

2.4: INITIATION OF AMENDMENT – LOT 4 COSY CORNER ROAD, KRONKUP

Land Description	: Lot 4 Cosy Corner Road, Kronkup
Proponent	: Craig Pursey Planning
Owner/s	: A.H. and P. R. London
Business Entity Name	: Trading as 'Torbay Olives'
Attachment(s)	: Proposed Subdivision Guide Plan
Appendices	: Amendment Document (AMD308)
Councillor Workstation	: Fire Management Plan Land Capability Assessment
Responsible Officer(s)	: E/Director Planning and Development Services (G Bride)

Maps and Diagrams:



IN BRIEF

- Determine whether to initiate the proposed Scheme Amendment to rezone Lot 4 Cosy Corner Road, Kronkup from the 'Rural' zone to the 'Special Rural' zone.
- It is recommended that the amendment be initiated with modifications.

**ITEM 2.4: RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR WOLFE
SECONDED: COUNCILLOR WELLINGTON**

THAT, subject to the following modifications being made;

- i. The wording of proposed provision 11.0(d) being deleted and replaced with a new provision stating that *“at the time of subdivision Council may recommend that a Section 70A notification be placed on titles of Lot U, V, W, X and Y advising future purchasers that they may be affected by the operations associated with existing farming activities in the area inclusive of the Olive Grove on Lot T”*;
- ii. The building envelope on Lot V being repositioned to the west to ensure no portion of the building envelope is within 60 metres of the lot boundary associated with Lot T (lot associated with the Olive Grove) and an area of revegetation being identified on the eastern boundary of Lot V; and
- iii. a new provision being placed in the special provisions for Special Rural Area No. 30 stating that *“future buildings to be placed on Lot W and X are to be constructed to Bushfire Attack Level (BAL) 19 under Australian Standard 3959 – Buildings in Bushfire Prone Areas”*,

Council Resolves to INITIATE Amendment No. 308 to Town Planning Scheme No. 3 in pursuance of section 75 of the *Planning and Development Act 2005* and *Regulation 25(1)c* of the *Town Planning Regulations 1967*, for the purposes of:

- 1) Rezoning Lot 4 Cosy Corner Road, Kronkup from the Rural zone to Special Rural zone and amending the Scheme Maps accordingly;
- 2) Including Lot 4 Cosy Corner Road, Kronkup in Special Rural Area No. 30, Schedule 1 – Special Rural Zones – Provisions Relating to Specified Areas;
- 3) Amending Schedule I – Special Rural Zones – Provisions Relating to Specified Areas, Special Rural Area No. 30 by amending provisions 4.1 and, 10.4;
- 4) Amending Schedule I – Special Rural Zones – Provisions Relating to Specified Areas, Special Rural Area No. 30 by deleting provision 5.1 (a); and
- 5) Inserting provision 3.3 (d) and 11.0 (d) in Schedule I – Special Rural Zones – Provisions Relating to Specified Areas Schedule, Rural Area No. 30.

CARRIED 8-1

Record of Vote

Against the Motion: Councillor J Bostock

BACKGROUND

1. Amendment No. 308 proposes to amend Town Planning Scheme (TPS) No. 3 by rezoning Lot 4 Cosy Corner Road, Kronkup from the ‘Rural’ zone to the ‘Special Rural’ zone.
2. The amendment is also proposing the following additional uses on one of the proposed lots;
 - a. Maximum 3 chalets;
 - b. Craft Studio
 - c. Cafe /Restaurant or Country Kitchen
 - d. Horticulture
 - e. Garden Centre
 - f. Sales outlet for Olive Grove

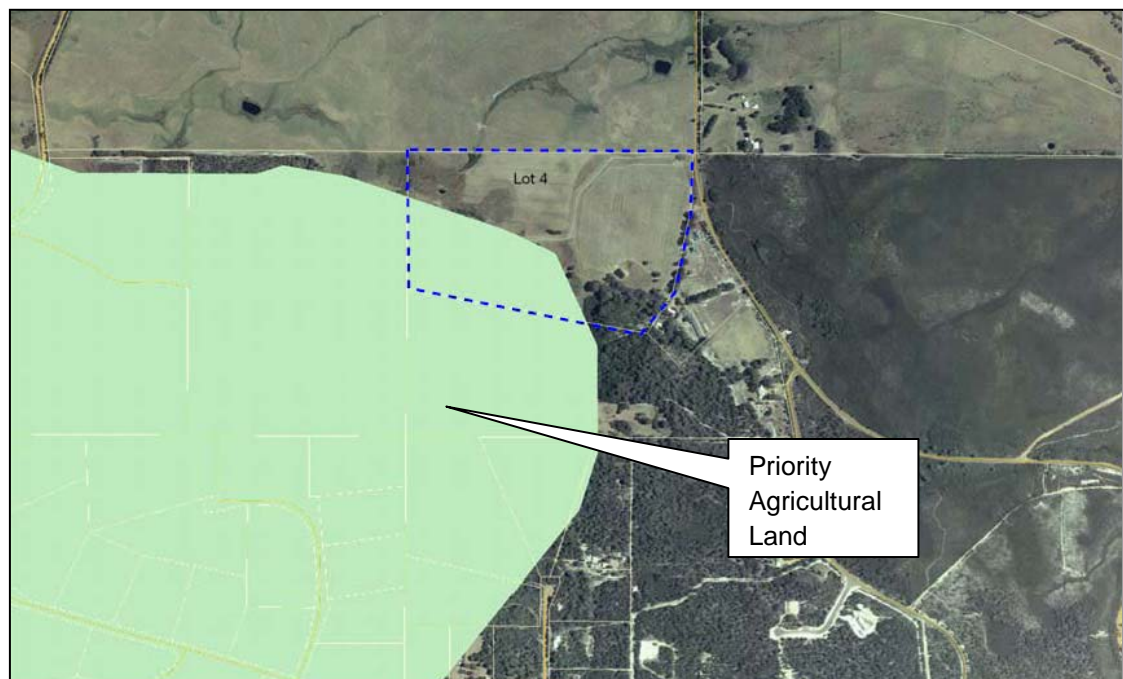
3. A Scheme Amendment Request (SAR149) proposing the rezoning of Lot 4 Cosy Corner Road, Kronkup from the 'Rural' zone to the 'Special Rural' zone was lodged with Council in September 2010.
4. Council considered SAR 149 at its Ordinary Meeting on 15 March 2011 and resolved to support the formal submission of a Scheme Amendment and to include the subject land within the boundary of the Torbay Hill Town Site when the ALPS is next reviewed.
5. The support of a formal submission of a Scheme Amendment is subject to the following matters being addressed and/or included as part of that formal amendment application:
 - a. An Agricultural Impact Statement (as per SPP 2.5, Appendix 3) being prepared by a suitably qualified professional to determine the impact of the proposal on existing agricultural operations and whether sufficient separation distances between building envelopes and existing rural activities, inclusive of the Olive Grove, are appropriate.
 - b. A land capability report being prepared to determine that the proposed building envelopes are capable of supporting the development envisaged.
 - c. A Fire Management Plan being prepared to determine whether there is sufficient separation between the proposed building envelopes and the vegetated areas.
6. To address the matters outlined above, the proponent provided a land capability report and a fire management plan as part of the amending document. An agricultural impact statement was also provided consistent with Part 2 (Land Use Conflict) of Appendix 3 within SPP2.5 which addresses the impact of the proposal on existing agricultural operations (grazing to the north and the Olive Grove) and separation distances between building envelopes and existing rural activities as requested by Council.

DISCUSSION

7. The subject land is zoned 'Rural' and has a total land area of 22.73 hectares and forms part of Torbay Hill, sloping down to the Kronkup flats along its northern boundary. Minor hills and drainage lines dissect the property. The subject land slopes down from a high point of 76m AHD in the south west corner of the lot to a low point of 30m AHD in the north eastern corner of the lot.
8. The subject land is currently developed with an olive grove, a single residence and a number of sheds used as outbuildings to the residence and as storage for farm equipment and olive oil reserves. The land is used for rural purposes with the olive grove producing limited commercial quantities with the remainder of the lot being grazed with cattle. There are large areas revegetated with native vegetation and a karri forest in the south eastern corner of the property.
9. Surrounding land uses include the following;
 - the land to the north is used for agricultural purposes (grazing of cattle);
 - the land to the south and west is being used for rural residential purposes and the land adjoining the site to the east is used as the Torbay Motel, chalets and a general store and cafe.

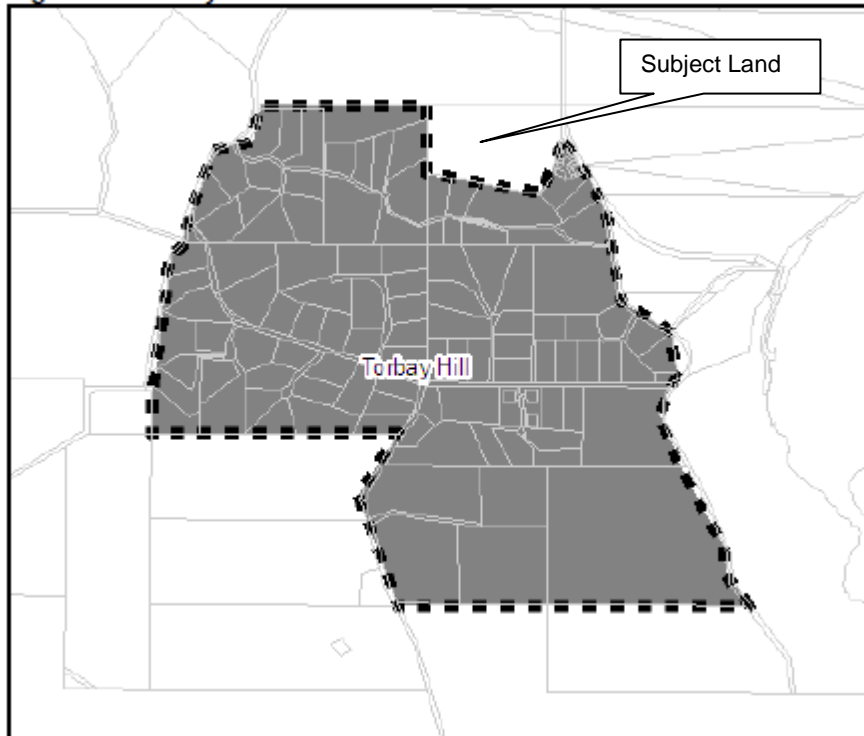
10. The subject land shares the same characteristics as the remainder of Torbay Hill with some cleared areas and large areas of remnant vegetation.
11. The introduction of additional dwellings contemplated under the proposal should not have a detrimental impact on the amenity of the area, as the area is already characterised by this type of development. The provision of a landscaped strip along the property's northern boundary is proposed; this will serve as a vegetated buffer to the large grazing areas to the north and as a visual buffer to Torbay Hill when viewed from Cosy Corner Road.
12. The subject land will be incorporated into the neighbouring Special Rural Area No. 30 with a subsidiary Subdivision Guide Plan (SGP) for the subject land carrying through the same terminology and information applicable to the existing SGP for Special Rural Area No. 30. The amendment seeks to modify the existing special provisions for Special Rural Area No. 30 in the following manner:
 - Clarifying that 'new' intensive agricultural pursuits are not permitted, recognising the existing Olive Grove operation;
 - Identifying that on Lot W as per the Subdivision Guide Plan, an alternative treatment effluent disposal system is required in accordance with the recommendations of the land capability study;
 - Introducing some additional uses that are permitted on Lot T (lot with the existing Olive Grove) including Chalets (maximum of three), Craft Studio, Cafe/Restaurant, Horticulture, Garden Centre and Sales Outlet for Olive Grove; and
 - Notifications to potential purchasers of the new lots identifying that they may be subjected to nuisance impacts associated with noise from the existing Olive Grove operations.
13. The proponent has stated that creating a retail outlet for the olive grove, with complimentary activities such as a café and chalets would support the economic viability of the olive grove and support the Torbay Hill Rural Village centre and the adjacent holiday accommodation. These uses will provide for an additional tourist experience at the Olive Grove and is supported by staff.
14. The small scale tree nursery on the site grows local endemic species for revegetation works in the locality. Trees are grown to 1-1.5m high and sold in bags from a separate entry to the property on Cosy Corner Road. This use is also complimentary to the organic farming methods of the olive grove and gives people another reason to visit the Torbay Hill Rural Village.
15. The proponent has detailed the operational activities associated with the Olive Grove and believes the potential for land use conflict is limited as the operation involves:
 - limited hand spraying (with no associated spray drift);
 - a short annual harvesting period of 10 days (with use of an air compressor and hand rakes); and
 - pruning by hand or battery powered sabre saw and pest control measures being applied once a year direct to the trees (application of white oil which is an organic pest control measure with no detrimental health effects).

16. The proponent has identified a minimum noise separation distance of 60 metres from any dwellings to the Olive Grove. This distance is recommended for such activities within the *Queensland Department of Natural Resources Planning Guidelines: Separating Agricultural and Residential Land Uses (August 1997)* which is identified in Western Australian Planning Commission Planning Bulletin 63 (*Policy for dealing with potential conflicts between residential subdivision and market gardens in East Waneroo*). The proponent has also recommended that potential purchasers be advised in writing by the owner of the existence of the Olive Grove operations associated with the Olive Grove on the purchase of the new lots, however this form of notification is broken once the original purchaser on sells their property. It is recommended that a Section 70A notification be placed on the titles of the proposed lots.
17. The Fire Management Plan submitted with the application identifies that the future dwellings on Lots W and X will need to be constructed to Bushfire Attack Level (BAL) 19 construction under Australian Standard 3959 – Buildings in Bushfire Prone Areas. A provision to this affect should be included within the special provisions for Special Rural Area No. 30.
18. The Land Capability Assessment identified a number of constraints including a creek line in the north western corner of the site requiring a 30 metre development setback and areas subject to water logging which have been avoided by the positioning of building envelopes outside of these areas. Soil testing and an assessment of winter ground water levels were carried out which revealed that the identified building envelopes can support dwellings and effluent disposal systems; Lot W will require an alternative treatment effluent disposal system (ie. ecomax/biomax system).
19. The subject land is within an area that is identified by the ALPS as Priority Agricultural land. Detailed mapping from the Department of Agriculture and Food WA (DAFWA) identified that only the south-west corner of the site was identified as 'Priority Agriculture'. The existing priority agricultural cell in this locality, being to the west and south of the subject land, is situated over existing special rural allotments, and due to their size and zoning do not support intensive agriculture. For these reasons it is clear that the proposal would not detrimentally impact existing or future agricultural production in the immediate locality.



20. The subject land is not within the Townsite Boundary as per Figure 19: Torbay Hill (refer below) and Table 5 of the ALPS recommends no further expansion of the Town Site.

Figure 19: Torbay Hill.



21. The proponent has stated that the inclusion of the subject land into the same zoning (Special Rural) as surrounding land parcels to the west and south would be a logical 'rounding off'. In relation to precedent concerns the proponent states:
- This property shares the same land characteristics as the existing special rural development (being the last property before the land flattens off into the Kronkup flats);
 - The land is surrounded by non-rural land uses on three sides;
 - The land is virtually the last smaller lot in the immediate area capable of being developed for rural residential purposes. Nearby land that is not located on the flats is designated as Priority Agriculture and is of a size capable of being further developed for agricultural purposes.
 - Hortin Road forms a boundary to rural residential development to the west. Cosy Corner Road forms a logical boundary to the east.
22. The boundaries of the Torbay Hill townsite (as identified in Figure 19 above) appear to have been based on the existing special rural areas that were in place at the time or were in the final stages of a scheme amendment process. The subject land, being zoned 'Rural' and identified as suitable for Priority Agriculture use in the ALPS, was therefore excluded. The proponent has identified that with the exception of the subject land being outside of the townsite boundary, the proposal meets all relevant objectives of the ALPS as it relates to the creation of Rural Living areas as:

- The land will not create an 'additional' rural townsite;
 - The small portion of the land is affected by the priority agricultural land designation, however the balance of this cell is over existing special rural lots, and therefore the proposal will not detrimentally affect opportunities for priority agriculture. The proposal will also retain the Olive Grove.
 - The land is not in an area of extreme bushfire risk and is not subject to flooding.
 - The land is beyond the area identified in ALPS as future urban or long term residential.
23. Table 5 within the ALPS identifies no additional growth for the Torbay Hill town site, and states that a maximum yield of 100 lots is envisaged. The number of existing and proposed lots within the town site boundary, as defined by Figure 19 of the ALPS, is approximately 102 (which includes the final yield identified in the relevant subdivision guide plans for the existing special rural areas). The proposal to add six additional lots would have a marginal impact on the maximum lot yield envisaged for the town site.
24. Whilst the land is not included within the boundaries of the Torbay Hill town site, the proposal meets all other relevant objectives identified within the ALPS, and it is recommended that the proposal be supported.

GOVERNMENT CONSULTATION

25. Should Council initiate the Amendment and the Environmental Protection Authority decides not to assess the proposal, the Amendment will be referred to all relevant Government agencies for assessment and comment.
26. As part of the Scheme Amendment Request process, support was received from the Albany Office of the Department of Planning, Health Department WA, Department of Water and the Water Corporation.
27. The Department of Agriculture and Food did express some concerns that the proposal could set a precedent for the subdivision of rural land elsewhere within the City and that should the proposal proceed, buffers should be imposed to minimise landuse conflict.

PUBLIC CONSULTATION / ENGAGEMENT

28. Should Council initiate the Amendment and the Environmental Protection Authority decides not to assess the proposal, the Amendment will be advertised to all affected and surrounding landowners. A sign will be placed on site and a notice will also be placed in the local newspaper inviting comment.

STATUTORY IMPLICATIONS

29. All Scheme Amendments undergo a statutory process in accordance with the *Planning and Development Act 2005* and *Town Planning Regulations 1967*.
30. Council's resolution under Section 75 of the *Planning and Development Act 2005* is required to amend the Scheme.

31. An Amendment to a Town Planning Scheme adopted by resolution of a Local Government must then be referred to the EPA for assessment.
32. Advertising of an Amendment for public inspection is for a period of 42 days and is not to commence until the EPA has determined that the Amendment is environmentally acceptable.
33. A resolution to amend a Town Planning Scheme should not be construed to mean that final approval will be granted to that amendment.

STRATEGIC IMPLICATIONS

34. This item relates directly to the following elements of the City of Albany Strategic Plan (2011-2021):

Key Focus Area

Sustainability and Development

Community Priority

A sustainable future

Proposed Strategies

Establish satellite township hubs in areas such as Young's Siding, Redmond, Manypeaks and Wellstead to provide services (*basic shopping necessities and recreational areas*).

35. Council's decision on the Scheme Amendment should be consistent with the objectives of the Albany Local Planning Strategy (ALPS) as the principal land use planning strategy for the City.
36. Section 8.3.1 – *Strategic Settlement Direction* sets the following Strategic Objective:

“Facilitate and manage sustainable settlement growth for the urban area in the City of Albany”.

This objective is supported by a set of aims that have been devised to contain the spread of fragmented urban and rural living areas in the City. They are as follows:

- *Providing for growth in urban areas, rural townsites and rural living areas as designated in ALPS.*
- *Minimising the development footprint on the landscape to help protect biodiversity and the environment.*
- *Promoting energy conservation.*
- *Providing greater housing choice.*
- *Minimising journey length from home to work/school/services and encouraging the use of public transport, cycling and walking.*
- *Reducing government expenditure on servicing current and future populations.*

37. Section 8.3.5 – *Rural Living* sets the following Strategic Objective in the ALPS:

“In the long term encourage the efficient use of existing rural living areas, based on land capability to maximise their development potential.”

The ALPS expands on this by stating that: “The strategy’s objectives for Rural Living areas are to:

- *Discourage the creation of additional rural townsites for living purposes.*
- *Avoid the development of Rural Living areas on productive agricultural land, other important natural resource areas and areas of high bushfire risk, flooding and environmental sensitivity.*
- *Avoid the development of Rural Living areas on future and potential long-term urban areas.*
- *Provide compact growth of selected existing rural townsites in accordance with Table 5, based on land capability and available services and facilities.*
- *Minimise potential for generating land-use conflicts.*

Existing Rural Residential areas in the ALPS are mainly on the fringe of the proposed Future Urban area.

Existing Special Rural and Special Residential zones in the City’s current Town Planning Scheme are fragmented and located within or next to rural areas on the periphery of the Albany urban area, along the King and Kalgan Rivers and around Princess Royal and Oyster Harbours. These zones are at different stages of development and not required to be connected to reticulated sewerage. Some of the outer areas, such as Millbrook and most of Gull Rock, are also not connected to reticulated water”.

38. The proposal is considered to be consistent with Section 8.3.5 of the ALPS, as it:

- discourages the creation of additional rural town sites for living purposes;
- avoids the development of a Rural Living area on productive agricultural land, other important natural resource areas and areas of high bushfire risk, flooding and environmental sensitivity;
- avoids the development of a Rural Living area on future and potential long-term urban areas, as the land has been identified in the ALPS as suitable for Special Rural purposes; and
- will create lot sizes similar to those adjoining the subject land, which are being used for similar rural residential living purposes, therefore minimising the potential for generating land-use conflicts.

POLICY IMPLICATIONS

39. The most relevant policy applicable to this proposal is the Western Australian Planning Commission’s Statement of Planning Policy 2.5 – Agricultural and Rural Land Use Planning. This Policy contains the following objectives that are relevant to this proposal:

1. *Protect agricultural land resources wherever possible by:*

- discouraging land uses unrelated to agriculture from locating on agricultural land;
- minimising the ad hoc fragmentation of rural land; and

2. *Plan and provide for rural settlement where it can:*

- benefit and support existing communities; and
- have access to appropriate community services and infrastructure.

3. Minimise the potential for land use conflict by:

- providing adequate separation distance between potential conflicting land uses;
- introducing management requirements that protect existing agricultural land uses;
- identify areas that are suitable and capable for intensive agricultural pursuits as agricultural priority areas.

40. In relation to the above objectives staff believe the proposal will minimise the potential for land use conflict through the application of a separation distances and notification of titles designed to ensure the existing Olive Grove operation can continue to operate into the future.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>Approval for the amendment facilitating the creation of six lots may cause potential landuse conflict and associated noise complaints to Council associated with existing Olive Grove operation.</i>	<i>Possible</i>	<i>Medium</i>	<i>High</i>	<i>The application of a separation distance (minimum 60 metres from all building envelopes to Olive Grove), revegetation on eastern boundary of Lot V and notification on titles for all lots.</i>

FINANCIAL IMPLICATIONS

42. The appropriate fee has been paid by the proponent and the proposal has been assessed by staff within existing resources and budget lines.

LEGAL IMPLICATIONS

43. There are no specific legal implications related to this item. If Council initiates the amendment the proposal will be referred to the Environmental Protection Agency to determine whether the proposal needs to be formally assessed.

ALTERNATE OPTIONS

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

- To resolve to initiate the Scheme Amendment without modifications;
- To resolve to initiate the Scheme Amendment with modifications; or
- To resolve not to initiate the Scheme Amendment.

SUMMARY CONCLUSION

- 45. The proposed re-zoning will allow subdivision of the subject land to create six special rural allotments all in excess of 2 hectares which is comparable to existing lot sizes to the south and west of the subject land.
- 46. The proposal adequately addresses fire management, land capability and land use conflict issues.

Consulted References	WA Planning Commission (WAPC) Statements of Planning Policy (SPP's) SPP1 & SPP 3
File Number (Name of Ward)	AMD 308 (West Ward)
Previous References	OCM 15/03/11 – Item 1.3 (SAR 149)