

Sam Williams- Town Planner

0418 116 216 samwilliams@westnet.com.au PO Box 69, Denmark WA 6333

21 March 2017

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

Dear Sir,

Scheme Amendment Request – Karri Mia, Mt Shadforth Road, Shadforth

This *Scheme Amendment Request* (SAR) has been prepared for the owners of the Karri Mia Resort comprising Lot 2 and Survey Strata Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9 Mt Shadforth Road, Shadforth (the site) to obtain Council's in-principle support to remove Clause 24 contained within the Scheme Provisions relating Amendment 131 to the Shire of Denmark's Town Planning Scheme No.3 (TPS3).

Clause 24 of Amendment 131 to TPS 3 currently states as follows:

"Holiday Accommodation (chalets) are to be constructed prior to issue of titles for the strata lots."

It is understood the Minister for Planning inserted this Clause as a Scheme Provision at the time of final approval of Amendment 131 at the instruction of the Shire of Denmark and the Western Australian Planning Commission (WAPC). This Clause was not supported by the then owner of the entire site and has proven to be problematic in practical application since the gazettal of Amendment 131 in April 2015.

1.0 Proposal

It is proposed to remove Clause 24 from Amendment 131 to TPS 3 to allow for a permanent residence/grouped dwelling to be constructed concurrently with a holiday accommodation dwelling post the creation of survey strata title(s).

1.1 Background

Amendment 131 to TPS3 was prepared to facilitate a new Tourist Development Plan (TDP) over the site. In facilitating the TDP, there were a number of additional land classes, provision for multiple private land ownership arrangements and facilitation

of development that will provide various forms of tourist development and residential accommodation.

It is understood the reason for the inclusion of Clause 24 was to ensure the owner of the site did not create the survey strata lots and on-sold them to future purchasers and they be "land banked" without a tourist accommodation or use being first constructed.

Whilst the reason for the inclusion of Clause 24 is unfounded, to ensure the site did not become a "residential subdivision" through the creation of residential/grouped dwellings ahead of tourist accommodation, Clause 3(b) of Amendment 131 to TPS3 was included and states as follows:

"A grouped dwelling will not be approved on a strata lot unless a minimum of one (1) Holiday Accommodation (chalet) building has first been approved, constructed and made available for short stay accommodation purposes on the strata lot. Alternatively the Holiday Accommodation (chalet) building and the grouped dwelling can be constructed concurrently, however Council may impose conditions as deemed appropriate at the time of subdivision and/or development to ensure that the Holiday Accommodation (chalet) component of the development is constructed and operational prior to the grouped dwelling component of the development being occupied."

The inclusion of Clause 24, which requires a holiday accommodation to be constructed prior to the issue of the title for the strata lots, is not necessary to stop "land banking" or a pseudo "residential subdivision" given the inclusion of Clause 3(b). Clause 24 has and is proving to be problematic given the following:

1.1.1 Quiet Enjoyment

As the Karri Mia resort was an operational going concern prior to the gazettal of Amendment 131 to TPS3 there were a number of holiday accommodation bungalows and chalets constructed on site. The developer was able to sell Survey Strata Lot 4 and 5, which comprised in total 2 bungalows and 2 chalets. The purchaser of Survey Strata Lot 4 and 5 has subsequently built a permanent residence on Survey Strata Lot 5. During construction of the permanent residence, the ability for the bungalows and chalets in the immediate vicinity of the build to be utilised for short stay tourist accommodation was substantially eroded. This was a result of the noise generated through building construction which impacted on the quiet enjoyment of holiday makers.

The reduced tariff from the loss of quiet enjoyment of the holiday accommodation makes it unviable for the operation of holiday accommodation for a short period of time. Whilst it could be argued the short period of time can be overcome, the issue is the demonstrated reduced revenue and the continued reduced income on other current and proposed dwellings, which impact on the values of the property.

1.1.2 Removal of Choice

The requirement for the landowner/developer to construct holiday accommodation prior to the issue of survey strata title restricts the choice of a future purchaser as to how they can ultimately develop their property.

For the developer to sell a survey strata lot, the developer has made the decision on the building's location, size and design. The developer is not able to predict what the market/future buyer may or may not require with respect to building size and location, plus not all buyers want the same product. The requirement for holiday accommodation on the property prior to the creation of title sterilises the land and the ability for people to have a choice for the ultimate development of their site.

1.1.3 Strata Fee Cost Structure

The current strata fee cost structure for the ongoing management of the site requires the total operating expense to be divided by the number of created survey strata lots. With the restriction on the creation of survey strata lots resultant from Clause 24, this places a heavy burden on the landowners of the current survey strata lots created. The ability to create survey strata lots without the impediment of Clause 24 would help to provide lots available for sale on the market, which upon their sale would equally distribute the high survey strata cost structure currently being borne by the current survey strata lot owners.

1.1.4 Combined Impact

It is noted, all of the above listed items combined represent an impediment to the ability for the development of the survey strata lots required to enable the feasible development of Karri Mia and should be considered collectively.

Furthermore, as mentioned above, Clause 3 (b) provides for the requirement of a grouped dwelling/permanent residence to be constructed either post or concurrently with the construction of holiday accommodation.

Through Clause 3 (b), the removal of Clause 24 will not see the creation of pseudo "residential subdivision" without holiday accommodation first being constructed.

2.0 Statutory Planning Context

Under TPS3, the site is zoned currently zoned Tourist. The purpose of the zone is to provide for tourist accommodation and associated services.

Specifically for the Karri Mia Tourist zone encapsulated in TPS3 the uses and associated services for the site are clearly established, with a Grouped Dwelling being a Permitted Use- Noting Clause 3 (b) as mentioned above.

The removal of Clause 24 is not in contradiction to the zoning and intent of the site under TPS3.

3.0 Strategic Planning Context

3.1 State Government – Strategic Policies and Guidelines

The WAPC policies and guidelines relevant to this amendment proposal are listed below.

3.1.1 Planning Bulletin 83/2013 Planning for Tourism

Planning Bulletin 83/2013- Planning for Tourism is relevant to the site and specifically Section 7 relating to Mixed Use/Residential development within tourism sites. It is noted this Section clearly states permanent residential use is permitted. Furthermore, there are a number of principles listed that must be adhered to relating to residential development within a tourist site.

As the residential development yield has been established with the preparation of the TDP, the proposed amendment is not in contradiction with the requirement of the subject Planning Bulletin. The removal of Clause 24 will not conflict with the requirements identified within the Planning Bulletin.

3.2 Local Government – Strategic Policies and Guidelines

3.2.1 Local Planning Strategy

The Shire of Denmark's *Local Planning Strategy* (LPS) provides the vision to guide the future growth of Denmark and surrounding areas across a range of different disciplines and interests. One of the key planning objectives of the LPS as it relates to Tourism is as follows:

To encourage eco-tourism and facilitate new tourism developments and choices of tourist accommodation types to enhance the Denmark Shire as a destination of choice for visitors.

Furthermore, Strategy G relating to Tourism states as follows:

To protect the longevity of tourist uses through appropriately zoned sites which contain flexibility for new development or extensions of existing developments to proceed.

The removal of Clause 24 will not contravene the objective or the strategy, as the zoning of the site is not being challenged. In fact, removing the impediment to the current development of the site imposed by Clause 24 will further help to address the intent of the Tourism use identified in the LPS given the following:

1. Making survey strata tourist zoned lots available for purchase without an existing tourist use on site will provide choice to the purchaser of the tourist accommodation they wish to construct. This is in contrast to the current scenario imposed by Clause 24 where the market choice of the accommodation type is not provided.
2. Making survey strata tourist zoned lots available for purchase without an existing tourist use will provide the flexibility for the new development of a tourist use. This is again in contrast to the developer being responsible for the construction and subsequent dictation of the tourist use as it enables greater flexibility for new development/use to meet market expectation as determined by a prospective new owner.

3.2.2 Shire of Denmark Tourism Planning Strategy- Stage 1

The Shire of Denmark's *Tourism Planning Strategy Stage 1* (Strategy) acknowledges there are permanent residents in tourism areas and specifically addresses Karri Mia. It is further noted investigation is required through a Local Planning Policy to ensure the residential development does not jeopardise the tourism nature of a tourist site and acknowledges permanent residents provide financial stability to tourism operations.

Whilst additional permanent residential dwellings from that currently approved on the TDP are not being sought, and hence will not detract from the tourism value, the acknowledgment of the importance for permanent residents is to be considered.

Furthermore, as previously mentioned, the operation of Karri Mia is currently financed by survey strata fees. With less lots created there becomes a survey strata cost burden on the existing lot owners. In removing Clause 24, the burden of creating a survey strata lot will be lifted. In being able to provide unencumbered strata lots on the property market there will be the ability for an increased land ownership and hence a reduced pro rata cost on strata fees (i.e. the permanent residents will facilitate greater financial stability for the development and land use).

3.2.3 Town Planning Scheme No.3. Policy No.46 Karri Mia Tourist Zone Design Guidelines

It is understood through the gazettal of Amendment 131 the preparation of design guidelines was necessitated for future development on the site. The implementation of these design guidelines has been addressed through TPS3 Policy No. 46 Karri Mia Tourist Zone Design Guidelines.

The removal of Clause 24 will not have any impact on this Policy.

4.0 Conclusion

The proposed SAR seeks to remove Clause 24 as a Scheme Provision relating to Amendment 131 to TPS3. The removal of Clause 24 is not in contradiction to the Tourist zoning of the site, the Scheme Provisions relating to the site and relevant Strategic Policies. Furthermore, the current inclusion of Clause 24 creates collectively a raft of problems ceasing the future development of the site.

It is respectfully requested Council investigate the merits of this proposal. Should you have any queries regarding this please do not hesitate to contact me on 0418 116 216.

Yours sincerely,



Sam Williams
Town Planner

cc: Mr Graeme Robertson

PL402*

PLANNING AND DEVELOPMENT ACT 2005
APPROVED LOCAL PLANNING SCHEME AMENDMENT
Shire of Gingin
 Town Planning Scheme No. 9—Amendment No. 7

Ref: TPS/1432

It is hereby notified for public information, in accordance with section 87 of the *Planning and Development Act 2005* that the Minister for Planning approved the Shire of Gingin local planning scheme amendment on 20 March 2015 for the purpose of—

1. Rezoning Lot 101 Cheriton Road from General Rural zone to Rural Living zone with a RL4 code.
2. Introduce a new Schedule 12—Rural Living Zones as follows—

No.	Description of Land	Conditions
1	Lot 101 Cheriton Road, Gingin	<ol style="list-style-type: none"> 1. All development shall be subject to an application to the local government for planning approval. 2. All habitable buildings and/or on-site effluent treatment and disposal and/or effluent treatment systems that may be required shall be confined to areas outside of the boundaries of the multiple-use wetland. 3. All lots shall be provided with a demonstrated sustainable fit-for-purpose water supply that comprises a 436m² roof catchment area to meet all water requirements or a 260m² roof catchment area plus a licensed bore with sufficient capacity to provide 58 000 litres per annum for outside use and fire-fighting purposes. 4. A permanent water supply of no less than 10,000 litres is to be maintained for bushfire fighting purposes.

3. Amend the Scheme Maps accordingly.

M. ASPINALL, Shire President.
 J. EDWARDS, Chief Executive Officer.

PL403*

PLANNING AND DEVELOPMENT ACT 2005
APPROVED LOCAL PLANNING SCHEME AMENDMENT
Shire of Denmark
 Town Planning Scheme No. 3—Amendment No. 131

Ref: TPS/1204

It is hereby notified for public information, in accordance with section 87 of the *Planning and Development Act 2005* that the Minister for Planning approved the Shire of Denmark local planning scheme amendment on 20 March 2015 for the purpose of—

deleting the information contained within 'Appendix XIII—Schedule of Tourist Zones—Tourist Zone 1', and replacing it with the following—

Particulars of the Land		Tourist Use	Conditions of Tourist Use				
T1.	Lots 83, 84 & 85 Mt Shadforth Road, Denmark.	Karri Mia Tourist Zone	(i) Notwithstanding any other provisions of the Scheme, the following land uses are the only permissible land uses within the Karri Mia Tourist zone as shown on the Karri Mia Development Plan: 09-16-DP(t), or any minor variation thereto approved by Council.				
			USES	Lot 84 (pro- posed Lot 1)	Lot 84 (pro- posed Lot 2)	83	85
			Boarding House (including Beauty salon)				P
			Caravan Park	P			
			Cinema/Theatre				P

Particulars of the Land	Tourist Use	Conditions of Tourist Use			
		Function Centre (Maximum 200 persons)			P
		Gallery/Restaurant			P
		Grouped Dwelling (Refer to Condition No. iii below)		P	
		Holiday Accommodation	P	P	P
		Holiday Home (Standard)		P	
		Home Occupation		P	
		Manager's Accommodation	IP	IP	IP IP
		Microbrewery			P
		Motel	P		
		Office	IP	IP	IP IP
		Public Exhibition			P
		Restaurant			P
		<p><i>Where no symbol appears in the cross reference of a use class against a lot number, use of that class is not permitted on that lot.</i></p> <p>(ii) Development and subdivision shall be generally in accordance with the Karri Mia Development Plan 09-16-DP(t) or any variation to that plan approved by Council. Subdivision of Lot 84 (proposed Lot 2) shall be by way of strata title only.</p> <p>(iii) (a) Only one (1) grouped dwelling per strata lot on Lot 84 (proposed Lot 2) is permitted.</p> <p>(b) A grouped dwelling will not be approved on a strata lot unless a minimum of one (1) Holiday Accommodation (chalet) building has first been approved, constructed and made available for short stay accommodation purposes on the strata lot. Alternatively the Holiday Accommodation (chalet) building and the grouped dwelling can be constructed concurrently, however Council may impose conditions as deemed appropriate at the time of subdivision and/or development to ensure that the Holiday Accommodation (chalet) component of the development is constructed and operational prior to the grouped dwelling component of the development being occupied.</p> <p>(iv) Council will request the WAPC to impose a condition at the time of subdivision for the provision and implementation of an overall Landscape Plan for the Landscape Building Setback areas as designated on the Tourist Development Plan. Planting proposals within the Landscape Building Setback area associated with Lot 84 (proposed Lot 2) shall have due regard to the tourism development form proposed on the site.</p> <p>(v) Council will request the WAPC to impose a condition at the time of subdivision for the provision of reticulated water to the lots.</p> <p>(vi) Building setbacks to the external property boundaries of the tourist zone (being Lots 83, 84 & 85) being a minimum of 20 metres.</p> <p>(vii) No development will be considered in the 'Building Exclusion Areas' designated on the Tourist Development Plan.</p>			

Particulars of the Land	Tourist Use	Conditions of Tourist Use
		<p>(viii) Vehicular access shall be limited to nominated points on Mount Shadforth Road as approved by Council.</p> <p>(ix) Development shall be connected to on-site alternative treatment unit effluent disposal systems installed on each lot (including strata lots) to the satisfaction of the Department of Health and Council.</p> <p>(x) Council will require as a condition of development or subdivision (including strata subdivision) the preparation and implementation of a Fire Management Plan approved by Council.</p> <p>(xi) Council will request the WAPC to impose a condition at the time of subdivision relating to the provision of reciprocal rights of access/common property arrangements where shared access is proposed.</p> <p>(xii) Council may request the WAPC to impose a condition at the time of subdivision for upgrading Mount Shadforth Road.</p> <p>(xiii) All buildings shall be constructed to "AS 3959-2009 Construction of Buildings in Bush Fire Prone Areas" (as amended) with no building requiring greater construction rating than BAL-29.</p> <p>(xiv) Design guidelines are to be prepared and adopted to ensure the integration of the Holiday Accommodation (chalet) and grouped dwelling shall address the following—</p> <ul style="list-style-type: none"> • Holiday Accommodation units shall be specifically designed for the needs of visitors and avoid large floor areas that resemble residential premises. • Holiday Accommodation units are to have a maximum of two bedrooms only. • The external form of development is to be of uniform and complimentary architectural theme, character, colours and materials. • The residential component is to be of a design and scale to ensure chalet and owner/manager accommodation blend together and visitors to the site should not be able to differentiate between the two. • All buildings constructed within the zone shall be sympathetic to the existing landscape in terms of location, scale, height, building materials and colour. • Demonstrate view lines will be protected. • Provide 3D model/imagery of the development. • Setbacks from lot boundaries and separation distances between holiday accommodation and grouped dwellings. <p>All development within Lot 84 (proposed Lot 2) shall be developed in accordance with design guidelines prepared to the satisfaction of Council.</p> <p>(xv) Council will request the Commission to impose a condition at the time of subdivision for a notification on the Certificate of Title for all new lots advising prospective purchasers that—</p> <p>(a) This land is located in a rural area and rural activities may be undertaken on neighbouring land that may result in potential noise, dust and odour nuisances</p>

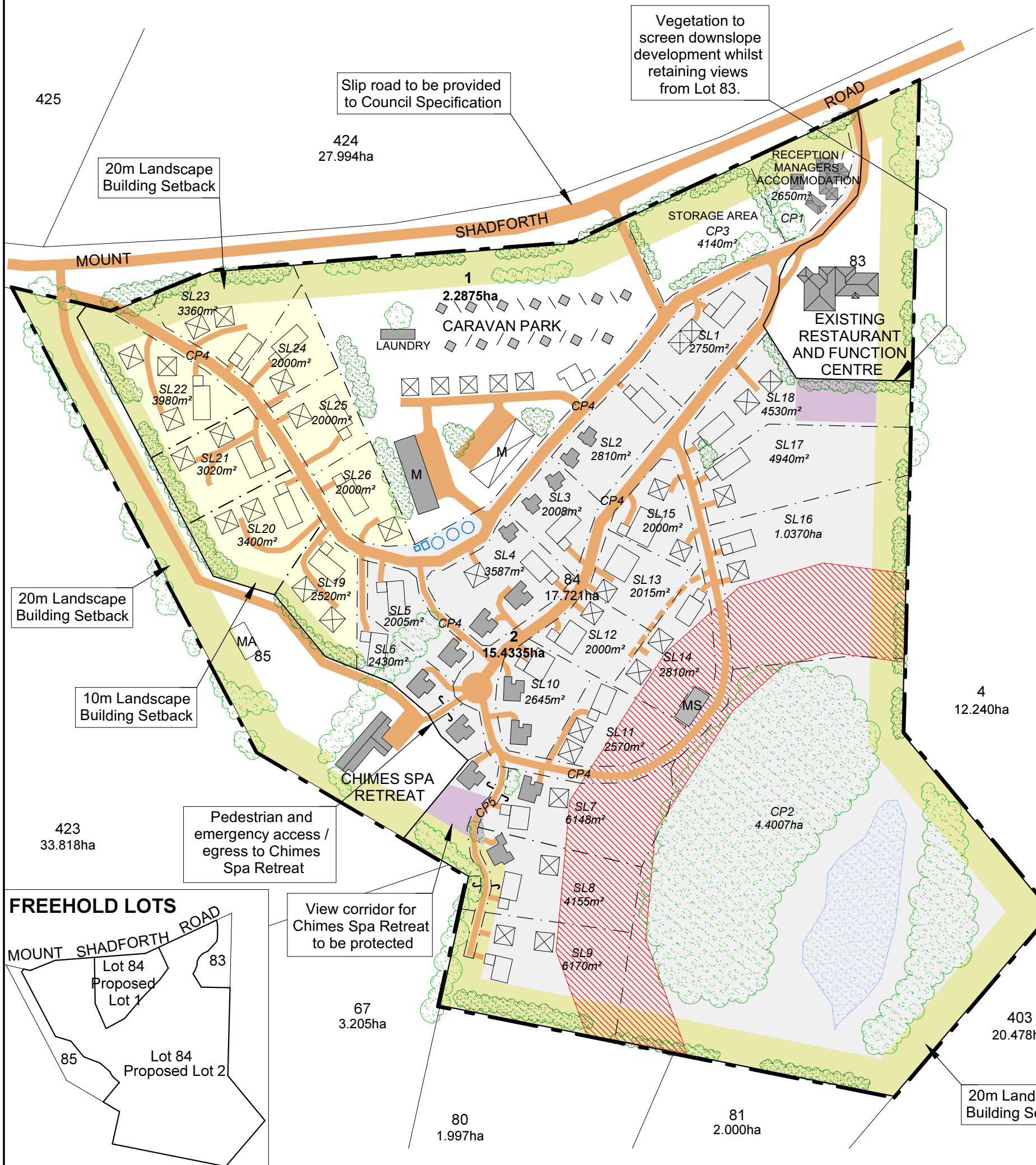
Particulars of the Land	Tourist Use	Conditions of Tourist Use
		<p>that may affect the use or enjoyment of the land;</p> <p>(b) The site is zoned 'Tourism' and associated uses may result in increased levels of noise and vehicular movement.</p> <p>(xvi) Fencing of strata lots shall not be permitted.</p> <p>(xvii) Outbuildings are not permitted on any strata lot within Lot 84 (proposed Lot 2) as all storage/garaging needs should be incorporated into the design of the dwelling.</p> <p>(xviii) The following requirements will apply to any strata titling proposal of the development within Lot 84 (proposed Lot 2)—</p> <p>(a) Restriction of length of stay to 3 months in any one year except for owner/manager's accommodation.</p> <p>(b) An agreement between the applicant and Council to ensure that a manager/operator is available to provide for on-site management of the common property, overall landscape management, fire control, security and where required by owner/managers, provision of a letting/management service, including marketing, maintenance, refurbishment and other services reasonably required for the development to operate as a tourist facility.</p> <p>(c) All Holiday Accommodation (chalets) are required to be managed and maintained by the strata company with no individual management or fit out of chalets permitted. Opting out of the central management by individual owners will not be permitted.</p> <p>(xix) (a) All external illumination shall be of low level, controlled spill lighting, with any variations requiring Council approval;</p> <p>(b) External illumination associated with the Restaurant and the Function Centre shall occur for no more than 15 minutes after these uses cease operating at night; and</p> <p>(c) On-site street lighting for personal safety shall not be illuminated later than 12.00 midnight.</p> <p>(xx) Any changes to the management statement require the approval of the WAPC and the management statement must bind successive owners.</p> <p>(xxi) A local water management strategy is required to be endorsed prior to development of the site.</p> <p>(xxii) The total number of grouped dwellings relative to the total number of Holiday Accommodation (chalets) shall be equal to or less than 35% across Lot 84 (proposed Lot 2). Development and building approval will only be granted which achieves a 35% ratio.</p> <p>(xxiii) A maximum of 26 grouped dwellings will be permitted on Lot 84 (proposed Lot 2). A minimum of 48 Holiday Accommodation (chalets) are to be developed on Lot 84 (proposed Lot 2).</p> <p>(xxiv) Holiday Accommodation (chalets) are to be constructed prior to issue of titles for the strata lots.</p>

R. THORNTON, Shire President.
D. STEWART, Chief Executive Officer.

ALL AREAS AND DIMENSIONS ARE SUBJECT TO SURVEY

KARRI MIA TOURIST ZONE SUBDIVISION AND DEVELOPMENT PLAN

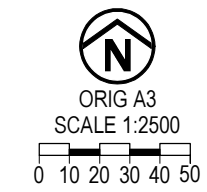
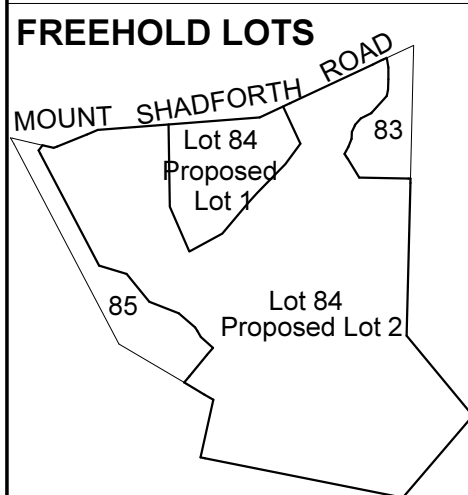
Lots 83, 84 & 85 Mount Shadforth Road
Shadforth, Shire of Denmark



- ### DEVELOPMENT GUIDELINES
- Subdivision and development to be generally in accordance with this Karri Mia Development Plan, or any variation approved by Council.
 - Only one (1) grouped dwelling per strata lot on Lot 84 (Proposed Lot 2) is permitted.
 - A grouped dwelling will not be approved on a strata lot unless a minimum of one (1) Holiday Accommodation (chalet) building has first been approved, constructed and made available for short stay accommodation purposes on the strata lot.
 - The total number of grouped dwellings relative to the total number of Holiday Accommodation (chalets) shall be equal to or less than 35% across Lot 84 (proposed Lot 2). Development and building approval will only be granted which achieves a 35% ratio.
 - A maximum of 26 grouped dwellings will be permitted on Lot 84 (proposed Lot 2).
 - A minimum of 48 Holiday Accommodation (chalets) are to be developed on Lot 84 (proposed Lot 2).
 - Vehicular access to the site shall be limited to that shown on the plan unless otherwise approved by Council.
 - Development shall be connected to on-site alternative treatment unit effluent disposal systems on each lot (including strata lots) to the satisfaction of the Department of Health and Council.
 - All development shall be connected to a reticulated water supply approved by Council.
 - No development will be considered in the 'Building Exclusion Area' designated on the Tourist Development Plan.
 - Holiday Accommodation (chalets) are to be constructed prior to issue of titles for the strata lots.
 - All development within Lot 84 (proposed Lot 2), to be designed in accordance with design guidelines prepared to the satisfaction of the Shire of Denmark.
 - Boundary fencing for the survey strata lots shall not be permitted.
 - Placement of buildings shall have regard to the views and privacy of adjoining development.
 - Outbuildings shall not be permitted with provision made for off site storage of boats and caravans.
 - Use of pole home design is preferred to extensive use of fill and retaining walls.
 - Fire hydrants to be provided every 200m along access roads.
 - Provision of a low fuel hazard separation zone as shown on the plan, and construction of housing in accordance with AS 3959 'Construction of Buildings in Bush Fire Prone Areas'.

LEGEND

	Subject Land
	Existing Lot Boundaries
	Proposed Lot Boundaries
	Existing Vegetation
	Proposed Vegetation
	Existing Chalets
	Indicative Location of Owner / Manager Accommodation
	Indicative Location of Holiday Chalet
	Motel (existing & proposed)
	Maintenance Shed
	Water Tank
	Pump Shed
	Existing Dams
	Common Property
	Survey Strata Lots
	Reciprocal Rights of Access Required
	Freehold Lots
	Low Fuel Zone / Building Exclusion Area
	Landscape Building Setback
	Building Exclusion Area
	Stage 1
	Stage 2



09-16-DP(t)
December 2014

AYTON BAESJOU
PLANNING

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In association
with Taylor Burrell Barnett

**SCHEDULE OF SUBMISSIONS: SCHEME AMENDMENT REQUEST
NO. 429 (LOT 2) MOUNT SHADFORTH ROAD, SHADFORTH**

Submission Number	Name & Address	Verbatim Submission	Planning Services Comment
Government Agencies			
G1	Department of Environment Regulation	<p>I refer to the correspondence dated 5 April 2017 inviting comment from the Department of Environment Regulation (DER) on the above proposed Scheme Amendment.</p> <p>DER has no comment on this matter in reference to regulatory responsibilities under the <i>Environmental Protection Act 1986</i> and the <i>Contaminated Sites Act 2003</i>.</p>	Noted.
G2	Department of Planning	<p><u>Original Submission</u> Thank you for the opportunity to comment on the above scheme amendment request.</p> <p>The proposal seeks to amend the Shire of Denmark Town Planning Scheme No. 3 (TPS3) by removing Condition xxiv from the Conditions of Tourist Use for the Karri Mia Tourist zone. Condition xxiv requires <i>Holiday Accommodation (chalets) are to be constructed prior to issue of titles for the strata lots</i> and was inserted into the TPS 3 as part of a modification to Amendment 131.</p> <p>The proposal is not supported. Requiring holiday accommodation to be constructed prior to titles being issued minimises the potential of vacant strata lots not being developed in the way intended, and removes future pressure for conversion to residential use if and when development of holiday accommodation does not take place within a reasonable timeframe. With all holiday accommodation being constructed by the developer, it also ensures consistency of design, and reduces the prolonged disturbance from extended construction times. Construction of holiday accommodation as a condition of subdivision approval on tourist zoned land is common practice for the WAPC.</p> <p><u>New Submission Following Review of Addendum Documentation</u> Further to our previous correspondence dated 11 April 2017, and upon receipt of legal advice from the proponent, the following comments are provided.</p>	Comments noted - noting that in response to the Department's new submission the applicant has agreed to the removal of part of Condition iii)(b). From a Planning Services perspective this outcome ensures that the intent behind the inclusion of Condition xxiv) as part of Scheme Amendment 131 considerations are still satisfactorily addressed whilst providing a desirable outcome for the current and future owners.

		<p>Like the Shire of Denmark, this office wishes to see a quality tourism outcome at the former Karri Mia resort and has worked tirelessly with the proponent and the Shire towards this goal.</p> <p>Construction of chalets as a condition of subdivision approval on tourist zoned land is common practice for the WAPC and this was a condition on the previous strata subdivision approval (WAPC ref 807-06). However, as the developer maintains this requirement is problematic, this office is willing to consider an amendment to remove Clause (xxiv) from the Conditions of Tourist Use in Schedule of Tourist Zones which requires chalets to be constructed prior to issue of titles for the strata lots.</p> <p>Further to the above, to allay concerns held by this office that the 35% ratio across the site may be jeopardised, we would seek to balance the removal of this clause with one or more of the following;</p> <ul style="list-style-type: none"> • Remove part clause (iii)(b) that allows chalet and dwelling to be constructed at same time, thus requiring chalet to be constructed first. This ensures the 35% ratio across the site will be maintained. • Staging – allowing, for example, 5 vacant lots to be created which need to be developed before the next stage is released. • Bond – requiring a bond and legal agreement with the bond amount covering the cost of legal expenses if Local Government required to enforce development approval conditions. <p>The provision of legal advice confirming that the Shire can take action to deal with the unlawful structure is noted, however requiring the Shire to take legal action is not a favourable outcome as the issue of non-compliance should be avoided in the first place. We do not want to see the Shire in a position where it has to follow up and require demolition of someone's home simply because a chalet has not been built as well.</p>	
G3	Tourism WA	Tourism Western Australia appreciates you seeking our input however after reading the various attached information, Tourism WA has no comments to add.	Noted.

Sam Williams- Town Planner

0418 116 216 samwilliams@westnet.com.au PO Box 69, Denmark WA 6333

1 August 2017

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

Dear Sir,

Provision of Further Information- Scheme Amendment Request for Karri Mia, Mt Shadforth Road, Shadforth.

I refer to the Scheme Amendment Request (SAR) lodged with the Shire on the 14 March 2017. This correspondence forms an addendum to this request for the purpose of providing further information.

In considering the proposal of the SAR to remove Clause 24 of Amendment 131 to Town Planning Scheme 3 (TPS3), the proponent sought legal advice regarding the "protection" offered to the Shire based on Clause 3(b) of Amendment 131 to TPS 3. Clause 3(b) provides complete guarantee to the Shire of Denmark that should a Grouped Dwelling and Holiday Accommodation be approved through a development application process (as required under Clause 3(b)), the issue of the development application can ensure both the Grouped Dwelling and Holiday Accommodation will be constructed and completed concurrently, as a worst case scenario. Should any future lot owner not commence or complete construction of the Holiday Accommodation prior to the Group Dwelling, the Shire has the legal ability to enforce the completion of the Holiday Accommodation - refer attached legal advice confirming this.

I understand the SAR was referred to the then Department of Planning and response was provided to the Shire they did not support the removal of Clause 24. The reason for not providing support is they were unaware of the ability through Clause 3(b) and the issue of a development approval the Shire had the guarantee to ensure the Holiday Accommodation would be constructed before or concurrently with a Group Dwelling.

Based on the information contained within this correspondence it is respectfully requested this be referred to the Department of Planning, Lands and Heritage for their reviewed consideration on this matter.

I thank you in advance for this and should you have any questions or queries regarding this please do not hesitate to me on 0418 116 216

Yours faithfully



Sam Williams
Town Planner

CC: Department of Planning, Lands and Heritage Attn: Kelsie Lewis.



HERBERT
SMITH
FREEHILLS

18 July 2017

Graeme Robertson

By email

gjrgroup@wn.com.au

Dear Graeme,

Advice Karri Mia development approvals

As requested, we now confirm the advice given in our email of 21 June 2017 in relation to compliance with conditions in a development approval.

We understand that any development of the land at Karri Mia requires the building of two structures, a residence and a bungalow, and that concerns have been raised that the local authority would be unable to enforce this requirement if an owner ignored that requirement and built only one of the structures. If it were a condition in the development approval that both structures must be built and only one structure is built then the one structure would be an unlawful structure and the owner would be liable for all of the penalties (fines, removal of structure etc.) flowing from a breach of a condition of the development approval.

Yours sincerely,

Bruno Camarri
Consultant
Herbert Smith Freehills

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