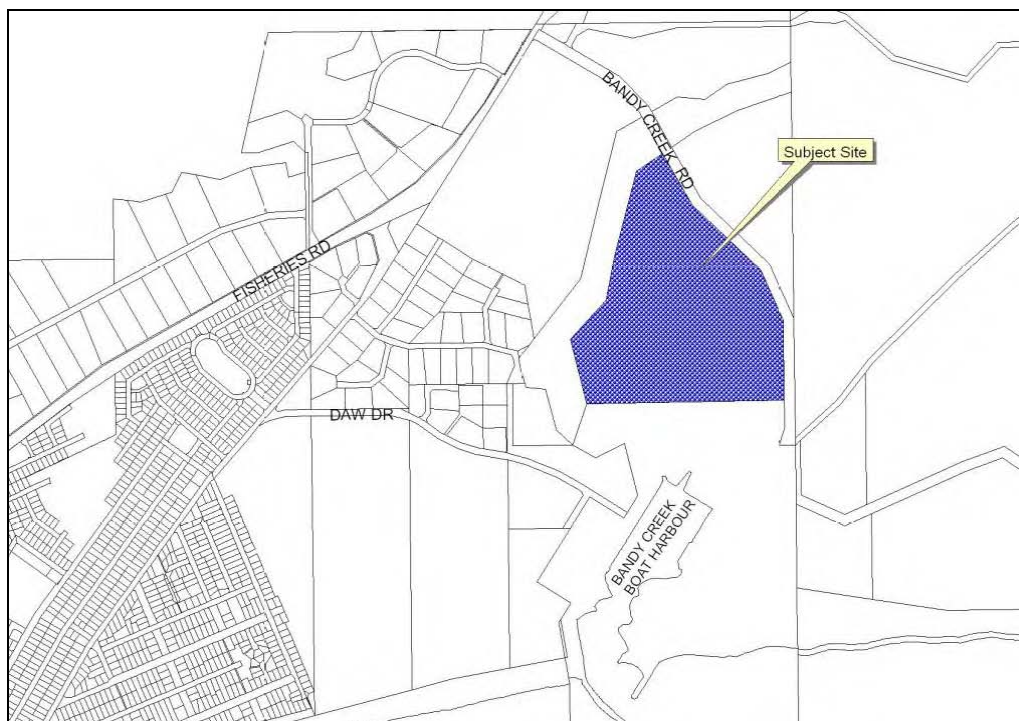


7.2.1.3 LOCAL PLANNING SCHEME NO. 23 - AMENDMENT NO. 2

Applicant: Urban Plan Design and Development of behalf of Foxbay Pty Ltd

Location/Address: Lot 64 Bandy Creek Road, Bandy Creek



File Ref: TPS23/AM2

Reporting Officer/Position: Prue McTaggart – Senior Planner
Richard Hindley – Executive Manager Development Services

Objective: To enable the Council to give consideration to the initiation of a Scheme Amendment that rezones Lot 64 Bandy Creek Road to facilitate the development of a canal and dry lot residential development.

Background: An application was lodged in March 2009 under Town Planning Scheme No 22 (TPS 22) to rezone Lot 64 Bandy Creek Road, Bandy Creek from “Rural” to “Special Use” to facilitate the development of a canal estate with a mixture of canal and dry lots (Amendment 52). In January of the preceding year, Council had resolved to “*not initiate any further amendments to TPS22 until such time as Local Planning Scheme 23 (LPS 23) is gazetted and comes into force*”.

At the April 2009 Council Meeting, a report was presented to Council for the consideration of the Initiation of Amendment 52. The proponent was made aware that if LPS 23 was considered by the WAPC before the amendment receives Commission approval it could not be incorporated into LPS 23. Despite the possibility of the amendment not being finalised prior to the gazettal of LPS 23, the proponent proceeded with the Initiation of Amendment

52. In April of 2009, Council supported the Amendment and resolved (O0409-1588(E0409-1510)) to:

1. *Remove the restriction on the initiation of any amendments prior to the gazettal of Local Planning Scheme No. 23 for Amendment 52.*
2. *Initiate Town Planning Scheme No. 22 – Amendment No. 52 subject to the following modifications:*
 - (i) *Assign reference to Amendment 52 throughout the document.*
 - (ii) *Modify the amendment report and provisions to show all the lots with frontage to a water way as strata development with the canals and associated waterways as common property. Dry lots within the development area may have freehold title.*
 - (iii) *Replace Figure 4 with an Outline Development Plan addressing the specific standards identified in Condition 2 (a)(iii) and clearly allocating densities and land uses across Lot 64.*
 - (iv) *Condition 2 (a) (i) and (iii) being replaced with specific reference to the ODP contained within the Document.* (v) *Modify the amendment report to ensure all references to lot yield are consistent.* (vi) *Format the special use for SU5 to reflect the format in Scheme No. 22.* (vii) *Remove all references to the request for Section 16(c) advice from the amendment report.* (viii) *Modify the amendment document by replacing the reference to the “Minister for Planning and Infrastructure” with “Minister for Planning”*
3. *Amend Town Planning No. 22 by:*
 - (i) *Rezoning Lot 64 Bandy Creek Road, Esperance for Rural Zone to Special Use Zone No. 5 to Appendix 12 of Town Planning Scheme No. 22; and*
 - (ii) *Amending the Scheme Map accordingly*
4. *Refer Amendment 52 to the EPA under Section 81 of the Planning and Development Act 2005*
5. *Determine that Town Planning Scheme No. 22 – Amendment No. 52 is not consistent with the criteria listed under Section 25(2) of the Town Planning Regulations 1967 and resolve to seek consent of the Western Australian Planning Commission to advertise the amendment for public inspection after referral to the EPA.*

The Amendment was referred to the WAPC and the EPA for direction and the proponent proceeded to undertake an environmental review in line with instructions issued.

In January 2010, a report was put to Council on behalf of the proponent requesting that a resolution be passed allowing the amendment to proceed under LPS 23. It was resolved that Council supports the carrying over of Amendment 52 to LPS 23 subject to the carrying over of Amendment 52 receiving the consent of the Minister for Planning. However, the Department of Planning indicated that a new amendment will need to be initiated under LPS 23 upon its gazettal, in accordance with the requirements of the Town Planning Regulations 1967 (as amended).

The Gazettal of LPS 23 occurred on the 19 February 2010. Advice from the WAPC dated 30 July 2009 advising of the Ministers determination stated:

The Shire and the proponent of Amendment 52 are advised, that given the Minister’s determination to grant final approval to Scheme No. 23, subject to modifications, that Amendment No 52 is unlikely to proceed and that if Council and the proponent wish to pursue the amendment, a new amendment will need to be initiated following the gazettal of Scheme No. 23.

The application now before Council seeks to initiate the Amendment under LPS 23, being

Amendment 2.

Officer's Comment: Discussions have been ongoing in relation to the potential to develop residential canal estates at Bandy Creek Boat Harbour. This has been recognised in the recently endorsed Local Planning Strategy as well as a structure planning process that is currently being undertaken on behalf of the Department for Planning and Infrastructure.

The proponent is seeking Council's initiation of a Scheme Amendment to the recently gazetted Local Planning Scheme No. 23 to rezone Lot 64 Bandy Creek Road from "Agriculture – General" Zone to "Special Use" Zone to enable a waterway residential development.

All modifications subject of the April 2009 resolution for Amendment 52 have been made to the documentation and the Amendment was referred to the EPA as required. The proponent is currently undertaking environmental assessments in accordance with the advice from the EPA however; the initiation of Amendment 2 under LPS 23 will again be subject of the referral process. On referral of Amendment 2 to the EPA, it is recommended that advice be provided pertaining to the failure of Amendment 52 to proceed under TPS 22 and that Amendment 2 is now being pursued under LPS 23.

Amendment 52 documentation was prepared under the former Town Planning Scheme No. 22. The Gazettal of Local Planning Scheme No. 23 and the endorsement of the Local Planning Strategy has introduced new provisions and resulted in inconsistent referencing in Amendment 2 documentation. A number of modifications are required and the proponent has prepared an Addendum to the documentation outlining necessary amendments to be made prior to the finalisation of legal documents and Scheme Zone Maps (Attachment G).

Consultation: Ian Brashaw (on behalf of the proponent)
Department of Planning

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
Planning and Development Regulations 2009
Town Planning Regulations, 1967
Shire of Esperance Town Planning Scheme No 22
Shire of Esperance Local Planning Scheme No 23

Policy Implications: Residential Design Codes 2002
Policy No. DC 1.8 – Canal Estate and Other Artificial
Waterway Developments
Local Planning Strategy

Financial Implications: In accordance with the Shire of Esperance 2009-10 Schedule of Fees and Charges, a fee of \$6,500 is applicable to applications for Major Amendments to a Planning Scheme. If the amendment is not initiated, or requires fewer resources, the portion of the fee that is unexpended will be returned.

The proponent has requested that the fee be waived on the basis that a fee was paid for Amendment No. 52 to Town Planning Scheme No. 22. In particular it was stated that “*The Shires work to date to in our considered opinion to assess the documentation prepared by urbanplan and to write a report to Council to initiate a scheme amendment and forward the documents onto EPA/WAPC for their assessment could not have possibly come close to this amount given that maximum fees are set under regulation for hourly charges (Refer Planning Bulletin 93/2009)*”. The previous application for the initiation of Amendment 52 under TPS22 was subject of a \$3,500 fee. As detailed in the January 2010 report to Council requesting the carrying over of Amendment 52:

If the amendment is rolled over there may be a reduction in amendment fees payable. A fee of \$3,500 was paid for the application and at this stage due to the work involved no funds are left. Regulation 49 of the Planning and Development Regulations 2009 provides an avenue to seek additional fees for work undertaken.

The initiation of Amendment 2 under LPS23 is a separate application to Amendment 52 and will involve additional work to be undertaken. As stated above, all fees associated with Amendment 52 have been expended. In line with the Schedule of Fees and Charges, the application of the applicable fee will enable fees for work undertaken to be deducted, with all unexpended fees being returned. This is a more favourable approach to recouping costs than seeking additional fees on completion of work undertaken through the Planning and Development Regulations.

Environmental Considerations: Referral of the Amendment to the EPA is required under Section 81 of the Planning and Development Act.

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

Officer’s Committee Recommendation:

Moved: Cr Mickel
Seconded: Cr Walker

AP0310-0025

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

1. Initiate Local Planning Scheme No. 23 – Amendment No. 2 subject to the payment of the amendment fee being \$6,500 and the following modifications:
 - (i) Amend reference to Town Planning Scheme No 22 to Local Planning Scheme No 23. where appropriate throughout document;
 - (ii) Amend reference to Amendment 52 to Amendment 2 throughout the document;
 - (iii) Amend reference to “Rural” zone to read “Agriculture – General” throughout the document;
 - (iv) Modify document to include reference to “Development Area 7”;
 - (v) Modify document to include relevant reference to Objectives, Strategies and Actions under the Local Planning Strategy.
2. Amend Local Planning Scheme No. 23 by:
 - (i) Rezoning Lot 64 Bandy Creek Road, Esperance from “Agriculture – General” Zone to “Special Use” Zone No. 5 to Schedule 4 of Local Planning Scheme No. 23; and
 - (ii) Amending the Scheme Map accordingly

3. Refer Amendment 2 to the EPA under Section 81 of the Planning and Development Act 2005;
4. Determine that Local Planning Scheme No. 23 – Amendment No. 2 is consistent with the criteria listed under Section 25(2) of the Town Planning Regulations 1967.

CARRIED
F9 - A0

Voting Requirements: Simple Majority.

APPENDIX G.1

Addendum
Planning Justification Report

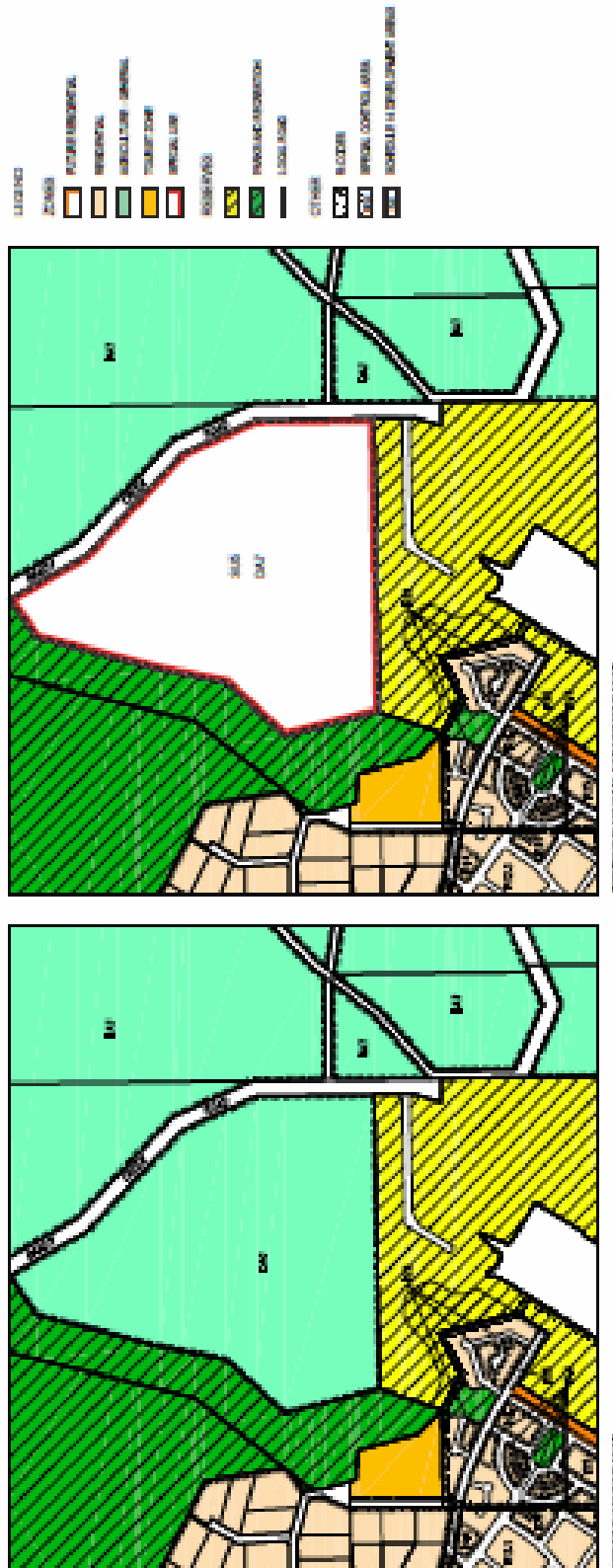
Scheme Amendment No. 2
Town Planning Scheme No. 23

This Planning Justification Report was prepared for the Initiation of Scheme Amendment No. 52 to the former Town Planning Scheme No. 22. Scheme Amendment No. 52 was Initiated by Council Resolution in August 2009. In the process of that Amendment, the new Scheme No. 23 came into being, thereby warranting a new Amendment has to be initiated.

As such this justification report makes reference to the former Scheme No. 22 and occasionally to Amendment No. 52 including Special Use Schedule SU 5 assigned to that Scheme. The justification report contents substantiates the position to rezone Lot 64 to permit residential and waterway or canal development under the new Agriculture – General Zone and accompanying SU5 in Special Use Schedule 4 and associated Scheme provisions of the new Scheme No. 23. All reference to the Rural Zone under the former Scheme No. 22 are to be amended to Agriculture – General Zone.

The Report before Council enables a Council Resolution that provides for the necessary amendments to be made to the final legal documents and Scheme Zone Map.

APPENDIX G.2



<p>ADOPTION (REGULATION 147) ACCEPTED by members of the Council of the Shire of Esperance for meeting of the Council held on the _____ day of _____ 2010.</p>	<p>FINAL APPROVAL (PROVILLA) This section to be completed at final approval stage after the section has approved the amendment. I, ACCEPTED BY FINAL RESOLUTION by the Shire of Esperance at the Ordinary Meeting of the Council held on the _____ day of _____ 2010. The Common Seal of the Shire of Esperance was lawfully affixed by authority of a member of the Council in the presence of:</p>	<p>FINAL APPROVAL (CORRECTIVE) I, _____ Minister for Planning and Infrastructure</p>
<p>Shire President</p>	<p>Chief Executive Officer</p>	<p>Date</p>
<p>Date</p>	<p>Date</p>	<p>Date</p>
<p>2. RECOMMENDED FOR FINAL APPROVAL:</p>	<p>Shire of Esperance Town Planning Scheme No. 21</p>	<p>Proposed Amendment No. 2</p>