - Guests and visitors must comply with access and parking regulations provided.

11. The main planning concerns raised and the proposed mitigation measures are addressed, as follows;
  - The proposal potentially impacting upon the amenity and character of the area;
  - Concerns in relation the number of guests;
  - The proposed holiday accommodation allowing pets;
  - Existing lighting at the rear of the property being excessive; and
  - Proliferation of Holiday homes.
12. The applicant was contacted in relation to the number of guests proposed and has agreed to reduce the number to eight. A condition will be applied for the management plan to include this revision.
13. In respect to the amenity and character of the area, it is necessary to consider that the proposal is located within the preferred area for holiday accommodation within the City of Albany Holiday Accommodation Local Planning Policy. It is considered that with the implementation of a suitable management plan as a condition of approval, that the use will not detrimentally affect the character or amenity of the area.
14. The keeping of domestic animals is permitted on a residential property. The proponent has included a number of provisions within the management plan outlining that pets must remain outside, be flea free and not damage the garden. While these provisions protect the landowner's property, it is considered appropriate for more measures to be added to protect the amenity of the surrounding area. It is therefore recommend that a condition be put on the approval requiring additional management measures in respect to pets.
15. In respect to the issue raised in relation to the lighting located at the rear of the property, it is considered that a condition requiring compliance with Australian Standard AS4282/1997 will be appropriate. The referenced Australian standard covers the matter of light spillage from properties and the impact they have on adjoining properties. It is expected that modification to the bulb type or adjustment of the angle will mitigate this matter.
16. In relation to the comments made regarding the perceived proliferation of holiday homes, it is necessary to consider that the Holiday House is classified as a "D" use within the 'Residential' zone under *Local Planning Scheme No. 1*. Further to this, the City of Albany's Local Planning Policy covering the matter outlines the location of the proposal as being within the preferred area.
17. The application is considered to be generally consistent with the City of Albany's Holiday Accommodation Local Planning Policy. Further to this, it is considered that any potential amenity impacts will be mitigated by the proposed management measures and revised parking plan.

#### GOVERNMENT & PUBLIC CONSULTATION

18. The application was advertised for public comment for a period of 21 days, with nearby landowners directly notified by letter.
19. Three submissions were received during advertising which raised concerns in respect to the proposal. The broad issues are discussed in the paragraphs, above and in the attached schedule of submissions.

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Consult	Mail Out	9/10/2019 to 31/10/2019	3 Submissions received	Yes

## STATUTORY IMPLICATIONS

20. A Holiday House is classified as a “D” use within the ‘Residential’ zone under *Local Planning Scheme No. 1*, meaning that the use is not permitted unless the Local Government has exercised its discretion by granting planning approval.
21. Voting requirement for this item is **SIMPLE MAJORITY**

## POLICY IMPLICATIONS

22. The proposal is subject to the City of Albany Holiday Accommodation Local Planning Policy.
23. The primary reason the matter has been referred to council for consideration is due to the position within this policy which states;

*“Where a neighbour objects to a proposal, the application is to be referred to the Council for deliberation and considered in view of the following:*

- a. The proximity of the holiday accommodation to key tourism attractions such as the beach or town centre/activity centre (typically a 5 minute walk – 400m); Location within a street(s) which facilitates safe, efficient and pleasant walking, cycling and driving;*
  - b. Location compatible with Figure A below (the areas illustrated are within close proximity to the town centre and popular swimming beaches).”*
  - c. A management plan designed to facilitate community concerns.*
24. The following comments are made in respect to the above matters of consideration:
  25. As per Figure A of the Local Planning Policy, the proposal is located within the preferred area for Holiday Accommodation.
  26. In accordance with the policy, the applicant has also submitted a management plan which controls the usage of the property and places clear guidance for its use. Measures to protect amenity through the management of the site include;
    - A maximum of eight guests is now proposed.
    - Parties and functions are prohibited, further to this, excessive noise will result in eviction
    - No functions or parties being permitted that would conflict with residential amenity.
    - Pets are proposed to be permitted if kept outside.
    - Guests and visitors must comply with access and parking regulations provided.
  27. It is considered that the proposal meets the key matters of the Holiday Accommodation Local Planning Policy and is capable of approval subject to appropriate conditions.

## RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Reputation.</b> <i>The approval may generate unacceptable impacts on the amenity on the area.</i>	<i>Possible</i>	<i>Minor</i>	<i>Low</i>	<i>The application and adherence of appropriate planning conditions will mitigate this risk.</i>
<b>Opportunity:</b> <i>Responds to market demand for holiday accommodation in a controlled fashion.</i>				



### FINANCIAL IMPLICATIONS

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

### LEGAL IMPLICATIONS

30. As per the appeal rights conferred by the *Planning and Development Act 2005*, the decision on the matter can be appealed to the State Administrative Tribunal.

### ENVIRONMENTAL CONSIDERATIONS

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

### ALTERNATE OPTIONS

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

- To resolve to refuse the proposal subject to reasons; and
- To resolve to approve the proposal subject to additional or modified conditions.

### CONCLUSION

33. The proposal is considered to be consistent with the objectives of the zone and the requirements of the *City of Albany's Holiday Accommodation* local planning policy.
34. The proposal has been modified to reduce the number of guests and include additional management measures in respect to pets on the premises.
35. The matters raised in the public submissions received during the advertising period have also been broadly addressed by the proponent and can be mitigated through the application of appropriate planning conditions.
36. It is therefore recommended that Council approve the proposed development, subject to the conditions provided.

Consulted References	:	1. <i>Local Planning Scheme No.1</i> ; 2. <i>Holiday Accommodation Local Planning Policy</i>
File Number (Name of Ward)	:	A107339 Frederickstown Ward
Previous Reference	:	Nil

**DIS191: HOLIDAY ACCOMMODATION – 2 O'KEEFE PARADE,  
MCKAIL WA 6330**

<b>Land Description</b>	: 2 O'Keefe Parade, McKail WA 6330
<b>Proponent</b>	: Neville Davidson & Natalya Davidson
<b>Attachments</b>	: 1. Area Plan 2. Copy of Application
<b>Report Prepared By</b>	: Coordinator Planning Services - (A Bott)
<b>Responsible Officers:</b>	: Executive Director Infrastructure, Development and Environment (P Camins)

**STRATEGIC IMPLICATIONS**

1. Council is required to exercise its quasi-judicial function in this matter.
2. In making a decision on the proposed development application, Council is obliged to draw conclusion from its adopted *Community Strategic Plan – Albany 2030*.
  - a) The *Albany Community Strategic Plan – Albany 2030* recommends a proactive planning service that supports sustainable growth while reflecting our local character and heritage (Community Priority: 5.1.2).
3. The item relates to the following Strategic Objective of the Albany Local Planning Strategy (ALPS):
  - a) *Enable tourist growth and diversification through land use planning mechanisms.*

**Maps and Diagrams:** Subject Site – 2 O'Keefe Parade, McKail WA 6330





**In Brief:**

- On 17 September, 2019, the City of Albany received a planning application for Holiday Accommodation at 2 O'Keefe Parade, McKail.
- The matter was subject to public advertising. Through this process, one submission raising concerns with the proposal was received.
- Due to the provisions of the City of Albany's Holiday Accommodation Policy, the proposal is required to be referred to Council for determination.
- The proposal is located outside of the preferred holiday home area as outlined within the Holiday Accommodation policy.
- Staff consider that the proposal is capable of approval when assessed against the City of Albany Holiday Accommodation policy and recommend the proposal be supported subject to conditions.

**RECOMMENDATION**

**DIS191: RESOLUTION**

**VOTING REQUIREMENT: SIMLE MAJORITY**

**MOVED: COUNCILLOR SUTTON**

**SECONDED: COUNCILLOR DOUGHTY**

**THAT Council resolves to ISSUE a notice of determination granting development approval, subject to the following conditions, for Holiday Accommodation at 2 O'Keefe Parade, McKail WA 6330:**

**Conditions:**

1. All development shall occur in accordance with the stamped, approved plans referenced P2190455 and dated **XX XX 2019**, unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.
2. If the development, the subject of this approval, is not substantially commenced within a period of 2 years from the date of approval, the approval shall lapse and be of no further effect.
3. A revised management plan shall be submitted, approved and implemented to the satisfaction of the City of Albany, the revised plans must address the following;
  - Additional controls in respect to amenity impacts.
4. The operation of the holiday accomodation hereby approved shall be in accordance with the approved management plan, which shall be reviewed and updated at the time of any change of ownership or management, to the satisfaction of the City of Albany.
5. The holiday accomodation hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust to any extent greater than what is to be expected within a residential zone.
6. The holiday accomodation hereby approved shall only be used for short stay accommodation, with any single tenant permitted to stay for no more than three months in any twelve month period.
7. The operator or manager of the holiday accomodation hereby approved shall maintain an annual register of all guests to the satisfaction of the City of Albany. A receipt book must also be kept.

8. Each bedroom utilising beds shall have a floor space of not less than four square metres per person; each bedroom utilising bunks shall have a floor space of not less than 2.5 square metres.

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

***Advice Condition 10:***

***Please refer to the City of Albany Local Planning Policy 2B – Signs for further information.***

10. Vehicular parking must be contained within the lot boundaries at all times.

11. Lighting devices are to be positioned and shielded so as not to cause any direct, reflected or incidental light to encroach beyond the property boundaries, in accordance with Australian Standard AS4282/1997.

**CARRIED 13-0**

DIS191: COMMITTEE RECOMMENDATION

MOVED: MAYOR WELLINGTON

SECONDED: COUNCILLOR SUTTON

THAT the Responsible Officer Recommendation be ADOPTED.

**CARRIED 11-0**

DIS191: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council resolves to ISSUE a notice of determination granting development approval, subject to the following conditions, for Holiday Accommodation at 2 O'Keefe Parade, McKail WA 6330:

Conditions:

1. All development shall occur in accordance with the stamped, approved plans referenced P2190455 and dated **XX XX 2019**, unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.
2. If the development, the subject of this approval, is not substantially commenced within a period of 2 years from the date of approval, the approval shall lapse and be of no further effect.
3. A revised management plan shall be submitted, approved and implemented to the satisfaction of the City of Albany, the revised plans must address the following;
  - Additional controls in respect to amenity impacts.
4. The operation of the holiday accommodation hereby approved shall be in accordance with the approved management plan, which shall be reviewed and updated at the time of any change of ownership or management, to the satisfaction of the City of Albany.
5. The holiday accommodation hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust to any extent greater than what is to be expected within a residential zone.
6. The holiday accommodation hereby approved shall only be used for short stay accommodation, with any single tenant permitted to stay for no more than three months in any twelve month period.
7. The operator or manager of the holiday accommodation hereby approved shall maintain an annual register of all guests to the satisfaction of the City of Albany. A receipt book

must also be kept.

8. Each bedroom utilising beds shall have a floor space of not less than four square metres per person; each bedroom utilising bunks shall have a floor space of not less than 2.5 square metres.

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

*Advice Condition 10:*

*Please refer to the City of Albany Local Planning Policy 2B – Signs for further information.*

10. Vehicular parking must be contained within the lot boundaries at all times.

11. Lighting devices are to be positioned and shielded so as not to cause any direct, reflected or incidental light to encroach beyond the property boundaries, in accordance with Australian Standard AS4282/1997.

## BACKGROUND

4. Local Planning Scheme No. 1 was gazetted on 28 April 2014 and consists of the Scheme Text and the Scheme Maps. The Scheme divides the Local Government district into zones to identify areas for particular uses and identifies land reserved for public purposes. Most importantly, the Scheme controls the types of uses and development allowed in different zones. There are particular controls included for heritage and special control areas. The Scheme Text also sets out the requirements for planning approval, enforcement of the Scheme provisions and non-conforming uses.
5. The site is located approximately 5km north west of the Albany CBD. The property is 602m<sup>2</sup> in size and zoned Residential R20 under Local Planning Scheme No.1.
6. The immediate surrounding properties are also zoned Residential R20, there is also a parcel of reserve for recreation 20m to the east.
7. The application was advertised for public comment for a period of 21 days, with nearby landowners directly notified by letter.
8. One submission was received during advertising which raised concerns in respect to the proposal. The concerns raised are summarised later in this item.
9. Council is now requested to consider the submissions received during the public advertising period and determine whether to grant development approval.

## DISCUSSION

10. The applicant has provided the following (summarised) outline of how the proposed holiday house will operate:
  - Maximum number of guests will be six;
  - The phone numbers for managers will be distributed to surrounding property owners;
  - Control of parties being permitted that would conflict with residential amenity; and
  - A register of guests will be maintained.
11. The main planning concerns raised and the proposed mitigation measures are addressed, as follows;
  - The proposal potentially impacting upon the amenity and character of the area;
  - Concerns with how the management plan will be implemented
  - Property values
  - How will individuals be vetted
  - Has the application already been approved?

12. It is considered that with the implementation of a suitable management plan as a condition of approval, that the use will not detrimentally affect the character or amenity of the area. As the proposal is located outside of the preferred area it is considered of importance that a management plan which covers more detail and provides a robust framework for compliance be submitted as a condition of consent.
13. The submission received also raised the matter of how the management plan is enforced. Firstly, the management plan forms a condition of consent and is required to be complied with in perpetuity. It is the responsibility of the landowner to ensure guests comply with the management plan. In the instance a management plan is not being enforced by the owner, it can be pursued in accordance with the statutory powers relating to compliance provided for within the *Planning and Development Act 2005*
14. The proposal is located outside of the preferred area for holiday homes within the Holiday Accommodation policy. While the proposal is outside of the preferred area, it is still capable of approvals on the basis that while the policy outlines the preferred area, it does ultimately remain a policy position that the City is required to consider flexibly with regard to the merits of the particular matter. Further to the above, the land use of Holiday Home is classified as a 'D' use within the Residential zone.
15. Property values are not a matter outlined within cl 67 of the *Planning and Development (Local Planning Schemes) Regulations 2015* and is therefore not a matter which can be taken into consideration in the assessment process.
16. It is not a function of the planning process to introduce or require the vetting of users of holiday accommodation. As the leasing of short term accommodation does not come under the ambit of the standard residential tenancy leasing arrangement, there is no statutory requirement for guests to be vetted. It is considered that the matter of vetting guests essentially ties back to concerns of guests causing issues in respect to amenity. As outlined earlier, it is considered that the requirement and implementation of a robust management plan will mitigate the matter.
17. Concerns were raised in the submission that the proposal was already approved. Upon investigation, it would found that the proposal was listed on AirBnB already and has appeared to have been let out already. It is recommended that compliance be addressed separately. It is necessary to note, as clarified by the State Administrative Tribunal, approval of an application before Council does not preclude the City of Albany from pursuing the compliance matter.
18. The application, except for location is considered to be generally consistent with the City of Albany's Holiday Accommodation local planning policy. Further to this, it is considered that any potential amenity impacts will be mitigated by the proposed management measures and revised parking plan.

#### GOVERNMENT & PUBLIC CONSULTATION

19. The application was advertised for public comment for a period of 21 days, with nearby landowners directly notified by letter.
20. One submission was received during advertising which raised concerns in respect to the proposal. The broad issues are discussed in paragraph 11-20, above and in the attached schedule of submissions.

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Consult	Mail Out	26/9/2019 to 17/10/2019	1 Submission received	Yes

## STATUTORY IMPLICATIONS

21. A Holiday House is classified as a “D” use within the ‘Residential’ zone under *Local Planning Scheme No. 1*, meaning that the use is not permitted unless the Local Government has exercised its discretion by granting planning approval.
22. Voting requirement for this item is **SIMPLE MAJORITY**

## POLICY IMPLICATIONS

23. The proposal is subject to the City of Albany Holiday Accommodation Local Planning Policy.
24. The primary reason the matter has been referred to council for consideration is due to the position within this policy which states;

*“Where a neighbour objects to a proposal, the application is to be referred to the Council for deliberation and considered in view of the following:*

- a. *The proximity of the holiday accommodation to key tourism attractions such as the beach or town centre/activity centre (typically a 5 minute walk – 400m);*
  - b. *location within a street(s) which facilitates safe, efficient and pleasant walking, cycling and driving;*
  - c. *location compatible with Figure A below (the areas illustrated are within close proximity to the town centre and popular swimming beaches).”*
  - d. *A management plan designed to facilitate community concerns.*
25. In accordance with the policy, the applicant has also submitted a management plan which controls the usage of the property and places clear guidance for its use. Measures to protect amenity through the management of the site include;
    - Maximum number of guests will be six;
    - The phone numbers for managers will be distributed to surrounding property owners;
    - Control of parties being permitted that would conflict with residential amenity; and
    - A register of guests will be maintained.
  26. It is considered that the proposal meets the key matters of the Holiday Accommodation Local Planning Policy and is capable of approval subject to appropriate conditions.

## RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Reputation.</b> <i>The approval may generate unacceptable impacts on the amenity on the area.</i>	<i>Possible</i>	<i>Minor</i>	<i>Low</i>	<i>The application and adherence of appropriate planning conditions will mitigate this risk.</i>
<b>Opportunity:</b> <i>Responds to market demand for holiday accommodation in a controlled fashion.</i>				

## FINANCIAL IMPLICATIONS

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

## LEGAL IMPLICATIONS

29. As per the appeal rights conferred by the *Planning and Development Act 2005*, the decision on the matter can be appealed to the State Administrative Tribunal.

**ENVIRONMENTAL CONSIDERATIONS**

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

**ALTERNATE OPTIONS**

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

- To resolve to refuse the proposal subject to reasons; and
- To resolve to approve the proposal subject to additional or modified conditions.

**CONCLUSION**

32. The proposal (Except for location) is considered to be consistent with the objectives of the zone and the broad requirements of the *City of Albany's Holiday Accommodation* local planning policy.
33. While located outside of the preferred area for holiday homes, it is considered that the proposal is capable of approval.
34. The matters raised in the public submission received during the advertising period have also been broadly addressed.
35. It is therefore recommended that Council approve the proposed development, subject to the conditions provided.

<b>Consulted References</b>	:	1. <i>Local Planning Scheme No.1</i> ; 2. <i>Holiday Accommodation Local Planning Policy</i>
<b>File Number (Name of Ward)</b>	:	A172621 McKail WA 6330
<b>Previous Reference</b>	:	Nil

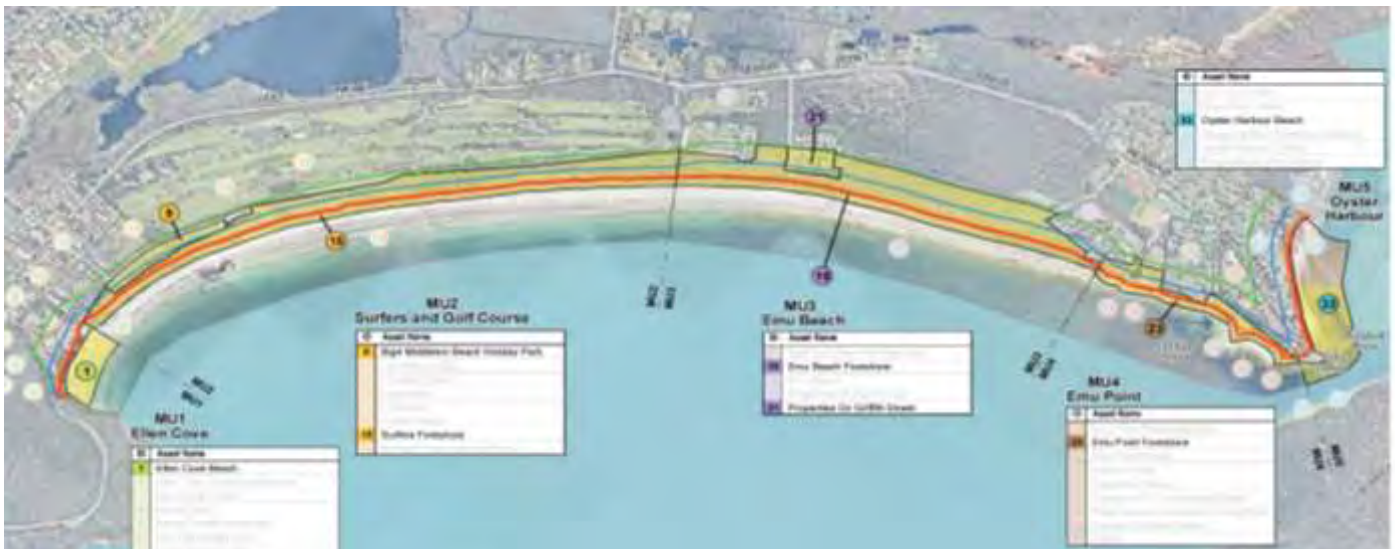
## DIS192: EMU POINT TO MIDDLETON BEACH COASTAL HAZARD RISK MANAGEMENT AND ADAPTATION PLAN (CHRMAP)

<b>Land Description</b>	: Area of coast from Ellen Cove to Emu Point Beach
<b>Proponent / Owner</b>	: City of Albany (Management Order or Vested Crown Land)
<b>Attachments</b>	: 1. Emu Point to Middleton Beach Coastal Hazard Risk Management and Adaptation Plan 2. Implementation Plan – Emu Point to Middleton Beach CHRMAP 3. Appendix – Emu Point to Middleton Beach CHRMAP 4. Public Comment Summary & Response – Emu Point to Middleton Beach CHRMAP
<b>Report Prepared By</b>	: Manager Major Projects (A McEwan)
<b>Responsible Officers:</b>	: Executive Director Infrastructure, Development and Environment (P Camins)

### STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
  - **Theme 3:** Clean, Green and Sustainable
  - **Objective 3.1:** To protect and enhance our natural and built environment in a changing climate
  - **Community Priority 3.1.1:** Deliver effective practices that reduce risk to property, infrastructure and the natural environment and improve community awareness and resilience.

### Maps and Diagrams: Subject Site



### In Brief:

The purpose of this report is to seek Council adoption of the final Coastal Hazard Risk Management and Adaptation Plan (CHRMAP) report prepared for the City of Albany.

**RECOMMENDATION**

**DIS192: RESOLUTION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR TERRY**  
**SECONDED: COUNCILLOR STEPHENS**

**THAT Council in accordance with *State Planning Policy No. 2.6 - State Coastal Planning Policy* resolves to ADOPT the final Emu Point to Middleton Beach Coastal Hazard Risk Management and Adaptation Plan (CHRMAP) including Implementation Plan, Appendices and Summary of Feedback.**

**CARRIED 12-1**

**Record of Vote**

Against the Motion: Councillor Hammond

**DIS192: COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR SMITH**  
**SECONDED: COUNCILLOR STEPHENS**

**THAT the Responsible Officer Recommendation be ADOPTED.**

**CARRIED 10-1**

**Record of Vote**

Against the Motion: Councillor Hammond

**DIS192: RESPONSIBLE OFFICER RECOMMENDATION**

**THAT Council in accordance with *State Planning Policy No. 2.6 - State Coastal Planning Policy* resolves to ADOPT the final Emu Point to Middleton Beach Coastal Hazard Risk Management and Adaptation Plan (CHRMAP) including Implementation Plan, Appendices and Summary of Feedback.**

**BACKGROUND**

2. The City of Albany (The City) has undertaken development of a Coastal Hazard Risk Management and Adaptation Plan (CHRMAP) to provide strategic guidance on coordinated, integrated and sustainable planning and management for key coastal assets in the Emu Point to Middleton Beach area. The Emu Point to Middleton Beach area has been identified by the community as highly valued for economic, social and environmental reasons.
3. Preparation of the CHRMAP has strongly focused on incorporating community and stakeholder values and input, while balancing the need for culturally and economically acceptable outcomes.
4. Adoption of the Plan will progress detailed studies, investigations and assist in the development of further work such as the Emu Beach Foreshore Management Plan.
5. The report proposes a number of adaptation and resilience measures, including long-term adaptation pathways that the City and its community can adopt to become more resilient to coastal hazards such as coastal erosion and inundation.
6. The adoption of the final CHRMAP report is not the conclusion of the project. The report is a strategic document that recommends specific investigations and ongoing monitoring actions to inform periodic review of the plan.
7. The final CHRMAP report has been produced in accordance with State Government requirements and responsibilities under Part 3 of the *Planning and Development Act 2005*, which is further outlined in *State Planning Policy No. 2.6 State Coastal Planning Policy (SPP 2.6)*.



8. There are 46 Local Governments responsible for managing coastal foreshore reserves in WA and around 30 Local Governments have completed or are in the process of completing CHRMAPs across WA.

## **DISCUSSION**

9. The CHRMAP is based on extensive technical background research and investigations, community and stakeholder values and inputs, recognition of strategic planning and governance interventions available to the City and the need for culturally and economically acceptable outcomes.
10. The report identifies the historical experience of coastal hazards along the coast between Middleton Beach and Emu Point and recognises that the City must act proactively to avoid ongoing risk to people and property. Technical studies have identified the potential extent of erosion and inundation for each of the timeframes 2017, 2030, 2050, 2070 and 2120. Using these studies and engagement with the community, this report highlights the assets at risk, which include access to beach, coastal scenery and vistas, coastal vegetation and habitat, dual use path and cafes. Stakeholders indicated that they were willing to pay for protection of significant coastal assets.
11. The report also highlights the existing controls available for the City in decision-making, recognising gaps such as a lack of a suitable mechanism to warn private citizens of the existing risk to property.
12. Through the CHRMAP process short term recommendations have been identified as:
  - a. Overarching Recommendations: key strategic, statutory planning, and policy or governance interventions that COA will need to implement regardless of the proposed adaption option chosen per asset; and
  - b. Asset Based Recommendations: recommended adaption plan actions proposed for each specific asset, which has been identified as at risk in the short term.
13. Five Management Units containing seven (7) highly valued assets are identified in the project area as requiring adaptation in the short term (0-10 years).
14. The recommended adaptation option(s) for these assets requiring short-term management were developed in conjunction with the City of Albany, Consultant Team and a Community Advisory Panel. Eleven (11) adaptation options have been recommended for further investigation, they are as follows:
  - a. MU1 Ellen Cove Beach: Sand Nourishment;
  - b. MU2 Foreshore: Avoid Further Development;
  - c. MU2 Big4 Middleton Beach: Staged relocation of assets;
  - d. MU2 Big4 Middleton Beach: Protect – Seawall;
  - e. MU3 Griffiths Street Properties: Managed Retreat, relocate assets;
  - f. MU3 Emu Beach Holiday Park and Dual Use Path: Managed retreat of assets in the Southern portion;
  - g. MU3 Emu Beach Holiday Park and Dual Use Path: Renovation/expansion of groynes (geotextile sand container);
  - h. MU3 Emu Beach Holiday Park and Dual Use Path – Upgrade existing protection structures;
  - i. MU4 Emu Point Foreshore Reserve: Maintain and enhance nearshore system – seagrass regeneration;
  - j. MU4 Emu Point Foreshore Reserve: Revetment and parkland development; and
  - k. MU5 Oyster Harbour Southeast Beach: Sand nourishment.

15. Assessment of adaptation options was undertaken with broad stakeholder engagement, using tools such as multi-criteria analysis to illustrate the relative risks, capital and maintenance costs, environmental impacts, social and amenity impacts, reversibility and effectiveness.
16. The City conducted a Public Comment Period from 29/05/2019 – 26/06/2019. The results of this comment period are contained in the Emu Point to Middleton Beach CHRMAP – Public Comment Summary & Response (August 2019).
17. As a result of the feedback submissions, the content of the documents was refined and finalised, noting that individual recommendations are subject to further scoping and design to determine exact requirements and cost.
18. A separate and standalone Implementation Plan recommends key strategic planning, statutory planning, and policy or governance interventions that are relevant to all assets, including those at risk over the longer-term. The City of Albany will need to implement these options regardless of the final adaptation option chosen per at-risk asset.
19. The Final Draft CHRMAP was presented to Council in August 2019 following the Public Comment Period and updated recommendations.
20. Following, the document was then circulated to the Project Steering Committee for final review and noted to be accepted.

#### **GOVERNMENT & PUBLIC CONSULTATION**

21. A Project Steering Group was established in October 2017 to guide the project development.
22. The role of the Project Steering Group was to provide technical coastal planning skills to the Grantee and ensure the project progressed in line with milestone reports and progress reports.
23. The Steering Group included representatives from project sponsors: Department of Planning Lands and Heritage and City of Albany, as well as other local government agencies and departments, local community friends' groups, local business and tourism operators. This group has been meeting regularly for more than 2 years.
24. The function of the Steering Group was to:
  - a. Deliver guidance and oversight on, and make decisions in relation to, all aspects of the Project, including but not limited to:
  - b. Reviewing Project Brief;
  - c. Assess of Tenders (through recommendations of the Tender Assessment Panel);
  - d. Provide discussion on the methodology for each milestone (as required);
  - e. Make recommendations on the project objectives and outcomes;
  - f. Review project deliverables including the Community and Stakeholder Engagement Plan, Issues Paper, draft and final CHRMAPs; and
  - g. Attend meetings as required.
25. The Steering Committee provided guidance and oversight however in the event of a dispute, the City of Albany had the final decision.

26. The Steering Group meetings occurred on the following dates:

- a. 21/10/2017
- b. 13/02/2018
- c. 22/08/2018
- d. 19/02/2019

27. Community Engagement Process:

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Involve	Survey	20/03/2018 to 15/06/2018	201	
Consult	Workshop	23/08/2018	13	
Involve	Community Advisory Panel	04/12/2018 and 08/12/2018	25	
Consult	Comment Period	29/05/2019 to 26/06/2019	125	Yes

28. The City of Albany conducted a formal public advertising period of the draft CHRMAP for 28 days. 125 survey submissions were received and 1 written submission. Responses have been collated in the *Public Comment Summary & Response – Emu Point to Middleton Beach CHRMAP*.

29. The CHRMAP was reviewed in light of the submissions received during consultation and a number of modifications were made to address the matters raised.

30. Elected Member Briefing occurred on the following dates:

- a. 13/11/2017 – results of Coastal Hazard Mapping and Vulnerability Study
- b. 31/01/2018 – Introduction to CHRMAP process
- c. 18/02/2019 – Proposed Adaptation Options
- d. 20/08/2019 – Draft CHRMAP

31. The CHRMAP was also referred to the Department of Planning Lands and Heritage who assessed and noted support for the Plan.

## STATUTORY IMPLICATIONS

32. *State Planning Policy No. 2.6 State Coastal Planning Policy* and associated Guidelines is the most pertinent policy to inform and guide decision-making for coastal planning; including managing development and land use change; establishment of foreshore reserves; and to protect, conserve and enhance coastal values.

33. The most relevant section of the policy is section 5.5 and deals with Coastal hazard risk management and adaptation planning.

34. The CHRMAP Project Area has been included in the Albany Local Planning Strategy (ALPS) as a special investigation area.

35. The CHRMAP includes a number of actions which will lead to further amendments and controls being introduced into the Planning framework over the area, these include:

- a. Disclosure of risk through the planning process.
- b. Adaptation measures.

36. All future strategic and statutory proposals within the CHRMAP area will be required to be considered against the document.

37. A full review is recommended to be undertaken within 10 years and in conjunction with ongoing reviews of the City's Local Planning Strategy and Local Planning Scheme.
38. The voting requirement of Council is to be Simple Majority.

### POLICY IMPLICATIONS

39. Should the CHRMAP be adopted and recommendations progressed in the future, Federal and State policies may apply to the project implementation phase.

### RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Reputation and Business Operation</b> <i>Risk: Council do not support the adoption of the final CHRMAP and suffer loss of confidence from funding sponsor</i>	Possible	Moderate	Medium	City officers will resubmit for further discussion addressing concerns raised to ensure the CHRMAP is accepted.
<b>Opportunity:</b> Confidence in the City of Albany to deliver outcome from funding body and confidence with the community and key stakeholders is maintained.				
<b>Financial</b> <i>Risk: Council do not support the adoption of the final CHRMAP and City is not able to acquit the project and receive final payment</i>	Possible	Moderate	Medium	City officers will resubmit for further discussion addressing concerns raised to ensure the CHRMAP is accepted.
<b>Opportunity:</b> There is an opportunity for the City to advocate and lobby for funds from State and Federal Government for contribution to implement control measures.				

### FINANCIAL IMPLICATIONS

41. There are no financial implications related to this report.
42. This project was funded 50:50 by Western Australian Planning Commission and City of Albany. The CHRMAP was completed within the agreed budget allocation.
43. The implementation of recommendations of the CHRMAP will be subject to further funding.

### LEGAL IMPLICATIONS

44. Governments at all levels and private parties (individuals, businesses and the community) each have important, complementary and differentiated roles in managing risk arising from coastal hazards.
45. Local government decision making on coastal planning and development is steered by state government policy and legislation.
46. There are no direct legal implications related to this report. However, it should be noted that the City is responsible for:
- Local land use planning;
  - Significant aspects of environmental management in the coastal zone, including the provision of waste removal and treatment services, and working with state government for the provision of water, drainage and sewerage services
  - Land management of coastal reserves and other coast buffer areas; and
  - Provision and management of public infrastructure such as roads, recreational areas and parks in the coastal zone.

47. Governments, on behalf of the community, are primarily responsible for managing risk to public goods and public assets which they own and manage.

#### ENVIRONMENTAL CONSIDERATIONS

48. Implementation of individual recommendations will require further environmental consideration.

#### ALTERNATE OPTIONS

49. Council may choose not to support the adoption of the CHRMAP.

#### CONCLUSION

50. The City of Albany has undertaken development of a Coastal Hazard Risk Management and Adaptation Plan (CHRMAP) to provide strategic guidance on coordinated, integrated and sustainable planning and management for key coastal assets in the Emu Point to Middleton Beach area. The Emu Point to Middleton Beach area has been identified by the community as highly valued for economic, social and environmental reasons.
51. The report proposes a number of adaptation and resilience measures, including long-term adaptation pathways that the City and its community can adopt to become more resilient to coastal hazards such as coastal erosion and coastal inundation.
52. It is recommended that Council ADOPT the final Emu Point to Middleton Beach Coastal Hazard Risk Management and Adaptation Plan (CHRMAP) including Implementation Plan, Appendices and Public Comment Summary & Response.

<b>Consulted References</b>	:	<ul style="list-style-type: none"><li>• <i>Local Government Act 1995, Planning and Development Act 2005. State Planning Policy No. 2.6 State Coastal Planning Policy and Guidelines</i></li><li>• <a href="#"><u>Coastal hazard risk management and adaptation planning guidelines, July 2019</u></a></li></ul>
<b>File Number (Name of Ward)</b>	:	EM.PLA.33 (Breaksea Ward)
<b>Previous Reference</b>	:	City adopted budget

**DIS193: PLANNING AND BUILDING REPORTS NOVEMBER 2019**

**Proponent / Owner** : City of Albany.  
**Attachments** : Planning and Building Reports November 2019  
**Report Prepared By** : Administration Officer – Planning (J Ferrell)  
Administration Officer – Development Services (Z Sewell)  
**Responsible Officers:** : Manager Planning and Land Information Services  
(J Van Der Mescht)

**RECOMMENDATION**

**DIS193: RESOLUTION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR SUTTON**  
**SECONDED: COUNCILLOR STEPHENS**

**THAT Council NOTE the Planning and Building Reports for November 2019.**

**CARRIED 13-0**

14. **NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF COUNCIL** Nil
15. **MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN** Nil
16. **REPORTS OF CITY OFFICERS** Nil
17. **MEETING CLOSED TO PUBLIC** Nil
18. **CLOSURE**

There being no further business the Mayor declared the meeting closed at **7.04PM**



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Dennis W Wellington  
**MAYOR**