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# MINUTES

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**Ordinary Meeting of Council**

**Tuesday 27 April 2021**

6.00pm  
Council Chambers

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



ORDINARY COUNCIL MEETING  
MINUTES - 27/04/2021

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**1. DECLARATION OF OPENING**

The Mayor declared the meeting open at 6.00pm.

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

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

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

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

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

Mayor

D Wellington

**Councillors:**

Breaksea Ward

P Terry

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

Manager Planning and Building Services

J van der Mescht

Manager Governance & Risk

S Jamieson

Meeting Secretary

D Clark

**Apologies:**

Breaksea Ward

R Hammond (Leave of Absence)

Frederickstown Ward

Vacant

Executive Director Community Services

N Watson (Apology)

Four members of media and 29 members of the public were in attendance

#### 4. DISCLOSURES OF INTEREST

Name	Report Item Number	Nature of Interest
Councillor Stocks	CCS337	<b>Financial:</b> 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	<b>Financial:</b> 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.
Councillor Terry	DIS252	<b>Financial</b> The nature of the interest being that Councillor Terry is the trustee of a self-managed superannuation fund which owns more than the prescribed amount of Telstra shares. Councillor Terry left the Chamber and was not present during the discussion and vote for this item.
Chief Executive Officer Mr Andrew Sharpe and Manager People & Culture Ms Libby Harding	CCS344	<b>Impartiality.</b> The nature of the interest being an interest in common with all City of Albany employees. Both the CEO and Manager People & Culture were responsible for the preparation of the report and recommendation to Council.

#### 5. REPORTS OF MEMBERS

##### 6:02pm Councillor Terry

##### Summary of key points:

Councillor Terry attended the official opening of the refurbished Albany Town Hall, and said that he enjoyed the presentation by Jon Doust on the history of the town hall.

The Great Southern Art Exhibition was also on display and Councillor Terry enjoyed viewing this.

Councillor Terry also participated in a very engaging meeting with WALGA President and WALGA CEO and looks forward to seeing the outcome from the discussion.

Councillor Terry encouraged residents to attend Cinefest OZ commencing on Thursday.

Councillor Terry said that this year's Anzac Day dawn service was a very moving, special event.

##### 6:07pm Councillor Stocks

##### Summary of key points:

Councillor Stocks stated that he was very supportive of Cinefest OZ, and congratulated Council and the City for supporting this initiative.

**6:08pm Councillor Benson-Lidholm**  
**Summary of key points:**

Councillor Benson-Lidholm attended the Regional Road Group meeting held in Kojonup. Andrew Duffield, Main Roads, provided an update on projects including the ring road project due for completion at the end of 2023.

Following the Regional Road Group meeting, Councillor Benson-Lidholm attended the Great Southern Zone of WALGA meeting.

Councillor Benson-Lidholm said that there were no matters of importance arising from that meeting, however, issues and concerns were raised about telecommunications.

**6.10pm Councillor Sleeman**  
**Summary of key points:**

Councillor Sleeman congratulated staff on delivering of some great projects, despite the challenges posed by the pandemic. Councillor Sleeman said that it was wonderful to see young people using and enjoying the Pump Track and Skate Park.

Councillor Sleeman said that the long awaited Sandford Road upgrade also very positive, and she was very proud to be part of this Council.

**6.12pm Councillor Thomson**  
**Summary of key points:**

Councillor Thomson was appreciative that the City has advertised street trees for the public and encouraged councillors to take up the opportunity of obtaining a street tree also.

**6.13pm Councillor Sutton**  
**Summary of key points:**

Councillor Sutton also attended the opening of the refurbished Town Hall, and very much enjoyed the performance by Jon Doust, which while amusing, conveyed the history of Albany.

Councillor Sutton agreed that the Pump Track is a terrific facility for all ages, and congratulated City staff for delivering the project.

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

**7. PUBLIC QUESTION TIME**

**6:15pm Mr Mark Bayliss General Manager, Albany Racing Club**  
**Summary of key points:**

Mr Bayliss addressed Council regarding DIS252: Telecommunications Infrastructure.

Mr Bayliss said that the Albany Racing Club would be interested in the proposed telecommunications infrastructure being located on their property.

The income from the infrastructure would be of assistance to the Club, and he requested that consideration be given to locating the infrastructure at the Racing Club.

**6:17pm Mr Ray Eskett, 198 Elphinstone Road, Robinson**

**Summary of key points:**

Mr Eskett addressed Council regarding DIS252: Telecommunications Infrastructure.

Mr Eskett spoke in opposition to the proposal. Mr Eskett has provided to the Mayor an email containing a summary of a report by Dr Russell Cooper regarding the effects of 5G. This document is detailed at Appendix A.

**6:18pm Mr Don Phillips, 314 Frenchman Bay Road**

**Summary of key points:**

Mr Phillips tabled 15 pages including questions on notice and requested that this information be included in its entirety in the minutes of this meeting.

The documents tabled by Mr Phillips have not been published as part of these minutes, as this may be viewed as 'republishing' of potential defamatory content. A written response to Mr Phillips' questions will be provided to Mr Phillips.

**6:22pm Ms Annie Matheson, Stirling Street, Robinson**

**Summary of key points:**

Ms Matheson addressed Council regarding DIS252: Telecommunications Infrastructure.

Ms Matheson spoke against the proposal. Ms Matheson read a letter to the meeting on behalf of Mr Ray Eskett regarding health concerns should the infrastructure be constructed on the proposed site.

**6:26pm Ms Samantha Stevens, 37 Rowney Road, Robinson**

**Summary of key points:**

Ms Stevens thanked City staff, Councillor Sleeman and Councillor Shanhun for supporting the creation of the Stidwell Bridle Trail Working Group.

Ms Stevens provided a brief history of the Trail and an overview of the City of Albany Trails Hub Strategy.

Ms Stevens said that she believes more needs to be done to implement the various elements contained in the Strategy, including appropriate staff resourcing and establishing achievable five year goals. Ms Stevens tabled address is detailed at Appendix A.

**6:30pm Mr Mitch Lever, Chester Pass Road, Albany**

**Summary of key points:**

Mr Lever addressed Council regarding DIS252: Telecommunications Infrastructure.

Mr Lever spoke against the proposal. Mr Lever tabled a document regarding the adverse health impact of 5G technology, which is detailed at Appendix A.

**6:34pm Ms Yasmin Bartlett, 130 Springdale Heights, Denmark**

**Summary of key points:**

Ms Bartlett addressed Council regarding DIS252: Telecommunications Infrastructure.

Ms Bartlett spoke against the proposal, as she feels that 5G results in an increase in negative effects on people and the environment.

Ms Bartlett encouraged Council to consider the health effects of 5G in their deliberations.

**6:39pm Ms Yana Appleton, 660 Lower King Road, Lower King**  
**Summary of key points:**

Ms Appleton addressed Council regarding DIS252: Telecommunications Infrastructure.

Ms Appleton spoke against the proposal, and requested that Council defer a decision so that the report can be considered as other than a planning matter.

Ms Appleton said that the 5G network should be underground.

**Ms Emily Pink, Telstra (via zoom)**  
**Summary of key points:**

Ms Pink addressed Council in support of the Committee Recommendation for DIS252: Telecommunications Infrastructure. Ms Pink advised that the tower was required to meet the demand for service.

An increase in population dictated where and how many towers were required. Users demanded a reliable and high speed network.

This site was first proposed in July 2018. The initial site proposed was altered after consideration of public submissions. The Mt Melville tower is at capacity and the proposed telecommunications infrastructure will improve mobile telecommunication in the area.

**Mr Martin Wittek, Telstra (via zoom)**  
**Summary of key points:**

Mr Wittek addressed Council in support of the Committee Recommendation for DIS252: Telecommunications Infrastructure.

Mr Wittek advised that the proposed tower is not a 5G tower, but will be providing coverage for an already congested network.

Mr Wittek advised that the Albany Race Club site had been considered but it was located too far South and too close to a national park.

This meant that 180 degrees of the towers coverage would be in an area where there was no population to use the tower.

Mr Wittek stated that the current proposal meets all health regulations.

**8. APPLICATIONS FOR LEAVE OF ABSENCE Nil**

**9. PETITIONS AND DEPUTATIONS Nil**



10. CONFIRMATION OF MINUTES

**RESOLUTION**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR SLEEMAN**

**SECONDED: COUNCILLOR THOMSON**

**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.**

**CARRIED 11-0**

**RESOLUTION**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR SLEEMAN**

**SECONDED: COUNCILLOR SUTTON**

**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.**

**CARRIED 11-0**

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 decisions made at an electors meeting are to be considered at the next ordinary council meeting if practicable.

If Council chooses to consider or make a decision in response to a decision made an electors meeting, the reason for the decision is 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 point that is raised, not a blanket yes or no response.

The following decisions were proposed by electors for Council consideration.

**6.50pm Councillor Terry left the Chamber after declaring a Financial Interest in Report Item DIS252: Telecommunications Infrastructure, which is the subject of the Special Electors' Meeting Motions.**

**MOTION 4 – PROPOSED BY MS YANA APPLETON**

**MOVED: MS YANA APPLETON**

**SECONDED: MR 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**

**RESOLUTION: MOTION 4 – PROPOSED BY MS YANA APPLETON**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR THOMSON**

**SECONDED: COUNCILLOR SLEEMAN**

**That the motion proposed by Ms Yana 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.**

**CARRIED 10-0**

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

**MOTION 1 – PROPOSED BY MR DON PHILLIPS**

MOVED: MR DON PHILLIPS  
SECONDED: MR 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

**RESOLUTION MOTION 1 – PROPOSED BY MR DON PHILLIPS  
VOTING REQUIREMENT: SIMPLE MAJORITY**

MOVED: COUNCILLOR SUTTON  
SECONDED: COUNCILLOR DOUGHTY

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.

CARRIED 9-1

**Record of Vote**

Against the Motion: Councillor Sleeman

**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: MS JUDY HUNT  
SECONDED: MR 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

**RESOLUTION MOTION 2: ALTERNATE MOTION BY COUNCILLOR THOMSON  
VOTING REQUIREMENT: SIMPLE MAJORITY**

MOVED: COUNCILLOR THOMSON  
SECONDED: COUNCILLOR STOCKS

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).”*

Is NOT accepted.

CARRIED 10-0

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: MS LINDA HILL

SECONDED: MR 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

RESOLUTION: MOTION 3 – PROPOSED BY MS LINDA HILL  
VOTING REQUIREMENT: SIMPLE MAJORITY

MOVED: COUNCILLOR THOMSON

SECONDED: COUNCILLOR STOCKS

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 the applicant.

CARRIED 10-0

**Comment:** It is acknowledged that members of the community are opposed to the proposed 5G technology. The City has formally requested in writing that the applicant take into consideration this request.

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: MS YANA APPLETON

SECONDED: MS LINDA HILL

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

CARRIED 28-0

**RESOLUTION: MOTION 5 ALTERNATE MOTION BY COUNCILLOR THOMSON  
VOTING REQUIREMENT: SIMPLE MAJORITY**

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

**That the motion proposed by Ms Yana 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 NOT accepted.**

**CARRIED 10-0**

**Councillor Reason:**

The possibility of devaluation of property surrounding the proposed site is not a valid consideration under planning legislation.

**RESOLUTION: MOTION 5 – PROPOSED BY MS YANA APPLETON  
VOTING REQUIREMENT: SIMPLE MAJORITY**

That the motion proposed by Ms Yana 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.

**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.

**6.57pm Councillor Terry returned to the Chamber.**

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

**MOVED: COUNCILLOR SLEEMAN**  
**SECONDED: COUNCILLOR GOODE**

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

**CARRIED 11-0**

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.

<b>File Number (Name of Ward)</b>	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: RESOLUTION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

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

**That 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 be RECEIVED.**

**CARRIED 11-0**

**CCS333: COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR SMITH**  
**SECONDED: COUNCILLOR THOMSON**

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

**CARRIED 10-0**

**CCS333: RESPONSIBLE OFFICER RECOMMENDATION**

**That 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 be RECEIVED.**

**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.

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

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
<b>TOTAL</b>	<b>\$300,023.22</b>
<b>Cancelled Cheques</b>	<b>Nil</b>

### STATUTORY IMPLICATIONS

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

### POLICY IMPLICATIONS

6. Expenditure for the period to 15 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.

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

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

**BACKGROUND:**

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

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

**COVID-19 IMPACT**

- COVID-19 has no impact on this report.

**RECOMMENDATION**

**CCS334: RESOLUTION  
VOTING REQUIREMENT: SIMPLE MAJORITY**

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

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

**CARRIED 11-0**

**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**

*This item was considered as confidential 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**

**RESOLUTION**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR SUTTON**

**SECONDED: COUNCILLOR SLEEMAN**

**THAT in accordance with clause 4.1 of the City of Albany Standing Orders Local Law 2014 (as amended) the meeting be closed to members of the public to discuss the following confidential reports:**

**CCS335: ALBANY VISITOR CENTRE OPERATIONS (AVC)**

**CCS336: CENTENNIAL STADIUM NAMING RIGHTS SPONSORSHIP**

**CCS344: COVID PAYMENT**

**CARRIED 11-0**

8.02pm

**RESOLUTION**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR SUTTON**

**SECONDED: COUNCILLOR SLEEMAN**

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

**CARRIED 11-0**

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

**MOVED: COUNCILLOR GOODE  
SECONDED: COUNCILLOR SUTTON**

**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 11-0**

**CCS335: COMMITTEE RECOMMENDATION**

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

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

**CARRIED 10-0**

**CCS336: CENTENNIAL STADIUM – NAMING RIGHTS SPONSORSHIP**

<b>Land Description</b>	:	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
<b>Proponent</b>	:	Centennial Stadium Inc
<b>Owner</b>	:	Crown (City of Albany under Management Order)
<b>Report Prepared By</b>	:	Team Leader Property and Leasing (T Catherall)
<b>Responsible Officers:</b>	:	Executive Director Corporate and Commercial Services (D Olde)

**CONFIDENTIAL REPORT**

*This report was considered as 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**

8.00pm

**RESOLUTION**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR SUTTON**

**SECONDED: COUNCILLOR SLEEMAN**

**THAT in accordance with clause 4.1 of the City of Albany Standing Orders Local Law 2014 (as amended) the meeting be closed to members of the public to discuss the following confidential reports:**

**CCS335: ALBANY VISITOR CENTRE OPERATIONS (AVC)**

**CCS336: CENTENNIAL STADIUM NAMING RIGHTS SPONSORSHIP**

**CCS344: COVID PAYMENT**

**CARRIED 11-0**

8.02pm

**RESOLUTION**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR SUTTON**

**SECONDED: COUNCILLOR SLEEMAN**

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

**CARRIED 11-0**

**CCS336: RESOLUTION**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR SUTTON**

**SECONDED: COUNCILLOR SMITH**

**THAT Council APPROVE the naming rights sponsorship for the Centennial Stadium to Albany Retravisio, subject to:**

- a) Centennial Stadium Inc. enter into a corporate naming rights sponsorship agreement with Albany Retravisio.
- b) Centennial Stadium Inc apply all funds received from Albany Retravisio 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.

**CARRIED 10-1**

**Record of Vote**

Against the Motion: Councillor Thomson

**CCS336: COMMITTEE RECOMMENDATION**

**MOVED: COUNCILLOR STOCKS**

**SECONDED: COUNCILLOR SUTTON**

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

**CARRIED 9-1**

**Record of Vote**

Against the Motion: Councillor Thomson

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

<b>Land Description</b>	: 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
<b>Attachments</b>	Report ( <b>CONFIDENTIAL</b> )
<b>Business Entity Name</b>	: City of Albany
<b>Owner</b>	: Crown (City of Albany under Management Order)
<b>Report Prepared By</b>	: Team Leader Property and Leasing (T Catherall)
<b>Responsible Officers:</b>	: Executive Director Corporate and Commercial Services (D Olde)

6.59pm Councillor Stocks left the Chamber after declaring a Financial Interest in this item.

**STRATEGIC IMPLICATIONS**

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

**VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**MOVED: COUNCILLOR BENSON-LIDHOLM**

**SECONDED: COUNCILLOR TERRY**

**THAT Council:**

- i) **APPROVES** a request to the Minister for Lands to excise portion of land approx. 7465m<sup>2</sup> 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.**

**CARRIED 10-0  
ABSOLUTE MAJORITY**



**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. 7465m<sup>2</sup> 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.

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

7.00pm Councillor Stocks returned to the Chamber. Councillor Stocks was not present during the discussion and vote for this item.

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

<b>Land Description</b>	: City of Albany
<b>Attachment</b>	: Proposed amendment local law (marked up)
<b>Report Prepared By</b>	: Manager Governance & Risk (S Jamieson)
<b>Responsible Officers:</b>	: 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: RESOLUTION  
VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**MOVED: COUNCILLOR SHANHUN  
SECONDED: COUNCILLOR SMITH**

**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 of .....2021.

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

CARRIED 11-0  
ABSOLUTE MAJORITY

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

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 \_\_\_\_\_ 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 of .....2021.

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
<b>Legal &amp; Compliance.</b> <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>
<b>Opportunity:</b> <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.

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

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

<b>Land Description</b>	: City of Albany
<b>Attachments</b>	: <ul style="list-style-type: none"><li>• Attachment 1 – Local Government (Model Code of Conduct) Regulations 2021</li><li>• Attachment 2 - Code of Conduct Breach Form Template</li><li>• Attachment 3 - Department of Local Government, Sport and Cultural Industries Standards and Guidelines: For Local Government CEO Recruitment and Selection, Performance Review and Termination.</li><li>• Attachment 4 – Amended Policy Position: CEO Performance Review Process Policy</li></ul>
<b>Report Prepared By</b>	: Manager Governance & Risk (S Jamieson)
<b>Responsible Officers:</b>	: Chief Executive Officer (A Sharpe)

**STRATEGIC IMPLICATIONS**

1. This item relates to the following elements of the City of Albany Strategic Community Plan 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.

**CCS339: RESOLUTION (AMENDED MOTION BY COUNCILLOR THOMSON)  
VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**MOVED: COUNCILLOR THOMSON  
SECONDED: COUNCILLOR TERRY**

**THAT:**

- (1) **The Model Code of Conduct for Council Members, Committee Members and Candidates be ADOPTED with the following amendments:**
  - **Clause 9(b) to be appended with a clarifying foot note 1: read:**  
*(b) must deal with the media in a positive<sup>1</sup> and appropriate manner and in accordance with any relevant policy of the local government;*  
*Footnote: positive<sup>1</sup> meaning respectful.*
- (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, including the amendment of Paragraph 2 of Part 10 to read:

*Following a review of the performance of the CEO, the Council must consider the review, which will only be endorsed by an absolute majority resolution of Council.*

**CARRIED 10-1  
ABSOLUTE MAJORITY**

**Record of Vote**

Against the Motion: Councillor Thomson

**RECOMMENDATION**

CCS339: AMENDMENT BY COUNCILLOR THOMSON  
VOTING REQUIREMENT: SIMPLE MAJORITY

MOVED: COUNCILLOR THOMSON  
SECONDED: COUNCILLOR TERRY

THAT:

1. The Model Code of Conduct for Council Members, Committee Members and Candidates be **ADOPTED** with the following amendments:
  - Clause 9(b) to be appended with a clarifying foot note 1: read:  
*(b) must deal with the media in a positive<sup>1</sup> and appropriate manner and in accordance with any relevant policy of the local government;*  
*Footnote: positive<sup>1</sup> meaning respectful.*
2. Paragraph 2 of Part 10 of the amended CEO Performance Review Policy be amended to read:  
*Following a review of the performance of the CEO, the Council must consider the review, which will only be endorsed by an absolute majority resolution of Council.*

**CARRIED 10-1**

**Record of Vote**

Against the Motion: Councillor Thomson

**Councillor Reasons:**

**Draft Model Code of Conduct:**

The requirement of Draft Clause 9(b) to deal with the media in a 'positive' way may, in instances where fair critique may be necessary, run counter to the interests of the City.

**Officer Comment (Manager Governance and Risk):**

Consultation has been conducted with the Dept. of Local Government and WALGA.

The content of the model code of conduct regulations cannot be deleted, only added to.

The proposed amendment clarifies the interpretation of the term "positive" as meaning "respectful", acknowledging the synonyms for the term "respectful" being: courteous, polite, decorous, and civil.

**CEO Performance Review Policy:**

Although not likely the intention, the current draft, in stating that the ‘Council must...endorse’ a review of a CEO’s performance could be perceived to pre-empt future Council decisions

**Officer Comment (Manager Governance and Risk):**

The proposed amendment to the Council’s current policy, being:

*“Following a review of the performance of the CEO, the Council must, by resolution of an absolute majority of the council, endorse the review.”*

*The proposed amendment, being:*

*“Following a review of the performance of the CEO, the Council must consider the review, which will only be endorsed by resolution of an absolute majority of the Council.”*

The new standards regarding CEO performance review, which amended the current policy, are based on the principles of fairness, integrity and impartiality.

The proposed amendment does not change the intent of the proposed amendment and improves readability.

*Councillor Thomson then proposed an Amendment to the Committee Recommendation.*

CCS339: COMMITTEE RECOMMENDATION  
VOTING REQUIREMENT: ABSOLUTE MAJORITY

MOVED: COUNCILLOR THOMSON  
SECONDED: COUNCILLOR TERRY

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.
- (1) 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**

Against the Motion: Councillor Thomson and Councillor Sleeman

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:
  - 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).

**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:
  - overarching principles to guide behaviour;
  - behaviours which are managed by local governments; and
  - 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:
  - appoint a person(s) to receive complaints by either affirming the complaint officers or appointing a new or additional officer(s), and
  - 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.
16. Key provisions include:
  - recruitment of CEOs - selection criteria, job description, advertising the vacancy, selection panel, contract of employment, mandatory advertising after 10 years of incumbency;
  - performance review of CEO; and
  - termination of CEO.
17. 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.
18. 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**

19. Public consultation was facilitated as part of the Local Government Act review by The Department of Local Government, Sport and Cultural Industries (the Department).
20. Government consultation: The Department of Local Government, Sport and Cultural Industries (the Department) have provided extensive communications to the local government sector.
21. The Department has:
  - 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
  - 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

22. 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

23. 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.
24. 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.
25. 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)

26. 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:
  - The Mayor or Deputy consider all complaints;
  - Delegation of complaints to the CEO to prepare a report for the council;
  - Appointment of an independent/external consultant to review complaints and provide a report to the council; and
  - Establish a committee to review complaints and report to the council. The committee may include independent members.

### Additions to the Model Code

27. Local governments may not amend Division 2 (Principles) or Division 4 (Rules of Conduct).
28. 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).
29. 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

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Legal &amp; Compliance.</b> <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>
<b>Opportunity:</b> <i>Opportunity to consider appointing an additional complaints officer.</i>				
<b>Opportunity:</b> <i>Opportunity to consider additions to the Model Code, incorporating additional behaviour requirements that are not represented in the Model Code.</i>				

## FINANCIAL IMPLICATIONS

31. Minor administration costs will be incurred.

## LEGAL IMPLICATIONS

32. Required actions for local governments and individuals:

- 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).
- 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

33. Not applicable to this report.

## ALTERNATE OPTIONS

34. Council may also consider:

- The appointment of additional Complaints Officers to receive complaints and withdrawals of complaints in regards to breaches of the Code of Conduct.
- Additions to the Model Code, incorporating additional behaviour requirements that are not represented in the Model Code.

## CONCLUSION

35. 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.
36. It is recommended that the current policy positions relating to management of complaints in relation to the CEO and Elected Members be RESCINDED.
37. It is recommended that additions to the Code of Conduct and associated processes are workshopped and presented in the future for consideration.



<b>Consulted References</b>	:	<ul style="list-style-type: none"> <li>• <i>Local Government Act 1995</i></li> <li>• <a href="#">Department of Local Government, Sport &amp; Cultural Industries online resources</a></li> <li>• <a href="#">Local Government (Model Code of Conduct) Regulations 2021</a></li> <li>• <a href="#">Model Code of Conduct Explanatory Notes</a></li> <li>• <a href="#">Model Code of Conduct Guidelines</a></li> <li>• <a href="#">Code of Conduct Breach Template</a></li> <li>• <i>Current City of Albany's:</i> <ul style="list-style-type: none"> <li>○ <a href="#">Code of Conduct (Council Members, Committee Members, Staff &amp; Volunteers)</a></li> <li>○ <a href="#">Handling of Complaints By or Against Elected Members Policy and Procedures</a></li> <li>○ <a href="#">Handling of Complaints By or Against the Chief Executive Officer Policy &amp; Procedure</a></li> </ul> </li> </ul>
<b>File Number (Name of Ward)</b>	:	All Wards
<b>Previous Reference</b>	:	<ul style="list-style-type: none"> <li>• OCM 23/05/2017 Resolution CCOS028.</li> </ul>

## 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: RESOLUTION 1

#### VOTING REQUIREMENT: ABSOLUTE MAJORITY

**Moved:** COUNCILLOR SLEEMAN

**Seconded:** COUNCILLOR SMITH

**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.**

**CARRIED 11-0  
ABSOLUTE MAJORITY**

**CCS340: RESOLUTION 2  
VOTING REQUIREMENT: ABSOLUTE MAJORITY**

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

**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.**

**CARRIED 11-0  
ABSOLUTE MAJORITY**

**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.
- e. 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.
- f. 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
<b>Reputation &amp; Organisation’s Operations.</b> <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>
<b>Opportunity:</b> <ul style="list-style-type: none"> <li><i>Provides Council with an additional opportunity to review the City’s current budget position.</i></li> <li><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></li> </ul>				

## LEGAL IMPLICATIONS

11. Nil.

## ENVIRONMENTAL CONSIDERATIONS

12. Nil.

## ALTERNATE OPTIONS

13. Committee may consider to:
- Adopt the amendments as recommended; or
  - 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

<b>Consulted References</b>	:	<ul style="list-style-type: none"> <li>Adopted Budget 2020/2021</li> <li>Local Government Act 1995</li> </ul>
<b>File Number (Name of Ward)</b>	:	FM.BUG.12
<b>Previous Reference</b>	:	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.
- 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: RESOLUTION**  
**VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**Moved: Councillor Stocks**  
**Seconded: Councillor Benson-Lidholm**

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

**CARRIED 11-0**  
**ABSOLUTE MAJORITY**

CCS341: COMMITTEE RECOMMENDATION

Moved: Councillor Stocks  
Seconded: Councillor Benson-Lindholt

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 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 or 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.

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



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

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

7.10pm Councillor Thomson left the Chamber after declaring a Financial Interest in this item.

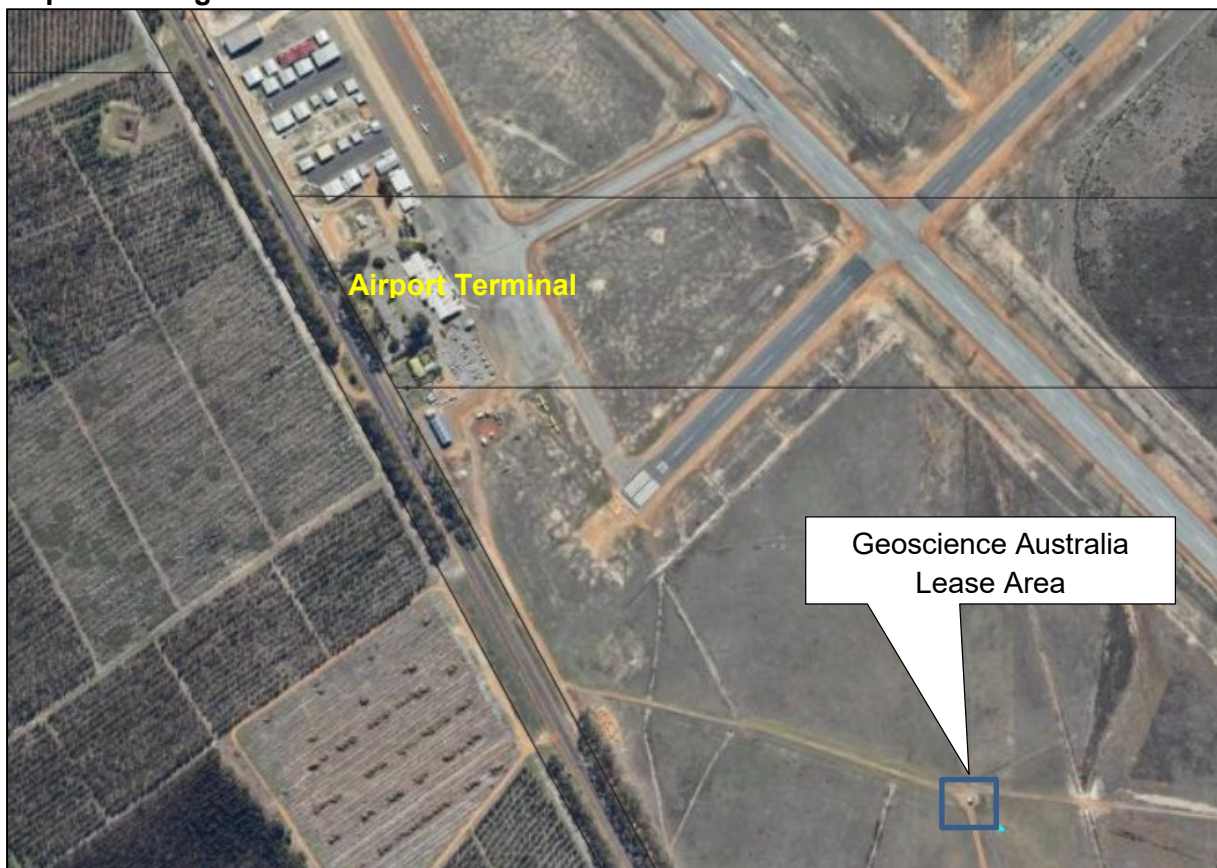
**STRATEGIC IMPLICATIONS**

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

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR SMITH**

**SECONDED: COUNCILLOR DOUGHTY**

**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 5m<sup>2</sup>.**
- 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).**

**CARRIED 10-0**

**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 5m<sup>2</sup>.
- 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 <sup>2</sup> 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.

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

7.11pm Councillor Thomson returned to the Chamber. Councillor Thomson was not present during the discussion and vote for this item.

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

**MOVED: COUNCILLOR GOODE**  
**SECONDED: COUNCILLOR SLEEMAN**

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

**CARRIED 11-0**

**CCS344: COVID PAYMENT**

**Attachments** : **CONFIDENTIAL Briefing Note – COVID Payment**  
**Report Prepared By** : Manager People & Culture (L Harding)  
**Responsible Officers:** : Chief Executive Officer (A Sharpe)  
Executive Management Team

**CONFIDENTIAL REPORT**

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

**STRATEGIC IMPLICATIONS**

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

**In Brief:**

- Confidential attached briefing note prepared for Council consideration.
- Council is requested to consider the proposed payment.

**RECOMMENDATION**

**RESOLUTION**

**VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**MOVED: COUNCILLOR SUTTON**

**SECONDED: COUNCILLOR SLEEMAN**

**That the Council consider this matter as urgent business, in accordance with clause 3.5 of the City of Albany Standing Orders Local Law 2014 (As amended).**

**CARRIED 11-0  
ABSOLUTE MAJORITY**

**Reason:** As this report affects employees, distribution prior to the meeting may have compromised the confidentiality of this report.

**8.00pm**

**RESOLUTION**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR SUTTON**

**SECONDED: COUNCILLOR SLEEMAN**

**THAT in accordance with clause 4.1 of the City of Albany Standing Orders Local Law 2014 (as amended) the meeting be closed to members of the public to discuss the following confidential reports:**

**CCS335: ALBANY VISITOR CENTRE OPERATIONS (AVC)**

**CCS336: CENTENNIAL STADIUM NAMING RIGHTS SPONSORSHIP**

**CCS344: COVID PAYMENT**

**CARRIED 11-0**

8.02pm

**RESOLUTION**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR SUTTON**

**SECONDED: COUNCILLOR SLEEMAN**

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

**CARRIED 11-0**

**CCS344: RESOLUTION**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED COUNCILLOR SLEEMAN**

**SECONDED COUNCILLOR TERRY**

**THAT the Responsible Officer Recommendation detailed at Point 5 of the Confidential Briefing Note attached to this report be ADOPTED.**

**CARRIED 11-0**

<b>Consulted References</b>	:	<ul style="list-style-type: none"><li>• <i>Local Government Act 1995</i></li><li>• <i>Fair Work Act 2009</i></li></ul>
<b>File Number (Name of Ward)</b>	:	Personnel Files
<b>Previous Reference</b>	:	Strategic Workshop – 13 April 2021



## DIS252: TELECOMMUNICATIONS INFRASTRUCTURE

<b>Land Description</b>	:	Lot 141, 32 Allerton Street, Robinson WA 6330
<b>Property Owner</b>	:	J.A and K.A .Quinlan
<b>Proponent</b>	:	Visionstream Australia Pty Ltd on behalf of Telstra Corporation
<b>Business Entity Name</b>	:	Visionstream Australia Pty Ltd
<b>Attachments</b>	:	1. Applicant Planning Assessment Report 2. Planning Assessment Report Appendix A – Certificate of Title 3. Plans 4. Planning Assessment Report Appendix C – EME Report 5. Planning Assessment Report Appendix E – EPBC Act Protected Matters Report 6. Schedule of Submissions 7. Applicant response to submissions
<b>Supplementary Information &amp; Councillor Workstation</b>	:	Letters of submission from the public
<b>Report Prepared By</b>	:	Senior Planning Officer (J Anderson)
<b>Responsible Officers:</b>	:	Executive Director Infrastructure, Development and Environment (P Camins)

7.12pm Councillor Terry left the Chamber after declaring a Financial Interest in this item.

### STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. 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: RESOLUTION (AMENDED RESPONSIBLE OFFICER RECOMMENDATION)  
VOTING REQUIREMENT: SIMPLE MAJORITY**

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

**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.***

**CARRIED 9-1**

**Record of Vote**

Against the Motion: Councillor Sleeman

**Comment:** Refer to in-brief section of report.

DIS252: COMMITTEE RECOMMENDATION  
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: COUNCILLOR 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 4,019m<sup>2</sup> 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);
  - 72m<sup>2</sup> 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 7.5m<sup>2</sup> 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.
39. 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.
40. 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."*

41. 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**

42. 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.
43. 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.
44. 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.
45. 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).
46. SPP 5.2 outlines a number of considerations in the assessment of the visual impact of telecommunications infrastructure proposals.
47. 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.
48. 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.
49. 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.
50. 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.
51. 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
52. 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.
53. 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**

54. 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
55. 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
56. 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.
57. The proposal has been assessed against SPP5.2. SPP 5.2 provides guiding principles for the location, siting and design of telecommunications infrastructure.
58. 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.
59. 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.
60. 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.
61. 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.
62. 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**

63. Concerns were raised during advertising that the proposal was not appropriate for the General Industry zone under LPS1.
64. 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.
65. 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.
66. 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.
67. 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.
68. 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.
69. LPS1 addresses the requirements set out under SPP5.2 in relation to land use permissibility of telecommunications infrastructure.
70. 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.
71. 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.
72. 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.
73. 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**

74. 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.
75. 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.

76. 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).
77. 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.
78. 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**

79. 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.
80. 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.
81. 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**

82. Decreased property values were raised during the consultation process.
83. 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.
84. 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**

85. Concerns were raised regarding constant humming from the proposed development.
86. 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.
87. The proposed development is considered to be appropriately setback from residential properties mitigating any associated noise.
88. 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.
89. 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**

90. 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.
91. 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.
92. A copy of the proposal was also made available on the City of Albany’s website during the consultation period.
93. 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.
94. 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"> <li>• Mail out to landowners</li> <li>• City of Albany website</li> </ul>	18/09/2020 to 14/10/2020	42 submissions received	No Consultation process undertaken in accordance with cl. 64 of the Planning Regulations

95. 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).
96. 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.

97. During the advertising period a total of 42 submissions were received, all objecting or raising concerns regarding the proposal.
98. 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.
99. 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.
100. 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**

101. 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.
102. Voting requirement for this item is **SIMPLE MAJORITY**.

### **POLICY IMPLICATIONS**

103. The proposal has been assessed against SPP 5.2. SPP 5.2 provides guiding principles for the location, siting and design of telecommunications infrastructure.
104. 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.
105. Furthermore, buffer zones and or setback distances are not to be included in planning schemes or policies.
106. 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.
107. 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.”

108. 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.
109. 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
110. The subject land is not identified as being within an area of high landscape protection, nor does it contain any places of heritage significance.
111. The infrastructure is located within an existing cleared area and does not require the removal of any native vegetation.
112. 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;”*
113. The site has been chosen to address the existing coverage issues in the Robinson and surrounding areas.
114. There are no existing facilities which would allow co-location to occur while still meeting the operational requirements for the infrastructure.
115. 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.
116. The proposal demonstrates compliance with the policy objectives of SPP 5.2.

#### RISK IDENTIFICATION & MITIGATION

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

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

#### FINANCIAL IMPLICATIONS

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

#### LEGAL IMPLICATIONS

119. 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**

120. 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**

121. 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**

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

123. 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.

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

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

**7.15pm Councillor Terry returned to the Chamber. Councillor Terry was not present during the discussion and vote for this item.**

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

**MOVED: COUNCILLOR SUTTON**  
**SECONDED: COUNCILLOR SLEEMAN**

**THAT the Planning and Building Reports for March 2021 be NOTED.**

**CARRIED 11-0**

**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: RESOLUTION  
VOTING REQUIREMENT: SIMPLE MAJORITY**

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

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

**CARRIED 11-0**

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

8.00pm

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

**MOVED: COUNCILLOR SUTTON**  
**SECONDED: COUNCILLOR SLEEMAN**

**THAT in accordance with clause 4.1 of the City of Albany Standing Orders Local Law 2014 (as amended) the meeting be closed to members of the public to discuss the following confidential reports:**

**CCS335: ALBANY VISITOR CENTRE OPERATIONS (AVC)**  
**CCS336: CENTENNIAL STADIUM NAMING RIGHTS SPONSORSHIP**  
**CCS344: COVID PAYMENT**

**CARRIED 11-0**

8.02pm

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

**MOVED: COUNCILLOR SUTTON**  
**SECONDED: COUNCILLOR SLEEMAN**

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

**CARRIED 11-0**

The confidential reports discussed behind closed doors were then moved for resolution of Council.

**CCS335: RESOLUTION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR GOODE**  
**SECONDED: COUNCILLOR SUTTON**

**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 11-0**

**CCS336: RESOLUTION  
VOTING REQUIREMENT: SIMPLE MAJORITY**

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

**THAT Council APPROVE the naming rights sponsorship for the Centennial Stadium to Albany Retravisio, subject to:**

- a) Centennial Stadium Inc. enter into a corporate naming rights sponsorship agreement with Albany Retravisio.**
- b) Centennial Stadium Inc. apply all funds received from Albany Retravisio 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.**

**CARRIED 10-1**

**Record of Vote**

Against the Motion: Councillor Thomson

**CCS344: RESOLUTION  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED COUNCILLOR SLEEMAN  
SECONDED COUNCILLOR TERRY**

**THAT the Responsible Officer Recommendation detailed at Point 5 of the Confidential Briefing Note relating to this report be ADOPTED.**

**CARRIED 11-0**

**18. CLOSURE**

There being no further business the Mayor declared the meeting closed at 8.15 pm.

*(Unconfirmed Minutes)*

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Dennis W Wellington  
**MAYOR**

Samantha Stevens  
37 Rowney Road, Robinson  
Albany

Tonight I would like to thank the staff and in particular Cr Sleeman and Cr Shanhan for supporting the recently formed Working Group to address the significant safety issues being experienced by the equestrian riders in Robinson and on the Stidwell Bridle Trail.

22 years old, the 30 km of Stidwell Bridle Trail traverses through the natural Sandpatch Reserve and adjacent Robinson urban neighbourhood.

At the time, the trail was one of the first equestrian trails in the state. It was well planned, capturing the vision and addressing potential issues including a comprehensive detailed signage plan.

The success and quality of the planning is reflected in the longevity and ongoing popularity of the trail.

One of the only formal equestrian trails in the Great Southern and a significant trail asset for the City. It is noted in the City of Albany Trails Hub Strategy Volume 2 page 29 along with 6 key recommendations. None of which have been achieved to date.

Sadly, over the past ten years the standards and management of the bridle trail have steadily declined with four-wheel drives and motorbikes now viewing the Stidwell and access roads as a legitimate option for riding on at incredibly high speeds.

Combined with a very recent increase in cyclists using the adjacent Robinson precinct as a training ground. Some cyclists reaching speeds over 50km per hour there is now a volatile mixed traffic environment that significantly increases the risk of an accident.

Speed has been identified as a key risk factor in road traffic accidents. At 30km there is a chance of survival but with higher speeds this chance rapidly decreases. Accidents are terrible events causing heartache for family, friends and community. Even worse is an accident that could have been avoided.

As you know the City of Albany Trails Hub (10 year) Strategy has been in place since 2015. The strategy identifies 9 priority projects for Albany with a range of short to long term recommendations.

Since inception there are very few if any of these recommendations that have been achieved on the ground.

It is not without trying though. Over the past 5 years the City of Albany has allocated annual budget to projects. Staff, Councillors, contractors and community have been passionate.

But money and passion have not been enough to make the necessary gains to truly develop our unique and beautiful trails system here in Albany.

So what has stopped progress....

We can lay blame with zealous environmental regulators. But on reflection I note that there has been no increase in staffing resources to assist with achieving the fullness of the strategy and its recommendations.

The City has had its most success with the strategies and projects that have had dedicated resourcing to them such as the Club Development Officer Scheme, the Travel Smart Officer, Major Projects and the Waste & Sustainability Officers.

It appears the City may currently lack the skills, experience and human resources on staff to undertake the heavy lifting required to achieve the trail hub projects.

Whilst I genuinely thank the Council and City for their commitment to address the issues being experienced on the Stidwell Bridle Trail and surrounding Robinson Precinct I respectfully request two things:

1. That the City of Albany review the Trails Hub Strategy priority projects with an aim to develop a specific, realistic 5 - year plan addressing the outstanding recommendations. With a clear intent to make some notable achievements over the next 5 years that will increase joy and improve health for residents and visitors alike.
2. Review and increase the staffing resources to enable achievement including supporting the newly formed working group. As a suggestion: This may be a unique opportunity to show leadership and package up a dedicated City of Albany Trails Team with supporting budget in line with the 5 years remaining for the Trails Hub Strategy. A first for local government.

Mitch Lever, PhD  
mlever@westnet.com.au

City of Albany  
102 North Road  
Yakamia WA 6330

27 April 2021

**Subject: Presentation to Council re adverse health impacts of 5G technology**

Dear Councillors,

I am a professional engineer with an interdisciplinary background, including mathematics, physics, statistics, engineering, environmental science, microbiology and education. I am writing and presenting at this council meeting to inform you about the abundant evidence of the harmful effects of radio frequency radiation, in pretty much all frequency ranges, including those being allocated for the 5G network.

The electrical nature of human, animal and other natural processes is well established. For example, muscle contraction, nerve activity, brain activity, cellular respiration and photosynthesis in plants, are all largely electrical processes. Since our health and survival depends on electricity, it follows that the application of electricity and electromagnetic radiation from external sources to our bodies, and the natural world, will affect them.

The information I have provided with this letter contains a timeline showing key historical stages in the development and rollout of electrical wired and wireless technologies, starting with the harnessing of static electricity in the 1700s, through the spread of electrical networks to distribute the telegraph, electric lighting, telephones, electric locomotives and electric motors, up to the advent of radio transmissions.

In parallel, we can see history of the documented side effects of electricity and its associated radiation which have included headaches, nausea, weakness, fatigue, heart palpitations, shortness of breath, coughing, wheezing, muscle and joint pains, depression, drowsiness, insomnia, a new disease called 'neurasthenia' meaning 'weak nerves', indigestion, constipation, vomiting, diarrhoea, fatigue, neuralgia, delirium, coma, convulsions and ultimately death. Marconi himself, who after suffering nine heart attacks while working on hundreds of radio towers in the final decade of his life, died of a heart attack at age 63.



Behind the timeline, I have provided some examples of the thousands of modern published studies which continue to demonstrate adverse health effects of radiofrequency electromagnetic radiation, including cancers of various types, mutagenicity, teragenicity (affects unborn children), neurodegenerative diseases, neurobehavioral problems, and adverse impacts on the neural, circulatory, immune, endocrine, and skeletal systems.

On the first page alone, you can see references to 20 published review studies, and 17 references to individual studies. Typically each review paper documents hundreds of individual experimental or epidemiological studies, meaning there are thousands of such studies. Most, but not all of them document adverse health impacts, which means there are thousands of studies documenting adverse health effects of wireless radiation, across most frequency ranges including 5G.

If you would like to investigate for yourselves, but don't know where to start, you can go to website of the Oceana Radiofrequency Scientific Advisory Association ([www.orsaa.org](http://www.orsaa.org)). There are training videos showing how to use the database, which contains over 3000 scientific studies sourced from all over the world. ORSAA is not funded by commercial entities and is therefore without any financial conflicts of interest

I have also included an example of a so-called review article cited by ARPANSA, the Australian Radiation Protection and Nuclear Safety Agency, denying any adverse health effects of radiation below maxim allowable levels. Notice that ARPANSA has co-authored this paper, and continues to ignore the many more real-world published reviews it has not been involved with. In my opinion, writing and then cherry picking their own view of the science to present to the public a preordained conclusion, whilst ignoring the weight of evidence, is highly irresponsible.

Techniques I have seen in documents produced by ARPANSA and the also frequently cited international body ICNIRP (the International Commission for Non-Ionising Radiation Protection) used to dismiss valid studies include: claiming inadequate statistical analyses were carried out when in fact adequate methods were used, claiming there is no way to differentiate between effects due to radiation and effects due to chance when that is precisely the function of the zero radiation control groups used, and claiming in studies with high levels of statistical significance that low numbers of animal or human subjects were used, whilst failing to mention that tests for statistical significance take sample size into account. That is the point of them. The ARPANSA

meta-analysis of their own review combines studies investigating therapeutic effects with studies investigating adverse effects, and concludes the findings are inconsistent.

Such arbitrary and unfounded criticisms of science are not new phenomena. They have been going on in one form or another for over sixty years, as documented in the book *The Merchants of Doubt*, published in 2010.

By the late 1970s, scores of lawsuits had been filed claiming personal injury from smoking cigarettes, but the industry had successfully defended itself using scientists as expert witnesses to testify that the smoking-cancer link was not unequivocal. The testimony would be particularly convincing if it were their own research. Experts could supply reasonable doubt, and who better to serve as an expert than an actual scientist.

p13

Tobacco caused cancer, that was a fact, and the industry knew it. So they looked for some way to deflect attention from it. Indeed they had known it since the early 1950s, since the industry first began to use science to fight science, when the modern era of fighting facts began.

p14

By the methods of the industry funded fact fighters, there is no study conceivable which cannot be dismissed, and no scientist who cannot be discredited. But the truth inevitably comes out, usually too late for thousands. It makes sense to get on the right side of things as early as possible.

I request the Albany City Council put first the health and safety of themselves and their residents, and the natural world upon which so much local business depends. Like the Byron Shire Council, please take a leadership role and reject the development application for the new telecommunications infrastructure at 32 Allerton Street, Robinson.

I would be happy to do a more comprehensive presentation to anyone who is interested.

Please let me know if you would like any more information or need any assistance.

Your sincerely,



Mitch Lever



## History of the Health Impacts of Electricity and Electromagnetic Radiation

Based on the book *The Invisible Rainbow* by Arthur Firstenberg

**1746:** Professor Musschenbroek invents the Leyden jar, a glass globe which is spun on its axis and generates a static electric charge via friction. For the first time, people can experience a significant electric shock. The world is fascinated. Shocking people individually and in groups becomes an international pastime. The inventors and “electricians” who provide this service experience convulsions, headaches, blood noses, fevers, and one practitioner’s wife found herself unable to walk.

Therapeutic uses developed including treatment for arthritis, helping the deaf to hear, the lame to walk, and the constipated to... Unwanted effects included headaches, nausea, weakness, fatigue, and heart palpitations, shortness of breath, coughing, wheezing, muscle and joint pains, mental depression, drowsiness and insomnia.

**1750s and 60s:** Experimenters develop permanent adverse effects. French botanist Dalibard develops a convulsive tremor in his arm. Doppelmayer, professor of mathematics at Nuremberg, becomes paralysed in one side of his body and dies of a stroke after one of his electrical experiments. Franklin develops a chronic neurological illness. Scientists agree the effects vary. People have widely differing sensitivities.

**1790s:** Scientific debate regarding whether electricity was a fundamental force of life (Galvani), or whether the limbs of living things were simply moist conductors for electricity which was produced externally (Volta). Volta won the popular vote, making it possible for society to harness electricity on an industrial scale, to wire the world. It permitted people to begin to disregard the accumulated knowledge gained by eighteenth century electricians.

**1839:** The commencement of the systematic electrification of Europe with the first installation of the wired telegraph communication.

**1844:** First telegraph in the US installed by Morse from Baltimore to Washington.

**1850:** Telegraph wires under construction on every continent. Around half the telegraphists were afflicted by *telegraphic sickness*.

**1859:** Telegraph rolled out in London to nearly 3500 households resulting in telegraph wires criss-crossing all over the city, representing in the first large-scale deployment of wired electrical networks.

**1869:** New York Doctor Beard published his findings of a new neurological disease of unknown cause which he named ‘neurasthenia’ meaning ‘weak nerves’.

**1871:** Invention and manufacture of dynamo enabled the generation of virtually unlimited quantities of electricity

**1875:** Carbon arc lamps light outdoor public spaces in Paris and Berlin.

**1876:** Invention of telephone by Bell

**1880s:** Electrification accelerates enormously with the simultaneous spread of electrical networks for the telegraph, telephone, electric lighting, DC and AC electrical power networks and electrified locomotives.

**1881:** Edison builds the first of hundreds of DC power stations and supplies power to outlying customers for newly developed incandescent globe with a new network of thicker wires, joining the previous networks of thinner wires associated with the telegraph, telephone, and lighting.

**1885:** Telegraph network links 30,000 homes and businesses in New York, using 1200 miles of wires. AC generation and distribution systems installed in Europe

**1886:** New York receives the first commercial AC power system in the USA. This system designed by George Westinghouse, William Stanley, and Oliver B. Shallenberger

**1887:** The “battle of the currents” escalated, Westinghouse ( AC) vying with Edison (DC) for the future of our world.

**1888:** Nikola Tesla patents the polyphase electric motor, enabling industries to use AC current not only for lighting but also for power.



**The Blizzard of 1888, New York City Courtesy of the Museum of the City of New York**

**1889:** Birth of the modern electrical era as the world was being electrified on a scale like never before. Simultaneous emergence of influenza pandemic which lasted four continuous years. The symptoms were not respiratory but mostly neurological - dizziness, insomnia, indigestion, constipation, vomiting, diarrhea, “utter prostration of mental and bodily strength,” neuralgia, delirium, coma, and convulsions. Upon recovery many were left with neurasthenia, or even paralysis or epilepsy.

French physician and scientist Jacques d’Arsonval discovers that smooth sine wave radiation produces changes in metabolism, and if the form of the wave is changed it produces muscular contractions. He concluded that electrotherapy at therapeutic right doses, with a perfectly smooth sine wave caused no pain, yet had potent physiological effects. He experimented with high frequency radiation in the megahertz range and observed it to have the effect of reducing blood pressure and concluded that “the currents of high frequency penetrated deep into the organism”.

**1891:** Tesla patents polyphase AC electric generator. ElectroTechnical Exhibition in Frankfurt in where three-phase AC power proved to be the best system for power generation and distribution.

**1894:** Sigmund Freud attributed the symptoms of telegraphic sickness, neurasthenia, microwave syndrome or EHS to disordered thoughts or poorly controlled emotions. As a result, today millions of citizens affected by electronic smog are being medicated instead of reducing their exposure. He renamed neurasthenia – which was known to be caused by electricity – as a *neurosis anxiety*, an *anxiety attack* or a *panic attack*, opening the way for the deployment of electrification to continue unimpeded.

**1901 to 1904:** Installation of four radio transmitters by Marconi on the Isle of Wight off the south coast of England, making it the most highly irradiated place on earth.

**1901:** Queen Victoria dies on the Isle of Wight from a brain haemorrhage just as Marconi was putting a new transmitter into operation just 13 miles away.

**1904:** Marconi develops fevers so severe he was thought to be suffering from Malaria. Bees disappear. More colonies are brought in but they die too.

**1917:** US enters the first world war and deploys the world’s largest radio network consisting of over 10,000 new radio transmitters for its naval fleet.

**1918:** Spanish Flu epidemic began in the United States, at the Naval Radio School of Cambridge, Massachusetts, with 400 initial cases.

1937: Marconi dies from his ninth heart attack while he was developing microwave technology, after experiencing symptoms including suicidal depression and cardiac disorders for ten years as he worked on radio transmitters.

*Epidemics and pandemics 1932-71* 121

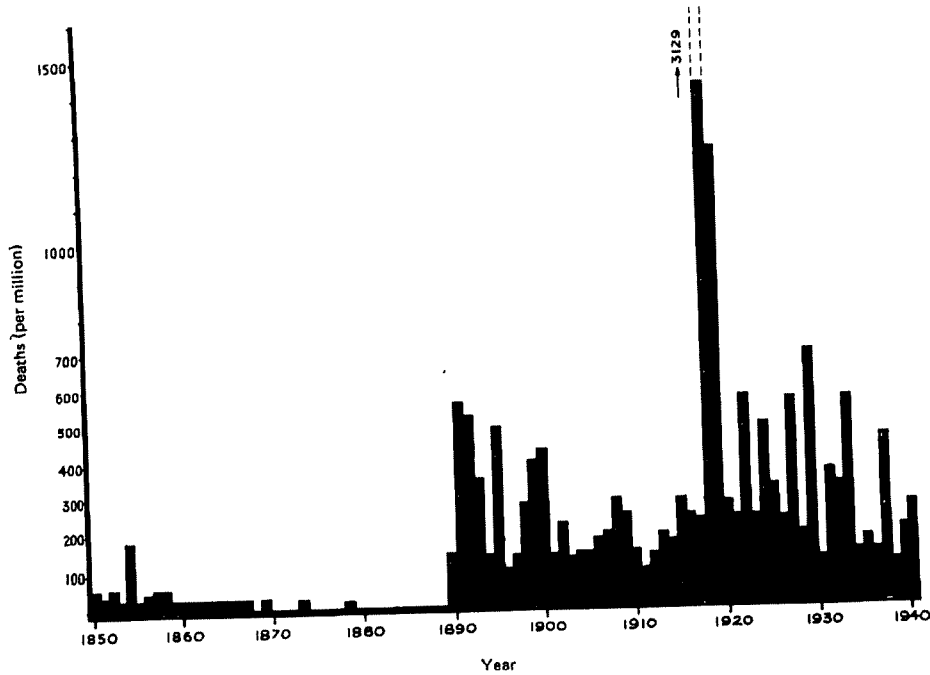


Fig. 6.2 Influenza deaths per million in England and Wales, 1850-1940.

Graph taken from the book *The Invisible Rainbow*, showing the dramatic rise in incidence and duration of influenza corresponding to the final stages in the beginning of the modern electrical era in 1889-90. In the space of 50 years electrical networks had spread worldwide to supply power for the telegraph, lighting, telephones, and electric trains. The widespread adoption of the AC motor, patented in 1889, led to the upgrading and expansion of power generation facilities, transmission and distribution networks worldwide to enable electricity to usurp the steam engine as one of the main drivers of industrial power. The spike in 1918 (actually twice the height shown) corresponds to the deployment of the worlds largest radio transmission network as the US enters the first world war.

## Health effects of wireless radiation - published studies

1. Kostoffa RN, Herouxb P, Aschnerc A, Tsatsakis A. Adverse health effects of 5G mobile networking technology under real-life conditions. *Toxicology Letters* 2020; 323: 35-40

**“A vast literature published over the past sixty years shows adverse effects from wireless radiation applied in isolation or as part of a combination with other toxic stimuli. Extensive reviews of wireless radiation-induced biological and health effects have been published** (Kostoff and Lau, 2013, 2017; Belpomme et al., 2018; Desai et al., 2009; Di Ciaula, 2018; Doyon and Johansson, 2017; Havas, 2017; Kaplan et al., 2016; Lerchl et al., 2015; Levitt and Lai, 2010; Miller et al., 2019; Pall, 2016, 2018; Panagopoulos, 2019; Panagopoulos et al., 2015; Russell, 2018; Sage and Burgio, 2018; van Rongen et al., 2009; Yakymenko et al., 2016; Bioinitiative, 2012).

In aggregate, for the high frequency (radiofrequency-RF) part of the spectrum, these reviews show that RF radiation below the FCC guidelines can result in:

- Carcinogenicity (brain tumors/glioma, breast cancer, acoustic neuromas, leukemia, parotid gland tumors),
- Genotoxicity (DNA damage, DNA repair inhibition, chromatin structure),
- Mutagenicity, teratogenicity
- Neurodegenerative diseases (Alzheimer’s Disease, Amyotrophic Lateral Sclerosis),
- Neurobehavioral problems, autism, reproductive problems, pregnancy outcomes, excessive reactive oxygen species/oxidative stress, inflammation, apoptosis, blood-brain barrier disruption, pineal gland/melatonin production, sleep disturbance, headache, irritability, fatigue, concentration difficulties, depression, dizziness, tinnitus, burning and flushed skin, digestive disturbance, tremor, cardiac irregularities,
- Adverse impacts on the neural, circulatory, immune, endocrine, and skeletal systems.”

2. Pangopolous DJ, Comparing DNA damage induced by mobile telephony and other types of man-made electromagnetic fields” published in *Mutation Research - Reviews in Mutation Research* 2019; 781: 53-62

**“During the past 15 years several statistical studies indicate a connection between residential exposure to radiation of MT base station antennas (which emit similar radiation with that of mobile phones), and reported symptoms of unwellness usually referred to as “microwave syndrome”, or “electro-hypersensitivity” (EHS). These include headaches, fatigue, sleep disorders, etc. [[57], [58], [59], [60], [61], [62], [63]].**

At the same time, more and more epidemiological studies indicate an increasing connection between mobile phone use and brain tumors in humans, [[66], [67], [68], [69], [70], [71], [72], [73], [74], [75]].”



3. Paulraj R. Behari J. Single strand DNA breaks in rat brain cells exposed to microwave radiation. *Mutat Research* 2006;596(1-2):76-80. doi: 10.1016/j.mrfmmm.2005.12.006

This investigation concerns with the effect of low intensity microwave (2.45 and 16.5 GHz, SAR 1.0 and 2.01 W/kg, respectively) radiation on developing rat brain. Wistar rats (35 days old, male, six rats in each group) were selected for this study. These animals were exposed for 35 days at the above mentioned frequencies separately in two different exposure systems. After the exposure period, the rats were sacrificed and the whole brain tissue was dissected and used for study of single strand DNA breaks by micro gel electrophoresis (comet assay). Single strand DNA breaks were measured as tail length of comet. Fifty cells from each slide and two slides per animal were observed. One-way ANOVA method was adopted for statistical analysis. **This study shows that the chronic exposure to these radiations cause statistically significant ( $p < 0.001$ ) increase in DNA single strand breaks in brain cells of rat.**

4. Kesari KK. Behari J. Fifty-gigahertz Microwave Exposure Effect of Radiations on Rat Brain. *Applied Biochemistry and Biotechnology* 2009

The object of this study is to investigate the effects of 50-GHz microwave radiation on the brain of Wistar rats. Male rats of the Wistar strain were used in the study. Animals of 60-day age were divided into two groups—group 1, sham-exposed, and group 2, experimental (microwave-exposed). The rats were housed in a temperature-controlled room (25 °C) with constant humidity (40–50%) and received food and water ad libitum. During exposure, rats were placed in Plexiglas cages with drilled ventilation holes and kept in an anechoic chamber. The animals were exposed for 2 h a day for 45 days continuously at a power level of **0.86  $\mu\text{W}/\text{cm}^2$**  with nominal specific absorption rate  $8.0 \times 10^{-4}$  w/kg. After the exposure period, the rats were killed and homogenized, and protein kinase C (PKC), DNA double-strand break, and antioxidant enzyme activity [superoxides dismutase (SOD), catalase, and glutathione peroxidase (GPx)] were estimated in the whole brain. **Result shows that the chronic exposure to these radiations causes DNA double-strand break (head and tail length, intensity and tail migration) and a significant decrease in GPx and SOD activity ( $p = < 0.05$ ) in brain cells, whereas catalase activity shows significant increase in the exposed group of brain samples as compared with control ( $p = < 0.001$ ).** In addition to these, PKC decreased significantly in whole brain and hippocampus ( $p < 0.05$ ). All data are expressed as mean  $\pm$  standard deviation. **We conclude that these radiations can have a significant effect on the whole brain.** (Abstract)

Note: The enzymes GPx and SOD, are important antioxidant enzymes for preventing damage caused to DNA by reactive oxygen species.

This study was carried out at radiation levels of 0.0086 W/m<sup>2</sup>. The maximum levels specified by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) for the general public are more than 1000 times greater than this (10 W/m<sup>2</sup>), and the levels specified for occupational exposure are more than 5000 times this (50 W/m<sup>2</sup>).

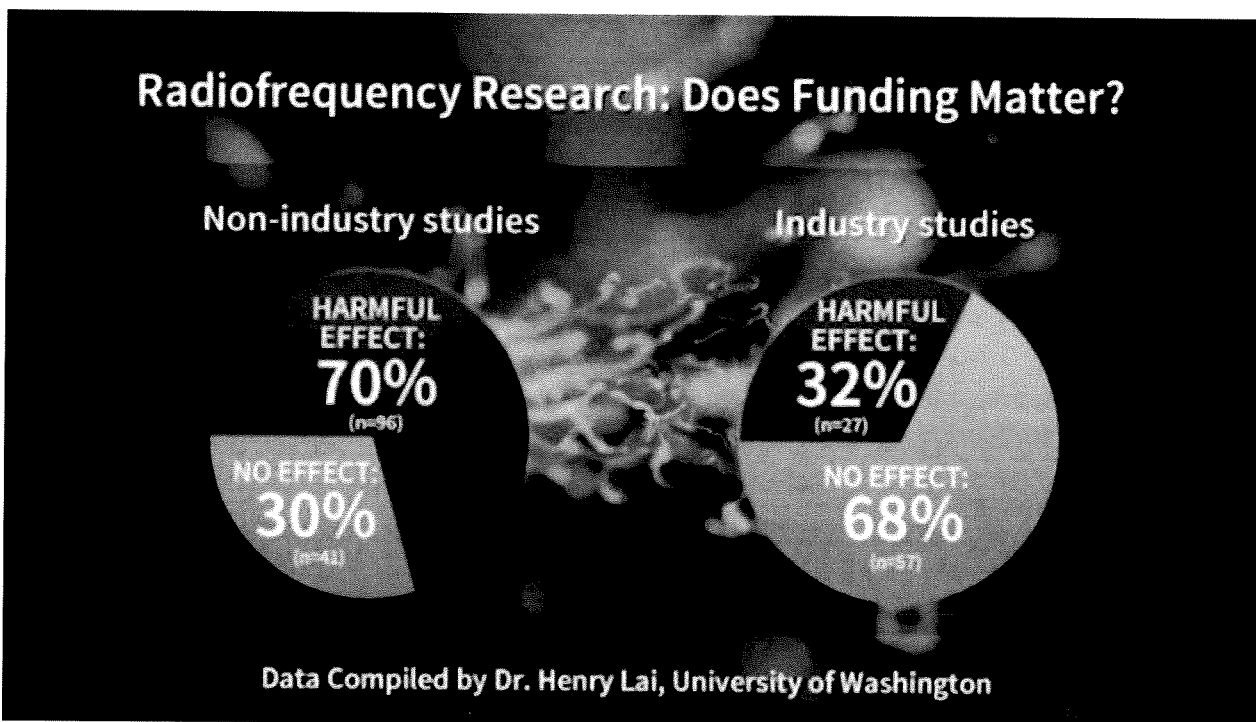
5. Karipidis K, Mate R, UrbanD, Tinker R, Wood A. 5G mobile networks and health—a state-of-the-science review of the research into low-level RF fields above 6 GHz. *Journal of Exposure Science & Environmental Epidemiology* 2020. <https://doi.org/10.1038/s41370-021-00297-6>

This review paper cited and co-authored by ARPANSA concludes about the studies 3 and 4 above (which are the same as studies 23 and 24 below), that:

“Three studies from an Indian research group have examined indicators of DNA damage and reactive oxygen species (ROS) production in rats exposed in vivo to MMWs. The studies reported DNA strand breaks based on evidence from comet assays [23, 24] and changes in enzymes that control the build-up of ROS [24]. Kumar et al. also reported an increase in ROS production [25]. All the studies from this research group had low animal numbers (six animals exposed) and their results have not been independently replicated. “ All the studies from this research group had low animal numbers (six animals exposed) and their results have not been independently replicated”, and goes on to conclude:

“The review of experimental studies provided no confirmed evidence that low-level MMWs are associated with biological effects relevant to human health.”

### Why the discrepancies?




UW Scientist Henry Lai Makes Waves in the Cell Phone Industry

<https://www.seattlemag.com/article/uw-scientist-henry-lai-makes-waves-cell-phone-industry>

“To the layperson, the science behind Lai’s work, which was largely funded by the National Institutes of Health, and **industry-funded research to contradict it** is mind-numbingly complex. Virtually every assertion of risk has a counterassertion of no risk. For every independent study showing damage to DNA and memory, there is a study showing the opposite.”

**Professional groups and organisations**

1. Oceana Radiofrequency Scientific Advisory Association  
<https://www.orsaa.org/>
2. We say no to 5G in Australia: What the Byron Shire is doing to stop 5G  
<https://www.wesaynoto5ginaustralia.com/councils>
3. International Appeal: Scientists call for Protection from Non-ionizing Electromagnetic Field Exposure  
<https://emfscientist.org/index.php/emf-scientist-appeal>
4. Appeal to the European Union  
<http://www.5gappeal.eu/>
5. International Appeal to Stop 5G on Earth and Space  
<https://www.5gspaceappeal.org/the-appeal>
6. International Society of Doctors for the Environment  
[https://www.isde.org/5G\\_appeal.pdf](https://www.isde.org/5G_appeal.pdf)
7. 400 US Doctors and Medical Professionals Submit Opposition to 5G to US Government FCC  
<https://ecfsapi.fcc.gov/file/1061850512373/FCC%20letter%20Medical%20Professionals.pdf>
8. Dozens of US Doctors and Healthcare Practitioners Send Letter to President Trump Calling for A Moratorium on 5G Press Release  
<https://ehtrust.org/dozens-of-us-doctors-and-healthcare-practitioners-send-letter-to-president-trump-calling-for-a-moratorium-on-5g-press-release/>
9. Belgium doctors Appeal  
<https://www.hippocrates-electrosmog-appeal.be/>
- 10 Canadian doctors  
[https://www.ntd.com/doctors-call-for-delaying-deployment-of-5g-due-to-health-risks\\_339335.html](https://www.ntd.com/doctors-call-for-delaying-deployment-of-5g-due-to-health-risks_339335.html)
11. Cyprus Medical Association  
<http://paidi.com.cy/common-positions-5g-2019/>
12. Physicians of Turin, Italy  
<https://www.radical-bio.com/sanita/lordine-dei-medici-di-torino-legge-irradiazione-5g/>
13. German Doctors Appeal  
<https://www.stuttgarter-zeitung.de/inhalt.demo-am-staatsministerium-in-stuttgart-protest-gegen-5-g-in-weissen-anzuengeln.18d9e428-36dc-4cab-ac71-b5af2cce9140>

27/4/2021  




Dr Russell Cooper MBBCh, ABAAM, FACNEM, FAcOHM, FAMAC, DipESAAM, DiplEPP, CCT  
 Board Certified Physician American Board Anti Aging Medicine  
 Fellow Australian College Nutritional and Environmental Medicine  
 Fellow Australian College Herbal Medicine  
 Fellow Australian Medical Acupuncture College  
 Diploma European Society Anti-Aging Medicine  
 Diploma European Institute of Personalised Prevention  
 Certification Chelation Therapy

26/04/2021

Mr Raymond Eskett  
 98 Elphinstone Rd  
 Robinson WA 6330

Dear Mr Eskett,

You have consulted me, deeply concerned about the potential non-ionising electromagnetic radiation damage, your wife Judy and yourself may be at risk of, if the proposed wireless base station goes ahead at 32 Allerton Rd, Robinson WA 6330, as per the RFNSA Site No 6330031 issued by Visionstream on 25/08/2020.

You have consulted me as both you and your wife have experienced disabling symptoms from chronic exposure to devices emitting radiofrequency electromagnetic radiation (RF-EMR).

Since notification from the carrier Telstra to attach the following radio systems 4G (LTE 1800, LTE2100 and LTE2600), 4GX (LTE700) and new radio 5G systems (NR850 and NR3500) to a monopole at 32 Allerton Rd, Robinson WA 6330, as per the RFNSA Site No 6330031 you have become very emotionally stressed. You described feeling distressed and anxious. You expressed great displeasure that you and your wife will be non-consensually exposed to radiofrequency electromagnetic radiation emissions from the wireless base station in direct line of sight, a mere 200 metres from your home, when exposure to RF-EMR emissions have repeatedly caused disabling neurological symptoms.

You have alerted me to a City of Albany Council meeting on 27/04/2021 to discuss the proposed telecommunications structure at 32 Allerton St, Robinson WA 6330. You are deeply concerned that your current symptoms experienced when exposed to RF-EMR, will be

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overlooked or ignored and that you fear for you and your wife's future health living in your appointed place of residence where you have lived for 16 years and intend to live for many years to come, should the erection and activation of the wireless base station go ahead.

I write this letter to you as a short urgent communication which will be followed by a far more complex medical report in the next few weeks.

It is my professional opinion having consulted with you and your wife, that you Mr Eskett and your wife Judy, are at extreme risk of harm to your health should this proposed wireless base station go ahead.

I base my assessment of your health risk on the following information:

The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) state on their website regarding Electromagnetic Hypersensitivity (EHS) that: 'ARPANSA acknowledges that the health symptoms experienced by the affected individuals are real and can be a disabling problem, and advise those affected to seek medical advice from a qualified medical specialist'.

You have followed ARPANSA's advice of seeking a medical professional. I am an APHRA registered doctor in Australia with 28 years' experience consulting with hundreds of people across Australia who have developed illness or an ailment/s following exposure to RF-EMR within the ARPANSA Standard (RPS3 2002 and the new RPS\_s-1 2021).

ARPANSA also state: 'On the basis of current scientific information, there is no established evidence that EHS is caused by EMF at levels below exposure guidelines' (ARPANSA on EHS)

I find the above statement by ARPANSA disingenuous.

The word 'established' concerns me as a medical professional profoundly. ARPANSA is devoid of medical professionals, so the nebulous statement 'established' lacks credibility, as the public are not informed which studies were assessed, which studies were excluded and who exactly was doing the assessment and whether that assessment was independently peer reviewed. Hence the scientists of ARPANSA who have no medical training, diagnose EHS as a non-EMF related illness. This is in my professional opinion, misinformation to the public.

In spite of ARPANSA since 2002 repeatedly stating there are no established health risks, there is voluminous research studies which have found detrimental effects from exposure to non-thermal, non-ionising radiation within the ARPANSA Standard and similar ICNIRP guidelines.

Scientists and doctors from the BioInitiative Group and scientists from ORSAA have found approximately 70% of studies show a detrimental effect from exposure to RF-EMR (The Bioinitiative Report 2012 with 2019/2020 update; Leach 2018).

As a medical professional, it gives me no confidence at all, that living in the vicinity of wireless mobile phone base stations, we are protected, when no long term research has proved safety from harm up to 10 million uW/m<sup>2</sup>.

Mr Eskett, as a concerned citizen, living just 200 metres from the proposed wireless base station at 32 Allerton Rd, Robinson WA 6330, you have every right to be aghast at the recognition of this information, that wireless base stations are being erected promiscuously throughout cities and suburbs Australia-wide, without proven long term research of the safety of such devices for adults and especially children exposed continuously 24 hours a day. Furthermore, additional antennae are continuously being added from a range of telecommunications companies, which massively amplifies the RF-EMR exposure. With the addition of 5G transmitters/receivers, not only is the power density massively increased over short distances, but there is growing alarm world wide of this ex-military technology having unique dangers to health.

Of added concern is the disclaimer published by ARPANSA that they take no responsibility for the contents of their website. The very government organisation responsible for the electromagnetic radiation protection of the Australian public, take no responsibility for the Standard guidelines they have produced. (ARPANSA Disclaimer)

Commenting on 5G in March 2019, ARPANSA commented on their website: 'Despite gaps in the knowledge, no health effects are expected from radio frequency exposures below the limits set in the ARPANSA standard'.

It is these very 'gaps in the knowledge' that are parlayed as inconsequential, which to me as a medical professional are extremely concerning. In spite of Dr Karipidis (not a doctor of medicine) ex-assistant director of ARPANSA saying 'no health effects are expected', numerous health effects of millimeter wave 5G technology have been documented from as early as 1977 (Zalyubovskaya NP) and is reported extensively at 'Physicians for Safe Technology' website ([www.mdsafetech.org](http://www.mdsafetech.org))

Closer inspection of the ARPANSA Standard (RPS3) reveals on page 9 that the time averaged power flux density (W/m<sup>2</sup>) states: 'For determination of time averaged values at frequencies below 10 GHz, an averaging time of six minutes applies' (ARPANSA: Radiation Protection Series Publication 3 [2002]).

In the ARPANSA Standard, non-human phantoms resembling human tissue are exposed to 6 minutes of RF-EMR under 10 GHz in the near field (close to the phantom) as representative of human exposure. The only measurement of concern is that of a thermal effect. No non-thermal effects have ever been accounted for or recognized within the Standard. To assume that avoidance of a thermal effect only, reflects safety, is in my professional opinion a gross misrepresentation of reality, based on the fact the multiple studies have reported genotoxic damage, oxidative damage, damage to sperm and reduced fertility, an increase in neurological symptoms and increases in cancer within the guidelines (ORSAA Leach 2018).

What have studies shown when people live near a base station?

A cross-sectional study was conducted on 85 inhabitants living nearby the first mobile phone station antenna in Menoufiya governorate, Egypt, 37 of whom were living in a building under the station antenna while 48 opposite the station. The aim was to identify the possible neurobehavioural deficits among inhabitants living nearby mobile phone base stations. The prevalence of neuropsychiatric complaints as headache (23.5%), memory changes (28.2%), dizziness (18.8%), tremors (9.4%), depressive symptoms (21.7%), and sleep disturbance (23.5%) were significantly higher among exposed inhabitants than controls: (10%), (5%), (5%), (0%), (8.8%) and (10%), respectively ( $P < 0.05$ ). The neurobehavioural test battery (NBTB) indicated that the exposed inhabitants exhibited a significantly lower performance than controls in one of the tests of attention and short-term auditory memory.

The authors concluded that inhabitants living nearby mobile phone base stations are at risk for developing neuropsychiatric problems and some changes in the performance of neurobehavioural functions either by facilitation or inhibition. They recommended revision of standard guidelines for public exposure to RF-EMR from mobile phone base station antennas and early detection of biological effects among inhabitants around the mobile phone base stations (Abdel-Rassoul 2007).

In 2002 Santini conducted a survey of 530 people (270 men, 260 women) living either within 300 metres of a base station or beyond 300m (control group) on 18 non-specific health symptoms (NSHS) in relation to self-reported distance from towers of 300 m. Exposure conditions were defined as living in the neighbourhood for at least 5 years; at least 16 hours a day spent at home.

They controlled for age, presence of electrical transformers (20 min per day), and computer use (>2 h per day). Questions also included residents' location in relation to antennas, taking into

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account orientations that were facing, beside, behind, or beneath antennas in cases of roof-mounted antenna arrays. The study controlled by nearby transforms, mobile phone use and computer use.

The worst symptoms were from people living within 10 metres of the towers. The symptoms were nausea, loss of appetite, visual disruptions, and difficulty in moving as well irritability, depressive tendencies, concentration difficulties, memory loss, dizziness and lower libido. The latter symptoms extending to 100m. Up to 200 m, symptoms included headaches, sleep disruption, feelings of discomfort and skin problems. Up the 300m the main reported symptom was fatigue.

Based on their results Santini et al recommended wireless base stations not be built less than 300m from people's homes for precautionary measures (Santini et al 2002).

The symptoms described above up to 200m from the base stations are the very symptoms you Mr Eskett and your wife have experienced when exposed the RF-EMR, that being headache, visual disruptions, dysesthesia and tinnitus.

In a 2017 study comparing persons living within 80 metres of a wireless base station to those living 300 metres away, persons living within 80 metres of the wireless base station had pre-cancerous markers in their white blood cells. The analyses of data from the group within a perimeter of 80 m of mobile base stations, showed significantly ( $p < 0.0001$ ) higher frequency of micronuclei when compared to the control group, residing 300 m away from the mobile base station. The study also assessed the effects of radiofrequency electromagnetic radiation on antioxidants in peripheral blood lymphocytes. The authors of the study found a highly significant reduction in major antioxidants like glutathione ( $p < 0.01$ ), catalase ( $p < 0.001$ ), superoxide dismutase ( $p < 0.001$ ) and a marked elevation lipid peroxidation. A significant association (through multiple linear regression analyses) was found between a reduction in glutathione (GSH) ( $p < 0.05$ ), catalase (CAT) ( $p < 0.001$ ), superoxide dismutase (SOD) ( $p < 0.001$ ) activities and elevated micronucleus (MN) frequency ( $p < 0.001$ ) and lipid peroxidation (LOO) ( $p < 0.001$ ) with increasing radiofrequency power density (Zothansiana 2017).

The evidence for free radical damage has been repeatedly documented among humans, animals, plants and microorganisms for both extremely low frequency (ELF) electromagnetic fields (EMF) and for radio frequency radiation, neither of which is ionizing. While ionizing radiation directly damages DNA, non-ionising radiation like the radiation from a wireless base station (mobile phone tower) interferes with the oxidative repair mechanisms resulting in oxidative stress, damage to cellular components including DNA, and damage to cellular processes leading to



cancer. Furthermore, free-radical damage explains the increased cancer risks associated with mobile phone use, occupational exposure to non-ionising radiation for both extremely low frequency (ELF EMF) and radiofrequency radiation (RFR), and residential exposure to power lines and RF transmitters including mobile phones, cell phone base stations, broadcast antennas, and radar installations. (Havas 2017).

In a 2017 study authored by Australian scientific expert researcher on electromagnetic radiation, Dr Priyanka Bandara with a PhD in oxidative stress has found RF-EMR causes oxidative stress in cells contrary to what ARPANSA state. Dr Bandara et al found 89% of 242 peer reviewed studies have demonstrated oxidative stress. This evidence was presented at the Australian Radiation Protection Society 2017 and published in their journal (Bandara P, Weller S 2017).

In a study entitled 'Epidemiological Evidence for a Health risk from Mobile Phone Base Stations' the lead author being Assoc Professor Vini Khurana eminent Australian Neurosurgeon, co-author Prof Lennart Hardell Professor of Oncology in Orebro Sweden and other researchers stated: 'Eight of the 10 studies reported increased prevalence of adverse neurobehavioural symptoms or cancer in populations living at distances less than 500 metres from base stations'.

The authors state that: 'none of the studies that found adverse health effects of base stations reported RF exposures above accepted international guidelines, the implication being that if such findings continue to be reproduced, current exposure standards are inadequate in protecting human populations.'

Khurana et al continue: 'The accumulating epidemiological literature pertaining to the health effects of mobile phones and their base stations suggests that previous exposure standards based on the thermal effects of EMF should no longer be regarded as tenable' (Khurana 2010).

Visionstream in the Environmental EME Report state that the maximum EME calculated is 1.65% of the public exposure limit. On a cursory glance that sounds not much at all. However, what that means is the proposed maximum RF-EMR is 1.65% of the thermal exposure limit. However, that does not infer safety from harm within the non-thermal, non-ionising radiation zone as described in cells studies by Bandara et al and many others (see ORSAA database and the BioInitiative report 2021 with 2020/2021 updates), that oxidative damage is occurring within the very standard meant to protect all Australians.

1.65% is a 'smoke scream' for the Electric Field strength measured at a maximum of 6.93 V/m up to 200m, which is 11.2% of a maximum public exposure of 61.4 V/m for radio systems with frequencies 2000 MHz to 3500 MHz. However, 700MHz radios systems like the LTE700 which

Telstra is erecting, has an ARPANSA limit of 37.6V/m, so now the Electric Field is 18.4% of the Standard which is a massive increase of exposure.

With respect to the radiofrequency exposure measured in milliwatts per meter squared mW/m<sup>2</sup>, the maximum calculated exposure at 200 metres is 127.23 mW/m<sup>2</sup>. This equates to 127,230 microwatts per meter squared (127,230 uW/m<sup>2</sup>). How can we contextualise these numbers remembering that multiple organizations following the Precautionary Principle recommend daily exposure of power density no more than 100 uW/m<sup>2</sup> and many, much less than that between 1-10uW/m<sup>2</sup> and electric fields strength no more than 0.3 V/m for daily chronic exposure? These organizations include The European Academy of Environmental Medicine (EUROPAEM), The BioInitiative Group, ORSAA, The Environmental Health Trust (EHT), The Austrian Medical Association, German BauBiologie (German Building Biologists), The Australian Society of Building Biologists, PHIRE (Physicians Health Initiative for Radiation and the Environment), STOA (The European Parliament Scientific and Technical Options Assessment of 2001) and other international medical organisations.

In a 2011 study of the health effects of living near a mobile phone base station antennae, the results showed that most of the symptoms such as nausea, headache, dizziness, irritability, discomfort, nervousness, depression, sleep disturbance, memory loss and lowering of libido were statistically significant in the inhabitants living less than 300 metres from the mobile phone base transceiver station BTS antenna (Alawazi 2011).

Are there risks of cancer living near a base station?

A number of studies have shown an increased risk the closer the wireless base station. In a South American study, the death rate was highest within a hundred metres of the tower and dropped back to base line levels one kilometre away. Closer observation of the RF-EMR exposure found that the largest accumulated electric field strength measured was between 0.4 V/m and 12.4 V/m. The lowest power density associated with increased cancer deaths was 0.04 µW/cm<sup>2</sup> (400uW/m<sup>2</sup>) and the highest recordings associated with increased cancer mortality was 40.78 µW/cm<sup>2</sup> (407,800uW/m<sup>2</sup>), smallest (Dode 2011).

Comparing these exposure levels to what you and your wife are projected to be exposed to with respect to electric field strength and power density places you in the middle of the Electric Field exposure and towards the highest end of power density exposure, suggest an extreme risk of harm to your health.

A German study found persons within the 400m perimeter of a wireless base station developed

cancer at a younger age. The study revealed a latency period of 5 years where there was no increased risk, but thereafter the risk of cancer increased 3 fold (Eger et al 2004). Other studies report similar results.

In 2018, the Ramazzini Institute published the largest long term study of 2,500 rats exposed to radiofrequency similar to emissions from a wireless base station from pre-term to death. There was a statistically significant increased risk of malignant schwannomas of the heart. There was also an increased incidence of glial tumours (malignant brain tumours) in female rats but it was not statistically significant. The authors commented 'These tumours are of the same histotype of those observed in some epidemiological studies on cell phone users. These experimental studies provide sufficient evidence to call for the re-evaluation of IARC conclusions regarding the carcinogenic potential of RFR in humans' (Falcioni et al 2018).

The National Toxicology Study (NTP) of rats and mice exposed to mobile phone frequencies from pre-term to the end of life also had a statistically significant higher occurrence of malignant heart tumours and gliomas in the males as well as an increase in adrenal, prostate and lung tumours but statistically significant. This triple peer reviewed study, not only endorsed the International Agency for Research in Cancer (IARC) classification that radiofrequency is a Group 2 Possible Carcinogen, but a number of scientific papers have been published that radiofrequency electromagnetic radiation should be reclassified as a Group 1 Carcinogen (Miller et al 2018/ Hardell 2019)

The WHO manages the International Classification of Diseases. In the 10<sup>th</sup> revision (ICD-10), a specific code exists for illness following exposure to non-ionising radiation. The code is W90.

There is a sub-code for radiofrequency, it is W90.0 with further differentiation for initial exposure, subsequent exposure and sequela. The codes being W90XXA for initial exposure, W90.XXD for subsequent exposure and W90.XXS for sequela.

There is also additional codes for exposure to other non-ionising radiation with the listing code being W90.8 with similar sub-codes being W90.8XXA, W90.8XXD and W90.8XXS

Hence it is internationally recognised that non-ionising radiation can cause illness from exposure and these exposures are occurring with the ARPANSA Standard.

Mr Eskett, it is my professional medical opinion, having consulted over the last 28 years with hundreds of people affected by exposure the electromagnetic radiation within the ARPANSA Standard, that exposure to the 4G, 4GX and 5G radio systems to be erected on a 40 metre

monopole at 32 Allerton Rd, Robinson WA 6330, poses an extreme risk of harm to your health.

RF-EMR is a proven Group 2B Possible Carcinogen as per IARC (The International Agency for Research on Cancer) declaration in May 2011. On these grounds alone, the Precautionary principle should be enforced and the wireless base station moved to a site further away.

Following the Ramazzini Institute study and the NTP Study endorsing the cancer causing potential of RF-EMR, a number of publications recommend IARC to reclassify RF-EMR as a Group 1 Carcinogen, the very frequencies emitting from the proposed wireless base station at 32 Allerton Rd, Robinson WA 6330, are the frequencies upon which the Ramazzini institute and the NTP study were conducted.

ARPANSA has provided no long term evidence that living 200 metres from a mobile phone base station for more than 5 years is free of any biological harm not only with 4G radio systems but now 5G systems as well. There are no long term safety studies, so not only is it highly likely that short and long term exposure will cause an exacerbation of your electromagnetic hypersensitivity symptoms, but there could be more sinister consequences. Based on the above research, the chance of accelerated oxidative stress occurring in your body's is highly likely living so close to the proposed tower, but the consequences of that oxidative stress to you are unknown.

Following The Precautionary Principle, I strongly recommend that you are not exposed at all to the non-consensual RF-EMR emissions from the proposed tower while living in your chosen place of residence at 98 Elphinstone Rd, Robinson WA 6330.

As Medical Director of the Australian Society of Electromagnetic Radiation Medicine (TASEMRM) comprised of doctors, scientists and the legal profession, it is my professional opinion that you and your wife living so close to the electromagnetic radiation from the proposed radio systems to be erected on a monopole with 4G, 4GX and 5G radio systems, will increase the risk of harm to your health and the health of your wife.

Should you wish to discuss the matter further, please contact me at the address below.

Yours sincerely



Dr Russell Cooper

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Physicians for Safe Technology  
Dr Cindy Russell  
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