

**8.1.1 SCHEME AMENDMENT 139 – RECLASSIFYING LOT 7576 KERNUTTS ROAD, HAY FROM “PUBLIC USE” TO “PARKS & RECREATION” AND LOT 7648 KERNUTTS ROAD, HAY FROM “PUBLIC USE – AGRICULTURAL RESEARCH STATION” TO “RURAL”**

|  |  |
|--|--|
| <b>File Ref:</b>                       | TPS3/SA139 (A3807; A3246); TPS3/SA84   |
| <b>Applicant / Proponent:</b>          | Whelans on behalf of Landcorp (On Behalf of State of Western Australia)              |
| <b>Subject Land / Locality:</b>        | Lots 7576 & 7648 Kernutts Road, Hay  |
| <b>Disclosure of Officer Interest:</b> | Nil  |
| <b>Date:</b>                           | 8 August 2016  |
| <b>Author:</b>                         | Annette Harbron, Director of Planning & Sustainability                               |
| <b>Authorising Officer:</b>            | Annette Harbron, Director of Planning & Sustainability                               |
|  | 8.1.1a – Proposed Scheme Text Provisions, Zoning Map and Building Envelope Plan      |
| <b>Attachments:</b>                    | 8.1.1b – Letter from EPA in relation to Scheme Amendment 84                          |
|  | 8.1.1c – Minutes from 27 May 2003 Council Meeting in Relation to Scheme Amendment 83 |

**Summary:**

Planning Services have received a request to initiate a Scheme Amendment to Town Planning Scheme No. 3 (TPS No. 3) to reclassify Lot 7576 Kernutts Road, Hay from “Public Use” local scheme reserve to “Parks and Recreation” local scheme reserve and Lot 7648 from “Public Use – Agricultural Research Station” local scheme reserve to “Rural” with an “Additional Use (A24)” zone to apply. By reclassifying the land as proposed and introducing the additional use zoning provisions, the existing flora and fauna values over the two lots will be protected whilst allowing for a single house to be developed on Lot 7648 only.

Having due regard to the relevant provisions of TPS No .3, the Shire’s adopted Local Planning Strategy (2011) and the numerous State Planning Policies and Town Planning Scheme Policies that are relevant to this proposal, it is recommended that Scheme Amendment No. 139 be initiated.

**Background:**

Current Application

A request to initiate a Scheme Amendment to TPS No. 3 to reclassify Lot 7576 Kernutts Road, Hay from “Public Use” local scheme reserve to “Parks and Recreation” local scheme reserve and Lot 7648 Kernutts Road, Hay from “Public Use – Agricultural Research Station” local scheme reserve to “Rural” with an “Additional Use (A24)” zone to apply was lodged with Planning Services in February 2014. It should be noted that since lodgement, the Scheme Amendment documentation has been the subject of an internal review by the Shire’s Development Co-ordination Unit and the Department of Planning whereby a number of key modifications/issues were identified that Shire officers and the Department of Planning considered needed to be addressed in the Scheme Amendment documentation prior to the matter being referred to Council for consideration of initiation.

Attached at Attachment 8.1.1a are the proposed Scheme Text provisions, Zoning Map and the referenced Building Envelope Plan. Due to the size of the document, a copy of the Scheme Amendment report documentation is available for Councillors via Dropbox or USB, with a printed version available for Councillors upon request.

In summary, the proposed Scheme provisions and the associated Building Envelope Plan will provide for a single house able to be built on Lot 7648 only.

History of Disposal Process Considerations and Scheme Amendment Considerations

At the Ordinary Meeting of Council held on 26 February 2002, Council considered the request from Vic Smith & Associates Pty Ltd Property Consultants acting on behalf of the Department of Agriculture (who were the management body for the two land parcels – with Lot 7648 being a Crown Reserve (Reserve 41253) and Lot 7576 being freehold land owned by the Minister for Works with a management order in favour of the Department of Agriculture) to provide its position on disposal and subsequent rezoning of the subject lots to “Rural”, wherein Council resolved as follows (Res No: 84/02):

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.*

At the Ordinary Meeting of Council held on 25 March 2003, Council considered the request to rezone Lot 7648 Kernutts Road from "Public Use Reserve" to "Rural" wherein Council resolved as follows (Res No: 64/03):

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.*

In line with Council's resolution the Scheme Amendment 84 documentation was prepared and referred to the Environmental Protection Authority accordingly for their due consideration to proceed to advertising. On the 5 May 2003 the Environmental Protection Authority advised in order for the review of the proposal to be undertaken and an appropriate level of assessment set that that additional information was required to be provided – refer Attachment 8.1.1b. To date this information has never been provided and Scheme Amendment 84 has never progressed.

At the Ordinary Meeting of Council held on 27 May 2003, Council considered the request to rezone Lot 7576 Kernutts Road from "Public Use Reserve" to "Rural" and alter the Additional Use Schedule in the Scheme Text wherein Council resolved as follows (Res No: 148/03):

1. *That Council not proceed with and not initiate Amendment No. 83 to Town Planning Scheme No. 3.*
2. *That Council notify the Western Australian Planning Commission of (1.) above.*

A copy of the relevant minutes pertaining to this resolution is provided at Attachment 8.1.1c.

In November 2008, the Department for Planning & Infrastructure (State Land Services) requested the Shire's comments in relation to their investigations of disposing of Lots 7576 & 7648. This matter was initially considered at the Ordinary Meeting of Council held on 27 January 2009, noting Council resolved (Res No: 090109) to defer consideration and seek advice from the Department of Environment & Conservation as to the values of Location 7576 and the likelihood as to whether any clearing may or may not be approved and request Council staff to provide a report on the potential uses of the partially cleared portion of Location 7648 for the purposes of community facilities.

In line with Council's resolution, staff sought comments from the Department of Environment & Conservation and the matter was re-considered by Council at the Ordinary Meeting held on 28 April 2009 wherein Council resolved as follows (Res No: 140409):

*That Council;*

1. *Not support the freeholding of Plantagenet Location 7648 and Location 7576, Kernutts Road.*
2. *Council supports incorporating both parcels within the adjoining conservation estate.*
3. *Requests that the portion of cleared land over Location 7648 be revegetated and rehabilitated if the land is incorporated as part of the conservation estate.*

In October 2010, the Shire of Denmark received correspondence from the Department of Regional Development and Lands (State Lands – South East) advising that they were investigating a request for a proposal to create reserve/s for a range of lots (inclusive of Lots 7576 and 7648) for 'Conservation

of Flora and Fauna' to be managed by the Conservation Commission of Western Australia (CCWA). No further action was required from the Shire of Denmark in relation to the subject lots given the Council resolution of 28 April 2009.

Following initial enquiries by Whelans in 2013 to rezone Lots 7576 & 7648, Planning Services contacted the Department of Lands (South West & Great Southern) to ascertain the status of the proposal to create the 'Conservation of Flora and Fauna' reserve. Advice received from the Property Asset & Clearing House section of the Department of Lands was that as government departments are required to pay for land now, the Conservation Commission of Western Australia advised that they were not in a position to purchase and the land has now been identified for disposal accordingly.

**Consultation:**

In accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015*, public advertising of a 'complex amendment' (refer explanation under 'Statutory Obligations') is required to be undertaken for a minimum period of 60 days once the Environmental Protection Authority and the Western Australian Planning Commission have considered the Scheme Amendment.

External Consultation

- Whelans (applicant)
- Department of Planning
- Department of Lands
- Department of Environment Regulation (Contaminated Sites Branch)

Internal Consultation

- Development Co-ordination Unit

**Statutory Obligations:**

- *Planning and Development Act 2005* – TPS No. 3 is an operative Local Planning Scheme under the Act;
- Town Planning Scheme No. 3 – Lot 7576 is currently reserved as "Public Use" and Lot 7648 is reserved as "Public Use – Agricultural Research Station" and
- *Planning and Development (Local Planning Schemes) Regulations 2015* – The Regulations set the procedure for amending a town planning scheme.

The *Planning and Development (Local Planning Schemes) Regulations 2015* provide for complex, standard and basic amendments. In relation to Scheme Amendment No. 139, it is considered to be a complex amendment having regard to Regulation 34 which is defined as:

- (a) *an amendment that is not consistent with a local planning strategy for the scheme that has been endorsed by the Commission;*
- (b) *an amendment that is not addressed by any local planning strategy;*
- (c) *an amendment relating to development that is of a scale, or will have an impact, that is significant relative to development in the locality;*
- (d) *an amendment made to comply with an order made by the Minister under section 76 or 77A of the Act;*
- (e) *an amendment to identify or amend a development contribution area or to prepare or amend a development contribution plan.*

**Policy Implications:**

The following policies have been given due consideration in relation to this proposal:

- State Planning Policy No. 2.5: Land Use Planning in Rural Areas
- State Planning Policy 3.7: Planning in Bushfire Prone Areas
- Town Planning Scheme Policy No. 5: Minimum Setbacks

**Budget / Financial Implications:**

Fees associated with the amendment have been paid as per Council's operative Fees and Charges Schedule.

**Strategic & Corporate Plan Implications:**

The sites are designated in the adopted Local Planning Strategy as 'Public Use' – designations that reflect the current scheme reservations in Town Planning Scheme No. 3. Due regard has been given to the relevant Local Planning Strategy provisions within Scheme Amendment No. 139, namely Part 1 Section 4.7 Natural Resource Management. It is considered that the proposals for scheme reserve/zoning provisions provided for in Scheme Amendment No. 139 would be minor variations to the Local Planning Strategy and if the amendment was gazetted could be dealt with in any review of the Local Planning Strategy.

The report and officer recommendation is consistent with Council's adopted Mission and Vision and assists achieve the following specific adopted Strategic Objectives & Goals:

*Environment Objective: Denmark's natural environment is regionally significant, wild and beautiful, yet so inviting and fragile that its protection and enhancement is carefully balanced in meeting the needs of current and future generations' lifestyle, development and tourism needs.*

*Environment Goal: Natural Environment – that the Shire of Denmark acknowledge the importance of the natural environment to the residents of Denmark and the region, and works with residents and all relevant agencies to maintain a high standard of environmental protection and its integration with community life.*

*Economic Objective: Denmark's economy is diverse and vibrant – its primary industries of tourism and agriculture rely on and enjoy natural and other assets that are sensibly managed and promoted.*

*Economic Goal: Development – that the Shire of Denmark closely monitor development and associated infrastructure needs in the region, and acts in conjunction with other authorities and agencies to plan development which is sensitive, timely and appropriate to the community's needs.*

*Governance Objective: The Shire of Denmark provides renowned leadership in sustainability, is effective with both its consultation with its people and its management of its assets, and provides transparent and fiscally responsible decision making.*

*Governance Goal: Planning – that the Shire of Denmark work with other relevant authorities and agencies to develop and implement planning policies and decisions that not only reflect the wishes of the community, but also provide the region with appropriate development options.*

**Sustainability Implications:**

➤ **Governance:**

There are no known significant governance considerations relating to the report or officer recommendation.

➤ **Environmental:**

There are no known significant environmental considerations relating to the report or officer recommendation, noting that the proposed Scheme provisions address the relevant environmental related matters for the development of the site (e.g. identification of building envelope, vegetation protection areas, restriction on landuses, fire protection measures etc.).

➤ **Economic:**

There are no known significant economic considerations relating to the report or officer recommendation.

➤ **Social:**

There are no known significant social considerations relating to the report or officer recommendation.

➤ **Risk:**

| Risk   | Risk Likelihood (based on history and with existing controls) | Risk Impact / Consequence | Risk Rating (Prior to Treatment or Control) | Principal Risk Theme               | Risk Action Plan (Controls or Treatment proposed) |
|--|---|---------------------------|---|------------------------------------|---|
| That Council not initiate Scheme Amendment No. 139 | Possible (3)  | Minor (2)                 | Moderate (5-9)                              | Not Meeting Community expectations | Accept Officer Recommendation                     |

**Comment/Conclusion:**

Scheme Amendment No. 139 proposes to reclassify Lot 7576 Kernutts Road, Hay from “Public Use” local scheme reserve to “Parks and Recreation” local scheme reserve and Lot 7648 from “Public Use – Agricultural Research Station” local scheme reserve to “Rural” with an “Additional Use (A24)” zone to apply. By reclassifying the land as proposed and introducing the additional use zoning provisions, the existing flora and fauna values over the two lots will be protected whilst allowing for a single house to be developed on Lot 7648 only.

As referenced in the ‘Background’ section of this report, there is extensive history in relation to the proposed disposal of the subject lots (on the basis of being State owned land) and rezoning of the subject lots. As a result, Planning Services have liaised with the Department of Lands and the Department of Environment Regulation (Contaminated Sites Branch) and their latest advice respectively is as follows:

- The land has been identified for disposal on the open market as the Conservation Commission of Western Australia and/or Department of Environment Regulation have identified that they are not in a position to purchase the land and support limited development occurring on Lot 7648.
- A Preliminary Site Investigation would not be needed as part of the scheme amendment; investigation may be required associated with development in the future.

From a Planning Services perspective it is considered that, having regard to the above comments, the scheme amendment proposal which incorporates provisions that will protect the flora and fauna values over the two lots whilst allowing for a single house only to be developed on Lot 7648 is considered appropriate.

It is therefore recommended that Council initiate Scheme Amendment No. 139 to TPS No. 3 accordingly.

**Voting Requirements:**

Simple majority.

OFFICER RECOMMENDATION

ITEM 8.1.1

That with respect to the request to initiate a Scheme Amendment to reclassify Lot 7576 Kernutts Road, Hay from “Public Use” to “Parks & Recreation” and Lot 7648 Kernutts Road, Hay from “Public Use – Agricultural Research Station” to “Rural”, Council:

1. Pursuant to Section 75 of the *Planning and Development Act 2005* initiate Town Planning Scheme No. 3 Amendment No. 139 by:
  - a) Reclassifying Lot 7576 Kernutts Road, Hay from “Public Use” local scheme reserve to “Parks and Recreation” local scheme reserve.
  - b) Reclassifying Lot 7648 Kernutts Road, Hay from “Public Use – Agricultural Research Station” local scheme reserve to “Rural” with an ‘Additional Use (A24)’ zone.
  - c) Amending the Scheme Map accordingly.
  - d) Inserting Additional Use (A24) and associated provisions in Appendix II – Schedule of Additional Use Sites of the Scheme text as follows:
    - Column 1  
A24
    - Column 2 – Particulars of the Land

Lot 7648 Kernutts Road, Hay

- Column 3 – Additional Use

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:

'AA' uses:

- Home Occupation

'P' uses:

- Single House

All other land uses classes are prohibited 'X' use.

- Column 4 – Conditions of Additional Use

1. The building envelope for Lot 7648 shall be as per the Building Envelope Plan Lots 7576 & 7648 Kernutts Road, Hay 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:
    - Trees that are dead, diseased or dangerous;
    - To comply with any Bushfire Management requirements that relate to the site; and
    - To provide vehicular access to the designated building envelope.
  3. Development shall be connected to Alternative Treatment Units approved by the local government and the 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.
2. Determine that Town Planning Scheme No. 3 Scheme Amendment No. 139 is a 'Complex Amendment' as per the provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* for the following reasons:
    - a) It is an amendment that is not consistent with a local planning strategy for the scheme that has been endorsed by the Western Australian Planning Commission; and
    - b) It is an amendment that is not addressed by any local planning strategy.
  3. Refer Town Planning Scheme No. 3 Scheme Amendment No. 139 to the Environmental Protection Authority in accordance with Section 81 of the *Planning and Development Act 2005*.
  4. Refer Town Planning Scheme No. 3 Scheme Amendment No. 139 to the Western Australian Planning Commission in accordance with Regulation 38 of the *Planning and Development Act (Local Planning Schemes) Regulations 2015*.
  5. Resolve to proceed to advertising of Town Planning Scheme Amendment No. 139 as per Regulation 38 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
  6. Not proceed with Scheme Amendment 84 to rezone Lot 7648 Kernutts Road, Hay from "Public Use" to "Rural" and advise the Environmental Protection Authority and the Western Australian Planning Commission accordingly.

**COUNCIL RESOLUTION**

ITEM 8.1.1

MOVED: CR GILLIES

SECONDED: CR SEENEY

That with respect to the request to initiate a Scheme Amendment to reclassify Lot 7576 Kernutts Road, Hay from “Public Use” to “Parks & Recreation” and Lot 7648 Kernutts Road, Hay from “Public Use – Agricultural Research Station” to “Rural”, Council:

1. Not initiate Scheme Amendment 139 at this point in time;
2. Seek to undertake discussions with the Department of Lands and the Minister for Lands regarding the disposal of this land to the adjoining State Forest landholding; noting Council has concerns over the current State Government requirement for government departments to purchase land from government departments; and
3. Re-consider the matter at the earliest available Council meeting following discussions with the Department of Lands and the Minister for Lands.

CARRIED UNANIMOUSLY: 8/0

Res: 060816

REASONS FOR CHANGE

Council considered that the land was more important as a community asset and not private land and previous Council resolutions and initial from the Conservation Commission of Western Australia (the then Department of Environment & Conservation) was that the land has high biodiversity values. Council also considered it an appropriate time to discuss Council’s concerns with the current land disposal processes in place that have resulted in the subject land being identified for disposal as private land.

**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:

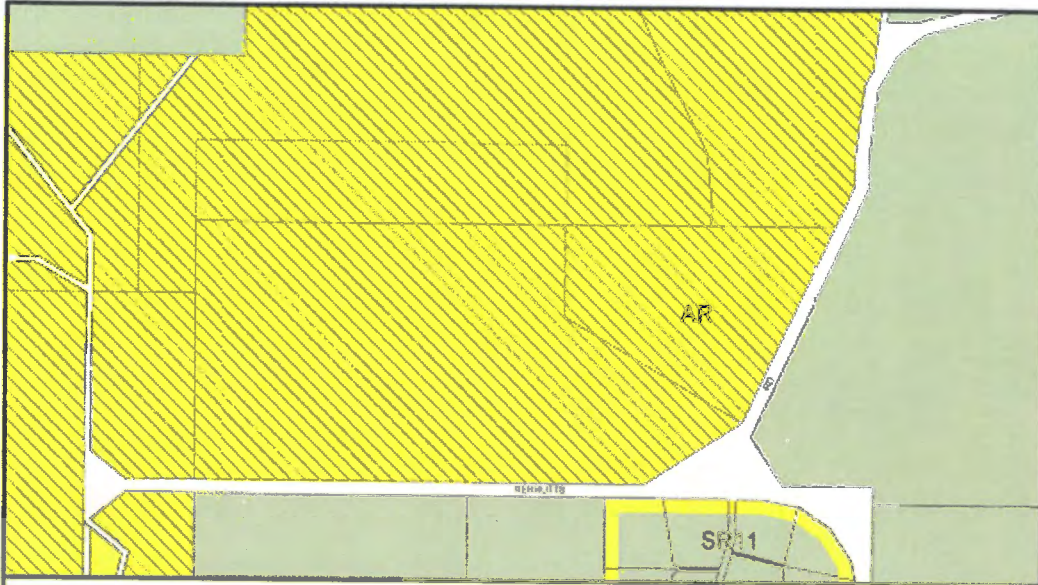
1. Reclassifying Lot 7576 Kernutts Road, Hay from 'Public Use' local scheme reserve to 'Parks and Recreation' local scheme reserve.
2. Reclassifying Lot 7648 Kernutts Road, Hay from 'Public Use – Agricultural Research Station' local scheme reserve to 'Rural' with an 'Additional Use (A24)' zone.
3. Amending 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"> <li>- Home Occupation.</li> </ul> <p><u>'P' uses:</u></p> <ul style="list-style-type: none"> <li>- Single House</li> </ul> <p>All other land use classes are prohibited 'X' use.</p> | <ol style="list-style-type: none"> <li>1. The building envelope for Lot 7648 shall be as per the <i>Building Envelope Plan Lots 7576 &amp; 7648 Kernutts Road, Hay</i> dated 27 January 2016 as provided for in the Scheme Amendment 139 documentation.</li> <li>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"> <li>- Trees that are dead, diseased or dangerous;</li> <li>- To comply with any Bushfire Management requirements that relate to the site; and</li> </ul> </li> </ol> |



|  |  |  |   |
|--|--|--|---|
|  |  |  | <ul style="list-style-type: none"><li>- To provide vehicular access to the designated building envelope.</li></ul> <ol style="list-style-type: none"><li>3. Development shall be connected to Alternative Treatment Units approved by the local government and Department of Health.</li><li>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.</li><li>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.</li><li>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.</li><li>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.</li></ol> |
|--|--|--|---|

**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**

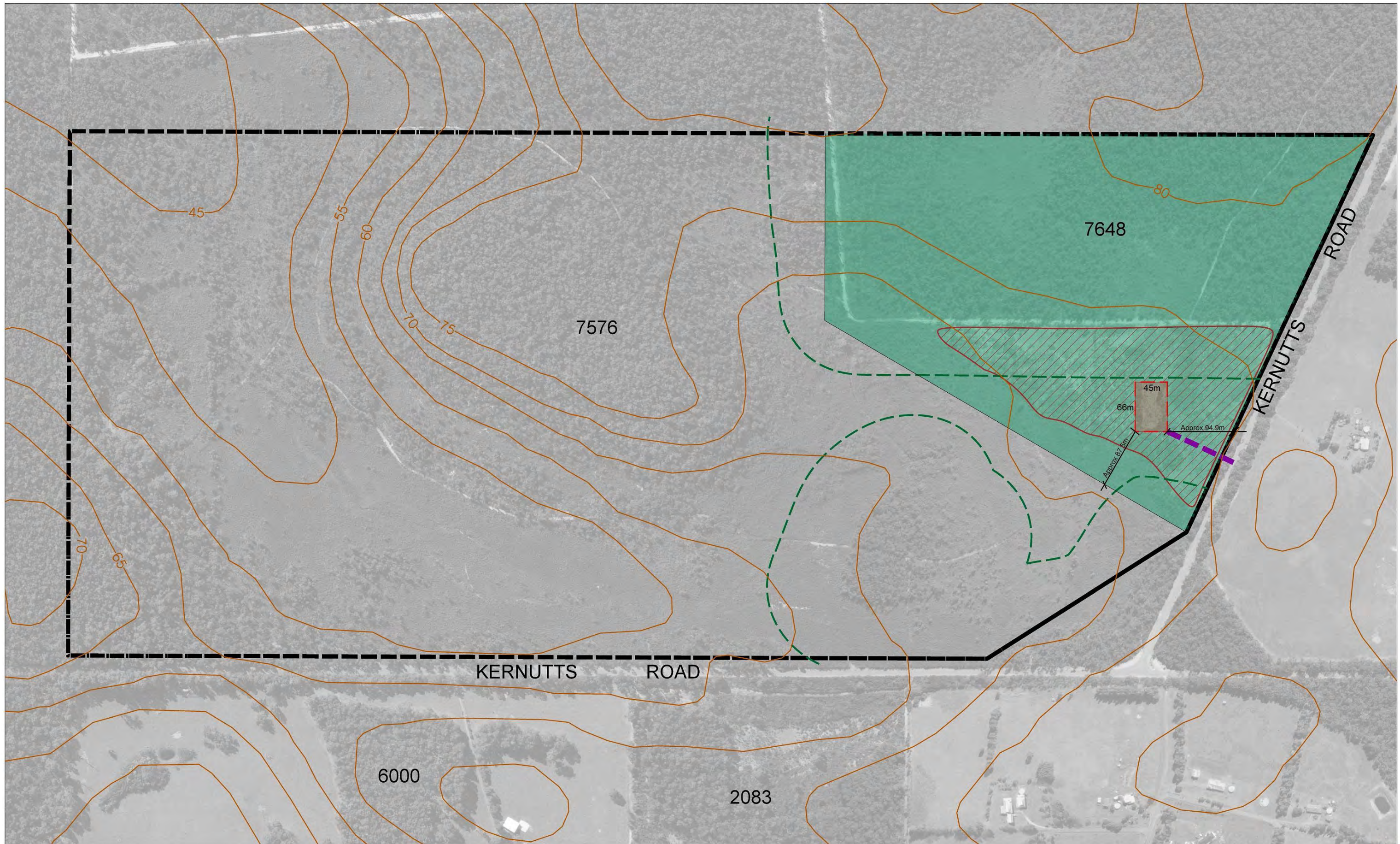
- Rural
- Special Rural

**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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Member Practice 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 3000m<sup>2</sup>)
-  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  
www.epa.wa.gov.au

Shire of Denmark

RECORD

- 6 MAY 2003

File TPS 3/A84

Meeting..... Item No.....

|       |            |                                     |
|-------|------------|-------------------------------------|
| CEO   | HLTH/BUDG  |                                     |
| A/CEO | PLANNING   | <input checked="" type="checkbox"/> |
| 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](http://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**

|  |  |
|--|--|
| <b>Location:</b>                       | Location 7576 Kernutts Road                    |
| <b>File Ref:</b>                       | TPS3 A83                                       |
| <b>Disclosure of Officer Interest:</b> | None   |
| <b>Date:</b>                           | 29 <sup>th</sup> April 2003                    |
| <b>Author:</b>                         | 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 26<sup>th</sup> 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 25<sup>th</sup> 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 26<sup>th</sup> 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 3500m<sup>2</sup> 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 3500m<sup>2</sup> 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