



AGENDA

DEVELOPMENT AND INFRASTRUCTURE SERVICES COMMITTEE MEETING

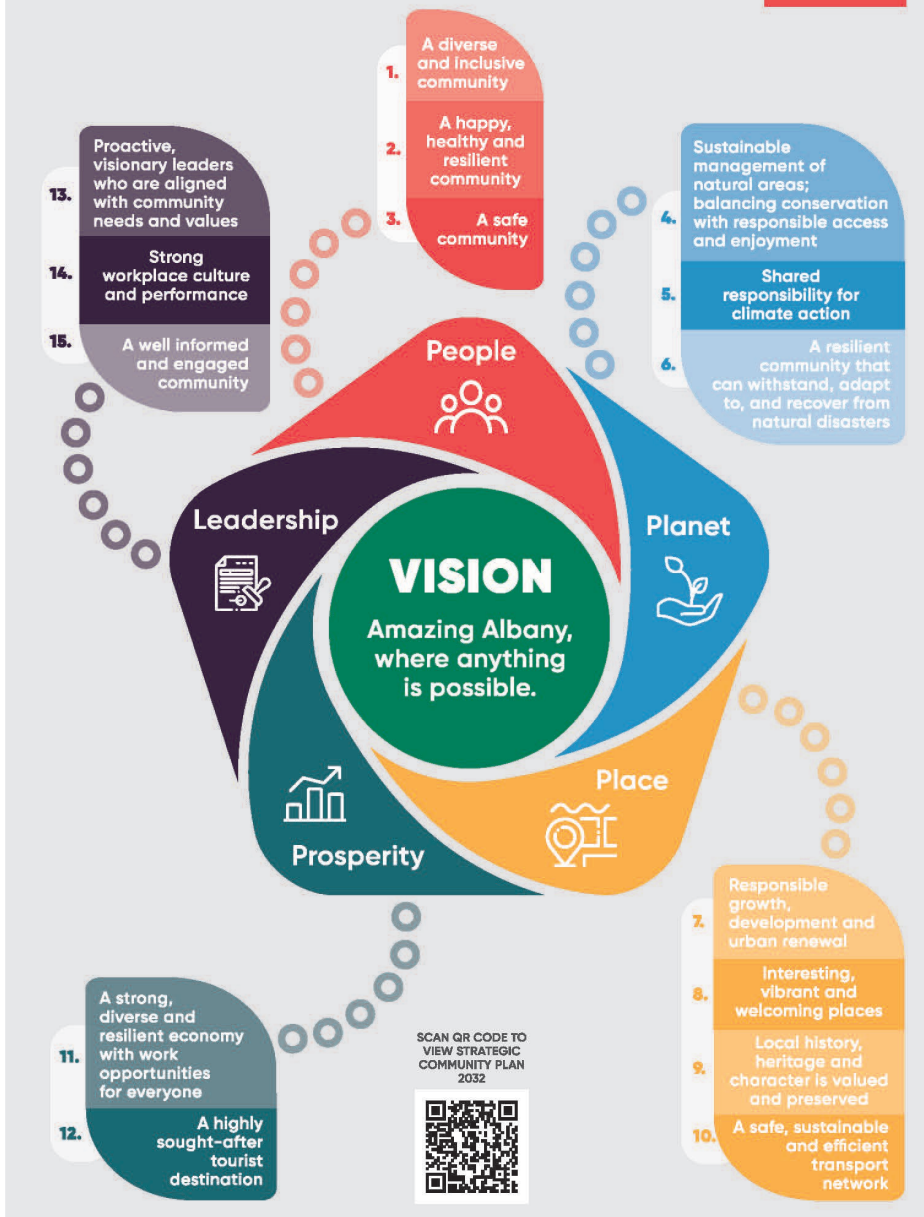
Wednesday 6 December 2023

6.00pm

Council Chambers



STRATEGIC COMMUNITY PLAN 2032



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

TABLE OF CONTENTS

	Details	Pg#
1.	DECLARATION OF OPENING	4
2.	PRAYER AND ACKNOWLEDGEMENT OF TRADITIONAL LAND OWNERS	4
3.	RECORD OF APOLOGIES AND LEAVE OF ABSENCE	4
4.	DISCLOSURES OF INTEREST	5
5.	RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE	5
6.	PUBLIC QUESTION TIME	5
7.	PETITIONS AND DEPUTATIONS	5
8.	CONFIRMATION OF MINUTES	5
9.	PRESENTATIONS	5
10.	UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS	5
	REPORTS	
DIS373	DRAFT LOCAL PLANNING POLICY 3.1: CARAVAN PARK AND TOURIST DEVELOPMENT USES IN THE RURAL OR PRIORITY AGRICULTURE ZONES – DRAFT LOCAL PLANNING SCHEME NO. 2	6
DIS374	GREY STREET TREE PLANTING	11
DIS375	DRAFT COUNCIL POLICY: TRADING IN PUBLIC PLACES	14
DIS376	AMENDMENT OF CONDITIONS 2, 4, 17 & 43 OF P2160670 INDUSTRY – EXTRACTIVE (LIME) AT LOT 9005 EDEN ROAD, NULLAKI	20
DIS377	C23025 – ALBANY HIGHWAY (SLK 1.97 – 2.48) RESURFACING	40
DIS378	C23028 – MARINE DRIVE MOUNTS ACCESS PATHWAY – BRUNSWICK ROAD TO APEX DRIVE	44
11.	MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN	48
12.	MEETING CLOSED TO PUBLIC	48
13.	CLOSURE	48

1. DECLARATION OF OPENING

2. PRAYER AND ACKNOWLEDGEMENT OF TRADITIONAL LAND OWNERS

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

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

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

3. RECORD OF 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

M Traill

Councillor

L MacLaren

Councillor

C McKinley

Councillor

M Lionetti

Staff:

Chief Executive Officer

A Sharpe

Executive Director Infrastructure, Development
& Environment

P Camins

Manager Planning and Building Services

J van der Mescht

Meeting Secretary

N Banyard

Apologies:

4. DISCLOSURES OF INTEREST

Name	Committee/Report Item Number	Nature of Interest

5. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE - Nil

6. PUBLIC QUESTION TIME

In accordance with 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 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.*

7. PETITIONS AND DEPUTATIONS

8. CONFIRMATION OF MINUTES

DRAFT MOTION

THAT the minutes of the Development and Infrastructure Services Committee meeting held on 15 November 2023 as previously distributed, be CONFIRMED as a true and accurate record of proceedings.

9. PRESENTATIONS

10. UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS

DIS373: DRAFT LOCAL PLANNING POLICY 3.1: CARAVAN PARK AND TOURIST DEVELOPMENT USES IN THE RURAL OR PRIORITY AGRICULTURE ZONES – DRAFT LOCAL PLANNING SCHEME NO. 2

Land Description	: City of Albany
Proponent / Owner	: City of Albany
Business Entity Name	: City of Albany
Attachments	: Draft Local Planning Policy 3.1: Caravan Park and Tourist Development Uses in the Rural or Priority Agriculture Zones
Supplementary Information & Councillor Workstation	: Submission
Report Prepared By	: Coordinator Planning Services (J Wardell-Johnson)
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:** Place
 - **Outcome:** Interesting, vibrant and welcoming places.
 - **Pillar:** Planet
 - **Outcome:**
 - Sustainable management of natural areas; balancing conservation with responsible access and enjoyment; and
 - A resilient community that can withstand, adapt to, and recover from natural disasters.
 - **Pillar:** Prosperity
 - **Outcome:**
 - A strong, diverse and resilient economy with work opportunities for everyone; and
 - A highly sought-after tourist destination.
 - **Pillar:** Leadership
 - **Outcome:** Grow awareness, understanding and engagement in City projects, activities and decisions.

In Brief:

- Draft *Local Planning Policy 3.1: Caravan Park and Tourist Development Uses in the Rural or Priority Agriculture Zones* (LPP3.1) was advertised for public comment during October and November 2023, following Council's endorsement to advertise at its meeting in September.
- One submission was received during the advertising period, with matters raised in the submission relevant to the draft policy including: that all proposals to be required to meet all policy and other legislative requirements, that no discretion be granted to any proposal, and that decisions on proposals to be made consistently in accordance with the policy. These matters are discussed in further detail below.

- The policy in its current form is considered to adequately address relevant matters raised during advertising, and therefore staff recommend Council proceed to resolve to adopt LPP3.1, without modification.

RECOMMENDATION

DIS373: AUTHORISING OFFICER RECOMMENDATION

THAT Council:

- 1. ADOPT Local Planning Policy 3.1: Caravan Park and Tourist Development Uses in the Rural or Priority Agriculture Zones, pursuant to Schedule 2, clause 4 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.**
- 2. NOTE that Local Planning Policy 3.1: Caravan Park and Tourist Development Uses in the Rural or Priority Agriculture Zones will come into effect following publication of a notice by the local government, as per Schedule 2, clause 87 of the Planning Regulations, following gazettal of City of Albany Local Planning Scheme No. 2.**

BACKGROUND

4. The Western Australian Planning Commission has advised that draft Local Planning Scheme No. 2 (LPS2) is expected to be finalised for gazettal by the end of 2023. Draft LPS2 is therefore considered to be a seriously entertained document under the local planning framework, enabling the City to develop local planning policies prepared in alignment with the new draft scheme.
5. Draft LPP3.1 has been prepared to provide guidance on the new requirements and standards outlined under draft LPS2 in relation to incidental Caravan Park and Tourist Development land use proposals located on land zoned Priority Agriculture or Rural.
6. Refer to previous report item DIS364 (September 2023) for further information and background on the draft policy.
7. Should Council resolve to adopt LPP3.1, the policy will be added to the City's current suite of local planning policies, pending gazettal of LPS2.

DISCUSSION

8. Draft LPP3.1 was advertised for public comment between October and November 2023, with one submission received.
9. Matters raised in the submission relevant to the draft policy include:
 - All proposals being required to meet all policy and other applicable legislative requirements;
 - No discretion to be granted to any proposal;
 - Proposals to be determined consistently in accordance with the requirements of the policy.
10. The following comments are outlined the address the relevant matters identified in the submission received during advertising.

11. Draft LPP3.1 has been prepared to ensure consistent advice and decision-making by the local government when considering Caravan Park and Tourist Development land use proposals in the Priority Agriculture or Rural zones. As previously mentioned, the policy was developed to guide the application of new standards and requirements for these land uses under draft LPS2, that aim to address matters such as:
 - Proposals are incidental in use and scale to the predominant agricultural activities, ensuring the primacy of existing agricultural activities and demonstrating compatibility can be maintained;
 - Caravan Parks and Tourist Development land uses are considered sensitive premises, with proposals for such incidental land uses on rural land required to demonstrate that the risk of potential detrimental impacts between and on existing agricultural activities on the subject site, as well as adjoining properties and the broader locality can be mitigated;
 - Proposals demonstrate that location, siting, design and operational objectives and requirements have been met and that consideration has been made to minimise environmental impact and mitigate vulnerability to natural hazards (such as coastal or bushfire);
 - Proposals can be managed effectively, through the submission of a management plan, in addition to standard development application requirements, that addresses specific matters outlined under the policy, as well as any additional management measures that the City may identify, to ensure outstanding issues or concerns can be adequately addressed and mitigated.
12. The following exclusions apply under the draft policy, and are addressed separately through other relevant requirements of the local planning framework:
 - Proposals for Caravan Park and Tourist Development land uses located in other zones.
 - Other forms of tourist accommodation, proposed on land zoned Priority Agriculture or Rural in accordance with LPS2, including hosted and unhosted short-term rental accommodation.
 - Short-term accommodation facilities on rural land that are not tourist accommodation.
13. Draft LPP3.1 does not contain specific requirements for advertising of proposed Caravan Park and Tourist Development land uses as they are proposed to be designated as 'I' under the Zoning Table for Priority Agriculture and Rural zones of draft LPS2. There are no minimum requirements for the advertising development proposals that involve an 'I' use, as the intention of the designation is to ensure uses that are small scale, low-key and incidental to the predominant land use of the land.
14. However, where in the officer's opinion there is potential impact by a development proposal on the environment and/or amenity of adjoining properties or the locality, draft LPS2 provides discretion to undertake advertising to further inform the local government's consideration of the proposal.
15. It should also be noted that the provisions for Caravan Parks and Tourist Development land uses contained under draft LPS2, and the associated requirements in the draft policy provides for the limited application of discretion to certain aspects of a proposal.
16. Development of performance criteria to consider discretion being sought was not considered necessary for this draft policy, as the assessment framework in its current form is considered to provide sufficient scope and guidance to consider variations, through advertising of a proposal, as well as assessment against the policy objectives, the LPS2 zone objectives and relevant matters for consideration by local government as set out under the Planning Regulations.

17. Following the above, the policy in its current form is considered to adequately address relevant matters raised in during advertising, as it meets the overarching purpose and intent of providing guidance and supporting information to the community, landowners, local government and relevant stakeholders in the City’s consideration of incidental Caravan Park and Tourist Development land uses in the Rural or Priority Agriculture Zones.
18. Staff therefore recommend Council proceed to resolve to adopt LPP3.1, without modification.

GOVERNMENT & PUBLIC CONSULTATION

19. The draft policy was advertised in accordance with Schedule 2, clause 4 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (Planning Regulations), for a minimum period of 21 days.
20. Details of advertising as follows:

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Consult	Notice in Advertiser	24/10/2023	1 submission received	Yes
Consult	Public comment – City website	23/10/2023-14/11/2023		Yes

21. After the expiry of the period within which submissions may be made, the local government must review the proposed policy in the light of any submissions made; and resolve to proceed with the policy without modification; or proceed with the policy with modification; or not to proceed with the policy.

STATUTORY IMPLICATIONS

22. Voting requirement for this item is **SIMPLE MAJORITY**.
23. Consideration of draft new LPPs requires resolution of Council for endorsement to advertise and final adoption following advertising, with or without modifications, in accordance with the Planning Regulations.
24. As outlined above, draft LPS2 is a seriously entertained document under the local planning framework, therefore enabling the ability to prepare and undertake preliminary advertising of draft LPPs that are prepared in alignment with the new draft scheme.
25. Draft LPP3.1 was therefore prepared for Council’s consideration and endorsement to undertake preliminary advertising and stakeholder consultation, prior to formal gazettal of LPS2.
26. Should Council resolve to adopt draft LPP3.1, with or without modification, a notice must be published as per 87 of the Planning Regulations. The notice will be published following formal gazettal of LPS2, with the policy coming into effect at that time.

POLICY IMPLICATIONS

27. There are no policy implications relating to adopting draft LPP3.1.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Operational Not adopting draft LPP3.1 could result in inconsistent advice, consideration and determination of applicable development proposals, resulting in undesired outcomes and detrimental impacts on existing agricultural operations as well as the amenity of the locality	Possible	Minor	Low	Policy provisions are consistent with the scheme standards and requirements, to provide guidance and supporting information for the consideration applicable proposals.
Opportunity: Ensure high-quality land use and development outcomes that align with zone objectives and potential detrimental impacts on environmental and amenity considerations are adequately mitigated.				

FINANCIAL IMPLICATIONS

29. There are no financial implications beyond what will be used for notice of adoption.

LEGAL IMPLICATIONS

30. Subject to following the applicable processes set out under the Planning Regulations, there are no legal implications relating to preparing, amending or revoking policy positions.

ENVIRONMENTAL CONSIDERATIONS

31. There are no broader environmental implications relating to the adoption of draft LPP3.1, further to what is intended to be considered and addressed under the policy.

ALTERNATE OPTIONS

32. Council has the following alternate options in relation to this item, which are:
- To resolve to proceed with the policy with modification.
 - To resolve not to proceed with the policy.

CONCLUSION

33. Based on the discussion above, staff recommend Council resolve to adopt *Local Planning Policy 3.1: Caravan Park and Tourist Development Uses in the Rural or Priority Agriculture Zones* without modification.
34. Should Council resolve to adopt draft LPP3.1, with or without modification, a notice will be published following formal gazettal of LPS2, with the policy coming into effect at that time.

Consulted References	:	Draft <i>Local Planning Scheme No. 2 Planning and Development (Local Planning Schemes) Regulations 2015</i>
File Number	:	LP.POL.2
Previous Reference	:	DIS364 (September 2023) – New Draft Local Planning Policy 3.1: Caravan Park And Tourist Development Uses In The Rural Or Priority Agriculture Zones – Draft Local Planning Scheme No.2 DIS333 (February 2023) - Adoption of Draft Local Planning Scheme No. 2

DIS374: GREY STREET TREE PLANTING

Land Description	: Grey Street East Road Reserve – between York St and Aberdeen St
Proponent / Owner	: Road Reserve (Crown) managed by City of Albany
Business Entity Name	: City of Albany
Attachments	Grey St East - Concept Plan and Perspective
Report Prepared By	: Major Projects Officer (N Walker) Manager Major Projects (A McEwan)
Authorising 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:
 - **Pillar:** Place
 - **Outcome:** 8 Interesting, vibrant and welcoming places.
 - **Objective:** 8.2 Provide attractive, well maintained streetscapes, verges and trees.

Maps and Diagrams:



In Brief:

- Implementing Resolution 15.2 from the July 2023 Ordinary Council Meeting (OCM), this proposal introduces a revised concept plan for the installation of street trees on Grey Street East.
- It is proposed to allocate funds in the budget for the 2024/25 financial year.

RECOMMENDATION

DIS374: AUTHORISING OFFICER RECOMMENDATION

THAT Council NOTE:

1. The revised concept plan to install street trees and furniture on Grey Street East between York Street and Aberdeen Street.
2. That an allocation of approximately \$90,000 will be considered in the 2024/25 draft budget to install street trees and furniture on Grey Street East between York Street and Aberdeen Street.

BACKGROUND

2. A concept plan to return Grey Street East between York Street and Aberdeen Street to two-way traffic was unanimously endorsed by Council in February 2019.
3. The concept included planting 8 street trees and related street furniture items.
4. The trees were not installed during the civil works phase in 2022 due to budget constraints and service clashes.
5. Concern over the lack of street trees were raised by the community to Elected Members.
6. Council requested by Notice of Motion (Resolution 15.2, July 2023 OCM):
THAT the council instructs the Chief Executive Officer to arrange for a report to be presented at an ordinary meeting of council before December 2023 outlining:
 - ***A timeline and implementation plan to plant street trees as per the concept plan for Grey Street East that was unanimously endorsed by the council in February 2019; or***
 - ***Options and rationale for an alternative course of action to that endorsed by the council in February 2019 with regard to street trees in the segment of Grey Street East between York and Aberdeen Streets.***
7. A review of underground and overhead services, timeline and budget has since been carried out, and a revised concept plan has been produced.

DISCUSSION

8. Street trees provide important amenity to our residential, commercial and civic public environments, and should be integrated wherever allowable by services, road safety considerations and budget.
9. Planning and budgeting for road asset upgrades such as kerbs, pavements, asphalt and drains should consider opportunities for the planting of street trees and the installation of associated amenities such as street lights, seats and benches, litter bins, public art, and interpretive/wayfinding signage.
10. The proposed street tree planting (shown in the revised concept plan) matches recent successful installations carried out as part of streetscape and asset upgrades along Stirling Terrace and central/upper York Street, using the same tree species, detailing around the tree pits, and the combination with street furniture and pedestrian wayfinding & interpretation signage.
11. A revised concept plan has been provided for endorsement as part of the implementation plan.
12. Once confirmed in the 2024/25 budget, tree stock can be sourced from an advanced tree nursery and planted early in the 2024/25 financial year.

GOVERNMENT & PUBLIC CONSULTATION

13. Elected Members have received ongoing feedback from the public concerned with the lack of street trees along this particular section of street upgrade.
14. Further community consultation is not required for the installation of street trees.

STATUTORY IMPLICATIONS

15. Nil

POLICY IMPLICATIONS

16. Nil

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>Reputational: The lack of street trees will create negative publicity for not following through on adopted public amenity concepts and proposals.</i>	<i>Likely</i>	<i>Minor</i>	<i>Medium</i>	<i>Address community concern by installing street trees.</i>
<i>Reputational Opportunity: There is an opportunity to positively respond to community demand for public amenity in our historic city streetscapes.</i>				

FINANCIAL IMPLICATIONS

18. The estimated cost of the streetscape works is \$90,000 and will require a capital budget line allocation for next financial year.

LEGAL IMPLICATIONS

19. Nil

ENVIRONMENTAL CONSIDERATIONS

20. There are no direct environmental considerations related to this item.

ALTERNATE OPTIONS

21. Nil

CONCLUSION

22. The proposal aims to enhance Grey Street East by facilitating the installation of street trees and street furniture. This proposal is in direct response to community feedback and aligns more closely with the adopted concept plan, ensuring a harmonious integration of greenery and amenities into the urban landscape.

Consulted References	:	
File Number (Name of Ward)	:	CP.DEC.150
Previous Reference	:	DIS147 - OCM 26/2/2019 Resolution 15.2 - OCM 25/7/2023

DIS375: DRAFT COUNCIL POLICY: TRADING IN PUBLIC PLACES

Land Description	: City of Albany
Proponent / Owner	: City of Albany
Business Entity Name	: City of Albany
Attachments	: 1. Draft City of Albany Policy: Trading in Public Places
Supplementary Information & Councillor Workstation	: 1. City of Albany Public Places Policy 2. <i>Activities on Thoroughfares and Public Places and Trading Local Law 2011</i> 3. <i>Local Government Property Local Law 2011</i>
Report Prepared By	: Senior Planning Officer – (D Ashboth)
Authorising 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 2032:
 - **Pillar:** Place
 - **Outcome:** Interesting, vibrant and welcoming places.
 - **Pillar:** Prosperity
 - **Outcome:** A strong, diverse and resilient economy with work opportunities for everyone.

In Brief:

- The current City of Albany Public Places Policy has been in place since 2009, with minor reviews undertaken in 2010, 2017 and 2020.
- There are a number of key matters which are consistently raised regarding this policy which will benefit from clarification and refinement in the form of a revised policy.
- The draft revised Trading in Public Places Policy is proposed to replace the existing adopted policy. Amendments to the existing policy were undertaken with a view of specifically addressing the following:
 - Reference to community interest when considering commercial use of public places.
 - Clarify management/operational requirements for the use of public land.
 - Providing more fixed location sites and opportunities to traders
 - Reducing impact of itinerant traders on existing bricks and mortar business
 - Clarifying information requirements for applicants submitting a permit application, including reference to community interest.
- Council is requested to resolve to approve the amended Trading in Public Places Policy for advertising purposes.

RECOMMENDATION

DIS375: AUTHORISING OFFICER RECOMMENDATION

THAT Council, RESOLVE to endorse draft City of Albany Trading in Public Places Policy for the purpose of advertising.

BACKGROUND

2. The Trading in Public Places Policy is prepared as a Council Policy in accordance with the *Local Government Act 1995*.
3. The Trading in Public Places Policy provides direction to City staff in the processing of enquiries and permit applications for trading in public places under the “*Activities on Thoroughfares and Public Places and Trading Local Law 2011*” and the “*Local Government Property Local Law 2011*”. The policy also provides a clear set of controls for operators to trade under.
4. The Trading in Public Places policy provides guidance for permit applications relating to the commercial use of public places including itinerant traders, fixed location traders, stallholders, market operators and alfresco dining.
5. The City of Albany deals with a number of enquiries in relation to or applications for trading permits each year. These enquiries most often relate to requests for itinerant trader permits for food vans.
6. Staff also from time to time receive comments and/or complaints from formal “brick and mortar” business owners about these traders. These comments or complaints normally relate to breaches of policy provisions or are competition/equity related.

DISCUSSION

Community interest

7. Permit applications for the use of public land for commercial purposes are provided for under the *City of Albany Activities on Thoroughfares and Public Places and Trading Local Law 2011*, the *Local Government Property Local Law 2011* and the provision of the Trading in Public Places Policy.
8. There are substantial benefits afforded to commercial traders operating on public land including, but not limited to:
 - no rent or rates (aside from permit fees)
 - low startup and operational costs
 - access to high amenity, unique locations
9. Although there are benefits to the City in encouraging entrepreneurs and startups through the use of public places, it is also important to ensure that support for these businesses/operations is in the community interest and not just the interest of the operators.
10. Amendments to the Policy are therefore proposed to ensure applicants are aware that any application to use public land for commercial benefit must align with the community interest.
11. Applicants will also be required to address the matters of community interest identified under provision 9 of the Policy with any application to trade on a public place.

Mobile food vendors

12. Notwithstanding the above, those seeking to trade in public places also have a role to play within the local economy, particularly mobile food vendors. Benefits can include:
 - Increasing the overall vibrancy of the City,
 - Activating underutilized public spaces;
 - Providing passive surveillance to public places;
 - Creating opportunity for small business to be establish and perhaps progress towards a formal business; and

- Mobile food vehicles can provide more food choices, attraction and vibrancy to residents and visitors during times that the City's existing bricks and mortar businesses choose not to be open.
13. However, it is important to ensure that mobile food vehicles operate in a way which complements existing food businesses and do not unfairly compete with the City's existing bricks and mortar businesses. This is also the primary issue most frequently raised by the community, which is intended to further addressed by the proposed updates to the Policy.
 14. With the benefits of mobile food vendors in mind, and the concerns with impacts on bricks and mortar businesses considered, the amended policy proposes to add additional fixed trader locations at:
 - Centennial Park
 - Lower King
 - Forts Carpark
 - Lakeside Park
 - Chipana Drive Public Carpark
 - Lower King Road
 - Stirling Terrace East
 - Mira Mar.
 15. It is considered the best way of addressing the conflict between bricks and mortar businesses and mobile food vendors was to provide more fixed locations for available to mobile food vendors, which are located well outside of the City CBD. This will allow mobile food vendors to activate underutilised public spaces in the suburbs without impacting on existing business.
 16. Those new fixed locations that are closer to existing businesses such as Centennial Park and the Forts Carpark will be limited to selling ice creams, confectionery, light meals and drinks to minimise impacts on existing businesses.
 17. A fixed trader location has also been proposed on Stirling Terrace East between the hours of 10.00pm and 3.00am to serve the nighttime economy in that area.
 18. Further restrictions are proposed to itinerant traders (those not utilising fixed locations) including:
 - Remove existing "Special Permit to trade in the CBD" due to conflict with existing businesses in York Street and confusion surround inconsistent operating hours of existing businesses; and
 - Increasing the distance that itinerant traders must maintain from existing businesses and schools when operating (outside of the CBD) from 150m to 200m.
 19. The amended Policy also states that the City may limit the number of itinerant food trader permits issued, if it is determined the operation of itinerant food vendors is causing undesired impacts to local amenity, the operation of existing bricks and mortar businesses, or any other issue considered relevant by the City.

Non-food vendors

20. The existing Trading in Public Places Policy has one location available for non-food traders which is located at Middleton Beach. The draft trading in Public Places Policy does not propose to increase the number of locations available for non-food operators.

21. Notwithstanding the above, officers have noted a significant increase in requests to use public land for non-food related purposes over the last 12 months.
22. At this stage, it is considered that the majority of non-food commercial uses are better suited to private property rather than public land, unless substantial community benefits can be identified (i.e e-scooters). Additional fixed locations have therefore not been proposed as part of this amendment.
23. This position can be revisited following the advertising period, if required.

Waste disposal

24. The existing Trading in Public Places Policy provides little information/guidance on the waste management / disposal obligations of the operator.
25. The proposed amendments to the policy aims to provide further clarification and guidance including the stipulation that no waste or litter generated by the operation shall be disposed by operators into the City of Albany public place bins. This includes the requirement for traders to provide adequately sized waste bins to collect patron and operation generated waste, and require removal of all waste from the approved location at the end of trade.
26. The amended policy also states that wastewater, solid waste, litter or any other pollutant must not be placed or discharged anywhere on the site or allowed to enter the stormwater drainage system. Proposed amendments require that mobile food vehicles must have a holding tank for wastewater to be disposed of correctly outside of public land.
27. This approach to trader management of wastewater and litter is consistent with that taken by other local governments supporting businesses on public land.

Information requirements

28. The amended policy seeks to clarify application requirements to ensure applicants are aware of what is required by them when submitting the application and operating their business following issuing of a permit.
29. In addition to the clarification of current information requirements, applicants will now be required to address community interest (refer above) and provide a Management Plan to accompany their application.
30. The Management Plan requires details on the following information:
 - How will amenity of the public place/s be maintained
 - How the potential for public nuisance will be minimised.
 - Waste generation and method for ensuring location/s remains clean, tidy and free of litter
 - Provision of power, water, gas or other servicing requirements.
 - Any other information deemed relevant by the City of Albany (Applicants are advised to discuss information requirements with the City of Albany as early as possible).
31. The Management Plan is a formal, stamped document and will form part of the approval for any operator using public land for commercial purposes. Requiring this information ensures applicants put measures in place to minimise impacts on the public place and also gives our compliance team the ability to investigate any operators who may not be operating in accordance with the measures documented under the approved Management Plan.

GOVERNMENT & PUBLIC CONSULTATION

32. The draft policy is proposed to be advertised for public comment in accordance with the following:

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Consult	Notice in Local Paper	09/01/2024 – 30/01/2024	Open	No
Consult	Public comment – City website	09/01/2024 – 30/01/2024		No

33. After expiry of the advertising period, the local government will be required to:

- Review and implement modifications to the policy, taking into account submissions received during advertising; and
- Resolve to either adopt the policy with or without modification, or not to proceed with the policy.

STATUTORY IMPLICATIONS

34. There are no statutory implications relating to endorsing the proposed Draft Trading in Public Places Policy for advertising.

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

POLICY IMPLICATIONS

36. The proposed updates to the Trading in Public Places aims to provide clarification and guidance to the existing regulatory framework for use of public places, taking into account community interest, and in accordance with the applicable local laws. The revised policy will replace the previous version upon formal adoption.

37. The existing Trading in Public Places Policy will be revoked via a notice of revocation published on the City of Albany website.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Operational <i>Not approving the amended policy for advertising would result in the continued use of an existing policy that is no longer considered fit for purpose.</i>	<i>Almost Certain</i>	<i>Minor</i>	<i>High</i>	<i>Approving the amended policy for advertising. The amended can be further amended once feedback from advertising is assessed.</i>
Opportunity: <i>Reduce conflict between street traders and bricks and mortar businesses. Ensure the use of public places for commercial purposes is consistent with community interest.</i>				

FINANCIAL IMPLICATIONS

39. There are no financial implications beyond what will be used for advertising the proposed policy.

LEGAL IMPLICATIONS

40. There are no legal implications relating to adopting the revised policy.

ENVIRONMENTAL CONSIDERATIONS

41. There are no environmental implications relating to adopting revised policy.

ALTERNATE OPTIONS

42. Council has the following alternate options in relation to this item, which are:
- To resolve to proceed with advertising the policy subject to modification; or
 - To resolve to proceed with advertising the policy without modification; or
 - To resolve not to proceed with advertising the policy.

CONCLUSION

43. The policy has been amended and refined to better address the common issues which arise from informal trading operations and the implementation of the existing policy.
44. The revised policy has been prepared with a view of specifically addressing the following;
- a. Reference to community interest when considering commercial use of public places.
 - b. Clarify management/operational requirements for the use of public land.
 - c. Providing more fixed location sites and opportunities to traders
 - d. Reducing impact of itinerant traders on existing bricks and mortar business
 - e. Clarifying information requirements for applicants submitting a permit application, including reference to community interest.
45. Council is requested to resolve to approve the amended Trading in Public Places Policy for advertising purposes.

Consulted References	:	<ol style="list-style-type: none"> 1. <i>Local Government Act 1995</i> 2. <i>Activities on thoroughfares and Public Places and Trading Local Law 2011</i> 3. <i>Local Government Property Local Law 2011.</i>
File Number	:	CM.STD.7
Previous Reference	:	OCM 25/02/2020 DIS195

**DIS376: AMENDMENT OF CONDITIONS 2, 4, 17 & 43 OF P2160670
INDUSTRY – EXTRACTIVE (LIME) AT LOT 9005 EDEN ROAD,
NULLAKI**

- Land Description** : Lot 9005 Eden Road, Nullaki.
- Proponent / Owner** : Graeme Robertson & Great Southern Lime Partnership.
- Business Entity Name** : **Great Southern Lime (WA) Pty Ltd and**
Directors being: Kenneth Walter Court
Scott Robert Neil Smith and Anette Gaebrielle Howie
Shareholders being: Ryan Douglas Neil Smith, Scott
Robert Neil Smith, Frederick Lloyd Wells, Faye Judith
Wells, Samuel Napier Williams, Joseph William Burton,
Camballup Pastoral Co, Summit Rural (WA) Pty Ltd,
Eversilk Pty Ltd, Minchton Pty Ltd, Phillip James Howie,
Anette Gaebrielle Howie
Frenesi Pty Ltd and
Directors and Shareholders being: Graeme James
Robertson and Peter James Robertson
Camarri Nominees Pty Ltd
Directors and Shareholders being: Bruno Giovanni
Camarri and Erica Mary Camarri
– ABN 47 614 073 910.
- Attachments** : 1. Copy of Development Application (as submitted).
2. Copy of revised/updated plans
3. State Administrative Tribunal decision WASAT 3 2019.
4. Schedule of Survey Submissions
- Supplementary Information & Councillor Workstation** : 1. Site Visit photographs of vegetation.
2. Fauna assessment
3. Acoustic Report
4. Australasian Bittern research
5. Copy of Submissions
6. Legal Advice (confidential)
7. DWER Clearing Permit in principle decision
(confidential)
8. DWER Clearing Permit Decision Report (confidential)
- Report Prepared By** : Senior Planning & Development Compliance Officer (*T Wenbourne*)
- Authorising Officer:** : Executive Director Infrastructure, Development &
Environment (*P Camins*)

STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. In making a decision on the proposed development, the Council is obliged to draw conclusion from its adopted City of Albany Local Planning Strategy 2019 and City of Albany Strategic Community Plan 2032.
3. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
 - **Pillar:** Leadership.
 - **Outcome:** A well-informed and engaged community.

4. The proposal is consistent with the strategic directions identified in the Planning Strategy.

Maps and Diagrams:



In Brief:

- Council is asked to consider an application to amend conditions 2, 4, 17 & 43 of P2160670 for Industry – Extractive (Lime) at Lot 9005 Eden Road, Nullaki. This is an existing non-conforming land use on this lot.
- The application was advertised for public comment via direct mail out to nearby landowners. There was also a notice on the City of Albany website with a link to a survey for comments to be made.
- The majority of the 74 submissions received were opposed. Some submissions were duplicated.
- The requested amendments to conditions have been assessed against the relevant regulations, guidelines and policies. Advice from State agencies and relevant matters raised during the advertising period have been considered as part of the City's assessment.
- The proponent has made changes to their application detail in response to additional information and recommendations from reports as well as addressing some of the concerns raised during the advertising and public consultation period.
- Due to the number of concerns raised, the application is being referred to Council for determination.
- The recommendations are not entirely what was originally sought by the proponent but are considered a suitable compromise that address and mitigate the concerns raised whilst also providing the operator a viable amendment of the existing conditions. The proponent has been advised of the recommendations. These have been discussed and mostly accepted with the exception of condition 17, that the applicant is seeking greater flexibility than what is proposed in the officer recommendation.
- Staff therefore recommend that Council approve the documented amendments to the conditions of approval.

RECOMMENDATION

DIS376: AUTHORISING OFFICER RECOMMENDATION 1

THAT Council AMEND Condition 2 of P2160670 to read:

The Industry – Extractive activity shall be contained within the areas as depicted on Drawing number 21980-23C dated 11-10-2023 as follows:

Area A – Excavation, processing/screening and storage of lime and stockpiled overburden shall be contained within the 8 hectare area (Area A). A maximum of 4 hectares of Area A shall be open and used for these activities at any one time. The perimeter of the area to be worked must be pegged and clearly marked to ensure that all earthworks are contained within the approved area.

Area B – Stockpiling of lime and loading of road transport vehicles for haulage offsite shall be contained within Area B as depicted on Drawing number 21980-14E dated 11-10-2023 and Drawing number 2530-01-300 F dated 17.10.23. The stockpiles within the areas indicated on Drawing number 2530-01-300 F shall not exceed a height of 6m.

Area C – Expanded area of hardstand (Area C) for use as a layby and onsite turning area for vehicles as depicted on Drawing number 21980-22A dated 18-04-23.

DIS376: AUTHORISING OFFICER RECOMMENDATION 2

THAT Council AMEND Condition 4 of P2160670 to read:

Except as otherwise approved by the City of Albany, the hours of operation of the various elements of the extractive industry activities shall be restricted as follows:

- 1) Excavation, processing/screening and associated activities within Area A between the hours of 7.00am - 5.00pm Monday to Friday, and 8.00am - 5.00pm Saturday, with no operation of the extractive industry permitted on Sundays or Public Holidays;***
- 2) Transportation of lime onsite from the extraction site (Area A) to the stockpile area (Area B) within the period of 2 January to 31 August (inclusive) between the hours of 7.00am - 5.00pm Monday to Friday, and 8.00am - 5.00pm Saturday, with no operation of this activity permitted on Sundays or Public Holidays;***
- 3) Transportation of lime offsite within the period of 2 January to 30 April (inclusive) between the hours of 7.00am - 5.00pm Monday to Friday, and 8.00am - 5.00pm Saturday, with no operation of this activity permitted on Sundays or Public Holidays.***

DIS376: AUTHORISING OFFICER RECOMMENDATION 3

THAT Council AMEND Condition 17 of P2160670 to read:

Transportation offsite of extracted lime shall not exceed 50,000 tonnes in any 12 month period. Laden vehicle movements removing lime from the Lot shall not exceed an average of fourteen (14) vehicles per operating day over a seven (7) day period.

DIS376: AUTHORISING OFFICER RECOMMENDATION 4

THAT Council AMEND Condition 43 of P2160670 to read:

The applicant shall submit an annual compliance report to the City of Albany by 30 June each year. The annual compliance report shall include:

- a) an internal compliance audit of all the development and licence approval conditions and Management Plan requirements undertaken by a suitably qualified person to the reasonable satisfaction of the City;***
- b) details of all community complaints and complaint responses;***
- c) annual tonnage of extracted material in the previous calendar year;***
- d) log of cartage trucks to and from the site recorded on a daily basis during period of operation;***
- e) evidence of the allocation and expenditure of the funds required to be spent pursuant to condition 45; and***
- (f) other information reasonably requested by the City relevant to management of any impact arising from the operation of the extractive industry.***

BACKGROUND

5. The subject site lies to the western side of Lower Denmark Road and to the southern side of Eden Road, approximately 40km west of Albany City centre. Access is provided by the newly constructed and upgraded Lee Road. The lot has an area of approximately 437 hectares and is zoned 'Conservation' and listed as No. CZ1 in Schedule 12 of City of Albany *Local Planning Scheme No. 1*.
6. The subject lot is bounded by reserved land to the south and east. The land to the north and west is zoned Conservation. The Bibbulmun Track runs through the reserve to the east of the subject site.
7. Due to the environmental properties of the land, and in order to secure long term land use protection, the Nullaki Peninsula is zoned Conservation under *Local Planning Scheme No.1*.
8. The lot has an existing land use right (non-conforming land use) for an 8 hectare area towards the south-east corner of the lot to be used for an extractive industry producing lime.
9. The existing extractive industry was granted development approval by the State Administrative Tribunal in January 2019, subject to 45 conditions.
10. On 24 May 2019 Local Planning Scheme amendment 29 (AMD29) was gazetted. In addition to other matters, AMD29 clarified that an Industry – Extractive was to be considered an X use within Conservation Zone CZ1. An X use means the land use is not permitted by the Scheme.
11. The Industry – Extractive use on part of Lot 9005 was lawful when approved by the Tribunal on 10 January 2019, but it became a non-conforming use after the gazettal of LPS1 AMD29 on 24 May 2019. A non-conforming use can lawfully continue operating, subject to meeting specific criteria set out under the local planning scheme.

DISCUSSION

12. The subject development application seeks amendment to some of the conditions of approval set down by the Tribunal in its decision of 10 January 2019. The conditions requested for amendment are conditions 2, 4, 17 and 43 of P2160670 for Industry – Extractive (Lime) at Lot 9005 Eden Road, Nullaki.

Proposal

13. The proponent is seeking to change their method of operation at the site for the following reasons:
 - Safety concerns raised regarding the 18% gradient haul road to the pit location.
 - Operator required to verify onsite equipment using the haul road is fit for purpose, but external transport vehicles are beyond the operator's scope of control.
 - A stockpile area at the bottom of the hill close to the site entrance means the external transport vehicles won't need to use the steep slope and the operator can use their controlled and verified vehicles to take the material to the stockpile area.
 - The smaller, slower haul truck will need to operate over a longer period to establish the stockpiles, but the haulage of lime offsite will still only occur over 4 months (January – April).
 - An increase from 3ha to 4ha for the operational area at the pit location is required to better accommodate the excavation, screening, some storage as well as accommodating the access in and around the pit.
 - Seeking flexibility in truck movements so a shortfall of trucks on one day can be made up for on another day. This will be the same total number of trucks over the period.

- The requested change on the reporting period provides the same 2-month timeframe for reports to be prepared following the end of carting since December – March was varied to January – April. This also aligns with the Extractive Licence term and the end of financial year.
14. The proponent has considered alternative options for transferring the lime down the hill, such as a slurry pipeline. All options explored proved challenging and ultimately unviable. These other options also still required the space at the bottom of the hill for stockpiling material and loading it onto vehicles to transport it offsite.
 15. To effect these proposed changes, the proponent is seeking amendment of four (4) conditions of the existing approval. These conditions are 2, 4, 17 & 43. In part these requested changes are to overcome safety issues related to topographical constraints, but also to assist in general operations.

Condition 2 – Areas of Activity

16. The existing condition reads:

Excavation, storage and extraction activities shall be contained within an eight hectare area in the location depicted in the plan and entitled "Lot 9005 Eden Road, Nullaki Peninsula Concept Final Contour Plan" drawn by Landform Research dated 21 August 2018 which is annexed to these conditions. A maximum of three hectares will be open for extraction and storage of extracted material at any one time. The perimeter of the area to be worked must be pegged and clearly marked to ensure that all earthworks are contained within the approved area.

17. The requested amendment to this condition is:

Excavation, storage and extraction activities shall be contained within areas A and B depicted on the site plan drawing number 21980-23A prepared by Harley Dykstra. Area A is the 8 hectare excavation, storage and extraction depicted in the Landform Research dated 21 August 2018 which is annexed to these conditions. The perimeter of Area A must be pegged and clearly marked to ensure that all earthworks are contained within the approved area. A maximum of four (4) hectares of Area A will be open for excavation, extraction and operation activities at any one time.

Area B is a three (3.0) hectare area for storage of screened extracted material and truck loading operations. A maximum of 50,000 tonnes of screened material shall be stored within two and half (2.5) hectares of Area B.

Area C is an area of 2,920m² to be used as a layby and a turning circle for trucks on the site.

18. This change to Condition 2 seeks to increase the open (in use) area within the 8 hectare extraction site; create a 3ha area at the base of the hill for stockpiling lime and loading it on to trucks for carting from the site; and increasing the size of the layby area at the entrance of the site to enable truck turning.

Condition 4 – Time Restrictions on Activity

19. The existing condition reads:

Except as otherwise approved by the City of Albany, the hours of operation of the extractive industry, including the movement of trucks in or out of the site, shall be restricted to:

- a) the period of 1 January to 30 April; and
- b) the hours of 7.00am - 5.00pm Monday to Friday, and 8.00am - 5.00pm Saturday, with no operation of the extractive industry permitted on Sundays or Public Holidays.

20. The requested amendment to this condition is:

Except as otherwise approved by the City of Albany the hours of operation of the extractive industry, shall be restricted to the hours of 7.00am – 5.00pm Monday to Friday and, 8.00am - 5.00pm Saturday with no operation of the extractive industry permitted on Sundays or public holidays.

The movement of trucks for the haulage of extracted material out of the site shall be restricted to the period of 1 January to 30 April annually.

21. This change to condition 4 seeks to allow onsite lime production activities to be undertaken year round, with the trucks carting lime being restricted to only operate during the 4 month window of January to April each year.

Condition 17 – Volume and Vehicle Movement Limits

22. The existing condition reads:

Extraction from the excavation site shall not exceed 50,000 tonnes in any 12 month period. Laden truck movements from the site shall not exceed fourteen (14) per day.

23. The requested amendment to this condition is:

Extraction from the excavation site (Area A) shall not exceed 50,000 tonnes in any 12 months period and the haulage out of the site (Area B) for each haulage operation period (January – April) shall not exceed a daily average of 14 truck movements over each haulage operation period.

24. This change to condition 17 seeks to permit a daily average of 14 trucks per day with the average being over the 4 month haulage season rather than the set daily 14 truck limit.

Condition 43 – Compliance Report

25. The existing condition reads:

The applicant shall submit an annual compliance report to the City of Albany by **30 May** each year. The annual compliance report shall include:

- (a) an internal compliance audit of all the development and licence approval conditions and Management Plan requirements undertaken by a suitably qualified person to the reasonable satisfaction of the City;
- (b) details of all community complaints and complaint responses;
- (c) annual tonnage of extracted material in the previous calendar year;
- (d) log of cartage trucks to and from the site recorded on a daily basis during period of operation; and
- (e) other information reasonably requested by the City relevant to management of any impact arising from the operation of the extractive industry.

26. The requested amendment to this condition is:

The applicant shall submit an annual compliance report to the City of Albany by **30 June** each year. The annual compliance report shall include:

- (a) an internal compliance audit of all the development and licence approval conditions and Management Plan requirements undertaken by a suitably qualified person to the reasonable satisfaction of the City;
- (b) details of all community complaints and complaint responses;
- (c) annual tonnage of extracted material in the previous calendar year;
- (d) log of cartage trucks to and from the site recorded on a daily basis during period of operation; and
- (e) other information reasonably requested by the City relevant to management of any impact arising from the operation of the extractive industry.

27. This change to condition 43 seeks to alter only the date highlighted in bold with the purpose to reinstate the 2 month report preparation period following cessation of carting lime from the site.

Public Consultation

28. The concerns or objections raised that are directly relevant to the requested condition amendments relate primarily to the following:
- No expansion or increased clearing of vegetation should be allowed.
 - This area is zoned Conservation and mining goes directly against conservation principles.
 - Impacts on fauna and in particular potential impacts on the habitat and breeding ability of the endangered Australasian Bitterns in the local area.
 - Increased span of operation will increase the period of noise and disturbance from the site.
 - The noise will have an impact on the Bibbulmun Track year-round.
 - No confidence in the owner/operator to meet and abide by the conditions of approval.
 - The change from a truck limit per day to an average daily limit over the whole period is effectively no limit as missed trucks could be caught up over a shorter, concentrated period of time.
 - A greater concentration of trucks on the road increases the risk and danger to local road users.
29. The proposal was also referred to the Department of Water and Environmental Regulation (DWER), the Department of Biodiversity, Conservation and Attractions (DBCA) and to the Department of Mines, Industry Regulation and Safety (DMIRS).

Assessment

30. As a result of the concerns raised during the submission period, but also in pursuit of the required clearing permit, the applicant arranged for a Fauna Survey of the proposed stockpile and truck turn around areas (Areas B & C). The Fauna Survey recommended that the area of clearing for the stockpile area (Area B) be altered to avoid a pocket of bush that is likely to provide high quality foraging for black cockatoos.
31. In response to this recommendation, the applicant has reduced Area B to avoid this foraging vegetation. Area B has been reduced in size from 3ha to 2.58ha in area.
32. The assessment of the application is based on the latest revised information.
33. The use of the land for Industry – Extractive was previously approved on review by the State Administrative Tribunal and the approval granted has been implemented by the developer within the allowed timeframe. Whilst the Scheme has subsequently been amended to clarify the non-permissibility of Industry – Extractive in the Conservation zone; this change does not affect the legality of this activity under the previous approval. The land use on this lot benefits from a non-conforming use right and under planning regulations can be continued.
34. The City has sought legal advice on whether the City can consider the requested amendment of conditions or if the request should be treated as an entirely new application. The advice received is clear, that under clause 3.9.1(a) of the Scheme, the City can consider an application to alter or extend a non-conforming use of land. The advice has also cited case law around the matters raised including:
- Re Shire of Carnarvon: Ex Parte Humphry (2005) WASCA 182
 - City of Mitcham v Fusco (2002) 124 LGERA 196
 - Prestige Car Sales Pty Ltd v Walkerville Town Corporation (1979) 20 SASR 514
 - Royal Agricultural Society (New South Wales) v Sydney City Council (1987) 61 LGRA 305.

35. Relevantly to this matter, the above-referenced Royal Agricultural Society case at paragraph 310 stated:

"The courts have done so by refusing to categorise an 'existing use' so narrowly that natural changes in the method of using the land or carrying on a business or industry will render an existing use right valueless. At the same time, the courts have been concerned not to categorise the purpose of an existing use so widely that the land or premises could be used for a prohibited purpose which was not part of its use at the commencement of the legislation."

36. Accordingly, on the basis of these legal determinations, the requested amendments should be considered within the context of the existing approved activity, as they are an extension of the same and do not constitute a change of use or request for a new activity.

Condition 2 – Areas of Activity

37. This land use on this property is a Class 3 extractive industry under the City of Albany *Extractive Industries and Mining Policy*. Typically, a Class 3 extractive industry is greater than 3 hectares in size. Whilst the current approval is for an area of 8 hectares, the imposed limit on area to be open at any one time is 3 hectares. The requested increase to 4 hectares (if approved) represents the operator being allowed to open 50% of the total approved area at any one time.
38. Area A depicted on Drawing 21980-23B (initially submitted as part of this application) is the 8 hectare area permitted for extractive operations in the existing approval. Indicated within this are the 3 stages originally envisaged whereby each stage is less than 3 hectares in area.
39. The requested increase to 4 hectares being open for extraction operations represents a change to a two (2) stage approach to the lifespan of the extractive.
40. The area already cleared of vegetation where extraction activity commenced in early 2023 is approximately 2.85 hectares in size. The extraction activity in this area has for the most part removed the peaks and undulations of the previous landform and produced a fairly uniform level across the area. As extraction progresses, it will become an excavation. As the excavation goes deeper, access to the working surface level will be required and an access track into and out of the excavation will be required. The deeper the excavation goes, the more horizontal space will be required for the access track and the base excavation area becomes increasingly smaller.
41. The operator has cited operational safety as justification for the requested increase. Whilst it may be difficult to comprehend how 3 hectares of operating area could be a constraint to safe working practices, as explained above, the deeper the excavation goes, the smaller the operating space becomes. Due to this, it is also envisaged the requested increase will be a more efficient use of the overall 8 hectare limit imposed in the original approval which is now a non-conforming use.
42. In one of the Department of Mines, Industry Regulation and Safety (DMIRS) inspection reports for the site, mention is made of the importance of safely excavating sand faces and planning safe mine face heights to prevent equipment being buried in the case of a collapse. The operator advises that 6m is the recommended maximum height for an active excavation face (also mentioned in DMIRS Code of Practice – Excavation). Having additional available working space away from the active excavation face has been verbally communicated as part of the safety considerations behind the request for the additional open area in Area A.
43. As the extraction operation has reached the point where it becomes an excavation, the additional hectare of working area is not envisaged to have any discernible impact outside of the immediate setting onsite.

44. Area B has been presented as an operational solution to safety concerns raised by the DMIRS relating to a safe system of work for haulage of lime sand down the hill. The issue of concern was that road transportation vehicles when loaded had to exit the site via the steep gradient haul road.
45. The existing internal haul road is acceptable for unladen trucks to enter the extraction pit area but considered too steep for loaded road trucks to safely use to leave the property. In addition, the haul road is a straight run down the hill which adds to the concerns. The City was advised that a suggestion was made for an alternative exit route from the extraction pit at a lower gradient incline be explored and thus establish a one-way truck route onsite.
46. This was considered but to achieve an acceptable gradient for these third-party road vehicles, the exit road would be a long winding route through the property. The route to achieve this would be through the area of the lot subject to the Conservation Covenant and to create this would require significantly more vegetation to be cleared than the requested Area B.
47. This proposal means that the site operator is in control of and responsible for the operation of vehicles transporting the extracted material (lime) down the steep incline to a place where it can be loaded onto the road transport trucks for haulage offsite. These road trucks do not then need to navigate the steep descent.
48. Area B is proposed as a stockpile and loading area only. This is where the operator's vehicles would deposit the lime from the extraction pit. The deposited material can then be loaded onto the road trucks for haulage offsite. Plans have been provided to show the separation of these vehicle types and the circulation for their varying activities.
49. Guided by the legal advice received, the area of clearing for the stockpiles and truck loading (Area B) is considered an associated activity intrinsically linked to the existing use right to extract lime from Area A. The reason for requesting the use of this area is to overcome the safety concerns raised by DMIRS in relation to the internal haul road and provide the required safe system of work for haulage of lime sand down the hill. Without this, or some other solution, the extractive cannot operate and the existing land use right would be valueless. Other solutions have been explored and this is considered the least environmentally intrusive option.
50. Area B was selected as it is in close proximity to the existing haul road. It has previously been cleared and used for running stock and it is relatively low lying, so is not readily visible from outside the site. In addition, it is set behind an area of more established vegetation to further screen it from the eastern lot boundary.
51. The vegetation survey provided is a broad identification of the vegetation type across the area. The survey identified that the vegetation proposed to be cleared is not representative of threatened or priority ecological communities and does not contain threatened (declared rare) or priority species. Whilst in good to excellent condition, the type of vegetation is common and widespread in the locality.
52. The extent of Area B (stockpile and loading area) has been revised to avoid a parcel of vegetation to the east of the proposed stockpile areas. This arose from a recommendation from the new fauna survey due to this parcel of vegetation likely to provide high quality foraging for black cockatoos. This survey and the plan showing the revised extent of Area B has been referred to the relevant government agency (DWER) for consideration of any change or update on their original comments. The DWER has noted the alteration of the area proposed to be cleared and has advised this does not alter their previous advice.
53. The areas identified for the stockpile locations are approximately 250m away from the lot boundary and the loading ramp for the loading of road trucks for lime to be taken offsite is in excess of 200m from the lot boundary. The established bush to be avoided and retained lies between the stockpile areas and loading ramp, and the boundary.

54. The Environmental Protection Authority *Guidance for the Assessment of Environmental Factors – Separation Distances between Industrial and Sensitive Land Uses* (June 2005) suggests buffer distances for various industrial activities from sensitive receptors – generally houses and other forms of human accommodation.
55. This guidance suggests a buffer distance for an Extractive Industry for sand or limestone that does not involve grinding or milling should have a setback buffer of 300-500m depending on its size. This is considered the applicable reference for consideration of the depositing and loading of the lime in the proposed stockpile area as the processing (crushing and screening) would still be undertaken in the existing extraction pit area at the top of the haul road.
56. The Bibbulmun Track overnight shelter at the Nullaki is located to the northeast of the loading ramp at a distance of almost 600m. The closest residential property is 61 Lee Road which is also to the northeast of the loading ramp at a distance of almost 1500m. In addition, the closest area of water visible on aerial images of the Eungedup Wetland referenced in many of the consultation responses is approximately 1000m east-southeast of the loading ramp.
57. Area C is an area of almost 3,000m² that forms a bulge towards the southern end of the truck stacking/parking area close to the site entrance. This area is requested to widen this end of the truck area to allow a road train to turn around onsite, if required, without the need to travel to the pit area or through the Area B loading loop past the stockpile locations.
58. Again, the vegetation survey identified that the vegetation proposed to be cleared is not representative of threatened or priority ecological communities and does not contain threatened (declared rare) or priority species. Area C contains a very small area of low open woodland type vegetation. This woodland type is less common than the other 2 identified vegetation types in the survey area, but is still widespread and well represented on low lying areas in the locality.
59. The shape of Area C has been selected to retain the more mature vegetation specimens.
60. Whilst the requested amendment to the condition references particular drawings, this was reflective of the original submission. The plans have subsequently been amended in response to queries raised and each revised drawing has a new version number.

In Summary:

61. The increase of open area from 3ha to 4ha within Area A is considered to have no discernible impact outside of the immediate vicinity now that the extractive has reached the stage where it will become an excavation. This would still be within the original approved 8 hectare area and is considered to be consistent with the requirements of the *Extractive Industries and Mining Policy*.
62. The Area B stockpile area will overcome the identified safety issue of the steep gradient haul road. The area has previously been grazed and the vegetation is less established than surrounding areas, which together with it being low-lying also help in obscuring direct views from the adjoining reserve to the east.
63. The clearing and use of Area B as a stockpile and loading area only will have less environmental impact than an alternative access route that would have to be longer to achieve the required gentle gradient. The proponent has taken additional steps to minimise the impact by altering the size and shape of the area to avoid the identified habitat providing high quality foraging for black cockatoos. This established vegetation also provides an element of visual screening from the adjoining reserve. It is appropriate that the height of the stockpiles is limited to ensure the screening is achieved.
64. The size and shape of Area C has been selected to retain the more established vegetation whilst providing space to facilitate truck turning (if necessary) without travelling further through the site.

65. Together the proposed clearing of Areas B & C is now less than 3ha in area and the vegetation that would be cleared is for the most part common and widespread throughout the area.
66. On this basis, it is considered that an amendment of Condition 2 can be approved. Although not to the exact description applied for but achieving the same intended outcome with a more robust and concise wording.

Condition 4 – Time Restrictions on Activity

67. The requested amendment seeks to allow year-round operation onsite, but still limit the haulage of lime offsite to the approved 4 month period each year. The reason for this is to allow replenishment of the proposed stockpiles at the bottom of the hill over a longer period of time due to the use of the operator's smaller, slow moving haul truck.
68. For efficiency of operations, the City has been informed that extraction and processing at the pit would not occur during the haulage period when road trucks are loaded from the stockpiles. The loader used in the pit to load the haul truck would be relocated to the stockpile area and used to load the road trucks for haulage of lime offsite.
69. The haul truck is a slow moving vehicle. Getting loaded at the pit and making the 3km round trip to unload at the stockpile area to return to the pit is estimated to take 30 minutes. Therefore, a single haul truck would be using the haul road up to 4 times per hour during the hours of operation.
70. In the consultation responses, the noise impact on the Bibbulmun Track and the Nullaki camp shelter was raised as a concern. The existing approved period of operation (January to April) is already established, and it is only the requested additional operating time that can be considered as part of this request.
71. Whilst the camp shelter is almost 600m from the loading ramp, it is approximately 450m from the closest point of the haul road that would be used by the haul truck. However, the Bibbulmun Track to the south of the Nullaki shelter meanders through the landscape and comes within 5m of the haul road at one point on the steep slope.
72. The proponent has provided an acoustic assessment that indicates noise levels produced by various vehicles that would be used onsite – road trucks, haul truck and the front end loader. Computer modelling has been used to determine the noise level impact from the vehicles at the Nullaki shelter as a sensitive premises. It is noted that the acoustic report has used the previously proposed Lee Road realignment as a reference point for the road trucks. The road trucks are not relevant to this request, so the findings relating to these vehicles at the incorrect and much-reduced distance are not required and can be dismissed.
73. At the shelter, the modelled noise level from the haul truck and the front end loader have been determined to be 35 and 37 dB(A) respectively. Even if a 5dB(A) penalty is applied for a tonal component, these levels are still below the 45dB(A) assigned outdoor noise levels for a highly sensitive area during regular working hours. These modelled noise levels would comply with the requirements set out in the *Environmental Protection (Noise) Regulations 1997*.
74. Given the hours of operation of the site are 7am to 5pm Monday to Friday, it is expected that most users of the shelter would be walking the track between shelters during the greater part of these times and therefore would not be at the shelter. It is also recognised that walking the Bibbulmun Track is not an entirely traffic or noise free experience. Walkers continuing through on this track section may experience 2 or 3 haul truck movements as they pass through during the daytime operating period.

75. In addition to the noise impact on users of the Bibbulmun Track, the noise impact on fauna and in particular the Australasian Bitterns was raised as a concern. These endangered birds nest and breed in the area between September and December. Their successful breeding relies on females hearing the males' booming calls, so there is concern that noise may have a significant disruptive impact.
76. Although the acoustic assessment has followed the guidance and assessed the noise level at a noise sensitive premises as required, the Bittern habitat is further away from the haul road than the Bibbulmun Track Nullaki shelter. Accordingly, it is anticipated that operating vehicle noise will be even less noticeable at this location.
77. Furthermore, in response to the concerns raised, the proponent has through their Environmental Consultant undertaken and provided research and analysis of published scientific data on the Australasian Bitterns. This research suggests that any noise from onsite activities may not necessarily impact the Bitterns ability to breed as their 'booming' calls are mostly at dawn and dusk during the mating season and they rest hidden away during the day.
78. In response to the findings from this research, the proponent has offered a variation of their requested use of the haul road and activities in the stockpile location (Area B) to the hours of 8am to 5pm during the September to December period. It is suggested that doing so would avoid the dawn and dusk times when the males make their 'booming' mating calls to females and therefore be unlikely to impact the breeding of the Australasian Bitterns.
79. Whilst this offered change alleviates some of the concern on impacts to the Bitterns, the provided research does say the mating calls are mostly at dawn and dusk, not exclusively at these times. Therefore, potential remains for some, albeit reduced, impact on the Bitterns mating conditions.
80. If the use of the haul road and activity in the stockpile location (Area B) were to cease during the September to December breeding season, there would still be over 100 days after the export period for the stockpiles to be replenished. Replenishment of 50,000 tonnes of lime could be achieved during this time with 17 haul truck loads per day assuming a minimum 30 tonnes of material in each load. Cessation of this activity during Spring would also remove any disturbance to users of the Bibbulmun Track during this busier period of track use.
81. The amended request from the proponent is for a twelve month per year operation onsite within the standard hours for an Extractive Industry, but for the use of the internal haul road and the proposed stockpile area to be restricted to 8am to 5pm Monday to Saturday from 1 September to 31 December each year. Also to continue the limitation of haulage of lime material offsite during 1 January to 30 April each year.
82. However, as per the considerations set out above, limiting operational use of the internal haul road and the stockpile area (Area B) to the January to August (inclusive) period is considered to afford the operator plenty of opportunity to replenish the lime stockpiles within Area B. This period avoids the spring breeding season of the bitterns and also the busier period of Bibbulmun Track use.
83. On this basis, it is considered that an amendment of Condition 4 can be approved. The recommended revised wording provides a clear distinction and separation of the activities onsite and the limitations on these activities.

Condition 17 – Volume and Vehicle Movement Limits

84. The requested amendment seeks to allow truck movements hauling lime from the site to be averaged over the period rather than a fixed daily maximum number of 14 trucks. The proponent suggests a limit of an average of 14 trucks per day would be achieved and adhered to.

85. The proponent advises that from their first partial season of operation they experienced difficulties with reliability of trucks. Although they had a booking system in place, some trucks were cancelled at short notice, and it was too late to arrange a replacement to fill the booked slot. From this, they see the 14 trucks per day limit as overly restrictive and inflexible.
86. Whilst solving an operational obstacle for the operator, the requested average raises potential issues for the local community, and this was commented on in some of the consultation responses.
87. The requested average of 14 trucks per day over the 4-month operating period would give a free reign (subject to operational capacity for loading trucks) to double or triple the number of trucks each day in the last period of operation to make up for any shortfall across the period. Whilst this may not be the intent, the requested amendment could allow that eventuality.
88. The current 14 laden trucks each day is 28 road train movements during the 10-hour window each normal weekday. Although the roads along the haulage route have been constructed and upgraded to accommodate these vehicles, any significant increase in the number of trucks would have an impact on the local community residing along and using these relatively quiet rural roads.
89. The proponent has advised that during their initial season they made efforts to book the maximum number of trucks allowed, but on occasion there were circumstances beyond their control which meant they fell short. It would be reasonable to allow some flexibility to enable lost capacity to be caught up, but this needs to be balanced with possible impact on the local community with the associated increased heavy traffic.
90. As highlighted, the requested change to average over the entire 4-month season leaves too little control over the potential impacts on the local community and local road users. The current 14 laden trucks per day over a typical 6-day week is a total of 84 trucks per week. If allowance were given for an average of 14 laden trucks per day over the week, a truck cancelling on Monday could be re-booked or have its place re-assigned to another truck later the same week. This minor and low level redistribution of the traffic volume will likely have little discernible impact, but stretching this out over a longer period could compound the impact with significantly increased numbers of trucks.
91. In reply to the concerns raised, the proponent has responded with a revision on their request and suggest they could work with an average of 14 trucks per day over a rolling 4-week period. They foresee an issue whereby there may be limited truck availability at the commencement of the season and any lesser period will not allow them opportunity to catch up.
92. They see this as still affording them the required flexibility of operation without the ability to disproportionately increase the number of trucks towards the end of the haulage period. Whilst this was not their intent, they recognise this could have been possible within their original request.
93. Whilst the opportunity to catch up may be an operational consideration, as previously discussed, averaging over a longer time period carries the potential to facilitate disproportionately loading the later part of the period and still remain compliant. Any significant increase in truck movements will have an impact on the local community using these relatively quiet rural roads.
94. Methods of road traffic count measurements include average daily traffic (ADT), average weekday traffic (AWDT) and average weekend day traffic (AWEDT). In terms of traffic flows and traffic impacts, it is standard practice to measure the average traffic over a given timeframe. Whilst the proponent has requested a rolling 4-week average (revised from the initial average over the 4 month period), it is more reasonable from a community impact perspective to have this average over a shorter period such as the typical 6 day operating week.

95. The community has always had and continues to maintain their concerns regarding the volume of trucks using the quiet rural roads in this area. Whilst the roads have been upgraded, the design for the upgrades were somewhat constrained due to the available width and alignments of road reserves. The original fixed total of 14 laden trucks per day was considered by the Tribunal as an acceptable traffic volume and would allow the proponent to transport the 50,000 tonnes of lime during the operating period.
96. It is recognised that due to the nature of the operation a fixed daily maximum number of trucks may be difficult to consistently achieve due to circumstances beyond the operator's control and some flexibility would be necessary.
97. The current 14 laden trucks per day over a typical 6-day operating week is a total of 84 trucks per week. Taking community concerns into account as well as considering a degree of flexibility for the operator, it is considered an average of 14 laden trucks per operating day over a 7-day period would allow for a missed truck movement one day to be made up on another day within a short timeframe. This limit would not result in a significant cumulative impact of 'missed' trucks being 'caught up'. This minor redistribution of the traffic volume will likely have little discernible impact on the local community.
98. Although this is not exactly what has been requested by the proponent, this is considered to be an acceptable compromise that provides some degree of flexibility compared to the existing condition. This level of change would have minimal community impact, if any, and on this basis, it is considered this can be supported.
99. The proponent has been advised of the City officer's position and recommendation on this point. They would still like greater flexibility and will consider this further. They may advance an alternative suggestion for consideration.
100. Although not expressly sought as part of this application, due to the request for a separate stockpile area it is appropriate to reconsider the first part of condition 14. The original condition was based on the application which envisaged the extracted material being loaded on to trucks and immediately taken offsite. Hence the condition limits extraction from the excavation site to 50,000 tonnes per annum.
101. With the proposal being to load and remove the same annual tonnage from the site, but from a remote stockpile, it would be appropriate to allow for extraction and stockpile capacity to be marginally larger than the annual export limit. Rather than setting a weight limit to be held within the stockpile area, it is more appropriate to look at the overall volume and size of the stockpiles and any associated visual or other amenity issues associated with this intended element of the operation.
102. As previously stated, the intended stockpile locations are in an area of relatively low lying land. This is approximately 2m lower than the constructed haul road along the eastern lot boundary. The vegetation to be retained between the boundary and majority of the stockpile area varies in height, but a significant proportion is estimated to be 4-6m higher than the haul road. The vegetation would therefore provide an effective visual screen of much of the stockpiles up to a maximum stockpile height of around 6m.
103. Keeping the stockpile height below the height of the surrounding vegetation will also minimise the potential for the material to become wind-borne. Even if some material were to be blown by the wind, it would only affect the immediate stockpile area and unlikely to impact beyond the property boundary.

Condition 43 – Compliance Report

104. The requested amendment seeks to restore the 2-month timeframe to submit the report after the extraction season finishes. When the 4-month season was adjusted from the original December to March period to then be January to April, the compliance report submission deadline was not changed and remained at 30 May.

105. Restoring the original 2 months to be able to compile and submit the report following the end of the haulage period, is considered reasonable and practical as it then aligns with the expiry of the Extractive Industry Licence.
106. Where public submission comments were specifically made on this element, there was general acceptance for this requested change, but this was qualified with the suggestion that such report should be made publicly available and should not have to be obtained via Freedom of Information requests.
107. In addition, condition 45 requiring the operation to pay a 60cents per tonne royalty on the limestone requires the allocation and expenditure of these funds to be detailed in the annual compliance report. It is therefore appropriate to cross-reference this and include this as an express requirement of the compliance report.
108. On this basis, it is considered that an amendment of Condition 43 can be approved.
109. When determining the proposal, Council may also consider that the proponent be required to produce an Executive Summary of the report that is to be made publicly available.

GOVERNMENT & PUBLIC CONSULTATION

110. Given the nature of the application, it was treated as a complex application under clause 64 of the Planning Regulations 2015 for advertising and referral purposes. The application was advertised for public comment via direct mail out to nearby landowners along the haulage route as far as Lower Denmark Road. A notice was also placed on the City of Albany website with a link to a survey for comments to be made. This advertising was open for 21 days and subsequently extended to 28 days, but any submissions lodged after this time have also been accepted.

111. Community Engagement

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)
Inform	Mail Out	28/07 – 18/08 (25/08)	15
Inform	Email – Community group mailing list	28/07 – 18/08 (25/08)	41
Consult	Survey	28/07 – 18/08 (25/08)	45

112. A total of 74 submissions were received in relation to the proposal. Of these submissions 3 were supportive of the amendments, whilst 66 were clearly opposed to the request. The remaining 5 were considered generally opposed. Six of the submissions received from different people included the same detail indicating an objection had been circulated and was copied. A couple of these submissions acknowledged they concurred with another opinion raised and repeated the information.
113. The broad issue themes raised in the submissions are set out above under Public Consultation, and further discussed under Assessment in relation to the specific matters.
114. In addition to the public consultation, the proposal was also referred to the Department of Water and Environmental Regulation (DWER), the Department of Biodiversity, Conservation and Attractions (DBCA) and to the Department of Mines, Industry Regulation and Safety (DMIRS).
115. DWER advised that the requested amendments are not covered by existing approvals/licences/permits and the proponent will need to seek an update to or amend these other approvals or obtain new approvals prior to commencing work in accordance with any changed detail.
116. The proponent has been informed of the advice from DWER.

117. DBCA advised they echo the concerns in the submission from the Bibbulmun Track Foundation regarding the amenity impacts from noise and dust on Track users. The primary concern is noise from the truck and loader movements due to the proximity to the campsite. They advise this can impact hikers at the campsite during the day as well as on the track in the vicinity.
118. DMIRS have assessed the proposal with respect to mineral and petroleum resources, geothermal energy and basic raw materials. They advise this proposal raises no significant issues and they have no objections.

STATUTORY IMPLICATIONS

119. As discussed in paragraphs 33-36, the existing Industry - Extractive is now a non-conforming use on this lot and the City's legal advice is that this request should be considered within the context of the existing approved activity. This is an amendment or associated extension of the same activity and is not a change of use or request for a new activity. Consequently, the change to the Scheme that has made the Industry – Extractive land use an 'X' (not permitted) does not impact consideration of this proposal.
120. The *EPA Guidance for the Assessment of Environmental Factors - Separation Distances between Industrial and Sensitive Land Uses 2005* sets out the criteria for buffers. The relevant comparable industry within the guidelines for the proposed stockpile operation is considered to be Extractive Industry – sand and limestone extraction with no grinding or milling works. The relevant impacts are Noise and Dust with the suggested buffer being 300-500m depending on the size of the operation.
121. The Department of Planning, Lands and Heritage *SPP 2.4 – Basic Raw Materials Guidelines (2021)* incorporates a site selection checklist intended on guiding the applicant during the site selection process. Within this checklist it recommends that adequate setbacks for Extractive Industries from sensitive lands uses should be between 300m and 1km. The guidelines however state that local government assessment and approval should be based on relevant local planning scheme provisions, policies or strategies where applicable.
122. The Department of Planning, Lands and Heritage *SPP 2.9 – Water Resources (2006)* is awaiting finalisation of the review and is due to be replaced. Currently there is a *Draft State Planning Policy 2.9 Planning for Water* and *Planning for Water Guidelines* which have completed public comment and once gazetted will replace the current SPP 2.9. The current SPP under Schedule 2 suggests foreshore management and protection areas of 30m for waterways and 50m for estuaries, with no mention of a similar type of setback for wetlands. The draft guidelines do not contain defined foreshore management setbacks and recognise that for foreshore areas and buffers to perform their function they require an appropriate width of healthy native vegetation. This will vary depending on the water body and the location and should be identified as part of Water Management Reports consistent with EPA Guidelines.
123. The City of Albany Extractive Industries and Mining Policy requires that buffer distances are to be in accordance with EPA requirements.
124. Voting requirement is a **Simple Majority**.

POLICY IMPLICATIONS

125. The primary assessment criteria for the application is set out in the City of Albany *Extractive Industries and Mining Policy*.
 - a. The proposal is classified as a Class 3 extractive industry under the policy. Class 3 extractive industries have site extraction areas greater than 3 hectares with a maximum depth exceeding 3 metres.
 - b. The policy requires that buffer distances are to be in accordance with the setbacks outlined within the Environmental Protection Authority requirements. The EPA *Guidance for the Assessment of Environmental Factors - Separation Distances*

between Industrial and Sensitive Land Uses 2005 has an activity that is considered comparable to the loading of trucks from the stockpile. This comparable activity is extractive industry – sand and limestone extraction with no grinding or milling works. The relevant buffer distance for this activity is 300-500m depending on the size. The loading ramp is indicated to be in excess of 200m from the lot boundary. The Bibbulmun Track Nullaki camp shelter is almost 600m away and the closest dwelling to the northeast is almost 1500m from the loading ramp.

- c. It should be noted that the applicant is required to obtain a clearing permit for the additional areas and also seek variations to existing licences and works approvals through DWER for their intended alteration of operations. A full assessment by DWER of these aspects of the proposal would be undertaken at that time. Regarding the clearing permit component, DWER have indicated agreement in principle for the specific areas covered by this application. The agreement is conditional on the proponent receiving development approval within a certain timeframe.
- d. The proposed stockpile area is compliant with the provision of the policy that requires pits to be located 40 metres from any public road and 20m from any other boundary.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<p>Organisational Operations and Reputation. Risk: The proposed amendment of conditions could have a variety of detrimental impacts on the area.</p>	Possible	Moderate	Medium	Mitigation of impacts to be achieved through considered revision of conditions and follow up enforcement if and when required.
<p>Opportunity: Facilitate the modest changes required to enable the non-conforming use established on the lot to continue to service the local agricultural sector bringing the sector a more efficient and cost-effective source of material.</p>				

FINANCIAL IMPLICATIONS

- 127. All costs associated with the development will be borne by the proponent.
- 128. However, should the proponent be aggrieved by Council’s decision or any of the amended conditions and seek a review of that decision or conditions through the State Administrative Tribunal, the City could be liable for costs associated with defending the decision at a State Administrative Tribunal hearing.

LEGAL IMPLICATIONS

- 129. Council is at liberty to use its discretion to approve or refuse the proposal.
- 130. The proponent has the right to seek a review of the Council’s decision, including any conditions attached to an approval to the State Administrative Tribunal, in accordance with Section 252 of 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

- 131. The DWER are the responsible body for the assessment of the environmental impacts of the proposal. The clearing requires a clearing permit that has already been lodged with the DWER.
- 132. The fauna survey has been undertaken pursuant to the clearing permit and the changes recommended from this survey have been incorporated through the revised detail received.

133. The DWER has indicated an agreement in principle in relation to the clearing permit. This agreement is subject to the proponent obtaining development approval within a given timeframe, otherwise the permit will be refused, and a new clearing permit application would then have to be lodged.
134. Separately, the DWER has advised that this proposal would require revision/amendment of existing permits and works approvals in relation to this property.
135. In response to the concerns raised in submissions in relation to the endangered Australasian Bittern. On the basis of their research and analysis of published scientific data on the species, the proponent has amended their request to restrict use of the internal haul road and operations in the proposed stockpile area between the hours of 8am to 5pm during the mating season (September to December). This would avoid noise generating activity at dawn and dusk which are mostly the times when the male bitterns call or 'boom' to any females.

ALTERNATE OPTIONS

136. Council has the following alternate options in relation to this item, which are:
 - i. To determine that the proposed amended conditions are unacceptable and to resolve to refuse each or all of the recommended conditions. Each requested amendment of condition is subject of a separate recommendation, so a decision can be made independently on each of the requested amended conditions; or
 - ii. To alter, amend, or replace recommended conditions to address potential impacts from the development.
137. Each of the recommendations will require a decision. If Council is not supportive of a recommendation, a decision to refuse will need to be motioned. If a recommendation is refused, the amended condition will not apply and control over the land use onsite will revert to the existing condition set in the State Administrative Tribunal decision.

CONCLUSION

138. Each of the conditions requested to be amended have been assessed. Some of them have been revised by or in consultation with the proponent to address new information that has arisen through reports or to address concerns raised in public submissions.
139. Overall, whilst the recommended amendments are not entirely what was sought by the proponent, they are considered a suitable compromise that address and mitigate the concerns raised from the public consultation and also provide the operator a viable amendment of the existing conditions.
140. It is therefore recommended that Council approve the documented amendments to the conditions of approval.

Consulted References	:	<ol style="list-style-type: none"> 1. <i>Local Planning Scheme No. 1</i> 2. <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> 3. <i>City of Albany Extractive Industries and Mining Policy</i> 4. <i>Environmental Protection (Noise) Regulations 1997</i> 5. <i>Environmental Protection Authority Separation Distances between Industrial and Sensitive Land Uses 2005</i> 6. <i>State Planning Policy 2.4 – Planning for Basic Raw Materials Guidelines</i> 7. <i>State Planning Policy 2.9 – Water Resources</i> 8. <i>Draft State Planning Policy 2.9 – Planning for Water Guidelines</i> 9. <i>DMIRS Code of Practice - Excavation</i>
File Number (Name of Ward)	:	A200151 (West Ward)
Previous Reference	:	DIS047, OCM September 2017 DIS106, OCM July 2018

**DIS377: C23025 - ALBANY HIGHWAY (SLK 1.97 – 2.48)
RESURFACING**

Land Description	: Albany Highway - Mt Melville, Centennial Park & Albany.
Proponent / Owner	: City of Albany
Business Entity Name	: City of Albany
Attachments	: Commercial in Confidence - Confidential Briefing Note
Report Prepared By	: Acting Team Leader Civil Infrastructure (A Henderson)
Authorising Officer:	: Executive Director Infrastructure, Development & Environment (P Camins)

CONFIDENTIAL ATTACHMENT

It is recommended that if discussion is required in regards to details contained within the Confidential Attachment, that the matters are discussed behind closed doors, in accordance with section 5.23(2)(c) & (e)(ii) of the Local Government Act 1995, being: a contract which may be entered into and information that has commercial value.

STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan 2032:
 - **Pillar:** Place
 - **Outcome:** A safe, sustainable and efficient transport network.
 - **Objective:** Improve road safety, connectivity and traffic flow.

Maps and Diagrams:



In Brief:

2. Following a competitive tender process, council approval is sought to award Tender C23025 - Albany Highway (SLK 1.97 – 2.48) resurfacing of the road surface from Sanford Road to York Street.
3. Two (2) complying tenders were received, with Tenderer B being the recommended contractor.
4. Construction is expected to commence in January 2024 with completion in late March 2024.

RECOMMENDATION

DIS377: AUTHORISING OFFICER RECOMMENDATION

THAT Council AWARD Contract C23025 – Albany Highway (SLK 1.97 – 2.48) resurfacing to the tenderer recommended by the evaluation panel, as detailed in the Confidential Briefing Note attached to this report.

BACKGROUND

5. Albany Highway is a 4-lane arterial road and is the major route into the Albany central business district. The road carries approximately 16,000 vehicles per day and is fronted by both commercial and residential properties.
6. The proposed work involves the replacement of the existing asphalt surface for the entire length from just north of Sanford Road, including the Sanford Road roundabout, to a point north of the York Street roundabout.
7. Design and specification documentation was prepared by the City of Albany to the stage of 'Issued for Tender'.
8. The tender was open from 1st November 2023 to 22nd November 2023.

DISCUSSION

9. The standard tender process as prescribed by the Local Government Act 1995 (the Act) and Local Government (Function and General) Regulations 1996 (the Regulations) was followed.
10. A total of Two (2) tender documents were issued by City of Albany.
11. Two (2) complete tender documents were submitted on or before the stipulated closing date and time.
12. The tenders were evaluated using the weighted attributes methodology. This method scores the evaluation criteria and weights their importance to determine an overall points score for each tender. The criteria are tabled below:

Criteria	% Weighting
Cost	20%
Relevant Experience	35%
Demonstrated Understanding	25%
Tenderers Resources	15%
Corporate Social Responsibility	5%
Total	100%

13. The following table summarises the tenderers and their weighted scores:

Tenderer	Weighted Score	Rank
Tenderer A	562.69	2
Tenderer B	680.65	1

14. Only Tenderer B claimed the Buy Local Policy reduction.
15. Tenderer B ranked highest with the highest score of 680.65.
16. From the evaluation scoring Tenderer B are the preferred tenderer and consequently it is recommended that their tender be accepted and the contract be awarded.

GOVERNMENT & PUBLIC CONSULTATION

17. A request for tenders was published in *The West Australian* on Wednesday 1st November 2023 and *The Extra* on Friday 3rd November 2023.

STATUTORY IMPLICATIONS

18. Regulation 11 of the Local Government (Functions and General) Regulations 1996 (Regulations) requires Council to publicly tender if the contract is, or is expected to be, more, or worth more than \$250,000.
19. Regulation 18 of the Regulations outlines a number of requirements relating to choice of tender. Council is to decide which of the acceptable tenders is the most advantageous to Council. It may also decline to accept any tender.
20. Regulation 19 of the Regulations requires Council to advise each tenderer in writing the result of Council's decision.
21. Voting requirement for this item is **Simple Majority**.

POLICY IMPLICATIONS

22. Council's Purchasing Policy (Tenders & Quotes) and Buy Local Policy (Regional Price Preference) are applicable to this item.
23. The value of this tender is in excess of \$500,000 and therefore Council approval is required as this exceeds the CEO's delegation.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
People Health and Safety <i>A vehicle accident occurs due to poor geometry and narrow road width.</i>	<i>Possible</i>	<i>Major</i>	<i>High</i>	<i>Continue upgrading road as funding is available.</i>
Finance <i>Non-compliance with contract or business failure</i>	<i>Unlikely</i>	<i>Moderate</i>	<i>Medium</i>	<i>Standard general conditions of contract protect the City by allowing for contract termination on the basis of failure to supply goods and services.</i>

FINANCIAL IMPLICATIONS

25. The value of this tender is in excess of \$500,000 and therefore approval is referred to Council for consideration.
26. More detailed information regarding the financial implications are contained in the Confidential Briefing Note.
27. External funding for two thirds of this project has been received from Road Projects Grants with the remainder being funded with municipal funds in the 2023-2024 budget.

28. The current budget is adequate to cover the tender amount including a small amount of contingency.

LEGAL IMPLICATIONS

29. There are no legal implications associated with this item.

ENVIRONMENTAL CONSIDERATIONS

30. There is no clearing of vegetation or impact on any waterway associated with this item.

ALTERNATE OPTIONS

31. The options are:
- a. Council may elect to accept the recommended tender; or
 - b. Not approve any tender.

CONCLUSION

32. The City has undergone a competitive process in line with the relevant legislation and established policies.
33. It is recommended, based on the evaluation scoring, clarification and financial check processes that the tender be awarded to Tenderer B.

Consulted References	<ul style="list-style-type: none">• Local Government (Functions and General) Regulations 1996• Council Policy – Purchasing• Council Policy – Buy Local (Regional Price Preference)
File Number (Name of Ward)	C23025
Previous Reference	N/A

DIS378: C23028 – MARINE DRIVE MOUNTS ACCESS PATHWAY – BRUNSWICK ROAD TO APEX DRIVE

Proponent / Owner	: City of Albany.
Business Entity Name	: City of Albany.
Attachments	: Commercial in Confidence - Confidential Briefing Note under separate cover
Report Prepared By	: Acting Team Leader Infrastructure (A Henderson)
Authorising Officer:	: Executive Director Infrastructure, Development & Environment (P Camins)

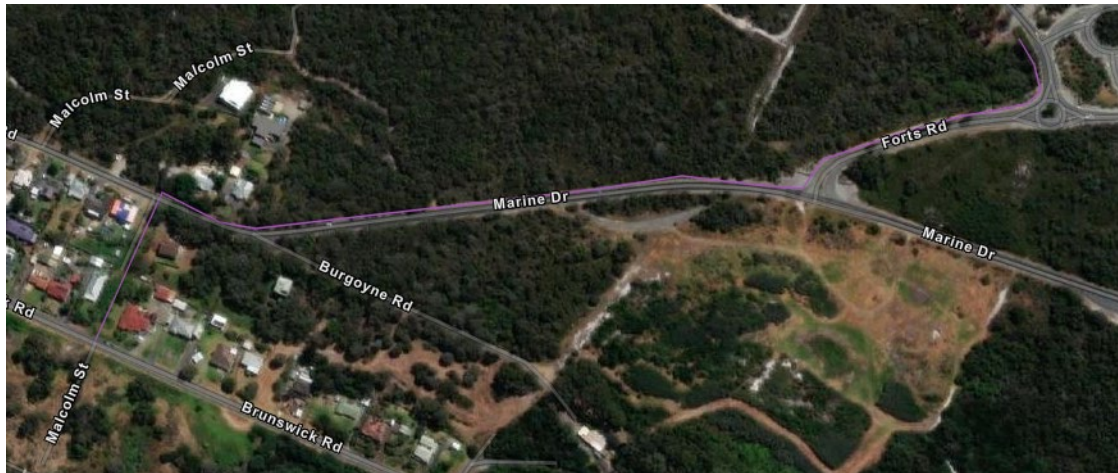
CONFIDENTIAL ATTACHMENT

It is recommended that if discussion is required in regards to details contained within the Confidential Attachment, that the matters are discussed behind closed doors, in accordance with section 5.23(2)(c) & (e)(ii) of the Local Government Act 1995, being: a contract which may be entered into and information that has commercial value.

STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
 - **Pillar:** Place.
 - **Outcome:** A safe, sustainable and efficient transport network.
 - **Objective:** Encourage more people to use active transport (walking and cycling).

Maps and Diagrams:



In Brief:

2. Following a competitive tender process, and securing of additional funds, Council approval is sought to award Tender C23028 Marine Drive Mounts Access Pathway – Brunswick Road to Apex Drive.
3. Three (3) complying tenders were received, with Tenderer C being the recommended contractor.
4. Construction is expected to commence in late January 2024 with completion in late March 2024.

RECOMMENDATION

DIS378: AUTHORISING OFFICER RECOMMENDATION

THAT Council AWARD Contract C23028 Marine Drive Mounts Access Pathway – Brunswick Road to Apex Drive to the tenderer recommended by the evaluation panel, as detailed in the Confidential Briefing Note attached to this report.

BACKGROUND

5. The City of Albany was successful in obtaining West Australian Bike Network (WABN) funding from the Department of Transport (DoT) for the construction of a concrete path from Brunswick Road to Apex Drive, aligning with the Mounts Master Plan. WABN funding is up to 50% contribution for paths that are included in cycling strategies.
6. This path link will improve the safety of pedestrians and bikes on existing roads, as well as providing a link for visitors from the Port or CDB to the National Anzac Centre (Mounts).
7. The proposed work involves the construction of a 2 metre wide concrete path with associated piped drainage, linking an existing path on Brunswick Road to an existing path on Apex Drive via Marine Drive and Forts Road.
8. Design and specification documentation was prepared by the City of Albany to the stage of 'Issued for Tender'.
9. The tender was open from 25th October 2023 to 27th November 2023.

DISCUSSION

10. A total of twenty (20) tender documents were issued by City of Albany.
11. Three (3) complete tender documents were submitted on or before the stipulated closing date and time.
12. The tenders were evaluated using the weighted attributes methodology. This method scores the evaluation criteria and weights their importance to determine an overall points score for each tender. The criteria are tabled below:

Qualitative Criteria	Weighting (%)
Cost	35
Relevant Experience	35
Ability to meet the required timeframe	25
Corporate Social Responsibility	5
Total	100

13. The following table summarises the tenderers and their weighted scores:

Tenderer	Total Score	Rank
Tenderer A	319.54	3
Tenderer B	585.50	2
Tenderer C	669.97	1

14. All Tenderers claimed the Buy Local Policy reduction.
15. Tenderer C ranked highest with the highest score of 699.97.
16. From the evaluation scoring Tenderer C are the preferred tenderer and consequently it is recommended that their tender be accepted and the contract be awarded.

GOVERNMENT & PUBLIC CONSULTATION

17. A request for tenders was published in *The West Australian* on Wednesday 25th October 2023 and *The Extra* on Friday 27th October 2023.

STATUTORY IMPLICATIONS

18. Regulation 11 of the Local Government (Functions and General) Regulations 1996 (Regulations) requires Council to publicly tender if the contract is, or is expected to be, more, or worth more than \$250,000.
19. Regulation 18 of the Regulations outlines a number of requirements relating to choice of tender. Council is to decide which of the acceptable tenders is the most advantageous to Council. It may also decline to accept any tender.
20. Regulation 19 of the Regulations requires Council to advise each tenderer in writing the result of Council's decision.

POLICY IMPLICATIONS

21. Council's Purchasing Policy (Tenders & Quotes) and Buy Local Policy (Regional Price Preference) are applicable to this item.
22. The value of this tender is in excess of \$500,000 and therefore Council approval is required as this exceeds the CEO's delegation.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Environment <i>Risk:</i> Increased vehicle traffic accessing Mount Clarence and the National Anzac Centre causing pollution.	Likely	Moderate	Medium	If proposed path link is accepted this will encourage more users to walk or cycle to these facilities.
People Health and Safety <i>Risk:</i> Pedestrians accessing Mt Clarence or National Anzac Centre are required to use the verge or road risking being struck by vehicles.	Possible	Severe	High	A clear, delineated path would increase the level of safety for pedestrians.
Opportunity: To link Mount Clarence and the National Anzac Centre to the City CBD via an all access pathway.				

FINANCIAL IMPLICATIONS

24. The value of this tender is in excess of \$500,000 and therefore approval is referred to Council for consideration.
25. More detailed information regarding the financial implications are contained in the Confidential Briefing Note.
26. Funding for this project has been received from the Department of Transport, Western Australian Bicycle Network program, and municipal funds allocated in the 2023-2024 budget.
27. A request for additional funds has been requested as part of CCS585.

LEGAL IMPLICATIONS

28. There are no legal implications associated with this item.

ENVIRONMENTAL CONSIDERATIONS

29. Vegetation clearing as part of this contract is considered to be minimal, of low impact and is exempt from any required referrals or approvals. Removal of one tree is required. Alternative designs were investigated to try and mitigate the removal of the tree however, site constraints are such that this is unavoidable.

ALTERNATE OPTIONS

30. The options are:
- a. Council may elect to accept the recommended tender; or
 - b. Not approve any tender.

CONCLUSION

31. The City has undergone a competitive process in line with the relevant legislation and established policies.
32. It is recommended, based on the evaluation scoring, clarification and financial check processes that the tender be awarded to Tenderer C.
33. In order to award the tender an increase in budget as part of CCS585 is required.

Consulted References	<ul style="list-style-type: none">• Local Government (Functions and General) Regulations 1996• Council Policy – Purchasing• Council Policy – Buy Local (Regional Price Preference)
File Number	C23028
Previous Reference	N/A

- 11. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**
- 12. MEETING CLOSED TO THE PUBLIC**
- 13. CLOSURE**