



SHIRE OF ESPERANCE

LOCAL PLANNING SCHEME NO. 24

AMENDMENT NO. 3

PLANNING AND DEVELOPMENT ACT 2005

RESOLUTION TO ADOPT AMENDMENT
TO LOCAL PLANNING SCHEME

SHIRE OF ESPERANCE

LOCAL PLANNING SCHEME NO. 24

AMENDMENT NO. 3

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 Description of land in RR5 in Schedule 8 by replacing 'Part former Esperance Location 320, Gibson' with 'Lots 2 – 14 and 17 Ivy Larmour Drive and Lots 15 and 16 Coolgardie – Esperance Highway, Gibson'.
2. Amending Clause 1 in RR5 in Schedule 8 by deleting 'Subdivision and development shall generally be in accordance with the subdivision guide plan dated 28.8.2008.'
3. Amending Clause 2 in RR5 in Schedule 8 by replacing '300 metre water bore buffer identified on the subdivision guide plan' with 'wellhead protection zone'.
4. Amending Clause 3 in RR5 in Schedule 8 by inserting 'and pigs' after the word 'horses'.
5. Amending Clause 4 in RR5 in Schedule 8 by deleting 'and the keeping of pigs'.
6. Amending Clause 5 in RR5 in Schedule 8 by replacing the clause with 'The keeping of livestock on Lots 6-12 inclusive and Lot 16 is prohibited.'
7. Amending RR5 in Schedule 8 by inserting after Clause 5 a new clause stating 'Subject to subclause 3., the keeping of livestock is permitted on Lots 1-5 and Lot 13-15 in accordance with the equivalent of 10 Dry Sheep Equivalents (DSE) per hectare.'
8. Amending Clause 7 in RR5 in Schedule 8 by replacing the clause with 'Best management practices should be used when using or storing chemicals such as fertilisers and pesticides to reduce the risk of contaminants leaching into groundwater.'
9. Amending RR5 in Schedule 8 by inserting after Clause 7 a new clause stating 'Conditions may apply to the storage of fuels and chemicals within wellhead protection zones (WHPZ).'
10. Amending Clause 7 in RR5 in Schedule 8 by deleting 'the Gibson Soak'.
11. Amending the Scheme by updating all numbering within RR5 in Schedule 8.

The amendment is basic under Regulation 34 of the *Planning and Development (Local Planning Schemes) Regulations 2015* for the following reason(s):

- (d) an amendment to the scheme so that it is consistent with any other Act that applies to the scheme or the scheme area;

if the amendment will have minimal effect on the scheme or landowners in the scheme area;

Dated this.....22.....day
of.....May.....2018

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CHIEF EXECUTIVE OFFICER

SCHEME AMENDMENT REPORT

1.1 Introduction

Notice of Final Approval of the Shire of Esperance Local Planning Scheme No. 24 ('the Scheme') was published in the Government Gazette on 2 August 2017.

At the Gazettal of Local Planning Scheme No. 24 Rural Residential Area RR5 was included with the same provisions as contained in Local Planning Scheme No. 23, with modifications to government agencies only. The current provision is shown below:

RR5	<p><u>Larmour Estate</u></p> <p>Part former Esperance Location 320, Gibson</p> <p><i>Note: As shown on the Scheme Map.</i></p>	<ol style="list-style-type: none"> 1. Subdivision and development shall generally be in accordance with the subdivision guide plan dated 28.8.2008. No further subdivision shall be permitted. 2. No residential development or effluent disposal systems are permitted within the 300 metre water bore buffer identified on the subdivision guide plan. 3. The keeping of horses is prohibited. 4. The rearing or agistment of livestock and poultry for commercial purposes and keeping of pigs is prohibited. 5. The keeping of grazing stock (other than horses or cattle) on any lot other than those affected by the wellhead protection buffer and the low lying building exclusion areas on subdivision guide plan Lots 6-12 inclusive and Lot 16 is permitted but shall be restricted to the equivalent of 10 Dry Sheep Equivalents (DSE) per hectare. 6. Rural pursuits that have the potential to pollute the Gibson Public Drinking Water Source Area are to be refused or referred to the Water Corporation and the Department of Water and Environmental Regulation for comment and the local government is to be due regard to advice received from those agencies when determining applications. 7. Fertilisers, herbicides and insecticides should be applied sparingly to prevent excess chemicals or nutrients leaching into the groundwater with particular reference to protecting the Gibson Soak Reserve 3041. 8. The local government may require, as a condition of planning approval, planting of trees and/or other perennial vegetation on lots that it considers require improvement and/or on areas that are identified for strategic (future) tree planting on the subdivision guide plan for the area. 9. The local government may require, as a condition of planning approval, to take measures that adequately
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		<p>preserve and protect vegetation on lots where the cover of such vegetation is considered worthy of preservation and protection, and/or otherwise is located within the strategic tree planting areas identified on the subdivision guide plan for the area. Such measures may include installation of fencing, firebreaks and any other measure the local government thinks fit.</p> <p>10. Vegetation that is planted, preserved and/or protected in accordance with development of the subdivision and/or planning approval shall be retained to the satisfaction of the local government.</p>
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It has recently become clear that the current clauses are difficult to interpret.

1.2 Current Zoning

The lots within the Ivy Larmour Estate are all zoned 'Rural Residential' and 'RR5' in Schedule 8 of the Scheme.

The following Special Control Areas also apply:

Special Control Area No. 4 - Public Drinking Water Source Protection

Special Control Area No. 4 requires, despite any other provision of the Scheme planning approval is required for all development including a single house, removal of vegetation, earthworks or the use of land for the keeping of or grazing animals. Outbuildings with an area of 10m² or less and a height of 2.4m or less do not require approval unless otherwise specified in the Scheme (other than in this clause).

In addition to other provisions of the Scheme, in considering any application for rezoning, subdivision or planning approval in Special Control Area No. 4, the local government is to have particular regard to –

- i. the Department of Water and Environmental Regulation Water Quality Protection Note: Land Use Compatibility in Public Drinking Water Source Areas, and any advice received from the Department of Water and Environmental Regulation;
- ii. Esperance Water Reserve Drinking Water Source Protection Plan and other plans associated with outlying Country Towns;
- iii. the requirements of Statement of Planning Policy No. 2.7, *Public Drinking Water Source Policy*;
- iv. The potential impact of the proposal on the quality of the water resource;
- v. The practicability and cost of any ameliorative measures proposed for the protection of the resource;

- vi. The existing level of protection of the resource provided, with reference to management of land and location of development;
- vii. The nature, location and performance of any existing or proposed effluent disposal system;
- viii. The drainage characteristics of the land, including surface and groundwater flow, and the adequacy of proposed measures to manage run-off and drainage.
- ix. For the purposes of this Scheme the groundwater reserves will be deemed to be as per the relevant Drinking Water Source Protection Plan and a wellhead protection zone of with a 500 metres radius around each production bore in a Priority 1 area and a 300 metres radius around each production bore in Priority 2 and Priority 3 will apply unless the Department of Water and Environmental Regulation indicates otherwise.

It should also be noted that despite any other provision of the Scheme planning approval cannot be issued unless the proposal complies with the provisions of Water Quality Protection Note 25 Land Use Compatibility in Public Drinking Water Source Areas unless it is satisfactory to the Department of Water and Environmental Regulation

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

Special Control Area No.5 requires, despite any other provision of the Scheme planning approval is required for all development. Outbuildings with an area of 10m² or less and a height of 2.4m or less do not require approval unless otherwise specified in the Scheme (other than in this clause).

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 –

- i. results of scientific research conducted by Department of Biodiversity Conservation and Attractions regarding groundwater and surface water interactions within the Lake Warden Wetland System and recommendations for management of the priority areas;
- ii. guidelines of the Environmental Protection Authority for protection of the environment including but not limited to maintenance of water quality;
- iii. guidelines of the Department of Water and Environmental Regulation for protection of wetlands and waterways including but not limited to maintenance of water quality;
- iv. the potential for adverse environmental impacts and the management of such potential impacts; and

- v. There is a general presumption against subdivision within the Priority 1 area of the Lake Warden catchment except where a structure plan applies;

and shall determine applications for planning approval accordingly.

It should also be noted that 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 Biodiversity Conservation and Attractions for comment and subsequent determination by the Local Government.

Special Control Area No. 8 - Esperance Airport Special Control Area 8

The Ivy Larmour Estate is in the SCA 8A area states planning approval is required for all land use and development within SCA 8A including the construction, extension or alteration of a single house or any other building or structure.

In considering any application for planning approval, subdivision or scheme amendment, the local government shall have regard to –

- i. objectives of the Esperance Airport Special Control Area 8;
- ii. advice from the Department of Transport and Civil Aviation Safety Authority;
- iii. potential impacts of the proposal on the current and future operations of the airport;
- iv. relevant ANEF contour information;
- v. *Australian Standards AS2021-1994 Acoustics – Aircraft Noise Intrusion – Building Siting and Construction*;
- vi. the Esperance Airport Obstacle Limitation Surfaces (OLS);
- vii. the Esperance Airport PANS-OPS protection surface; and
- viii. the Esperance Airport Master Plan.

2. AMENDMENT PROPOSAL

2.1 Amendment Concept

It is proposed to amend the Scheme by simplifying and rearranging the clauses. It should be noted that no modification is proposed to the outcomes created by the Scheme it simply amends the clause so that they are easily interpreted.

2.2 Current Situation

A number of landowners around the Ivy Larmour Drive area in Gibson are unhappy with the stock animal restrictions in the RR5 area under Local Planning Scheme No. 24. The stock restrictions were included in the Scheme at the request of then Water and Rivers Commission (now Department of Water and Environmental Regulation) around 2002/03.

The restrictions were placed due to the Ivy Larmour Estate's location next to the Gibson drinking water bore field. The entire estate is also shown as Priority 2 groundwater protection area in the Gibson Water Reserve Drinking water source protection plan.

A complaint was received regarding the keeping of horses within the estate. As a result of this complaint a letter was sent to all landowners within the Ivy Larmour Estate stating:

As a result of an investigation it has become apparent that livestock are being kept on a number of properties in the area contrary to the provisions of the *Shire's Local Planning Scheme 24*. These provisions exist at the behest of the Department of Water and Environmental Regulation in order to protect the Gibson Wellhead Protection Zone, a groundwater source.

The prohibition on livestock in the area can be summarised as follows:

- No horses or pigs are permitted on any property in the Ivy Larmour Estate;
- No livestock are permitted on Lots 6-12 inclusive and Lot 16;
- A maximum of 10 Dry Sheep Equivalents per hectare are allowed (horses excepted) on Lots 2-5, 13, 14 and 17 only, in accordance with the Department of Agriculture and Food *Stocking Rate Guidelines for Rural Small Holdings* as attached; and
- Rearing or agistment of livestock and poultry for commercial purposes is prohibited on any property in the Ivy Larmour Estate.

As part of this landowners were advised that unauthorised stock and horses were to be removed within 60 days of the date of the letter.

As a consequence of feedback to the letter the Department of Water and Environmental Regulation was contacted to determine if there was a resolution that could be supported by the Department.

2.3 Department of Water and Environmental Regulation Comments

Due to issues that were being raised as a result of the letter to landowners the Department of Water and Environmental Regulation was contacted.

Four provisions were identified as creating the issue within the Ivy Larmour Estate.

Schedule 8 – RR5 – Larmour Estate:

3. The keeping of Horses is prohibited.
4. The rearing or agistment of livestock and poultry for commercial purposes and keeping of pigs is prohibited.
5. The keeping of grazing stock (other than horses or cattle) on any lot other than those affected by the wellhead protection buffer and the low lying building exclusion areas on subdivision guide plan Lots 6-12 inclusive an Lot 16 is permitted but shall be restricted to the equivalent of 10 Dry Sheep Equivalents (DSE) per hectare.
6. Rural pursuits that have the potential to pollute the Gibson Public Drinking Water Source Area are to be refused or referred to the Water Corporation and the Department of Water and Environmental Regulation for comment and local government is to be due regard to advice received from those agencies when determination application.

The Department provided the following advice in relation to the Special Provisions:

Clause 3 – The keeping of horses is prohibited.

Retain – it should be noted the keeping of pigs that was in Clause 4 has been moved to this clause for clarity.

Clause 4 – The rearing or agistment of livestock and poultry for commercial purposes and keeping of pigs is prohibited

Retain – It should be noted that the reference to the keeping of pigs is now in Clause 3 and is hence deleted from this clause.

Clause 5 – The keeping of grazing stock (other than horses or cattle) on any lot other than those affected by the wellhead protection buffer and the low lying building exclusion areas on subdivision guide plan Lots 6-12 inclusive an Lot 16 is permitted but shall be restricted to the equivalent of 10 Dry Sheep Equivalents (DSE) per hectare.

Retain – This has been simplified to just reference the prohibition on the subject lots rather than relating to geographic areas – this will assist in interpreting the clause. The clause has also been split into two clause one dealing with where there is a prohibition and one where there potential to approve.

Condition 6 – Rural pursuits that have the potential to pollute the Gibson Public Drinking Water Source Area are to be refused or referred to the Water Corporation and the Department of Water and Environmental Regulation for comment and local government is to be due regard to advice received from those agencies when determination application.

Retain – no modifications proposed.

Condition 7 - Fertilisers, herbicides and insecticides should be applied sparingly to prevent excess chemicals or nutrients leaching into the groundwater with particular reference to protecting the Gibson Soak Reserve 3041.

Replace - Best management practices should be used when using or storing chemicals such as fertilisers and pesticides to reduce the risk of contaminants leaching into groundwater.

New Condition - Conditions may apply to the storage of fuels and chemicals within wellhead protection zones (WHPZ).

The Department recommended two approaches that could be undertaken.

1. Enforce the Scheme Provisions - it is recommended that the Shire provide up to 6 months with a timeframe to remove cattle.

or

2. Reword provision 3 to prohibit the keeping of cattle as well as horses on lots less than 4ha, this approach may make compliance less complicated and more easily achievable.

2.4 Amendment Proposal

It is proposed to apply the first option provided by the Department of Water and Environmental Regulation. It should be noted that this does not actually result in a greater level of control being applied over what current exists.

The opportunity to streamline the clauses to make them more legible and to reflect that subdivision of the Ivy Larmour Estate is complete was also taken resulting in the following:

RR5	<p><u>Larmour Estate</u></p> <p>Lots 2 – 14 and 17 Ivy Larmour Drive and Lots 15 and 16 Coolgardie – Esperance Highway, Gibson</p> <p><i>Note: As shown on the Scheme Map.</i></p>	<ol style="list-style-type: none"> 1. No further subdivision shall be permitted. 2. No residential development or effluent disposal systems are permitted within the wellhead protection zone. 3. The keeping of horses and pigs is prohibited. 4. The rearing or agistment of livestock and poultry for commercial purposes is prohibited. 5. The keeping of livestock on Lots 6-12 inclusive and Lot 16 is prohibited. 6. Subject to subclause 3., the keeping of livestock is permitted on Lots 1-5 and Lot 13-15 in accordance with the equivalent of 10 Dry Sheep Equivalents (DSE) per hectare. 7. Rural pursuits that have the potential to pollute the Gibson Public Drinking Water Source Area are to be refused or referred to the Water Corporation and the Department of Water and Environmental Regulation for comment and the local government is to be due regard to advice received from those agencies when determining applications. 8. Best management practices should be used when using or storing chemicals such as fertilisers and pesticides to reduce the risk of contaminants leaching into groundwater. 9. Conditions may apply to the storage of fuels and chemicals within wellhead protection zones (WHPZ) . 10. The local government may require, as a condition of planning approval, planting of trees and/or other
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		<p>perennial vegetation on lots that it considers require improvement and/or on areas that are identified for strategic (future) tree planting on the subdivision guide plan for the area.</p> <p>11. The local government may require, as a condition of planning approval, to take measures that adequately preserve and protect vegetation on lots where the cover of such vegetation is considered worthy of preservation and protection, and/or otherwise is located within the strategic tree planting areas identified on the subdivision guide plan for the area. Such measures may include installation of fencing, firebreaks and any other measure the local government thinks fit.</p> <p>12. Vegetation that is planted, preserved and/or protected in accordance with development of the subdivision and/or planning approval shall be retained to the satisfaction of the local government.</p>
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The proposed provisions will maintain the current level of control available in the Scheme.

3. LOCAL PLANNING STRATEGY

Gibson is located in Precinct 52 - Gibson and provides the following:

Gibson's drinking water supply is sourced from the Water Corporation's production bores 1/03 and 1/06. The bores are protected by a single wellhead protection zone (WHPZ) which extends 300 m around the bores.

Production bores 1/03 and 1/06 are located on Lot 2081 (Crown reserve 3041) vested with the Water Corporation. Crown reserve 3041 has been assigned as a Priority 1 area within the Gibson water reserve drinking water source protection plan (DoW May 2008). Priority 1 areas are assigned to land in accordance to the principle of risk avoidance to ensure the highest level of protection is afforded from land use within the protection areas

IT is also noted in the actions:

The Gibson Water Reserve Drinking water source protection plan (DoW, May 2008) applies

The proposed amendments are consistent with the Local Planning Strategy.

4. CONCLUSION

This amendment seeks to reword provision 3 in RR5 of Schedule 8 to prohibit the keeping of cattle as well as horses on lots less than 4ha, this approach will make compliance less complicated and more easily achievable. This modification has been proposed by the Department of Water and Environmental Regulation.

The opportunity to streamline the clauses to make them more legible and to reflect that subdivision of the Ivy Larmour Estate is complete was also taken.

The modifications are a result of consultation with the Department of Water and Environmental Regulation and are consistent with Water Quality Protection Note. 25 – Land use compatibility tables for public drinking water source areas.

The proposed provisions are consistent with the Local Planning Strategy.

PLANNING AND DEVELOPMENT ACT 2005

SHIRE OF ESPERANCE

LOCAL PLANNING SCHEME NO. 24

AMENDMENT NO. 3

The Shire of Esperance 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 Description of land in RR5 in Schedule 8 by replacing 'Part former Esperance Location 320, Gibson' with 'Lots 2 – 14 and 17 Ivy Larmour Drive and Lots 15 and 16 Coolgardie – Esperance Highway, Gibson'.
2. Amending Clause 1 in RR5 in Schedule 8 by deleting 'Subdivision and development shall generally be in accordance with the subdivision guide plan dated 28.8.2008.'
3. Amending Clause 2 in RR5 in Schedule 8 by replacing '300 metre water bore buffer identified on the subdivision guide plan' with 'wellhead protection zone'.
4. Amending Clause 3 in RR5 in Schedule 8 by inserting 'and pigs' after the word 'horses'.
5. Amending Clause 4 in RR5 in Schedule 8 by deleting 'and the keeping of pigs'.
6. Amending Clause 5 in RR5 in Schedule 8 by replacing the clause with 'The keeping of livestock on Lots 9-12 inclusive and Lot 16 is prohibited.'
7. Amending RR5 in Schedule 8 by inserting after Clause 5 a new clause stating 'Subject to subclause 3., the keeping of livestock is permitted on Lots 1-8 and Lots 13-15 in accordance with the equivalent of 10 Dry Sheep Equivalents (DSE) per hectare.'
8. Amending Clause 7 in RR5 in Schedule 8 by replacing the clause with 'Best management practices should be used when using or storing chemicals such as fertilisers and pesticides to reduce the risk of contaminants leaching into groundwater.'
9. Amending RR5 in Schedule 8 by inserting after Clause 7 a new clause stating 'Conditions may apply to the storage of fuels and chemicals within wellhead protection zones (WHPZ).'
10. Amending Clause 7 in RR5 in Schedule 8 by deleting 'the Gibson Soak'.
11. Amending the Scheme by updating all numbering within RR5 in Schedule 8.
12. Amending Clause 6 in RR5 by replacing the 'be' after 'the local government is to' with 'have',

COUNCIL ADOPTION

This Basic Amendment was adopted by resolution of the Council of the Shire of Esperance at the Ordinary Meeting of the Council held on the 22 day of May, 2018



Vidwana Brown

SHIRE PRESIDENT

[Signature]

CHIEF EXECUTIVE OFFICER

WAPC ENDORSEMENT (r.63)

[Signature]

DELEGATED UNDER S.16 OF
THE P&D ACT 2005

DATE 03/09/18

APPROVAL GRANTED

It is hereby certified that this is a true copy of the ~~Scheme~~ Amendment, final approval to which was endorsed by the Minister for Planning on 7/9/18.

Certified by

Marnie-Lee D'Amico

Officer of the Commission Duty authorised pursuant to Section 24 of the Planning and Development Act 2005 and Regulation 32(3) Scheme and Regulation 63(3) (Amendment) of the Planning and Development (Local Planning Scheme) Regulations 2015.

MINISTER FOR PLANNING

DATE