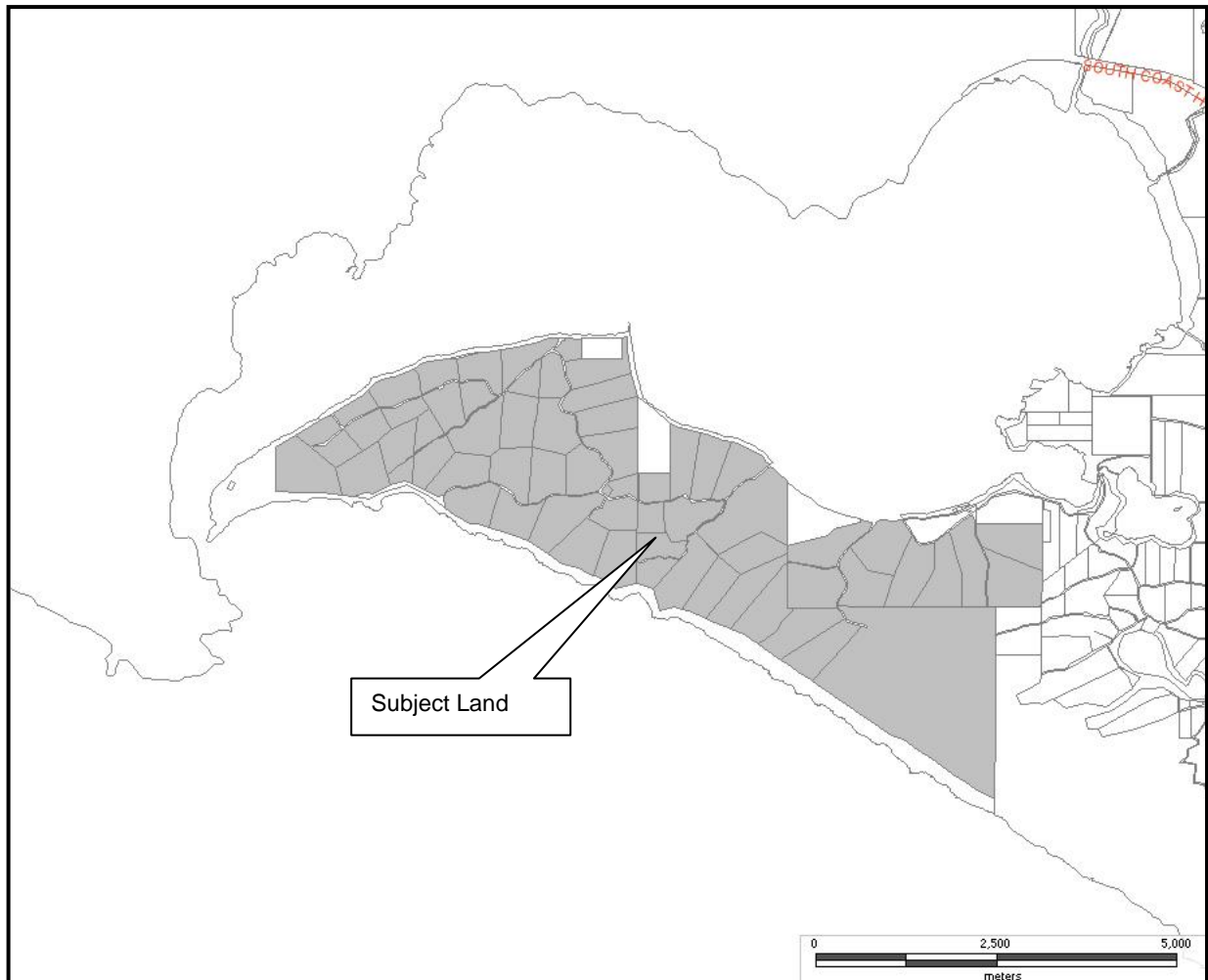


**2.2: INITIATION OF AMENDMENT – LOCATIONS 1609, 1828, 1947, 1990-1992, 2064, 2229 & 3102 EDEN ROAD, YOUNGS SIDING – VERSION 2**

- Land Description** : Locations 1609, 1828, 1947, 1990-1992, 2064, 2229 and 3102 Eden Road, Nullaki
- Proponent** : Ayton Baesjou Planning
- Owner/s** : G J Robertson & S Dzwonnik (main landowners)
- Business Entity Name** : N/A
- Appendices** : AMD 309 – Scheme Amendment document  
: AMD 309 - Site Assessment
- Responsible Officer(s)** : E/Director Planning and Development Services (G Bride)

**Maps and Diagrams:**



**CEO:**

**RESPONSIBLE OFFICER:**

**IN BRIEF**

**ITEM 2.2**

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**ITEM 2.2**

- Consider whether to initiate the proposed Scheme Amendment that will modify the scheme provisions of Conservation Zone Area No. 1 in such a way that caretaker dwellings will be allowed on all lots within the Conservation Zone area 1.

**ITEM 2.2: RESPONSIBLE OFFICER RECOMMENDATION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

**THAT Council determines that initial public consultation, prior to referral to the EPA, and outside of the statutory framework set down by the *Town Planning Regulations 1967* is not required and in pursuance of Section 75 of the *Planning and Development Act 2005* resolves to INITIATE Amendment No. 309 to Town Planning Scheme No. 3, without modification, for the purposes of:**

- i. Deleting existing clause 3.1 dot point two and replacing it with the following;

*Caretaker's Accommodation (maximum floor area 150m<sup>2</sup>) to be located between the main residential house and the front gate, utilising shared access. In assessing applications and determining the location of Caretaker's Accommodation consideration is to be given to the objectives of the zone, clause 8.0 Vegetation and Habitat Protection, clause 11.0 Fire Protection and the aim to provide the greatest security and management benefit to the property and the peninsula.*

- ii. Deleting existing clause 4.1 and replacing it with the following;

*The Development Area refers to the area within which all development on each lot (including sheds, water storage, low fuel areas and effluent disposal areas) must be confined and is not to exceed 1.0ha.*

**BACKGROUND**

1. Amendment No. 309 proposes to amend the special provisions of Conservation Zone Area No. 1 by allowing one caretakers dwelling per lot, instead of the maximum of six for the entire Estate that currently applies, and providing direction on the size and positioning of building envelopes for caretakers dwellings.
2. Council initiated Amendment 247 at its Ordinary Meeting on 19 July 2005 (Item 11.3.6). This amendment proposed to modify the subdivision guide plan and scheme provisions associated with the Nullaki Conservation Zone. One of the provisions made allowance to increase the number of caretakers dwellings throughout the Estate from six to sixty to allow a caretakers dwelling on each lot.
3. The Environmental Protection Authority (EPA) and the Minister for Planning considered the additional caretakers' dwellings to be inconsistent with the objectives of the zone, as they could potentially have detrimental impacts on flora, fauna, surface water and groundwater. Consequently the amendment was rejected and Council was appropriately notified of that decision.

4. Following this decision the proponent prepared Amendment No. 259. This amendment removed the provision allowing for additional caretakers' dwellings, but retained the modifications to the subdivision guide plan and other proposed scheme provisions that formed part of Amendment 247. The EPA supported the modifications and the amendment was finally approved by the Minister for Planning on 17 March 2011 and gazetted on 25 March 2011.
5. The proponent, through Amendment 309, is now seeking to revisit the issue of caretakers accommodation and has identified the following information in support of that position:
- An analysis of existing effluent disposal systems within the Nullaki Estate (specifically Lot 133) has determined that a second effluent disposal system per lot will not detrimentally impact groundwater; and
  - A reduced development area of one hectare for caretakers and main dwellings down from 1.5 hectares to limit the amount of clearing involved.
6. The table below identifies what Council has previously supported as part of Amendment 247 and what is proposed under Amendment 309.

Amendment 247	Amendment 309
<p>3.1 Within Conservation Zone Area No. 1 the following uses shall be permitted subject to the Special Approval of Council:</p> <ul style="list-style-type: none"> <li>- Caretakers Accommodation (max permissible floor area of 150m<sup>2</sup>):- Located subject to application for and granting of Planning Scheme Consent. Caretakers accommodation shall: <ul style="list-style-type: none"> <li>a. be located no more than 300m from the principal dwelling; and</li> <li>b. be located in a situation adjacent to the driveway between the principal dwelling and the public road access so as to provide strategic surveillance of access to/from the lot as well as visual surveillance of the principal dwelling;</li> <li>c. Notwithstanding clauses a &amp; b above, in the case where a lot is bisected by a public roadway, Council may approve caretakers accommodation not located within 300m of the primary dwelling and not located adjacent to the driveway serving the primary dwelling on the basis that it is demonstrated that the caretakers accommodation can provide and maintain visual surveillance over the principal residence. In the instance where caretakers accommodation is located between Nullaki Drive and the Wilson Inlet Foreshore Reserve, any such caretakers accommodation shall be located and designed such that it is not visible from a foreshore node or the Bibulmun Track.</li> </ul> </li> </ul>	<p>3.1 Within Conservation Zone Area No. 1 the following uses shall be permitted subject to the Special Approval of Council:</p> <ul style="list-style-type: none"> <li>- Caretakers Accommodation (maximum floor area 150m<sup>2</sup>) to be located between the main residential house and the front gate, utilising shared access. In assessing applications and determining the location of Caretaker's Accommodation consideration is to be given to the objectives of the zone, clause 8.0 Vegetation and Habitat Protection, clause 11.0 Fire Protection and the aim to provide the greatest security and management benefit to the property and peninsula.</li> </ul> <p>4.1 The Development Area refers to the area which all development on each lot (including sheds, water storage, low fuel areas and effluent disposal areas) must be confined and is not to exceed 1.0ha.</p>

<p><i>4.1 The Development Area refers to the area within which all development on each lot (including sheds and water storage) must be confined and is not to exceed 1.0 hectare on lots where caretakers accommodation is not approved or 1.5 hectares where caretakers accommodation is approved subject to provision 3.1.</i></p>	
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7. The current special provisions applying to Conservation Zone Area No. 1 are:

*“3.0 Land use*

*3.1 Within Conservation Zone Area No. 1 the following uses shall be permitted subject to the Special Approval of Council:*

- *Single House*
- *Caretakers Accommodation (maximum floor area 150m<sup>2</sup>) limited to six within Conservation Zone Area No. 1, located subject to specific application and approval. In assessing applications for caretakers accommodation, Council will aim to provide the greatest security and management benefit and shall have regard to relevant issues including the need to ensure caretakers accommodation is strategically located throughout the Peninsula in order to maximise surveillance and security of house sites, public use nodes and environmentally sensitive areas such as Anvil Beach and the sand blowouts...”*

*4.0 Development Area*

*4.1 The Development Area refers to the area within which all development on each lot (including sheds, water storage, low fuel areas and effluent disposal areas) must be confined and is not to exceed 1.0 hectare on lots where caretakers accommodation is not approved or 1.5 hectares where caretakers accommodation is approved subject to Provision 3.1.*

*4.2 The Development Area may be split to allow the separate development of the main residential house and the caretakers accommodation...”*

8. The objective of Conservation Zone Area No. 1 is to:

- *protect, enhance and rehabilitate the flora, fauna and landscape qualities of the Nullaki Peninsula;*
- *provide for controlled public access to the Peninsula, the Wilson Inlet Foreshore and Anvil Beach; and*
- *Provide for limited wilderness retreat subdivision and development in a manner that is compatible with the conservation values of the Peninsula.*

9. In order to allow the additional information contained within Amendment 309 to be formally considered by the EPA, the amendment must first be initiated by Council.

## DISCUSSION

10. The current allocation of Caretaker's Accommodation is limited to six dwellings under the existing scheme provisions. The six Caretakers dwellings allowed in the provisions have already been allocated/approved on Lots 104, 107, 115, 116, 122 and 134 (as per the attached map).



11. This proposal will allow for caretaker dwellings on each of the sixty lots (subject to the purchaser wishing to take advantage of this option). This could ultimately represent an increase of 54 dwellings within the Nullaki Estate.
12. The proponent has advised that the majority of Nullaki landowners are often away from their properties for extended periods of time. The remote location of the Peninsula and high level of absenteeism raises a security and safety risk to property. This is further exacerbated by boundary fencing being minimal/precluded and a general lack of surveillance.
13. Caretakers that permanently reside in the estate would assist in overcoming these issues and allow for an improved response to a bushfire by turning on sprinkler systems, improving bushfire surveillance and providing an instant volunteer fire-fighting team.
14. The proposed modifications will limit the total clearing allowed on each of the lots to 1ha regardless of whether the lot is developed with a single dwelling only or with a single dwelling (main residential house) and caretakers dwelling. This is a reduction of 0.5 hectares from that identified in the current provisions.

15. Where single dwellings (main residential house) and caretakers dwellings are developed a higher level of construction in accordance with Australian Standard 3959 (Buildings in Bushfire Prone Areas) may be required where hazard separation and building protection zones cannot be achieved because of the one hectare clearing restriction. A detailed fire report is required to be submitted for each dwelling as part of any application for planning scheme consent.
16. The proposed modifications could potentially result in 54 additional effluent disposal systems throughout the area. Given that the lot sizes are predominantly 40ha in area this will result in one effluent disposal system for every 20 hectares. The standard in other “Conservation” Zones is one effluent disposal system for every ten hectares.
17. The proponent has recently engaged an environmental consultant to undertake soil and groundwater testing adjacent to an existing residence at the Nullaki (Lot 133) which is positioned within close proximity to the Wilson Inlet foreshore and has been on the site for 20 years. The testing revealed that effluent from the existing septic system had not leached into the groundwater, with no bacterial contamination being found. The consultant concluded that based on the laboratory results, the size of lots at the Nullaki and that the majority of house sites being on or adjacent to ridge lines (being 50 to 100 metres higher than known ground water tables), that the concerns about effluent disposal systems should not form the basis for an argument to restrict additional caretaker cottages.
18. As per Paragraph 6 above, the proposed provisions are very similar to those previously supported by Council as part of Amendment 247 (OCM 19 July 2005). The differences are:
  - a. The maximum development area is to be reduced from 1.5 hectares to 1 hectare in size for all lots, regardless whether a caretakers dwelling is proposed.
  - b. The requirement for the caretakers dwelling to be within 300m of the main house has been omitted, however all other requirements such as sharing access are retained.
  - c. The amendment documents provide evidence that the additional caretakers dwellings, and associated effluent disposal systems, are not likely to impact on groundwater.
19. The above differences are supported by staff on the basis that:
  - a. The retention of a one hectare clearing limit will ensure no additional clearing to that contemplated under the existing provisions will result. A higher level of construction for dwellings under Australian Standard 3959 may be required.
  - b. The new proposal is more practical given the size of the lots their topography and the capability of using areas on the lots already cleared or sparsely vegetated.

## **GOVERNMENT CONSULTATION**

20. Should Council initiate the Amendment and the EPA decides not to assess the proposal, the Amendment will be referred to all relevant Government agencies for assessment and comment.

## PUBLIC CONSULTATION / ENGAGEMENT

21. Should Council initiate the Amendment and the EPA decides not to assess the proposal, the Amendment will be advertised to **the community and specifically** all affected and surrounding landowners.
22. *The Town Planning Regulations 1967* identify the process local governments must follow in assessing scheme amendment applications, and prescribe that the local government is to publicly advertise a scheme amendment for a 42 day period after it decides to initiate the amendment **and once the EPA** have determined that the amendment is not required to be formally assessed.
23. Accordingly under legislation the City of Albany has no requirement to consult with or advise the community of this matter before Council initially considers the amendment and until the EPA have undertaken their assessment.
24. The City reviewed its *Planning Application Guidelines* at its April 2011 OCM which included additional public consultation measures for **development applications** above and beyond statutory requirements for public consultation.
25. Similar to this approach, Council has the ability to introduce additional, earlier public consultation for scheme amendment proposals, particularly those that are likely to be of significant interest to surrounding landowners and the wider community. A review of all public consultation measures will be undertaken in the new-year.
26. Council could determine to not refer the matter to the EPA until the City has undertaken some initial public consultation to determine the level of community support for the proposal.
27. Under legislation should the EPA find that the amendment does not require a formal assessment, the surrounding community and all relevant government agencies will be consulted. The proposal will then be brought before Council to allow for the consideration of any submissions received through the advertising process.

## STATUTORY IMPLICATIONS

28. All Scheme Amendments undergo a statutory process in accordance with the *Planning and Development Act 2005* and *Town Planning Regulations 1967*.
29. Council's resolution under Section 75 of the *Planning and Development Act 2005* is required to amend the Scheme.
30. An Amendment to a Town Planning Scheme adopted by resolution of a Local Government must then be referred to the EPA for assessment.
31. 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.



32. 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**

33. Council's decision on the Scheme Amendment should be consistent with the objectives of the ALPS as the principal land use planning strategy for the City.
34. The Albany Local Planning Strategy (ALPS) identifies this area as an “*environmental protection area*”; the key element being to protect biodiversity, natural character and resources and to reduce the environmental impacts from land use and development.
35. Section 8.3.5 – *Rural Living* sets the following Strategic Objective:

*“The Conservation Areas in the ALPS are in the Big Grove, Torbay Hill and Nullaki localities with many along major tourist routes. This classification is a reflection of the visual importance of land often next to a national park, ocean, inlet, harbour or groundwater reserves. A major issue is fire risk ranging from high to extreme in these localities. Minimisation of the development footprint is very important to retain the amenity and sustainability of these areas, so as a general rule, additional subdivision of these areas will not be supported.”*

36. The proposal is considered to be consistent with the above objectives on the basis that the development areas will not result in additional clearing and the additional dwellings contemplated are not likely to impact on groundwater.

### **POLICY IMPLICATIONS**

37. There are no policy implications related to this item.



**RISK IDENTIFICATION & MITIGATION**

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

<b>Risk</b>	<b>Likelihood</b>	<b>Consequence</b>	<b>Risk Analysis</b>	<b>Mitigation</b>
<i>The proposal could result in exposing more people to existing fire risk.</i>	<i>Possible</i>	<i>Extreme</i>	<i>Extreme</i>	<i>Ensure all new dwellings are constructed to Australian Standard 3959 with sprinkler systems installed.</i>
<i>The proposal could result in political risk given the EPA has previously considered similar provisions and advised that they could not support them.</i>	<i>Possible</i>	<i>Minor</i>	<i>Medium</i>	<i>Initiating the amendment allows the EPA to formally consider the new provisions and information to determine whether such information addresses their previous concerns on groundwater, flora and fauna.</i>
<i>Community concerns, particularly from outside of the Nullaki Estate about the impact of additional dwellings on environmental values.</i>	<i>Possible</i>	<i>Medium</i>	<i>High</i>	<i>Consider concerns as part of formal advertising process, post advice from the EPA, or undertake prelim informal consultation pre referral to EPA.</i>

**FINANCIAL IMPLICATIONS**

39. The appropriate planning fee has been paid by the proponent. The proposal has been assessed by staff using in-house resources.
40. Increased public consultation processes, incorporating two rounds of consultation, would incur additional costs in advertising and staff time and may delay the progress of the amendment.

**LEGAL IMPLICATIONS**

41. Section 75 of the *Planning Development Act 2005* allows Council to pass a resolution to amend its Town Planning Scheme.
42. Regulation 13(1)(b) of the *Town Planning Regulations 1967* allows Council to pass a resolution that it does not wish to proceed with an amendment to its Town Planning Scheme prior to the advertising of the amendment.

**ALTERNATE OPTIONS**

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

- To resolve to initiate the Scheme Amendment without modifications as recommended by staff;
- To resolve to initiate the Scheme Amendment with modifications; or
- To resolve not to initiate the Scheme Amendment.

**SUMMARY CONCLUSION**

44. The proposal is consistent with Council's previous resolution of 19 July 2005 in seeking to allow all landowners within the Nullaki Estate the ability to have a caretakers dwelling.

45. In order to address the previous concerns of the EPA, the proponent has undertaken groundwater monitoring and has proposed to restrict the development area to 1 hectare per lot, so that no additional clearing is proposed.

<b>Consulted References</b>	WA Planning Commission (WAPC) Statements of Planning Policy (SPP's) SPP1 & SPP 3
<b>File Number (Name of Ward)</b>	AMD 309 (West Ward)
<b>Previous References</b>	OCM 21/12/04 - Item 11.3.2 OCM 19/07/05 - Item 11.3.6 OCM 19/12/06 - Item 11.3.4 and 11.1.3 OCM 18/09/07 – Item 11.3.5 OCM 19/02/08 – Item 11.3.4