



SHIRE OF ESPERANCE
LOCAL PLANNING SCHEME NO. 23
AMENDMENT NO. 8

PLANNING AND DEVELOPMENT ACT 2005

RESOLUTION DECIDING TO AMEND A LOCAL PLANNING SCHEME

SHIRE OF ESPERANCE

LOCAL PLANNING SCHEME NO. 23

AMENDMENT NO. 8

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 Reserves Pt 4182, 24486, 42360, Pt 46443, Pt 44627 and 49191 from 'Rural Residential' to 'Parks, Recreation and Conservation – Local' as depicted on the Amendment Map.
2. Amending the Scheme Map by rezoning Reserve 46228 from 'Rural Residential' to 'Public Purposes' with a designation of 'Water Supply' as depicted on the Amendment Map.
3. Amending the Scheme Map by rezoning Lot 3000 Downes Street, Pink Lake from 'Rural Residential' to 'Public Purposes' with a designation of 'Water Supply' as depicted on the Amendment Map.
4. Amending the Scheme Map by rezoning Lots 6 and 18 Pink Lake Road, Sinclair from 'Public Purposes' Reserve to 'Residential' with a density of 'R5/20' as depicted on the Amendment Map.
5. Amending the Scheme Map by rezoning Lot 96 Willis Street, Grass Patch from 'Agriculture – General' to 'Industry – General' as depicted on the Amendment Map.
6. Amending the Scheme Map by rezoning Pt Lot 4 Norseman Road, Chadwick from Industry General to 'Parks, Recreation and Conservation – Local' as depicted on the Amendment Map.
7. Amending the Scheme Map by rezoning Pt Lot 20 Merivale Road, Merivale from 'National Park or Nature Reserve' to 'Agriculture – General' as depicted on the Amendment Map
8. Amending the Scheme by replacing Schedule 8. Industry Business (i) with:

At the discretion of the local government, may be reduced to a minimum of 12m where the front and side walls within 20m of the frontage are to be constructed of a hard, durable material but not including metal cladding and may incorporate glazing as approved by the local government.
9. Amending the Scheme by replacing Schedule 8. Industry-General (i) with:

At the discretion of the local government, may be reduced to a minimum of 12m where the front and side walls within 20m of the frontage are to be constructed of a hard, durable material but not including metal cladding and may incorporate glazing as approved by the local government.
10. Amending the Scheme by replacing Sections 6.2.7(c), 6.2.8(e) and 6.2.9(d) with new Sections 6.2.7(c), 6.2.8(e) and 6.2.9(d) stating:

The local government will impose a condition on its planning consent for a dwelling or other noise sensitive premise that does not comply with these conditions requiring a Section 70A notification under the Transfer of Land Act 1893 being placed on the title advising of the potential to be affected by transportation noise levels and the

deficiencies in meeting those conditions. The notification will need to be in place before a building licence is issued.

11. Amending the Scheme by inserting a new Section 6.2.8(f) stating:

New property titles (including strata titles) should warn of the proximity of the access corridor and the potential to be affected by transportation noise levels. This notification pursuant to Section 165 of the Planning and Development Act is to state "*This lot is located in close proximity to the Esperance Port Access Corridor and may experience high levels of transportation noise.*"

12. Amending Section 8.2(j), (n) and (o) by removing the reference to the 'reflective materials policy'.

13. Amending Schedule 5 – RR2 by deleting point 5 and renumbering from that point.

14. Amending Schedule 4 – SU4 by replacing all references to SU5 with SU4.

Dated this.....day of.....2011

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CHIEF EXECUTIVE OFFICER

PROPOSAL TO AMEND A LOCAL PLANNING SCHEME

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|---|--|
| 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 | 8 |
| PROPOSAL | <ol style="list-style-type: none">1. Amending the Scheme Map by rezoning Reserves Pt 4182, 24486, 42360, Pt 46443, Pt 44627 and 49191 to 'Parks, Recreation and Conservation – Local'2. Amending the Scheme Map by rezoning Reserve 46228 to 'Public Purposes' with a designation of 'Water Supply'.3. Amending the Scheme Map by rezoning Lot 3000 Downes Street, Pink Lake to 'Public Purposes' with a designation of 'Water Supply'.4. Amending the Scheme Map by rezoning Lots 6 and 18 Pink Lake Road, Sinclair to 'Residential' with a density of 'R5/20'5. Amending the Scheme Map by rezoning Lot 96 Willis Street, Grass Patch to 'Industry – General'.6. Amending the Scheme Map by rezoning Pt Lot 4 Norseman Road, Chadwick to 'Parks, Recreation and Conservation – Local'.7. Amending the Scheme Map by rezoning Pt Lot 20 Merivale Road, Merivale from 'National Park or Nature Reserve' to 'Agriculture – General'.8. Amending Sections 6.2.7(c), 6.2.8(e) and 6.2.9(d) by replacing with a new provision referencing a 'Section 70A notification under the Transfer of Land Act 1893'9. Amending the Scheme to include a new Section 6.2.8 (f) to place a notification on new titles within the Condition 2 area of SCA1 – Port and Transport Corridor.10. Amending the setback relaxation in Schedule 8 for 'Industry – General' and 'Industry – Business' to remove the reference to fire resistant material and allow glazing.11. Amending Section 8.2(j), (n) and (o) by removing the reference to the 'reflective materials policy'.12. Amending Schedule 5 – RR2 by deleting |

- point 5 and renumbering from that point.
13. Amending Schedule 4 – SU4 by replacing all references to SU5 with SU4.
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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 correct a number of mapping and textual errors that have been identified since the gazettal of the Scheme. Mapping modifications are also proposed as a result of the WAPC providing advice on subdivision approvals.

This Amendment also seeks to amend Special Control Area No. 1 – Port and Transport Corridor to clarify the requirement for a notification on the title when development is carried out without any noise attenuation. The main change as part of this amendment is using a Section 70A notification instead of a memorial on the title. A second modification is proposed to place a notification on the title of new lots created within the Condition 2 area. The new control already applies to Condition 1 and 3 areas of Special Control Area No. 1.

The recession of the reflective materials policy has resulted in a number of provisions needing to be modified to remove this reference. This amendment facilitates those changes.

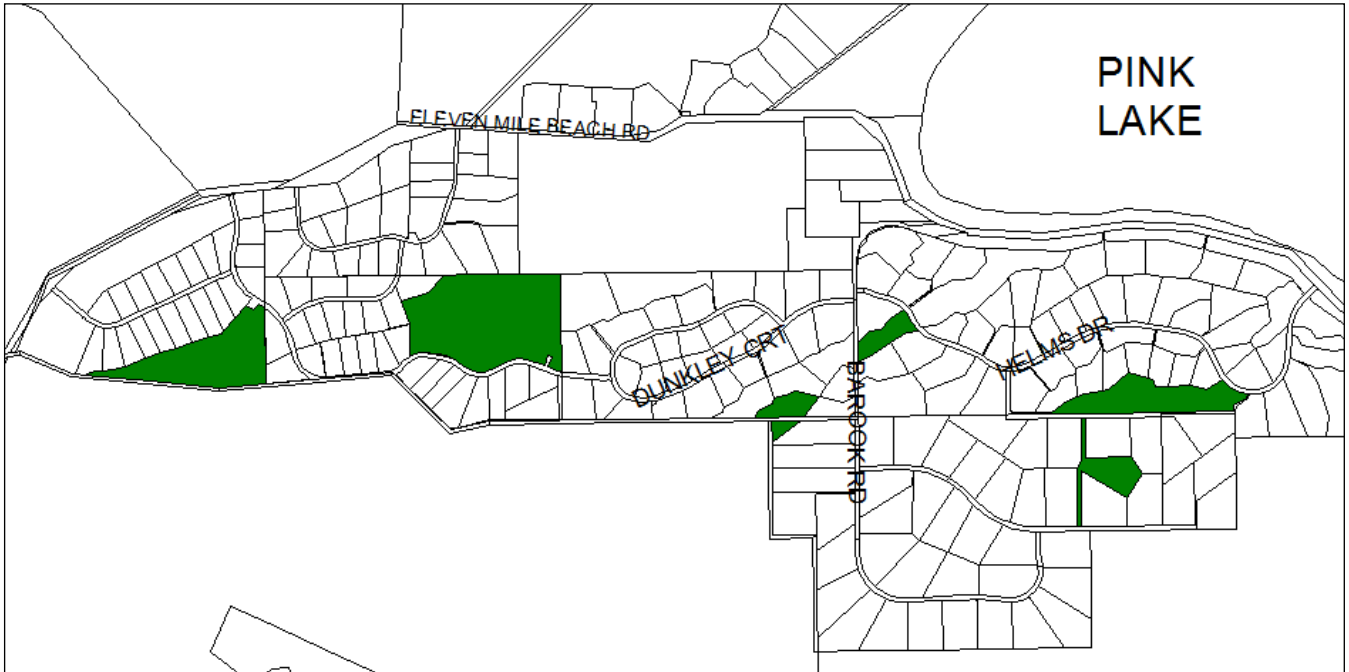
The relaxation to industrial setbacks is also modified to more clearly articulate what the provision is attempting to facilitate being the improvement of the visual amenity of industrial areas.

Finally a referencing error has been identified in Schedule 4 – Special Uses with SU5 being referenced instead of SU4 within SU4. This amendment makes the required modification.

2 AMENDMENT PROPOSALS

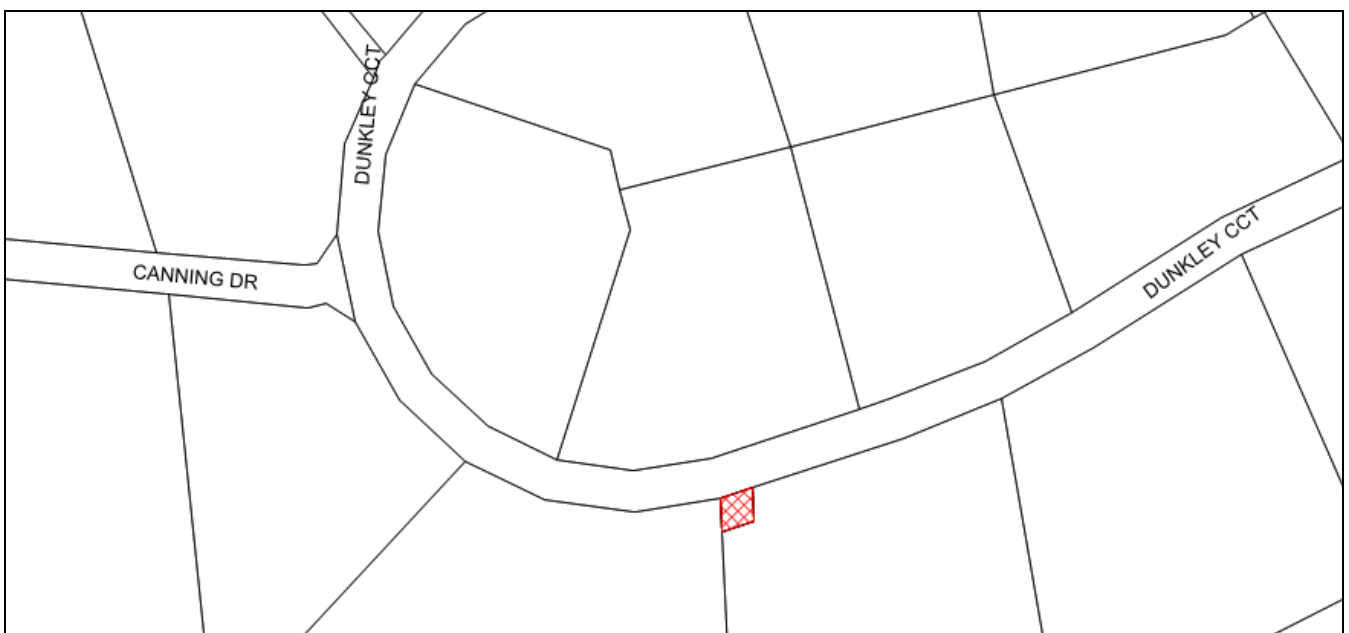
2.1 Reserve Lots Incorrectly Shown as 'Rural Residential'

An error was made in relation to showing the reserve of some land within the Scheme. In this instance the lots shown below were all applied with the 'Rural Residential' zone in error.



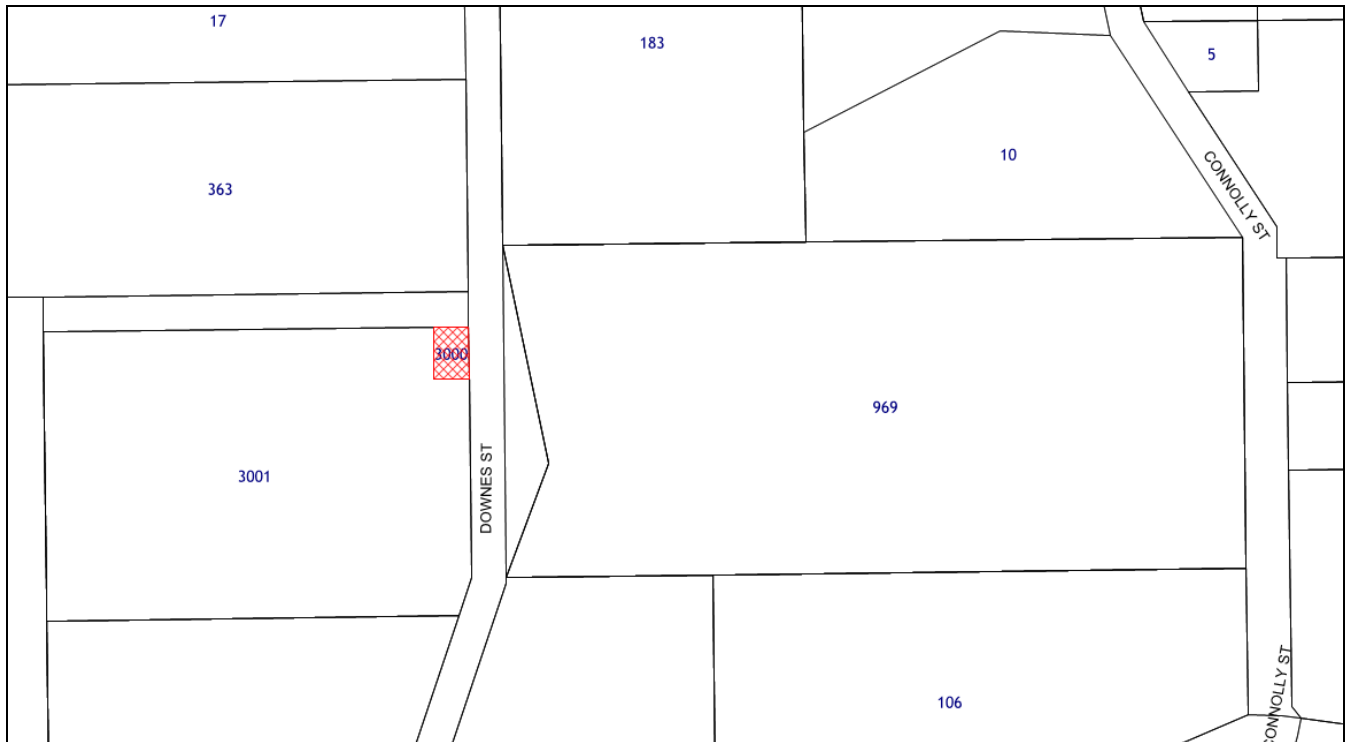
To correct this error an amendment is proposed to the Scheme to reserve the above identified lots as 'Parks, Recreation and Conservation – Local'

Related to the above error a water reserve was also shown as 'Rural Residential' under the Scheme.



This amendment corrects the error by reserving the subject land as 'Public Purpose' reserve with the purpose of 'Water Supply'.

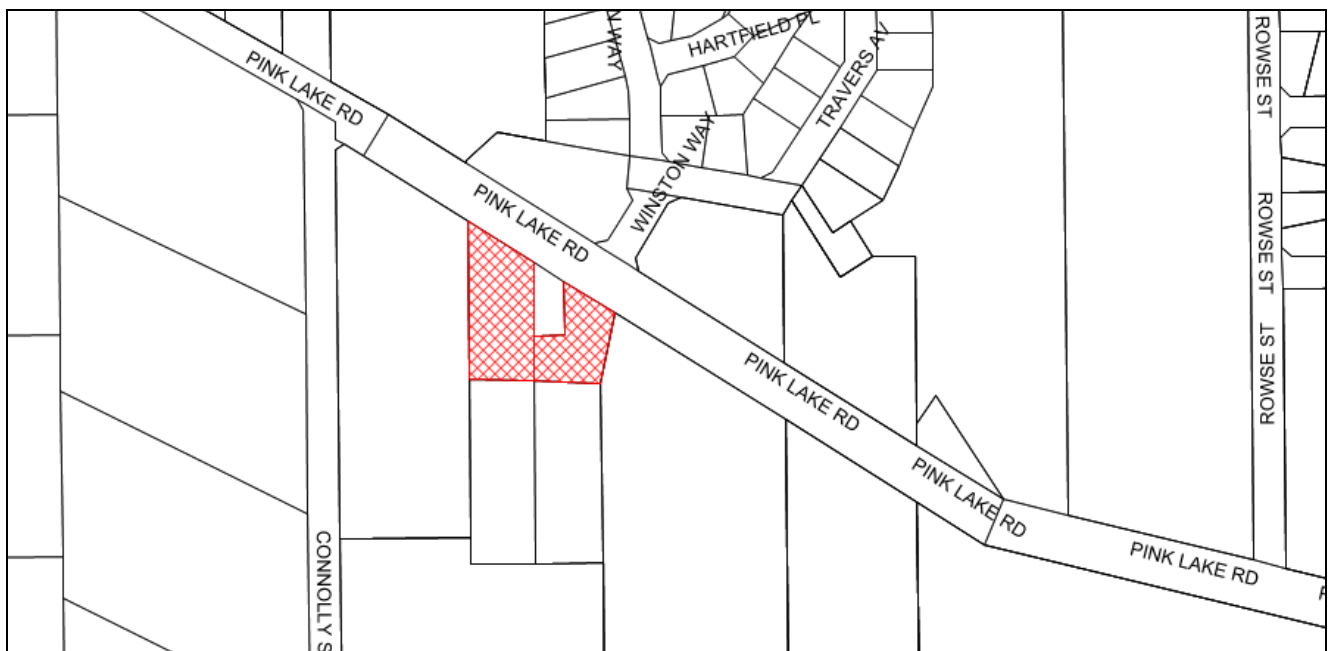
Another water reserve was shown as 'Rural Residential' under the Scheme. This was applied in error as is demonstrated in the lot having an area of 600m² and currently being occupied by a Water Corporation bore.



This amendment corrects the error by reserving the subject land as 'Public Purpose' reserve with the purpose of 'Water Supply'

2.2 Freehold Lots Incorrect Shown as 'Public Purpose' Reserve

The two lots subject to this reservation are freehold titles which were reserved in association with the Esperance Senior High School in error.

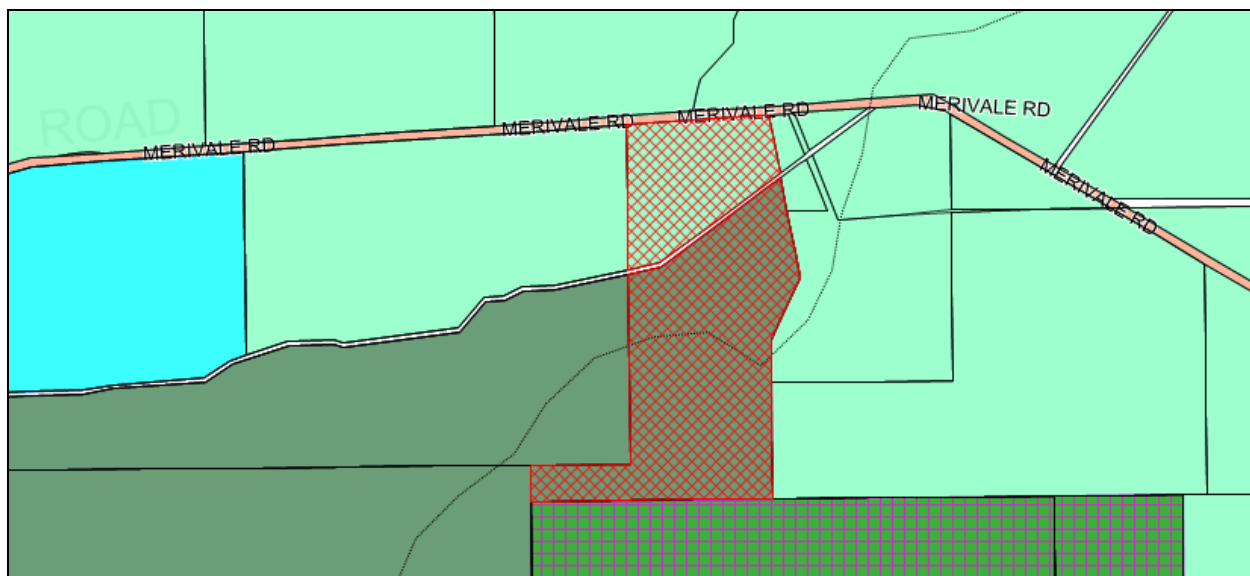


The Education Department have advised that they have no requirement for the land and do not object the reverting back to a residential zone.

It is proposed to apply a 'Residential' zone with a density code of R5/R20. The higher density is subject to the connection of the lots to reticulated sewerage as stipulated in Clause 5.3.1(a) of the Scheme.

2.3 Portion Freehold Lot shown as 'National Park or Nature Reserve'

Lot 20 Merivale Road is currently subject to a split zoning.



The northern portion of the lot is zoned 'Agriculture General' with the southern portion of the lot being reserved for 'National Park or Nature Reserve'

As this is a freehold lot it is considered inappropriate to have a large portion of it reserved under the Scheme. It should also be noted that the subject lot is already shown as 'rural' in the Local Planning Strategy.

It should also be noted that this lot is subject to a conservation covenant that retains 39.7 ha of the site as native vegetation. This restriction will remain irrespective of the zone or reserve placed on the site.

2.4 Amendment Requested by WAPC as a Result of Subdivision

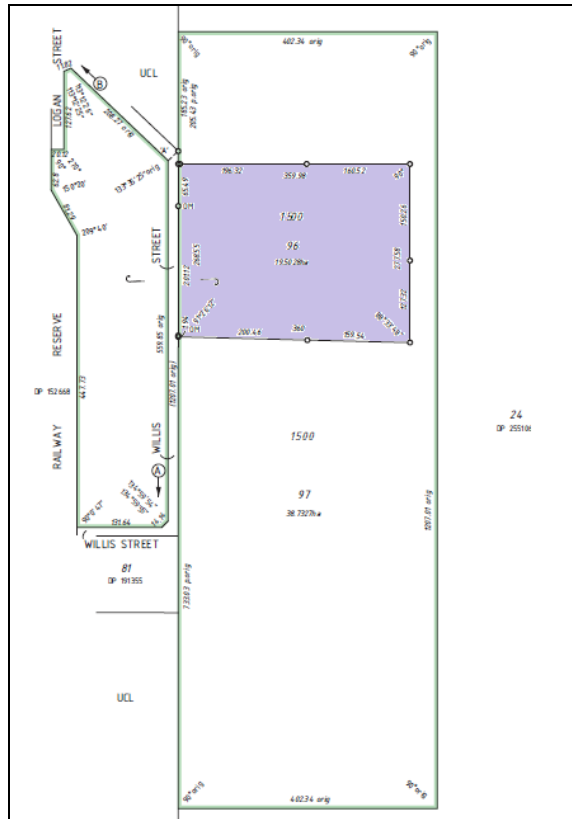
2.4.1 Lot 1500 Willis Street, Grass Patch – WAPC Ref 141663

The Western Australian Planning Commission advised the Shire of Esperance when approving subdivision application 141633 (Lot 1500 Willis Street, Grass Patch) that an amendment should be initiated in due course to address the dual zoning issue that arose out of the proposal.

ADVICE TO LOCAL GOVERNMENT

1. The Shire of Esperance is advised that the proposed amalgamation would lead to one lot being dually zoned. The Shire is advised to initiate a scheme amendment in due course to ensure that the land is zoned according to its land-use and that only one zone exists over the subject site.

That area of land the subject of the zoning change is shown below.



The subdivision caters for the expanded operations of CBH in Grass Patch.

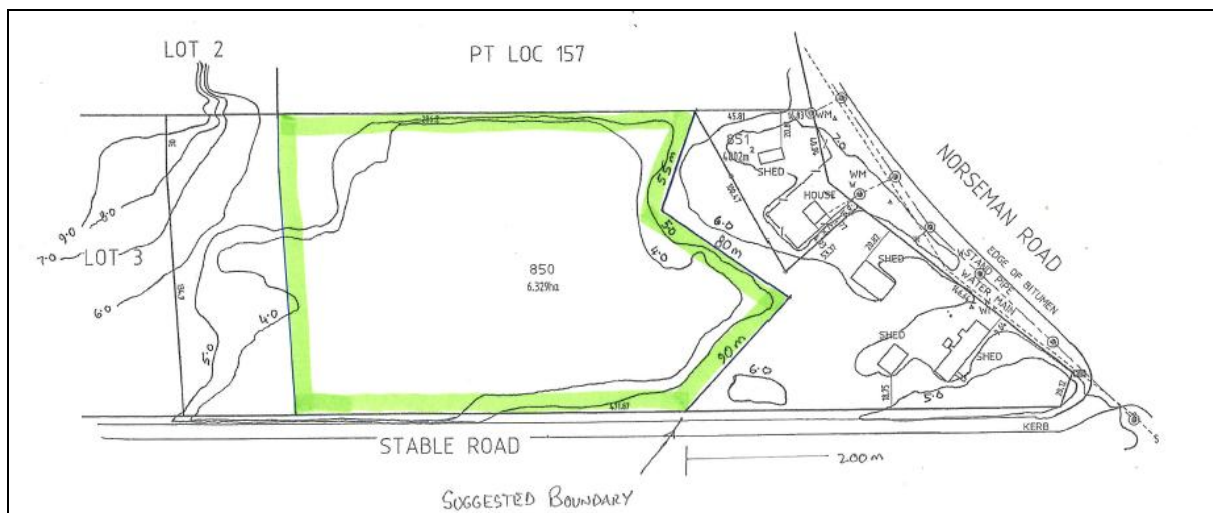
2.4.2 Lot 4 Norseman Road, Chadwick – WAPC Ref: 141178

The Western Australian Planning Commission advised the Shire of Esperance when approving subdivision application 141178 that the wetland area on Lot 4 should be protected.

3. With regard to Condition 3, the applicant/owner is advised that the detailed plan is to be to scale and must include the location and extent of the building exclusion zone on the lot, including appropriate setbacks for buildings and effluent disposal systems from relevant features such as watercourses, wetlands, roads and so on. The building exclusion zone is to protect the existing wetland from further degradation.



The proposal is to rezone a portion of proposed Lot 850 on Lot 4 Norseman Road Chadwick from “Industry-General” to “Parks, Recreation and Conservation - Local”



The application of this zone will formalise the development restriction that applies to this portion of the site as a result of the wetland.

It should be noted that no change is proposed to the western boundary of the lot as this is already reserved for 'Regional Road' as part of the Barney Hill realignment.

2.5 Amendment Required Through Rescission of Reflective Material Policy

Section 8.2 Permitted Development provides a range of exempt developments. A number of these exemption reference the reflective material policy. The provisions are:

- (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;
- (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 R2.5 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;

As a result of the recession of the reflective materials policy this part of the provisions needs to be removed. It is also proposed to extend the exemption for rainwater tanks to all residential zones to reflect the increasing incidence of small rainwater tanks being installed on smaller residential lots. The resultant clauses would read:

- (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 setbacks and cumulative total floor area in accordance with Scheme requirements;
- (n) rainwater tanks in the Rural Residential zone and the Rural Smallholdings zone which 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 zoned land and 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 side setbacks, open space and cumulative total for outbuildings;

Schedule 5 –RR2 also references the reflective material policy:

- 5. Building materials are to be in accordance with the local government's reflective materials policy.

This provision will need to be deleted and the remainder of the section renumbered to take into account the recession of the policy.

2.6 Modification to Industrial Setback Requirement.

Schedule 8 – Development Provisions by Zone stipulates development standards for each zone. In the case of the 'Industry – Business' zone additional provisions apply in relation to reduction of the front setback as shown below:

- (i) At the discretion of the local government, may be reduced to a minimum of 12m where the front and side walls within 20m of the frontage are to be constructed of a hard, durable, fire resistant material approved by the local government.

The 'Industry – General' zone has a similar provision as below:

- (i) At the discretion of the local government, may be reduced to a minimum of 12m where the front and side walls within 20m of the frontage are to be constructed of hard, durable, fire resistant material, approved by the Council.

It is proposed to include the following in lieu of the current provisions for both 'Industry – Business' and 'Industry – General':

- (i) At the discretion of the local government, may be reduced to a minimum of 12m where the front and side walls within 20m of the frontage are to be constructed of a hard, durable material but not including metal cladding and may incorporate glazing as approved by the local government

The new provision will allow for consistent wording between both zones as well as allow for the use of glazing on the frontages of buildings. The original material made reference to fire resistant material which is inappropriate in this instance as the fire rating standard only apply within 3 metres of a boundary (no standard applies on the street setback as the road is not a fire source feature).

2.7 Modifications to Special Control Area No. 1

Sections 6.2.7(c), 6.2.8(e) and 6.2.9(d) of the Scheme states that the local government may require a 'memorial' to be placed on a title if the noise attenuation provisions of the SCA are not complied with. These provisions are as follows:

- 6.2.7(c) The local government may impose a condition on its planning consent for a dwelling or other noise sensitive premise that does not comply with these conditions requiring a memorial to be placed on the title advising of the potential to be affected by transportation noise levels and the deficiencies in meeting those conditions. The notification will need to be in place before a building licence is issued.

- 6.2.8(e) The local government may impose a condition on its planning consent for a dwelling or other noise sensitive premise that does not comply with the relevant scheme provisions, requiring a memorial to be placed on the title advising of the potential to be affected by transportation noise levels and that the premises are deficient in meeting those provisions. The notification will need to be in place before a building licence is issued.
- 6.2.9(d) The local government may impose a condition on its planning consent for a dwelling or other noise sensitive premise that does not comply with these conditions requiring a memorial to be placed on the title advising of the potential to be affected by transportation noise levels and the deficiencies in meeting those conditions. The notification will need to be in place before a building licence is issued.

It is proposed to make each of these three clauses the same and modify the form of notification that will be placed on a title. The proposed clause is:

The local government will impose a condition on its planning consent for a dwelling or other noise sensitive premise that does not comply with these conditions requiring a Section 70A notification being placed on the title advising of the potential to be affected by transportation noise levels and the deficiencies in meeting those conditions. The notification will need to be in place before a building licence is issued.

The new condition will ensure that either the development standards are complied with or a notification is placed on the title. The Section 70A notification under the Transfer of Land Act 1893 is the standard notification tool used for factors that affect the use and enjoyment of land and as such is the appropriate mechanism in this situation.

Sections 6.2.7(d) being Condition Area No. 1 and 6.2.9(g) being Condition Area No. 3 contain a provision to put a notification on the title of new properties. This provision states:

New property titles (including strata titles) should warn of the proximity of the access corridor and the potential to be affected by transportation noise levels. This notification pursuant to Section 165 of the Planning and Development Act is to state *“This lot is located in close proximity to the Esperance Port Access Corridor and may experience high levels of transportation noise.”*

This provision does not appear within the Condition 2 area. This is considered to be an oversight and as such this provision is to be included within the Condition 2 area. This modification will ensure that the same standard applies in all three condition areas when a subdivision occurs.

2.8 Correction to referencing in Special Use Area No. 4.

Special Use No. 4 was placed in the Scheme as a modification prior to its gazettal. This occurred as Amendment No. 51 to Town Planning Scheme No. 22 was gazetted before Local Planning Scheme No. 23 was gazetted.

Since inserting this provision into the Scheme it has become apparent that certain provisions reference SU 5 in error.

- 10.1 Provision shall be made to Council’s satisfaction to ensure that prospective purchasers and occupiers of land within SU5 are provided with a copy of these Special Use SU5 Provisions prior to entering into an agreement to acquire any property.

11.0 Application for Development Approval

- 13.1.1.1 All development within SU5 shall require Planning Approval.
- 13.1.1.2 Where development involves the maintenance and repair of aircraft, Council may require as a condition of Planning Approval, the provision of appropriate grease and oil traps for the storage and offsite disposal of oils.

12.0 Mosquito Nuisance

- 12.1 Notification in the form of a memorial shall be registered against the Certificate of Title of all residential lots created within SU5 advising of the existence of a hazard or other factor affecting the use or enjoyment of the land. The memorial is to state as follows:

This lot is in close proximity to mosquito breeding areas. The mosquito species is known to carry Ross River Virus and other diseases.

These provisions will need to be modified to reference SU 4 and hence this amendment modifies all reference to SU5 within SU4 to SU4.

3. LOCAL PLANNING STRATEGY

The proposed amendments are broadly consistent with the Local Planning Strategy. There are minor variations that may be required to the Strategy and these will be addressed through a separate amendment to the Local Planning Strategy on the finalisation of this amendment.

4. CONCLUSION

As can be seen all of the above amendments to the Scheme are administrative in nature either correcting errors to the original gazettal of the Scheme or in response to the rescission of a Local Planning Policy.

Two amendments have also been included that are the result of WAPC Approvals. These approvals gave advice to the Local Government to amend the Scheme to reflect the changes.

PLANNING AND DEVELOPMENT ACT 2005

SHIRE OF ESPERANCE

LOCAL PLANNING SCHEME NO. 23

AMENDMENT NO. 8

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 Reserves Pt 4182, 24486, 42360, Pt 46443, Pt 44627 and 49191 from 'Rural Residential' to 'Parks, Recreation and Conservation – Local' as depicted on the Amendment Map.
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10. Amending the Scheme by replacing Sections 6.2.7(c), 6.2.8(e) and 6.2.9(d) with new Sections 6.2.7(c), 6.2.8(e) and 6.2.9(d) stating:

The local government will impose a condition on its planning consent for a dwelling or other noise sensitive premise that does not comply with these conditions requiring a Section 70A notification under the Transfer of Land Act 1893 being placed on the title advising of the potential to be affected by transportation noise levels and the deficiencies in meeting those conditions. The notification will need to be in place before a building licence is issued.

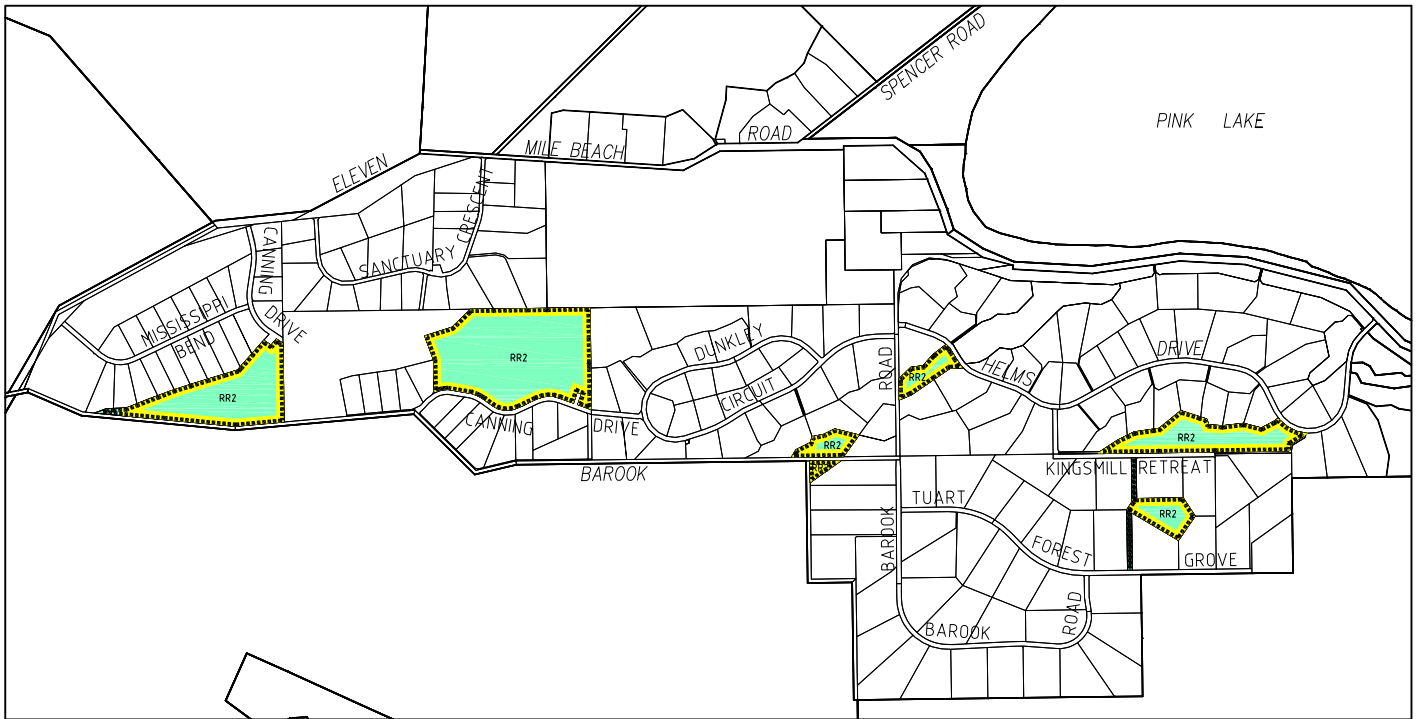
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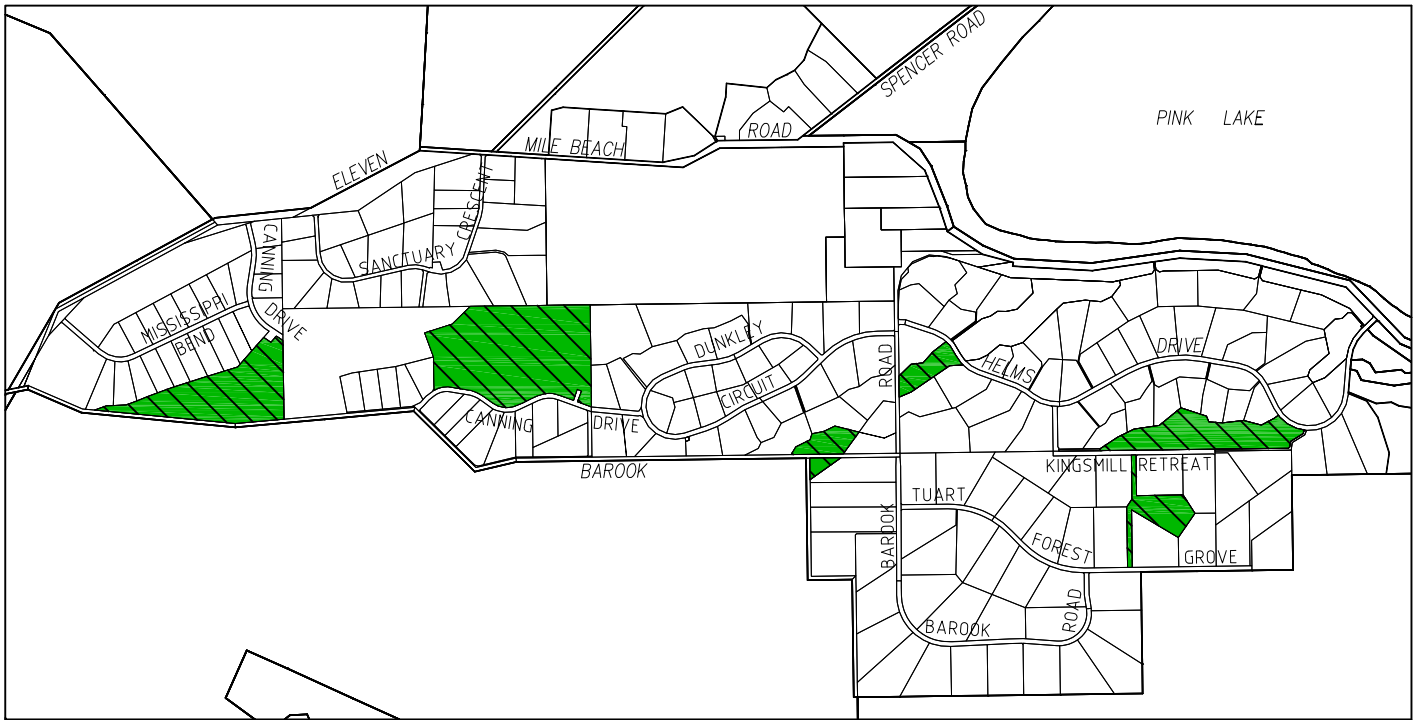
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13. Amending Schedule 5 – RR2 by deleting point 5 and renumbering from that point.

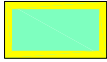


14. Amending Schedule 4 – SU4 by replacing all references to SU5 with SU4.



EXISTING ZONING

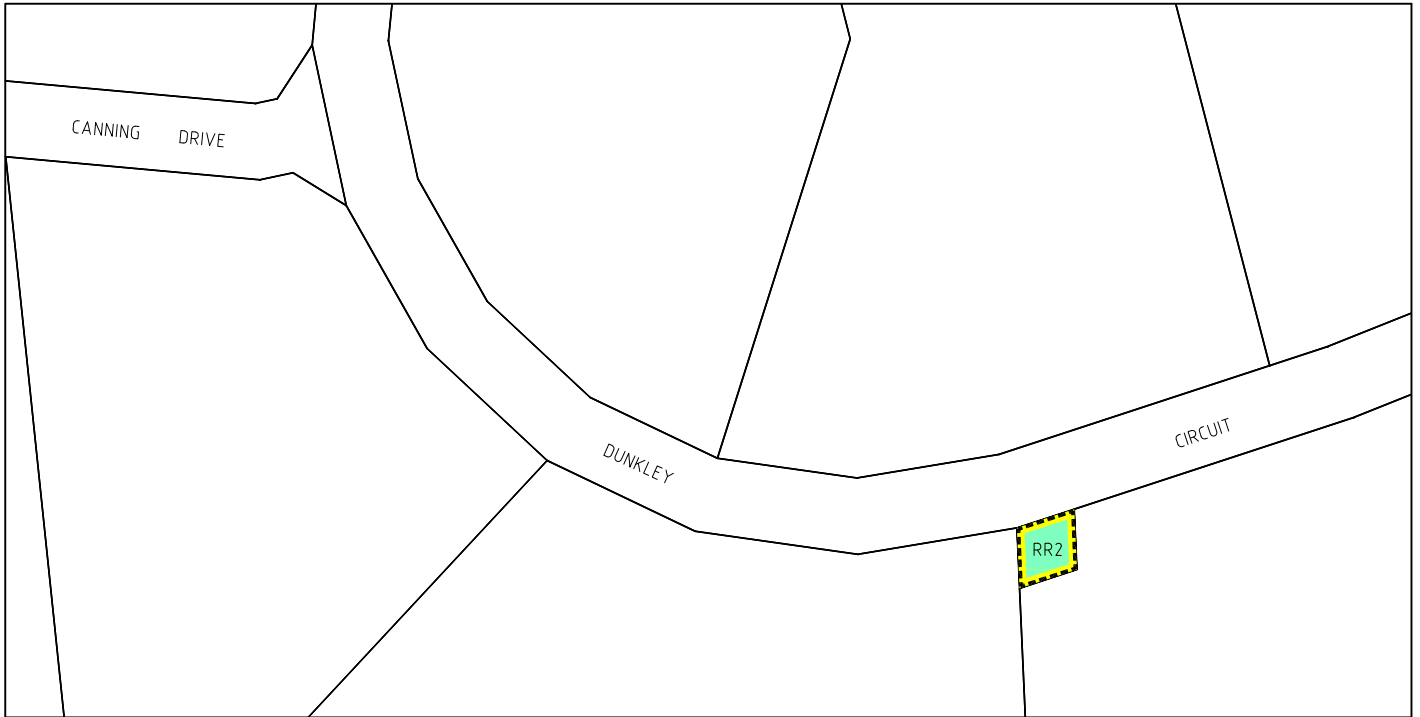


PROPOSED ZONING

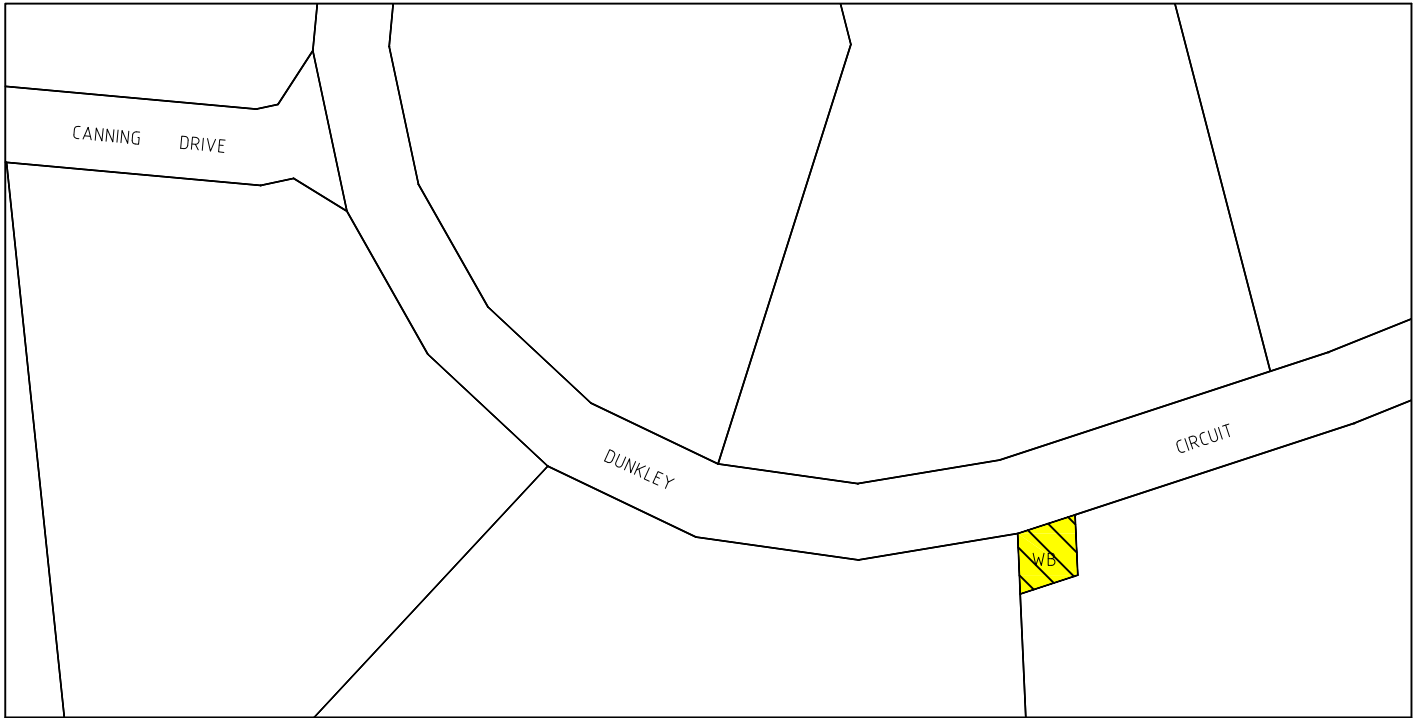
| <i>LEGEND ZONES / RESERVES</i> | |
|---|--|
|  | RURAL RESIDENTIAL |
|  | RR2 SCHEDULE 5 – SPECIAL PROVISIONS |
|  | PARKS, RECREATION AND CONSERVATION – LOCAL |

SHIRE OF ESPERANCE LOCAL PLANNING SCHEME No. 23




AMENDMENT No. 8.



EXISTING ZONING



PROPOSED ZONING

| <u>LEGEND ZONES / RESERVES / OTHER</u> | |
|---|----------------------------------|
|  | RURAL RESIDENTIAL |
|  | SCHEDULE 5 – SPECIAL PROVISIONS |
|  | PUBLIC PURPOSE (WB – WATER BORE) |

SHIRE OF ESPERANCE LOCAL PLANNING SCHEME No. 23

AMENDMENT No. 8.



EXISTING ZONING

LEGEND ZONES / RESERVES



RURAL RESIDENTIAL



PUBLIC PURPOSE



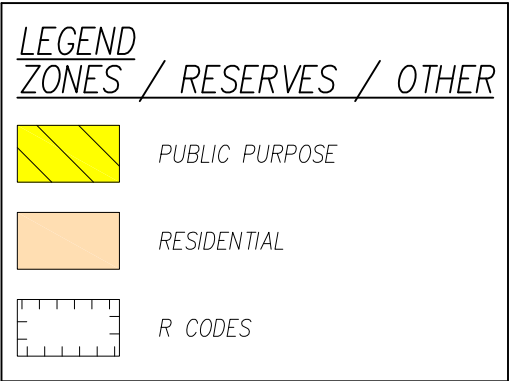
PROPOSED ZONING

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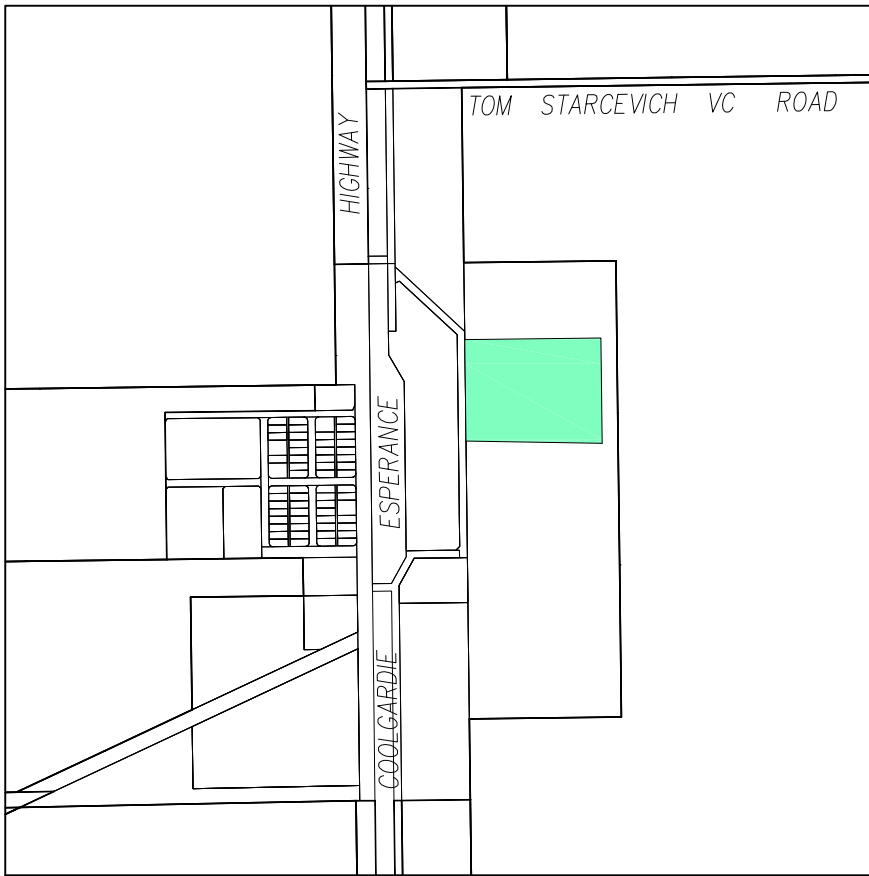
EXISTING ZONING



PROPOSED ZONING

SHIRE OF ESPERANCE LOCAL PLANNING SCHEME No. 23

AMENDMENT No. 8.



EXISTING ZONING

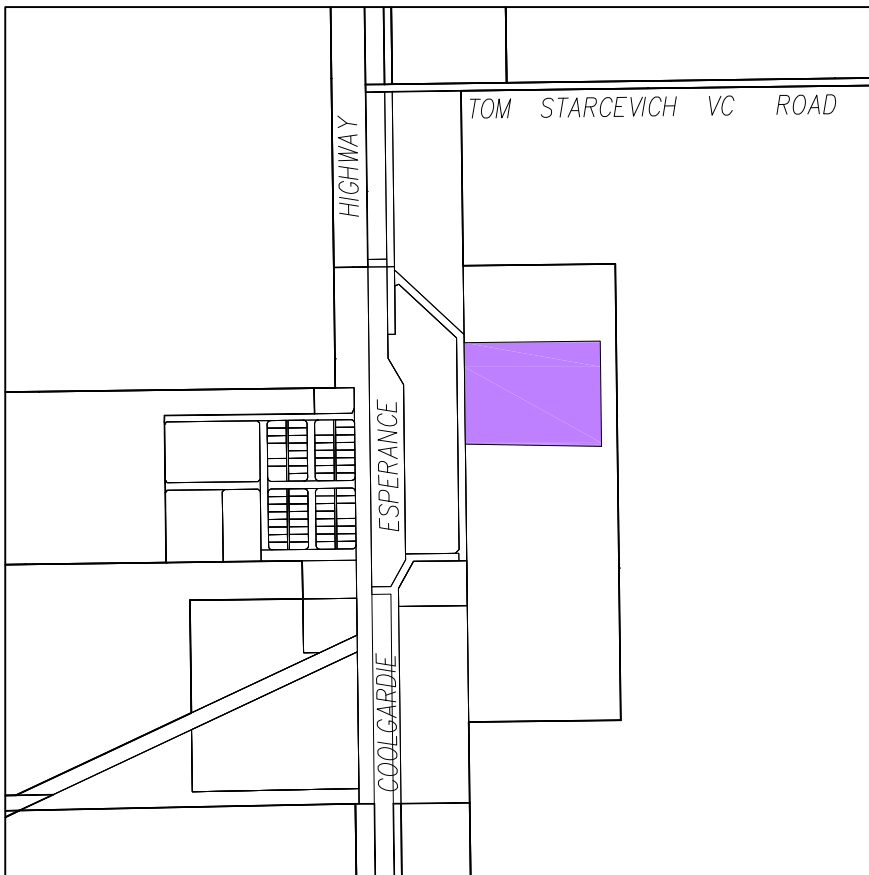
LEGEND ZONES



AGRICULTURE – GENERAL



INDUSTRY – GENERAL



PROPOSED ZONING

SHIRE OF ESPERANCE LOCAL PLANNING SCHEME No. 23

AMENDMENT No. 8.



EXISTING ZONING

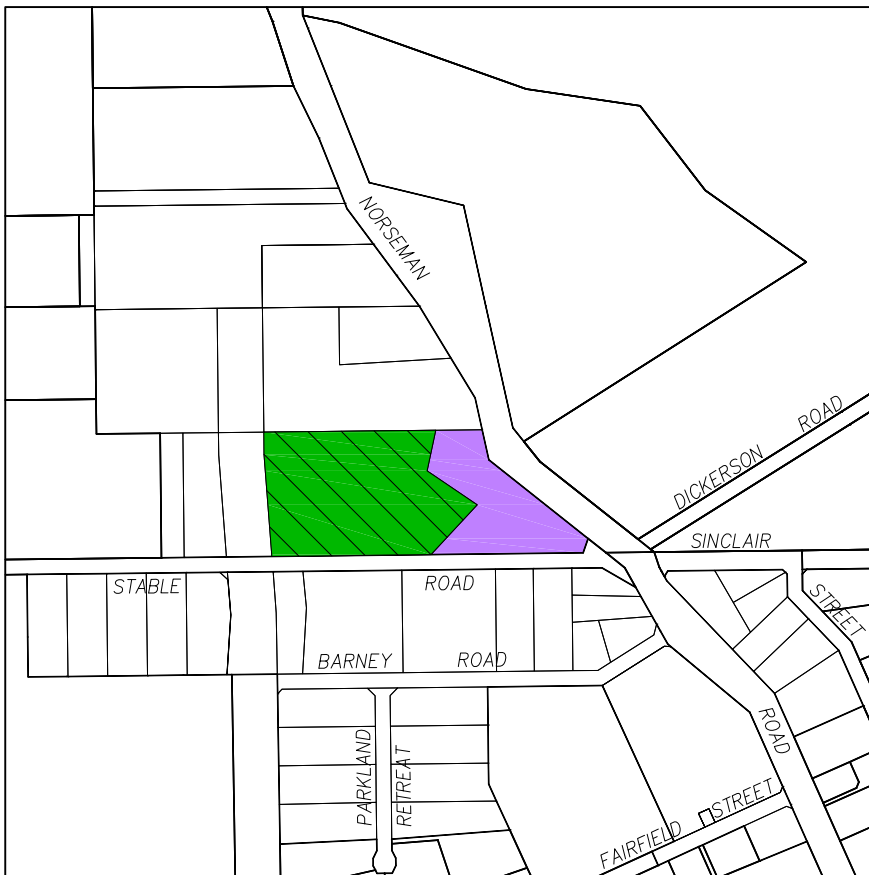
LEGEND ZONES / RESERVES



INDUSTRY - GENERAL



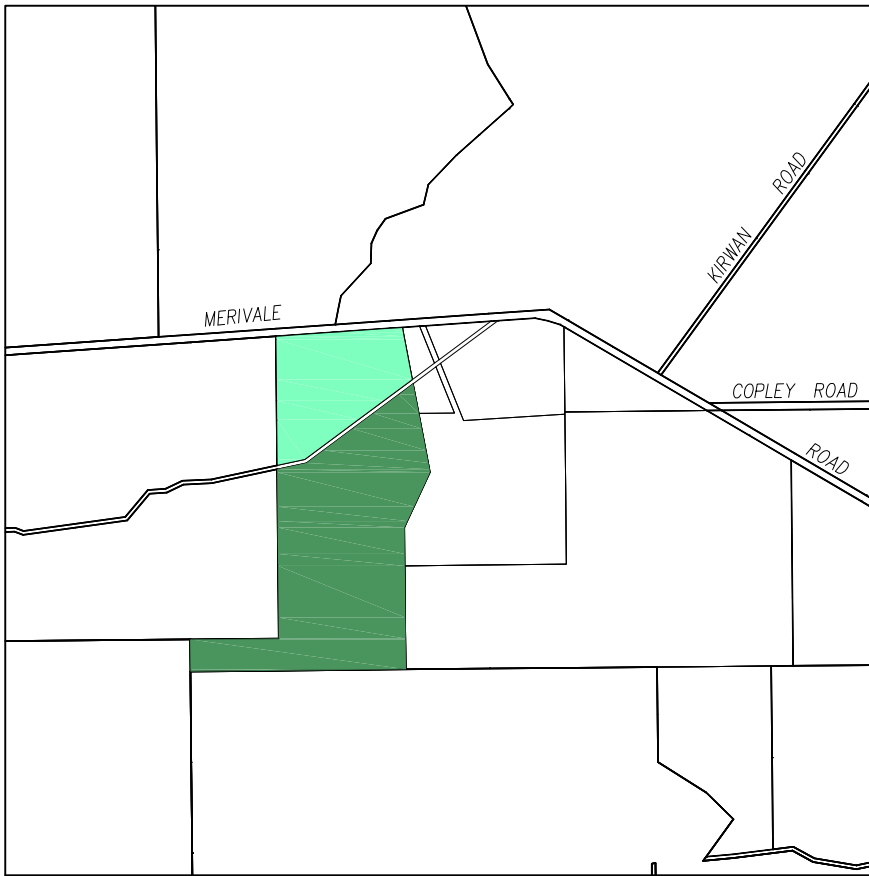
PARKS, RECREATION AND
CONSERVATION - LOCAL



PROPOSED ZONING

SHIRE OF ESPERANCE LOCAL PLANNING SCHEME No. 23

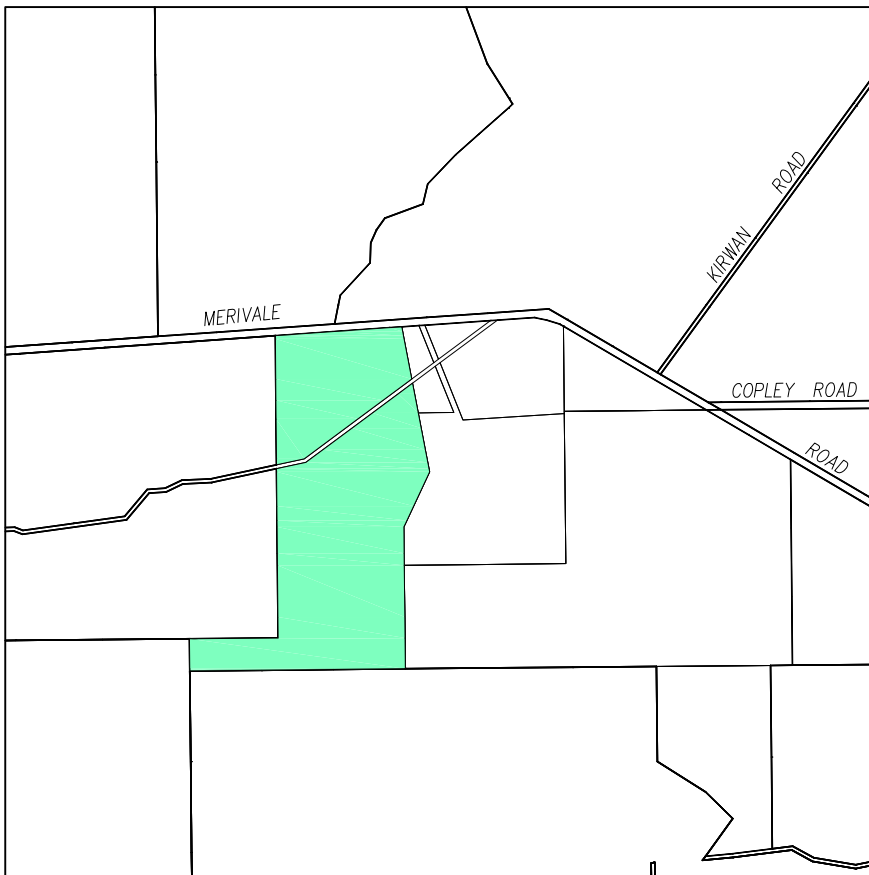
AMENDMENT No. 8.



EXISTING ZONING

LEGEND ZONES / RESERVES

-  AGRICULTURE – GENERAL
-  NATIONAL PARK OR NATURE RESERVE



PROPOSED ZONING

SHIRE OF ESPERANCE LOCAL PLANNING SCHEME No. 23

AMENDMENT No. 8.

ADOPTION

Adopted by resolution of the Council of the Shire of Esperance at the Ordinary Meeting of the Council held on the ___ day of _____ 2011.

.....
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

Date.....