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# MINUTES

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**Ordinary Meeting of Council**

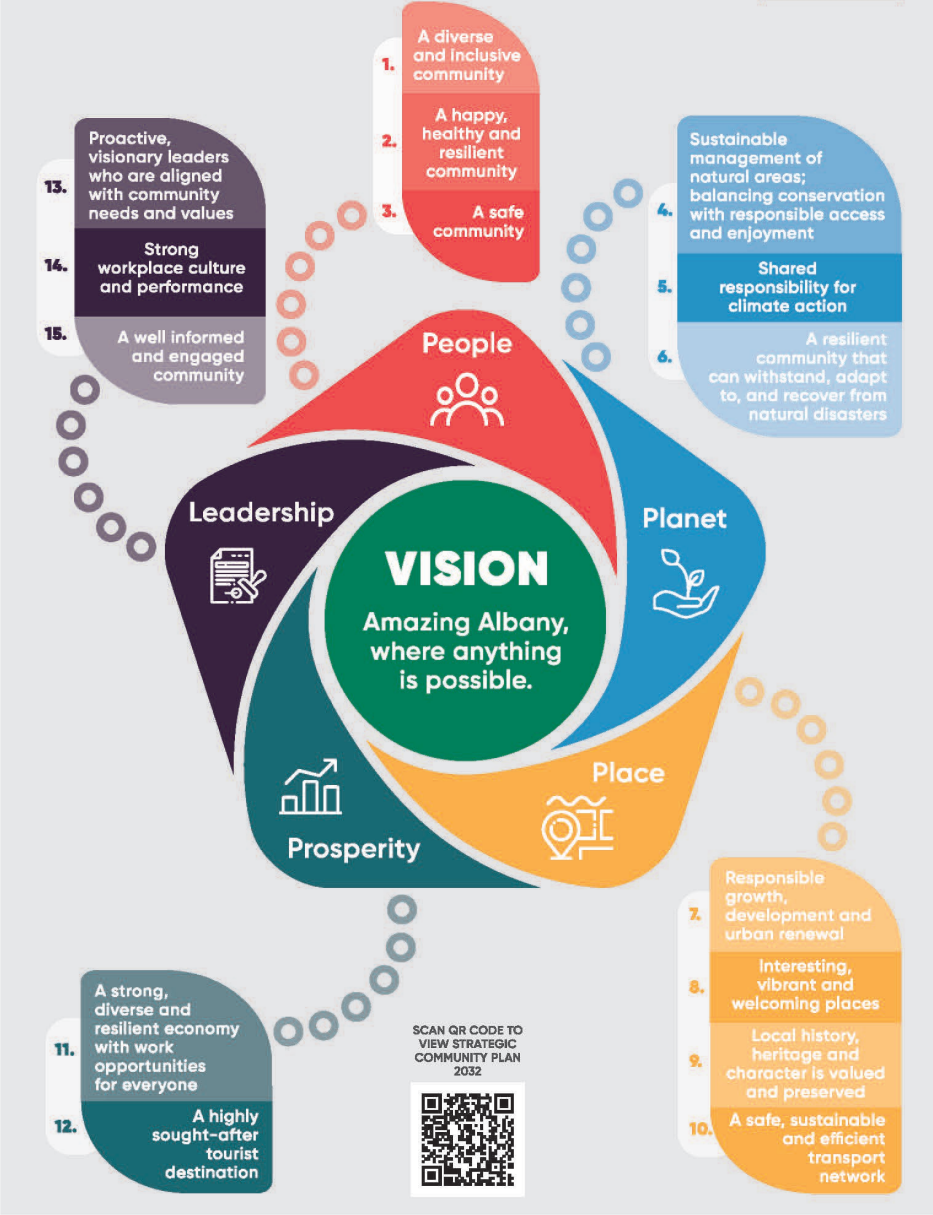
**Tuesday 26 July 2022**

6.00pm

**Council Chambers**



**STRATEGIC COMMUNITY PLAN 2032**



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## 1. DECLARATION OF OPENING

The Mayor declared the meeting open at 6.00pm.

## 2. PRAYER AND ACKNOWLEDGEMENT OF TRADITIONAL LAND OWNERS

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

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

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

## 3. RECORD OF APOLOGIES AND LEAVE OF ABSENCE

Mayor

D Wellington

### **Councillors:**

Breaksea Ward

P Terry

Breaksea Ward

A Cruse

Frederickstown Ward

G Stocks

Frederickstown Ward

M Traill

Kalgan Ward

M Benson-Lidholm JP

Kalgan Ward

T Brough (By Zoom)

Vancouver Ward

J Shanhun

Vancouver Ward

D Baesjou

West Ward

S Smith

Yakamia Ward

C Thomson (By Zoom)

Yakamia Ward

R Sutton

### **Staff:**

Chief Executive Officer

A Sharpe

A/Executive Director Corporate & Commercial Services

L Harding

Executive Director Infrastructure, Development  
& Environment

P Camins

Executive Director Community Services

N Watson

Manager Governance and Risk

S Jamieson

Manager Planning and Building Services

J van der Mescht

Coordinator Planning Services

J Wardell-Johnson

Meeting Secretary

J Williamson

### **Apologies:**

West Ward

A Goode JP (Leave of Absence)

Four members of the media and approximately 30 members of the public were in attendance.

4. DISCLOSURES OF INTEREST

Name	Report Item Number	Nature of Interest
Councillor Terry	DIS308	<b>Impartiality.</b> The nature of the interest being that Councillor Terry attended a private function at this address prior to the development application being lodged with the City. Councillor Terry remained in the Chamber and participated in the discussion and vote for this item.
Councillor Thomson	DIS307	<b>Financial.</b> The nature of the interest being that through his employment, Councillor Thomson has been, and possibly may still be, involved in discussions of a commercial nature concerning the Motorsport Park. Councillor Thomson's access to the meeting via Zoom was suspended. Councillor Thomson was not able to see or hear the debate or vote for this item. Councillor Thomson's remote access to the meeting was resumed following the decision for this item.
Mr Jan Van Der Mescht Manager Planning and Building Services	DIS308	<b>Impartiality.</b> The nature of the interest being that Mr Van Der Mescht has known the proponent for a number of years on a personal basis. Mr Van Der Mescht remained in the Chamber during the discussion and vote for this item. Mr Van Der Mescht also provided responses to questions raised by Elected Members during the debate and discussion for this item.
Councillor Cruse	DIS308	<b>Financial.</b> The nature of the interest being that the proponent is a client of Councillor Cruse's business, Aurora Magazine. Councillor Cruse left the Chamber and was not present during the discussion and vote for this item.
Councillor Terry	CCS454	<b>Financial.</b> The nature of the interest being that Councillor Terry would be classified as a closely related person to one of the lessees. Councillor Terry left the Chamber and was not present during the discussion and vote for this item.

## **5. REPORTS OF MEMBERS**

### **6.03pm Councillor Smith**

#### **Summary of key points:**

Councillor Smith declared that the Inaugural Maritime Festival was a huge success, with activities being oversubscribed due to the popularity. Councillor Smith congratulated the City's Communication Team on their creativity and collaboration to produce some outstanding marketing for the event.

Councillor Smith also attended the Citizenship Ceremony held on 20 July 2022, where 14 new Australian Citizens were welcomed.

Councillor Smith attended the Korean Armistice Memorial on Sunday, and said that it was a moving and sobering memorial of remembrance and tribute to the 340 Australian military personnel who were killed or missing in action in that conflict.

### **6.05pm Councillor Terry**

#### **Summary of key points:**

Councillor Terry acknowledged the ceremony held earlier in the day to display the Aboriginal and Torres Strait Islander Flags in the Council Chamber. The ceremony was attended by local Noongar Elders and elected members, and was a moving occasion with a Welcome to Country from Ms Carol Pettersen following by the unfurling and blessing of the flags.

Councillor Terry thanked Mayor Wellington for standing in to him and attending the WALGA Great Southern Zone meeting.

Councillor Terry acknowledged the recent community meeting attended at Lange Park by Bayonet Head residents and local MLC Ms Rebecca Stephens. Residents at that meeting expressed concern that there is only one road in and one road out of Bayonet Head, and the risk that this poses to residents in the event of a bushfire or other emergency.

Councillor Terry also visited the Emu Point Sporting Club to view plans for the proposed redevelopment of the site, valued at over \$1m.

### **6.08pm Councillor Traill**

#### **Summary of key points:**

Councillor Traill commented on the success of the Maritime Festival, and echoed Councillor Terry's comments regarding the installation and display of the Aboriginal and Torres Strait Islander flags in the Council Chamber.

### **6.09pm Councillor Brough**

#### **Summary of key points:**

Councillor Brough commented on the concerns by primary producers in the Kalgan Ward regarding the increased risk of Foot and Mouth Disease and the importance of farm biosecurity to protect local producers.

## **6. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE Nil.**

## 7. PUBLIC QUESTION TIME

In accordance with City of Albany Standing Orders Local Law 2014 (as amended):

*Clause 5) The Presiding Member may decide that a public question shall not be responded to where—*

- (a) the same or similar question was asked at a previous Meeting, a response was provided and the member of the public is directed to the minutes of the Meeting at which the response was provided;*
- (b) the member of the public asks a question or makes a statement that is offensive, unlawful or defamatory in nature, provided that the Presiding Member has taken reasonable steps to assist the member of the public to rephrase the question or statement in a manner that is not offensive, unlawful or defamatory.*

### **6.11pm Ms Samantha Stevens, 37 Rowley Road, Robinson Summary of key points:**

Ms Stevens addressed Council in support of the Committee Recommendation for Report Item CCS455: Robinson Precinct and Stidwell Bridle Trail Study. Ms Stevens' tabled address is detailed at Appendix A.

### **6.14 pm Ms Dianne Ciprian, Albany Summary of key points:**

Mrs Ciprian spoke in support of the Committee Recommendation for Report Item DIS308: Recreation-Private (Treehouse) to refuse commercial use of the treehouse.

### **6.18pm Ms Charlotte McIntyre, 76 Robinson Road, Robinson Summary of key points:**

Ms McIntyre spoke in support of the Committee Recommendation for Report Item CCS455: Robinson Precinct and Stidwell Bridle Trail Study.

### **6.21pm Mr Peter Stevens, 27 Harding Road, Robinson(By Zoom) Summary of key points:**

Mr Stevens spoke in support of the Committee Recommendation DIS308: Recreation-Private (Treehouse) to refuse commercial use of the treehouse.

### **6.23pm Ms Melanie Price, 76 Festing Street Mount Melville Summary of key points:**

Ms Price spoke in support of the Committee Recommendation for CCS455: Robinson Precinct and Stidwell Bridle Trail Study.

### **6.27pm Ms Marena Williams, 165 Robinson Road, Robinson Summary of key points:**

Ms Williams spoke in support of the Committee Recommendation for CCS455: Robinson Precinct and Stidwell Bridle Trail Study.

**6.31pm Ms Danita Walsh, 7 Drew Lane Mira Mar**  
**Summary of key points:**

Ms Walsh addressed Council regarding Report Item DIS308: Recreation-Private (Treehouse). Ms Walsh spoke in support of the proponents' proposal to continue commercial use of the treehouse.

**6.35 Mr Jon Doust, Angove Road, Spencer Park**  
**Summary of key points:**

Mr Doust addressed Council regarding Report Item DIS308: Recreation-Private (Treehouse), and spoke in support of the proponents' proposal to continue commercial use of the treehouse.

**6.38 Mr Sam Goodall, Kempton Close, Gledhow**  
**Summary of key points:**

Mr Goodall addressed Council regarding Report Item DIS308: Recreation-Private (Treehouse). Mr Goodall spoke in support of the proponents' proposal to continue commercial use of the treehouse.

**6.42pm Mr James McLean, 14 Mira Mar Road, Mira Mar (Proponent)**  
**Summary of key points:**

Mr McLean is the proponent for Report Item DIS308: Recreation-Private (Treehouse) and addressed Council in support of his application to continue commercial use of the treehouse.

**6.46pm Ms Amy Galante, 14 Mira Mar Road, Mira Mar (Proponent)**  
**Summary of key points:**

Ms Galante is the proponent for Report Item DIS308: Recreation-Private (Treehouse) and addressed Council in support of her application to continue commercial use of the treehouse.

There being no further speakers the Mayor declared Public Question Time closed at **6.50pm**.

**8. APPLICATIONS FOR LEAVE OF ABSENCE**

<p><b>RESOLUTION</b> <b>VOTING REQUIREMENT: SIMPLE MAJORITY</b></p> <p><b>MOVED: COUNCILLOR SUTTON</b> <b>SECONDED: COUNCILLOR SHANHUN</b></p> <p><b>THAT Councillor Baesjou be GRANTED Leave of Absence for the period 21 August 2022 to 31 August 2022 inclusive.</b></p> <p style="text-align: right;"><b>CARRIED 10-2</b></p>
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**Record of Vote**

Against the Motion: Councillors Smith and Thomson

**9. PETITIONS AND DEPUTATIONS Nil**



**10. CONFIRMATION OF MINUTES**

**RESOLUTION**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR TERRY**

**SECONDED: COUNCILLOR SHANHUN**

**THAT the minutes of the Ordinary Council Meeting held on 21 June 2022, as previously distributed, be CONFIRMED as a true and accurate record of proceedings.**

**CARRIED 12-0**

**11. PRESENTATIONS Nil**

**12. UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS**

**CCS448: FINANCIAL ACTIVITY STATEMENT – MAY 2022**

**Proponent / Owner** : City of Albany  
**Attachments** : Financial Activity Statement - May 2022  
**Report Prepared By** : Manager Finance (S Van Nierop)  
**Authorising Officer:** : Chief Executive Officer (A Sharpe)

**STRATEGIC IMPLICATIONS**

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
  - **Pillar:** Leadership.
  - **Outcome:** Strong workplace culture and performance

**IN BRIEF**

- Under the Local Government Financial Management Regulations, a local government is to prepare on a monthly basis a statement of financial activity that is presented to Council.
- The City of Albany's Statement of Financial Activity for the period ending 31 May 2022 has been prepared and is attached.
- In addition, the City provides Council with a monthly investment summary to ensure the investment portfolio complies with the City's Investment of Surplus Funds Policy.

**RECOMMENDATION**

**CCS448: RESOLUTION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR SUTTON**  
**SECONDED: COUNCILLOR BENSON**

**THAT the Financial Activity Statement for the period ending 31 May 2022 be RECEIVED.**  
**CARRIED 12-0**

CCS448: COMMITTEE RECOMMENDATION

MOVED: COUNCILLOR BROUGH  
SECONDED: COUNCILLOR SUTTON

THAT the Authorising Officer Recommendation be ADOPTED.  
**CARRIED 10-0**

CCS448: AUTHORISING OFFICER RECOMMENDATION

THAT the Financial Activity Statement for the period ending 31 May 2022 be RECEIVED.

**DISCUSSION**

2. 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.
3. In order to fulfil statutory reporting obligations, the Financial Activity Statement prepared provides a snapshot of the City's year to date financial performance. The report provides:
  - (a) Statement of Financial Activity by Nature or Type;
  - (b) Explanation of material variances to year to date budget;
  - (c) Net Current Funding Position;
  - (d) Investment Portfolio Snapshot;
  - (e) Receivables; and
  - (f) Capital Acquisitions.

4. Additionally, each year a local government is to adopt a percentage or value to be used in the Statement of Financial Activity for reporting material variances. Under Council item CCS367, Council approved that a variance between actual and budget-to-date of greater than \$100,000 is considered to be a material variance for reporting purposes in the Statement of Financial Activity for 2021/2022.
5. The Statement of Financial Activity may be subject to year-end adjustments and has not been audited by the appointed auditor.
6. It is noted that rounding errors may occur when whole numbers are used, as they are in the reports that follow. The 'errors' may be \$1 or \$2 when adding sets of numbers. This does not mean that the underlying figures are incorrect."

### STATUTORY IMPLICATIONS

7. Section 34 of the *Local Government (Financial Management) Regulations 1996* provides:

34(1) A local government is to prepare each month a statement of financial activity reporting on the revenue and expenditure, 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); and
- (b) budget estimates to the end of the month to which the statement relates; and
- (c) actual amounts of expenditure, revenue and income to the end of the month to which the statement relates; and
- (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.

34(2) 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; and
- (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.

34(3) The information in a statement of financial activity may be shown –

- (a) according to nature and type classification; or
- (b) by program; or
- (c) by business unit.

34(4) 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.

34(5) Each financial year, a local government is to adopt a percentage or value, calculated in accordance with the AAS, to be used in statements of financial activity for reporting material variances

**POLICY IMPLICATIONS**

8. The City's 2021/22 Annual Budget provides a set of parameters that guides the City's financial practices.
9. The Investment of Surplus Funds Policy stipulates that the status and performance of the investment portfolio is to be reported monthly to Council.

**FINANCIAL IMPLICATIONS**

10. Expenditure for the period ending 31 May 2022 has been incurred in accordance with the 2021/22 proposed budget parameters.
11. Details of any budget variation in excess of \$100,000 (year to date) is outlined in the Statement of Financial Activity. There are no other known events, which may result in a material non-recoverable financial loss or financial loss arising from an uninsured event.

**LEGAL IMPLICATIONS**

12. Nil

**ENVIRONMENTAL CONSIDERATIONS**

13. Nil

**ALTERNATE OPTIONS**

14. Nil

**CONCLUSION**

15. The Authorising Officer's recommendation be adopted
16. It is requested that any questions on specific payments are submitted to the Executive Director Corporate & Commercial Services by 4pm of the day prior to the scheduled meeting time. All answers to submitted questions will be provided at the Committee meeting. This allows a detailed response to be given to the Committee in a timely manner.

<b>Consulted References</b>	:	<i>Local Government (Financial Management) Regulations 1996</i>
<b>File Number (Name of Ward)</b>	:	FM.FIR.7 - All Wards

**CCS449: LIST OF ACCOUNTS FOR PAYMENT – JUNE 2022**

**Business Entity Name** : City of Albany  
**Attachments** : List of Accounts for Payment  
**Report Prepared By** : Manager Finance (S Van Nierop)  
**Authorising Officer:** : Chief Executive Officer (A Sharpe)

**STRATEGIC IMPLICATIONS**

- This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
  - Pillar:** Leadership.
  - Outcome:** Strong workplace culture and performance.

**IN BRIEF**

- 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.

**RECOMMENDATION**

**CCS449: RESOLUTION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**  
**MOVED: COUNCILLOR SMITH**  
**SECONDED: COUNCILLOR TRAILL**  
**THAT the list of accounts authorised for payment under delegated authority to the Chief Executive Officer for the period ending 15 June 2022 totalling \$6,290,509.21 be RECEIVED.**  
**CARRIED 12-0**

**CCS449: COMMITTEE RECOMMENDATION**  
**MOVED: COUNCILLOR TRAILL**  
**SECONDED: COUNCILLOR BROUGH**  
**THAT the Authorising Officer Recommendation be ADOPTED.**  
**CARRIED 10-0**

**CCS449: AUTHORISING OFFICER RECOMMENDATION**  
**THAT the list of accounts authorised for payment under delegated authority to the Chief Executive Officer for the period ending 15 June 2022 totalling \$6,290,509.21 be RECEIVED.**

**DISCUSSION**

- The table below summarises the payments drawn from the municipal fund for the period ending 15 June 2022. Please refer to the Attachment to this report.

<b>Municipal Fund</b>	
Trust	\$0.00
Credit Cards	\$20,252.96
Payroll	\$1,650,570.51
Cheques	\$38,604.90
Electronic Funds Transfer	\$4,581,080.84
<b>TOTAL</b>	<b>\$6,290,509.21</b>

3. The table below summarises the total outstanding creditors as at 15 June 2022.

Current	\$876,831.71
30 Days	\$373,032.70
60 Days	\$7,774.89
90 Days	\$40,149.97
<b>TOTAL</b>	<b><u>\$1,297,789.27</u></b>
<b>Cancelled Cheques</b>	<b>Nil</b>

**STATUTORY IMPLICATIONS**

4. 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.
5. The Chief Executive Officer has delegated authority to make payments from the municipal and trust fund.
6. Regulation 13 of the *Local Government (Financial Management) Regulations 1996* provides that if the function of authorising payments is delegated to the Chief Executive Officer, then a list of payments must be presented to Council and recorded in the minutes.

**POLICY IMPLICATIONS**

7. Expenditure for the period to 15 June 2022 has been incurred in accordance with the 2021/2022 budget parameters.

**FINANCIAL IMPLICATIONS**

8. Expenditure for the period to 15 June 2022 has been incurred in accordance with the 2021/2022 budget parameters.

**LEGAL IMPLICATIONS**

9. Nil

**ENVIRONMENTAL CONSIDERATIONS**

10. Nil

**ALTERNATE OPTIONS**

11. Nil

**CONCLUSION**

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

<b>Consulted References</b>	:	<i>Local Government (Financial Management) Regulations 1996</i>
<b>File Number (Name of Ward)</b>	:	FM.FIR.2 – All Wards

**CCS450: DELEGATED AUTHORITY REPORTS – 16 MAY 2022 to 15 JUNE 2022**

**Proponent / Owner** : City of Albany  
**Attachments** : Executed Document and Common Seal Report.  
**Report Prepared By** : PA to the ED Corporate & Commercial Services (H Bell)  
**Authorising Officer:** : Chief Executive Officer (A Sharpe)

**STRATEGIC IMPLICATIONS**

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
  - **Pillar:** Leadership.
  - **Outcome:** A well informed and engaged community.

**RECOMMENDATION**

**CCS450: RESOLUTION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR THOMSON**  
**SECONDED: COUNCILLOR BENSON-LIDHOLM**

**THAT the Delegated Authority Reports 16 May 2022 to 15 June 2022 be RECEIVED.**

**CARRIED 12-0**

CCS450: COMMITTEE RECOMMENDATION

MOVED: COUNCILLOR BENSON-LIDHOLM  
SECONDED: COUNCILLOR SMITH

THAT the Authorising Officer Recommendation be ADOPTED.

**CARRIED 10-0**

CCS450: AUTHORISING OFFICER RECOMMENDATION

THAT the Delegated Authority Reports 16 May 2022 to 15 June 2022 be RECEIVED.

**BACKGROUND**

2. In compliance with Section 9.49A of the *Local Government Act 1995* the attached report applies to the use of the Common Seal and the signing of documents under Council's Delegated Authority:
  - Delegation: 006 - SIGN DOCUMENTS ON BEHALF OF THE CITY OF ALBANY (Chief Executive Officer)
  - Delegation: 009 - GRANT FUNDING, DONATIONS, SPONSORSHIP
  - Delegation: 018 - CHOICE OF TENDER, AWARD CONTRACT

**CCS451: WRITE OFF GENERAL DEBT REPORT AS AT 30 JUNE 2022**

**Proponent** : City of Albany  
**Attachments** : General Debtors Write Off Report  
**Report Prepared by** : Manager Finance (S Van Nierop)  
**Authorising Officer** : Chief Executive Officer (A Sharpe)

**STRATEGIC IMPLICATIONS**

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
  - **Pillar:** Leadership.
  - **Outcome:** A well informed and engaged community.

**RECOMMENDATION**

**CCS451: RESOLUTION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR STOCKS**  
**SECONDED: COUNCILLOR TRAILL**

**THAT the General Debtors Write Off Report as at 30 June 2022 be RECEIVED.**

**CARRIED 12-0**

CCS451: COMMITTEE RECOMMENDATION

MOVED: COUNCILLOR THOMSON  
SECONDED: COUNCILLOR SUTTON

THAT the Authorising Officer Recommendation be ADOPTED.

**CARRIED 10-0**

CCS451: AUTHORISING OFFICER RECOMMENDATION

THAT the General Debtors Write Off Report as at 30 June 2022 be RECEIVED.



**CCS452: CORPORATE SCORECARD**

**Attachments** : Attachment – ‘CS Dashboard Q4 2021-22’  
**Report Prepared By** : Business Planning and Performance Coordinator  
(A Olszewski)  
**Authorising Officer:** : Acting Executive Director Corporate & Commercial Services  
(L Harding)

**STRATEGIC IMPLICATIONS**

1. This item relates to the following elements of the City of Albany’s Strategic Community Plan 2032 or Corporate Business Plan informing plans or strategies:
  - **Pillar:** Leadership.
  - **Outcome:** Proactive, visionary leaders who are aligned with community needs and values.

**In Brief:**

- The Strategic Community Plan 2032 (SCP) and Corporate Business Plan 2021-2025 (CBP) were adopted by Council in August 2021.
- The CBP outlines a comprehensive suite of actions that effectively form Council’s priority commitments to the community.
- The Corporate Scorecard (CS) Dashboard concept was developed to provide a quarterly update to Council on the status of these actions.

**RECOMMENDATION**

**CCS452: RESOLUTION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**  
**MOVED: COUNCILLOR SMITH**  
**SECONDED: COUNCILLOR STOCKS**  
**THAT the Corporate Scorecard Dashboard be NOTED.**  
**CARRIED 12-0**

**CCS452: COMMITTEE RECOMMENDATION**  
**MOVED: COUNCILLOR TRAILL**  
**SECONDED: COUNCILLOR BROUGH**  
**THAT the Authorising Officer Recommendation be ADOPTED.**  
**CARRIED 10-0**

**CCS452: AUTHORISING OFFICER RECOMMENDATION**  
**THAT the Corporate Scorecard Dashboard be NOTED.**

**BACKGROUND**

2. The SCP establishes the results the community expects Council to achieve through the City, while the CBP describes the specific actions necessary to achieve those results.
3. These actions are monitored through Business Unit Plans, which define (on a minimum quarterly basis) associated service levels and enable assignment of a simple ‘traffic light’ status to each action.
4. The first iteration of the CS Dashboard was presented to Council at the November 2021 CCS Committee meeting for feedback, and subsequently endorsed at the December 2021 Ordinary Council meeting.

## DISCUSSION

5. The 'CS Dashboard Q4 2021-22' (attached) provides an update on the status of CBP actions for the April – June 2022 Quarter, identifying those actions potentially 'at-risk.'
6. 'At-risk' actions include those assigned with a traffic light status of either:
  - Red (a service *not meeting* its service level, or a project *not on track*), or;
  - Orange (a service *under strain*, or a project that has *stalled*).
7. As part of the continuous improvement of the CS Dashboard, commentary has now been added to the list of 'At-risk' actions in the final section of the report.

## GOVERNMENT & PUBLIC CONSULTATION

8. N/A.

## STATUTORY IMPLICATIONS

9. There are no direct statutory implications, however the CS Dashboard supports the City's obligations under *Local Government (Administration) Regulations 1996*, regulation 19DA in relation specifically to the Corporate Business Plan:

**Corporate Business Plan** means a plan made under regulation 19DA that, together with a strategic community plan, forms a plan for the future of a district made in *accordance with section 5.56*, which states:

- (1) *A local government is to ensure that a corporate business plan is made for its district in accordance with this regulation in respect of each financial year after the financial year ending 30 June 2013.*
- (2) *A corporate business plan for a district is to cover the period specified in the plan, which is to be at least 4 financial years.*
- (3) *A corporate business plan for a district is to —*
  - (a) *set out, consistently with any relevant priorities set out in the strategic community plan for the district, a local government's priorities for dealing with the objectives and aspirations of the community in the district; and*
  - (b) *Govern a local government's internal business planning by expressing a local government's priorities by reference to operations that are within the capacity of the local government's resources; and*
  - (c) *Develop and integrate matters relating to resources, including asset management, workforce planning and long-term financial planning.*
- (4) *A local government is to review the current corporate business plan for its district every year.*
- (5) *A local government may modify a corporate business plan, including extending the period the plan is made in respect of and modifying the plan if required because of modification of the local government's strategic community plan.*
- (6) *A council is to consider a corporate business plan, or modifications of such a plan, submitted to it and is to determine\* whether or not to adopt the plan or the modifications. **\*Absolute majority required.***
- (7) *If a corporate business plan is, or modifications of a corporate business plan are, adopted by the council, the plan or modified plan applies to the district for the period specified in the plan.*

## POLICY IMPLICATIONS

10. N/A.

**RISK IDENTIFICATION & MITIGATION**

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Reputational/Business Operations:</b> Loss of reputation from not following through on commitments outlined in CBP.	Likely	Minor	Moderate	Staff to review and address areas of concern prior to reconsideration by Council.
<b>Opportunity:</b> Significantly enhanced oversight of CBP Actions, leading to improved community perception of Council leadership.				

**FINANCIAL IMPLICATIONS**

12. N/A.

**LEGAL IMPLICATIONS**

13. N/A.

**ENVIRONMENTAL CONSIDERATIONS**

14. N/A.

**ALTERNATE OPTIONS**

15. Council may choose not to review progress of commitments made in the CBP through the proposed CS Dashboard, and delegate this oversight to the City’s Executive.

**CONCLUSION**

16. It is recommended the CS Dashboard be noted.

<b>Consulted References</b>	:	<ul style="list-style-type: none"> <li>Local Government Act 1995, s5.56</li> <li>Local Government (Administration) Regulations 1996, Reg. 19D</li> <li>IPR Framework and Guidelines 2019</li> </ul>
<b>File Number (Name of Ward)</b>	:	All Wards
<b>Previous Reference</b>	:	<ul style="list-style-type: none"> <li>OCM 24/08/2021 - Report Item CCS374</li> <li>CCS 30/11/2021 – Report Item CCS398</li> </ul>

**CCS453: QUARTERLY REPORT – TENDERS AWARDED – APRIL TO JUNE 2022**

<b>Proponent</b>	: City of Albany
<b>Attachments</b>	: Quarterly Report – Tenders Awarded – April to June 2022
<b>Report Prepared by</b>	: Senior Procurement Officer (H Hutchinson)
<b>Authorising Officer</b>	: Chief Executive Officer (A Sharpe)

**STRATEGIC IMPLICATIONS**

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
  - **Pillar:** Leadership.
  - **Outcome:** A well informed and engaged community.

**RECOMMENDATION**

**CCS453: RESOLUTION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

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

**THAT the Quarterly Report-Tenders Awarded April to June 2022 be RECEIVED.**

**CARRIED 12-0**

**CCS453: COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR BROUGH**  
**SECONDED: COUNCILLOR SUTTON**

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

**CARRIED 10-0**

**CCS453: AUTHORISING OFFICER RECOMMENDATION**

**THAT the Quarterly Report – Tenders Awarded – April to June 2022 be RECEIVED.**

**CCS454: PROPOSED SURRENDER OF LEASE AND REPLACE WITH A NEW LEASE TO JONATHON MARWICK AND KATE MARWICK AS TRUSTEE FOR THE MARWICK FAMILY TRUST – EMU POINT CAFE**

<b>Land Description</b>	: Crown Reserve 22698, Lot 1461 on Deposited Plan 219777 the subject of Certificate of Crown Land Title Volume LR3110 Folio 171, Mermaid Avenue, Emu Point
<b>Proponent</b>	: Jonathon Sylvester Marwick and Kate Patricia Marwick as trustee for the Marwick Family Trust trading as Emu Point Cafe (ABN 58 942 450 762)
<b>Owner</b>	: Crown (City of Albany under Management Order)
<b>Report Prepared By</b>	: Team Leader Property & Leasing (T Catherall)
<b>Authorising Officer</b>	: Chief Executive Officer (A Sharpe)

**STRATEGIC IMPLICATIONS**

1. This item relates to the following elements of the City of Albany Strategic Community Plan:
  - **Pillar:** Prosperity
  - **Outcome:** A strong, diverse and resilient economy with work opportunities for everyone.

**Maps and Diagrams:**



**In Brief:**

- Council is requested to consider a surrender of lease and replace with a new commercial lease to the current tenant Jonathon Marwick and Kate Marwick as trustee for the Marwick Family Trust, trading as Emu Point Cafe.
- The current tenant is proposing to further invest in the premises by undertaking improvements, at their cost.
- Proposed improvements include upgrades to the cafe and kiosk kitchens, internal refurbishment and veranda extension.
- Given the current lease expires in December 2023, the tenant has approached the City to request the surrender of its current agreement in favour of entering into a new agreement for a term of 5 years plus 5 year option to secure longer tenure.
- It is proposed that the surrender of lease will be effective only on the granting of a new lease.
- It is recommended the proposed surrender and new commercial lease to the current tenant be approved.

**RECOMMENDATION**

**CCS454: RESOLUTION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**  
**MOVED: COUNCILLOR STOCKS**  
**SECONDED: COUNCILLOR SUTTON**

**THAT Council APPROVE the surrender of lease and replace with a new lease for Jonathon Sylvester Marwick and Kate Patricia Marwick as Trustee for the Marwick Family Trust, trading as Emu Point Cafe, on Crown Reserve 22698, over existing cafe and restaurant premises situated at 1 Mermaid Avenue, Emu Point subject to:**

- a) The surrender of lease will be effective only on the granting of a new lease.**
- b) Lease purpose being for “Commercial Cafe and Restaurant and associated activities” in accordance with and limited by the Management Order over the Land.**
- c) New lease term being five (5) years plus a five (5) year option, commencing as soon as practicable.**
- d) Lease area being approximately 372m<sup>2</sup>.**
- e) Lease rent being determined by market valuation provided by a licensed Valuer.**
- f) Rent reviews by market valuation every three years with Consumer Price Index applied for intervening years.**
- g) Lease special condition to document Coastal Hazard Provisions.**
- h) Lease special condition to note City works and Tenant works to happen at the same time. No compensation payable by City or Minister for Lands to tenant for any disruption, loss of business or revenue as a result of these works.**
- i) Section 18 of the *Lands Administration Act 1997*, the Minister for Lands consent being obtained.**
- j) Disposal of Property advertising in accordance with the provisions of Section 3.58 of the *Local Government Act 1995*.**
- k) All costs associated with the preparation of surrender of lease documentation and ongoing operations of the lease property being payable by the tenant. (Noting the costs associated with the preparation of the new lease documentation to be paid by the City as it is a retail lease governed by the *Commercial Tenancy (Retail Shops) Agreements Act 1985*).**
- l) Lease being consistent with City Policy – Property Management (Leases and Licences).**

**CARRIED 11-0**

CCS454: COMMITTEE RECOMMENDATION

MOVED: COUNCILLOR STOCKS  
SECONDED: MAYOR WELLINGTON

THAT the Authorising Officer Recommendation be ADOPTED.

CARRIED 9-0

CCS454: AUTHORISING OFFICER RECOMMENDATION

THAT Council APPROVE the surrender of lease and replace with a new lease for Jonathon Sylvester Marwick and Kate Patricia Marwick as Trustee for the Marwick Family Trust, trading as Emu Point Cafe, on Crown Reserve 22698, over existing cafe and restaurant premises situated at 1 Mermaid Avenue, Emu Point subject to:

- a) The surrender of lease will be effective only on the granting of a new lease.
- b) Lease purpose being for “Commercial Cafe and Restaurant and associated activities” in accordance with and limited by the Management Order over the Land.
- c) New lease term being five (5) years plus a five (5) year option, commencing as soon as practicable.
- d) Lease area being approximately 372m<sup>2</sup>.
- e) Lease rent being determined by market valuation provided by a licensed Valuer.
- f) Rent reviews by market valuation every three years with Consumer Price Index applied for intervening years.
- g) Lease special condition to document Coastal Hazard Provisions.
- h) Lease special condition to note City works and Tenant works to happen at the same time. No compensation payable by City or Minister for Lands to tenant for any disruption, loss of business or revenue as a result of these works.
- i) Section 18 of the *Lands Administration Act 1997*, the Minister for Lands consent being obtained.
- j) Disposal of Property advertising in accordance with the provisions of Section 3.58 of the *Local Government Act 1995*.
- k) All costs associated with the preparation of surrender of lease documentation and ongoing operations of the lease property being payable by the tenant. (Noting the costs associated with the preparation of the new lease documentation to be paid by the City as it is a retail lease governed by the *Commercial Tenancy (Retail Shops) Agreements Act 1985*).
- l) Lease being consistent with City Policy – Property Management (Leases and Licences).

## **BACKGROUND**

2. The Emu Point Cafe, as it is known, is located within Crown Reserve 22698, Mermaid Avenue Emu Point.
3. The reserve is under management order issued to the City of Albany with the power to lease or licence for any term not exceeding 50 years for the purpose of “Recreation and Associated Business Purposes”, subject to the consent of the Minister for Lands.
4. The tenant holds a commercial lease for the cafe which is due to expire on 14 December 2023. Current lease rental is \$42,997.25 plus GST per annum.
5. The tenant of the cafe is proposing to undertake improvements to the premises, at their cost. In return the tenant seeks security of tenure to support the investment in the premises.
6. The tenant has approached the City to request the surrender of its current agreement in favour of entering into a new agreement for a term of 5 years plus 5 year option to secure longer tenure.

## **DISCUSSION**

7. The City has planned and budgeted for maintenance works to the Emu Point Cafe premises in the 2022/23 financial year. The scope of works include:
  - external roof replacement;
  - kitchen ceiling replacement; and
  - removal of asbestos.
8. The above works will require the closure of the cafe to complete the works. City officers have been working with the tenant to agree works timeframes to minimise disruption to cafe operations.
9. The tenant is now proposing to utilise the closure to undertake their own improvements to the premises. Tenant improvement works include:
  - Upgrade both the cafe and kiosk kitchens to improve functionality;
  - Internal refurbishments; and
  - Extend veranda roof to provide additional undercover seating area (to be completed in a staged approach).
10. It is proposed that the new lease will commence as soon as practicable.
11. The new lease will contain a special condition to note the above City works and the Tenant improvement works are to be undertaken at the same time. No compensation is payable by the City or the Minister for Lands to the tenant for any disruption or loss of business or revenue as a result of these works.
12. Given cafe customers utilise the City’s adjoining public toilet facilities the tenant pays to the City an annual fee of \$2,569 plus GST per annum for ongoing use of these facilities. The fee is reviewed annually.

### Coastal Hazards

13. The Coastal Hazard Risk Management and Adaption Plan (CHRMAP) for the Emu Point to Middleton Beach Coastal area has noted the lease site is located in an area likely to be subject to coastal erosion and/or inundation over the next 100 years.
14. As such it is proposed a special condition be included in the lease acknowledging CHRMAP and that the tenant is aware of potential requirements and limitations on the lease area.
15. Expanded rights of the City will be included to allow the City conduct works relating to coastal protection treatments.
16. Further indemnification clauses will be included in the lease to ensure the City is not liable for any loss or damage by the tenant by any reason arising from coastal processes.



New Lease Agreement

17. The table below summarises the key terms of the proposed new commercial lease:

ITEM	DETAILS
Tenant	Jonathon Sylvester Marwick and Kate Patricia Marwick as trustees for the Marwick Family Trust
Land Description	Crown Reserve 22698, Lot 1461 on Deposited Plan 219777 the subject of Certificate of Crown Land Title Volume LR3110 Folio 171, Emu Point
Lease and Licence Area	Lease Area – Approx. 372m <sup>2</sup>
Land Ownership	Crown (City of Albany under Management Order)
Building Ownership	City of Albany
Permitted Use	Commercial cafe and restaurant
Term	5 years + 5 year option
Initial Rent	Lease rent to be determined by market valuation provided by licensed Valuer
Rent Review	Market valuation every 3 year with Perth All Groups CPI applied on the anniversary for all other years
Outgoings	Tenant responsible for all outgoings, including insurance
Utilities	Tenant responsible for all utilities
Maintenance	Tenant responsible for own day to day maintenance
Special Condition	The lease area has been identified under the Coastal Hazard Risk Management and Adaption Plan (CHRMAP) to likely be subject to coastal erosion over the next 100 years. The tenant is aware of the requirements and potential limitations that may apply given the coastal location of the site, including town planning and other requirements. Indemnification clauses will be included in the lease to ensure the City and Minister for Lands are not liable for any loss or damage by the tenant by any reason arising from coastal processes.
Special Condition	The City works and the Tenant improvement works are to be undertaken at the same time. No compensation is payable by the City or the Minister for Lands to the tenant for any disruption, loss of business or revenue as a result of these works.

18. The Tenant has agreed in principle with the above terms, subject to Council and Minister for Lands approval.
19. The remaining terms of the lease agreement will be developed in line with City Policy – Property Management (Leases and Licences) and the *Commercial Tenancy (Retail Shops) Agreement Act 1985*.

**GOVERNMENT & PUBLIC CONSULTATION**

20. The Department of Planning, Lands and Heritage has been consulted with regards to the proposed surrender and new replacement lease, with in principle consent provided subject to Section 18 of the *Land Administration Act 1997* as required.
21. Section 3.58 of the *Local Government Act 1995* defines the requirements for the disposal of property, including leased/licensed land and buildings. The Act requires the following:
- a. A local government must give local public notice of the proposed lease/licence inviting submissions from the public, for a period of two weeks.
  - b. Any submissions are to be considered by Council and their decision with regard to those submissions, to be recorded in the minutes.
  - c. A local government can then proceed with the lease/licence.
22. The new lease will be advertised to comply with the requirements of Section 3.58 of the *Local Government Act 1995*.

23. Community Engagement

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

**STATUTORY IMPLICATIONS**

24. Section 3.58 of the *Local Government Act 1995* allows for the disposal of property including leased/licensed land and buildings.
25. Section 18 of the *Land Administration Act 1997* states that a person shall not assign, sell, transfer or otherwise deal with interests on Crown land, create, or grant an interest in Crown land without the prior approval in writing of the Minister for Lands.
26. As this is Crown land, under Management Order held by the City, the Minister’s consent will be sought prior to execution of the lease.
27. The new lease documentation will be a retail lease governed by the *Commercial Tenancy (Retail Shops) Agreement Act 1985*.

**POLICY IMPLICATIONS**

28. The City’s Property Management (Leases and Licences) Policy aims to support the equitable access, and the efficient and effective management of City owned and managed properties in line with statutory procedures.
29. The recommendation is consistent with the Policy.

**RISK IDENTIFICATION & MITIGATION**

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Reputational:</b> <i>Surrender and new Lease not approved.</i>	Possible	Moderate	Medium	Seek to negotiate terms to Council satisfaction.
<b>Reputational:</b> <i>surrender and new lease not approved – further building upgrades not undertaken</i>	Possible	Minor	Medium	Seek to negotiate terms to Council satisfaction Negotiate with tenant to undertake improvements
<b>Financial:</b> <i>new lease not approved – possible loss of commercial rental income in short term</i>	Possible	Moderate	Medium	Seek to negotiate terms to Council satisfaction.
<b>Opportunity:</b> <i>Demonstrate City’s commitment to attracting investment, tourism, economic development and new jobs to the region</i>				
<b>Opportunity:</b> <i>Improved City lease premises and cafe services in Emu Point to enhance visitor experience</i>				

**FINANCIAL IMPLICATIONS**

31. All costs associated with the development and finalisation of the surrender of lease documentation will be met by the tenant.
32. In accordance with section 14B of the *Commercial Tenancy (Retail Shops) Agreements Act 1985* all costs associated with the preparation, execution and completion of the new lease documentation will be payable by the City of Albany as Landlord.

**LEGAL IMPLICATIONS**

33. The commercial lease documentation will be prepared by City’s lawyers with enforceable terms and conditions.

**ENVIRONMENTAL CONSIDERATIONS**

34. The Coastal Hazard Risk Management Plan (CHRMAP) project for the Emu Point to Middleton Beach Coastal areas has noted the lease site is located within an area likely to be subject to coastal erosion and / or inundation over the next 100 years.
35. The CHRMAP notes that based on the current condition of existing protection structures and measures it is expected to mitigate the likelihood of coastal erosion in the vicinity of the lease premises over the medium term (approx.50 years).
36. The new lease will include provisions to ensure tenant acknowledges and accepts the potential impact of coastal erosion and/or inundation, sea level rises and other coastal processes.
37. Further indemnification clauses be included such that the City will not be liable for any damage to tenant infrastructure, loss of use, or liability to any third parties as a result of erosion or the coastal location of the site and the City has rights to conduct works relating to coastal protection treatments.

**ALTERNATE OPTIONS**

38. Council may:
  - Approve the surrender and new lease; or
  - Decline the request.
39. Should Council not support the surrender and new lease, the existing lease will remain in place until December 2023. The tenant may reconsider investing further in improvements to the premises.

**SUMMARY CONCLUSION**

40. The current tenant of the Emu Point Cafe is proposing to undertake improvements to the premises, at their cost. In return the tenant seeks security of tenure to support the investment in premises.
41. The tenant has requested to surrender the existing lease and replacement with a new lease for a term of 5 years plus 5 year option.
42. The tenant has successfully operated a cafe from the premises since 2010 and met the obligations of the existing lease including payment of rent and outgoings.
43. It is recommended that the surrender and replacement new lease to Jonathon Marwick and Kate Patricia Marwick as Trustee for the Marwick Family Trust be supported.

<b>Consulted References</b>	:	<ul style="list-style-type: none"> <li>• Property Management (Leases and Licences) Policy</li> <li>• <i>Local Government Act 1995</i></li> <li>• <i>Land Administration Act 1997</i></li> <li>• <i>Commercial Tenancy (Retail Shops) Agreements Act 1985</i></li> </ul>
<b>File Number (Name of Ward)</b>	:	PRO319, A152433 (Breaksea Ward)
<b>Previous Reference</b>	:	OCM 26/11/2013 Item CSF037

**CCS455: ROBINSON PRECINCT AND STIDWELL BRIDLE TRAIL STUDY**

<b>Proponent / Owner</b>	: City of Albany
<b>Attachments</b>	: Robinson Precinct and Stidwell Bridle Trail Study Final Report
<b>Report Prepared By</b>	: Manager Recreation Services (M Green) : Manager City Reserves (J Freeman)
<b>Responsible Officers:</b>	: Executive Director Community Services (N Watson)

**STRATEGIC IMPLICATIONS**

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
  - **Pillar:** People
  - **Outcome:** A happy, healthy and resilient community
  - **Pillar:** Planet
  - **Outcome:** Conserve and enhance the region's natural reserves
  - **Pillar:** Place
  - **Outcome:** Provide attractive and sustainable parks, playgrounds and reserves

**In Brief:**

- To inform Council on the Robinson Precinct and Stidwell Bridle Trail Study and the proposed next steps.

**RECOMMENDATION**

**CCS455: RESOLUTION (AMENDED MOTION BY COUNCILLOR SMITH)  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR SMITH  
SECONDED: COUNCILLOR TRAILL**

**THAT Council:**

1. **NOTE** the Robinson Precinct and Stidwell Bridle Trail Study; and
2. **NOTE** that City staff will collaborate with the Friends of Stidwell Bridle Trail group to develop an implementation plan.
3. **REQUEST** the Chief Executive Officer to provide an update to Council by December 2022 on the progress of the implementation plan.

**CARRIED 12-0**

**CCS455: AMENDMENT BY COUNCILLOR SMITH  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR SMITH  
SECONDED: COUNCILLOR TRAILL**

**THAT the Committee Recommendation be AMENDED to add Point 3 to read as follows:**

3. **REQUEST** the Chief Executive Officer to provide an update to Council by December 2022 on the progress of the implementation plan.

**CARRIED 12-0**

**Councillor Reason:**

This request is to ensure that Council are informed of the progress of City staff in liaising with the Stidwell Bridle Trail User Group, including the prioritisation of an action plan to identify and implement achievable recommendations from the Tredwell Report.

In addition, it may be that establishing a Memorandum of Understanding between stakeholders will assist in the identification and implementation of those achievable recommendations from the Tredwell Report.

**Officer Comment (Executive Director Community Services):**

Officers are supportive of updating Council on the development of the implementation plan and collaboration with the Friends of Stidwell Bridle Trail Group by December 2022.

CCS455: COMMITTEE RECOMMENDATION

MOVED: COUNCILLOR SHANHUN  
SECONDED: COUNCILLOR SMITH

THAT the Authorising Officer Recommendation be ADOPTED.

CARRIED 10-0

CCS455: AUTHORISING OFFICER RECOMMENDATION

THAT Council:

1. NOTE the Robinson Precinct and Stidwell Bridle Trail Study; and
2. NOTE that City staff will collaborate with the Friends of Stidwell Bridle Trail group to develop an implementation plan.

**BACKGROUND**

2. The Stidwell Bridle Trail (SBT) is a network of bridle trails which consists of the Robinson Loop, the Sandpatch Loop, the Werrilup Loop and associated access trails (also known as feeder trails). All trail loops are promoted to start and end at the Albany Equestrian Centre (AEC) in Robinson. The SBT is located within a Public Drinking Water Source Area (PDSWA) and wellhead protection zones (WHPZs).
3. There has been ongoing conflict between horse riders and other users within the Robinson area and Sandpatch Reserve (Focus Area) which is creating safety risks for all users. This has included speeding vehicles and large groups of cyclists along the roads within Robinson, and recreational vehicles (i.e., four wheel drives and trailbikes), both licensed and unlicensed, within Sandpatch Reserve.
4. Recreational use within the focus area has increased since 2000 and particularly since the closure of the motocross track on Roberts Road in 2012.
5. User conflict on the SBT has caused significant safety risks for horse riders. The damage by vehicles both on and off unsealed tracks in the Focus Area is also significant.
6. There have been attempts by the CoA to mitigate this risk by erecting signage and horse-only gates on the SBT as well as undertaking education, but the conflict has continued.
7. In December 2020, a meeting was held with concerned community members (from the horse community), City staff and Councillors to discuss a way forward in regards to the management of the Stidwell Bridle Trail. This resulted in an agreement to form a working group to assist in addressing the concerns raised.

8. An expression of interest was sent to all residents within Robinson. From submissions received a Project Working Group (PWG) was formed consisting of City officers (Recreation Services, Reserves, Public Health & Safety), Ward Councillors, Agency representatives (Police, DWER and Water Corporation) and 10 community members from various user groups (namely equestrian groups).
9. Based on the complexities of the land management and the ongoing safety concerns of the SBT, the City of Albany (CoA) engaged Tredwell Management through an RFQ process in July 2021 to undertake an objective and independent study into the issues within the Robinson Precinct and Stidwell Bridle Trail (SBT).
10. The Study was to explore the history, current management, environmental and safety issues with a focus on equestrian use and provide recommendations for future management and ongoing improvements. The Focus Area for the Study included the SBT and the Robinson Precinct.
11. The SBT exists on a complex land tenure including traversing alongside gazetted roads and Water Corporation drains, through reserves vested in the CoA, across unallocated Crown land and through DWER-managed wellhead protection zones (WHPZ) and a PDWSA.
12. The Stidwell Bridle Trail Study assists to respond to the City of Albany's Trails Hub Strategy (2015-2025) recommendation under section 5.1 and Strategy 1.1 to 'Review and upgrade the Mike Stidwell Trail and Network'.

## **DISCUSSION**

### Study methodology

13. The Study involved a review of a wide range of legislation, policies, regulations, and other background information relevant to the Focus Area. It is noted the City has completed a number of studies on the Stidwell Bridle Trail and Sandpatch Reserve as noted below;
  - SBT Trail Development Plan (1999)
  - SBT Trail Maintenance Plan (2000)
  - SBT Sandpatch Loop Realignment Plan (2009)
  - SBT Maintenance Plan (2010)
  - Draft Sandpatch Recreation Management Plan (2019)
14. The Study was undertaken over a 9-month period across a series of phases covering Project Start-Up and Background Document Review, Site Appraisal and Consultation with Key Stakeholders, Draft Report and Feedback, Final Report.
15. The consultation process gathered information from a wide range of perspectives. This involved workshops with the PWG, an accompanied site visit and interviews with targeted stakeholders, including regular trail users and State Government agencies.

### Key Outcomes

16. The SBT traverses land managed by the CoA (road corridors and vested Crown Reserves R34370 and R13773) and the Water Corporation (drainage reserve), as well as a parcel of Unallocated Crown Land.
17. The Focus Area is located within the South Coast Water Reserve and is a PDWSA. DWER, Water Corporation and the CoA have a shared responsibility for the protection of PDWSAs. The SBT and Robinson Precinct are located within Drinking Water Priority Areas (P1 and P2) and sections of the trail are also within wellhead protection zones (WHPZ).
18. A key policy which applies to the SBT and all Crown land within the Focus Area is the Department of Water and Environmental Regulation's (DWER) Operational Policy 13: Recreation within public drinking water source areas on crown land (2019).

19. The SBT is recognised as an existing approved land use and can continue at current levels/capacity because the trail was existing and formally designated before 2012 (and before Operational Policy 13 was updated to reflect recommendations from a parliamentary inquiry into recreation within PDWSAs). However, any proposed increases in capacity, facilities or change in use or recreation events must be assessed in accordance with Operational Policy 13.
20. The Study has identified a potential conflict between the CoA Local Government Property Local Law (2011), the Activities and Thoroughfares Local Law 2011 and the Department of Water and Environmental Regulation's Operational Policy 13 (as per pages 13 and 65-66 of report) regarding public use of management tracks.
21. The SBT in its current state does not provide a safe and appealing trail user experience and requires improvements, particularly with regards to addressing safety concerns associated with trail user conflict and ongoing maintenance requirements.
22. There are currently limited resources allocated for the implementation of the SBT Trail Maintenance Plan (2010). The plan is now out-of-date and maintenance has been generally reactive to community requests.
23. The trailhead signage located on the grounds of the Albany Equestrian Centre is in good condition. However, the content of this sign requires review and update to ensure that all relevant trail information is provided.
24. Management/risk signage relating to 'shared use' of the SBT has caused confusion among the trail user community and the Study identifies a range of actions to address this.
25. The existing wayfinding system is in varied condition across the SBT, with many units in poor condition, and some units missing the arrow/indicator plaque.

Off-road vehicles

26. A key issue identified within the SBT Study is the conflict of use that is occurring within the Focus Area between equestrian users and off-road vehicles and the Study has made a range of recommendations to mitigate this issue.
27. The report identifies a potential conflict between CoA Local Laws and the Department of Water and Environmental Regulation's Operational Policy 13 (as noted above in point 20) regarding public use of land management tracks.
28. The SBT Study recommends the CoA undertake a review of the applicable Local Laws to provide clarity around the definition of a public road within a PDWSA.
29. The City's Manager Governance and Risk has advised:

Operational Policy 13 – Recreation within public drinking water source areas on crown land

30. The CoA acknowledges that this policy should guide local governments responsible for promoting and approving recreational activities within PDWSAs and that it should also guide groups and individuals that plan, organise or participate in recreation activities within PDWSAs.
31. It is also noted that this policy applies to crown land in all PDWSAs, unless a drinking water source protection report specifically recommends an alternative outcome for recreation.
32. The CoA's position is that it is the remit of the Department of Water and Environmental Regulation (DWER) and its delegated agents (Water Corporation) to provide compliance oversight and enforcement in PDWSAs.

Incidence of illegal riding of unregistered vehicles on the SBT

33. The control of vehicles in off-road areas in Western Australia is regulated under the *Control of Vehicles (Off-road Areas) Act 1978* (ORV Act).
34. The tracks within the SBT have not been formally designated as either a permitted or prohibited area suitable for Off Road Vehicle (ORV) use.
35. Before a site can be made a permitted or prohibited area, it must be assessed for suitability by the Department of Local Government's ORV Advisory Committee.
36. The CoA as well as other local governments face competing demands and challenges in administering the ORV Act and its local laws pertaining to illegal riding, particularly unregistered vehicles.
37. In accordance with the City's local laws, vehicles are not allowed on City of Albany managed reserves unless permitted through determination.

City of Albany Local Laws pertaining to control of vehicle use within the SBT

38. Tracks within the SBT Study Focus Area (including Sandpatch Reserve) are considered to fall under the category of a 'clearly designated accessway' under the CoA's Local Laws.
39. With this interpretation and application, use of vehicles on these routes by members of the public is not prohibited.

Next Steps

40. The SBT has strong levels of interest, advocacy and support within the local equestrian community, however until the establishment of the PWG, this was not in a formalised manner.
41. A community group known as the 'Friends of SBT' formerly existed, however has since dissolved. Re-establishment of the 'Friends of the SBT' by members of the local community who are willing to volunteer time and effort to the trail's ongoing advocacy and maintenance, will ensure that a formal stakeholder group is established and involved in supporting the City with the trail's management.
42. A best practice example of an effective partnership is between the Shire of Serpentine-Jarrahdale and the Darling Downs Residents Association, who collaboratively manage and maintain the Darling Downs Bridle Trails and Equestrian Precinct.
43. It is recommended that supporting the re-formalisation of the 'Friends of SBT' is the first step in the process to establish stronger collaboration between the community and City with regards to management and maintenance of the SBT.
44. City officers from Reserves and Recreation Services will then work with The Friends of SBT to develop a prioritised implementation plan that is informed by the Study's recommendations and proposed timeframes, and has shared responsibilities.

**GOVERNMENT & PUBLIC CONSULTATION**

45. Tredwell undertook consultation with the PWG, key stakeholders and targeted members of the trail user community to inform the Stidwell Bridle Trail Study.
46. The Stidwell Bridle Trail Study includes a report on the consultation undertaken on pages 44-52, and summaries of the stakeholder interviews are provided as a separate attachment to this report.
47. Targeted consultation was preferred for the Study and supported by the PWG due to its specific focus on equestrian use and user conflict within the Focus Area, and the complexity of the land tenures and governing laws and policies.
48. It is expected that implementation of Study recommendations will require additional consultation with targeted stakeholders (Water Corp, DWER etc.), as well as broader community consultation where appropriate.



**STATUTORY IMPLICATIONS**

49. There is no direct statutory requirements in relating to noting this report.

**POLICY IMPLICATIONS**

50. The review of the SBT was identified in the CoA Trails Hub Strategy 2015-2025. The Stidwell Bridle Trail Study will assist in achieving outcomes contained within the Trails Hub Strategy.

51. The Study identifies potential conflicts between the CoA Local Government Property Local Law (2011), the Activities on Thoroughfares and Public Places and Trading Local Law 2011 and the Department of Water and Environmental Regulation’s Operational Policy 13. These are outlined on Page 13 and Pages 65-66 of the attached report, along with Appendix 1.

52. Officers will prepare a report that will consider addressing the view that a conflict may exist between the City’s local laws and the State’s Operational Policy 13 – Recreation within public drinking water source areas on crown land.

53. It is proposed that a determination pursuant to the City’s *Local Laws* will be prepared for Council consideration.

54. The report will consider the purpose and effect of the determination, specifically:
- a. Categorisation of tracks within the SBT, which may designate specific or shared use; and
  - b. The legalities and practicalities of compliance and enforcement.

**RISK IDENTIFICATION & MITIGATION**

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Community, Property &amp; Reputation:</b> <i>The Stidwell Bridle Trail is not maintained to user’s expectations.</i>	<i>Possible</i>	<i>Moderate</i>	<i>Medium</i>	<i>Work with a Friends of Stidwell Bridle Trail Group to develop an implementation and management plan for the SBT with shared responsibility.</i>
<b>People Health &amp; Safety:</b> <i>Accident or injury occurs arising from neglected trail maintenance and misuse.</i>	<i>Likely</i>	<i>Major</i>	<i>High</i>	<i>Work with a Friends of Stidwell Bridle Trail Group to develop an implementation and management plan for the SBT with shared responsibility.</i>
<b>Reputation, and People Health &amp; Safety:</b> <i>Inconsistent interpretation of local laws and State policies encourages conflicting uses on the SBT and creates safety risk for riders and horses.</i>	<i>Likely</i>	<i>Major</i>	<i>High</i>	<i>Ensure a clear and consistent legislative framework applies to the Focus Area and is appropriately understood and applied by relevant stakeholders.</i>

**FINANCIAL IMPLICATIONS**

56. The Robinson Precinct and Stidwell Bridle Trail Study was funded by the City.

57. It is anticipated that many of the immediate/short term recommendations can be actioned within current and existing operational budgets. Any projects outside of this will be subject to usual business and budget planning processes and can be considered following development of a detailed implementation plan in collaboration with ‘The Friends of SBT’.

58. There will also be funding opportunities to assist with the implementation of a number of recommendations contained within the report.

**LEGAL IMPLICATIONS**

- 59. There are no direct legal implications related to this report.
- 60. The Council is requested to NOTE the Robinson Precinct and Stidwell Bridle Trail Study, which acknowledges the recommendations and potential future actions detailed within the report; which may be undertaken by Officers.

**ENVIRONMENTAL CONSIDERATIONS**

- 61. There are no direct environmental considerations related to this report.

**ALTERNATE OPTIONS**

- 62. Council may choose to:
  - a. Accept, Reject or Amend the associated recommendations within the Robinson Precinct and Stidwell Bridle Trail Study; and
  - b. Not support City Officers preparing a draft proposal to collaborate with the Friends of Stidwell Bridle Trail group.

**CONCLUSION**

- 63. The SBT is highly valued by the local equestrian community, and the Robinson Precinct is known and appreciated for its strong equestrian culture, history and facilities.
- 64. The SBT in its current state does not provide a safe and appealing trail experience and requires improvements, particularly with regards to addressing safety concerns associated with trail user conflict and ongoing maintenance requirements.
- 65. Based on this and to deliver the vision of the trail and the study the following is required;
  - Ensure a clear and consistent legislative framework applies to the Focus Area and is appropriately understood and applied by relevant stakeholders;
  - Improve safety and quality of equestrian experiences in the Robinson Precinct and on the SBT;
  - Improve management of the Focus Area, with clear roles and responsibilities, for the benefit of authorised trail users, the environment and public drinking water quality;
  - Communicate clear, consistent and up to-date information about the Robinson Precinct and SBT.
- 66. With Council support officers are committed to working with the Friends of Stidwell Bridle Trail community group to oversee the implementation of the recommendations within the report and improve the trail experience for users of the Stidwell Bridle Trail.
- 67. The timeframes for implementation of recommendations within the SBT Study are indicative only and are likely to be influenced by factors such as funding availability, resourcing capacity, Council priorities and levels of stakeholder and community support.

<b>Consulted References</b>	:	<ul style="list-style-type: none"> <li>• <i>Local Government Act 1995</i></li> <li>• <i>Control of Vehicles (Off-road Areas) Act 1978</i></li> <li>• Department of Water and Environmental Regulation (DWER), Operational Policy 13 – Recreation within public drinking water source areas on crown land</li> <li>• City of Albany’s Local Law:                             <ul style="list-style-type: none"> <li>○ Local Government Property Local Law 2011; and</li> <li>○ The Activities on Thoroughfares and Public Places and Trading Local Law 2011.</li> </ul> </li> </ul>
<b>File Number (Name of Ward)</b>	:	Vancouver Ward
<b>Previous Reference</b>	:	Not applicable.

## CCS456: REX PROPOSED 3 YEAR PARTNERSHIP AGREEMENT

<b>Proponent</b>	: City of Albany
<b>Attachments</b>	: Regional Express Correspondence
<b>Report Prepared By</b>	: Manager Governance & Risk (S Jamieson)
<b>Authorising Officer(s)</b>	: Chief Executive Office (A Sharpe)

### CONFIDENTIAL REPORT

*This report was considered confidential in accordance with section 5.23 (2)(c) of the Local Government Act 1995, being: a contract which may be entered into by the local government.*

### STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
  - **Pillar:** Leadership.
  - **Outcome:** A well informed and engaged community.
  - **Pillar:** Prosperity.
  - **Outcomes:** A strong, diverse and resilient economy with work opportunities for everyone and a highly sought-after tourist destination.

#### In Brief:

- Rex proposed agreement presented for Council consideration.

### RECOMMENDATION

**CCS456: RESOLUTION**  
**VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**MOVED: COUNCILLOR TRAILL**  
**SECONDED: COUNCILLOR SHANHUN**

**THAT Council DELEGATE AUTHORITY to the CEO to negotiate this agreement with REX in accordance with the conditions detailed in the CONFIDENTIAL report.**

**CARRIED 12-0**  
**ABSOLUTE MAJORITY**

CCS456: COMMITTEE RECOMMENDATION

MOVED: COUNCILLOR SMITH  
SECONDED: COUNCILLOR TRAILL

THAT the Authorising Officer Recommendation be ADOPTED.

CARRIED 10-0

CCS456: AUTHORISING OFFICER RECOMMENDATION

THAT Council DELEGATE AUTHORITY to the CEO to negotiate this agreement with REX in accordance with the conditions detailed in the CONFIDENTIAL report.

**CCS457: 2022-23 BUDGET ADOPTION**

**Proponent** : City of Albany  
**Attachments** : Draft 2022-23 Budget  
**Report Prepared by** : Business Analyst/Management Accountant (D Harrison)  
**Authorising Officer** : Chief Executive Officer (A Sharpe)  
A/Executive Director Corporate & Commercial Services  
(L Harding)

**STRATEGIC IMPLICATIONS**

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
  - **Theme: 1:** Leadership.
  - **Objective: 1.2:** To establish and maintain sound business and governance structures.
  - **Community Priority: 1.2.1:** Develop informed and transparent decision making processes that meet our legal obligations, reflect the level of associated risk and are adequately explained to community.
2. This proposed budget aligns with the City's Corporate Business Plan where possible and takes into account the consequences of the COVID-19 pandemic:

**In Brief:**

- Approve the 2022/2023 budget, noting that the proposed budget is a result of a series of elected member and staff workshops.

**RECOMMENDATION**

**CCS457: RESOLUTION 1**  
**VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**MOVED: COUNCILLOR SUTTON**  
**SECONDED: COUNCILLOR SMITH**

**THAT Council ADOPT the following municipal rates in the dollar on gross rental valuations and unimproved valuations and minimum rate values for the 2022/2023 financial year:**

**(1) Rating Category 1 – GRV General**

- The General Rate on Gross Rental Values for the 2022/2023 financial year on Rating Category (1) including all GRV rateable land be 10.1630 cents in the dollar.

**(2) Rating Category 3 – UV**

- The General Rate on current unimproved values for the 2022/2023 financial year on Rating Category (3) including all UV rateable land be 0.3555 cents in the dollar.

**(3) Minimum Rate**

- The Minimum Rate for Rating Category 1 – GRV General rateable properties within the City of Albany will be \$1,120.00
- The Minimum Rate for Rating Category 3 – UV rateable properties within the City of Albany will be \$1,210.00

**CARRIED 12-0**  
**ABSOLUTE MAJORITY**

**CCS457: RESOLUTION 2**  
**VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**MOVED: COUNCILLOR TERRY**  
**SECONDED: COUNCILLOR STOCKS**

**THAT Council APPROVES the following Waste Collection charges for the City of Albany (including general waste collection, bulk hard waste ,bulk green waste, collection of recyclables and green/fogo waste) be adopted for the 2022/2023 financial year:**

**(1) Residential Services**

- Full Residential Waste Service \$379.00
- Waste Collection 140 Ltr MGB Fortnightly
- Recycling Collection 240 Ltr MGB Fortnightly
- FOGO Waste Collection 240Ltr MGB Fortnightly (and weekly between mid December and mid February)

**(2) Additional Services**

**Additional Services (up to a maximum of two but can only include one collection type) with a full residential waste service.**

- Waste Collection 140 Ltr MGB (Inc GST) Fortnightly \$100.00
- Recycling Collection 240 Ltr MGB (Inc GST) Fortnightly \$60.00
- FOGO Waste Collection 240Ltr MGB (Inc GST) Fortnightly \$60.00 (and weekly between mid December and mid February)

**(3) Waste Facilities Maintenance Rate (Section 66(1) Waste Avoidance and Resource Recovery Act 2007)**

**In addition to the full domestic refuse service the City will be raising an annual rate under section 66(1) of the *Waste Avoidance and Resource Recovery Act 2007* (WARR Act) and, in accordance section 66(3) of the WARR Act, apply the minimum payment provisions of section 6.35 of the *Local Government Act 1995*. The rate is proposed to be called the 'Waste Facilities Maintenance Rate'. The minimum payment will be \$58.**

**The proposed rates are:**

- GRV General Properties – Rate in the dollar: 0.01 Cents, minimum \$58.00
- UV General Properties – Rate in the dollar: 0.0022 Cents, minimum \$58.00

**CARRIED 12-0**  
**ABSOLUTE MAJORITY**

**CCS457: RESOLUTION 3**

**VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**MOVED: COUNCILLOR SUTTON**

**SECONDED: COUNCILLOR TRAILL**

**THAT Council ADOPTS:**

**(1) Pursuant to the provisions of section 6.2 of the *Local Government Act 1995* and Part 3 of the *Local Government (Financial Management) Regulations 1996*, the Municipal and Trust Fund Budgets as contained in the Attachment to this agenda and the minutes, for the City of Albany for the 2022/2023 financial year which includes the following:**

- **Statement of Comprehensive Income by Nature and Type on page (v) showing a net result for that year of \$19,646,485**
- **Statement of Comprehensive Income by Program on page (vi) showing a net result for that year of \$19,646,485**
- **Statement of Cash Flows showing cash & cash equivalents at year-end of \$10,395,432 on page (vii)**
- **Rate Setting Statement on page (viii) showing an amount required to be raised from rates of \$42,130,150**
- **Notes to and Forming Part of the Budget on pages (1 to 58)**
- **Fees and Charges and Capital Works Schedule as detailed on pages (59 to 97)**
- **Transfers to / from Reserve Accounts as detailed in pages (44 to 49)**

**(2) Pursuant to section 6.11 of the *Local Government Act 1995*, maintain the following reserves (noting the purpose of each reserve detailed in page 44 to 49 of the budget):**

- **Airport Reserve**
- **Albany's Bicentennial Reserve**
- **Albany Daycare Centre Reserve**
- **Albany Entertainment Centre Reserve**
- **Albany Heritage Park Infrastructure Reserve**
- **Albany Leisure And Aquatic Centre – Synthetic Surface “Carpet” Reserve**
- **Albany Town Hall Reserve**
- **Bayonet Head Infrastructure Reserve**
- **Building Restoration Reserve**
- **Capital Seed Funding for Sporting Clubs Reserve**
- **Centennial Park Stadium and Pavilion Renewal Reserve**
- **Cheyne Beach Reserve**
- **City of Albany General Parking Reserve**
- **Coastal Management Reserve**
- **Debt Management Reserve**
- **Destination Marketing & Economic Development Reserve**
- **Emu Point Boat Pens Development Reserve**
- **Emu Point Marina Reserve 42964 Reserve**
- **Great Southern Contiguous Local Authorities Group Reserve**
- **Information Technology Reserve**
- **Land Acquisition Reserve**
- **Master Plan Funding Reserve**
- **National Anzac Centre Reserve**
- **Parks and Recreation Grounds and Trails Reserve**
- **Plant & Equipment Reserve**
- **Public Open Space Reserve**
- **Refuse Collection & Waste Minimisation Reserve**
- **Roadworks & Drainage Reserve**
- **Developer Contributions (Non-Current) Reserve**

- Unspent Grants Reserve
- Waste Management Reserve

CARRIED 12-0  
ABSOLUTE MAJORITY

**CCS457: RESOLUTION 4**  
**VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**MOVED: COUNCILLOR CRUSE**  
**SECONDED: COUNCILLOR SHANHUN**

**THAT Council APPROVES the due dates for payment of Rates and Waste Collection Charges for 2022/2023 be as follows:**

- (1) Pay rates in full 23rd September 2022.
- (2) Pay by two instalments:
  - (a) First Instalment Payment 23rd September 2022; and
  - (b) Second Instalment: 24th January 2023.
- (3) Pay by four instalments:
  - (a) First Instalment Payment 23rd September 2022;
  - (b) Second Instalment: 23rd November 2022;
  - (c) Third Instalment: 24th January 2023; and
  - (d) Fourth Instalment: 24th March 2023.

CARRIED 12-0  
ABSOLUTE MAJORITY

**CC457: RESOLUTION 5**  
**VOTING REQUIREMENT: ABSOLUTE MAJORITY**

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

**THAT Council IMPOSES the following Rates and Charges to provide for Administration and Interest Charges on Rating, Waste Collection and General Debtor Collection charges during the 2022/2023 financial year:**

**(1) Instalment Plan Administration Fee**

In accordance with section 6.45(3) of the Local Government Act 1995 and clause 13 of the Local Government (COVID-19 Response) Ministerial Order 2020 (and noting the Local Government (COVID-19 Response) Amendment Order 2022 gazetted on 24 June 2022), an Instalment Plan Administration fee of \$6.50 for the second and each subsequent instalment notice issued will apply for rates and rubbish collection charges subject to:

- a) This additional charge cannot be applied to an excluded person, as defined in the Local Government (COVID-19 Response) Ministerial Order 2020, that has been determined as suffering financial hardship as a consequence of the COVID-19 pandemic in accordance with Council Policy CM.STD.7 Financial Hardship.

**(2) Late Payment Interest Charge**

In accordance with section 6.51(1) of the Local Government Act 1995 and clause 14 of the Local Government (COVID-19 Response) Ministerial Order 2020 (and noting the Local Government (COVID-19 Response) Amendment Order 2022 gazetted on 24 June 2022), a charge on outstanding rates and rubbish collection accounts (including amounts owed on ad hoc Payment Plans) of 7% p.a will be calculated daily at 0.01918% on a simple interest basis for the number of days from the account due date until the day prior to the day on which the payment is received subject to:

- a) This interest rate cannot be applied to an excluded person, as defined in the Local Government (COVID-19 Response) Ministerial Order 2020, that has been determined by the City of Albany as suffering financial hardship as a consequence of the COVID-19 pandemic.

**(3) Instalment Plan Interest Charge**

In accordance with section 6.45(3) of the Local Government Act 1995 and clause 13 of the Local Government (COVID-19 Response) Ministerial Order 2020 (and noting the Local Government (COVID-19 Response) Amendment Order 2022 gazetted on 24 June 2022), an interest rate of 5.5% p.a will be calculated on a daily basis at 0.0151% by simple interest basis from the due date of the first instalment as shown on the rate notice to the due date of each respective instalment subject to:

- a) This additional interest rate cannot be applied to an excluded person, as defined in the Local Government (COVID-19 Response) Ministerial Order 2020, that has been determined as suffering financial hardship as a consequence of the COVID-19 pandemic in accordance with Council Policy CM.STD.7 Financial Hardship.

**(4) Late Payment Interest Charge (Excluding Rates & Charges)**

In accordance with section 6.13 of the Local Government Act 1995 and clause 8 of the Local Government (COVID-19 Response) Ministerial Order 2020 (and noting the Local Government (COVID-19 Response) Amendment Order 2022 gazetted on 24 June 2022), gazetted on 24 June 2022 - A charge of 7% p.a interest, calculated on a simple interest basis for the number of days outstanding, may apply on unpaid debts (other than rates and rubbish collection charges) outstanding 35 days from the date of invoices raised after 1 July 2022. In respect to the Late Payment Interest Charge on rates and charges, the method of calculating the interest charge is on the daily balance outstanding subject to:

- a) a person who is considered by the City of Albany to be suffering financial hardship as a consequence of COVID-19 pandemic.

**Waivers**

Where a small balance remains on a property assessment due to circumstances such as a delay in the receipt of mail payments or monies from property settlements and additional daily interest has accumulated , amounts outstanding of \$2.00 and under will be waived, as it is not considered cost effective or equitable to recover from the new property owner. Estimated loss of revenue from this waiver is \$1,100.

**CARRIED 12-0  
ABSOLUTE MAJORITY**

**CCS457: RESOLUTION 6**

**VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**MOVED: COUNCILLOR TERRY**

**SECONDED: COUNCILLOR BENSON-LIDHOLM**

**THAT Council APPROVES the Schedule of Fees and Charges (which forms part of the 2022/2023 Budget) be adopted effective from 27th July 2022.**

**CARRIED 12-0  
ABSOLUTE MAJORITY**



**CCS457: RESOLUTION 7**  
**VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**MOVED: COUNCILLOR STOCKS**  
**SECONDED: COUNCILLOR SMITH**

**THAT Council SETS the Elected Member Sitting Fees and Allowances as prescribed by the *Local Government (Administration) Regulations 1996* per annum, being:**

- (1)Councillor Meeting Attendance Fee: \$32,470**
- (2)Mayoral Meeting Attendance Fee: \$48,704**
- (3)Councillor and Mayoral ICT Allowance: \$3,500**
- (4)Annual Travel and Accommodation Allowance (allowable claims in excess of this allowance will be reimbursed): \$50**
- (5)Total Mayoral Allowance is: \$91,997**
- (6)Deputy Mayoral Allowance: \$22,999 - being 25% of the Mayoral Allowance**

**CARRIED 10-2**  
**ABSOLUTE MAJORITY**

**Record of Vote**

Against the Motion: Councillors Brough and Thomson

**CCS457: RESOLUTION 8**  
**VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**MOVED: COUNCILLOR SMITH**  
**SECONDED: COUNCILLOR BAESJOU**

**THAT Council APPROVES a variance between actual and budget-to-date of greater than \$100,000 is considered to be a material variance for reporting purposes in the Statement of Financial Activity for 2022/2023.**

**CARRIED 12-0**  
**ABSOLUTE MAJORITY**

**BACKGROUND**

3. Council has considered strategic and operational issues which will impact on the 2022/23 budget.
4. Under section 6.36 of the *Local Government Act 1995*, the City is not required to advertise the proposed rates amounts for the 2022/23 financial year.

**DISCUSSION**

5. Through Council workshops, Council members have considered various factors in developing a financially responsible budget including the consequences of the COVID-19 pandemic, while ensuring compliance with Local Government legislation, occupational safety and health requirements, continuation of the various services provided by the City, cost-saving initiatives and new capital projects that are “project ready” or will be required to be undertaken this financial year, given commitments previously made by Council.
6. An important consideration in preparing any budget is to ensure that Council works towards achieving financial sustainability for the future.
7. The draft budget reflects a number of factors to maintain financial sustainability, which will impact not only on this year’s budget but will have a compounding effect in future budgets.

## GOVERNMENT & PUBLIC CONSULTATION

8. The Department of Local Government, Sport and Cultural Industries is not consulted prior to budget adoption. Once the Budget is adopted, a copy is sent to the Department for review.

## PUBLIC CONSULTATION / ENGAGEMENT

9. Budget information will be published on the City of Albany website.

## STATUTORY IMPLICATIONS

10. This item directly relates to, and contributes to achievement of, the Strategies within the Community Strategic Plan – Albany 2023 and the consequences of the COVID-19 pandemic.

## POLICY IMPLICATIONS

11. Nil.

## RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Financial &amp; Reputation:</b> <i>Council does not endorse the 2022/23 Budget, with the consequential risk of deferred cash flow, and thus inability to meet financial commitments.</i>	<i>Unlikely</i>	<i>Extreme</i>	<i>Extreme</i>	<i>Delegated authority to the CEO to incur expenditure under the Local Government Act 1995 until Budget endorsement.</i>  <i>Reconsideration of the budget paper at a Council meeting prior to 31 August 2022.</i>

## FINANCIAL IMPLICATIONS

13. The 2022/23 Budget sets the parameters for expenditure of City resources.
14. The City must meet its legislative and debt obligations through endorsement of a budget. Failure to do so incurs considerable financial and other risks to the City.

## LEGAL IMPLICATIONS

15. Nil.

## ALTERNATE OPTIONS

16. Council adopt the 2022/23 Annual Financial Budget with changes.

## SUMMARY CONCLUSION

17. Endorsement of the budget provides delegated authority to the CEO to incur expenditure from 1 July 2022 until 30 June 2023.

<b>Consulted References</b>	:	<ul style="list-style-type: none"> <li>• <i>Local Government Act 1995</i></li> <li>• <i>Local Government (Financial Management) Regulations 1996.</i></li> </ul>
<b>File Number (Name of Ward)</b>	:	FM.BUG.12
<b>Previous Reference</b>	:	<ul style="list-style-type: none"> <li>• <i>Budget Workshop – 17 May 2022</i></li> <li>• <i>Budget Workshop – 14 June 2022</i></li> <li>• <i>OCM July 2021 Resolution CCS367</i></li> </ul>

**CCS458: APPOINTMENT OF SENIOR DESIGNATED EMPLOYEE - EXECUTIVE DIRECTOR CORPORATE AND COMMERCIAL SERVICES**

**Attachments** : CONFIDENTIAL – Curriculum Vitae and Selection Panel Report.  
**Report Prepared By** : Acting Manager People and Culture (D Waugh)  
**Responsible Officers:** : Chief Executive Officer (A Sharpe)

**CONFIDENTIAL REPORT**

*This report was considered CONFIDENTIAL in accordance with section 5.23(2(a) of the Local Government Act 1995, as it relates to a matter affecting an employee.*

**STRATEGIC IMPLICATIONS**

1. This item relates to the following elements of the City of Albany Community Strategic Plan or Corporate Business Plan informing plans or strategies:
  - **Pillar:** Leadership.
  - **Outcome:** Proactive, visionary leaders who are aligned with community needs and values.
  - **Outcome:** Strong workplace culture and performance.
  - **Objective:** Provide strong, accountable leadership.
  - **Objective:** Embrace innovation and best practice to improve business efficiencies and the customer experience.
  - **Objective:** Provide cost effective financial management and value for money.
  - **Objective:** Foster employee engagement and a positive workplace culture.

**In Brief:**

- Council is requested to endorse the Chief Executive Officer's determination to fill the vacant position of Executive Director Corporate and Commercial Services with the preferred candidate, and offer the successful applicant a negotiated contract within the prescribed salary range for a term of 3 years.

8.59PM

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

**MOVED: COUNCILLOR SMITH**  
**SECONDED: COUNCILLOR SUTTON**

**THAT in accordance with section 4.1 of the City of Albany Standing Orders Local Law 2014 (As Amended) the meeting be closed to members of the public.**

**CARRIED 12-0**  
**ABSOLUTE MAJORITY**

9.03pm

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

**MOVED: COUNCILLOR SUTTON**  
**SECONDED: COUNCILLOR SMITH**

**THAT the meeting be re-opened to members of the public.**

**CARRIED 12-0**  
**ABSOLUTE MAJORITY**

**RECOMMENDATION**

**CCS458: RESOLUTION  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR SUTTON  
SECONDED: COUNCILLOR TRAILL**

**THAT:**

- 1) The Confidential Selection Committee Report for the position of Executive Director Corporate and Commercial Services be NOTED; and**
- 2) The Chief Executive Officer’s determination to fill the vacant position of Executive Director Corporate and Commercial Services and offer Mr Matthew Gilfellow a negotiated contract within the prescribed salary range for a term of 3 years, be ENDORSED.**

**CARRIED 12-0**

<b>Consulted References</b>	:	<i>Local Government Act 1995 Local Government (Administration) Regulations 1996</i>
<b>File Number (Name of Ward)</b>	:	Personnel File
<b>Previous Reference</b>	:	N/A

**DIS307: C22004 ALBANY MOTORSPORT PARK, RACE TRACK  
DESIGN SERVICES**

<b>Land Description</b>	: Lot 5780 Down Road, Drome
<b>Proponent / Owner</b>	: City of Albany
<b>Business Entity Name</b>	: Great Southern Motorplex Group Incorporated
<b>Attachments</b>	: <b>Confidential Briefing Note</b>
<b>Report Prepared By</b>	: Manager Major Projects (A. McEwan) & Project Officer (M. Randall)
<b>Authorising Officer:</b>	: Executive Director Infrastructure & Environment (P. Camins)

**6.58pm: Councillor Thomson left the Chamber after declaring a Financial Interest in this item.**

**STRATEGIC IMPLICATIONS**

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
  - **Pillar:** People
  - **Outcomes:** A diverse and inclusive community
  - **Pillar:** Place
  - **Outcomes:** Responsible growth, development and urban renewal; and
  - Interesting, vibrant and welcoming places
  - **Pillar:** Prosperity
  - **Outcomes:** A highly sought-after tourist destination

**Maps and Diagrams:**



**Aerial photograph of Albany Motorsport Park**

**In Brief:**

- Following a competitive tender process, Council approval is sought to award tender for Contract C22004 - Albany Motorsport Park, Race Track Design Services to GHD Pty Ltd.

**RECOMMENDATION**

**DIS307: RESOLUTION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR SUTTON**  
**SECONDED: COUNCILLOR SMITH**

**THAT Council ACCEPT the tender RECOMMENDED by the evaluation panel in the Confidential Briefing Note and AWARD Contract C22004 Albany Motorsport Park, Race Track Design Services to GHD Pty Ltd.**

**CARRIED 11-0**

DIS307: COMMITTEE RECOMMENDATION

MOVED: MAYOR WELLINGTON  
SECONDED: COUNCILLOR TERRY

THAT the Authorising Officer Recommendation be ADOPTED.

**CARRIED 9-0**

DIS307: AUTHORISING OFFICER RECOMMENDATION

THAT Council ACCEPT the tender RECOMMENDED by the evaluation panel in the Confidential Briefing Note and AWARD Contract C22004 Albany Motorsport Park, Race Track Design Services Tender.

**BACKGROUND**

2. Tenders were called for Albany Motorsport Park, Race Track Design Services.
3. The intent of the tender invitation is for the successful Tenderer to carry out all works in accordance with every detail of the Request for Tender Documents for the completion of the Race Track Precinct detailed design.
4. It is preferable to commence design at the earliest possible time to ensure completion in accordance with funding requirements for the projects implementation.

**DISCUSSION**

5. The standard tender process as prescribed by the Local Government Act 1995 (the Act) and Local Government (Function and General) Regulations 1996 (the Regulations).
6. Tenders were advertised both state-wide and locally from the 30 March 2022 and closed on 4 May 2022.
7. Thirty one (31) tender documents were downloaded from the City of Albany website, with the City receiving one (1) conforming tender.

**Evaluation of Tenders**

8. The tender panel evaluated tenders using the weighted criteria methodology across four (4) key areas, shown in Table 1.

Table 1 – Evaluation Criteria

Criteria	% Weighting
Key Personnel Skills, Experience & Capacity	20%
Demonstrated Understanding	25%
Corporate Social Responsibility	5%
Cost	50%

9. The following table summarises the tenderers and the overall evaluation scores applicable.

Table 2 – Conforming Submissions

Tenderer	Total	Rank
GHD Pty Ltd	574	1

10. GHD Pty Ltd ranked highest, and was the only conforming submission.
11. A tender clarification meeting and value management discussion was held with GHD Pty Ltd and the developer, the Great Southern Motorplex Group Incorporated.
12. From the evaluation scoring, clarification, negotiation and financial check processes, GHD Pty Ltd are the preferred tender and consequently it is recommended that their tender be accepted and the contract be awarded.
13. The developer, the Great Southern Motorplex Group Incorporated, are supportive of a recommendation to award the tender to GHD Pty Ltd.

**GOVERNMENT & PUBLIC CONSULTATION**

14. There is no government consultation required for the award of Albany Motorsport Park, Race Track Design Services.
15. The funding bodies will be notified with regard to the outcome of the award and timeframe for implementation through reporting processes.

**STATUTORY IMPLICATIONS**

16. Regulation 11 of the Regulations requires Council to publicly tender if the contract is, or is expected to be, more, or worth more than \$250,000.00
17. 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.
18. Regulation 19 of the Regulations requires Council to advise each tenderer in writing of Council's decision.
19. Voting Requirement: **Simple Majority.**

**POLICY IMPLICATIONS**

20. The City of Albany Purchasing Policy and Regional Price Preference Policy are applicable to this item.
21. The value of this tender is in excess of \$500,000.00 and therefore Council approval is required as this exceeds the CEO's delegation.

**RISK IDENTIFICATION & MITIGATION**

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>City Operations and Financial</b> <i>Risk: Failure to deliver project within specified timeframe may jeopardize the funding agreement.</i>	Possible	Major	High	Award tender as soon as possible to enable the design to be developed and implemented in the appropriate season to satisfy funding conditions.
<b>Business Interruption</b> <i>Risk: Appointment of the recommended tenderer is not supported.</i>	Possible	Major	High	City staff to work with preferred tenderer to address any concerns prior to awarding the tender.
<b>Opportunity:</b> Project developed and delivered on time for the benefit of the community and its use.				

**FINANCIAL IMPLICATIONS**

23. The recommended tender is within overall project budget.

24. The value of this tender is in excess of \$500,000.00 and therefore the approval is referred to Council for consideration.

**LEGAL IMPLICATIONS**

25. Responsibility has been assigned to ensure contractual terms for all aspects of this project are applied.

**ENVIRONMENTAL CONSIDERATIONS**

26. Should the tender be awarded, the consultant design will consider environmental responsibilities as they relate to the approved project development.

**ALTERNATE OPTIONS**

27. The options are:

- Council may choose to accept the recommended tender, or
- Not approve any tender.

**CONCLUSION**

28. The City has undergone a competitive process in line with the relevant legislation and established policies.

29. It is recommended, based on the evaluation scoring, clarification, reference and financial check processes that GHD Pty Ltd be noted as being the preferred tender, and that the CEO is given the delegated authority to award the tender to the preferred Consultant.

<b>Consulted References</b>	:	<ul style="list-style-type: none"> <li>• Local Government Act 1995</li> <li>• Local Government (Functions and General) Regulations 1996</li> <li>• Council Policy: Purchasing Policy (Tenders and Quotes)                             <ul style="list-style-type: none"> <li>○ Tender Procedure</li> <li>○ Evaluation Procedure (Tenders and Quotations)</li> </ul> </li> <li>• Council Policy: City of Albany Buy Local Policy (Regional Price Preference)</li> </ul>
<b>File Number (Name of Ward)</b>	:	RC.PJT.2
<b>Previous Reference</b>	:	Council Confidential Briefing

6.59pm: Councillor Thomson returned to the Chamber. Councillor Thomson was not present during the discussion and vote for this item.



**DIS308: RECREATION – PRIVATE (TREEHOUSE)**

**Land Description** : Lot 201, 6 Bridges Street, Albany WA 6330  
**Proponent / Owner** : J McLean & A Galante  
**Attachments** : 1. Plans  
2. Management Plan  
3. Schedule of submissions  
**Supplementary Information & Councillor Workstation Report Prepared By** : Public submissions (in full)  
**Authorising Officer:** : Senior Planning Officer (J Anderson)  
: Executive Director Infrastructure, Development and Environment (P Camins)

7.00pm: Councillor Cruse left the Chamber after declaring a Financial Interest in this item.

**STRATEGIC IMPLICATIONS**

1. Council is required to exercise its quasi-judicial function in this matter.
2. In making a decision on the proposed amendment, the Council is obliged to draw conclusion from its adopted City of Albany *Local Planning Strategy 2019* and City of Albany *Strategic Community Plan 2032*.
3. This item relates to the following elements of the Strategic Community Plan:
  - **Pillar:** People
  - **Outcome:** Plan a compact city with diverse land, housing and development opportunities.
  - **Pillar:** Place
  - **Outcome:** Responsible growth, development and urban renewal.
  - **Pillar:** Leadership.
  - **Outcome:** A well-informed and engaged community.

**Maps and Diagrams:** 6 (Lot 201) Bridges Street, Albany



**In Brief:**

- Council is asked to consider an application for existing development at No. 6 (Lot 201) Bridges Street, Albany, for the unauthorised construction of a treehouse and commencement of a Recreation-Private (Treehouse) use on site.
- The application for the Recreation-Private (Treehouse) was required to be advertised for a period of 21 days as the use is designated as an 'A' use under the Zoning Table of the City of Albany *Local Planning Scheme No. 1 (LPS1)*.
- 197 responses were received during the advertising period; 186 in support and 11 objections. Relevant matters raised during the advertising period have been taken into account as part of the City's assessment.
- Following conclusion of advertising, the proponent submitted a detailed response and updated management plan seeking to address concerns raised.
- The application is presented to Council for determination, due to the concerns raised during advertising.
- Council is now requested to consider the matter, specifically in regards to:
  - Whether the existing unapproved treehouse can remain in its current form, but for private use by the landowner and/or occupier only, or be modified and/or removed in its entirety; and
  - Whether the operation of the treehouse for commercial purposes as a Recreation – Private use is an acceptable intensification of a site in the Residential Zone, taking into account potential impacts on the amenity of residential properties directly adjoining and within proximity to the site, the objectives of the Residential Zone under LPS1 and submissions received during advertising.

**RECOMMENDATION**

**DIS308: RESOLUTION (AMENDED MOTION BY COUNCILLOR THOMSON)  
VOTING REQUIREMENT: SIMPLE MAJORITY**

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

**THAT Council resolves to:**

**A) ISSUE a notice of determination granting development approval with conditions for the Existing Development (Treehouse) at Lot 201, 6 Bridges Street, Albany.**

**Conditions:**

- 1. All development shall occur in accordance with the stamped, approved plans referenced P2220146 and dated XX XXXXX 2022, unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.**
- 2. The proposal is to comply with any details and/or amendments marked in red on the stamped, approved plans.**
- 3. The treehouse hereby approved shall not be used for any commercial use.**

**Advice Note: Notwithstanding exempted development provisions, any proposal for future development on the site associated with the treehouse, is subject to further consideration by Council.**

**General advice:**

- All works within the road reserve require a verge development application to be submitted for approval by the City of Albany.**

**B) ISSUE a notice of determination for REFUSAL for Recreation – Private (Treehouse) at Lot 201, 6 Bridges Street, Albany, for the following reasons:**

- 1. The proposal does not satisfy the following matters to be considered as identified in Schedule 2, Part 9, Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, namely:**
  - (a) The aims and provisions of the City of Albany Local Planning Scheme No. 1, specifically the following objectives of the Residential Zone, outlined under clause 3.2.1:**
  - (b) Maintain the character and amenity of established residential areas and ensure that new development, is sympathetic with the character and amenity of those areas;**
  - (c) the compatibility of the development with its setting, including —**
    - the compatibility of the development with the desired future character of its setting; and**
  - (d) the amenity of the locality including the following —**
    - the character of the locality; and**
    - social impacts of the development.**

**CARRIED 10-1**

**Record of Vote**

Against the Motion: Councillor Benson-Lidholm

**DIS308: AMENDMENT BY COUNCILLOR THOMSON  
VOTING REQUIREMENT: SIMPLE MAJORITY**

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

**THAT the Committee Recommendation be AMENDED to include the following Advice Note:**

*“Advice Note: Notwithstanding exempted development provisions, any proposal for future development on the site associated with the treehouse, is subject to further consideration by Council. “*

**CARRIED 10-1**

**Record of Vote**

Against the Motion: Councillor Benson-Lidholm

**Councillor Reason:**

The amendment seeks to make clear that any development on the site associated with the approved treehouse will be subject to future consideration by Council.

Councillor Thomson then proposed an amendment to the Committee Recommendation.

**DIS308: COMMITTEE RECOMMENDATION  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR TERRY  
SECONDED: COUNCILLOR SMITH**

**THAT Council resolves to:**

- A) **ISSUE** a notice of determination granting development approval with conditions for the Existing Development (Treehouse) at Lot 201, 6 Bridges Street, Albany.

**Conditions:**

1. All development shall occur in accordance with the stamped, approved plans referenced P2220146 and dated XX XXXXX 2022, unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.
2. The proposal is to comply with any details and/or amendments marked in red on the stamped, approved plans.
3. The treehouse hereby approved shall not be used for any commercial use.

General advice: All works within the road reserve require a verge development application to be submitted for approval by the City of Albany.

- B) **ISSUE** a notice of determination for REFUSAL for Recreation – Private (Treehouse) at Lot 201, 6 Bridges Street, Albany, for the following reasons:
1. The proposal does not satisfy the following matters to be considered as identified in Schedule 2, Part 9, Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, namely:
  2. The aims and provisions of the City of Albany Local Planning Scheme No. 1, specifically the following objectives of the Residential Zone, outlined under clause 3.2.1:
  3. Maintain the character and amenity of established residential areas and ensure that new development, is sympathetic with the character and amenity of those areas;
  4. the compatibility of the development with its setting, including —
    - the compatibility of the development with the desired future character of its setting; and
  5. the amenity of the locality including the following —
    - the character of the locality; and
    - social impacts of the development.

**LOST 5-6**

**Record of Vote:**

Against the Motion: Councillors Stocks, Shanhun, Sutton, Thomson, Benson-Lidholm and Brough.

**As Councillor Thomson’s Alternate Motion was lost, Council then considered the Committee Recommendation.**

DIS308: ALTERNATE MOTION BY COUNCILLOR THOMSON  
VOTING REQUIREMENT: SIMPLE MAJORITY

MOVED: COUNCILLOR THOMSON  
SECONDED: COUNCILLOR STOCKS

THAT Council resolves to:

A) ISSUE a notice of determination for REFUSAL for Recreation – Private (Treehouse) at Lot 201, 6 Bridges Street, Albany, for the following reason:

- The proposal does not satisfy the following matters to be considered as identified in Schedule 2, Part 9, Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, namely:
  - a) The aims and provisions of the City of Albany Local Planning Scheme No. 1, specifically the following objectives of the Residential Zone, outlined under clause 3.2.1;
  - b) Maintain the character and amenity of established residential areas and ensure that new development is sympathetic with the character and amenity of those areas;
  - c) the compatibility of the development with its setting, including:
    - the compatibility of the development with the desired future character of its setting; and
  - d) the amenity of the locality including the following:
    - the character of the locality;
    - social impacts of the development.

B) THAT the Unapproved Development (Treehouse) be REMOVED from site within 90 days.

C) REQUEST the CEO to:

- Commence discussions with the proponents on the possibility of relocating the existing treehouse to a mutually agreeable tree at a City reserve or land where the proponents could pay a peppercorn rent, and reinstate operation of the treehouse by them on a commercial basis; and
- provide a report no later than the December 2022 OCM on any feasible relocation options that might exist for the treehouse, based upon discussions mentioned in the dot point immediately above and any other relevant considerations.

LOST 5-6

**Record of Vote**

Against the Motion: Mayor Wellington, Councillors Brough, Baesjou, Terry, Smith and Traill.

**Councillor Reason:**

This Alternate Motion responds to officer and community concern over the development proposal’s non-satisfaction of the Development and Planning Regulations, as outlined in the dot point at Part A, above.

Point 134 of the officer report explains that if preliminary advice had been obtained prior to the unauthorised construction and use of the treehouse, the project “would have needed to demonstrate [ ... ] how impacts [ ... ] would be adequately mitigated. Where it is unable to be suitably demonstrated that a development proposal can adequately address issues either through redesign or mitigation measures, it would most likely be unable to be supported and recommended that a more suitable site be identified that can cater for the use”.

With regard to the officer report, I propose that Part A of the original recommendation be excised, because officers have explained the intention of that Part, that the treehouse not be used for commercial purposes, would nonetheless permit use of the treehouse by occupiers of short-stay accommodation proposed for the site.

There is therefore a clear commercial nexus between the commercial use of the planned short-stay accommodation and likely marketing, and proposed exclusive use, of the treehouse to and by paying occupiers. Hence, use of the treehouse under such circumstances would constitute commercial use incompatible with the wording of Point 3 of Part A of the officer recommendation. If this argument is accepted, the use proposed at Part A would be an unreasonable intensification of the site for commercial purposes.

Relocating the treehouse to a City reserve or City land agreeable to the proponents and the City would facilitate reinstatement of commercial operations at a location that satisfies the Planning and Development Regulations.

The proposed peppercorn rent is in recognition of the significant potential benefits for Albany's community, and for the city's ability to attract and retain tourists, of the treehouse operating at an appropriate site.

**Officer Comment (A/ED Infrastructure Development and Environment & A/ED Corporate and Commercial Services):**

Staff generally support Part A and Part B of the Alternate Motion as it is considered to be in accordance with the local planning scheme and is based on sound planning principles.

Staff are prepared to commence discussions with the proponent to determine an appropriate location, and will also consider what formal arrangements will be required for use of the land.

It is recommended that suitable sites be considered on City freehold land, as it is unlikely that the Department of Planning, Lands and Heritage would support a commercial operation on a Crown Reserve.

Any proposed location may be subject to the provisions of the City of Albany Property Management (Leases and Licences) Policy, including calling for expressions of interest and public comment.

Staff note that the proposed peppercorn rental for a commercial lease would be a departure from normal City Policy.

**Council then considered the Alternate Motion by Councillor Thomson.**

DIS308: ALTERNATE MOTION BY COUNCILLOR TERRY  
VOTING REQUIREMENT: SIMPLE MAJORITY

MOVED: COUNCILLOR TERRY  
SECONDED: COUNCILLOR SMITH

THAT Council resolves to ISSUE a notice of determination granting development approval with conditions for Recreation-Private (Treehouse) at Lot 201, 6 Bridges Street, Albany.

Conditions:

1. All development shall occur in accordance with the stamped, approved plans referenced P2220146 and dated **XX XXXXX 2022**, unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.
2. The proposal is to comply with any details and/or amendments marked in red on the stamped, approved plans.
3. The approval of Recreation – Private (Treehouse) is valid for a period of 12 months **from ##### [dd/mm/yyyy]**. At the end of this period the Recreation – Private (Treehouse) shall cease, unless a new development approval has been granted to continue operating past this time.
4. *The operation of events at the Recreation – Private (Treehouse) shall be restricted to a maximum duration of one and a half hours per session, and subject to the following:*

- *Monday – Friday: 10am – 5pm (1 session per day, maximum of 2 sessions Monday-Friday)*
  - *Saturday: 10am – 2pm (maximum 2 sessions)*
  - *No events permitted on Sundays or Public Holidays*
5. The maximum capacity of the Recreation- Private (Treehouse) shall not exceed the maximum capacity detailed within the approved Management Plan, or the maximum capacity determined under the *Health (Public Building) Regulations 1992*, whichever is lesser.
6. Prior to commencement of use, a screen with a minimum height of 1.6m from natural ground level shall be erected, as shown on the plans, between the southern edge of the car park and the southern lot. The screen shall be implemented and maintained to the satisfaction of the City of Albany.
7. Prior to commencement of operations of the development, stormwater management plans and details shall be submitted to the City of Albany for approval. Prior to formal occupation of the development, the approved stormwater management plans and details shall be implemented, completed and maintained thereafter to the satisfaction of the City of Albany.

*Advice:*

- *Stormwater management is to be designed in accordance with the ‘City of Albany’s Subdivision and Development Guidelines’.*
  - *All car parking areas to be drained and attenuation outflows directed to existing drain on Bridges Street. Stormwater not to impact adjacent properties.*
  - *Stormwater management plans shall include other relevant information and details as required by other conditions and amendments to the approved Management Plan (such as the location of toilet facilities and provision of on-site car parking areas).*
8. Prior to commencement of operations, a Vehicle Parking and Access Plan shall be submitted to the City of Albany for approval. Prior to formal occupation of the development, the approved Vehicle Parking and Access Plan, shall be implemented, completed and maintained thereafter to the satisfaction of the City of Albany.

*Advice:*

- *All required car parking contained on-site.*
  - *Car parking and access is to be designed in accordance with the Australian Standard 2890.*
  - *Parking bays and access driveway to be constructed with appropriate materials to the satisfaction of the City of Albany.*
  - *The Vehicle Parking and Access Plan shall:*
    - *Indicate the intended use of all parking bays (eg disabled bay, loading bay etc), access areas and line marking.*
    - *A turnaround/reversing area shall be provided on site to allow vehicles to enter the street in forward gear.*
  - *The Vehicular Parking and Access Plan is to include other relevant information and details as required by other conditions and amendments to the approved Management Plan (such as the location of toilet facilities).*
9. Prior to formal occupation of the development, the existing crossover shall be upgraded and constructed to the specifications, levels and satisfaction of the City of Albany.

*Advice:*

- *A ‘Permit for Vehicle Crossover Construction’ from the City of Albany is required prior to any work being carried out within the road reserve, which shall be in accordance with drawing nos. STD-05-01 – STD-05-03 (refer to the City of Albany’s Subdivision and Development Guidelines).*
  - *Existing Heritage rock-lined open stormwater drain to be protected at all times. Engineering details to be provided for crossover slab and supports traversing the drain.*
10. Prior to occupancy of the development the premises shall be connected to the Water Corporation sewerage system.
11. The development hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust.

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

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

12. Prior to commencement of use, a revised Management Plan shall be submitted to City of Albany for approval, incorporating the requirements as outlined in the above conditions and taking into account the following:

- The requirement for a manager to be present on site for the duration of an event, and a minimum of 30 minutes before and after the event
- Any further restrictions or limitations to the permitted number of events per week and maximum capacity of the use
- Car parking contained on-site
- Screening requirements to southern edge of the car park
- Any further amendments to details and information as a result of the requirements of this approval including capacity, site layout such as location of toilet facilities, car parking and vehicle access.

13. The development shall be operated and maintained in perpetuity, in accordance with the relevant measures and actions as detailed under the approved Management Plan, to the satisfaction of the City of Albany.

• Advice:

- *The approved Management Plan shall be reviewed and updated at the time of any change of ownership or management, in consultation and to the satisfaction of the City of Albany.*
- *The complaints response procedure shall include current contact details of the business manager/operator.*
- *The operator shall ensure that the complaints response procedure is updated and maintained when required and made available to current adjoining landowners for the life of the development.*
- *It is the responsibility of the operator to distribute an approved management plan to surrounding landowners/adjoining properties, prior to commencement of operations. The approved management plan shall be implemented and complied with at all times, whilst the approved use is in operation.*

General advice:

- *The level of noise emanating from the premises shall not exceed that prescribed in the Environmental Protection Act 1986, and the Environmental Protection (Noise) Regulations 1997.*
- *The premises must comply with the Health (Public Building) Regulations 1992.*
- *Prior to commencement of use, a verge development application is to be submitted for approval by the City for all works within the road reserve.*
- *Prior to commencement suitable arrangements being made of an accessible unisex toilet facility to be installed onsite and connected to the Water Corporation sewerage system. .*
- *An annual inspection & report by Kidsafe WA is to be provided to the City of Albany to ensure ongoing compliance with AS 4685.*

LOST 5-6

**Record of Vote:**

Against the Motion: Councillors Thomson, Stocks, Sutton, Shanhun, Benson-Lidholm and Traill.

**Councillor Reason:**

Whilst I recognize the quite valid reasons for the Officer Recommendation in relation to only permitting Private use of the Treehouse, due to the nature of structure I feel that we as a Community should come to an agreement as to how to make this facility available to the wider community whilst recognizing the unique characteristics of the neighbourhood and being mindful of the impact of the structure on neighbouring properties.



As a result of the submissions received from neighbouring properties the proponent has tightened up a number of conditions in relation to use of the structure and has also agreed to reduce the number of events that more closely align with the request from the neighbor immediately to the south of the site. The reduction in the number of events will reduce the amenity impacts on the immediate neighbours and hopefully placate some, not all, of their concerns.

The list of conditions attached to the approval for Recreation – Private (Treehouse) are achievable and not overly onerous on the proponent bearing in mind that the proponent proposes to build 3 “Loft Houses” on the property in time.

I feel that the Zealtopia Treehouse will be a wonderful asset to the community and we should find a way to ensure the Community has access to it that is acceptable to the immediate neighbours.

**Officer Comment (A/ED Infrastructure Development and Environment):**

In response to the alternate recommendation, staff remain of the position that use of the Treehouse as Recreation-Private should be refused. Were the use to be approved, even in a further limited form, it is unlikely that the potential detrimental impacts from the use to directly affected properties and within Bridges Street could be reasonably addressed through further limitations aiming to mitigate the impacts.

However, should Council resolve to support the use of the Treehouse as Recreation-Private, appropriate conditions and general advice as outlined in the alternate recommendation should be applied, to ensure a decision is made that seeks to address and mitigate outstanding operational and management matters raised within the report.

If approved, the City's powers are limited to only ensuring that the conditions of operation are adhered to. Monitoring on an ongoing basis would require an unsustainable use of limited resources.

DIS308: COMMITTEE RECOMMENDATION

MOVED: COUNCILLOR STOCKS

SECONDED: COUNCILLOR SHANHUN

THAT the Authorising Officer Recommendation be ADOPTED.

CARRIED 9-1

**Record of Vote:**

Against the Motion: Councillor Thomson

As the Alternate Motion by Councillor Terry was lost, the Committee then considered the Authorising Officer Recommendation.

DIS308: ALTERNATE MOTION BY COUNCILLOR TERRY

MOVED: COUNCILLOR TERRY

SECONDED: COUNCILLOR SMITH

THAT Council resolves to ISSUE a notice of determination granting development approval with conditions for Recreation-Private (Treehouse) at Lot 201, 6 Bridges Street, Albany.

Conditions:

1. All development shall occur in accordance with the stamped, approved plans referenced P2220146 and dated **XX XXXXX 2022**, unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.
2. The proposal is to comply with any details and/or amendments marked in red on the stamped, approved plans.
3. The approval of Recreation – Private (Treehouse) is valid for a period of 12 months **from #### [dd/mm/yyyy]**. At the end of this period the Recreation – Private (Treehouse) shall cease, unless a new development approval has been granted to continue operating past this time.
4. *The operation of events at the Recreation – Private (Treehouse) shall be restricted to a maximum duration of one and a half hours per session, and subject to the following:*
  - *Monday – Friday: 10am – 5pm (1 session per day, maximum of 2 sessions Monday-Friday)*
  - *Saturday: 10am – 2pm (maximum 2 sessions)*

- *No events permitted on Sundays or Public Holidays*

5. The maximum capacity of the Recreation- Private (Treehouse) shall not exceed the maximum capacity detailed within the approved Management Plan, or the maximum capacity determined under the Health (Public Building) Regulations 1992, whichever is lesser.
6. Prior to commencement of use, a screen with a minimum height of 1.6m from natural ground level shall be erected, as shown on the plans, between the southern edge of the car park and the southern lot. The screen shall be implemented and maintained to the satisfaction of the City of Albany.
7. Prior to commencement of operations of the development, stormwater management plans and details shall be submitted to the City of Albany for approval. Prior to formal occupation of the development, the approved stormwater management plans and details shall be implemented, completed and maintained thereafter to the satisfaction of the City of Albany.

*Advice:*

- *Stormwater management is to be designed in accordance with the 'City of Albany's Subdivision and Development Guidelines'.*
  - *All car parking areas to be drained and attenuation outflows directed to existing drain on Bridges Street. Stormwater not to impact adjacent properties.*
  - *Stormwater management plans shall include other relevant information and details as required by other conditions and amendments to the approved Management Plan (such as the location of toilet facilities and provision of on-site car parking areas).*
8. Prior to commencement of operations, a Vehicle Parking and Access Plan shall be submitted to the City of Albany for approval. Prior to formal occupation of the development, the approved Vehicle Parking and Access Plan, shall be implemented, completed and maintained thereafter to the satisfaction of the City of Albany.

*Advice:*

- *All required car parking contained on-site.*
  - *Car parking and access is to be designed in accordance with the Australian Standard 2890.*
  - *Parking bays and access driveway to be constructed with appropriate materials to the satisfaction of the City of Albany.*
  - *The Vehicle Parking and Access Plan shall:*
    - *Indicate the intended use of all parking bays (eg disabled bay, loading bay etc), access areas and line marking.*
    - *A turnaround/reversing area shall be provided on site to allow vehicles to enter the street in forward gear.*
  - *The Vehicular Parking and Access Plan is to include other relevant information and details as required by other conditions and amendments to the approved Management Plan (such as the location of toilet facilities).*
9. Prior to formal occupation of the development, the existing crossover shall be upgraded and constructed to the specifications, levels and satisfaction of the City of Albany.

*Advice:*

- *A 'Permit for Vehicle Crossover Construction' from the City of Albany is required prior to any work being carried out within the road reserve, which shall be in accordance with drawing nos. STD-05-01 – STD-05-03 (refer to the City of Albany's Subdivision and Development Guidelines).*
  - *Existing Heritage rock-lined open stormwater drain to be protected at all times. Engineering details to be provided for crossover slab and supports traversing the drain.*
10. Prior to occupancy of the development the premises shall be connected to the Water Corporation sewerage system.
  11. The development hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust.
  12. Sign(s) shall not be erected on the lot without the prior approval of the City of Albany
  13. Advice: Please refer to the City of Albany Local Planning Policy – Signs for further information.
  14. Prior to commencement of use, a revised Management Plan shall be submitted to City of Albany for approval, incorporating the requirements as outlined in the above conditions and taking into account the following:
    - *The requirement for a manager to be present on site for the duration of an event, and a minimum of 30 minutes before and after the event*
    - *Any further restrictions or limitations to the permitted number of events per week and maximum capacity of the use*
    - *Car parking contained on-site*
    - *Screening requirements to southern edge of the car park*

- Any further amendments to details and information as a result of the requirements of this approval including capacity, site layout such as location of toilet facilities, car parking and vehicle access.

15. The development shall be operated and maintained in perpetuity, in accordance with the relevant measures and actions as detailed under the approved Management Plan, to the satisfaction of the City of Albany.

Advice:

- *The approved Management Plan shall be reviewed and updated at the time of any change of ownership or management, in consultation and to the satisfaction of the City of Albany.*
- *The complaints response procedure shall include current contact details of the business manager/operator.*
- *The operator shall ensure that the complaints response procedure is updated and maintained when required and made available to current adjoining landowners for the life of the development.*
- *It is the responsibility of the operator to distribute an approved management plan to surrounding landowners/adjoining properties, prior to commencement of operations. The approved management plan shall be implemented and complied with at all times, whilst the approved use is in operation.*

General advice:

- *The level of noise emanating from the premises shall not exceed that prescribed in the Environmental Protection Act 1986, and the Environmental Protection (Noise) Regulations 1997.*
- *The premises must comply with the Health (Public Building) Regulations 1992.*
- *Prior to commencement of use, a verge development application is to be submitted for approval by the City for all works within the road reserve.*
- *Prior to commencement suitable arrangements being made of an accessible unisex toilet facility to be installed onsite and connected to the Water Corporation sewerage system. .*
- *An annual inspection & report by Kidsafe WA is to be provided to the City of Albany to ensure ongoing compliance with AS 4685.*

MOTION TIED 5-5  
THE PRESIDING MEMBER EXERCISED THE CASTING VOTE  
MOTION LOST 6-5

### Record of Vote

Against the Motion: Councillors Thomson, Sutton, Benson-Lidholm, Stocks and Shanhun

### Councillor Terry's Reason:

Whilst I recognize the quite valid reasons for the Officer Recommendation in relation to only permitting Private use of the Treehouse, due to the nature of structure I feel that we as a Community should come to an agreement as to how to make this facility available to the wider community whilst recognizing the unique characteristics of the neighbourhood and being mindful of the impact of the structure on neighbouring properties.

As a result of the submissions received from neighbouring properties the proponent has tightened up a number of conditions in relation to use of the structure and has also agreed to reduce the number of events that more closely align with the request from the neighbor immediately to the south of the site. The reduction in the number of events will reduce the amenity impacts on the immediate neighbours and hopefully placate some, not all, of their concerns.

The list of conditions attached to the approval for Recreation – Private (Treehouse) are achievable and not overly onerous on the proponent bearing in mind that the proponent proposes to build 3 “Loft Houses” on the property in time.

I feel that the Zealtopia Treehouse will be a wonderful asset to the community and we should find a way to ensure the Community has access to it that is acceptable to the immediate neighbours.

### Officer Comment (A/ED Infrastructure Development and Environment):

In response to the alternate recommendation, staff remain of the position that use of the Treehouse as Recreation-Private should be refused. Were the use to be approved, even in a further limited form, it is unlikely that the potential detrimental impacts from the use to directly affected properties and within Bridges Street could be reasonably addressed through further limitations aiming to mitigate those impacts.

However, should Council resolve to support the use of the Treehouse as Recreation-Private, appropriate conditions and general advice as outlined in the alternate recommendation should be applied, to ensure a decision is made that seeks to address and mitigate outstanding operational and management matters raised within the report.

If approved, the City's powers are limited to only ensuring that the conditions of operation are adhered to. Monitoring on an ongoing basis would require an unsustainable use of limited resources.

**DIS308: AUTHORISING OFFICER RECOMMENDATION**

THAT Council resolves to:

A) ISSUE a notice of determination granting development approval with conditions for the Existing Development (Treehouse) at Lot 201, 6 Bridges Street, Albany.

Conditions:

1. All development shall occur in accordance with the stamped, approved plans referenced P2220146 and dated XX XXXXX 2022, unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.
2. The proposal is to comply with any details and/or amendments marked in red on the stamped, approved plans.
3. The treehouse hereby approved shall not be used for any commercial use.

General advice: All works within the road reserve require a verge development application to be submitted for approval by the City of Albany.

B) ISSUE a notice of determination for REFUSAL for Recreation – Private (Treehouse) at Lot 201, 6 Bridges Street, Albany, for the following reasons:

4. The proposal does not satisfy the following matters to be considered as identified in Schedule 2, Part 9, Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, namely:
  - a) The aims and provisions of the City of Albany Local Planning Scheme No. 1, specifically the following objectives of the Residential Zone, outlined under clause 3.2.1:
  - b) Maintain the character and amenity of established residential areas and ensure that new development, is sympathetic with the character and amenity of those areas;
  - c) the compatibility of the development with its setting, including —
    - the compatibility of the development with the desired future character of its setting; and
  - d) the amenity of the locality including the following —
    - the character of the locality;
    - social impacts of the development;

**BACKGROUND**

4. Site details:

<b>Local Planning Scheme</b>	City of Albany Local Planning Scheme No. 1
<b>Zone</b>	Residential R30
<b>LPS1 Use Class &amp; Permissibility (Table 2)</b>	Recreation – Private (Treehouse) – A
<b>Lot Size:</b>	Site area 984m <sup>2</sup>
<b>Existing Land Use:</b>	Vacant
<b>Bushfire Prone Area:</b>	Yes
<b>Local Planning Policies:</b>	Albany Historic Town Design Policy

5. The construction of the treehouse on the subject site and subsequent use of the site as Recreation – Private (Treehouse) were both commenced without development approval. The treehouse was constructed within an existing mature tree located within the south-west corner of the lot.
6. In late March 2022 the City was made aware that a commercial business was operating from the subject site.
7. The City contacted the proponent, requesting that the use of the treehouse for private functions cease, with any existing bookings cancelled, until such time as the situation was resolved through determination of a development application.
8. Development approval is required for both elements as:
  - b. The treehouse does not meet the exemption criteria for certain works set out under the Planning and Development (Local Planning Schemes) Regulations 2015 (the Planning Regulations); and
  - c. Recreation – Private is designated as an ‘A’ use in the Residential zone in the Zoning Table under LPS1.
9. The proponent subsequently lodged a development application seeking approval of the existing treehouse and use of the treehouse as a recreation play space (assessed as ‘Recreation-Private’ under LPS1), available to hire to the public for various private functions and events, such as children’s birthday parties, high teas or the like.
10. The subject site is surrounded by land zoned Residential to the north, east, south and west. The Residential zone extends west to Spencer and Aberdeen Streets, where it meets the boundary of the Regional Centre and Regional Centre Mixed Use Zones of the Albany CBD; and extends east and north to the boundary of the Corndarup / Mt Clarence reserve (Parks and Recreation Reserve). South of Stirling Terrace and Brunswick Road is a mixture of land use zones, includes Lawley Park (Parks and Recreation Reserve), Rail Reserve, Port Industry and the Waterfront development.
11. Bridges Street is located at the base of the southern face of Corndarup / Mt Clarence and within the central historic town precinct, approximately 600m east of the CBD. Bridges Street is separated into two sections – the subject site is located towards the northern end of the southern section, which is a no through road ending in a cul-de-sac, accessed via Brunswick Road/Stirling Terrace at the southern end. References to Bridges Street throughout the remainder of the report relate to the southern section where the subject site is located.
12. Bridges Street is approximately 9m wide, consists of a moderate downwards slope from the top of the cul-de-sac towards Brunswick Road/Stirling Terrace, and incorporates historic open stone drains that extend either side for most of its length (approximately 90m).
13. Bridges Street is residential in character, with the streetscape generally informed by being located within the Albany Historic Town Precinct, the area’s topography and the short length of the street, plus long-term vacant sites situated at the northern eastern end (including the subject site). Notable features include the open stone drains on both sides of Bridges Street, wide footpath and street trees.

14. Eight properties have direct frontage to Bridges Street, six of which consist of single dwellings. An additional five lots have access via a private lane way accessed from the western side of Bridges Street. Bridges Street is considered to have low traffic volumes as it is a cul-de-sac that services up to 13 lots.
15. Existing dwellings fronting Bridges Street consist of varying historic or more recent architecture styles, with individual sites following the slope by gradually stepping downwards towards Brunswick Road/Stirling Terrace. Existing dwellings have been constructed either at grade with or lower than the road, sometimes utilising retaining walls or otherwise brick build up. The primary frontage of the dwellings at the southern end face of Bridges Street face Stirling Terrace / Brunswick Road, with their secondary street frontages facing Bridges Street, with dwelling frontages onto Bridges Street generally consisting of open garden areas, with minimal or open style front fencing, and/or mature vegetation.

## DISCUSSION

16. As outlined above, the application relates to consideration of:
17. The unapproved treehouse constructed within an existing mature tree in the south-western corner of the site, and whether it should be:
  - a. Permitted to remain in its current form, for private use by the landowner and/or occupier only; or
  - b. Permitted to remain for private use by the landowner and/or occupier only, but with modifications; or
  - c. Removed in its entirety; and
  - d. If the existing treehouse is approved to remain, that it is permitted to be used for commercial purposes as a Recreation – Private use, with or without modifications to the current proposal.
18. In considering whether to approve use of the site as Recreation-Private (Treehouse), Council will need to consider whether the intensification of a site in the Residential Zone for commercial purposes is acceptable in this instance, taking into account:
19. The potential impacts on the amenity of residential properties directly adjoining and within proximity to the subject site, generated by the Recreation-Private use;
20. Submissions received during advertising; and
21. The objectives of the Residential Zone under LPS1.

### Existing treehouse

22. The treehouse has been constructed within the existing mature tree, primarily using wooden materials. The treehouse is considered play equipment, not a building or structure, and therefore does not require building permit.
23. Access to the treehouse is via a ramp and door to the base platform, and steps using various materials connect to each level. Various play equipment (swings, pulleys etc) have been installed within and around the treehouse.
24. The treehouse has an overall height of 7.4m (approximate), consisting of six levels across four storeys, with distances between the treehouse and adjoining boundaries as follows:
  - a. 4.2m from the front boundary (measured from the trunk).
  - b. 4.2m to the southern boundary (measured from the trunk).
  - c. 7.7m from the main sitting area to the southern boundary.
25. The treehouse is enclosed within a 2m high visually permeable fence. The fence is considered to be substantially screened by the existing canopy.
26. Branches of the existing mature tree provide an element of screening from the upper levels of the treehouse to the southern adjoining property, however some of these branches potentially overhang the southern boundary, and could be removed by the neighbour at any time without notice, without requiring permission of the proponent.

**Recreation – Private (Treehouse)**

27. As outlined above, the site is proposed to be used for commercial purposes as a Recreation – Private (Treehouse) use.
28. In response to the concerns raised during advertising, the proponent has amended the operations of the Recreation-Private (Treehouse) use. The amended proposal involves the following (refer Attachments 1 and 2):
29. The treehouse is likely to be used for private events and functions such as birthday parties, reunions, high teas, baby showers, anniversaries, therapy sessions, meeting place for corporate customers or book clubs and tourists.
30. Functions are only permitted during daylight hours within the following timeframes as follows:
  - a. Monday to Friday: 10am to 5pm (1 function per day, maximum of 3 functions Mon-Fri)
  - b. Saturday: 10am to 4pm (maximum of 2 functions per day, minimum of 1 hour between functions)
  - c. Sunday: 11am to 2pm (1 function per day)
31. The treehouse is leased for a maximum of two hours for each function
32. Capacity:
  - a. No more than 12 children permitted at each event (with a maximum of one adult per child).
  - b. A maximum of 12 adults may attend an adult function.
33. Patrons are to remain within the fence during the length of an event.
34. Use of amplified music is not permitted.
35. Payment of a \$100 bond, to ensure compliance with lease conditions. Failure to comply with the conditions of lease will result in loss of the security bond.
36. Noise and disturbance outside of the treehouse perimeter fence shall be limited as a courtesy to surrounding landowners.
37. Should a neighbour complain then the customer shall be contacted immediately to rectify the situation. The operation management plan contains the contact details of the management of the use.
38. Patrons will be encouraged to walk or ride to the treehouse, with bike racks to be installed on site, and discounts provided to groups opting to ride to the site.
39. The proponent has installed a portable toilet on site, located in the north western corner for patrons of the Private-Recreation use.
40. No onsite management is currently proposed to be provided for the use.
41. There is currently no formal vehicle access or car parking provided on site. The proponent proposes to install 8 on-site car parking bays, with overflow car parking proposed to be located on the street directly in front of 6 Bridges Street.
42. In regards to capacity, the City's Health Officers have advised that should the Recreation-Private use be approved, further assessment is required as a 'Public Building' under the relevant public health legislation, and this will determine the permitted maximum capacity for the use. This may be above or below the capacity currently proposed by the proponent.
43. The assessment as a Public Building under the relevant legislation would also determine minimum requirements for accessibility and provision of formal permanent toilet facilities.
44. The proponent has also installed a footbridge over the open stone drain and a footpath on the road verge. Should Council support the proposal, these works are subject to the requirement for approval from the City as part of a formal verge development application.
45. The proponent states that the treehouse will form the central feature of a short-term accommodation development in the future. The short-term accommodation proposal does not form part of this application.

46. Were the proposed future short-term accommodation development proceed, the proponent has indicated that the intention would be for the Recreation-Private use to continue, with access to the treehouse by the short-term accommodation patrons coordinated/shared with the general public hiring the treehouse as part of the Recreation-Private use.

### Public Consultation

47. The public consultation undertaken for the Recreation-Private (Treehouse) use at the subject site is discussed in detail below:
48. The Recreation-Private (Treehouse) use is designated as an 'A' use under the Zoning Table of LPS1, and was therefore required to be advertised for a timeframe of 21 days, surrounding landowners being notified directly by mail. The City also undertook additional methods of consultation, including placing a sign onsite, and a notice and online submission form published on the City of Albany website. A QR code linking to the online submission form was included in the letters and the sign onsite.
49. The submission period was open for a period of 27 days (06/04/2022 – 02/05/2022).
50. During the submission period 197 submissions were received representing surrounding landowners and members of the wider community, with a breakdown as follows:
- a. 11 objections (9 from directly affected properties).
  - b. 186 submissions of support or conditional of support (10 submissions representing 6 directly affected properties, as either landowner or tenant).
51. It should be noted that although the purpose of the advertising of the treehouse was specifically in regards to the Recreation-Private use, it was unclear from some submissions received if comments provided were in relation to the treehouse generally or specifically the use of the treehouse for commercial purposes.
52. A summary of key matters raised in either objection or support is provided below and also a schedule of submissions has been prepared, refer Attachment 3 to this report.
53. Key matters raised as part of submissions received in support or conditional support of the Recreation-Private use included the following:
- a. Innovative, unique and fun idea which promotes fun and learning in nature.
  - b. Suitable conditions have been applied to minimise impact on neighbours.
  - c. Based on recent experience as a previous neighbour, it was felt that previous parties didn't result in a loss of privacy or in any noise above what you would expect at a park, and was never inconvenienced in relation to the parking.
  - d. Previously hired the treehouse for a party and felt it allowed for sufficient parking and ease of access.
  - e. Amazing resource for the community. Fully supportive of controlled parties.
  - f. Draw card for tourists.
  - g. Need more party venues in Albany.
  - h. Disability inclusive.
  - i. Children need to spend more time outdoors.
  - j. Minimal risk to the community and should be supported. Although there may be a small degree of impact on the adjoining neighbour, this would be minimal compared to any convention residential development.
  - k. Enriches the built environment and the social fabric of the Albany community.
  - l. Supportive if they provide a safe structure, limit traffic and noise.
  - m. Supportive if it is during normal working day time hours.
  - n. Noise from kids can just as easy come from a neighbouring house.
  - o. Albany has a lack of play facilities.
  - p. Council should look at more of these being provided around town.
  - q. We live directly opposite, there are no issues regarding noise or parking.
  - r. No objections to the venture, as long as all conditions are met dutifully by the operator of the treehouse. There has already been children visiting the treehouse and their laughter and playful noise has no impact on us at all.



- s. As a neighbour sharing one of the boundaries – I do not have any objections to the treehouse as long as all the restrictions of use in the proposal are adhered too. Off-street parking would be a requirement that would need to be met.
  - t. I live next door and I have been present for two parties and really have to strain to hear the kids.
  - u. Excellent use of conserving a tree.
54. Some comments received in submissions of support or conditional support related to the retention of the treehouse in principle (as part of domestic purposes only) or as a temporary interim use as Recreation-Private, prior to development of the site as future short-term accommodation, subject to the following:
- a. All parking and drop offs are contained on-site to avoid inconveniencing residents
  - b. Sufficient break between sessions to avoid any overlapping of the comings and goings
55. Key concerns raised as part of submissions received in objection of the Recreation-Private use primarily related to:
- a. Amenity – Proximity to surrounding lots, loss of privacy, noise, traffic, parking, incompatible land use and lack of on-site management.
  - b. Safety, lack of access to services and facilities and commencement of unauthorised development
  - c. Value of property.
56. Submissions from nearby landowners also requested that Council not utilise its discretion to allow this use to operate at the subject site, that due regard be given to those directly affected by the use, and not to be unduly influenced by the opinions of those unaffected.
57. Noting the submissions received in support and condition support above, the concerns raised during the submission period in relation to relevant planning matters and officer assessment of the application are discussed in detail below.

*Amenity – Proximity to surrounding lots, loss of privacy, noise, traffic and parking, incompatible land use and lack of on-site management*

58. The potential impact on the amenity of existing residential properties was a concern consistently raised within the submissions against the proposal. Concerns raised in relation to amenity primarily relate to the following and are discussed in detail below:
- a. Recreation-Private being an incompatible land use / inappropriate development within this location.
  - b. Lack of on-site management.
  - c. Proximity of the treehouse to adjoining lots and subsequent loss of privacy.
  - d. Dominance of the treehouse to the southern adjoining property that reduces privacy (actual and perceived).
  - e. Noise (from guests and traffic).
  - f. Intensity of the use.
  - g. Traffic generated.
  - h. Parking within the street inconveniencing residents.

*Incompatible land use / inappropriate development within this location*

59. Concerns raised outlined that the intensification of the use of the treehouse as part of a Recreation – Private use, was inappropriate development that was incompatible within a residential zone in this location, and subsequently resulting in detrimental impacts on the privacy, quiet enjoyment and amenity that could be reasonably expected in a residential area.
60. Concerns were also raised that the resulting commercial nature of the site could also have an impact on the site's future desired residential outcomes, as outlined in the objectives for the Residential zone. If the 'Recreation-Private' use was retained to continue operating at the subject site, the works required to the site for the use to continue (such as provision of on-site car parking and vehicle access) could have a potential impact on future residential development capacity outcomes of the subject site.

*Lack of onsite management*

61. A number of concerns were raised in relation to there being no on-site management during events due to the owner not residing on-site. Concerns were raised that due to parties being self-managed, residents would be left dealing with non-compliance of rules such as noise, waste management, car parking and numbers of attendees.

*Proximity of the treehouse to adjoining lots and loss of privacy*

62. Concerns were raised in relation to the proximity of the treehouse and carpark to the southern boundary, resulting in adjoining landowners being negatively affected from noise and loss of privacy:
- a. Formal car park will be elevated and located within close proximity to the boundary, resulting in adjoining landowners experiencing a perceived loss of privacy to the rear private outdoor area.
  - b. The proximity of the treehouse to the boundary results in the structure dominating private outdoor living areas and resulting in loss of privacy.
  - c. Although there is a sizable canopy providing screening, the canopy overhangs the adjoining lot, therefore once pruned/removed the southern face of the treehouse would be exposed, increasing the dominance and decreasing the privacy.

*Noise (from guests and traffic)*

63. Concerns were raised that due to the proximity of the treehouse to the boundary, the development would result in increased noise and the perception of all activities such as comings and goings being viewed, and private conversations being overheard by adults and children potentially 7 days a week.
64. Some submissions indicated that properties located further up the hill had heard noise generated by previous parties held at the treehouse.
65. The concerns raised in relation to noise generated by the Recreation-Private use specifically related to:
- a. Noise generated by 24 guests on the site (children and adults)
  - b. The car park on-site due to the proximity to surrounding lots
  - c. Increased traffic.
66. Concerns were also raised for night shift workers that live in the area, who may be impacted by the noise generated from the use during the day.

*Intensity of the use*

67. Concerns were raised in relation to the intensity of the use, relating to the number of people and amount of traffic that could reasonably be generated per day if operating at maximum capacity.

*Traffic and parking*

68. Submissions received raised the concerns stating that the running of these events has already resulted in residents being impacted by traffic, congestion and noise.
69. The following concerns were raised in relation to traffic and associated impacts on amenity:
- a. The potential of 96 vehicle movements per day x 7 days per week (based on the original proposal) and the capacity of the road system to accommodate this.
  - b. Bridges Street being a cul-de-sac could not accommodate that many extra vehicle movements per day.
  - c. An increase of traffic would result in the amenity of the area being impacted by increased traffic not normally associated with a quiet residential street.
  - d. That the running of these events already has resulted in congestion within the street.
  - e. Pedestrian safety on and off-site with the vehicle movements.

70. The following concerns were raised in relation to parking and impacts on amenity:
- a. There not being enough bays provided on-site, resulting in cars parking within the street and inconveniencing residents.
  - b. Residents were concerned that existing access ways and the private laneway (that services five dwellings) would be blocked, which for some of these lots was their only means of access.
  - c. Also due to being a cul-de-sac, if guests parked in the street it would result in there being no ability to turn around at the top of Bridges Street.

**Officer comment:** Retention of the treehouse for private use only

71. In considering the application, including the revised details and management plan submitted by the proponent, and relevant concerns during advertising, staff have formed the view that the existing treehouse in its current form could be considered an acceptable development and approved to be retained, but only to be used for private purposes by the landowner.
72. There are no specific development provisions outlined under LPS1 and therefore assessment of the treehouse in its current form, and specifically consideration of its retention for private purposes only by the landowner and/or occupier of the subject site, has been undertaken against the objectives of the Residential zone, as well as relevant matters to be considered as outlined under the Planning Regulations.
73. As outlined above, the treehouse is not considered a building or structure, and therefore provisions under the Residential Design Codes and Albany Historic Town Local Planning Policy that relate to requirements for residential development such as boundary setbacks, visual privacy, overshadowing or building height are not applicable in this instance.
74. The concerns raised in submissions in relation to the dominance or imposing nature of the treehouse to directly affected properties are acknowledged. Being located in the southwest corner of the site, the visual impact of the treehouse and associated perception of overlooking and noise generated by the use of the treehouse would primarily be experienced by the southern adjoining property. Although the treehouse can be viewed from the street, the western elevation of the treehouse facing Bridges Street is substantially screened by low branches and thick canopy cover.
75. It is also noted that concerns were raised during advertising that much of the screening to the upper levels of the treehouse are provided by branches from the existing tree, and that some of these branches overhang the southern boundary.
76. Where there is direct overlooking from the upper levels of the treehouse, screening by the branches should not be relied upon as a single method to address direct overlooking, as this screening could be pruned by the adjoining neighbour where they overhang the boundary, at any time without notice and without requiring permission of the proponent.
77. The proponent has verbally indicated that additional screening measures have been undertaken to the treehouse itself to further mitigate concerns relating to overlooking to the adjoining directly affected property.
78. Following the above, although the standard provisions for residential development do not specifically apply, consideration can be given to potential detrimental impacts on the amenity of the southern adjoining neighbour from a visual privacy perspective, and whether these impacts do not meet the objectives of the Residential zone or the relevant matters to be considered as outlined under the Planning Regulations.
79. To determine these impacts, the general principles contained under the R-Codes for the assessment of visual privacy have been utilised. The design principles in relation to visual privacy refer to designing the development to minimise direct overlooking to active outdoor spaces or openings to habitable rooms to adjacent properties, and providing maximum visual privacy to rear and side boundaries through various recommended methods.
80. Specifically, direct overlooking should be minimised to active outdoor spaces and major openings of adjacent properties that are located behind the street setback line.

81. There are no major openings on the northern elevation of the southern adjoining dwelling. It is also noted that the boundary fence between the subject site and southern adjoining property is less than a standard 1.8m in height, where behind the street setback line.
82. It is acknowledged that there is a courtyard located in the front of the southern adjoining dwelling. However as this is not the only active outdoor area for the southern adjoining dwelling, and this area is located forward of the southern adjoining property's setback line, the front courtyard is considered to form part of the public realm (i.e. visible from the street). Although there may be a perception of a detrimental impact from overlooking from the treehouse, it would be unreasonable to require screening from the treehouse to this area.
83. Additionally, as the treehouse is setback approximately 4.2m from the southern boundary, there is an expectation that in addition to the setback of the upper levels of the treehouse to the southern adjoining boundary, the remaining canopy would provide sufficient screening to minimise direct overlooking to any sensitive areas of the adjoining property located behind the street setback line. Further, as the foliage of the existing tree is fairly substantial, this statement even accounts for the concern that branches overhanging the southern boundary, could be legally removed by the neighbour.
84. Subsequently, were the treehouse to be retained for private purposes only, although the development is arguably more substantial than typical play equipment associated with domestic use, the treehouse is not considered to result in a detrimental impact on amenity of the southern adjoining property in relation to visual privacy.
85. In regards to bulk and scale and the impact of the treehouse on the streetscape and adjoining properties, although there are no specific provisions applicable as outlined above, the objectives relating to streetscape and building design outlined under the R-Codes are considered an appropriate tool. Refer to the Statutory Implications section of this report for further information.
86. As noted above, although the treehouse is substantially greater in size than typical play equipment, were the treehouse used for domestic/private purposes only, the impacts generated would be substantially less than if it were used for commercial purposes. Even though it is likely it would be used on a regular basis, it is likely to be occupied by a much lower number of children at any one time and with less frequency than experienced on a commercial basis.
87. It is acknowledged that the southern adjoining property is the most affected in regards to potential impacts of bulk and scale (visual dominance) from the treehouse. The overall perceived impacts from bulk and scale of the treehouse would also be compounded by the lower ground level of the southern adjoining site compared to the subject site, and the treehouse being constructed within an existing substantial tree that overshadows the adjoining property.
88. However on the other hand, as the treehouse is constructed within the tree, of wooden and similar coloured materials, it is considered that this contributes to reducing the perceived impact from its bulk and scale to the southern adjoining property and the streetscape, than what would be generated by a similar scale building or structure in the same location.
89. As the treehouse is substantially screened by the existing foliage, it is barely visible from the street and therefore it has minimal impact on the streetscape. Furthermore, although it is substantially larger in scale than typical play equipment, the treehouse itself is not considered to be inconsistent with the residential character or amenity of the street.
90. On this basis, it is acknowledged that the treehouse creates a visual impact when viewed from the southern adjoining property, however the bulk and scale of the treehouse itself is not considered to create a significant detrimental impact on amenity. In this instance, the treehouse is considered to contribute and even complement the character of the street and the area, and therefore is recommended to be retained in its current form for private/domestic purposes only.

*Recreation-Private (Treehouse) use*

91. In considering the application, including the revised details and management plan submitted by the proponent, and submissions received during advertising, staff have formed the view that the proposed intensification of the land for the purpose of Recreation – Private (Treehouse) use on site should not be supported.
92. It is considered an unreasonable intensification of a site for commercial purposes, resulting in an inappropriate development within the specific context of the established residential inner urban area of Bridges Street.
93. In considering a use classified as an “A”, it is important to consider whether the proposed use meets the objectives of the Residential zone, and whether the proposed use is compatible with existing uses and within the specific context of the subject site.
94. When assessing impacts on amenity, it is necessary to determine the level of existing amenity within the immediate area.
95. The amenity of Bridges Street is generally consistent with an established inner urban residential area of a historic town, where the applicable residential zoning and density is consistent to its location and relative proximity to the CBD, and to areas of high amenity located within walking distance to the site (such as Stirling Terrace, the Waterfront, Lawley Park and Corndarup / Mt Clarence). Development in the context of Bridges Street specifically is of a residential character, with existing dwellings predominantly used for permanent residential uses.
96. The context and amenity of Bridges Street and the immediate vicinity within and in excess of 150m of the subject site, is also informed by Albany’s maritime setting and subsequent proximity to the Albany Port and associated infrastructure, and other aspects such as the Albany Waterfront development.
97. This established inner urban context of a historic town within a maritime setting results in buildings and land uses that are predominantly consistent with an established inner urban residential area, along with a mix of other associated non-residential uses within this radius such as community or private clubs, recreational facilities, consulting rooms and holiday accommodation.
98. A treehouse hired on a regular and ongoing basis for the purpose of private events would have a range of differing impacts on the adjoining and nearby landowners, particularly including the intensity of use in terms number of people likely to be occupying the tree.
99. Therefore the intensification of the treehouse for the purpose of hiring for private events as a Recreation-Private use, compounded by the perception of impacts on privacy and associated noise generated by the use, would create an unreasonable level of detrimental impact on the amenity of the southern adjoining property.
100. These resulting detrimental impacts do not maintain the existing character and amenity of the immediate or surrounding area of the subject site and therefore are inconsistent with the objectives of the Residential zone.
101. Although the proponent has made an attempt to decrease to impact on the surrounding area by incorporating stricter measures into the management plan and lease conditions, including the reduction in the number of events per week, it is pertinent to note that the lack of on-site management would essentially result in parties being self-managed. It is considered that the lack of on-site management could pose an unacceptable risk to the amenity of the area and on surrounding landowners.
102. Staff have also raised with the proponent whether they would potentially consider further limitations to the operation of the Recreation-Private use (such as reduced hours or days), in addition to the recent amendments submitted to address concerns raised during advertising.
103. The proponent indicated they could potentially consider additional limitations, however raised concerns as to what extent any further limitations might entail, as the proponent considered that the recent amended proposal already involved significant reductions in the operations of the use.

104. Should the proposal be supported it is considered that an approved Management Plan be revised to include matters such as the requirement for an onsite manager when events are being held and a further reduction in the number of events permitted each week, to address and mitigate concerns raised in relation to detrimental impact on amenity.
105. If the Recreation-Private (Treehouse) were supported, onsite car parking would also be recommended to be required and implemented prior to commencement of the use. A variation to car parking requirements would not be supported due to potential detrimental impacts on the existing functionality and residential character of the street. Formalised car parking and access to the site would also address safety concerns regarding conflict between pedestrians and vehicles accessing the site.
106. It should also be noted that a significant portion of the site will be required to be constructed as access and car parking bays to accommodate on site car parking generated as part of the proposal. Additionally, due to the level difference between the street and the site, substantial site works may be required that may impact on the functionality of car parking and manoeuvring on site. The onsite car parking requirements would most likely further detract from the residential character of the street and also potentially impact the future residential development potential of the site, especially were the Recreation-Private use proposed to be retained and continue operating.
107. It is also noted that due to existing constraints of the road reserve including mature street trees, the narrow width of the street, and the existing cul-de-sac design, there is currently minimal turning area within the street that would be further compounded by vehicles accessing the use, including parking on the street.
108. As the function and existing infrastructure of Bridges Street is already constrained, the intensification of the site from the Recreation-Private (Treehouse) use would further compound the detrimental impacts on the residential character of Bridges Street.
109. It is also unlikely that works or upgrades would be supported to be undertaken within the road reserve, such as removal of the mature street tree or upgrade works to the cul-de-sac design in order to mitigate the impacts from the Recreation-Private use, as the works are currently not required to support the predominant residential functions of the street.
110. Bridges St is located in an established inner urban residential area within an historic town, close to a regional activity centre and also a regional port and associated infrastructure. Accordingly the minimum expected amenity and characteristics of this area are fundamentally different to the minimum expected amenity and characteristics of more contemporary residential areas, especially located in a suburban context separated from sensitive land uses.
111. Therefore, any intensification of a site for commercial purposes within the specific context of the established residential setting of Bridges Street should not result in a further compounding on what would be considered an acceptable level of disturbance or detrimental impact on amenity, than what is already being experienced by existing sensitive land uses.

*Safety, lack of access to services and facilities and commencement of unauthorised development*

112. Some objections to the unauthorised construction of the treehouse and commencement of the Recreation-Private (Treehouse) outlined the following concerns:
  - a. The application should not be supported, as this would create a precedent used in the future to circumvent proper approval processes.
  - b. No regard had been given for the approval process and to nearby landowners.
  - c. No regard had been given for orderly and proper planning as required by the Planning Regulations.
  - d. The structure had received no scrutiny relative to the Building Codes because plans were not submitted to Council for development approval.

113. Objections received also raised concerns in relation to:
- a. The use having a lack of access to suitable facilities, including accessible compliant toilets.
  - b. Patron safety, due to the existing design of the play equipment, even if certified by Kidsafe.
  - c. Non-compliant structures on public land creating a public safety hazard, making the City liable should there be an accident.
114. Although the works were undertaken without development approval, the proponent now seeks to rectify this by submitting a formal development application.
115. Development applications are assessed on their merits and informed by relevant considerations, including when development has commenced without proper approvals in place.
116. It should however be noted that regardless of the determination of the application, precedent is not a valid planning concern.
117. It is acknowledged that suitability of the land for development and possible risk to health and safety is a relevant matter for consideration. However in this instance, these matters are captured through various means, including:
- a. The officer's recommendation that the treehouse if retained be used for private purposes only;
  - b. Kidsafe WA are the relevant body to certify play equipment and have certified its compliance with AS 4685 (refer to Statutory Implications section for further information);
  - c. The development on the verge does not form part of this application. Works within the road reserve require approval from the City via submission of a verge development application (refer to the Statutory Implications section of this report for more information); and
  - d. As outlined elsewhere in the report, were the Recreation-Private use be approved, the City's Health officers have advised that the treehouse would require a Public Building assessment, with requirements to be implemented prior to commencement of the use.

*Property value*

118. Concerns regarding decreased property values were raised during the consultation process.
119. Property values are not within the matters to be considered under clause 67 of the Planning Regulations; and therefore are not a valid planning consideration.

**GOVERNMENT & PUBLIC CONSULTATION**

120. Agency responses, concerns raised during advertising, staff comment and the proponent's justification for the proposal are summarised and discussed above.
121. The Recreation- Private use was advertised to nearby landowners of the site for a period of 27 days via direct mail out. A sign was also placed on-site and a copy of the proposal placed on the City of Albany website for the same time period.

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Consult	Mail Out	06/04/2022 – 02/05/2022	197 submissions received	Yes Planning Regulations
Consult	Public Comment – City of Albany website and survey	06/04/2022 – 02/05/2022		Yes – as above
Consult	Sign on-site	06/04/2022 – 02/05/2022		Yes – as above

122. Due to the potential heritage significance of the stone drain, the footbridge constructed over the drain was referred to the City of Albany Heritage Advisor, as per standard process. The Heritage Advisor indicated they were satisfied that the fabric of the drain was not impacted during the installation of the footbridge. The approval of development on the verge is however subject to a verge development application.
123. The proposal was referred to internal departments for consideration and comment, including Environmental Health, Building and Engineering.
124. Environmental Health advised that the premises must comply with the *Health (Public Building) Regulations 1992* and be connected to the Water Corporation sewerage system.

### STATUTORY IMPLICATIONS

125. The treehouse in its current form does not meet exemptions for the requirement to obtain development approval under the Planning Regulations, LPS1 or relevant local planning policy. It is acknowledged that the proponent has indicated there were materials installed within the mature tree prior to construction of the treehouse that is the subject of this application. However, the City's position is that the existing treehouse as constructed to its current form is a substantial intensification of what may have previously been installed on site, and therefore has been assessed as new development.
126. It is also acknowledged that clause 61. of the Deemed Provisions of the Planning Regulations contains exemption criteria specifically for a 'cubbyhouse'. However due to the substantial scale of the treehouse and the associated intent for the use of the treehouse for both adults and children, is not considered to fall under the intent of this exemption criterion. In this instance, cubbyhouses or other play fixtures or equipment within a residential context are generally considered under the planning framework as being smaller scale constructions, associated with a domestic setting, for private use as play equipment primarily by children, and that are incidental to the overarching predominant residential use on site.
127. In accordance with LPS1 the definition for Recreation – Private:  
*'means premises that are –*
  - (a) *used for indoor or outdoor leisure, recreation or sport; and*
  - (b) *not usually open to the public without charge;'*
128. Recreation – Private is classified as an 'A' use within the Residential zone in accordance with Table 2 Zoning Table of LPS1, meaning that the use is not permitted unless the local government has exercised its discretion by granting development approval after giving notice in accordance with clause 64 of the deemed provisions.
129. Although development approval is required for the existing treehouse and use, a building permit is not required, as the treehouse is considered nature play equipment and not a 'structure' under the relevant building legislation.
130. The treehouse is required to comply with AS 4685.1:2021 Playground Equipment and Surfacing. Kidsafe WA are the relevant body to certify play equipment and have certified its compliance with AS 4685, however this is a separate process and not a captured under the relevant planning legislation.
131. The objectives of the Residential zone under LPS1 that are relevant to the consideration of the Recreation-Private use of the treehouse at the subject site are as follows:
  - a. Maintain the character and amenity of established residential areas and ensure that new development, including alterations and additions, is sympathetic with the character and amenity of those areas;



- b. Promote and safeguard the health, safety and convenience of residential areas and inhabitants by:
- Providing for increased dwelling density and encouraging urban renewal and consolidation in areas where land is sufficiently close to existing or planned facilities and infrastructure available to service the development;
  - Providing a range of lot sizes in appropriate locations to meet the needs of the City and its anticipated growth in population;
  - Providing for adaptable housing in areas where facilities are available to meet the needs of aged and disabled residents within the City;
- c. Identifying those areas where a residential land use development requires additional development control standards to safeguard residents against an adjoining non-compatible land use activity or hazard;
- d. Encourage high standards of innovative housing design, which recognise the need for privacy and energy efficient design, whilst ensuring the building bulk and scale is compatible with adjoining sites; and
- e. In low density areas, ensure that development (including dwellings, structures, outbuildings and access) are sited and designed to:
- Minimises the clearing of stands of remnant vegetation and promotes the replanting of endemic vegetation species;
  - Enhance the visual amenity of the area; and
  - Avoid areas affected by natural hazards or other impacts (including bushfire risk and/or floodplains, heavy haulage routes and the like) to reduce the potential for harm to buildings and their occupants.
132. Amenity is defined under LPS1 as:
- All those factors which combine to form the character of an area and include the present and likely future amenity

133. The provisions under the R-Codes in relation to the streetscape and building design are as follows:

#### **5.2 Streetscape objectives**

(a) To contribute towards the character of streetscapes including their views and vistas and provides security for occupants and passers-by, a landscape to ensure adequate shade, privacy and open space for occupants, and an attractive setting for the collection of buildings.

#### **5.4 Building design**

(a) To design buildings and landscape to minimise adverse impact on the privacy of adjoining dwellings and private open space.

(b) To optimise comfortable living, access to sunlight and solar energy to facilitate sustainable housing development with particular regard for place and local conditions.

(c) To maintain the amenity of streetscapes and views along the street by ensuring that associated outbuildings and other fixtures attached to buildings do not detract from the streetscape and are not visually intrusive to neighbouring properties or adjoin public spaces.

134. It should be noted however that the viability of a business or potential loss of revenue from additional limitations being applied to an approved use are not relevant planning matters.
135. Matters such as the appropriateness of a development within its applicable land use zone and within the context of the site, its operational capacity and potential impacts on the immediate vicinity and within proximity to a site are taken into account at the preliminary or formal assessment stage of a proposed development.
136. Were preliminary advice obtained prior to commencement of the unauthorised construction and use of the treehouse as Recreation-Private, a development would have needed to demonstrate that these matters had been identified and how impacts from the development would be adequately mitigated. Where it is unable to be suitably demonstrated that a development proposal can adequately address issues either through redesign or mitigation measures, it would most likely be unable to be supported and recommended that a more suitable site be identified that can cater for the use.
137. Voting requirement for this item is **SIMPLE MAJORITY**

**POLICY IMPLICATIONS**

138. The subject site falls within the City of Albany - *Albany Historic Town Design Policy* area, however the proposed development does not fall within the scope of the policy.

**RISK IDENTIFICATION & MITIGATION**

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>Risk: A decision that results in detrimental impacts on amenity may be seen as a misapplication of the provisions of local planning scheme.</i>	<i>Likely</i>	<i>Moderate</i>	<i>High</i>	<i>Pragmatic decision based on the assessment in accordance with the provisions of the local planning scheme, taking into account the consideration the objectives of the Residential zone and submissions received during advertising.</i>

**FINANCIAL IMPLICATIONS**

140. All costs associated with the development will be borne by the proponent.
141. However, should the proponents be aggrieved by Council’s decision and seek a review through the State Administrative Tribunal, the City could be liable for costs associated with defending the decision at a State Administrative Tribunal hearing.

**LEGAL IMPLICATIONS**

142. Council is at liberty to use its discretion to approve or refuse the proposal. An applicant aggrieved by a decision or condition may apply for a review to the State Administrative Tribunal, in accordance with Section 252 of the *Planning and Development Act 2005*.

**ENVIRONMENTAL CONSIDERATIONS**

143. No environmental impacts apply.

**ALTERNATE OPTIONS**

144. Council has the following alternate options in relation to this item, which are:
- a. To resolve to refuse the proposal subject to reasons; and
  - b. To alter, amend, remove or add conditions to the approval to address potential impacts from the development.

145. If Council were to not support the retention of the treehouse, the following matters are to be considered:
- a. Refusal of the unapproved treehouse; and
  - b. Removal of the treehouse within a certain timeframe and the site returned to its original state (implemented through the compliance process)
146. If Council were to support the development, the following matters are to be considered that vary the proponent's application:
- a. Reduction in operator hours to address concerns and mitigate potential detrimental impact on amenity, including the recommendation for events not being permitted on Sundays or Public Holidays
  - b. All car parking being contained on site, with submission of a Vehicle Parking and Access Plan required, prior to commencement of development, demonstrating all car parking being contained onsite and in accordance with relevant standards and for the Plan to be implemented, including construction of the car parking prior to formal occupation of the use.
147. If approved, the following matters are to be addressed via conditions or advice notes:
- a. Temporary approval and/or limiting hours of operation/number of events.
  - b. Approval of Management Plan and submission of revised Management Plan if required, such as requirement for onsite manager.
  - c. Car parking to be constructed to the satisfaction of the City and connected to appropriate services.
  - d. Screening to car parking along southern boundary (submission).
  - e. Acoustic report (Health).
  - f. Submission of Kidsafe annual report (Building Services).
  - g. Compliance with Public Health Act.
  - h. Crossover permit and verge development application, including for bridge and footpath.

**CONCLUSION**

148. Based on the above detailed discussion, the authorising officer's recommendation is that Council:
- a. Approve the existing treehouse for private use only; and
  - b. Refuse the Recreation – Private (Treehouse) use as it is inconsistent with the objectives of the Residential zone under LPS1, due to:
    - The use being an unreasonable intensification of the site for commercial purposes, and is therefore incompatible within its specific context of the residential nature of the Bridges Street cul-de-sac and would result in a detrimental impact on the residential amenity and character of the properties directly adjoining and within proximity to the subject site; and
    - That the intensification of the site for commercial purposes will have a detrimental impact on the existing residential amenity and character of the direct adjoining properties and the broader vicinity. The level of disturbance generated by the use, specifically in relation to noise (compounding an existing accepted level of disturbance due to the context of the site and proximity to existing commercial/port industry uses), is unlikely to be satisfactorily mitigated through additional limitations on the operations and management of the use.

<b>Consulted References</b>	:	<ul style="list-style-type: none"> <li>• Local Planning Scheme No. 1</li> <li>• Planning and Development (Local Planning Schemes) Regulations 2015</li> <li>• Residential Design Codes Volume 1</li> <li>• Residential Design Codes Explanatory Guidelines</li> </ul>
<b>File Number (Name of Ward)</b>	:	A156891 (Frederickstown Ward)
<b>Previous Reference</b>	:	Nil

**8.32pm: Councillor Cruse returned to the Chamber. Councillor Cruse was not present during the discussion and vote for this item.**

**DIS309: PLANNING AND BUILDING REPORTS JUNE 2022**

**Proponent / Owner** : City of Albany.  
**Attachments** : Planning and Building Reports June 2022  
**Report Prepared By** : Technical Support Officer (P Ruggera)  
**Authorising Officer:** : Manager Planning and Building Services  
(J Van Der Mescht)

**RECOMMENDATION**

**DIS309: RESOLUTION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR TRAILL**  
**SECONDED: COUNCILLOR BENSON-LIDHOLM**

**THAT Council NOTE the Planning and Building Reports for June 2022.**

**CARRIED 12-0**

**LEMC029: RECEIVE THE MINUTES OF THE LOCAL EMERGENCY  
MANAGEMENT COMMITTEE – 16 DECEMBER 2021**

**Attachments** : Confirmed Minutes of the LEMC Meeting held 16/12/2021  
**Report Prepared By** : Personal Assistant to the ED Corporate & Commercial  
Services (H Bell)  
**Authorising Officer:** : Acting Executive Director Corporate and Commercial Services  
(L Harding)

**STRATEGIC IMPLICATIONS**

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
  - **Pillar:** Leadership.
  - **Outcome:** A well informed and engaged community.

**In Brief:**

- Receive the minutes of the Local Emergency Management Committee meeting held on 16 December 2021.

**RECOMMENDATION**

**LEMC029: RESOLUTION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR BROUGH**  
**SECONDED: COUNCILLOR THOMSON**

**THAT the confirmed minutes of the Local Emergency Management Committee meeting held on 16 December 2021 be RECEIVED.**

**CARRIED 12-0**

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

CCS458: APPOINTMENT OF SENIOR DESIGNATED OFFICER-EXECUTIVE DIRECTOR CORPORATE AND COMMERCIAL SERVICES.

**18. CLOSURE**

There being no further business the Mayor declared the meeting closed at **9.04PM**.



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Dennis W Wellington  
**MAYOR**

**TABLED ADDRESS BY MS SAMANTHA STEVENS**

Samantha Stevens  
37 Rowney Road  
Robinson, ALBANY

Mayor Wellington and Councillors.

Tonight, I talk in support of Council Item CCS455 and its recommendations.

Firstly, thank you to the Mayor, Deputy Mayor, Cr Traill, CEO and staff for coming out in the pouring rain last week to review the trail and challenges facing equestrian riders. I appreciated your time, the resources and effort taken to experience the trail firsthand.

Over the last few weeks, you have read and heard many personal stories and experiences relating to the Stidwell Bridle Trail. You have listened to the fears and traumatic impacts of a horse-riding accident on the individual, family, and friends. The importance of riding for our mental health and how it keeps us sane. How it connects us to nature, neighbours and friends.

Horse riding is truly a wonderful and uplifting experience that we are lucky to enjoy. It is AMAZEBalls Albany that we can do it so close to a town centre. It's one of the differences that makes living in the regions so unique.

When Cr Trail asked about the relationships with stakeholders at the CCS Committee Meeting. We heard from staff that they have good working relationships with all the project stakeholders including the Police, DWER and Water Corp.

I was so heartened to hear the enquiring questions and comments at the Committee Meeting from the Councillors and support for the safety of the riding community.

I did though feel sad for staff. The confusion. How difficult it must be for them to listen to the riders, the Mums and Dads, and the neighbours who call through to make complaints about the trail bikes when they know they can do nothing about it.

Staff have told us that the current local laws do not prohibit licensed vehicles or trail bikes on the trail and therefore do not empower staff to act. There is nothing to investigate and nothing to enforce. All they can do is listen to the frightened and understandably enraged riders.

Tonight's notation is the very first important step towards developing a determination that will protect the trail and riders, and more importantly the broader Reserve and our regional PDWS.

In line with the report, a strategic determination that encompasses banning all vehicles from the Focus Area will empower staff to work in partnership with DWER, Water Corp and the Police. Leveraging of those strong partnerships that staff have established.

A strategic determination that carefully aligns our local laws with the State's Acts and Policies is a show of strength with these agencies and will keep those relationships strong. Importantly, it provides staff with opportunity to create a shared enforcement program that uses the state resources as well as making good use of the city's limited resources.

With no supporting laws in place there can be no enforcement, so we really don't know what works, when or where on this particular reserve with these particular circumstances.

Once the laws are in place, we may discover - as Cr Sutton indicated - that a concerted effort from all parties will make change quickly – who knows - but a Working Together Partnered approach surely makes financial sense and positions the City to protect its people and our part of the planet.

Thank You.