

SHIRE OF DENMARK

## Special Council Meeting

FOR THE PURPOSE OF CONSIDERING THE ITEM RELATING TO LOT 621  
HARLEQUIN STREET, LOT 1 SOUTH COAST HIGHWAY, DENMARK.

# AGENDA

**12 May 2026**

TO BE HELD IN COUNCIL CHAMBERS, 953 SOUTH COAST  
HIGHWAY, DENMARK, ON TUESDAY, 12 MAY 2025  
COMMENCING AT 4.00PM.



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**1. DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS****2. RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE****MEMBERS:**

Cr Aaron Wiggins (Shire President)  
 Cr Nathan Devenport (Deputy Shire President)  
 Cr Clare Campbell  
 Cr Kingsley Gibson  
 Cr Jay Hockey  
 Cr Jan Lewis  
 Cr Janine Phillips  
 Cr Alex Sleeman

**STAFF:**

David King (Chief Executive Officer)  
 Rob Westerberg (Director of Infrastructure and Assets)  
 Claire Thompson (Governance Coordinator)

**APOLOGIES:****ON LEAVE OF ABSENCE:**

Cr Dominic Youel

**ABSENT:****VISITORS:****DECLARATIONS OF INTEREST:**

Name	Item No	Interest	Nature

**3. ANNOUNCEMENT BY THE PERSON PRESIDING****4. PUBLIC QUESTION TIME****4.1 PUBLIC QUESTIONS**

In accordance with Section 5.24 of the Local Government Act 1995, Council conducts a public question time to enable members of the public to address Council or ask questions of Council.

For a Special Meeting of Council, such as this, **they must however relate to the item(s) on the Agenda.**

Questions from the public are invited and welcomed at this point of the Agenda.

Should you wish to address Council please note that the Presiding Person (the Shire President) may have to limit the time of individual speakers in order to allow sufficient time for all speakers present at the meeting to address Council. The rules of this process and the time allocated will be determined by the Presiding Person at the Meeting dependent upon the indicative number of speakers.

Questions from the Public

## 5. REPORTS OF OFFICERS

### 5.1 STRUCTURE PLAN – LOT 621 HARLEQUIN STREET AND LOT 1 SOUTH COAST HIGHWAY, DENMARK

<b>File Ref:</b>	PLN.93
<b>Applicant / Proponent:</b>	Williams Consulting
<b>Subject Land / Locality:</b>	Lot 621 Harlequin Street and Lot 1 South Coast Highway, Denmark
<b>Disclosure of Officer Interest:</b>	David King - Chief Executive Officer – Impartiality interest as advice in this report refers indirectly to owned property.
<b>Date:</b>	4 May 2026
<b>Author:</b>	Cindy Simpson, Town Planner Craig Pursey, Manager Development Services
<b>Authorising Officer:</b>	Craig Pursey, Manager Development Services
<b>Attachments:</b>	5.1a – Local Structure Plan 5.1b – Local Structure Plan Appendices 5.1c – Structure Plan: Lot 5, South Coast Highway 5.1d - EPA advice at Amendment Stage 5.1e – Schedule of Submissions

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### EXECUTIVE SUMMARY

1. Lot 621 Harlequin Street and Lot 1 South Coast Highway, Denmark (subject land) was rezoned from Rural to Urban Development under Amendment No. 146 of the Local Planning Scheme No. 3 in 2023.
2. The Shire has received an application for the Structure Plan to be assessed and advertised under the *Planning and Development (Local Planning Schemes) Regulations 2015*. The Structure Plan was advertised for a period of 42 days in accordance with the Regulations. This report discusses the outcomes of the assessment of the Structure Plan against State and Local Planning Framework and the response to submissions received.

3. At the Ordinary Council Meeting in April, the consideration was deferred so that councillors had time to digest additional information and consider the proponents' comments that arose from Public Question time.
4. A number of amendments have been made to the officer's recommendation to retain the principle of the original recommendation whilst accommodating a more economically viable development.
5. The changes relate to the following:
  - Access to highway – Change to incorporate a Zimmerman street access
  - Preservation of Excellent quality vegetation to the South – change to incorporate private ownership (not POS) and preservation of the vegetation through alternative protection mechanisms
  - Relaxation on the stipulated 30m foreshore subject to future review by the commission.
6. It is recommended that Council advise the West Australian Planning Commission (WAPC) that approval of the Structure Plan is supported, subject to modifications to improve environmental, community and infrastructure outcomes and address matters raised in submissions.

#### **VOTING REQUIREMENTS**

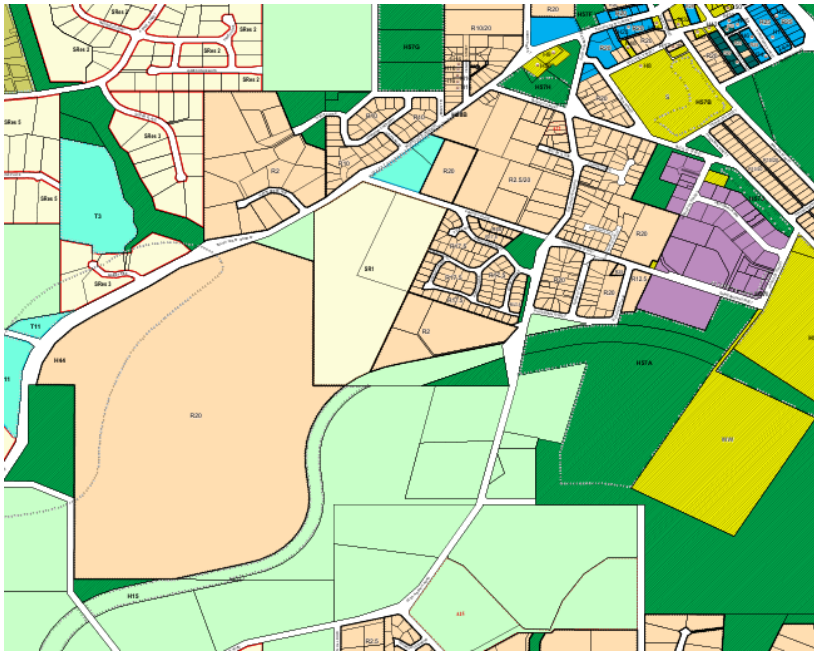
7. Simple majority.

<b>COUNCIL RESOLUTION</b>	ITEM 5.1
<p>That Council, in accordance with the requirements of the <i>Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2, Part 4, Clause 20</i>:</p>	
<ol style="list-style-type: none"> <li>1. ADVISES the West Australian Planning Commission that approval of the Structure Plan is supported, subject to the following modifications:               <ol style="list-style-type: none"> <li>a) Identify the area of remnant native vegetation in good to excellent condition located along the southern boundary of the subject land as a 'vegetation protection area' to be retained and protected through an appropriate planning mechanism such as a Local Development Plan.</li> <li>b) Add a notation on the structure plan clarifying how existing trees will be protected:                   <ol style="list-style-type: none"> <li>i. Black Cockatoo habitat trees (mandatory) Trees identified in the endorsed environmental reporting as providing Black Cockatoo habitat are to be retained and protected. Protection is to be secured through subdivision and/or development design measures to the satisfaction of the Shire of Denmark.</li> </ol> </li> </ol> </li> </ol>	

- ii. Very High and High value vegetation and trees (strong encouragement)  
Vegetation and trees mapped as 'Very High' and 'High' value should be retained wherever reasonably practicable and incorporated into the subdivision design, public open space and road reserves. Where these trees are in private property consideration should be given to:
    - the creation of larger lot sizes;
    - The identification and application of Tree Protection Zones (TPZ's);
    - The designation of building envelopes that avoid encroachment into TPZ's.
    -
  - c) Review the provision of public open spaces that demonstrably meet the design objectives of both the Shire's Local Planning Policy 39: Public Open Space and Liveable Neighbourhoods having regard for function, shape and edge treatment, including consideration of the requirements under WAPC's State Planning Policy 2.9: Water to protect the creek and its biophysical values.
  - d) Relocate the proposed road within the Zimmerman Street road reserve to align with the western boundary of the road reserve at South Coast Highway, then cross the creekline at a location outside the Zimmerman Street road reserve that minimises environmental impact and connect to the internal road network, within the structure plan area, in a manner that establish a subordinate right of way.
  - e) Update the Bushfire Management Plan to consider the outcomes of modifications required to the Structure Plan, including the modifications required by DFES.
  - f) Identify stormwater infrastructure required to manage and treat stormwater from the proposed lots along South Coast Highway and Zimmerman Street road reserve.
  - g) Consistent with DPLH's Strategic Engagement Framework and the Aboriginal Engagement Toolkit, engagement with relevant Traditional Owners / Aboriginal representative bodies for the Denmark area, should be undertaken prior to final Structure Plan endorsement.
2. FORWARD its recommendation, with a copy of the Council report and Schedule of Submissions to the West Australian Planning Commission for determination.
  3. ADVISES those who provided a submission of Council's resolution.

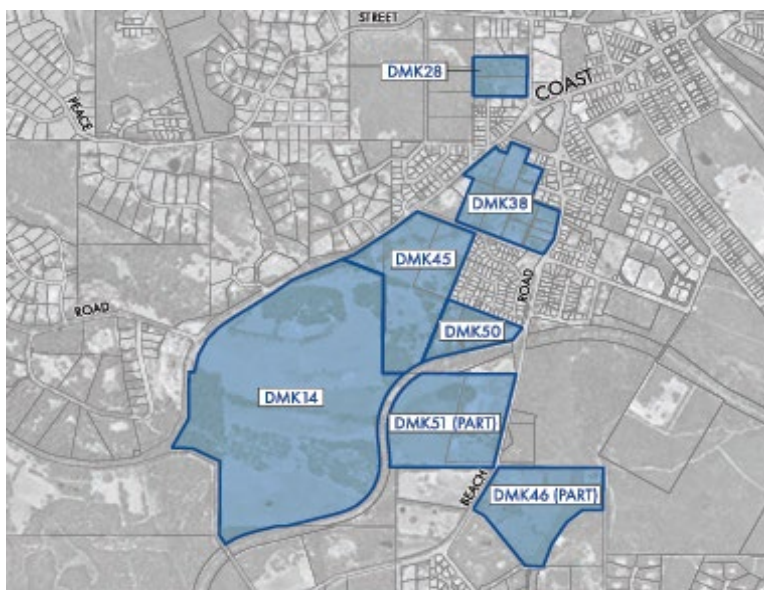
## LOCATION

The Local Structure Plan applies to Lot 621 Harlequin Street and Lot 1 South Coast Highway, Denmark (subject land) comprising 16.88ha. The subject land is bounded by South Coast Highway and Zimmerman Street road reserve to the north, the residential 'Kemsley Estate' and Residential R2 lots to the east, the Denmark to Nornalup rail trail to the south and to the west, residential zoned land (R20) which is undeveloped.



Zoning Map extract from LPS3

8. The subject land is part of the western urban expansion front of Denmark, identified as DMK 45 (subject land) and DMK14 (Undeveloped residential zoned land) in the Shire's Local Planning Strategy 2024.



## Local Planning Strategy – Extract of Urban Expansion Map

### BACKGROUND

9. At its meeting of 16 August 2022, Council resolved to initiate Amendment 146 to the Local Planning Scheme No. 3 (LPS3) to rezone the subject land for residential development and to progress to public advertising.
10. At its meeting of 16 May 2023, Council resolved to support Amendment 146 to LPS3 with modifications and to advise the West Australian Planning Commission (WAPC) that it does not support the indicative Structure plan due to unacceptable environmental and landscape amenity outcomes and deficiencies identified within the supporting documents.
11. The Minister for Planning approved the amendment on 14 December 2023 which rezoned the subject land from Rural to Urban Development. The Urban Development Zone provisions under LPS3 require that a Structure Plan be prepared and approved, and that subdivision and development be accordance with the approved Structure Plan. Additional requirements apply to the preparation of the Structure Plan as per 'Appendix XIX– Additional Requirements that apply to Land in Scheme Area' of LPS3 as follows:
  - Provide for fully serviced residential development with reticulated sewer and underground power.
  - Ensure protection of view lines from South Coast Highway, the Denmark-Nornalup Rail Trail and adjacent established residential areas.
  - Incorporate measures for identification, retention and management of quality fauna habitat.
  - Retain areas containing significant environmental value, including consolidating areas of native vegetation and provide ecological linkages.
  - Identify mechanisms to ensure the protection of trees retained on private residential lots.
12. At its OCM meeting of 28 April 2026, Council resolved to defer the item to the next ordinary meeting to allow Councilors to be provided with further information on the concerns raised by the proponent during public question time (Res: 040426).

### DISCUSSION / OFFICER COMMENTS

#### Structure Plan Overview

13. The purpose of the Structure Plan is to coordinate subdivision and development of the site in a contextually appropriate manner and facilitate the development of positive community outcomes.
14. The Structure Plan proposes the following:
  - Fully serviced development including reticulated sewer, potable water, underground power and telecommunications;

- a residential density code of R20 for standard residential lots and two group housing sites of R40;
- The development will deliver an estimated lot yield of 144, dwelling yield of 160 and a population of 400;
- Public open space is predominantly proposed along the unnamed creekline and foreshore reserve, along the central ridgeline and a small area of drainage to the south;
- Areas of remnant vegetation are proposed to be protected within public open space, through the provision of larger lots and within road reserves;
- The access and movement network includes a primary access to South Coast Highway, secondary access via Harlequin Street/ Ocean Beach Road, emergency access ways to meet bushfire planning requirements and a pedestrian and cycling link along the northern foreshore of the creekline integrating with existing networks;
- Stormwater will be managed on site through a network of swales and infiltration basins.

A copy of the Structure Plan documentation is found at Attachment 5.1a

15. It is proposed to develop the land in three stages. Stage 1 will be in the northern portion of the site accessed from Zimmerman Street and will provide a connection to Ocean Beach Road and include the public open space proposed along the creek line. Stage 2 of the development is proposed to extend south from stage one to the central ridge and include the public open space on the central ridgeline. The southern most extent of the site comprise the third and final stage of development and consideration is required with respect to the economically viable connection to wastewater.
16. The Structure Plan identifies the need for the preparation of Local Development Plans (LDP's) to be prepared for lots abutting public open space and addressing South Coast Highway and Zimmerman Street. The purpose of the LDP's is to address design considerations such as variation to building envelopes, minimum setbacks, setback variations, dwelling orientation and passive surveillance to POS as well as uniform fencing.

#### **Protection of Remnant Vegetation and Black Cockatoo Nesting Trees**

17. An Environmental Assessment was undertaken by PGV Environmental (August 2025). The study concludes that the site has been extensively cleared historically, with remnant vegetation of varying quality occurring in fragmented pockets as follows:
  - The highest-quality vegetation occurs in the southern portion, comprising Marri/Jarrah/Karri Woodland, in 'good' to 'excellent' condition. It represents the most intact remnant vegetation on the site with good connectivity to vegetation outside of the site. It has also been assessed as 'good fauna habitat'.

- Vegetation along the creekline is generally in 'good condition' including Karri, Marri, Taxandria and sedgeland, although this vegetation is narrow in extent and subject to weed invasion and historical disturbance.
- The central ridgeline supports a larger area of Karri-dominated vegetation; however, while the tree canopy remains largely intact, the understorey is degraded, with a high presence of weeds and limited native regeneration.
- Mature Karri and Marri trees has local ecological significance, providing foraging and potential breeding habitat for Black Cockatoos, with 305 significant/potential habitat trees identified on site and comprising approximately 5.8 hectares of Black Cockatoo foraging habitat
- A potential Boorna Gramma tree was identified along western boundary of the subject land. Gramma trees were cultivated, shaped and used by Aboriginal people for water storage and therefore have very high cultural significance.
- The assessment recommends prioritising retention of vegetation in 'good' to 'excellent' condition, particularly within the creekline and southern areas.

18. Under Amendment 146 to LPS3, in which the subject land was rezoned to 'Urban Development', the Environmental Protection Authority (EPA) determined to not formally assess the Amendment but that the Amendment can meet environmental objectives. As part of their advice, they expected the following to be achieved as part of future structure planning:

- The identification, retention and management of quality fauna habitat;
- Retain areas of significant environmental value including consolidated area of native vegetation (particularly vegetation in 'excellent' condition) and supporting vegetation (particularly foraging and potential breeding trees) for conservation significant fauna species; and
- The provision of ecological linkage.

EPA recommended that avoidance and management measures be applied to minimize impact to environmental values within the amendment area in accordance with the EPA's 2021 *Guidance for planning and development: Protection of naturally vegetated areas in urban and peri-urban areas*.

A copy of the EPA advice is found in attachment 5.1d of this report.

19. The advice received from the EPA is also reflected in the Local Planning Scheme No. 3 provisions that apply to this site.

20. The Structure Plan proposes to retain the remnant vegetation and suitable/ potential cockatoo nesting trees as follows:

- Public open space containing the creek line;
- Public open space containing the ridgeline, which comprise mature Karri and some Mari trees;

- Provision of large lots in the southern portion of the subject land which will meet bushfire planning requirements and identification of suitable building envelopes.
- The Wave Court emergency access way public open space;
- Provision of wider road reserves and strategic alignment of road layout design and the ability for the future carriageway to be constructed to avoid select trees;
- A significant number of trees will be retained in future lots. It is proposed to enter into an agreement with the Shire of Denmark to place a Restrictive Covenant on Title protecting selected trees.

21. The mechanisms identified in the Structure Plan to retain and protect remnant vegetation are assessed as follows:

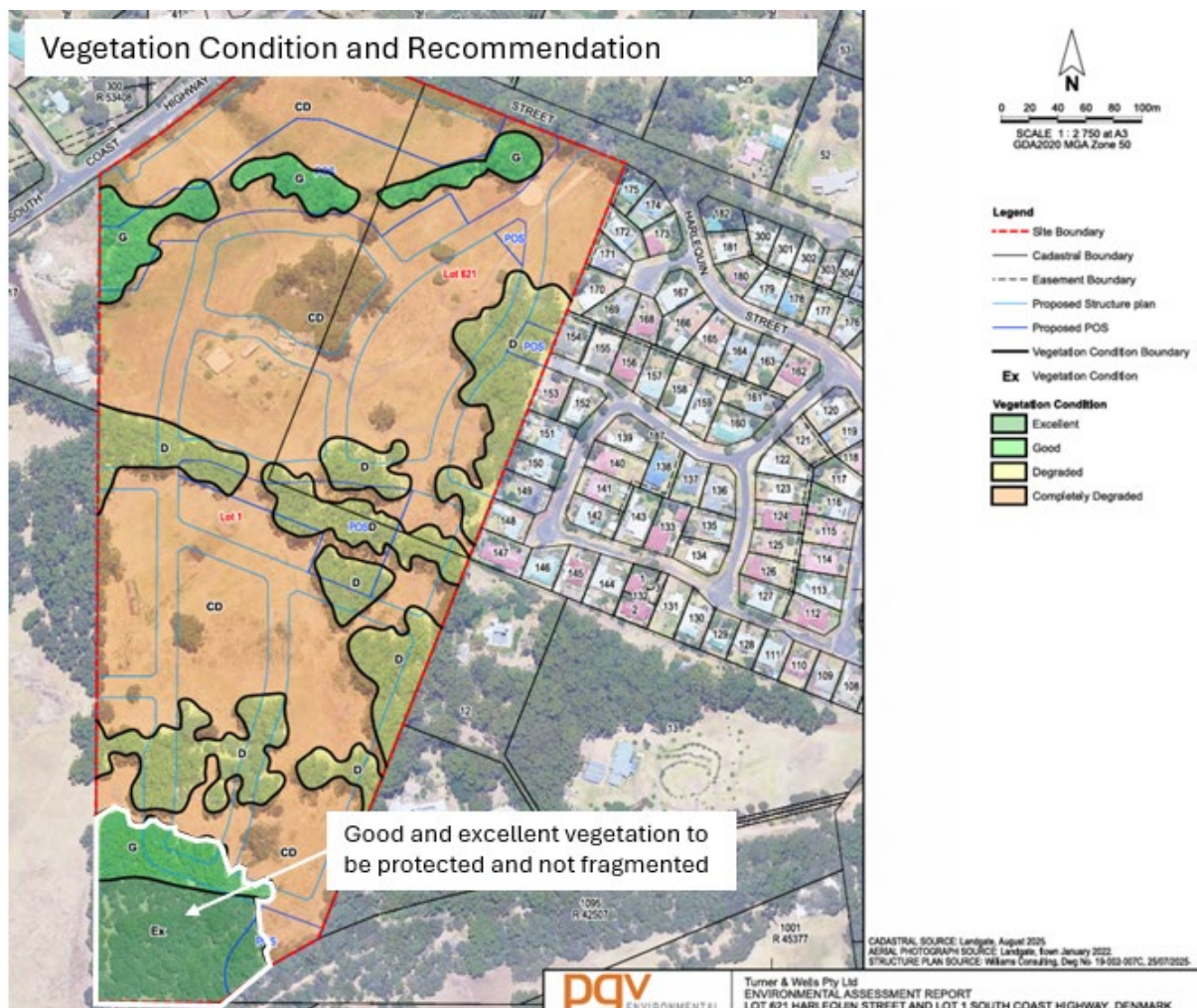
#### *Public Open Space*

22. The identification of public open space on the ridgeline, within which the mature Karri trees of medium to high value Black Cockatoo habitat is retained and protected, is supported. The trees also contribute significant landscape, visual and amenity value and enhance the recreational function and use of public open space for future residents. The shape and function of this public open space is assessed in more detail below.
23. The protection and retention of riparian vegetation within the creek line within public open space, is also supported, consistent with best-practice environmental outcomes and waterway protection objectives. The shape and function of this public open space is assessed in more detail below.
24. In general, the protection and integration of environmental and landscape features within public open space is supported.

#### *Provision of Larger Lots*

25. Larger lot sizes can support the retention of existing vegetation, and the use of building envelopes can help direct development away from significant trees. However, achieving meaningful tree retention on private lots requires careful subdivision-stage coordination to ensure the lot size and shape, proposed lot boundaries, mapped Tree Protection Zones and building envelopes are mutually consistent and enforceable.
26. The area to the south, identified as good to excellent condition with high fauna habitat value, is proposed to be subdivided into larger lots. This approach will result in significant fragmentation of high-quality remnant vegetation due to clearing associated with dwelling construction, asset protection zones, Bushfire Attack Level (BAL) compliance and requirements under the Shire's annual Firebreak and Property Management Notice and is not supported.
27. This outcome is contrary to EPA advice and Local Planning Scheme No. 3 provisions, which seek to retain areas of significant environmental value in a consolidated and secure manner.

28. The original recommendation tabled at the April OCM was that the Structure Plan be modified to comply with EPA's advice and LPS3 provisions, by retaining the area within public open space for conservation purposes.
29. Following further assessment and the proponents' concerns around this matter, other options have been considered. Various planning mechanisms can be applied to protect vegetation in good to excellent condition along the southern boundary of the subject land. As such, this area does not necessarily need to be secured as a POS to protect the vegetation community. It is recommended that this area be identified as a 'vegetation protection area' to be retained and protected through an appropriate planning mechanism, such as a Local Development Plan.



#### *Significant Tree Retention (Diameter > 500mm)*

30. A significant number of trees are proposed to be retained in future lots. The Structure Plan proposes that an agreement be entered into with the Shire of Denmark to apply a Restrictive Covenant on Title protecting selected trees
31. The size of lots (R20) currently shown over areas of remnant vegetation which has been identified as Black Cockatoo/fauna habitat may not in all cases result in sufficient land area to accommodate both a building envelope and retention and protection of trees. It is recommended that the Structure Plan be modified to show

how trees are proposed to be protected within private lots and that tree protection zones and building envelopes be identified at the subdivision stage.

32. The proposed restrictive covenants on title as a statutory mechanism to protect the trees on private lots may not represent the most suitable or robust long-term protection mechanism due to monitoring and enforcement resources required by local government. Additional/alternative mechanisms may include the use of existing Scheme provisions requiring approval for tree removal and a local planning policy on tree retention.
33. Where the retention of trees is not viable within public open space or larger/private lots, retention within road reserves represents a critical opportunity to conserve environmental values within developed landscapes. The retention of established trees within road reserves provides immediate canopy cover, enhances visual amenity, and contributes to the landscape character in newly developed areas.
34. The protection of trees during construction is critical for the long-term tree health and stability. The Engineering Infrastructure Report (Figure 5, Page 9) shows depths of cut of up to 2m and fill of up to 1m on all the proposed roads. Such cut-and-fill operations may result in the complete removal of trees.
35. It is recommended that trees identified in the endorsed environmental reporting as providing Black Cockatoo habitat are to be retained and protected as a mandatory condition. Protection is to be secured through subdivision and/or development design measures to the satisfaction of the Shire of Denmark.
36. In addition, vegetation and trees mapped as 'Very High' and 'High' value should be retained wherever reasonably practicable and incorporated into the subdivision design, public open space and road reserves. Where these trees are in private property, consideration should be given to:
  - the creation of larger lot sizes;
  - The identification and application of Tree Protection Zones (TPZ's);
  - The designation of building envelopes that avoid encroachment into TPZ's.



### Summary

37. The development of the subject land requires a balanced planning approach that recognises both environmental protection and the practical need for economically viable and orderly development. While the retention of remnant vegetation is a key objective, site constraints such as environmental features (creekline and pockets of remnant vegetation), topography, bushfire risk management, infrastructure and service requirements limit the capacity to retain all trees. Over-constraining development through strict environmental protection measures may undermine feasibility and shift long-term costs, safety risks and maintenance burdens to landowners and the local government.

38. A more defensible outcome is achieved by prioritising the retention of good to excellent quality vegetation and fauna habitat within public open space or

environmental protection reserves, where long-term protection and management can be secured, while accepting strategic and justified vegetation loss where necessary. This approach aligns environmental protection objectives with development realities and supports sustainable outcomes that balance ecological integrity, community benefit and economic viability.

### **Protection of Creekline and Foreshore Reserve Management**

A copy of the Environmental Assessment and Hydrological Flood Study is found in attachment 5.1b.

39. The northern portion of the site contains an unnamed creek that runs from west to east. The creek is part of a longer creekline estimated to be around 2.9km long, discharging to Wilson Inlet. The creek is dammed immediately upstream on an adjoining property to the west. Parts of the creek line are vegetated with native species in good condition, offering Black Cockatoo habitat. Other parts are cleared/dominated by weeds, and the remainder of the foreshore is completely degraded.
40. A foreshore assessment identified primary factors in determining a setback from the creek line i.e. preserving the existing vegetation, maintain the hydrological function and ensuring the 1% AEP (the 100 year floodplain) is within the foreshore reserve. In addition, the hydrological study determined where residential lots can be developed in relation to the creek line.
41. The foreshore reserve will be managed in accordance with the Foreshore Reserve Management Plan (PGV, Environmental, 2025), which proposes to retain the vegetation in the creekline, revegetate cleared areas, as well as the area impacted by the 1% AEP, to improve bank stability. The remainder of the reserve is proposed to be retained in its current condition to retain the rural character within the POS. The revegetation of the creek line is supported.
42. The proposed creekline setback, when considered against the relevant environmental and water management objectives, is not supported. In some locations, private lot boundaries are shown as close as 0.5 metres from the creek line. This separation is insufficient to establish a meaningful riparian/foreshore buffer capable of protecting waterway function and values. In particular, it provides little to no allowance to safeguard the creek from the impacts of future cut and fill and associated disturbance on private lots. It also limits opportunities for revegetation and ongoing management required to restore or maintain environmental values over time.
43. WAPC's State Planning Policy 2.9: Water requires that the width of the foreshore area or reserve from each edge of the waterway should be a minimum of 30m (unless otherwise determined by a biophysical assessment) and notes that foreshore widths of less than 30m are generally not considered to provide adequate protection for ecosystems. The Environmental Assessment Report determined that the foreshore area is completely clear and does not have biophysical factors that would require increasing the proposed foreshore reserve from that shown on the Structure Plan. The proposed width of the foreshore reserve is, however, not supported.

44. In their submission on the Structure Plan, the Department of Water and Environmental Regulation (DWER), requested that the creek setback be clearly defined and increased.
45. The proponent does not support the proposed modification, which required a 30m wide foreshore reserve on both sides of the creek line as required by State Planning Policy 2.9: Water. The reason for the objection is that, based on previous decisions made by the WAPC, to allow lesser foreshore reserve widths in subdivisions further downstream. These decisions were made at subdivision stage in response to site specific constraints where consideration was given to the protection of creeklines based on drainage functions. Similar considerations can be made at the structure plan stage, but only if site-specific constraints are justified.
46. The Structure Plan proposes that the creekline be located within public open space (POS), within which multiple drainage infrastructure elements are also to be accommodated. In this context, the determination of the appropriate foreshore width cannot be assessed in isolation. Rather, it must be considered in conjunction with the resultant design and function of the POS, including whether the location and form of drainage infrastructure adequately protect the ecological health of the creekline while still allowing the POS to achieve its intended community and recreational functions.
47. The interrelated environmental, community and infrastructure considerations are as follows:

#### *Environmental Outcomes*

48. State Planning Policy 2.9: Water and the associated Planning for Water Guidelines – establish that the width of the foreshore area or reserve from each edge of the waterway should be a minimum of 30m to provide for ongoing protection of the environment, and cultural and social values of the foreshore and waterway. The foreshore area is a negotiated distance with DWER and DWER's advice is provided to the decision-maker.
49. The Planning for Water Guidelines states that foreshore widths of less than 30m for waterways are generally not considered to provide adequate protection for the ecosystem. In limited circumstances, where site-specific constraints exist, such as topography, management and accessibility complexities, exceptions to the minimum width of the foreshore may be granted. In these circumstances, a non-standard foreshore width that adequately protects the waterway may be requested, and justification will be required. In this case, some relaxation could be applied where required to accommodate lots to the North of the creek. However, officers view that this relaxation does not apply to the South side of the creek where there are limited constraints.

#### *Community Outcomes*

50. In this instance, the 30m setback required under SPP 2.9 – Water, also defines the extent of the POS and establishes the 'development setback' from the creekline.

51. Liveable Neighbourhoods establishes that the primary purpose of public open space is recreation (active and passive) and community benefit. Land that functions primarily as a floodway, vegetation buffer or a stormwater conveyance corridor, is not normally credited towards public open space. While foreshore reserves may form part of the open space network, they are only credited where they are designed to be safe, accessible and provide meaningful passive and/or active recreational opportunities for the community.
52. Where the Shire supports that the foreshore reserve be credited towards POS, the function and purpose of the POS must comply with the design requirements as set out under Liveable Neighbourhoods and the Shire's Local Planning Policy No. 39: Public Open Space.

#### *Infrastructure Outcomes*

53. Liveable Neighbourhoods permits the integration of drainage infrastructure within public open space only where the POS remains safe, accessible and usable during low rainfall periods and where the drainage infrastructure does not materially reduce the area or functionality of usable POS. The Shire's Local Planning Policy No. 39: Public Open Space aligns with this approach and establishes a general presumption against the placement of drainage sumps within POS. The policy instead supports stormwater detention through sensitively designed swales and shallow depressions where these elements enhance the amenity, aesthetics and recreational function of the public open space. Accordingly, the incorporation of drainage infrastructure within POS must be consistent with the primary recreational and community purpose of the land.
54. Where Council is to support the location of drainage infrastructure within public open space, the overall area, configuration and width of the POS are critical factors in achieving an outcome that is both functional and well designed. In this instance, a reduced foreshore reserve constrains the ability to integrate drainage infrastructure in a manner that protects the creekline, maintains environmental values and preserves usable and meaningful public open space.
55. A 30 metre foreshore reserve is therefore seen as the starting point for negotiating the necessary space to provide sufficient capacity to accommodate appropriately designed drainage swales and depressions without the POS functioning predominantly as a stormwater management corridor, and to ensure compliance with Liveable Neighbourhoods, Local Planning Policy No. 39 and the intent of State planning policy.

#### *Summary*

56. In order to allow the decision-making authority (WAPC) and DWER flexibility in the determination of the final width of the foreshore reserve, it is proposed to amend the modification to refer to the requirement to meet the provisions of SPP 2.9: Water in conjunction with the recommendations of Liveable Neighbourhoods regarding design and function of public open space (POS 1).

#### **Protection of Aboriginal Heritage Values**

57. Submissions received from residents and Wagyl Kaip Noongar Aboriginal Corporation (WKSN) raise concern that Aboriginal heritage matters were not addressed and that Aboriginal consultation on the Structure Plan has not occurred.
58. The Structure Plan notes that a search of the Aboriginal Heritage Inquiry System was undertaken and that no registered Aboriginal Heritage Sites was recorded on the site. The Environment Assessment Report identified a 'gnamma tree' on the site.
59. The Structure Plan was referred to the Department of Planning, Lands and Heritage (DPLH) for their comments. In addition to its planning responsibilities, the DPLH also houses the Aboriginal heritage function, with responsibility for administering the Aboriginal Heritage Act 1972 and managing the identification, protection and assessment of Aboriginal cultural heritage across Western Australia. No comments were received from the Department during the consultation period in relation to Aboriginal heritage matters.
60. The DPLH's Strategic Engagement Framework (2025) establishes a clear expectation that engagement with Aboriginal people must occur where planning decisions affect land, water, cultural landscapes or heritage values. The Framework is supported by the Aboriginal Engagement Toolkit, which provides practical guidance to ensure engagement is culturally appropriate, relationship based and undertaken at a point where it can genuinely influence outcomes, not merely validate completed decisions.
61. The Strategic Engagement Framework highlights that Structure Plans establish the long-term land use pattern, including road alignments, public open space, drainage corridors and interfaces with waterways and bushland. These matters intersect directly with Aboriginal cultural values, even in areas where no registered Aboriginal heritage sites are currently mapped. Absence of known sites does not remove the need for engagement, as Aboriginal knowledge may identify cultural landscapes, pathways or values not captured in statutory registers.
62. Accordingly, finalising the Structure Plan without direct Aboriginal engagement would be inconsistent with the intent of State engagement guidance, which seeks to ensure Aboriginal perspectives are considered before key planning decisions are locked in.
63. Consistent DPLH's Strategic Engagement Framework and the Aboriginal Engagement Toolkit, engagement with relevant Traditional Owners / Aboriginal representative bodies for the Denmark area, should be undertaken prior to final Structure Plan endorsement, while changes to layout, public open space configuration and buffers remain feasible.

### **Assessment of Liveable Neighbourhoods: Public Open Space**

For location of Public Open Space referencing refer to Figure 1 within the report (above).

64. Liveable Neighbourhoods is the West Australian Planning Commission's (WAPC's) primary policy for the design and assessment of structure plans and subdivisions of new urban residential areas on greenfield or infill sites. The POS proposed in the Structure Plan is assessed against relevant elements of Liveable Neighbourhoods and

the Shire's Local Planning Policy 39 – Public Open Space. Both frameworks emphasise that POS should be well-located, functional and of a regular, usable shape, capable of supporting a range of recreational and social outcomes including informal play, walking, passive recreation and community gathering.

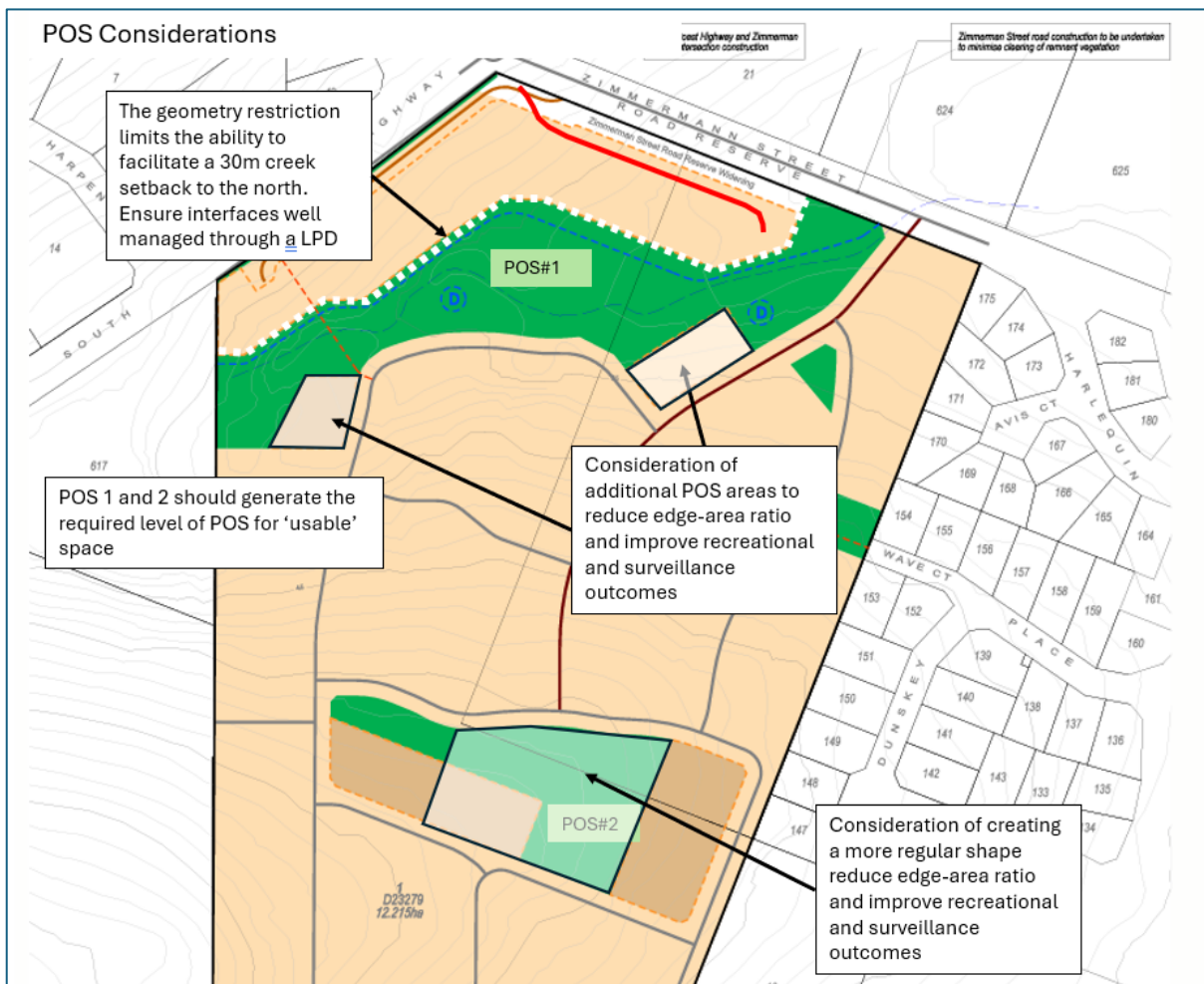
65. POS 1 (creekline POS) is irregular in shape, narrows in several locations and is proposed to accommodate stormwater functions, including detention/swale infrastructure. In the context of the limited creekline setback, foreshore reserve management requirements and the close proximity of residential lots to the waterway, the design outcome indicates that POS 1 has been configured primarily to meet minimum riparian and drainage requirements, with limited consideration of broader POS design objectives and community usability.
66. The extent to which drainage infrastructure (including detention basins/sumps) will reduce the area of usable parkland in POS 1, is not clearly demonstrated at the Structure Plan stage. This creates a reasonable perception that POS is being treated as secondary to drainage infrastructure, rather than being planned as a valued public place. While integrating stormwater management within POS can be supported where appropriately designed, this is only acceptable where recreational value, accessibility and safety are clearly retained and the drainage function does not dominate the public space.
67. POS 2 appears to have been primarily shaped around retention of vegetation, rather than being configured to deliver a coherent and functional recreation space.
68. Both POS 1 and POS 2 have a number of lots that front and actively address the open space, with many lots instead backing onto or side-addressing the POS. Combined with the irregular configuration, this produces a high edge-to-area ratio, meaning there is a disproportionate amount of boundary (often fencing interfaces) relative to the amount of usable POS. This weakens casual surveillance, reduces perceived safety and diminishes the everyday relationship between residents and the POS.
69. Liveable Neighbourhoods seeks active interfaces and surveillance outcomes through development that engages the public realm, POS being overlooked by surrounding dwellings, with lots oriented to provide passive surveillance and encourage community ownership and activation of the space.
70. POS 3 (Wave Court) appears to function primarily as an emergency accessway, while POS 5 is identified primarily for drainage infrastructure. In principle, there is no objection to small, purpose-specific pockets of POS, provided the broader POS network delivers high-quality, usable public space outcomes. In this case, POS 1 and POS 2 which comprise the main public open spaces, have not demonstrated that they achieve strong recreation, usability and surveillance outcomes, which reduces the acceptability of relying on additional POS areas that are largely functional in nature. POS 4 is effectively residual land and does not appear to provide a meaningful recreation or community function and is not supported.
71. Deferring the achievement of good POS outcomes to future Local Development Plans (LDPs) is not supported. LDPs can refine built form and interface treatments at the lot

level, but they cannot rectify fundamental structure plan issues such as the location, width, shape and usability of POS. Quality POS is expected to be planned and secured through the structure plan and subdivision design.

72. The Structure Plan identifies that it meets the minimum 10% POS contribution requirement under the Liveable Neighbourhoods. However, the 10% standard is a minimum provision, and does not, on its own, demonstrate that the POS is of acceptable quality and usability. Local governments may reasonably seek additional or improved POS outcomes where site and local circumstances warrant it.

73. Taken as a whole, the current POS network prioritises subdivision efficiency and servicing outcomes over community benefit. In its current form, the POS system cannot be considered an appropriate or equitable public open space contribution, as it does not clearly demonstrate usability, safety, high-quality interfaces or a coherent recreation function consistent with the Shire’s and State policy intent. It is therefore recommended that the Structure Plan be modified to incorporate POS areas that demonstrably meet the design objectives of both the Shire’s Local Planning Policy 39: Public Open Space and Liveable Neighbourhoods.

74. The schematic below shows, in part, the intent of this condition.



**Bushfire Planning**

75. A Bushfire Management Plan (BMP) has been prepared to meet State Planning Policy 3.7 and the Planning for Bushfire Guidelines (2024). The BMP is intended to ensure future residents can safely evacuate and that emergency services can access the area during a bushfire event.
76. Where required bushfire management measures are implemented (such as asset protection zones), most of the sites can achieve BAL-29. The BMP acknowledges that some areas of higher exposure (BAL-40 and BAL-FZ) may extend into parts of the proposed residential areas due to vegetation outside the site boundary and vegetation within the creekline/open space areas. To manage this, the BMP requires habitable building exclusion areas so that houses are not built in the higher-risk parts of lots. The plan indicates these exclusion areas would be secured through a Local Development Plan (LDP) at subdivision stage where needed.
77. For evacuation and emergency response, the BMP requires that residents have two ways in and out of the development (including during staged subdivision). The BMP proposes this is achieved through a combination of:
- upgrading/extending Zimmerman Street to connect to South Coast Highway, and
  - constructing internal public roads and three emergency access ways (EAWs) to provide secondary escape routes.
78. The BMP notes that EAWs must be built to the required standard, signposted, and that the Shire's agreement is required for Council to accept care, control and management of those EAWs.
79. The BMP also makes it clear that vegetation outcomes (particularly in POS and drainage areas) must be confirmed through a Landscape Management Plan at subdivision stage, to ensure future planting or regrowth does not unintentionally increase bushfire exposure across the site.
80. The BMP is based on the assumption that the vegetation load will be reduced on the Zimmerman Street road reserve should it serve as access onto South Coast Highway. This report however, does not support the use of the road reserve for access. This is in conjunction with other recommended modifications, such as retention and protection of the pocket of the high-quality remnant vegetation to the south of the subject land, and the implication thereof on bushfire planning should be considered. It is therefore recommended that the BMP be updated to consider the modification required, including those required by DFES.

### **Infrastructure Arrangements: Road Infrastructure**

The *Transport Impact Assessment and Engineering Infrastructure Report* is available under Attachment 5.1b.

#### *Access to South Coast Highway*

81. At the time of the amendment, Main Roads did not support access directly onto South Coast Highway and instead requested that access be provided via Harlequin Street to

Ocean Beach Road. This option was not considered desirable, as it would result in increased traffic movements through the Kemsley Estate, reduced permeability for residents of the future development, an inability to meet secondary access requirements for bushfire planning, and additional traffic demands on the Ocean Beach Road/South Coast Highway intersection.

82. In response to Main Roads' objection, the applicant and landowners, in collaboration with the Shire, explored the option of utilising the Zimmerman Street road reserve to provide access onto South Coast Highway. The Structure Plan therefore proposes a boulevard arrangement comprising one carriageway designed to meander around existing trees where possible, and a second carriageway located on cleared land owned by the developer. The intent of this boulevard treatment is to minimise vegetation clearing.
83. During the public advertising of the Structure Plan, Main Roads raised significant concerns regarding the proposed access via the Zimmerman Road reserve, stating that it posed a significant risk to the future function of South Coast Highway. Subsequently, the Shire met with Main Roads, during which Main Roads verbally agreed in principle to a connection between Harpendene Rise and Ross Court, subject to appropriate intersection design and an internal road network that does not provide a direct throughfare to Ocean Beach Road.
84. Access via the Zimmerman Road reserve presents the following opportunities and constraints:

Opportunities:

- Utilisation of an existing road reserve;
- Availability of an existing road widening reserve on South Coast Highway to accommodate a slip lane; and
- Construction of the road will reduce the Bushfire Attack Level (BAL) rating and safety of resident living adjacent to the road.
- Potentially the retention of existing trees along boulevard would be an attractive entry statement into a new residential area for Denmark.

Constraints:

- Ongoing objection from Main Road to this intersection;
- The connection will create a throughfare to Ocean Beach Road via Harlequin Street.
- Road works required to construct the intersection at South Coast Highway (fill and batter) would be likely to result in a significant loss of mature trees at the intersection;
- The road would traverse the creek line which is an ecologically important riparian zone. Construction of the road will require an approximate 1.5 – 2m cut and resulted loss of mature trees;
- Perched groundwater and localised waterlogging which result in seasonally saturated ground, occur near the creekline; and
- Road vertical design must avoid lowering into flood-affected areas, potentially requiring elevated design.

85. The following opportunities and constraints have been identified at the access between Harpendene Rise and Ross Court (central access)

Opportunities:

- Supported in principle by Main Roads, subject to appropriate intersection design and the internal road network that avoids use as a direct shortcut through to Ocean Beach Road; and
- Protection of the mature trees in the Zimmerman Road reserve, providing an opportunity to create a dual-use path for pedestrians and cyclists connection to South Coast Highway. This approach would also reduce fuel loads and improve BAL rating, however this is time sensitive.

Constraints:

- While some road reserve is available on South Coast Highway (approximately 7.5m), use of this space for a slip lane (bulge) may be constrained by an upward slope to the north.

86. In summary, construction along the total length of the Zimmerman Street road reserve is not supported. This is primarily because the construction of a road that crosses the creekline within the Zimmerman Street road reserve will cause significant impacts to the ecology of the creek's riparian zone, where disturbance would result in the loss of trees and degradation of hydrological and environmental functions, in addition to perched groundwater and locally waterlogged conditions in the vicinity of the creekline. The through traffic impacts to the Highway are also considered unacceptable by MRWA.

87. Having regard to the above considerations, at the April OCM, it was recommended that the Structure Plan be modified to remove vehicle access via Zimmerman Street road reserve onto South Coast Highway, and instead provide access via the central point between Ross Court and Harpendene Rise.

88. The applicant seeks to retain access to the subject land via the Zimmerman Street road reserve. The rationale for this appears to be:

- That the road reserve width and topography at the previously recommended site at a mid-point between Ross Court and Harpendene Rise would not facilitate a passing bulge resulting in a difficult and expensive intersection.
- The Zimmerman Street alignment would make a more attractive entry to the future subdivision in either a boulevard approach with retained trees through the centre aisle or the road along the western edge of the existing vegetation.

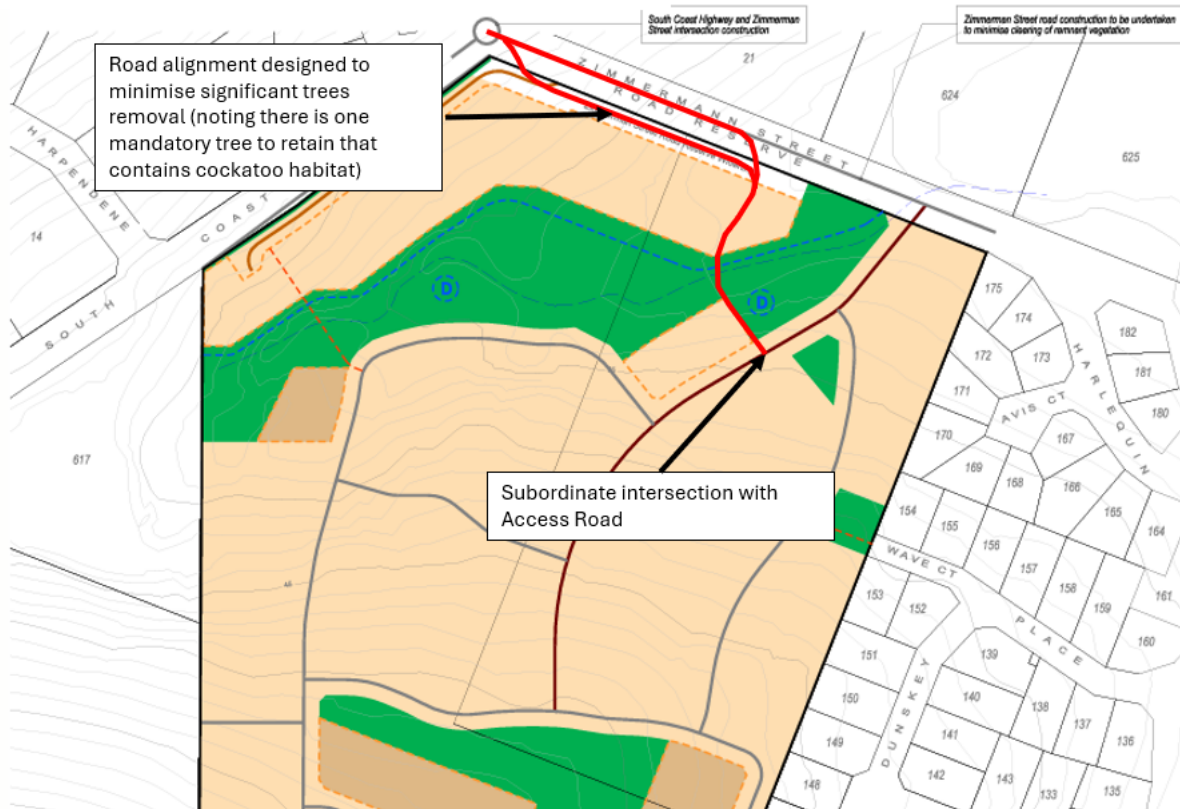
89. Main Roads originally objected to the access road alignment in the advertised structure plan due to the creation of a through road/shortcut to Ocean Beach Road, increasing traffic impacts on South Coast Highway, the Kemsley Estate community and Ocean Beach Road.

90. It is accepted that shifting the access road to the mid-point between Ross Court and Harpendene Rise is not the only way of addressing the concerns raised during

advertising and assessment of the structure plan. Having regard to the objection from Main Roads regarding through traffic concerns, and the identified environmental constraints associated with constructing a creek crossing within the road reserve, an alternative access arrangement is recommended.

91. Specifically, it is recommended that the access road be aligned along the western boundary of the Zimmerman Street road reserve, retaining trees in the reserve as a high priority, crossing the creekline at a location outside of the Zimmerman Street road reserve, and connecting to the internal road network in a manner that establishes the access as a subordinate right of way rather than a primary through route.
92. This recommendation will result in the protection of the creekline, and the mature trees located within its immediate vicinity. It would facilitate a passing bulge and retain much of the existing vegetation in the Zimmerman Street road reserve. This alignment of the access road with a subordinate internal intersection is expected to discourage the use of the access road as a throughfare, satisfying one of MRWAs' major concerns.
93. Notwithstanding these benefits, it is acknowledged that there are potential impacts of this alignment to consider:
  - Due to the slope of the land, aligning the road with the western boundary of the road reserve at South Coast Highway will necessitate earthworks, including fill and embankments, may result in the result in the loss of some mature trees.
  - The road alignment may result in headlight shine into an existing house on the north side of South Coast Highway.
94. On balance, it is recommended to align the access road along the western edge of Zimmermann Street road reserve ensuring the road design:
  - Focuses on retaining existing vegetation in the road reserve, and if necessary is realigned entirely into the subject site;
  - Is aligned to not have traffic shine their lights directly into the house opposite;
  - Crosses the creek at a point outside of the road reserve with no vegetation loss and minimal impact upon the hydrology of the creek; and
  - The new access road is brought through a T-junction and does not function as an easy short cut through to Ocean Beach Road.
95. The schematic below shows the intent of this recommendation.

### South Coast Highway Connectivity



#### *Impact on residential amenity of Kemsley Estate*

96. Concerns regarding traffic flow through Kemsley Estate, via Harlequin Street, have featured in many of the public submissions. Similarly, concern was raised that Kemsley Place Road may potentially serve as access and egress to the subject land, leading to a through route to Ocean Beach Road. Harlequin Street was created as part of the subdivision of Kemsley Estate, being designed and constructed at that time to accommodate a road connection for future development, replacing the original Zimmermann Street alignment.
97. Concern regarding the potential opening of Wave Court to serve as access to the subject land also featured in submissions. Harlequin Street replaced access to the future development site, and Wave Court now serves as an emergency access point only. No road construction is proposed.

#### **Infrastructure Arrangement: Stormwater Management**

The *Local Water Management Strategy* is available under Attachment 5.1b.

98. The Local Water Management Plan (LWMP) outlines that stormwater management is primarily achieved using land-based drainage infrastructure, including detention and retention areas that are integrated within the subdivision layout. These measures are intended to attenuate peak flows, manage minor and major rainfall events, and maintain pre-development hydrological conditions as far as practicable.

99. The LWMP also incorporates water-sensitive urban design principles, with an emphasis on slowing, storing and treating stormwater before discharge. This includes the use of vegetated areas and public open space to accommodate water during rainfall events, while maintaining flood protection for developable areas.
100. Stormwater will be accommodated via four separate catchments, 3 drainage basins are proposed in the POS associated with the creek line and one drainage basin is proposed within a small POS on the southern boundary. Stormwater infrastructure in public open space is acceptable where the design of the POS in relation to the detention basins does not impinge on the recreational use of the parkland.
101. Stormwater infrastructure for the lots proposed along South Coast Highway and the Zimmerman Street road reserve has not been shown. Stormwater can increase peak flows, erosion, sediment and nutrient loads, and degrade riparian vegetation and habitat. It is recommended that the Structure Plan and associated technical documentation be updated to show how stormwater to the north of the creek line will be managed and treated.

### **Visual Impact – South Coast Highway Interface**

The *Landscape Management Plan* is available under Attachment 5.1b

102. Under LPS 3 (Appendix XIX), additional requirements that must be addressed include the protection of view lines from South Coast Highway, the Denmark-Nornalup Rail Trail and adjacent established residential areas.
103. The Structure Plan and accompanying Landscape Management Plan identify that views from South Coast Highway, the Denmark–Nornalup Rail Trail, and adjacent established residential areas are largely screened or filtered by existing landform and vegetation.
104. From South Coast Highway, views of the site are generally partial and filtered through roadside vegetation, with the proposed layout and additional landscaping intended to avoid a continuous hard urban edge and maintain the rural, vegetated character of the highway corridor.
105. Views from the Denmark–Nornalup Rail Trail are minimal due to the sunken alignment of the trail, existing earthen bunding and retained mature vegetation, which together create a contained, canopied trail experience that significantly limits visual exposure to the development.
106. In relation to nearby residential areas, the Structure Plan proposes landscape buffers, retained vegetation and solid fencing where required to manage interface impacts and reduce overlooking or visual intrusion.
107. Overall, the visual impact of the development is expected to be low, provided the proposed landscaping and vegetation retention measures are implemented as detailed, ensuring the development integrates with the surrounding landscape and maintains the visual amenity of key public corridors and neighbouring residential properties.

## Noise Mitigation

The *Noise Management Plan* is available under Attachment 5.1b.

108. A Noise Mitigation Plan supporting the Structure Plan has been prepared which identifies appropriate noise mitigation measures for select lots adjacent to South Coast Highway.

## CONSULTATION AND EXTERNAL ADVICE

109. The Structure Plan was advertised for a period of 42 days from 20 November 2025 to 16 January 2026 including:

- And advertising notice in the Denmark Bulletin;
- Referral of the Structure Plan to government agencies;
- Referral to immediately adjacent landowners;
- The Structure Plan documents being available on the Shire's website for viewing and at the Shire Administration office.

110. During the consultation period, 26 submissions were received from the public and 9 from Government agencies.

111. The submissions received from the public generally acknowledge that there is a need for additional residential development to support Denmark's growing population,

112. The following provides a summary of the matters/concerns raised by submissions received from the public:

- Vegetation clearing and environmental impacts: Concerns raised regarding the removal of Marri/Karri trees, fragmentation of ecological corridors and impacts on local fauna.
- Loss of Black Cockatoo habitat: Concerns raised regarding the impact on Black Cockatoo habitat due to loss of nesting trees and foraging habitat destruction which conflicts with local conservation efforts.
- Traffic, road network and access issues: Concerns raised regarding the impacts of new road connections on quiet streets, impact of 'emergency access' road to Wave Court, increased traffic noise and congestion, road alignment impacts on amenity and poor mitigation detail in traffic studies.
- Kemsley Place/Zimmerman Road through-road concerns: Concerns regarding potential risk of Kemsley Place becoming a through-road to Ocean Beach Road creating an unsafe four-way intersection, loss of cul-de-sac amenity, increased traffic around Hopson Reserve and loss of quiet residential character.

- Amenity, privacy and character impacts: Concerns raised regarding potential risk of overlooking from new dwellings (especially upslope), change from semi-rural to dense suburb, potential for Airbnb dominated neighbourhood and loss of views and quiet lifestyle.
- Density and urban form: Concerns raised regarding R20 density to high for Denmark with lot sizes too small, loss of Denmark's character and inadequate open space/play areas.
- Aboriginal heritage and consultation: Concerns regarding lack of detailed Aboriginal field survey and potential loss of Gnamma tree. The Wagyl Kaip Southern Noongar Aboriginal Corporation raise concern that no consultation occurred with them, that due diligence was not met and that the Aboriginal heritage protection was not addressed.
- Drainage, water, stormwater and erosion: Concerns regarding down-slope erosion affecting neighbouring rural-residential areas, impact on Karri forest hydrology, and impacts on downstream effects.
- Construction impacts (noise, dust, vibration): Concerns regarding dust drift during earthworks, noise impacts on the amenity of residents and vibration impacts on homes.

Submissions received and issues raised are discussed in this report and included in Attachment 5.1e.

### **STATUTORY / LEGAL IMPLICATIONS**

113. The Shire of Denmark Local Planning Scheme No. 3 is an operative Local Planning Scheme under the Planning and Development Act 2005.

114. Under Schedule 2, Part 4 of the Planning and Development (Local Planning Schemes) Regulations 2015:

- A Structure Plan must be prepared in a manner and form prescribed the West Australian Planning Commission (Clause 16),
- The Structure Plan must advertised for period of 42 days (Clause 18);
- The Local Government must prepare a report on the Structure Plan and provide it to the Commission with a recommendation whether the Structure Plan should be approved by the Commission, including a recommendation on any proposed modifications (Clause 20).

### **STRATEGIC / POLICY IMPLICATIONS**

115. The following policies have been given due consideration in relation to the Structure Plan:

- State Planning Policy 2: Environment and Natural Resources Policy

- State Planning Policy 2.9: Water
- State Planning Policy 3: Urban Growth and Settlement
- State Planning Policy 3.7: Planning in Bushfire Prone Areas
- State Planning Policy 5.4: Road and Rail Noise
- State Planning Policy 7: Design of Built Environment
- Liveable Neighbourhoods (2009) and draft (2015)
- Local Planning Scheme Policy 39: Public open space
- Local Planning Strategy (2024)

### **FINANCIAL IMPLICATIONS**

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

### **OTHER IMPLICATIONS**

#### **Environmental**

117. The assessment of the Structure Plan and proposed modifications considers a balanced outcome that retains and protects remnant vegetation and fauna habitat where possible.

#### **Economic**

118. An approved Structure Plan will facilitate residential development of R20 and R40 housing density. Residential development is an important contributor to Denmark's economy.

#### **Social**

119. The development of the land will contribute towards increased residential lot and housing supply.

### **RISK MANAGEMENT**

120. A risk assessment has been undertaken per the Council's Risk Management Policy, and no risks have been identified in relation to the officer recommendation or the report

121. in relation to the officer recommendation or the report.

## **6. MATTERS BEHIND CLOSED DOORS**

Nil

## **7. CLOSURE OF MEETING**