

**SHIRE OF ESPERANCE**  
**LOCAL PLANNING SCHEME NO. 23**  
**AMENDMENT NO. 6**



**PLANNING AND DEVELOPMENT ACT 2005**  
**RESOLUTION DECIDING TO AMEND A LOCAL PLANNING SCHEME**  
**SHIRE OF ESPERANCE**  
**LOCAL PLANNING SCHEME NO. 23**  
**AMENDMENT NO. 6**

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. Amending the Scheme Map by rezoning Lots 2 and 29 Thomas Street and Lot 16 Sampson Street, Monjingup from "Agriculture – General" to "Industry – General".
2. Amending the Scheme Text by replacing Section 6.9.4(e) with "a general presumption against land clearing and further subdivision unless in accordance with an approved Outline Development Plan,".

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

.....  
CHIEF EXECUTIVE OFFICER

## PROPOSAL TO AMEND A LOCAL PLANNING SCHEME

<b>LOCAL GOVERNMENT</b>	SHIRE OF ESPERANCE
<b>DESCRIPTION OF LOCAL PLANNING SCHEME</b>	SHIRE OF ESPERANCE LOCAL PLANNING SCHEME NO. 23
<b>TYPE OF SCHEME</b>	DISTRICT SCHEME
<b>SERIAL NO. OF AMENDMENT</b>	6
<b>PROPOSAL</b>	<ol style="list-style-type: none"><li>1. Amending the Scheme Map by rezoning Lots 2 and 29 Thomas Street and Lot 16 Sampson Street, Monjingup "Agriculture – General" to "Industry – General".</li><li>2. Amending Section 6.9.4(e) to remove reference to intensification of land uses and include a reference to Outline Development Plans.</li></ol>

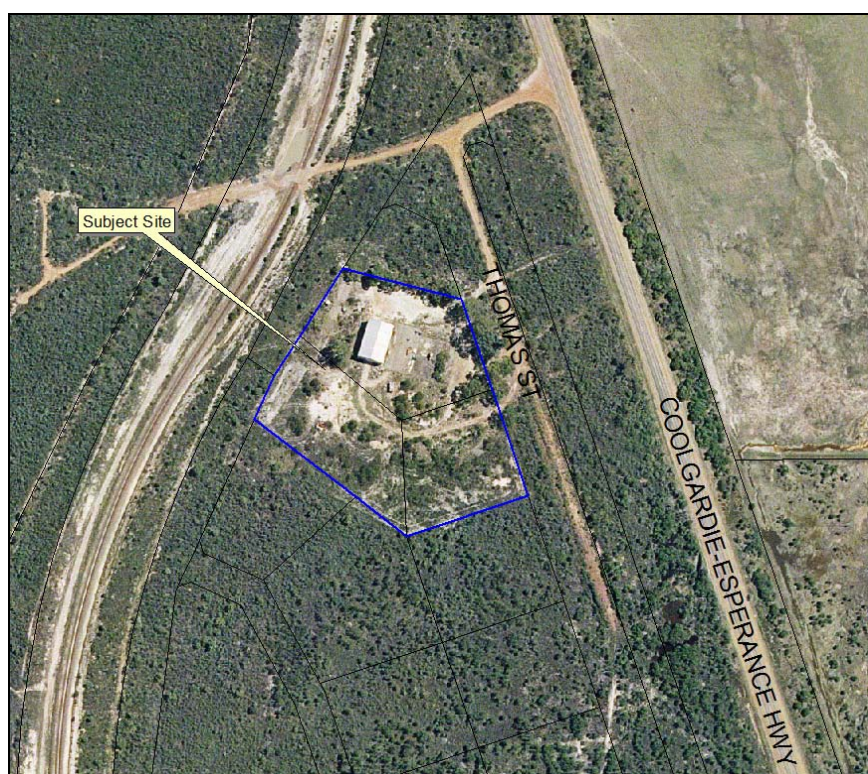
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### SCHEME AMENDMENT REPORT

#### 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.

This amendment seeks to restore the 'Industry - General' zoning that applied to three (3) lots prior to the gazettal of Local Planning Scheme No. 23.



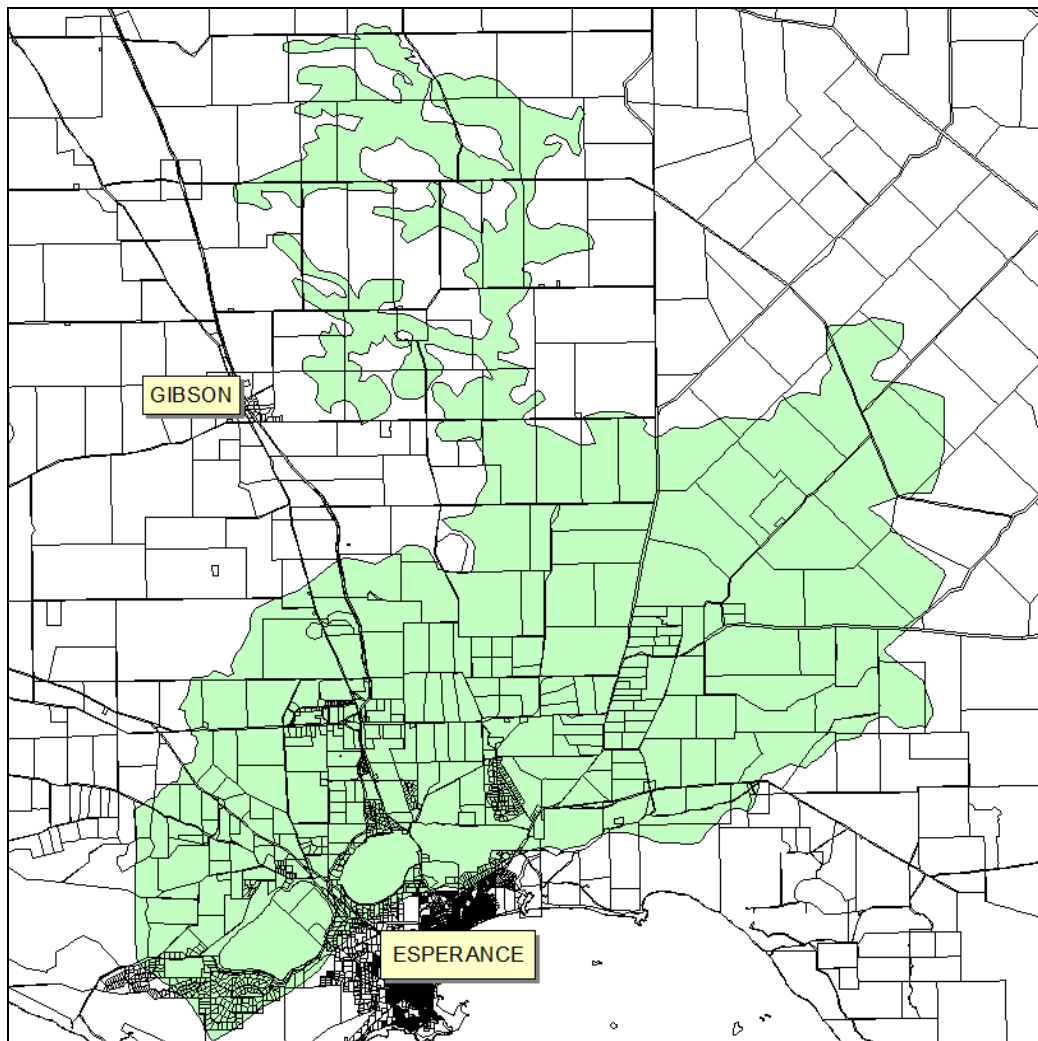
The subject lots are bounded to the North and South by Vacant Crown Land with Coolgardie –Esperance Highway to the East and Rail Reserve to the West.

The lots have the following sizes:

Lot	Area (m <sup>2</sup> )
2	5869
16	4957
29	7116

The intention of this rezoning is to facilitate the return of the 'Industry – General' zone to the lots in recognition of an error that was made in the finalisation of the Scheme Maps. This error is further made apparent in the inconsistency between the lot sizes and the current zoning.

This amendment also proposes a modification to Special Control Area No. 5 to remove a reference to the intensification of development. The provision currently references a single house as benchmark which is considered inappropriate and hard to administer in the numerous zones that the Special Control Area applies. The amendment also inserts a provision to permit subdivision where an Outline Development Plan has been approved.



## 2. BACKGROUND

### 2.1 *Previous Zoning and Scheme Provisions*

Under the provisions of Town Planning Scheme No. 22 Lots 2 and 29 Thomas Street and Lot 16 Sampson Street, Monjingup were zoned 'Industry – General' along with a number of other lots within the Shark Lake Townsite.



Extract from Town Planning Scheme No. 22

The subject lots were the only freehold title industrial lots in the immediate surrounds with the remainder of the industrial area being Vacant Crown Land (VCL).

Special Control Area No. 5 came into affect with the gazettal of Local Planning Scheme No. 23 and there were no parallel controls in Town Planning Scheme No. 22.

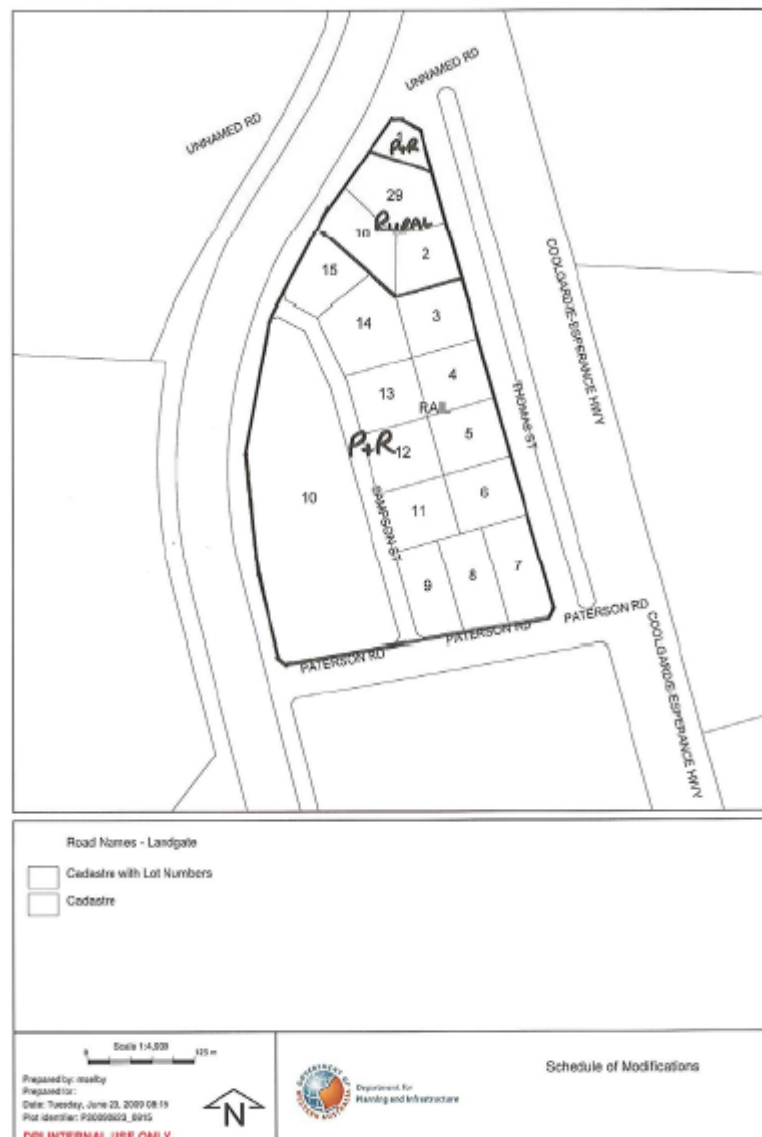
## 2.2 Current Zoning and Relevant Scheme Provisions

### 2.2.1 Lots 2 and 29 Thomas Street and Lot 16 Sampson Street, Monjingup

Under the Scheme, Lots 2 and 29 Thomas Street and Lot 16 Sampson Street, Monjingup are currently zoned 'Agriculture – General' with the remaining VCL being reserved for "Parks, Recreation and Conservation – Local".

It should be noted that there is currently some limited potential for industrial development of the lots and as such a development approval has recently been issued on Lot 16 Sampson Street for an industrial shed for the production and maintenance of agricultural machinery. Lot 29 has an existing industrial shed and has non-conforming use rights under the Scheme.

It should be noted that the 'Agriculture – General' zoning was applied to the lots as the result of a modification to the Scheme. Modification 47 (shown below) was made on the basis that the 3 lots were freehold and did not take into account the previous zoning or the development that has occurred on the site.



This amendment only seeks to amend the zoning of the 'Agriculture – General' lots.

## **2.2.2 Special Control Area No. 5 - Wetlands of Significance and Lake Warden Recovery Catchment**

Special Control Areas are included in the Scheme to identify areas which are significant for a particular reason and where special provisions in the Scheme may need to apply. In this instance these provisions target land use and development within the catchment of the wetlands of significance and overlapping zone and reserve boundaries. The special provisions contained within SCA 5 are applied in addition to the provisions of the zones and reserves.

Local Planning Scheme No. 23 introduced Special Control Area No. 5 (SCA 5) to provide guidance for land use and development within the catchments of wetlands of significance.

The provisions for SCA 5 are included in Section 6.9 of the Scheme and are contained below.

### **6.9 SCA 5 – Wetlands of Significance and Lake Warden Recovery Catchment Special Control Area 5**

#### *6.9.1 Purpose*

*The purpose of SCA 5 is to provide guidance for land use and development within the catchments of wetlands of significance.*

#### *6.9.2 Objectives*

*The objectives of SCA 5 are to –*

- (a) ensure that the use and development of affected land is compatible with and does not detrimentally affect the SCA 5 wetlands;*
- (b) encourage retention and planting of native vegetation and properly managed perennial pasture;*
- (c) encourage fencing and rehabilitation of creek lines; and*
- (d) discourage subdivision and intensification of development within Department of Environment and Conservation Priority 1 areas due to the risks posed by the shallow water table, flooding, nutrient pollution, domestic animal impact and risks to public health.*

#### *6.9.3 Application Requirements*

*Despite any other provision of the Scheme planning approval is required for all use and development including a single house.*

#### *6.9.4 Relevant Considerations*

*In addition to provisions of the Scheme, the local government in considering applications for rezoning, subdivision or planning approval in SCA 5 is to have due regard to –*

- (a) results of scientific research conducted by Department of Environment and Conservation regarding groundwater and surface water interactions within the Lake Warden Wetland System and recommendations for management of the priority areas;*

- (b) *guidelines of the Environmental Protection Authority for protection of the environment including but not limited to maintenance of water quality;*
- (c) *guidelines of the Department of Water for protection of wetlands and waterways including but not limited to maintenance of water quality;*
- (d) *the potential for adverse environmental impacts and the management of such potential impacts; and*
- (e) *a general presumption against land clearing, further subdivision and intensification of development beyond construction of a single dwelling,*

*and shall determine applications for planning approval accordingly.*

#### 6.9.5 Referral of Applications

- (a) *The local government may refer applications for planning approval to the Department of Environment and Conservation and the Department of Water and the local government is to have due regard to recommendations and advice received from those authorities when determining applications.*
- (b) *The keeping of horses on lots of less than 4ha (or equivalent stocking rates of other animals) within SCA 5 will be refused or referred to the Department of Environment and Conservation for comment and subsequent determination by the Council.*

The amendment seeks to amend Section 6.9.4 (e) to remove the section of the provision that states “and intensification of development beyond construction of a single dwelling”. This part of the provision is problematic in that the SCA 5 provisions affect multiple zones ranging from “Residential” zoned land in the Esperance Townsite to “Rural Residential”, “Agriculture General” and “Industry – General” zoned land.

The Special Control Area also impacts more specifically on the Shark Lake Industrial Park, Residential Development in the Esperance Townsite and Rural Smallholding Land to the northwest of the Esperance Townsite. The industrial park is zoned “Industry – General” and has only been partially subdivided to date as has the residential development in the Esperance Townsite. The Rural Smallholdings land is currently having an Outline Development Plan being prepared. These are all impacted on by the general presumption against “further subdivision”. To resolve this issue without creating more potential for subdivision it is proposed to amend the remaining part of Section 6.9.4 (e) to include “further subdivision unless in accordance with an approved Outline Development Plan,”. All of the affected land either has, or will have, an Outline Development Plan.

### 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.

##### 3.1.1 Precinct 33 – Shark Lake

The subject site is located within Precinct 33 of the Strategy. The following is an extract from the strategy.

###### ***Precinct 33 - Shark Lake***

**Objectives:** *To allow for the continued development of the Shark Lake Industrial Park*

###### ***Background/Location:***

*The Shark Lake Abattoirs is located to the north of Esperance, to the east of the Coolgardie-Esperance Highway. The northern section of the precinct to the west of the Coolgardie Highway has a large uncleared area with significant amounts of remnant vegetation. Agriculture WA occupies the southeastern area of this precinct.*

*A speedway, pony club, model aeroplane flying club, truck wash facility and motor cross club are all located within the north eastern section of the precinct and the Shark Lake Industrial Park has been established to the north of Shark Lake Road and west of the Coolgardie-Esperance Highway.*

###### ***Strategy:***

- *Ensure that development takes into account the Lake Warden Catchment Recovery Area and other significant wetland catchments.*
- *Encourage the development of the precinct in a manner that recognises the environmental opportunities and constraints.*
- *Ensure that the Shark Lake Industrial Park has a primary purpose of accommodating storage for the Esperance Port (grain, mining and forestry products), down stream processing and associated industries that may arise from the mining, grain and stock handling, forestry and aquaculture industries. Other industrial uses not able to be accommodated within the General Industrial zones within the Esperance townsite could also be located on the site.*
- *Ensure that appropriate buffers are established to protect the operation of the Shark Lake Industrial Park.*
- *Support will not be granted for new industrial uses on land not contained in the Shark Lake Industrial Park until such time that Shark Lake Industrial Park is substantially developed.*

###### ***Actions:***

- *No subdivision should occur within the buffer area around the abattoirs as illustrated on Plan 2.*

No subdivision is proposed as result of this rezoning. The proposal simply seeks to reinstate a zoning that was removed in error during the scheme review process.

The proposed rezoning is consistent with the objectives of the Local Planning Strategy. The subject lots were previously zoned 'Industry – General' under the provisions of Town Planning Scheme No. 22 and this amendment simply seeks to reinstate that zoning as a change was made in error to the Scheme Maps.

The proposal is also consistent with the Action for Precinct 33 as the land has already been subdivided. The proposal will not provide any additional industrial land within the precinct over what is already provided.

### **3.1.2 Wetlands and other Strategy Considerations**

The Strategy includes many references to protection of the Wetlands and is generally consistent with the provisions that were inserted into the Scheme as part of SCA 5.

Section 6.12 Environmental Management has the following Objectives:

- *Protect and enhance the Shire's key environmental values that support the continuation of biodiversity, the lifestyle of the community and the viability of ecosystem dependent businesses.*
- *Promote natural resource management as a cooperative mechanism to protect and enhance the Shire's key environment values.*
- *Protect National Parks and nature reserves.*
- *Protect the Wetlands of International importance and other wetland systems in the Shire.*

Of specific importance is the protection of wetland systems in the Shire.

Specific Precincts that are affected by SCA 5 reference in potential subdivision potential. Precinct 30 – Bukenerup Road Rural Smallholdings specifies a minimum lot size of 8ha whilst Precinct 33 – Shark Lake supports the subdivision of the Shark Lake Industrial Park. A general presumption against subdivision within SCA 5 is contrary to the Precinct Statements in the Strategy.

## **3.2 Environmental Factors and Impacts**

### **3.2.1 Lake Warden Catchment**

The subject lots are located within the Lake Warden catchment area and are subject to Special Control Area No. 5 (SCA 5). The provisions contained within SCA 5 are contained in Section 2.2.2 of this report.

In relation to 6.9.4 (e) it should be noted that industrial development has already occurred on the site. The limited land area that is available for industrial development will restrict the potential impacts of uses especially given the other provision of SCA 5.

As part of this amendment it is proposed to amend Section 6.9.4 (e) to include a general presumption against land clearing and further subdivision. The reference to a single dwelling is removed as it does not account for the wide range of uses that can occur under the Scheme in numerous zones (the SCA extends into the Esperance Townsite as shown earlier in this report).

As can be seen the Scheme provides a suite of controls to ensure that the impacts on the Wetlands of Significance and Lake Warden Recovery Catchment Area and these controls will remain irrespective of the base zoning of Lots 2, 16 and 29.

### **3.2.2 Acid Sulphate Soils**

Studies in the area have shown that there is a high risk of acid sulphate soils occurring some 2 km away in the vicinity of the Ramsar Wetlands.

Historical excavations on the site have shown no evidence of acid sulphate soils on the immediate site and the proposed development does not result in any further excavation.

### **3.2.3 Soil Types and Capability**

E3b – Deep Uniform Sands >80 cm

The soils on the site are a deep sandy siliceous soil. Any organic matter has been removed as a result of development on the site.

The site is free draining. Due to the nature of the soil wind erosion is possible but can be addressed through site management practices.

The site is relatively flat with a slope of less than 3%.

### **3.2.4 Land Clearing**

As identified in Section 3.2.1 of this report the subject lots are subject to the provisions of SCA 5. This control area has specific restrictions and a general presumption against any further land clearing. This being recognised the subject lots have already been cleared and partially developed.



No land clearing is proposed to result out of the changes made by this amendment.

### **3.2.5 Offsite Impacts**

The subject sites are surrounded by VCL that is reserved for for “Parks, Recreation and Conservation – Local”.

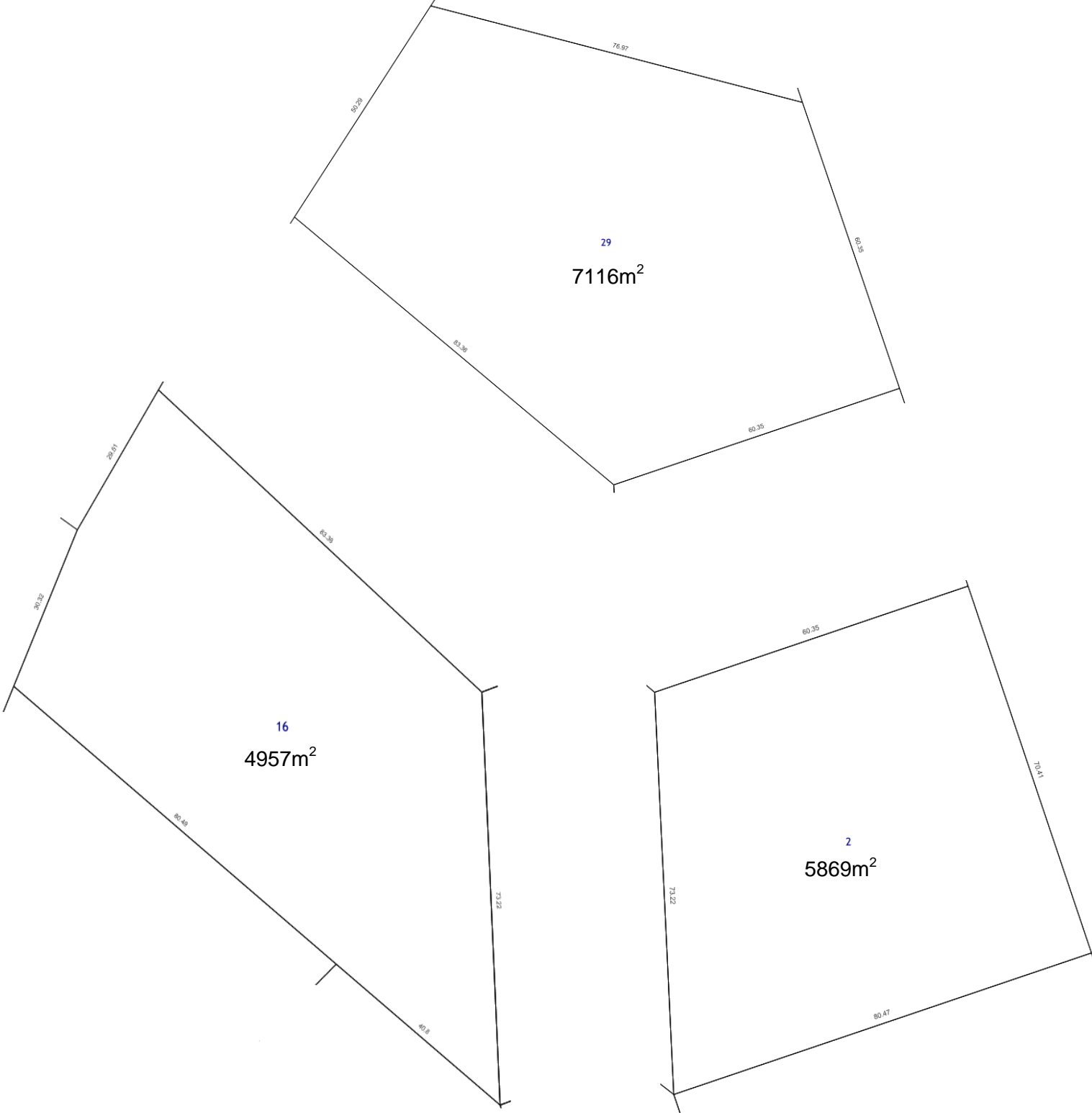
Given that the surrounding land in uncleared VCL that is reserved under the Scheme and that the subject site is located within the buffer area for the abattoir as shown on the Local Planning Strategy Map it is unlikely that any further intensification of use will occur adjacent the site.

The provisions of SCA 5 will also effectively result in the reduction of any potential offsite impacts by its requirements to minimise impacts in the catchment area of Lake Warden.

**3.3 Justification of Amendment**

This amendment seeks to correct an error that was introduced with the gazettal of Local Planning Scheme No. 23 and modify a provision of SCA 5 to improve its administration.

The three subject lots are clearly of insufficient size to operate as 'Agriculture – General' lots.



The combined land area of the three lots is 1.79ha. This lot size is suitable for industrial development (as has already occurred) and not agricultural development (as is suggested by the current zoning of the subject site).

The amendment to Section 6.9.4 (e) of the Scheme addresses one of the relevant considerations of SCA 5. In its unamended form the provision gave a general presumption against the further intensification of development beyond the construction of a single dwelling. The amendment removes this requirement due to the difficulty in administering it. A provision to allow subdivision in accordance with approved Outline Development Plans will also clarify the Schemes position in regard to land that is already subject to these plans.

#### **4.0 CONCLUSION**

The proposed amendment relating to Lots 2 and 29 Thomas Street and Lot 16 Sampson Street, Monjigup is consistent with the Local Planning Strategy and resolves the issue of having lots less than 1ha in area having the 'Agriculture - General' zone. This amendment also corrects an error that was made in the finalisation of the Scheme which resulted in the 'Agriculture – General' zone being placed on 'Industry – General' land.

The proposed amendment to Section 6.9.4 (e) will assist in administering SCA 5 by removing a provision that is not administrable and clarifying the permissibility of subdivision within the area.

**PLANNING AND DEVELOPMENT ACT 2005**

**SHIRE OF ESPERANCE**

**LOCAL PLANNING SCHEME NO. 23**

**AMENDMENT NO. 6**

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. Amending the Scheme Map by rezoning Lots 2 and 29 Thomas Street and Lot 16 Sampson Street, Monjingup from "Agriculture – General" to "Industry – General".
2. Amending the Scheme Text by replacing Section 6.9.4(e) with "a general presumption against land clearing and further subdivision unless in accordance with an approved Outline Development Plan,".

**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.16 OF THE  
PLANNING AND DEVELOPMENT ACT 2005

Date.....

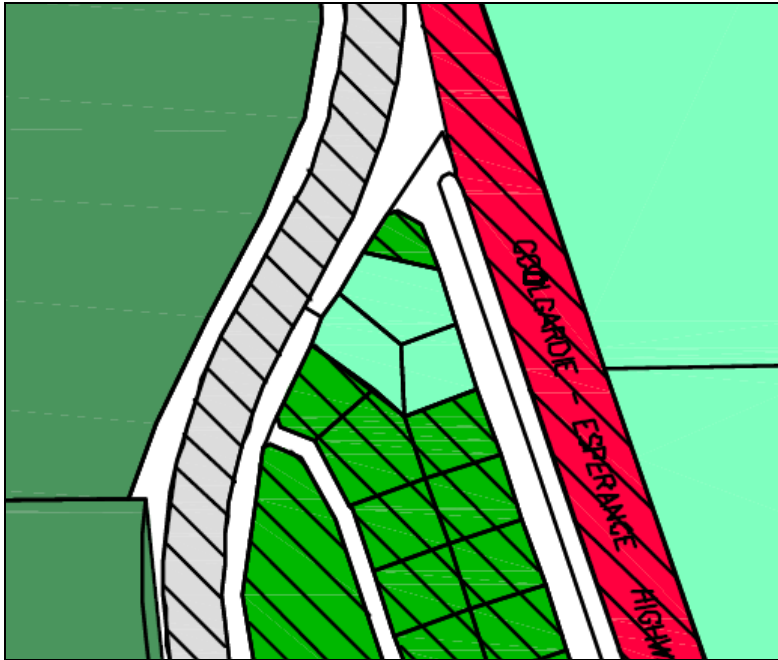
**FINAL APPROVAL GRANTED**

.....  
MINISTER FOR PLANNING








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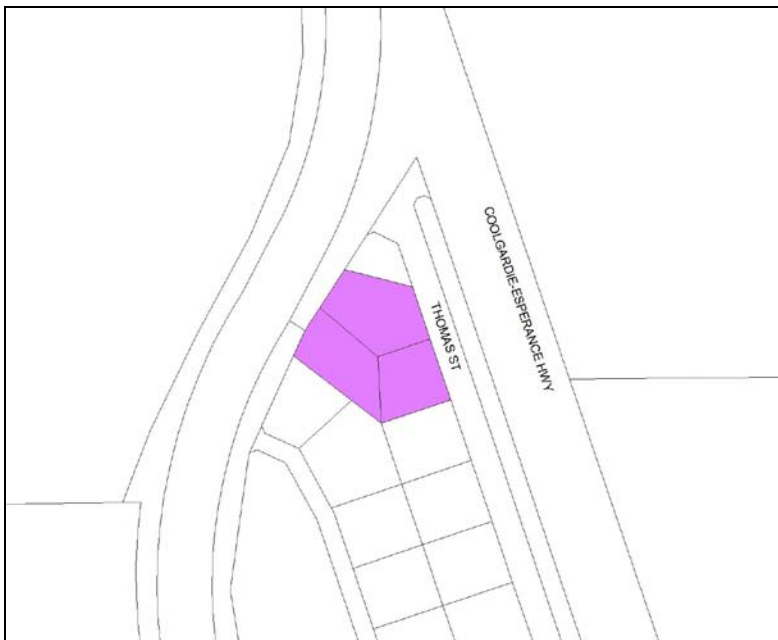
# SHIRE OF ESPERANCE LOCAL PLANNING SCHEME NO. 23

## AMENDMENT NO. 6



**EXISTING ZONING**

LEGEND	
<u>ZONES</u>	
	INDUSTRY - GENERAL
	AGRICULTURE - GENERAL
<u>RESERVES</u>	
	STATE HIGHWAY
	LOCAL ROAD
	PARKS, RECREATION AND CONSERVATION - LOCAL
	NATIONAL PARK OR NATURE RESERVE
	RAILWAY OR PORT INSTALLATION



**PROPOSED ZONING**