

2.4: FINAL APPROVAL OF AMENDMENT – LOT 114 FRENCHMAN BAY ROAD

- Land Description** : Lot 114 Frenchman Bay Road, Robinson
Proponent : Aurora Environmental
Owner/s : Mr J Drinan & Ms M Price
Business Entity Name : Aurora Environmental
Directors : M Price
Attachment(s) : Schedule of submissions
: Subdivision Guide Plan
Councillor Workstation : Copy of OCM 19/09/06 – Item 11.3.2 (SAR 098)
: Copy of OCM 20/04/10 – Item 13.2.2 (SAR 098)
: Amendment Document (AMD266)
: Copy of Local Water Management Strategy/Urban Water Management Plan
: Copy of submissions
Responsible Officer(s) : E/Director Planning and Development Services (G Bride)

Maps and Diagrams:



IN BRIEF

- Consider the submissions received from the public consultation period and determine whether to grant final approval to the proposed Scheme Amendment to rezone Lot 114 Frenchman Bay Road, Robinson from the 'Rural' and 'Residential Development' zones to the 'Special Rural' zone.

CEO:

RESPONSIBLE OFFICER:

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

THAT Council:

- 1) In pursuance of section 75 of the *Planning and Development Act 2005* and *Regulation 17(2) of the Town Planning Regulations 1967* **ADOPTS WITH MODIFICATIONS** Amendment No. 266 to Town Planning Scheme No. 3 by:
 - i) Rezoning Lot 114 Frenchman Bay Road, Robinson from the 'Rural' and 'Residential Development' zone to the 'Special Rural' zone;
 - ii) Inserting Special Rural Area No. 43 into Schedule 1 – Special Rural Zones – Provisions Relating to Specified Areas; and
 - iii) Amending the Scheme Maps accordingly.
- 2) **NOTES** the staff recommendations within the attached Schedule of Submissions and **ENDORSES** those recommendations.

BACKGROUND

1. Amendment 266 proposes to amend Town Planning Scheme No. 3 (TPS3) by rezoning Lot 114 Frenchman Bay Road, Robinson from the 'Rural' and 'Residential Development' zones to the 'Special Rural' zone.
2. The lot covers an area of 5.78ha and lies to the north-west of Frenchman Bay Road, approximately 4km from the centre of Albany. The land is relatively flat and has been cleared, with the only significant vegetation being two large shelter belts that have been planted across the lot on a roughly east-west axis. A large shed stands to the eastern side of the lot, at the end of the access leg that runs east to Frenchman Bay Road. The land is currently used for the agistment of horses.
3. The land to the north, west and south of the subject lot is zoned 'Rural', while the land to the east and a small portion on the eastern fringe of the subject lot itself is zoned 'Residential Development'. The area has been identified as being suitable for 'Rural Residential' development in the adopted Albany Local Planning Strategy (ALPS).
4. A Scheme Amendment Request (SAR 098) was reported to the Ordinary Council Meeting held on 17 November 2009. Council resolved:

"THAT, subject, but not limited to, the following matters being addressed to the satisfaction of Council:

- i) a land capability assessment;*
- ii) a conceptual structure plan taking into consideration visual management; and*
- iii) an identification of servicing needs and infrastructure requirements to accommodate future subdivision,*

Council advises that it is prepared to entertain the submission of a formal application for rezoning Lot 114 Frenchman Bay Road from the split zoning ('Rural' and 'Residential Development') to a fully serviced (sewered) 'Residential Development' zone."

5. While the matters outlined above have all been broadly addressed in the amending document, the strategic direction set out in the Albany Local Planning Strategy (ALPS) and the outcome of a Land Capability Assessment undertaken by independent consultants has led to a change in the proposed zoning from 'Residential Development' to 'Special Rural'.
6. The amendment was subsequently initiated by Council on 20 April 2010.

DISCUSSION

7. The Land Capability Assessment has highlighted that due to the flat, low-lying nature of the land, it is prone to water logging following heavy rains. The proposal to rezone to 'Special Rural' allows the nomination of building envelopes, which in this instance can be located in an area of the lot that is not subject to water logging.
8. City staff and the Water Corporation both had concerns over the proposal's likely impact on the rural drainage network. This was also the most common theme raised by adjoining landowners in their submissions.
9. The landowner subsequently provided a Local Water Management Strategy and Urban Water Management Plan to address the concerns over the potential impact on the rural drainage network and adjoining lots. Although the Water Corporation maintained its objection initially, the landowner provided further information which addressed the outstanding issues. The development will now be able to cope with a one in one hundred year rain event and should alleviate the existing problem of inundation.
10. The other outstanding issue of an inadequate vegetated buffer between the subject land and the adjoining market garden can be addressed by modifications to the amendment in accordance with Western Australian Planning Commission Planning Bulletin 63. These will require the buffer to be increased to 20m and notifications to be placed on the titles of new lots created within 300m of the market garden, advising that they may be subject to nuisance impacts of odour, noise, dust and spray drift.
11. Overall, the proposal is considered to be broadly consistent with the strategic aims and objectives of the ALPS and Statement of Planning Policy 1 and 3. The proposal is also consistent will also be consistent with the requirements of Planning Bulletin 63.

GOVERNMENT CONSULTATION

12. The Amendment documents were initially referred to the Environmental Protection Authority (EPA) as required by the *Planning and Development Act 2005* for environmental assessment. The EPA advised that the amendment has been assessed and does not require further formal assessment. However, additional advice and recommendations were provided, as outlined in the attached Schedule of Submissions.

13. The Amendment was also referred to WA Gas Networks (WestNet Energy), Telstra, Water Corporation, Western Power, Department of Agriculture and Food WA, Department of Health, Department of Water, Department of Environment and Conservation, and Department of Education for assessment and comment. Responses were received from WA Gas Networks (WestNet Energy), Telstra, Water Corporation, Western Power, Department of Agriculture and Food WA, Department of Health, Department of Water, Department of Environment and Conservation, and Department of Education and are summarised in the attached Schedule of Submissions.

PUBLIC CONSULTATION / ENGAGEMENT

14. The Amendment was advertised in accordance with the requirements of the *Town Planning Regulations 1967* from 22 July 2010 to 2 September 2010 by placement of a sign on-site, direct referral to affected and adjoining/nearby landowners and advertisement in the local newspaper.
15. A total of fifteen written submissions were received as attached. The submissions received are summarised and discussed with a recommendation for each submission in the attached Schedule of Submissions.

STATUTORY IMPLICATIONS

16. All scheme amendments undergo a statutory process in accordance with the *Planning and Development Act 2005* and *Town Planning Regulations 1967*. Council's decision on the final approval of the amendment requires endorsement by the WAPC and the approval of the Minister for Planning.

STRATEGIC IMPLICATIONS

17. 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.
18. The area has been identified as being suitable for 'Rural Residential' development in the Albany Local Planning Strategy (ALPS). In addition to this designation, the proposal should be assessed against the specific strategic objectives and aims set out in Sections 8.3.1 and 8.3.5 of the ALPS text, which set the strategic settlement direction and objectives for rural living areas.
19. 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 town sites 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.”*

20. Section 8.3.5 – *Rural Living* sets the following Strategic Objective:

“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 not connected to reticulated water”.

21. The proposal is considered to be consistent with the various Strategic Objectives and aims set out in the ALPS, particularly those contained within Section 8.3.5 – *Rural Living*.
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.

POLICY IMPLICATIONS

22. Council is required to have regard to any Western Australian Planning Commission Statements of Planning Policy (SPP) that apply to the scheme amendment. Any amendment to the Town Planning Scheme will be assessed by the Western Australian Planning Commission to ensure consistency with the following State and Regional Policies.

23. **SPP 1 – State Planning Framework**

The Policy establishes state-wide key land use planning principles and informs the Commission, Local Government and others involved in the planning process in relation to sustainable land use and development across the State. It is designed to ensure there is coordination and integrated decision-making across all spheres of planning.

The proposal is consistent with the Lower Great Southern Strategy and the Albany Local Planning Strategy and therefore complies with the principles of SPP1.

24. **SPP 3 – Urban Growth and Settlement**

SPP 3 sets out the key principles and planning considerations that apply to planning for urban growth and expansion of settlements in the State.

The key policy objectives in SPP 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 identifiable sense of place for each community.*
- *To coordinate new development with the efficient, economic and timely provision of infrastructure and services.”*

The Amendment proposal is considered to be broadly consistent with the key policy measures identified in SPP 3.

25. Western Australian Planning Commission *Planning Bulletin 63 – Policy for Dealing with Potential Conflicts Between Residential Subdivision and Market Gardens in East Waneroo* also provides relevant guidance on this proposal and should be taken into account.
26. The objectives of the policy, in relation to market gardens on land zoned 'Rural' are to:
- 1) *“minimise the effects of residential development on market gardens which are practiced in accordance with the relevant legislation, codes of practice and associated industry-specific guidelines;*
 - 2) *minimise the potential for complaints about market gardens from residential areas;*
 - 3) *provide residents with acceptable standards of amenity in residential areas that are located in proximity to market gardens.”*
27. For residential subdivision in the vicinity of market gardens on land zoned Rural in the Metropolitan Region Scheme, the WAPC will accept:
- *“a separation distance of 300m which can be reduced to a protected and maintained vegetated buffer strip of a minimum width of 20m, together with adequate additional land for access for maintenance and firebreaks, and specially designed fencing of the type specified below (Note: the design of the vegetated buffer should be based on the Queensland guidelines (p28) and contain a mix of local Western Australian evergreen species with different growth habits and should include species with long, thin and rough foliage); and*
 - *prospective purchasers within 300m of the boundary of the market garden to be advised of the existence of the market garden on the contract of sale; and*
 - *memorials to be included on titles of all residential lots within 300m of the boundary of the market garden advising of the location and impacts of the market garden on amenity;*
or
 - *alternative measures which it can be demonstrated meet the objectives of the policy to the satisfaction of the WAPC.”*
28. At present, the Subdivision Guide Plan details a 10m wide vegetated buffer area separating the proposed development from the adjacent market garden. However, modifications to the proposal will be required to ensure that a 20m buffer is put in place and that notifications are placed on the titles of the new lots created, advising that they are within 300m of a market garden and may be subject to nuisance impacts of odour, noise, dust and spray drift.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>The proposal may generate a land use conflict (through noise and spray drift) due to an existing market garden immediately south of the subject land.</i>	<i>Possible</i>	<i>Medium</i>	<i>High</i>	<i>Imposition of an increase vegetated buffer of 20 metres and placement of notifications on titles to advise prospective purchasers of the operations of the market garden.</i>

FINANCIAL IMPLICATIONS

30. The appropriate planning fee has been received and staff have processed the application within existing budget lines.

31. Should Council support the Scheme Amendment, the property owners would be responsible for lodging an application for subdivision and extending services to the subject land at their own cost.

LEGAL IMPLICATIONS

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

33. Regulation 17(2)(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 after the advertising of a scheme amendment. Council would need to advise the Western Australian Planning Commission why it does not wish to proceed with the amendment.

ALTERNATE OPTIONS

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

- To adopt the Scheme Amendment without modifications;
- To adopt the Scheme Amendment with modifications as per staff's recommendation; or
- To resolve not to adopt the Scheme Amendment and advise the WAPC of the reasons for not doing so.

SUMMARY CONCLUSION

35. The subject land is identified on Map 9B of the ALPS for 'Rural Residential' development and the amendment seeks to rezone the land to the 'Special Rural' zone. The proposal is considered broadly consistent with the strategic aims and objectives of the ALPS, SPPs 1 and 3 and will meet the requirements of Planning Bulletin 63 through the implementation of minor modifications.

Consulted References	WA Planning Commission (WAPC) Statements of Planning Policy (SPP's) SPP1 & SPP 3 & Planning Bulletin 63.
File Number (Name of Ward)	AMD266 (Vancouver Ward)
Previous References	OCM 17/11/09 – Item 11.3.2 (SAR 098) OCM 20/04/10 – Item 13.2.2 (AMD266)