

Statutory Planning Committee

Notice is hereby given that a meeting of the
Statutory Planning Committee will be held on:

Tuesday 26 February 2013
9.00 am

Level 2, Room 2.39
One40 William Street
Perth



Neil Thomson
Secretary, Western Australian Planning Commission

Statutory Planning Committee

Membership:

Member	Representation in accordance with <i>Planning and Development Act 2005</i>	Term of office ends
Mr Eric LUMSDEN	Chairman, WAPC Schedule 2 clause 4(2)(a)	30/04/2013
Mr Eric LUMSDEN	Director General, Department of Planning Schedule 2 clause 4(2)(b)	Ex officio
Mr Henty FARRAR	Nominee of the Regional Minister Schedule 2 clause 4(2)(c)	26/9/2013
Ms Elizabeth TAYLOR	Community representative Schedule 2 clause 4(2)(d)	5/11/2014
Mr Ian HOLLOWAY	Professions representative Schedule 2 clause 4(2)(e)	5/11/2014
Mayor Carol ADAMS	Local Government representative Schedule 2 clause 4(2)(f)	1/02/2012
Ms Megan BARTLE	WAPC appointee Schedule 2 clause 4(2)(g)	5/11/2014
Ms Sue BURROWS	WAPC appointee Schedule 2 clause 4(2)(g)	5/11/2014

Quorum: 4

In accordance with the Western Australian Planning Commission (WAPC) Standing Orders 2009, 3.7 - Quorum for meetings:

- (2) A quorum for a meeting of a committee is at least 50% of the number of offices (whether vacant or not) of members of the committee.

Role:

Schedule 2(4)(4) of the *Planning and Development Act 2005*

The Statutory Planning Committee is the WAPC's regulatory decision-making body and performs such of the functions of the WAPC under the *Planning and Development Act 2005* and Part II of the *Strata Titles Act 1985* as are delegated to the Statutory Planning Committee under section 16 and such other functions as are delegated to it under that section. These functions include approval of the subdivision of land, approval of leases and licenses, approval of strata schemes, advice to the Minister for Planning on local planning schemes and scheme amendments, and the determination of certain development applications under the Metropolitan Region Scheme.

Delegated Authority (Del 2009/05)

Planning and Development Act 2005 Section 16(1)

- 2.1 Power to determine applications for approval to commence and carry out development lodged with or referred to the WAPC pursuant to the provisions of a region scheme.

- 2.2 Power to approve detailed plans requiring the subsequent approval of the WAPC as a condition of development approval pursuant to the provisions of a region scheme and power to confirm that conditions imposed by the WAPC on a development approval pursuant to the provisions of a region scheme have been complied with.
- 2.3 Power to determine whether or not proposals and the ongoing implementation of a region scheme comply with conditions (if any) applied pursuant to sections 48F and 48J of the *Environmental Protection Act 1986*.
- 2.4 Power to determine whether or not applications to commence and carry out development are of State or regional importance, or in the public interest, pursuant to any resolution of the WAPC made under a region scheme requiring such determination.
- 2.5 Power to request the Minister for Planning to approve the WAPC disregarding the advice of the Swan River Trust in whole or in part in relation to the approval of development of land within the Riverbank or Development Control Area as defined under the *Swan and Canning Rivers Management Act 2006* where the determining authority is the WAPC.
- 2.6 All functions of the WAPC as set out in -
- (i) Sections 14(a), 14(c), 34, 97, 98, 100, 104, 105, 106, 107, 109, 110, 111, 134, 135, 136, 138, 139, 140, 142, 143, 144, 145, 147, 151, 153, 154, 157, 169, 185, 214, 215, 216 of the Act;
 - (ii) Town Planning Regulations 1967;
 - (iii) Regulations 21, 22, 24 and 27 of the Planning and Development Regulations 2009;
 - (iv) *Strata Titles Act 1985* or the provisions of a strata or survey-strata scheme;
 - (v) Strata Titles General Regulations 1996;
 - (vi) Section 52 and section 85 of the *Land Administration Act 1997*;
 - (vii) Section 40 of the *Liquor Control Act 1988*;
 - (viii) *Perry Lakes Redevelopment Act 2005*.
- 2.7 Power to determine requests for variations to plans of subdivision where WAPC approval is required pursuant to the provisions of an approved local planning scheme.
- 2.8 Power to provide comment on and grant approval to plans known generally as outline development plans, structure plans and similar plans, and to planning policies and similar documents or amendments thereto, requiring the approval or endorsement of the WAPC pursuant to the provisions of a local planning scheme.
- 2.9 Power to provide comments or advice on behalf of the WAPC to a local government or a redevelopment authority where a provision of a local planning scheme or a redevelopment scheme requires comments from the WAPC.
- 2.10 Power to execute and accept the benefit of easements in gross, covenants in gross, records on title and other instruments for dealings in land for subdivisions, strata subdivisions and developments in accordance with any applicable policy and legislation.
- 2.11 Power to make recommendations to the Minister for Planning in relation to requests from local governments to expend monies paid by subdividing land owners in lieu of

setting aside free of cost to the Crown, areas of land for public open space, where such recommendations are in accordance with WAPC policy.

- 2.12 Power to determine whether or not a proposal is likely to have a significant effect on the environment pursuant to section 38(1) of the *Environmental Protection Act 1986* and to refer such proposal to the Environmental Protection Authority.
- 2.13 Power to waive or clear conditions affixed as conditions of approval.
- 2.14 Power to endorse diagrams and plans of survey and deposited plans involving the acquisition and resumption of land created pursuant to Part 11 of the Act and the *Land Administration Act 1997*.
- 2.15 Power to advise the Minister for Planning on any appeal or matter arising therefrom pursuant to Part 14 of the Act.
- 2.16 Power to defend and otherwise deal with applications for review lodged with the State Administrative Tribunal and to appeal, defend, respond and otherwise deal with any matter that may be appealed to the Supreme Court on a question of law.
- 2.17 Power to defend, respond, appeal and otherwise deal with legal proceedings.
- 2.18 Power to prepare and approve, subject to the prior approval of the Minister for Planning, policies relating to planning matters and/or the functions of the WAPC, save and except for State Planning Policies under Part 3 of the Act.
- 2.19 Power to determine matters under Regional Interim Development Orders.
- 2.20 Such powers and functions of the WAPC as set out in-
 - (i) Part 5 of the Act;
 - (ii) *Town Planning Regulations 1967*

as are necessary for the preparation, promulgation and the making of recommendations in relation to the Improvement Scheme authorised by Improvement Plan No. 37 for the Browse Liquefied Natural Gas Precinct.

This meeting is not open to members of the public.

RELEVANT INFORMATION FOR MEMBERS

Disclosure of interests

In accordance with the *Planning and Development Act 2005* and Part 6 of the Standing Orders 2009, members of Committees (and certain employees) are required to disclose the following types of interests that they have or persons closely associated to them, have:

- direct and indirect pecuniary interests (financial);
- proximity interests (location); and
- impartiality interests (relationship).

A “**direct pecuniary interest**” means a relevant person’s interest in a matter where it is reasonable to expect that the matter if dealt with by the board or a Committee, or an employee in a particular way, will result in a financial gain, loss, benefit or detriment for the person.

An “**indirect pecuniary interest**” means a relevant person’s interest in a matter where a financial relationship exists between that person and another person who requires a board or Committee decision in relation to the matter.

A “**proximity interest**” means a relevant person’s interest in a matter if the matter concerns -

- (i) a proposed change to a planning scheme affecting land that adjoins the person’s land;
- (ii) a proposed change to the zoning or use of land that adjoins the person’s land; or
- (iii) a proposed development, maintenance or management of the land or of services or facilities on the land that adjoins the person’s land.

An “**Impartiality interest**” means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the member having the interest and includes an interest arising from kinship, friendship, partnership or membership of an association or an association with any decision making process relating to a matter for discussion before the board or a Committee.

Members disclosing any pecuniary or proximity interests for an item can not participate in discussion or the decision making procedure relating to the item and must leave the meeting room during the discussion of the item. Members disclosing an impartiality interest in an item must also leave the room during the discussion or the decision making procedure relating to the item unless the Committee, by formal resolution, allows the member to remain. The reason to allow a member to remain must be stated in the formal resolution and will be minuted.

Disclosure of representations

Where a member has had verbal communication with or on behalf of a person with an interest in a matter which is before a meeting, the member is to disclose the interest.

Where a member is in receipt of relevant written material (including email) from or on behalf of a person with an interest in a matter which is before a meeting, the member is to table the material at the meeting for the information of members and relevant employees.

ORDER OF BUSINESS

1. Declaration of opening
2. Apologies : Mayor Carol Adams
3. Members on leave of absence and applications for leave of absence
4. Disclosure of interests
5. Declaration of due consideration
6. Deputations and presentations
7. Announcements by the Chairperson of the board and communication from the WAPC
8. Confirmation of minutes of the meeting of 12 February 2013
9. Reports (see attached index of reports)
10. Confidential items (see attached index of reports)
11. General business
12. Items for consideration at a future meeting

Item No	Report	Request	Report Required by
7474.10.11	DA to Construct Ancillary Dwelling – Lot 7 Mottram Road, Carmel	To request DoP to provide more information on bush fire control, access and management plan and maximum sizes of ancillary accommodation	TBA

13. Closure - next meeting to be held on 12 March 2013

Statutory Planning Committee

Minutes
of ordinary meeting 7475
held on Tuesday 12 February 2013

Attendance

Members

Mr Eric Lumsden	WAPC Chairman (Presiding Member) Director General, Department of Planning
Ms Sue Burrows	WAPC appointee
Mr Ian Holloway	Professions representative
Ms Elizabeth Taylor	Community representative

Officers

Ms Anika Chhabra	Department of Planning Senior Planning Officer, Metro South West (Item 9.2)
Ms Sarah Cosstick	Planning Manager, Perth and Peel (Item 10.3)
Ms Natalie Cox	Senior Planning Officer, Independent Planning Reviewer (Item 10.1)
Mr John DiRosso	Senior Planning Officer, Perth and Peel (Item 10.3)
Ms Jackie Holm	Planning Manager, Regional Planning and Strategy (Item 10.2)
Mr Jas Lapinski	Senior Planning Officer, Perth and Peel (Item 9.1)
Ms Kym Petani	Director, Metropolitan Planning North West (Item 9.1)
Mr Paul Sewell	Planning Manager, Perth and Peel (Item 9.2)

Observers

Mr George Hajigabriel	Greg Rowe & Associates Item 6.1 – (refers Report 9.1)
Mr Behnam Bordbar	Transcore (Item 6.3 – refers Report 9.2)
Ms Dalia Gliozzi-Schenk	Allerding & Associates (Item 6.4 – refers Report 10.3)

Statutory Planning Committee

Minutes
of ordinary meeting 7475
held on Tuesday 12 February 2013

Presenters

Ms Claire Richards	Greg Rowe & Associates (Item 6.1 – refers Report 9.1)
Ms Amanda Butterworth	Allerding & Associates (Item 6.2 – refers Report 9.1)
Mr Frank Arangio	Development Planning Strategies (Item 6.3 – refers Report 9.2)
Mr Steve Allerding	Allerding & Associates (Item 6.4 – refers Report 10.3)
Mr John Symonds	Hanson Construction Materials Pty Ltd. (Item 6.4 – refers Report 10.3)

Committee Support

Ms Leah Carr	Committee Support Officer - Department of Planning
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7475.1 Declaration of Opening

The Presiding Member declared the meeting open at 9.00 am, acknowledged the traditional owners and custodians of the land on which the meeting is taking place and welcomed Members.

7475.2 Apologies

Mayor Carol Adams	Local Government representative
Ms Megan Bartle	WAPC appointee
Mr Henty Farrar	Nominee of the Regional Minister

7475.3 Members on Leave of Absence and Applications for Leave of Absence

Mayor Adams has submitted an application for a leave of absence for the Statutory Planning Committee meeting scheduled for 26 February 2013.

Resolved

Moved by Mr Holloway, seconded by Ms Taylor

That the approval for a leave of absence be granted to Mayor Adams for the Statutory Planning Committee meeting to be held on 26 February 2013.

The motion was put and carried.

Statutory Planning Committee

Minutes
of ordinary meeting 7475
held on Tuesday 12 February 2013

7475.4 Disclosure of Interests

Nil.

7475.5 Declaration of Due Consideration

No declarations were made.

7475.6 Deputations and Presentations

7475.6.1 **Adoption of East Wanneroo Cell 9 – East Landsdale Local Structure Plan No. 57 (refers item 9.1)**

Presenter Ms Claire Richards (Greg-Rowe & Associates)

Ms Richards, representing BMC Properties Australia P/L (owners of Lot 154 Landsdale Road), advised the Committee of their client's support of the amended Schedule of Modifications to be tabled by the DoP at item 9.1; but raised concerns that Telstra has not provided confirmed evidence as to the impact of commercial development on radio frequency interference on the Telstra Perth International Telecommunications Centre (PITC).

Ms Richards requested that Telstra provides factual support of its claims to the public.

7475.6.2 **Adoption of East Wanneroo Cell 9 – East Landsdale Local Structure Plan No. 57 (refers item 9.1)**

Presenter Ms Amanda Butterworth (Allerding & Associates)

Ms Butterworth, representing PITC, thanked Members for recommending the meeting between Telstra, the City of Wanneroo and Department of Planning officers.

Members questioned car parking arrangements and Ms Butterworth agreed that if car parking were on the western side of buildings then buildings would be designed to orient towards the car parking, giving a flow-on approach.

Statutory Planning Committee

Minutes
of ordinary meeting 7475
held on Tuesday 12 February 2013

7475.6.3 **Endorsement of the West Karnup Local Structure Plan – Lots 3, 805 and 806 Mandurah Road, Karnup (refers item 9.2)**

Presenter Mr Frank Arangio (Development Planning Strategies)

Mr Arangio advised Members of his client's support for the officer's recommendations.

7475.6.4 **Section 31 (State Administrative Tribunal Act 2004) Reconsideration of Development Application for continuation and expansion of Hard Rock Quarry, City of Swan (refers item 10.3)**

Presenter Mr Steve Allering (Allering & Associates)
Mr John Symonds (Hanson Construction Materials Pty. Ltd.)

Mr Allering gave a powerpoint presentation. A copy of the presentation has been placed on file.

Mr Allering advised Members of his client's support for the officer's recommendations with exception to the ten year timeframe. The Committee was advised that Hanson Construction Materials Pty. Ltd. requires a twenty year timeframe to give certainty to future operations, and that it would provide a ten-year Performance Review Report and an annual Environmental Audit Report to the City of Swan which would include:

- Visual amenity (screening and rehabilitation plan) audit held every 2 years;
- Annual community consultation report;
- Noise – obliged to modify blasting practices to meet current regulation;
- Dust – electronic monitoring of dust readings across the site;

Random monitoring by the Department of Environment and Conservation and by the Department of Mines and Petroleum to ensure compliance is also to be carried out.

7475.7 Announcements by the Chairperson of the Board and communication from the WAPC

The Chairman requested that Committee Support emails members a copy of the quote made by Chief Justice David Malcolm QC contained in the *Western Australian Law Review 1985*, referring to power and use of discretion.

Statutory Planning Committee

Minutes
of ordinary meeting 7475
held on Tuesday 12 February 2013

7475.8 Confirmation of Minutes

7475.8.1 Minutes of the Statutory Planning Committee meeting held on Tuesday 22 January 2013

Resolved

Moved by Ms Taylor, seconded by Mr Holloway

That the minutes of the Statutory Planning Committee meeting held on Tuesday 22 January 2013, be confirmed as a true and correct record of the proceedings.

The motion was put and carried.

7475.9 Reports

7475.9.1 Adoption of East Wanneroo Cell 9 - East Landsdale Local Structure Plan No. 57

File SPN/0124, SPN/0124M-1
Report Number SPC/358
Agenda Part C
Reporting Officer Senior Planning Officer, Metro Planning North West

An amended Schedule of Modifications was tabled, amending wording in no.3 (under heading 12.3.6 Commercial Design Provisions) to "Vehicular Access and parking areas being located on the western side of the Commercial zoned sites to minimise radiofrequency interference to the PICT, in consultation with Telstra".

The tabled amended Schedule of Modifications was approved by the Committee and a copy has been placed on file.

Resolved

Moved by Ms Taylor, seconded by Mr Holloway

That the Western Australian Planning Commission resolves, subject to the amended Schedule of Modifications, to:

- 1. adopt the proposed East Wanneroo Cell 9 - East Landsdale Local Structure Plan No. 57 subject to the Schedule of Modifications appended as Attachment 3;*

Statutory Planning Committee

Minutes
of ordinary meeting 7475
held on Tuesday 12 February 2013

2. *advise the City of Wanneroo of its decision accordingly.*

The motion was put and carried.

7475.9.2

Endorsement of The West Karnup Local Structure Plan - Lots 3, 805 & 806 Mandurah Road, Karnup

File SPN/0426
Report Number SPC/359
Agenda Part C
Reporting Officer Planning Manager, Metropolitan South West

Resolved

Moved by Ms Burrows, seconded by Ms Taylor

That the Western Australian Planning Commission resolves to:

1. *endorse the West Karnup Local Structure Plan, inclusive of a left-in, left-out access point from Mandurah Road south of the commercial zone, subject to the following modifications:*

- 1.1 *Lot 805 is to be excluded from the structure plan (area). Route and design planning for Paganoni Road as a regional connector serving Keralup and the Karnup Transit Oriented Development (TOD) site are still underway, with the structure plan area proposed to be linked to the TOD site via an access road between the realigned Paganoni Road and the main north-south spine road running through the structure plan. Planning for the TOD site also requires resolution on an agreed intersection treatment for the Mandurah Road and Crystaluna Drive intersection, which will provide the key access to the northern portion of the structure plan (comprising Lot 805). Residential densities for Lot 805 are to respond to the proximity of the site within the 1 kilometre walkable catchment of the TOD site; and*

Statutory Planning Committee

Minutes
of ordinary meeting 7475
held on Tuesday 12 February 2013

- 1.2 *the modifications referenced in Attachment 7: Schedule of Modifications (West Karnup LSP);*
2. *advise the City of Rockingham of 1. above and that it is the Commission's expectation that residential densities proposed by the local structure plan will be achieved at the subsequent subdivision and development stages.*

The motion was put and carried.

7475.9.3

Layout Plan for Amendments – Mapping Data Conversion

File DP/11/00058/1
Report Number SPC/360
Agenda Part D
Reporting Officer Planning Manager – Aboriginal Communities

Resolved

Moved by Ms Taylor, seconded by Ms Burrows

That the Western Australian Planning Commission resolves to:

1. *endorse the Amendments to Layout Plans listed in Attachment 1;*
2. *ratify the draft Layout Plans listed in Attachment 2.*

The motion was put and carried.

7475.9.4

Layout Plan for Endorsement – Bell Springs, Shire of Wyndham, East Kimberley

File 057/1/1/25P21
Report Number SPC/361
Agenda Part D
Reporting Officer Planning Manager – Aboriginal Communities

Resolved

Moved by Ms Taylor, seconded by Mr Holloway

Statutory Planning Committee

Minutes
of ordinary meeting 7475
held on Tuesday 12 February 2013

That the Western Australian Planning Commission resolves to endorse the Bell Springs Layout Plan 1.

The motion was put and carried.

7475.9.5

Request to amend Planning Approval - Proposed Mineral Sands Mine located at Lot 59 Westcott Road, Lot 62 Hopelands Road and Lot 300 Atkins Road, North Dandalup

File 616-114-1
Report Number SPC/362
Agenda Part G
Reporting Officer Planning Manager – Perth and Peel Planning

Resolved

Moved by Ms Taylor, seconded by Mr Holloway

That the Western Australian Planning Commission resolves to amend the Approval to Commence Development (WAPC Ref: 616-114-1, dated 29 June 2011) pursuant to Clause 24 of the Peel Region Scheme by:

- 1. modifying Condition 1 to extend the term of the planning approval from 10 years to 12 years, from the date of the original planning approval;*
- 2. deleting Conditions 6, 7 and 8;*
- 3. inserting a new condition which states:
"The primary processing plant for the mineral sands mine shall be located on Lot 62 Hopelands Road, North Dandalup as indicated on Attachment 4;*
- 4. extending the period of time for the development to be substantially commenced from two years to four years.*

The motion was put and carried.

Statutory Planning Committee

Minutes
of ordinary meeting 7475
held on Tuesday 12 February 2013

7475.10 Confidential Items

7475.10.1 City of Wanneroo District Planning Scheme Amendment No.117 - For Final Approval

File TPS/0689
Report Number SPC/363
Agenda Part B
Reporting Officer Planning Manager - Schemes, Strategies & Amendments

THIS ITEM IS CONFIDENTIAL

7475.10.2 Improvement Scheme - Browse Liquefied Natural Gas Precinct

File DP/12/01091/1
Report Number SPC/364
Agenda Part B
Reporting Officer Planning Manager, Regional Planning and Strategy

THIS ITEM IS CONFIDENTIAL

7475.10.3 Section 31 (State Administrative Tribunal Act 2004) Reconsideration of Development Application for continuation and expansion of Hard Rock Quarry, City of Swan

File 21-50148-3
Report Number SPC/365
Agenda Part D
Reporting Officer A/Manager, Metropolitan Planning North-East

THIS ITEM IS CONFIDENTIAL

7475.11 General Business

Nil.

Statutory Planning Committee

Minutes
of ordinary meeting 7475
held on Tuesday 12 February 2013

7475.12 Items for Consideration at a Future Meeting

Item No	Report	Request	Report Required by
7474.10.7	Shire of Toodyay Local Planning Scheme No. 4 Amendment No. 3 – for final approval	To request DoP to provide clarification of recommendation and associated uses.	26/02/13
7474.10.11	DA to Construct Ancillary Dwelling – Lot 7 Mottram Road, Carmel	To request DoP to provide more information on bush fire control, access and management plan and maximum sizes of ancillary accommodation	TBA

7475.13 Closure

The next ordinary meeting is scheduled for 9 am on 26 February 2013 in Room 2.39.

There being no further business before the Committee, the Presiding Member thanked members for their attendance and declared the meeting closed at 10.13 am.

PRESIDING MEMBER _____

DATE _____

INDEX OF REPORTS

Item	Description
9	REPORTS
	C SUBDIVISIONS / AMALGAMATIONS
9.1	SUBDIVISION TO CREATE 24 LOTS FOR RURAL SMALL HOLDINGS - LOT 1 OLD DARWIN ROAD, KUNUNURRA
10	CONFIDENTIAL REPORTS
	A POLICY
10.1	PROPOSED PLANNING BULLETIN 108/2013 - LAYOUT PLANS
	B LOCAL OR REGIONAL PLANNING SCHEMES / AMENDMENTS
10.2	CITY OF WANNEROO DISTRICT PLANNING SCHEME AMENDMENT NO.117 - FOR FINAL APPROVAL
10.3	CITY OF FREMANTLE LOCAL PLANNING SCHEME NO.4 AMENDMENT NO.12 - FOR FINAL APPROVAL (FOLLOWING READVERTISING)
	C SUBDIVISIONS / AMALGAMATIONS
10.4	ENDORSEMENT OF FORRESTFIELD INDUSTRIAL AREA - STAGE 1 LOCAL STRUCTURE PLAN
	E MINOR LOCAL OR REGIONAL PLANNING SCHEMES / LOCAL PLANNING SCHEME AMENDMENTS
10.5	SHIRE OF TOODYAY LOCAL PLANNING SCHEME NO. 4 AMENDMENT NO. 3 - FOR FINAL APPROVAL

ITEM NO: 9.1

SUBDIVISION TO CREATE 24 LOTS FOR RURAL SMALL HOLDINGS - LOT 1 OLD DARWIN ROAD, KUNUNURRA

WAPC OR COMMITTEE:	Statutory Planning Committee
REPORTING AGENCY:	Department of Planning
REPORTING OFFICER:	Manager Planning, Kimberley
AUTHORISING OFFICER:	A/Executive Director Regional Planning and Strategy
AGENDA PART:	C
FILE NO:	146818
DATE:	19 February 2013
ATTACHMENTS:	1: subdivision plan.pdf, 2: location plan.pdf, 3: old darwin road structure plan - not endorsed.pdf, 4: revised landfill buffer plan.pdf
REGION SCHEME ZONING:	REMNANT VEGETATION (NLWA)
LOCAL GOVERNMENT:	Shire of Wyndham-East Kimberley
LOCAL SCHEME ZONING:	Rural Agriculture 1
LGA RECOMMENDATION(S):	N/A
REGION DESCRIPTOR:	Regional Northern (Perth Based)
RECEIPT DATE:	2 October 2012
PROCESS DAYS:	75
APPLICATION TYPE:	Subdivision To Create 24 Lots For Rural Small Holdings.
CADASTRAL REFERENCE:	Old Darwin Road, Kununurra

RECOMMENDATION:

That the Western Australian Planning Commission resolves to approve the application for subdivision of Old Darwin Road, Kununurra as shown on the plan date-stamped 02 October 2012. This decision is valid for four years subject to the following Conditions and Advice:

CONDITIONS:

1. Arrangements being made with the licensed water supply provider so that provision of a suitable water supply service will be available to the lots shown on the approved plan of subdivision. (Licensed water supply provider)

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2. **A restrictive covenant, to the benefit of the Shire of Wyndham-East Kimberley pursuant to Section 129BA of the Transfer of Land Act 1893 is to be placed on the certificate(s) of title of the proposed lot(s) advising of the existence of a restriction on the use of the land. Notice of this restriction is to be included on the diagram or plan of survey (deposited plan). The restrictive covenant is to state as follows:**

'This lot is not to be developed for any purpose other than a residential dwelling and domestic garden activities only. No irrigated horticultural or irrigated agricultural development is permitted.'

(Local Government)

3. **The subdivision plan being amended to allow for an additional lot north of lot 19 to a minimum size of 4 ha and for the amalgamation of lots 1, 2 and 23 into lot 24 for the purposes of retaining a 500 metre separation distance from the existing landfill site. (Local Government)**

4. **In relation to Condition 3, a restrictive covenant is to be placed on the certificate of title for the additional lot which is to state as follows:**

'This lot is within the 500m separation distance to the Kununurra Landfill site. Any development on this lot is to be contained outside the separation distance area.' (Local Government)

5. **Prior to the commencement of subdivisional works, an urban water management plan is to be prepared and approved, in consultation with the Department of Water, consistent with any approved Local Water Management Strategy.**

(Local Government)

6. **The land being filled, stabilised, drained and/or graded as required to ensure that**

- a) **lots can accommodate their intended development; and**
- b) **finished ground levels at the boundaries of the lot(s) the subject of this approval match or otherwise coordinate with the existing and/or proposed finished ground levels of the land abutting; and**
- c) **stormwater is contained on-site, or appropriately treated and connected to the local drainage system.**

(Local Government)

7. **A geotechnical report is required:**

- a) **Prior to the commencement of subdivisional works, the landowner/applicant is to provide a pre-works geotechnical report certifying that the land is physically capable of development or advising how the land is to be remediated and compacted to ensure it is capable of development; and**

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- b) In the event that remediation works are required, the landowner/applicant is to provide a post geotechnical report certifying that all subdivisional works have been carried out in accordance with the pre-works geotechnical report.
(Local Government)
8. A fire management plan being prepared, approved and relevant provisions implemented during subdivisional works, in accordance with the WAPC's *Guideline Planning for Bushfire Protection Edition 2, May 2010 (in particular Appendix 3)* to the specifications of the local government and/or the Department of Fire and Emergency Services. (Local Government)
9. A notification, pursuant to section 70A of the *Transfer of Land Act 1893* is to be placed on the certificate(s) of title of the proposed lot(s). Notice of this notification is to be included on the diagram or plan of survey (deposited plan). The notification is to state as follows:

'The lot(s) is/are subject to a fire management plan.'
(Local Government)
10. Engineering drawings and specifications are to be submitted, approved, and subdivisional works undertaken in accordance with the approved plan of subdivision, engineering drawings and specifications, to ensure that those lots not fronting an existing road are provided with frontage to a constructed road(s) connected by a constructed road(s) to the local road system and such road(s) are constructed and drained at the landowner/applicant's cost.

As an alternative, and subject to the agreement of the Local Government the Western Australian Planning Commission (WAPC) is prepared to accept the landowner/applicant paying to the local government the cost of such road works as estimated by the local government and the local government providing formal assurance to the WAPC confirming that the works will be completed within a reasonable period as agreed by the WAPC. (Local Government)
11. Engineering drawings and specifications are to be submitted and approved, and satisfactory arrangements being made for subdivisional works to be undertaken in accordance with the approved plan of subdivision and engineering drawings and specifications, for the construction of full earthworks, one carriageway, shared path(s), drainage facilities and grade separated pedestrian crossing(s) required for the portion of Old Darwin Road abutting the application area.
(Local Government)
12. Suitable arrangements being made with the local government for the provision of vehicular crossover(s) to service the lot(s) shown on the approved plan of subdivision. (Local Government)
13. An acid sulphate soils self-assessment form and, if required as a result of the self-assessment, an acid sulphate soils report and an acid sulphate soils

management plan shall be submitted to and approved by the Department of Environment and Conservation before any subdivision works or development are commenced. Where an acid sulphate soils management plan is required to be submitted, all subdivision works shall be carried out in accordance with the approved management plan. (Department of Environment and Conservation)

14. Certification from Horizon Power that financial and other requirements have been satisfied for the provision of underground electricity to the lots approved under this application.
15. Such padmount sites as may be required by Horizon Power being transferred free of cost to Horizon Power, with the locations of the sites being to the satisfaction of the local authority.
16. Certification from Horizon Power that satisfactory arrangements have been made for the provision of easements for Horizon Power existing or future equipment.

ADVICE:

1. Condition 5 has been imposed in accordance with *Better Urban Water Management Guidelines (WAPC 2008)*. Further guidance on the contents of urban water management plans is provided in *'Urban Water Management Plans: Guidelines for preparing and complying with subdivision conditions'* (Department of Water 2008).
2. In regard to Condition 10, the landowner/applicant is advised that the road reserves, including the constructed carriageways, laneways, truncations, footpaths/dual use paths and car embayments, are to be generally consistent with the approved plan of subdivision.
3. Condition 13 makes reference to an 'acid sulphate soils self-assessment form'. This form can be downloaded from the Western Australian Planning Commission's website at: www.planning.wa.gov.au
4. The 'acid sulphate soils self-assessment form' makes reference to the Department of Environment and Conservation's 'Identification and Investigation of Acid Sulphate Soils' guideline. This guideline can be obtained from the Department of Environment and Conservation's website at: www.dec.wa.gov.au
5. In regard to Condition 15, Horizon Power provides only one underground point of electricity supply per freehold lot.
6. Clearing of native vegetation is prohibited in Western Australia except where a clearing permit has been granted or an exemption applies. Any clearing of

native vegetation will need to take into consideration the requirements of the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*.

7. Main Roads Western Australia advises the landowner/application with regard to the Victoria Highway:

- (a) no earthworks are to encroach onto the road reserve;
- (b) no stormwater drainage is to be discharged onto the road reserve;
- (c) the landowner/applicant shall make good any damage to the existing verge vegetation

SUMMARY:

This report is being presented to the Statutory Planning Committee because a subdivision application has been lodged for rural smallholdings in the 'Rural Agriculture 1' zone without a supporting structure plan as required under the *Shire of Wyndham-East Kimberley Town Planning Scheme No. 7*.

This application proposes the subdivision of Lot 1 Old Darwin Road to support the development of 24 rural smallholdings lots. The site has been used as a melon farm for the past 14 years and is completely cleared of native vegetation.

A draft scheme has recently been prepared to replace the current scheme, and proposes to rezone the site to 'Rural Smallholdings', consistent with neighbouring properties. Key issues relate to the provision of potable and non-potable water, as the application does not propose to connect to the reticulated water supply, and an adequate separation distance from the adjoining landfill site to the north.

The subdivision is recommended for approval subject to the lots being connected to Kununurra's reticulated water supply, and a notification being placed on title restricting the use of the lots for domestic dwellings and gardens only.

LEGISLATION / STRATEGIC PLAN / POLICY:

Legislation
Section: Subdivision / Development Approval / Reconsiderations
Part 10 of the P&D Act 2005

Strategic Plan
Strategic Goal: Planning
Outcomes: Effective Delivery of Integrated Plans
Strategies: Implement State and Regional Planning priorities

Policy
Number and / or Name: Proposal complies with WAPC policies unless discussed in Planning Assessment section.

INTRODUCTION:

This application proposes the subdivision of Lot 1 Old Darwin Road, measuring 119.9 ha, into 23 lots ranging in size from 3.2 to 5.6 ha - with the majority measuring 4 ha - and a balance lot of 19.2 ha which incorporates a buffer to the existing landfill site directly north (refer **Attachment 1: Subdivision Plan**).

The subject site is located approximately five kilometres from the Kununurra town centre, and can be accessed via an unsealed road connected to the Victoria Highway (refer **Attachment 2: Location Plan**). The lot is currently zoned 'Rural Agriculture 1' in the *Shire of Wyndham-East Kimberley Town Planning Scheme No. 7: Kununurra Townsite and Surrounds* (2001), but is proposed to be rezoned to 'Rural Smallholdings' in the draft Local Planning Scheme No. 8. Power and telecommunication services are available.

This is the first subdivision application received for the lot. Melon farming has been the predominant use of the site since 1994, resulting in a lot completely cleared of any remnant vegetation.

There have been a number of subdivision applications at Egret Close, to the east of the subject site, four of which were refused by the Western Australian Planning Commission but upheld on appeal (application numbers 99894, 106159, 117803, and 130321). Reasons for refusal included inconsistency with the site's Rural Agriculture 2 zoning; the lack of structure planning for the site and surrounds, particularly in relation to connectivity with remaining lots in the Old Darwin Road Precinct; and the lack of evidence that the lots could be supplied with a sustainable water supply. These approvals have resulted in a fragmented and insular subdivision pattern.

A subdivision application has also been received for Lot 2 Old Darwin Road, directly to the west of the subject site. The application proposes the creation of 11 lots, eight of which measure 4 ha and the remaining three retaining large areas of farmland. At the time of writing, the application is yet to be determined.

CONTEXT

Shire of Wyndham-East Kimberley Local Planning Strategy (2006)

The Local Planning Strategy (LPS) identifies high demand for rural living lots, but does not specify appropriate locations or provision of such land near Kununurra. The LPS identifies the Old Darwin Road Precinct as being suitable for rural smallholding lots subject to a) rezoning prior to subdivision; b) the establishment of a minimum lot size of 4 ha; and c) the preparation of a structure plan that addresses groundwater and drainage, potable on-site water supply, waste disposal, buffer zones, and geotechnical suitability among other issues.

The Shire intends to review its LPS in the near future to encompass the entire municipal area. To address demand for rural living lots in the interim, the Shire commenced a partial review of the LPS's rural living component in 2009. In October 2012, the

Statutory Planning Committee (SPC) deferred endorsement of the partial review due to insufficient supporting information. As such, direction on potential rural living areas in the Shire will remain unclear until the partial review is finalised or a comprehensive review of the LPS is undertaken, which may take several years.

Shire of Wyndham-East Kimberley Local Planning Scheme No. 7: Kununurra Townsite and Surrounds (2001)

The site is zoned Rural Agriculture 1 in the current scheme, but is identified as being within Overall Planning Area No. 4 - Old Darwin Road Precinct, which provides for subdivision of rural smallholding lots measuring between 4 and 40 hectares. Structure planning is required to ensure compatibility of proposed uses with existing agricultural and horticultural activity; avoid compromising the future use of prime agricultural land for agricultural purposes; and to prevent proposed land uses from impacting on the adjoining Emu Creek wetland.

Draft Shire of Wyndham-East Kimberley Local Planning Scheme No. 8 (2012)

The draft scheme was endorsed by the SPC for consent to advertise on 11 December 2012. It proposes to rezone the subject site to 'Rural Smallholdings', where the objectives are:

- (a) *to provide appropriate land for people wishing to reside on larger rural lots in proximity to or with the potential for agriculture;*
- (b) *to ensure that agricultural uses within the area and adjoining agricultural uses are protected with appropriate separation from residential development;*
- (c) *to protect productive agricultural land by retaining areas suitable for horticulture in larger lots;*
- (d) *to provide for ancillary agricultural and other land uses compatible with the predominant use of the land; and*
- (e) *to protect environmental and landscape values.*

The draft scheme establishes Development Area 3 over the Old Darwin Road Precinct, which retains the current scheme's Overall Planning Area requirements including the need for a structure plan prior to subdivision. The Environmental Protection Authority's assessment of the draft scheme supports this approach, stating 'the EPA supports the use of a SCA for Lots 1 and 2 Old Darwin Road to protect the water quality and fringing vegetation around Emu Creek, which is a Ramsar wetland'.

Draft State Planning Policy 2.5: Land Use Planning in Rural Areas (WAPC 2012)

This draft policy is set to replace the current *Statement of Planning Policy No. 11: Agricultural and Rural Land Use Planning* (WAPC 2002), receiving endorsement by the Western Australian Planning Commission in February 2012. It is yet to receive the Minister for Planning's consent.

The proposed subdivision is generally consistent with the objectives and policy measures applicable to rural living precincts identified in the draft policy with the exception of water supply. Provisions relevant to this application are:

(vii) 'where a reticulated [water] supply is demonstrated to not be available, or the individual lots are greater than 4 hectares, the WAPC may consider a fit-for-purpose domestic potable water supply, which includes water for fire fighting. The supply must be demonstrated, sustainable and consistent with the appropriate standards for water and health'; and

(viii) 'where an acceptable supply of potable water cannot be demonstrated, the development cannot proceed'.

The issue of water supply is discussed in detail later in this report.

State Planning Policy 2.9: Water Resources (WAPC 2006)

A Local Water Management Strategy (LWMS) has been prepared for the site which addresses issues identified in the policy in respect to protecting waterways and wetlands, ground and surface water, floodplains and stormwater. The LWMS achieves consistency with the general measures of this policy and further water management planning are able to be addressed through standard conditions.

Other relevant planning policies

The subdivision meets the requirements of *Development Control Policy 1.1: Subdivision of Land – General Principles* (WAPC 2004); and *Planning for Bush Fire Protection Guidelines* (WAPC 2010).

The subject site has a low bushfire risk due to the clearing of vegetation required for intensive farming, as well as the site's high water table and proximity to Emu Creek wetland. Standard fire management conditions have been applied due to the likelihood that future landowners will revegetate the site, and due to the lot's location in a bushland setting.

The subdivision plan identifies one entrance and exit, with a future access way through Lot 2, as well as the potential for the proposed cul-de-sac to be opened onto Old Darwin Road in the future; therefore, access is considered to meet the requirements of the Policy and Guideline.

Guidance for the Assessment of Environmental Factors: Separation Distances Between Industrial and Sensitive Land Uses (Environmental Protection Authority 2005)

An operational landfill site exists directly to the north of the subject site. The LPS states that, with improved management techniques, the longevity of the landfill site could be extended for another 20 years. As such, it is not anticipated to close in the near future, making the need for a suitable separation distance essential until such time as a new landfill site and transition timeframes are established.

The Environmental Protection Authority's guidance document recommends a 500m separation distance between landfill with putrescible waste and subdivision for sensitive land uses. The subdivision plan initially placed a buffer which arced from the site of the landfill across the northern part of the subject lot. Clarification was sought on the method used to calculate this distance to ensure it complied with the Guidance Statement's definition. This identified that the initial buffer was taken from the active portion of the site, as opposed to the lot boundary. A revised plan was provided that outlined the buffer area in relation to lot boundaries, consistent with the Guidance Statement (refer **Attachment 4: Revised Landfill Buffer Plan**).

As a result, the buffer area now extends the portion of the balance lot across the northern boundary of the site, requiring the amalgamation of lots 1, 2 and 23 into balance lot 24. While this is a conservative approach, it accommodates the requirements of the EPA's guidance document without requiring extensive odour studies, and will not prevent future subdivision of this area once further information on the landfill site is available.

The proponents have requested that a new lot be created directly above proposed lot 19 which is supported provided that it is a minimum size of 4 ha and a restrictive covenant is placed on the certificate of title to ensure future development on the lot is placed outside the buffer area.

CONSULTATION:

- The Shire of Wyndham-East Kimberley did not provide a response within the 42 day referral period. It is noted that the Shire has provided varying advice on the development potential of the site to the proponents over a five year period. Subsequently, the Department considers it appropriate to proceed with assessment based on the information at hand in this instance.
- The Department of Water (DoW) initially identified a number of outstanding issues with the submitted LWMS, which are addressed in more detail later in this report. Their concerns are:
 - insufficient identification of adequate potable and non-potable water supplies;
 - lack of geotechnical information to determine stormwater management infrastructure;
 - insufficient information regarding on-site waste water management ;
 - risk of major 1 in 100 year flooding of Emu Creek not adequately addressed; and
 - appropriate stormwater management not adequately addressed.

-
- The Department has no objection to the proposal, provided that no lot is within 50 metres of the Emu Creek Lagoon, as it forms part of the Lake Argyle and Kununurra Ramsar Wetland. The lot measures approximately 88 metres from the wetland foreshore to its nearest corner, achieving the Department's recommended separation distance. The Department also provided standard advice in relation to the clearing of native vegetation.
 - The Water Corporation notes that the proposal is not located within close proximity to the existing water supply infrastructure but has no objection and did not recommend any standard conditions.
 - Main Roads and Horizon Power offered no objection to the application subject to standard conditions, while no formal response was received from the Department of Health.

COMMENTS:

Incompatible zoning

The landowners of Lot 1 have not applied for a rezoning and the site is zoned Rural Agriculture 1; however, the Shire has recently proposed rezoning the site to Rural Smallholdings in its draft scheme. As such, subdivision in accordance with the proposed zone is considered acceptable as it will bring the land use into line with the future scheme, and achieve land use consistency across the Old Darwin Road Precinct, eliminating potential land use conflict between rural smallholding lots and the site's current agricultural use.

The proposed Rural Smallholdings zone offers the flexibility to provide for large lots of up to 40 ha to maintain high value agricultural areas, with the option of subdividing areas of low agricultural value into smaller lots. In contrast, a Rural Residential zone is essentially residential in character, which is reinforced by the zone's objective which is 'to provide for low density rural residential development where the predominant use is for residential living in a rural setting'.

The proponent states that the intent of the lots is to support a house and small garden, not to establish crops, which indicates that rural residential might be a more appropriate zone. There are arguments to support 'Rural Residential' sized lots of 1 to 4 ha in this location, as no agricultural uses will remain on site. The end zoning of the site is likely to be one that provides for lifestyle development, which is broadly suitable in this locality.

Need for a structure plan

The SWEK Local Planning Strategy and both current and draft versions of the scheme require a structure plan for the subject site. A preliminary structure plan covering both lots 1 and 2 was prepared in support of the scheme amendment for the adjoining Lot 2, which effectively establishes an indicative subdivision layout across both lots (refer

Attachment 3: Old Darwin Road Structure Plan - not endorsed). The subdivision plan submitted reflects this structure plan.

The *Planning and Development Act 2005* requires that the Commission is not to give an approval that conflicts with the local planning scheme; however, Clause 138 (3)(c) provides that approval may be issued if the conflict is of a minor nature, or the approval is consistent with the general intent of the local planning scheme. The scheme's structure plan requirement can therefore be waived in this instance for the following reasons:

- the subdivision would be consistent with the proposed zoning of the site in the Shire's draft scheme;
- rural smallholdings lots on this site would achieve consistency of land use across the Old Darwin Road Precinct;
- the site is under single ownership and there is no landowner or land use fragmentation;
- the subdivision plan reflects the road network outlined in the structure plan prepared for Lot 2 Old Darwin Road, which will achieve connectivity between the two lots; and
- issues normally addressed as part of the structure planning process have been comprehensively considered as part of this subdivision application, including water management, separation distance to the adjoining Ramsar wetland and separation to the existing landfill.

Protection of Priority Agricultural Land (PAL)

The Department of Agriculture and Food Western Australia (DAFWA) have concluded that although the lots' soil types are "prime" for agricultural purposes, they are not classified as "priority" agricultural land, as more suitable soils exist elsewhere in the Ord River catchment.

The lot is said to be reaching the end of its natural life for viable agricultural production, with current operators becoming increasingly reliant on irrigation and fertiliser use to sustain current crops. Long-term, horticulture is not considered viable due to waterlogging and salinity issues, which have the potential to negatively impact the surrounding environment.

Given that Lot 1 Old Darwin Road is now adjoined on the right and left by land identified for rural smallholdings, the ability to utilise the lot for intensive agriculture is limited without also establishing significant buffers within the site. Subdivision into rural smallholding-sized blocks would achieve consistency in land use across the precinct, preventing future land use conflict, and is considered appropriate in this instance.

Non-potable water supply

DoW is concerned that there will be considerable demand for non-potable water to facilitate the revegetation of the cleared lots, including the establishment of 'hobby farms'. DoW has also questioned the sustainability of ongoing reliance on groundwater as the only identified water source, noting that 'no provisions are proposed to manage this use and this could lead to costly and unmanageable expectations of use of surface water at a later date – an issue that has arisen in a similar situation in recent times'.

DoW has estimated a demand of 2,000 kL per annum for non-potable water for household use, with 10,000 kL per hectare per year for the irrigation of crops and pasture. DoW has requested that a hydrogeological investigation be included in the LWMS to address contamination and supply issues; however, they accept that supplies from groundwater would be sufficient without further investigation should the lots be restricted to a house and garden only. Should subdivision precede the finalisation of the new scheme, the Shire could still consider more intensive agricultural pursuits on the lots under the current zoning. Therefore, it is proposed that a restrictive covenant be applied that restrict the use of the lots for domestic dwellings and gardens only. This will overcome the issue of potential extensive non-potable water use, and avoid the development of land uses that are incompatible with surrounding development. DoW's water licencing requirements and detailed design guidelines for the lots will also serve to reinforce this condition. The proponent supports DoW's non-potable water estimates for household use, and support the restriction on the use of the lots to house and garden only.

Potable on-site water supply

Kununurra's *District Water Management Strategy* (GHD 2009) requires connection to a potable water supply for the development area. The site is located approximately 4.2 kilometres south of the nearest Water Corporation infrastructure. The proponent does not consider it feasible to connect due to costs associated with extending the water supply network and additional costs associated with establishing a holding tank near the site to meet water pressure requirements. No cost details have been provided on servicing the site from the scheme.

The applicant proposes the use of rainwater harvesting from roof runoff and the installation of rainwater tanks for potable water provision, supplemented by water carting in low rainfall years.

The LWMS prepared to support this application assumes water use of 56 kL per person per year with an average household size of 2.4 persons. Current water consumption across the State averages 106 kL per person per year (*Water Forever – Options for our Water Use*, Water Corporation 2008) and *State Water Plan* (Department of Water 2007) aims for 100 kL per person per year. DoW has suggested increasing the water provision to 120 kL per person per year in this instance to accord with usage patterns and to account for the climatic conditions. It is considered reasonable to assume a 100kL per person consumption rate, which accords with both current and aspirational water

consumption rates. Based on an average household occupancy rate of 2.4 people, each household would require 240 kL of water per year. The 56 kL assumption in the LWMS is unrealistic and is not supported.

The LWMS identifies that 774mm of rain falls in a low rainfall year, rising to 994mm in an average rainfall year. Ninety per cent of rainfall occurs during the wet season of October to April, with most occurring in December to February (Bureau of Meteorology 2013). In considering rainfall as a water supply option, there is a need to demonstrate that there is sufficient rainfall to generate a sustainable supply, which includes rainfall intervals. This would also consider whether there is sufficient roof catchment to capture rainfall.

Assuming 85% of rainfall is captured, the calculation model in the draft *Rural Planning Guidelines* (WAPC 2012) suggests that a roof collection area of 451m² is required for a low rainfall year, or 346m² in an average rainfall year. The recommended maximum in the guidelines is 300m², which generally caters for a 4 bedroom home (200m² and a 100m² shed). It should also be noted that homes in the north of the State are usually constructed without gutters, as due to the intense rainfall events, normal household gutters would be unable to 'process' the rainfall. In addition, this part of WA usually experiences little to no rainfall during 7-8 months of the year, so although the water tank would potentially fill over the summer months, it is unlikely rainfall could supply a household for the entire year.

The Guidelines recommend that rainfall requirements be based on an average household size of 4 persons per dwelling, and include an additional 10 kL per year for fire fighting purposes. These additional requirements further increase the required rainfall collection area, and size of the water storage tank for the proposed lots. At subdivision stage there is no mechanism to mandate a larger catchment area, and if there were, requiring certain sizes of catchment could transfer development costs to the future landowner, and possibly create amenity issues. There is also no mechanism for the local government to require construction of a house or shed at a certain size.

The use of rainwater for a potable water supply is not considered suitable for this proposal. If approved, it is likely to create a residential area with a reliance on water carting. Water carting is reliant on the Water Corporation's continued agreement to supply an annual allocation, which is resource-intensive and ultimately unsustainable. DoW has also questioned the feasibility of water carting, and there is no advice or information from the Water Corporation indicating that this approach is suitable, or would be supported.

Another option for a water supply could be groundwater, however no information supporting the use of groundwater has been supplied. It is known that the current irrigation operations have had to rely increasingly on irrigation water, indicating that groundwater supply may be problematic. There is no indication whether the groundwater would be suitable for human consumption.

The Valentine Falls Estate (refer **Attachment 2 - Location Plan**) was granted subdivision approval on 10 December 2007 on the basis that appropriate groundwater supplies could be provided, but subsequent hydrological studies identified that the resource was limited leaving landowners with no recourse but to rely on regular water carting.

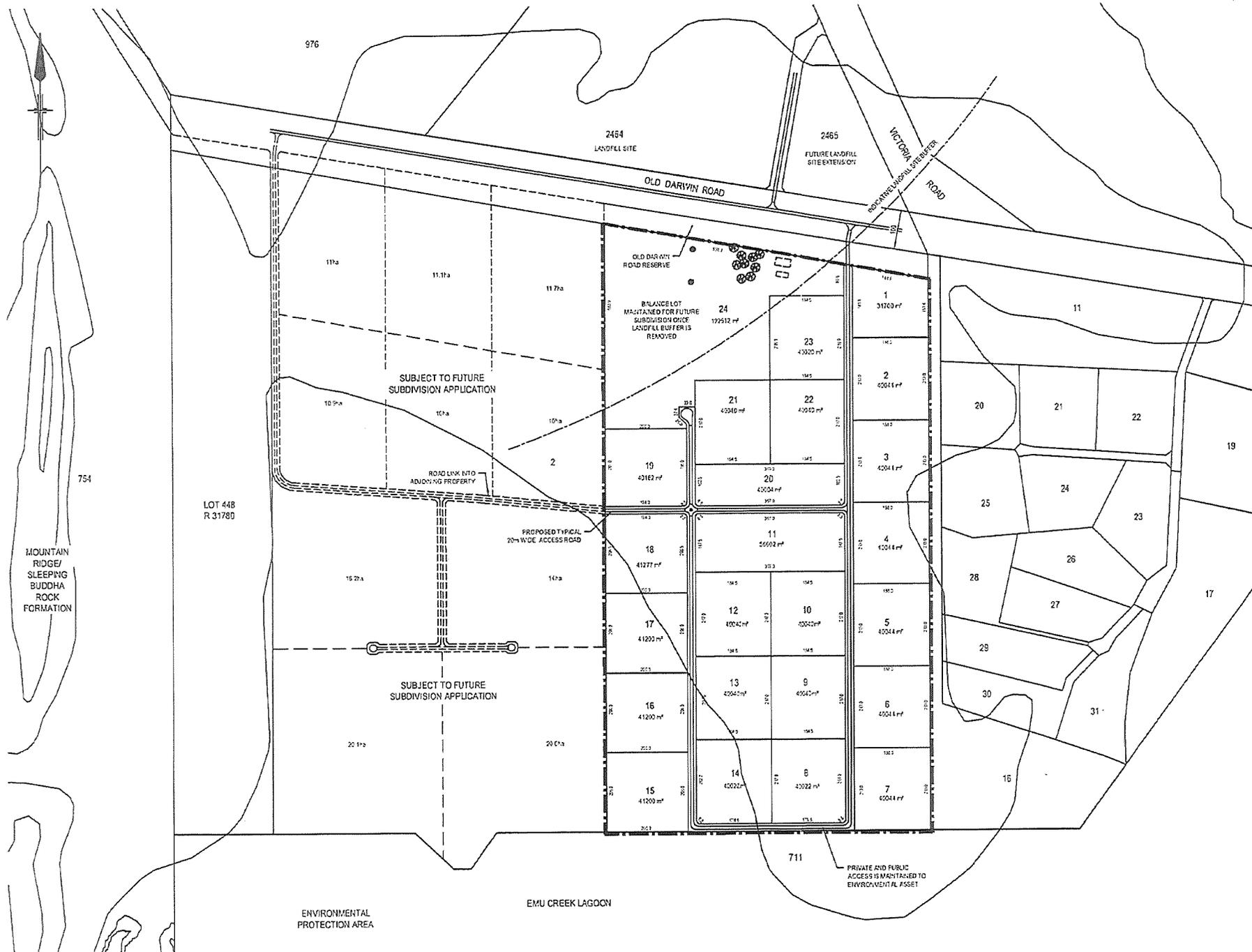
WAPC policy is that 'rural living' or lifestyle development is considered a residential land use, and should be serviced accordingly with scheme water as a preference. While policy provides scope to consider an alternative supply, the supply needs to be demonstrated and sustainable. In the absence of information that demonstrates a sustainable alternative supply, it is recommended that a standard water condition be applied.

Other outstanding water issues

DoW provided written advice to state that the remaining outstanding issues relating to geotechnical information, stormwater and groundwater management and flood risk can be addressed as standard conditions of subdivision as they would not impact on the subdivision plan.

CONCLUSION:

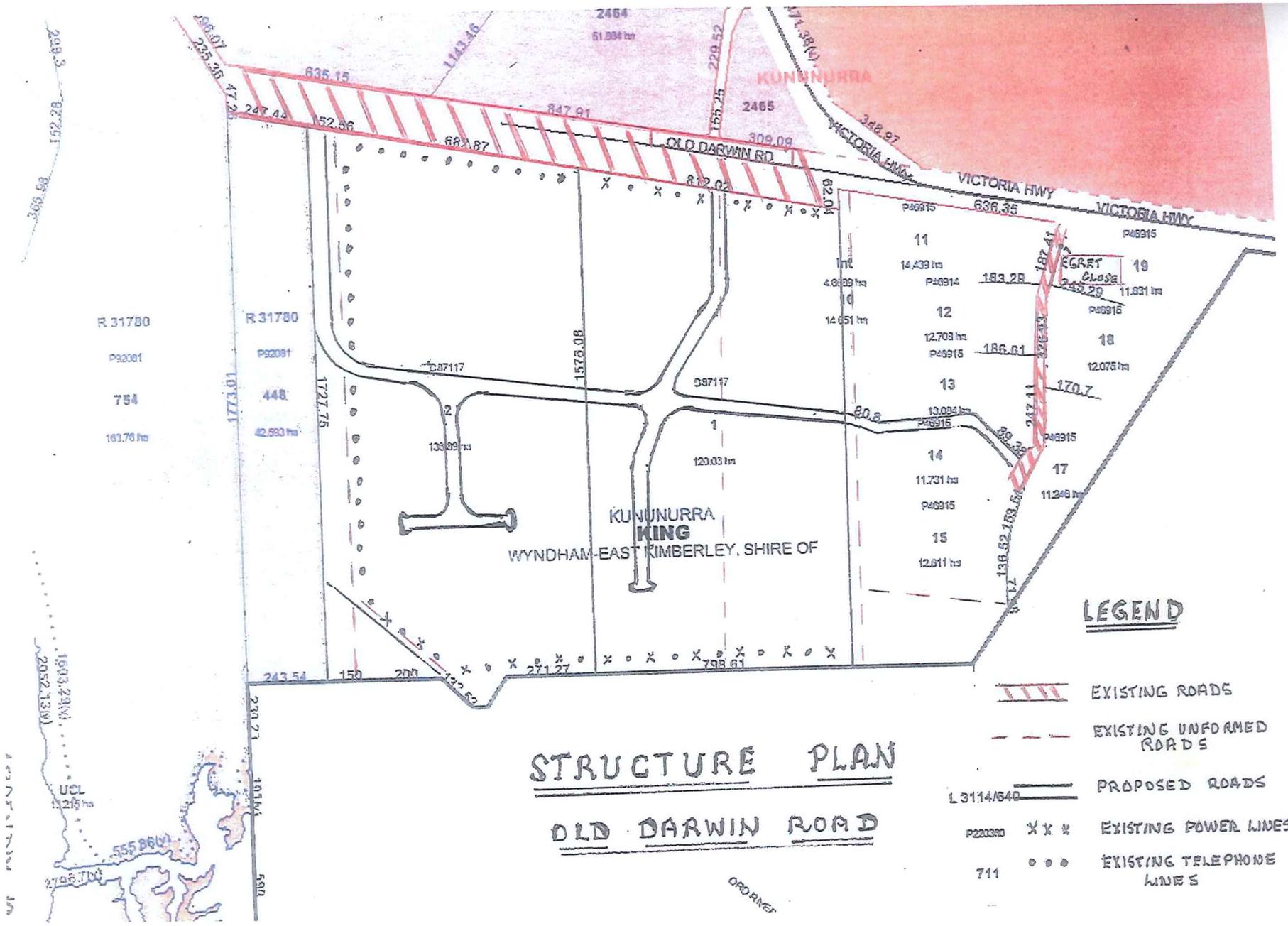
The subdivision proposal for Lot 1 Old Darwin Road is supported subject to conditions.





Valentine Falls Estate

Subject site



ATTACHMENT 4

