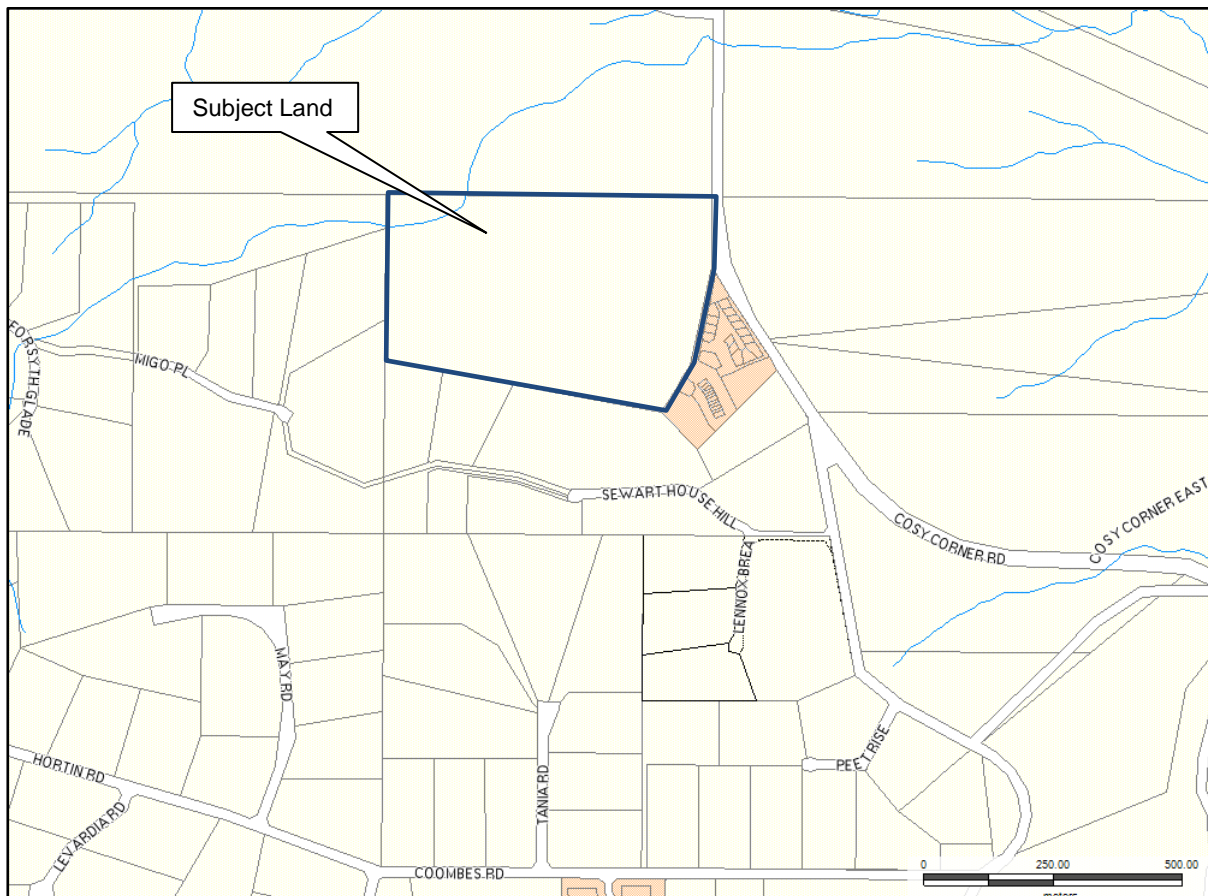


**2.5: FINAL APPROVAL OF AMENDMENT – LOT 4 COSY CORNER ROAD, KRONKUP**

<b>Land Description</b>	: Lot 4 Cosy Corner Road, Kronkup
<b>Proponent</b>	: Craig Pursey Planning
<b>Owner/s</b>	: A H and P R London
<b>Business Entity Name</b>	: Trading as 'Torbay Olives'
<b>Attachment(s)</b>	: Schedule of submissions
<b>Councillor Workstation</b>	: Copy of OCM 15/03/11 – Item 1.3 (SAR149) : Copy of OCM 11/10/11 – Item 2.4 : Amendment document (AMD308) : Copy of submissions
<b>Responsible Officer(s)</b>	: Executive Director – Planning and Development Services (D Putland)

**Maps and Diagrams:**



**IN BRIEF**

- Final approval is sought for the proposed scheme amendment to rezone Lot 4 Cosy Corner Road, Kronkup from the 'Rural' zone to the 'Special Rural' zone.

<b>CEO:</b>	<b>RESPONSIBLE OFFICER:</b>
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**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. 308 to Town Planning Scheme No. 3 for the purposes of:
  - i. Rezoning Lot 4 Cosy Corner Road, Kronkup from the Rural zone to Special Rural zone and amending the Scheme Maps accordingly;
  - ii. Including Lot 4 Cosy Corner Road, Kronkup in Special Rural Area No. 30, Schedule 1 – Special Rural Zones – Provisions Relating to Specified Areas;
  - iii. Amending Schedule I – Special Rural Zones – Provisions Relating to Specified Areas, Special Rural Area No. 30 by amending provisions 4.1 and, 10.4;
  - iv. Amending Schedule I – Special Rural Zones – Provisions Relating to Specified Areas,
  - v. Special Rural Area No. 30 by deleting provision 5.1 (a); and
  - vi. Inserting provision 3.3 (d) and 11.0 (d) in Schedule I – Special Rural Zones – Provisions Relating to Specified Areas Schedule, Rural Area No. 30.
- 2) **NOTES** the staff recommendations within the attached Schedule of Submissions and **ENDORSES** those recommendations.

**BACKGROUND**

1. Amendment No. 308 proposes to amend Town Planning Scheme (TPS) No. 3 by rezoning Lot 4 Cosy Corner Road, Kronkup from the 'Rural' zone to the 'Special Rural' zone.
2. The amendment also proposes to include the following additional uses on proposed Lot T:
  - a. Maximum 3 chalets;
  - b. Craft Studio
  - c. Cafe /Restaurant or Country Kitchen
  - d. Horticulture
  - e. Garden Centre
  - f. Sales outlet for Olive Grove
3. A Scheme Amendment Request (SAR 149) for Lot 4 Cosy Corner Road was considered at the Ordinary Council Meeting on 15 March 2011 and it was resolved:

*"THAT Council:*

1. **ADVISE** the proponent that it is **PREPARED** to consider a formal scheme amendment to rezone Lot 4 Cosy Corner Road, Kronkup from the 'Rural' zone to 'Special Rural' zone, subject to the following matters being addressed and/or included as part of that formal amendment application:
  - A. An Agricultural Impact Statement (as per SPP 2.5, Appendix 3) being prepared by a suitably qualified professional to determine the impact of the proposal on existing

*agricultural operations and whether sufficient separation distances between building envelopes and existing rural activities, inclusive of the Olive Grove, are appropriate.*

- B. A land capability report being prepared to determine that the proposed building envelopes are capable of supporting the development envisaged.*
- C. A Fire Management Plan being prepared to determine whether there is sufficient separation between the proposed building envelopes and the vegetated areas.*

2. *AGREES to update the Albany Local Planning Strategy (ALPS), by amending Figure 19 (Torbay Hill Town Site) to include Lot 4 Cosy Corner Road, Kronkup within the boundary of the Torbay Hill Town Site when the ALPS is next reviewed in mid to late 2011.”*

- 4. To address the matters outlined above, the proponent provided a land capability report and a fire management plan as part of the amending document. An agricultural impact statement consistent with Part 2 (Land Use Conflict) of Appendix 3 within SPP2.5 was also provided, which addresses:
  - 5. i) impact of the proposal on existing agricultural operations (grazing to the north and the olive grove)
  - 6. ii) the necessary separation distances between building envelopes and existing rural activities.
- 7. t the Ordinary Council Meeting on 11 October 2011 it was resolved:

*“THAT, subject to the following modifications being made;*

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

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

- 1) *Rezoning Lot 4 Cosy Corner Road, Kronkup from the Rural zone to Special Rural zone and amending the Scheme Maps accordingly;*

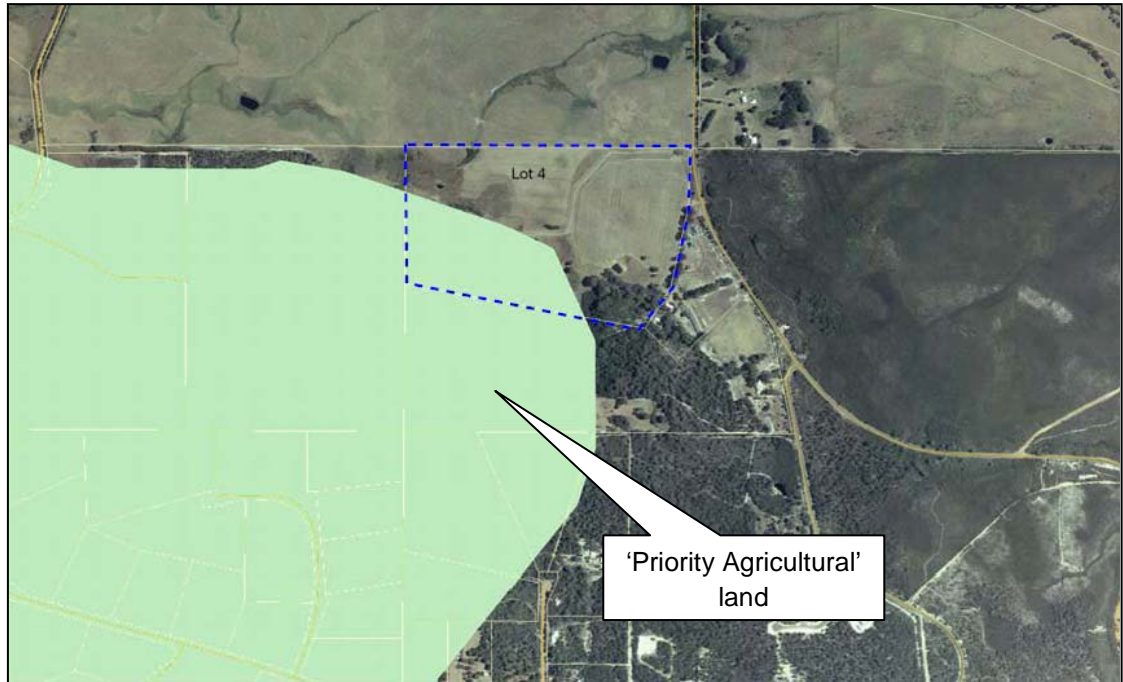
- 2) *Including Lot 4 Cosy Corner Road, Kronkup in Special Rural Area No. 30, Schedule 1 – Special Rural Zones – Provisions Relating to Specified Areas;*
  - 3) *Amending Schedule 1 – Special Rural Zones – Provisions Relating to Specified Areas, Special Rural Area No. 30 by amending provisions 4.1 and, 10.4;*
  - 4) *Amending Schedule 1 – Special Rural Zones – Provisions Relating to Specified Areas, Special Rural Area No. 30 by deleting provision 5.1 (a); and*
  - 5) *Inserting provision 3.3 (d) and 11.0 (d) in Schedule 1 – Special Rural Zones – Provisions Relating to Specified Areas Schedule, Rural Area No. 30.”*
8. Council is required to consider the submissions received from the public consultation period and determine whether to grant final approval to the proposed scheme amendment.

## **DISCUSSION**

9. The subject lot covers an area of approximately 22.73ha and lies to the west of Cosy Corner Road on the north-eastern side of Torbay Hill, approximately 25km east of Albany town centre.
10. The land slopes down from a high point of 76m AHD in the south-west corner of the lot to a low point of 30m AHD in the north-eastern corner before levelling out into the Kronkup flats to the north of the lot.
11. The northern half of the lot has been cleared for pasture, while significant stands of vegetation remain to the south-western and south-eastern corners of the lot, including some Karri forest, with parkland cleared vegetation scattered between them. An olive grove has been cultivated toward the north-eastern corner of the lot, a large dam lies just south of the centre of the lot and a smaller dam lies adjacent to the southern boundary in the dampland area around the natural drainage line that traverses the lot at its north-western corner.
12. A single dwelling and associated outbuildings stand approximately 70m west of the large dam.
13. The surrounding land is zoned:
14. i) 'Rural' to the north and used for grazing;
15. ii) 'Special Rural' to the south and west and used for rural residential purposes; and
16. iii) 'Motel' and 'Special Use' to the south-east, where the land uses include the Torbay Motel, chalets, a cafe and a general store.
17. The remaining land to the east, on the opposite side of Cosy Corner Road, is bushland and designated as a 'Parks and Recreation' reserve.
18. The subject land shares similar characteristics with the remainder of the 'Special Rural' zoned land on Torbay Hill and the introduction of additional dwellings would not have a detrimental impact on the amenity of the area.

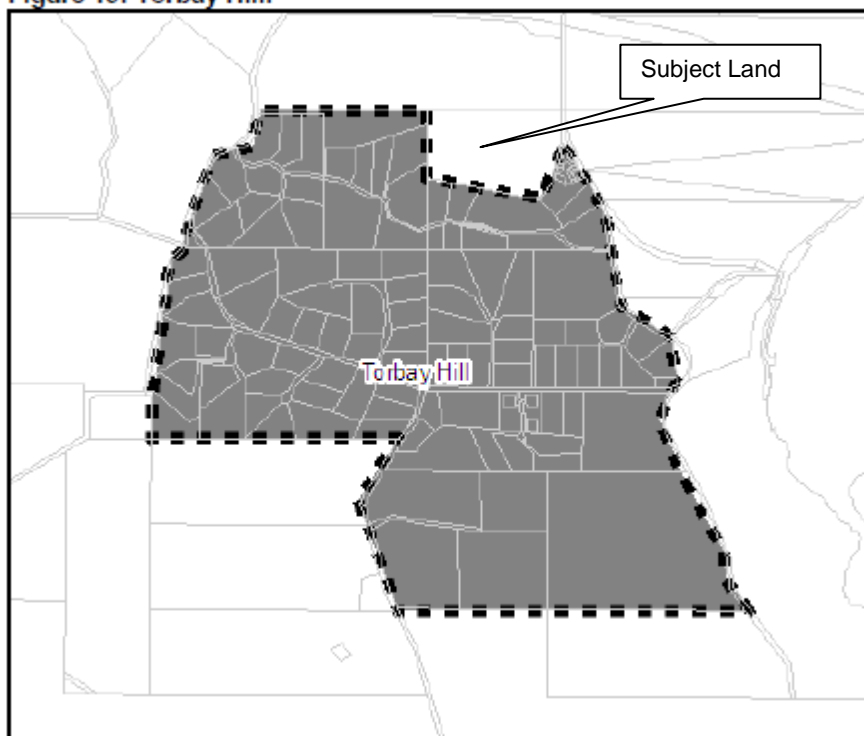
19. The provision of a landscaped strip along the property's northern boundary would serve as a vegetated buffer to the grazing areas to the north and as a visual buffer to Torbay Hill when viewed from Cosy Corner Road.
20. The subject land will be incorporated into the neighbouring 'Special Rural' zone Area No. 30 and a subsidiary Subdivision Guide Plan (SGP) will be applied, using the same terminology and information as the existing SGP for 'Special Rural' zone Area No. 30. The amendment also seeks to modify the existing special provisions for 'Special Rural' zone Area No. 30 in the following manner:
- Clarifying that 'new' intensive agricultural pursuits such as piggeries, and commercial scale horticulture and viticulture are not permitted;
  - Identifying that on Lot A and Lot W on the Subdivision Guide Plan, the City will allow either an alternative amended soil effluent treatment and disposal system within the building envelope, or a system which pumps treated effluent to a disposal area within the lot which satisfies the required setbacks from water courses;
  - Introducing a number of additional uses that may be permitted on Lot T (the lot encompassing the existing olive grove) including: chalets (maximum of three); craft studio; cafe/restaurant; horticulture; garden centre; and sales outlet for olive grove;
  - A requirement for future buildings to be placed on Lot W and X to be constructed to Bushfire Attack Level (BAL) 19 under Australian Standard 3959 – Buildings in Bushfire Prone Areas; and
  - A requirement for Section 70A notifications to be placed on the titles of proposed Lots U, V, W, X and Y, advising future purchasers that they may be affected by the operations associated with the existing farming activities in the area inclusive of the olive grove on Lot T.
21. The proponent has stated that creating a retail outlet for the olive grove, with complimentary activities such as a café and chalets would support the economic viability of the olive grove, the Torbay Hill Rural Village centre and the adjacent holiday accommodation. The provision for additional uses could improve the tourist experience at the olive grove.
22. There is also a small tree nursery on the subject land, which grows endemic species to approximately 1 to 1.5m tall, which are typically used for revegetation works in the locality. The nursery has a separate access to Cosy Corner Road and is complimentary to the organic farming methods employed in the olive grove. This business also brings people to the Torbay Hill Rural Village.
23. The proponent has detailed the operational activities associated with the olive grove and states that the potential for land use conflict is limited, as the operation only involves:
- limited hand spraying (with no associated spray drift);
  - a short annual harvesting period of 10 days (with use of an air compressor and hand rakes);
  - pruning by hand or battery powered sabre saw; and
  - annual application of pest control measures direct to the trees (specifically, the application of white oil, which is an organic pest control measure with no detrimental health effects).

24. A minimum noise separation distance of 60m between the new building envelopes and the olive grove has been specified to mitigate potential noise nuisance and/or spray drift. This distance is recommended for such activities within the *Queensland Department of Natural Resources Planning Guidelines: Separating Agricultural and Residential Land Uses (August 1997)* which is identified in Western Australian Planning Commission Planning Bulletin 63 (*Policy for dealing with potential conflicts between residential subdivision and market gardens in East Waneroo*).
25. Due to the proximity of the olive grove to the Torbay Motel, chalets, cafe and general store, a 10m vegetated buffer along the eastern boundary of Lot T is proposed, in order to achieve a similar effect.
26. It is recommended that an additional vegetated buffer is planted along the northern boundary of Lot U, in order to mitigate against any potential spray drift from the neighbouring dairy farm, which lies to the north of the subject land.
27. A scheme provision requiring Section 70A notifications to be placed on the titles at the time of subdivision to advise future purchasers that they may be affected by the ongoing operation of the olive grove has been included in the proposal. It is recommended that this be expanded to refer to the dairy farm as well.
28. The subject land is within an area that has been identified by the Albany Local Planning Strategy (ALPS) as 'Priority Agricultural' land. Detailed mapping from the Department of Agriculture and Food WA (DAFWA) identified that only the south-west corner of the site was identified as 'Priority Agriculture'.
29. The existing priority agricultural cell in this locality, being to the west and south of the subject land, is situated over existing special rural allotments, which due to their size and zoning do not support intensive agriculture. The proposal would not detrimentally impact existing or future agricultural production in the immediate locality.



30. The subject land is not included in the Torbay Hill town site boundary as prescribed in Figure 19 in the ALPS (see below). Table 5 of the ALPS does not support expansion of the town site.

Figure 19: Torbay Hill.



31. Despite the subject land being excluded from the town site, the proponent states that the inclusion of the subject land within the existing 'Special Rural' zoned area adjacent would be a logical 'rounding off' of this zone.
32. In response to concerns about setting a negative precedent, the proponent states that:

- This subject land shares the same land characteristics as the existing 'Special Rural' development (as it is the last lot on Torbay Hill, before the land flattens out into the Kronkup flats);
  - The land is surrounded by non-rural land uses on three sides;
  - The land is likely to be the last of the smaller lots in the immediate area that is capable of being developed for rural residential purposes;
  - Nearby lots that are not located on the flats are designated as 'Priority Agriculture' and are large enough to be further developed for agricultural purposes; and
  - Cosy Corner Road and Hortin Road form logical boundaries between 'Rural' and 'Special Rural' zoned land to the east and west respectively.
33. The boundaries of the Torbay Hill town site (as identified in Figure 19 above) appear to have been based on the existing special rural areas that were in place, or were in the final stages of a scheme amendment process, when the ALPS was drafted. The subject land, being zoned 'Rural' and identified as partially suitable for 'Priority Agriculture', was excluded.
34. With the exception of the subject land being outside of the town site boundary, the proponent has stated that the proposal meets the following objectives of the ALPS, which pertain to the creation of 'Rural Living' areas:



- The land will not create an ‘additional’ rural townsite;
  - The small portion of the land is affected by the priority agricultural land designation, however the balance of this cell is over existing special rural lots, and therefore the proposal will not detrimentally affect opportunities for priority agriculture. The proposal will also retain the olive grove.
  - The land is not in an area of extreme bushfire risk and is not subject to flooding.
  - The land is beyond the area identified in ALPS as future urban or long term residential.
35. Table 5 within the ALPS does not provide for any further expansion of the Torbay Hill town site, and sets a maximum yield of one hundred lots. The number of existing and proposed lots within the town site boundary, as defined by Figure 19 of the ALPS, is approximately 102 (including the final yield that would be provided by the relevant subdivision guide plans for the existing ‘Special Rural’ zoned areas). The proposal would add six additional lots beyond that defined by ALPS.
36. Whilst the land is not included within the boundaries of the Torbay Hill town site, the proposal meets all other relevant objectives identified within the ALPS.

#### **GOVERNMENT CONSULTATION**

37. The amendment was referred to WA Gas Networks, Telstra, Water Corporation, Western Power, Department of Agriculture and Food WA, Department of Water, and Department of Environment and Conservation for assessment and comment. Responses were received from WA Gas Networks Telstra, Water Corporation, Western Power, Department of Agriculture and Food WA, Department of Water, and Department of Environment and Conservation. These submissions are summarised, discussed and accompanied by appropriate recommendations in the attached Schedule of Submissions.

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

38. The Amendment was advertised in accordance with the requirements of the *Town Planning Regulations 1967* from 9 February 2012 to 22 March 2012 by placement of a sign on-site, direct referral to affected and adjoining/nearby landowners and advertisement in the local newspaper.

Two submissions were received from adjoining landowners/members of the public. These submissions raised the following issues:

- Lot A, which is referenced in the proposed scheme provisions, does not appear on the subdivision guide plan;
- It is unclear what a ‘Conservation of Flora and Fauna Area’ is;
- The wildlife corridor does not appear to go anywhere;

- The building envelope on proposed Lot U is too close to the northern boundary abutting the dairy farm;
- There is no vegetated buffer between the building envelope on Lot U and the dairy farm;
- There are no scheme provisions to protect the ongoing operations of the dairy farm in the event that a land use conflict arises with the proposed development; and
- No justification has been provided for Lot T's special status (additional land uses).

Due to this lack of justification, an objection to the provision of additional land uses on Lot T has been lodged. In addition, it has been suggested that *all* dwellings should be bushfire-proof.

The points raised in the submissions can be addressed as follows:

- Lot A refers to an existing lot on the subdivision guide plan for the adjacent
- 'Special Rural' zoned land.
- A 'Conservation of Flora and Fauna Area' is an existing area of good quality bushland that will be retained for this purpose and protected from clearing.
- The wildlife corridor on the proposed subdivision guide plan connects to the wildlife corridor identified on the subdivision guide plan for the adjoining 'Special Rural' zoned land.
- It is acknowledged that provision 5.1(a) for 'Special Rural' area No. 30 requires a 100m setback from the 'Rural' zoned land to the north. However, with the provision of a vegetated buffer and Section 70A notification to mitigate potential land use conflict arising from noise and/or spray drift nuisance, it is considered that an exception can be made for Lot U.
- Lot T has been given provision for additional uses to be developed, in order to improve the viability of the olive grove.
- Only the dwellings constructed on lots adjacent to bushland (Lots T, W and X) require construction to AS 3959. The house on Lot Y is existing and this requirement cannot be applied retrospectively.

### **STATUTORY IMPLICATIONS**

39. All scheme amendments undergo a statutory process in accordance with the *Planning and Development Act 2005* and *Town Planning Regulations 1967*.
40. 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**

41. 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*).

42. 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.
43. 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.*

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

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

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

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

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

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

45. The proposal is consistent with Section 8.3.5 of the ALPS, as it:
- discourages the creation of additional rural town sites for living purposes;
  - avoids the development of a Rural Living area on productive agricultural land, other important natural resource areas and areas of high bushfire risk, flooding and environmental sensitivity;
  - avoids the development of a Rural Living area on future and potential long-term urban areas, as the land has been identified in the ALPS as suitable for Special Rural purposes; and
  - will create lot sizes similar to those adjoining the subject land, which are being used for similar rural residential living purposes, therefore minimising the potential for generating land-use conflicts.

## POLICY IMPLICATIONS

46. The Western Australian Planning Commission's Statement of Planning Policy 2.5 – Agricultural and Rural Land Use Planning. This contains the following objectives that are relevant to this proposal:
- 1. Protect agricultural land resources wherever possible by:**
    - discouraging land uses unrelated to agriculture from locating on agricultural land;
    - minimising the ad hoc fragmentation of rural land; and
  - 2. Plan and provide for rural settlement where it can:**
    - benefit and support existing communities; and
    - have access to appropriate community services and infrastructure.
  - 3. Minimise the potential for land use conflict by:**
    - providing adequate separation distance between potential conflicting land uses;
    - introducing management requirements that protect existing agricultural land uses;
    - identify areas that are suitable and capable for intensive agricultural pursuits as agricultural priority areas.
47. To address the above objectives, the potential for land use conflict is mitigated by the application of appropriate separation distances and vegetated buffers, and by placing Section 70A notifications on titles to advise future purchasers of the existing olive grove and dairy farming operations.

**RISK IDENTIFICATION & MITIGATION**

48. 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>
The proposal may generate land use conflict between future residents of the proposed lots and the ongoing operations of the existing olive grove on the subject land or the existing dairy farm immediately to the north (due to noise and/or spray drift).	Possible	Medium	High	The application of appropriate separation distances (minimum 60m from all building envelopes to the olive grove), the provision of vegetated buffers on the eastern boundary of Lot V and northern boundary of Lot U, and the placement of Section 70A notifications on titles at the time of subdivision, to advise prospective purchasers of the operations of the olive grove and dairy farm.

**FINANCIAL IMPLICATIONS**

- 49. The prescribed planning fee of \$2500 has been received and staff have processed the application within existing budget lines.
- 50. Should Council support the Scheme Amendment, the property owners would be responsible for lodging an application for subdivision and extending available services to the subject land at their own cost.
- 51. Due to the nature of the proposed development, there will be no requirement to upgrade or expand the local road and stormwater drainage networks, nor provide additional services, such as the ongoing maintenance of public open space or collection of household refuse.

**LEGAL IMPLICATIONS**

- 52. Section 75 of the *Planning Development Act 2005* allows Council to amend its Town Planning Scheme.

53. Regulation 17(2)(a) of the *Town Planning Regulations 1967* allows Council to adopt the Scheme with or without modification.

### **ALTERNATE OPTIONS**

54. 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; or
  - To resolve not to adopt the Scheme Amendment and advise the WAPC of the reasons for not doing so.

### **SUMMARY CONCLUSION**

55. The proposed re-zoning will allow subdivision of the subject land to create six rural residential lots, each in excess of 2ha, which is comparable to existing lot sizes to the south and west of the subject land.
56. The proposal has adequately addressed land capability and land use conflict issues. The modifications recommended in the attached schedule of submissions will adequately address fire management issues, to the satisfaction of the City of Albany

<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 308 (West Ward)
<b>Previous References</b>	OCM 15/03/11 – Item 1.3 (SAR 149)