



MINUTES

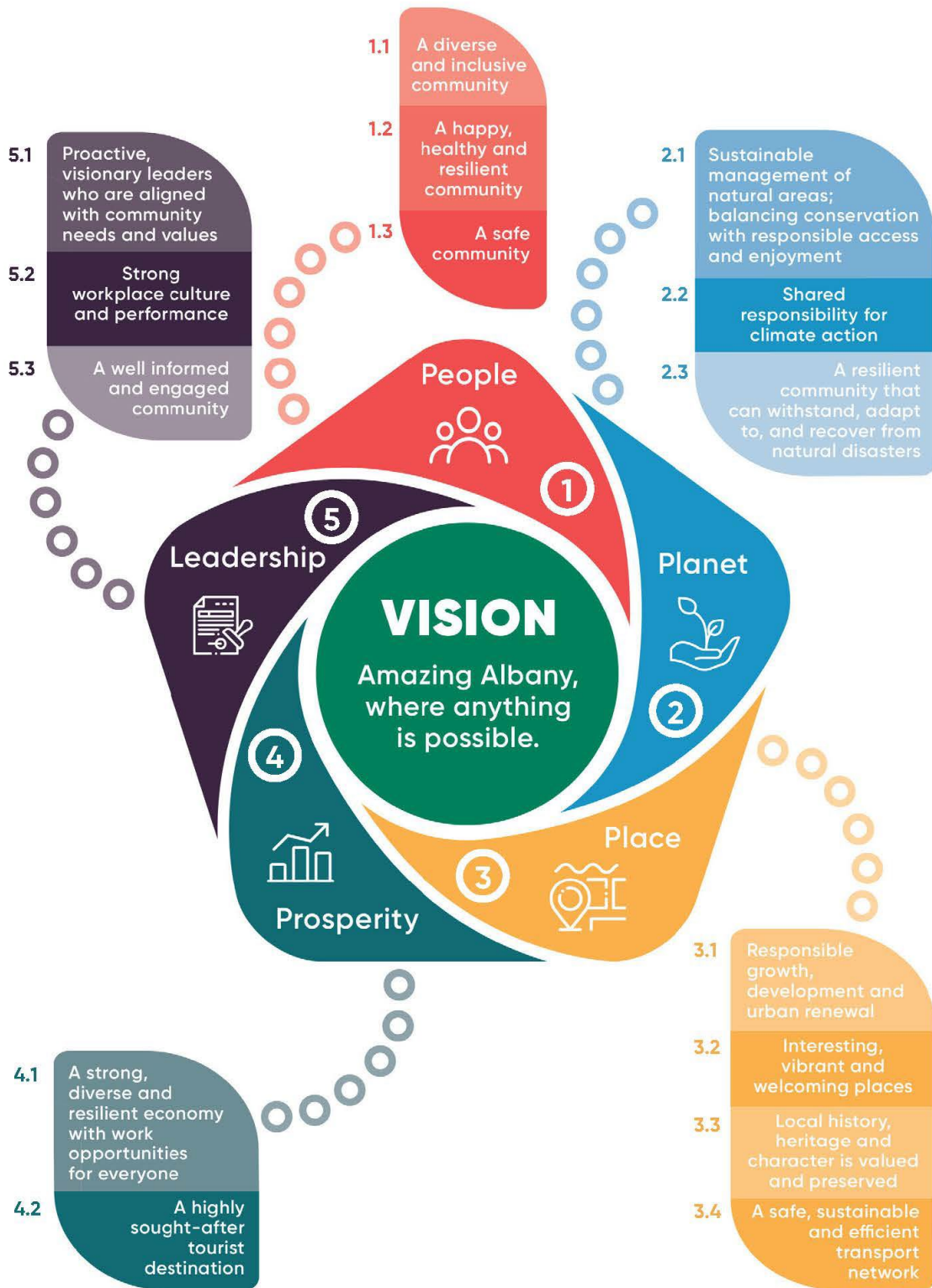
DEVELOPMENT AND INFRASTRUCTURE SERVICES COMMITTEE MEETING

Wednesday 13 March 2024

6.00pm

Council Chambers

The Five Strategic Pillars



Development & Infrastructure Services Committee
Terms of Reference

Functions:

This Committee is responsible for:

- Sustainable management of natural areas, balancing conservation with responsible access and enjoyment.
- Shared responsibility for climate action.
- Responsible growth, development, and urban renewal.
- Creating interesting, vibrant, and welcoming places.
- Valuing and preserving local history, heritage, and character.
- Ensuring a safe, sustainable, and efficient transport network.

It accomplishes this by:

- Developing policies and strategies.
- Creating progress measurement methods.
- Receiving progress reports.
- Considering officer advice.
- Debating current issues.
- Offering advice on effective community engagement and progress reporting.
- Making recommendations to Council.

Membership: Open to all elected members.

Meeting Schedule: Monthly Meeting

Location: Council Chambers

Executive Officers:

- Executive Director Infrastructure, Development & Environment Services
- Manager Planning & Building Services
- Manager Engineering & Sustainability

Delegated Authority: None

DEVELOPMENT AND INFRASTRUCTURE SERVICES COMMITTEE
MINUTES – 13/03/2024

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DEVELOPMENT AND INFRASTRUCTURE SERVICES COMMITTEE
MINUTES – 13/03/2024

1. **DECLARATION OF OPENING** The Chair declared the meeting open 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 ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE**

Mayor G Stocks

Councillors:

| | |
|-------------------------|-----------------|
| Deputy Mayor Councillor | P Terry |
| Councillor | A Cruse (Chair) |
| Councillor | R Sutton |
| Councillor | T Brough |
| Councillor | D Baesjou |
| Councillor | S Grimmer |
| Councillor | C McKinley |
| Councillor | M Lionetti |

Staff:

| | |
|---|------------------|
| Chief Executive Officer | A Sharpe |
| Executive Director Infrastructure, Development & Environment | P Camins |
| Manager Development Services | J van der Mescht |
| Meeting Secretary | P Ruggera |

Apologies:

| | |
|------------|----------------------|
| Councillor | M Traill (Apology) |
| Councillor | L MacLaren (Apology) |

There were no media representatives and 2 members of the public were in attendance.

4. DISCLOSURES OF INTEREST

| Name | Committee/Report Item Number | Nature of Interest |
|------|---------------------------------|--------------------|
| Nil | | |

5. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE Nil

6. PUBLIC QUESTION TIME

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

Clause 4 (6) The total time allowed for public question time will be no more than 30 minutes.

Any extension to the time period defined by the City of Albany Standing Orders Local Law 2014 (as amended) will be at the discretion of the Presiding Member.

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

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

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

6.01pm Dr Emily Fergie, 31 Cygnet Crescent, Dalkeith

Summary of Key Points:

Dr Fergie spoke against the Authorising Officer Recommendation for report item DIS388 :Holiday House at 56 Karrakatta Road, Goode Beach.

6.05pm Mr Craig Wallace, 1 Williams Street, Perth.

Summary of Key Points:

Mr Wallace spoke against the Authorising Officer Recommendation for Report Item DIS388:Holiday House at 56 Karrakatta Road, Goode Beach.

7. PETITIONS AND DEPUTATIONS Nil

8. CONFIRMATION OF MINUTES

RESOLUTION

**MOVED: COUNCILLOR BROUGH
SECONDED: MAYOR STOCKS**

THAT the minutes of the Development and Infrastructure Services Committee meeting held on 14 February 2024 as previously distributed, be CONFIRMED as a true and accurate record of proceedings.

CARRIED 9-0

9. PRESENTATIONS Nil

10. UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS Nil

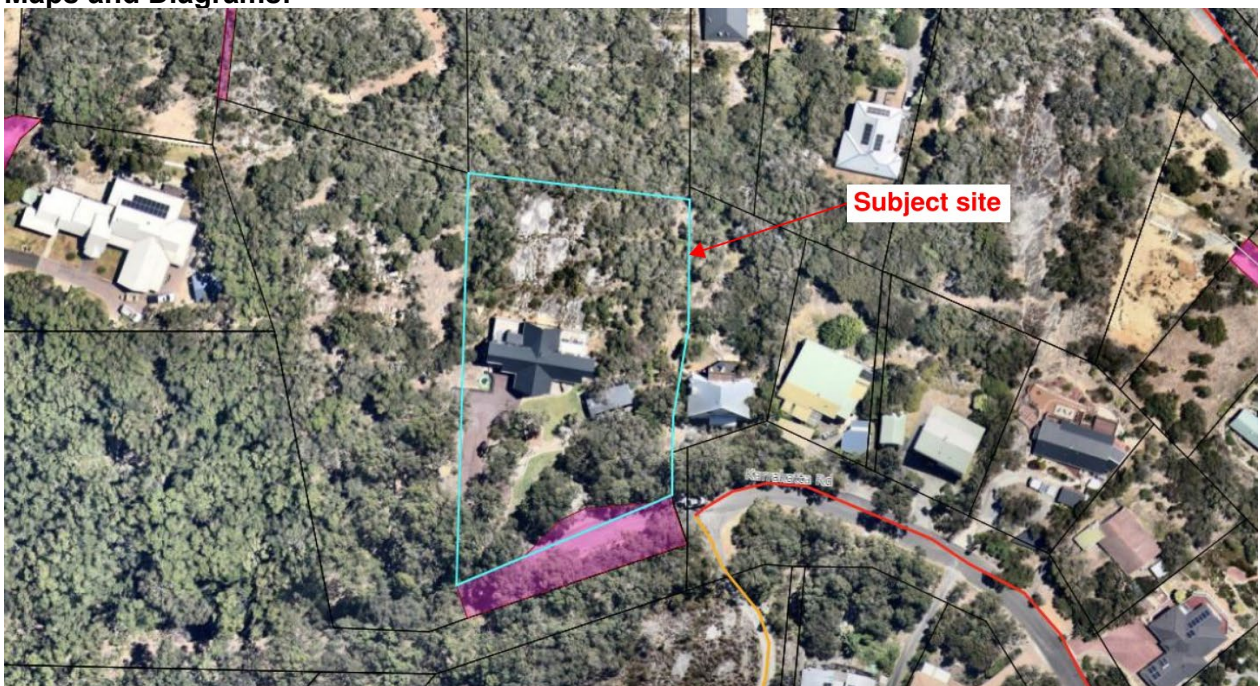
DIS388: HOLIDAY HOUSE AT 56 KARRAKATTA ROAD, GOODE BEACH

| | |
|---|--|
| Land Description | : Lot 601, 56 Karrakatta Road, Goode Beach |
| Proponent / Owner | : CS & EM Bastian |
| Attachments | : 1. BMP & BEEP 2. Development Plans 3. DFES technical advice February 2023 4. DFES technical advice December 2023 5. Property Management Plan 6. Schedule of Submissions |
| Supplementary Information & Councillor Workstation | : Customer Complaint Form Objection State Planning Policy 3.7 – Planning in Bushfire Prone Areas Guidelines for Planning in Bushfire Prone Areas V1.4 |
| Report Prepared By | : Senior Planning Officer (D Ashboth) |
| Authorising Officer: | : Executive Director Infrastructure, Development and Environment (P Camins) |

STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. In making its decision, Council is obliged to draw conclusion from its adopted *Albany Local Planning Strategy 2019* (the Planning Strategy) and *Strategic Community Plan – Albany 2032*.
3. This item relates to the following elements of the City of Albany Strategic Community Plan 2032:
 - **Pillar:** People
 - **Outcome:** A safe community
 - **Pillar:** Planet
 - **Outcome:** A resilient community that can withstand, adapt to, and recover from natural disasters.
 - **Pillar:** Prosperity
 - **Outcome:** A highly sought-after tourist destination.

Maps and Diagrams:



In Brief:

- Council is requested to consider an application for a Holiday House at No. 56 (Lot 601) Karrakatta Road, Goode Beach.
- The application is consistent, or capable of consistency (through imposition of conditions) with Local Planning Scheme No.2 and the City of Albany Holiday Accommodation Local Planning Policy requirements.
- The proposed Holiday House does not achieve objectives 5.1, 5.2 and 5.3 of State Planning Policy 3.7 – Planning in Bushfire Prone Areas (SPP3.7).
- The proposed Holiday House also does not meet the performance solutions nor the intent of Element 5: Vulnerable Tourism Land Uses contained within the Guidelines for Planning in Bushfire Prone Areas (Bushfire Guidelines) relating to Siting and Design (P5iv) nor Vehicle Access (P5v).
- The City’s consideration of the proposal, including the documentation submitted by the applicant and advice provided by DFES are discussed in detail within the report.
- Council is now requested to consider the matter, specifically in relation to whether the proposal is an acceptable outcome, taking into account the Objectives of SPP3.7 and the Elements and Objectives contained within v1.4 of the Guidelines for Planning in Bushfire Prone Areas.

RECOMMENDATION

DIS388: COMMITTEE RECOMMENDATION

THAT Council:

- (1) ENDORSES the Bushfire Management Plan submitted by the Applicant.**
- (2) RESOLVES to issue a notice of determination for APPROVAL for a Holiday House at Lot 601, 56 Karrakatta Road, Goode Beach, subject to the following conditions:**

- 1. All development shall occur in accordance with the stamped, approved plans referenced P2210704 and dated 26 March 2024, 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. Prior to commencement of operation, an updated vehicular parking and access plan shall be submitted for approval and be subsequently constructed and fully implemented to the satisfaction of the City of Albany.**

Advice Condition 3:

- ***Car parking and access is to be designed in accordance with Australian Standard 2890.***
 - ***The plan shall clearly indicate the dimensions and intended use of all parking bays (eg disabled bay, loading bay etc), access areas, line marking, kerbing and sealing.***
 - ***All trafficable areas to be suitably sealed, to the satisfaction of the City of Albany.***
 - ***All parking is to be onsite with no parking permitted outside of property boundaries.***
 - ***Three (3) parking bays are required for up to eight (8) guests under the City of Albany Holiday Accommodation Local Planning Policy.***
 - ***Stormwater runoff attenuation from carparking and driveway should be detailed.***
- 4. Prior to commencement of operation, an updated property management plan shall be submitted to and approved by the City of Albany. The updated property management plan shall address minor inconsistencies relating to carparking numbers, property management and implementation of measures required under the approved Bushfire Management Plan including:**

- **Implementation of accommodation closures on extreme and catastrophic fire days and alternative arrangements for guests and their belongings on these days.**
 - **Location of local property manager and details as to how they will educate guests on the bushfire risk and measures to be undertaken in the event of a bushfire.**
 - **Details as to how the local property manager will assist with occupant evacuation in the event of a bushfire.**
5. **The updated property management plan shall also include and detail protocols to enhance situational awareness, minimise risks and contribute to a safer environment for guests, including:**
- **Provide clear written materials and visual aids during check-in to enhance guest awareness.**
 - **Mandatory Check-In Briefings: Conduct mandatory briefings for all guests upon check-in, focusing on bushfire safety measures and emphasising key evacuation details.**
 - **Guest Safety Orientation: Develop and implement a comprehensive orientation program for guests, including information on bushfire risks, evacuation routes and emergency procedures.**
 - **Guest Acknowledgement: Implement a booking and check-in process requiring guests to acknowledge and understand the bushfire risks through a signed agreement or electronic acknowledgement.**
 - **Technology Alerts: Utilise available technology for real-time updates and alerts to guests regarding bushfire risks through mobile apps or automated messaging systems.**
 - **On-Call Safety Personnel: Employ/contract an emergency responder to assist and guide guests during bushfire events.**
6. **The operation of the holiday accommodation shall be in accordance with the approved management plan, which shall be reviewed and updated at the time of any change of ownership or management.**
7. **Prior to commencement of operation, information is to be provided to demonstrate that the measures contained in Section 6; Table 12 of the bushfire management plan dated 19 September 2023 by BioDiverse Solutions required ‘prior to use’ have been implemented. This information should include a completed ‘Certification by Bushfire Consultant’ from the bushfire management plan.**
8. **The measures and actions identified in the approved Bushfire Management Plan and Bushfire Emergency Evacuation Plan shall be implemented and maintained in perpetuity, to the satisfaction of the City of Albany.**
9. **Prior to commencement of operation, an easement in accordance with Section 195 of the Land Administration Act 1997 specifying access rights for vegetation maintenance in favour lot 601 Karrakatta Road shall be placed on the certificate(s) of title of lot 602 Karrakatta Road. The easement documentation shall detail the management activity within the easement area by the owners of lot 601. Notice of this easement(s) is to be included on the diagram or plan of survey (deposited plan). The easement is to state as follows: *“Vegetation to be maintained in a low fuel state all times”***
10. **Prior to commencement of operation, the asset protection zone indicated under ‘Figure 5 Works Program of the approved Bushfire Management Plan shall be provided and maintained around the holiday house hereby approved, to the satisfaction of the City of Albany.**

11. A notification, pursuant to Section 165 of the Planning and Development Act 2005, is to be placed on the certificate(s) of title of the lot(s), advising of the existence of a hazard or other factor. Notice of this notification is to be included on the diagram or plan of survey (deposited plan). The notification is to state as follows:

“This land is within a bushfire prone area as designated by an Order made by the Fire and Emergency Services Commissioner and is subject to a Bushfire Management Plan. Additional planning, building and management requirements may apply to this land”

12. No goods or materials shall be stored, either temporarily or permanently, in the parking areas or in access driveways, unless otherwise agreed in writing by the City of Albany.

13. The development hereby approved shall not prejudicially affect the amenity of the neighborhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust.

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

Advice Condition 14:

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

15. The holiday house hereby approved shall only be used for short stay accommodation, with any single tenant permitted to stay for no more than three months in any twelve month period.

16. Each bedroom utilising beds shall have a floor space of not less than four square metres per person; each bedroom utilising bunks shall have a floor space of not less than 2.5 square metres per person; and a maximum of eight (8) persons are permitted to stay on the premises at any one time.

17. The operator or manager of the premises hereby approved for holiday accommodation are to provide and maintain a register of all people who utilise the holiday accommodation during the year to the satisfaction of the City of Albany. A receipt book must be kept available for inspection by the City of Albany.

Officer Comment:

In addition to the comprehensive assessment outlined in this document, officers assert that the Bushfire Management Plan (BMP) fails to comply with the requirements of SPP3.7.

As highlighted in the BMP, the proposed development does not fall within the definition of "Minor Development", yet an assessment is conducted based on that very definition. Furthermore, since this development constitutes a new "vulnerable land use", as clearly defined in SPP3.7, and is not "unavoidable development", the legacy provisions do not apply, and the precautionary principle is not being adhered to.

Additionally, and specifically, vulnerable land uses in BAL-40 or BAL-FZ (this application) will not be supported in SPP3.7 unless they are "unavoidable development".

The criteria for "minor development" may be satisfied if a "safer place" is established within the precinct in the future to allow a different assessment methodology.

The decision-makers are obligated to consider State Planning Policy with "Due Regard".

The “Due Regard” that a decision maker (in this case Council) should afford to SPP3.7 in its quasi-judicial capacity is clearly set out in the SAT case O’NEILL and CITY OF JOONDALUP [2021] WASAT 107.

This case also establishes a pertinent test for exercising discretion in evaluating applications of this nature which includes the following seven points listed in clause 2.5. of the guidelines;

- The intent, objectives and policy measures of SPP 3.7 and the guidelines;
- The need to apply the precautionary principle;
- Compliance with any provisions of the local planning scheme or local planning policy relating to bushfire;
- Whether the bushfire hazard can be reduced to an acceptable level;
- Whether the proposed measures can be practically implemented and maintained for the life of the development or land use;
- Whether the proposal demonstrates an improvement or innovation in bushfire risk management that improves the bushfire outcome on the site and surrounds; and
- Advice received from relevant referral agencies.

Officers believe that the application does not meet all these criteria. Council should also consider this test in making a final decision on the matter.

DIS388: ALTERNATE MOTION BY COUNCILLOR SUTTON

MOVED: COUNCILLOR SUTTON

SECONDED: COUNCILLOR BROUGH

THAT Council:

- (1) ENDORSE the submitted Bushfire Management Plan.
- (2) Resolves to issue a notice of determination for APPROVAL for a Holiday House at Lot 601, 56 Karrakatta Road, Goode Beach, subject to the following conditions:
 1. All development shall occur in accordance with the stamped, approved plans referenced P2210704 and dated 26 March 2024, 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. Prior to commencement of operation, an updated vehicular parking and access plan shall be submitted for approval and be subsequently constructed and fully implemented to the satisfaction of the City of Albany.

Advice Condition 3:

- *Car parking and access is to be designed in accordance with Australian Standard 2890.*
 - *The plan shall clearly indicate the dimensions and intended use of all parking bays (eg disabled bay, loading bay etc), access areas, line marking, kerbing and sealing.*
 - *All trafficable areas to be suitably sealed, to the satisfaction of the City of Albany.*
 - *All parking is to be onsite with no parking permitted outside of property boundaries.*
 - *Three (3) parking bays are required for up to eight (8) guests under the City of Albany Holiday Accommodation Local Planning Policy.*
 - *Stormwater runoff attenuation from carparking and driveway should be detailed.*
4. Prior to commencement of operation, an updated property management plan shall be submitted to and approved by the City of Albany. The updated property management plan shall address minor inconsistencies relating to carparking numbers, property management and implementation of measures required under the approved Bushfire Management Plan including:

- Implementation of accommodation closures on extreme and catastrophic fire days and alternative arrangements for guests and their belongings on these days.
 - Location of local property manager and details as to how they will educate guests on the bushfire risk and measures to be undertaken in the event of a bushfire.
 - Details as to how the local property manager will assist with occupant evacuation in the event of a bushfire.
5. The updated property management plan shall also include and detail protocols to enhance situational awareness, minimise risks and contribute to a safer environment for guests, including:
- Provide clear written materials and visual aids during check-in to enhance guest awareness.
 - Mandatory Check-In Briefings: Conduct mandatory briefings for all guests upon check-in, focusing on bushfire safety measures and emphasising key evacuation details.
 - Guest Safety Orientation: Develop and implement a comprehensive orientation program for guests, including information on bushfire risks, evacuation routes and emergency procedures.
 - Guest Acknowledgement: Implement a booking and check-in process requiring guests to acknowledge and understand the bushfire risks through a signed agreement or electronic acknowledgement.
 - Technology Alerts: Utilise available technology for real-time updates and alerts to guests regarding bushfire risks through mobile apps or automated messaging systems.
 - On-Call Safety Personnel: Employ/contract an emergency responder to assist and guide guests during bushfire events.
6. The operation of the holiday accommodation shall be in accordance with the approved management plan, which shall be reviewed and updated at the time of any change of ownership or management.
7. Prior to commencement of operation, information is to be provided to demonstrate that the measures contained in Section 6; Table 12 of the bushfire management plan dated 19 September 2023 by BioDiverse Solutions required 'prior to use' have been implemented. This information should include a completed 'Certification by Bushfire Consultant' from the bushfire management plan.
8. The measures and actions identified in the approved Bushfire Management Plan and Bushfire Emergency Evacuation Plan shall be implemented and maintained in perpetuity, to the satisfaction of the City of Albany.
9. Prior to commencement of operation, an easement in accordance with Section 195 of the Land Administration Act 1997 specifying access rights for vegetation maintenance in favour lot 601 Karrakatta Road shall be placed on the certificate(s) of title of lot 602 Karrakatta Road. The easement documentation shall detail the management activity within the easement area by the owners of lot 601. Notice of this easement(s) is to be included on the diagram or plan of survey (deposited plan). The easement is to state as follows: *"Vegetation to be maintained in a low fuel state all times"*
10. Prior to commencement of operation, the asset protection zone indicated under 'Figure 5 Works Program of the approved Bushfire Management Plan shall be provided and maintained around the holiday house hereby approved, to the satisfaction of the City of Albany.
11. A notification, pursuant to Section 165 of the Planning and Development Act 2005, is to be placed on the certificate(s) of title of the lot(s), advising of the existence of a hazard or other factor. Notice of this notification is to be included on the diagram or plan of survey (deposited plan). The notification is to state as follows:
- "This land is within a bushfire prone area as designated by an Order made by the Fire and Emergency Services Commissioner and is subject to a Bushfire Management Plan. Additional planning, building and management requirements may apply to this land"*

12. No goods or materials shall be stored, either temporarily or permanently, in the parking areas or in access driveways, unless otherwise agreed in writing by the City of Albany.
13. The development hereby approved shall not prejudicially affect the amenity of the neighborhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust.
14. Sign(s) shall not be erected on the lot without the prior approval of the City of Albany.
Advice Condition 14:
 - *Please refer to the City of Albany Local Planning Policy – Signs for further information.*
15. The holiday house hereby approved shall only be used for short stay accommodation, with any single tenant permitted to stay for no more than three months in any twelve month period.
16. Each bedroom utilising beds shall have a floor space of not less than four square metres per person; each bedroom utilising bunks shall have a floor space of not less than 2.5 square metres per person; and a maximum of eight (8) persons are permitted to stay on the premises at any one time.
17. The operator or manager of the premises hereby approved for holiday accommodation are to provide and maintain a register of all people who utilise the holiday accommodation during the year to the satisfaction of the City of Albany. A receipt book must be kept available for inspection by the City of Albany.

CARRIED 5-4

Record of Vote:

Against the Motion: Mayor Stocks, Deputy Mayor Councillor Terry and Councillors Cruse and Grimmer.

Councillor Reason:

Council believe that the Bushfire Management Plan submitted by the applicant meets the requirements of SPP 3.7 and its associated performance criteria as detailed in the Guidelines for Planning in Bushfire Prone Areas, and as such there are no grounds for refusing this application on that basis.

Councillor Sutton then proposed an Alternate Motion from the floor.

DIS388: AUTHORISING OFFICER RECOMMENDATION

MOVED: COUNCILLOR TERRY

SECONDED: MAYOR STOCKS

THAT Council resolves to issue a notice of determination for REFUSAL for a Holiday House at Lot 601, 56 Karrakatta Road, Goode Beach, for the following reasons:

1. The proposal does not satisfy the following matters to be considered as identified in Schedule 2, Part 9, Clause 67 of the Planning and Development (Local planning Schemes) Regulations 2015, namely:
 - a) The objectives and provisions of State Planning Policy 3.7 Planning in bushfire prone areas, specifically:
 - i. Objectives 5.1, 5.2 and 5.3 and Policy measure 6.6 of SPP3.7; and
 - ii. The proposal does not meet the performance solutions nor the intent of Element 5: Vulnerable Tourism Land Uses contained within the Guidelines for Planning in Bushfire Prone Areas (v1.4) associated with the State Planning Policy 3.7 – Planning in bushfire prone areas. Specifically the performance solutions outlined under the BMP dated 19/09/2023 do not satisfactorily demonstrate in the opinion of the local government, in consultation with DFES, appropriate solutions for Siting and Design (P5iv) nor Vehicle Access (P5v).

- b) the suitability of the land for the development taking into account the possible risk of flooding, tidal inundation, subsidence, landslip, bush fire, soil erosion, land degradation or any other risk; and
- c) the suitability of the land for the development taking into account the possible risk to human health or safety.

LOST 4-5

Record of Vote

For the Motion: Mayor Stocks, Deputy Mayor Councillor Terry, Councillors Cruse and Grimmer.

BACKGROUND

Site details

| | |
|---|--|
| Local Planning Scheme: | City of Albany Local Planning Scheme No. 2 |
| Zone: | Residential (Site Specific Provisions 19) |
| Lot Size: | Site Area 4006m ² |
| LPS2 Use Class and Permissibility (Table 3): | Holiday House - A |
| Existing Land Use: | Single House |
| Bushfire Prone Area: | Yes |
| Local Planning Policies: | Holiday Accommodation |
| Other Relevant Plans and Policies: | State Planning Policy 3.7 – Planning in bushfire prone areas & associated guidelines |

- The applicant initially contacted the City in September 2021 to discuss requirements for a change in use application from 'Single House' to 'Holiday House'. The applicant was advised of the additional bushfire requirements that apply to the lot (amongst other considerations) and was directed to a bushfire consultant.
- The application for 'Holiday House' at 56 Karrakatta Road was originally lodged with the City in December 2021 and in the same month, the applicant was advised that the application is unlikely to be supported due to the identified BAL rating of BAL-FZ (flame zone) resulting in non-compliance with SPP3.7 and associated Bushfire Guidelines. The applicant was subsequently given the opportunity to withdraw the application or proceed to a full assessment.
- The applicant confirmed they wished to proceed with a full assessment and later that month, the application was referred to adjoining landowners and the Department of Fire and Emergency Services (DFES) for comment.
- Following further discussions with the applicant, the application was placed on hold in January 2022 pending the provision of a Bushfire Emergency Evacuation Plan, an updated BAL assessment and a revised parking plan.
- In the time that followed the application being placed on hold, the applicant began efforts (in consultation with their bushfire consultant and neighbours) to reduce the BAL-rating in an attempt to achieve the deemed-to-comply criteria relating to Element 5(P5iv) of the Bushfire Guidelines. However, despite their efforts, the applicant was unable to reduce the BAL rating below BAL-FZ, even with the cooperation of an adjoining landowner.
- At the same time, the City sought advice from the Department of Planning, Lands and Heritage as custodians of SPP3.7 and associated Guidelines to ensure the City's interpretation of the documents was correct. The City was advised to refer to the DFES for technical information.

8. A referral response was received from the DFES on 15th February 2022 (refer attachment 1) which advised the application does not comply with the bushfire protection criteria within the Bushfire Guidelines and was therefore not supported.
9. Following the DFES advice, the applicant was again advised that the City is unable to support the application as currently proposed. The applicant subsequently requested a site meeting to discuss the outstanding bushfire matters, which was held on 25 February 2022, with City officers, the applicant and their bushfire consultant in attendance.
10. At the onsite meeting, when the City was asked how the application could move forward despite the DFES advice, City officers suggested that they may wish to consider exploring the preparation of a risk assessment in accordance with SPP3.7 Guidelines, which provides a potential alternative pathway via a performance principle-based solution to demonstrate the proposal can address the outstanding bushfire considerations.
11. However, City officers also stressed at the time that this avenue would not guarantee a positive determination of the application, and further assessment and referral to DFES likely to be required.
12. The applicant and bushfire consultant indicated they would investigate the risk assessment approach suggested by City officers and would forward the document to the City once completed.
13. Following the meeting in February 2022 and early December 2022, the City contacted the applicant on multiple occasions, seeking an update on the progress with the preparation of a risk assessment, with the applicant indicating that it had still not been completed.
14. The bushfire consultant then contacted the City in mid-December 2022 seeking clarification on City officers suggestion for the applicant to consider preparing a risk assessment to support the development proposal.
15. The consultant indicated that the document was more appropriate for a large-scale tourism development and suggested that an updated BMP and (Bushfire Emergency Evacuation Plan) BEEP in accordance with the performance principles in V1.4 of the Guidelines be provided in its place.
16. The City agreed and advised that upon receipt of these updated documents, the City would follow the required processes including re-referral to DFES, with a decision to be made based on the updated documentation and revised comments from DFES.
17. In September 2023 the applicant was again contacted as the required documentation had not been provided and the application could not be left on hold indefinitely.
18. They were also reminded that they did not have the necessary approvals to operate as a Holiday House following receipt of a complaint by a nearby landowner.
19. The applicant provided the requested documents at the end of October 2023. This information was then referred to DFES for a second round of comments and the assessment of the application was recommenced.
20. A second response was received from DFES in December 2023 with similar advice to the first referral response (refer attachment 2).
21. The applicant was again advised that the application cannot be supported. A meeting was arranged at the applicant's request to clarify the reasons for the anticipated refusal and discuss next steps. This meeting was also attended by the applicant's legal representative.
22. Following this meeting the applicant advised they wished to have the application determined by Council at the next available Ordinary Council Meeting, rather than under officer delegation.
23. It should be noted that this Holiday House has been operating without the necessary approvals for the duration of the application process (more than 2 years).

24. The City's Compliance and Planning team have advised the applicant that they do not have the necessary approvals to operate as a Holiday House.
25. The applicant had attempted to get their accommodation registered with the Albany Visitor's Centre. The Visitor Centre Team undertook their due diligence and checked with the Planning Department.
26. The Compliance Team advised that the Holiday House does not have the necessary approvals and as such any public liability insurances may be invalid.
27. It should also be noted that a similar application for a 'Holiday House' on the same street as this application was refused under officer delegation due to non-compliance with SPP 3.7 and the same aspects of Element 5 as this application.

DISCUSSION

Holiday Accommodation Local Planning Policy and Local Planning Scheme No.2

28. Applications for a change in land use to Holiday House require assessment against the City of Albany Holiday Accommodation Local Planning Policy (Holiday Accommodation Policy).
29. The Holiday Accommodation Policy requires the preparation of a Management Plan (attached), setting out on-going management procedures and methods to ensure the amenity of adjoining/nearby land uses are maintained.
30. The Management Plan has been reviewed by officers and is generally considered acceptable for this property, subject to some modifications to correct inconsistencies and address the implementation of measures required under the BMP.
31. As required under cl.64 of the *Deemed Provisions for Local Planning Schemes*, the application (including Management Plan) was referred to adjoining landowners for comment.
32. One (1) objection to the Holiday House was received at the close of advertising. Details of the objection, along with the officer response can be found within the Schedule of Submissions.
33. In accordance with the Holiday Accommodation Policy, where a neighbour objects to a proposal for Holiday Accommodation, the application is to be considered in view of the following:
 - a) The proximity of the holiday accommodation to key tourism attractions such as the beach or town centre/activity centre (typically a 5 minute walk – 400m); and/or
 - b) Location within a street(s) which facilitates safe, efficient and pleasant walking, cycling and driving; and/or
 - c) Location compatible with Figure A (refer to attachment - the areas illustrated are within close proximity to the town centre and popular swimming beaches); and
 - d) A management plan designed to facilitate community concerns.
34. It is considered the application meets the above-mentioned criteria for the following reasons:
 - a) The proposal is located in close proximity to Goode Beach as well as key tourist attractions such as Albany's Historic Whaling Station, the Gap and Frenchman Bay.
 - b) See above.
 - c) The property is located within a Preferred Area for Holiday Accommodation (Figure A)
 - d) An acceptable management plan has been prepared for the property to mitigate amenity impacts of the proposed Holiday House (refer above).
35. The application proposes accommodation for up to 8 guests which would require provision of three (3) designated car parking bays (1 per 3 guests) under the Holiday Accommodation Policy. Although the applicant has indicated seven (7) carparking bays on the site plan, some of these bays do not meet Australia Standards requirements.

36. Despite the above, there appears to be ample space on-site for the provision of at least 3 bays (likely more), therefore it is considered parking requirements could easily be met via the provision of a detailed car parking plan.
37. The application would be consistent with the remaining provisions of the Holiday Accommodation Policy subject to the imposition of standard conditions.
38. The application is consistent with the objectives of the Holiday Accommodation Policy being *'To encourage good quality, well managed holiday accommodation for use by short-term visitors generally in locations that will enhance the tourism experience while minimising potential impacts on adjoining residents.'*
39. The application is also consistent with the applicable provisions of LPS2, including the objectives of the Residential Zone.

Bushfire

40. A Bushfire Management Plan (BMP) and Bushfire Emergency Evacuation Plan (BEEP) were required to be prepared to accompany the application given the location in a bushfire prone area and is seeking a change of use to a vulnerable land use.
41. A vulnerable land use includes tourism or recreational land uses which involve visitors who are unfamiliar with the surroundings and/or where they present evacuation challenges. This reflects the increase in risk from a permanent residential use.
42. BMP's and BEEP's for vulnerable land uses are required to be completed by a Level 3 Bushfire practitioner under State Planning Policy 3.7 Planning in Bushfire Prone Areas and associated Guidelines version 1.4. These documents have subsequently been co-signed by a BPAD Level 3 Practitioner (Erika Dawson from Integrated Consulting).
43. The BMP is required to address the criteria contained within Element 5 of the Guidelines for Planning in Bushfire Prone Areas (the Guidelines) specifically those applying to 'Bed and Breakfast and Holiday Houses' outside of a residential built-out area.
44. The Guidelines define a 'residential built-out area' as:
"A locality serviced with reticulated water and is within or contiguous with an urban area or town (or similar), which incorporates a suitable destination."
45. A Suitable Destination is defined as:
"An area that is not classified as bushfire prone on the Map of Bush Fire Prone Areas, or is greater than 100 metres from classified vegetation as per AS 3959 and can provide shelter during a bushfire event."
46. Given Goode Beach is unable to achieve the definition of a residential built-out area (with the exception of a reticulated water supply) the application must be assessed against the more stringent criteria for land outside of a residential built-out area.
47. The BMP satisfactorily addresses the bushfire criteria relating to Provision of Water (P5vi) however, fails to achieve the criteria relating to Siting and Design (P5iv) and Vehicle Access (P5v).
48. In relation to Siting and Design (P5iv), the acceptable solutions contained within the Guidelines require an asset protection zone of sufficient size to ensure the radiant heat impact of a bushfire does not exceed BAL-29.
49. The BMP has indicated the property is unable to achieve a BAL rating below BAL-FZ (flame zone) which is the highest possible BAL rating.

50. Given the application was unable to achieve the acceptable solution, the BMP proposed assessment against the associated performance principle as follows:
- Habitable buildings are sited and designed to:*
- *Minimise clearing of existing vegetation; and*
 - *Provide hazard separation between classified vegetation and a development site, that is managed in perpetuity, to prevent the spread of fire and direct flame contact to the building.*
51. The application proposes to address the performance criteria through the following:
- Upgrading the building to limit ember ingress
 - Providing a nominated water tank for bushfire purposes
 - Closure on extreme and catastrophic fire days
 - Managing all vegetation on site and some on the neighbouring property to the west.
52. Whilst it can be argued that the above measure may increase safety in a bushfire event, these measures do not specifically address the performance criteria contained within the Guidelines.
53. Even if all the vegetation on the lot were to be managed (which would not meet the requirement to minimise vegetation clearance), the property would still be located within the 'flame zone' which entails direct flame contact with the building in a bushfire event.
54. This position was supported by the DFES referral response which noted that 'The additional mitigation measures do not improve the hazard separation for the building, and therefore do not demonstrate compliance with the performance principle'.
55. It should also be noted that although the BMP proposed clearance and maintenance of the adjoining lot through a notification on title (which staff raise concerns and have issues with) this would still not reduce the BAL-rating below BAL-FZ. These measures would only reduce the BAL-rating to the western face of the building, if they are able to be implemented.
56. The subject site is also located approximately 11m above the lots adjoining the subject site to the north which contain 'Class A Forest' designated vegetation.
57. Buildings located upslope from existing vegetation are considered to be in more danger in a bushfire event than those located on a downslope or on level land.
58. In relation to Vehicle Access (P5v), the acceptable solutions contained within the Guidelines require (amongst other attained criteria):
- Public road access is to be provided in two different directions to at least two different suitable destinations; and
 - All public roads to be through roads. No-through roads are not recommended, however if required shall not be more than 200m in length for areas with an extreme bushfire hazard level (BHL).
59. Goode Beach is in a location on a peninsula, the entirety of which is declared bushfire prone.
60. Frenchman Bay Road is the only access in and out of the locality, so applications in Goode Beach are unable to achieve the acceptable Vehicle Access criteria of the Bushfire Guidelines.
61. There is no option to achieve the required public road access in two different directions to at least two suitable destinations.
62. This particular proposal is also located at the end of a no through road with a length of approximately 340m and an extreme BHL.

63. The application therefore proposes assessment against the associated performance principle as follows:

The design and capacity of vehicular access and egress is to adequately provided for the occupants to evacuate to a suitable destination before a bushfire arrives to the site, whilst allowing emergency service personnel to attend the site.

64. The application proposes to address the performance criteria through the following:

- Closure on extreme and catastrophic fire days;
- Local managers available to assist with the evacuation of the site, if necessary;
- Local managers to educate guests on bushfire risk and measures to be undertaken in the event of a bushfire;
- BEEP providing for early evacuation of the site to Albany Leisure and Aquatic Centre.

65. In response to this proposal, DFES have advised that this approach does not demonstrate how the performance principle has been met which requires vehicle access to adequately provide for the occupants to evacuate to a suitable destination before the bushfire arrives to the site, whilst allowing emergency services personnel to attend the site.

66. Both DFES and City officers are of the opinion that compliance cannot be achieved at this location. It is noted that the change of use is within an established building and located at the end of a single access road.

67. It is considered that the limitations associated with the access arrangements in conjunction with the risk that the access could be cut off in the event of a bushfire and the potential for landscape scale bushfire in this area makes the site unsuitable for vulnerable uses.

68. In addition to the specific assessment criteria contained within Element 5 of the Bushfire Guidelines, the overall intent of Element 5 is *'To provide bushfire protection for tourism land uses relevant to the characteristics of the occupants and/or the location, to preserve life and reduce the impacts of bushfire on property and infrastructure.'*

69. In their referral response, DFES have advised that the topography, type and extent of bushfire prone vegetation may result in landscape-scale destruction as it interacts with the bushfire hazard on and close to the site.

70. In conjunction with the remoteness of the site and limited access options, it is considered that development of a vulnerable land use at this location does not comply with the overarching intent of Element 5 of the Bushfire Guidelines.

71. It is considered that approving the application would also be inconsistent with SPP3.7 specifically in relation to:

a. Policy Objectives:

5.1 Avoid any increase in the threat of bushfire to people, property and infrastructure. The preservation of life and the management of bushfire impact are paramount.

5.2 Reduce vulnerability to bushfire through the identification and consideration of bushfire risks in decision-making at all stages of the planning and development process.

5.3 Ensure that higher order strategic planning documents, strategic planning proposals, subdivision and development applications take into account bushfire protection requirements and include specified bushfire protection measures; and

b. 6.6 Vulnerable or high-risk land uses

6.6.2 In areas where BAL-40 or BAL-Flame Zone (FZ) applies

Subdivision and development applications for vulnerable or high-risk land uses in areas of BAL-40 or BAL-Flame Zone (FZ) will not be supported unless they comply with policy measures 6.6.1 and 6.7.2.

72. In relation to policy measure 6.6.2 listed above, policy measure 6.6.1 relates to BAL levels at BAL-29 or below (not applicable) whilst policy measure 6.7.2 relates to unavoidable development which the guidelines state may include development such as critical state infrastructure (railway lines, communication towers), development associated with preservation of historic or cultural sites or emergency services such as evacuation centres, fire stations or policy and ambulance facilities (not considered applicable).
73. The land use is considered an ‘A’ use, which is a use not permitted unless the local government has exercised its discretion by granting development approval after advertising the application in accordance with clause 64 of the deemed provisions.
74. As such, the applicant does not have a right to use the land for this purpose unless otherwise approved by the local government, taking into consideration the relevant assessment framework.
75. Despite the identified need for more luxury tourist accommodation in the City of Albany, the desirable location and the high-quality, unique residence, the application is unable to achieve the requirements of State Planning Policy 3.7 and associated Bushfire Guidelines.
76. It is therefore considered introducing a vulnerable land use to this location would result in unacceptable risk to the safety of occupants.
77. Courts have previously emphasised the duty of care owed by local authorities to prevent harm, even if they lack a specific statutory duty.
78. It is recommended that Council resolves to issue a notice of determination for refusal for a Holiday House at Lot 601, 56 Karrakatta Road, Goode Beach, for the above-mentioned reasons.

GOVERNMENT & PUBLIC CONSULTATION

79. The application was advertised to adjoining landowners for a period of 30 days (extended due to Christmas and the New Year period) with adjoining landowners directly notified by letter.
80. One (1) response was received objecting to the application.
81. The comments, including officer response are provided in the attached ‘Schedule of Submissions’.

| Type of Engagement | Method of Engagement | Engagement Dates | Participation (Number) | Statutory Consultation |
|--------------------|----------------------|--------------------------|------------------------|------------------------|
| Consult | Mail out | 21/12/2021 to 20/01/2022 | 1 submission received | Yes |

82. The application was also referred to the Department of Fire and Emergency Services (DFES) for comment. The comments have been included as an attachment to this item and summarised in the Discussion section above.

STATUTORY IMPLICATIONS

83. This application was submitted over two (2) years ago under Local Planning Scheme No.1 (LPS1). Whilst LPS1 has now been superseded by Local Planning Scheme No.2 (LPS2) and the zoning of the site has changed from Special Residential to Residential, the Scheme planning framework is not much different in terms of process. The most relevant planning consideration for this proposal is the State Planning Policy 3.7 and associated Bushfire Guidelines, which have not changed.
84. The subject site is located within the Residential Zone of the City of Albany Local Planning Scheme No.2. ‘Holiday House’ is listed as an ‘A’ use within the Residential Zone which means the use is not permitted unless the local government has exercised its discretion by granting development approval after advertising the application in accordance with clause 64 of the deemed provisions.

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

POLICY IMPLICATIONS

- 86. The property is located in a Bushfire Prone Area which means the application requires assessment against *State Planning Policy 3.7 – Planning in Bushfire Prone Areas (SPP3.7)*.
- 87. The proposal is not consistent with Objectives 5.1, 5.2 and 5.3 and Policy Measure 6.6 of SPP3.7 and does not meet the performance solutions nor the intent of Element 5: Vulnerable Tourism Land Uses contained within the Guidelines for Planning in Bushfire Prone Areas (v1.4) associated with the SPP3.7.

RISK IDENTIFICATION & MITIGATION

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

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|--|-----------------|---------------|---------------|--|
| <p>Reputations and People Health and Safety</p> <p><i>Increased threat to individuals, specifically visitors, residing on the premises during a bushfire. If the proposed ‘Holiday House’ is approved, there is an elevated risk to visitor safety in the event of a bushfire, as the application fails to comply with best practice frameworks.</i></p> <p><i>A holiday house is classified as a ‘vulnerable land use’.</i></p> <p><i>Not applying Guidelines for Planning in Bushfire Prone Areas and the local planning provisions could lead to severe consequences, jeopardising the safety of individuals (visitors) on the premises.</i></p> | <i>Possible</i> | <i>Severe</i> | <i>High</i> | <p><i>Mitigation: The recommended approach is to refuse the application, aligning with best practice guidelines and prioritising visitor safety.</i></p> <p><i>This ensures adherence to established frameworks and avoids endorsing a heightened risk to life associated with potential bushfire events.</i></p> <p><i>Should Council choose to support the application, it is recommended conditions be applied to enhance situational awareness, minimize risks, and contribute to a safer environment for visitors staying in the holiday house.</i></p> |

FINANCIAL IMPLICATIONS

- 89. All costs associated with the development will be borne by the proponent.
- 90. Should the proponents be aggrieved by Council’s decision and seek a review through the State Administrative Tribunal, the City may be liable for costs associated with defending the decision at a State Administrative Tribunal hearing.
- 91. Should Council elect to approve the development, there would be regulatory cost implications associated with such a decision. Compliance with, and adherence to, the Bushfire Management Plan (BMP) prepared for the property by the Applicant would be a condition of any approval as the BMP is part of the application.
- 92. The BMP states that bushfire education would be provided to all guests and that on catastrophic and extreme bushfire days the accommodation would be closed. The financial implications of ensuring compliance with this undertaking is yet to be quantified.

LEGAL IMPLICATIONS

93. Council may use its discretion to approve or refuse the proposal. An applicant aggrieved by a decision or condition may apply for a review to the State Administrative Tribunal, in accordance with Section 252 of the Planning and Development Act 2005.
94. Should Council elect to approve the development, the Council may be exposed to potential liabilities under the *Civil Liability Act 2002, Section 5X* if harm occurs due to a bushfire.
95. Section 5X of the Civil Liability Act 2002 pertains to claims for damages related to public bodies or officers. In a claim for damages arising from a public body or officer's fault in performing or not performing a public function.
96. Council may be liable for damages if proposal is approved, and harm occurs due to a bushfire.
97. It should be noted that a policy decision cannot be used to prove that the defendant was at fault unless the decision was unreasonable to the point where no reasonable public body or officer in the defendant's position could have made it. Essentially, if the decision was within a reasonable range, it won't be considered at fault.
98. It is proposed that should Council resolve to APPROVE the application, the applicant should be encouraged to implement measures to mitigate the risk to visitors, particularly in the context of a lack of situational awareness related to the proposed 'Holiday House' in a bushfire-prone area.

ENVIRONMENTAL CONSIDERATIONS

99. Should the application be approved and the recommendations contained within the BMP subsequently implemented, significant clearing of vegetation on both 56 Karrakatta Road (the subject of this application) and the neighbouring property at 53 Karrakatta Road would be required.

ALTERNATE OPTIONS

100. Council has the following alternate options in relation to this item, which are:
 - Approve the application as submitted, subject to conditions.
101. If approved, the following matters should be addressed by conditions or advice notes:
 - Implementation of the Bushfire Management Plan
 - Implementation of Holiday House Management Plan, including an update to include the points raised in the Legal Implications section above
 - Implementation of Holiday Accommodation Local Planning Policy requirements

CONCLUSION

102. The application is proposing to introduce a vulnerable land use to a bushfire prone area.
103. The application for a Holiday House in the proposed location cannot be supported at officer level as the Holiday House is unable to provide an adequate asset protection zone (extreme bushfire hazard level), nor vehicle access (single access and egress route to a suitable destination). The officer’s recommendation for refusal is based on the proposal in its current form as it does not meet:
- a) objectives 5.1, 5.2 and 5.3 and policy measure 6.6 of SPP3.7;
 - b) the performance solutions nor the intent of Element 5: Vulnerable Tourism Land Uses contained within the Guidelines for Planning in Bushfire Prone Areas (v1.4) associated with the State Planning Policy 3.7 – Planning in bushfire prone areas. Specifically, the performance solutions outlined under the BMP dated 19/09/2023 do not satisfactorily demonstrate appropriate solutions for Siting and Design (P5iv) nor Vehicle Access (P5v).
 - c) the suitability of the land for the development taking into account the possible risk of flooding, tidal inundation, subsidence, landslip, bush fire, soil erosion, land degradation or any other risk; and
 - d) the suitability of the land for the development taking into account the possible risk to human health or safety.

| | | |
|-----------------------------|---|---|
| Consulted References | : | <ol style="list-style-type: none"> 1. <i>Draft Local Planning Scheme No. 2</i> 2. <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> 3. <i>City of Albany Holiday Accommodation Local Planning Policy</i> 4. <i>State Planning Policy 3.7 – Planning in Bushfire Prone Areas</i> 5. <i>Guidelines for Planning in Bushfire Prone Areas (v1.4)</i> |
| File Number | : | A160896 |
| Previous Reference | : | N/A |

11. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN - Nil

12. MEETING CLOSED TO THE PUBLIC - 7.38PM

13. CLOSURE

There being no further business the Chair declared the meeting closed at 7.38pm.

(Unconfirmed Minutes)

Councillor Cruse
CHAIR

Our ref: CHW:IAM: 1180426
 Contact: Isabella Mosole
 Direct Line: (08) 9288 6963
 Email: Isabella.mosole@lavan.com.au
 Partner: Craig Wallace
 Direct Line: (08) 9288 6828
 Email: craig.wallace@lavan.com.au



1 William Street
 Perth Western Australia 6000
 Tel +61 8 9288 6000
 Fax +61 8 9288 6001
 lavan.com.au

11 March 2024

Elected Members
 City of Albany
 102 North Road
 YAKAMIA WA 6330

By email: staff@albany.wa.gov.au

Dear Elected Members

Submission to Council - No. 56 (Lot 601) Karrakatta Road, Goode Beach

Overview

- 1 Lavan act for the owners of the land known as No. 56 (Lot 601) Karrakatta Road, Goode Beach (**Subject Site**) which comprises a Single House approved pursuant to the City of Albany’s (**City**) *Local Planning Scheme No. 2 (Scheme)*.
- 2 My clients seek development approval for the change of use of the Subject Site to a “Holiday House” pursuant to the Scheme (**Application**).
- 3 Importantly,
 - 3.1 the Subject Site is located within the “Residential” zone of the Scheme;
 - 3.2 pursuant to the Scheme land use permissibility table (Table 3), Holiday House is designated an “A” use in the “Residential” zone; and
 - 3.3 the “A” designation means that the relevant land use is capable of approval on the Subject Site, subject to the exercise of discretion.
- 4 The Application was lodged by my clients in December 2021. Since that time, my clients have been working with the City’s planning officers to address concerns in relation to the consistency of the Application with *State Planning Policy 3.7 – Planning in Bushfire Prone Areas (SPP 3.7)*.

A full service Western Australian law firm:

Our Values:

| | | | | |
|--|--------------------------------|------------------------------------|-----------------------------|---------------|
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| Agribusiness | Cyber & Data Protection | Intellectual Property & Technology | Private Clients | Courage |
| Asian Investment | Education, Employment & Safety | Liquor Licensing | Property & Leasing | Collaboration |
| Banking & Finance | Energy, Oil & Gas | Litigation & Dispute Resolution | Reconstruction & Insolvency | Fulfilment |
| Construction & Infrastructure | Family Law | Mining & Resources | Wills & Estates | Integrity |

Lavan respectfully acknowledges the traditional owners of the land on which we live and work.

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- 5 In simple terms, SPP 3.7 directs how land use should address bushfire risk management in Western Australia. SPP 3.7 should be read in conjunction with the *Guidelines for Planning in Bushfire Prone Areas* (**Bushfire Guidelines**) which have been designed to assist with the interpretation of SPP 3.7.
- 6 My clients have engaged a qualified Bush Fire Consultant to prepare a bushfire management plan (**BMP**) and associated documents addressing SPP 3.7 in support of the Application which is included as Annexure 1 to the City's Development and Infrastructure Services Committee Meeting Agenda.
- 7 The Application was also referred to the Department of Fire and Emergency Services (**DFES**) by the City for comment.
- 8 I understand that on 15 February 2022, DFES wrote to the City in relation to the Application and advised that it did not comply with the bushfire protection criteria within the Bushfire Guidelines and was therefore not supported.
- 9 In light of the DFES advice, the City's officers advised my client that it was unable to approve the Application under delegation.
- 10 On that basis, my clients' requested that the Application be elevated to the City's Council for determination. As part of this process, the City's planning officers have provided the Council with a recommendation in respect of the Application, which in this case, is that the Application should be refused (**Recommendation**). Relevantly, the Recommendation is made on the basis that the Application does not comply with the objectives and provisions of SPP 3.7.
- 11 I am instructed to write to the City's Council in relation to how it should approach the issue of compliance with SPP 3.7 for the purpose of making a determination on the Application.

Referral agency comment

- 12 It is important for the Council to keep in perspective that the letter from DFES constitutes no more than a referral agency comment on the Application.
- 13 Clause 67(2)(za) in Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (WA) (**Deemed Provisions**) provides that due regard is to be given to referral agency comments in determining a development application.
- 14 What this means is, a decision-maker of a development application is not bound to follow or accept any referral agency comment that has been received.
- 15 Accordingly, in making its decision, the Council is empowered to make up its own mind as to compliance with SPP 3.7 in determining the Application.
- 16 Although the referral agency comment from DFES will inform the question of compliance with SPP 3.7 and will have to be given due regard, it is not determinative as to whether the provisions of SPP 3.7 have been satisfied.
- 17 Indeed, it is my experience that DFES are only likely to comment on compliance and will not offer any support or advice on a performance based solution. Discretion in that regard is reserved for the Council.



Inflexible application of policy

- 18 The State Administrative Tribunal (**Tribunal**) has considered similar applications in which the central issue was compliance with SPP 3.7.
- 19 Relevantly, in *Bunnings Group Limited and Presiding Member of the Metro North West Joint Development Assessment Panel* [2019] WASAT 121, the Tribunal determined that development approval should be granted, notwithstanding that the development application in question did not strictly satisfy all requirements of SPP 3.7, on the basis that the proposal adequately responded to the underlying planning objectives in SPP 3.7 and was otherwise meritorious.
- 20 In its reasons, the Tribunal identified that for a decision-maker to refuse a development application based on non-compliance with SPP 3.7, without anything more, would constitute an error of law, due to an inflexible application of policy.
- 21 Under clause 67(2)(c) of the Deemed Provisions, SPP 3.7 is a planning instrument to which due regard must be given in determining a development application (because it is a policy), which means that its provisions cannot be construed as being mandatory requirements.
- 22 Therefore, even though DFES concludes that the Application is not consistent with SPP 3.7 in all respects, it is still open to the Council to grant development approval, especially in circumstances where the advice from my clients' Bush Fire Consultant confirms that the BMP and associated materials still adequately respond to the underlying planning objectives in SPP 3.7 and the Application is otherwise meritorious.
- 23 In that regard, I would observe that the City's planning officers have confirmed in their report to Council that:
- 23.1 the Application is consistent with the applicable provisions of the Scheme, including the objectives of the "Residential" zone; and
 - 23.2 the Application would be consistent with the objectives and applicable provisions of the City's *Holiday Accommodation Local Planning Policy*.

Conditions

- 24 Another notable aspect of the Tribunal decision referred to above is that the Tribunal supported the imposition of conditions of development approval in relation to ensuring compliance with particular aspects of SPP 3.7.
- 25 In particular, the Tribunal imposed conditions of development approval requiring:
- 25.1 the production of a revised BMP;
 - 25.2 the production of a bushfire risk management plan;
 - 25.3 the production of a revised evacuation plan; and
 - 25.4 proposed additions to comply with Australian Standard 3959.
- 26 What this means is, if there is any doubt on the part of the Council, based on the DFES letter, as to whether the current BMP and associated materials are adequate for the purpose of SPP 3.7, the Council should grant the Application subject to the imposition of appropriate conditions in relation to these aspects, rather than refusing the Application.



27 I would observe that the City has provided an alternative recommendation to the Council for the grant of the Application, to this effect.

Conclusion

28 It is my opinion that the City's Recommendation to refuse the Application, simply because DFES does not support the Application, is incorrect.

29 For the reasons above, I would invite the Council to approach the assessment of this Application against the performance criteria to the Guidelines with an open mind and with a degree of flexibility.

30 The Council should instead be making up its own mind as to compliance with SPP 3.7 and consider:

30.1 whether the Application and the BMP adequately respond to the underlying planning objectives in SPP 3.7; and

30.2 whether any perceived shortcomings with respect to compliance with SPP 3.7 can be adequately resolved by way of imposing conditions of development approval.

31 Having regard to the additional technical advice provided by my clients' Bush Fire Consultant, it is my opinion that both of these questions can be answered in the affirmative.

Please contact me or Isabella Mosole if you have any questions.

Yours faithfully

A handwritten signature in black ink, appearing to read "Craig Wallace".

Craig Wallace
Partner

Please notify us if this communication has been sent to you by mistake. If it has been, any privilege between solicitor and client is not waived or lost and you are not entitled to use it in any way.



Albany Office: 29 Hercules Crescent
Albany WA 6330
9842 1575

Denmark Office: Unit 7, 40 South Coast Highway
Denmark WA 6333
9848 1309

Esperance Office: Unit 2A, 113 Dempster Street
Esperance WA 6450
9072 1382

enquiry@biodiversesolutions.com.au

ABN 46 643 954 929
Job#: BAL0133.003

11 March 2024

Emily Fergie
56 Karrakatta Rd
Goode Beach WA 6330

RE: Lot 601 (No. 56) Karrakatta Road Goode Beach

Dear Emily,

I write in reponse to the Department of Fire and Emergency Services (DFES) written reponse (dated 13th December 2023) to the Bio Diverse Solutions (BDS) prepared Bushfire Management Plan (BMP) for Lot 601 (No. 56) Karrakatta Road Goode Beach. The dwelling on Lot 601 is an existing building which was constructed prior to the enacting of the legislation and framework of State Planning Policy (SPP) 3.7 (WAPC, 2015).

The BMP was prepared by myself. I have the following qualifications:

- Bachelor of Applied Science (ECU) Environmental Management;
- Diploma Business Studies;
- Graduate Diploma of Environmental Management;
- BPAD Accredited Level 2 Bushfire Practitioner; and
- Progression towards Masters of Environmental Science (ECU, current).

I have 30 years experience in my profession, with 20 years bushfire planning experience and 10 years operational fire experience with the (formerly) DEC (1995-2005) and has the following accreditation in bushfire management:

- Incident Control Systems;
- Operations Officer;
- Prescribed Burning Operations;
- Fire and Incident Operations;
- Wildfire Suppression 1, 2 & 3;
- Structural Modules – Hydrants and hoses, Introduction to Structural Fires, and Fire extinguishers; and
- Ground Controller.

I am an accredited Level 2 Bushfire Practitioner (Accreditation No: BPAD-30794). Bio Diverse Solutions are Silver Corporate Members of the Fire Protection Australia Association (FPAA). I also am appointed by FPAA to deliver Level 1 BPAD training for FPAA in WA and Victoria, have been a member of the Western Australia FPAA Bushfire Subcommittee for 6 years, a Department of Land Planning and Heritage (DPLH) Bushfire Technical Working Group committee member and I am currently appointed on the Standards Australia Handbook 208 Technical committee for AS3959. I am a suitably qualified Bushfire Practitioner to prepare the BMP report.

The BMP was peer reviewed by Erika Dawson, Director of Integrated Consulting), a BPAD Level 3 Accredited Practitioner (NSW & WA) BPAD-36371 and Registered Planner PIA. Erika Dawson has over 20 years' experience working in both the public and private sector, working in rural, regional and metropolitan NSW, Western Australia and the UK. Erika has obtained the following qualifications:

- Bachelor of Urban & Regional Planning;
- Graduate Diploma of Natural Resources;
- Graduate Certificate Development Planning; and
- Graduate Diploma in Bushfire Protection with Distinction.

Erika has the following accreditations:

- Registered Planner, Planning Institute of Australia (PIA); and
- BPAD Level 3 Accredited Bushfire Practitioner NSW & WA (FPAA).

The peer review of the BMP was undertaken by a Practitioner with the appropriate level of accreditation of the Fire Protection Association Australia's (FPAA) *Practice Note 03-2019 Performing work outside of accredited level*.

In preparing the BMP, the subject site was found to be BAL-FZ even with onsite vegetation management. The property in question (and the majority of Goode Beach existing residents) are located in BAL-FZ, due to the vegetation adjacent special residential lots in the area (specifically the north and west of the subject site), the steep slopes attributable to the local area, and the overgrown nature of the surrounding lots. This is a legacy to previous planning approvals of the Goode Beach area and prior to the enacting legislative framework of SPP 3.7.

The current and endorsed WAPC Guideliens for Planning in Bushfire Prone Areas allows for "*Legacy approvals and discretionary decision making*", (see Section 2.7 of the guidelines). Which states:

Subsequent planning applications for sites that received initial planning approval prior to the introduction of SPP 3.7 in 2015, are often unable to demonstrate compliance with SPP 3.7 or the Guidelines. Applications for these legacy sites may require a significant re-design in order to demonstrate that the bushfire risk can be mitigated to an acceptable level, in accordance with these Guidelines. (WAPC, 2021)

In response to the inherent bushfire risk (and in the absence of applying re-design due to the existing dwelling is only undergoing a class change and no net increase of occupants), the client has adopted strategies as per the BMP to address the bushfire risk of holiday accommodation land use, these strategies include:

- Management of the entire development site (whole of lot) as a APZ as outlined in the Guidelines with assistance from the neighbour to the west through a section 70A notification on title and easement for management of the APZ in perpetuity on Lot 602 Karrakatta Road, Goode Beach.
- Upgrade the existing dwelling to provide for improved ember protection by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any subfloor areas, openable windows, vents, weep holes and eaves. External doors are to be fitted with draft excluders.
- Provide for a static water supply on site of 10,000L to provide for additional localised supply in addition to the existing reticulated water supply.
- The development will be closed on Extreme and Catastrophic Fire Danger Rating days.

- A comprehensive Bushfire Emergency Evacuation Plan (BEEP) is to be prepared for the operation of the development, which includes the provision of local managers for the site to ensure on-going management of the site and assistance with evacuation of occupants should that be necessary.

The proponent seeks to apply through this Development Application with the City of Albany the **legacy provisions and discretionary decision-making provisions** with additional bushfire mitigation measures to ensure safety for occupants to the site. The bushfire mitigation **measures aim to address the legacy provisions and reduce the bushfire risk to the extent possible within the lot**. The proposed performance solution is demonstrated to be consistent with both the intent and Performance Principle of the Element and the overall objectives of SPP 3.7.

The bushfire protection measures applied to the property are in my opinion are far beyond the safety measures applied to **existing** holiday rental accommodation previously approved by the City of Albany in the Goode Beach area and provide for increased protection for the occupants of the house from bushfire.

The BMP report outlines a performance-based assessment to demonstrate compliance to the intent of the bushfire protection criteria as per SPP 3.7 and the WAPC current, endorsed guidelines. As a result of the Performance Solution provided in the BMP, ensures the development will be consistent with the objectives of SPP 3.7 policy and guidelines in the following ways:

- With the implementation of the Performance Solution, the development will not increase the threat of bushfire to people, property or infrastructure.
- The vulnerability of the development to bushfire will be reduced through identification and consideration of risks and application of the Performance Solution.
- The development has taken into account bushfire protection requirements and has included bushfire protection measures as specified in the Performance Solution.
- The development has provided for an appropriate balance of bushfire risk management measures and vegetation management commensurate with the size and scale of the proposed development.

I attach a response to the DFES letter in to this letter (Attachment A) for any further clarification required on the matter.

It is in my opinion that the BMP satisfies, to the extent possibly within the lot, all the elements of SPP 3.7 and the current and endorsed legislative framework by DPLH and should be approved for the proposed land use by the City of Albany.

Kind regards



Kathryn Kinnear
Director, Principal Bushfire Practitioner
Bio Diverse Solutions
Accredited Level 2 Bushfire Practitioner (Accreditation No: BPAD-30794)



Attachment A
Response to DFES letter (dated 13th December 2023)

1. Policy Measure 6.5 a) Preparation of a BAL Assessment

| Issue | Assessment | Action | BDS Comment |
|----------------------------------|--|--------------------------------------|--|
| Vegetation Classification | Further evidence is required to support the exclusion of Plot 3 to the south of the dwelling. Photo ID's 7, 8 and 26 do not support the exclusion. It is acknowledged that the classification of this area will not impact the BAL rating of BAL-FZ. | Modification to the BMP is required. | Photos 7, 8 and 26 have been classified in accordance with AS3959 -2018 and are representative of low fuel exclusion 2.2.3.2 (f). No change to the assessment is required. The BAL report is prepared by and accredited bushfire practitioner with extensive experience in AS3959 classifications and exclusions to AS3959 endorsed methodology. Peer reviewed by a Level 3 Practitioner. It is further noted that DFES are not accredited practitioners to the FPAA endorsed AS3959 Method 1 BAL assessor training. |
| Vegetation Classification | It appears that the dwelling does not currently comply with the requirements of the City of Albany firebreak and cannot achieve an appropriately sized APZ within the lot boundary. | | It is noted in the BMP report that an APZ to BAL-29 cannot be achieved as per the WAPC approved and endorsed guidelines and a number of strategies have been enacted to address this as a performance-based assessment. The guidelines do not require compliance to the firebreak notice if a BMP is supplied in accordance to the WAPC endorsed and adopted guidelines. It is noted in the CoA Management notice as gazetted under S33 of the bushfires Act that a BMP can be submitted as a variation to the notice. |

| Issue | Assessment | Action | BDS Response |
|----------------------------------|---|--------------------------------------|---|
| Vegetation Classification | <p>Vegetation Plots 8 and 9 cannot be substantiated as Class D Scrub with the limited information and photographic evidence available. Photo ID 24 & 25 does not represent Class D Scrub. It is further noted that a BAL assessment submitted as part of an earlier application classified Plot 8 as forest vegetation. It is acknowledged that the classification of this area will not impact the BAL rating of BAL-FZ.</p> <p>The BMP should detail specifically how the Class D Scrub classification was derived as opposed to Class A Forest.</p> <p>If unsubstantiated, the vegetation classification should be revised to consider the vegetation at maturity as per AS3959, or the resultant BAL ratings may be inaccurate.</p> | Modification to the BMP is required. | Plot 8 and 9 have been classified in accordance with AS3959 -2018 and are representative of Scrub Type D. The photographs and descriptions substantiate the classification adequately. No change to the assessment is required. The BAL report is prepared by an accredited bushfire practitioner with extensive experience in AS3959 classifications and exclusions to AS3959 endorsed methodology. Peer reviewed by a Level 3 Practitioner. It is further noted that DFES are not accredited Practitioners to the FPAA endorsed AS3959 Method 1 BAL assessor training. |
| Vegetation Management | DFES does not accept fire break notices on adjoining land as part of the vegetation management required to achieve an APZ or low-threat classification. Fire break notices may only apply for part of the year and may be varied from year to year by the responsible local government. | Modification to the BMP is required. | Vegetation management to the adjacent block is noted to be managed in the BMP with an easement in favour for management which is compliant to the current endorsed guidelines. <i>This statement is factually wrong and not what is written in the BMP</i> |

| Issue | Assessment | Action | BDS Response |
|---|---|----------------------|---|
| <p>Construction to AS3959 Building Standards</p> | <p>DFES acknowledges that <i>AS3959 does not apply retrospectively to existing buildings if the use does not change.</i></p> <p>However, the decision maker should consider upgrading the dwelling to utilise all the elements of AS3959 that apply to the appropriate Bushfire Attack Level (BAL). This is consistent with Clause 78E(i) Schedule 2 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> that requires the local government to have regard to the bushfire resistant construction requirements of the Building Code of Australia.</p> <p>Although BAL construction standards do not guarantee the survival of the occupants or building, DFES supports the improved bushfire resilience provided by AS 3959:2018 construction standards.</p> | <p>Comment only.</p> | <p>The retrospective application of full compliance to AS3959 and BAL construction is very difficult to apply to existing buildings and very expensive a practical outcome is to apply retrofitting for resilience from bushfire to ember attack. As a member of Standards Australia and committee member of AS3959 Technical committee HB208 this is a very difficult issue to resolve across Australia as over 90% of housing stock is built pre enacting legislation. The building has been allocated targeted retrofit for design compliance in accordance with the deemed inherent risk. This statement is opinionated and not within an assessment of a method 1 BAL assessment from the decision maker. This statement should be retracted from assessing a Method 1 BAL assessment from the decision maker.</p> |

2. Policy Measure 6.5 c) Compliance with the Bushfire Protection Criteria

| Element | Assessment | Action | BDS response |
|---|--|-------------------------|---|
| <p>Vulnerable Tourism Land Uses - Intent</p> | <p>Intent – does not comply</p> <p>The development is on a lot that has, and is surrounded by, an extreme hazard that, in the opinion of DFES, cannot be adequately managed.</p> <p>The intent of Element 5 is to provide bushfire protection for tourism land uses relevant to the characteristics of the occupants and/or the location, to preserve life and reduce the impacts of bushfire on property and infrastructure. The BMP proposes a Performance Principle based Solution for P5iv and P5v. Notwithstanding the below discussion, the topography, type and extent of bushfire prone vegetation may result in landscape-scale destruction as it interacts with the bushfire hazard on and close to the site. In conjunction with the remoteness of the site and limited access options, it is considered that development of a vulnerable land use at this location does not comply with the intent of Element 5 of the Guidelines.</p> | <p>Does not comply.</p> | <p>Bushfire mitigation and management measures have been stated in the BMP to comply to the policy intent as stated in the performance-based solution.</p> <p>A number of solutions have been provided as stated in the BMP to increase the safety of occupants. The proponent seeks to apply through this Development Application with the City of Albany the legacy provisions and discretionary decision-making provisions with additional bushfire mitigation measures to ensure safety for occupants to the site. The bushfire mitigation measures aim to address the legacy provisions and reduce the bushfire risk to the extent possible within the lot.</p> <p>This is accordance with the WAPC guidelines. Statement from DFES is unsubstantiated.</p> |

| Element | Assessment | Action | BDS response |
|---------------------------|--|--------|---|
| <p>Uses – P5iv</p> | <p>DFES does not support introduction of a vulnerable land use within BAL-40/FZ. SPP 3.7 appropriately focuses on the location and siting of vulnerable land uses rather than the application of bushfire construction requirements.</p> <p>The BMP states that the proposal meets the Intent of Element 5 and Performance Principle P5iv through management of the entire site (noting limitations in size of site), upgrading the building to limit ember ingress, providing water, closure on extreme and catastrophic fire rating days and providing a Bushfire Emergency Evacuation Plan.</p> <p>It is noted that it would not be possible, due to the size of the site, to provide for an appropriately sized APZ within the boundaries, even with management of all vegetation on site. The development footprint is 4m metres from the boundary of the neighbouring lot to the west.</p> <p>The email from the neighbours attached at Appendix C of the BMP stating they will continue to manage their lot to ‘parkland clearing’ standard on an ongoing basis is not considered to be a legally binding or enforceable mechanism to ensure the neighbouring land is maintained to low threat in perpetuity.</p> <p>Furthermore, vulnerable land uses within an existing residential building are not considered to be ‘minor development’ unless they are within a residential built</p> <p>DFES notes that bushfires can occur on days that are not catastrophic or extreme.</p> <p>The additional mitigation measures do not improve the hazard separation for the building, and therefore do not adequately demonstrate compliance with the Performance Principle.</p> | | <p>Bushfire mitigation and management measures have been stated in the BMP to comply to the Policy intent as stated in the performance based solution.</p> <p>A number of solutions have been provided as stated in the BMP to increase the safety of occupants. The proponent seeks to <u>apply through this Development Application with the City of Albany the legacy provisions and discretionary decision-making provisions</u> with additional bushfire mitigation measures to ensure safety for occupants to the site. The bushfire mitigation measures aim to address the legacy provisions and reduce the bushfire risk to the extent possible within the lot.</p> <p>The development is in accordance with the WAPC guidelines. An easement is proposed with the neighbours as documented in the BMP report as a legal mechanism which is compliant to the current and endorsed guidelines which can be conditioned at DA. Statement from DFES is unsubstantiated, misleading and should be retracted.</p> <p>Statement on minor development should be retracted, not seeking approval under this mechanism.</p> <p>The comment on the additional mitigation measures do not improve hazard separation for the building and non-compliance are misleading when by adding additional separation to BAL-29 with the neighbor is a clear increase from BAL-FZ? This statement should be retracted or substantiated?</p> |

2. Policy Measure 6.5 c) Compliance with the Bushfire Protection Criteria

| Element | Assessment | Action | BDS response |
|---|---|-------------------------|--|
| <p>Vulnerable Tourism Land</p> <hr/> <p>Uses - Vehicular Access</p> | <p>P5v – does not comply The BMP states that the proposal meets the Intent of Element 5 and Performance Principle P5v through closure on extreme and catastrophic fire rating days, provision of a Bushfire Emergency Evacuation Plan (BEEP), managers located in Albany and confirmation of an evacuation location being in Albany.</p> <p>This approach does not demonstrate how the performance principle has been met which is for the vehicle access to adequately provide for the occupants to evacuate to a suitable destination before the bushfire arrives to the site, whilst allowing emergency services personnel to attend the site.</p> <p>DFES advocates for vulnerable tourism land uses to be located in areas with appropriate access in two different directions. Compliance cannot be achieved at this location. It is noted that the site is within an established building and located at the end of a single access road. It is considered that the limitations associated with the access arrangements in conjunction with the risk that the access could be cut off in the event of a bushfire and the potential for landscape scale bushfire in this area makes the area unsuitable for vulnerable uses.</p> <p>The proposed performance principle-based solution of early closure and the road design being a legacy issue does not demonstrate compliance with Performance Principle P5v.</p> | <p>Does not comply.</p> | <p>The BMP proposes a number of management measures to mitigate bushfire risk and meet the vehicular access requirement. The evacuation plan is a supporting document designed to give early evacuation prior to a bushfire event. The house was built on Vancouver Peninsula which has one way in and on way out. The location of the building is a legacy to the previous building approval prior to the enacting bushfire legislative framework. The subject site is located within a subdivision area that was created in 1971 and consequentially there is no ability to alter the public road network.</p> <p>The BMP report outlines a performance-based assessment to demonstrate compliance to the intent of the bushfire protection criteria as per the WAPC current and endorsed guidelines. As a result of the Performance Solution, the development will be consistent with the objectives of SPP 3.7.</p> <p>The proposed Performance Solution therefore meets the requirements of the Performance Principle. It is noted that historically DFES do not agree with site closures and evacuation plans to meet the requirements of the guidelines, however <i>the number of mitigating factors presented in the BMP has demonstrated to be consistent with the intent and the performance principles in the overall objectives of SPP3.7.</i> It is noted that SPP3.7 is law and the guidelines are not a legislative document but are designed to assist with interpretation.</p> |

3. Policy Measure 6.6.2 Vulnerable land uses in areas where BAL-40 or BAL-FZ applies

29 Hercules Crescent Albany ~ Unit 7, 40 South Coast Highway Denmark ~ Unit 2A, 113 Dempster Street Esperance
www.biodiversesolutions.com.au

| Element | Assessment | Action | BDS response |
|---|--|----------------------|---|
| <p>Extreme bushfire hazard and/or BAL-40/ BAL-FZ applies</p> | <p>Development applications for vulnerable land uses in areas of BAL-40/BAL-FZ will not be supported unless they comply with policy measure 6.7.1 or 6.7.2 of SPP 3.7. The proposal does not meet the definition of minor or unavoidable development.</p> | <p>Comment only.</p> | <p>A number of solutions have been provided as stated in the BMP to increase the safety of occupants. The proponent seeks to <u>apply through this Development Application with the City of Albany the legacy provisions and discretionary decision-making provisions</u> with additional bushfire mitigation measures to ensure safety for occupants to the site, alligned to SPP 3.7.</p> <p>The bushfire mitigation <i>measures aim to address the legacy provisions and reduce the bushfire risk to the extent possible within the lot.</i></p> <p>This statement should be retracted as there is no intent to meet “Minor development” or “Unavoidable development”. Statement is confusing and misleading to the Decision Maker.</p> |
| <p>Bushfire Emergency Evacuation Plan (BEEP)</p> | <p>The referral has included a ‘<i>Bushfire Emergency Evacuation Plan</i>’ for the purposes of addressing the policy requirements. Consideration should be given to the Guidelines Section 5.5.4 ‘Developing a Bushfire Emergency Evacuation Plan’. This contains detail regarding what should be included in a BEEP and will ensure the appropriate content is detailed when finalising the BEEP to the satisfaction of the city.</p> | <p>Comment only.</p> | <p>No comment.</p> |