



AGENDA

Ordinary Meeting of Council

Tuesday 27 April 2021

6.00pm
Council Chambers

**CITY OF ALBANY
COMMUNITY STRATEGIC PLAN (ALBANY 2023)**



NOTICE OF AN ORDINARY COUNCIL MEETING

Dear Mayor and Councillors

The next Ordinary Meeting of the City of Albany will be held on Tuesday 27 April 2021 in the Council Chambers, 102 North Road, Yakamia commencing at 6.00pm.

Andrew Sharpe
CHIEF EXECUTIVE OFFICER

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1. **DECLARATION OF OPENING**

2. **PRAYER AND ACKNOWLEDGEMENT OF TRADITIONAL LAND OWNERS**

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

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

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

3. **RECORD OF APOLOGIES AND LEAVE OF ABSENCE**

Mayor

D Wellington

Councillors:

Breaksea Ward

P Terry

Breaksea Ward

R Hammond

Frederickstown Ward

G Stocks (Deputy Mayor)

Kalgan Ward

E Doughty

Kalgan Ward

M Benson-Lidholm JP

Vancouver Ward

J Shanhun

Vancouver Ward

T Sleeman

West Ward

A Goode JP

West Ward

S Smith

Yakamia Ward

R Sutton

Yakamia Ward

C Thomson

Staff:

Chief Executive Officer

A Sharpe

Executive Director Corporate & Commercial Services

D Olde

Executive Director Infrastructure, Development
& Environment

P Camins

Executive Director Community Services

N Watson

Manager Planning and Building Services

J van der Mescht

Manager Governance & Risk

S Jamieson

Meeting Secretary

Apologies:

Frederickstown Ward

Vacant

4. DISCLOSURES OF INTEREST

Name	Report Item Number	Nature of Interest
Councillor Stocks	CCS337	Financial: The nature of Interest being that Councillor Stocks is the Managing Director of a Company in very preliminary discussions with Leeuwin Coast/Harvest Road which may or may not result in a financial relationship with the proponent. Councillor Stocks left the Chamber and was not present during the discussion and vote for this item.
Councillor Thomson	CCS342	Financial: The nature of interest being that Councillor Thomson is an employee of the Commonwealth Government that through Geoscience Australia has applied for the lease that the subject of the item CCS342. Councillor Thomson left the Chamber and was not present during the discussion and vote for this item.

5. REPORTS OF MEMBERS

6. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE – Nil

7. PUBLIC QUESTION TIME

8. APPLICATIONS FOR LEAVE OF ABSENCE

9. PETITIONS AND DEPUTATIONS

10. CONFIRMATION OF MINUTES

DRAFT MOTION 1 – ORDINARY COUNCIL MEETING

VOTING REQUIREMENT: SIMPLE MAJORITY

THAT the minutes of the Ordinary Council Meeting held on 23 March 2021, as previously distributed, be CONFIRMED as a true and accurate record of proceedings.

DRAFT MOTION 2 – SPECIAL ELECTORS' MEETING

VOTING REQUIREMENT: SIMPLE MAJORITY

THAT the minutes of the Special Electors' Meeting held on 29 March 2021, as previously distributed, be CONFIRMED as a true and accurate record of proceedings.

11. PRESENTATIONS – Nil

12. UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS

A Special Electors' Meeting was held on Monday 29 March 2021.

In accordance with the *Local Government Act 1995* (the Act), section 5.33, all decision made at an electors meeting are to be considered at the next ordinary council meeting if practicable.

If Council chose to consider to make a decision in response to a decision made an electors meeting, the reason for the decision are to be recorded in the minutes of the council meeting.

The electors at the meeting requested that the City of Albany Council respond to each and every points that is raised no a blanket yes or no response.

The following decisions were proposed the electors for Council consideration:

MOTION 4 – PROPOSED BY MS YANA APPLETON

MOVED: Yana Appleton

SECONDED: Patrick Foster

The electors would like to request that the City of Albany responds to each and every point that is raised, not a blanket yes or no response.

CARRIED 28 - 0

OFFICER RECOMMENDATION: MOTION 4 – PROPOSED BY MS YANA APPLETON

VOTING REQUIREMENT: SIMPLE MAJORITY

That the motion proposed by Ms Yanna Appleton, being the decision of the electors' meeting:

“The electors would like to request that the City of Albany responds to each and every point that is raised, not a blanket yes or no response.”

be **ACCEPTED** as a procedural motion, to not receive the decisions of the elector's meeting en-bloc.

Comment: The agenda has been prepared to facilitate this request.

MOTION 1 – PROPOSED BY MR DON PHILLIPS

MOVED: Don Phillips

SECONDED: Ray Eskett

That the electors of Albany, of the Special Electors Meeting, direct the City of Albany to refuse consent for the application of telecommunications infrastructure for Lot 41, 32 Allerton Street, Robinson.

CARRIED 28-0

OFFICER RECOMMENDATION: MOTION 1 – PROPOSED BY MR DON PHILLIPS

VOTING REQUIREMENT: SIMPLE MAJORITY

That the motion proposed by Mr Don Phillips, being the decision of the electors' meeting:

“That the electors of Albany, of the Special Electors Meeting, direct the City of Albany to refuse consent for the application of telecommunications infrastructure for Lot 41, 32 Allerton Street, Robinson.”

be **NOTED**.

Comment: Report Item DIS252: Telecommunications Infrastructure-Lot 141, 32 Allerton Street, Robinson is listed on the agenda for resolution of Council.

MOTION 2 – PROPOSED BY MS JUDY HUNT

MOVED: Judy Hunt

SECONDED: Patrick Foster

That if the City of Albany supports the tower each councillor be held liable for any financial outlay for treatment of mental health disorders caused by this Telecommunication Tower at 32 Allerton Street, Robinson (i.e. doctors, psychologists, psychiatrists, counselling and medication)

CARRIED 28 - 0

OFFICER RECOMMENDATION: MOTION 2 – PROPOSED BY MS JUDY HUNT

VOTING REQUIREMENT: SIMPLE MAJORITY

That the motion proposed by Ms Judy Hunt, being the decision of the electors' meeting:

“That if the City of Albany supports the tower each councillor be held liable for any financial outlay for treatment of mental health disorders caused by this Telecommunication Tower at 32 Allerton Street, Robinson (i.e. doctors, psychologists, psychiatrists, counselling and medication).”

be NOTED.

Comment: Report Item DIS252: Telecommunications Infrastructure-Lot 141, 32 Allerton Street, Robinson is listed on the agenda for resolution of Council.

Based on an unqualified observation, I am of the view that local government, specifically the City of Albany, cannot be held liable for injury arising from transmission of mobile signals where:

- does not own or operate the hardware;
- the hardware and its use is regulated by a separate statutory body; and
- the location of the transmission towers (i.e. 5G, or any telecommunications service) does not breach the conditions of Planning & Development legislation.

MOTION 3 – PROPOSED BY MS LINDA HILL

MOVED: Linda Hill

SECONDED: David Atherson

That should a tower be approved, then the City of Albany employ an independent electromagnetic radiation expert to take weekly readings at 100m, 200m, 250m, 300m, 350m, 400m, 500m, and so on to ensure that the radiation levels stay well below allowable limits.

CARRIED 28 - 0

OFFICER RECOMMENDATION: MOTION 3 – PROPOSED BY MS LINDA HILL

That the motion proposed by Ms Linda Hill, being the decision of the electors' meeting:

“That should a tower be approved, then the City of Albany employ an independent electromagnetic radiation expert to take weekly readings at 100m, 200m, 250m, 300m, 350m, 400m, 500m, and so on to ensure that the radiation levels stay well below allowable limits.

Be CONSIDERED as a request for consideration by applicant.

Comment: It is acknowledged that members of the community are opposed to the proposed 5G technology.

The City's position is that:

- the roll out of 5G technologies is regulated by State and Federal governments; and
- local governments have a limited statutory role in the space of regulating the deployment of telecommunication facilities and infrastructures.

MOTION 5 – PROPOSED BY MS YANA APPLETON

MOVED: Yana Appleton

SECONDED: Linda Hill

That the City of Albany does not support the application on the grounds that it will devalue surrounding properties.

CARRIED 28 - 0

OFFICER RECOMMENDATION: MOTION 5 – PROPOSED BY MS YANA APPLETON

VOTING REQUIREMENT: SIMPLE MAJORITY

That the motion proposed by Ms Yanna Appleton, being the decision of the electors' meeting:

“That the City of Albany does not support the application on the grounds that it will devalue surrounding properties.”

Be NOTED.

CARRIED 28 - 0

Comment: The Planning & Development Act 2005, requires a Council to seek the views and comments of people, authorities and organisations that may be affected by a planning proposal.

The Council, can only consider objections that are based on legitimate planning grounds.

Objections premised on moral grounds or private and commercial competition will not be considered as they are not within the scope of the planning legislation.

While loss of property value is a common concern for neighbours, it is not a planning consideration.

The local government sector across Australia generally agrees that 5G will change the nature of mobile network design, placement and integration, and will require collaboration between all levels of government and the telecommunications industry.

It is acknowledged that telecommunication industry in Australia will pose significant challenges for State and Local government agencies across Australia.

At both State and Local Government level there is still no consistent framework and or guidelines around managing the impacts associated with the emergence of “Smart City Technologies” such as 5G.

Council may wish to consider advocating to both State and Federal Government to review the 1997 Telecommunications Act legislation and seek additional appropriate guidance and assurance for the local government sector.

It is widely acknowledged based on review of Council reports across Australia that guidance for Local Councils is required on how to better manage the roll out of this technology so that all parties can have a consistent approach to fully realising the benefits and opportunities that these “Smart Technologies” will bring to our communities.

CCS332: FINANCIAL ACTIVITY STATEMENT – FEBRUARY 2021

Proponent	: City of Albany
Attachments	: Financial Activity Statement – February 2021
Report Prepared by	: Manager Finance (S Van Nierop)
Responsible Officer	: Executive Director Corporate & Commercial Services (D Olde)

RECOMMENDATION

**CCS332: COMMITTEE RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY**

THAT the Financial Activity Statement for the period ending 28 February 2021 be RECEIVED.

CCS332: COMMITTEE RECOMMENDATION

MOVED: COUNCILLOR SUTTON
SECONDED: COUNCILLOR SMITH

THAT the Responsible Officer Recommendation be ADOPTED.

CARRIED: 10-0

CCS332: RESPONSIBLE OFFICER RECOMMENDATION

THAT the Financial Activity Statement for the period ending 28 February 2021 be RECEIVED.

COVID-19 IMPACT

1. Impacts to the financial performance of the City are detailed in the 'Explanation of Material Variances to the YTD Budget in Excess of \$100,000' (Note 1) of the Attachment to this report (Statement of Financial Activity).

BACKGROUND

2. The Statement of Financial Activity for the period ending 28 February 2021 has been prepared and is attached.
3. In addition to the statutory requirement to provide Council with a Statement of Financial Activity, the City provides Council with a monthly investment summary to ensure the performance of the investment portfolio is in accordance with anticipated returns and complies with the Investment of Surplus Funds Policy.

DISCUSSION

4. In accordance with section 34(1) of the *Local Government (Financial Management) Regulations 1996*, the City of Albany is required to prepare each month a Statement of Financial Activity reporting on the revenue and expenditure of the local authority.
5. 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.
6. Additionally, each year a local government is to adopt a percentage or value to be used in Statements of Financial Activity for reporting material variances. Variations in excess of \$100,000 are reported to Council.
7. These financial statements are still subject to further yearend adjustments and have not been audited by the appointed auditor.

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

STATUTORY IMPLICATIONS

8. Section 34 of the *Local Government (Financial Management) Regulations 1996* provides:
- I. A local government is to prepare each month a statement of financial activity reporting on the 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.
 - II. Each statement of financial activity is to be accompanied by documents containing –
 - a. an explanation of the composition of the net current assets of the month to which the statement relates, less committed assets and restricted assets; 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.
 - III. 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.
 - IV. A statement of financial activity, and the accompanying documents referred to in sub regulation (2), are to be –
 - a. presented at an ordinary meeting of the council within 2 months after the end of the month to which the statement relates; and
 - b. recorded in the minutes of the meeting at which it is presented.
 - V. 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

9. The City's 2020/21 Annual Budget provides a set of parameters that guides the City's financial practices.
10. 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

11. Expenditure for the period ending 28 February 2021 has been incurred in accordance with the 2020/21 proposed budget parameters.
12. Details of any budget variation in excess of \$100,000 (year to date) follow. There are no other known events which may result in a material non recoverable financial loss or financial loss arising from an uninsured event.

File Number (Name of Ward)	FM.FIR.7 - All Wards
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CCS333: LIST OF ACCOUNTS FOR PAYMENT – MARCH 2021

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

RECOMMENDATION

**CCS333: COMMITTEE RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY**

That Council RECEIVE the list of accounts authorised for payment under delegated authority to the Chief Executive Officer for the period ending 15 March 2021 totalling \$6,351,863.95.

CCS333: COMMITTEE RECOMMENDATION

MOVED: COUNCILLOR SMITH
SECONDED: COUNCILLOR THOMSON

That the Responsible Officer Recommendation be ADOPTED.

CARRIED:10-0

CCS333: RESPONSIBLE OFFICER RECOMMENDATION

That Council RECEIVE the list of accounts authorised for payment under delegated authority to the Chief Executive Officer for the period ending 15 March 2021 totalling \$6,351,863.95.

BACKGROUND

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

DISCUSSION

2. The table below summarises the payments drawn from the municipal fund for the period ending 15 March 2021. Please refer to the Attachment to this report.

Municipal Fund	
Trust	\$0.00
Credit Cards	\$14,555.00
Payroll	\$1,540,453.49
Cheques	\$14,702.33
Electronic Funds Transfer	\$4,782,153.13
TOTAL	\$6,351,863.95

As at 15 March 2021, the total outstanding creditors stands at \$300,023.22 and is made up as follows;

Current	\$274,158.78
30 Days	\$29,569.36
60 Days	\$51,533.15
90 Days	-\$55,238.07
TOTAL	\$300,023.22
Cancelled Cheques	Nil

STATUTORY IMPLICATIONS

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

POLICY IMPLICATIONS

6. Expenditure for the period to 15 March 2021 has been incurred in accordance with the 2020/2021 budget parameters.

FINANCIAL IMPLICATIONS

7. Expenditure for the period to 15 March 2021 has been incurred in accordance with the 2020/2021 budget parameters.

CONCLUSION

8. That list of accounts have been authorised for payment under delegated authority.
9. It is requested that any questions on specific payments are submitted to the Executive Director Corporate 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.

File Number (Name of Ward)	:	FM.FIR.2 - All Wards
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CCS334: DELEGATED AUTHORITY REPORTS – FEBRUARY 2021 to MARCH 2021

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

BACKGROUND:

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

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

COVID-19 IMPACT

- COVID-19 has no impact on this report.

RECOMMENDATION

**CCS334: COMMITTEE RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY**

THAT the Delegated Authority Reports 16 February 2021 to 15 March 2021 be RECEIVED.

CCS334: COMMITTEE RECOMMENDATION

MOVED: COUNCILLOR SLEEMAN
SECONDED: COUNCILLOR THOMSON

THAT the Responsible Officer Recommendation be ADOPTED.

CARRIED: 10-0

CCS334: RESPONSIBLE OFFICER RECOMMENDATION

THAT the Delegated Authority Reports 16 February 2021 to 15 March 2021 be RECEIVED.

CCS335: ALBANY VISITORS CENTRE OPERATIONS (AVC)

- Attachments** : • **Confidential** – Briefing Note – Business Unit Review – Albany Visitors Centre – presented to Council Strategic Workshop 23 February 2021.
- Report Prepared By** : Executive Director Corporate & Commercial Services (D Olde)
- Responsible Officers:** : Executive Director Corporate & Commercial Services (D Olde)

CONFIDENTIAL

(Not for public distribution)

This item is confidential and not for further distribution in accordance with section 5.23 (2a) of the Local Government Act 1995 a matter affecting City of Albany Employees.

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:
 - **Theme:** Smart, Prosperous and Growing.
 - **Objective:**
 - To strengthen and grow our region's economic base.
 - To develop a smart city that supports economic growth.
 - To develop and promote Albany as a unique and sought-after visitor location.
 - **Community Priority:** Provider positive leadership that delivers community outcomes.

COVID-19 IMPACT

- COVID-19 has had a significant impact on this operational area of the City, both revenue and expenses, as discussed in the report.

RECOMMENDATION

**CCS335: COMMITTEE RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY**

That Council:

- (1) **NOTE** the Report prepared by the Administration.
- (2) **SUPPORT** the continued operation of the Albany Visitors Centre (AVC) for 2021/22 (FY) and 2022/23 (FY).
- (3) **ENDORSE** capping the Budgeted cash subsidy to \$350,000 annually.

**CCS335: COMMITTEE RECOMMENDATION
MOVED: COUNCILLOR BENSON-LIDHOLM
SECONDED: COUNCILLOR THOMSON**

That Council:

- (1) **NOTE** the Report prepared by the Administration.
- (2) **SUPPORT** the continued operation of the Albany Visitors Centre (AVC) for 2021/22 (FY) and 2022/23 (FY).
- (3) **ENDORSE** capping the Budgeted cash subsidy to \$350,000 annually.

CARRIED: 10-0

CCS336: CENTENNIAL STADIUM – NAMING RIGHTS SPONSORSHIP

Land Description	:	Part of the land in Crown Reserve 405 and Certificate of Title Volume LR3009 Folio 774, being part of Lot 1359 on Deposited Plan 185302
Proponent	:	Centennial Stadium Inc
Owner	:	Crown (City of Albany under Management Order)
Report Prepared By	:	Team Leader Property and Leasing (T Catherall)
Responsible Officers:	:	Executive Director Corporate and Commercial Services (D Olde)

CONFIDENTIAL REPORT
(Not for public distribution)

This report is confidential in accordance with section 5.23(2) (c) and (e, iii) of the Local Government Act 1995, being: (e) a matter that if disclosed, would reveal – (iii) information about the business, professional, commercial or financial affairs of a person other than local government

COVID-19 IMPACT

- COVID-19 has no impact on this report.

STRATEGIC IMPLICATIONS

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

Maps and Diagrams:



RECOMMENDATION

**CCS336: COMMITTEE RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY**

THAT Council APPROVE the naming rights sponsorship for the Centennial Stadium to the recommended sponsor, subject to:

- a) Centennial Stadium Inc. enter into a corporate naming rights sponsorship agreement with recommended sponsor.**
- b) Centennial Stadium Inc apply all funds received from the recommended sponsor to the annual Licence Fees and annual Maintenance Fund Contribution as required under the community licence with the City of Albany.**
- c) Development Application approval for signage.**

CCS336: COMMITTEE RECOMMENDATION

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

THAT the Responsible Officer Recommendation be ADOPTED.

CARRIED: 9-1

Against the Motion: Councillor Thomson

CCS337: HARVEST ROAD AQUACULTURE PROPOSAL – LAND TENURE & LEASE DELEGATED AUTHORITY

Land Description	: Part of the land in Crown Reserve 42964 and portion of Lot 501 on Deposited Plan 64940, the subject of Certificate of Title Volume LR3159 Folio 265, Emu Point
Attachments	Report (CONFIDENTIAL)
Business Entity Name	: City of Albany
Owner	: Crown (City of Albany under Management Order)
Report Prepared By	: Team Leader Property and Leasing (T Catherall)
Responsible Officers:	: Executive Director Corporate and Commercial Services (D Olde)

STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
 - **Theme:** Leadership.
 - **Objective:** To establish and maintain sound business and governance structures.
 - **Community Priority:** Provide informed and transparent decision making that is consistent with our strategic direction, meets our legal obligations, reflect the level of associated risk and are adequately explained to community.
 - **Theme:** Smart Prosperous & Growing.
 - **Objective:** To strengthen and grow our region’s economic base.
 - **Community Priority:** Work with business and other stakeholders to attract investment; diversify the economy; create jobs and support small business growth.

COVID-19 IMPACT

- Covid-19 has no impact on this report.

Maps and Diagrams:



In Brief:

- Harvest Road Oceans Pty Ltd (HRO) has approached the City with a proposal to expand their lease area, adjacent to the existing lease, on Crown Reserve 42964 to redevelop and expand aquaculture activities.
- Department of Planning, Lands and Heritage (DPLH), as landowner, were consulted and in response advised they do not support commercial development on Crown Reserves and do not support a direct lease from the HRO, in the same manner as the existing lease.
- DPLH preferred approach is to excise the commercial land from the reserve and provide a head lease to the City with terms to enable the land to be subleased to HRO.
- This report requests that Council approve the following actions to resolve tenures and facilitate HRO development:
 - Excise a portion of Reserve 42964 to be occupied by HRO and revert to DPLH to allow for a head lease arrangement between the City and State of WA and subsequent sublease between the City and HRO.
 - Delegation to CEO to secure and finalise head lease with DPLH.
 - Delegation to CEO to surrender existing lease with HRO and replace with a sublease, approved by DPLH.
- Council is asked to support the Officer's Recommendation.

RECOMMENDATION

**CCS337: COMMITTEE RECOMMENDATION
VOTING REQUIREMENT: ABSOLUTE MAJORITY**

THAT Council:

- i) **APPROVES a request to the Minister for Lands to excise portion of land approx. 7465m² from Reserve 42964 and revert to the Department of Planning, Lands and Heritage to allow a head lease with the City of Albany.**
- ii) **DELEGATES authority to the Chief Executive Officer to negotiate with Department of Planning, Lands and Heritage to secure and finalise a head lease with the State of WA over excised portion of Reserve 42964 to facilitate a sublease with Harvest Road Oceans Pty Ltd.**
- iii) **DELEGATES authority to the Chief Executive Officer to approve the surrender of the current lease with Harvest Road Oceans Pty Ltd and replace with a sublease over excised portion of Reserve 42964 to expedite Harvest Road Oceans Pty Ltd aquaculture development proposal.**
- iv) **All costs associated with tenure arrangements and lease documentation will be met by Harvest Road Oceans Pty Ltd.**

CCS337: COMMITTEE RECOMMENDATION

MOVED: COUNCILLOR THOMSON
SECONDED: COUNCILLOR BENSON-LIDHOLM

THAT the Responsible Officer Report be ADOPTED.

CARRIED: 9-0

CCS337: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council:

- i) APPROVES a request to the Minister for Lands to excise portion of land approx. 7465m² from Reserve 42964 and revert to the Department of Planning, Lands and Heritage to allow a head lease with the City of Albany.
- ii) DELEGATES authority to the Chief Executive Officer to negotiate with Department of Planning, Lands and Heritage to secure and finalise a head lease with the State of WA over excised portion of Reserve 42964 to facilitate a sublease with Harvest Road Oceans Pty Ltd.
- iii) DELEGATES authority to the Chief Executive Officer to approve the surrender of the current lease with Harvest Road Oceans Pty Ltd and replace with a sublease over excised portion of Reserve 42964 to expedite Harvest Road Oceans Pty Ltd aquaculture development proposal.
- iv) All costs associated with tenure arrangements and lease documentation will be met by Harvest Road Oceans Pty Ltd.

BACKGROUND

2. Reserve 42964, Emu Point is a 'C' class reserve under Management Order issued to the City of Albany with the power to lease or licence for the purpose of "Marine and Associated Purposes" for a term not exceeding 50 years subject to the consent of the Minister for Lands.
3. Council at its meeting on 25 February 2020 approved a new lease to HRO for aquaculture farming and associated activities over portion of Reserve 42964 for a term of 50 years, commencing April 2020.
4. HRO have approached the City with a proposal to redevelop and expand aquaculture activities in two stages and are seeking additional lease area over the existing bitumen car park towards the foreshore within Reserve 42964.

DISCUSSION

Land Tenure

5. In September 2020, the HRO proposal was referred to the DPLH, as the land owner, for comment.
6. DPLH confirmed the Department's position is that Crown Reserves should only be used for public purposes to deliver community benefit and should not be used for commercial purposes. This is their current policy approach which is applied state-wide.

7. DPLH further advised they do not support a City direct lease with HRO in the same manner as the existing lease and alternate tenure arrangements will be required to allow the proposed development.
8. DPLH requires the commercial development land to be excised from the reserve to facilitate the proposal by a direct lease between the State and HRO. Where the Local Government can demonstrate the social and economic benefits of the proposed development to the reserve, City and Community, a head lease between the State and the City with sublease to HRO can be considered.
9. City Officers determined the best approach would be to pursue the head lease / sublease model to comply with DPLH policy as it avoids policy conflicts and potentially provides the most certainty in the future for the City and HRO.
10. Should Council adopt the Officer recommendation, Officers will commence the statutory process with DPLH to excise the land from the reserve and negotiate the lease agreements for the HRO development.

Development Application Stages 1 & 2

11. HRO have lodged an application for stage 1 for proposed development within the current lease area. This development was considered and approved at the OCM 23 March 2021.
12. An application for stage 2 will be submitted to the City for assessment once the tenure matters are settled.
13. DPLH are required to sign the Development Application as landowner, and confirm they are willing to do so also once tenure matters are resolved.
14. Stage 2 will be referred to Council at a later date for consideration.

GOVERNMENT & PUBLIC CONSULTATION

15. DPLH has been consulted as landowner. The City is working with the Department to settle land use tenure matters.
16. Department of Transport has been consulted given adjacent to the marina and associated land uses and interaction with Management Order for adjacent Reserve 49354.

STATUTORY IMPLICATIONS

17. Section 3.58 of the *Local Government Act 1995* defines the requirements for the disposal of property, including leased/licensed land and buildings. It requires Council to give local public notice of its intention to dispose of property, and consider any submissions which are received within the specified period.
18. The sublease with HRO will be advertised to comply with the requirements of Section 3.58 of the *Local Government Act 1995*.
19. Section 51 of the *Land Administration Act 1997* provides for the Minister to cancel, or amend the boundaries of a reserve.
20. 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.
21. Voting Requirement: **Absolute Majority**.

POLICY IMPLICATIONS

- 22. The 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.
- 23. The recommendation is consistent with the Policy.
- 24. HRO development will be assessed taking into consideration the State Planning Policy 2.6 – State Coastal Planning Policy and City of Albany Development in Flood Prone Areas Local Planning Policy.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>Reputation: adverse community response to sub lease with HRO</i>	<i>Unlikely</i>	<i>Minor</i>	<i>Low</i>	<i>Regular engagement with the community regarding the HRO proposal</i> <i>Seek to negotiate terms to Council satisfaction</i>
<i>Reputation: unable to agree tenure matters with DPLH to City satisfaction</i>	<i>Unlikely</i>	<i>Minor</i>	<i>Low</i>	<i>Regular engagement with DPLH</i> <i>Seek to negotiate terms to Council satisfaction</i>
<i>Opportunity: Demonstrate the City’s commitment to attracting investment, tourism, economic development and new jobs to the region.</i>				
<i>Opportunity: To secure tenure for HRO aquaculture development.</i>				

FINANCIAL IMPLICATIONS

- 26. There will be costs associated with the required excision of land, survey and creation of a new lot for HRO proposal. These costs are estimated at approximately \$6,000 and will be met by the sub tenant, HRO.
- 27. All costs associated with the development and finalisation of the lease documentation will be met by the sub tenant, HRO.
- 28. Sublease rental from HRO to the City will be a market rent determined by a licensed Valuer.
- 29. DPLH head lease condition requires that the City forward all rental into a reserve fund allocated to manage Reserve 42964.

LEGAL IMPLICATIONS

- 30. The head lease agreement will be provided by DPLH with the sublease prepared by City’s lawyers with enforceable terms and conditions.

ENVIRONMENTAL CONSIDERATIONS

- 31. HRO lease area is adjacent to an ‘A’ class reserve allocated for conservation. In assessing the HRO development application the Department of Biodiversity, Conservation and Attractions had no objections to the proposal.

Contamination

32. In 2014 the Department of Water and Environmental Regulation (DWER) identified possible hydrocarbon impacted soil on site (such as oil from drums).
33. In 2020 HRO advised that remedial works to remove impacted soil had been completed.
34. Recently DWER in assessing the HRO development application, advised it believes that the stockpiled hydrocarbon impacted soil has been removed and did not raise any contamination concerns.
35. HRO are to provide to the City an environmental assessment as confirmation the remediation works have been completed and the site is free from contamination.

Coastal Inundation & Erosion

36. The subject land is foreshore land and will be impacted by coastal hazards. As such the new sublease will include provisions to ensure the tenant acknowledges and accepts the potential impact of coastal erosion and/or inundation, sea level rises and other coastal processes.
37. The sub tenant occupies the land and buildings entirely at its own risk.
38. Further indemnification clauses will be included in the sublease to ensure the City is not liable for any loss or damage by the sub tenant for any reason arising from coastal processes.
39. In addition, the Development Application for stage 2 will address coastal erosion conditions to mitigate the risks from erosion and inundation such as extending the existing sea wall, at HRO cost.

ALTERNATE OPTIONS

40. As an alternative to Officer recommendation, Council could:
 - Accept DPLH conditions required to facilitate a direct lease with HRO in the same manner as the current lease. In addition, a budget allocation will be required to fulfil the conditions.
 - Noting this approach is not recommended as does not comply with the DPLH policy and does not provide certainty for the future.

CONCLUSION

41. HRO have requested to lease additional area adjacent to the existing lease on Reserve 42964 to redevelop and expand aquaculture operations at Emu Point.
42. In order for the HRO development to proceed the City has been required to negotiate with DPLH to secure tenure of the foreshore reserve.
43. Council is asked to support actions to resolve tenure matters with DPLH which, if approved, will pave the way for the City of Albany to enter into a sublease agreement with HRO for a lease period of 50 years.

Consulted References	:	<ul style="list-style-type: none"> • Council Policy – Property Management (Leases and Licences) • <i>Local Government Act 1995</i> • <i>Land Administration Act 1997</i>
File Number (Name of Ward)	:	PRO460, A150655 (Breaksea Ward)
Previous Reference	:	OCM 25/02/2020 Item CCS225

CCS338: JETTIES, BRIDGES, BOAT PENS AND SWIMMING STRUCTURES AMENDMENT LOCAL LAW 2021

Land Description	: City of Albany
Attachment	: Proposed amendment local law (marked up)
Report Prepared By	: Manager Governance & Risk (S Jamieson)
Responsible Officers:	: Executive Director Corporate & Commercial Services (D Olde)

STRATEGIC IMPLICATIONS

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

In Brief:

- On 11/11/2020 Council resolved to accept an undertaking requested by the Joint Standing Committee on Delegated Legislation (the Committee).
- On 15/12/2020 Council resolve to make the amendment local law.
- Council is now requested to complete the process by adopting the proposed amendment local law, noting minor administrative amendments.

COVID-19 IMPACT:

- COVID-19 has no impact on this report.

RECOMMENDATION

**CCS338: COMMITTEE RECOMMENDATION
VOTING REQUIREMENT: ABSOLUTE MAJORITY**

THAT Council resolves to ADOPT the *City of Albany Jetties, Bridges, Boat Pens and Swimming Structures Amendment Local Law 2021*, in accordance with section 3.12 of the *Local Government Act 1995*, noting the minor administrative amendments detailed in the report.

**LOCAL GOVERNMENT ACT 1995
CITY OF ALBANY
JETTIES, BRIDGES, BOAT PENS AND SWIMMING STRUCTURES
AMENDMENT LOCAL LAW 2021**

1. Enabling Legislation

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Albany resolved on 27 April 2021 to make the following local law.

2. Citation

This local law may be cited as the City of Albany Jetties, Bridges, Boat Pens and Swimming Structures Amendment Local Law 2021.

3. Commencement

This local law comes into operation 14 days after the date of its publication in the Government Gazette.

4. Principal local law amended

In this local law, the City of Albany Jetties, Bridges, Boat Pens and Swimming Structures Local Law 2020, as published in the Government Gazette on 6 October 2020 is referred to as the principal local law. The principal local law is amended.

5. Clause 1.5 amended

In clause 1.5, insert the definition of 'Land', and a definition of 'Ellen Cove Jetty'.

Ellen Cove Jetty means the structure located at, and extends from the coastal boundary of Lot 651, 2 Flinders Parade, Middleton Beach WA.

land means that part of the earth's surface that is not covered by water, for the purpose of this local law land vested in the care and control of the local government above the mean high water mark;

6. Clause 1.5 amended:

In clause 1.5 amend the definition of *designated area* by deleting "4.6" and inserting "4.5".

7. Clause 2.2 amended

In clause 2.2, delete each occurrence of the words 'the jetties' and replace them with the words 'a jetty'.

8. Clause 2.3 amended

In clause 2.3(2), delete "3.2(2)(a)" and insert "3.5".

9. Clause 2.19 amended

In clause 2.19(a), delete the word "filth,".

10. Clause 3.8 amended

In clause 3.8(1), delete '4.8' and insert "4.7".

11. Clause 3.9 amended

In clause 3.9(3) delete both instances of "7 days" and replace with "28 days".

11. Clause 4.4 amended

Delete clause 4.4, renumber following clauses accordingly.

12. Clause 5.2 amended

In clause 5.2(3), insert the words 'by resolution' after the word 'decide'.

13. Clause 5.2 amended

After clause 5.2(8), insert the following:

(9) This local law is subject to any written law and law of the Commonwealth about assistance animals as defined in the *Disability Discrimination Act 1992* (Cth).

(10) The prohibition of animals in or on any part of the pen system does not apply to assistance animals.

Dated this: day of2021.

The Common Seal of the City of Albany was affixed by the authority of the resolution of Council in the presence of:

.....
Dennis Wellington
Mayor

.....
Andrew Sharpe
Chief Executive Officer

CCS338: RESPONSIBLE OFFICER RECOMMENDATION

MOVED: COUNCILLOR SMITH
SECONDED: COUNCILLOR DOUGHTY

That the Responsible Office Recommendation be ADOPTED.

CARRIED: 10-0

CCS338: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council resolves to ADOPT the *City of Albany Jetties, Bridges, Boat Pens and Swimming Structures Amendment Local Law 2021*, in accordance with section 3.12 of the *Local Government Act 1995*, noting the minor administrative amendments detailed in the report.

LOCAL GOVERNMENT ACT 1995
CITY OF ALBANY
JETTIES, BRIDGES, BOAT PENS AND SWIMMING STRUCTURES
AMENDMENT LOCAL LAW 2021

12. Enabling Legislation

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Albany resolved on _____ to make the following local law.

13. Citation

This local law may be cited as the City of Albany Jetties, Bridges, Boat Pens and Swimming Structures Amendment Local Law 2021.

14. Commencement

This local law comes into operation 14 days after the date of its publication in the Government Gazette.

15. Principal local law amended

In this local law, the City of Albany Jetties, Bridges, Boat Pens and Swimming Structures Local Law 2020, as published in the Government Gazette on 6 October 2020 is referred to as the principal local law. The principal local law is amended.

16. Clause 1.5 amended

In clause 1.5, insert the definition of 'Land', and a definition of 'Ellen Cove Jetty'.

Ellen Cove Jetty means the structure located at, and extends from the coastal boundary of Lot 651, 2 Flinders Parade, Middleton Beach WA.

land means that part of the earth's surface that is not covered by water, for the purpose of this local law land vested in the care and control of the local government above the mean high water mark;

17. Clause 1.5 amended:

In clause 1.5 amend the definition of *designated area* by deleting "4.6" and inserting "4.5".

18. Clause 2.2 amended

In clause 2.2, delete each occurrence of the words 'the jetties' and replace them with the words 'a jetty'.

19. Clause 2.3 amended

In clause 2.3(2), delete "3.2(2)(a)" and insert "3.5".

20. Clause 2.19 amended

In clause 2.19(a), delete the word “filth,”.

21. Clause 3.8 amended

In clause 3.8(1), delete ‘4.8’ and insert “4.7”.

22. Clause 3.9 amended

In clause 3.9(3) delete both instances of “7 days” and replace with “28 days”.

11. Clause 4.4 amended

Delete clause 4.4, renumber following clauses accordingly.

12. Clause 5.2 amended

In clause 5.2(3), insert the words ‘by resolution’ after the word ‘decide’.

13. Clause 5.2 amended

After clause 5.2(8), insert the following:

(9) This local law is subject to any written law and law of the Commonwealth about assistance animals as defined in the *Disability Discrimination Act 1992* (Cth).

(10) The prohibition of animals in or on any part of the pen system does not apply to assistance animals.

Dated this: day of2021.

The Common Seal of the City of Albany was affixed by the authority of the resolution of Council in the presence of:

.....
Dennis Wellington
Mayor

.....
Andrew Sharpe
Chief Executive Officer

BACKGROUND

- On 15 December 2020, Council resolved to make the amendment local law.

DISCUSSION

- Post the meeting held on 15 December 2020, statutory advertising was undertaken and relevant government departments advised of the proposed amendment local law.
- The Department of Local Government advised that no significant issues were identified, however, the following minor edits were suggested:

Jetties, Bridges, Boat Pens and Swimming Structures Amendment Local Law **2021**

1. Enabling provision

It is suggested that the local law include an enabling provision after the local law’s title. The standard wording is as follows:

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the (name of local government) resolved on (date) to make the following local law.

2. Minor edits

The following minor edits are suggested:

- The amendments should be rearranged so that the clauses are amended in numerical order.

- **Clause 5:** Change the first line to read:
In clause 1.5, insert the following definitions in alphabetical order:
- **Clause 6:** Reword as follows:
In clause 1.5 amend the definition of **designated area** by deleting “4.6” and inserting “4.5”.
- **Clause 7:** Insert quote marks around “3.5”.
- **Clause 8:** Insert quote marks around “4.7”.
- **Clause 9:** Reword as follows:
In clause 3.9(3) delete both instances of “7 days” and replace with “28 days”.
- **Clause 10:**
 - On the first line, change “2.19” to “2.19(a)”.
 - Change “filth” to “filth,” (i.e. so it deletes the comma as well).
- **Clause 13:**
 - Change the first line to read:
After clause 5.2(8) insert the following:
 - The proposed subclauses (9) and (10) should be indented slightly to the right, so the reader can differentiate them from the clause which inserts them.
- In the final draft, include a section for the common seal and signatures.

The City should also ensure that all references and cross references are accurate, particularly if any changes occur as a result of the Department’s comments.

5. The proposed amendment local law (marked up) is attached to the report.

GOVERNMENT & PUBLIC CONSULTATION

6. Public submissions were opened on the 28 January 2021 and closed on 11 March 2021, in accordance with the prescribed period of no less than 6 weeks.
7. No public submissions were received.
8. In accordance with the Act, copies of the proposed amendment local law and the local public notice was sent to the Minister for Transport, Planning and Lands and the Minister for Local Government; Heritage; Culture and The Arts.

STATUTORY IMPLICATIONS

9. Amending a local law needs to be done in accordance with section 3.12 of the Act which is the same procedure for ‘making’ a local law. This is because an amendment local law is a new law in itself and must follow the full statutory process.
10. Section 3.12 of the Local Government Act 1995 (the Act) requires the person presiding at a Council meeting is to ensure the purpose and effect of the proposed amendment local law is given.

Purpose: The purpose of this local law is to amend the principle Jetties, Bridges, Boat Pens and Swimming Structures Local Law 2020 in order to comply with the undertaking with the Joint Standing Committee on Delegated Legislation.

Effect: City of Albany compliance with the legal undertaking to amend the principle local law.

11. The resolution of Council to ADOPT the local law must be carried by **Absolute Majority**.

POLICY IMPLICATIONS

12. Nil.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Legal & Compliance. <i>If amendment local law is not progressed to adoption, the principle local law may be disallowed.</i>	<i>Unlikely</i>	<i>Moderate</i>	<i>Medium</i>	<i>Adopt the amendment local law.</i>
Opportunity: <i>Support of the Committee’s request will mitigate disallowance of the Local Law.</i>				

FINANCIAL IMPLICATIONS

14. Minor administration costs will be incurred.

LEGAL IMPLICATIONS

15. There is no direct legal implication related to this report; however, it is a legal requirement that the undertakings are formalised through the amendment local law process.

ENVIRONMENTAL CONSIDERATIONS

16. Not applicable to this report.

ALTERNATE OPTIONS

17. No alternate options are proposed.

CONCLUSION

18. It is recommended that Council resolve to ADOPT the amended local law; in order to finalise the undertaking process previously resolved by Council.

Consulted References	:	<ul style="list-style-type: none"> Local Government Act 1995 https://www.dlgsc.wa.gov.au/local-government/local-governments/local-laws
File Number (Name of Ward)	:	All Wards
Previous Reference	:	<ul style="list-style-type: none"> OCM 15/12/2021 Resolution CCS313 SCM 11/11/2020 Resolution SCM019

CCS339: LOCAL GOVERNMENT LEGISLATION AMENDMENT ACT 2019 – MODEL CODE OF CONDUCT

Land Description	: City of Albany
Attachments	: <ul style="list-style-type: none">• Attachment 1 – Local Government (Model Code of Conduct) Regulations 2021• Attachment 2 - Code of Conduct Breach Form Template• Attachment 3 - Department of Local Government, Sport and Cultural Industries Standards and Guidelines: For Local Government CEO Recruitment and Selection, Performance Review and Termination.• Attachment 4 – Amended Policy Position: CEO Performance Review Process Policy
Report Prepared By	: Manager Governance & Risk (S Jamieson)
Responsible Officers:	: 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:
 - **Theme:** Leadership.
 - **Objective:** To provide strong, accountable leadership supported by a skilled and professional workforce
 - **Community Priority:** Provider positive leadership that delivers community outcomes.

In Brief:

- On 3 February 2021, the following regulations took effect implementing the remaining provisions of the Local Government Legislation Amendment Act 2019:
 - Local Government (Model Code of Conduct) Regulations 2021 (Model Code);
 - Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2021 (Employee Code Regulations); and
 - Local Government (Administration) Amendment Regulations 2021 (Model Standards)

COVID-19 IMPACT:

- COVID-19 has no impact on this report.

RECOMMENDATION

**CCS339: COMMITTEE RECOMMENDATION
VOTING REQUIREMENT: ABSOLUTE MAJORITY**

THAT:

- (1) The Model Code of Conduct for Council Members, Committee Members and Candidates, be ADOPTED.**
- (2) The Council REAFFIRM the Chief Executive Officer as the Complaints Officer and DELEGATE processing of complaints in regards to a breach of the code of conduct to the CEO, who will prepare a report for council determination.**
- (3) APPROVE the Code of Conduct Breach Form Template.**
- (4) The following Council Policy Positions be RESCINDED:**
 - **Handling of Complaints By or Against Elected Members Policy and Procedures; and**
 - **Handling of Complaints By or Against Chief Executive Officer Policy and Procedures.**
- (5) NOTE and ADOPT the amended CEO Performance Review Process Policy which aligns with the key provisions contained within Schedule 2 of the Local Government (Administration) Regulations 1996.**

CCS339: COMMITTEE RECOMMENDATION

**MOVED: MAYOR WELLINGTON
SECONDED: COUNCILLOR STOCKS**

THAT the Responsible Officer Recommendation be ADOPTED.

CARRIED: 8-2

Record of Vote: Councillor Thomson and Councillor Sleeman voted against the motion.

CCS339: RESPONSIBLE OFFICER RECOMMENDATION

THAT:

- (1) The Model Code of Conduct for Council Members, Committee Members and Candidates, be ADOPTED.**
- (2) The Council REAFFIRM the Chief Executive Officer as the Complaints Officer and DELEGATE processing of complaints in regards to a breach of the code of conduct to the CEO, who will prepare a report for council determination.**
- (3) APPROVE the Code of Conduct Breach Form Template.**
- (4) The following Council Policy Positions be RESCINDED:**
 - **Handling of Complaints By or Against Elected Members Policy and Procedures; and**
 - **Handling of Complaints By or Against Chief Executive Officer Policy and Procedures.**
- (5) NOTE and ADOPT the amended CEO Performance Review Process Policy which aligns with the key provisions contained within Schedule 2 of the Local Government (Administration) Regulations 1996.**

BACKGROUND

2. On 3 February 2021, the following regulations took effect implementing the remaining provisions of the Local Government Legislation Amendment Act 2019:
 - a. Local Government (Model Code of Conduct) Regulations 2021 (Model Code);
 - b. Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2021 (Employee Code Regulations); and
 - c. Local Government (Administration) Amendment Regulations 2021 (Model Standards).

DISCUSSION

Model Code

3. The recently gazetted *Local Government (Model Code of Conduct) Regulations 2021*, introduce a mandatory code of conduct for Elected Members, committee members and candidates.
4. The Model Code Regulations provide for:
 - a. overarching principles to guide behaviour;
 - b. behaviours which are managed by local governments; and
 - c. rules of conduct breaches which are considered by the Standards Panel
5. The City is required to prepare and adopt a code of conduct to be observed by Elected Members, committee members and candidates that incorporates the Model Code within three months of these regulations coming into effect (by 3 May 2021).
6. Until such time the Model Code applies (refer to attachment).
7. To begin implementation of the Model Code, local governments should:
 - a. appoint a person(s) to receive complaints by either affirming the complaint officers or appointing a new or additional officer(s), and
 - b. approve a form for complaints to be lodged (attached).
8. A copy of the Model Code and associated Explanatory Notes should be provided to all council members, committee members and any candidates in upcoming elections.
9. It is the individual responsibility of council members, committee members and candidates to become familiar with the Model Code, the Guidelines on the Model Code as well as any relevant policies of their local government, and to follow the Code at all times.

Employee Code Regulations

10. The conduct of Elected Members, committee members, the CEO, employees and contractors was previously governed by the Code of Conduct Policy (Council Members, Committee Members, Staff and Volunteers).
11. The effect of the new Regulations is to require separate codes of conduct for employees, contractors and the CEO on one hand and Elected Members, committee members and candidates on the other.
12. A new Employee and Contractor Code of Conduct is being developed by Administration and (in accordance with the Employee Code Regulations) will be approved and implemented by the CEO.
13. Until such time the City's Code of Conduct Policy (Council Members, Committee Members, Staff and Volunteers) will still apply and must be observed by the CEO, employees and contractors.

CEO Standards

14. The *Local Government (Administration) Regulations 1996* was amended to prescribe model standards for the recruitment, selection, performance review and termination of Local Government CEOs.
15. In addition to prescribing minimum requirements for these processes, the standards also require Local Governments to advertise the position of CEO if a period of 10 or more years has elapsed since a recruitment process has been carried out.

Key provisions include:

- a. recruitment of CEOs - selection criteria, job description, advertising the vacancy, selection panel, contract of employment, mandatory advertising after 10 years of incumbency;
 - b. performance review of CEO; and
 - c. termination of CEO.
16. The City's CEO Performance Review Process Policy covers the key provisions contained in the Model Standards; however, has been amended to reference to Department's guidelines.
 17. The City is required to prepare and adopt a set of CEO Standards within three months of these regulations coming into effect (by 3 May 2021).

GOVERNMENT & PUBLIC CONSULTATION

18. Public consultation was facilitated as part of the Local Government Act review by The Department of Local Government, Sport and Cultural Industries (the Department).
19. Government consultation: The Department of Local Government, Sport and Cultural Industries (the Department) have provided extensive communications to the local government sector.
20. The Department has:
 - a. Recommended that a copy of the Model Code and associated Explanatory Notes should be provided to all council members, committee members and any candidates in upcoming elections; and
 - b. Advised that it is the individual responsibility of council members, committee members and candidates to become familiar with the Model Code, the Guidelines on the Model Code as well as any relevant policies of their local government, and to follow the Code at all times.

STATUTORY IMPLICATIONS

Model Code

21. To adopt the Model Code, a resolution passed by an **absolute majority** of the council is required. Once the Code is adopted, it must be published on the local government's official website (section 5.104(7) of the Act).

POLICY IMPLICATIONS

Responding to complaints about behaviour

22. The Model Code provides a high-level process that requires local councils to make a finding on complaints regarding the alleged behaviour of council members, committee members and candidates that have been elected.

23. The City’s Handling of Complaints by or Against Elected Members Policy & Procedure has been reviewed by the City’s Administration and has identified inconsistencies with the new Regulations.
24. It is recommended that the current policy positions relating to management of complaints in relation to the CEO and Elected Members be RESCINDED and Council is guided by the Model Code of Conduct Guidelines.

Dealing with a complaint (Breach of the Code of Conduct)

25. Clause 12 of the Regulations outlines the process for dealing with complaints regarding the conduct of elected members and candidates. The Model Code leaves it open to local governments to determine the most appropriate and effective process for how this is undertaken. Options could include:
 - a. The Mayor or Deputy consider all complaints;
 - b. Delegation of complaints to the CEO to prepare a report for the council;
 - c. Appointment of an independent/external consultant to review complaints and provide a report to the council; and
 - d. Establish a committee to review complaints and report to the council. The committee may include independent members.

Additions to the Model Code

26. Local governments may not amend Division 2 (Principles) or Division 4 (Rules of Conduct).
27. Additional behaviour requirements can be included in Division 3 (Behaviours) if deemed appropriate by the local government. Any additions must be consistent with the Model Code of Conduct (section 5.104(3) of the Act).
28. In preparing the Model Code for adoption, local governments are encouraged to review their existing Code and consider incorporating any additional behaviour requirements that are not represented in the Model Code. This may include specific dress standards or the appropriate use of technology.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Legal & Compliance. <i>If the model code of conduct is not adopted, non-compliance with the Act will result.</i>	<i>Unlikely</i>	<i>Moderate</i>	<i>Medium</i>	<i>Adopt the model code of conduct; or work with staff to adopt the model local law with additional approved content.</i>
Opportunity: <i>Opportunity to consider appointing an additional complaints officer.</i>				
Opportunity: <i>Opportunity to consider additions to the Model Code, incorporating additional behaviour requirements that are not represented in the Model Code.</i>				

FINANCIAL IMPLICATIONS

30. Minor administration costs will be incurred.

LEGAL IMPLICATIONS

31. Required actions for local governments and individuals:

- a. Section 5.104 of the Act requires that local governments adopt the Model Code as their Code of Conduct within three months of the Regulations coming into operation (by 3 May 2021).
- b. In accordance with section 5.104(5), the Model Code applies until the local government adopts it as their Code. This means that the principles, behaviour requirements and rules of conduct of the Regulations apply to council members, committee members and candidates even if their local government has not yet adopted the Model Code.

ENVIRONMENTAL CONSIDERATIONS

32. Not applicable to this report.

ALTERNATE OPTIONS

33. Council may also consider:
 - a. The appointment of additional Complaints Officers to receive complaints and withdrawals of complaints in regards to breaches of the Code of Conduct.
 - b. Additions to the Model Code, incorporating additional behaviour requirements that are not represented in the Model Code.

CONCLUSION

34. It is recommended that Council resolve to ADOPT the Model Code of Conduct, REAFFIRM the CEO as the Complaints Officer and ADOPT the Code of Conduct Complaints Form Template.
35. It is recommended that the current policy positions relating to management of complaints in relation to the CEO and Elected Members be RESCINDED.
36. It is recommended that additions to the Code of Conduct and associated processes are workshopped and presented in the future for consideration.

Consulted References	:	<ul style="list-style-type: none"> • <i>Local Government Act 1995</i> • Department of Local Government, Sport & Cultural Industries online resources • Local Government (Model Code of Conduct) Regulations 2021 • Model Code of Conduct Explanatory Notes • Model Code of Conduct Guidelines • Code of Conduct Breach Template • <i>Current City of Albany's:</i> <ul style="list-style-type: none"> ○ Code of Conduct (Council Members, Committee Members, Staff & Volunteers) ○ Handling of Complaints By or Against Elected Members Policy and Procedures ○ Handling of Complaints By or Against the Chief Executive Officer Policy & Procedure
File Number (Name of Ward)	:	All Wards
Previous Reference	:	<ul style="list-style-type: none"> • OCM 23/05/2017 Resolution CCCS028.

CCS340: BUDGET AMENDMENT REQUEST

Proponent : City of Albany
Report Prepared by : Manager Engineering & Sustainability (R March)
Responsible Officer : Executive Director Infrastructure, Development & Environment (P Camins)

STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
 - **Theme:** Leadership.
 - **Objective:** To establish and maintain sound business and governance structures.
 - **Community Priority:** Implement systems and controls that ensure the prudent use of rates and ensure value for money in all aspects of Council operations.

In Brief:

- This is an additional review of budgets for two projects outside the normal budget review process.
- There is a budget shortfall from job number 1977: 'Stirling Terrace New to Spencer' due to increased contractor costs.
- There is an opportunity to install a new 2.5 metre path on Sanford Road which will provide a dual use path that will connect the Youth Precinct works to the surrounding area. The existing path is very narrow and some panels need replacing due to damage caused during various recent and current construction works.

COVID-19 IMPACT

- Due to the large amount of construction work across the State as a result of the high level of economic stimulus, engaging contractors has been problematic and resulted in a general increase in costs to undertake our works program.

RECOMMENDATION

CCS340: COMMITTEE RECOMMENDATION 1 VOTING REQUIREMENT: ABSOLUTE MAJORITY

THAT Council REALLOCATE \$67,000 from job number 1981 (Stirling Terrace New to York) to job number 1977 Stirling Terrace New to Spencer, resulting in a total budget for job 1977 of \$122,000.

CCS340: COMMITTEE RECOMMENDATION - 2 VOTING REQUIREMENT: ABSOLUTE MAJORITY

THAT Council REALLOCATE \$5,000 from job number 4155 (Youth Challenge Park) and \$95,000 from account number 13222 (Road Maintenance) to a new job number resulting in a total budget of \$100,000, to renew/upgrade the existing path on Sanford Road with a new 2.5 metre path.

CCS340: COMMITTEE RECOMMENDATION 1

MOVED: COUNCILLOR SUTTON
SECONDED: COUNCILLOR DOUGHTY

THAT the Responsible Officer Recommendation be ADOPTED.

CARRIED 10-0

CCS340: RESPONSIBLE OFFICER RECOMMENDATION 1

THAT Council REALLOCATE \$67,000 from job number 1981 (Stirling Terrace New to York) to job number 1977 Stirling Terrace New to Spencer, resulting in a total budget for job 1977 of \$122,000.

CCS340: COMMITTEE RECOMMENDATION 2

MOVED: COUNCILLOR SMITH
SECONDED: COUNCILLOR SUTTON

THAT the Responsible Officer Recommendation be ADOPTED.

CARRIED 10-0

CCS340: RESPONSIBLE OFFICER RECOMMENDATION 2

THAT Council REALLOCATE \$5,000 from job number 4155 (Youth Challenge Park) and \$95,000 from account number 13222 (Road Maintenance) to a new job number resulting in a total budget of \$100,000, to renew/upgrade the existing path on Sanford Road with a new 2.5 metre path.

BACKGROUND

2. Refer to “In Brief” section of report.

DISCUSSION

3. This budget request requires no additional expenditure by the City.
4. The following budget amendments are requested:

Reallocation of \$67,000

- a. Reallocation of \$67,000 from job number 1981(Stirling Terrace New to York) to job number 1977 (Stirling Terrace New to Spencer).
- b. The costs for these works has increased due to the lack of availability of local contractors. The construction stimulus has seen an increase in construction works which has resulted in contractors increasing their prices for works.
- c. As there are no local contractors available to complete these works, a request for quote was issued to 6 contractors (three local, three non-local) and only one response was received. In order to ensure that Black Spot Funding is not lost, these works need to be completed this financial year. It is proposed that Stirling Terrace New to York will be reprogrammed for 2022-23.

Reallocation of \$5,000

- d. Reallocation of \$5,000 from job number 4155 (Youth Challenge Park) and \$95,000 from Account 13222 (Road Maintenance) to install a new 2.5-metre-wide path on Sanford Road.

- f. This renewal/upgrade is in the current Long Term Financial Plan and it is proposed to bring this forward. This proposal will complete the new works on this section of Sanford Road and provide a strong connection for active transport demands (including pedestrian, cyclists, skateboards, scooters etc.) that are anticipated for the upgraded Youth Precinct and PCYC.
- g. The path upgrade is recommended to occur now instead of expending funds to repair damage made to the existing narrow path during various recent and current construction works on Sanford Rd.

GOVERNMENT & PUBLIC CONSULTATION

5. Department of Local Government guidelines were followed in the preparation of this report.
6. City of Albany Executives, Managers and Officers with budget responsibility were consulted in the preparation of the Budget Review.

STATUTORY IMPLICATIONS

7. Under the *Local Government Act 1995*, section 6.8, a local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure:
 - a. is incurred in a financial year before the adoption of the annual budget by the local government
 - b. is authorised in advance by a resolution (absolute majority required) or;
 - c. is authorised in advance by the Mayor in an emergency.
8. The voting requirement of Council is **Absolute Majority**.

POLICY IMPLICATIONS

9. There are no policy implications related to this report.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Reputation & Organisation’s Operations. <i>Non approval of the budget review, may result in significant delays to achieving deliverables and identified opportunities.</i>	<i>Unlikely</i>	<i>Moderate</i>	<i>Medium</i>	<i>Adopt the Budget Review with amendments (as specified by Council).</i>
Opportunity: <ul style="list-style-type: none"> • <i>Provides Council with an additional opportunity to review the City’s current budget position.</i> • <i>Realise the opportunity to install a new 2.5 metre path on Sanford Road linking the Youth Precinct works to the surrounding area, which will enhance the safety for footpath users.</i> 				

LEGAL IMPLICATIONS

11. Nil.

ENVIRONMENTAL CONSIDERATIONS

12. Nil.

ALTERNATE OPTIONS

13. Committee may consider to:
- a. Adopt the amendments as recommended; or
 - b. Adopt the amendments with amendments (as specified by Council).

SUMMARY CONCLUSION

14. That the Responsible Officer's Recommendation to adopt the Budget Amendments in order to complete job number 1977 (Stirling Terrace New to Spencer) and a new project for Sanford Road Footpath Upgrade, be supported

Consulted References	:	<ul style="list-style-type: none">• Adopted Budget 2020/2021• Local Government Act 1995
File Number (Name of Ward)	:	FM.BUG.12
Previous Reference	:	Annual Budget – OCM 28/07/2020 Resolution CCS271

CCS341: FREDERICKSTOWN WARD VACANCY

Proponent : City of Albany
Attachment : WAEC Correspondence
Report Prepared by : Manager Governance & Risk (S Jamieson)
Responsible 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:
 - **Theme 1:** Leadership.
 - **Objective 1.1:** To establish and maintain sound business and governance structures.
 - **Community Priority 1.1.1:** Implement systems and controls that ensure the prudent use of rates and ensure value for money in all aspects of Council operations.

In Brief:

- Consider not holding an extraordinary election for Frederickstown Ward.
- Responsible Officer Recommends holding vacancy till October 2021 Ordinary Election.

COVID-19 IMPACT

- Covid-19 has no impact on this report.

ADDENDUM

- On 13 April 2021, Electoral Commission advised that approval has been given to defer filling the vacancy until the October 2021 ordinary elections.

RECOMMENDATION

CCS341: COMMITTEE RECOMMENDATION VOTING REQUIREMENT: ABSOLUTE MAJORITY

THAT Council DEFER filling of the Frederickstown Ward Vacancy till the October 2021 ordinary election.

CCS341: COMMITTEE RECOMMENDATION

MOVED: COUNCILLOR STOCKS

SECONDED: COUNCILLOR BENSON-LINDHOLM

THAT the Responsible Officer Recommendation be ADOPTED.

CARRIED: 10-0

CCS341: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council DEFER filling of the Frederickstown Ward Vacancy till the October 2021 ordinary election.

BACKGROUND

2. Councillor Rebecca Stephens, tendered her resignation with effect the 23 March 2021, as a result of her move into the role of Albany's Member for Parliament.

DISCUSSION

3. Councillors are elected for terms of four years and elections are held every two years for half of the council, and candidates are elected using the first-past-the-post voting system.
4. The next City of Albany Local Government Election will be held on Saturday 16 October 2021.
5. Generally, if a vacancy occurs within a term, an extraordinary election is held.
6. However, Councillor Stephens' resignation falls within the allowed time period for Council to be able to hold the Frederickstown vacancy until the October 2021 Ordinary Local Government election.
7. The Frederickstown Ward is still represented by Councillor Stocks and the Council enters the care-taker period post the August ordinary meeting of council.
8. Given that Councillor Stephens' term was due to expire in October 2021, it would not be cost effective or practical to hold an extraordinary election to fill the vacancy.

GOVERNMENT & PUBLIC CONSULTATION

9. The Mayor advised Council of Councillor Stephens resignation on 23 March 2021 at Council's Ordinary Meeting of Council.
10. The WAEC was advised of the resignation of Councillor Stephens on the 23 March 2021.
11. The Electoral Commissioner was requested to consider a request under section 4.17(2) of the Local Government Act 1995 (the Act) to defer filling this vacancy until the 2021 Local Government ordinary elections.

STATUTORY IMPLICATIONS

12. Section 4.17 of the Act; states in part:

4.17. Cases in which vacant offices can remain unfilled

(2) If a member's office becomes vacant under section 2.32 —

- a. after the third Saturday in January in the election year in which the term of the office would have ended under the Table to section 2.28; but
- b. before the third Saturday in July in that election year, the council may, with the approval of the Electoral Commissioner, allow the vacancy to remain unfilled and, in that case, the term of the member who held the office is to be regarded in section 4.6 as ending on the day on which it would have ended if the vacancy had not occurred.

(3) If a councillor's office becomes vacant under section 2.32 and under subsection (4A) this subsection applies, the council may, with the approval of the Electoral Commissioner, allow* the vacancy to remain unfilled and, subject to subsection (4), in that case, the term of the member who held the office is to be regarded in section 4.6 as ending on the day on which it would have ended if the vacancy had not occurred.

*** Absolute majority required.**

13. Council resolved in August 2020, that the Electoral Commissioner be responsible for the conduct of ordinary and extraordinary elections for the City of Albany by postal vote until the end of 2021.

POLICY IMPLICATIONS

14. The Election Caretaker Period Policy establishes protocols for the purpose of preventing actual and perceived advantage or disadvantage to a candidate in a Local Government

Election, through the use of public resources or decisions made by the Council or administration on behalf of the City of Albany during the period immediately prior to an election.

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

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>Reputational. Perception of actual and perceived bias if an extraordinary election is conducted prior to the ordinary election.</i>	<i>Possible</i>	<i>Minor</i>	<i>Medium</i>	<i>Adherence to Council’s adopted Election Caretaker Period Policy.</i>

FINANCIAL IMPLICATIONS

17. If the position remains vacant there is no additional financial cost.
 18. An additional extraordinary election conducted by the Western Australian Electoral Commission would incur additional cost, approximately \$30,000.

LEGAL IMPLICATIONS

19. Nil.

ENVIRONMENTAL CONSIDERATIONS

20. Nil.

ALTERNATE OPTIONS

21. The alternate option is to hold an extraordinary election to fill the vacancy, which term will expire on 16 October 2021.

SUMMARY CONCLUSION

22. Approval has been sought and obtained from the Electoral Commissioner to defer filling this vacancy till the 2021 Local Government ordinary elections.
 23. That the Responsible Officer’s Recommendation be considered.

Consulted References	:	<ul style="list-style-type: none"> • <i>Local Government Act 1995</i> • <i>Local Government (Elections) Regulations 1997</i> • <i>Election Caretaker Period Policy</i>
File Number (Name of Ward)	:	GO.ELE.3 – Elections (All Wards)
Previous Reference	:	OCM 11/08/2020 Resolution CCS278.

**CCS342: NEW LEASE – COMMONWEALTH OF AUSTRALIA
REPRESENTED BY GEOSCIENCE AUSTRALIA – ALBANY REGIONAL
AIRPORT**

Land Description	: Lot 4861 on Deposited Plan 157338 and Lot 5643 on Deposited Plan 157458 the subject of Certificate of Title Volume 2088 Folio 492
Proponent	: Commonwealth of Australia represented by Geoscience Australia ABN 80 091 799 039
Owner	: City of Albany
Report Prepared By	: Team Leader Property and Leasing (T Catherall)
Responsible Officers:	: Executive Director Corporate and Commercial Services (D Olde)

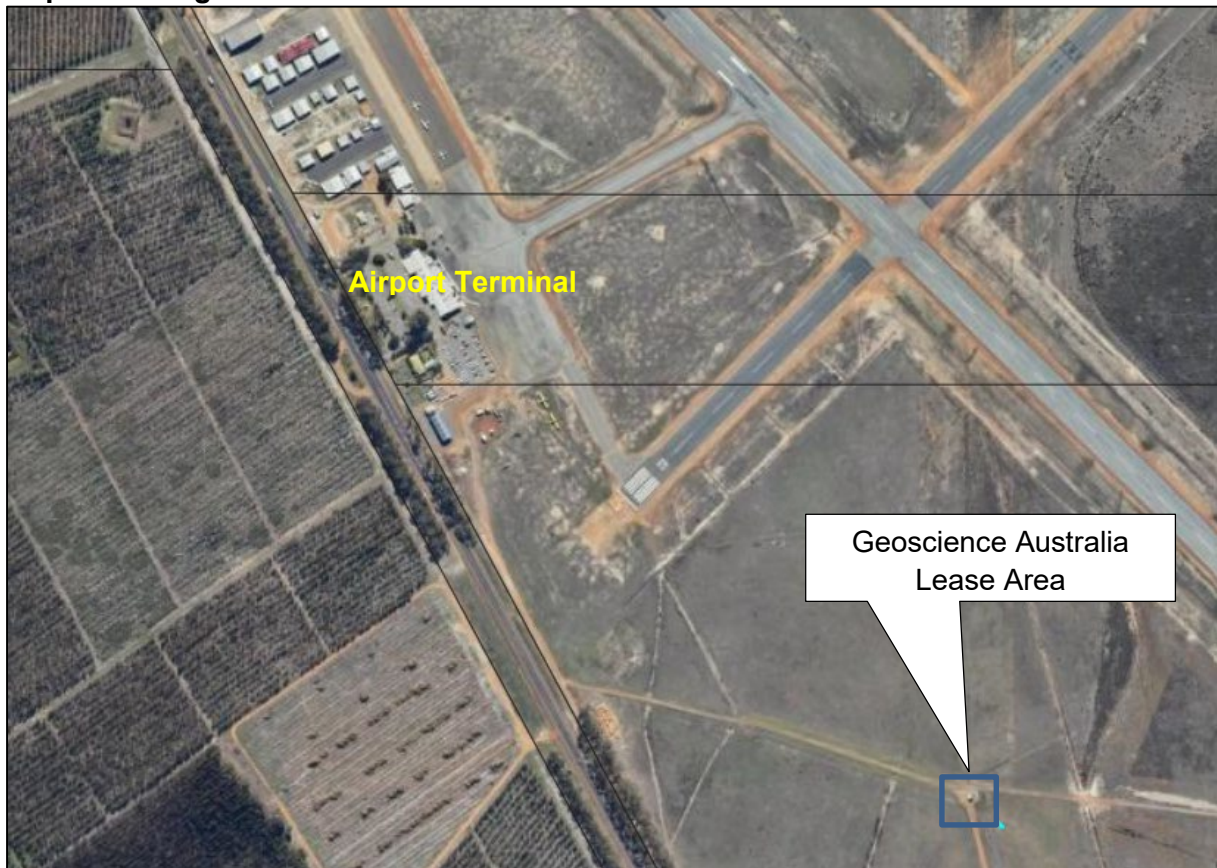
STRATEGIC IMPLICATIONS

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

COVID-19 IMPACT

- Covid-19 has no impact on this report.

Maps and Diagrams:



In Brief:

- Council is requested to consider a new lease to Commonwealth of Australia represented by Geoscience Australia (GA) to formalise ongoing use of Global Navigation Satellite System facility and operations at the Albany Regional Airport.
- Landgate have occupied the site at the Airport under licence, since 2008. The licence expired April 2018 and Landgate remain on holding over provisions pending a suitable new entity to run these operations.
- Landgate have since advised the ownership and management of its navigation facilities have been transferred to the Commonwealth Government entity, GA.
- GA have contacted the City seeking a new lease to secure its tenure over the existing area.
- It is recommended the new lease is approved.

RECOMMENDATION

**CCS342: COMMITTEE RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY**

THAT Council APPROVE a new lease to Commonwealth of Australia represented by Geoscience Australia at the Albany Regional Airport subject to:

- a) Lease purpose being “maintaining and operating a Global Navigation Satellite System ground station within the Albany Regional Airport”.**
- b) Lease term being 10 years with a 10 year further term option, commencing 1 April 2021.**
- c) Lease area being approximately 5m².**
- d) Lease rent being peppercorn \$10 pa plus GST.**
- e) All costs associated with the ongoing operations of the lease property being payable by the tenant.**
- f) All costs associated with the preparation, execution and completion of the lease documentation being payable by the tenant.**
- g) Lease being consistent with Council Policy – Property Management (Leases and Licences).**

CCS342: COMMITTEE RECOMMENDATION

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

THAT the Responsible Officer Recommendation be ADOPTED.

CARRIED: 9-0

CCS342: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council APPROVE a new lease to Commonwealth of Australia represented by Geoscience Australia at the Albany Regional Airport subject to:

- a) Lease purpose being “maintaining and operating a Global Navigation Satellite System ground station within the Albany Regional Airport”.**
- b) Lease term being 10 years with a 10 year further term option, commencing 1 April 2021.**

- c) Lease area being approximately 5m².
- d) Lease rent being peppercorn \$10 pa plus GST.
- e) All costs associated with the ongoing operations of the lease property being payable by the tenant.
- f) All costs associated with the preparation, execution and completion of the lease documentation being payable by the tenant.
- g) Lease being consistent with Council Policy – Property Management (Leases and Licences).

BACKGROUND

- 2. Council at its meeting 15 April 2008 granted a new licence to Western Australian Land Information Authority (Landgate) at Albany Regional Airport for the purpose of installing and operating a global navigation satellite system reference station and associated operations.
- 3. The term of 5 + 5 years expired in April 2018. Landgate continue to occupy the area under holding over provisions.
- 4. In 2018 the Commonwealth Government committed to improving the accuracy of navigational positioning for the country. Since then parties have been negotiating a suitable candidate to take over the State and Territory Governments facilities. This is considered necessary to effectively deliver improved productivity, improved community safety and allow for future innovation.
- 5. Landgate has now advised it has transferred the ownership and management of all its 26 navigation facilities, including the facility located at the Airport, to the Commonwealth Government entity, GA.
- 6. GA are seeking a new lease to continue and improve navigation operations at the Airport.

DISCUSSION

- 7. GA is the Australian Government organisation responsible for the development and maintenance of Global Navigation Satellite System (GNSS) ground stations.
- 8. GA is leading the program to ensure a coordinated national network that provides instant, accurate and reliable navigational positioning data for all Australians.
- 9. Current position technologies, such as those in smartphones or cars, provides an accuracy of only 5-10 metres. Australia requires a greater accuracy for a range of fundamental functions including aircraft flying in poor weather conditions and for emerging technologies, such as driverless vehicles.
- 10. To ensure that more accurate positioning information is widely available to the community, GA will establish and/or upgrade the necessary ground infrastructure.
- 11. Upgrades to existing ground stations will include the installation of new equipment and an upgrade to ageing technology to provide consistency over the entire network. GA advise upgrades will be completed by July 2022.
- 12. City Officers have been in discussion with GA regarding proposed lease terms. Parties have agreed in-principle to the following summarised terms and conditions subject to Council approval.

ITEM	DETAILS
Tenant	Commonwealth of Australia represented by Geoscience Australia ABN 80 091 799 039
Land Description	Portion of Lot 4861 on Deposited Plan 157338 and Lot 5643 on Deposited Plan 157458 the subject of Certificate of Title Volume 2088 Folio 492
Area	Approximately 5m ² to accommodate navigational equipment shed on plinth, antenna and bollards to protect infrastructure
Land Ownership	City of Albany
Infrastructure Ownership	Commonwealth of Australia
Permitted Use	Maintaining and operating a Global Navigation Satellite System ground station
Term	10 years with a 10 year further term option
Rent	Peppercorn
Outgoings & Utilities	Tenant responsibility as applicable
Insurance	Public Liability Policy for a minimum of \$20 million and appropriate Infrastructure insurance
Indemnity	Indemnify the City for all claims resulting from any damage, loss, death or injury in connection with the Council Property, unless such claims arise out of City's negligence
Maintenance	Tenant responsible for own maintenance
Costs	Tenant has given a \$2,000 plus GST cap for all costs associated with the development and implementation of any new lease document

GOVERNMENT & PUBLIC CONSULTATION.

13. City Officers have been liaising with both Government entities Landgate and GA to formalise GA occupation at the Airport.
14. Section 3.58 of the Local Government Act 1995 outlines the requirements for the disposal of property, including leased/licenced 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.
15. Section 30 of the Local Government (Functions and General) Regulations 1996 defines the dispositions to which the advertising requirements of Section 3.58 of the Act do not apply. Section 30 (2) (c) (i & ii) states that Section 3.58 of the Act is exempt if:
 - (c) The land is disposed of to –
 - (i) The Crown in right of the State or the Commonwealth; or
 - (ii) A department, agency, or instrumentality of the Crown in right of the State or the Commonwealth.
16. The proposed lease to GA is exempt from the advertising requirements as they are a Government entity.

STATUTORY IMPLICATIONS

17. Section 3.58 of the *Local Government Act 1995* defines the requirements for the disposal of property, including leased/licenced land and buildings including advertising requirements.

POLICY IMPLICATIONS

18. The 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.
19. The recommendation is consistent with the Policy.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>Reputation: new lease not approved</i>	<i>Unlikely</i>	<i>Minor</i>	<i>Low</i>	<i>Seek to negotiate terms to Council satisfaction</i>
<i>Reputation: new lease not approved – unable to provide up to date GPS information</i>	<i>Unlikely</i>	<i>Minor</i>	<i>Low</i>	<i>Seek to negotiate terms to Council satisfaction</i>
<i>Opportunity: To provide support to the Commonwealth of Australia in providing accurate and up to date navigational information for all Australians.</i>				
<i>Opportunity: To demonstrate support for the development of new technology with regards to functions such as improving aircraft navigational equipment and mobile phone use.</i>				

FINANCIAL IMPLICATIONS

21. All costs associated with the development and finalisation of the lease documentation will be met by the tenant to a cap of \$2,000 plus GST.

LEGAL IMPLICATIONS

22. The legal agreement with GA will be a formal Deed of Lease with enforceable terms and conditions prepared by City lawyer.

ENVIRONMENTAL CONSIDERATIONS

23. There are no environmental implications.

ALTERNATE OPTIONS

24. Council may:

- a. Approve the new lease request; or
- b. Decline the request.

25. Should Council decline the request, the Commonwealth Government will need to consider alternate locations suitable for GNSS facility in Albany.

26. Noting this option is not recommended as the current location at the Airport is considered ideal given in an open area providing no interference from obstructions.

CONCLUSION

27. Landgate who were responsible for the GNSS facility have transferred the ownership and management of all its 26 facilities, including the facility located at the Airport, to the Commonwealth Government entity, GA.

28. GA have requested a new 10 + 10 year lease over the existing area occupied at the Airport to formalise current navigational facility operations.

29. It is recommended the new lease to the Commonwealth of Australia, GA is supported.

Consulted References	:	<ul style="list-style-type: none"> • Council Policy – Property Management (Leases and Licences) • Local Government Act 1995 • Local Government (Functions and General) Regulations 1996
File Number (Name of Ward)	:	PRO366, A64802, (Kalgan Ward)
Previous Reference	:	OCM 15 April 2008 Item 13.5.1

CCS343: QUARTERLY REPORT – TENDERS AWARDED – JANUARY TO MARCH 2021

Proponent : City of Albany
Attachments : Quarterly Report – Tenders Awarded – January to March 2021
Report Prepared by : Senior Procurement Officer (H Hutchinson)
Responsible Officer : Executive Director Corporate & Commercial Services (D Olde)

COVID-19 IMPACT

- Covid-19 has no impact on this report.

RECOMMENDATION

CCS343: RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY

THAT the Quarterly Report – Tenders Awarded – January to March 2021 be RECEIVED.

DIS252: TELECOMMUNICATIONS INFRASTRUCTURE

Land Description	:	Lot 141, 32 Allerton Street, Robinson WA 6330
Property Owner	:	J.A and K.A .Quinlan
Proponent	:	Visionstream Australia Pty Ltd on behalf of Telstra Corporation
Business Entity Name	:	Visionstream Australia Pty Ltd
Attachments	:	<ol style="list-style-type: none">1. Applicant Planning Assessment Report2. Planning Assessment Report Appendix A – Certificate of Title3. Plans4. Planning Assessment Report Appendix C – EME Report5. Planning Assessment Report Appendix E – EPBC Act Protected Matters Report6. Schedule of Submissions7. Applicant response to submissions
Supplementary Information & Councillor Workstation	:	Letters of submission from the public
Report Prepared By	:	Senior Planning Officer (J Anderson)
Responsible Officers:	:	Executive Director Infrastructure, Development and Environment (P Camins)

STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. This item relates to the following elements of the City of Albany *Strategic Community Plan 2030*:

Themes: Smart, Prosperous and Growing; and a connected and safe built environment.

Objectives:

- To strengthen and grow our region's economic base; and
- To develop vibrant neighbourhoods which retain local character and heritage.

Community Priorities:

- Work with business and other stakeholders to attract investment, diversify the economy, create jobs and support small business growth; and
- Develop and implement a contemporary Local Planning Strategy that reflects our identity and supports economic growth.

3. When exercising its discretion in relation to planning matters, the pertinent strategic document is the *Albany Local Planning Strategy 2019* (the Planning Strategy).
4. The proposal is consistent with the objectives identified in the Planning Strategy, specifically: *Meet the service infrastructure requirements for settlement growth*.

COVID-19 IMPACT

- COVID-19 has no impact on this report.

Maps and Diagrams: 32 (Lot 141) Allerton Street, Robinson



In Brief:

- Council is asked to consider an application for development approval for Telecommunications Infrastructure at 32 (Lot 141) Allerton Street, Robinson.
- This item was referred to Council in March 2021 under report item DIS252. A decision was deferred to allow time for staff, in consultation with the proponents, to review and consider alternative locations for the Telecommunications Infrastructure on the subject site.
- The proponent submitted a revised site plan dated 13 April 2021, depicting the relocation of the proposed Telecommunications Infrastructure to the south western corner of the subject site. Vehicle access is proposed to be provided to the infrastructure via a secondary access point from Newton Street through a new gate installed in the existing boundary fence.
- The development proposal, including the relocation of the infrastructure and compound shelter to the south western corner of the site, has been assessed against the applicable statutory framework including *State Planning Policy 5.2 – Telecommunications Infrastructure* (SPP5.2), and is generally consistent with the City of Albany LPS1.
- The revised location of the Telecommunications Infrastructure is considered to address the reasons for deferral. The relocation of the Telecommunications Infrastructure on the subject site creates additional separation to the northern adjoining property and results in an improved outcome on the original proposed location on the site, in accordance with the objectives and requirements of the General Industry zone outlined under LPS1.
- Staff recommend the proposal, incorporating the relocation of the Telecommunications Infrastructure as depicted on the revised site plan dated 13 April 2021, be supported subject to conditions.

RECOMMENDATION

**DIS252: AMENDED RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY**

THAT Council resolves to ISSUE a notice of determination granting development approval with conditions for Telecommunications Infrastructure at Lot 141, 32 Allerton Street, Robinson.

Conditions:

1. All development shall occur in accordance with the stamped, approved plans referenced P2200433 (**Revised Site Plan – Version 1 dated 13 April 2021, Antenna Layout Plan W109233 Sheet No. S1-2 Issue 4, dated 31/03/20 and Antenna Configuration Table W109233 Sheet No. S3-1 Issue 4, dated 31/03/20**), unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.
2. **Prior to commencement of the development, updated elevation and detailed site layout plans appropriately modified to reflect the revised location of the development on the site, shall be submitted to the City for approval.**
3. If the development, the subject of this approval, is not substantially commenced within a period of 2 years from the date of approval, the approval shall lapse and be of no further effect.
4. Unless otherwise agreed in writing with the City of Albany, no additional lighting is permitted on the Telecommunications Infrastructure.
5. 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.

Advice:

- a. *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.*

Comment: Refer to in-brief section of report.

**DIS252: PROCEDURAL MOTION
VOTING REQUIREMENT: SIMPLE MAJORITY**

MOVED: COUNCILLOR SLEEMAN
SECONDED: COUNCILLOR GOODE

THAT this matter:

1. Be DEFERRED to allow time for staff, in consultation with the proponents, to review and consider alternative locations for the Telecommunications Infrastructure on the subject site at Lot 141, 32 Allerton Street, Robinson to lessen the impact on the landowner and lessee of the property to the North; and
2. Be RE-PRESENTED for consideration by Council at the Ordinary Council Meeting to be held on Tuesday 27 April 2021.

CARRIED 8-3

Record of Vote:

Against the Motion: Councillors Thomson, Smith and Doughty.

DIS252: PROPOSED PROCEDURAL MOTION
VOTING REQUIREMENT: SIMPLE MAJORITY

THAT this matter be deferred for consideration until:

1. The Special Electors' Meeting called to discuss this matter on Monday 29 March 2021 has been held; and
2. A Special Council Meeting is convened to consider this report and receive any motions arising from the Special Electors' Meeting.

DIS252: ADDENDUM

- On Wednesday 10 March 2021, the City of Albany received a Petition requesting that a Special Meeting of Electors be convened. The details of the matter to be discussed at the meeting are DIS252: Telecommunications Infrastructure.
- The *Local Government Act 1995* and the *Local Government (Administration) Regulations 1996* require that public notice be given for a period of 14 days prior to the meeting.
- Accordingly, the City has placed a Public Notice on the City's website advertising the date of the Special Electors' Meeting which will be held on Monday 29 March 2021, commencing at 6.30pm in the Council Chambers, 102 North Road, Yakamia. This notice will also appear in local newspapers advertising the date, time and location of the meeting.

DIS252: COMMITTEE RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY

THAT Council resolves to ISSUE a notice of determination granting development approval with conditions for Telecommunications Infrastructure at Lot 141, 32 Allerton Street, Robinson.

Conditions:

1. All development shall occur in accordance with the stamped, approved plans referenced P2200433, unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.
2. If the development, the subject of this approval, is not substantially commenced within a period of 2 years from the date of approval, the approval shall lapse and be of no further effect.
3. Unless otherwise agreed in writing with the City of Albany, no additional lighting is permitted on the telecommunications tower.
4. 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.

Advice:

- a. *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.*

DIS252: COMMITTEE RECOMMENDATION

MOVED: COUNCILLOR SUTTON
SECONDED: COUNCILLOR THOMSON

THAT the Responsible Officer Recommendation be ADOPTED.

CARRIED 9-1

Record of Vote

Against the Motion: Councillor Sleeman

DIS252: PROCEDURAL MOTION BY COUNCILLOR SLEEMAN
VOTING REQUIREMENT: SIMPLE MAJORITY

MOVED: COUNCILLOR SLEEMAN
SECONDED: COUNCILLOR BENSON-LIDHOLM

THAT this matter be deferred for consideration until the proponent has explored other sites for the telecommunications tower.

LOST 2-8

Record of Vote

For the Motion: Councillors Sleeman and Benson-Lidholm

DIS252: RESPONSIBLE OFFICER RECOMMENDATION

MOVED: CONCILLOR SUTTON
SECONDED: COUNCILLOR THOMSON

THAT Council resolves to ISSUE a notice of determination granting development approval with conditions for Telecommunications Infrastructure at Lot 141, 32 Allerton Street, Robinson.

Conditions:

1. All development shall occur in accordance with the stamped, approved plans referenced P2200433, unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.
2. If the development, the subject of this approval, is not substantially commenced within a period of 2 years from the date of approval, the approval shall lapse and be of no further effect.
3. Unless otherwise agreed in writing with the City of Albany, no additional lighting is permitted on the telecommunications tower.
4. 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.

Advice:

- a. *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.*

DIS252: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council resolves to ISSUE a notice of determination granting development approval with conditions for Telecommunications Infrastructure at Lot 141, 32 Allerton Street, Robinson.

Conditions:

1. All development shall occur in accordance with the stamped, approved plans referenced P2200433, unless varied by a condition of approval or a minor amendment, to the satisfaction of the City of Albany.
2. If the development, the subject of this approval, is not substantially commenced within a period of 2 years from the date of approval, the approval shall lapse and be of no further effect.
3. Unless otherwise agreed in writing with the City of Albany, no additional lighting is permitted on the telecommunications tower.
4. 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.

Advice:

- a. *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.*

BACKGROUND

5. This item was previously considered at the Ordinary Council Meeting held on 23 March 2021 and subsequently deferred for the purpose of giving the proponent and the City time to consider alternative locations for the infrastructure on the subject site.
6. The development application the subject of this report is for Telecommunications Infrastructure at 32 (Lot 141) Allerton Street, Robinson.
7. The subject site is located approximately 3.7km west of the Albany CBD.
8. The subject site is 4,019m² in area and situated on the corner of Allerton Street and Newton Street.
9. The subject site is zoned General Industry under LPS1 and is currently developed with an industrial workshop/shed.
10. The subject site is adjoined by land zoned General Industry to the north, south, east and west. A mixture of Rural Small Holdings and Rural Residential lots lie approximately 200m-400m to the east, south and west.
11. Telecommunications Infrastructure is classified as a 'D' use within the General Industry zone, meaning that the use is not permitted unless the local government has exercised its discretion by granting development approval.
12. The location is over 1.3kms from Princess Royal Harbour, 300m from Lower Denmark Road and over 1km Frenchman Bay Road.
13. The subject land is not identified as being within an area of high landscape protection, nor does it contain any places of heritage significance.

DISCUSSION

14. The proponent submitted a revised location plan dated 13 April 2021, relocating the proposed infrastructure and compound shelter to the south western corner of the site, with vehicle access provided via a secondary access point from Newton Street.
15. According to the applicant's Planning Assessment Report (Attachment 1), the development application for the proposed telecommunications infrastructure was lodged on the basis of improving network services to the Robinson locality and will make Robinson and the greater Albany region 5G ready.
16. The proposed development involves installation of the following telecommunications infrastructure at the subject site.
 - 1 monopole measuring 41.25m high with a triangular headframe;
 - 9 panel antennas (no greater than 2.8m in length);
 - 72m² compound area which is propose to be enclosed by security chain-mesh fencing;
 - Equipment shelter with a maximum height of 3m and floor area of 7.5m² located in the compound area;
17. The applicant has proposed a monopole rather than a lattice style tower as it is less obtrusive. It is also proposed to leave the infrastructure unpainted in a grey colour which is the preferred finish for telecommunication infrastructure as it blends as far as practical against lighter background such as the sky.
18. The existing development (industrial workshop/shed) on-site are to be retained.
19. The location is over 1.3kms from Princess Royal Harbour, 300m from Lower Denmark Road and over 1km Frenchman Bay Road.
20. The subject land is not identified as being within an area of high landscape protection, nor does it contain any places of heritage significance.

21. The infrastructure is located within an existing cleared area and does not require the removal of any native vegetation.
22. The proposal has been assessed against LPS1 and SPP 5.2.
23. As outlined under SPP5.2, when determining telecommunications infrastructure, it is necessary to assess the impact on amenity against the overall public benefit of the infrastructure.
24. The acceptable boundary setbacks for General Industry land listed under Table 8 – Site Requirements of LPS 1 require development to be setback 9m from the front boundary, with nil setbacks required to the rear and side boundaries.
25. The proposed infrastructure and compound shelter were originally proposed to be located to the north-east portion of the lot, with the pole setback:
 - 9m from the eastern boundary abutting Allerton Street (primary street)
 - 6m from the northern boundary;
 - Approximately 80m from the western boundary; and
 - Approximately 50 metres to the southern boundary abutting Newton Street.
26. The proponent has since revised the location of the pole on the subject site, with the new proposed location of the infrastructure and compound shelter being to the south-west corner of the lot, with the pole setback:
 - 6m from the southern boundary abutting Newton Street (secondary street)
 - 6m from the western boundary
 - Approximately 70m from the eastern boundary (Allerton Road)
 - Approximately 40m from the northern boundary.
27. As previously noted in report item DIS252 referred to the Ordinary Council Meeting in May 2021, the applicant's Planning Assessment Report (Attachment 1) outlines the process utilised by Telstra regarding the site selection process and criteria used to identify potential suitable sites.
28. As outlined in the Planning Assessment Report (Attachment 1), Telstra considers the following as part of its site selection process:
 - The technical viability of potential sites, including prediction of coverage that may be expected from identified sites using computer modelling;
 - The potential to co-locate on an existing telecommunications facility.
 - The potential to locate on an existing building or structure.
 - Visual impact and the potential to obtain relevant town planning approvals.
 - Proximity to community sensitive locations and areas of environmental heritage.
 - The potential to obtain tenure at the site.
 - The cost of developing the site and the provision of utilities (power, access to the facility and transmission links).
29. Following the process outlined in its report and consideration of a number of potential candidate sites, Telstra concluded that the subject site was the most appropriate solution to provide necessary mobile phone coverage to the Robinson locality. As outlined in the report, the conclusion was based on:
 - The site is appropriately located and sited to minimise visual and environmental impacts on the immediate and surrounding areas;
 - Well setback from sensitive uses;

- The site will achieve the required capacity and indoor coverage objectives for the area;
 - The site will help to make the Robinson and Albany region 5G ready;
 - The site will meet design and construction considerations; and
 - The proposal operates within the regulatory framework of Commonwealth, State and Local Government.
 - There is a willing landowner.
30. In assessing the merits of the proposal, Council are to consider the overall public benefit of the proposal on balance with the potential impacts on amenity from the proposed development.
31. The proposed development has been assessed against the applicable statutory framework including SPP5.2 and LPS1.
32. Although not specifically required under LPS1, the application was advertised for a period of twenty-seven (27) days (between the dates of 18/09/2020 – 14/10/2020). All landowners within a 500m radius of the site were notified directly by letter, and a notice was placed on the City of Albany website.
33. During the advertising period a total of 42 submissions were received. All objected or raised concerns regarding the proposal.
34. The concerns raised relate primarily to the following:
- Health concerns;
 - The visual impact of the proposal on the amenity of the area;
 - Inconsistency of site selection with state and local planning framework and non-compliance with relevant regulations and industry codes;
 - Environmental concerns;
 - Noise;
 - Potential impacts on property values;
 - Aspects of the consultation process.
35. The main concerns raised during the submission period will be broadly addressed under the headings below.

Health concerns

36. Concerns were raised during in relation to the potential for detrimental health effects from the proposed tower was consistently raised, particularly 5G.
37. Concerns were specifically raised that there were a number of residents and children living within 250m of the proposed development. In addition to this there was concerns that the workers within the area would be exposed 6 days per week up to 10 hours per day.
38. The subject site is zoned General Industry. Although a dwelling is not a permitted use within this zone, it is acknowledged that there are a number of dwellings within the Rural Small Holdings and Rural Residential zones to the east, south and west of the subject lot. By relocating the infrastructure to the south western corner of the site, the distance between the proposed development and closest dwelling (located to the south of the site) has been reduced to approximately 200m, from approximately 220m. However, the revised location addresses concerns raised by increasing the separation distance of the infrastructure to the northern adjoining property.
39. The applicant has provided the following response in relation to the concerns raised in relation to health. A full copy of the applicant's response to the submissions received can be viewed under Attachment 7 to this report.

“Please be assured that Telstra take the responsibilities regarding the health and safety of their customers and the community very seriously. Telstra also acknowledge that some people are genuinely concerned about the possible health effects from electromagnetic energy (EME).

There are many sources of EME (often called electromagnetic radiation). They occur naturally as well as having artificial sources. Natural sources of EME include light from the sun, lightning and the earth's magnetic field. Refrigerators, hairdryers and computers, TVs, radios, mobile phones, WiFi, remote control devices, emergency services systems, baby monitors and microwave ovens.

The Australian Communications and Media Authority (ACMA) has set mandatory limits for EME exposure for all devices that produce Radiofrequency signals. Mobile phones and their base stations are included in these mandatory limits, as are AM/FM radio and TV broadcast stations. The ACMA conduct regular audit operations to test for compliance against these limits. The levels are set by the Australian Radiation Protection and Nuclear Safety Agency - ARPANSA Maximum Exposure Levels to Radiofrequency Fields -3kHz to 300 GHz' (RPS3), which is derived from the International Commission Non-Ionizing Radiation Protection (ICNIRP) Guidelines. The Australian Communications and Media Authority (ACMA) has extensive information on health and mobile phone technology.

ICNIRP has recently undertaken an extensive review of the available scientific evidence and research on EME and health. As a result, new ICNIRP Guidelines were published on 11 March 2020 with a focus on the overall depth of research and safety of the guidelines. It is the responsibility of these expert authorities to continually review the science on electromagnetic energy (EME) and to protect public safety.

ARPANSA's position is: “Based on current research there are no established health effects that can be attributed to the low RF EME exposure from mobile phone base station antennas.”

Additionally, the safety regulations operate by placing a limit on the strength of the signal (or radiofrequency EME) that Telstra can transmit. They are not based on distance, or creating “buffer zones” for residential areas, places of employment, schools or any other specific environment. The environmental standard limits the network signal strength to a level low enough to protect all people, in all environments, 24-hours a day. The safety limit itself, has a significant safety margin, or precautionary approach built into it.

The ACMA's regulatory arrangements require base stations to comply with the exposure limits in the ARPANSA RF Standard. The ARPANSA Standard is designed to protect people of all ages and health status against all known adverse health effects from exposure to RF EME. This standard is the same for infants/children, seniors and pregnant women.”

40. It is necessary to note that the City is not a regulatory body in respect to electromagnetic energy (EME). The Federally established Australian Protection and Nuclear Safety Agency (ARPANSA) enforce the *Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields – 3kHz to 300GHz*. The EME report submitted by the applicant states that the maximum calculated EME level from the site will be 1.65% of the maximum public exposure level.

Visual amenity

41. A number of concerns were received in relation to the impact on visual amenity of the area from the proposed development, including the visual impact from nearby residents.
42. When assessing impacts on amenity, it is necessary to determine the level of existing amenity within the immediate area and secondly, within the wider locality.
43. The existing amenity of Allerton Street can be classified as having an industrial landscape, defined by industrial workshops and storage yards. The wider area can be classified as having a rural residential landscape defined by dispersed dwellings located within areas of open paddocks and areas of dense vegetation.

44. The applicant has provided a photo montage of the proposal taken from a number of surrounding properties (refer Appendix D under Attachment 1 Applicant's Planning Assessment Report).
45. SPP 5.2 outlines a number of considerations in the assessment of the visual impact of telecommunications infrastructure proposals.
46. Considerations include that visual impact assessments should be made on a case by case basis, that proposals should be sited and designed to minimise visual impact, that proposals should not be located on sites that may compromise sites of cultural, environmental, social or visual landscape value and the proposal should display design features, including scale, materials, external colours and finishes that are sympathetic to the surrounding landscape.
47. In line with the above, the proposed site is not located in a prominent topographical location (such as on a ridge line). The applicant has also proposed to leave the monopole unpainted (resulting in a dull grey colour) in order to assist in reducing the visual impact of the proposed development.
48. The applicant has proposed a monopole rather than a lattice style tower as it is less obtrusive. It is also proposed to leave the infrastructure unpainted in a grey colour which is the preferred finish for telecommunication infrastructure as it blends as far as practical against lighter background such as the sky.
49. It is acknowledged that while the proposal will be partially visible when viewed from a number of properties within the area, it is necessary to consider that although part of the proposed development will be visible, this aspect does not, in itself, mean that the proposed development will have a negative impact on the visual amenity of the locality.
50. Furthermore, and as outlined above, the location is over 1.3kms from Princess Royal Harbour, 300m from Lower Denmark Road and over 1km Frenchman Bay Road. It is not anticipated the facility will be visually dominant from any of these locations
51. The subject land is not identified as being located within an area of high landscape protection, nor does it contain any places of heritage significance.
52. As outlined above, the proposal demonstrates compliance with the policy objectives and measures set out under SPP 5.2. A full assessment of the policy is outlined under the Policy Implications section below.

Site selection and inconsistency with State Planning Policy 5.2 – Telecommunications Infrastructure

53. A number of concerns received during advertising were raised regarding the proposal not meeting the SPP5.2 in relation to the following:
 - a) Address the needs of the community - There is already acceptable coverage within the area and therefore residents do not want it.
 - b) Should be co-located wherever possible – Panels should just be added to the existing towers rather than constructing a new tower.
 - c) Site selection
54. As outlined above, SPP 5.2 identifies a clear direction under the state planning framework in order to facilitate the roll out of an efficient telecommunications network
55. According to the applicant's Planning Assessment Report (Attachment 1), the development application for the proposed telecommunications infrastructure was lodged on the basis of improving network services to the Robinson locality and will aid in making Robinson and the greater Albany region 5G ready.
56. The proposal has been assessed against SPP5.2. SPP 5.2 provides guiding principles for the location, siting and design of telecommunications infrastructure.
57. Along with the considerations outlined above, SPP 5.2 also outlines that proposed infrastructure should be co-located whenever possible and also located where the

infrastructure will facilitate continuous network coverage and/or improved telecommunication services to the community.

58. The applicant stated in their assessment against SPP5.2 requirements as outlined under the Planning Assessment Report (Attachment 1), that there were no existing facilities within the vicinity that would allow co-location to occur while still meeting the operational requirements for the infrastructure.
59. The applicant provided justification stating that the existing NBN tower was investigated during the site selection process as a potential co-location site, however it was determined that the site was too far away to meet the capacity requirements.
60. As outlined above, the applicant provided rationale contained under the Planning Assessment Report (Attachment 1) outlining the process to determine the subject site being the most appropriate solution to provide mobile phone coverage to the Robinson locality.
61. The proposal demonstrates compliance with the policy objectives and measures under SPP 5.2. A full assessment of the policy is outlined under the Policy Implications section below.

Inconsistency with LPS1

62. Concerns were raised during advertising that the proposal was not appropriate for the General Industry zone under LPS1.
63. Telecommunications Infrastructure is classified as a 'D' use within the General Industry zone under the LPS1 Zoning table, meaning that the use is not permitted unless the local government has exercised its discretion by granting development approval.
64. The proposed development aligns with the objectives and provisions of the General Industry zone under LPS1, in that:
 - It is a use in keeping with existing uses on site and directly adjoining the subject site; and
 - That the proposed infrastructure is intended to improve upon existing telecommunication services in the locality, that would further contribute to Albany's economic growth and its regional centre status within the Great Southern region.
 - The relocation of the infrastructure and compound shelter to the south western corner of the site results in an improvement to the Allerton Road streetscape by removing the initial potential visual obstruction of the existing building façade by the pole and compound shelter. Furthermore, existing trees and vegetation within the adjoining road verge on Newton Street will provide visual screening at ground level, either side of the proposed secondary vehicle access point to the site.
65. SPP 5.2 provides the direction that telecommunication infrastructure should not be prohibited in any zone, hence why it is discretionary within all zones throughout the City of Albany. SPP 5.2 also outlines that buffer zones and or setback distances are not to be included in planning schemes or policies.
66. As outlined above, SPP 5.2 identifies parameters that a local planning framework is required to address in order to facilitate the roll out of an efficient telecommunications network.
67. Local planning schemes and relevant local planning policies are required to adhere to the parameters set out under SPP5.2, including that local planning schemes and relevant local planning policies should not incorporate buffer zones and/or setback distances for installation of telecommunications infrastructure.
68. LPS1 addresses the requirements set out under SPP5.2 in relation to land use permissibility of telecommunications infrastructure.
69. The applicant provided justification in its Planning Assessment Report (Attachment 1) that the proposal has been sited to retain the land for its current use and to minimise visual impacts upon the amenity of the area by being placed on an established industrial site, surrounded by other established industrial developments.

70. The applicant indicated that detailed siting was undertaken to ensure the primary use of the land and any potential future use of surrounding land was not negatively impacted upon.
71. The revised location of the infrastructure and compound shelter results in a reduced impact on the Allerton Road streetscape. Trees and other vegetation within the Newton Street road verge adjoining the site provide visual screening of the pole and compound shelter either side of the proposed secondary vehicle access point to the site.
72. The proposal, including the revised location of the development, is considered to meet the provisions of LPS1.

Does not meet the requirements of the C564:2018 Industry Code – Mobile Phone Base Station Deployment

73. A number of submissions make reference to the applicant not satisfying the requirements of the *C564:2018 Industry Code – Mobile Phone Base Station Deployment* (the Deployment Code) in relation to the following:
 - Submissions contested the applicant’s statement that that they complied with the Deployment Code.
 - Submissions raised concerns in relation to the applicant not providing transparency to residents and the local community on the proposed development.
 - Submissions raised concerns regarding a signed agreement occurring between the landowner and the applicant without planning approval and without community and council discussion or involvement.
74. Submissions raised concerns that the ‘Precautionary Principle” hadn’t been applied. Submissions raised concerns that as young children would be exposed to radiation emitted from the proposed telecommunications infrastructure, that the Precautionary Principle should be applied, in that if there is any perceived doubt about the safety of the technology, in this case EME radiation exposure to people, the implementation of such technology (infrastructure) should be paused or halted until it can be deemed to be safe.
75. It should be noted that the consultation requirements of the Deployment Code do not apply to Mobile Phone Radio Telecommunications Infrastructure that require development approval. Where a development approval is required for telecommunications infrastructure, Public consultation for the proposal is undertaken though the development application process undertaken by the relevant authority (City of Albany in this instance).
76. The applicant provided justification in the Planning Assessment Report (Attachment 1) outlining that although the Code doesn’t specifically apply to the subject proposal, the site was selected and the proposed infrastructure designed in order to comply with the Code in regards to design and adherence to a precautionary approach.
77. The applicant provided further justification in their response to the submissions, in that the mandatory limits set by the Australian Communications Media Authority (ACMA) for EME exposure have a safety margin or precautionary approach built into the safety limit, which the proposed telecommunications infrastructure is required to adhere to.

Environmental concerns - Risk on endangered species and EMR impacts on wildlife

78. Concerns were raised in relation to the risk on endangered species and EMR impacts on wildlife, specifically:
 - Habitat for endangered Western Ringtail Possum;
 - Red and white tailed cockatoos frequent this area (red on critical list);
 - Barn Owls (sonar);
 - Sacred kingfisher;
 - Can it be guaranteed that the proposal will not affect the above?

- Can you guarantee that the Barn Owl who located food by sound will not be affected by this tower?
 - Local apiarists live nearby and this will impact the bees breeding and pollinating capacity, collapsing their colonies.
79. It is noted that the submissions received during consultation reference 'EMR'. The City's consideration of the submissions referencing EMR assume the reference is to EME. Subsequently, officer comments below in response to the submissions received reference EME, noting the submitters' use of EMR.
80. The applicant has provided the following response in relation to the concerns listed above. A full copy of the applicant's response is available under Attachment 7 to this report.
- With respect to possible biological effect of RF EME, in 2019 Telstra asked ARPANSA for their response on the issue of possible effects on flora and fauna. They replied, "There is no established evidence that EME exposure from wireless telecommunications sources is harmful to flora or fauna. It should be remembered that many studies investigating human health are performed in the laboratory on animals and plant cells."*
- Specifically, in relation to bees we are not aware of any evidence that 5G harms bees.*

Property value

81. Decreased property values were raised during the consultation process.
82. Property values are not within the matters to be considered under clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015; and therefore are not a valid planning consideration.
83. It should be noted that there is a clear legal precedent that impact on property values in itself is not a relevant planning consideration.

Noise

84. Concerns were raised regarding constant humming from the proposed development.
85. It is anticipated that there will be some low-level noise from the ongoing operation of air conditioning equipment associated with the equipment shelter. This is comparable to a domestic air conditioning unit.
86. The proposed development is considered to be appropriately setback from residential properties mitigating any associated noise.
87. Further to this, the standard condition in relation to management of environmental impacts (including noise) in order to not prejudicially affect the amenity of the neighbourhood is proposed to be applied as a condition of approval should the proposal be supported.
88. The proposed development is also required to be installed and operated in accordance to prescribed levels set out under the *Environmental Protection Act 1986*, and the *Environmental Protection (Noise) Regulations 1997*. This requirement is identified through an advice note applied should the proposal be supported. The legislation is managed through the Department of Water and Environmental Regulation (DWER).

Insufficient consultation undertaken by the City of Albany

89. Although not specifically required under LPS1, the application was advertised for a period of twenty-seven (27) days (between 18 September 2020 – 14 October 2020). All landowners within a 500m radius of the site were notified directly by letter, and a notice was placed on the City of Albany website.
90. Public consultation of the proposal was undertaken in accordance with clause 64 of the Planning Regulations which requires a proposal to be advertised for a minimum period of 14 days to surrounding landowners within the vicinity of the proposal.

91. A copy of the proposal was also made available on the City of Albany’s website during the consultation period.
92. In addition to above, on Wednesday 10 March 2021, the City of Albany received a Petition requesting that a Special Meeting of Electors be convened with the details of the matter to be discussed at the meeting being DIS252: Telecommunications Infrastructure. The *Local Government Act 1995* and the *Local Government (Administration) Regulations 1996* require that public notice be given for a period of 14 days prior to a Special Meeting of Electors.
93. A Special Electors’ Meeting was held on 29 March 2021 to discuss the report item DIS252.

GOVERNMENT & PUBLIC CONSULTATION

1. Community Engagement

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Consult	<ul style="list-style-type: none"> • Mail out to landowners • City of Albany website 	18/09/2020 to 14/10/2020	42 submissions received	No Consultation process undertaken in accordance with cl. 64 of the Planning Regulations

94. Although not specifically required under LPS1, due to the nature of the proposal, the development application was advertised for a period of twenty-seven (27) days (between 18 September 2020 – 14 October 2020).
95. All landowners within a 500m radius of the site were notified directly by letter, and a notice was placed on the City of Albany website. Advertising was undertaken in accordance with clause 64 of Planning Regulations.
96. During the advertising period a total of 42 submissions were received, all objecting or raising concerns regarding the proposal.
97. The content of the submissions is summarised in more detail in the attached schedule of submissions. Staff comments and recommendations are provided in the attached schedule, while the broad issues are discussed in the Discussion section above.
98. In addition to above, a Special Meeting of Electors was held on 29 March 2021, following a Petition received by the City on Wednesday 10 March 2021, requesting that a Special Meeting of Electors be convened. The Petition outlined that the details of the matter to be discussed at the meeting being DIS252: Telecommunications Infrastructure.
99. It should be noted that the convening of the Special Electors Meeting held on 29 March 2021 does not form part of the formal consultation or decision making processes required to be followed by the local government in order to determine the subject proposal. The concerns raised at the Special Meeting of Electors are to be addressed separately to this report.

STATUTORY IMPLICATIONS

100. Telecommunications Infrastructure is classified as a “D” use within the ‘General Industry’ zone under the LPS1 Zoning table, meaning that the use is not permitted unless the Local Government has exercised its discretion by granting planning approval.
101. Voting requirement for this item is **SIMPLE MAJORITY**.

POLICY IMPLICATIONS

102. The proposal has been assessed against SPP 5.2. SPP 5.2 provides guiding principles for the location, siting and design of telecommunications infrastructure.

103. It is important to note that SPP 5.2 provides the direction that telecommunication infrastructure should not be prohibited in any zone, hence why it is discretionary within all zones throughout the City of Albany.
104. Furthermore, buffer zones and or setback distances are not to be included in planning schemes or policies.
105. There is a clear direction in the SPP 5.2 to facilitate the roll out of an efficient telecommunications network, unless the location and siting unreasonably affects places of cultural or environmental significance, or the visual impact on balance has not been mitigated to outweigh the community benefit of the service it will provide the community.
106. Comment in reference to the key guiding principles for the location, siting and design of telecommunications infrastructure from SPP 5.2 are as follows:
- “Telecommunications infrastructure should be sited and designed to minimise visual impact and whenever possible:*
- a) Be located where it will not be prominently visible from significant viewing locations such as scenic routes, lookouts and recreation sites;
 - b) Be located to avoid detracting from a significant view of a heritage item or place, a landmark, a streetscape, vista or a panorama, whether viewed from public or private land;
 - c) Not be located on sites where environmental, cultural heritage, social and visual landscape values maybe compromised and
 - d) Display design features, including scale, materials, external colours and finishes that are sympathetic to the surrounding landscape;”
107. As outlined above, the applicant provided rationale within the Planning Assessment Report (Attachment 1) outlining the process and measures undertaken to select a site and location that aims to minimise perceived negative impacts from the proposed development on the visual amenity of the area.
108. The location is over 1.3kms from Princess Royal Harbour, 300m from Lower Denmark Road and over 1km Frenchman Bay Road. It is not anticipated the facility will be visually dominant from any of these locations
109. The subject land is not identified as being within an area of high landscape protection, nor does it contain any places of heritage significance.
110. The infrastructure is located within an existing cleared area and does not require the removal of any native vegetation.
111. The applicant has proposed a monopole rather than a lattice style tower as it is less obtrusive. It is also proposed to leave the infrastructure unpainted in a grey colour which is the preferred finish for telecommunication infrastructure as it blends as far as practical against lighter background such as the sky.
- “Telecommunications infrastructure should be located where it will facilitate continuous network coverage and/or improved telecommunications services to the community;”*
112. The site has been chosen to address the existing coverage issues in the Robinson and surrounding areas.
113. There are no existing facilities which would allow co-location to occur while still meeting the operational requirements for the infrastructure.
114. The relocation of the infrastructure and compound shelter further mitigates the visual impact of the development to Allerton Road by removing the potential visual obstruction of the façade of the existing building. Additionally, the relocation of the development to the south western corner of the site will be mitigated by visual screening from existing trees and other vegetation within the adjoining Newton Street verge.

115. The proposal demonstrates compliance with the policy objectives of SPP 5.2.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<p>Reputation The perception that the approval may generate unacceptable impacts on the amenity on the area.</p>	Possible	Moderate	Medium	The application has been assessed against the relevant statutory framework and sited to minimise any impacts on the amenity of the area.
<p>Opportunity: Responds to community for improving mobile telecommunications in the municipality.</p>				

FINANCIAL IMPLICATIONS

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

LEGAL IMPLICATIONS

118. The proponent has the right to seek a review of the Council's decision, including any conditions attached to an approval, conferred by the *Planning and Development Act 2005*. The City of Albany may be required to defend the decision at a State Administrative Tribunal hearing.

ENVIRONMENTAL CONSIDERATIONS

119. The proposed development is required to comply with parameters set out under the Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields – 3kHz to 300GHz. The Federally established Australian Protection and Nuclear Safety Agency (ARPANSA) enforce these Standards.

ALTERNATE OPTIONS

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

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

CONCLUSION

121. The proposal has been assessed against LPS1 and SPP5.2 relating to telecommunications infrastructure.

122. In determining the application, it is necessary to consider and potential impacts on amenity against the long term benefit of improved mobile telecommunication services and coverage.

123. It is therefore recommended that Council approve the proposed development, subject to the conditions provided.

Consulted References	:	<ol style="list-style-type: none"> 1. Local Planning Scheme No. 1 2. Albany Local Planning Strategy 2010 3. State Planning Policy 5.2 - <i>Telecommunications Infrastructure</i> 4. Visual Landscape Planning in Western Australia – a manual for assessment, siting and design 5. <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>
File Number (Name of Ward)	:	A66676 (Vancouver Ward)
Previous References	:	OCM 23/03/2021 Report Item DIS252 SEM 29/03/2021 - Special Electors' Meeting

DIS255: PLANNING AND BUILDING REPORTS MARCH 2021

Proponent / Owner : City of Albany.
Attachments : Planning and Building Reports March 2021
Report Prepared By : Information Officer – Development Services - Zoe Sewell
Responsible Officers: : Manager Planning and Building Services
(J Van Der Mescht)

RECOMMENDATION

DIS255: RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY

THAT Council NOTE the Planning and Building Reports for March 2021.

COVID-19 IMPACT

- COVID-19 has no impact on this report.

**LEMC025: RECEIVE THE MINUTES OF THE LOCAL EMERGENCY
MANAGEMENT COMMITTEE – 17 DECEMBER 2020**

- Attachments** : Confirmed Minutes of the LEMC Meeting held 17/12/2020
- Report Prepared By** : Personal Assistant to Executive Director Corporate & Commercial Services (H Bell)
- Responsible Officers:** : Executive Director Corporate and Commercial Services (D Olde)

STRATEGIC IMPLICATIONS

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

In Brief:

- Receive the minutes of the Local Emergency Management Committee meeting held on 17 December 2020.

COVID-19 IMPACT

- Covid-19 has no impact on this report.

RECOMMENDATION

**LEMC025: RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY**

THAT the confirmed minutes of the Local Emergency Management Committee meeting held on 17 December 2020 be RECEIVED.

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