

PLANNING & DEVELOPMENT ACT 2005
SHIRE OF DENMARK
DISTRICT TOWN PLANNING SCHEME NO. 3
AMENDMENT NO. 139

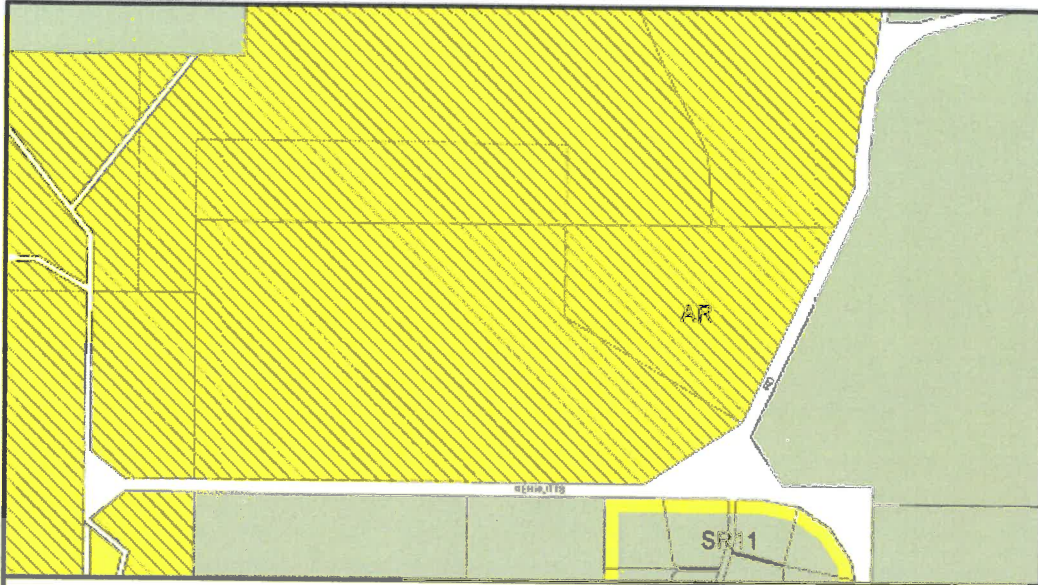
RESOLVED that the Council, in pursuance of Section 75 of the Planning and Development Act 2005, amend the above local planning scheme by:

1. Reclassifying Lot 7576 Kernutts Road, Hay from 'Public Use' local scheme reserve to 'Parks and Recreation' local scheme reserve.
2. Reclassifying Lot 7648 Kernutts Road, Hay from 'Public Use – Agricultural Research Station' local scheme reserve to 'Rural' with an 'Additional Use (A24)' zone.
3. Amending the Scheme Map accordingly.
4. Inserting Additional Use (A24) and associated provisions into Appendix II – Schedule of Additional Use Sites of the Scheme Text.

	Particulars of the Land	Additional Use	Conditions of Additional Use
A24	Lot 7648 Kernutts Road, Hay	<p>The objective of the 'Additional Use' for the subject land is to protect existing flora and fauna values and, notwithstanding the Rural zoning, accordingly restrict land use classes to the following:</p> <p><u>'AA' uses:</u></p> <ul style="list-style-type: none"> - Home Occupation. <p><u>'P' uses:</u></p> <ul style="list-style-type: none"> - Single House <p>All other land use classes are prohibited 'X' use.</p>	<ol style="list-style-type: none"> 1. The building envelope for Lot 7648 shall be as per the <i>Building Envelope Plan Lots 7576 & 7648 Kernutts Road, Hay</i> dated 27 January 2016 as provided for in the Scheme Amendment 139 documentation. 2. Within those areas delineated as Vegetation Protection Area on the Building Envelope Plan, no further clearing shall occur except for: <ul style="list-style-type: none"> - Trees that are dead, diseased or dangerous; - To comply with any Bushfire Management requirements that relate to the site; and

			<ul style="list-style-type: none">- To provide vehicular access to the designated building envelope. <ol style="list-style-type: none">3. Development shall be connected to Alternative Treatment Units approved by the local government and Department of Health.4. All buildings shall be constructed to AS3959-2009 Construction of Buildings in Bushfire Prone Areas (as amended), with all bushfire management measures recommended in the Bushfire Hazard Assessment Report contained in the Scheme Amendment 139 documentation being implemented to the satisfaction of the local government.5. Provision of potable water shall be the responsibility of the individual landowner at the time of development and shall involve the installation of a water storage tank of not less than 92,000 litre capacity.6. As a condition of Development Approval, the area around the building envelope shall be fenced so as to demarcate the development exclusion area outside of the building envelope. All fencing (internal and boundary) shall be of rural construction standard such as pine/steel post and strand to the satisfaction of the local government.7. A Preliminary Site Investigation is required to be undertaken, to the satisfaction of the Department of Environment Regulation, to accompany the application for development approval, given the site's historical use as an agricultural research station.
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**SHIRE OF DENMARK
 TOWN PLANNING SCHEME No. 3** **Amendment No.139**



EXISTING ZONING



SCHEME (AMENDMENT) MAP

LEGEND

LOCAL SCHEME RESERVES

- Parks and Recreation
- Public Use

AR Denoted as Follows:
 Agricultural Research Station

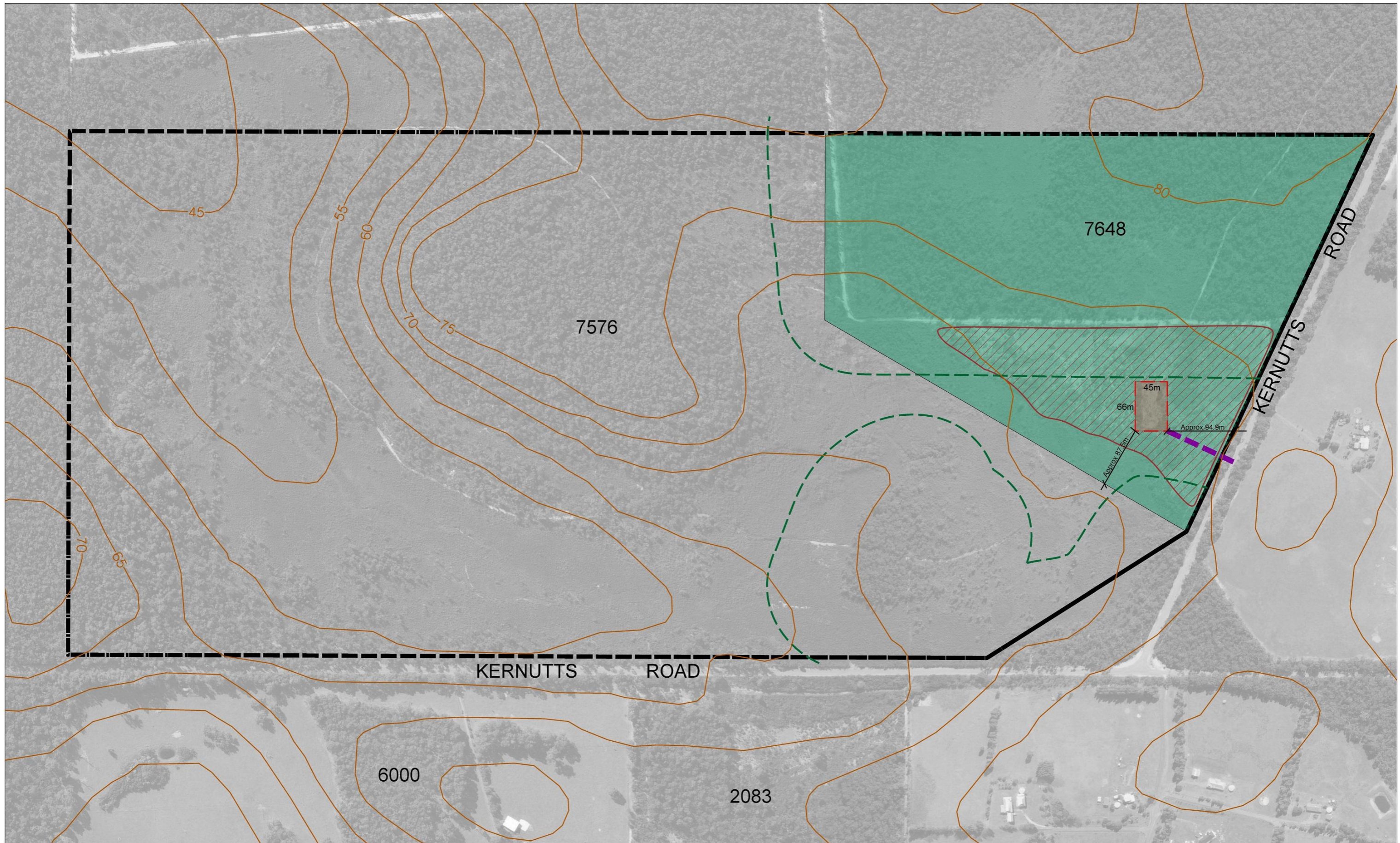
ZONES

- Rural
- Special Rural

OTHER

- A24 Additional Use
- SR11 Special Rural Areas (see Scheme Text)
- No Zone

SCALE 1:20 000






Plan No. : 16746-2
 Revision : REV.2
 Scale : 1:5000@A3






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Merbe Pty Ltd
 Suite 4 First Floor 40 Hasler Road Osborne Park WA 6017 www.whelans.com.au

LEGEND

-  100m Hazard Separation Zone from Forest Extreme Bushfire Hazard Risk
-  Subject Site
-  Semi-cleared low bushfire hazard risk area

-  Vegetation Protection Area (Development exclusion area)
-  Building Envelope (maximum 3000m²)
-  Indicative location for driveway

**BUILDING ENVELOPE PLAN
 LOTS 7576 & 7648 KERNUTTS ROAD
 HAY**

Date: 27 January 2016

DRAWN BY: CdeL
 CHECKED BY: JP
 V DATUM: AHD
 H DATUM: MGA94 (50)



**Environmental
Protection Authority**

Westralia Square, Level 8
141 St George's Terrace, Perth, Western Australia 6000
PO Box K822, Perth, Western Australia 6842
Telephone (08) 9222-7000 Facsimile (08) 9222 7155
SHIRE OF DENMARK

www.epa.wa.gov.au

RECORD	
- 6 MAY 2003	
File TPS 3/A84	
Meeting..... Item No.....	
CEO	HEALTH/BDG
A/CEO	PLANNING
EN	REC. CENT.

Your Ref TPS3/A84 PD/CV
Our Ref 188678
Enquiries Natalie Thorning

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

Attention: Peter Duncan

SHIRE OF DENMARK TPS 3 AMENDMENT 84

I refer to your correspondence dated 23 April 2003 regarding the above proposal.

In order for the Environmental Protection Authority to review the proposal and set appropriate level of assessment, further information is required, in particular:

Remnant vegetation

The EPA notes that, the 29.447 hectare Amendment Area contains 19.4 hectares of uncleared land and 2.4 hectares described as regrowth. Only 7.6 hectares of the site is cleared and thus available for rural use. It should be noted that a new land-clearing approval process is currently being established under the Department of Environment to replace the current system of assessment under the *Soil and Land Conservation Act* and by the Environmental Protection Authority. Any future clearing is likely to be subject to this permit process.

It is also noted that the Amendment Area is located within the Denmark River Catchment which has been identified as one of five catchments under the State Salinity Action Plan.

With the above as context the EPA Service Unit recommends that the proposed Rural zone be further justified or alternative zones considered that will complement the present values of the Amendment Area.

Information regarding the viability of the Amendment Area as a rural site is also requested.

Site contamination

As the Amendment Area has previously been used as an agricultural research station there is the potential for soil and/or groundwater contamination from chemicals such as fertilisers, pesticides, herbicides, that may have been used and/or stored in the past.

It is therefore requested that a Preliminary Site Investigation be undertaken to determine the extent and severity of the contamination on the site and to outline the approach to management of any contamination present.

When undertaking the site investigation the Department of Environmental Protection (DEP) Contaminated Sites Management Series of Guidelines should be referred to for the preferred methodology and criteria. These guidelines are available on the DEP website www.environ.wa.gov.au under the heading 'Contaminated Sites'.

Would you please forward the above information as soon as possible by either faxing it to (08) 9322 1598 or address it to Environmental Planning Branch, Department of Environmental Protection, Westralia Square, 141 St George's Terrace, Perth WA 6000. Please mark it to the attention of Natalie Thorning.

Yours sincerely



K J Taylor
DIRECTOR
EVALUATION DIVISION

5 May 2003

Cc Chris Gunby, DOE South Coast Region

**9.1.4 TOWN PLANNING SCHEME No.3 – AMENDMENT No.83 –
LOCATION 7576 KERNUTTS ROAD**

Location:	Location 7576 Kernutts Road
File Ref:	TPS3 A83
Disclosure of Officer Interest:	None
Date:	29 th April 2003
Author:	Peter Duncan – Manager, Planning & Development

Summary:

A proposed Amendment to Town Planning Scheme No.3 has been submitted to rezone Location 7576 Kernutts Road from Public Use Reserve to the Rural Zone and to alter the Additional Use Schedule in the Scheme Text.

It is recommended the Amendment not be initiated.

Background:

The possibility of this land and an adjoining Location 7648 Kernutts Road being rezoned from the Public Use Reserve to the Rural Zone was considered by Council on the 26th February 2002 where it was resolved:

“(1) That Council support the freeholding and disposal of Reserve 41253 (Location 7648) Kernutts Road and advise that any subsequent proposal to rezone the land from Public Use Reserve to Rural will need to be the subject of a Town Planning Scheme Amendment prepared by planning consultants and submitted in accordance with Council’s requirements for consideration.

“(2) That Council not support the disposal of Location 7576 Kernutts Road which is zoned Public Use Reserve under Town Planning Scheme No.3, as the land is completely vegetated and a substantial portion is a wetland and subsequent development resulting from the disposal would not be favoured.

“(3) That Council advise that any funding generated by the ultimate sale of Location 7648 Kernutts Road must be expended by the Department of Agriculture in the Denmark area.”

Amendment No.84 which proposed the rezoning of the adjoining Location 7648 Kernutts Road was considered by Council at its meeting held on the 25th March 2003 where it was resolved.

“(1) That Amendment No.84 to Town Planning Scheme No.3 be initiated subject to the modifications in the attached Schedule of Modifications being carried out.

“(2) When modified, Amendment No.84 be referred to the Environmental Protection Authority and once authorised by the EPA, it be advertised for a period of 42 days.”

That Amendment No.84 was then modified by the consultants and was referred to the EPA prior to formal advertising. The EPA has recently requested more detail on remnant vegetation and potential site contamination and this has been referred to the consultants to address.

This present Amendment No.83 involves Location 7576 Kernutts Road which, on 26th February 2002 Council resolved it did not support its disposal by the Crown (Department of Agriculture). The reasons for that lack of support were, the land is completely vegetated and a substantial portion is a wetland and subsequent development resulting from the disposal would not be favoured.

Location 7576 is freehold land owned by the Minister for Works with a Management Order in favour of the Department of Agriculture and is 96.4ha in area. Location 7576 was placed in favour of the Department of Agriculture following a transfer with the Education Department.

The land to the far east and south west is zoned Rural, whilst to the south-east is zoned Special Rural and to the north is a Public Use Reserve under Town Planning Scheme No.3.

The land to the west is a Public Use Reserve that is presently being rezoned to an Industrial Zone (Amendment No.71) for the new industrial area. The western part of Location 7576 will be affected by the buffer for the industrial area.

As part of the Denmark Industrial Area Site Selection Study, a plan showed the bulk of Location 7656 is a wetland and the total site is vegetated with woodland.

The rezoning of Location 7576 to Rural and its ultimate disposal would place pressure on various authorities for the clearing of the wetland for agricultural development.

Comment:

In accordance with policy a copy of the Amendment document is attached for each Councillor.

The Amendment proposes to rezone Location 7576 from the Public Use Reserve to the Rural Zone and to alter the Schedule of Additional Use Sites to include this land and place specific restrictions on the land.

Under the "Purpose" heading in the Amendment it is stated the proposal "is consistent with the relevant Town Planning Schemes and Local Planning Strategy (etc.)" but this not strictly correct.

The Amendment does recognise the ecological significance of the land and states land use restrictions are needed over the land.

The "Background" section of the Amendment fails to mention Council in February 2002 resolved not to support the disposal of this land. It appears the basis of the Amendment is that the land is surplus to the Department of Agriculture requirements and it wishes to sell the land to achieve a return. This Amendment attempts to show how a zone and controls can be applied to the land to ensure that future purchasers are "not constrained by a 'redundant' zoning/classification".

The proposal involves the use of a Conservation Covenant and Scheme provisions with the ability to clear 10ha of the land for agricultural or other development. It is proposed the Conservation Covenant is jointly managed by the landowner, Water and Rivers Commission, DEP and Council. The Scheme provisions proposed do not specify that a conservation covenant must be prepared.

The Scheme provisions involve altering Appendix 2 (Additional Use Sites) to include a reference to Additional and Restricted Uses and include Location 7576 in that Appendix with a range of 16 permissible uses and 9 conditions of use.

The document states the Department of Agriculture is prepared to prepare a conservation covenant under the direction of Council but this is not a specified condition in the Amendment.

The Amendment does not contain a detailed land capability assessment and regardless of the kinds of conditions of use for the 10ha area for development, and considering the heavily vegetated nature of the site and the wetlands involved, its ability to sustain a Rural Zoning is seriously questioned. Council's Rural Settlement Strategy's Land Capability Mapping shows the site as having a low to medium capability only for perennial and annual horticulture and rural residential. Its capability is better for grazing but that would involve clearing of this heavily vegetated lot and this would be contrary to the stated objectives of the Amendment.

The fact that a landowner finds the land surplus to its requirements does not make a Scheme classification redundant as stated in the Amendment.

The rezoning of this vegetated lot to Rural does not mean the rural character of the immediate area will be maintained. The rural character is to the south of Kernutts Road. The Amendment fails to mention the proposals contained in Amendment No.71 to rezone portion of State Forest No.64 to the west to Industry.

The reference at 7.5 (Interface) that "discussions with the Manager, Planning Services confirm that the most appropriate zone adjoining the Crown land is the 'Rural' zone" is not correct. The consultant was advised of Council's February 2002 resolution and that a Scheme Amendment may fail to gain Council support for this particular piece of land.

If the land is no longer required by the Department of Agriculture the Crown can amalgamate it into State Forest No.64 soon to become part of the larger National Park.

The initiation of this Amendment is not favoured.

Consultation:

The Amendment if initiated by Council would need to be referred to the EPA for its assessment and authorisation to proceed. If the EPA authorisation is received the Amendment would be publicly advertised for a period of 42 days by way of a newspaper notice, a sign on site, letters to neighbours and relevant government departments. Once this process

starts, Council does not retain the right to make the final decision on the Amendment.

Statutory Obligations:

Town Planning & Development Act 1928 (as amended)

Town Planning Scheme No.3

Town Planning Regulations – The Regulations set the procedure for amending a Scheme including referral to the EPA, public advertising then referral to the WA Planning Commission and the final decision by the Minister for Planning and Infrastructure. If Council does not resolve to initiate a Scheme Amendment, then there is no right of appeal against that decision. Council under Regulation 13 must forward two copies of the Amendment to the WAPC but under Regulation 25(1)(d) the Commission does not make a recommendation to the Minister.

Policy Implications:

Town Planning Scheme Policy No.4 (TPS Amendment Documentation) – A copy of the Amendment is provided for each Councillor.

Town Planning Scheme Policy No.29 (Rural Settlement Strategy) – Denmark River Catchment Policy Area No.5.

Financial Implications:

The necessary fee has been paid.

Strategic Implications:

Nil.

Environmental Considerations:

As stated earlier the site is almost completely vegetated (see aerial photo in Amendment document) except for a minor area of some 3500m² on the western portion of this 96.4ha lot. This cleared area represents only some 0.36% of the site. The proposal to allow 10ha to be developed, represents some 10.4% of the site. Special condition 4 states the 10ha development envelope is to be located within “an existing cleared portion of the land...” but there is not an area of 10ha that is cleared. The small 3500m² cleared area is within the buffer for the new industrial area.

Voting Requirements:

Simple majority.

COUNCIL DECISION & OFFICER RECOMMENDATION

ITEM 9.1.4

MOVED: CR DONNELLY

SECONDED: CR STOKES-HUGHES

(1) That Council not proceed with and not initiate Amendment No.83 to Town Planning Scheme No.3.

(2) That Council notify the WA Planning Commission of (1) above.

CARRIED 7/2

Res: 148/03