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# AGENDA

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**For the Ordinary Meeting of Council  
To be held on  
Tuesday, 13 December 2011  
7.00pm  
City of Albany Council Chambers**

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

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

The Plan states our vision and values as:

### **VISION**

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

### **VALUES**

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

- Results
- Ethical behaviour
- Accountability
- Leadership

ORDINARY COUNCIL BRIEFING  
 AGENDA – 13/12/2011  
 \*\* REFER DISCLAIMER \*\*

**TABLE OF CONTENTS**

	<b>Details</b>	<b>Pg#</b>
I.	<b>DECLARATIONS OF OPENING</b>	4
II.	<b>OPENING PRAYER</b>	4
III.	<b>ANNOUNCEMENTS BY MAYOR AND COUNCILLORS WITHOUT DISCUSSION</b>	4
IV.	<b>RESPONSE TO PREVIOUS UNANSWERED QUESTIONS FROM PUBLIC QUESTION TIME</b>	4
V.	<b>PUBLIC QUESTION AND STATEMENT TIME</b>	4
VI.	<b>RECORD OF ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE PREVIOUSLY APPROVED</b>	5
VII.	<b>APPLICATIONS FOR LEAVE OF ABSENCE</b>	5
VIII.	<b>CONFIRMATION OF MINUTES OF PREVIOUS MEETING</b>	6
IX.	<b>DECLARATIONS OF INTEREST</b>	7
X.	<b>IDENTIFICATION OF MATTERS FOR WHICH COUNCIL MAY SIT BEHIND CLOSED DOORS</b>	8
15.1	Notice of Motion by Mayor Wellington-Nomination of Freeman to the City	
XI.	<b>PETITIONS, DEPUTATIONS AND PRESENTATIONS</b>	8
XII.	<b>ADOPTION OF RECOMMENDATIONS EN BLOC</b>	8
XIII.	<b>REPORTS</b>	
1.0	<b>OFFICE OF THE CEO</b>	
1.2	Planning and Building Reports November 2011	1
1.3	Common Seal and Executed Documents Report November 2011	2
1.4:	Allocation of Funds for the Proposed Esplanade Community Park	3-6
1.5	Delegations WITHDRAWN	
1.6	Audit Committee Minutes and Acceptance of Annual Report 2010-11	
1.7	Awarding of Tender for Anzac Interpretive Centre-REPORT WILL BE AVAILABLE PRIOR TO THE OCM	
2.0	<b>REPORTS-PLANNING AND DEVELOPMENT SERVICES</b>	
2.1	Development Application-Motorcross Facility-Parker Brook Road, Willyung	1-13
2.2	Initiation of Amendment-Locations 1609, 1828, 1947, 1990-1992, 2064, 2229 & 3102 Eden Road, Youngs Siding	14-22
2.3	Initiation of Amendment-Pt Lot 50 Nanarup Road, Kalgan	23-33
2.4	Final Approval of Amendment-Lot 114 Frenchman Bay Road	34-42
2.5	New Building Act 2011	43-53

ORDINARY COUNCIL BRIEFING

AGENDA – 13/12/2011

\*\* REFER DISCLAIMER \*\*

<b>3.0</b>	<b>REPORTS-COMMUNITY SERVICES Nil.</b>	
<b>4.0</b>	<b>REPORTS-CORPORATE SERVICES</b>	
4.1	List of Accounts for Payment-November 2011	1-2
4.2	Financial Activity Statement-November 2011	3-9
4.3	Audit Committee Minutes and Acceptance of Annual Report 2010-11	10-12
<b>5.0</b>	<b>REPORTS – WORKS &amp; SERVICES</b>	
5.1	Contract C11010-Supply and Application of Bitumen	1-4
5.2	Contract C11009-Supply of Asphalt	5-8
5.3	Contract C11008-Provision of Traffic Control	9-12
<b>XIV.</b>	<b>MOTIONS WITH NOTICE</b>	1
<b>XV.</b>	<b>MOTIONS OF WHICH NOTICE WAS GIVEN AT THE PREVIOUS MEETING</b>	
15.1	Notice of Motion by Mayor Wellington-Nomination of Freeman to the City	1
15.2	Notice of Motion by Councillor Hammond-Mayoral Allowance	2
<b>XVI.</b>	<b>URGENT BUSINESS APPROVED BY DECISION OF THE MEETING.</b>	
	Extended Trading Hours Within the City of Albany	
<b>XVII.</b>	<b>REQUEST FOR REPORTS FOR FUTURE CONSIDERATION</b>	
<b>XVIII.</b>	<b>ANNOUNCEMENT OF NOTICES OF MOTIONS TO BE DEALT WITH AT THE NEXT MEETING</b>	
<b>IX.</b>	<b>ITEMS TO BE DEALT WITH WHILE THE MEETING IS CLOSED TO MEMBERS OF THE PUBLIC</b>	
15.1	Notice of Motion by Mayor Wellington-Nomination of Freeman to the City	3
<b>XX.</b>	<b>NEXT ORDINARY MEETING DATE</b>	
<b>XXI.</b>	<b>CLOSURE OF MEETING</b>	

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

**II. OPENING PRAYER**

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

**ITEM 2.0: MOTION 1**

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

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

**ITEM 3.0: MOTION**

**The Mayor’s Report be RECEIVED.**

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

**V. PUBLIC QUESTION AND STATEMENT TIME**

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

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

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

**Staff:**

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

**Apologies:**

**VII. APPLICATIONS FOR LEAVE OF ABSENCE**

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

**ITEM 8.0: MOTION 1**

**THAT the minutes of the Ordinary Council Meeting held on 15 November 2011, as previously distributed, be CONFIRMED as a true and accurate record of proceedings.**

**ITEM 8.0: MOTION 2**

**THAT the minutes of the Special Council Meeting held on 9 August 2011, as previously distributed, be CONFIRMED as a true and accurate record of proceedings.**

ORDINARY COUNCIL BRIEFING  
AGENDA – 13/12/2011  
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**IX. DECLARATIONS OF INTEREST**

<b>Name</b>	<b>Item Number</b>	<b>Nature of Interest</b>
Mayor D Wellington	15.2	<b>Financial.</b> Mayor Wellington is the recipient of the Mayoral Allowance.
Councillor Attwell	2.1	<b>Impartiality.</b> Councillor Attwell's sons are members of the Albany Motorcycle Club.



**X. IDENTIFICATION OF MATTERS FOR WHICH THE MEETING MAY SIT BEHIND CLOSED DOORS**

15.1 Notice of Motion by Mayor Wellington-Nomination of Freeman to the City of Albany

**XI. PETITIONS, DEPUTATIONS AND PRESENTATIONS**

**XII. ADOPTION OF RECOMMENDATIONS EN BLOC**

**RISK MANAGEMENT FRAMEWORK**

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

## **1.x: REVIEW OF COUNCIL DELEGATIONS**

<b>Proponent</b>	: City of Albany
<b>Attachments</b>	: Nil
<b>Appendices</b>	: Draft Delegations Register 2011
<b>Responsible Officer(s)</b>	: Chief Executive Officer (F James)

### **IN BRIEF**

- Council is required to review its delegations every 12 months as per the *Local Government Act 1995*.
- It is recommended that the proposed delegation powers be granted to the Chief Executive Officer by Council.

### **RECOMMENDATION**

#### **ITEM 1.x: RESPONSIBLE OFFICER RECOMMENDATION VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**THAT Council pursuant to section 5.42 of the *Local Government Act 1995* DELEGATES to the Chief Executive Officer those functions specified in the Delegations Register 2011.**

### **BACKGROUND**

1. In accordance with section 5.46 of the *Local Government Act 1995* each year the delegations provided to officers are to be reviewed by Council with the ability for the delegation to be revoked, amended or renewed. The current delegations were reviewed in December 2010.

### **DISCUSSION**

2. A review of the delegations has been conducted. Delegation as a process delivers a more efficient and time effective service to the City's customers. Without delegations **all** administrative decisions would require a Council resolution.

### **GOVERNMENT CONSULTATION**

3. Not applicable.

### **PUBLIC CONSULTATION / ENGAGEMENT**

4. Not applicable.

### **STATUTORY IMPLICATIONS**

5. Section 5.42 of the *Local Government Act 1995* (the Act) allows Council to delegate to the Chief Executive Officer the exercise of any of its powers or the discharge of its duties.

**CEO:**

6. The Chief Executive Officer (CEO) may sub-delegate to individual staff based upon their experience, qualifications and capabilities. The CEO can modify or withdraw the authority, without further referral to Council, if the performance of an individual officer does not meet organisational standards or if staff members change. The CEO can then administratively arrange, pursuant to Section 5.44, to allow another person to perform the required function. This method is the most appropriate one for Council to use, as it allows the CEO to change a delegation within 24 hours if needed, as opposed to seeking approval presenting an item to Council.
7. Section 9.10 of the Act allows local government to appoint persons or classes of persons to be authorised for the purposes of performing particular functions.

**STRATEGIC IMPLICATIONS**

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

**Key Focus Area**

Organisational Performance

**Community Priority**

- Policy and procedures
- Elected Member’s performance

**Proposed Strategies**

- Develop clear processes and policies and ensure consistent, transparent application across the organisation.
- Clearly define and separate roles and responsibilities between elected members and staff.

**POLICY IMPLICATIONS**

9. Some delegations have additional conditions linked to Council Policies. This is detailed in the Delegations Register.

**RISK IDENTIFICATION & MITIGATION**

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>If delegations are not updated and adopted by Council operational matter would have to be forwarded to Council for decisions. Significantly increase the Council’s workload and time commitment.</i>	<i>Almost Certain</i>	<i>High</i>	<i>Extreme</i>	<i>Mitigation entirely dependent on Council.</i>

**FINANCIAL IMPLICATIONS**

11. If Council does not grant delegations to staff to administer the functions of the *Local Government Act 1995* all matters would need to be forwarded to Council for assessment.
12. This would have a significant financial impact, as a result of increased overtime to administer additional Council meetings.

**LEGAL IMPLICATIONS**

13. If Council does not grant delegations to staff and does not expend more time as a Council making administrative decisions the City may not meet statutory and legal compliance obligations.

**ALTERNATE OPTIONS**

14. Council has the option to amend the delegations to the CEO as presented or withhold delegations from staff.

**SUMMARY CONCLUSION**

15. The adoption of staff delegations for development applications will ensure the City continues to operate efficiently in the delivery of town planning assessment.

<b>Consulted References</b>	<i>Local Government Act 1995</i> <i>Local Government (Miscellaneous Provisions) Act 1960</i> <i>Interpretation Act 1984</i> <i>Better Practice Review – City of Albany – Interim Report – July 2010</i> <i>Local Government Local Law Register</i> <i>Local Government Operational Guidelines – Number 17 – Delegations dated 17 January 2007</i>
<b>File Number (Name of Ward)</b>	PE.AUT.1
<b>Previous References</b>	OCM 14/12/10 Items 4.3 & 4.6 OCM 15/02/11 Item 4.3 OCM 15/03/11 Item 3.3 OCM 19/04/11 Item 4.7 OCM 16/08/11 Item 3.3 OCM 19/10/11 Item 4.1

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

**Responsible Officer** : Executive Director Planning and Development  
Services (G Bride)

**Attachment** : Planning and Building Reports November 2011

**IN BRIEF**

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

**ITEM 1.2: RESPONSIBLE OFFICER RECOMMENDATION**

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

**CEO:**

**RESPONSIBLE OFFICER:**

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

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

**IN BRIEF**

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

**ITEM 1.3: RESPONSIBLE OFFICER RECOMMENDATION**

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

**CEO:**

**1.4: ALLOCATION OF FUNDS FOR PROPOSED ESPLANADE COMMUNITY PARK**

**Proponent** : City of Albany  
**Owner** : WPC Plaza (Albany) Pty Ltd  
**Responsible Officer(s)** : Chief Executive Officer (F James)

**IN BRIEF**

- Proposal to commit funds from the 2011-12 budget and support a further proposal for 2012-13 budget funds allocation which will enable the City to plan for and construct an Esplanade Community Park if the City is able to secure a lease of 1-7 Flinders Parade.

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

**THAT Council:**

**APPROVE funds to the amount of \$30,000 from the 2011-2012 financial year budget and support a further \$30,000 in the 2012-13 financial year budget for the design and development of an Esplanade Community Park on 1-7 Flinders Parade, Middleton Beach (commonly known as the Middleton Beach Hotel site).**

**CEO:**

**BACKGROUND**

1. As a result of defective development condition approvals, the Middleton Beach Esplanade Hotel was demolished a few years ago, with no building being subsequently built on 1-7 Flinders Parade.
2. The resultant vacant block has had a security fence erected to prevent public access to the property (for insurance/liability purposes) and has been left by the private owners to “waste”, including becoming weed infested and more prone to sand drift, with detrimental visual, economic and social amenity impact.
3. This situation has distressed and angered community residents that use the Middleton Beach area.

**DISCUSSION**

4. The City’s CEO and the previous and current Mayor have approached the site owners agents to ascertain the possibility of the City leasing the site for use as a Public Open Space until the owner or investors are in a position to commercially develop the site. The response has been somewhat positive from the owners of the property.
5. Should the City lease the property from the owners to develop a low maintenance, low cost Park this would result in the removal of the security fence, make the site safe for public use of the area until the owner/s determine to invest in the site for development, and generally enhance the public amenity of the Middleton Beach area.
6. The owner/s requested the City to investigate other “incentives” such as a reduction in State land tax. The City has advised the owner/s it has no power to influence State taxes but may consider other incentives such as reduced City of Albany rates if the lease terms were suitable.
7. The City is interested in seeking a positive resolution to this situation which meets community expectations.
8. For economic (amortisation) purposes, it is proposed to seek a lease agreement to cover an initial two to three years, with further options until development of the site commences.
9. If this proposal is successful, the City will be creating a parkland for use by the community, through community volunteer involvement and “ownership”.

**GOVERNMENT CONSULTATION**

10. Not applicable



## PUBLIC CONSULTATION/ENGAGEMENT

11. Initial community engagement has occurred through the Middleton Beach Users Group and Frederickstown Progress Association, which has highlighted concerns about the lack of development on the site and the current “negative” visual impact of the site. Feedback also indicates that the precinct generally is suffering economically and any improvement in the area generally would be welcome.

## STATUTORY IMPLICATIONS

### 12. Local Government Act 1995

**6.8** Expenditure from municipal fund not included in annual budget

(1) A local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure-

- Is incurred in a financial year before the adoption of the annual budget by the local government;
- Is authorised in advance by resolution\*; or
- Is authorised in advance by the mayor or president in an emergency.

\* Absolute majority required

## STRATEGIC IMPLICATIONS

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

### **Community engagement**

*Maintain Albany’s uniqueness and preserve its heritage. This point has been highlighted by various community consultations.*

### **Lifestyle and environment**

*A built environment that includes parks and public areas to improve lifestyle quality.*

*Consulting with community to maintain a “community area” although it might be short term(2 years) for use by multiple groups.*

### **Sustainability and Development**

*Adopting green city principals and support the community to make a tourist area more vibrant that will attract people and business. Preservation of Albany’s uniqueness by developing areas such as beach precincts to be more aesthetically pleasing.*

### **Community Focussed Organisation**

*The City is in touch with the needs and wishes of the local community to reduce the negative impact of the vacant lot.*

## POLICY IMPLICATIONS

14. The introduction of incentives regarding rate payment would require a Council resolution regarding the introduction of a further differential rate, applicable to related property type/group.

\*\*REFER DISCLAIMER\*\*

**RISK IDENTIFICATION & MITIGATION**

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
1-7 Flinders Parade, Middleton Beach is private property and the owner may not lease	Possible	Medium	Medium	Secure lease agreement with terms suitable to the owner to maintain the site as public open space for as long as possible.
Inability to fund development beyond a certain amount	Possible	High	High	Allocate funds to suit low cost project with very defined scope.

**FINANCIAL IMPLICATIONS**

16. In addition to possible incentives to the owner of reduced rates in the 2012-13 financial years, a total value of \$60,000 (\$30,000 is proposed for this financial year from CEO discretionary funds). In the 2012-13 budget a further \$30,000 in project funds would be sought to allow finalisation of the project.
17. The funds will be used to develop a park design and implement construction including community consultation sessions.
18. Funding will also be used for removal of the security fence, and remediating the hazards on the site such as steep embankments, protruding service connections, weed control and mitigation of sand drift by mulching and vegetating.

**LEGAL IMPLICATIONS**

19. Should Council support the project, a lease agreement would be required to allow works to commence on the private property.

**ALTERNATE OPTIONS**

20. Council can accept or reject this proposal.

**SUMMARY CONCLUSION**

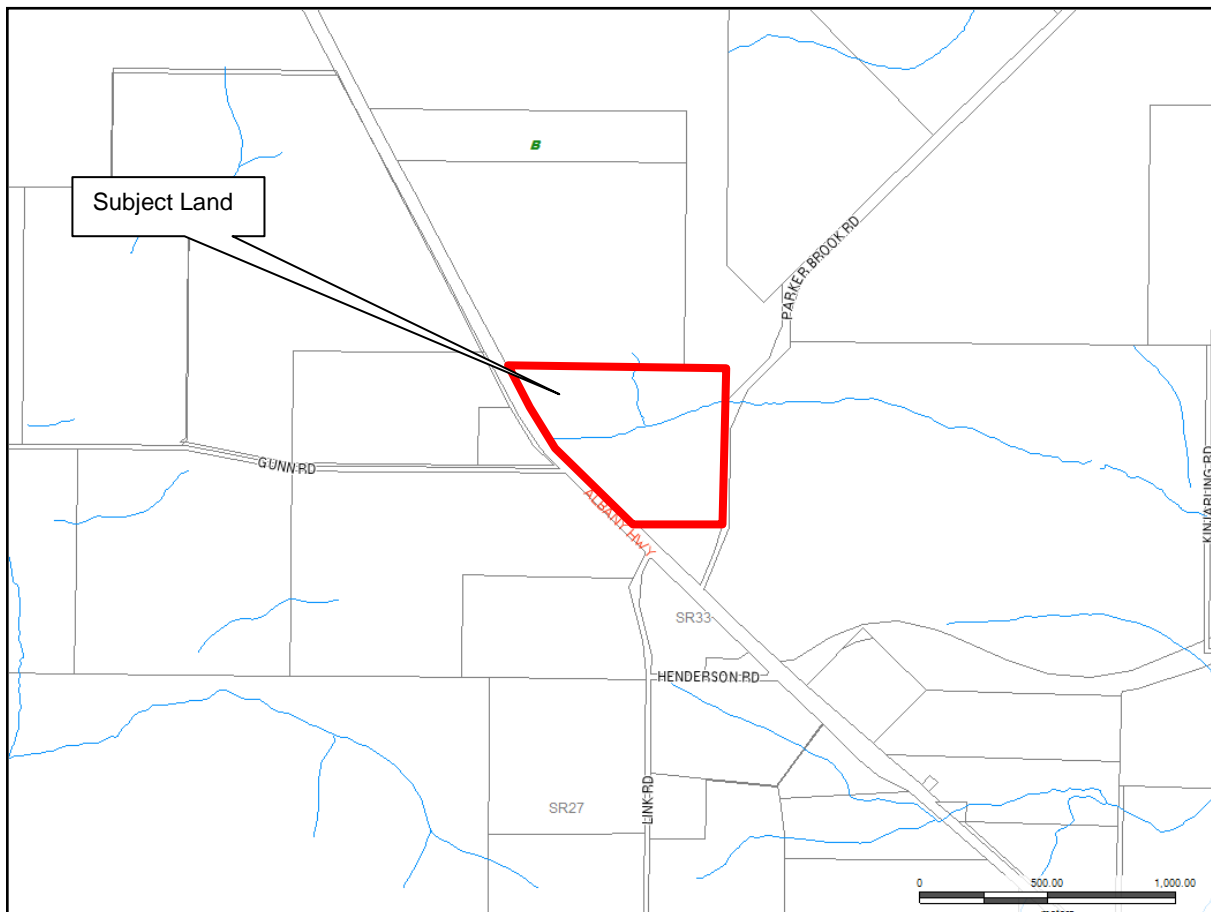
21. If the City of Albany can secure a lease agreement with the landowners for at least two years then the project can be justified economically and should go ahead to restore the visual and social amenity of the Middleton Beach area as a premier tourist destination.
22. Investment in this site by the City, even in the short term, would demonstrate the commitment of the City of Albany to this precinct and to addressing the concerns of resident community members.

<b>Consulted References</b>	Local Government (Functions and General) Regulations 1995
<b>File Number (Name of Ward)</b>	
<b>Previous Reference</b>	

**2.1: DEVELOPMENT APPLICATION – MOTOCROSS FACILITY – PARKER BROOK ROAD, WILLYUNG**

- Land Description** : Reserve 1947 Parker Brook Road, Willyung  
**Proponent** : Albany Motorcycle Club Incorporated  
**Owner** : Crown (vested in City of Albany)  
**Business Entity Name** : Albany Motorcycle Club Inc.  
**Directors** : N/A  
**Attachments** : 1. Application for Planning Scheme Consent  
: 2. Plan of overall Motorplex Proposal  
: 3. Approved Subdivision Guide Plan (Lot 2 Gunn Road)  
: 4. Approved Subdivision Guide Plan (Lot 6 Link Road)  
**Appendices** : Noise Management Plan (September 2011)  
: Copies of Submissions  
**Councillor Workstation** : Environmental Management Plan  
: Clearing Permit  
**Responsible Officer(s)** : E/Director Planning and Development Services (G Bride)

**Maps and Diagrams:**



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

- Consideration of an application for Planning Scheme Consent for a Motocross Facility at Reserve 1947 Parker Brook Road, Willyung.
- The predicted motorcycle noise levels defined in the submitted Noise Management Plan, accompanying the application, are non compliant with assigned noise levels at noise sensitive premises as defined in the *Environmental Protection (Noise) Regulations 1997*.
- A total of nine (9) submissions, six from government agencies and three from neighbouring property owners, were received.

**RECOMMENDATION**

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

**THAT Council issue a Notice of Planning Scheme Refusal for “Private Recreation – Motocross Facility” at Reserve 1947 Parker Brook Road, Willyung as the predicted motorcycle noise levels, as identified in the submitted Noise Management Plan, will exceed the levels at noise sensitive premises as identified in the *Environmental Protection (Noise) Regulations 1997*, which is likely to detrimentally impact on the amenity of the locality.**

**BACKGROUND**

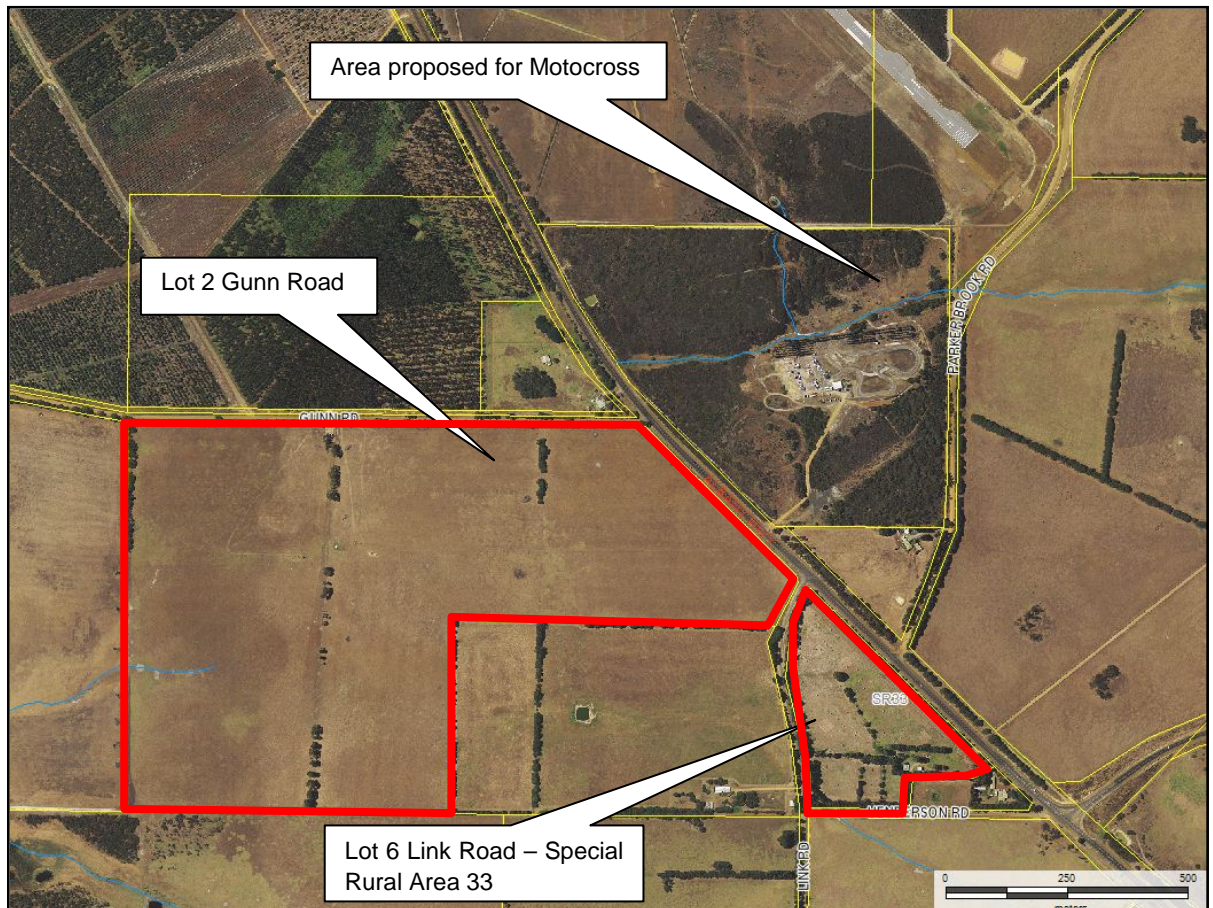
1. In 1992 the former Shire of Albany granted a new lease to the Albany Motorcycle Club Inc. over Reserve 30495 in Robinson (west of Albany) for the purpose of the establishment of a track for the riding of motorcycles and conducting other motorcycle events.
2. The Club developed a motocross track and infrastructure upon the Reserve in Robinson.
3. Due to numerous noise complaints from neighbouring properties the City, with the support of the Department of Environment and Conservation, undertook noise measurements of the Club’s motocross activities. The City concluded that the noise levels did not comply with the *Environmental Protection (Noise) Regulations 1997* assigned levels.
4. On the basis of the results the City issued the Club with an Environment Protection Notice (EPN), which required the Club to reduce noise emissions so that they meet the requirements of the *Environmental Protection (Noise) Regulations*.
5. The Club appealed the Notice to the Minister for Environment and the Minister in determining the appeal allowed the Club to operate for ten days in the 2009 calendar year subject to complying with the *Environmental Protection (Noise) Regulations*. This provided the opportunity for the Club to further monitor noise and to prove to the City and Minister that the Club’s activities could be carried out in compliance with the Regulations.
6. Further noise monitoring by acoustic engineers was undertaken in 2009 and the results confirmed earlier investigations by the City that the level of noise emanating from the site was well in excess of the noise levels prescribed under the regulations.

7. At the OCM held on 17 February 2009, Council received the 'Motor Sports Complex Feasibility Study' and resolved:
- (A) *THAT Council RECEIVES the 'Motor sports Complex Feasibility Study' and supports the concept of the development of a Motor-Sport Complex on Parker Brook Reserve (reserve 1947), subject to achievement of and council's satisfaction with the following:*
1. *'Environmental Noise Impact Assessment' demonstrating the design and management/ operational measures required and the ability of the concept to meet:*
    - *Environmental Protection Authority (EPA) Environmental Impact Assessment Requirements;*
    - *Requirements of the Environmental Protection Act 1986; and*
    - *Requirements of the Environmental Protection (Noise) Regulations 1997.*
  2. *Site Design and Full 'Environmental Management Plan' of sufficient detail to be submitted to the EPA for Environmental Impact Assessment Approval.*
  3. *Approval of the Site Design and 'Environmental Management Plan' by the EPA.*
  4. *A facility/ operational management plan specifying and demonstrating the sustainable operation of the facility including but not limited to:*
    - *operation and functionality of the site management group*
    - *responsibilities and entitlements of co-located tenants*
    - *driver education and training facilities*
    - *noise management*
    - *waste management*
    - *water management*
    - *facility access and security management*
    - *asset maintenance and management*
    - *reserve flora and fauna management*
    - *principles for major event management at the site*
  5. *The achievement of sufficient external funding to undertake each stage of the proposal.*
  6. *A new/amended lease over the site containing provisions that the facility is constructed and operated in accordance with EPA approval, council determinations in relation to the items above and any other relevant council strategies, policies, procedures and determinations.*
8. At the OCM held on 20 April 2010, Council supported the Club operating a further ten days in the 2010 calendar year.
9. In January 2011, the Club wrote to the City requesting approval to hold two non-complying events under Regulation 18 of the *Environmental Protection (Noise) Regulations 1997* within their existing lease area in Robinson.
10. Council considered the request at OCM held on 15 February 2011 and resolved to undertake community consultation with residents and property landowners within a radius of 1.5km.
11. In March 2011, Council granted the Albany Motorcycle Club Incorporated approval to hold two non-complying events under Regulation 18 of the *Environmental Protection (Noise)*

*Regulations 1997* in 2011 conditional on no further breaches of the Environmental Protection Notice previously served on the Albany Motorcycle Club Incorporated.

12. The Club has formally requested a new lease over portion of Reserve 1947 for a term of 10 years and the surrender the existing lease over Reserve 30495.
13. This request was consistent with Council's resolution of 17 February 2009 (specifically part A6 of the resolution) as per Paragraph 7 above.
14. Council resolved at its OCM held on 15 March 2011 to surrender the existing lease over Reserve 30495 (Robinson) and support a new lease over portion of Reserve 1947 (Willyung) subject to the following being completed:
  1. *Lease surrender date to be as soon as practical.*
  2. *Lease surrender subject to remediation of Reserve 30495 to the satisfaction of the City of Albany.*
  3. *All costs associated with the remediation of Reserve 30495 to be payable by the proponent.*
  4. *Lease term being 10 years commencing as soon as practical.*
  5. *Lease purpose being establishment of grounds suitable for the riding of motorcycles and conducting motorcycle events.*
  6. *Lease rental being equivalent to Minimum Land Rate as set by Council per annum. This is currently \$725.00 plus GST per annum.*
  7. *All relevant approvals including Planning Scheme Consent being obtained prior to development or riding activities within the leased area.*
  8. *Lease area being approximately 5 hectares in area, and not encroaching on Aboriginal Heritage listed creek site.*
  9. *The Club received the approval of the appropriate Departments (State and Commonwealth) regarding usage of land next to an Aboriginal Heritage listed site.*
  10. *Lease is subject to a 5 metre access easement for Grange Resources pipeline.*
  11. *Lease special condition will provide for the relinquishment of the lease once the Great Southern Motorplex Group has obtained all necessary approvals and is in a position to undertake the responsibility for the lease and management over the entire Reserve 1947 for development of the Motorsport complex.*
  12. *Section 3.58 of the Local Government Act 1995, advertising requirements.*
  13. *Section 18 of the Lands Administration Act 1997, Minister for Lands consent.*
  14. *All costs associated with the development, maintenance and operations of the leased area to be payable by the proponent.*
  15. *All costs associated with the development, execution and completion of the surrender and new lease to be payable by the proponent.*
15. At its OCM held on 21 June 2011 Council considered the adoption of a subdivision guide plan for 68 special rural allotments on Lot 2 Gunn Road, Drome. At the time the item was considered by Council no predicted noise levels were known for the overall Motorplex proposal, or the motocross facility in isolation; the noise management plan being lodged with Council in August 2011. The adoption of the subdivision guide plan followed a rezoning process that commenced in 2005.

16. The eastern boundary of Lot 2 Gunn Road is located approximately 500m from the closest point of the Motocross track. The predicted noise from a senior motorcycle race is anticipated to exceed the assigned levels defined in the *Environmental Protection (Noise) Regulations 1997* over this property.
17. Council has also approved the rezoning of Lot 6 Link Road from Rural to Special Rural which was gazetted on 17 August 2010. This land is approximately 670 metres from the proposed motocross facility and identifies the creation of nine special rural lots in excess of one hectare.



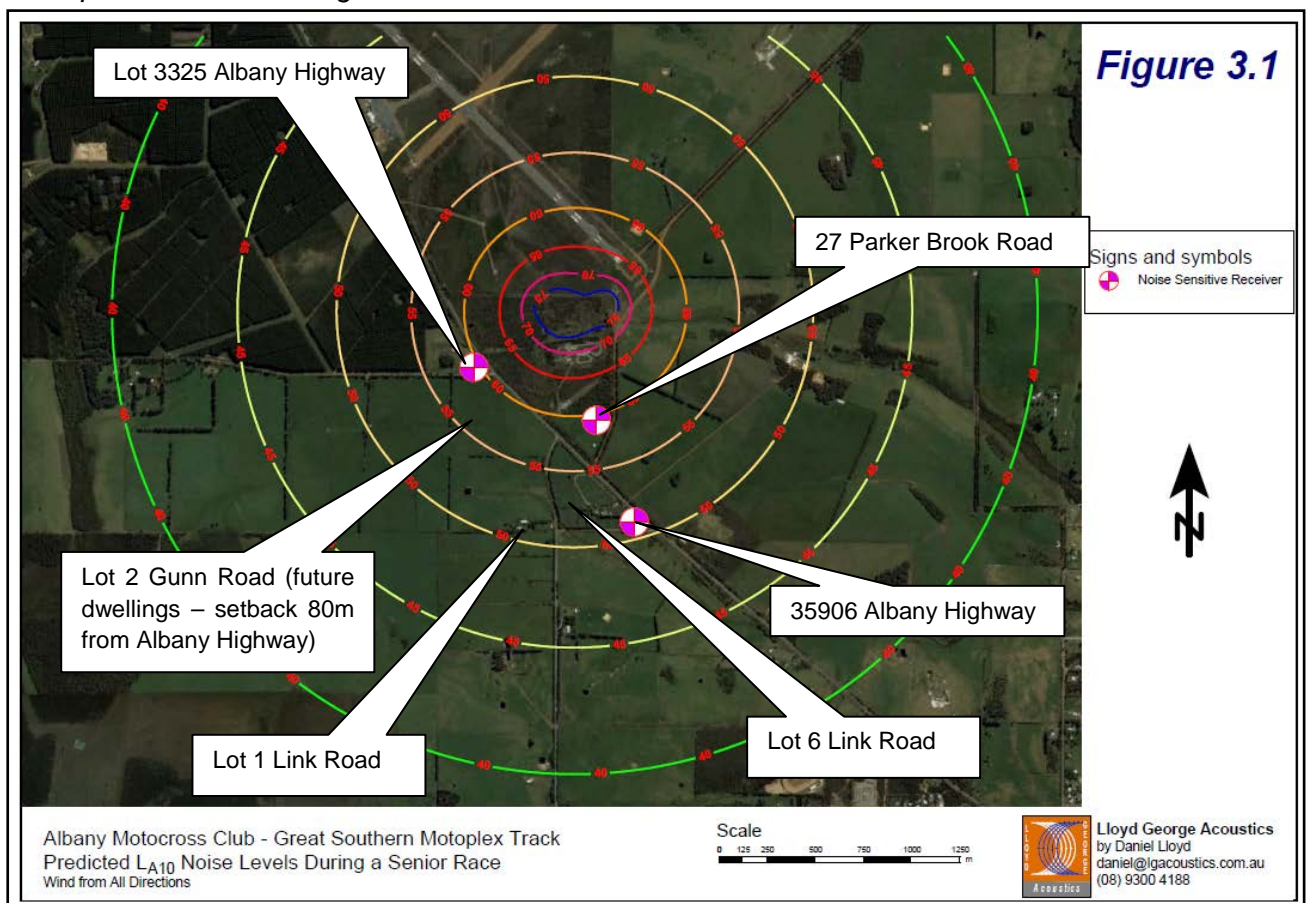
18. Based on condition 7 of the March 2011 resolution, in June 2011, the City received an application for Planning Scheme Consent to develop and use portion of Reserve 1947 (Willyung) for a Motocross Facility.

## DISCUSSION

19. The proponent is proposing to lease the north eastern portion of Reserve 1947 to develop a track, clubrooms, starting gates, toilets and showers, timing tower and access, car parking and pit areas. A copy of the development plan is attached to the rear of this report.
20. A Noise Management Plan (NMP) has been submitted to identify predicted noise levels as a result of the motocross facility and to define how the use of the site will be managed.

21. The NMP is proposing that the site be open for use on the weekends for a maximum of fourteen events per year (Saturday or Sunday). These events will be held between 8.30am and 5.00pm. In addition to the events, the proponent is proposing to be open during the week for training as follows:
  - From March to November, training will occur on three days per week between 12pm and 6.30pm; and
  - From December to February, training will occur on two days per week between 12pm and 6.30pm.
22. The NMP makes predictions for noise at the proposed site using noise results previously attained from races at the Robinson facility. The NMP assessed the noise for a senior and junior race whilst considering wind blowing from either all directions or from the west.
23. Predicted noise levels during a senior race (wind from all directions) as per the NMP identifies that noise levels would exceed the *Environmental Protection (Noise) Regulations 1997* at four existing dwellings being 27 Parker Brook Road, Lot 1 Link Road and Lots 35906 and 3325 Albany Highway, in addition to future dwellings to be constructed on Lot 2 Gunn Road. As indicated on the Plan below, the predicted noise at the Parker Brook Road residence and Lot 3325 will be between 55 and 60dB, which is up to 20dB above the 40dB limit identified in the Regulations for noise generation on a Sunday between 9:00am and 7:00pm.

Excerpt from Noise Management Plan





24. Section 7 of the *Environmental Protection (Noise) Regulations 1997* states that noise emitted from any premises or public place when received at other premises must not cause, or significantly contribute to, a level of noise which exceeds the assigned levels. Section 8(2) of the *Environmental Protection (Noise) Regulations 1997* states that the assigned level for all premises is to be determined by reference to the following Table 1 (Assigned noise levels are the levels of noise allowed to be received at a premises at a particular time of the day or night).

*Table 1 (Assigned Noise levels affecting noise sensitive premises)*

Noise sensitive premises includes residential homes, schools, small hospitals, caravan parks, aged care, child care, veterinary clinics etc.	Time of day	Assigned level (dB)		
		LA 10 (Noise not to exceed this level for more than 10% of time)	LA 1 (Noise not to exceed this level more than 1% of time)	LA max (Noise never to exceed this level)
	0700 to 1900 hours Monday to Saturday	45 + influencing factor	55 + influencing factor	65 + influencing factor
	0900 to 1900 hours Sunday and public holidays	40 + influencing factor	50 + influencing factor	65 + influencing factor
	1900 to 2200 hours all days	40 + influencing factor	50 + influencing factor	55 + influencing factor
	2200 hours on any day to 0700 hours Monday to Saturday and 0900 hours Sunday and public holidays	35 + influencing factor	45 + influencing factor	55 + influencing factor
	All hours	60	75	80

25. Table 1 classifies assigned levels into the three different categories being LA10, LA1 and LAMax. The *EPA Noise Regulations 1997* allows increases in noise levels above the LA10 to the LA1 level although the higher the noise level up to the LA Max the smaller the time period that noise is permitted.
26. The events associated with the motocross facility are proposed to be held predominantly on a Sunday between the hours of 9am and 7pm. In this regard the *EPA Noise Regulations 1997* require noise levels affecting noise sensitive premises do not exceed:
- 40dB for more than 10% of the time on Sundays between 9am and 7pm;
  - 50dB for more than 1% of the time on Sundays between 9am and 7pm; and
  - 65 dB at no time on Sundays between 9am and 7pm.
27. As defined in the noise regulations, a representative assessment period means a period of time of not less than 15 minutes, and not exceeding four hours, or other time determined by an inspector or authorised person to be appropriate for the assessment of a noise emission, having regard to the type and nature of the noise emission. Using a four hour period as the representative assessment period, noise levels should not exceed 40dB for more than 24 minutes and should not exceed 50dB for more than 2.4 minutes.
28. The NMP identifies levels of between 55 and 60db will be experienced at two existing noise sensitive premises during the senior race which would exceed the periods of time set out in the Regulations.

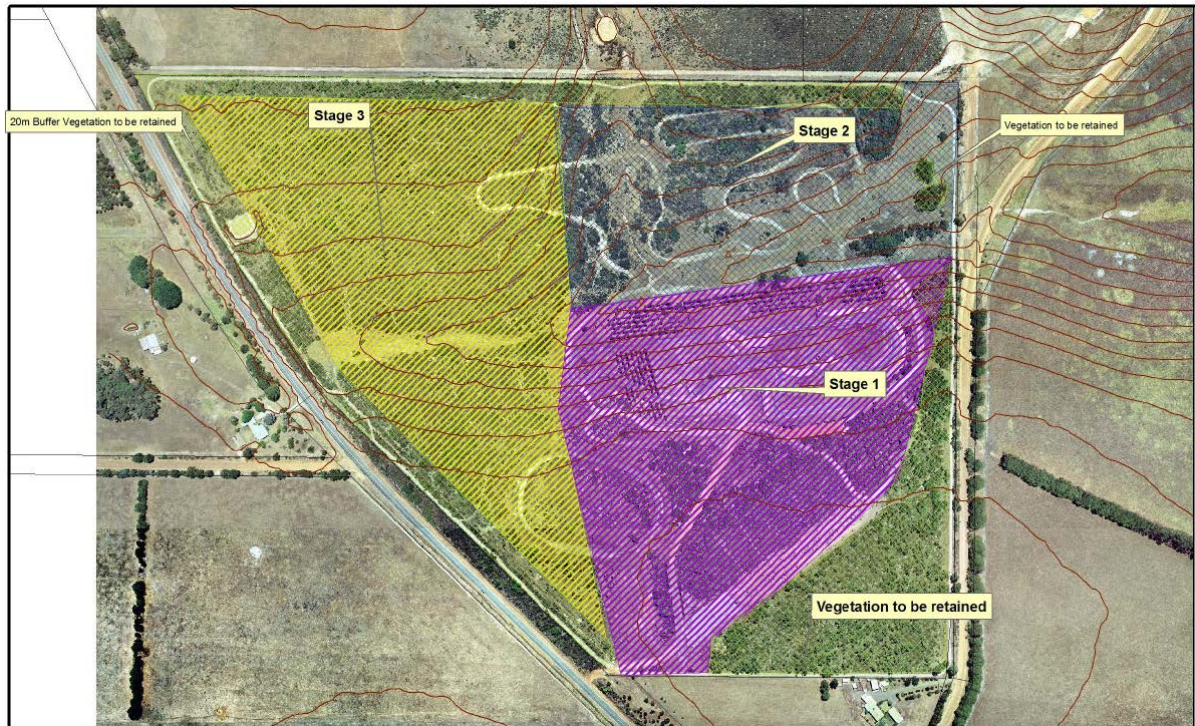
29. The NMP identifies a number of measures to control the impact of the noise by:
- Noise testing motorcycles so that only those that meet Motorcycling Australia guidelines will be permitted on the track;
  - Restricting the operating times to fourteen (14) events per years and training days ranging from two to three days per week at various times of the year;
  - Notifying residents of the dates and times of events and training days;
  - A complaint response system; and
  - Noise bunding.
30. A reduction in operating times and the application of noise bunding are considered the only mechanisms that have the potential to reduce the impact of noise from the site. However, according to the acoustic consultant the use of a 5 metre high earth bund will not materially reduce noise levels external to the subject land. Figure 4.1 of the NMP (as per the Appendices Booklet) identifies the noise levels post construction of the earth bund. Besides a small reduction immediately adjacent to the bund, noise levels will effectively remain the same at existing noise sensitive premises.
31. Given the proponents are unable to control noise impacts associated with the proposal and objections have been received from adjacent landowners the impact of noise remains an unresolved issue.

#### **GOVERNMENT CONSULTATION**

32. The application was referred to the following government agencies:
- Main Roads WA;
  - Department of Water;
  - Water Corporation;
  - Environmental Protection Authority;
  - Department of Environment and Conservation; and
  - Department of Indigenous Affairs.
33. Main Roads WA raised no objection to the proposal and is supportive of access being provided via Parker Brook Road.
34. The Department of Water raised no objection to the proposal subject to a stormwater management plan being prepared with objectives being to protect and rehabilitate the waterways on the site.
35. The Water Corporation owns land opposite the site, containing a residence approximately 380 metres from the proposed motocross facility. The Water Corporation has objected to the proposed motocross facility on the following grounds:
- The proposed motocross facility will cause noise levels at Lot 3325 Albany Highway that exceed the assigned levels stipulated within the *Environmental Protection (Noise) Regulations 1997*; and
  - The proposed motocross facility will result in unacceptable impacts to the amenity of Lot 3325 Albany Highway.

36. As per the February 2009 Council resolution, an Environmental Management Plan (EMP) has been submitted for the entire Motorplex proposal and been approved by the EPA.

*Excerpt from Environmental Management Plan*



37. A clearing permit issued by the Department of Environment and Conservation to the Great Southern Motorplex Group supports clearing of the site subject to a number of factors including:
- Obtaining development approval from the City prior to clearing;
  - Clearing selected areas only;
  - Fencing protected areas; and
  - Complying with an Assessment Sequence and Management Procedure.
38. The EMP identified a 20m buffer for vegetation protection (as per the above plan), however the development plan submitted identifies this same area for access and firebreak purposes. If Council is minded to approve the proposal a 20 metre vegetation buffer would need to be identified on the plans.
39. The City received comment from the Department of Indigenous Affairs with the following advice:
- An Aboriginal Heritage Ethnographic and Archaeological survey is to be undertaken; and
  - A minimum setback of 30m to the Creek is required (Registered DIA Site 21837 – Creek running east-west).
40. No response has been received from the Noise Branch of the Department of Environment and Conservation, despite repeated requests from staff at the City. Should a formal response be received the correspondence will be distributed to Councillors.

## **PUBLIC CONSULTATION / ENGAGEMENT**

41. The application was advertised with a sign on site, an advertisement in the local newspaper and letters sent to neighbouring properties within 2 kilometres of the proposed motocross site.
42. The owner of 27 Parker Brook Road objected to the proposed use of the site for motocross for the following reasons:
- The noise will be in excess of the assigned levels as defined in the Environmental Protection (Noise) Regulations 1997;
  - The duration of high noise is for long periods (race day 8.30-5.30 and training days 3 days/week 12pm – 6.30pm); and
  - The use will impact on their quality of life. The residents submit they are entitled to live in peace and quiet and not be subjected to excessive noise pollution.
43. The owner of Lot 2 Gunn Road objected to the proposed use of the site for motocross for the following reasons:
- Motor sports and residential developments do not happily co-exist and should be separated by a buffer of at least 1000m;
  - The proposed motorsports complex is less than 100m from Lot 2 Gunn Road, which received approval for residential development some years ago;
  - The motorplex activities will exceed EPA regulations for noise generated;
  - The extreme noise generated will adversely affect the amenity of existing and future homes in the locality;
  - The noise generated by motorplex will make it difficult, if not impossible to sell lots;
  - Council will be at serious risk of legal action and compensation for significant damages incurred by the owners of Lot 2 Gunn Road; and
  - Council will face ongoing complaints from new and existing residents.
44. The owner of Lot 1 (46) Link Road objected to the proposed use for the following reasons:
- A detrimental effect on future potential to subdivide;
  - A detrimental effect on property value; and
  - Potential restriction to development with the need to include a buffer zone on their property.

## **STATUTORY IMPLICATIONS**

45. The land is identified as a 'Reserve' under Town Planning Scheme No. 3. For land that is Reserved under the Scheme, Council is to have regard to the ultimate purpose of the reserve in determining the appropriateness of the planning proposal. In this case the Reserve is vested with the City of Albany for the purposes of 'Recreation' and therefore the proposed motocross facility is consistent with the ultimate purpose identified for the Reserve. This is further reinforced with Council's previous in principle support for the Motorplex proposal.
46. Clause 5.4 of Town Planning Scheme No. 3 (Matters to be Considered) requires Council to give due regard to the following matters relevant to this proposal:

*“(e) any approved Environmental Protection Policy under the Environmental Protection Act 1986.*

*(f) any relevant policy or strategy of the Commission or any relevant planning policy adopted by the Government of the State.*

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

*(j) any social issues that have an effect on the amenity of the locality.*

*(n) the preservation of the amenity of the locality.*

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

*(za) potential impacts of noise, dust, light risk and other pollutants on surrounding landuses.”*

47. The *Environmental Protection Act 1986* and the *Environmental Protection (Noise) Regulations 1997* are administered by Environmental Health Officers. The legislation aims to protect people from unnecessary noise while letting them carry out their business and social activities.
48. Section 7 of the *Environmental Protection (Noise) Regulations 1997* states that noise emitted from any premises or public place when received at other premises must not cause, or significantly contribute to, a level of noise which exceeds the assigned level.
49. Regulations 18(3), 18(7) and 18(11) of the *Environmental Protection (Noise) Regulations 1997* state:
- (3) *Where the Chief Executive Officer is satisfied that a proposed sporting, cultural or entertainment event that is to be open to the public —*
    - (a) *is likely to result in the emission of noise in contravention of the standard prescribed under regulation 7; and*
    - (b) *would lose its character or usefulness if it were required to comply with that standard,*
    - (c) *the Chief Executive Officer may approve the event, subject to such conditions as the Chief Executive Officer thinks fit, for the purposes of this regulation.*
  - (7) *Conditions imposed under subregulation (3) may —*
    - (a) *limit the duration of practice and rehearsal sessions, sound system tests and the event;*
    - (b) *specify starting and completion times for practice and rehearsal sessions, sound system tests and the event;*
    - (c) *specify times when facilities such as stages, temporary seating and lighting towers can be erected and dismantled; and*
    - (d) *specify any other requirements, including maximum allowable noise levels, considered necessary to maintain the impact of noise emissions on other premises at an acceptable level.*
  - (11) *The Chief Executive Officer is not to approve the holding of more than 2 approved non-conforming events in or at a particular venue in any period of 12 consecutive months unless the Chief Executive Officer is satisfied that the majority of occupiers on whom the noise emissions will impact have no objection to the holding of the additional events.*

**STRATEGIC IMPLICATIONS**

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

**Key Focus Area**

Community Focused Organisation

**Community Priority**

Support for community groups

**Proposed Strategy**

Assist with improving access to suitable venues close to CBD that are affordable for community groups.

**POLICY IMPLICATIONS**

51. The subject land is located within the Albany Airport Buffer (Local Planning Policy 7A). As the proposal does not involve the placement of noise sensitive premises within the Policy Area, the motocross facility is an acceptable use with the noise buffer of the airport.

**RISK IDENTIFICATION & MITIGATION**

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

<b>Risk</b>	<b>Likelihood</b>	<b>Consequence</b>	<b>Risk Analysis</b>	<b>Mitigation</b>
<i>Considering the predicted noise at noise sensitive premises is over the assigned levels defined in the Environmental Protection (Noise) Regulations 1997, the health risk to neighbours and complaints risks to the City.</i>	<i>Likely</i>	<i>High</i>	<i>Extreme</i>	<i>Mitigation entirely dependent on Council.</i>

**FINANCIAL IMPLICATIONS**

53. The application has been assessed by staff within existing budget and resources. The appropriate planning fee has been paid by the proponent.

**LEGAL IMPLICATIONS**

54. If the City supports the proposal, which involves up to fourteen events per year and up to three training days per week, it is possible that neighbouring landowners will lodge a third party appeal with the State Administrative Tribunal (SAT).

55. Given landowners most affected by the non-complying noise levels envisaged have objected to the proposal would make it would be difficult for the proponents to establish that the majority of those affected have no objection, as per Regulation 18(11).

**ALTERNATE OPTIONS**

56. Council has the option of supporting the proposal (subject to conditions) with the frequency of events identified in the Noise Management Plan. The proponent has advised that should further restrictions on the number of events or training days be imposed this would not be sustainable and would not cater for newer members who need regular training days.
57. In deciding to approve the proposal Council should be satisfied that the majority of residents affected by the noise have no objection.

**SUMMARY CONCLUSION**

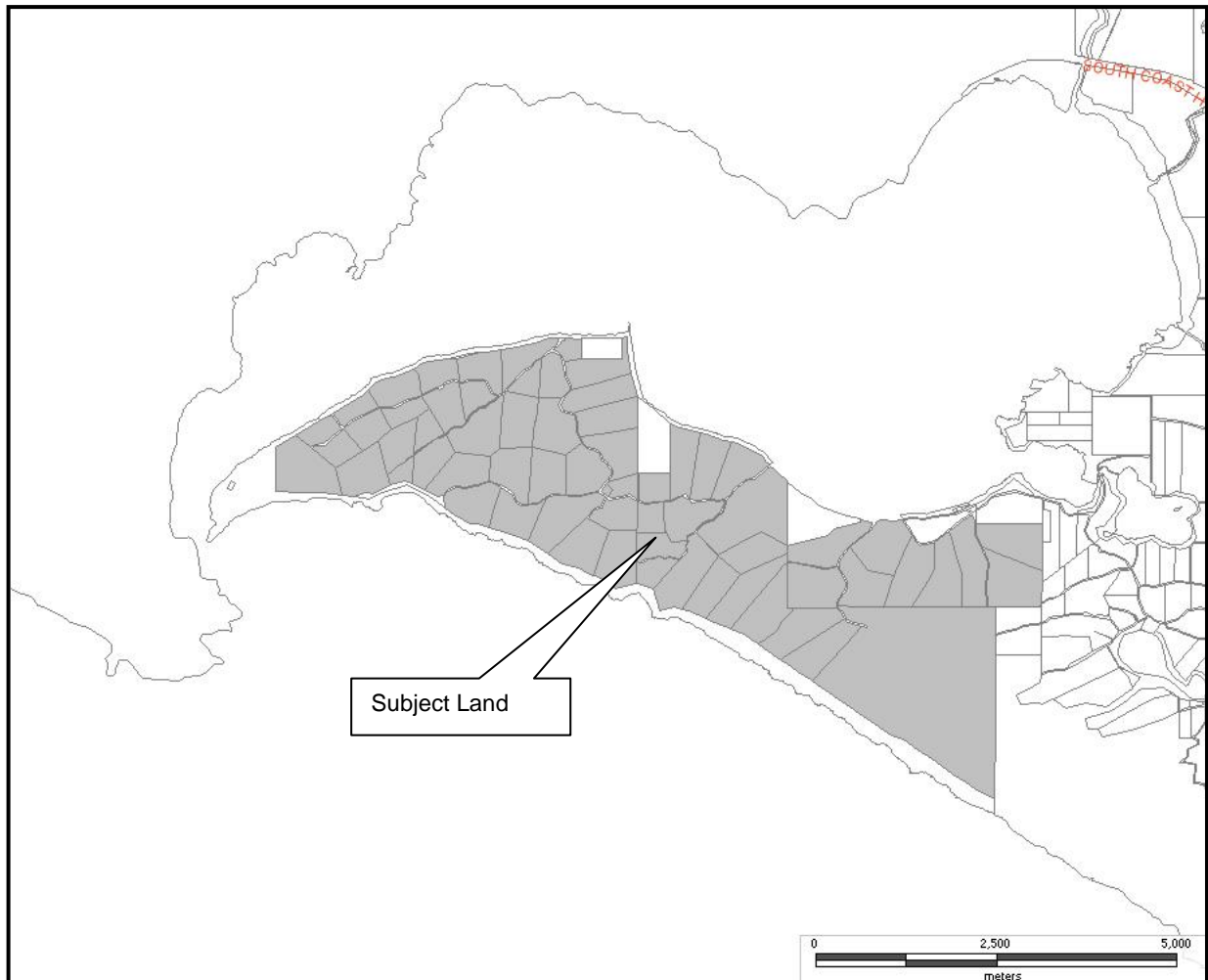
58. The City has supported in principle the proposal to develop Reserve 1947 Parker Brook Road, Willyung for a Motor-Sport Complex on the condition that any proposals comply with the *Environmental Protection (Noise) Regulations 1997*.
59. Four existing dwellings and a significant number of future dwellings have the potential to be affected by noise should the proposal be supported.
60. The proposal before Council is an application for Planning Scheme Consent as required under Council’s Town Planning Scheme No.3. Under Clause 5.4 of the Scheme, Council is to have due regard to noise pollution and more specifically the existing *Environmental Protection (Noise) Regulations 1997* in arriving at a decision on the proposal. Given the noise emissions associated with the proposal which are likely to be detrimentally affect the amenity of the locality.

<b>Consulted References</b>	Planning Application Noise Management Plan Environmental Management Plan Clearing Permit <i>Environmental Protection (Noise) Regulations 1979</i>
<b>File Number (Name of Ward)</b>	A171336 (Kalgan Ward)
<b>Previous Reference</b>	OCM 19.08.2008 Item 12.8.1 OCM 16.12.2008 Item 12.8.2 OCM 17.02.2009 Item 12.8.2 OCM 16.06.2009 Item 18.2 SCM 10.11.2009 Item 6.2.15 OCM 15.02.2011 Item 2.6 OCM 15.03.2011 Item 1.9 OCM 15.03.2011 Item 2.3 OCM 15.03.2011 Item 2.7 OCM 21.06.2011 Item 4.4 OCM 15.11.2011 Item 1.7

**2.2: INITIATION OF AMENDMENT – LOCATIONS 1609, 1828, 1947, 1990-1992, 2064, 2229 & 3102 EDEN ROAD, YOUNGS SIDING – VERSION 2**

- Land Description** : Locations 1609, 1828, 1947, 1990-1992, 2064, 2229 and 3102 Eden Road, Nullaki
- Proponent** : Ayton Baesjou Planning
- Owner/s** : G J Robertson & S Dzwonnik (main landowners)
- Business Entity Name** : N/A
- Appendices** : AMD 309 – Scheme Amendment document  
: AMD 309 - Site Assessment
- Responsible Officer(s)** : E/Director Planning and Development Services (G Bride)

**Maps and Diagrams:**



**CEO:**

**RESPONSIBLE OFFICER:**

**IN BRIEF**

**ITEM 2.2**

14

**ITEM 2.2**



- Consider whether to initiate the proposed Scheme Amendment that will modify the scheme provisions of Conservation Zone Area No. 1 in such a way that caretaker dwellings will be allowed on all lots within the Conservation Zone area 1.

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

**THAT Council determines that initial public consultation, prior to referral to the EPA, and outside of the statutory framework set down by the *Town Planning Regulations 1967* is not required and** in pursuance of Section 75 of the *Planning and Development Act 2005* resolves to INITIATE Amendment No. 309 to Town Planning Scheme No. 3, without modification, for the purposes of:

- i. Deleting existing clause 3.1 dot point two and replacing it with the following;

*Caretaker's Accommodation (maximum floor area 150m<sup>2</sup>) to be located between the main residential house and the front gate, utilising shared access. In assessing applications and determining the location of Caretaker's Accommodation consideration is to be given to the objectives of the zone, clause 8.0 Vegetation and Habitat Protection, clause 11.0 Fire Protection and the aim to provide the greatest security and management benefit to the property and the peninsula.*

- ii. Deleting existing clause 4.1 and replacing it with the following;

*The Development Area refers to the area within which all development on each lot (including sheds, water storage, low fuel areas and effluent disposal areas) must be confined and is not to exceed 1.0ha.*

**BACKGROUND**

1. Amendment No. 309 proposes to amend the special provisions of Conservation Zone Area No. 1 by allowing one caretakers dwelling per lot, instead of the maximum of six for the entire Estate that currently applies, and providing direction on the size and positioning of building envelopes for caretakers dwellings.
2. Council initiated Amendment 247 at its Ordinary Meeting on 19 July 2005 (Item 11.3.6). This amendment proposed to modify the subdivision guide plan and scheme provisions associated with the Nullaki Conservation Zone. One of the provisions made allowance to increase the number of caretakers dwellings throughout the Estate from six to sixty to allow a caretakers dwelling on each lot.
3. The Environmental Protection Authority (EPA) and the Minister for Planning considered the additional caretakers' dwellings to be inconsistent with the objectives of the zone, as they could potentially have detrimental impacts on flora, fauna, surface water and groundwater. Consequently the amendment was rejected and Council was appropriately notified of that decision.

4. Following this decision the proponent prepared Amendment No. 259. This amendment removed the provision allowing for additional caretakers' dwellings, but retained the modifications to the subdivision guide plan and other proposed scheme provisions that formed part of Amendment 247. The EPA supported the modifications and the amendment was finally approved by the Minister for Planning on 17 March 2011 and gazetted on 25 March 2011.
5. The proponent, through Amendment 309, is now seeking to revisit the issue of caretakers accommodation and has identified the following information in support of that position:
- An analysis of existing effluent disposal systems within the Nullaki Estate (specifically Lot 133) has determined that a second effluent disposal system per lot will not detrimentally impact groundwater; and
  - A reduced development area of one hectare for caretakers and main dwellings down from 1.5 hectares to limit the amount of clearing involved.
6. The table below identifies what Council has previously supported as part of Amendment 247 and what is proposed under Amendment 309.

Amendment 247	Amendment 309
<p>3.1 Within Conservation Zone Area No. 1 the following uses shall be permitted subject to the Special Approval of Council:</p> <ul style="list-style-type: none"> <li>- Caretakers Accommodation (max permissible floor area of 150m<sup>2</sup>):- Located subject to application for and granting of Planning Scheme Consent. Caretakers accommodation shall: <ul style="list-style-type: none"> <li>a. be located no more than 300m from the principal dwelling; and</li> <li>b. be located in a situation adjacent to the driveway between the principal dwelling and the public road access so as to provide strategic surveillance of access to/from the lot as well as visual surveillance of the principal dwelling;</li> <li>c. Notwithstanding clauses a &amp; b above, in the case where a lot is bisected by a public roadway, Council may approve caretakers accommodation not located within 300m of the primary dwelling and not located adjacent to the driveway serving the primary dwelling on the basis that it is demonstrated that the caretakers accommodation can provide and maintain visual surveillance over the principal residence. In the instance where caretakers accommodation is located between Nullaki Drive and the Wilson Inlet Foreshore Reserve, any such caretakers accommodation shall be located and designed such that it is not visible from a foreshore node or the Bibulmun Track.</li> </ul> </li> </ul>	<p>3.1 Within Conservation Zone Area No. 1 the following uses shall be permitted subject to the Special Approval of Council:</p> <ul style="list-style-type: none"> <li>- Caretakers Accommodation (maximum floor area 150m<sup>2</sup>) to be located between the main residential house and the front gate, utilising shared access. In assessing applications and determining the location of Caretaker's Accommodation consideration is to be given to the objectives of the zone, clause 8.0 Vegetation and Habitat Protection, clause 11.0 Fire Protection and the aim to provide the greatest security and management benefit to the property and peninsula.</li> </ul> <p>4.1 The Development Area refers to the area which all development on each lot (including sheds, water storage, low fuel areas and effluent disposal areas) must be confined and is not to exceed 1.0ha.</p>

<p><i>4.1 The Development Area refers to the area within which all development on each lot (including sheds and water storage) must be confined and is not to exceed 1.0 hectare on lots where caretakers accommodation is not approved or 1.5 hectares where caretakers accommodation is approved subject to provision 3.1.</i></p>	
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7. The current special provisions applying to Conservation Zone Area No. 1 are:

*“3.0 Land use*

*3.1 Within Conservation Zone Area No. 1 the following uses shall be permitted subject to the Special Approval of Council:*

- *Single House*
- *Caretakers Accommodation (maximum floor area 150m<sup>2</sup>) limited to six within Conservation Zone Area No. 1, located subject to specific application and approval. In assessing applications for caretakers accommodation, Council will aim to provide the greatest security and management benefit and shall have regard to relevant issues including the need to ensure caretakers accommodation is strategically located throughout the Peninsula in order to maximise surveillance and security of house sites, public use nodes and environmentally sensitive areas such as Anvil Beach and the sand blowouts...”*

*4.0 Development Area*

*4.1 The Development Area refers to the area within which all development on each lot (including sheds, water storage, low fuel areas and effluent disposal areas) must be confined and is not to exceed 1.0 hectare on lots where caretakers accommodation is not approved or 1.5 hectares where caretakers accommodation is approved subject to Provision 3.1.*

*4.2 The Development Area may be split to allow the separate development of the main residential house and the caretakers accommodation...”*

8. The objective of Conservation Zone Area No. 1 is to:

- *protect, enhance and rehabilitate the flora, fauna and landscape qualities of the Nullaki Peninsula;*
- *provide for controlled public access to the Peninsula, the Wilson Inlet Foreshore and Anvil Beach; and*
- *Provide for limited wilderness retreat subdivision and development in a manner that is compatible with the conservation values of the Peninsula.*

9. In order to allow the additional information contained within Amendment 309 to be formally considered by the EPA, the amendment must first be initiated by Council.

## DISCUSSION

10. The current allocation of Caretaker's Accommodation is limited to six dwellings under the existing scheme provisions. The six Caretakers dwellings allowed in the provisions have already been allocated/approved on Lots 104, 107, 115, 116, 122 and 134 (as per the attached map).



11. This proposal will allow for caretaker dwellings on each of the sixty lots (subject to the purchaser wishing to take advantage of this option). This could ultimately represent an increase of 54 dwellings within the Nullaki Estate.
12. The proponent has advised that the majority of Nullaki landowners are often away from their properties for extended periods of time. The remote location of the Peninsula and high level of absenteeism raises a security and safety risk to property. This is further exacerbated by boundary fencing being minimal/precluded and a general lack of surveillance.
13. Caretakers that permanently reside in the estate would assist in overcoming these issues and allow for an improved response to a bushfire by turning on sprinkler systems, improving bushfire surveillance and providing an instant volunteer fire-fighting team.
14. The proposed modifications will limit the total clearing allowed on each of the lots to 1ha regardless of whether the lot is developed with a single dwelling only or with a single dwelling (main residential house) and caretakers dwelling. This is a reduction of 0.5 hectares from that identified in the current provisions.

15. Where single dwellings (main residential house) and caretakers dwellings are developed a higher level of construction in accordance with Australian Standard 3959 (Buildings in Bushfire Prone Areas) may be required where hazard separation and building protection zones cannot be achieved because of the one hectare clearing restriction. A detailed fire report is required to be submitted for each dwelling as part of any application for planning scheme consent.
16. The proposed modifications could potentially result in 54 additional effluent disposal systems throughout the area. Given that the lot sizes are predominantly 40ha in area this will result in one effluent disposal system for every 20 hectares. The standard in other “Conservation” Zones is one effluent disposal system for every ten hectares.
17. The proponent has recently engaged an environmental consultant to undertake soil and groundwater testing adjacent to an existing residence at the Nullaki (Lot 133) which is positioned within close proximity to the Wilson Inlet foreshore and has been on the site for 20 years. The testing revealed that effluent from the existing septic system had not leached into the groundwater, with no bacterial contamination being found. The consultant concluded that based on the laboratory results, the size of lots at the Nullaki and that the majority of house sites being on or adjacent to ridge lines (being 50 to 100 metres higher than known ground water tables), that the concerns about effluent disposal systems should not form the basis for an argument to restrict additional caretaker cottages.
18. As per Paragraph 6 above, the proposed provisions are very similar to those previously supported by Council as part of Amendment 247 (OCM 19 July 2005). The differences are:
  - a. The maximum development area is to be reduced from 1.5 hectares to 1 hectare in size for all lots, regardless whether a caretakers dwelling is proposed.
  - b. The requirement for the caretakers dwelling to be within 300m of the main house has been omitted, however all other requirements such as sharing access are retained.
  - c. The amendment documents provide evidence that the additional caretakers dwellings, and associated effluent disposal systems, are not likely to impact on groundwater.
19. The above differences are supported by staff on the basis that:
  - a. The retention of a one hectare clearing limit will ensure no additional clearing to that contemplated under the existing provisions will result. A higher level of construction for dwellings under Australian Standard 3959 may be required.
  - b. The new proposal is more practical given the size of the lots their topography and the capability of using areas on the lots already cleared or sparsely vegetated.

## **GOVERNMENT CONSULTATION**

20. Should Council initiate the Amendment and the EPA decides not to assess the proposal, the Amendment will be referred to all relevant Government agencies for assessment and comment.

## PUBLIC CONSULTATION / ENGAGEMENT

21. Should Council initiate the Amendment and the EPA decides not to assess the proposal, the Amendment will be advertised to **the community and specifically** all affected and surrounding landowners.
22. *The Town Planning Regulations 1967* identify the process local governments must follow in assessing scheme amendment applications, and prescribe that the local government is to publicly advertise a scheme amendment for a 42 day period after it decides to initiate the amendment **and once the EPA** have determined that the amendment is not required to be formally assessed.
23. Accordingly under legislation the City of Albany has no requirement to consult with or advise the community of this matter before Council initially considers the amendment and until the EPA have undertaken their assessment.
24. The City reviewed its *Planning Application Guidelines* at its April 2011 OCM which included additional public consultation measures for **development applications** above and beyond statutory requirements for public consultation.
25. Similar to this approach, Council has the ability to introduce additional, earlier public consultation for scheme amendment proposals, particularly those that are likely to be of significant interest to surrounding landowners and the wider community. A review of all public consultation measures will be undertaken in the new-year.
26. Council could determine to not refer the matter to the EPA until the City has undertaken some initial public consultation to determine the level of community support for the proposal.
27. Under legislation should the EPA find that the amendment does not require a formal assessment, the surrounding community and all relevant government agencies will be consulted. The proposal will then be brought before Council to allow for the consideration of any submissions received through the advertising process.

## STATUTORY IMPLICATIONS

28. All Scheme Amendments undergo a statutory process in accordance with the *Planning and Development Act 2005* and *Town Planning Regulations 1967*.
29. Council's resolution under Section 75 of the *Planning and Development Act 2005* is required to amend the Scheme.
30. An Amendment to a Town Planning Scheme adopted by resolution of a Local Government must then be referred to the EPA for assessment.
31. Advertising of an Amendment for public inspection is for a period of 42 days and is not to commence until the EPA has determined that the Amendment is environmentally acceptable.

32. A resolution to amend a Town Planning Scheme should not be construed to mean that final approval will be granted to that amendment.

### **STRATEGIC IMPLICATIONS**

33. Council's decision on the Scheme Amendment should be consistent with the objectives of the ALPS as the principal land use planning strategy for the City.
34. The Albany Local Planning Strategy (ALPS) identifies this area as an “*environmental protection area*”; the key element being to protect biodiversity, natural character and resources and to reduce the environmental impacts from land use and development.
35. Section 8.3.5 – *Rural Living* sets the following Strategic Objective:

*“The Conservation Areas in the ALPS are in the Big Grove, Torbay Hill and Nullaki localities with many along major tourist routes. This classification is a reflection of the visual importance of land often next to a national park, ocean, inlet, harbour or groundwater reserves. A major issue is fire risk ranging from high to extreme in these localities. Minimisation of the development footprint is very important to retain the amenity and sustainability of these areas, so as a general rule, additional subdivision of these areas will not be supported.”*

36. The proposal is considered to be consistent with the above objectives on the basis that the development areas will not result in additional clearing and the additional dwellings contemplated are not likely to impact on groundwater.

### **POLICY IMPLICATIONS**

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

**RISK IDENTIFICATION & MITIGATION**

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

<b>Risk</b>	<b>Likelihood</b>	<b>Consequence</b>	<b>Risk Analysis</b>	<b>Mitigation</b>
<i>The proposal could result in exposing more people to existing fire risk.</i>	<i>Possible</i>	<i>Extreme</i>	<i>Extreme</i>	<i>Ensure all new dwellings are constructed to Australian Standard 3959 with sprinkler systems installed.</i>
<i>The proposal could result in political risk given the EPA has previously considered similar provisions and advised that they could not support them.</i>	<i>Possible</i>	<i>Minor</i>	<i>Medium</i>	<i>Initiating the amendment allows the EPA to formally consider the new provisions and information to determine whether such information addresses their previous concerns on groundwater, flora and fauna.</i>
<i>Community concerns, particularly from outside of the Nullaki Estate about the impact of additional dwellings on environmental values.</i>	<i>Possible</i>	<i>Medium</i>	<i>High</i>	<i>Consider concerns as part of formal advertising process, post advice from the EPA, or undertake prelim informal consultation pre referral to EPA.</i>

**FINANCIAL IMPLICATIONS**

39. The appropriate planning fee has been paid by the proponent. The proposal has been assessed by staff using in-house resources.
40. Increased public consultation processes, incorporating two rounds of consultation, would incur additional costs in advertising and staff time and may delay the progress of the amendment.

**LEGAL IMPLICATIONS**

41. Section 75 of the *Planning Development Act 2005* allows Council to pass a resolution to amend its Town Planning Scheme.
42. Regulation 13(1)(b) of the *Town Planning Regulations 1967* allows Council to pass a resolution that it does not wish to proceed with an amendment to its Town Planning Scheme prior to the advertising of the amendment.



**ALTERNATE OPTIONS**

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

- To resolve to initiate the Scheme Amendment without modifications as recommended by staff;
- To resolve to initiate the Scheme Amendment with modifications; or
- To resolve not to initiate the Scheme Amendment.

**SUMMARY CONCLUSION**

44. The proposal is consistent with Council’s previous resolution of 19 July 2005 in seeking to allow all landowners within the Nullaki Estate the ability to have a caretakers dwelling.

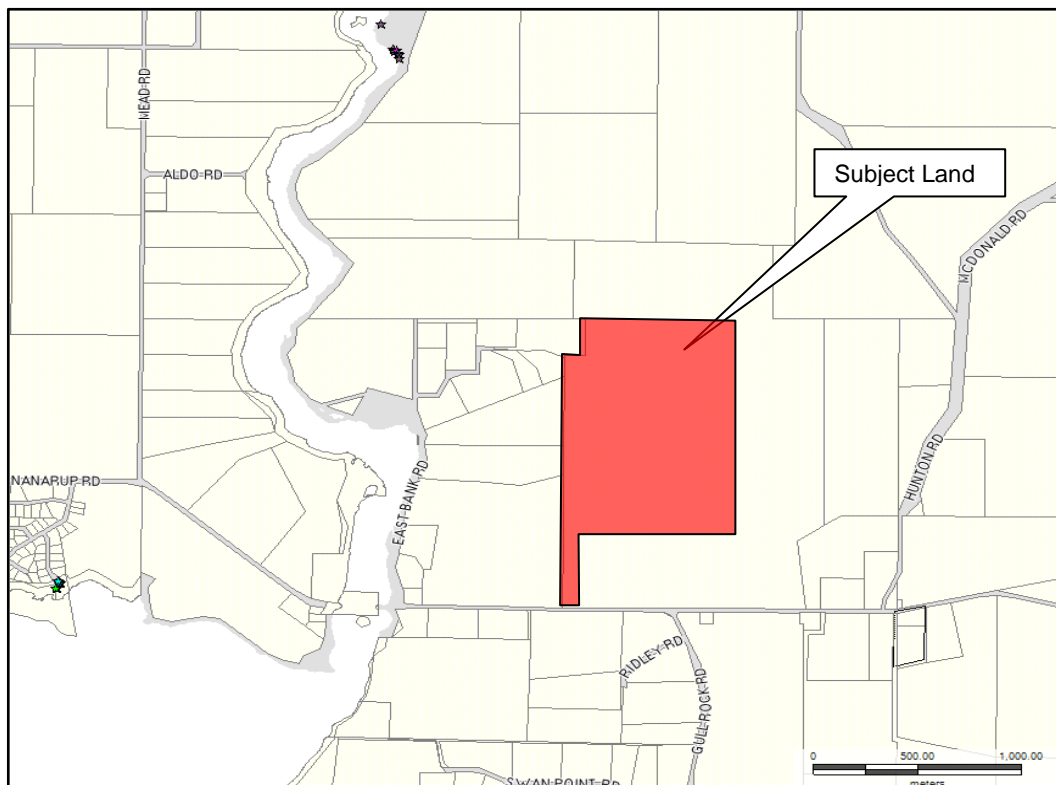
45. In order to address the previous concerns of the EPA, the proponent has undertaken groundwater monitoring and has proposed to restrict the development area to 1 hectare per lot, so that no additional clearing is proposed.

<b>Consulted References</b>	WA Planning Commission (WAPC) Statements of Planning Policy (SPP's) SPP1 & SPP 3
<b>File Number (Name of Ward)</b>	AMD 309 (West Ward)
<b>Previous References</b>	OCM 21/12/04 - Item 11.3.2 OCM 19/07/05 - Item 11.3.6 OCM 19/12/06 - Item 11.3.4 and 11.1.3 OCM 18/09/07 – Item 11.3.5 OCM 19/02/08 – Item 11.3.4

**2.3: INITIATION OF AMENDMENT – PT LOT 50 NANARUP ROAD, KALGAN – VERSION 2**

- Land Description** : Portion of Lot 50 Nanarup Road, Kalgan
- Proponent** : Ayton Baesjou Planning
- Owner** : Erujin Pty Ltd
- Business Entity Name** : Erujin Pty Ltd
- Directors** : Melva Mary Armstrong, Robert Frederick Armstrong and Eva Pascoe
- Attachment(s)** : Subdivision Guide Plan – Plan Only  
: Land Capability Map  
: Visual Impact Assessment
- Appendices** : AMD 303 - Scheme Amendment document
- Councillor Workstation** : Land Capability and Geotechnical Assessment  
: Flora and Vegetation Survey  
: Fire Management Plan  
: Copy of OCM 19/01/10 (SAR145)
- Responsible Officer(s)** : E/Director of Planning and Development Services (G Bride)

**Maps and Diagrams:**



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

- Consider whether to initiate the proposed Scheme Amendment to rezone a portion of Lot 50 Nanarup Road, Kalgan from the 'Rural' zone to the 'Special Residential' zone.

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

**THAT Council determines that initial public consultation, prior to referral to the EPA, and outside of the statutory framework set down by the *Town Planning Regulations 1967* is not required and in pursuance of Section 75 of the *Planning and Development Act 2005* resolves to INITIATE Amendment No. 303 to Town Planning Scheme No.3 for the purposes of rezoning portion of Lot 50 Nanarup Road, Lower Kalgan from the Rural zone to the Special Residential zone.**

**BACKGROUND**

1. Amendment 303 proposes to amend Town Planning Scheme (TPS) No. 3 by rezoning a portion of Lot 50 Nanarup Road, Kalgan, commonly known as 'Candyup', from the 'Rural' zone to the 'Special Residential' zone.
2. Lot 50 covers an area of 237ha and lies to the north of Nanarup Road, approximately 870m east of the Kalgan River. The land immediately adjacent to Nanarup Road is relatively flat and low-lying, with a creek system running across it from east to west, towards the Kalgan River. Towards the centre of the lot, the land begins to slope substantially upward to the north. It then levels out by the north-east corner, before the slope breaks and gently falls away toward the northern boundary. Although much of the land has been cleared, significant stands of remnant native vegetation extend across the eastern, and particularly, northern portions of the lot.
3. The original homestead stands at the centre of Lot 50, with a collection of outbuildings to the west of it. There are also a small number of dams scattered across the subject land. Access to the dwelling is via a track leading from Nanarup Road, roughly through the centre of the lot, with a dog-leg to the west following the natural contours of the land.
4. The adjoining land to the north, west and east of the subject lot is zoned 'Rural', while the land to the south, on the opposite side of Nanarup Road, forms part of Special Rural Area No. 6 and Special Rural Area No. 9.
5. Council has previously considered a number of proposals on the subject land with varying outcomes. The first of these was a Scheme Amendment Request that was presented to the Ordinary Meeting of Council on 16 September 2003 to rezone the subject land and neighbouring Lot 51 from the 'Rural' zone to 'Special Residential' and 'Special Site – Tourism'. This was supported by Council, subject to a number of environmental and servicing concerns being satisfactorily addressed in a future Scheme Amendment proposal, including:
  - Soil sampling being undertaken across the site;
  - The preparation of a fire management plan;

- View shed mapping to be undertaken;
  - Lot sizes should vary across the site in response to opportunities and constraints mapping;
  - Remnant vegetation bring protected;
  - The designation of a tourist site for future tourism development;
  - How servicing of the site is to be achieved; and
  - A minimum lot size of 3000m<sup>2</sup> with an average of 1 hectare.
6. A Scheme Amendment to rezone Lots 50 and 51 from 'Rural' to 'Special Residential', 'Special Use' and the 'Parks and Recreation' reserve was subsequently submitted to Council and initiated at the Ordinary Meeting held on 21 December 2004, subject to modifications (Amendment No. 233). This proposal identified approximately 145 lots over the same portion of land subject to this amendment.
7. The amendment documents were forwarded to the Environmental Protection Authority (EPA) for consent to advertise the Scheme Amendment. However, the EPA advised that they considered the Amendment to be incapable of being made environmentally acceptable.
8. On receipt of the advice from the EPA, Council at its Ordinary Meeting of 21 February 2006 resolved:
- “to take no immediate action to advance an amendment for Lots 50 and 51 Nanarup Road, Kalgan, and that a comprehensive briefing be held to review the information provided by the Department of Environment and the Department of Planning on the amendment and that a period of six months be provided to allow time for the community and developers to prepare an action plan for the development of the Lower Kalgan locality that meets the environmental, social and economic needs of all members of the Lower Kalgan community”.*
9. In 2006, when the draft of the Albany Local Planning Strategy (ALPS) was placed on public display, the landowner lodged a detailed submission requesting the land be shown in ALPS as “Future Urban”. This request was supported by Council. The expansion of urban services to the locality, particularly reticulated sewer, addressed many of the issues previously raised by the EPA in their earlier assessment of development potential of the land.
10. Despite the above, the proponent submitted a Scheme Amendment Request in November 2009, requesting Council rezone Lots 50 and 51 from the 'Rural' zone to 'Special Residential'. The proponent advised that due to a lost opportunity to share the cost of reticulated sewer with the Great Southern Grammar School, the cost of servicing the land was no longer viable. The proponent also identified that the Department of Planning had recently supported a request to rezone Lot 422 Affleck Road (to the south of the subject land on the opposite side of Nanarup Road) to the Special Rural zone, despite this land being within the same 'Future Urban' cell identified within the draft ALPS.
11. At its Ordinary Meeting held on 19 January 2010, Council resolved to entertain the submission of a formal Scheme Amendment to rezone Lots 50 and 51 Nanarup Road from the 'Rural' zone to the 'Special Residential' zone on the basis that:

*“On viewing the land, it is difficult to support full urban development of the subject land given the exposure of the site and ‘Special Residential’ development will result in less building activity and be less visually intrusive”.*

12. While this Scheme Amendment Request was under consideration, the ‘final’ version of the draft ALPS was on public advertising, with the redesignation of these lots from ‘Rural Residential’ to ‘Future Urban – Priority 5’ as one of the five substantial modifications under consideration. At its Ordinary Meeting on 15 June 2010, Council resolved to modify the draft ALPS to change the designation of the land north of Nanarup Road from ‘Future Urban – Priority 5’ to ‘Special Residential’.
13. This modification reflected Council’s earlier resolution of 19 January 2010 and was subsequently endorsed by the Western Australian Planning Commission (WAPC) when the draft ALPS was finally approved on 26 August 2010.

## **DISCUSSION**

14. The proposal seeks to rezone a 107ha portion of the subject lot at this stage, avoiding the bulk of the remnant vegetation in the north and east and the creek system to the south, which were the main areas of concern identified by the EPA in its 2005 assessment. The development of this portion of Lot 50 will yield approximately 215 new lots which equates to an average lot size of 5000m<sup>2</sup>.
15. The subject land has been identified as being suitable for ‘Special Residential’ development in the ALPS and is consistent with the Strategic Objectives and Aims set out in section 8.3.5 – *Rural Living* therein.
16. The Subdivision Guide Plan (SGP) has been informed by:
  - A Flora and Vegetation Assessment prepared in March 2009;
  - A Land Capability and Geotechnical Assessment Study prepared in July 2010; and
  - A Fire Hazard and Visual Impact Assessment prepared in November 2010.
17. Based on the submitted land capability and geotechnical report, the SGP identifies five development precincts with common soil and topographical conditions. An overall minimum lot size of 2000m<sup>2</sup> has been identified, with a minimum lot size contemplated for each of the precincts. The majority of the lots will be within the vicinity of 3000m<sup>2</sup> in size, however the SGP acknowledges that on steep areas, areas affected by remnant vegetation or areas containing swales and associated wet areas, larger lots of around 5000m<sup>2</sup>, but up to 1 hectare, will be required.
18. The SGP contained within the Amendment document is more of an opportunities and constraints plan, whereby the final alignment of lots will be determined at the subdivision stage. An average lot size of 5000m<sup>2</sup> over the site will be required to be met, meaning that the maximum lot yield will be equal to or less than 215 lots.

19. The proposed SGP identifies a significant increase in the density of development to that of the original SGP that was supported by Council in 2004 (an increase from 145 to 215 lots) however since 2004 the ALPS has been adopted, which encourages the efficient use of rural living areas based on land capability to maximise development potential. The land capability report accompanying the amendment identifies that the density proposed can be accommodated on the site.
20. The other significant changes between the 2004 SGP and the current version submitted are:
  - The 20 hectare tourist site has been omitted with the proponent claiming such a site would not be viable. The proponent has however identified a tea rooms/restaurant site in the north east portion of the site which commands the best views of the harbour and surrounding rural landscape; and
  - The SGP represents as an opportunities and constraints plan rather than a more detailed plan identifying lot boundaries (this form of SGP is acceptable to staff).
21. Each of the five precincts proposed have differing land capability and planning issues associated with them and are discussed below.

#### Precinct A

22. Precinct A includes the major area of significant remnant vegetation on the subject land as identified in the vegetation assessment, and effectively means future development within this precinct will be confined to the outer edges between this vegetation and the road network. The SGP identifies lot sizes ranging from 2000m<sup>2</sup> to 3000m<sup>2</sup> and according to the submitted land capability report this Precinct has a '*very high capability with few physical limitations*'.
23. The identification of the significant vegetation as public open space is considered appropriate; the alternative approach would be to include this vegetation within the rear boundaries of more than 20 allotments. This would not be good practice as numerous landowners would be responsible for the maintenance of the vegetation resulting in:
  - the removal of the connectivity between areas of vegetation;
  - introducing a cost impost on certain lots;
  - increasing the fire risk through non-compliance; and
  - adding considerably to the requirement to police the outcome.
24. The SGP identifies a hazard separation zone and building protection zone surrounding the vegetated POS areas to ensure future dwellings are adequately separated from this fire threat consistent with the submitted Fire Management Plan.

#### Precinct B

25. The north-eastern quadrant of Precinct B has been identified through the geotechnical assessment as having the poorest land capability on the subject land (category 5), and represents a defined drainage line through the property. The SGP has identified this area as public open space.

26. A significant portion of Precinct B is also prone to temporary water logging in winter months which is identified on the proposed SGP. The land capability report identifies that this area could be made developable by installing cut-off drains and road drainage that intersects the down slope surface water flows and through additional site works such as filling. Such works would enable these lots to be usable throughout the entire year, and ensure that an appropriate clearance for effluent disposal systems is achieved (500mm separation is required). No detailed engineering plans to document this solution have been submitted however the amendment document has identified the requirement for a detailed drainage management and site mediation plan (via Clause 4.4 of the special provisions) at the subdivision stage.
27. The proponent has identified a drainage reserve running parallel to the north-south road which will cater for drainage flows from the higher slopes and will have the effect of restricting vehicular access and accompanying crossovers and culverts. Access to these lots will be provided from the cul-de-sac road to the west, allowing building envelopes to be positioned outside of the area prone to water logging, thereby reducing the drainage and fill works needed within this area.
28. The Department of Health's Country Sewerage Policy does state the following in relation to groundwater separation requirements for effluent disposal systems:

***“Minimum Site Requirements***

*Irrespective of the type of on-site wastewater disposal system proposed, there should be at least 0.5 metres separation between the **natural** ground surface and the highest known groundwater level. Correctly engineered drainage solutions may be used to increase the clearance between the natural surface and the highest known groundwater level, subject to such drainage works being environmentally acceptable.”*

29. Council has two distinctive options in relation to this issue being to either:
- a) Support the proponent's position that the waterlogged land within this precinct can be made developable through cut-off drains and/or filling with details to be provided at the subdivision stage; or
  - b) Require that all building envelopes should be positioned outside of the areas prone to water logging. This would result in a reduced lot yield and/or a redesign in the south-eastern portion of this Precinct to ensure lots can accommodate reasonably sized building envelopes outside of these areas.

Precinct C

30. Precinct C contains the steepest land with some areas having a gradient between 1 in 3 (33%) and 1 in 4 (25%). The land capability consultant has identified a low to medium risk for landslip within this Precinct advising that whilst the conditions and slopes are similar to those in other hilled areas of the south west of WA, including Albany, they are not considered to be prohibitive but rather design parameters that provide stability for dwellings would be required. This area has been demarcated on the SGP as 'Steep Soils'. The

proponent has identified within the proposed special provisions (Clause 6.1) that design guidelines will be required to be prepared at the subdivision stage over Precinct C and D to guide development over this land to guide housing design and manage the risk of landslip.

31. Immediately south of the northern most east-west road, which sits on a ridge, a relatively flat area would be available for the majority of house sites in this Precinct before the land becomes excessively steep. The positioning of buildings in these locations will assist in ensuring the built form is not out of character with the surrounding special residential development.
32. The SGP identifies lot sizes ranging from 4000m<sup>2</sup> to 5000m<sup>2</sup> which will produce lots with a frontage of at least 50 metres. The proposed lot sizes and lot frontages will promote reasonable separation distances for privacy and amenity.

#### Precinct D

33. Precinct D has a high capability for development and is cleared of vegetation but represents the most visually exposed portion of the site. The proponent has prepared a visual impact assessment which has included the taking of photographs at various public vantage points taken from Bayonet Head, Lower King and Emu Point.
34. The photographic assessment does identify the cleared areas involved which is predominantly the area associated with Precinct D, however this area is framed by images existing vegetation on the northern portion of Lot 50 (to the north of the portion subject to this amendment) which will ensure that any future development would not silhouette against the skyline. The proponent has advocated the use of appropriate colours and building materials on future buildings within this Precinct, as well as the planting of street trees, to ensure the development blends in with the rural landscape.
35. The SGP identifies lot sizes ranging from 2000m<sup>2</sup> to 3000m<sup>2</sup> and according to the submitted land capability report this Precinct has a *'high capability with minor physical limitations'*. Design guidelines will be prepared to control the visual impact of the development, and the development within this Precinct will be 'back-dropped' by retained remnant vegetation.

#### Precinct E

36. Precinct E has a high capacity for development with lot sizes ranging from 2000m<sup>2</sup> to 6000m<sup>2</sup>. The varied range is to cater for those allotments affected by the significant stand of vegetation in the central portion of this Precinct.

#### Precinct F

37. The land within this precinct does not form part of this proposal and merely indicates the road connections and context with this current proposal. Precinct F includes the areas subject to significant constraints such as the major creek line to the south and heavily vegetated areas to the north and east. This land will remain under the rural rezoning.



38. Overall the land capability study has identified that the proposed subdivision layout is sympathetic to the landform and environmental values and provides for the management of identified constraints. Soil testing and assessment has determined that waste water disposal can comply with the Government Country Sewerage policy.
39. The proposed layout is consistent with good practice stormwater management and road design principles. The creation of public open space along the valley at the centre of the subject land, in combination with drainage reserves and the careful positioning of roads should ensure that runoff from roads, development and the overland flow from higher slopes can be suitably accommodated during high intensity stormwater events; a more detailed urban water management plan to inform drainage design will be required at the subdivision stage for the City's consideration.
40. The fire management plan has incorporated the requirements of the Planning for Bushfire Protection Guidelines (2010) identifying strategic fire breaks (fire access tracks), building protection and hazard reduction zones.
41. The visual management plan has concluded that despite the prominent nature of the site, the stands of vegetation help to minimise the potential impact of the proposed development. The plan recommends that through the protection of this vegetation wherever possible, the provision of additional street trees to frame the roads, and the careful consideration of building materials and colours, the visual impact of the development would be limited.

#### **GOVERNMENT CONSULTATION**

42. Should Council initiate the Amendment and the EPA decides not to assess the proposal, the Amendment will be referred to all relevant Government agencies for comment.

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

43. Should Council initiate the Amendment and the EPA decides not to assess the proposal, the Amendment will be advertised to **the community and specifically** all affected and surrounding landowners.
44. *The Town Planning Regulations 1967* identify the process local governments must follow in assessing scheme amendment applications, and prescribe that the local government is to publicly advertise a scheme amendment for a 42 day period after it decides to initiate the amendment **and once the EPA** have determined that the amendment is not required to be formally assessed.
45. Accordingly under legislation the City of Albany has no requirement to consult with or advise the community of this matter before Council initially considers the amendment and until the EPA have undertaken their assessment.
46. The City reviewed its *Planning Application Guidelines* at its April 2011 OCM which included additional public consultation measures for **development applications** above and beyond statutory requirements for public consultation.

47. Similar to this approach, Council has the ability to introduce additional, earlier public consultation for scheme amendment proposals, particularly those that are likely to be of significant interest to surrounding landowners and the wider community. A review of all public consultation measures will be undertaken in the new-year.
48. Council could determine to not refer the matter to the EPA until the City has undertaken some initial public consultation to determine the level of community support for the proposal.
49. Under legislation should the EPA find that the amendment does not require a formal assessment, the surrounding community and all relevant government agencies will be consulted. The proposal will then be brought before Council to allow for the consideration of any submissions received through the advertising process.

### **STATUTORY IMPLICATIONS**

50. All Scheme Amendments undergo a statutory process in accordance with the *Planning and Development Act 2005* and *Town Planning Regulations 1967*.
51. Council's resolution under Section 75 of the *Planning and Development Act 2005* is required to amend the Scheme.
52. An Amendment to a Town Planning Scheme adopted by resolution of a Local Government must then be referred to the EPA for assessment.
53. Advertising of an Amendment for public inspection is for a period of 42 days and is not to commence until the EPA has determined that the Amendment is environmentally acceptable.
54. A resolution to amend a Town Planning Scheme should not be construed to mean that final approval will be granted to that amendment.

### **STRATEGIC IMPLICATIONS**

55. Council's decision on the Scheme Amendment should be consistent with the objectives of the Albany Local Planning Strategy (ALPS) as the principal land use planning strategy for the City.
56. Section 8.3.5 – *Rural Living* sets the following Strategic Objectives:

*"In the long term encourage the efficient use of existing rural living areas, based on land capability to maximise their development potential."*

*"Ensure that future rural living areas are planned and developed in an efficient and co-ordinated manner by being located either adjacent to Albany as designated on the ALPS maps, or within existing rural townsites in accordance with Table 5 along with adequate services and community infrastructure."*

*The ALPS expands on this by stating that: "The strategy's objectives for Rural Living areas are to:*

- *Discourage the creation of additional rural townsites for living purposes.*
- *Avoid the development of Rural Living areas on productive agricultural land, other important natural resource areas and areas of high bushfire risk, flooding and environmental sensitivity.*
- *Avoid the development of Rural Living areas on future and potential long-term urban areas.*
- *Provide compact growth of selected existing rural townsites in accordance with Table 5, based on land capability and available services and facilities.*
- *Minimise potential for generating land-use conflicts.*

*Existing Rural Residential areas in the ALPS are mainly on the fringe of the proposed Future Urban area.*

*Existing Special Rural and Special Residential zones in the City's current Town Planning Scheme are fragmented and located within or next to rural areas on the periphery of the Albany urban area, along the King and Kalgan Rivers and around Princess Royal and Oyster Harbours. These zones are at different stages of development and not required to be connected to reticulated sewerage. Some of the outer areas, such as Millbrook and most of Gull Rock, are not connected to reticulated water".*

57. The proposal is considered to be consistent with Section 8.3.5 of the ALPS, as it:

- discourages the creation of additional rural town sites for living purposes;
- avoids the development of a Rural Living area on productive agricultural land, other important natural resource areas and areas of high bushfire risk, flooding and environmental sensitivity;
- avoids the development of a Rural Living area on future and potential long-term urban areas, as the land has been identified in the ALPS as suitable for Special Residential purposes; and
- will create lot sizes suitable for rural residential living purposes, similar to those to the south, although smaller, therefore minimising the potential for generating land-use conflicts.

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

**Key Focus Area:**

Sustainability and Development

**Community Priority**

Single Town Planning Scheme

**Proposed Strategies**

- Develop strategies to retain prime agricultural land.
- Flexibility for development in key tourism areas.

**POLICY IMPLICATIONS**

58. Should the amendment be ultimately adopted by the Minister for Planning, the proponent will need to develop a set of design guidelines (to be adopted as a Local Planning Policy) as a condition of subdivision approval.

**RISK IDENTIFICATION & MITIGATION**

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

<b>Risk</b>	<b>Likelihood</b>	<b>Consequence</b>	<b>Risk Analysis</b>	<b>Mitigation</b>
<i>The development on the higher slopes has the potential to be visually prominent.</i>	<i>Possible</i>	<i>Medium</i>	<i>High</i>	<i>Use of design guidelines to control building height, building colours and materials and promote street tree planting.</i>
<i>The development on higher slopes may be prone to land slip risk.</i>	<i>Unlikely</i>	<i>High</i>	<i>High</i>	<i>Use of design guidelines to control building height, type of construction and footing designs / requirements.</i>
<i>The development on the lower portions of the site are prone to winter water logging in winter.</i>	<i>Possible</i>	<i>Medium</i>	<i>High</i>	<i>Requirement for a detailed drainage management and site mediation plan at subdivision stage.</i>
<i>Fire risk for dwellings adjacent to significant stands of vegetation.</i>	<i>Unlikely</i>	<i>High</i>	<i>High</i>	<i>At subdivision and development stage ensure requirements of the fire management plan are implemented (hazard separation and building protection zones).</i>
<i>Community concerns about the impact of development.</i>	<i>Possible</i>	<i>Medium</i>	<i>High</i>	<i>Consider concerns as part of formal advertising process, post advice from the EPA, or undertake prelim informal consultation pre referral to EPA.</i>

**FINANCIAL IMPLICATIONS**

60. The appropriate application fees have been paid and staff have assessed the proposal within existing budget lines.
61. Increased public consultation processes, incorporating two rounds of consultation, would incur additional costs in advertising and staff time and may delay the progress of the amendment.

**LEGAL IMPLICATIONS**

62. Section 75 of the *Planning Development Act 2005* allows Council to pass a resolution to amend its Town Planning Scheme.
63. Regulation 13(1)(b) of the *Town Planning Regulations 1967* allows Council to pass a resolution that it does not wish to proceed with an amendment to its Town Planning Scheme prior to the advertising of the amendment.

**ALTERNATE OPTIONS**

64. Council has the following options in relation to this item, which are:
- To resolve to initiate the Scheme Amendment without modifications as recommended by staff;
  - To resolve to initiate the Scheme Amendment with modifications; or
  - To resolve to not initiate the Scheme Amendment.

**SUMMARY CONCLUSION**

65. The proposal seeks to rezone a portion of Lot 50 Nanarup Road, Kalgan from the ‘Rural’ zone to the ‘Special Residential’ zone. The subject land has been identified as being suitable for ‘Special Residential’ development in the ALPS and is considered to be consistent with the Strategic Objectives and Aims set out in section 8.3.5 – *Rural Living* therein.

<b>Consulted References</b>	Albany Local Planning Strategy
<b>File Number (Name of Ward)</b>	AMD 303 (Kalgan Ward)
<b>Previous Reference</b>	OCM 16/09/03 – Item 11.3.5 OCM 21/12/04 – Item 11.3.4 OCM 21/02/06 – Item 11.3.3 OCM 19/01/10 – Item 13.2.1 (SAR145)

**2.4: FINAL APPROVAL OF AMENDMENT – LOT 114 FRENCHMAN BAY ROAD**

- Land Description** : Lot 114 Frenchman Bay Road, Robinson  
**Proponent** : Aurora Environmental  
**Owner/s** : Mr J Drinan & Ms M Price  
**Business Entity Name** : Aurora Environmental  
**Directors** : M Price  
**Attachment(s)** : Schedule of submissions  
: Subdivision Guide Plan  
**Councillor Workstation** : Copy of OCM 19/09/06 – Item 11.3.2 (SAR 098)  
: Copy of OCM 20/04/10 – Item 13.2.2 (SAR 098)  
: Amendment Document (AMD266)  
: Copy of Local Water Management Strategy/Urban Water Management Plan  
: Copy of submissions  
**Responsible Officer(s)** : E/Director Planning and Development Services (G Bride)

**Maps and Diagrams:**



**IN BRIEF**

- Consider the submissions received from the public consultation period and determine whether to grant final approval to the proposed Scheme Amendment to rezone Lot 114 Frenchman Bay Road, Robinson from the 'Rural' and 'Residential Development' zones to the 'Special Rural' zone.

**CEO:**

**RESPONSIBLE OFFICER:**

**ITEM 2.4: RESPONSIBLE OFFICER RECOMMENDATION  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**THAT Council:**

- 1) In pursuance of section 75 of the *Planning and Development Act 2005* and *Regulation 17(2) of the Town Planning Regulations 1967* **ADOPTS WITH MODIFICATIONS** Amendment No. 266 to Town Planning Scheme No. 3 by:
  - i) Rezoning Lot 114 Frenchman Bay Road, Robinson from the 'Rural' and 'Residential Development' zone to the 'Special Rural' zone;
  - ii) Inserting Special Rural Area No. 43 into Schedule 1 – Special Rural Zones – Provisions Relating to Specified Areas; and
  - iii) Amending the Scheme Maps accordingly.
- 2) **NOTES** the staff recommendations within the attached Schedule of Submissions and **ENDORSES** those recommendations.

**BACKGROUND**

1. Amendment 266 proposes to amend Town Planning Scheme No. 3 (TPS3) by rezoning Lot 114 Frenchman Bay Road, Robinson from the 'Rural' and 'Residential Development' zones to the 'Special Rural' zone.
2. The lot covers an area of 5.78ha and lies to the north-west of Frenchman Bay Road, approximately 4km from the centre of Albany. The land is relatively flat and has been cleared, with the only significant vegetation being two large shelter belts that have been planted across the lot on a roughly east-west axis. A large shed stands to the eastern side of the lot, at the end of the access leg that runs east to Frenchman Bay Road. The land is currently used for the agistment of horses.
3. The land to the north, west and south of the subject lot is zoned 'Rural', while the land to the east and a small portion on the eastern fringe of the subject lot itself is zoned 'Residential Development'. The area has been identified as being suitable for 'Rural Residential' development in the adopted Albany Local Planning Strategy (ALPS).
4. A Scheme Amendment Request (SAR 098) was reported to the Ordinary Council Meeting held on 17 November 2009. Council resolved:

*"THAT, subject, but not limited to, the following matters being addressed to the satisfaction of Council:*

- i) a land capability assessment;*
- ii) a conceptual structure plan taking into consideration visual management; and*
- iii) an identification of servicing needs and infrastructure requirements to accommodate future subdivision,*

*Council advises that it is prepared to entertain the submission of a formal application for rezoning Lot 114 Frenchman Bay Road from the split zoning ('Rural' and 'Residential Development') to a fully serviced (sewered) 'Residential Development' zone."*

5. While the matters outlined above have all been broadly addressed in the amending document, the strategic direction set out in the Albany Local Planning Strategy (ALPS) and the outcome of a Land Capability Assessment undertaken by independent consultants has led to a change in the proposed zoning from 'Residential Development' to 'Special Rural'.
6. The amendment was subsequently initiated by Council on 20 April 2010.

## **DISCUSSION**

7. The Land Capability Assessment has highlighted that due to the flat, low-lying nature of the land, it is prone to water logging following heavy rains. The proposal to rezone to 'Special Rural' allows the nomination of building envelopes, which in this instance can be located in an area of the lot that is not subject to water logging.
8. City staff and the Water Corporation both had concerns over the proposal's likely impact on the rural drainage network. This was also the most common theme raised by adjoining landowners in their submissions.
9. The landowner subsequently provided a Local Water Management Strategy and Urban Water Management Plan to address the concerns over the potential impact on the rural drainage network and adjoining lots. Although the Water Corporation maintained its objection initially, the landowner provided further information which addressed the outstanding issues. The development will now be able to cope with a one in one hundred year rain event and should alleviate the existing problem of inundation.
10. The other outstanding issue of an inadequate vegetated buffer between the subject land and the adjoining market garden can be addressed by modifications to the amendment in accordance with Western Australian Planning Commission Planning Bulletin 63. These will require the buffer to be increased to 20m and notifications to be placed on the titles of new lots created within 300m of the market garden, advising that they may be subject to nuisance impacts of odour, noise, dust and spray drift.
11. Overall, the proposal is considered to be broadly consistent with the strategic aims and objectives of the ALPS and Statement of Planning Policy 1 and 3. The proposal is also consistent will also be consistent with the requirements of Planning Bulletin 63.

## **GOVERNMENT CONSULTATION**

12. The Amendment documents were initially referred to the Environmental Protection Authority (EPA) as required by the *Planning and Development Act 2005* for environmental assessment. The EPA advised that the amendment has been assessed and does not require further formal assessment. However, additional advice and recommendations were provided, as outlined in the attached Schedule of Submissions.



13. The Amendment was also referred to WA Gas Networks (WestNet Energy), Telstra, Water Corporation, Western Power, Department of Agriculture and Food WA, Department of Health, Department of Water, Department of Environment and Conservation, and Department of Education for assessment and comment. Responses were received from WA Gas Networks (WestNet Energy), Telstra, Water Corporation, Western Power, Department of Agriculture and Food WA, Department of Health, Department of Water, Department of Environment and Conservation, and Department of Education and are summarised in the attached Schedule of Submissions.

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

14. The Amendment was advertised in accordance with the requirements of the *Town Planning Regulations 1967* from 22 July 2010 to 2 September 2010 by placement of a sign on-site, direct referral to affected and adjoining/nearby landowners and advertisement in the local newspaper.
15. A total of fifteen written submissions were received as attached. The submissions received are summarised and discussed with a recommendation for each submission in the attached Schedule of Submissions.

#### **STATUTORY IMPLICATIONS**

16. All scheme amendments undergo a statutory process in accordance with the *Planning and Development Act 2005* and *Town Planning Regulations 1967*. Council's decision on the final approval of the amendment requires endorsement by the WAPC and the approval of the Minister for Planning.

#### **STRATEGIC IMPLICATIONS**

17. Council's decision on the Scheme Amendment should be consistent with the objectives of the ALPS as the principal land use planning strategy for the City.
18. The area has been identified as being suitable for 'Rural Residential' development in the Albany Local Planning Strategy (ALPS). In addition to this designation, the proposal should be assessed against the specific strategic objectives and aims set out in Sections 8.3.1 and 8.3.5 of the ALPS text, which set the strategic settlement direction and objectives for rural living areas.
19. Section 8.3.1 – *Strategic Settlement Direction* sets the following Strategic Objective:

*“Facilitate and manage sustainable settlement growth for the urban area in the City of Albany.”*

This objective is supported by a set of aims that have been devised to contain the spread of fragmented urban and rural living areas in the City. They are as follows:

- *“Providing for growth in urban areas, rural town sites and rural living areas as designated in ALPS.*

- *Minimising the development footprint on the landscape to help protect biodiversity and the environment.*
- *Promoting energy conservation.*
- *Providing greater housing choice.*
- *Minimising journey length from home to work/school/services and encouraging the use of public transport, cycling and walking.*
- *Reducing government expenditure on servicing current and future populations.”*

20. Section 8.3.5 – *Rural Living* sets the following Strategic Objective:

*“In the long term encourage the efficient use of existing rural living areas, based on land capability to maximise their development potential.”*

The ALPS expands on this by stating that:

*“The strategy’s objectives for Rural Living areas are to:*

- *Discourage the creation of additional rural townsites for living purposes.*
- *Avoid the development of Rural Living areas on productive agricultural land, other important natural resource areas and areas of high bushfire risk, flooding and environmental sensitivity.*
- *Avoid the development of Rural Living areas on future and potential long-term urban areas.*
- *Provide compact growth of selected existing rural townsites in accordance with Table 5, based on land capability and available services and facilities.*
- *Minimise potential for generating land-use conflicts.*

*Existing Rural Residential areas in the ALPS are mainly on the fringe of the proposed Future Urban area.*

*Existing Special Rural and Special Residential zones in the City’s current Town Planning Scheme are fragmented and located within or next to rural areas on the periphery of the Albany urban area, along the King and Kalgan Rivers and around Princess Royal and Oyster Harbours. These zones are at different stages of development and not required to be connected to reticulated sewerage. Some of the outer areas, such as Millbrook and most of Gull Rock, are not connected to reticulated water”.*

21. The proposal is considered to be consistent with the various Strategic Objectives and aims set out in the ALPS, particularly those contained within Section 8.3.5 – *Rural Living*.

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

**Key Focus Area:**

Sustainability and Development

**Community Priority**

Single Town Planning Scheme

**Proposed Strategies**

Develop strategies to retain prime agricultural land.

**POLICY IMPLICATIONS**

22. Council is required to have regard to any Western Australian Planning Commission Statements of Planning Policy (SPP) that apply to the scheme amendment. Any amendment to the Town Planning Scheme will be assessed by the Western Australian Planning Commission to ensure consistency with the following State and Regional Policies.

23. **SPP 1 – State Planning Framework**

The Policy establishes state-wide key land use planning principles and informs the Commission, Local Government and others involved in the planning process in relation to sustainable land use and development across the State. It is designed to ensure there is coordination and integrated decision-making across all spheres of planning.

The proposal is consistent with the Lower Great Southern Strategy and the Albany Local Planning Strategy and therefore complies with the principles of SPP1.

24. **SPP 3 – Urban Growth and Settlement**

SPP 3 sets out the key principles and planning considerations that apply to planning for urban growth and expansion of settlements in the State.

The key policy objectives in SPP 3 are as follows:

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

The Amendment proposal is considered to be broadly consistent with the key policy measures identified in SPP 3.

25. Western Australian Planning Commission *Planning Bulletin 63 – Policy for Dealing with Potential Conflicts Between Residential Subdivision and Market Gardens in East Waneroo* also provides relevant guidance on this proposal and should be taken into account.
26. The objectives of the policy, in relation to market gardens on land zoned 'Rural' are to:
- 1) *“minimise the effects of residential development on market gardens which are practiced in accordance with the relevant legislation, codes of practice and associated industry-specific guidelines;*
  - 2) *minimise the potential for complaints about market gardens from residential areas;*
  - 3) *provide residents with acceptable standards of amenity in residential areas that are located in proximity to market gardens.”*
27. For residential subdivision in the vicinity of market gardens on land zoned Rural in the Metropolitan Region Scheme, the WAPC will accept:
- *“a separation distance of 300m which can be reduced to a protected and maintained vegetated buffer strip of a minimum width of 20m, together with adequate additional land for access for maintenance and firebreaks, and specially designed fencing of the type specified below (Note: the design of the vegetated buffer should be based on the Queensland guidelines (p28) and contain a mix of local Western Australian evergreen species with different growth habits and should include species with long, thin and rough foliage); and*
  - *prospective purchasers within 300m of the boundary of the market garden to be advised of the existence of the market garden on the contract of sale; and*
  - *memorials to be included on titles of all residential lots within 300m of the boundary of the market garden advising of the location and impacts of the market garden on amenity;*  
*or*
  - *alternative measures which it can be demonstrated meet the objectives of the policy to the satisfaction of the WAPC.”*
28. At present, the Subdivision Guide Plan details a 10m wide vegetated buffer area separating the proposed development from the adjacent market garden. However, modifications to the proposal will be required to ensure that a 20m buffer is put in place and that notifications are placed on the titles of the new lots created, advising that they are within 300m of a market garden and may be subject to nuisance impacts of odour, noise, dust and spray drift.

**RISK IDENTIFICATION & MITIGATION**

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

<b>Risk</b>	<b>Likelihood</b>	<b>Consequence</b>	<b>Risk Analysis</b>	<b>Mitigation</b>
<i>The proposal may generate a land use conflict (through noise and spray drift) due to an existing market garden immediately south of the subject land.</i>	<i>Possible</i>	<i>Medium</i>	<i>High</i>	<i>Imposition of an increase vegetated buffer of 20 metres and placement of notifications on titles to advise prospective purchasers of the operations of the market garden.</i>

**FINANCIAL IMPLICATIONS**

30. The appropriate planning fee has been received and staff have processed the application within existing budget lines.

31. Should Council support the Scheme Amendment, the property owners would be responsible for lodging an application for subdivision and extending services to the subject land at their own cost.

**LEGAL IMPLICATIONS**

32. Section 75 of the *Planning Development Act 2005* allows Council to pass a resolution to amend its Town Planning Scheme.

33. Regulation 17(2)(b) of the *Town Planning Regulations 1967* allows Council to pass a resolution that it does not wish to proceed with an amendment to its Town Planning Scheme after the advertising of a scheme amendment. Council would need to advise the Western Australian Planning Commission why it does not wish to proceed with the amendment.

**ALTERNATE OPTIONS**

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

- To adopt the Scheme Amendment without modifications;
- To adopt the Scheme Amendment with modifications as per staff's recommendation; or
- To resolve not to adopt the Scheme Amendment and advise the WAPC of the reasons for not doing so.

**SUMMARY CONCLUSION**

35. The subject land is identified on Map 9B of the ALPS for 'Rural Residential' development and the amendment seeks to rezone the land to the 'Special Rural' zone. The proposal is considered broadly consistent with the strategic aims and objectives of the ALPS, SPPs 1 and 3 and will meet the requirements of Planning Bulletin 63 through the implementation of minor modifications.

<b>Consulted References</b>	WA Planning Commission (WAPC) Statements of Planning Policy (SPP's) SPP1 & SPP 3 & Planning Bulletin 63.
<b>File Number (Name of Ward)</b>	AMD266 (Vancouver Ward)
<b>Previous References</b>	OCM 17/11/09 – Item 11.3.2 (SAR 098) OCM 20/04/10 – Item 13.2.2 (AMD266)

**2.5: NEW BUILDING ACT 2011**

<b>Land Description</b>	: Whole of Municipality
<b>Proponent</b>	: City of Albany
<b>Attachment</b>	: 1. Revocation of existing delegations : 2. Delegation of Authority – Building Permits : 3. Delegation of Authority – Demolition Permit : 4. Delegation of Authority – Grant of Occupancy Certificates : 5. Delegation of Authority – Extension of Occupancy : Certificates : 6. Delegation of Authority – Building Fees : 7. Delegation of Authority – Building Orders : 8. Delegation of Authority - Authority to prosecute : 9. Proposed Fees
<b>Responsible Officer</b>	: E/Director Planning & Development Services (G Bride)

**IN BRIEF**

- To provide Council with an overview of the changes to building control in Western Australia resulting from the *Building Act 2011*.
- Council consideration is also sought on delegation of powers and fees associated with the *Building Act 2011*.

**CEO:**

**RESPONSIBLE OFFICER:**

**ITEM 2.5: RESPONSIBLE OFFICER RECOMMENDATION 1  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**THAT Council notes the approach that Officers will take in response to the *Building Act 2011*.**

**ITEM 2.5: RESPONSIBLE OFFICER RECOMMENDATION 2  
VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**THAT Council:**

- (1) Revoke delegations shown in Attachment 1 and adopt new delegations as shown in Attachment 2, which are to take effect from the proclamation of the *Building Act 2011*.**
- (2) Adopts the proposed City of Albany Schedule of Fees and Charges for the assessment of uncertified Class 2 to Class 9 building applications and other related fees as shown in Attachment 3.**
- (3) Approves giving Local Public Notice of the fees and charges in (3) above, pursuant to section 6.19 of the *Local Government Act 1995*, with effect from the proclamation of the *Building Act 2011*.**

**BACKGROUND**

1. Building control in Western Australia is currently administered under the provisions of the *Local Government (Miscellaneous Provisions) Act 1960*, which identifies local governments as the sole authority to assess building licence applications and issue approvals.
2. Following a review of building regulations by the former Housing and Works and Consumer Protection portfolios, a recommendation was made that the legislation be updated to reflect modern building practices in Western Australia.
3. To this end, the Government has been working on a Building Regulation Reform package which is planned to deliver the most significant transformation to Western Australian building legislation in over 50 years. The existing building approvals process was established by the *Local Government Act 1960* and reflects the way buildings were designed in the 1950's, relying on builders registered under the *Builders' Registration Act 1939*.
4. The Building Regulation Reform package consists of 4 Acts:
  - *Building Act 2011*;
  - *Building Services (Registration) Act 2011*;
  - *Building Services (Complain Resolution and Administration) Act 2011*; and
  - *Building Services Levy Act 2011*.



5. The *Building Act 2011* (Act), which will have the most impact on local government, was passed by State Parliament in June 2011. It is anticipated that the Act will come into effect on 1 January 2012 with a phased implementation over 12 months.
6. The anticipated outcomes of the reform package should be a more responsive and modern building regulatory system that meets the changing needs of building industry participants and consumers.
7. While the new Act will alter some traditional duties and responsibilities of local government, the full impact of the proposed changes will not be known for approximately 12 to 18 months.
8. A major change to process under the Act is to separate the process of certifying compliance with the Building Code of Australia, and other standards, from the administrative process of issuing permits. The introduction of Private Certification will remove the sole role of local government as the building licence application assessor. Applicants will have the option of engaging the services of a registered private building surveyor or a registered building surveyor working for a local government.
9. The Act will establish Permit Authorities to issue permits and notices/orders, ensure enforcement of permits and retain building records. A Permit Authority can be a local government, Special Permit Authority (a group of local governments) or State Government.
10. A Permit Authority grants all permits that are required under the new building approval system, and ensures that all statutory requirements for the lodgement of a permit application are met, and that the paperwork is complete.
11. A local government as the Permit Authority will be required to provide a certification and approval service for domestic buildings (Class 1 and 10 buildings) and maintain its monitoring and enforcement role within its boundaries. The powers and duties of a Permit Authority in relation to the approval and enforcement roles cannot be delegated to the private sector.
12. However, as the Regulations supporting the *Building Act 2011* have not been completed at this point in time, there is still uncertainty as to the actual role of the Permit Authority in the enforcement area. It is anticipated that there may be an additional role for local government to undertake audits of applications being submitted for accuracy and compliance with the relevant codes.
13. There is also a possibility that local governments will be required to undertake mandatory site inspections for specific buildings to ensure they are constructed in accordance with building standards and the approved plans.
14. Local governments may also provide a certification service for all other classifications of buildings (commercial, industrial and public buildings) where certification from a registered building surveyor is required under the Act.
15. Prior to offering a certification service for non-domestic buildings, a local government is required to ensure the provisions of the *Local Government Act 1995* are not breached.

16. To provide the community with the option of submitting a building application for non-domestic buildings to a registered private building surveyor or a registered local government building surveyor, it is proposed that, in addition to its required role as a Permit Authority, the City continues to provide, at least in the short-term until the full impact of the legislation and regulations is known, a full range of certification services in relation to building work undertaken in the City of Albany after the implementation of the Act.
17. To prepare for the introduction the Act, it is necessary to adopt:
  - a schedule of fees and charges for services not set by statute;
  - new delegations; and
  - new authorisations.

## **DISCUSSION**

18. The City has a building services team that currently provides a complete range of building control services and is capable of providing the same range of services when the new Act comes into effect.
19. It is important that the local building industry is able to access building surveying services on an on-going and uninterrupted basis. There will also be an expectation that residents and small builders will continue to submit building applications to the City for assessment, pay a fee and obtain the necessary approvals to undertake building work.
20. At this point there has been no indication as to whether private registered building surveyors will be readily available within Albany to offer building surveyor services for Class 2 to Class 9 buildings to residents and builders.

### Fees

21. As the Act allows for permit authorities to receive fees for applications for building, demolition, and occupancy permits as well as a number of other activities, the Building Commission released a paper *Building Act: Proposed fee modelling for permit authorities* on 5 August 2011.
22. The schedule of fees for permit authorities and local governments proposed by the Building Commission is based on the current fees charged and modified to allow for the new building regulatory process. The following table shows the current and proposed common fees:

<b>Act Provision</b>	<b>Current fee</b>	<b>Proposed fee</b>
<b>Building permit application minimum fee</b>	\$85.00	\$90.00
<b>Building Permit application Class 1 &amp; 10 – uncertified</b>	0.35% of 10/11 of the estimated value of the proposed construction as determined by the local government but not less than \$85. The 10/11 is an adjustment to recognise the extra cost of building imposed by GST.	0.318% of the estimated value (inclusive of GST) of the proposed building work as determined by the permit authority but not less than \$90.
<b>Building Permit application Class 1 &amp; 10 – certified</b>	No current equivalent	0.19% of the estimated value (inclusive of GST) of the proposed building work as determined by the permit authority but not less than \$90.
<b>Building Approval Certificate for unauthorised Class 1 &amp; 10 – certified</b>	No current equivalent For uncertified application – 0.7% of 10/11 of the estimated current value of the unauthorised work as determined by the local government but not less than \$170.	0.38% of the estimated current value (inclusive of GST) of the unauthorised work as determined by the permit authority, but not less than \$90.
<b>Building Permit Application Class 2 to 9 – certified</b>	No current equivalent For uncertified application – 0.2% of 10/11 of the estimated value of the proposed construction as determined by the local government but not less than \$85.	0.09% of the estimated value (inclusive of GST) of the proposed building work as determined by the permit authority but not less than \$90.
<b>Application for Occupancy Permit for Class 2 to 9 buildings – certified</b>	Certificate of Classification is the closest equivalent. No current fee associated with a Certificate of Classification.	\$90 per application.

23. The proposed fees are considered to be an interim measure and will be reviewed by the Building Commission once the Act has been in operation for a sufficient period of time to ensure the fees align accurately with the actual costs associated with providing the permit authority functions.

24. While local governments are only required to undertake the role of a Permit Authority, they can, as a service to their community, consider providing other services and be able to charge a fee to recover the cost of those services.
25. Prior to providing the additional services, local governments are required to ensure they do not breach the *Local Government Act 1995*. Other services could include:
- Issuing Certificates of Design Compliance (all classes of building).
  - Issuing Certificates of Construction Compliance (inspection and certification of buildings during construction).
  - Issuing Certificates of Building Compliance (inspection and certification that a completed building is compliant).
  - Conducting inspections for other parties.
26. As there is no indication that registered private building surveyors will be immediately available within Albany, it is proposed as an interim measure that the City continue to provide the full range of building services currently available to the community.
27. The following table shows the proposed fees for uncertified buildings and associated services. The fees in this table are in addition to the fees proposed by the Building Commission. Both fees will be chargeable to building applications.

<b>Uncertified Applications</b>	
Certificate of Design Construction (Class 1 and 10 buildings)	0.13% of the estimated value (inclusive if GST) but not less than \$90.
Certificate of Design Construction (Class 2 to 9 buildings)	0.09% of the estimated value (inclusive if GST) but not less than \$90.
Request to provide a Certificate of Design Construction for buildings outside City of Albany boundaries (Class 1 and 10)	0.13% of the estimated value (inclusive if GST) but not less than \$90.
Request to provide a Certificate of Design Construction for buildings outside City of Albany boundaries (Class 2 to 9)	0.09% of the estimated value (inclusive if GST) but not less than \$90.
Request to provide Certificate of Construction Compliance	\$100 per hour, with a minimum of \$200
Request to provide a Certificate of Building Compliance	\$100 per hour, with a minimum of \$200

<b>Other fees (Excluding GST)</b>	
Application for copies of permits, building approval certificates in register	\$50.00
Providing advice on town planning, environmental health or stormwater disposal requirements and/or providing written confirmation of compliance with town planning, environmental health and stormwater requirements.	\$100 per hour, with a minimum of \$200.00
Inspections (per hour)	\$100.00

28. The proposed fees are considered an interim measure and have been calculated using the same method used to establish statutory fees (using a percentage of the estimated building value) or cost recovery, as required by section 6.17 of the *Local Government Act 1995*, taking into account direct and other costs associated with providing the service.

Delegations

29. With the introduction of the Act, the current delegations for building surveyors, which were authorised under the *Local Government (Miscellaneous Provisions) Act 1960*, will become redundant.
30. One of the anticipated outcomes of the Act is a reduction in the approval times for building applications. The specified timeframes for processing applications are considered tight and will require local governments to perform at their most efficient level.
31. Council is requested to approve the following new delegations as provided under the following sections of the Act (refer Attachment 2):
- Section 20 Approve or refuse a Building Permit
  - Section 21 Approve or refuse a Demolition Permit
  - Section 22 Further grounds for refusing to grant a Building or Demolition Permit
  - Section 58 Issue of Occupancy Permit and Building Approval Certificate
  - Section 65 Consider Extending the period of duration of a Occupancy Permit or Building Approval Certificate
  - Section 110 Issue Building Orders
  - Section 117 Revoke Building Orders
  - Section 139 Authority to commence prosecutions
32. Under the provisions of the Act, local governments will be provided with the authority to ensure that all building works comply with the requirements of the issued building or demolition permit, the Building Code of Australia and all relevant standards.
33. A Permit Authority may take enforcement action if building work:

- Contravenes a building, demolition or occupancy permit;
- Is used in contravention of the Act or Regulations;
- Is unfit for use or occupancy; or
- Is a danger to the occupants.

34. To ensure good governance in building control and to enable the City to effectively and efficiently fulfil its obligations under the Act it is necessary to delegate the authority to appoint authorised officers for the purposes of the Act to the Chief Executive Officer (refer Attachment 2).

### GOVERNMENT CONSULTATION

35. Building team officers have undertaken informal consultation with Building Commission staff and other local governments to develop the proposed approach to implementing the new Building Act and other new legislation.

### PUBLIC CONSULTATION / ENGAGEMENT

36. Consultation regarding the implementation of the new Building Act and how it affects the Western Australian building industry is the responsibility of the Building Commission.

37. The proposed fee structure will be advertised in the local press as required by section 6.19 of the *Local Government Act 1995*.

38. If adopted, builders within the City of Albany area will be advised of the services to be offered by the City and the fee for the service.

### STATUTORY IMPLICATIONS

39. The following sections of the *Local Government Act 1995* have been considered:

***“6.12. Power to defer, grant discounts, waive or write off debts***

- (1) *Subject to subsection (2) and any other written law, a local government may —*
- (a) *when adopting the annual budget, grant\* a discount or other incentive for the early payment of any amount of money;*
  - (b) *waive or grant concessions in relation to any amount of money; or*
  - (c) *write off any amount of money,*

*which is owed to the local government.*

*\* Absolute majority required.*

- (2) *Subsection (1)(a) and (b) do not apply to an amount of money owing in respect of rates and service charges.*
- (3) *The grant of a concession under subsection (1)(b) may be subject to any conditions determined by the local government.*
- (4) *Regulations may prescribe circumstances in which a local government is not to exercise a power under subsection (1) or regulate the exercise of that power.”*

**“6.16. Imposition of fees and charges**

- (1) *A local government may impose\* and recover a fee or charge for any goods or service it provides or proposes to provide, other than a service for which a service charge is imposed.*
  - \* *Absolute majority required.*
- (2) *A fee or charge may be imposed for the following —*
  - (a) *providing the use of, or allowing admission to, any property or facility wholly or partly owned, control managed or maintained by the local government;*
  - (b) *supplying a service or carrying out work at the request of a person;*
  - (c) *subject to section 5.94, providing information from government records;*
  - (d) *receiving an application for approval, granting an approval, making an inspection and issuing a licence permit, authorisation or certificate;*
  - (e) *supplying goods;*
  - (f) *such other service as may be prescribed.*
- (3) *Fees and charges are to be imposed when adopting the annual budget but may be —*
  - (a) *imposed\* during a financial year; and*
  - (b) *amended\* from time to time during a financial year.”*

**“6.17. Setting level of fees and charges**

- (1) *In determining the amount of a fee or charge for a service or for goods a local government is required to take into consideration the following factors —*
  - (a) *the cost to the local government of providing the service or goods;*
  - (b) *the importance of the service or goods to the community; and*
  - (c) *the price at which the service or goods could be provided by an alternative provider.*
- (2) *A higher fee or charge or additional fee or charge may be imposed for an expedited service or supply of goods if it is requested that the service or goods be provided urgently.*
- (3) *The basis for determining a fee or charge is not to be limited to the cost of providing the service or goods other than a service —*
  - (a) *under section 5.96;*
  - (b) *under section 6.16(2)(d); or*
  - (c) *prescribed under section 6.16(2)(f), where the regulation prescribing the service also specifies that such a limit is to apply to the fee or charge for the service.*
- (4) *Regulations may —*
  - (a) *prohibit the imposition of a fee or charge in prescribed circumstances; or*
  - (b) *limit the amount of a fee or charge in prescribed circumstances.”*

**“6.19. Local government to give notice of fees and charges**

*If a local government wishes to impose any fees or charges under this Subdivision after the annual budget has been adopted it must, before introducing the fees or charges, give local public notice of —*

- (a) *its intention to do so; and*
- (b) *the date from which it is proposed the fees or charges will be imposed.”*

**STRATEGIC IMPLICATIONS**

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

**Key Focus Area:**

Organisational Performance

**Community Priority**

Policy and procedures

**Proposed Strategies**

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

**POLICY IMPLICATIONS**

42. There are no policy implications associated with this item.

**RISK IDENTIFICATION & MITIGATION**

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

<b>Risk</b>	<b>(L)</b>	<b>(C)</b>	<b>Risk Rating</b>	<b>Mitigation</b>
<i>Proposed fee schedule is not adopted.</i>	Possible	Medium	High	Adopt the proposed fee schedule.
<i>Proposed delegations are not adopted</i>	Possible.	Medium	High	Adopt the proposed delegations
<i>Proposed authorisations are not adopted.</i>	Possible	Medium	High	Adopt the proposed authorisations

**FINANCIAL IMPLICATIONS**

44. While local governments will receive legislated fees for their new responsibilities, it is anticipated that the amount of revenue local government receives from the building approval service may decrease. With the introduction of private certification, local government will no longer have the exclusive right to assess building licence applications, which will impact on the revenue currently received from building approval fees and charges. The effect of the proposed changes on income will not be known for approximately 12 to 18 months.



**LEGAL IMPLICATIONS**

45. Without the delegations and authorisations in place by the proclamation of the Act, the City's Building Surveyors will be restricted in their ability to assess building applications.

**ALTERNATE OPTIONS**

46. With the introduction of the Act, Council has two options available regarding the service to be provided to the community:

- (a) Provide the minimum service as specified by the Act:

- Issue prescribed permits (Permit Authority)
- Ensure building works within the district achieve statutory compliance
- Undertake assessment and issue Certificate of Design Compliance for Class 1 (single dwellings) and Class 10 (sheds & patios) buildings.

or

- (b) In addition to the minimum service, Council can resolve to provide a certification service for Class 2 to 9 buildings, for buildings within the City of Albany district, which will essentially be a continuation of the building assessment role that is currently undertaken by local governments.

**SUMMARY CONCLUSION**

47. That Council consider the proposal for the City of Albany to provide a building certification service in accordance with the Act and adopt the proposed schedule of fees and charges.

<b>Consulted References</b>	<i>Building Act 2011</i>
<b>File Number (Name of Ward)</b>	All Wards
<b>Previous Reference</b>	Nil

## 4.1: LIST OF ACCOUNTS FOR PAYMENT

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

### ITEM 2.1: RESPONSIBLE OFFICER RECOMMENDATION

**The list of accounts authorised for payment under delegated authority to the Chief Executive Officer for the period ending 15<sup>th</sup> November 2011 totalling \$2,524,631.40 be RECEIVED.**

### BACKGROUND

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

### DISCUSSION

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

#### Municipal Fund

Trust	Totalling	\$101,747.90
Cheques	Totalling	\$134,277.52
Electronic Fund Transfer	Totalling	\$1,465,170.40
Credit Cards	Totalling	\$5,093.09
Payroll	Totalling	\$818,342.49
	<b>TOTAL</b>	<b><u>\$2,524,631.40</u></b>

- As at 15th November 2011, the total outstanding creditors, stands at **\$577,804.21** and made up follows:

Current	\$ 248,571.98
30 Days	\$301,310.06
60 Days	\$5,120.96
90 Days	\$22801.21
<b>TOTAL</b>	<b>\$577,804.21</b>

CEO:

RESPONSIBLE OFFICER:

4. Cancelled cheques – 27685 – paid by EFT, 27708 – incorrect name details (replacement cheque 27718) and 27719 - address details incomplete (replacement cheque 27728)

**STATUTORY IMPLICATIONS**

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

**FINANCIAL IMPLICATIONS**

8. Expenditure for the period to 15 November 2011 has been incurred in accordance with the 2011/2012 budget parameters.

**POLICY IMPLICATIONS**

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

**SUMMARY CONCLUSION**

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

<b>File Number (Name of Ward)</b>	FM.FIR.2 - All Wards
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## 4.2: FINANCIAL ACTIVITY STATEMENT – 30 NOVEMBER 2011

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

### IN BRIEF

- Statement of Financial Activity reporting on the revenue and expenditure of the City of Albany for the reporting period ending 30 November 2011.

### ITEM 4.2: RESPONSIBLE OFFICER RECOMMENDATION

**The Financial Activity Statement for the period ending 30 November 2011 be RECEIVED.**

### BACKGROUND

1. The Statement of Financial Activity for the period ending 30 November 2011 has been prepared and is attached.
2. In addition to the statutory requirement to provide Council with a Statement of Financial Performance, the City provides Council with a monthly investment summary to ensure the performance of the investment portfolio is in accordance with anticipated returns and complies with the Investment of Surplus Funds Policy.

### DISCUSSION

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

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

**CEO:**

**RESPONSIBLE OFFICER:**

**6. STATEMENT OF FINANCIAL ACTIVITY – AS AT 30 NOVEMBER 2011**

FINANCIAL DETAIL NOT  
AVAILABLE AT TIME OF  
PRINTING

**7. CITY OF ALBANY - NET CURRENT ASSETS – 30 NOVEMBER 2011**

FINANCIAL DETAIL NOT  
AVAILABLE AT TIME OF  
PRINTING

**8. PORTFOLIO VALUATION – MARKET VALUE – AS AT 30 NOVEMBER 2011**

FINANCIAL DETAIL NOT AVAILABLE AT TIME OF  
PRINTING

**9. FINANCIAL RATIOS - AS AT 30 NOVEMBER 2011**

FINANCIAL DETAIL NOT  
AVAILABLE AT TIME OF  
PRINTING



**STATUTORY IMPLICATIONS**

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

**\*\*REFER DISCLAIMER\*\***

**FINANCIAL IMPLICATIONS** *Expenditure for the period ending 30 November 2011 has been incurred in accordance with the 2011/12 proposed budget parameters. Details of any budget variation in excess of \$100,000 (year to date) follow. There are no other known events which may result in a material non recoverable financial loss or financial loss arising from an uninsured event.*

**13. VARIANCES TO BUDGET IN EXCESS OF \$100,000 - AS AT 30 NOVEMBER 2011**

FINANCIAL DETAIL NOT AVAILABLE AT TIME OF  
PRINTING

**POLICY IMPLICATIONS**

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

<b>File Number (Name of Ward)</b>	FM.FIR.2 - All Wards
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**5.1: CONTRACT C11010 - SUPPLY AND APPLICATION OF BITUMEN**

**Proponent** : City of Albany  
**Owner** : City of Albany  
**Responsible Officer(s)** : Chief Executive Officer (F James)

**IN BRIEF**

- Contract C11010 – Supply and application of bitumen be AWARDED to Fulton Hogan Industries for a one year period, following which period the contract will be retendered.

**ITEM 5.1 RESPONSIBLE OFFICER RECOMMENDATION  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**THAT Council:**

**ACCEPT the Tender from Fulton Hogan Industries and award contract C11010 for the supply and application of bitumen for a period of one year, following which period the contract will be retendered.**

**CEO:**

**RESPONSIBLE OFFICER:**

**BACKGROUND**

1. Due to an expiry of the current bitumen supply and application contract, tenders were called for the provision of bitumen supply and application for a period of one year. The tender is for all services necessary to satisfactorily perform the City of Albany's annual reseal program.

**DISCUSSION**

2. A total of seven tender documents were downloaded from the City of Albany website.
3. Three completed tender document were submitted on or before the stipulated closing date and time. The following table summarises the tenderers and overall evaluation scores applicable to each submission.

<b>Tenderer</b>	<b>Total Evaluation Score</b>
Boral Asphalt	469.588
RNR	488.399
Fulton Hogan Industries	677.013

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

<b>Criteria</b>	<b>% Weight</b>
Cost	55
Technical Compliance and Experience	15
Reliability	15
Quality Accreditation	15
<b>Total</b>	<b>100</b>

5. On the basis of the total evaluation score which considers cost, technical compliance and experience, reliability and quality the most suitable company is considered Fulton Hogan Industries.

**GOVERNMENT CONSULTATION**

Nil.

**PUBLIC CONSULTATION / ENGAGEMENT**

6. A request for tenders was published in the West Australian on 5 October 2011 and the Great Southern Weekender on 6 October 2011.

**STATUTORY IMPLICATIONS**

7. Regulation 11 of the Local Government (Functions and General) Regulations 1996 (Regulations) requires Council to publicly tender if the contract is, or is expected to be, more, or worth more, than \$250,000.

8. Regulation 18 of the Regulations outlines a number of requirements relating to choice of tender. Council is to decide which of the acceptable tenders is the most advantageous to Council. It may also decline to accept any tender.
9. Regulation 19 of the Regulations requires Council to advise each tenderer in writing the result of Council's decision.

**STRATEGIC IMPLICATIONS**

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

**Key Focus Area**

*Lifestyle and Environment*

**Community Priority**

*A built environment for active lifestyles*

**Key Focus Area**

*Lifestyle and Environment*

**Community Priority**

*Road improvements*

**POLICY IMPLICATIONS**

11. The City of Albany Tender Policy and Regional Price Preference Policy are applicable to this item.

**RISK IDENTIFICATION & MITIGATION**

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Non compliance with contract or business failure	Unlikely	Medium	Medium	General conditions of contract allow for contract termination on the basis of failure to supply goods & services
A vehicle accident occurs due to an unsafe environment for road users	Possible	Medium	High	The Contractor is required to submit a Traffic Management Plan prepared by an accredited person for each site of works

**FINANCIAL IMPLICATIONS**

13. The value of this tender is in excess of \$250,000 and therefore the approval is referred to Council for consideration.
14. The cost per job will be included in the specific budget line item.

**LEGAL IMPLICATIONS**

Nil.

**ALTERNATE OPTIONS**

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

**SUMMARY CONCLUSION**

16. On reviewing the one submission, the evaluation team assessed Fulton Hogan Industries as being the most suitable tenderer across the evaluation criteria in terms of cost, technical compliance and experience, reliability and quality. Fulton Hogan Industries is recommended to be awarded the supply and application of bitumen contract.

<b>Consulted References</b>	Local Government (Functions and General) Regulations 1995 Council Policy – Purchasing (Tenders & Quotes) Council Policy – Buy Local (Regional Price Preference)
<b>File Number (Name of Ward)</b>	C11010
<b>Previous Reference</b>	

**5.2: CONTRACT C11009 - SUPPLY OF ASPHALT**

**Proponent** : City of Albany  
**Owner** : City of Albany  
**Responsible Officer(s)** : Chief Executive Officer (F James)

**IN BRIEF**

- Contract C11009 – Supply of asphalt be AWARDED to Gordon Walmsley Pty Ltd for a one year period, following which period the contract will be retendered.

**ITEM 5.2 RESPONSIBLE OFFICER RECOMMENDATION  
VOTING REQUIREMENT: ABSOLUTE/SIMPLY MAJORITY**

**THAT Council:**

**ACCEPT the Tender from Gordon Walmsley Pty Ltd and award contract C11009 for the supply of asphalt for a period of one year, following which period the contract will be retendered.**

**CEO:**

**RESPONSIBLE OFFICER:**

**BACKGROUND**

1. Due to an expiry of the current asphalt supply contract, tenders were called for the provision of asphalt supply for a period of one year. The tender is for the supply and placement of hot mix asphalt surfacing on roads within the City of Albany.

**DISCUSSION**

2. A total of seven tender documents were downloaded from the City of Albany website.
3. One completed tender document was submitted on/before the stipulated closing date and time. The following table summarises the tenderer and overall evaluation score applicable to the submission.

<b>Tenderer</b>	<b>Total Evaluation Score</b>
Gordon Walmsley Pty Ltd	507.5

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

<b>Criteria</b>	<b>% Weight</b>
Cost	55
Technical Compliance and Experience	15
Reliability	15
Quality Accreditation	15
<b>Total</b>	<b>100</b>

5. Gordon Walmsley Pty Ltd has been a previous contractor for the City of Albany and has proved a reliable local operator.
6. On the basis of the total evaluation score which considers cost, technical compliance and experience, reliability and quality Gordon Walmsley Pty Ltd is considered a suitable company.

**GOVERNMENT CONSULTATION**

Nil.

**PUBLIC CONSULTATION / ENGAGEMENT**

7. A request for tenders was published in the West Australian on 5 October 2011 and the Great Southern Weekender on 6 October 2011.

**STATUTORY IMPLICATIONS**

8. Regulation 11 of the Local Government (Functions and General) Regulations 1996 (Regulations) requires Council to publicly tender if the contract is, or is expected to be, more, or worth more, than \$250,000.



9. Regulation 18 of the Regulations outlines a number of requirements relating to choice of tender. Council is to decide which of the acceptable tenders is the most advantageous to Council. It may also decline to accept any tender.
10. Regulation 19 of the Regulations requires Council to advise each tenderer in writing the result of Council's decision.

**STRATEGIC IMPLICATIONS**

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

**Key Focus Area**

*Lifestyle and Environment*

**Community Priority**

*A built environment for active lifestyles*

**Key Focus Area**

*Lifestyle and Environment*

**Community Priority**

*Road improvements*

**POLICY IMPLICATIONS**

12. The City of Albany Tender Policy and Regional Price Preference Policy are applicable to this item.

**RISK IDENTIFICATION & MITIGATION**

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Non compliance with contract or business failure	Unlikely	Medium	Medium	General conditions of contract allow for contract termination on the basis of failure to supply goods & services
A vehicle accident occurs due to an unsafe environment for road users	Possible	Medium	High	The Contractor is required to submit a Traffic Management Plan prepared by an accredited person for each site of works

**FINANCIAL IMPLICATIONS**

14. The value of this tender is in excess of \$250,000 and therefore the approval is referred to Council for consideration.
15. The cost per job will be included in the specific budget line item.

**LEGAL IMPLICATIONS**

Nil.

**ALTERNATE OPTIONS**

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

**SUMMARY CONCLUSION**

17. On reviewing the one submission, the evaluation team assessed Gordon Walmsley Pty Ltd as being a suitable tenderer across the evaluation criteria in terms of cost, technical compliance and experience, reliability and quality. Gordon Walmsley Pty Ltd is recommended to be awarded the supply of asphalt contract.

<b>Consulted References</b>	Local Government (Functions and General) Regulations 1995 Council Policy – Purchasing (Tenders & Quotes) Council Policy – Buy Local (Regional Price Preference)
<b>File Number (Name of Ward)</b>	C11009
<b>Previous Reference</b>	

**5.3: CONTRACT C11008 – PROVISION OF TRAFFIC CONTROL**

**Proponent** : City of Albany  
**Responsible Officer(s)** : Chief Executive Officer (F James)

**IN BRIEF**

- Contract C11008 – Provision of Traffic Control be AWARDED to Advanced Traffic Management for a period from the date awarded by Council until 30 June 2013, following which period the contract will be retendered.

**RECOMMENDATION**

**ITEM 4.1 RESPONSIBLE OFFICER RECOMMENDATION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

**THAT Council:**

**ACCEPT the Tender from Advanced Traffic Management and award contract C11008 for the provision of traffic control until 30 June 2013, following which the contract will be retendered.**

**CEO:**

**RESPONSIBLE OFFICER:**

**BACKGROUND**

1. Due to an expiry of the current traffic control contract, tenders were called for the provision of traffic control for a period from the date awarded by Council until 30 June 2013. The tender is for all work necessary to provide for the safe movement of traffic and the protection of persons and property through and/or around the work sites within the City.

**DISCUSSION**

2. A total of eight tender documents were downloaded from the City of Albany website.
3. Two completed tender document were submitted on/before the stipulated closing date and time. The following table summarises the tenderers and overall evaluation scores applicable to each submission.

<b>Tenderer</b>	<b>Total Evaluation Score</b>
Albany Traffic Control Pty Ltd	579.34
Advanced Traffic Management (WA) Pty Ltd	615.66

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

<b>Criteria</b>	<b>% Weight</b>
Cost	40
Relevant Experience	15
Key Personnel Skills and Experience	15
Tenderer's Resources	15
Demonstrated Understanding	15
<b>Total</b>	<b>100</b>

5. On the basis of the total evaluation score which considers cost, relevant experience, key personnel and experience, resources and demonstrated understanding the most suitable company is considered Advanced Traffic Management.

**GOVERNMENT CONSULTATION**

Nil.

**PUBLIC CONSULTATION / ENGAGEMENT**

6. A request for tenders was published in the West Australian on 12 October 2011 and the Great Southern Weekender on 13 October 2011.

**STATUTORY IMPLICATIONS**

7. Regulation 11 of the Local Government (Functions and General) Regulations 1996 (Regulations) requires Council to publicly tender if the contract is, or is expected to be, more, or worth more, than \$250,000.

8. Regulation 18 of the Regulations outlines a number of requirements relating to choice of tender. Council is to decide which of the acceptable tenders is the most advantageous to Council. It may also decline to accept any tender.
9. Regulation 19 of the Regulations requires Council to advise each tenderer in writing the result of Council's decision.

**STRATEGIC IMPLICATIONS**

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

**Key Focus Area**

*Lifestyle and Environment*

**Community Priority**

*A built environment for active lifestyles*

**Key Focus Area**

*Lifestyle and Environment*

**Community Priority**

*Road improvements*

**POLICY IMPLICATIONS**

11. The City of Albany Tender Policy and Regional Price Preference Policy are applicable to this item.

**RISK IDENTIFICATION & MITIGATION**

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Non compliance with contract or business failure	Unlikely	Medium	Medium	General conditions of contract allow for contract termination on the basis of failure to supply goods & services

**FINANCIAL IMPLICATIONS**

13. The value of this tender is in excess of \$250,000 and therefore the approval is referred to Council for consideration.
14. The cost per job will be included in the specific budget line item.

**LEGAL IMPLICATIONS**

Nil.

**ALTERNATE OPTIONS**

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

**SUMMARY CONCLUSION**

16. On reviewing the one submission, the evaluation team assessed Advanced Traffic Management as being the most suitable tenderer across the evaluation criteria in terms of cost, relevant experience, key personnel and experience, resources and demonstrated understanding. Advanced Traffic Management is recommended to be awarded the provision of traffic control contract.

<b>Consulted References</b>	Local Government (Functions and General) Regulations 1995 Council Policy – Purchasing (Tenders & Quotes) Council Policy – Buy Local (Regional Price Preference)
<b>File Number (Name of Ward)</b>	C11008
<b>Previous Reference</b>	

**XIV. MOTIONS WITH NOTICE**

Nil.

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

**15.1: MOTION WITH NOTICE BY MAYOR WELLINGTON**

**ITEM 15.1: Notice of Motion by Mayor Wellington**

**THAT (to be advised) be appointed as a Freeman of the City of Albany.**

**Councillor's Reason:**

The City of Albany traditionally has a male and female Freeman. With the passing of Freeman Enid Home, there now exists a vacancy for a female Freeman of the City.

Freemen are traditionally appointed in recognition of a long standing and distinguished service to their community.

The nominee will be discussed behind closed doors to maintain confidentiality prior to the appointment of the Freeman.

**15.2: MOTION WITH NOTICE BY COUNCILLOR HAMMOND**

**ITEM 15.2: Notice of Motion by Councillor Hammond**

**THAT the 2011/12 Budgeted Mayoral Allowance of \$65,000 be applied with immediate effect.**

**Councillor's Reason:**

The allowance of \$65,000 was provided for within the scope of the 2011/12 Budget, and is entirely consistent with other larger municipalities.

The matter of the Mayoral stipend is under review at State government level because in general, stipends have fallen below what has been considered as reasonably adequate, particularly given the nature and level of responsibilities and duties.

It is entirely appropriate that the new tenure commences in line with budgetary provisions, especially in light of an expected escalation in the work load.

A signed rescission motion has been presented to rescind the previous resolution of Council:

*“THAT on endorsement of the adopted 2011-12 Budget (on whatever date), Council AGREE to quarantine the amount of \$36,600 allocated to Mayoral allowances and sitting fees (described in the Budget as the Mayoral salary), until the matter is further considered regarding the allocation of those funds.”*

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

The 2011-12 City of Albany endorsed budget includes an amount of \$65,000 for total Mayoral sitting fees and all allowances, including an amount up to \$20,000 for vehicle use.

The Mayor has commenced monitoring his vehicle use through use of a log book. Once a sufficient period of time has elapsed the vehicle usage amount will be reconsidered.

In accordance with Regulation 10(1a) of the *Local Government (Administration) Regulations 1996*, the procedural requirements for revocation of the resolution of Council's decision at the OCM held on 19 July 2011 have been met. Please refer to the signed Revocation Motion detailed below.



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

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

Nil

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

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

15.1 Notice of Motion by Mayor Wellington-

**XX. NEXT ORDINARY MEETING DATE**

Tuesday 21 February 2012.

**XXI. CLOSURE OF MEETING**

**ITEM 21.0: MOTION**

**THAT Standing Order 3.1 be RESUMED to stop recording of proceedings.**

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

<b>Meeting Date</b>	<b>Item Number</b>	<b>Details/Status</b>
15/06/2010	15.2.3	Lot 5 Rufus Street - Claim for Subdivision Design Changes. <b>AWAITING RESPONSE FROM LAND OWNER/DEVELOPER REGARDING PROGRESS</b>
16/11/2010	2.6	Surrender Lease over Hangar Site 2 at Albany Airport. <b>REQUIRES FURTHER CONSIDERATION BY COUNCIL PENDING THE COMPLETION OF THE AIRPORT MASTERPLAN/BUSINESS PLAN.</b>
15/02/2011	4.11	Padre White Lookout Project. CEO to undertake further investigation of this project, including detailed budget analysis for project scope and provide further advice to council. <b>AWAITING ANZAC ALLIANCE PROGRESS AND ROYALTIES FOR REGIONS FUNDING</b>
19/04/2011	4.7	Audit Committee Recommendations. That Council request the Chief Executive Officer to further review the investment of Surplus Funds Policy through the Finance Strategy Committee, prior to recommendation to Council. <b>PENDING. - AWAITING DEVELOPMENT OF FIVE YEAR (FINANCE) PLAN.</b>
17/05/2011	3.1	Albany Leisure and Aquatic Centre. That the Business Plan be Brought back to Council for the Approval of the Recommendation. <b>PENDING COMPLETION OF BUSINESS PLAN TO BE PRESENTED TO FUTURE OCM.</b>
11/10/2011	5.2	Public Notice of Closure of Clydesdale Road at South Coast Highway. <b>TO BE PRESENTED TO FEBRUARY 2012 OCM</b>