



# **TOWN PLANNING SCHEME NO. 3**

## **SCHEME AMENDMENT NO. 125**

**PLANNING AND DEVELOPMENT ACT 2005**

**RESOLUTION DECIDING TO AMEND A LOCAL PLANNING SCHEME**

**SHIRE OF DENMARK**

**TOWN PLANNING SCHEME No. 3**

**AMENDMENT No. 125**

RESOLVED that the Council, in pursuance of Section 75 of the Planning and Development Act 2005, amend the above local planning scheme by:

- 1) Inserting a new scheme provision for Fire Protection and Bush Fire Control.
- 2) Altering the Table of Contents accordingly.

Dated this ..... day of .....201....

.....  
Chief Executive Officer                      Date

**MINISTER FOR PLANNING**

**PROPOSAL TO AMEND A SCHEME**

<b>1.</b>	<b>LOCAL AUTHORITY:</b>	Shire of Denmark
<b>2.</b>	<b>DESCRIPTION OF TOWN PLANNING SCHEME:</b>	Town Planning Scheme No. 3
<b>3.</b>	<b>TYPE OF SCHEME:</b>	District Zoning Scheme
<b>4.</b>	<b>SERIAL NUMBER OF AMENDMENT:</b>	Amendment No. 125
<b>5.</b>	<b>PROPOSAL</b>	<ol style="list-style-type: none"><li>1) Inserting a new scheme provision for Fire Protection and Bush Fire Control.</li><li>2) Altering the Table of Contents accordingly.</li></ol>

# SCHEME AMENDMENT REPORT

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## 1.0 Introduction

The Shire of Denmark seeks the WA Planning Commission's support and the Hon. Minister's approval to a scheme amendment that seeks to incorporate a new scheme provision covering bush fire protection within the Shire.

Council has been considering the matter of altering the present bush fire control requirements as a result of discussions and recommendations from local bush fire committees and concerned residents. The priority has been elevated following the tragic bushfire disasters experienced in WA and on the eastern seaboard. The continued improvement and implementation of adequate bush fire protection measures in the Shire of Denmark is a high-priority and requires the cooperation and acceptance of a shared responsibility from all stakeholders to minimise the threat.

These discussions have revolved around the 'possible' confusion between the implementation of statutory planning controls under the Scheme and the Shire's Annual Fire Regulation Notice.

In the past, practice has been the subdivider of land undertook all works required under the planning scheme and landowners were then responsible to maintain these to a standard acceptable by the Shire. These situations arose in the Special Residential, Special Rural, Tourist and Landscape Protection zones. In addition, the Shire prepares the Annual Fire Regulation Notice which stipulates to all landowners (irrespective of zoning) the required fire protection measures to be implemented by them by a certain time each year. In the event that an existing scheme provision differed from the Fire Regulation Notice, staff applied the higher standard to that particular property.

Subsequently, the Shire at its July 2009 Meeting (Resolution: 190709) resolved:

*Council, as part of a proposed omnibus amendment of Town Planning Scheme No. 3, incorporate Bush Fire Objectives and a new clause addressing Bush Fire Management and criteria and at the same time reviewing all Fire Management/Bush Fire Protection provisions relating to Special Residential, Special Rural, Tourism and Landscape protection Zones to achieve a more consistent application across these zones.*

## 2.0 Existing Scheme Provisions

The present Town Planning Scheme No. 3 contains individual special provisions created at the time of rezoning the land and are included within the Appendices at the rear of the Scheme Text. There are presently some 49 distinct special residential, special rural, tourist and landscape protection zones contained within the Scheme, each having similar but slightly different requirements which were created specific to the land.

Many of these provisions (some dating back to the 1980's), have not been reviewed and in some cases are now at odds with the annually reviewed Fire Regulation Notice.

### **3.0 Proposed Scheme Provisions**

The scheme amendment intends to introduce a new general scheme provision that will ensure consistency of approach regarding bush fire protection throughout the affected zones. It includes objectives and controls designed to mirror current practice and to remove any potential confusion for landowners.

If there is any inconsistency, the matter would be determined by Council who will apply the higher standard as determined from the Scheme and Fire Regulation Notice.

### **4.0 Conclusion**

The proposed new scheme provisions will provide Council with the necessary fire control provisions and ensure that any inconsistency is adequately addressed.

The Shire seeks the Hon. Minister for Planning approval for the finalisation of the amendment accordingly.

PLANNING AND DEVELOPMENT ACT 2005

Shire of Denmark

TOWN PLANNING SCHEME No. 3

AMENDMENT No. 125

The Denmark Shire Council under and by virtue of the powers conferred upon it in that behalf by the Planning and Development Act 2005 hereby amends the above local planning scheme by:

1) Inserting a new scheme provision for Fire Protection and Bush Fire Control as follows:

*5.37 Fire Protection and Bush Fire Control*

*Council's objectives in implementing fire protection and bush fire control measures are to:*

- *Identify areas within the Shire where bush fires pose a threat to life and property;*
- *Require all land use and development to implement appropriate fire protection requirements;*
- *Implement the WA Planning Commission 'Planning for Bush Fire Protection' guidelines and DC Policy 3.7 'Fire Planning'.*

*5.37.1 Council shall require all planning proposals (relating to scheme amendments, structure plans and subdivisions) to include a fire hazard assessment and report prepared in accordance with the methodology and classifications (as determined by Council) contained in the WAPC 'Planning for Bush Fire Protection' guidelines at the time of application.*

*5.37.2 Council shall require all planning proposals incorporate appropriate fire protection measures which may include:*

- *The requirements of the Shire's Annual Fire Regulation Notice (as amended from time to time);*
- *The provision of an adequate fire fighting water supply and fire hydrants/standpipes/hose connections etc;*
- *The provision of fire access tracks for access and egress of 2WD vehicles and access for emergency service vehicles;*
- *Fire prevention and suppression measures to be implemented by all landowners including hazard separation, building protection and low-fuel zones;*
- *Incorporation of construction standards for buildings including those in AS3959 Construction of Buildings in Bushfire Prone Areas (as updated from time to time) and the Building Codes of Australia;*
- *If deemed necessary, allocation of land for a fire fighting building or payment of a financial contribution to the implementation of additional fire protection measures within the local area.*

*5.37.3 Council may request the WA Planning Commission impose conditions on subdivision proposals requiring the implementation of appropriate fire protection measures.*

*5.37.4 Notwithstanding any other fire protection provisions contained within Appendix VI – Special Rural Zone, Appendix XIII – Schedule of Tourist Zones, Appendix XIV – Special Residential Zones and/or Appendix XVI – Landscape Protection Zone of the scheme, all development shall comply with the requirements of the Shire’s Annual Fire Regulation Notice (as amended from time to time).*

*5.37.5 In the event of any inconsistency between an existing scheme provision and/or approved Fire Management Plan or similar and the Shire’s Annual Fire Regulation Notice, the protection measures that, in the opinion of the Council, provides the greater fire risk protection and mitigation measures shall be implemented by the developer and/or landowner to the satisfaction of the Shire of Denmark.*

2) Alter the Table of Contents accordingly.



PLANNING & DEVELOPMENT ACT 2005

Shire of Denmark

TOWN PLANNING SCHEME No. 3

AMENDMENT No. 125

**ADOPTION**

Adopted by resolution of the Council of the Shire of Denmark at the Ordinary Meeting of the Council held on the ..... day of .....201....

.....  
SHIRE PRESIDENT

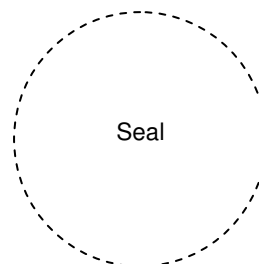
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CHIEF EXECUTIVE OFFICER

**FINAL APPROVAL**

Adopted for final approval by resolution of the Council of the Shire of Denmark at the Ordinary Meeting of the Council held on the ..... day of .....201... and the Common Seal of the Shire of Denmark was hereunto affixed by the authority of a resolution of the Council in the presence of:

.....  
SHIRE PRESIDENT

.....  
CHIEF EXECUTIVE OFFICER



**RECOMMENDED/SUBMITTED FOR FINAL APPROVAL**

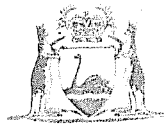
.....  
DELEGATED UNDER S.16 OF PD ACT 2005

.....  
Date

**FINAL APPROVAL GRANTED**

.....  
MINISTER FOR PLANNING

.....  
Date



**Minister for Police; Emergency Services; Road Safety  
Leader of the House in the Legislative Assembly**

Our Ref: 31-05131

Mr Dale Stewart  
Chief Executive Officer  
Shire of Denmark  
PO Box 183  
DENMARK WA 6333

Shire of Denmark	
ICR105825	
4 MAY 2010	
FIRE 1	
DATE	LPH
FILE REF	
COUNCILLORS	
CEO	<input checked="" type="checkbox"/>
DIR of FINANCE	
DIR of PLANNING	
DIR of INFRASTRUCTURE	
DIR of COMMUNITY	
OTHER	

Dear Mr Stewart

Thank you for your letter dated 2 September 2009 seeking legal advice as to whether notices under sub-section 33(1) of the *Bush Fires Act 1954* (BF Act) override all other legislative jurisdictions and / or instruments issued under Western Australian law. Further to my interim response dated 17 November 2009 I can now advise the following.

The concern identified in your letter, is the potential for conflict between separate statutory instruments affecting land clearing, such as notices issued under section 33 of the *Bush Fires Act 1954* and local planning schemes provided for under the *Planning and Development Act 2005*. It should be noted that an inconsistency will only arise if, to take one example, a section 33 notice requires a landowner to clear land and a local planning scheme forbids the clearing of the same land. Where statutory instruments are capable of simultaneous obedience, no inconsistency will arise.

In the case of an inconsistency, however, it is difficult to determine with certainty which statutory instrument would prevail. Clearly, this is an undesirable situation and the Fire and Emergency Authority of Western Australia (FESA) will be liaising with the Department of Planning and the Western Australian Local Government Association to identify the most appropriate way of removing this uncertainty.

I appreciate you writing to me with your concern.

Yours sincerely

**ROB JOHNSON MLA  
MINISTER FOR POLICE; EMERGENCY SERVICES; ROAD SAFETY**

30 APR 2010