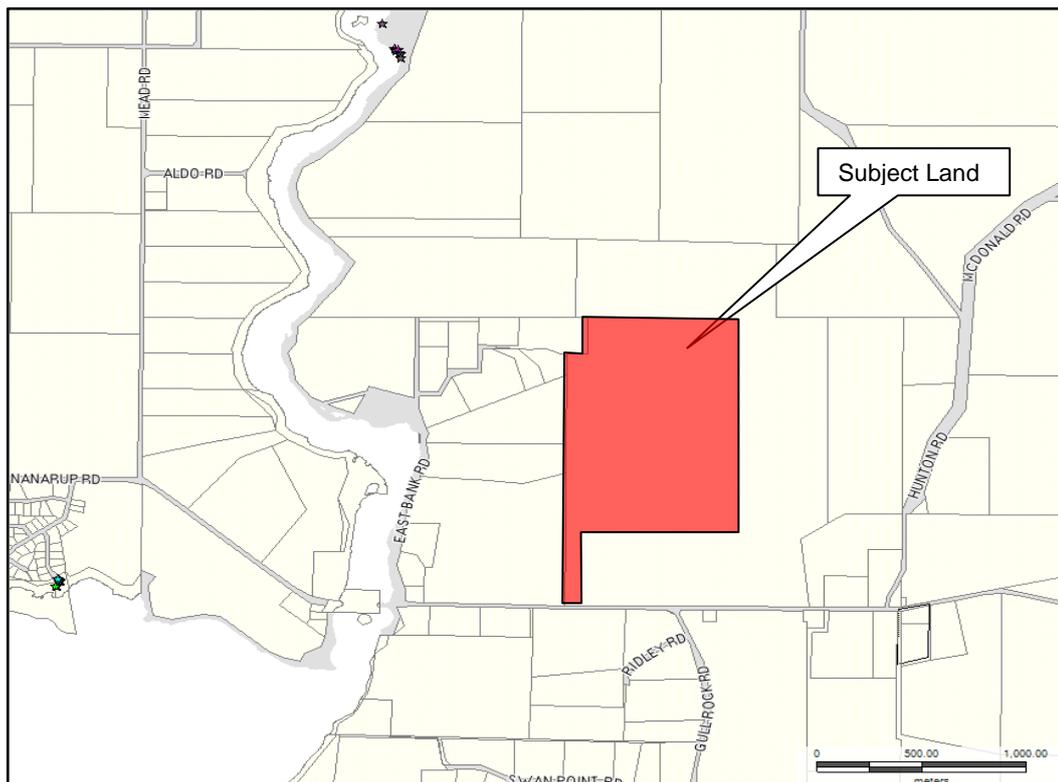


**2.3: INITIATION OF AMENDMENT – PT LOT 50 NANARUP ROAD, KALGAN – VERSION 2**

- Land Description** : Portion of Lot 50 Nanarup Road, Kalgan
- Proponent** : Ayton Baesjou Planning
- Owner** : Erujin Pty Ltd
- Business Entity Name** : Erujin Pty Ltd
- Directors** : Melva Mary Armstrong, Robert Frederick Armstrong and Eva Pascoe
- Attachment(s)** : Subdivision Guide Plan – Plan Only  
: Land Capability Map  
: Visual Impact Assessment
- Appendices** : AMD 303 - Scheme Amendment document
- Councillor Workstation** : Land Capability and Geotechnical Assessment  
: Flora and Vegetation Survey  
: Fire Management Plan  
: Copy of OCM 19/01/10 (SAR145)
- Responsible Officer(s)** : E/Director of Planning and Development Services (G Bride)

**Maps and Diagrams:**



**CEO:**

**RESPONSIBLE OFFICER:**

**IN BRIEF**

- Consider whether to initiate the proposed Scheme Amendment to rezone a portion of Lot 50 Nanarup Road, Kalgan from the 'Rural' zone to the 'Special Residential' zone.

**ITEM 2.3: 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. 303 to Town Planning Scheme No.3 for the purposes of rezoning portion of Lot 50 Nanarup Road, Lower Kalgan from the Rural zone to the Special Residential zone.**

**BACKGROUND**

1. Amendment 303 proposes to amend Town Planning Scheme (TPS) No. 3 by rezoning a portion of Lot 50 Nanarup Road, Kalgan, commonly known as 'Candyup', from the 'Rural' zone to the 'Special Residential' zone.
2. Lot 50 covers an area of 237ha and lies to the north of Nanarup Road, approximately 870m east of the Kalgan River. The land immediately adjacent to Nanarup Road is relatively flat and low-lying, with a creek system running across it from east to west, towards the Kalgan River. Towards the centre of the lot, the land begins to slope substantially upward to the north. It then levels out by the north-east corner, before the slope breaks and gently falls away toward the northern boundary. Although much of the land has been cleared, significant stands of remnant native vegetation extend across the eastern, and particularly, northern portions of the lot.
3. The original homestead stands at the centre of Lot 50, with a collection of outbuildings to the west of it. There are also a small number of dams scattered across the subject land. Access to the dwelling is via a track leading from Nanarup Road, roughly through the centre of the lot, with a dog-leg to the west following the natural contours of the land.
4. The adjoining land to the north, west and east of the subject lot is zoned 'Rural', while the land to the south, on the opposite side of Nanarup Road, forms part of Special Rural Area No. 6 and Special Rural Area No. 9.
5. Council has previously considered a number of proposals on the subject land with varying outcomes. The first of these was a Scheme Amendment Request that was presented to the Ordinary Meeting of Council on 16 September 2003 to rezone the subject land and neighbouring Lot 51 from the 'Rural' zone to 'Special Residential' and 'Special Site – Tourism'. This was supported by Council, subject to a number of environmental and servicing concerns being satisfactorily addressed in a future Scheme Amendment proposal, including:
  - Soil sampling being undertaken across the site;
  - The preparation of a fire management plan;

- View shed mapping to be undertaken;
  - Lot sizes should vary across the site in response to opportunities and constraints mapping;
  - Remnant vegetation bring protected;
  - The designation of a tourist site for future tourism development;
  - How servicing of the site is to be achieved; and
  - A minimum lot size of 3000m<sup>2</sup> with an average of 1 hectare.
6. A Scheme Amendment to rezone Lots 50 and 51 from 'Rural' to 'Special Residential', 'Special Use' and the 'Parks and Recreation' reserve was subsequently submitted to Council and initiated at the Ordinary Meeting held on 21 December 2004, subject to modifications (Amendment No. 233). This proposal identified approximately 145 lots over the same portion of land subject to this amendment.
7. The amendment documents were forwarded to the Environmental Protection Authority (EPA) for consent to advertise the Scheme Amendment. However, the EPA advised that they considered the Amendment to be incapable of being made environmentally acceptable.
8. On receipt of the advice from the EPA, Council at its Ordinary Meeting of 21 February 2006 resolved:
- “to take no immediate action to advance an amendment for Lots 50 and 51 Nanarup Road, Kalgan, and that a comprehensive briefing be held to review the information provided by the Department of Environment and the Department of Planning on the amendment and that a period of six months be provided to allow time for the community and developers to prepare an action plan for the development of the Lower Kalgan locality that meets the environmental, social and economic needs of all members of the Lower Kalgan community”.*
9. In 2006, when the draft of the Albany Local Planning Strategy (ALPS) was placed on public display, the landowner lodged a detailed submission requesting the land be shown in ALPS as “Future Urban”. This request was supported by Council. The expansion of urban services to the locality, particularly reticulated sewer, addressed many of the issues previously raised by the EPA in their earlier assessment of development potential of the land.
10. Despite the above, the proponent submitted a Scheme Amendment Request in November 2009, requesting Council rezone Lots 50 and 51 from the 'Rural' zone to 'Special Residential'. The proponent advised that due to a lost opportunity to share the cost of reticulated sewer with the Great Southern Grammar School, the cost of servicing the land was no longer viable. The proponent also identified that the Department of Planning had recently supported a request to rezone Lot 422 Affleck Road (to the south of the subject land on the opposite side of Nanarup Road) to the Special Rural zone, despite this land being within the same 'Future Urban' cell identified within the draft ALPS.
11. At its Ordinary Meeting held on 19 January 2010, Council resolved to entertain the submission of a formal Scheme Amendment to rezone Lots 50 and 51 Nanarup Road from the 'Rural' zone to the 'Special Residential' zone on the basis that:

*“On viewing the land, it is difficult to support full urban development of the subject land given the exposure of the site and ‘Special Residential’ development will result in less building activity and be less visually intrusive”.*

12. While this Scheme Amendment Request was under consideration, the ‘final’ version of the draft ALPS was on public advertising, with the redesignation of these lots from ‘Rural Residential’ to ‘Future Urban – Priority 5’ as one of the five substantial modifications under consideration. At its Ordinary Meeting on 15 June 2010, Council resolved to modify the draft ALPS to change the designation of the land north of Nanarup Road from ‘Future Urban – Priority 5’ to ‘Special Residential’.
13. This modification reflected Council’s earlier resolution of 19 January 2010 and was subsequently endorsed by the Western Australian Planning Commission (WAPC) when the draft ALPS was finally approved on 26 August 2010.

## **DISCUSSION**

14. The proposal seeks to rezone a 107ha portion of the subject lot at this stage, avoiding the bulk of the remnant vegetation in the north and east and the creek system to the south, which were the main areas of concern identified by the EPA in its 2005 assessment. The development of this portion of Lot 50 will yield approximately 215 new lots which equates to an average lot size of 5000m<sup>2</sup>.
15. The subject land has been identified as being suitable for ‘Special Residential’ development in the ALPS and is consistent with the Strategic Objectives and Aims set out in section 8.3.5 – *Rural Living* therein.
16. The Subdivision Guide Plan (SGP) has been informed by:
  - A Flora and Vegetation Assessment prepared in March 2009;
  - A Land Capability and Geotechnical Assessment Study prepared in July 2010; and
  - A Fire Hazard and Visual Impact Assessment prepared in November 2010.
17. Based on the submitted land capability and geotechnical report, the SGP identifies five development precincts with common soil and topographical conditions. An overall minimum lot size of 2000m<sup>2</sup> has been identified, with a minimum lot size contemplated for each of the precincts. The majority of the lots will be within the vicinity of 3000m<sup>2</sup> in size, however the SGP acknowledges that on steep areas, areas affected by remnant vegetation or areas containing swales and associated wet areas, larger lots of around 5000m<sup>2</sup>, but up to 1 hectare, will be required.
18. The SGP contained within the Amendment document is more of an opportunities and constraints plan, whereby the final alignment of lots will be determined at the subdivision stage. An average lot size of 5000m<sup>2</sup> over the site will be required to be met, meaning that the maximum lot yield will be equal to or less than 215 lots.

19. The proposed SGP identifies a significant increase in the density of development to that of the original SGP that was supported by Council in 2004 (an increase from 145 to 215 lots) however since 2004 the ALPS has been adopted, which encourages the efficient use of rural living areas based on land capability to maximise development potential. The land capability report accompanying the amendment identifies that the density proposed can be accommodated on the site.
20. The other significant changes between the 2004 SGP and the current version submitted are:
  - The 20 hectare tourist site has been omitted with the proponent claiming such a site would not be viable. The proponent has however identified a tea rooms/restaurant site in the north east portion of the site which commands the best views of the harbour and surrounding rural landscape; and
  - The SGP represents as an opportunities and constraints plan rather than a more detailed plan identifying lot boundaries (this form of SGP is acceptable to staff).
21. Each of the five precincts proposed have differing land capability and planning issues associated with them and are discussed below.

#### Precinct A

22. Precinct A includes the major area of significant remnant vegetation on the subject land as identified in the vegetation assessment, and effectively means future development within this precinct will be confined to the outer edges between this vegetation and the road network. The SGP identifies lot sizes ranging from 2000m<sup>2</sup> to 3000m<sup>2</sup> and according to the submitted land capability report this Precinct has a *'very high capability with few physical limitations'*.
23. The identification of the significant vegetation as public open space is considered appropriate; the alternative approach would be to include this vegetation within the rear boundaries of more than 20 allotments. This would not be good practice as numerous landowners would be responsible for the maintenance of the vegetation resulting in:
  - the removal of the connectivity between areas of vegetation;
  - introducing a cost impost on certain lots;
  - increasing the fire risk through non-compliance; and
  - adding considerably to the requirement to police the outcome.
24. The SGP identifies a hazard separation zone and building protection zone surrounding the vegetated POS areas to ensure future dwellings are adequately separated from this fire threat consistent with the submitted Fire Management Plan.

#### Precinct B

25. The north-eastern quadrant of Precinct B has been identified through the geotechnical assessment as having the poorest land capability on the subject land (category 5), and represents a defined drainage line through the property. The SGP has identified this area as public open space.

26. A significant portion of Precinct B is also prone to temporary water logging in winter months which is identified on the proposed SGP. The land capability report identifies that this area could be made developable by installing cut-off drains and road drainage that intersects the down slope surface water flows and through additional site works such as filling. Such works would enable these lots to be usable throughout the entire year, and ensure that an appropriate clearance for effluent disposal systems is achieved (500mm separation is required). No detailed engineering plans to document this solution have been submitted however the amendment document has identified the requirement for a detailed drainage management and site mediation plan (via Clause 4.4 of the special provisions) at the subdivision stage.
27. The proponent has identified a drainage reserve running parallel to the north-south road which will cater for drainage flows from the higher slopes and will have the effect of restricting vehicular access and accompanying crossovers and culverts. Access to these lots will be provided from the cul-de-sac road to the west, allowing building envelopes to be positioned outside of the area prone to water logging, thereby reducing the drainage and fill works needed within this area.
28. The Department of Health's Country Sewerage Policy does state the following in relation to groundwater separation requirements for effluent disposal systems:

***“Minimum Site Requirements***

*Irrespective of the type of on-site wastewater disposal system proposed, there should be at least 0.5 metres separation between the **natural** ground surface and the highest known groundwater level. Correctly engineered drainage solutions may be used to increase the clearance between the natural surface and the highest known groundwater level, subject to such drainage works being environmentally acceptable.”*

29. Council has two distinctive options in relation to this issue being to either:
- a) Support the proponent's position that the waterlogged land within this precinct can be made developable through cut-off drains and/or filling with details to be provided at the subdivision stage; or
  - b) Require that all building envelopes should be positioned outside of the areas prone to water logging. This would result in a reduced lot yield and/or a redesign in the south-eastern portion of this Precinct to ensure lots can accommodate reasonably sized building envelopes outside of these areas.

Precinct C

30. Precinct C contains the steepest land with some areas having a gradient between 1 in 3 (33%) and 1 in 4 (25%). The land capability consultant has identified a low to medium risk for landslip within this Precinct advising that whilst the conditions and slopes are similar to those in other hilled areas of the south west of WA, including Albany, they are not considered to be prohibitive but rather design parameters that provide stability for dwellings would be required. This area has been demarcated on the SGP as 'Steep Soils'. The

proponent has identified within the proposed special provisions (Clause 6.1) that design guidelines will be required to be prepared at the subdivision stage over Precinct C and D to guide development over this land to guide housing design and manage the risk of landslip.

31. Immediately south of the northern most east-west road, which sits on a ridge, a relatively flat area would be available for the majority of house sites in this Precinct before the land becomes excessively steep. The positioning of buildings in these locations will assist in ensuring the built form is not out of character with the surrounding special residential development.
32. The SGP identifies lot sizes ranging from 4000m<sup>2</sup> to 5000m<sup>2</sup> which will produce lots with a frontage of at least 50 metres. The proposed lot sizes and lot frontages will promote reasonable separation distances for privacy and amenity.

#### Precinct D

33. Precinct D has a high capability for development and is cleared of vegetation but represents the most visually exposed portion of the site. The proponent has prepared a visual impact assessment which has included the taking of photographs at various public vantage points taken from Bayonet Head, Lower King and Emu Point.
34. The photographic assessment does identify the cleared areas involved which is predominantly the area associated with Precinct D, however this area is framed by images existing vegetation on the northern portion of Lot 50 (to the north of the portion subject to this amendment) which will ensure that any future development would not silhouette against the skyline. The proponent has advocated the use of appropriate colours and building materials on future buildings within this Precinct, as well as the planting of street trees, to ensure the development blends in with the rural landscape.
35. The SGP identifies lot sizes ranging from 2000m<sup>2</sup> to 3000m<sup>2</sup> and according to the submitted land capability report this Precinct has a *'high capability with minor physical limitations'*. Design guidelines will be prepared to control the visual impact of the development, and the development within this Precinct will be 'back-dropped' by retained remnant vegetation.

#### Precinct E

36. Precinct E has a high capacity for development with lot sizes ranging from 2000m<sup>2</sup> to 6000m<sup>2</sup>. The varied range is to cater for those allotments affected by the significant stand of vegetation in the central portion of this Precinct.

#### Precinct F

37. The land within this precinct does not form part of this proposal and merely indicates the road connections and context with this current proposal. Precinct F includes the areas subject to significant constraints such as the major creek line to the south and heavily vegetated areas to the north and east. This land will remain under the rural rezoning.

38. Overall the land capability study has identified that the proposed subdivision layout is sympathetic to the landform and environmental values and provides for the management of identified constraints. Soil testing and assessment has determined that waste water disposal can comply with the Government Country Sewerage policy.
39. The proposed layout is consistent with good practice stormwater management and road design principles. The creation of public open space along the valley at the centre of the subject land, in combination with drainage reserves and the careful positioning of roads should ensure that runoff from roads, development and the overland flow from higher slopes can be suitably accommodated during high intensity stormwater events; a more detailed urban water management plan to inform drainage design will be required at the subdivision stage for the City's consideration.
40. The fire management plan has incorporated the requirements of the Planning for Bushfire Protection Guidelines (2010) identifying strategic fire breaks (fire access tracks), building protection and hazard reduction zones.
41. The visual management plan has concluded that despite the prominent nature of the site, the stands of vegetation help to minimise the potential impact of the proposed development. The plan recommends that through the protection of this vegetation wherever possible, the provision of additional street trees to frame the roads, and the careful consideration of building materials and colours, the visual impact of the development would be limited.

#### **GOVERNMENT CONSULTATION**

42. 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 comment.

#### **PUBLIC CONSULTATION / ENGAGEMENT**

43. 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.
44. *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.
45. 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.
46. 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.

47. 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.
48. 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.
49. 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**

50. All Scheme Amendments undergo a statutory process in accordance with the *Planning and Development Act 2005* and *Town Planning Regulations 1967*.
51. Council's resolution under Section 75 of the *Planning and Development Act 2005* is required to amend the Scheme.
52. An Amendment to a Town Planning Scheme adopted by resolution of a Local Government must then be referred to the EPA for assessment.
53. 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.
54. 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**

55. 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.
56. Section 8.3.5 – *Rural Living* sets the following Strategic Objectives:

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

*"Ensure that future rural living areas are planned and developed in an efficient and co-ordinated manner by being located either adjacent to Albany as designated on the ALPS maps, or within existing rural townsites in accordance with Table 5 along with adequate services and community infrastructure."*

*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 not connected to reticulated water".*

57. 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 Residential purposes; and
- will create lot sizes suitable for rural residential living purposes, similar to those to the south, although smaller, therefore minimising the potential for generating land-use conflicts.

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

**Key Focus Area:**

Sustainability and Development

**Community Priority**

Single Town Planning Scheme

**Proposed Strategies**

- Develop strategies to retain prime agricultural land.
- Flexibility for development in key tourism areas.

**POLICY IMPLICATIONS**

58. Should the amendment be ultimately adopted by the Minister for Planning, the proponent will need to develop a set of design guidelines (to be adopted as a Local Planning Policy) as a condition of subdivision approval.

**RISK IDENTIFICATION & MITIGATION**

59. 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 development on the higher slopes has the potential to be visually prominent.</i>	<i>Possible</i>	<i>Medium</i>	<i>High</i>	<i>Use of design guidelines to control building height, building colours and materials and promote street tree planting.</i>
<i>The development on higher slopes may be prone to land slip risk.</i>	<i>Unlikely</i>	<i>High</i>	<i>High</i>	<i>Use of design guidelines to control building height, type of construction and footing designs / requirements.</i>
<i>The development on the lower portions of the site are prone to winter water logging in winter.</i>	<i>Possible</i>	<i>Medium</i>	<i>High</i>	<i>Requirement for a detailed drainage management and site mediation plan at subdivision stage.</i>
<i>Fire risk for dwellings adjacent to significant stands of vegetation.</i>	<i>Unlikely</i>	<i>High</i>	<i>High</i>	<i>At subdivision and development stage ensure requirements of the fire management plan are implemented (hazard separation and building protection zones).</i>
<i>Community concerns about the impact of development.</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**

60. The appropriate application fees have been paid and staff have assessed the proposal within existing budget lines.
61. 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**

62. Section 75 of the *Planning Development Act 2005* allows Council to pass a resolution to amend its Town Planning Scheme.
63. 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**

64. 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 to not initiate the Scheme Amendment.

**SUMMARY CONCLUSION**

65. The proposal seeks to rezone a portion of Lot 50 Nanarup Road, Kalgan from the ‘Rural’ zone to the ‘Special Residential’ zone. The subject land has been identified as being suitable for ‘Special Residential’ development in the ALPS and is considered to be consistent with the Strategic Objectives and Aims set out in section 8.3.5 – *Rural Living* therein.

<b>Consulted References</b>	Albany Local Planning Strategy
<b>File Number (Name of Ward)</b>	AMD 303 (Kalgan Ward)
<b>Previous Reference</b>	OCM 16/09/03 – Item 11.3.5 OCM 21/12/04 – Item 11.3.4 OCM 21/02/06 – Item 11.3.3 OCM 19/01/10 – Item 13.2.1 (SAR145)