

CITY OF ALBANY TOWN PLANNING SCHEME No. 3
AMENDMENT No. 315
SCHEDULE OF SUBMISSIONS

| No. | Name/Address of Submitter | Summary of Submission | Officer Comment | Staff Recommendation |
|------------|--|--|---|---|
| 1 | Environmental Protection Authority Locked Bag 33 Cloisters Square PERTH WA 6850 | The Environmental Protection Authority (EPA) considers that the proposed scheme amendment should not be assessed under Part IV Division 3 of the <i>Environmental Protection Act 1986</i> (EP Act) and that it is not necessary to provide any advice or recommendations. | Nil. | The submission is noted. |
| 2 | Water Corporation PO Box 100 LEEDERVILLE WA 6902 | No comments. | Nil. | The submission is noted. |
| 3 | Western Power Locked Bag 2520 PERTH WA 6001 | No objections. | Nil. | The submission is noted. |
| 4 | Department of Water PO Box 525 ALBANY WA 6331 | No objections. | Nil. | The submission is noted. |
| 5 | Department of Environment and Conservation 120 Albany Highway ALBANY WA 6330 | The Department of Environment and Conservation (DEC) has no objections to the amendment and recognises the benefits of modifying the current Subdivision Guide Plan to align the development exclusion area with the historical clearing that has occurred to negate the need for further clearing and rehabilitation of the already cleared area. DEC recommends that minimum Building | The comments in relation to modification of the subdivision guide plan are noted. It is acknowledged that the proposed amendment would provide a more satisfactory outcome purely in terms of flora conservation. However, there are a number of other relevant planning considerations that are examined in more detail below. The comments in relation to Bushfire | The submission is noted. <u>Modifications required:</u> The notation on the modified subdivision guide plan shall be amended with the following wording: <i>“Any habitable buildings on the site shall be constructed to withstand</i> |

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| | | Attack Level 29 (BAL-29) building standards be required as this will result in Hazard Separation Zone being considerably reduced or not required outside the Building Protection subject to vegetation type and slope. | Attack Level 29 (BAL-29) are noted and it is considered that any future habitable buildings erected on the site should be constructed to withstand BAL-29 under <i>Australian Standard 3959 – Construction of Buildings in Bushfire-Prone Areas.</i> | <i>Bushfire Attack Level (BAL) 29 under Australian Standard 3959 – Construction of Buildings in Bushfire-Prone Areas.”</i> |
| 6 | | <p>We are submitting support for the application to amend the building envelope as per the ‘Comparative Development Footprints’ that we received. We also support the building work being done in the most cost efficient way, regardless of elevation, which should also have minimal ground disturbance. We believe that supporting this amendment and elevation will in no way adversely affect us as direct neighbours who have an elevated view of the property.</p> <p>We do believe that the owners bought in good faith with no intention of deceiving anyone. Why would one make a rod for their own back, especially an experienced owner-builder who also seems to have a genuine concern for the environment?</p> <p>We understand the hardships of owner-building, including the hidden costs, without this on top of it. When someone does make an honest mistake it is not our job to work with them to help remedy the situation in a</p> | It is acknowledged that ----- do not consider that the proposed amendment would have a direct impact on the amenity of their property and would allow for the retention of a wildlife corridor at the southern extent of Lot 116 Forsyth Glade. | The submission is noted. |

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| | | <p>rational and expedient way (<i>Officer's note: In the context of the submission, it is presumed that this is a typographical error and should read "...it is our job..."</i>). It also appears to be a logical argument to move the envelope.</p> <p>Our experience with the City of Albany Building Department has been nothing but excellent. They helped me all along the way, above and beyond the call of duty. My hopes are that they are able to extend this help to the owners of Lot 116 Forsyth Glade. Should the amendment be approved, it would not affect us adversely in any way and we believe that it ensures there is still a natural bush corridor available to wildlife, supporting a philosophy that we value.</p> | | |
| 7 | | <p>I fully support the City's proposed amendment of the Development Exclusion and Landscape Protection Area on Lot 116, Forsyth Glade, Kronkup. This property is --- --- in Forsyth Glade and I have been witness to the previous changes, shed-building and clearing by the three previous owners, prior to the purchase of the land by the present owners.</p> <p>As the current clearing and shed-building were undertaken several years ago by the first and second owners of the property, any</p> | The comments regarding the owners of Lot 116 Forsyth Glade having acted in "good faith" and the opposition to further clearing on the lot are noted. | The submission is noted. |

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| | | <p>objections by surrounding landowners should have been made to the City of Albany at that time and not nearly a decade later. We, the residents of Forsyth Glade, were all aware of the shed location and the clearing of land at the time they were undertaken; it is not a new revelation for any of us.</p> <p>During the recent selling period of this block, the advertisements did not mention that either the shed or the clearing were within the 'Development Exclusion and Landscape Protection Area' (and not within the permitted Building Envelope. The new owners purchased the land in good faith, enquiring with the City of Albany and to the Real Estate Agent (now unfortunately deceased) to verify this fact.</p> <p>The proposed footprint of 6757m², (as opposed to the original footprint of 6985m²) is further up the hill and would result in the proposed dwelling (and existing shed) being further away from the adjacent Lot 115, and although slightly closer to Lot 117, the natural vegetation between the two properties would ensure privacy and screening.</p> <p>It would be criminal for further, unnecessary clearing to be made on Lot 116, notwithstanding the additional cost the</p> | | |

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| | | <p>present owner would incur. In addition further clearing would double the amount of natural vegetation lost on this block, further disturbing the natural flora and fauna. This subdivision's original aim was to preserve the remnant natural bush of the area. In achieving this aim, it permitted land owners a certain amount of permissible clearing, i.e. our building envelopes. Where that actual clearing was originally designated is not as important as ensuring unnecessary and duplicated clearing does not occur in our bushland.</p> <p>I fully support Amendment No. 315 being approved and the owners being allowed to build their dwelling on the existing clearing, adjacent to the existing shed.</p> | | |
| 8 | | <p>We are property owners at -----, Kronkup. We are aware the owners of 43 Forsyth Glade have applied for a planning scheme amendment to move the building envelope to a location already cleared by a previous owner of the block. We understand that if the amendment is not approved, this would result in a need to clear the current building envelope which contains native vegetation and wetland. This area is also a habitat for native fauna. While we believe it is very important that land owners comply with the requirements of the relevant subdivision guidelines, in this</p> | The opposition to further clearing of vegetation on Lot 116 Forsyth Glade is noted. | The submission is noted. |

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| | | case it would seem to make no sense to clear yet more native bush when an area has already been cleared by a previous owner. We therefore support Amendment No. 315. | | |
| 9 | | I am happy with the proposed amendment. The current clearing has been in place for over a decade and it would seem inappropriate to conduct even more vegetation clearing on the hill unless it is absolutely necessary. | The opposition to further clearing of vegetation on Lot 116 Forsyth Glade is noted. | The submission is noted. |
| 10 | | We have received correspondence from the owners of Lot 116 Forsyth Glade, regarding their application to build on their block. From what they are saying it seems that we should be encouraging them to build on an area that has already been cleared, rather than clearing another area to do same. There is not much remnant flora and fauna left in this area and everything should be done to try and preserve the small amount that is left. Accordingly, I ask that maybe you reinstate the approval that was given so that they can build on the cleared area as was originally approved. | The opposition to further clearing of vegetation on Lot 116 Forsyth Glade is noted. However, it should be noted that no approval has been issued either for the existing clearing or any future house. While the existing large shed on the lot had previously been approved under a building licence, it was found that it had not been constructed in the location approved, but had been unlawfully constructed by the previous landowners within the Development Exclusion and Landscape Protection Area. Furthermore, approximately 2900m ² of vegetation had been unlawfully cleared at the time of construction of the shed and additional clearing was | The submission is noted. |

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| | | | conducted in 2012 by the current landowners, pre-emptively preparing the site for the construction of their proposed house. | |
| 11 | | I would hate to see more trees felled on Lot 116 Forsyth Glade and have no objection to the house being built on the area already cleared. | The opposition to further clearing of vegetation on Lot 116 Forsyth Glade is noted. | The submission is noted. |
| 12 | | <p>The subdivision subject to this amendment took place an area of remnant bush and was designed with a designated building envelope on each block, in order to preserve as much of that bush as possible. On Lot 116 Forsyth Glade, a previous owner had cleared an area outside the designated envelope. That is unfortunate, but now that is has happened and considering the sub-division was designed to preserve the remnant bush, it is less important where that clearing is, than that there should be one such clearing. I am informed and believe that now that clearing has occurred, it cannot be restored to its original condition.</p> <p>Also there is within the area cleared by a previous owner, a building for which I am also informed and believe, the usual permissions were sought and granted.</p> <p>Finally, Lot 116 Forsyth Glade was</p> | <p>The opposition to further clearing of vegetation on Lot 116 Forsyth Glade is noted.</p> <p>As outlined above, the existing large shed on the lot had previously been approved under a building licence, but was found to have been unlawfully constructed by the previous landowners within the Development</p> | The submission is noted. |

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| | | <p>purchased with the present clearing and building in place. The new owners are not responsible for the current situation. Mr. Nevill is a naturalist with a publication on native flora to his credit. The preservation of the bush matters to him. It would have been cheaper and less stressful to have simply cleared the original envelope, leaving the earlier clearing to take care of itself. His application is therefore a principled attempt to avoid that outcome.</p> | <p>Exclusion and Landscape Protection Area, rather than in the approved location. Furthermore, approximately 2900m² of vegetation was unlawfully cleared at the time of construction of the shed and additional clearing was conducted in 2012 by the current landowners, pre-emptively preparing the site for the construction of their proposed house.</p> | |
| 13 | | <p>I write in support of the scheme amendment requested by the owners of Lot 116 Forsyth Glade.</p> <p>As owner (with my wife) as a house and block in-----, I'm not directly affected by the dispute over the building envelope that has drawn criticism from some of his neighbours. As only a part-time resident, I might well be said to have even less credibility as a supporter. However, through reading the landowners' account of the dispute that has raged over the past year or more, I'm persuaded that they have been unfortunate victims of other people's mistakes and quite probably of a campaign by opponents without any cogent reasons to object to their plans.</p> <p>It is clear that in preparing to build in what their critics, including the Council, have said</p> | <p>The opposition to further clearing of vegetation on Lot 116 Forsyth Glade is noted.</p> <p>It is understood by staff that the planning regulations, as they apply to 'Special Rural' zone Area No. 14, have only been amended once; by Amendment No. 126 in April 1996, which rezoned the land from 'Rural' to 'Special Rural' and applied the current planning provisions. However, the City of Albany's position on certain planning matters may also differ from those of the former Shire of Albany, although this is not reflected in the provisions for 'Special Rural' zone Area No. 14.</p> | The submission is noted. |

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| | | <p>is the wrong place, they were following all the specifications set out in the real estate advertisement for the property that they bought. That fact, plus the telling report from Penny Hussey, project officer of Land for Wildlife, makes clear that for them to now to adhere to the building envelope they were never presented with would involve unnecessary environmental damage.</p> <p>I make two further comments. In thirty years of owning our block in ----- – but only eight since we built on it – my wife and I have seen many changes in the Council's rules about where to build, how many properties may or may not be on a block and whether extra ones can be free-standing or connect to the original. If action is to be taken against 'mistakes' such as that made by the owners of Lot 116 Forsyth Glade, it surely should be against real estate agents who fail to keep up to date with such changes. Secondly, despite all the changes Torbay Hill contains many houses and sheds with much greater visual impact than promised by the proposed amendment.</p> | <p>It is acknowledged that some works may be undertaken without approval, due to an individual being misinformed or simply having been unaware that a local government approval is required. However, these mistakes can sometimes be rectified by applying retrospectively, provided that the works undertaken are compliant with, or can be made to comply with the current planning regulations. In this instance, the landowners have been unfortunate enough to inherit a problem created by a previous owner. However, due to the nature of the planning system, it is now their responsibility to rectify the situation. In this instance, they have chosen to lodge an application to amend the Town Planning Scheme. As with any retrospective application, this must be assessed as though no work has been undertaken on-site and</p> | |

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| | | | <p>staff must consider the individual planning merits of the case and determine whether an approval would have been granted prior to any work being carried out.</p> | |
| 14 | | <p>We are writing to you concerning the proposed re-alignment of the building envelope on Lot 116 Forsyth Glade.</p> <p>Although we are not immediate neighbours of this property, we have been residents of Torbay Hill for thirty-six years, and have been involved with the adjacent subdivision in Migo Place and Stewart House Hill, which took place seven years ago.</p> <p>To us it seems quite sensible to approve the scheme amendment to move the building envelope on Lot 116 from the original location to that which has already been cleared. This will allow significant areas of the block to remain as natural bushland, but also provide a safe 20m building protection zone around the proposed house site.</p> <p>We would also question how this situation has arisen. Did the original owner construct the shed on the property without the knowledge of the local authority, or did the local authority approve the construction of the shed even though it was built outside the original building envelope? In either</p> | <p>The opposition to further clearing of vegetation on Lot 116 Forsyth Glade is noted.</p> <p>As outlined above, the existing large shed on the lot had previously been approved under a building licence, but was found to have been unlawfully constructed by the previous landowners within the Development Exclusion and Landscape Protection</p> | <p>The submission is noted.</p> |

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| | | <p>case, we cannot understand why the present owner of the property is being put to inconvenience and expense to rectify a problem caused by someone else's action or inaction.</p> <p>We would very strongly recommend that the scheme amendment to move the building envelope on Lot 116 be approved.</p> | <p>Area, rather than in the approved location. Furthermore, approximately 2900m² of vegetation was unlawfully cleared at the time of construction of the shed and additional clearing was conducted in 2012 by the current landowners, pre-emptively preparing the site for the construction of their proposed house.</p> <p>As also outlined above, the current landowners have been unfortunate enough to inherit a problem created by a previous owner and due to the nature of the planning system, it is now their responsibility to rectify the situation. In this instance, the landowners have chosen to lodge an application to amend the Town Planning Scheme. As with any retrospective application, this must be assessed as though no work has been undertaken on-site and staff must consider the individual planning merits of the case and determine whether an approval would have been granted prior to any work being carried out.</p> | |
| 15 | | We are writing to you to plead for common sense to prevail and for the City of Albany to grant final approval to Amendment No. 315. | The opposition to further clearing of vegetation on Lot 116 Forsyth Glade is noted. | The submission is noted. |

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| | | <p>We totally support your amending the Town Planning Scheme by modifying the subdivision guide plan for this block in the “Special Rural” zone no.14 by allowing the previously cleared area (in 2002/3) and the construction of the previously approved shed to now become the agreed building envelope.</p> <p>The landowners possess the utmost honesty and integrity. They have the highest verifiable commitment to nature having devoted almost a lifetime of promoting same in a number of ways including writing and publishing books and educating others. They were delighted to find that the heavily wooded block, assessed by DEC as “excellent”, they had fallen in love with and purchased in early 2012 had been granted “Land for Wildlife” status in 2011.</p> <p>Unfortunately at the time of their purchase of the block they were given incorrect information relating to the location of the prescriptive building envelope from the Real Estate Sales Agent as well as being given incorrect official information i.e. being located in Scheme No. 3.2.B Torbay Hill Special Rural, relating to another subdivision.</p> <p>In spite of the status of this block being unchanged i.e. previously cleared for many</p> | | |

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| | | <p>years during which time no-one took any notice, the landowners have had their integrity questioned, they have had aggressive verbal challenges, the episode has cost them many thousands of dollars, substantial delays in progressing with their building of their home and somewhat serious mental stress has taken its toll.</p> <p>What a great welcome to our neighbourhood! It is everyone's right and the communities' expectation to question any unusual or possible illegal activity. Innuendo or guessing is not acceptable evidence of anything unlawful. But in this case giving someone "a fair go" and the "benefit of the doubt" is missing!</p> <p>The landowners will build their new home at 43 Forsyth Glade, Kronkup. Our community will be enhanced by their presence and they will become good neighbours and good friends.</p> <p>Finally my thoughts are that the relocation of the building site to within the original "Building Envelope" at the expense of the pristine bush is ludicrous. Building in the current cleared area is logical. Your assistance with concluding this outcome is strongly sought.</p> | | |
| 16 | | I wish to express my support for the owners of Lot 116 Forsyth Glade to go ahead with | Nil. | The submission is noted. |

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| | | <p>their building as planned. In other words, I support their request to have the building envelope moved from an uncleared area on their property to the cleared area around the existing building on the block.</p> | | |
| 17 | | <p>We are very concerned with any modification of the subdivision guide plan, as the development exclusion zones are established to preserve vegetation and waterways, taking into account gradients and providing corridors for animal movement. They contribute to this subdivision in creating a particular lifestyle within a bush setting.</p> <p>We are disappointed that the Council had failed to act on the initial illegal land clearing and construction on Lot 116 Forsyth Glade and on the recent “pre-emptive clearing and earthworks” that was done by the current owner in the Development Exclusion Area prior to any approvals from Council. This enables a culture to develop within a community of disregard for pre-established rules. Changing the rules after the event could lead to a perception that this is a way around subdivision conditions.</p> <p>We are opposed to the shape and position of the proposed development footprint area and the location of the proposed dwelling. We hope that a compromise can be</p> | <p>This concern is noted. However, further clearing within the original building envelope would lead to further environmental degradation. The existing cleared area could be revegetated, although there is some debate as to whether this will ever be as high quality as the existing remnant bush.</p> <p>It is unfortunate that the present situation did not come to the attention of City of Albany staff until the lodgement of a development application in July 2012. However, no complaints were received in the period prior to that.</p> <p>It is acknowledged that Council risks setting an undesirable precedent by not adhering to the established planning provisions for the area.</p> <p>The opposition to the proposed building envelope and suggested alternative are noted.</p> | The submission is noted. |

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| | | <p>reached to minimise any further clearing while attempting to align with the existing development footprint area as much as possible. The proposed development footprint does not extend north-west into the existing development footprint. We suggest that any new envelope should substantially over lap the existing development area, instead of the area indicated south and east, which will clear further into the originally zoned 'landscape protection area'. Furthermore, the dwelling site should be at a lower elevation and closer to the existing development footprint area.</p> <p>We reiterate that the most important outcome is that any further clearing undertaken should be in a direction towards the existing development footprint area. The proposed dwelling site should be located closer to the existing development area.</p> <p>The development exclusion zones are readily and clearly available for landowners. There are some already cleared blocks available within the Torbay Hill area for people who wish to pursue different land uses on their blocks and are concerned about fire.</p> <p>We are saddened by the lobbying (see attached letters) and division this issue has created within a small community. This</p> | <p>Noted.</p> <p>Noted.</p> <p>Noted. Council is advised that the lobbying of neighbours for support by the landowners may have contributed</p> | |

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| | | possibly could have been mitigated with timely and diligent intervention from the Council. | to the unusually high proportion of public submissions lending their support to the proposal. | |
| 18 | | <p>We respond with our concerns in the same order as set out in the Ayton Baesjou document to make it easier to refer to.</p> <p>1. Introduction There is no reference to the Landscape Protection Area which was impacted by the unauthorized clearing done by the current owners.</p> <p>2. Location and Zoning There are numerous inaccurate details in this section regarding local facilities that would suggest they are of a higher standard than they really are.</p> <p>3. Site Analysis The probable reason there may have been no complaints regarding previous clearing was that it could not be seen by the nearby lots, however those same neighbours can see all of the unauthorized clearing done the by current owners. The subdivision Guide Plan specifically references the concept that the buildings and the building envelopes they are to be built in are to be planned to have minimal impact on the amenities of their neighbours and</p> | <p>Noted.</p> <p>Noted. The description of local facilities is broad and does create the impression of greater local amenity than is the case.</p> <p>It is acknowledged that the photograph on page three of the amendment document does not accurately show how visible the existing clearing is from Hortin Road, or Lower Denmark Road. It has been noted in previous cases that photographs do not always provide a true representation of landscape impact when taken from some distance away.</p> | <p>The submission is upheld in part.</p> <p><u>Modifications required:</u></p> <p>The notation on the modified subdivision guide plan shall be amended with the following wording:</p> <p><i>“ANY DEVELOPMENT WITHIN LOT 5 (current Lot 116) IS TO BE IN ACCORDANCE WITH SITE PLAN 12-37-SP(f)”</i></p> <p>(Officer’s note: As the site plan will also be modified, its reference number will be updated to 12-37-SP(f)).</p> <p>The site plan shall be modified as follows:</p> <ul style="list-style-type: none"> • Detailed levels shall be shown, with the fill material used on site under the current ownership removed; • An indicative dwelling footprint shall be shown on plan; • The extent of the 25-45m wide |

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| | | <p>minimal visibility from Hortin Road. The photo shown on page three of the report does not accurately depict the impact the unauthorized clearing have on those using this road.</p> <p>Regarding the photos shown on page 5, it is interesting to see that there are no current photos from 2012/13 to compare against those taken in the early 2000s while using the same datum points. In addition, it would seem that these same 10-12 year old photos appear to contradict the topography shown on the proposal's Comparative Development Footprints (12-37-CDF(b)).</p> <p>It should be noted that a bulldozer was working on site for 3 days at the beginning of May, 2012. Had the current owners applied for permission to clear through the correct channels, all the information regarding the existing structures would have been discovered at that time. In addition, it should be remembered that each and every lot owner has been required at the time of purchase to acknowledge and accept to the conditions relating to this subdivision. In doing so, we understand the binding restrictions relating to our own lots, and those of our neighbours which were introduced to protect the amenities of</p> | <p>It is also acknowledged that the photographs provided in the report, taken in the early 2000s, do not accurately depict the site as it is now. There have been earthworks undertaken to create a level pad, above the existing shed, to the south-west. However, it is unclear from the partial topographical information shown on drawing 12-37-CDF(b) if this contradicts the photographs.</p> <p>It is acknowledged that the current landowners undertook clearing and earthworks without local government approval.</p> | <p>Building Protection/Hazard Separation Zone shall be delineated on plan;</p> <ul style="list-style-type: none"> • “Development Exclusion Area” on the legend shall be replaced with “Development Exclusion and Landscape Protection Area”; and • “Revegetation” on the legend shall be replaced with “Revegetation using site-specific endemic species”. |

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| | | <p>everyone within the subdivision – and which include details regarding Development Exclusion and Landscape Protection Areas. We all signed these documents in good faith – that our neighbours would adhere to the same conditions that we have.</p> <p>The reference made in the first paragraph on page 8 regarding the owners revising their plans for the dwelling would only appear to be bringing ground levels back to what they would have been prior to the unauthorized clearing, and while floor level is referred to – roof height is not.</p> <p>The final paragraph on page 8 suggests an environmental loss if building occurs lower down and closer to Forsyth Glade. We disagree. While in the medium term our amenity would be disrupted, long term (with the regeneration of the Landscape Protection Area) it would be greatly improved. As noted earlier in the proposal, the land has regenerated before – however, with a dwelling placed higher than is currently allowed, this would be a permanent loss.</p> <p>On page 11, it is suggested that the Department of Environment and Conservation do not support further</p> | <p>Noted. However, as the amendment seeks only to modify the Development Exclusion and Landscape Protection Area, detail of the roof height of any future house is not known at this time.</p> <p>It is argued that the clearing of the prescribed building envelope and revegetation of the existing cleared area could be of further detriment to the environment, as the revegetation would never be of the quality of undisturbed natural bush.</p> <p>It is acknowledged that this is not a strong case for the proposed solution,</p> | |

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| | | <p>clearing of the site. However we would consider the proposed hazard reduction clearing to be as much of a 'major disturbance' as clearing for a building site and would be just as devastating to local flora and fauna. With such acknowledgement that the flora and fauna is of such high quality, it is alarming that this section closes with the comment "This is one of the reasons that environmental offsets are considered as a 'last resort'."</p> <p>4. Landscape Protection Area The report by BMJ Hussey is referenced on page 10 of the proposal. We would like to reiterate our earlier point that the clearing of undergrowth for fire hazard reduction would have as much impact in the degradation of the habitat as would further clearing for development. Landscape Protection Areas are very important features of any subdivision and should not be dismissed. Not only do they ensure the least visual impact possible of the overall developments but they also help preserve the habitats of various local species of flora and fauna.</p> <p>In the case of Lot 116, its Landscape Protection Area is high above the existing building envelope, and we cannot see how building further away</p> | <p>as opposed to an environmental offset. However, as has been discussed, clearing of the prescribed building envelope and revegetation of the existing cleared area would have a significant environmental impact.</p> <p>Noted.</p> <p>It is acknowledged that the construction of a house further from the principal point of egress presents</p> | |

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| | | <p>from the only real escape route in the event of a fire could be seen as more beneficial.</p> <p>In the last paragraph on page 11, it refers to the revegetation program planned by the current owners. Earlier it referred to them using endemic species – which “<i>especially grevilleas</i>” are not. Introduced species will either die if they are not suited to the conditions or (without due care) could become problematic. There is local help available from several sources that could assist the current owners in determining the endemic species that have been destroyed during the unauthorized clearing but could be reinstated with relative ease.</p> <p>5. Visual Amenity In the first paragraph on page 12, the concept of minimizing visual impact is referred to – and yet it is obvious by the nature of the unauthorized clearing that it is the owners' intention to build as high up as they can – presumably to maximize their view. It doesn't matter what the materials or colour the dwelling may be, it will still be permanently visual. In the second paragraph, it suggests a future dwelling would be built 'at ground level'. Would this be the enhanced level</p> | <p>a greater risk to the occupants.</p> <p>Noted. Should the amendment be finally adopted by Council, a notation can be added to the subdivision guide plan requiring the use of site-specific endemic species.</p> <p>It should be acknowledged that the report refers to the use of species that are less combustible, which is likely the reason for grevilleas being specifically named.</p> <p>Noted. The ground level is known to have been altered and any future house should be set as low into the hillside as is practicable.</p> | |

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| | | <p>obtained by the bulldozer, or the natural ground level – as it was prior to the bulldozer?</p> <p>6. Fire Safety As stated previously in our submission, we cannot see how building further away from the obvious escape route can be considered preferable to building closer. If the Landscape Protection Area is removed and the dwelling built where the current owners desire it, they will (under the current Fire Act) be able to both above and below the site up to the required clearance of 20m, but this doesn't take in to account the incline of the slope which would entitle them to clear even more. This would encompass the area including the original building envelope which would have been cleared anyway – so why not build the dwelling there in the first place?</p> <p>It is interesting comment regarding the State Forest. State Forests are large tracts of land whose resources are managed for logging and other public use. How is this comment relevant to a private lot of less than 4ha? There would appear to be a real danger that (should this proposal be approved) the current or future owners may 'parkland clear' the entire lot which would certainly</p> | <p>Noted. As has been mentioned above, clearing of the prescribed building envelope in addition to the existing cleared area would incur a further environmental loss. Although the existing cleared area could be revegetated, this may not regenerate to its original state. While the proposal seeks to regularise unlawful works, it may be less environmentally damaging to minimise the amount of additional clearing required on the lot, particularly taking into account the requirement for a Building Protection Zone/Hazard Separation Zone.</p> <p>The comment regarding State Forests is only used as an example to illustrate the type of fuel loading anticipated. There is no justification for parkland clearing the entire lot, provided that the methodology prescribed in the <i>Planning for Bush Fire Protection Guidelines – Edition Two</i> is followed.</p> | |

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| | | <p>ruin our amenity and would certainly become visible to Hortin Road.</p> <p>Regarding the comments about additional access/egress – have the owners obtained permission from the other relevant landowners to transgress their property?</p> <p>7. Statutory Planning Context The final paragraph on page 15 makes reference to Subdivision Guide Plan Clause 5.3 – specifically that buildings and their clearance zones should not encroach into any landscape protection area. This has already occurred with the unauthorized clearing.</p> <p>8. Conclusion This section suggests that the circumstances of Lot 116 are unique and would not set a precedent. This we dispute as there are several landowners in the vicinity who will willingly use any successful change in conditions applied to Lot 116 for their own situation. General advice we have obtained also confirms this theory.</p> <p>SUMMARY</p> <p>Having responded to the proposal submitted by the current owners, we would like to list</p> | <p>The comment refers to former strategic firebreaks (now called fire access tracks), that would only be used for egress in an emergency situation.</p> <p>Noted.</p> <p>Noted. As outlined above, Council risks setting an undesirable precedent in finally adopting the amendment in its current form.</p> | |

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| | | <p>our comments and concerns as follows:</p> <ul style="list-style-type: none"> • The current owners have not followed best practice by instigating pre-emptive clearing prior to seeking approval from the City of Albany. • We would like it noted that we are not in favour of this proposal unless the following four conditions are met: <ul style="list-style-type: none"> • All clauses from the original Subdivision Guide Plan for Special Rural Zone No. 14 must be retained – including and especially clause 5.3 relating to Landscape Protection Areas. • On the proposal's Site Plan (12-37-SP(e)) the wording 'Existing Vegetation' must be replaced with 'Landscape Protection Area'. • The Subdivision Guide Plan (12-37-SGP(a)) enclosed with the proposal references a site plan (12-37-SP(b)) which has not been included in the documentation. We have no idea what impact this plan would have on this proposal or our response to it. | <p>Noted.</p> <p>It is not proposed to alter the provisions for 'Special Rural' zone Area No. 14 within Town Planning Scheme No. 3. However, it is acknowledged that the proposal is not consistent with the intent of Clause 5.3.</p> <p>Noted. On the legend on 12-37-SP(e) it would be more appropriate for "Development Exclusion Area" to be accompanied by "Landscape Protection Area", rather than replacing "Existing Vegetation".</p> <p>It appears that the reference to Site Plan 12-37-SP(b) on the Subdivision Guide Plan 12-37-SGP(a) is an error and should refer to Site Plan 12-37-SP(e)</p> | |

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| | | <ul style="list-style-type: none"> The proposal's Comparative Development Footprints plan (12-37-CDF(b)) – the wording 'Existing Vegetation' must be replaced with 'Landscape Protection Area'. | <p>It is not considered necessary for Comparative Development Footprints plan 12-37-CDF(b) to include a reference to the “Landscape Protection Area”.</p> | |
| 19 | | <p>Submits the following queries in relation to the proposed amendment:</p> <ol style="list-style-type: none"> Why is there a proposal to change the building envelope? If building envelopes are changed on this property, then what is the point of having them in the first place? <p>We, as owners of lot -----, Kronkup, object to the proposed amendment.</p> <p>The original objective of the subdivision was to “create rural residential retreats which blend in with the landscape, minimise visual impact from Hortin Road and minimise the export of nutrients from the site.”</p> <p>Council must consider the impact the amendment will have for future generations.</p> <p>The current situation (illegal clearing,</p> | <p>As noted above, the proposal seeks to alter the building envelope to regularise previous unlawful development of the site.</p> <p>This is a valid comment and highlights the risk to Council, should they resolve to finally adopt the amendment in its current form.</p> <p>Noted.</p> <p>Noted.</p> | <p>The submission is upheld in part.</p> <p><u>Modifications required:</u></p> <p>The statement that “<i>It is estimated that 80% of the cleared area has been cleared for more than 11 years</i>”, on page 4 of the amendment document shall be replaced with the statement that “<i>It is estimated that 80% of the cleared area has been cleared for more than 5 years</i>”.</p> |

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| | | <p>altering the landscape and proposed Amendment No. 315) directly impacts at least two neighbours. This is not fair or just.</p> <p>So many aspects of this amendment are not just, and many questions are raised about the mistakes, with or without intent, that already have been made.</p> <p>It was wrong for the current owner to clear a substantial amount of land, change the landscape, and then claim that they were not aware the earthworks were outside their building envelope.</p> <p>Usually one submits plans to Council, once approved then proceeds to clear.</p> <p>Usually when a person alerts another of a problem, as one of the neighbours did when the current owner's contractors began clearing, a reasonable thing would be to reassess the situation and not allow any further clearing. The earthmoving contractor was clearing for about four or five days. Any previous clearing was minor in comparison to what has now occurred. This is an injustice to the flora and fauna of the block.</p> <p>There appear to be several flaws and omissions in the amendment report:</p> | <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>This is correct. The proposed amendment is effectively a retrospective application to regularise the unlawful works that were undertaken on the site.</p> <p>Noted.</p> | |

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| | | <p>a. The photos do not accurately depict the extent to which the block has now been cleared. By cutting into the slope the landscape has been changed.</p> <p>b. There is no current aerial photograph. Why?</p> <p>c. Alterations made to the block have visually impacted on the whole subdivision. The clearing is even visible from South Coast Highway. This shows no regard to the adjoining neighbours.</p> <p>d. Page four of the report states that “80% of the cleared area has been cleared for more than 11 years.” This at best is a mistake. At worst it is the owner trying to persuade. The statement is wrong.</p> <p>e. Page eight states that further clearing would be required if the owner was asked to build in the building envelope. It seems evident that the current owner is now concerned with the plant and fauna. It should have always been a priority to minimise clearing.</p> <p><u>Precedent:</u></p> <p>Contrary to the report commissioned, this is not an isolated case. We have been approached in the past by an owner of Lot</p> | <p>It is noted in paragraph 19 of the Officer’s report that only 15-20% of the cleared area existed prior to 2002 and that more substantial clearing has taken place since. The aerial photographs provided only prove that 80% of the cleared area was cleared more than 5 years ago.</p> <p>A current aerial photograph of the site may not be available. However, it would likely show a larger cleared area than the May 2010 photograph.</p> <p>It acknowledged that the existing cleared area is highly visible.</p> <p>Noted. This is discussed in detail in paragraph 19 of the Officer’s report.</p> <p>Noted. As has been mentioned above, clearing of the prescribed building envelope in addition to the existing cleared area would incur a further environmental loss. Although the existing cleared area could be revegetated, this may not regenerate to its original state. While the proposal seeks to regularise unlawful works, it may be less environmentally damaging to minimise the amount of additional clearing required on the lot.</p> | |

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| | | <p>202 of Migo Place. The owner was not aware that a building envelope existed on his block. He went to Council and was given the information. The block is now for sale.</p> <p>Allowing the amendment would definitely set a precedent. Any owner can claim that there were not aware at the time of purchase, that a building envelope existed. It is up to the purchaser to obtain the right information.</p> <p><u>Externalities:</u></p> <p>i.e.: equity of existing neighbours. Existing neighbours have bought and built knowing the locations of building envelopes in the subdivision, and adjacent subdivision. If Amendment No. 315 is approved the proposed dwelling will be visible from several dwellings and those property owners' privacy will be compromised. Would those property owners have a claim for damages?</p> <p><u>Environmental loss if Amendment No. 315 is declined:</u></p> <p>The applicant suggests there will be further environmental loss if the original/existing building envelop is now cleared. If you consider only Lot 116, yes. If you consider</p> | <p>Noted. As outlined above, Council risks setting an undesirable precedent if it finally adopts the amendment in its current form.</p> <p>It is unlikely that the proposed building envelope would compromise the privacy of adjoining properties. However, it could impact on visual amenity that they currently enjoy. However, there would be no avenue for adjoining owners to claim for 'damages'.</p> | |

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| | | <p>this amendment is a blueprint for shifting building envelopes, there will be more amendments granted and more environmental loss.</p> <p>There are no guarantees that commitments to revegetate will be honoured.</p> <p>The proposed new building envelope allows the owner to build a dwelling with far superior views at 107.5m AHD. The current development exclusion stipulates no building above 96m AHD. Superior views raise the value of a property. The time and expense of a scheme amendment can be estimated as can the increased market value of a property with superior views, therefore approving Amendment No. 315 sets an example and precedent of a risk/reward calculation for a positive economic outcome.</p> <p>In conclusion, whilst the applicant can infer this objection implies we support more native vegetation being cleared i.e. the current building envelope: in this instance yes we do; if it prevents an inequitable outcome for neighbours and opens the door for those able to fund future amendments to achieve a desired economic outcome.</p> | <p>Noted. As discussed above, the overall environmental impact and risk of setting an undesirable precedent must be carefully considered.</p> <p>Now that the City of Albany is aware of the situation on the site, any commitments made by the owners and any new planning controls or conditions put in place can be monitored for compliance.</p> <p>Noted.</p> <p>It is noted that other landowners in the area have adhered to the provisions</p> | |

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| | | | of the Town Planning Scheme and again, the risk of setting an undesirable precedent must be noted. | |
| 20 | | <p>I wish to raise concerns and comments regarding Amendment No. 315 to Town Planning Scheme No. 3, which proposes to amend the subdivision guide plan for Special Rural Zone No. 14 (Hortin Road and Forsyth Glade, Kronkup).</p> <p>I and my family have lived ----- to this application for thirteen years.</p> <p><u>Precedent:</u></p> <p>The planning report for this proposal is misleading in that the photographs of the site ('Images from Early 2000s') depict a situation which no longer exists. The current situation involves unauthorised clearing of an additional 20% of the site of this area by the applicant using heavy machinery over a number of days. This development included further clearing of the Development Exclusion Area and refill of approximately seven meters (vertical) of the cutaway for the previously proposed housepad (to the right of the motor vehicle in the 'Images from Early 2000s' and between the shed roof and tree to the left in the bottom photograph) utilising green fill cleared in the activity.</p> | <p>Noted. These photographs do show the site as it was prior to the current owner undertaking further earthworks and clearing. However, the exact percentage of the site which was cleared under the current ownership is unclear.</p> | <p>The submission is upheld in part.</p> <p><u>Modifications required:</u></p> <p>The site plan shall be modified as follows:</p> <ul style="list-style-type: none"> • "Revegetation" on the legend shall be replaced with "Revegetation using site-specific endemic species". |

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| | | <p>This additional clearing was completed after its proscription was brought to the attention of the contractor.</p> <p>This risks creating a precedent where the owner of the adjacent holdings or uncleared land in any similar subdivision, motivated by commercial advantage or a grab for views, could clear, without authorisation, under a claim of ignorance, naiveté or mistake, and expect the Subdivision Guide Plans to be amended to accommodate the unauthorised site works.</p> <p>The claim within the amendment report to the effect that “the particular issues are unique to this property and will therefore not set a precedent” is without authority or substance. This would more likely have been the case without the additional clearing by the applicant as depicted in the ‘Images from Early 2000s’ photographs.</p> <p><u>Floor level allowable for future construction vis-à-vis visual amenity in sub-division guidelines:</u></p> <p>This revised site application includes some restoration toward the condition of the site when it was purchased by the applicant with removal of the proposed driveway (around the water tank) and lowering of the proposed house pad. Although still in</p> | <p>Noted.</p> <p>Noted. Again, the risk of setting an undesirable precedent is highlighted.</p> <p>Noted.</p> <p>Noted. This suggestion of a compromise may offer an appropriate solution to the concerns over cumulative environmental loss, setting of an undesirable precedent and</p> | |

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| | | <p>excess of the maximum height limit of approximately 97m in the existing requirements, further restoration of the house pad to the floor level to approximately 102m (5.5m below the indicative height with this application) and position (adjacent to the existing shed) as was the case when the applicant purchased the property (as depicted in 'Images from Early 2000s') would effectively remove the opportunity for other landowners to cite precedent in future.</p> <p>I am supportive of this application in respect to the maintenance of the original subdivision guidelines, particularly in terms of landscape protection and visual amenity. I acknowledge that the requirement to clear in the current development footprint would be detrimental to the landscape ("net environmental loss") and amenity of the area, notwithstanding the impact on other properties and the subdivision-guidelines including the requirement "to minimise the external and internal visual impact of dwellings, outbuildings and access legs."</p> <p>It is my view that intentions of the applicant as far as the proposed dwelling are irrelevant to this proposal. The intentions of the original owner of this land were to build to the north of the existing shed while the previous owner 'intended' to build in the clearing adjacent to the shed depicted in the</p> | <p>impact on the landscape. It is discussed in more detail in paragraph 31 and 33 of the Officer's report.</p> <p>Noted.</p> <p>Noted.</p> | |

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| | | <p>photographs. Neither their intentions nor those of the sub-division guidelines have been fulfilled and it is my submission that an application of this nature should be considered against all the limits of the proposed changes as the intentions of the applicant or subsequent owners are free to change, within those guidelines, at any time.</p> <p><u>Landscape Protection Zone:</u></p> <p>Lot 116 is the only block on the subdivision where the Landscape Protection zone and the Development Exclusion Area are identical and it is my view that irrespective of the ultimate location of the development footprint, the guidelines of these zones should be maintained in the interest of the intentions of the subdivision plans.</p> <p>This amendment proposal is based substantially on a wish to avoid further clearing yet requires further substantial clearing of existing vegetation, up to about 15m wide at some points, on three sides of the proposed development footprint. This appears to extend the cleared area approximately a further twenty-percent in addition to the twenty per-cent previously cleared by the applicant. The allowance for this additional clearing would not occur if the building was genuinely located more to the centre of the proposed development</p> | <p>Noted. While a compromise between the prescribed building envelope and existing cleared area may be a pragmatic outcome, it would still be contrary to the intent of the Town Planning Scheme provisions and original subdivision guide plan.</p> <p>Noted. This can be considered in a compromise situation.</p> | |

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| | | <p>footprint and this footprint was limited to the existing cleared area.</p> <p>I support any restoration of the cleared area with endemic rather than simply native species. The introduction of non-endemic native flora does not serve the conservation elements referred to in the application.</p> <p>It seems incongruous that an unauthorised clearing could result in amendment to subdivision guidelines, (which were intended by the City “to create rural residential retreats that blend into the landscape and minimises visual impact from Hortin Road” and were the basis on which we purchased our block), in a way which requires and permits further clearing, while the merits and intentions of these original guidelines has not been questioned.</p> | <p>A notation can be added to the subdivision guide plan to ensure that revegetation is undertaken using endemic species.</p> <p>Noted. Once again, this highlights the risk to Council of setting an undesirable precedent, by amending the scheme to regularise unlawful works. Furthermore, no attempt has been made to demonstrate that the proposal is consistent with the intent of the original subdivision guide plan, as described in Amendment No. 126 (see paragraphs 13-16 in the Officer’s report).</p> | |
| 21 | | <p>I wish to make known that I fully support the proposed amendment of the development exclusion and landscape protection area on Lot 116 Forsyth Glade, Kronkup.</p> <p>It would appear illogical to undertake further clearing of the natural vegetation, when a perfectly good building envelope already exists on this parcel of land. The existing building and cleared area have been in place for some years, and to my knowledge without any objections from local residents.</p> | <p>The opposition to further clearing of vegetation on Lot 116 Forsyth Glade is noted.</p> <p>As outlined above, the existing large shed on the lot had previously been approved under a building licence, but was found to have been unlawfully constructed by the previous landowners within the Development Exclusion and Landscape Protection</p> | The submission is noted. |

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| | | <p>The question must be asked; why has this suddenly become an issue? I believe that the current owners are in fact acting responsibly in trying to retain as much of the natural flora and fauna as possible.</p> <p>I was of the belief that the objective of this subdivision was to preserve the remaining natural vegetation of the area, not increase the area of cleared land. Therefore, building on the existing parcel of cleared</p> | <p>Area, rather than in the approved location. Furthermore, approximately 2900m² of vegetation was unlawfully cleared at the time of construction of the shed and additional clearing was conducted in 2012 by the current landowners, pre-emptively preparing the site for the construction of their proposed house.</p> <p>The current landowners have been unfortunate enough to inherit a problem created by a previous owner and due to the nature of the planning system, it is now their responsibility to rectify the situation. In this instance, the landowners have chosen to lodge an application to amend the Town Planning Scheme. As with any retrospective application, this must be assessed as though no work has been undertaken on-site and staff must consider the individual planning merits of the case and determine whether an approval would have been granted prior to any work being carried out.</p> <p>It may be contended that this is the most pragmatic solution to the current situation. Removing the fill that has been added to the site, under the current ownership, would help to</p> | |

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| | | | land is the most responsible and practical path to take and I believe Amendment No. 315 should be approved. | reduce landscape impact by setting any future dwelling lower into the hillside. | |