

7.2.1.2 LOCAL PLANNING SCHEME NO. 23 - AMENDMENT NO. 1

Applicant: Development Services

Location/Address: Not Applicable

File Ref: TPS23/AM1

Reporting Officer/Position: Richard Hindley - Executive Manager Development Services

Objective: This report recommends that Amendment No. 1 to Local Planning Scheme No. 23 be initiated (Appendix F).

Background: Notice of Final Approval of the Shire of Esperance Local Planning Scheme No. 23 ("the Scheme") was published in the Government Gazette on 19 February 2010.

A number of exemptions have been inserted into the Scheme that waive the requirement to gain approval under Part 8 of the Scheme. A review of these exemptions was undertaken prior to the gazettal of the Scheme which identified that, in the interests of efficiency, an exemption should be introduced to exempt single dwellings and extensions from gaining planning approval.

It is also proposed to include swimming pools into the dwelling exemption to be consistent with the intent of the Model Scheme Text.

Schedule 2 – Additional Uses is the subject of two modifications. The first modification corrects the base zoning for A1 to 'Residential' from 'Rural Residential'. The second modification adds a new Additional Use of 'stables' to the area known as the Racecourse Estate. Horses were allowed in the estate under Town Planning Scheme No. 22 however the removal of the Special Residential zone through modification to Local Planning Scheme No. 23 requires a scheme amendment to correct.

The proposed amendment is consistent with the provisions of the Model Scheme Text and corrects a number of anomalies.

Officer's Comment: Whilst it is proposed to insert the model scheme text exemption into the Scheme the clause needs to be altered to be consistent with the existing exemptions in Clause 8.2. It is proposed to remove ancillary outbuildings from the exemption as they have existing exemptions under Clause 8.2 (j).

Clause 8.2(h) exempts below ground swimming pools less than 0.5 metres above natural ground level. It is proposed to delete this exemption and incorporate it with the single house exemption as per the Model Scheme Text. The resultant Clause that is proposed to be inserted into the Scheme is:

- (b) the erection on a lot of a single house including any extension and swimming pools except where —
 - (i) the proposal requires the exercise of a discretion by the local government under the Scheme to vary the provisions of the Residential Design Codes; or
 - (ii) the development will be located in a heritage area designated under the Scheme;

This modification will exempt compliant dwellings, extensions and swimming pools from requiring planning consent.

The amendment can also be justified by the efficiencies that will be created in the development assessment process. Refining the exemptions to include single houses and extensions will free up resources to focus on more strategic activities.

Additional Use No. 1 in Schedule 2 states its base zone as 'Rural Residential'. This lot is shown as 'Residential' on the Scheme map and as such the Schedule needs to be modified.

Under the provision of the previous Scheme – Town Planning Scheme No. 22 the 'Racecourse Estate' was zoned 'Special Residential - SRES 1'.

	Locality of Land	Special Provisions
<i>SRes1</i>	Esperance East Location 22, 8, 10-49 and 52-59	<p>(1) If is intended to confine the use of the land to those uses that will complement the Racecourse and breeding or keeping of dogs or any other use, that in the opinion of the Council, may conflict with the keeping, training and racing of horses, shall not be permitted.</p> <p>(2) The land shall not be used for purposes other than a single residence or the keeping, training and racing of horses without the prior written permission of the Council. An application for permission to use the land other than for the above purposes shall be in writing and shall contain a statement of the purpose to which it is proposed to put such land and the reasons for which it is intended to use such land.</p> <p>(3) Further subdivision of this Special Residential Zone is not permitted.</p>

The provisions for this zone specifically apply to the use of the land for activities that supported the adjacent racecourse. During the final modifications to Scheme No. 23 before its gazettal the provisions relating to this land were deleted and the lots were zoned 'Residential – R2'.

The amendment also deletes the definition of 'Residential Planning Codes' and inserts a new definition for 'Residential Design Codes'. This modification will result in the correct reference to the R-Codes being made as well as being consistent with the other provisions of the Scheme relating to residential development.

The proposed Amendment is consistent with the intent of the Model Scheme Text as it relates to the exemption for single dwellings and will reduce the administrative burden on officers increasing the opportunity to focus on strategic planning. The amendment also reinstates the ability to have horses within the Racecourse Estate and corrects several administrative errors.

Consultation: A 42 day advertising period applies for amendments which will commence upon receipt of comments from the EPA.

Strategic Implications: Strategic Action Plan 2007-2027

67. Aim to ensure that all development in the Shire of Esperance is carried out in a way that is sustainable.
72. Ensure the adequate and timely availability of land and services to meet the future needs of the town of Esperance.

Statutory Environment: Planning and Development Act 2005
Town Planning Regulations 1967
Local Planning Scheme No. 23

Policy Implications: Local Planning Strategy

Environmental Considerations: There are no environmental considerations relating to this item.

Asset Management Implications There are no asset management implications relating to this item.

Financial Implications: As a result of the proposed exemption for a dwelling on a lot there will be a reduction in development application fees. The only dwellings that are exempt are those which meet the requirements of both the Scheme and the R-Codes which is likely to result in a 10-20% reduction in planning consents for dwellings with a corresponding drop in planning fee income.

Officer's / Committee Recommendation:

Moved: Cr Walker

Seconded: Cr Paxton

AP0310-0024

That Council, pursuant to Section 75 of the Planning and Development Act 2005 resolve to:

1. Initiate Local Planning Scheme No. 23 – Amendment No. 1.
2. Amend Local Planning Scheme No. 23 by:
 - (i) Exempting single dwellings, extensions and swimming pools from requiring development approval except where the proposal requires the exercise of a discretion by the local government under the Scheme to vary the provisions of the Residential Planning Codes or the development is located within a heritage area designated under the Scheme.
 - (ii) In Schedule 1 replacing the definition of 'Residential Planning Codes' with 'Residential Design Codes'.
 - (iii) Amending Base zone in Schedule 2 – A1 to 'Residential'.
 - (iv) Inserting new provisions as Schedule 2 – A8 permitting stables on Lots 1, 7 & 8 Bandy Grove, Lots 34, 44 – 48 Bow Court, Lots 2 – 6, 19, 20 & 931 Daw Drive, Lot 10 Fisheries Road, Lots 15, 16, 21, 29 – 33, 35 – 37, 101 & 102 Freeman Drive, Lots 17, 18 & 59 Goldfields Road, Lots 19 & 22 – 26 Kent Place, Lots 52 – 58 Kiwi Close & Lots 11 – 14 & 38 – 43 McCarthy Road and amending the Scheme Map accordingly.
3. Refer Amendment 1 to the EPA under Section 81 of the Planning and Development Act 2005.

4. Determine that Local Planning Scheme No. 23 – Amendment No. 1 is consistent with the criteria listed under Section 25(2) of the Town Planning Regulations and resolve to proceed to advertising of the amendment for public inspection after referral to the EPA.

CARRIED
F9 - A0

Voting Requirements: Simple Majority.

Council Resolution:

ATTACHMENT F



SHIRE OF ESPERANCE
LOCAL PLANNING SCHEME NO. 23
AMENDMENT NO. 1

PLANNING AND DEVELOPMENT ACT 2005
RESOLUTION DECIDING TO AMEND A LOCAL PLANNING SCHEME
SHIRE OF ESPERANCE
LOCAL PLANNING SCHEME NO. 23
AMENDMENT NO. 1

Resolved that the local government, in pursuance of Section 75 of the *Planning and Development Act, 2005* amend the above local planning scheme by;

1. Deleting Clause 8.2(h).
2. Renumbering Clause 8.2(b) as 8.2(c) and renumber from this point.
3. Inserting the following into Clause 8.2 after 8.2(a).
 - (b) the erection on a lot of a dwelling including any extension and swimming pools, except where —
 - (i) the proposal requires the exercise of a discretion by the local government under the Scheme to vary the provisions of the Residential Design Codes; or
 - (ii) the development will be located in a heritage area designated under the Scheme;
4. Amending Schedule 1 by deleting the reference to the 'Residential Planning Codes' and inserting the following in its place:

"Residential Design Codes" means the Residential Design Codes in the Western Australian Planning Commission State Planning Policy 3.1, as amended from time to time.
Note: also called R Codes, Codes
5. Amending the Scheme by replacing all references to the 'Residential Planning Codes' with 'Residential Design Codes'.
6. Amending the Base Zone for Additional Use A1 in Schedule 2 from 'Rural Residential' to 'Residential'.
7. Amending Schedule 2 – Additional Uses to include the following new entry.

No.	Location	Base Zone	Additional Use(s)	Development Standards/Conditions
A8	Lots 1, 7 & 8 Bandy Grove, Lots 34, 44 – 48 Bow Court, Lots 2 – 6, 19, 20 & 931 Daw	Residential	Stables	As determined by the local government.

Drive, Lot 10 Fisheries Road, Lots 15, 16, 21, 29 - 33, 35 - 37, 101 & 102 Freeman Drive, Lots 17, 18 & 59 Goldfields Road, Lots 19 & 22 - 26 Kent Place, Lots 52 - 58 Kiwi Close & Lots 11 - 14 & 38 - 43 McCarthy Road			
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8. Amending the Scheme Maps to include an 'Additional Use' designation of 'A8' over Lots 1, 7 & 8 Bandy Grove, Lots 34, 44 - 48 Bow Court, Lots 2 - 6, 19, 20 & 931 Daw Drive, Lot 10 Fisheries Road, Lots 15, 16, 21, 29 - 33, 35 - 37, 101 & 102 Freeman Drive, Lots 17, 18 & 59 Goldfields Road, Lots 19 & 22 - 26 Kent Place, Lots 52 - 58 Kiwi Close & Lots 11 - 14 & 38 - 43 McCarthy Road.

Dated this.....day of.....2010

.....
CHIEF EXECUTIVE OFFICER

PROPOSAL TO AMEND A LOCAL PLANNING SCHEME

LOCAL GOVERNMENT	SHIRE OF ESPERANCE
DESCRIPTION OF LOCAL PLANNING SCHEME	SHIRE OF ESPERANCE LOCAL PLANNING SCHEME NO. 23
TYPE OF SCHEME	DISTRICT SCHEME
SERIAL NO. OF AMENDMENT	1
PROPOSAL	<ol style="list-style-type: none">1. Exempting single dwellings, extensions and swimming pools from requiring development approval except where the proposal requires the exercise of a discretion by the local government under the Scheme to vary the provisions of the Residential Planning Codes or the development is located within a heritage area designated under the Scheme.2. In Schedule 1 replacing the definition of 'Residential Planning Codes' with 'Residential Design Codes'.3. Amending Base zone in Schedule 2 – A1 to 'Residential'.4. Inserting new provisions as Schedule 2 – A8 permitting stables on the identified lots.

SCHEME AMENDMENT REPORT

1. INTRODUCTION

Notice of Final Approval of the Shire of Esperance Local Planning Scheme No. 23 ('the Scheme') was published in the Government Gazette on 19 February 2010.

A number of exemptions have been inserted into the Scheme that waive the requirement to gain approval under Part 8 of the Scheme. A review of these exemptions was undertaken prior to the gazettal of the Scheme which identified that, in the interests of efficiency, an exemption should be introduced to exempt single dwellings and extensions.

It is also proposed to include swimming pools into the dwelling exemption to be consistent with the intent of the Model Scheme Text.

Schedule 2 – Additional Uses is the subject of two modifications. The first modification corrects the base zoning for A1 to 'Residential' from 'Rural Residential'. The second modification adds a new Additional Use of 'stables' to the area known as the Racecourse Estate. Horses were allowed in the estate under Town Planning Scheme No. 22 however the removal of the Special Residential zone through modification to Local Planning Scheme No. 23 requires a scheme amendment to correct.

The proposed amendment is consistent with the provisions of the Model Scheme Text and corrects a number of anomalies.

2 BACKGROUND

2.1 Existing Zoning and Relevant Scheme Provisions

Under the Scheme, Clause 8.1 requires that all development on land zoned or reserved under the scheme requires the development approval of the Local Government unless the use is specifically exempted under Clause 8.2.

Clause 8.2 of the Scheme states:

8.2 Permitted Development

Except as otherwise provided in the Scheme, for the purposes of the Scheme the following development does not require the planning approval of the local government –

- (a) *the carrying out of any building or work which affects only the interior of a building and which does not materially affect the external appearance or the function of the building except where the building is –*
 - (i) *located in a place that has been entered in the Register of Heritage Places under the Heritage of Western Australia Act 1990;*
 - (ii) *the subject of an order under Part 6 of the Heritage of Western Australia Act 1990; or*
 - (iii) *included on the Heritage List under clause 7.1 of the Scheme,*
- (b) *the demolition of any building or structure except where the building or structure is –*
 - (i) *located in a place that has been entered in the Register of Places under the Heritage of Western Australia Act 1990;*
 - (ii) *the subject of an order under Part 6 of the Heritage of Western Australia Act 1990;*
 - (iii) *included on the Heritage List under clause 7.1 of the Scheme; or*
 - (iv) *located within a Heritage Area designated under the Scheme;*
- (c) *a home office;*
Note: See definition for home office in Schedule 1.
- (d) *The use of land for Agriculture – Extensive purposes, the erection of windmills and the construction of water tanks in the Agriculture General zone.*
- (e) *farm buildings in the Rural Smallholdings and Agriculture – General Zones setback no less than 20 metres from any side boundary and 100 metres from any highway;*
Note: See definition for farm building in Schedule 1.

- (f) *keeping of horses and stables on lots greater than 4 ha at a stocking rate of 1 horse per 2 ha provided that the land is planted to perennial pasture and zoned Rural Residential, Rural Smallholdings or Agriculture - General and located outside of any Special Control Area or groundwater reserve protection area;*
- (g) *any works or occasional use which are temporary and in existence for less than 48 hours or such longer time as the local government agrees;*
- (h) *below ground swimming pools less than 0.5 metres above natural ground level;*
- (i) *rainwater tanks or pergolas not exceeding 10m² and 2.1 metres in height located behind the front of a dwelling, screened from public view, with setbacks and cumulative total floor area in accordance with Scheme requirements;*
- (j) *residential outbuildings not exceeding 10% of site area or 100m² whichever is less with a maximum wall height of 3.0m and a ridge height of no more than 4.0m, provided that they meet the reflective materials policy with setbacks and cumulative total floor area in accordance with Scheme requirements;*
- (k) *one satellite dish with a diameter of less than 1.2 metres;*
- (l) *street trading and outdoor eating facilities on public places in accordance with the local laws on trading in thoroughfares and public places;*
- (m) *one flagpole not exceeding 6 metres in height with the flags not used for commercial advertising;*
- (n) *rainwater tanks in the Rural Residential zone and the Rural Smallholdings zone which meet the reflective materials policy and are located within an approved building envelope, or where no building envelope exists, are set back no less than 20 metres from any lot boundary;*
- (o) *rainwater tanks on residential R2 and 2.5 dwelling sites located behind the front of a dwelling and set back in accordance with the Special Provisions of the Scheme (if any) and the Acceptable Development standards for outbuildings provided that they meet the reflective materials policy, the side setbacks, open space and cumulative total for outbuildings;*
- (p) *any retaining wall less than 500mm high constructed of masonry materials located to the rear of a building associated with the primary use of the site; and*
- (q) *replacement of an existing retaining wall less than 900mm with new masonry materials provided that there is no alteration of ground levels.*

As can be seen from Clause 8.2 the exemptions contained within the Scheme are clearly defined; however there is no exemption for complying dwellings or extensions.

Schedule 2 – Additional Uses deals with the additional uses that apply over and above the development standards for a specific zone. This amendment revises the base zone for site A1 to reflect the zoning on the Scheme Map.

The second amendment deals with the area known as the 'Racecourse Estate'. Under the provisions of the Scheme these lots are zoned 'Residential' with a density of R2. Based on the 'Residential' the keeping of horses on these lots is prohibited. It should also be recognised that there are significant non conforming use rights within the area relating to the keeping of horses and stables. This amendment inserts an 'Additional Use' over the subject land allowing 'Stables'.

2.2 Model Scheme Text

The Model Scheme Text provides a specific exemption clause for dwellings (including any extensions, ancillary outbuildings and swimming pools.

- (b) *the erection on a lot of a single house including any extension, ancillary outbuildings and swimming pools, except where —*
- (i) *the proposal requires the exercise of a discretion by the local government under the Scheme to vary the provisions of the Residential Planning Codes; or*
 - (ii) *the development will be located in a heritage area designated under the Scheme;*

The new exemption proposed for the Scheme should be based on the Model Scheme Text whilst acknowledging the existing structure of the Scheme. As the Scheme currently exempts outbuilding to a different standard to the Residential Design Codes, it is proposed to amend the Model Scheme Text provisions by removing the reference to ancillary outbuildings.

3.0 REPORT

3.1 Local Context - Shire of Esperance Local Planning Strategy

The Shire prepared a comprehensive Local Planning Strategy (Strategy) to support the Scheme.

This amendment will not prejudice the objectives and principles of the Strategy. The exemption of single dwellings will reduce the administrative burden on officers allowing more emphasis to be placed on strategic planning.

The replacement of the 'Residential Planning Codes' definition with 'Residential Design Codes' in Schedule 1 is procedural only and will not prejudice the objectives and principles of the Strategy.

The 'Racecourse Estate' is located in Precinct 29 of the Local Planning Strategy. The objectives for this precinct are as follows:

- To allow for the provision of single dwellings and associated outbuildings.
- To allow residents to keep horses.

The addition of a new Additional Use in Schedule 2 for 'Stables' is consistent with the objectives of the Local Planning Strategy.

3.2 Justification of Amendment

Whilst it is proposed to insert the model scheme text exemption into the Scheme the clause needs to be altered to be consistent with the existing exemptions in Clause 8.2. It is proposed to remove ancillary outbuildings from the exemption as they have existing exemptions under Clause 8.2 (j).

Clause 8.2(h) exempts below ground swimming pools less than 0.5 metres above natural ground level. It is proposed to delete this exemption and incorporate it with the single house exemption as per the Model Scheme Text.

The resultant Clause that is proposed to be inserted into the Scheme is therefore:

- (b) the erection on a lot of a dwelling including any extension and swimming pools except where —
 - (i) the proposal requires the exercise of a discretion by the local government under the Scheme to vary the provisions of the Residential Design Codes; or
 - (ii) the development will be located in a heritage area designated under the Scheme;

The amendment can also be justified by the efficiencies that will be created in the development assessment process. Refining the exemptions to include single houses and extensions will free up resources to focus on more strategic activities.

Additional Use No. 1 in Schedule 2 states its base zone as 'Rural Residential'. This lot is shown as 'Residential' on the Scheme map and as such the Schedule needs to be modified.

Under the provision of the previous Scheme – Town Planning Scheme No. 22 the 'Racecourse Estate' was zoned 'Special Residential - SRES 1'.

	Locality of Land	Special Provisions
SRes1	Esperance East Location 22, 8, 10-49 and 52-59	(1) If is intended to confine the use of the land to those uses that will complement the Racecourse and breeding or keeping of dogs or any other use, that in the opinion of the Council, may conflict with the keeping, training and racing of horses, shall not be permitted. (2) The land shall not be used for purposes other than a single residence or the keeping, training and racing of horses without the prior written permission of the Council. An application for permission to use the land other than for the above purposes shall be in writing and shall contain a statement of the purpose to which it is proposed to put such land and the reasons for which it is intended to use such land. (3) Further subdivision of this Special Residential Zone is not permitted.

The provisions for this zone specifically apply to the use of the land for activities that supported the adjacent racecourse. During the final modifications to Scheme No. 23 before its gazettal the provisions relating to this land were deleted and the lots were zoned Residential – R2.

The amendment also deletes the definition of 'Residential Planning Codes' and inserts a new definition for 'Residential Design Codes'. This modification will result in the correct reference to the R-Codes being made as well as being consistent with the other provisions of the Scheme relating to residential development.

4.0 CONCLUSION

The proposed Amendment is consistent with the intent of the Model Scheme Text as it relates to the exemption for single dwellings and will reduce the administrative burden on officers increasing the opportunity to focus on strategic planning. The amendment also reinstates the ability to have horses within the Racecourse Estate and corrects several administrative errors.

PLANNING AND DEVELOPMENT ACT 2005

SHIRE OF ESPERANCE

LOCAL PLANNING SCHEME NO. 23

AMENDMENT NO. 1

The Esperance Shire Council under and by virtue of the power conferred upon it in that behalf by the *Planning and Development Act, 2005*, hereby amends the above local planning scheme by:

1. Deleting Clause 8.2(h).
2. Renumbering Clause 8.2(b) as 8.2(c) and renumber from this point.
3. Inserting the following into Clause 8.2 after 8.2(a).
 - (b) the erection on a lot of a dwelling including any extension and swimming pools, except where —
 - (i) the proposal requires the exercise of a discretion by the local government under the Scheme to vary the provisions of the Residential Design Codes; or
 - (ii) the development will be located in a heritage area designated under the Scheme;
4. Amending Schedule 1 by deleting the reference to the 'Residential Planning Codes' and inserting the following in its place:

"Residential Design Codes" means the Residential Design Codes in the Western Australian Planning Commission State Planning Policy 3.1, as amended from time to time.
Note: also called R Codes, Codes
5. Amending the Scheme by replacing all references to the 'Residential Planning Codes' with 'Residential Design Codes'.
6. Amending the Base Zone for Additional Use A1 in Schedule 2 from 'Rural Residential' to 'Residential'.
7. Amending Schedule 2 – Additional Uses to include the following new entry.

No.	Location	Base Zone	Additional Use(s)	Development Standards/Conditions
A8	Lots 1, 7 & 8 Bandy Grove, Lots 34, 44 – 48 Bow Court, Lots 2 – 6, 19, 20 & 931 Daw Drive, Lot 10	Residential	Stables	As determined by the local government.

Fisheries Road, Lots 15, 16, 21, 29 - 33, 35 - 37, 101 & 102 Freeman Drive, Lots 17, 18 & 59 Goldfields Road, Lots 19 & 22 - 26 Kent Place, Lots 52 - 58 Kiwi Close & Lots 11 - 14 & 38 - 43 McCarthy Road			
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8. Amending the Scheme Maps to include an 'Additional Use' designation of 'A8' over Lots 1, 7 & 8 Bandy Grove, Lots 34, 44 - 48 Bow Court, Lots 2 - 6, 19, 20 & 931 Daw Drive, Lot 10 Fisheries Road, Lots 15, 16, 21, 29 - 33, 35 - 37, 101 & 102 Freeman Drive, Lots 17, 18 & 59 Goldfields Road, Lots 19 & 22 - 26 Kent Place, Lots 52 - 58 Kiwi Close & Lots 11 - 14 & 38 - 43 McCarthy Road.

ADOPTION

Adopted by resolution of the Council of the Shire of Esperance at the Ordinary Meeting of the Council held on the ___ day of _____ 2010.

.....
PRESIDENT

.....
CHIEF EXECUTIVE OFFICER

FINAL APPROVAL

Adopted by Resolution of the local government of the Shire of Esperance at the meeting of the local government held on the ___ day of _____ 20__, and pursuant to that Resolution the Seal of the Municipality was hereunto affixed in the presence of:

.....
PRESIDENT

.....
CHIEF EXECUTIVE OFFICER

RECOMMENDED/SUBMITTED FOR FINAL APPROVAL

.....
DELEGATED UNDER S.18 OF THE
PLANNING AND DEVELOPMENT ACT 2005

Date.....

FINAL APPROVAL GRANTED

.....
MINISTER FOR PLANNING

Date.....

