



Shire of Denmark
Local Planning Scheme No. 3

Amendment No. 152

Summary of Amendment Details

*Rezoning of Lot 999 Kearsley Road, Denmark and Lot 106 McLean Road, Denmark
from 'Special Residential' Zone to 'Residential' zone*

*Inserting a new appendix to provide for additional provisions for development to comply
with R-Codes and height restrictions*

February 2022

20 September 2022 - Attachment 9.1.2a

Planning and Development Act 2005

**RESOLUTION TO ADOPT AN AMENDMENT
TO LOCAL PLANNING SCHEME**

Shire of Denmark Local Planning Scheme No. 3

Amendment No. 152

Resolved that the Local Government pursuant to section 75 of the *Planning and Development Act 2005*, amend the above Local Planning Scheme by:

1. Rezoning Lot 999 Kearsley Road, Denmark and Lot 106 McLean Road, Denmark from 'Special Residential' Zone to 'Residential' zone.
2. Deletion of the part of Appendix XIV as it relates to SRes 12 Lot 999 Kearsley Road, Denmark and Lot 106 McLean Road, Denmark.
3. Adding an R5 Residential Density Code for Lot 999 Kearsley Road and Lot 106 McLean Road, Denmark.
4. Add a new clause 5.3.7 referring to any additional provisions in Appendix XIX that may apply to R5 density land.
5. Adding a new Appendix XIX to insert additional site and development requirements relating to height, setback and fencing controls for Lot 999 Kearsley Road, Denmark and Lot 106 McLean Road, Denmark.
6. Amending the Scheme Map accordingly.

The amendment is standard under the provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* for the following reason(s):

- (a) an amendment relating to a zone or reserve that is consistent with the objectives identified in the scheme for that zone or reserve;
- (b) an amendment that is consistent with a local planning strategy for the scheme that has been endorsed by the Commission;
- (c) an amendment to the scheme so that it is consistent with a region planning scheme that applies to the scheme area.
- (e) an amendment that would have minimal impact on land in the scheme area that is not the subject of the amendment;
- (f) an amendment that does not result in any significant environmental, social, economic or governance impacts on land in the scheme area
- (g) any other amendment that is not a complex or basic amendment.

Dated this _____ day of _____ 20____

(Chief Executive Officer)

SCHEME AMENDMENT REPORT

1.0 INTRODUCTION

This Amendment seeks to rezone Lot 999 and Lot 106 McLean Road, Denmark, from 'Special Residential' zone to 'Residential' zone with an R5 density code.

The Amendment also seeks to insert a new Appendix XIX to provide for new table to provide for additional site and development requirements relating to height and setback controls on the land. This new Appendix complies with clause 32 of the Model Scheme Text as outlined in the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations).

The existing Scheme provisions do not allocate an R Code density to the subject land which brings into question whether the provisions of the R codes apply if there is no density code. This situation is common to all land included in the "Special Residential' zone.

Currently, Schedule 3 of the Regulations does not include a legend notation for 'Special Residential' even though there is a list of objectives for such a zone in clause 16 of Schedule 1 – Part 3 of the Regulations. Advice indicates that the 'Special Residential' zone will be removed from clause 16 referred to above.

In November 2019 the WA Planning Commission approved a subdivision of the land into 25 lots of over 2,000m². This approval was subject to relatively standard 25 conditions requiring the normal services, road widening, bushfire provisions and compliance with the Scheme.

The land is sloping south-eastwards offering views of the Wilson Inlet to all prospective developers, however as there are no height limits in the Scheme area, there is an opportunity for a single house to block the views of others. This Amendment will introduce a height limit of 5.5m from natural ground level on all but four lots. These four lots are located on the highest portion of the property and cannot build out the views of others.

This Scheme Amendment is classified as a Standard Amendment for the following reasons.

- (a) an amendment relating to a zone or reserve that is consistent with the objectives identified in the scheme for that zone or reserve;
- (b) an amendment that is consistent with a local planning strategy for the scheme that has been endorsed by the Commission;
- (c) an amendment to the scheme so that it is consistent with a region planning scheme that applies to the scheme area.
- (e) an amendment that would have minimal impact on land in the scheme area that is not the subject of the amendment;
- (f) an amendment that does not result in any significant environmental, social, economic or governance impacts on land in the scheme area
- (g) any other amendment that is not a complex or basic amendment.

2.0 BACKGROUND

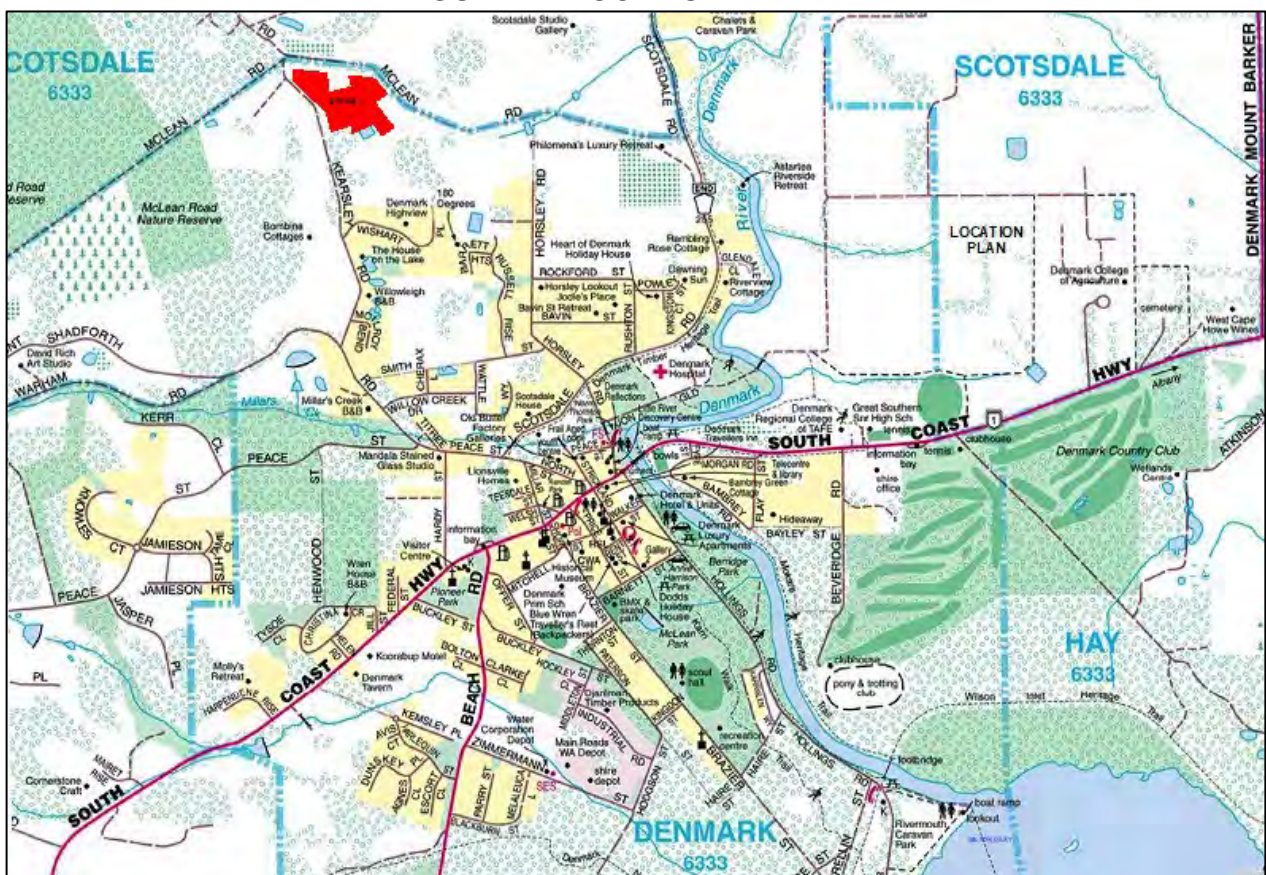
2.1 Location

The land is located less than 2 kilometres north-northwest of central Denmark. **Figure 1** provides a location plan of Stage 1 and its relationship to the Denmark townsite and Wilson Inlet.

2.2 Site Area

The total area of Lot 999 Kearsley Road is about 9.4 hectares of which 4.24 hectares is the subject of the current subdivision approval (approximately Stage 1). Lot 106 McLean Road is nearly 4,000m² and is located at the highest point of the existing SRes 12 area.

FIGURE 1 – LOCATION PLAN



Source: Planwest, Landgate

2.3 Ownership

The subject land (Lot 999) is currently owned by Triple Nine Investments Pty Ltd, a company that is based in Denmark. Lot 106 McLean Road is owned by Garry and Linda Kerr.

2.4 Current & Surrounding Land uses

The land is currently developed with a single house located on the proposed Lot 5 between McLean and Read Roads. Other than this house the land is used for pasture. The surrounding land uses are similar in nature as can be seen from an aerial photograph shown in the following **Figure 2**.

FIGURE 2 – AERIAL PHOTOGRAHY OF SITE



Source: Planwest, Landgate

2.5 Physical Characteristics

As can be appreciated in **Figure 2**, the land is largely cleared. The land slopes from the north-west at about the 150-metre contour down to the south-east at about the 80-metre contour.

2.6 Infrastructure

Following the referral of the subdivision application to all the servicing agencies, several conditions of subdivision were imposed to require the full servicing of the lots - other than deep sewerage. On-site effluent disposal is required on each lot to the satisfaction of the local government – a standard condition for this locality.

3.0 LOCAL PLANNING CONTEXT

3.1 Regional Planning Context

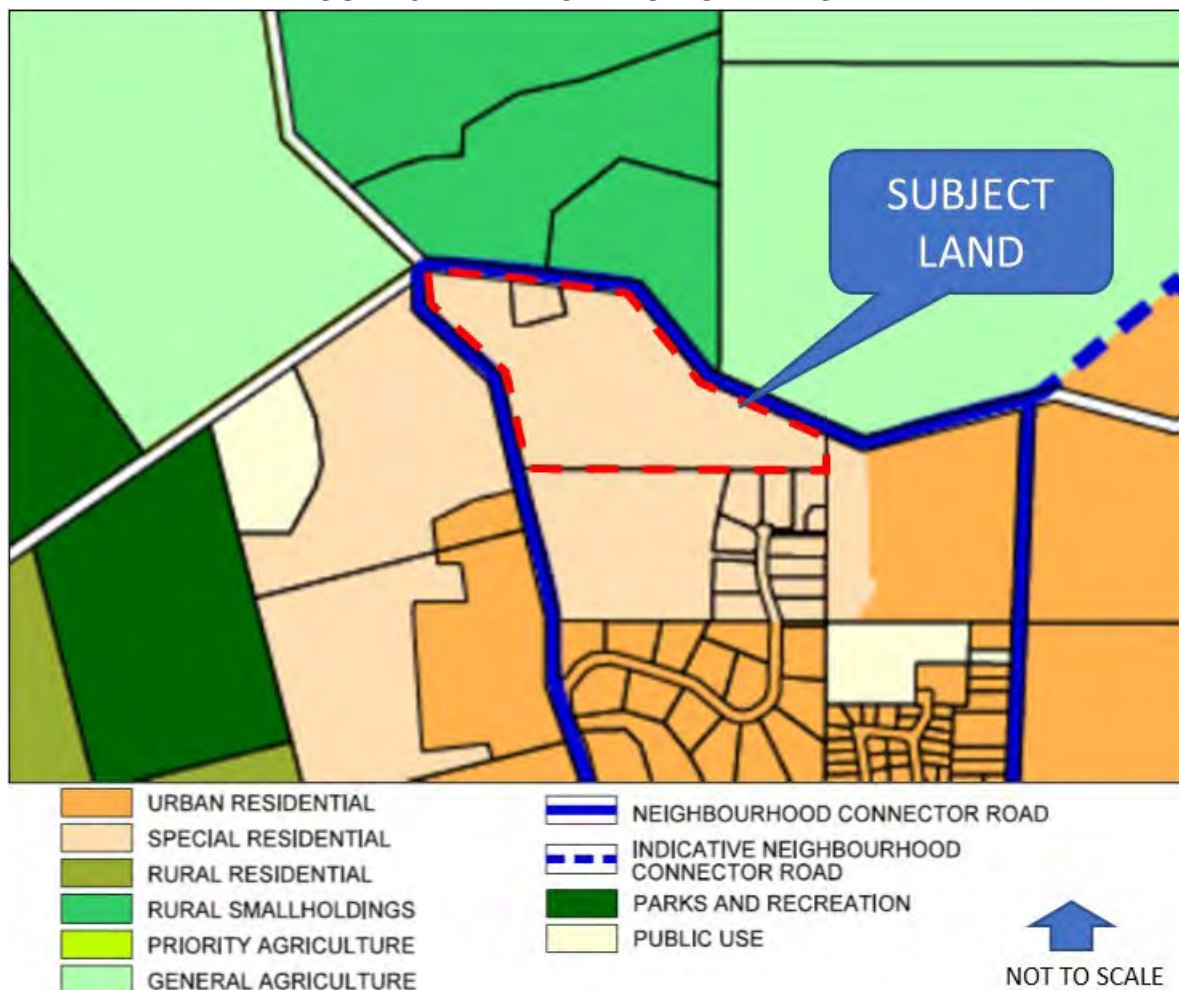
The Lower Great Southern Strategy 2016 was published in 2016 and covers the local governments of Albany, Cranbrook, Denmark and Plantagenet. This Strategy is a regional document and relies on the Local Planning Strategy and Scheme to determine the detailed planning of each of the Shires. There is nothing in this Amendment that conflicts with the regional strategy.

3.2 Local Planning Strategy

The Shire of Denmark Local Planning Strategy was updated in June 2012. An extract from the strategy map is shown in **Figure 3**. The subject land is designated as Special Residential and

abuts similarly designated land to the west, south and east. Land immediately north of the subject land is designated as Rural Smallholdings.

FIGURE 3 – EXTRACT FROM STRATEGY MAP



Source: Planwest, Shire of Denmark

3.3 Local Planning Scheme

The Shire of Denmark Local Planning Scheme No 3 (the Scheme) was gazetted on 25 March 1994. **Figure 4** provides an extract from the Scheme indicating the current zoning of the subject land as ‘Special Residential’ lacks a residential density coding.

3.4 Local Planning Policies

There are no Local Planning Policies that directly impact the proposed amendment.

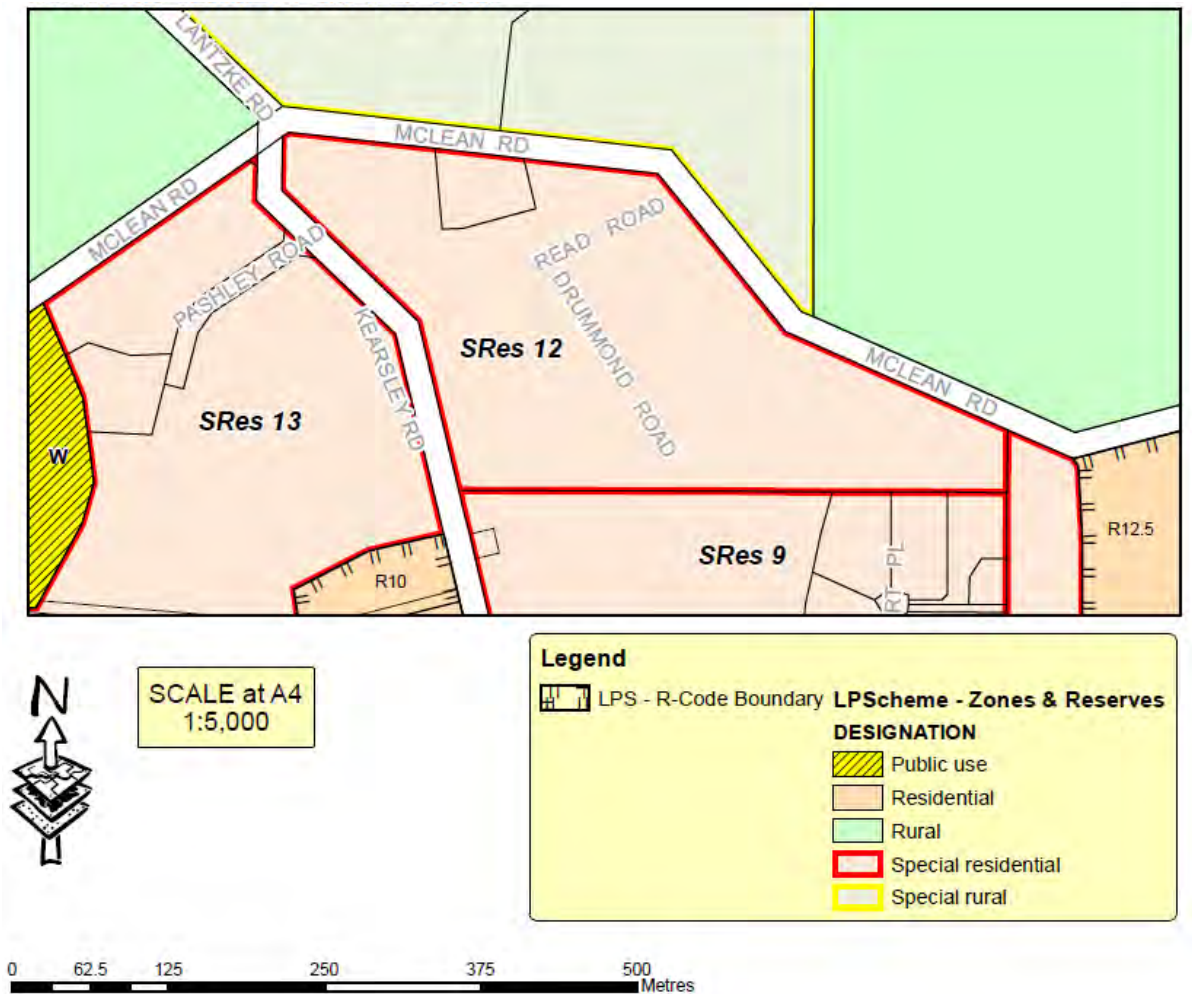
4.0 PROPOSAL

4.1 Components of the Amendment

1. Rezoning

The first part of this amendment is to rezone the subject land from ‘Special Residential’ zone to ‘Residential’ zone.

FIGURE 4 – EXTRACT FROM SCHEME MAP



Source: Planwest, DPLH

2. Deletion of Appendix XIV Provisions

Appendix XIV provides for Special Residential zone provisions in place of the R-Codes. All reference to these special provisions (as they relate to the subject land) will be deleted.

3. R-Code

A new R-Code of R5 will be added to the subject land. The R5 code provides for the same density as the existing Special Residential zone, but as the Residential Design Codes now apply, the setbacks are slightly different.

4. R-Codes variations and exclusions

A new clause is added to Part 5.3 of the Scheme to refer to any variations or exclusions included in a new Appendix XIX that may apply to land with an R5 density codes.

5. New Appendix

In accordance with clause 32 of the Model Scheme Text (MST) contained in the Regulations, a new Table will be added as a new Appendix XIX. This Table provides

for the opportunity to apply special provisions to the subject land that differ from the R-Codes. These special provisions include building height restrictions, buildings in setback areas and fencing.

6. Amending the Scheme Map accordingly

This part ensures that the amendment is accurately reflected on the Scheme map.

4.2 Planning Justification

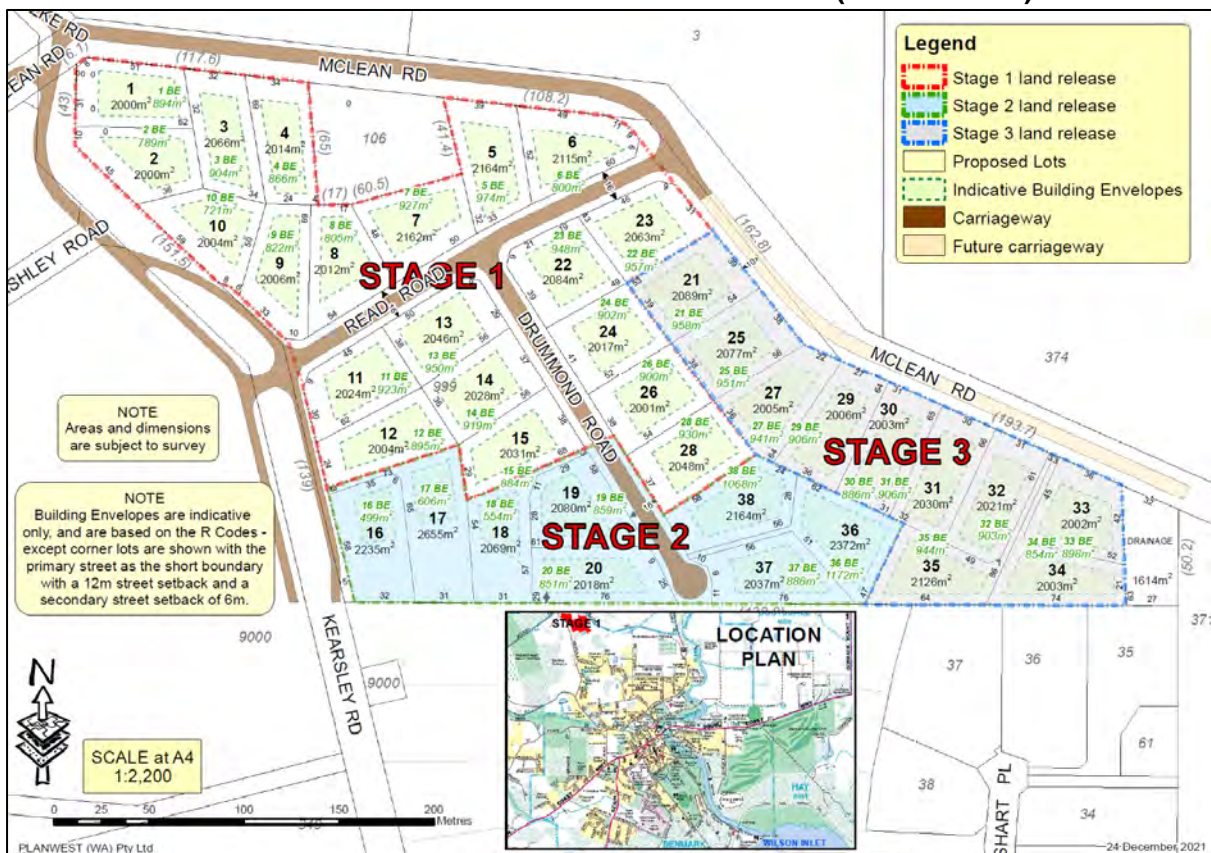
The designation of the subject land as Special Residential does not justify the complications and legislative issues surrounding the control of development without the application of the R codes.

The adding of the new Appendix (XIX) is to specify three additional provisions that make these areas 'special'.

The **first** additional provision is the imposition of a height restriction. This is specifically for the benefit of protecting the views of all future owners in the subdivision as there is no current height controls in the Shire – other than the generous maximum building heights as provided for in the R-Codes (Table 3) which do not apply without an R-Code.

Figure 5 shows the effective building envelopes defined by the R-Code setbacks for an R5 density.

FIGURE 5 – PERMISSIBLE BUILDING AREAS (ENVELOPES)



Source: Planwest, Landgate

The **second** additional provision relates to prohibiting development within the setback areas. The average building envelope size for the 1st stage lots is 885m², with a minimum of 721m² and a maximum of 974m². These building envelopes areas are considered generous for building without the need to build in the setback areas – that would otherwise be permitted by the R-Codes. This restriction adds to the semi-rural amenity that so many seek.

The **third** additional provision is the control of fencing to avoid the use of fibre cement or metal sheeting on boundaries. The clause in the existing Scheme has been adopted.

The new Appendix provides for the opportunity to apply these special provisions to the subject land that differ from the R-Codes, however the MST does not provide a connection between the Scheme Map and the relevant part of the new Appendix - unlike the existing Scheme that provides an annotation of **SRes12** to connect the land to the respective part of the Appendix XIV.

4.3 Opportunities, Constraints and Issues

The principle of this Amendment may be considered in the Scheme review for other undeveloped land in the Special Residential zone as the potential for development control issues may become apparent.

5.0 CONCLUSION

The Amendment is supported by the owners of the subject land (**see Attachment A**) and will have negligible impact on the surrounding land holdings. None of the proposed changes will create a visual difference to owners outside the Amendment area.

Planning and Development Act 2005

**RESOLUTION TO ADOPT AN AMENDMENT
TO LOCAL PLANNING SCHEME**

Shire of Denmark Local Planning Scheme No. 3

Amendment No. 152

Resolved that the Local Government pursuant to section 75 of the *Planning and Development Act 2005*, amend the above Local Planning Scheme by:

1. Rezoning Lot 999 Kearsley Road, Denmark and Lot 106 McLean Road, Denmark from 'Special Residential Zone' to 'Residential zone'.
2. Deletion of the parts of Appendix XIV – Special Residential zones, as they relate to SRes 12 Lot 999 Kearsley Road, Denmark and Lot 106 McLean Road, Denmark.
3. Adding an R5 Residential Density Code for Lot 999 Kearsley Road and Lot 106 McLean Road, Denmark.
4. Adding a new clause 5.3.7 as follows;

'5.3.7 Additional site and development requirements as contained in Appendix XIX may apply to areas designated with an R5 density code.'

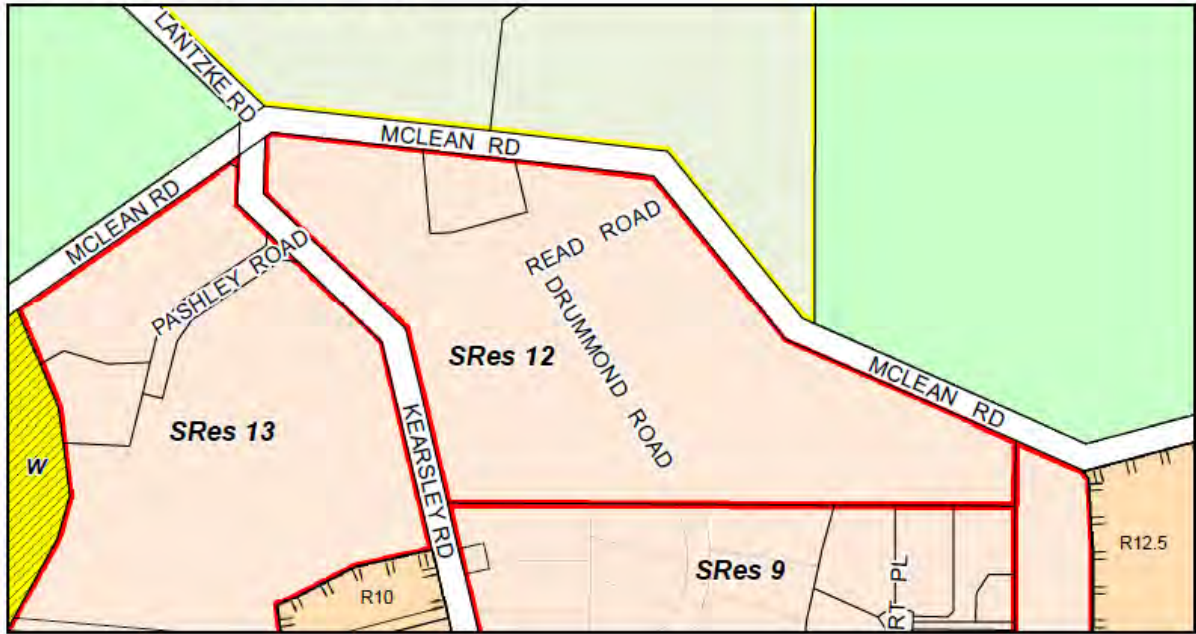
5. Adding a new Appendix XIX as follows;

'APPENDIX XIX – ADDITIONAL SITE AND DEVELOPMENT REQUIREMENTS

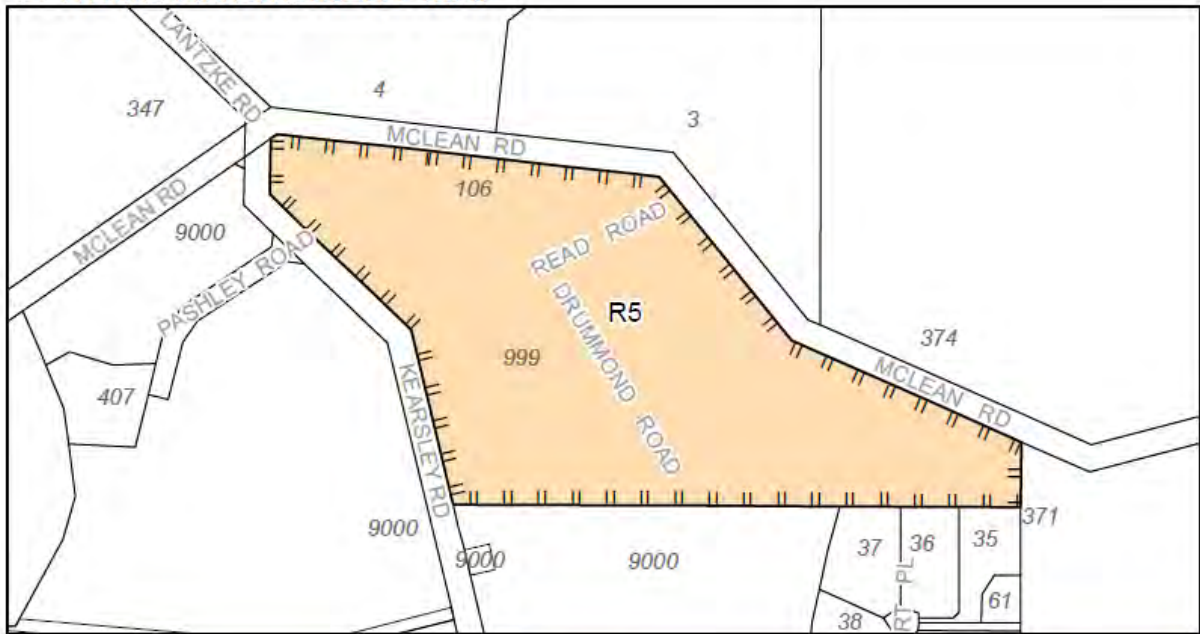
No.	Description of land	Requirement
1	Lot 999 Kearsley Road, Denmark and Lot 106 McLean Road, Denmark	<ol style="list-style-type: none">1. No development, other than on Lots 1, 3 and 4 McLean Road, Denmark, and Lot 106 McLean Road, Denmark as shown on the approved plan of subdivision, shall have a height greater than 5.5 metres above natural ground level as surveyed in 2021.2. No development, including outbuildings, are permitted within a development setback area.3. No boundary fencing shall be constructed of fibre cement or metal sheeting. If boundary fencing is utilized, it shall be of rural construction such as pine posts/steel posts and 7 strand ringlock to the satisfaction of Council.

6. Amending the Scheme Map accordingly.

EXISTING SCHEME MAP




SCHEME AMENDMENT MAP








SCALE at A4
1:5,000

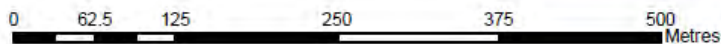
Legend

 LPS - R-Code Boundary

LPScheme - Zones & Reserves

DESIGNATION

-  Public use
-  Residential
-  Rural
-  Special residential
-  Special rural



COUNCIL ADOPTION

This Standard Amendment was adopted and is recommended for approval by resolution of the Council of the Shire of Denmark at the Ordinary Meeting of the Council held on the day of 202 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:

.....
MAYOR/SHIRE PRESIDENT

.....
CHIEF EXECUTIVE OFFICER

WAPC RECOMMENDATION FOR APPROVAL

.....
DELEGATED UNDER S.16 OF
THE P&D ACT 2005

DATE.....

APPROVAL GRANTED

.....
MINISTER FOR PLANNING


DATE.....

ATTACHMENT A

TO WHOM IT MAY CONCERN

Lot 999 Kearsley Road, Denmark is owned by Triple Nine Investments Pty Ltd (ACN 130 356 277).

I, Ross Douglas Thornton, Director of The Triple Nine Unit Trust (ABN 78 966 572 738) part owner of Triple Nine Investments Pty Ltd (ACN 130 356 277) hereby supports the proposed Amendment No 152 to the Shire of Denmark Local Planning Scheme No 3 as outlined in the preceding document.

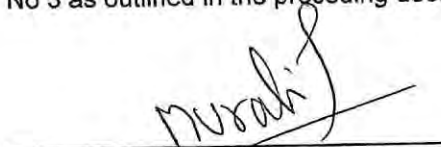


Ross Douglas Thornton

4/1/2022
Date

Lot 999 Kearsley Road, Denmark is owned by Triple Nine Investments Pty Ltd (ACN 130 356 277).

I, Balamurali Mohan Krishna Tatavarthi, Director of Sri Rama Sai Pty Ltd (ACN 169 231 725) as Trustee for Bala Siri Family Trust, part owner of Triple Nine Investments Pty Ltd (ACN 130 356 277) hereby supports the proposed Amendment No 152 to the Shire of Denmark Local Planning Scheme No 3 as outlined in the preceding document.




Balamurali Mohan Krishna Tatavarthi

06/1/2022
Date

Lot 106 McLean Road, Denmark is owned by Garry and Linda Kerr.

We, Garry and Linda Kerr, as owners of Lot 106 McLean Road, Denmark, hereby support the proposed Amendment No 152 to the Shire of Denmark Local Planning Scheme No 3 as outlined in the preceding document.



Garry Kerr

5/1/2022
Date



Linda Kerr

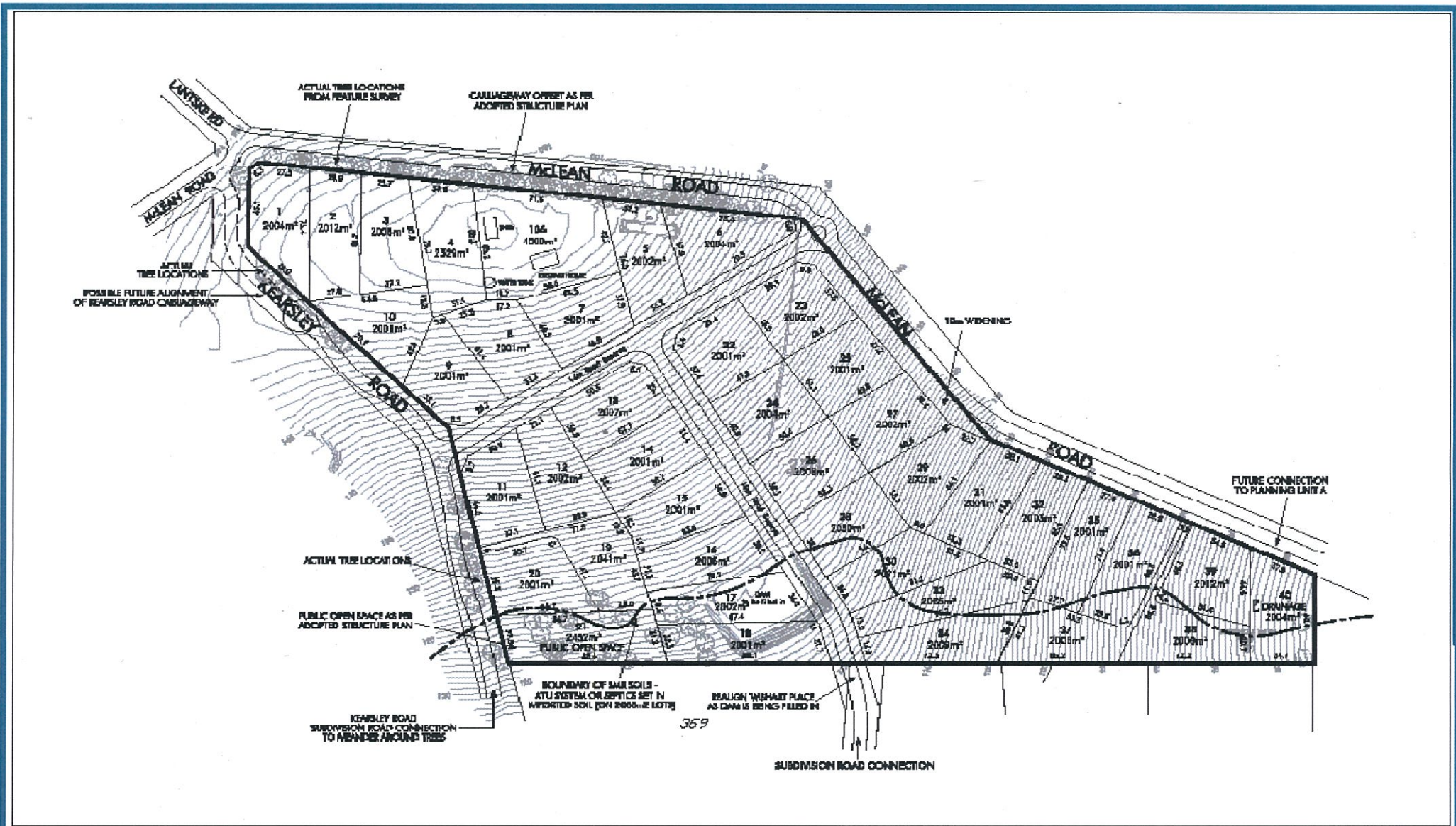
5/1/2022
Date

APPENDIX XIII - SCHEDULE OF SPECIAL RESIDENTIAL ZONES

PARTICULARS OF LAND	PROPOSED USES	SPECIAL PROVISIONS
<p><i>SRes 12</i></p> <p>Lot 999 Kearsley Road, Denmark and lot 106 McLean Road, Denmark</p>	<p>Residential Permitted Use (P) – Single House</p> <p>Permitted at Council's Discretion (AA) – Home Occupation</p>	<p>(i) Lot Sizes</p> <p>(a) For lot 371 Horsley Road, lot 999 Kearsley Road and lot 106 McLean Road the minimum lot size shall be no less than 2000m².</p> <p>(b) Subdivision shall generally be in accordance with the Subdivision Guide Plans endorsed by the WAPC and signed by the CEO, for lot 369 Kearsley Road, lot 371 Horsley Road, lot 999 Kearsley Road and lot 106 McLean Road. The WAPC may consider minor variations to the Subdivision Guide Plan, however the further breakdown of lots shall be contrary to the Scheme.</p> <p>(ii) Boundary Setback Distances</p> <p>(a) All buildings shall be set back a minimum of -</p> <ul style="list-style-type: none"> - 10m from the front boundary - 8m from the rear boundary - 6m from all other boundaries <p>(b) Notwithstanding (a) above, Council may approve a reduction to the nominated 'rear boundary' and 'all other boundaries' setback, to a minimum of 5m each, where it is of the opinion that the topography or shape of the lot, or remnant vegetation on it, makes it desirable to alter the setback and that the location of the building will not detract from the amenity of the area of existing or future dwellings on surrounding lots.</p> <p>On the lots allocated 'Development Envelopes' (1000m²) on the Subdivision Guide Plan, dwellings shall be confined to the Development Envelopes unless otherwise approved by Council.</p> <p>(iii) Bush Fire Management</p> <p>(a) Council may request the Commission to impose a condition at the time of subdivision requiring the preparation and implementation of a Bushfire Management Plan in accordance with Planning For Bushfire Protection Guidelines for lot 999 Kearsley Road and lot 106 McLean Road.</p> <p>(b) Council may request the Commission to impose a condition at the time of subdivision for the provision of Strategic Fire Breaks and other fire safety facilities. Such facilities shall be provided to the satisfaction of Council and the Fire & Emergency Services Authority and in accordance with the Fire Management Plan.</p> <p>(c) Council shall require that individual landowners are responsible for the maintenance of any strategic firebreaks crossing individual lots.</p> <p>(d) The clearing of firebreaks other than for strategic firebreak purposes will not be permitted unless for safety reasons to comply with Council and Fire & Emergency Services Authority requirements.</p>

PARTICULARS OF LAND	PROPOSED USES	SPECIAL PROVISIONS
<p><i>SRes 12</i></p> <p>Lot 999 Kearsley Road, Denmark and lot 106 McLean Road, Denmark</p>	<p>Residential Permitted Use (P) – Single House</p> <p>Permitted at Council's Discretion (AA) – Home Occupation</p>	<p>(e) Low Fuel Areas a minimum of 20m wide shall be provided and maintained around all buildings.</p> <p>(f) Council may request the Commission to impose a condition at the time of subdivision for the provision of fire hydrants at intervals of 200 metres along subdivisional water mains.</p> <p>(iv) Vegetation Protection and Control</p> <p>(a) No clearing of remnant vegetation shall occur except for—</p> <ul style="list-style-type: none"> - clearing to comply with the requirements of the Bush Fires Act (as amended) - clearing may reasonably be required to construct an approved building and curtilage - clearing trees that present an imminent danger to human health - clearing to establish a low fuel buffer - clearing to gain vehicular access to an approved dwelling or any other clearing which may be approved by the Council - that which is prescribed in the Environmental Protection Regulations 2004 - strategic fire breaks or hazard separation zones <p>(b) Council may request the Commission to impose a condition at the time of the subdivision for the preparation and implementation of a public open space and tree planting strategy. Such strategy shall use local native tree and shrub species. Trees only should be used in road reserves.</p> <p>(v) Building Materials, Colours and Heights</p> <p>(a) All buildings constructed within the zone shall be sympathetic to existing landscape elements (landform and vegetation) in terms of their location, scale, height, materials and colour.</p> <p>(vi) Fencing</p> <p>(a) No boundary fencing shall be constructed of fibre cement or metal sheeting. If boundary fencing is utilized, it shall be of rural construction such as pine posts/steel posts and 7 strand ringlock to the satisfaction of Council.</p> <p>(vii) On-site Effluent Disposal</p> <p>(a) On-site effluent disposal shall be the responsibility of the individual landowner and shall involve the use of on-site disposal systems approved by Council in accordance with Health Department of WA and Department of Environment and Conservation guidelines.</p>

PARTICULARS OF LAND	PROPOSED USES	SPECIAL PROVISIONS
<p><i>SRes 12</i></p> <p>Lot 999 Kearsley Road, Denmark and lot 106 McLean Road, Denmark</p>	<p>Residential Permitted Use (P) – Single House</p> <p>Permitted at Council's Discretion (AA) – Home Occupation</p>	<p>(viii) Urban Water Management Plan</p> <p>(a) Council may request the Commission to impose a condition at the time of subdivision for the preparation and implementation of a detailed Urban Water Management Plan (UWMP) in accordance with Water Sensitive Urban Design Principles, as detailed in the Stormwater Management Manual for Western Australia. This plan is to be developed in consultation with the Shire of Denmark, to the satisfaction of the Department of Water.</p> <p>(ix) Prospective Purchasers</p> <p>Provision shall be made to Council's satisfaction to ensure prospective purchasers of land within Special Residential Zone Area No. 12 acknowledge and accept these Special Provisions prior to entering into an agreement to acquire any property.</p> <p>For lot 999 Kearsley Road and lot 106 McLean Road, that -</p> <ul style="list-style-type: none"> - Land managed by the Department of Environment and Conservation is in close proximity and that some or all of the following activities may occur from time to time - prescribed burning for conservation and/or fire hazard reduction purposes - baiting with approved poisons to control introduced predators of native fauna - application of herbicides and other chemicals for weed and plant disease control.



MELVISTA PARK PTY LTD

PO BOX 333, NORTH BEACH, W.A. 61920
 PH: 9448 9911 FAX: 9443 1466



Compiled by: Simon Beal Drafting and Graphics
 DATE: 20.12.2007

Coloured and Topographic data supplied by Department of Land Information

NOTE

- Application Area.....
- Existing Lot Boundary.....
- Proposed Lot Boundary.....

All areas and dimensions are subject to survey.

SITE AREA: 9.28 ha
 No. of Existing lots: 2
 No. of Proposed Lots: 41 (including POS, drain and access house lot)

SUBDIVISION GUIDE PLAN

**LOTS 999 AND 108 KEARSLEY/MCLEAN ROADS
 DENMARK
 SHIRE OF DENMARK**