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# AGENDA

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## PLANNING AND DEVELOPMENT COMMITTEE

**02 September 2015**

5.30pm

City of Albany Council Chambers

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

**VISION**

Western Australia's most sought after and unique regional city to live, work and visit.

**VALUES**

All Councillors, Staff and Volunteers at the City of Albany will be...

**Focused: on community outcomes**

This means we will listen and pay attention to our community. We will consult widely and set clear direction for action. We will do what we say we will do to ensure that if it's good for Albany, we get it done.

**United: by working and learning together**

This means we will work as a team, sharing knowledge and skills. We will build strong relationships internally and externally through effective communication. We will support people to help them reach their full potential by encouraging loyalty, trust, innovation and high performance.

**Accountable: for our actions**

This means we will act professionally using resources responsibly; (people, skills and physical assets as well as money). We will be fair and consistent when allocating these resources and look for opportunities to work jointly with other directorates and with our partners. We will commit to a culture of continuous improvement.

**Proud: of our people and our community**

This means we will earn respect and build trust between ourselves, and the residents of Albany through the honesty of what we say and do and in what we achieve together. We will be transparent in our decision making and committed to serving the diverse needs of the community while recognising we can't be all things to all people.

**TERMS OF REFERENCE**

**(1) Function:**

The Planning and Development Committee will be responsible for the delivery of the following Liveable Environmental Objectives contained in the City of Albany Strategic Plan:

- (a) To advocate, plan and build connected, liveable communities;
- (b) To create a community that supports people of all ages and backgrounds;
- (c) To create vibrant neighbourhoods which are safe yet retain our local character and heritage.

**(2) It will achieve this by:**

- (a) Developing policies and strategies;
- (b) Establishing ways to measure progress;
- (c) Receiving progress reports;
- (d) Considering officer advice;
- (e) Debating topical issues;
- (f) Providing advice on effective ways to engage and report progress to the Community ; and
- (g) Making recommendations to Council.

**(3) Chairperson:** Councillor V Calleja JP

**(4) Membership:** Open to all elected members, who wish to be members

**(5) Meeting Schedule:** 1<sup>st</sup> Wednesday of the Month

**(6) Meeting Location:** Council Chambers

**(7) Executive Officer:** Executive Director Planning & Development

**(8) Delegated Authority:** None

PLANNING AND DEVELOPMENT COMMITTEE  
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**1. DECLARATION OF OPENING**

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

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

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

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

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

**Mayor** Mayor D Wellington (Deputy Chair)

**Councillors:**

Member	R Sutton
Member	S Bowles
Member	B Hollingworth
Member	A Goode JP
Member	G Gregson
Member	N Mulcahy
Member	R Hammond

**Staff:**

Chief Executive Officer	A Sharpe
Executive Director Planning & Development Services	D Putland
Manager Planning	J van der Mescht
Planning Officer	C McMurtrie
Senior Planning Officer / Strategic Planning	A Nicoll
Minutes	J Cobbold

**Apologies:**

Member	V Calleja JP (Chair)
Member	A Hortin JP

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**4. DISCLOSURES OF INTEREST**

<b>Name</b>	<b>Committee/Report Item Number</b>	<b>Nature of Interest</b>

**5. REPORTS OF MEMBERS**

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

**7. PUBLIC QUESTION TIME**

**8. APPLICATIONS FOR LEAVE OF ABSENCE**

**9. PETITIONS AND DEPUTATIONS**

**10. CONFIRMATION OF MINUTES**

**DRAFT MOTION**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**THAT the minutes of the Planning and Development Committee Meeting held on 05 August 2015, as previously distributed, be CONFIRMED as a true and accurate record of proceedings.**

**11. PRESENTATIONS / DISCUSSION**

Yakamia Structure Plan – Adrian Nicoll

**12. UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS**

**PD091: RECONSIDERATION OF DEVELOPMENT APPLICATION –  
TELECOMMUNICATIONS INFRASTRUCTURE – LOT 105, 241  
ROBINSON ROAD, ROBINSON**

**Land Description** : Lot 105, 241 Robinson Road, Robinson  
**Proponent** : Daly International  
**Owner** : Algean Pty Ltd  
**Business Entity Name** : Algean Pty Ltd  
**Attachments** : 1. Location plan  
2. Site Selection Rationale  
3. Visual Impact Assessment  
4. Schedule of Comments from the public information session  
5. Copy of O.C.M. 24/03/2015 – Item PD073  
6. Schedule of Submissions  
**Supplementary Information & Councillor Workstation:** : Copy of submissions  
**Report Prepared by** : Senior Planning Officer (A Bott)  
Planning Officer (C McMurtrie)  
**Responsible Officer** : Director Development Services (D Putland)

**Responsible Officer's Signature:**



**STRATEGIC IMPLICATIONS**

1. Council is required to exercise its quasi-judicial function in this matter.
2. This is a statutory planning matter that is assessed against *Local Planning Scheme No.1* and any relevant planning policies. As such there are no strategic implications. Notwithstanding this, the most relevant strategic document is the *Albany Local Planning Strategy*.
3. The item relates to the following Strategic Objective of the *Albany Local Planning Strategy*:

**6.4.4 Telecommunications**

*"To encourage the extension and maintenance of high quality telecommunications for the whole Albany district"*

**In Brief:**

- An application was lodged in October 2014, seeking Planning Scheme Consent to install 'Telecommunication Infrastructure' at Lot 105, 241 Robinson Road, Robinson.
- At its Ordinary Meeting on 24 March 2015, Council resolved to refuse Planning Scheme Consent, as it was considered that the *"proposal to site the tower at 241 Robinson Road will have an adverse visual impact on the character and amenity of the local environment"*.
- The proponent subsequently appealed the decision to the State Administrative Tribunal.
- Following mediation, the State Administrative Tribunal has invited Council to reconsider the decision made at its Ordinary Council Meeting on 24 March 2015.

- The proponent has provided the City with additional information in support of the application, including the rationale behind site selection and a Visual Impact Assessment.
- The City conducted a public information session on 26 August 2015 to present the supporting information to the community.
- Council are now requested to grant Planning Scheme Consent, subject to conditions.

## RECOMMENDATION

### PD091: RESPONSIBLE OFFICER RECOMMENDATION 1

**THAT Council accept the request of the State Administrative Tribunal, that this matter be reconsidered.**

### PD091: RESPONSIBLE OFFICER RECOMMENDATION 2

**THAT Council ISSUES a Notice of Planning Scheme Consent for Telecommunication Infrastructure at 241 Robinson Road, Robinson; subject to the following conditions:**

- (1) Prior to occupancy of use, unless varied by a condition of approval or a minor amendment to the satisfaction of the City of Albany, all development shall occur in accordance with the stamped, approved plans.**
- (2) A construction management plan shall be submitted for approval in writing and implemented to the satisfaction of the City of Albany.**
- (3) Stormwater from the lot shall be managed to the satisfaction of the City of Albany.**
- (4) Lighting devices are to be positioned and shielded so as not to cause any direct, reflected or incidental light to encroach beyond the property boundaries, in accordance with Australian Standard AS4282/1997.**
- (5) Prior to commencement of development a schedule of materials and colours to be used on the structures hereby approved shall be submitted for approval by the City of Albany.**

## BACKGROUND

4. *Local Planning Scheme No. 1* was gazetted on 28 April 2014 and consists of the Scheme Text and the Scheme Maps. The Scheme divides the Local Government district into zones to identify areas for particular uses and identifies land reserved for public purposes. Most importantly, the Scheme controls the types of uses and development allowed in different zones. There are particular controls included for heritage and special control areas. The Scheme Text also sets out the requirements for planning approval, enforcement of the Scheme provisions and non-conforming uses.
5. An application was lodged in October 2014, seeking Planning Scheme Consent to install 'Telecommunication Infrastructure' at Lot 105, 241 Robinson Road, Robinson.
6. The proposed 'Telecommunication Infrastructure' would consist of a fenced compound of 96m<sup>2</sup>, containing two outdoor equipment cabinets and one 40m tall monopole. The monopole would carry two parabolic antennas (located at 37m above ground) and three panel antennas. The installation would be located centrally on lot 105, setback 125m from Robinson Road, 96m from the western boundary and 88m from the eastern



boundary. The installation would form a component of the National Broadband Network's (NBN) wireless network.

7. The subject lot is zoned 'Rural Residential' and is located approximately 4.7km west of Albany town centre, with an area of 6.16ha.
8. The surrounding land to the east, south and west of the subject lot is zoned 'Rural Residential', while the land to the north is zoned 'Rural Small Holding'.
9. The application was advertised from 16 October 2014 to 6 December 2014 by direct referral to all landowners within a 1km radius of the subject lot, and by publication of a notice in the local newspaper.
10. The application was then considered by Council at its Ordinary Meeting on 24 March 2015, where it decided:

*"THAT:*

- a. Council resolves to ISSUE a Notice of Planning Scheme Consent REFUSAL for Telecommunication Infrastructure at 241 Robinson Road, Robinson.*
- b. THAT Council support the provision of NBN in the area but not in the current proposed location."*

The Councillor's reason for this resolution was that:

*"The proposal to site the tower at 241 Robinson Road will have an adverse visual impact on the character and amenity of the local environment."*

11. Following Council's decision and the issue of Planning Scheme Consent Refusal, the proponent lodged an appeal with the State Administrative Tribunal.
12. Subsequent mediation took place between the proponent and the City, through the State Administrative Tribunal. From the mediation, it was proposed that:
  - Council reconsider the matter at its Ordinary Meeting on 22 September 2015.
  - The applicant provides the City of Albany with the rationale behind their site selection and a Visual Impact Assessment, in support of the application.
13. The City of Albany offered the proponent an opportunity to undertake further community consultation with the supporting information; however, this offer was declined.
14. In the interests of transparency, the City held a public information session on 26 August 2015 in order to explain the reconsideration process and communicate the additional information to the community. The comments received from the community following this meeting are contained in Attachment 4.

## DISCUSSION

15. The City planning Staff have previously supported the development of the proposed 'Telecommunications Infrastructure' at Lot 105, 240 Robinson Road, Robinson, subject to conditions, having taken into consideration the nature of the submissions received from members of the public and the significant public benefit of the proposal.
16. When assessing telecommunications infrastructure, it is necessary to consider the overall public benefit against any amenity impact. Amenity, particularly the perceived impact on views of significance and the natural amenity of the area, was the main concern raised in the submissions received during the public advertising process.

17. When assessing impacts on amenity, it is necessary to determine the level of existing amenity within the immediate area and secondly, within the wider locality.
18. The likely impact that the proposal would have on the landscape has been assessed by Staff with reference to the Western Australian Planning Commission's publication *Visual Landscape Planning in Western Australia – a manual for assessment, siting and design*.
19. The established character of Robinson Road is that of a typical 'Rural Residential' area, composed of sections of open pasture and a thick band of vegetation to the south of Robinson Road. Lots are defined by rural type post and wire fencing, with buildings generally setback amongst the trees. The land to the south of the subject lot is occupied by smaller 'Rural Residential' lots, which are predominately cleared pasture. The land to the north is occupied by larger 'Rural Small Holding' lots, which are also cleared in the main, with tree cover limited to boundary planting and shelter belts. Overall, the area is considered to have a rural character.
20. A Visual Impact Assessment has also been submitted by the proponent, in response to the submissions received on the perceived impacts on views of significance and the natural amenity of the area. The Assessment confirms that the proposed monopole will be visible from both private properties and public vantage points in the surrounding area, but concludes that due to the screening provided by surrounding trees, only the top of the monopole will be visible from public vantage points.
21. Another comment that was made consistently throughout the submissions was that an alternative location within the locality should be found for the proposed installation. Staff discussed the possibility of finding an alternative site with the proponent. However, the proponent advised that a number of sites had been considered prior to lodging the application, but the proposed location was the most suitable. Since the public advertising process, the proponent has provided a rationale for the selection of this site, in support of the application.
22. The potential for the proposed installation to cause detrimental health effects was raised in a number of submissions. It should be noted that the City is not a regulatory body in respect of electromagnetic energy. The Federally established Australian Radiation Protection and Nuclear Safety Agency enforce the *Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields – 3kHz to 300GHz*. The electromagnetic energy report submitted by the proponent states that the maximum calculated electromagnetic energy level from the proposed installation would be 0.028% of the maximum public exposure level.
23. Detrimental impacts on property values were also raised as a concern in some of the submissions. However, effects on property values are not one of the "Matters to be Considered" under Section 10.2 of *Local Planning Scheme No. 1* and are not a valid planning consideration.
24. The additional information provided in support of the application confirms the proponents' preference to develop the proposed 'Telecommunications Infrastructure' on Lot 105, 240 Robinson Road, Robinson and Council are requested to reconsider the matter.

#### GOVERNMENT & PUBLIC CONSULTATION

25. The proposal was advertised from 16 October 2014 to 6 December 2014 by direct referral to all landowners within a 1km radius of the subject lot, and by publication of a notice in the local newspaper.
26. Seven (7) submissions were received from members of the public during the advertising period, all objecting to the proposal. A petition with 89 signatories, objecting to the proposal, was also submitted. The submissions are summarised in the

attached Schedule of Submissions (Attachment 6). Staff comments are also provided in the schedule and the broad issues are discussed in paragraphs 16-23 above.

27. Following the direction set by the mediation, and the submission of additional supporting information by the proponent, the City held a public information session on 26 August 2015 to explain the reconsideration process and communicate the additional information to the community. The comments received from the community following this meeting are summarised in Attachment 4.

**STATUTORY IMPLICATIONS**

28. The subject lot is zoned ‘Rural Residential’ under *Local Planning Scheme No. 1*.
29. Telecommunications Infrastructure is classified as an ‘A’ use under *Local Planning Scheme No. 1*, meaning that the use is not permitted unless the Local Government has exercised its discretion by granting planning approval after giving special notice in accordance with clause 9.4 of the Scheme.
30. If Council does not accept the request to reconsider, this matter will be determined by the State Administrative Tribunal.
31. Voting requirement for this item is **SIMPLE MAJORITY**

**POLICY IMPLICATIONS**

32. The proposal has been assessed against the Western Australian Planning Commission’s *State Planning Policy 5.2 – Telecommunications Infrastructure*. *State Planning Policy 5.2* provides guiding principles for the assessment of telecommunication infrastructure.
33. Further discussion around the principles set out in *State Planning Policy 5.2* can be found in the original Officer’s report on this matter (Attachment 5).

**RISK IDENTIFICATION & MITIGATION**

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<b>Community</b> Council does not accept the request to reconsider, this matter will be determined by the State Administrative Tribunal.	Likely	Moderate	Medium	Continue to lobby the NBN to seek an alternative site in the area.

**FINANCIAL IMPLICATIONS**

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

**LEGAL IMPLICATIONS**

36. The applicant has the option to continue mediation or to proceed to a hearing at the State Administrative Tribunal.

**ENVIRONMENTAL CONSIDERATIONS**

37. Approximately 80% of the lot is covered by vegetation, which forms part of a 130-460m wide band of vegetation between Robinson Road and Racecourse Road. The remaining 20% of the lot is cleared along the frontage to Robinson Road. A house and

outbuilding stand back amongst the trees, toward the western lot boundary, approximately 130m from Robinson Road.

38. There are no additional environmental controls on the property other than those contained within *Local Planning Scheme No. 1*. It is the responsibility of the proponents and landowners to ensure that all obligations under the *Environment Protection and Biodiversity Conservation Act 1999* and *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* are fulfilled.

#### ALTERNATE OPTIONS

39. Council has the following alternate option in relation to this item:
- To refuse the reconsideration on the grounds that the proposal will have an adverse impact on the visual amenity and character of the area.

#### SUMMARY CONCLUSION

40. Having taken into consideration the potential impacts on amenity as a result of the proposed 'Telecommunications Infrastructure' at Lot 105, 240 Robinson Road, Robinson against the long term benefit of a secured high speed broadband service, it is recommended, on balance, that Council grant Planning Scheme Consent, subject to conditions.

<b>Consulted References</b>	:	<ol style="list-style-type: none"> <li>1. <i>Local Planning Scheme No. 1</i></li> <li>2. <i>Albany Local Planning Strategy 2010</i></li> <li>3. Western Australian Planning Commission <i>State Planning Policy 5.2 – Telecommunications Infrastructure</i></li> <li>4. Western Australian Planning Commission <i>Visual Landscape Planning in Western Australia – a manual for assessment, siting and design.</i></li> </ol>
<b>File Number (Name of Ward)</b>	:	A42985 (Vancouver Ward)
<b>Previous Reference</b>	:	O.C.M 24/03/2015 – Item PD073

**PD092: APPROVAL OF LOCAL DEVELOPMENT PLAN – LOT 1 AND 2  
FRENCHMAN BAY ROAD, FRENCHMAN BAY**

**Land Description** : Lot 1 and 2 Frenchman Bay Road, Frenchman Bay 6330  
**Proponent** : Harley Dykstra  
**Owner** : MTK Ventures Pty Ltd  
**Business Entity Name** : MTK Ventures Pty Ltd  
**Attachments** : 1. Location plan  
2. Site plan  
3. Schedule of Submissions  
4. Local Development Plan No. 1 report  
**Supplementary Information &** : Copy of submissions  
**Councillor Workstation:**  
**Report Prepared by** : Senior Planning Officer (Alex Bott)  
Planning Officer (C McMurtrie)  
**Responsible Officer** : Executive Director Planning and Development Services (D  
Putland)

**Responsible Officer's Signature:**



**STRATEGIC IMPLICATIONS**

1. Council is required to exercise its quasi-judicial function in this matter.
2. When exercising its discretion in relation to planning matters, the pertinent strategic document is the *Albany Local Planning Strategy*.
3. The proposal is consistent with the strategic direction set in the *Albany Local Planning Strategy*.

**In Brief:**

- A Local Development Plan has been prepared in accordance with Schedule 4 – Special Use Zone No. SU13, provision 1 of *Local Planning Scheme No. 1*, to guide the development of Lots 1 and 2 Frenchman Bay Road, Frenchman Bay.
- At its Ordinary Meeting on 24 March 2015, Council determined that the draft Local Development Plan was satisfactory for the purposes of public advertising and referral to service providers and State Government agencies.
- The draft Local Development Plan was advertised for public comment and referred to service providers and State Government agencies in accordance with the requirements of *Local Planning Scheme No. 1*.
- A substantial number of submissions were received from members of the public, with concerns raised around the ‘unrestricted stay’ units, the provision of a private on-site effluent disposal system and the proposed use of an on-site water supply.
- Legal advice was sought regarding the permissibility of the proposed ‘unrestricted stay’ units and it was confirmed that this land use could not be considered under the current Local Planning Scheme provisions pertaining to the site.
- The proponent has subsequently updated the Plan to remove the ‘unrestricted stay’ units and reduce the total number to comply with the Department of Health’s draft *Country Sewerage Policy*.

- Council is requested to approve the Local Development Plan, subject to conditions.

## RECOMMENDATION

### PD092: RESPONSIBLE OFFICER RECOMMENDATION

**THAT Council APPROVE Local Development Plan No.1, subject to the following conditions:**

- 1. Reduction of the number of units (including caretakers and commercial) to 25.**
- 2. Addition of a notation on the Plan advising of the requirement to amalgamate Lots 1 and 2 prior to development.**
- 3. Addition of a notation on the plan to read as follows: ‘If on site effluent disposal is to be utilised, details of the proposed communal on-site wastewater treatment and disposal system are to be referred to Department of Health for consideration prior to the lodgement of a development application’.**
- 4. That Council note it is understood that the developer may ultimately seek to have a number of permanent residential units on the subject land, which cannot be approved under the current Local Planning Scheme Provisions that apply to the site.**

## BACKGROUND

- Local Planning Scheme No. 1* was gazetted on 28 April 2014 and consists of the Scheme Text and the Scheme Maps. The Scheme divides the Local Government district into zones to identify areas for particular uses and identifies land reserved for public purposes. Most importantly, the Scheme controls the types of uses and development allowed in different zones. There are particular controls included for heritage and special control areas. The Scheme Text also sets out the requirements for planning approval, enforcement of the Scheme provisions and non-conforming uses.
- The subject lots are zoned ‘Special Use’ and form Special Use Zone No. SU13. Schedule 4 – Special Use Zone No. SU13, provision 1 of *Local Planning Scheme No. 1* requires that “*All land use and development shall be consistent with a Development Guide Plan prepared by the landowner and adopted by the Local Government*”. Local Development Plan No.1 has been prepared to guide the development of the subject lots, in accordance with this provision.
- The subject lots are located at the eastern end of Frenchman Bay Road, approximately 600m east of Goode beach and 10km south-east of Albany town centre.
- The surrounding land is reserved for ‘Parks and Recreation’, with the exception of the lot to the east, which forms part of ‘Special Use’ zone No. SU3.

## DISCUSSION

- The City planning Staff support the Local Development Plan, subject to conditions and the removal of the ‘unrestricted stay’ units, as it is consistent with the current strategic direction set in the *Albany Local Planning Strategy* and the relevant provisions of *Local Planning Scheme No. 1* and the City of Albany’s *Significant Tourist Sites and Frenchman Bay Tourist Development Site* policies.
- The Local Development Plan will guide the development of Lots 1 and 2 Frenchman Bay Road, Frenchman Bay for the purposes of ‘Holiday Accommodation’.

10. Schedule 4 – Special Use Zone No. SU13 only permits the land uses of ‘Caravan Park’, ‘Caretaker’s Dwelling’, ‘Holiday Accommodation’ and ‘Shop’ on the subject lots. ‘Holiday Accommodation’ is defined in *Local Planning Scheme No. 1* as “any land and/or building providing accommodation and recreation facilities for guests/tourists on a short-term commercial basis and may include a shop or dining area incidental to the function providing limited services to patrons”.
11. In its original form, the Local Development Plan contained a proportion of ‘unrestricted stay’ units. The City was uncertain if these could be approved under the definition of ‘Holiday Accommodation’, assuming that they would not be used as a person’s primary place of residence, and sought both legal advice and advice from the Department of Planning on the matter.
12. Notwithstanding the need to obtain this advice, the decision was made to advertise the Local Development Plan to the public, including the proposed ‘unrestricted stay’ units in the interests of transparency, as these form part of the landowners’ ultimate aspiration for the site.
13. During the advertising and referral process, it was confirmed by both the City’s legal counsel and the Department of Planning that the ‘unrestricted stay’ land use could not be considered under the current Local Planning Scheme provisions pertaining to the site.
14. The proponent had sought their own legal advice on the matter, which contradicted the advice given to the City, stating that ‘unrestricted stay’ units could be considered under the provisions of Schedule 4 – Special Use Zone No. SU13 of *Local Planning Scheme No. 1*.
15. A substantial number of submissions were received from service providers, Government agencies and members of the public during the public advertising and referral process. The public submissions objecting to the proposal, or expressing concern, relate mainly to the following issues:
  - The ‘unrestricted stay’ component of the application cannot be approved under the provisions Schedule 4 – Special Use Zone No. SU13.
  - Proposed on-site effluent disposal.
  - Proposed on-site water supply.
16. The proponent had originally identified 10 of the 30 proposed units as being available for ‘unrestricted stay’. A significant number of submissions were received both in objection to, and in support of the ‘unrestricted stay’ units, with most questioning whether they could be approved under the provisions of Schedule 4 – Special Use Zone No. SU13.
17. As outlined above, the City of Albany sought legal counsel and advice from the Department of Planning on whether such a use could be approved on the site. The advice received stated that only land uses contained within Schedule 4 – Special Use Zone No. SU13 can be approved on the site and that the use of ‘Holiday Accommodation’ would not extend to ‘unrestricted stay’ units. As a result, the applicant was invited to change the proposed ‘unrestricted stay’ accommodation to ‘Holiday Accommodation’, as defined in *Local Planning Scheme No. 1*, or to remove the units from the plan. The applicant elected to transfer the units to standard ‘Holiday Accommodation’ units, the occupancy of which is typically restricted to no more than three calendar months per year, by the same person or persons.
18. It should be noted that the proponent has the ability to apply for a Local Planning Scheme amendment to add ‘unrestricted stay accommodation’ as a permissible land use under Schedule 4 – Special Use Zone No. SU13. Any such amendment would be subject to initiation by Council, a public advertising and referral process, adoption by Council and final approval by the Western Australian Planning Commission and Minister for Planning. If a Local Planning Scheme amendment was to be successful, a subsequent review of, or

variation to the *Significant Tourist Sites* policy would also have to be sought by the proponent before ‘unrestricted stay’ units could be approved on the site.

19. Several of the submissions received during the public advertising and referral process raised concerns around the proposed use of a private on-site effluent disposal system.
20. Schedule 4 – Special Use Zone No. SU13, provision 7 states that:
 

*“All development on the Land shall be connected to the reticulated sewerage/wastewater system provided by a licensed sewerage/wastewater disposal and treatment provider unless an alternative treatment system appropriate for the scale of the proposed development and acceptable to the relevant State Government authority can be provided to the satisfaction of the Local Government”.*
21. The Department of Health’s *Draft Country Sewerage Policy* makes provision for remote or isolated development sites. A site falls within this classification if the land is remote from existing or proposed urban land, or is unlikely to be connected to reticulated sewer in the foreseeable future.
22. Formal comment on the proposal was sought from the Department of Health on the matter and the following advice was provided:
 

*“The proposed development exceeds the number of dwelling units allowed by the provisions of the draft Country Sewerage Policy. Unless the total development is limited to 25 units including the caretaker’s unit and commercial unit, and that both the lots are amalgamated, the DOH does not support the proposal.”*
23. The Department of Health also provided a further submission, stating that subject to the amalgamation of the lots and density of the development limited to a total of 25 units, including existing developments, the following conditions would apply:
  - “1. Demonstrate that adequate and sustainable supply of potable water is achievable for the development.*
  - 2. Potable water must be of the quality as specified under the Australian Drinking Water Quality Guidelines 2004 and the water quality must be monitored regularly.*
  - 3. Apart from ensuring that a minimum horizontal separation of 30 metres between the source of the potable water supply and the wastewater disposal area, it must be further demonstrated that no contamination of the potable water source can occur from wastewater that has infiltrated.*
  - 4. Consideration and acceptability by the DOH of the communal on-site wastewater treatment and disposal system proposed before development application.*
  - 5. A Works Approval is required from the Department of Environmental Regulation (DER) if the total wastewater produced exceeds 20 kilolitres/day.*
  - 6. Approval of the development by the Department of Water and the DER.”*
23. In view of this advice, the proponent has updated the Plan to reduce the number of units to 25, including any caretakers or commercial units, in order for a private on-site effluent disposal system to be utilised. However, five units are still shown indicatively for future inclusion, should the site be connected to reticulated sewer or it is demonstrated to the satisfaction of the Department of Health that the 30 units can be serviced by an private on-site effluent disposal system, in accordance with the draft *Country Sewerage Policy*.
24. The conditions outlined by the Department of Health would be applicable to any future development application. However, the City considers that condition 4 should be placed on the approval of the Local Development Plan, as should a condition requiring the amalgamation of the lots.



25. The Department of Planning also provided comment on the proposal, noting that the planning report accompanying the Local Development Plan proposes to utilise a private on-site effluent disposal system. The Department has stated that if the report is approved along with the Plan, it would be necessary to provide further information prior to approval. However, only the Local Development Plan itself would be approved, not the planning report, thereby retaining the flexibility to either connect the development to reticulated sewer or utilise a private on-site effluent disposal system, as provided for under Schedule 4 – Special Use Zone No. SU13, provision 7.
26. The Department of Water also commented on the proposed private on-site effluent disposal, stating that soils and site characteristics indicate that on site wastewater disposal may be difficult to achieve, and that there may be potential for groundwater contamination. These matters would be addressed as part of any further investigations and would be considered by the Department of Health.
27. A number of the submissions received during the public advertising and referral process raised concerns around the proposed use of an on-site water supply.
28. Schedule 4 – Special Use Zone No. SU13, provision 8 states that:  
  
*“All development on the land shall be connected to reticulated water supplied by a licensed reticulated water provider.”*
29. The Water Corporation have advised that this servicing requirement would stand and that as the proposal is not within the current Water Corporation service area, an extension of the reticulated water network would be required to provide a connection.
30. However, the proponent has stated that there is an operating bore and tank on-site that was previously used to service the former caravan park and currently services the public toilet facilities at the end of Frenchman Bay Road. It is proposed to upgrade this water source with the addition of multiple tanks and water treatment devices to provide potable water to the site.
31. The Department of Water has advised that a groundwater bore may be able to provide the water supply for any future development. However, the Department advises that further drilling and/or aquifer test pumping would be required to determine whether the existing or future production wells can provide the required supply volume without impacting on the water resource, groundwater dependent vegetation or the nearby springs, or leading to seawater intrusion. The Department has also highlighted that total guest numbers are unknown at this time and so it cannot advise whether sufficient groundwater is available to supply the development.
32. Legal advice has been sought regarding the ability of a Local Development Plan to vary a Scheme requirement, such as Schedule 4 – Special Use Zone No. SU13, provision 8. The City has been advised that while a Local Development Plan cannot vary a Scheme requirement, this could be sought as part of any future development application. However, should the proponent seek to vary Schedule 4 – Special Use Zone No. SU13, provision 8, it would be necessary to provide detailed hydrological studies and associated environmental impact reports to demonstrate to the City of Albany and any relevant State Government agencies that there would be no detrimental impacts on the groundwater or wider environment.
33. The Department of Water also commented on the coastal setback requirement set in Schedule 4 – Special Use Zone No. SU13, provision 3, which states that:  
  
*“All development on the land is to be setback a minimum of 75 metres from the horizontal setback datum (HSD). A greater setback may be required if recommended by any relevant public authority or in an applicable policy.”*

34. The current horizontal setback datum was established as part of the previous Local Planning Scheme amendment over the site and the proposed Local Development Plan is consistent with the setback requirement. However, the Department of Water has recommended that the setback should be reviewed against the newest predictions for sea level rise as per *Environmental Protection Authority Bulletin 18 – Sea Level Rise* and that if there are any changes to the setback, this may necessitate a redesign of the Local Development Plan.
35. The Department has also advised that the area to be ceded to the Crown for a foreshore reserve should be clearly marked on the Plan and that at the time of development a foreshore management plan will be required. The extent of the proposed foreshore area is indicated on the Plan, though this may be varied, subject to a detailed site analysis at the time of amalgamation of the lots. A foreshore management plan would also be required at this time.

## GOVERNMENT & PUBLIC CONSULTATION

36. The Local Development Plan was advertised from 16 March 2015 to 18 June 2015 by direct referral to all landowners in the suburb of Goode Beach, service providers and State Government agencies, and advertisement in the local newspaper. The proponent also conducted two community information sessions, with City of Albany staff in attendance, at Little Grove Community Hall and Albany Senior Citizens Centre on 29 May 2015.
37. During the advertising and referral process, advice was sought from the Department of Planning regarding the permissibility of the proposed 'unrestricted stay' land use. It was advised that this land use cannot be considered under the current Scheme provisions pertaining to the site. Legal advice confirmed this position. However, the decision had been made to advertise the Local Development Plan to the public, including the proposed 'unrestricted stay' units in the interests of transparency, as these form part of the landowners' ultimate aspiration for the site.
38. Seventy-four (74) submissions were received from members of the public, the Frenchman Bay Association, service providers and State Government agencies and are summarised in the attached Schedule of Submissions. Twenty-eight (28) submissions objected or raised concerns around the proposal, while 46 expressed support, although it is noted that 28 of those in support are pro forma letters. Staff comments and recommendations are also provided in the schedule and the broad issues are discussed in paragraphs 15-35 above.

## STATUTORY IMPLICATIONS

39. Local Development Plans undergo a statutory process in accordance with Section 5.9 of *Local Planning Scheme No. 1*.
40. Section 5.9 of *Local Planning Scheme No. 1* sets out the procedures for the preparation, adoption and approval of a Local Development Plan.
41. Sub-clause 5.9.1.7.1(c) of *Local Planning Scheme No.1* allows Council to approve the Local Development Plan with or without conditions.
42. Voting requirement for this item is **SIMPLE MAJORITY**

## POLICY IMPLICATIONS

43. The proposal is considered to be consistent with the City of Albany's *Significant Tourist Sites* and *Frenchman Bay Tourist Development Site* policies.
44. The original proposal contained a proportion of 'unrestricted stay' units, which would not have been permitted under the *Significant Tourist Sites* policy. However, following the public advertising and referral process, a revised plan has been lodged by the proponent, which removes the proposed 'unrestricted stay' units. In this form, the proposal is now compliant with the policy.

45. With regard to the above, it should be noted that the proponent has the ability to apply for a Local Planning Scheme amendment to add ‘unrestricted stay accommodation’ as a permissible land use within ‘Special Site’ zone No. SU13. Any such amendment would be subject to initiation by Council, a public advertising and referral process, adoption by Council and final approval by the Western Australian Planning Commission and Minister for Planning. If a Local Planning Scheme amendment was to be successful, a subsequent review of, or variation to the *Significant Tourist Sites* policy would also have to be sought by the proponent before ‘unrestricted stay’ units could be approved on the site.
46. The proposal is consistent with the *Frenchman Bay Tourist Development Site* policy in terms of its built form. The policy permits two-storey development to be considered within the areas proposed. Any future development on the site will be subject to a separate development application.
47. The proposal is also compliant with the provisions contained in the *Frenchman Bay Tourist Development Site* policy in relation to setbacks from the high water mark and the Vancouver Springs.
48. The remaining provisions of the *Frenchman Bay Tourist Development Site* policy that relate to built form are not applicable at this stage and would be assessed as part of any future development application.

**RISK IDENTIFICATION & MITIGATION**

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<p><b>Community, Organisational Operations and Reputation</b></p> <p>It is understood that the developer may ultimately seek to have a number of permanent residential units on the subject land, which cannot be approved under the current Local Planning Scheme Provisions that apply to the site.</p>	Likely	Minor	Medium	<p>The original proposal included an proportion of ‘unrestricted stay’ units and this version was advertised to inform the public of the developer’s intentions. However, should the developer wish to establish ‘unrestricted stay’ or permanent residential units on the subject land, they would first have to lodge a Local Planning Scheme Amendment seeking to modify the provisions of Schedule 4 – Special Use Zone No. SU13.</p>
<p><b>Environment, Organisational Operations and Reputation</b></p> <p>The proposed development may not be connected to reticulated water and sewer.</p>	Likely	Minor	Medium	<p>At this stage, insufficient information is available to know if connection to reticulated water and sewer will be possible.</p> <p>However, the Department of Health, Water Corporation and Department of Water have provided advice and recommended conditions that would govern the use of a private on-site effluent disposal system and on-site water supply to service the development. The matters will be investigated in</p>

				greater detail at the subsequent development stage.
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**FINANCIAL IMPLICATIONS**

50. There are no financial implications related to the item.

**LEGAL IMPLICATIONS**

51. There are no legal implications related to the item.

**ENVIRONMENTAL CONSIDERATIONS**

52. There are no additional environmental controls on the property other than those contained within *Local Planning Scheme No. 1*. It is the responsibility of the proponents and landowners to ensure that all obligations under the *Environment Protection and Biodiversity Conservation Act 1999* and *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* are fulfilled.

**ALTERNATE OPTIONS**

53. Council has the following alternate option in relation to this item, which are:

- To resolve to approve the Local Development Plan subject to further conditions; or
- Not to approve the Local Development Plan.

**SUMMARY CONCLUSION**

54. The matters raised in the public and State Government agency submissions have been adequately addressed by subsequent modifications to the Local Development Plan, or can be controlled through the application of planning conditions.

55. It is recommended that Council approve Local Development Plan No.1, subject to conditions.

<b>Consulted References</b>	:	1. <i>Local Planning Scheme No. 1</i> 2. <i>Albany Local Planning Strategy 2010</i> 3. <i>City of Albany Strategic Community Plan 2023</i> 4. <i>City of Corporate Business Plan 2013-2017</i> 5. <i>City of Albany Significant Tourist Sites policy</i> 6. <i>City of Albany Frenchman Bay Tourist Development Site policy</i> 7. Department of Health draft <i>Country Sewerage Policy</i>
<b>File Number (Name of Ward)</b>	:	LDP1 (Vancouver Ward)
Previous Reference	:	O.C.M. 19/05/2009 – Item 11.1.1 O.C.M. 24/03/2015 – Item PD075

**PD093: ADOPTION OF YAKAMIA/LANGE STRUCTURE PLAN**

<b>Land Description</b>	: Various lots in the Yakamia and Lange localities.
<b>Proponent</b>	: City of Albany
<b>Owners</b>	: Various owners (see Attachment 1)
<b>Business Entity Name</b>	: Various business entities (see Attachment 1)
<b>Attachments</b>	: 1. List of landowners and business entities 2. Schedule of Submissions 3. <i>Yakamia/Lange Structure Plan</i> (as modified) 4. Appendices a) Local Water Management Strategy b) Environment Opportunities and Constraints Plan c) Road Contribution Plan d) Issues Background Paper
<b>Supplementary Information &amp; Councillor Workstation:</b>	: Copy of submissions
<b>Report Prepared by</b>	: Senior Planning Officer, Strategic Planning (A Nicoll) Planning Officer (C McMurtrie)
<b>Responsible Officer</b>	: Executive Director Planning and Development Services (D Putland)

**Responsible Officer's Signature:**



**STRATEGIC IMPLICATIONS**

1. Council is required to exercise its quasi-judicial function in this matter.
2. When exercising its discretion in relation to planning matters, the pertinent strategic document is the *Albany Local Planning Strategy*.
3. This proposal is consistent with the strategic direction set in the *Albany Local Planning Strategy*.

**In Brief:**

- A draft *Yakamia/Lange Structure Plan* was developed by the City of Albany to guide the future subdivision and development of land in the Yakamia and Lange localities.
- At its Ordinary Meeting on 25 November 2014, Council determined that the draft Structure Plan was satisfactory for the purpose of public advertising.
- The draft Structure Plan was advertised for public comment and referred to service providers and State Government agencies in accordance with the requirements of *Local Planning Scheme No. 1*.
- Following public advertising and referral of the draft Structure Plan, modifications have been made to the plan, in response to the advice and comments received.
- Council is requested to adopt the modified *Yakamia/Lange Structure Plan*.

## RECOMMENDATION

### PD093 RESPONSIBLE OFFICER RECOMMENDATION

#### THAT Council:

1. **ADOPT the Yakamia/Lange Structure Plan, including the following appendices:**
  - **Local Water Management Strategy;**
  - **Environmental Opportunities and Constraints Plan;**
  - **Road Contribution Plan; and**
  - **Issues Background Paper.**

#### AND

2. **Forward the Yakamia/Lange Structure Plan and appendices to the Western Australian Planning Commission seeking its approval of the Structure Plan and appendices.**

## BACKGROUND

4. *Local Planning Scheme No. 1* was gazetted on 28 April 2014 and consists of the Scheme Text and the Scheme Maps. The Scheme divides the Local Government district into zones to identify areas for particular uses and identifies land reserved for public purposes. Most importantly, the Scheme controls the types of uses and development allowed in different zones. There are particular controls included for heritage and special control areas. The Scheme Text also sets out the requirements for planning approval, enforcement of the Scheme provisions and non-conforming uses.
5. Development on land zoned 'Future Urban' under *Local Planning Scheme No. 1* is restricted, unless a Structure Plan has been prepared under Clause 5.9 of the Scheme.
6. Due to requests from a number of landowners wishing to subdivide their land in the Yakamia and Lange localities and the Department of Parks and Wildlife indicating support for the alignment of a planned north-south local distributor road (Range Road) over vegetated land (Lot 4743 North Road), the City developed a draft structure plan for the localities of Yakamia and Lange.
7. Prior to drafting the Structure Plan, the City developed Environmental and Water Management plans. The key findings of the *Environmental Opportunities and Constraints Plan* are that:
  - No threatened flora has been identified (noting that detailed environmental investigations have not been undertaken for some areas);
  - Vegetated communities with *Banksia Coccinea* are possibly threatened; and
  - There are remnant stands of vegetation (Jarrah/Mari) in excellent condition and that form natural corridors.
8. The Water Management Plan highlighted constrained areas, such as those subject to flooding, and set various criteria for the management of water. These plans were then used to inform the design of the draft Structure Plan.
9. The draft Structure Plan was referred to the Office of the Environmental Protection Authority, which supported the plan on the basis that vegetation that is in excellent

condition, potentially threatened, forming a large coverage and/or forming an alliance with a foreshore, is protected.

10. The draft Structure Plan was modified in response to the Office of the Environmental Protection Authority advice.
11. Developers strongly objected to vegetation protection measures on the basis that it would detrimentally affect the viability of developing their land. In response, the draft Structure Plan was modified to support development in some less constrained vegetated areas (Lots 79 and 80 Bond Road).
12. The environmental protection measures contained in the draft Structure Plan have been supported by other State Government departments, including the Department of Planning, the Department of Water and the Department of Parks and Wildlife.
13. The subject land is divided into two precincts, with the largest extending from approximately 1.3km to 3.9km north of Albany town centre and covering an area of approximately 355ha. The second, smaller precinct lies approximately 2.4km north-north-west of Albany town centre and covers an area of approximately 10ha. The larger precinct includes land within the 'Future Urban', 'General Agriculture', 'Residential' and 'Yakamia Creek' zones and the 'Parks and Recreation' and 'Public Use' local scheme reserves. The land within the smaller precinct is included within the 'Future Urban' zone and 'Parks and Recreation' local scheme reserve.
14. The southern half of the larger precinct is bounded by 'Residential' zoned land to the east and west, while the land to the south is reserved for 'Parks and Recreation'. The northern half of the precinct is bounded by land zoned 'General Agriculture' or reserved for 'Parks and Recreation' to the east and north. The north-western corner of the precinct adjoins land zoned 'Future Urban' and 'Residential' and a 'Public Use' local scheme reserve.
15. The smaller precinct is predominately surrounded by land within the 'Residential' zone, with the exception of the Yakamia Primary School site to the south, which is reserved for 'Public Use' and the land to the west, which fronts onto Chester Pass Road and is zoned 'Highway Commercial'.

## DISCUSSION

16. The *Yakamia/Lange Structure Plan* is consistent with the current strategic direction set by the *Albany Local Planning Strategy* and *State Planning Policy 3*.
17. The larger precinct within the Structure Plan is identified in the *Albany Local Planning Strategy* as being suitable for 'Future Urban' development with Priority 1 and 2 classifications and 'Regional Reserve', while the smaller precinct is identified as 'Existing Urban'.
18. The *Albany Local Planning Strategy* promotes a staged, incremental approach to the development of identified 'Future Urban' areas, with Priority stages 1 and 2 respectively indicating land that forms part of the existing development front and land that can be developed to a fully-serviced urban standard in the short to medium-term.
19. The 'Regional Reserve' designation covers the Yakamia Creek and identified areas of significant remnant vegetation. The proposed 'Public Parkland' areas in the Structure Plan largely mirror this designation. The smaller precinct that forms part of the structure plan area is identified as 'Existing Urban'; however, it has not been developed to its full potential, as a reticulated sewer connection has not yet been provided.

20. A portion of the land identified for 'Future Urban' development in the *Albany Local Planning Strategy* is currently zoned 'General Agriculture' under *Local Planning Scheme No. 1*. This land will have to be rezoned to the 'Future Urban' zone via a local planning scheme amendment, prior to being development in accordance with the *Yakamia/Lange Structure Plan*.
21. The Structure Plan designates different uses for different areas based on characteristics of the land. For example, in environmentally sensitive areas such as those adjacent to creeks, the Structure Plan recommends that the land is used for 'Public Parkland'. In flat areas with no environmental constraints and in close proximity to the Brooks Garden shopping centre, the Structure Plan recommends that the land is used for medium density residential development.
22. Areas identified for 'Residential' development are divided into three types:
  - 'Residential (Yakamia Creek)' – areas adjacent to the Yakamia Creek, where the minimum lot size shall be 3000m<sup>2</sup>;
  - 'Residential R25' – areas not within easy walking distance of a neighbourhood shop, where the average lot size shall be 350m<sup>2</sup>; and
  - 'Residential R30' – areas within easy walking distance to Brooks Garden shopping centre, where the average lot size shall be 300m<sup>2</sup>.
23. 'Private Conservation' lots have been identified over land that is covered by remnant vegetation, worthy of protection because of the quality and extent of that vegetation. Development of these lots will be permitted on the condition that vegetation is protected.
24. 'Public Use' designations have been applied in locations suitable for public utilities, including for City of Albany administration, Western Power substations and Water Corporation pumping stations.
25. 'Public Parkland' has been identified over areas adjacent to creeks to provide a range of public reserve areas for the purposes of active and passive recreation, protection of foreshores, wetlands, waterways and vegetation, protection of Aboriginal Heritage values, and best-practice urban water management.
26. Areas for 'Active Recreation' have been identified on flat land, central to neighbourhoods, for sporting activities.
27. Strategic infrastructure requirements, including key roads, paths, intersection treatments and reticulated sewer lines and pump stations have been identified on the Structure Plan map. The Structure Plan specifically recommends the development of two major link roads between North Road and Mercer Road (Range Road) and North Road and Chester Pass Road (extension of Barnesby Drive).
28. The Structure Plan also requires subsequent applications to subdivide and develop land to be supported by information to address a variety of matters including fire risk, urban water management, acid sulphate soils, Aboriginal Heritage and access.
29. A substantial number of submissions were received from service providers, Government agencies, landowners and members of the public during the public advertising and referral process.
30. The Department of Planning advised that the subdivision and development of all land for residential purposes, other than the 'Residential (Yakamia Creek)' area, should be dependent on connection to reticulated sewer. Western Power and the Water Corporation both reiterated a need to designate areas for substations to facilitate power distribution and effluent disposal. Modifications to the Structure Plan have been completed to reflect this advice.



31. The comments received from landowners related primarily to the following concerns:
  - The amount of land designated for 'Public Parkland' (Regional Open Space, Public Open Space, Foreshore reserve);
  - High fire risk due to the extent of the remnant vegetation identified for protection; and
  - The financial contributions required for the provision of public open space and infrastructure.
32. In response to landowners' concerns, modifications were made:
  - To reduce the amount of land designated for 'Public Parkland' in areas that are not affected by flooding; and
  - To incorporate measures to ensure that dwellings are constructed in accordance with *Australian Standard 3959 – Construction of Buildings in Bushfire Prone Areas*, in order to mitigate concerns about fire risk.
33. To allay concerns about financial contributions, a comprehensive *Road Contribution Plan* has been developed and is appended to the Structure Plan. It clarifies the methodology used in determining the contributions and the amounts that will be required.

#### GOVERNMENT & PUBLIC CONSULTATION

34. In 2012, the City undertook informal consultation with landowners within the structure plan area and received the following comments, as summarised:
  - *The land should be planned to accommodate residential living.*
  - *Creek areas should be turned into public parkland.*
  - *A north-south transport link is greatly recommended.*
  - *Vegetation in designated wetland and public open space areas should be protected.*
  - *Valley areas should be reserved for recreation.*
  - *The area should be developed into a mixture of smaller and 'special rural' lots.*
  - *The creeks should be regenerated and a cycle-way developed to connect to the Brooks Garden shopping precinct.*
  - *We would like to see an area flooded and lakeside lots created.*
35. Additionally, most of those who responded to the consultation exercise indicated that they would support the creation of smaller lots and were in full support of future development in the locality.
36. Due to the presence of potential environmental impediments, the draft Structure Plan was specifically referred to the Office of the Environmental Protection Authority and property developers for appraisal, prior to formal advertising.
37. Ongoing informal dialogue and on-site meetings have also taken place between the City and landowners to inform the planning process.
38. The draft Structure Plan was formally advertised in accordance with the requirements of *Local Planning Scheme No. 1* from 4 December 2014 to 30 January 2015 by direct referral to affected landowners, service providers and State Government agencies, and advertisement in the local newspaper.
39. Forty (40) submissions were received from service providers, State Government agencies and members of the public and are summarised in the attached Schedule of Submissions. Staff comments and recommendations are also provided in the schedule and the broad issues are discussed in paragraphs 28-32 above.

40. Since completion of the formal advertising process, the draft document has been modified to reflect the advice and comments received. This document was presented at a public information session held at the City of Albany Civic Rooms on 4 August 2015.

### STATUTORY IMPLICATIONS

41. Structure Plans undergo a statutory process in accordance with Section 5.9 of *Local Planning Scheme No. 1*.
42. Section 5.9 of *Local Planning Scheme No. 1* sets out the procedures for the preparation, adoption and approval of Structure Plans. Council resolution is sought for the adoption of a Structure Plan.
43. Sub-clause 5.9.1.5.7(a) of *Local Planning Scheme No. 1* allows Council to adopt the Structure Plan with or without modification.
44. Voting requirement for this item is **SIMPLE MAJORITY**

### POLICY IMPLICATIONS

45. The Western Australian Planning Commission's *Liveable Neighbourhoods* policy has been used to guide the development of the *Yakamia/Lange Structure Plan*. The following principles from *Liveable Neighbourhoods* are of particular relevance to the Structure Plan:
- The ceding of a foreshore reserve will generally not be included in the calculation of a 10% contribution to the provision of public open space;
  - Increased integration of urban water management elements into the urban form will be promoted; and
  - A variety of lot sizes will be provided.
46. *State Planning Policy 2 – Environment and Natural Resources* has also been used to guide the development of the Structure Plan, particularly the following key policy measures:
- Avoid development that may result in unacceptable environmental damage;
  - Actively seek opportunities for improved environmental outcomes including support for development which provides for environmental restoration and enhancement; and
  - Protect significant natural, Indigenous and cultural features, including sites and features significant as habitats and for their floral, cultural, built, archaeological, ethnographic, geological, geomorphological, visual or wilderness values.
47. *State Planning Policy 2.9 – Water Resources* has also been considered in the preparation of the Structure Plan. The objectives of *State Planning Policy 2.9* are as follows:
- Protect, conserve and enhance water resources that are identified as having significant economic, social, cultural and/or environmental values;
  - Assist in ensuring the availability of suitable water resources to maintain essential requirements for human and all other biological life with attention to maintaining or improving the quality and quantity of water resources; and
  - Promote and assist in the management and sustainable use of water resources.

48. The Structure Plan has been prepared in accordance with *State Planning Policy 3 – Urban Growth and Settlement*. The objectives of *State Planning Policy 3* are as follows:

- To promote a sustainable and well planned pattern of settlement across the State, with sufficient and suitable land to provide for a wide variety of housing, employment, recreation facilities and open space.
- To build on existing communities with established local and regional economies, concentrate investment in the improvement of services and infrastructure and enhance the quality of life in those communities.
- To manage the growth and development of urban areas in response to the social and economic needs of the community and in recognition of relevant climatic, environmental, heritage and community values and constraints.
- To promote the development of a sustainable and liveable neighbourhood form which reduces energy, water and travel demand whilst ensuring safe and convenient access to employment and services by all modes, provides choice and affordability of housing and creates an identified sense of place for each community.
- To coordinate new development with the efficient, economic and timely provision of infrastructure and services.

49. *State Planning Policy 3.6 – Development Contributions for Infrastructure* states sets the following principles for the levy of development contributions:

**“1. Need and the nexus**

*The need for the infrastructure included in the development contribution plan must be clearly demonstrated (need) and the connection between the development and the demand created should be clearly established (nexus).*

**2. Transparency**

*Both the method for calculating the development contribution and the manner in which it is applied should be clear, transparent and simple to understand and administer.*

**3. Equity**

*Development contributions should be levied from all developments within a development contribution area, based on their relative contribution to need.*

**4. Certainty**

*All development contributions should be clearly identified and methods of accounting for escalation agreed upon at the commencement of a development.*

**5. Efficiency**

*Development contributions should be justified on a whole of life capital cost basis consistent with maintaining financial discipline on service providers by precluding over recovery of costs.*

**6. Consistency**

*Development contributions should be applied uniformly across a Development Contribution Area and the methodology for applying contributions should be consistent.*

**7. Right of consultation and arbitration**

*Land owners and developers have the right to be consulted on the manner in which development contributions are determined. They also have the opportunity to seek a review by an independent third party if they believe that the calculation of the*

*contributions is not reasonable in accordance with the procedures set out in the draft Model Scheme Text in appendix 2.*

**8. Accountable**

*There must be accountability in the manner in which development contributions are determined and expended.”*

Part 5.3.2 of the Policy makes provision for development contributions to be calculated and applied:

*“Development contributions are generally calculated and applied by way of conditions of subdivision, strata subdivision or development, particularly in greenfield areas. Development contributions may also be sought in infill and redevelopment areas at the time of subdivision, strata subdivision or development.*

*They may be calculated and applied as –*

- *Standard conditions of subdivision or strata subdivision;*
- *Conditions of development.”*

The Policy states that it should be implemented through:

*“...the day-to-day consideration of zoning, subdivision, strata subdivision and development proposals and applications, together with the actions and advice of agencies in carrying out their responsibilities.”*

The WAPC and Local Government are required to have regard to *State Planning Policy 3.6* when seeking developer contributions for infrastructure.

**RISK IDENTIFICATION & MITIGATION**

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<p><b>Organisational Operations and Reputation</b></p> <p>The aspirations of some landowners to develop may not have been met.</p>	Likely	Insignificant	Low	<p>The City of Albany, in developing the Yakamia/Lange Structure Plan followed procedures as set out in Section 5.9 of Local Planning Scheme No. 1.</p> <p>The City has undertaken extensive consultation with service providers, Government agencies, landowners and members of the public, which exceeded the basic statutory requirements set out in Section 5.9 of the Scheme.</p>
<p><b>Community, Organisational Operations and Reputation</b></p> <p>Some Landowners may object to the recommendations made by the Structure Plan.</p>	Likely	Minor	Medium	<p>The City consulted widely in developing the Yakamia/Lange Structure Plan.</p> <p>The City acknowledges that some landowners expect to be able to use and develop their land as desired.</p> <p>However, there are instances where legislative requirements</p>

				<p>override landowners' expectations. Remnant vegetation and waterways exist throughout the Structure Plan area. The City of Albany and State Government Departments require development to be considerate of protecting the integrity of waterways and remnant vegetation.</p> <p>The Structure Plan seeks to find a balanced approach between landowner aspirations and conservation of the environment.</p>
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**FINANCIAL IMPLICATIONS**

- 51. Two new local distributor roads (Range Road and Barnesby Drive) and six major intersections will ultimately be required within the structure plan area. The Structure Plan makes provision for the City to obtain a financial contribution from developers towards the construction of these roads and intersections.
- 52. The approximate amount of roadwork's and the associated cost is included in the appendices "Road Contribution Plan"
- 53. A comprehensive *Road Contribution Plan* has been developed and appended to the Structure Plan. Western Australian Planning Commission *State Planning Policy 3.6 – Development Contributions for Infrastructure* allows the City to implement the Road Contribution Plan, which has calculated the developer contribution on a per lot basis for each new lot created, as a condition of subdivision in accordance with *State Planning Policy 3.6*.
- 54. The 'Public Parkland' areas identified for public open space and foreshore reserves are to be ceded to the Crown and vested with the City for management purposes, at the time of subdivision. The City will incur costs associated with the ongoing maintenance of the 'Public Parkland' areas.

**LEGAL IMPLICATIONS**

- 55. There are no legal implications in relation to this item.

**ENVIRONMENTAL CONSIDERATIONS**

- 56. The Structure Plan has been informed by the Office of the Environmental Protection Authority, and seeks to provide a balanced approach to protect environmentally sensitive areas and to accommodate development.
- 57. The Structure Plan has clarified that:
 

*If a developer proposes to take an action in a designated 'Private Conservation' area that is likely to have a significant impact on a matter of national environmental significance. For instance, clearing of vegetation that would affect the habitat of Carnaby's Black Cockatoo, the developer may need to obtain approval from the Commonwealth Environment Minister, prior to taking that action.*

**ALTERNATE OPTIONS**

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

- To resolve to adopt the proposed Structure Plan without modifications; or
- To refuse to adopt the proposed Structure Plan and give reasons for this.

**SUMMARY CONCLUSION**

59. It is recommended that Council adopt the Yakamia/Lange Structure Plan, as it is consistent with the current strategic direction set by the *Albany Local Planning Strategy* and *State Planning Policy 3* and has been developed with consideration of economic, environmental and social criteria.

<b>Consulted References</b>	:	<ol style="list-style-type: none"> <li>1. <i>Local Planning Scheme No. 1</i></li> <li>2. <i>Albany Local Planning Strategy 2010</i></li> <li>3. <i>City of Albany Strategic Community Plan 2023</i></li> <li>4. <i>City of Albany Corporate Business Plan 2013-2017</i></li> <li>5. Western Australian Planning Commission <i>Structure Plan Preparation Guidelines 2012</i></li> <li>6. Western Australian Planning Commission <i>Liveable Neighbourhoods 2009</i></li> <li>7. Western Australian Planning Commission <i>State Planning Policy 2 – Environment and Natural Resources</i></li> <li>8. Western Australian Planning Commission <i>State Planning Policy 2.9 – Water Resources</i></li> <li>9. Western Australian Planning Commission <i>State Planning Policy 3 – Urban Growth and Settlement</i></li> <li>10. Western Australian Planning Commission <i>State Planning Policy 3.6 – Development Contributions for Infrastructure</i></li> </ol>
<b>File Number (Name of Ward)</b>	:	LP.PLA.1
<b>Previous Reference</b>	:	O.C.M. 25/11/2014 – Item PD060

**PD094: INITIATION OF SCHEME AMENDMENT – LOT 5 LOWANNA DRIVE, LOTS 9 AND 110 GEORGE STREET AND LOT 16 SOUTH COAST HIGHWAY, GLEDHOW**

**Land Description** : Lot 5 Lowanna Drive, Lots 9 and 110 George Street and Lot 16 South Coast Highway, Gledhow

**Proponent** : Ayton Baesjou Planning

**Owner** : F & J Lombardo, Q D Knight, T G Burgess and L J & R Spaanderman

**Business Entity Name** : Nil

**Attachments** : 1. Location plan  
: 2. Albany Local Planning Strategy excerpts  
: 3. Local Planning Scheme Amendment No. 9 report

**Supplementary Information & Councillor Workstation:** : Nil

**Report Prepared by** : Senior Planning Officer (A Bott) & Planning Officer (C McMurtrie)

**Responsible Officer** : Executive Director Planning and Development Services (D Putland)

**Responsible Officer's Signature:**



**STRATEGIC IMPLICATIONS**

1. Council is required to exercise its quasi-judicial function in this matter.
2. When exercising its discretion in relation to planning matters, the pertinent strategic document is the *Albany Local Planning Strategy*.
3. This proposal is consistent with the strategic direction set in the *Albany Local Planning Strategy*.
4. The City has currently imposed a moratorium on the initiation of significant Local Planning Scheme amendments to rezone agricultural land, or intensify adjacent sensitive land uses, other than those that promote ongoing productive use of the land.
5. Although this proposal seeks to create lots for rural living purposes, it is considered to be an 'infill' development, within the already fragmented peri-urban edge. It also seeks to further subdivide lots of approximately 4-5ha in area, which are already considered to have little capacity for agricultural production. Consequently, it is considered that the proposal does not conflict with the current moratorium and may be entertained.

**In Brief:**

- A request has been submitted for Council to initiate a Local Planning Scheme Amendment to rezone Lot 5 Lowanna Drive, Lots 9 and 110 George Street and Lot 16 South Coast Highway, Gledhow from the 'General Agriculture' zone to the 'Rural Residential' zone and amend the Scheme Maps accordingly.
- City planning Staff support the proposal, as it is consistent with the current strategic direction set by the Albany Local Planning Strategy and *State Planning Policy 2.5*.
- The proposal is considered to be an 'infill' development, within the already fragmented peri-urban edge. It seeks to further subdivide lots of approximately 4-5ha in area,

which are already considered to have little capacity for agricultural production. As such, it may be entertained, as it does not conflict with the current moratorium on the initiation of significant Local Planning Scheme amendments to rezone agricultural land, or intensify adjacent sensitive land uses, other than those that promote ongoing productive use of the land.

- Council is requested to initiate the Local Planning Scheme Amendment.

## RECOMMENDATION

### PD094: RESPONSIBLE OFFICER RECOMMENDATION

**THAT Council, in pursuance of Section 75 of the Planning and Development Act 2005 and Regulation 25(1)(c) of the Town Planning Regulations 1967, resolves to initiate Amendment No. 9 to City of Albany Local Planning Scheme No. 1 for the purposes of:**

- (1) Rezoning Lot 5 Lowanna Drive, Lot 16 South Coast Highway and Lots 9 and 110 George Street from the 'General Agriculture' zone to the 'Rural Residential' zone and incorporating them within area No. RR22, as set out in Schedule 14 – Rural Residential Zone of the Scheme text;**
- (2) Amending the Scheme Maps accordingly.**

## BACKGROUND

6. Local Planning Scheme No. 1 was gazetted on 28 April 2014 and consists of the Scheme Text and the Scheme Maps. The Scheme divides the Local Government district into zones to identify areas for particular uses and identifies land reserved for public purposes. Most importantly, the Scheme controls the types of uses and development allowed in different zones. There are particular controls included for heritage and special control areas. The Scheme Text also sets out the requirements for planning approval, enforcement of the Scheme provisions and non-conforming uses.
7. Amendment No. 9 has been prepared to seek the rezoning of Lot 5 Lowanna Drive, Lot 16 South Coast Highway and Lots 9 and 110 George Street from the 'General Agriculture' zone to the 'Rural Residential' zone.
8. The subject lots are located approximately 6.5km west of Albany town centre and have an area of approximately 18.4ha.
9. Land to the north-west, north-east and south is currently zoned 'General Agriculture', while the land to the north and west is reserved for 'Parks and Recreation' or zoned 'Rural Small Holding'. The lots to the east are zoned 'Rural Residential'.
10. *The amendment document states that:*  
  
*"Following the designation of land located within the area bounded by Lowanna Drive, Charles Street, George Street and South Coast Highway for rural residential purposes, a number of landowners propose to rezone the land from 'General Agriculture' zone to the 'Rural Residential' zone"*



## DISCUSSION

11. The City planning Staff support the rezoning of Lot 5 Lowanna Drive, Lots 9 and 110 George Street and Lot 16 South Coast Highway, Gledhow from the 'General Agriculture' zone to the 'Rural Residential' zone as it is consistent with the current strategic direction set by the *Albany Local Planning Strategy* (see Attachment 2) and *State Planning Policy 2.5*. It is considered that the proposal is an 'infill' development, within the already fragmented peri-urban edge. and seeks to further subdivide lots of approximately 4-5ha in area, which are already considered to have little capacity for agricultural production. In this context, the proposal can be entertained, as it does not conflict with the current moratorium on the initiation of significant Local Planning Scheme amendments to rezone agricultural land, or intensify adjacent sensitive land uses, other than those that promote ongoing productive use of the land.
12. It is proposed that the rural residential zoning for the site be amalgamated under the controls for the adjacent 'Rural Residential' zone Area No. 22.
13. Lot 15 George Street has not been included within the amendment as it is owned by Main Roads WA.
14. A land capability assessment has been carried out on the subject land and it has been found that it can support the installation of private on-site effluent disposal systems.

## GOVERNMENT & PUBLIC CONSULTATION

15. Prior to lodging the amendment documents with the City of Albany, the proponent has consulted with Main Roads WA regarding the planned Albany Ring Road alignment and any associated constraints that would apply to the rezoning proposal.
16. The westernmost lots shown on the proposed Subdivision Guide Plan would lie within the planned Albany Ring Road alignment. An appropriate acoustic setback, which would also serve as a development exclusion area, has been identified on the plan and would allow for dwellings to be developed in accordance with the 60da(A) noise limit within *State Planning Policy 5.4 – Road and Rail Transport Noise and Freight Considerations in Land Use Planning*.
17. No further consultation has taken place at this stage.
18. The *Town Planning Regulations 1967* require that a Local Planning Scheme amendment is initiated by a resolution of Council and that the consent of the Environmental Protection Authority and the Department of Planning is obtained, prior to the proposal being advertised for public comment.

## STATUTORY IMPLICATIONS

19. Scheme amendments undergo a statutory process in accordance with the *Planning and Development Act 2005* and *Town Planning Regulations 1967*.
20. Section 75 of the *Planning and Development Act 2005* allows a local government authority to amend its local planning scheme with the approval of the Minister for Planning. Council resolution is sought for the initiation of a local planning scheme amendment.
21. *Regulation 25* of the *Town Planning Regulations 1967* sets out the process for amending the Local Planning Scheme.
22. Voting requirement for this item is **SIMPLE MAJORITY**

## POLICY IMPLICATIONS

23. The proposal is considered to be consistent with the key policy measures identified in Western Australian Planning Commission *State Planning Policy 2.5 – Land Use Planning in Rural Areas*.
24. *State Planning Policy 2.5* was gazetted in 2012 and has provided a comprehensive review and refinement of the previous *Development Control Policy 3.4 Rural Land Use Planning* (1989). The Western Australian Planning Commission and Local Government are required to have regard to *State Planning Policy 2.5* in planning for the development of rural areas.
25. The overarching policy requirements of *State Planning Policy 2.5* are:
  - a) land use change from rural to all other uses is to be planned and provided for in a planning strategy or scheme;
  - b) land identified as priority agricultural land in a planning strategy or scheme is to be retained for that purpose;
  - c) beyond its principle function for primary production, rural land is also required for public purposes, natural resource management, biodiversity conservation and protection of landscapes and views;
  - d) the use of rural land for intensive or emerging primary production land uses does not warrant creation of new or smaller rural lots on an unplanned, ad hoc basis; and
  - e) Creation of new rural lots will be by exception and in accordance with *Development Control Policy 3.4 – Subdivision of Rural Land*, or planned in a strategy or scheme.
26. The proposal has been designed to be consistent with the requirements of *State Planning Policy 5.4 – Road and Rail Transport Noise and Freight Considerations in Land Use Planning*. *State Planning Policy 5.4* aims to “promote a system in which sustainable land use and transport are mutually compatible. It seeks to minimise the adverse impact of transport noise, without placing unreasonable restrictions on noise-sensitive residential development, or adding unduly to the cost of transport infrastructure”. The objectives of the policy are to:
  - Protect people from unreasonable levels of transport noise by establishing a standardised set of criteria to be used in the assessment of proposals;
  - Protect major transport corridors and freight operations from incompatible urban encroachment;
  - Encourage best-practice design and construction standards for new development proposals and new or redeveloped transport infrastructure proposals;
  - Facilitate the development and operation of an efficient freight network; and
  - Facilitate the strategic co-location of freight handling facilities.

## RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<p><b>Organisational Operations and Reputation</b></p> <p>A decision to initiate this scheme amendment may be perceived as being at odds with the current moratorium on the rezoning of agricultural land, or intensify adjacent sensitive land uses, other than those that promote ongoing productive use of the land.</p>	Possible	Minor	Medium	The proposal is considered to be an 'infill' development, within the already fragmented peri-urban edge. It seeks to further subdivide lots of approximately 4-5ha in area, which are already considered to have little capacity for agricultural production. As such, it may be entertained, as it does not conflict with the current moratorium.
<p><b>Organisational Operations and Reputation</b></p> <p>The proposal may not be accepted by the Western Australian Planning Commission or the Minister for Planning.</p>	Possible	Minor	Medium	If not supported by the WAPC or Minister, the amendment will not be progressed and the City will advise the proponent that they may submit a modified proposal.
<p><b>Community, Organisational Operations and Reputation</b></p> <p>The proposal may attract objections from members of the public or other Government agencies.</p>	Possible	Minor	Medium	Widely consulting with all parties who may be affected and all government agencies should mitigate any risk in this regard. If necessary, further information can be requested from the proponent as part of the amendment process.

## FINANCIAL IMPLICATIONS

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

## LEGAL IMPLICATIONS

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

## ENVIRONMENTAL CONSIDERATIONS

30. The subject lots are largely cleared pasture with the exception of well vegetated windbreaks on lot boundaries. There is a stand of parkland cleared vegetation in the southwest corner of lot 9 George Street.

**ALTERNATE OPTIONS**

31. Council has the following alternate options in relation to this item, which are:
- To resolve to initiate the scheme amendment with modification; or
  - To resolve not to initiate the scheme amendment.

**SUMMARY CONCLUSION**

32. It is recommended that Council initiate Local Planning Scheme Amendment No. 9, as the proposal is consistent with the strategic direction currently set within the *Albany Local Planning Strategy* and *State Planning Policy 2.5*.

<b>Consulted References</b>	:	<ol style="list-style-type: none"> <li>1. <i>Local Planning Scheme No. 1</i></li> <li>2. <i>Albany Local Planning Strategy 2010</i></li> <li>3. <i>City of Albany Strategic Community Plan 2023</i></li> <li>4. <i>City of Albany Corporate Business Plan 2013-2017</i></li> <li>5. Western Australian Planning Commission <i>State Planning Policy 1 – State Planning Framework Policy (Variation No. 2)</i></li> <li>6. Western Australian Planning Commission <i>State Planning Policy 2.5 – Land Use Planning in Rural Areas</i></li> <li>7. Western Australian Planning Commission <i>State Planning Policy 5.4 – Road and Rail Transport Noise and Freight Considerations in Land Use Planning.</i></li> </ol>
<b>File Number (Name of Ward)</b>	:	LAMD9 (West Ward)
<b>Previous Reference</b>	:	Nil

**PD095: ADOPTION OF SCHEME AMENDMENT – LOTS 105 AND 106  
NANARUP ROAD, LOWER KING**

**Land Description** : Lots 105 and 106 Nanarup Road, Lower King  
**Proponent** : Ayton Baesjou Planning  
**Owner** : J A & M A Kennedy, G A & P M Clark  
**Business Entity Name** : Nil  
**Attachments** : 1. Location plan  
2. Schedule of Submissions and Modifications  
3. Albany Local Planning Strategy Excerpts  
4. Local Planning Scheme Amendment No. 6 report  
**Supplementary Information &** : Nil  
**Councillor Workstation:**  
**Report Prepared by** : Planning Officer (C McMurtrie)  
**Responsible Officer** : Executive Director Planning and Development  
(D Putland)

**Responsible Officer's Signature:**



**STRATEGIC IMPLICATIONS**

1. Council is required to exercise its quasi-judicial function in this matter.
2. When exercising its discretion in relation to planning matters, the pertinent strategic document is the *Albany Local Planning Strategy*.
3. This proposal is consistent with the strategic direction set in the *Albany Local Planning Strategy*.
4. The City has currently imposed a moratorium on the initiation of significant Local Planning Scheme amendments to rezone agricultural land, or intensify adjacent sensitive land uses, other than those that promote ongoing productive use of the land.
5. Although this proposal seeks to create semi-rural 'lifestyle' lots, it is considered relatively minor and would constitute an area of 'infill' in the established 'Special Residential' planning unit. The amendment was also initiated prior to Council imposing the moratorium. Consequently, it is considered that the proposal does not conflict with the current moratorium and may be entertained.

**In Brief:**

- At its Ordinary Meeting on 24 February 2015, Council initiated a Local Planning Scheme Amendment to rezone Lot 105 and a portion of Lot 106 Nanarup Road, Lower King from the 'General Agriculture' zone to the 'Special Residential' zone and to reserve a portion of Lot 106 for 'Parks and Recreation'.
- The Local Planning Scheme Amendment has been advertised for public comment and referred to service providers and State Government agencies in accordance with the requirements of the *Town Planning Regulations 1967*.
- The proposal is considered to be a minor 'infill' development within an established 'Special Residential' zoned area and is consistent with the strategic direction currently set within the *Albany Local Planning Strategy* and *State Planning Policy 2.5*. The amendment was also initiated prior to Council imposing the current moratorium

on the initiation of significant Local Planning Scheme amendments to rezone agricultural land, or intensify adjacent sensitive land uses, other than those that promote ongoing productive use of the land. As such, it is considered that the proposal does not conflict with the moratorium.

- Council is requested to consider the submissions received following public advertising and referral and to adopt the Local Planning Scheme Amendment, subject to modification.

## RECOMMENDATION

### PD095 RESPONSIBLE OFFICER RECOMMENDATION

**THAT Council, in pursuance of section 75 of the Planning and Development Act 2005 and Regulation 17(2) of the Town Planning Regulations 1967, ADOPT Amendment No. 6 to City of Albany Local Planning Scheme No. 1, subject to the modifications specified in the attached Schedule of Submissions and Modifications, for the purposes of:**

- (1) Rezoning Lot 105 and a portion of Lot 106 Nanarup Road, Lower King from the 'General Agriculture' zone to the 'Special Residential' zone (SR10)**
- (2) Transferring a portion of Lot 106 Nanarup Road, Lower King from the 'General Agriculture' zone to the 'Parks and Recreation' local scheme reserve.**

## BACKGROUND

6. *Local Planning Scheme No. 1* was gazetted on 28 April 2014 and consists of the Scheme Text and the Scheme Maps. The Scheme divides the Local Government district into zones to identify areas for particular uses and identifies land reserved for public purposes. Most importantly, the Scheme controls the types of uses and development allowed in different zones. There are particular controls included for heritage and special control areas. The Scheme Text also sets out the requirements for planning approval, enforcement of the Scheme provisions and non-conforming uses.
7. Amendment No. 6 has been prepared to seek the rezoning of Lot 105 and a portion of 106 Nanarup Road, Lower King from the 'General Agriculture' zone to the 'Special Residential' zone and to reserve a portion of Lot 106 for 'Parks and Recreation'.
8. The subject lots are located approximately 10.6km north-east of Albany town centre and have an area of approximately 6.88ha.
9. The land to the east and west of the subject lots is zoned 'Special Residential', while the land to the north, on the opposite side of Nanarup Road, is zoned 'Rural Residential'. The land to the south is reserved for 'Parks and Recreation' and forms the Oyster Harbour foreshore reserve.
10. The amendment document states that:

*"This rezoning has been foreshadowed by the original rezoning and creation of Special Residential Zone Area No. 10, as well as the Albany Local Planning Strategy".*

## DISCUSSION

11. The City planning Staff support the rezoning of Lots 105 and 106 Nanarup Road, Lower King from the 'General Agriculture' zone to the 'Special Residential' zone and 'Parks and Recreation' local scheme reserve, as it is consistent with the current strategic direction set by the *Albany Local Planning Strategy* (see Attachment 1) and *State Planning Policy 2.5*.
12. The subject land is identified in the *Albany Local Planning Strategy* as being suitable for 'Special Residential' development and is located between two existing components of 'Special Residential' zone No. 10 to its east and west and is considered to form a minor 'infill' in an established 'Special Residential' planning unit. The land to the north has also been rezoned and subdivided into larger 'Rural Residential' zoned lots. Furthermore, the amendment was initiated prior to Council imposing the current moratorium on the initiation of significant Local Planning Scheme amendments to rezone agricultural land, or intensify adjacent sensitive land uses, other than those that promote ongoing productive use of the land. As such, it is considered that the proposal does not conflict with the moratorium.
13. Fire management implications on the subject land are minimal; much of the area has been parkland cleared and further stands of vegetation will see limited clearing to locate development envelopes and facilitate hazard reduction measures. The extension of Kula Road and its connection to a right-of-way over existing driveways to the west by means of an 8m wide pedestrian access way will also provide significantly improved emergency access or egress.
14. The lower reaches of Lot 106 will be transferred into the 'Parks and Recreation' local scheme reserve, thereby enhancing the reserve network and increasing the depth of the Oyster Harbour foreshore reserve.
15. A small number of submissions were received from service providers, Government agencies and the local progress association, expressing no objection to the proposed amendment. Western Power and Water Corporation have provided subdivision and development advice, which will be relevant to the future subdivision and development of the land; however, it has no bearing on the proposed zoning change itself.
16. The Department of Water commented that development should be restricted to the parkland cleared areas of proposed Lots 7 and 8 to ensure that the largest possible vegetation buffer is maintained to Oyster Harbour. This position is reflected by a notation on the proposed subdivision guide plan that requires all building envelopes to be located north of the 'low fuel link', as indicated. This would place the building envelopes within the cleared area to the northern extent of proposed Lots 7 and 8. The Department of Water's comment also highlights the fact that the notations on the proposed subdivision guide plan, which is an updated version of the existing plan, still refer to the provisions contained within former *Town Planning Scheme No. 3*. It is therefore recommended that these notations are updated to refer to the provisions of *Local Planning Scheme No. 1*, where still relevant.
17. The Lower Kalgan Progress Association commented on the need to provide a second road connection from Nanarup Road to Kalgan Heights, at least in the form of an emergency access/egress route. The subdivision design incorporates an 8m wide pedestrian access way that would connect the proposed extension to Kula Road back to Nanarup Road, via an existing right-of-way to the west of Lot 104. This would provide an alternative route in and out of the subdivision in an emergency situation.

## GOVERNMENT & PUBLIC CONSULTATION

18. The Amendment was advertised in accordance with the requirements of the *Town Planning Regulations 1967* from 30 April 2015 to 18 June 2015 by placement of a sign on-site, direct referral to affected and adjoining/nearby landowners, service providers and State Government agencies, and advertisement in the local newspaper.
19. Seven (7) submissions were received from service providers, State Government agencies and the local progress association and are summarised in the attached Schedule of Submissions and Modifications. Staff comments and recommendations are also provided in the schedule and the broad issues are discussed in paragraphs 13-15 above.

## STATUTORY IMPLICATIONS

20. Scheme amendments undergo a statutory process in accordance with the *Planning and Development Act 2005* and *Town Planning Regulations 1967*.
21. Section 75 of the *Planning and Development Act 2005* allows a local government authority to amend its local planning scheme with the approval of the Minister for Planning. Council resolution is sought for the adoption of a local planning scheme amendment.
22. Regulation 17(2)(a) of the *Town Planning Regulations 1967* allows Council to adopt the Scheme with or without modification.
23. Voting requirement for this item is **SIMPLE MAJORITY**

## POLICY IMPLICATIONS

24. The proposal is considered to be consistent with the key policy measures identified in Western Australian Planning Commission *State Planning Policy 2.5 – Land Use Planning in Rural Areas*.
25. The Western Australian Planning Commission and Local Government are required to have regard to *State Planning Policy 2.5* in planning for the development of rural areas.
26. The overarching policy requirements of *State Planning Policy 2.5* are:
  - a) land use change from rural to all other uses is to be planned and provided for in a planning strategy or scheme;
  - b) land identified as priority agricultural land in a planning strategy or scheme is to be retained for that purpose;
  - c) beyond its principle function for primary production, rural land is also required for public purposes, natural resource management, biodiversity conservation and protection of landscapes and views;
  - d) the use of rural land for intensive or emerging primary production land uses does not warrant creation of new or smaller rural lots on an unplanned, ad hoc basis; and;
  - e) Creation of new rural lots will be by exception and in accordance with *Development Control Policy 3.4 – Subdivision of Rural Land*, or planned in a strategy or scheme.



## RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<p><b>Organisational Operations and Reputation</b></p> <p>The proposal may not be accepted by the Western Australian Planning Commission or the Minister for Planning.</p>	Possible	Minor	Medium	If not supported by the WAPC or Minister, the amendment will not be progressed and the City will advise the proponent that they may submit a modified proposal.

## FINANCIAL IMPLICATIONS

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

## LEGAL IMPLICATIONS

29. There are no legal implications directly relating to this item.

## ENVIRONMENTAL CONSIDERATIONS

30. Much of the land is relatively level, with only a slight fall to the west across the western half of Lot 105 and the driveway leading to Lot 106 from Nanarup Road. The western and southern extents of Lot 106 fall more steeply down to Oyster Harbour.
31. Lot 105 is parkland cleared, with the thickest stand of remaining trees running through the centre of the lot in a north-south axis. A single house stands on Lot 105, slightly west of the centre of the lot and approximately 17m from the southern boundary.
32. A tree-lined access leg to Lot 106 runs along the eastern boundary of Lot 105 before dog-legging to the west, where it opens out into the lot. The level area of Lot 106 is parkland cleared, with thicker vegetation remaining on the slopes to the west and south of the lot on the steeper slopes. A clearing measuring approximately 140m by 50m near the centre of the lot accommodates a single house and outbuildings.

## ALTERNATE OPTIONS

33. Council has the following alternate options in relation to this item, which are:
- To resolve to adopt the scheme amendment with modification; or
  - To resolve not to adopt the scheme amendment and advise the Western Australian Planning Commission, in writing, of the reasons for doing so.

## SUMMARY CONCLUSION

34. It is recommended that Council adopt Local Planning Scheme Amendment No. 6, subject to modification, as the proposal is considered to be a minor 'infill' development within an established 'Special Residential' zoned area and is consistent with the strategic direction currently set within the *Albany Local Planning Strategy* and *State Planning Policy 2.5*

<b>Consulted References</b>	:	<ol style="list-style-type: none"> <li>1. <i>Local Planning Scheme No. 1</i></li> <li>2. <i>Albany Local Planning Strategy 2010</i></li> <li>3. <i>City of Albany Strategic Community Plan 2023</i></li> <li>4. <i>City of Corporate Business Plan 2013-2017</i></li> <li>5. Western Australian Planning Commission <i>State Planning Policy 1 – State Planning Framework Policy (Variation No. 2)</i></li> <li>6. Western Australian Planning Commission <i>State Planning Policy 2.5 – Land Use Planning in Rural Areas</i></li> </ol>
<b>File Number (Name of Ward)</b>	:	LAMD6 (Kalgan Ward)
<b>Previous Reference</b>	:	OCM – 24/02/2015 – Item PD070

**PD096: ADOPTION OF SCHEME AMENDMENT – LOT 11 ON  
DIAGRAM 42859 NANARUP ROAD, NANARUP**

**Land Description** : Lot 11 Nanarup Road, Nanarup  
**Proponent** : Harley Dykstra Pty Ltd  
**Owner** : R C & J L Buegge  
**Business Entity Name** : Nil  
**Attachments** : 1. Location plan  
2. Schedule of Submissions and Modifications  
3. Local Planning Scheme Amendment No. 10  
report  
**Supplementary Information &** : Nil  
**Councillor Workstation:**  
**Report Prepared by** : Planning Officer (C McMurtrie)  
**Responsible Officer** : Executive Director Planning and Development  
(D Putland)

**Responsible Officer's Signature:**



**STRATEGIC IMPLICATIONS**

1. Council is required to exercise its quasi-judicial function in this matter.
2. When exercising its discretion in relation to planning matters, the pertinent strategic document is the *Albany Local Planning Strategy*.
3. This proposal is broadly consistent with the strategic direction set in the *Albany Local Planning Strategy*.

**In Brief:**

- At its Ordinary Meeting on 24 February 2015, Council initiated a Local Planning Scheme Amendment to rezone Lot 11 Nanarup Road, Nanarup from 'Residential' R1 to 'Residential' R5.
- The Local Planning Scheme Amendment has been advertised for public comment and referred to service providers and State Government agencies in accordance with the requirements of the *Town Planning Regulations 1967*.
- Staff support the rezoning on the basis that it is a minor increase in residential density, but remains consistent with the established residential density of the adjoining lots.
- The City has currently imposed a moratorium on the initiation of significant Local Planning Scheme amendments to rezone agricultural land, or intensify adjacent sensitive land uses, other than those that promote ongoing productive use of the land. However, this proposal does not conflict with the moratorium, as it does not seek to rezone agricultural land or intensify a sensitive land use adjacent to agricultural land.

- Council is requested to consider the submissions received following public advertising and referral and to adopt the Local Planning Scheme Amendment, subject to modification.

## RECOMMENDATION

### PD096 RESPONSIBLE OFFICER RECOMMENDATION

**THAT Council, in pursuance of Section 75 of the Planning and Development Act 2005 and Regulation 25(1)(c) of the Town Planning Regulations 1967, ADOPT Amendment No. 10 to City of Albany Local Planning Scheme No. 1, subject to the modifications specified in the attached Schedule of Submissions and Modifications, for the purposes of:**

- (1) Rezoning Lot 11 Nanarup Road, Nanarup from the 'Residential' R1 to the 'Residential' R5.
- (2) Amending the Scheme Maps accordingly.

## BACKGROUND

1. *Local Planning Scheme No. 1* was gazetted on 28 April 2014 and consists of the Scheme Text and the Scheme Maps. The Scheme divides the Local Government district into zones to identify areas for particular uses and identifies land reserved for public purposes. Most importantly, the Scheme controls the types of uses and development allowed in different zones. There are particular controls included for heritage and special control areas. The Scheme Text also sets out the requirements for planning approval, enforcement of the Scheme provisions and non-conforming uses.
2. Amendment No. 9 has been prepared to seek the rezoning of Lot 11 Nanarup Road, Kalgan from the 'Residential' R1 zone to the 'Residential' R5 zone.
3. The subject lot is located approximately 11.5km north-east of Albany town centre and has an area of approximately 1.45ha.
4. The land to the north of the subject lot is zoned 'Caravan and Camping', the land to the south-west is reserved for 'Public Use' (Great Southern Grammar School), and the land to the east is zoned 'Residential' R1.
5. The amendment document states that:

*"The purpose of this amendment to the City of Albany Local Planning Scheme No.1 (LPS1) is to rezone Lot 11 (No. 264) Nanarup Rd, Kalgan (herein referred to as the subject site) from Residential R1 to Residential R5".*

## DISCUSSION

6. The City planning Staff support the rezoning of Lot 11 Nanarup Road, Nanarup from 'Residential' R1 to 'Residential' R5, as it is broadly consistent with the current strategic direction set by the *Albany Local Planning Strategy* and *State Planning Policy 3.1*.
7. The subject land is identified in the *Albany Local Planning Strategy* as being suitable for 'Rural Residential' development. However, a submission was made to the City during the preparation of *Local Planning Scheme No.1* stating that the 'Rural Residential' designation was not consistent with the existing low density residential development in the area.

8. It was then determined that a zoning of 'Residential' R1 would be a more appropriate for the land and this was applied as part of *Local Planning Scheme No. 1*. It was also advised at this time that in order to support any increase in residential density beyond R1, land capability to support additional on-site effluent and stormwater disposal would have to be demonstrated.
9. The City has currently imposed a moratorium on the initiation of significant Local Planning Scheme amendments to rezone agricultural land, or intensify adjacent sensitive land uses, other than those that promote ongoing productive use of the land. However, this proposal does not conflict with the moratorium, as it does not seek to rezone agricultural land or intensify a sensitive land use adjacent to agricultural land.
10. The Subdivision Concept Plan submitted with the amendment document shows a proposed subdivision layout incorporating six lots of 2000-2574m<sup>2</sup>, which is consistent with the minimum lot size requirement for the R5 residential density code contained in *State Planning Policy 3.1 – Residential Design Codes*. These lot sizes are also consistent with the size of the three adjoining lots on Kalgonak Lane, immediately to the east of the subject lot.
11. The proposed change in residential density is also consistent with the provisions of the Department of Health's draft *Country Sewerage Policy*. The Policy states that unsewered subdivision can be supported if it does not result in lots of less than 2000m<sup>2</sup> in area or a residential density greater than R5.
12. The Department of Health has indicated that proposed lot 'F' on the Subdivision Concept Plan could not support private on-site effluent disposal in its current state. However, the City's Environmental Health Officers have reviewed the land capability report and agree with the finding that the land is capable of supporting private on-site effluent disposal systems, subject to fill being placed on proposed lot 'F' as part of subdivisional works. This would allow the necessary vertical separation to be achieved between the effluent disposal system and the water table. City Officers have also recommended that all lots to utilise nutrient retaining Alternative Treatment Units, due to their proximity to the Kalgan River.
13. The Great Southern Grammar has raised concerns about the possible influence an additional five households on adjacent land may have on their day-to-day operation and future expansion plans. They have specific concerns that noise and disturbance caused by outdoor activities and sports may lead to complaint from adjoining residents and that these residents may also object to potential future expansion of the school in line with its master plan.
14. The Lower Kalgan Progress Association and adjoining landowners have both raised concerns about the safety of the proposed access to the proposed lots via Kalgonak Lane. Following assessment by City engineers, it is recommended that the Subdivision Concept Plan is modified to show access being taken from the existing crossover point near the centre of the subject lot.

#### **GOVERNMENT & PUBLIC CONSULTATION**

15. The Amendment was advertised in accordance with the requirements of the *Town Planning Regulations 1967* from 30 April 2015 to 18 June 2015 by placement of a sign on-site, direct referral to affected and adjoining/nearby landowners, service providers and State Government agencies, and advertisement in the local newspaper.
16. Ten (10) submissions were received from service providers, State Government agencies and the local progress association and are summarised in the attached Schedule of Submissions and Modifications. Staff comments and recommendations are also provided in the schedule and the broad issues are discussed in paragraphs 11-13 above.

### STATUTORY IMPLICATIONS

17. Scheme amendments undergo a statutory process in accordance with the *Planning and Development Act 2005* and *Town Planning Regulations 1967*.
18. Section 75 of the *Planning and Development Act 2005* allows a local government authority to amend its local planning scheme with the approval of the Minister for Planning. Council resolution is sought for the adoption of a local planning scheme amendment.
19. Regulation 17(2)(a) of the *Town Planning Regulations 1967* allows Council to adopt the Scheme with or without modification.
20. Voting requirement for this item is **SIMPLE MAJORITY**

### POLICY IMPLICATIONS

21. The proposal is consistent with the lot area requirements for the R5 residential density code, as prescribed by *State Planning Policy 3.1 - Residential Design Codes*.

### RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<p><b>Organisational Operations and Reputation</b></p> <p>The proposal may not be accepted by the Western Australian Planning Commission or the Minister for Planning.</p>	Possible	Minor	Medium	If not supported by the WAPC or Minister, the amendment will not be progressed and the City will advise the proponent that they may submit a modified proposal.

### FINANCIAL IMPLICATIONS

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

### LEGAL IMPLICATIONS

24. There are no legal implications directly relating to this item.

### ENVIRONMENTAL CONSIDERATIONS

25. The subject lot is largely cleared of vegetation, with the exception of a row of trees along the southern boundary. A single house and associated outbuildings stand near the centre of the lot. The Kalgan River lies approximately 110m from the eastern lot boundary and 245m from the southern lot boundary.
26. The land capability assessment provided in support of the amendment demonstrates adequate vertical separation from the water table to avoid any negative impact on the waterway, with the exception of proposed Lot 'F'. However, a small amount of fill on proposed lot 'F', as a part of subdivisional works, will allow the necessary vertical separation between the effluent disposal system and the water table to be achieved.
27. To further protect the waterway, City of Albany Environmental Health Officers have recommended the use of nutrient-retaining Alternative Treatment Units on the proposed lots, that comply with Department of Health advice.

**ALTERNATE OPTIONS**

28. Council has the following alternate option in relation to this item, which are:

- To resolve to adopt the scheme amendment with modification; or
- To resolve not to adopt the scheme amendment and advise the Western Australian Planning Commission, in writing, of the reasons for doing so.

**SUMMARY CONCLUSION**

29. It is recommended that Council adopt Local Planning Scheme Amendment No. 10, as the proposal seeks a minor increase in residential density, which remains consistent with the intended low-density for the area, as set out in the *Albany Local Planning Strategy*.

<b>Consulted References</b>	:	1. <i>Local Planning Scheme No. 1</i> 2. <i>Albany Local Planning Strategy 2010</i> 3. <i>City of Albany Strategic Community Plan 2023</i> 4. <i>City of Corporate Business Plan 2013-2017</i> 5. Draft Country Sewerage Policy 6. Western Australian Planning Commission <i>State Planning Policy 3.1 – Residential Design Codes</i>
<b>File Number (Name of Ward)</b>	:	LAMD10 (Kalgan Ward)
<b>Previous Reference</b>	:	OCM – 24/02/2015 – Item PD071

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