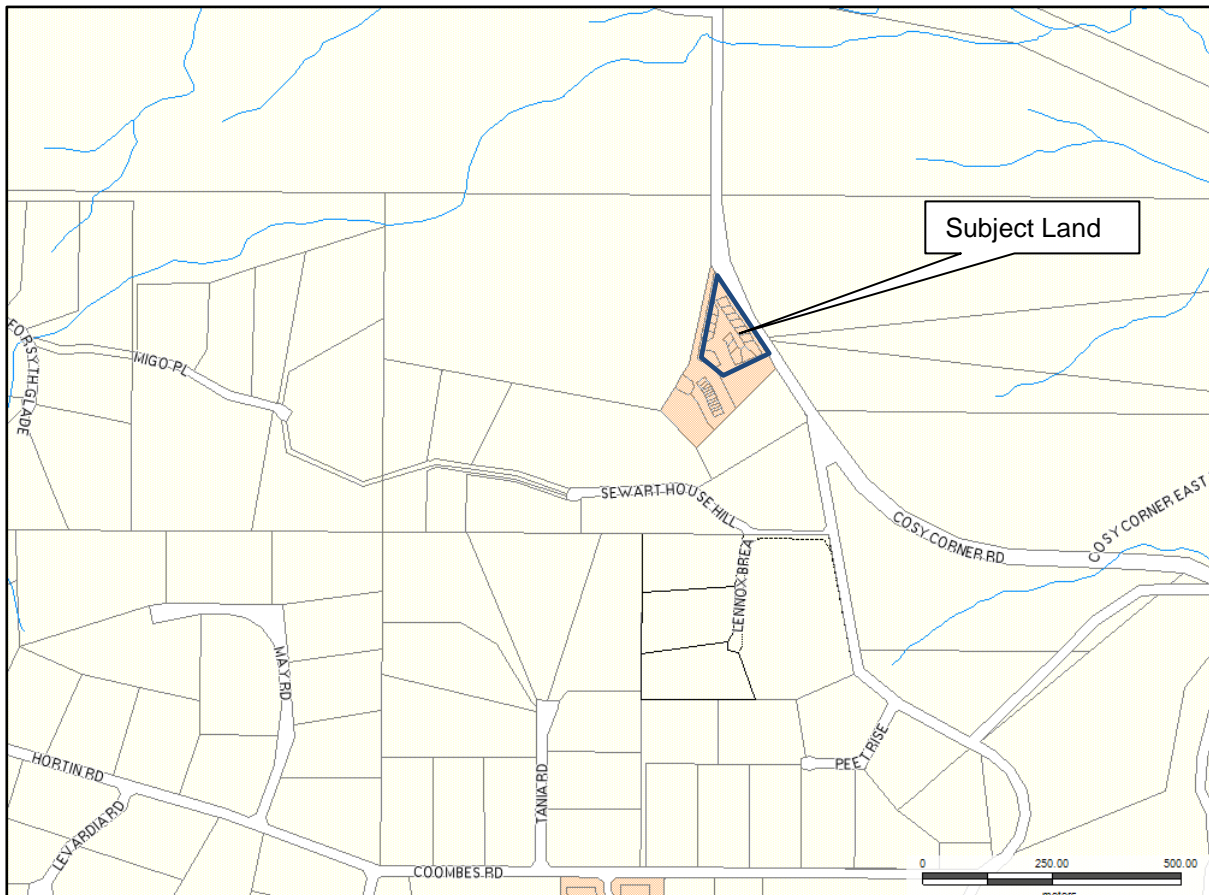


**2.1: INITIATION OF AMENDMENT – LOTS 2 AND 13 ON STRATA PLAN  
37046 COSY CORNER ROAD, KRONKUP**

<b>Land Description</b>	: (Lots 2 and 13 on strata plan 37046) Unit 2 and 13, 256 Cosy Corner Road, Kronkup
<b>Proponent</b>	: Harley Global Pty Ltd
<b>Owner/s</b>	: Geoscience Consulting Pty Ltd
<b>Business Entity Name</b>	: Geoscience Consulting Pty Ltd
<b>Director/s</b>	: Stephen Leonard Lipple
<b>Councillor Workstation</b>	: Amendment Document (AMD311)
<b>Responsible Officer(s)</b>	: Acting Executive Director Planning and Development Services (S Lenton)

**Maps and Diagrams:**



**IN BRIEF**

- Determine whether to initiate the proposed Scheme Amendment to modify the existing scheme provisions in a way that it will permit a group dwelling and the permanent residential use of Lots 2 and 13 within the existing short term accommodation development.
- It is recommended that the amendment not be initiated, as the proposal is contrary to the intent of the area according to ALPS.

<b>CEO:</b>	<b>RESPONSIBLE OFFICER:</b>
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**ITEM 2.1: RESPONSIBLE OFFICER RECOMMENDATION  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**THAT Council in pursuance of section 75 of the *Planning and Development Act 2005* and *Regulation 13(1)(b)* of the *Town Planning Regulations 1967* resolves NOT TO INITIATE Amendment No. 311 to Town Planning Scheme No. 3, as the proposal is not in accordance with the Councils endorsed Albany Local Planning Strategy and also does not represent orderly and proper planning.**

**BACKGROUND**

1. Amendment 311 proposes to amend Town Planning Scheme (TPS) No. 3 by modifying the Special Use Zone Area No. 8 provisions in Schedule 3 of TPS 3 to allow for the permanent residential use of units 2 and 13 (Lots 2 and 13) 256 Cosy Corner Road, Kronkup.
2. Lots 2 and 13 on Strata Plan 37046 at number 256 Cosy Corner Road, Kronkup, Torbay form part of the 'Cosy Corner Beach Cottages' site (formerly known as Cosy Corner Eco-Village).
3. The Cosy Corner Beach Cottages site is currently zoned 'Special Use' and included as Special Use Zone Area No. 8 in Schedule 3 of TPS 3.
4. Special Use Zone Area No. 8 was set up for tourism uses and allows for the following additional uses:

*Chalet Accommodation (Max 15), Caretakers/Managers Dwelling, Private Recreation, Shop (Max. Retail NLA of 150m<sup>2</sup>) and other incidental or non defined activities considered appropriate by Council which are consistent with the objective of the zone.*

5. Special Use Zone Area No. 8 special conditions includes the following restriction:

*"Chalet length of stay shall be limited to 3 months in any 12 month period, and such restriction shall be noted on the titles of the chalet strata lots."*

**DISCUSSION**

6. The site currently contains the 'Cosy Corner Beach Cottages' accommodation and associated uses. The site consists of a total of eighteen strata lots which include a caretaker/manager's residence, a shop, chalets and recreational facilities.
7. The Site is currently serviced by electricity, bottled gas, telephone and septic systems in the common property areas. The amending document incorrectly refers to the development as being provided with services that includes sewerage (as opposed to septic systems). Reticulated sewer or water is not available.
8. Strata Lots 2 and 13 both contain existing chalets that are currently only permitted to allow the occupancy by a specific party for a maximum of three months in any 12 month period.
9. The site is adjacent to another holiday accommodation development known as the Torbay SeaView Apartments to the south, and rural land to the west (currently subject of a rezoning application from "Rural" to "Special Rural" AMD 308) and a Parks and Recreation Reserve to the east (opposite side of Cosy Corner Road).

10. The size of the 15 chalet lots range between 324m<sup>2</sup> and 546m<sup>2</sup> with the average lot size of 382m<sup>2</sup>. Lot 2 is 427 m<sup>2</sup> and Lot 3 is 546m<sup>2</sup>. The caretakers dwelling is located on a lot size of 993m<sup>2</sup> and the shop is located on a lot size of 1198m<sup>2</sup> the common property area is 5715m<sup>2</sup>.
11. The amendment is proposing to enable two of the 15 lots to be used as a group dwelling instead of chalet and thus also enable the permanent residential use of the dwelling instead of short stay accommodation (tourism use).
12. According to the applicant the Cosy Corner Beach Cottages site has been in operation for approximately ten years and although the majority of the site is developed, the site is not functioning to its full potential due to lack of demand.
13. The applicant is of the opinion that the proposal to modify the uses permitted in Special Use Zone Area No. 8 is consistent with the State Government and City of Albany requirements for mixed tourism and residential developments and:
  - a. *that the proposal will benefit the existing site by allowing passive surveillance and security as well as promoting the use and support of the shop and other facilities on site.*
  - b. *The proposal will help the Cosy Corner Beach Cottages site generally to be better used and facilitate the completion of the development (i.e. the construction of the three vacant strata lots).*
  - c. *The proposed amendment will ensure the main use of the site remains as tourism with the residential component limited to 13% of the site which is well below the State and Local Government planning requirements.*
14. Albany Local Planning Strategy - The most pertinent sections of the ALPS are as follows;
  - a) "Section 8.3.5 – Rural Living  
  
*...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 strategy's objectives for Rural Living areas are to:
    - *Provide for compact growth of selected existing rural townsites in accordance with Table 5, based on land capability and available services and facilities...*"
15. Table 5 within the ALPS identifies the proposed function of Torbay Hill as; Rural residential and Tourist accommodation.
16. The strategy does not allow for additional growth of the Torbay Hill Townsite but allows for permanent residential via infill only and keeping the prevailing rural residential lot sizes.
17. ALPS does not envisage a change in the character of the Townsite and proposes the continuation of the tourism use and special rural (rural residential) use.

18. The proposal is likely to be a catalyst and precedent for changing other the short term accommodation uses to permanent residential uses. This will change the character of the Townsite, contrary to the intended rural-residential and tourism use and function of the area.
19. The proposal will lead to residential use of the area that will affect the amenity of the development and is likely to cause land use conflict that will be detrimental to the intended tourism use of the site.
20. Adequate provision has already been made for surveillance by allowing for a caretakers dwelling. It is also not clear how the permanent use of two units will increase the sustainability of the shop or facilitate the development of the other three units.
21. The way in which the site has been developed does not provide for the adequate separation between tourism and permanent residential uses and land use conflict will therefore be unavoidable.
22. The amendment is furthermore considered a spot rezoning, speculative and does not appear to have any strategic planning merit.
23. The proposed change will set an unwanted precedent for other units/lots within the development and the adjoining tourist site that would also like to change to permanent residential.
24. The amendment is therefore not recommended for initiation

#### **GOVERNMENT CONSULTATION**

25. 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**

26. Should Council initiate the Amendment and the Environmental Protection Authority (EPA) decides not to assess the proposal, the Amendment will be advertised to the public and individual notice will be provided to all affected and surrounding landowners.

#### **STATUTORY IMPLICATIONS**

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

32. 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.*)

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. Albany Local Planning Strategy - The most pertinent sections of the ALPS are as follows;

b) "Section 6.2.4 Rural Town sites

*...The planning and development of rural townsites need to be based on appropriate development options to maintain their function and the availability of infrastructure and community facilities...*

*Actions: Identify in the LPS1 the settlements of Redmond, Manypeaks, Youngs Siding, Elleker, Torbay Hill, Kalgan, Wellstead, South Stirling and Cheyne Beach as existing rural focal points and settlement centres with the potential for additional development in accordance with Table 5. Structure planning is required for each townsite (CoA)."*

c) 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.*

d) "Section 8.3.5 – *Rural Living*

*...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 strategy’s objectives for Rural Living areas are to:

- *Provide for compact growth of selected existing rural townsites in accordance with Table 5, based on land capability and available services and facilities...”*

35. Table 5 within the ALPS identifies the proposed function of Torbay Hill as; Rural residential and tourist accommodation.
36. The strategy does not allow for additional growth of the Torbay Hill town site but allows for Permanent residential via infill only and keeping the prevailing rural residential lot sizes.
37. ALPS does not envisage a change in the character of the Townsite and proposes the continuation of the tourism use and special rural use (rural residential).
38. The proposal is considered to be inconsistent consistent with the intent of the area as identified the ALPS.
39. Tourism Accommodation Strategy - The subject site is included in the Cosy Corner Precinct of the Tourism Accommodation Planning Strategy. The following Strategic Action recommended in the strategy: “Cosy Corner East and the **Torbay Locality area are a “Suitable Tourism Site / Locality”**, however Cosy Corner East has little potential to be expanded or redeveloped as a caravan park. The site retains value to the local community as a bush camp and the leasing of the reserve should proceed in accordance with the management plan. It should be retained as a Crown Reserve to preclude the land from being removed from longer term community ownership and potential conversion back to recreational usage. Development of larger tourism based projects in the locality should be encouraged but the form and scale of the development needs to be carefully planned and community support obtained through the rezoning process. No further action is recommended to zone land, or recognize this locality in the Community Planning Scheme.”

## POLICY IMPLICATIONS

40. The State Government’s position on the provision of tourism facilities is reported in the Tourism Planning Taskforce Report (January 2006) and further refined in the Western Australian Planning Commission’s Planning Bulletin 83 dated July 2011. This bulletin sets out the policy position of the Western Australian Planning Commission (WAPC) to guide decision making by the WAPC and local government for subdivision, development and scheme amendment proposals for tourism purposes.
41. The Tourism Planning Taskforce (the Taskforce) was established in September 2002, to address the growing practice of using land zoned for tourism purposes for residential development and the effect of strata schemes on tourism developments. The primary concerns were related to the ongoing operation of strata titled tourist development; the potential conflict between short stay tourists and permanent residents; and the increasing pressure to redevelop tourism sites for other purposes such as residential.

42. This Planning Bulletin addresses the matters identified in the review while highlighting the key considerations when planning for tourism.
43. This Report does not intend to respond in detail to all of the issues contained in the Taskforce's report. The main concerns flowing from the report relate to the loss of, or the permanent residential occupation/conversion of, tourism infrastructure and to maintaining the low yield tourism assets for the next generation of tourists.
44. The Planning Bulletin Policy objectives include:
- Highlighting the importance of strategic planning for tourism.
  - Recognise local and regional variations in tourism demand and development pressures; and their impacts on the viability of tourism development, in assessing and determining tourism proposals.
  - Provide guidance to local government in planning for tourism development to be undertaken as part of the local planning strategy process.
  - Provide guidance on the development of non tourism uses on tourism sites.
  - Provide for flexibility in the design and assessment of tourism and mixed use development
45. The planning bulletin also includes the following pertinent points for consideration;

#### Interim Policy

Where a local government does not have an endorsed local planning strategy or local tourism planning strategy consistent with the policy framework outlined in this bulletin, and a scheme amendment or development application is proposed for an existing tourist zoned site to support residential or a non-tourism use, the amendment report or development proposal should address the matters specified in this planning bulletin, the Local Planning Policy Manual 2010, and any other relevant State and local government policies.

If this site is located within an existing and or potential tourism precinct, the amendment report/development proposal should, where appropriate, take into account the issues and objectives for the precinct and the importance of tourism in the locality.

#### Residential development within tourism sites

Proposals for permanent residential use or other non-tourism uses on tourism sites to facilitate the development of tourist accommodation should be considered on a case by case basis. Determination of the suitability and extent of the residential development should be based on an assessment of the proposal against the following principles, the sites tourism value and other matters considered relevant to a particular site, precinct or location:

- Whether the site has the capacity to be developed for a mix of uses and can also deliver a sustainable tourism outcome that will result in the size, type and quality of tourist accommodation appropriate to the site and location.
- The suitability and sustainability of residential development within the broader planning and settlement context of the site.
- Assessment of the existing tourist accommodation facilities in the area which takes into consideration the capacity for new tourism development and the projected demand/range of tourist accommodation in a precinct, locality or region
- In all cases, the scale of residential development should complement the tourism component and priority given to locating the tourism component on those areas of the site providing the highest tourism amenity, (eg. the beachfront).
- Residential units are designed to encourage integration into the management/letting pool for the tourism facility.
- Innovative master planning of the site to integrate residential and tourism components of the site to both enhance the tourism component of the site and to ameliorate potential conflicts that may arise; such as noise, between tourist accommodation and permanent residents.
- Provision of appropriate lot sizes that will attract the desired tourism operator and type of tourism accommodation required.
- The intensity and compatibility of land use and development including consideration of lot sizes, building heights, scale and character of development and the potential impacts on the surrounding area.
- Compliance with the relevant State and local government policies and guidelines.
- The location of all units on the site shall provide for ease of tourism access through the site.
- The tourism component of a mixed use development shall incorporate those facilities normally associated with tourist accommodation developments such as recreation, entertainment facilities and integrated management facilities.
- Appropriate staging so that the tourism development and provision of facilities occurs concurrently to the residential component of a mixed use development.
- Where strata titling is proposed, appropriate management arrangements in a management statement which ensures that all units will be let out for tourism purposes, preferably by an on-site letting agent (manager).



- Conversion of an existing tourism development to facilitate a residential component should not be supported without a resultant tourism benefit; such as an increase in the number, or significant upgrade of, tourism units and facilities.

46. It is considered that the proposal is not in line with the objectives of this policy and the non-tourism development (i.e. residential) on the site will compromise the tourism values of the site; and it is anticipated that there will be a land use/planning conflict between the residential use and the adjacent and nearby land uses and zones including the tourism activity on the balance of the lot.
47. The Conversion of the tourism development to facilitate a residential component will not result in an increase of the tourism benefit; such as an increase in the number, or significant upgrade of, tourism units and facilities. According to the policy this proposal should therefore not be supported.

### RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>The proposal will result in Land use conflict.</i>	<i>Possible</i>	<i>Moderate</i>	<i>Medium</i>	<i>Land use conflict between Residential use and Tourism use is unavoidable given the way that the site was developed.  Some of the risk can be mitigated through Strata rules. This may however not always be effective and practical the best mitigation will be not to support the proposal in accordance with officer's recommendation.</i>
<i>The proposal will set a precedent and will lead to a loss of tourism facilities in the area.</i>	<i>Almost certain</i>	<i>Moderate</i>	<i>High</i>	<i>The only way to mitigate this risk will be not to support the proposal in accordance with officers recommendation.</i>

### FINANCIAL IMPLICATIONS

49. The prescribed planning fee of \$2500 has been received and staff has processed the application within existing budget lines.

**LEGAL IMPLICATIONS**

50. Regulation 13(1) of the *Town Planning Regulations 1967* (as amended), requires that Council pass a resolution either:
- a) To proceed with the Scheme, adopt the proposed Scheme in accordance with the Act; or
  - b) Not to proceed with the Scheme, notify the Commission in writing of that resolution.
51. Council must therefore pass a clear resolution in accordance with regulation 13 (1) and if it resolves not to proceed with the Scheme Amendment under regulation 13(1)(b), it is required to notify the Commission in writing of that resolution.

**ALTERNATE OPTIONS**

52. Council has the following options in relation to this item, which are to resolve:
- To initiate the Scheme Amendment without modifications;
  - To initiate the Scheme Amendment with modifications; or
  - Not to initiate the Scheme Amendment.
53. A resolution to initiate an Amendment to a Town Planning Scheme adopted by resolution of a Local Government must be referred to the EPA for assessment.
54. 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.

**SUMMARY CONCLUSION**

55. The amendment seeks to modify the existing scheme provisions in a way that it will permit a group dwelling and the permanent residential use of Lots 2 and 13 within the existing short term accommodation development.
56. The City officers do not recommend the amendment for initiation because they are of the opinion that the proposal is likely to;
- i. Be a catalyst and create a precedent for changing other short term accommodation uses to permanent residential uses. This will change the character of the town site, contrary to the intended rural-residential and tourism use and function of the area.
  - ii. The proposal will lead to residential use of the area that will affect the amenity of the development and is likely to cause land use conflict that will be detrimental to the intended tourism use of the site.
  - iii. The amendment is considered a spot rezoning, speculative and does not appear to have any strategic planning merit.
  - iv. The way in which the site has been developed does not provide for the adequate separation between tourism and permanent residential uses land uses advocated in the WAPC Planning Bulletin No. 83.

<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 311 (West Ward)