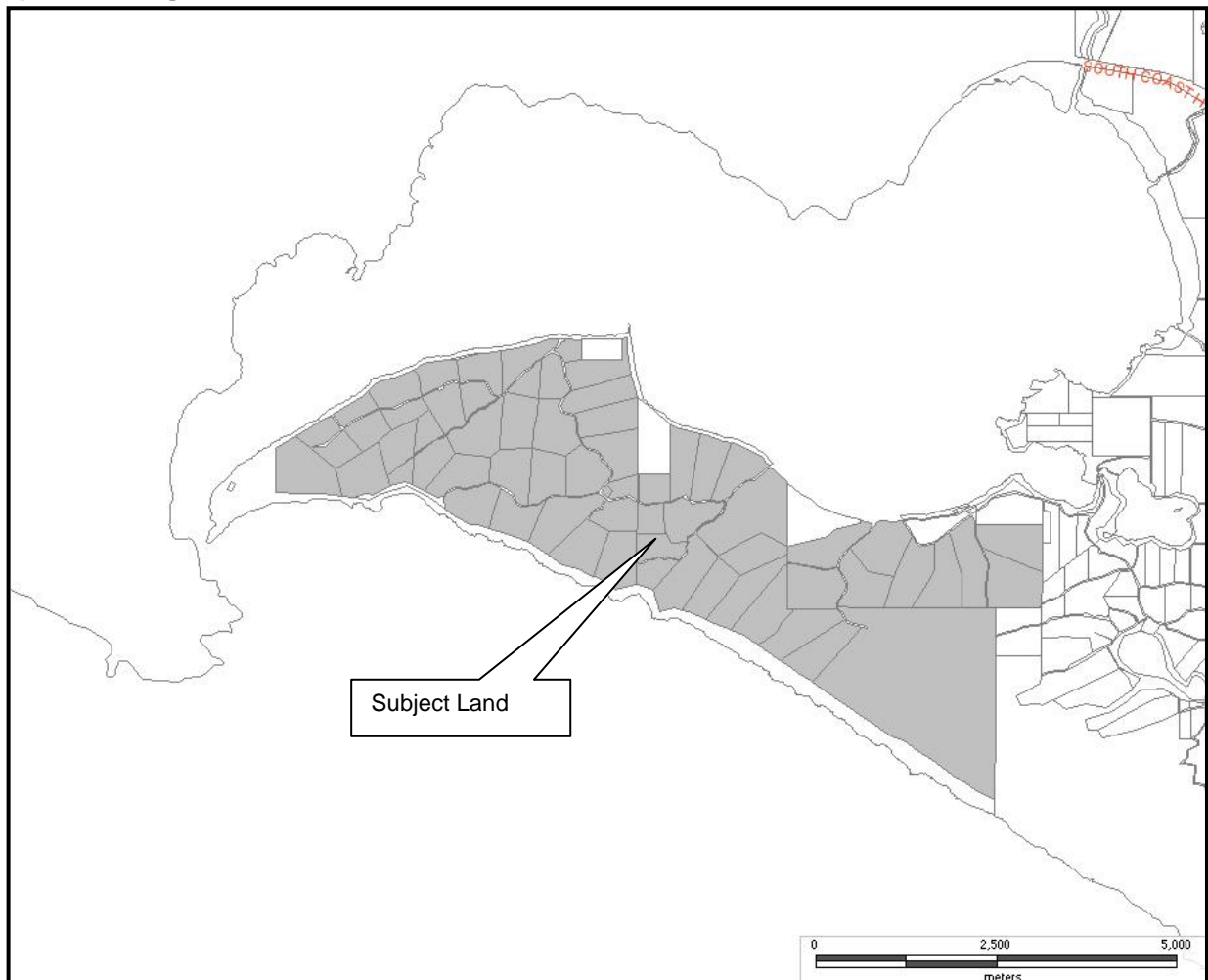


2.8:FINAL ADOPTION OF AMENDMENT – LOCATIONS 1609, 1828, 1947, 1990-1992, 2064, 2229 & 3102 EDEN ROAD, YOUNGS SIDING

| | |
|-------------------------------|---|
| Land Description | : Locations 1609, 1828, 1947, 1990-1992, 2064, 2229 and 3102 Eden Road, Nullaki |
| Proponent | : Ayton Baesjou Planning |
| Owner/s | : G J Robertson & S Dzwonnik (main landowners) |
| Business Entity Name | : N/A |
| Attachments | : Submissions : Example Development Area AS3959 |
| Responsible Officer(s) | : Executive Director Planning and Development Services (D Putland) |

Maps and Diagrams:



IN BRIEF

- Final approval is sought for the proposed scheme amendment that will modify the scheme provisions of Conservation Zone Area No. 1 in such a way that caretaker dwellings will be allowed on all lots within the Conservation Zone area 1.

ITEM: 2.8 RESOLUTION

VOTING REQUIREMENT: SIMPLE MAJORITY

MOVED: COUNCILLOR BOWLES

SECONDED: COUNCILLOR ATTWELL

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* **FINALLY ADOPTS WITH MODIFICATIONS** Amendment No.309 to Town Planning Scheme No. 3 for the purpose of:
 - i. Deleting existing clause 3.1 dot point two and replacing it with the following;

Caretaker's Accommodation (maximum floor area 150m²) to be located between the main residential house and the front gate, utilising shared access. In assessing applications and determining the location of Caretaker's Accommodation consideration is to be given to the objectives of the zone, clause 8.0 Vegetation and Habitat Protection, clause 11.0 Fire Protection and the aim to provide the greatest security and management benefit to the property and the peninsula.
 - ii. Deleting existing clause 4.1 and replacing it with the following;

The Development Area refers to the area within which all development on each lot (including sheds, water storage, low fuel areas and effluent disposal areas) must be confined and is not to exceed 1.0ha.
 - iii. Modifying clause 4.4 to include reference to the EPA's Guidance statement No. 56 - Terrestrial Fauna Surveys for EIA in WA.
2. **NOTES** the staff recommendations within the attached Schedule of Submissions and **ENDORSES** those recommendations.

CARRIED 9-0

BACKGROUND

1. Amendment No. 309 proposes to amend the special provisions of Conservation Zone Area No. 1 by allowing one caretakers dwelling per lot and providing direction on the size and positioning of building envelopes for caretakers dwellings. Currently a maximum of six for the entire Estate applies.
2. Council initiated Amendment 247 at its Ordinary Meeting on 19 July 2005 (Item 11.3.6). This amendment proposed to modify the subdivision guide plan and scheme provisions associated with the Nullaki Conservation Zone. One of the provisions made allowance to increase the number of caretakers dwellings throughout the Estate from six to sixty to allow a caretakers dwelling on each lot.

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

| Amendment 247 | Amendment 309 |
|--|---|
| <p><i>3.1 Within Conservation Zone Area No. 1 the following uses shall be permitted subject to the Special Approval of Council:</i></p> <ul style="list-style-type: none"> - <i>Caretakers Accommodation (max permissible floor area of 150m²):- Located subject to application for and granting of Planning Scheme Consent. Caretakers accommodation shall:</i> <ol style="list-style-type: none"> a. <i>be located no more than 300m from the principal dwelling; and</i> b. <i>be located in a situation adjacent to the driveway between the principal dwelling and the public road access so as to provide strategic surveillance of access to/from the lot as well as visual surveillance of the principal dwelling;</i> c. <i>Notwithstanding clauses a & b above, in the case where a lot is bisected by a public roadway, Council may approve caretakers accommodation not located within 300m of the primary dwelling and not located adjacent to the driveway serving the primary dwelling on the basis that it is demonstrated that the caretakers accommodation can provide and maintain visual surveillance over the principal</i> | <p><i>3.1 Within Conservation Zone Area No. 1 the following uses shall be permitted subject to the Special Approval of Council:</i></p> <ul style="list-style-type: none"> - <i>Caretakers Accommodation (maximum floor area 150m²) to be located between the main residential house and the front gate, utilising shared access. In assessing applications and determining the location of Caretaker's Accommodation consideration is to be given to the objectives of the zone, clause 8.0 Vegetation and Habitat Protection, clause 11.0 Fire Protection and the aim to provide the greatest security and management benefit to the property and peninsula.</i> <p><i>4.1 The Development Area refers to the area in which all development on each lot (including sheds, water storage, low fuel areas and effluent disposal areas) must be confined and is not to exceed 1.0ha.</i></p> |

| | |
|--|--|
| <p><i>residence. In the instance where caretakers accommodation is located between Nullaki Drive and the Wilson Inlet Foreshore Reserve, any such caretakers accommodation shall be located and designed such that it is not visible from a foreshore node or the Bibulmun Track.</i></p> <p><i>4.1 The Development Area refers to the area within which all development on each lot (including sheds and water storage) must be confined and is not to exceed 1.0 hectare on lots where caretakers accommodation is not approved or 1.5 hectares where caretakers accommodation is approved subject to provision 3.1.</i></p> | |
|--|--|

7. The current special provisions applying to Conservation Zone Area No. 1 are:

“3.0 Land use

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

- Single House*
- Caretakers Accommodation (maximum floor area 150m²) limited to six within Conservation Zone Area No. 1, located subject to specific application and approval. In assessing applications for caretakers accommodation, Council will aim to provide the greatest security and management benefit and shall have regard to relevant issues including the need to ensure caretakers accommodation is strategically located throughout the Peninsula in order to maximise surveillance and security of house sites, public use nodes and environmentally sensitive areas such as Anvil Beach and the sand blowouts....”*

4.0 Development Area

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

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

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

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

9. At the Ordinary Council Meeting on 13 December 2011 it was resolved:

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

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

Caretaker's Accommodation (maximum floor area 150m²) to be located between the main residential house and the front gate, utilising shared access. In assessing applications and determining the location of Caretaker's Accommodation consideration is to be given to the objectives of the zone, clause 8.0 Vegetation and Habitat Protection, clause 11.0 Fire Protection and the aim to provide the greatest security and management benefit to the property and the peninsula.

Deleting existing clause 4.1 and replacing it with the following;

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

10. Council is required to consider the submissions received from the consultation period and determine whether to grant final approval to the proposed scheme amendment.

DISCUSSION

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



12. This proposal will allow for caretaker dwellings on each of the sixty lots (subject to the purchaser wishing to take advantage of this option). This could ultimately represent an increase of 54 dwellings within the Nullaki Estate.
13. The proponent has advised that the majority of Nullaki landowners are often away from their properties for extended periods of time. The remote location of the Peninsula and high level of absenteeism raises a security and safety risk to property. This is further exacerbated by boundary fencing being minimal/precluded and a general lack of surveillance.
14. Caretakers that permanently reside in the estate would assist in overcoming these issues and allow for an improved response to a bushfire by turning on sprinkler systems, improving bushfire surveillance and providing an instant volunteer fire-fighting team.
15. The proposed modifications will limit the total clearing allowed on each of the lots to 1ha regardless of whether the lot is developed with a single dwelling only or with a single dwelling (main residential house) and caretakers dwelling. This is a reduction of 0.5 hectares from that identified in the current provisions.
16. Where two single dwellings (main residential house) and caretakers dwellings are developed, a higher level of construction in accordance with Australian Standard 3959 (Buildings in Bushfire Prone Areas) may be required where hazard separation and building protection zones cannot be achieved due to the one hectare clearing restriction. A detailed fire report is required to be submitted for each dwelling as part of any application for planning scheme consent.

17. The proposed modifications will potentially result in 54 additional effluent disposal systems throughout the area. Given that the lot sizes are predominantly 40ha in area this will result in one effluent disposal system for every 20 hectares. The standard in other “Conservation” Zones is one effluent disposal system for every ten hectares.
18. The proponent has recently engaged an environmental consultant to undertake soil and groundwater testing adjacent to an existing residence at the Nullaki (Lot 133). The residence is positioned within close proximity to the Wilson Inlet foreshore and has been on the site for 20 years. The testing has revealed that effluent from the existing septic system had not leached into the groundwater, with no bacterial contamination being found. The consultant has concluded, based on the laboratory results, the size of lots at the Nullaki and that the majority of house sites being on or adjacent to ridge lines (being 50 to 100 metres higher than known ground water tables), that the concerns about effluent disposal systems should not form the basis for an argument to restrict additional caretaker cottages.
19. As per Paragraph 6 above, the proposed provisions are very similar to those previously supported by Council as part of Amendment 247 (OCM 19 July 2005). The differences are:
 - a. The maximum development area is to be reduced from 1.5 hectares to 1 hectare in size for all lots, regardless whether a caretakers dwelling is proposed.
 - b. The requirement for the caretakers dwelling to be within 300m of the main house has been omitted, however all other requirements such as sharing access are retained.
 - c. The amendment documents provide evidence that the additional caretakers dwellings, and associated effluent disposal systems, are not likely to impact on groundwater.
20. The proposed provisions are supported by staff on the basis that:
 - a. The retention of a one hectare clearing limit will ensure no additional clearing to that contemplated under the existing provisions will result. A higher level of construction for dwellings under Australian Standard 3959 may be required.
 - b. The new proposal is more practical given the size of the lots their topography and the capability of using areas on the lots already cleared or sparsely vegetated.
21. The main concern that has been raised during advertising has been in respect to the proposed reduction of the maximum amount of clearing allowed for a Development Area from 1.5 HA to 1HA.
22. A Development area of less than 1Ha is considered appropriate for the development of primary residence and the caretakers dwelling when its co-located within the same development area and will normally require development at a AS3959 level of 12.5 or lower
23. Where collocation is not possible and separate development areas are required. Higher levels of constructing in accordance with AS 3959 is appropriate and provides adequate protection to allow the development of a Primary dwelling and a Caretakers dwelling. (Examples explaining the amount of clearing and AS 3959 is attached for information)

GOVERNMENT CONSULTATION

24. The EPA provided a response to the City containing comments and advice on the proposed scheme amendment. The comments include a requirement to modify existing clause 4.4 in such a way that it includes a reference to the EPA's Guidance statement No. 56 - Terrestrial Fauna Surveys for EIA in WA.
25. The amendment was referred to WA Gas Networks, Telstra, Water Corporation, Western Power, Department of Water, Department of Environment and Conservation, Department of Regional Development and Land and the Shire of Denmark for assessment and comment. Responses were received from Telstra, Water Corporation, Western Power, Department of Water, and Department of Environment and Conservation and the Department of Regional Development and Lands these submissions are summarised, discussed and accompanied by appropriate recommendations in the attached Schedule of Submissions.
26. No objections have been received, advice and recommendations have however been provided by the Government Departments and Agencies.
27. The most pertinent comments were received from the Department of Environment and Conservation who comments on the appropriateness and effectiveness of Caretakers dwellings as an effective way to manage the risk to properties. The Department in their submission suggests alternatives that according to them are considered more effective in managing risk and protecting the environment.

PUBLIC CONSULTATION / ENGAGEMENT

28. The Amendment was advertised in accordance with the requirements of the *Town Planning Regulations 1967* from 5 April 2012 to 17 May 2012 by placement of a sign on-site, direct referral to affected and adjoining/nearby landowners and advertisement in a local newspaper.
29. Four submissions were received from adjoining landowners/members of the public. These submissions support the amendment to allow Caretakers dwellings on all the lots. However, some also raised concern over the proposed reduction of the maximum amount of clearing allowed for a Development Area from 1.5 HA to 1HA.

STATUTORY IMPLICATIONS

30. 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

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

Key Focus Area

Lifestyle and Environment

Community Priority

Preservation of Albany's uniqueness

Proposed Strategies

Preserve Albany's coastline through its Town Planning Scheme, regulation and monitoring. Protect remnant vegetation (particularly in urban areas) to preserve Albany's beauty and uniqueness.

32. The Albany Local Planning Strategy (ALPS) identifies this area as an “*environmental protection area*”; the key element being to protect biodiversity, natural character and resources and to reduce the environmental impacts from land use and development.

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

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

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

POLICY IMPLICATIONS

35. The recommendation is consistent with relevant Council Policy.

RISK IDENTIFICATION & MITIGATION

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

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|--|-------------------|--------------------|----------------------|---|
| <i>The proposal could result in exposing more people to existing fire risk.</i> | <i>Possible</i> | <i>Extreme</i> | <i>Extreme</i> | <i>Ensure all new dwellings are constructed to Australian Standard 3959 with sprinkler systems installed.</i> |
| <i>Community concerns, particularly from outside of the Nullaki Estate about the impact of additional dwellings on environmental values.</i> | <i>Possible</i> | <i>Medium</i> | <i>High</i> | <i>Consider concerns as part of formal advertising process, post advice from the EPA, or undertake preliminary informal consultation pre referral to EPA.</i> |

FINANCIAL IMPLICATIONS

37. The appropriate planning fee has been paid by the proponent. The proposal has been assessed by staff using in-house resources.

LEGAL IMPLICATIONS

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

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

ALTERNATE OPTIONS

40. 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

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

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

| | |
|-----------------------------------|--|
| Consulted References | WA Planning Commission (WAPC) Statements of Planning Policy (SPP's) SPP1 & SPP 3 |
| File Number (Name of Ward) | AMD 309 (West Ward) |
| Previous References | OCM 21/12/04 - Item 11.3.2 OCM 19/07/05 - Item 11.3.6 OCM 19/12/06 - Item 11.3.4 and 11.1.3 OCM 18/09/07 – Item 11.3.5 OCM 19/02/08 – Item 11.3.4 OCM 13/12/11 – Item 2.2 |