

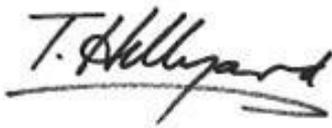


## Statutory Planning Committee

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

**Tuesday 24 September 2013**  
**9.00 am**

**Level 2, Room 2.40**  
**One40 William Street**  
**Perth**



**Tim Hillyard**  
**WAPC Secretary**

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Please convey apologies to Christina Sanders on 6551-9053 or email  
[christina.sanders@planning.wa.gov.au](mailto:christina.sanders@planning.wa.gov.au)

# 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
Vacant	Local government representative Schedule 2 clause 4(2)(f)	
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:

The Statutory Planning Committee is one of four committees set up by the WAPC on 1 March 1995 upon proclamation of the *Planning Legislation Amendment Act (No. 2) 1994*.

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
3. Members on leave of absence and applications for leave of absence
  - Ms Sue Burrows
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 10 September 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
7477.11.1	The Wheatbelt – Towns of York and Toodyay	To request Committee Support to arrange a site visit with regard to water and bush fire issues and in relation to future approvals for rural living subdivisions due to lack of water resources, and a possible need for consolidation of the local towns. (to be combined with 7477.11.2) (Subsequently resolved on 28/5/13 to hold the site visit on a date when a cancelled SPC meeting would occur)	8/10/2013

7477.11.2	Avon Arc Study	To request Committee Support to invite Avon Arc to advise the Committee on issues such as sustainability, identifying priority areas, royalties for regions and capability. (to be combined with 7477.11.1) (as above)	8/10/13
7477.11.3	Private Arrangements for obtaining money for public open space by agreement	To request the Department to prepare a report to the WAPC regarding these types of arrangements.	10/9/13
7482.9.1	Update of Planning Bulletin 67: Guidelines for Wind Farm Development	To request the Department to liaise with the Department of Lands and the Department of Agriculture and consult with departments and the statutory planning section to ascertain whether there are any further refinements required to the policy. To incorporate comments from SPC members and to represent the policy to a future SPC meeting.	24/9/13

**13. Closure - next meeting to be held on 22 October 2013**

## Statutory Planning Committee

Minutes  
of ordinary meeting 7488  
held on 10 September 2013

### Attendance

#### Members

Ms Megan Bartle	WAPC appointee
Mr Henty Farrar	Nominee of the Regional Minister
Mr Ian Holloway	Professions representative
Ms Elizabeth Taylor	Community representative (Presiding Member)
Mr Neil Thomson	Proxy to Director General

#### Officers

Mr Johan Gildenhuys	<b>Department of Planning</b> Planning Manager, Regional Planning and Strategy (Item 10.1)
Ms Jackie Holm	Planning Manager, Regional Planning and Strategy (Item 10.8)
Mr Christopher Ng	Senior Planning Officer, Regional Planning and Strategy (Item 10.8)
Mr David Saunders	Executive Director, Regional Planning and Strategy (Item 10.4)
Mr Peter Wood	Senior Planning Officer, Regional Planning and Strategy (Item 10.4)
Mr Phil Woodward	Planning Director, Regional Planning and Strategy (Item 10.4)

#### Observers

Mr Leonard Long	Town of Port Hedland (Item 6.1 refers Item 10.4)
Ms Rebecca White	Department of State Development (Item 6.4 refers Item 10.4)

#### Presenters

Mr Eber Butron	Town of Port Hedland (Item 6.1 refers Item 10.4)
Mr Scott Cameron	Finbar (Item 6.2 refers Item 10.4)
Mr Greg Rowe	Rowe Group (Item 6.2 refers Item 10.4)
Mr Mark Donovan	BHP Billiton Iron Ore (Item 6.3 refers Item 10.4)
Mr Paul Kotsoglo	Planning Solutions (Item 6.3 refers Item 10.4)
Ms Mirella Goetzmann	Department of Health (Item 6.4 refers Item 10.4)
Ms Karen Hall	Department of State Development (Item 6.4 refers Item 10.4)

## Statutory Planning Committee

Minutes  
of ordinary meeting 7488  
held on 10 September 2013

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Mr Anthony Sheehan	Environmental Protection Authority (Item 6.4 refers Item 10.4)
Mr Vernon Butterly	Whelans Town Planning (Item 6.5 refers Item 10.1)
Mr Ben Dreckow	City of Mandurah (Item 6.6 refers Item 10.2)
Ms Fiona Mullen	City of Mandurah (Item 6.6 refers Item 10.2)
<b>Committee Support</b>	
Ms Christina Sanders	Committee Support Officer - Department of Planning

### 7488.1 Declaration of Opening

Due to the absence of the Presiding Member and in accordance with clause 3.6 of the Standing Orders 2009, a member was chosen to preside over the meeting.

**Mr Farrar nominated Ms Taylor.  
Ms Taylor accepted the nomination.**

**Resolved**

**Moved by Mr Farrar, seconded by Mr Holloway**

*That Ms Taylor preside over the meeting of the Statutory Planning Committee in the absence of the Presiding Member.*

***The motion was put and carried.***

The Presiding Member declared the meeting open at 9.02 am, acknowledged the traditional owners and custodians of the land on which the meeting is taking place and welcomed Members.

### 7488.2 Apologies

Mr Eric Lumsden	WAPC Chairman (Presiding Member) Director General, Department of Planning
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### 7488.3 Members on Leave of Absence and Applications for Leave of Absence

Ms Burrows has submitted an application for a leave of absence for the Statutory Planning Committee meetings scheduled between 2 September and 14 October 2013.

## Statutory Planning Committee

Minutes  
of ordinary meeting 7488  
held on 10 September 2013

### 7488.4 Disclosure of Interests

Member/Officer	Minute No.	Page No.	Nature of Interest
Mr Thomson	All items	All items	Impartiality

**Resolved**

***Moved by Ms Bartle, seconded by Mr Holloway***

*In accordance with clause 6.10(7) of the Standing Orders 2009, members of the Statutory Planning Committee agree that the member listed above, who has disclosed an impartiality interest, is permitted to participate in discussion and voting on the items as the interest is insignificant and is unlikely to influence Mr Thomson's conduct in relation to the matters.*

***The motion was put and carried.***

### 7488.5 Declaration of Due Consideration

No declarations were made.

### 7488.6 Deputations and Presentations

7488.6.1 **Town of Port Hedland - Local Planning Scheme Amendment No. 62 - For Final Approval (refers Item 10.4)**

Presenter Mr Eber Butron

Mr Butron gave a powerpoint presentation in support of the Town of Port Hedland Local Planning Scheme Amendment No. 62 and provided clarification in response to members' questions.

A copy of the presentation has been placed on file.

7488.6.2 **Town of Port Hedland - Local Planning Scheme Amendment No. 62 - For Final Approval (refers Item 10.4)**

Presenters Mr Scott Cameron  
Mr Greg Rowe

Messrs Rowe and Cameron gave a presentation in support of the Town of Port Hedland Local Planning Scheme Amendment No. 62 and answered questions from members.

## Statutory Planning Committee

Minutes  
of ordinary meeting 7488  
held on 10 September 2013

7488.6.3      **Town of Port Hedland - Local Planning Scheme Amendment No. 62 - For Final Approval (refers Item 10.4)**

Presenters    Mr Paul Kotsoglo  
                    Mr Mark Donovan

Messrs Kotsoglo and Donovan gave a powerpoint presentation outlining their concerns with the Town of Port Hedland Local Planning Scheme Amendment No. 62 and answered questions from members.

A letter from the Port Hedland Industries Council had been circulated to members prior to the meeting.

A deputation note was tabled for members' interest.

Copies of the presentation, letter and deputation note have been placed on file.

7488.6.4      **Town of Port Hedland - Local Planning Scheme Amendment No. 62 - For Final Approval (refers Item 10.4)**

Presenters    Ms Karen Hall  
                    Ms Mirella Goetzmann  
                    Ms Rebecca White  
                    Mr Anthony Sheehan

Ms Hall gave a presentation outlining concerns with the Town of Port Hedland Local Planning Scheme Amendment No. 62.

Ms Hall, Ms Goetzmann, Mr Sheehan and Ms White provided clarification in response to members' questions.

7488.6.5      **Shire of Esperance - Local Planning Scheme Amendment No. 12 (refers Item 10.1)**

Presenter    Mr Vernon Butterly

Mr Butterly gave a powerpoint presentation in support of the Shire of Esperance Local Planning Scheme Amendment No. 12 and answered questions from members.

Summary notes had been circulated to members prior to the meeting.

Copies of the presentation and summary notes have been placed on file.

## Statutory Planning Committee

Minutes  
of ordinary meeting 7488  
held on 10 September 2013

### 7488.6.6 **City of Mandurah – Resolution to Prepare a Local Planning Scheme**

Presenters Mr Ben Dreckow  
Ms Fiona Mullen

Mr Dreckow and Ms Mullen gave a presentation in support of the City of Mandurah Resolution to Prepare a Local Planning Scheme and answered questions from members.

### 7488.7 **Announcements by the Chairperson of the Board and communication from the WAPC**

Nil.

### 7488.8 **Confirmation of Minutes**

#### 7488.8.1 **Minutes of the Statutory Planning Committee meeting held on 27 August 2013**

**Resolved**

***Moved by Ms Bartle, seconded by Mr Thomson***

*That the minutes of the Statutory Planning Committee meeting held on 27 August 2013, be confirmed as a true and correct record of the proceedings.*

***The motion was put and carried.***

### 7488.9 **Reports**

#### 7488.9.1 **Endorsement of Outline Development Plan Lot 6 Bortolo Drive, Greenfields**

File SPN/0514  
Report Number SPC/500  
Agenda Part C  
Reporting Officer Senior Planning Officer

**Resolved**

***Moved by Ms Bartle, seconded by Mr Holloway***

*That the Western Australian Planning Commission resolves to:*

## Statutory Planning Committee

Minutes  
of ordinary meeting 7488  
held on 10 September 2013

1. *endorse the outline development plan for Lot 6 Bortolo Drive Greenfields, subject to the outline development plan being modified in accordance with the attached schedule of modifications; and*
2. *advise the City of Mandurah of its decision.*

***The motion was put and carried.***

### **7488.9.2 Reconsideration of Modifications Required to the City of Swan Local Structure Plan No. 11**

File SPN/0037  
Report Number SPC/501  
Agenda Part C  
Reporting Officer Planning Manager, Metropolitan Planning North East

**THIS ITEM WAS WITHDRAWN PRIOR TO THE MEETING.**

### **7488.9.3 Approval for Refurbishment and Upgrade of Community Centre - Hampton Road, Pinjarra**

File 616-134-1  
Report Number SPC/502  
Agenda Part G  
Reporting Officer Planning Manager, Peel Planning, Perth and Peel Planning

**Resolved**

***Moved by Ms Bartle, seconded by Mr Farrar***

*That the Western Australian Planning Committee resolves to approve the application for approval to commence development in accordance with the plans submitted thereto, subject to the following condition and advice notes:*

**CONDITIONS:**

1. *Suitable arrangements are to be made with the Shire of Murray for the provision of vehicular crossovers to service the development.*

## Statutory Planning Committee

Minutes  
of ordinary meeting 7488  
held on 10 September 2013

2. *Uniform fencing is to be constructed along the western boundary of Lot 299 Hampton Road Pinjarra to control access to the regionally significant vegetation located on Lot 354 Hampton Road Pinjarra to the satisfaction of the Western Australian Planning Commission.*

***The motion was put and carried.***

### 7488.10 Confidential Items

**7488.10.1 Shire of Esperance - Local Planning Scheme Amendment No. 12 - For Final Approval**

File TPS/1037/1  
Report Number SPC/503  
Agenda Part B  
Reporting Officer Senior Planning Officer, Central Regions

**THIS ITEM IS CONFIDENTIAL**

**7488.10.2 City of Mandurah - Resolution to Prepare a Local Planning Scheme**

File TPS/1197  
Report Number SPC/504  
Agenda Part B  
Reporting Officer Senior Planning Officer

**THIS ITEM IS CONFIDENTIAL**

**7488.10.3 Shire of Murray - Local Planning Scheme Amendment 275 - For Consent to Advertise**

File TPS/0665/1  
Report Number SPC/505  
Agenda Part E  
Reporting Officer Planning Manager (Peel)

**THIS ITEM IS CONFIDENTIAL**

**7488.10.4 Town of Port Hedland - Local Planning Scheme Amendment No. 62 - For Final Approval**

File TPS/1047  
Report Number SPC/506  
Agenda Part B  
Reporting Officer Senior Planning Officer - Northern Regions

## Statutory Planning Committee

Minutes  
of ordinary meeting 7488  
held on 10 September 2013

### THIS ITEM IS CONFIDENTIAL

**7488.10.5 Shire of Northampton Horrocks Beach Local Planning Strategy – Consent to Advertise**

File DP/09/00777/1  
Report Number SPC/507  
Agenda Part E  
Reporting Officer Statutory Planning Manager

### THIS ITEM IS CONFIDENTIAL

**7488.10.6 Shire of Mingenew: Draft Mingenew Townsite Strategy - For Consent to Advertise**

File DP/13/00601  
Report Number SPC/508  
Agenda Part E  
Reporting Officer Planning Manager, Statutory Planning Manager

### THIS ITEM IS CONFIDENTIAL

**7488.10.7 Shire of Three Springs Draft Townsite Strategy - For Consent to Advertise**

File DP/13/00479  
Report Number SPC/509  
Agenda Part E  
Reporting Officer Planning Manager, Statutory Planning Manager

### THIS ITEM IS CONFIDENTIAL

**7488.10.8 Shire of Broome - Local Planning Scheme No. 4 Amendment No. 62**

File TPS/751/1  
Report Number SPC/510  
Agenda Part E  
Reporting Officer Planning Manager - Kimberley

### THIS ITEM IS CONFIDENTIAL

**7488.11 General Business**

Nil.

## Statutory Planning Committee

Minutes  
of ordinary meeting 7488  
held on 10 September 2013

### 7488.12 Items for Consideration at a Future Meeting

Item No	Report	Request	Report Required by
7477.11.1	The Wheatbelt – Towns of York and Toodyay	To request Committee Support to arrange a site visit with regard to water and bush fire issues and in relation to future approvals for rural living subdivisions due to lack of water resources, and a possible need for consolidation of the local towns. (to be combined with 7477.11.2). (Subsequently resolved on 28/5/13 to hold the site visit on a date when a cancelled SPC meeting would occur.	8/10/13
7477.11.1	The Wheatbelt – Towns of York and Toodyay	To request Committee Support to arrange a site visit with regard to water and bush fire issues and in relation to future approvals for rural living subdivisions due to lack of water resources, and a possible need for consolidation of the local towns. (to be combined with 7477.11.2). (Subsequently resolved on 28/5/13 to hold the site visit on a date when a cancelled SPC meeting would occur.	8/10/13
7477.11.3	Private Arrangements for obtaining money for public open space by agreement	To request the Department to prepare a report to the WAPC regarding these types of arrangements.	10/09/13

## Statutory Planning Committee

Minutes  
of ordinary meeting 7488  
held on 10 September 2013

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7482.9.1	Update of Planning Bulletin 67: Guidelines for Wind Farm Development	To request the Department to liaise with the Department of Lands and the Department of Agriculture and consult with departments and the statutory planning section to ascertain whether there are any further refinements required to the policy. To incorporate comments from SPC members and to represent the policy to a future SPC meeting.	TBA
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### 7488.13 Closure

The next ordinary meeting is scheduled for 9.00 am on Tuesday 24 September 2013.

There being no further business before the Committee, the Presiding Member thanked members for their attendance and declared the meeting closed at 11.50 am.

**PRESIDING MEMBER** \_\_\_\_\_

**DATE** \_\_\_\_\_

Unconfirmed

## INDEX OF REPORTS

Item	Description
<b>9</b>	<b>REPORTS</b>
H	PRELIMINARY SUBDIVISIONAL / SURVEY STRATA
9.1	CREATE 2 FREEHOLD LOT(S) FOR RESIDENTIAL PURPOSE – EXMOUTH
9.2	SUBDIVISION & SURVEY STRATA OF LOTS 2 & 6 EALY STREET, MOUNT HELENA
9.3	SUBDIVISION TO CREATE TWO LOTS FOR FARMING AND CONSERVATION PURPOSE - LOT 4194 GARDENER ROAD KENTDALE
<b>10</b>	<b>CONFIDENTIAL REPORTS</b>
A	POLICY
10.1	PLANNING BULLETIN: PLANNING FOR BUSHFIRE
B	LOCAL OR REGIONAL PLANNING SCHEMES / AMENDMENTS
10.2	CITY OF STIRLING, LOCAL PLANNING SCHEME NO. 3 AMENDMENT NO. 26 - FOR FINAL APPROVAL
10.3	CITY OF SWAN - LOCAL PLANNING SCHEME AMENDMENT NO. 58 - FOR FINAL APPROVAL
E	MINOR LOCAL OR REGIONAL PLANNING SCHEMES / LOCAL OR REGIONAL PLANNING SCHEME AMENDMENTS
10.4	SHIRE OF DALWALLINU – LOCAL PLANNING STRATEGY AND LOCAL PLANNING SCHEME NO. 2 – FINAL APPROVAL
G	DEVELOPMENTS / SUBDIVISIONAL / SURVEY STRATA
10.5	REQUEST FOR RECONSIDERATION OF CONDITIONS - SUBDIVISION OF LOT 9026 PORTMARNOCK DRIVE THE VINES & LOT 9228 BANROCK DRIVE ELLENBROOK

## ITEM NO: 9.1

### CREATE 2 FREEHOLD LOT(S) FOR RESIDENTIAL PURPOSE - EXMOUTH

<b>WAPC OR COMMITTEE:</b>	<b>Statutory Planning Committee</b>
REPORTING AGENCY:	Department of Planning
REPORTING OFFICER:	Manger Statutory Planning, Central Regions
AUTHORISING OFFICER:	Executive Director, Regional Planning and Strategy
AGENDA PART:	H
FILE NO:	148237
DATE:	28/08/13
ATTACHMENT(S):	1 - Subdivision Plan 2 - Zoning Map
REGION SCHEME ZONING:	Remnant Vegetation (NIWA), Threatened Fauna Buffer
LOCAL GOVERNMENT:	Shire of Exmouth
LOCAL SCHEME ZONING:	Residential
LGA RECOMMENDATION(S):	Conditional Approval
REGION DESCRIPTOR:	Geraldton
RECEIPT DATE:	28-JUN-13
PROCESS DAYS:	63
APPLICATION TYPE:	Subdivision
CADASTRAL REFERENCE:	Lot 1346 Tambor Drive, Exmouth

#### RECOMMENDATION:

***That the Western Australian Planning Commission resolves to approve the application for subdivision of Lot 1346 Tambor Drive, Exmouth as shown on the plan date stamped 26 June 2013 subject to the following conditions and advice:***

#### ***Conditions:***

- 1. Arrangements being made with the Water Corporation so that provision of a suitable water supply service will be available to the lots shown on the approved plan of subdivision. (Water Corporation)***
- 2. Arrangements being made with the Water Corporation so that provision of a sewerage service will be available to the lots shown on the approved plan of subdivision. (Water Corporation)***

- 
3. ***A notification, pursuant to Section 165 of the Planning and Development Act 2005 is to be placed on the certificates of title of the proposed lot(s) advising of the existence of a hazard or other factor. Notice of this notification is to be included on the diagram or plan of survey (deposited plan). The notification is to state as follows:***

***'This lot is in close proximity to known mosquito breeding areas. The predominant mosquito species is known to carry viruses and other diseases.'*** (Western Australian Planning Commission)

4. ***Arrangements being made to the satisfaction of the Western Australian Planning Commission and to the specification of Horizon Power for the provision of an underground electricity supply service to the lot(s) shown on the approved plan of subdivision. (Horizon Power)***

**Advice:**

1. ***In regard to Condition/s 1 and 2, the landowner/applicant shall make arrangements with the Water Corporation for the provision of the necessary services. On receipt of a request from the landowner/applicant, a Land Development Agreement under Section 67 of the Water Agencies (Powers) Act 1984 will be prepared by the Water Corporation to document the specific requirements for the proposed subdivision.***
2. ***In regard to Condition 4, Horizon Power provides only one underground point of electricity supply per freehold lot.***

**SUMMARY:**

- The application proposes the freehold subdivision of Lot 1346 Tambor Drive, Exmouth, to create two lots for residential purposes.
- The application is presented to the Western Australian Planning Commission as the average lot size of the proposed subdivision does not comply with WAPC policy and determination in support falls outside the delegation instrument dated 23 October 2012.
- It is recommended that the application be approved subject to standard conditions.

**LEGISLATION / STRATEGIC PLAN / POLICY:**

**Legislation** 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

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## Policy

Number and / or Name: Proposal complies with WAPC policies unless discussed in the Comments section.

## INTRODUCTION:

The application proposes the subdivision of one lot of 1053m<sup>2</sup> (Lot 1346) to create two lots of 517m<sup>2</sup> (proposed Lot 1) and 536m<sup>2</sup> (proposed Lot 2) (**Attachment 1 - Subdivision Plan**).

The subject land is zoned 'Residential' with a density coding of R17.5 under the Shire of Exmouth Town Planning Scheme No. 1 (**Attachment 2 - Zoning Map**).

## CONSULTATION:

The Shire of Exmouth raised no objections to the application.

The other referral authorities raised no objections to the application and supported it subject to conditions and / or advice.

All recommended conditions have been assessed and where considered fair, reasonable and relevant, they should be imposed.

## COMMENTS:

The application is consistent with the Shire of Exmouth's operative Local Planning Scheme.

### Residential Design Codes

WAPC State Planning Policy 3.1 - Residential Design Codes (R-Codes) requires a minimum lot size of 500m<sup>2</sup> for residential subdivision at R17.5 density. The proposal complies with this requirement.

The R-Codes require an average lot size of 571m<sup>2</sup> for residential subdivision at R17.5 density. The average lot size of the proposal is 536.5m<sup>2</sup>. The proposal does not comply with this requirement.

This average includes an additional 20m<sup>2</sup> in area being added to proposed Lot 1 as it is a lot with a corner truncation. Under clause 5.1.1 C1.3 of the R Codes up to 20m<sup>2</sup> of the truncation shall be added to the area of the adjoining lot for the purposes of calculating compliance with required minimum an average lot sizes.

### Development Control Policy 2.2 - Residential Subdivision (DC 2.2)

Clause 3.2.3 of DC 2.2 states that a subdivision may be approved if the variation to the average lot size reduces the average of the overall subdivision by no more than 5% of the average lot size specified in Table 1. This variation can only be applied if

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all the lots in the subdivision meet the required minimum lot size, a requirement this proposal complies with.

If this variation is applied the average lot size required for R17.5 development is 542.45m<sup>2</sup> (536.5m<sup>2</sup> provided with the truncation concession). The proposal still does not comply with the allowed variation as it is deficient by 6m<sup>2</sup>. In order to comply the proposal would require a 6.042% variation, which is the reason that the proposal has been referred to the Statutory Planning Committee.

It is recommended that the application be approved as:

- the minimum Lot size of 500m<sup>2</sup> is satisfied;
- the subject land was already subject to a previous approval for a similar two lot subdivision which has since lapsed (WAPC No. 101736);
- the 6m<sup>2</sup> variation required is minor in nature (an approximately 6% variation as opposed to the 5% allowed by DC 2.2);
- the subject land is a corner lot and both lots created by the proposal will have adequate street frontages;
- the local government is supportive of the proposal.

#### Delegation Instrument

The WAPC's delegation instrument dated 23 October 2013 provides for;

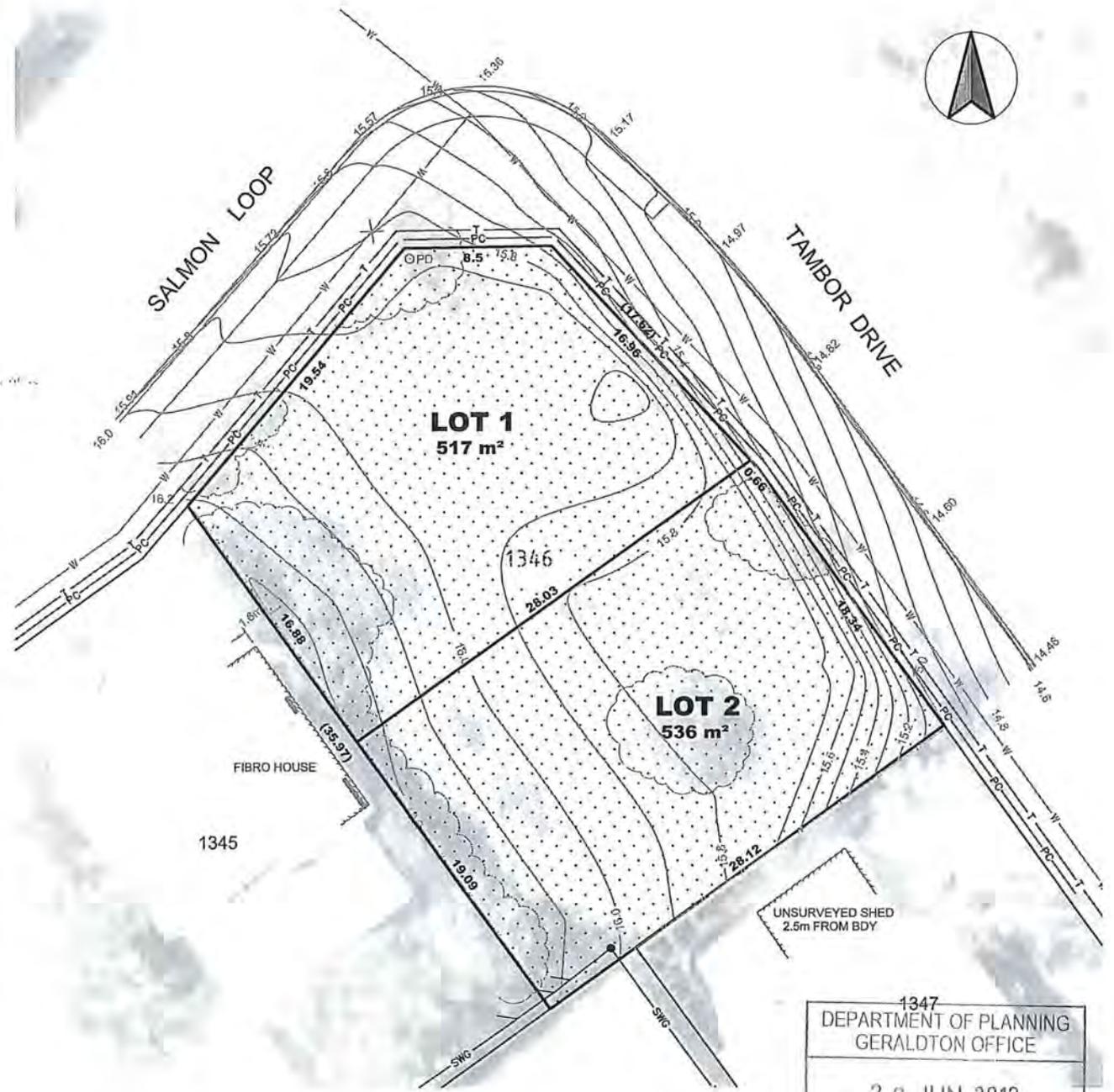
*"Power to determine all applications to the WAPC under Part 10 of the Act where such determination is in accordance with predetermined policies (if any) of the WAPC"*

The recommendation to support the proposal is contrary to policy and falls outside the scope of the delegation instrument.

#### **CONCLUSION:**

The application meets the minimum lot size requirements set out in WAPC policy. The variation to the average lot size required is minor in nature. Conditional approval is recommended.

23713AS1-1-1



1347	
DEPARTMENT OF PLANNING GERALDTON OFFICE	
26 JUN 2013	
FILE	148237

**LEGEND**

- OPD POWER DOME
- T TELSTRA (SOURCED DBYD)
- W WATER (SOURCED FROM ESINET)
- SWG SEWER GRAVITY (SOURCED FROM ESINET)
- F FENCE
- BUILDING WINDOW

- SUBJECT BOUNDARY
- ABUTTING BOUNDARY
- APPLICATION AREA
- VEGETATION

No. OF EXISTING LOTS : 1  
 LOT 1346 : 1053 m²  
 No. OF PROPOSED LOTS : 2

**EXPLANATORY NOTE**

THIS PLAN WAS PREPARED TO ACCOMPANY AN APPLICATION TO THE WESTERN AUSTRALIAN PLANNING COMMISSION FOR APPROVAL TO SUBDIVIDE THE LAND DESCRIBED IN THE PLAN AND IS NOT TO BE USED FOR ANY OTHER PURPOSE OR BY ANY OTHER PERSON. HILLE, THOMPSON & DELFOS ACCEPT NO RESPONSIBILITY FOR ANY LOSS OR DAMAGE CAUSED TO ANY PERSON WHO MAY RELY ON THE INFORMATION ON THIS PLAN FOR A PURPOSE FOR WHICH IT WAS NOT INTENDED.

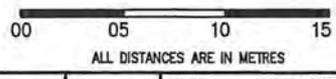
THE SERVICES SHOWN ON THIS PLAN HAVE BEEN PLOTTED FROM THE RECORDS OF THE RELEVANT AUTHORITIES. PRIOR TO ANY DEMOLITION, EXCAVATION OR CONSTRUCTION ON THE SITE, THE RELEVANT AUTHORITIES SHOULD BE CONTACTED.

AERIAL PHOTO WAS SOURCED FROM LANDGATE

AERIAL PHOTO SOURCED FROM LANDGATE

**REVISIONS**

1	31/05/13	DESIGN AMENDMENT	SL
0	29/04/13	ORIGINAL	SL



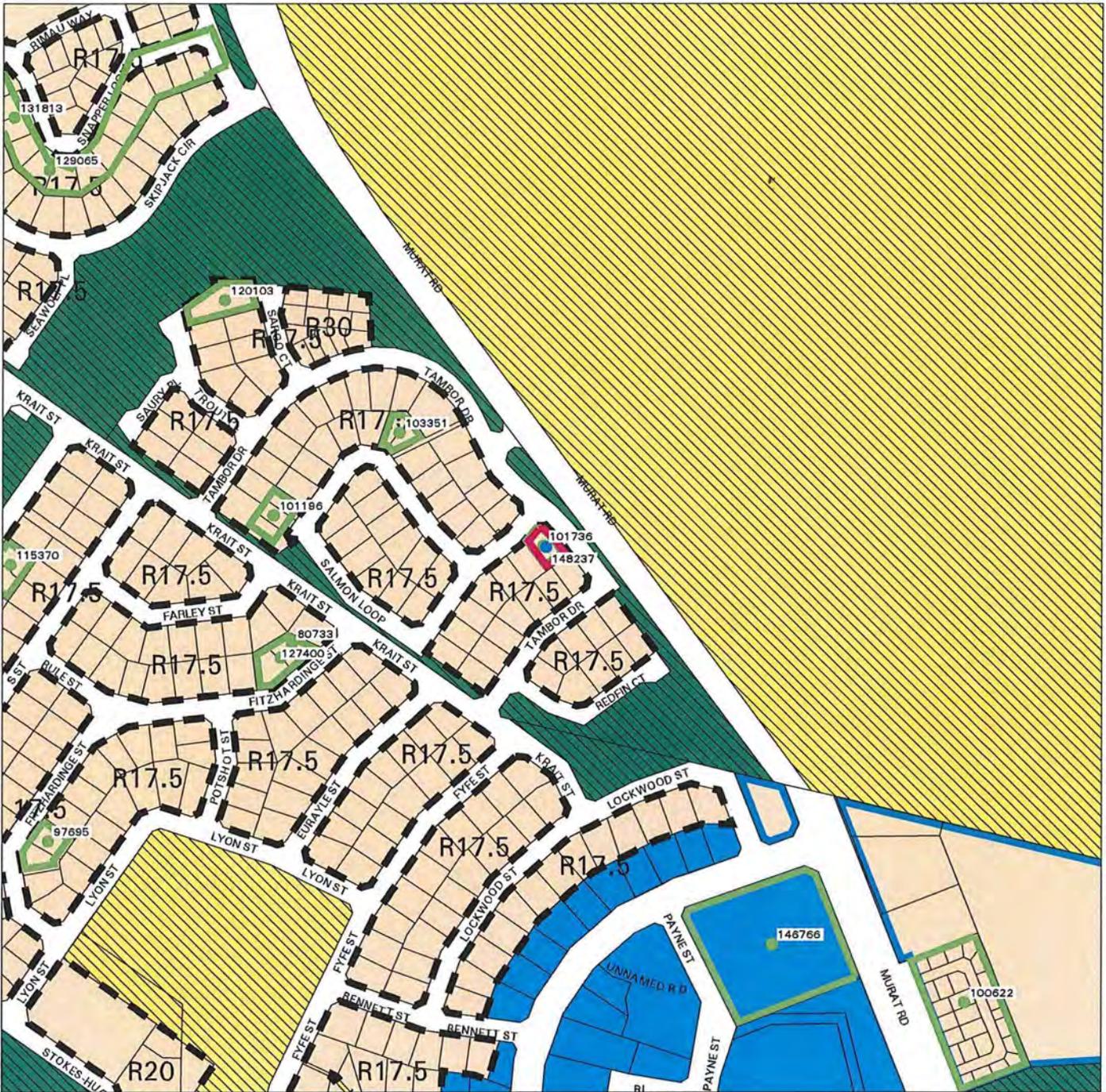
DESIGNED BY: BC	APR'13	AREA FILE: 2001
DRAWN BY: SL	29/04/13	CONT. INT'VAL: 0.1m
CHECKED BY:		V DATUM: AHD
		H DATUM: EXM94
APPROVED BY:		FIELD Bk: N/A

**HTD**  
**SURVEYORS & PLANNERS**  
 HILLE, THOMPSON & DELFOS  
 PO Box 820, GERALDTON WA 6531  
 PHONE: (08) 9921 3111 FAX: (08) 9921 8072



CLIENT: BRUCE TURNER CREATIONS  
 LOT 1346 on DP217702  
**PROPOSED SUBDIVISION**  
 TAMBOR DRIVE, EXMOUTH - SHIRE OF EXMOUTH

SCALE 1: 1000  
 ALL DISTANCES ARE IN METRES



Subdivision Application 148237 (MGA ref 202825mE 61572689mN Zone 50)

This data is to be used for the processing of subdivision applications only.

-  APPROX LOCATION OF APPLICATION
-  CADASTRAL BOUNDARY
-  OUTSTANDING
-  APPROVED
-  OUTSTANDING
-  APPROVED
-  R CODE BOUNDARY
-  RECREATION AND OPEN SPACE
-  RESIDENTIAL
-  TOURIST
-  TOWN CENTRE
-  PUBLIC PURPOSES
-  PUBLIC PURPOSES DRAINAGE
-  ROADS

142344s.eps

## ITEM NO: 9.2

### SUBDIVISION & SURVEY STRATA OF LOTS 2 & 6 EALY STREET, MOUNT HELENA

<b>WAPC OR COMMITTEE:</b>	<b>Statutory Planning Committee</b>
REPORTING AGENCY:	Department of Planning
REPORTING OFFICER:	Planning Officer, Metropolitan Planning North East, Perth and Peel Planning
AUTHORISING OFFICER:	Planning Manager, Metropolitan Planning North East , Perth and Peel Planning
AGENDA PART:	H
FILE NO:	147967 & 546-13
DATE:	10 September 2013
ATTACHMENT(S):	1. Subdivision Plan (WAPC Ref: 147967) 2. Survey Strata Plan (WAPC Ref: 546-13) 3. Location Plan/Scheme Map 4. WAPC Ref: 865-10 Approved Plan and Decision Letter 5. WAPC Ref: 865-10 SAT Orders
REGION SCHEME ZONING:	Urban
LOCAL GOVERNMENT:	Shire of Mundaring
LOCAL SCHEME ZONING:	Residential R5
LGA RECOMMENDATION(S):	Deferral
REGION DESCRIPTOR:	Mount Helena
RECEIPT DATE:	16 May 2013
PROCESS DAYS:	81
APPLICATION TYPE:	Subdivision & Survey Strata
CADASTRAL REFERENCE:	Lots 2 & 6 Ealy Street, Mount Helena

#### RECOMMENDATION WAPC REF: 147967:

***That the Western Australian Planning Commission resolves to approve the application for subdivision of Lots 2 and 6 Ealy Street, Mount Helena subject to the following conditions:***

#### **CONDITION(S):**

- 1. Engineering drawings and specifications are to be submitted, approved, and works undertaken in accordance with the approved engineering drawings, specifications and approved plan of subdivision, for grading and/or stabilisation of the site to ensure that:***

- 
- a) *lots can accommodate their intended use; 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.*  
(Local Government)
2. *Engineering drawings and specifications are to be submitted and approved, and works undertaken in accordance with the approved engineering drawings and specifications and approved plan of subdivision, for the filling and/or draining of the land, including ensuring that stormwater is contained on-site, or appropriately treated and connected to the local drainage system. Engineering drawings and specifications are to be in accordance with an approved Urban Water Management Plan (UWMP) for the site, or where no UWMP exists, to the satisfaction of the Western Australian Planning Commission. (Local Government)*
  3. *Drainage easements and reserves as may be required by the local government for drainage infrastructure being shown on the diagram or plan of survey (deposited plan) as such, granted free of cost, and vested in that local government under Sections 152 and 167 of the Planning and Development Act 2005. (Local Government)*
  4. *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)*
  5. *The existing dwelling being retained is to comply with the requirements of the Residential Design Codes. (Local Government)*
  6. *Other than buildings, outbuildings and/or structures shown on the approved plan for retention, all buildings, outbuildings and/or structures present on proposed Lot 3 at the time of subdivision approval being demolished and materials removed from the lot(s). (Local Government)*
  7. *All buildings and effluent disposal systems having the necessary clearance from the new boundaries as required under the relevant legislation including the Local Planning Scheme and Building Regulations of Australia. (Local Government)*
  8. *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:  
'Due to the topography and soil conditions of the lot it is necessary to achieve on site effluent disposal by means of a semi inverted conventional leach drain septic system' (Local Government)*
  9. *A fire hydrant is to be provided within the Ealy Street road reserve adjacent to, or adjoining Lot 6 to the specifications and satisfaction of the Water Corporation and the Department of Fire and Emergency Services. (Local Government)*
  10. *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)*

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11. ***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) are subject to a fire management plan.'* (Local Government)**
  12. ***Measures being taken to ensure the identification and protection of any vegetation on the site worthy of retention that is not impacted by subdivisional works, prior to commencement of subdivisional works.* (Local Government)**
  13. ***The subdivider to prepare and implement a dieback management plan to the specifications of the local government and to the satisfaction of the Western Australian Planning Commission.* (Local Government)**
  14. ***The provision of an emergency access easement for the benefit of the proposed lots in accordance with the approved plan of subdivision (attached) to the specifications of the Shire of Mundaring and to the satisfaction of the Western Australian Planning Commission.* (Local Government)**
  15. ***The subdivider shall provide a 6.0 metre wide access way along the emergency access easement referred to in Condition 14. This access way shall:***
    - ***Be a minimum of 4.0 metre sealed bitumen carriageway with trafficable shoulders and shall be drained at the subdivider's cost to the satisfaction of the Shire of Mundaring;***
    - ***Be clearly signposted at the access and egress points for 'emergency access only'; and***
    - ***Not be gated or obstructed to prevent vehicular access.* (Local Government)**
  16. ***A cash contribution for the purposes of kerbing and edge widening of Ealy Street shall be payable to the Shire of Mundaring. The amount payable as at 20 June 2013 is \$10,584.00. This amount is reviewable every six months from 20 June 2013 to permit the revision of cost estimates in accordance with the Shire of Mundaring's Road Upgrade Program.* (Local Government)**
  17. ***An area(s) of land at least 1299.1m<sup>2</sup> in area, in a position to be agreed with the Western Australian Planning Commission, being shown on the diagram or plan of survey (deposited plan) as a Reserve for Recreation and vested in the Crown under Section 152 of the Planning and Development Act 2005, such land to be ceded free of cost and without any payment of compensation by the Crown.* (Local Government)**
  18. ***Uniform fencing being constructed along the boundaries of proposed Lots 1 and 3 abutting the public open space reserve.* (Local Government)**
  19. ***Arrangements being made to the satisfaction of the Western Australian Planning Commission and to the specification of Western Power for the provision of an underground electricity supply to the lot(s) shown on the approved plan of subdivision.* (Western Power)**
  20. ***Arrangements being made with the Water Corporation so that provision of a suitable water supply service will be available to the lots shown on the approved plan of subdivision.* (Water Corporation)**

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**ADVICE:**

1. *In regard to Condition 6, planning approval and/or a demolition licence may be required to be obtained from the local government prior to the commencement of demolition works.*
2. *In regard to Condition 7, the Western Australian Planning Commission will accept building clearance requirements as specified in the relevant local planning scheme operative at the time the subdivision approval was granted by the Western Australian Planning Commission.*
3. *In regard to Condition 17, the Western Australian Planning Commission hereby approves of a cash-in-lieu contribution in accordance with Section 153 of the Planning and Development Act 2005.*
4. *In regard to Condition 19, Western Power provides only one underground point of electricity supply per freehold lot.*
5. *In regard to Condition 20, the landowner/applicant shall make arrangements with the Water Corporation for the provision of the necessary services. On receipt of a request from the landowner/applicant, a Land Development Agreement under Section 67 of the Water Agencies (Powers) Act 1984 will be prepared by the Water Corporation to document the specific requirements for the proposed subdivision.*
6. *The Shire of Mundaring advises the subdivider to ascertain whether any Declared Rare Flora or Threatened Ecological Communities exist within the application area in consultation with the Department of Parks and Wildlife. The subject land is likely to fall within breeding habitat for the threatened Carnaby's cockatoo, Baudin's cockatoo and forest red-tailed black cockatoo, which are classified as 'Vulnerable' under the Environment Protection and Biodiversity Conservation Act 1999. In this regard the subdivider is advised to refer to the "Environment Protection and Biodiversity Conservation Act 1999 draft referral guidelines for three threatened black cockatoo species: Caranaby's cockatoo (endangered) *Calyptohynchus Latiostris*, Baudin's cockatoo (vulnerable) *Calyptohynchus Baudinii*, forest red-tailed black cockatoo (vulnerable) *Calyptohynchus Banksii Naso*" (Commonwealth of Australia 2011) for further information.*

**RECOMMENDATION WAPC REF: 546-13:**

*That the Western Australian Planning Commission resolves to approve the application for survey strata subdivision of Lots 2 and 6 Ealy Street, Mount Helena as shown on the plan date stamped 16 May 2013 subject to the following conditions and advice:*

**CONDITION(S):**

1. *Prior to the Western Australian Planning Commission's endorsement of a diagram or plan of survey (deposited plan) for the creation of lots proposed by this application, the lot that is the subject of this application being created on a separate diagram or plan of survey (deposited plan) and the plan being endorsed by the Western Australian Planning Commission. (Western Australian Planning Commission)*
2. *Engineering drawings and specifications are to be submitted, approved, and works undertaken in accordance with the approved engineering*

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**drawings, specifications and approved plan of subdivision, for grading and/or stabilisation of the site to ensure that:**

- a) **lots can accommodate their intended use; 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. (Local Government)**
3. **Engineering drawings and specifications are to be submitted and approved, and works undertaken in accordance with the approved engineering drawings and specifications and approved plan of subdivision, for the filling and/or draining of the land, including ensuring that stormwater is contained on-site, or appropriately treated and connected to the local drainage system. Engineering drawings and specifications are to be in accordance with an approved Urban Water Management Plan (UWMP) for the site, or where no UWMP exists, to the satisfaction of the Western Australian Planning Commission. (Local Government)**
  4. **Drainage easements and reserves as may be required by the local government for drainage infrastructure being shown on the diagram or plan of survey (deposited plan) as such, granted free of cost, and vested in that local government under Sections 152 and 167 of the Planning and Development Act 2005. (Local Government)**
  5. **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)**
  6. **The proposed access way(s) being constructed and drained at the landowner/applicant's cost to the specifications of the local government. (Local Government)**
  7. **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)**
  8. **Prior to commencement of subdivisional works, a detailed plan identifying building envelope(s) on all lots on the approved plan of subdivision is to be prepared in consultation with the local government to ensure the appropriate siting of development, to the satisfaction of the Western Australian Planning Commission. (Local Government)**
  9. **A restrictive covenant, to the benefit of the local government, 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**

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**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:**

**'No development is to take place outside the defined building envelope(s), unless otherwise approved by the local government'. (Local Government)**

- 10. Measures being taken to ensure the identification and protection of any vegetation on the site worthy of retention that is not impacted by subdivisional works, prior to commencement of subdivisional works. (Local Government)**
- 11. The subdivider to prepare and implement a dieback management plan to the specifications of the local government and to the satisfaction of the Western Australian Planning Commission. (Local Government)**
- 12. The subdivider is to construct a bin pad within the Ealy Street road verge to accommodate 8 rubbish bins to the specifications of the Shire of Mundaring and to the satisfaction of the Western Australian Planning Commission. (Local Government)**
- 13. Arrangements being made to the satisfaction of the Western Australian Planning Commission and to the specification of Western Power, for the provision of an electricity supply to the survey-strata lots shown on the approved plan of subdivision, which may include the provision of necessary service access rights either as an easement under Section 136C and Schedule 9A of the Transfer of Land Act 1893 for the transmission of electricity by underground cable, or (in the case of approvals containing common property) via a portion of the common property suitable for consumer mains. (Western Power)**
- 14. Arrangements being made with the Water Corporation so that provision of a suitable water supply service will be available to the lots shown on the approved plan of subdivision. (Water Corporation)**

**ADVICE:**

- 1. In regard to Condition 13, Western Power provides only one underground point of electricity supply per freehold lot.**
- 2. In regard to Condition 14, the landowner/applicant shall make arrangements with the Water Corporation for the provision of the necessary services. On receipt of a request from the landowner/applicant, a Land Development Agreement under Section 67 of the Water Agencies (Powers) Act 1984 will be prepared by the Water Corporation to document the specific requirements for the proposed subdivision.**
- 3. The Shire of Mundaring advises the subdivider to ascertain whether any Declared Rare Flora or Threatened Ecological Communities exist within**

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***the application area in consultation with the Department of Parks and Wildlife. The subject land is likely to fall within breeding habitat for the threatened Carnaby's cockatoo, Baudin's cockatoo and forest red-tailed black cockatoo, which are classified as 'Vulnerable' under the Environment Protection and Biodiversity Conservation Act 1999. In this regard the subdivider is advised to refer to the "Environment Protection and Biodiversity Conservation Act 1999 draft referral guidelines for three threatened black cockatoo species: Caranaby's cockatoo (endangered) *Calyptohynchus Latirostris*, Baudin's cockatoo (vulnerable) *Calyptohynchus Baudinii*, forest red-tailed black cockatoo (vulnerable) *Calyptohynchus Banksii Naso*" (Commonwealth of Australia 2011) for further information.***

## SUMMARY

The application proposes to:

- amalgamate and resubdivide Lots 2 and 6 Ealy Street, Mount Helena to create three lots ranging in area from 1921m<sup>2</sup> to 8971.5m<sup>2</sup> for residential purposes. Lot 2 has been included to enable the provision of an access easement over the lot only; and
- survey strata subdivide the proposed 8971.5 m<sup>2</sup> lot to create four lots ranging in area from 2000m<sup>2</sup> to 2017.5m<sup>2</sup> and a 6m wide common property access lot of 952m<sup>2</sup>. (**Attachment 1** - Subdivision Plan WAPC Ref: 147967 & **Attachment 2** – Survey Strata Plan WAPC Ref: 546-13)

The application is referred to the Statutory Planning Committee (SPC) as the recommendation is contrary to the local government's recommendation to defer the application. The deferral request relates to concerns have been raised regarding compliance with *Planning for Bush Fire Protection* in relation to access and hazard separation. However, the requirements of the bush fire guidelines in this regard have not changed since the previous approval relating to the site and conditional approval is recommended.

## LEGISLATION / STRATEGIC PLAN / POLICY:

### Legislation

Section:

*Planning and Development Act 2005*

Part 10

### Strategic Plan

Strategic Goal:

Planning

Outcomes:

Effective Delivery of Integrated Plans

Strategies:

Implement State and Regional Planning priorities

### Policy

Number and / or Name:

State Planning Policy 3.1 'Residential Design Codes'

Development Control Policy 2.3 'Public Open Space in Residential Areas'

Planning for Bush Fire Protection Guidelines

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## INTRODUCTION & BACKGROUND

The application proposes:

- To amalgamate and resubdivide Lots 2 and 6 Ealy Street, Mount Helena into three lots ranging in area from 1921m<sup>2</sup> to 8971.5m<sup>2</sup> for residential purposes. Proposed Lot 3 is a battleaxe lot comprising of a 6 metre wide access leg to Ealy Street. Lot 2 Ealy Street has been included within the application for the purpose of providing an emergency access easement over the site only. (**Attachment 1** - WAPC Ref: 147867)
- Survey strata subdivide the proposed 8971.5 m<sup>2</sup> lot to create four lots ranging in area from 2000m<sup>2</sup> to 2017.5m<sup>2</sup> and a 6m wide common property access lot of 952m<sup>2</sup>. (**Attachment 2** - WAPC Ref: 546-13)

The subject land is zoned 'Urban' under the Metropolitan Region Scheme and 'Residential' with a density coding of R5 under the Shire of Mundaring Town Planning Scheme (TPS) No.3 (**Attachment 3** - Location Plan/Scheme Map). A narrow strip along the western boundary of the subject land is zoned 'No Zone' under the Shire's TPS No.3. This represents a closed right of way which has subsequently been amalgamated into existing Lot 6.

On 8 December 2012, the WAPC conditionally approved an application (WAPC 865-10) to survey strata subdivide the subject land into 6 lots ranging in area from 1921m<sup>2</sup> to 4007m<sup>2</sup> and a 6 metre wide common property access way lot (**Attachment 4** - WAPC Ref: 865-10 - Approved Plan and Decision Letter). The applicant subsequently sought review from the State Administrative Tribunal (SAT) of four conditions of the survey strata approval and on 16 March 2011 the WAPC resolved to support the deletion and modification of the conditions as set out in the SAT minute of consent orders (**Attachment 5** - WAPC Ref: 865-10 - SAT Orders).

## CONSULTATION

The Shire of Mundaring has recommended deferral of both applications on the basis of the following:

- Approval to the subdivision would result in the creation of lots with an undesirable internal access layout.
- Amendments are required to be made to the existing Fire Management Plan (FMP). The emergency access easement through existing Lot 2 provides alternative emergency access to the same road which egress is obtained for the subject land. As the subject land is within an 'Extreme' bush fire hazard area, fire protection measures need to be implemented in an amended FMP.
- Insufficient information on how stormwater will be adequately retained on site or via another conventional methods. The Shire has raised concerns regarding the implications of a potential drainage basin on proposed Lot 4 which will affect the usability of the lot and compliance with the lot size requirements of the Residential Design Codes (R-Codes).

The Shire has provided recommended conditions in the event that the WAPC resolves to conditionally approve the applications.

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The Water Corporation and Western Power recommend approval subject to standard servicing conditions and advice.

The Department of Health and Department of Fire and Emergency Services Authority raises no objections.

## **PLANNING ASSESSMENT**

### Shire of Mundaring TPS No.3

Clause 4.48 of the Shire's TPS No.3 requires a Local Subdivision and Infrastructure Plan (LSIP) to guide subdivision within the 'Residential' zone, however, the requirements for a LSIP may be waived if it:

- a) is unlikely to have any significant environmental impact;*
- b) is in an area where no further subdivision potential exists;*
- c) does not require and is unlikely to create the requirement for additional services or interconnectivity of services or road networks with adjoining property; and*
- d) does not prejudice the subsequent subdivision and development of adjoining land; and*

There is no endorsed LSIP for the subject land and the Shire of Mundaring has not requested the preparation of an LSIP to support the proposed subdivision. The WAPC has previously supported the subdivision of the land in the absence of an LSIP on the basis that the surrounding land does not have subdivision potential under the current R5 density coding. As such, there is no practical opportunity under the proposed subdivision to achieve an interconnected road network in the immediate locality. No environmental concerns have been raised by the Shire or Department of Health. Accordingly, it is considered that there would be no practical benefit in requiring the applicant to prepare an LSIP over the subject land. The Shire's decision to exercise its discretion in not requiring an LSIP is supported in this instance.

### Residential Design Codes (R-Codes) 2013

With the exception of existing Lot 2, the proposed lots comply with the minimum lot size requirement of the R5 density code of 2000m<sup>2</sup>. Lot 2 (1921m<sup>2</sup>) is owned by the same landowner and has only included in the application for the purposes of achieving an emergency access easement for fire escape purposes. Existing Lot 2 is not being further subdivided and will remain in its current configuration.

The R5 density code has a minimum frontage requirement of 30 metres. Proposed Lot 1 is provided with a 17.8m wide frontage. The R-Codes do not provide guidance or performance criteria for circumstances where a variation to the minimum frontage may be considered. Furthermore, WAPC Development Control (DC) Policy 2.2 'Residential Subdivision' makes no allowance for a variation to the minimum frontage requirements specified in the R-Codes.

In this case, the variation to the minimum frontage requirement is partly due to the need for a wider battleaxe leg to satisfy the WAPC's 'Planning for Bush Fire

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Protection Guidelines' and allow two-way vehicle access (6 metres proposed whereas only 4 metres is required under the R-Codes and DC Policy 2.2). It is also noted that existing Lots 2 and 6 are already non-compliant in terms of meeting the minimum frontage requirement, as are the majority of R5 density coded lots in this particular street block

The variation to the minimum frontage requirement is not considered to adversely affect the streetscape or amenity of the locality and is considered consistent with the general policy objectives of the R-Codes and DC Policy 2.2.

#### Planning for Bush Fire Protection Guidelines

The WAPC's *Planning for Bush Fire Protection Guidelines - Edition 2* (the guidelines) sets out the matters that need to be addressed when assessing subdivision and development proposals of land in bush fire prone areas. The relevant provisions of the Guidelines relating to vehicular access include:

- allow for two-way traffic to enable emergency vehicles to enter and other vehicles to evacuate concurrently;
- provision of two different vehicle access routes, both of which connect to the public street network; and
- achieve a minimum 6 metre width.

The proposed battleaxe lot (proposed Lot 3) achieves the minimum 6 metre width requirement. The alternative emergency access to Ealy Street will be constructed to two wheel drive standard and will be protected by an easement through existing Lot 2. Ealy Street provides two different routes (north and south) in the case of an emergency. On this basis, the proposed access arrangements are consistent with the Guidelines and are supported.

It is unlikely that the proposed lots are capable of achieving adequate hazard separation as required under Acceptable Solution 4.1 'Hazard Separation - moderate to extreme bush fire hazard level' of the Guidelines, which requires that buildings be sited a minimum distance of 100 metres from the vegetation comprising the moderate or extreme bushfire hazard. If the required 100 metre hazard separation distance cannot be achieved, the Guidelines provide for a reduced hazard separation subject to development being constructed in accordance with AS 3959.

Clause 6.5.3 of the Shire's draft Local Planning Scheme No.4 (endorsed by the A/Minister for Planning on 18 June 2013 subject to modifications) requires dwelling construction within a Designated Bushfire Prone Area to be subject to the relevant bushfire prone area building requirements of the Building Code of Australia and Australian Standard 3959.

The subject land is identified with an 'Extreme' bushfire hazard level by the Bush Fire Hazard Special Control Area which also comprise a Designated Bushfire Prone Area. Dwelling construction on the proposed lots will, therefore, be subject to the relevant bushfire prone area building requirements of the Building Code of Australia and Australian Standard 3959.

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The WAPC's assessment of the previous application (WAPC Ref: 865-10) relating to the subject land concluded that a substantial proportion of each lot will be cleared for dwelling and outbuilding construction and boundary firebreaks. Furthermore, the imposition of a condition is recommended consistent with WAPC Ref: 865-10 requiring the provision of a fire hydrant within the Ealy Street road reserve adjacent to existing Lot 6. This measure and those outlined in the Fire Management Plan (FMP) are considered to reflect the requirements of the Guidelines and are supported.

The applicant has prepared a FMP in order to comply with Condition 20 of WAPC Ref: 865-10. The FMP includes the following measures to reduce bushfire risk:

- 3 metre wide firebreaks around lot boundaries;
- All new dwellings to be constructed to Australian Standard (AS) 3959;
- Requirement for a building protection zone of 20 metres to be established prior to new dwelling construction;
- Requirement for a hazard separation zone which comprises the balance of the lot outside the building protection zone;
- Recommended year round hazard reduction program;
- Strategic fire break/emergency access easement; and
- Minimum driveway standards of 6 metres wide with a 4 metre wide trafficable surface and a 4 metre vertical clearance.

The Shire of Mundaring has advised that amendments are required to be made to the existing FMP. Accordingly, it is recommended that the standard condition be imposed requiring an FMP to be prepared, approved and relevant provisions implemented during subdivisional works in accordance with the Guidelines. Furthermore, the imposition of a condition is recommended requiring a notification on title of each of the proposed lots advising that the lots are subject to a FMP.

#### Development Control (DC) Policy 2.3 'Public Open Space in Residential Areas'

The WAPC's DC Policy 2.3 states that: *"the WAPC's normal requirement in residential areas is that, where practicable, 10 per cent of the gross subdivisible area be given up free of cost by the subdivider and vested in the Crown under Section 152 of the Planning and Development Act 2005 as a Reserve for Recreation"*.

In addition, DC Policy 2.3 states that: *"the WAPC may impose an open space condition where an application would create five lots or less where .... the local government has identified an existing or potential deficiency of public open space and has an adopted strategy to improve or provide open space (POS) by land acquisition in the locality of the subdivision"*.

Existing Lot 6 is identified in the catchment of Location D of Map 18 of the Shire's POS Strategy. The Strategy recommends that for Location D, POS be given up as cash-in-lieu at a rate of 10% to be used for the development/upgrading of the existing POS reserve at the corner of Dibble and Ealy Streets abutting the northern boundary of existing Lot 6.

The WAPC's assessment of the SAT application for review of WAPC Ref: 865-10 relating to the subject land concluded that existing Lot 2 should not be included in the

---

calculation of the gross subdivisible area as it was not identified in the POS Strategy, not being further subdivided and had been included in the application area for the sole purpose of providing an emergency access easement to Ealy Street.

This previous position of the WAPC is supported for the current application. It is, therefore, recommended that the POS contribution relate to 10% of the gross subdivisible area of existing Lot 6 only, that being, 1299.1m<sup>2</sup>. It is recommended that this be required as part of the first stage of subdivision (WAPC Ref: 147967).

### Drainage

The Shire has raised concern regarding the implications of a potential drainage basin on proposed Lot 4 of WAPC Ref: 546-13 which will affect the usability of the lot and compliance with the lot size requirements of the R-Codes.

The R-Codes defines site area as *"the area of land required for the construction of a dwelling to satisfy the requirements of the R-Codes"*. In the case of grouped dwellings, the R-Codes states that the minimum site area set out in Table 1 is calculated as the area of land occupied by the dwelling itself, together with all other areas whether contiguous or not, designated for the exclusive use of the occupants of that dwelling.

In this regard the applicant advises the following:

- Regardless of the drainage requirement proposed Lot 4 maintains an area of 2000m<sup>2</sup> in accordance with the minimum site area requirements of the R-Codes and any proposed drainage area is not discounted from the lot size.
- It is common place that features on a lot may affect the developable area. As part of the previous survey strata approval (WAPC Ref: 865-10) relating to the subject land a building envelope was also required for this lot. There is more than sufficient area for the location of a building envelope on proposed Lot 4 to contain a dwelling and appurtenant areas for residential purposes.

The position of the applicant is supported in this instance. The imposition of a condition requiring the preparation of a detailed plan identifying building envelope(s) on all proposed lots will ensure the appropriate siting of development on the proposed lots. Furthermore, it is not considered uncommon for the WAPC to approve the creation of lots which incorporate servicing infrastructure and their associated easements such as for water, sewerage or drainage purposes. WAPC policy advises that all new residential lots shall, in addition to compliance with the general requirements for subdivision of land, be located within an area which is suitable for subdivision in terms of its physical characteristics such as drainage and in terms of its ability to secure servicing infrastructure to each new lot appropriate for its intended residential use. The level of such services is to be determined based on a range of matters including the intended use, lot size and scheme provisions.

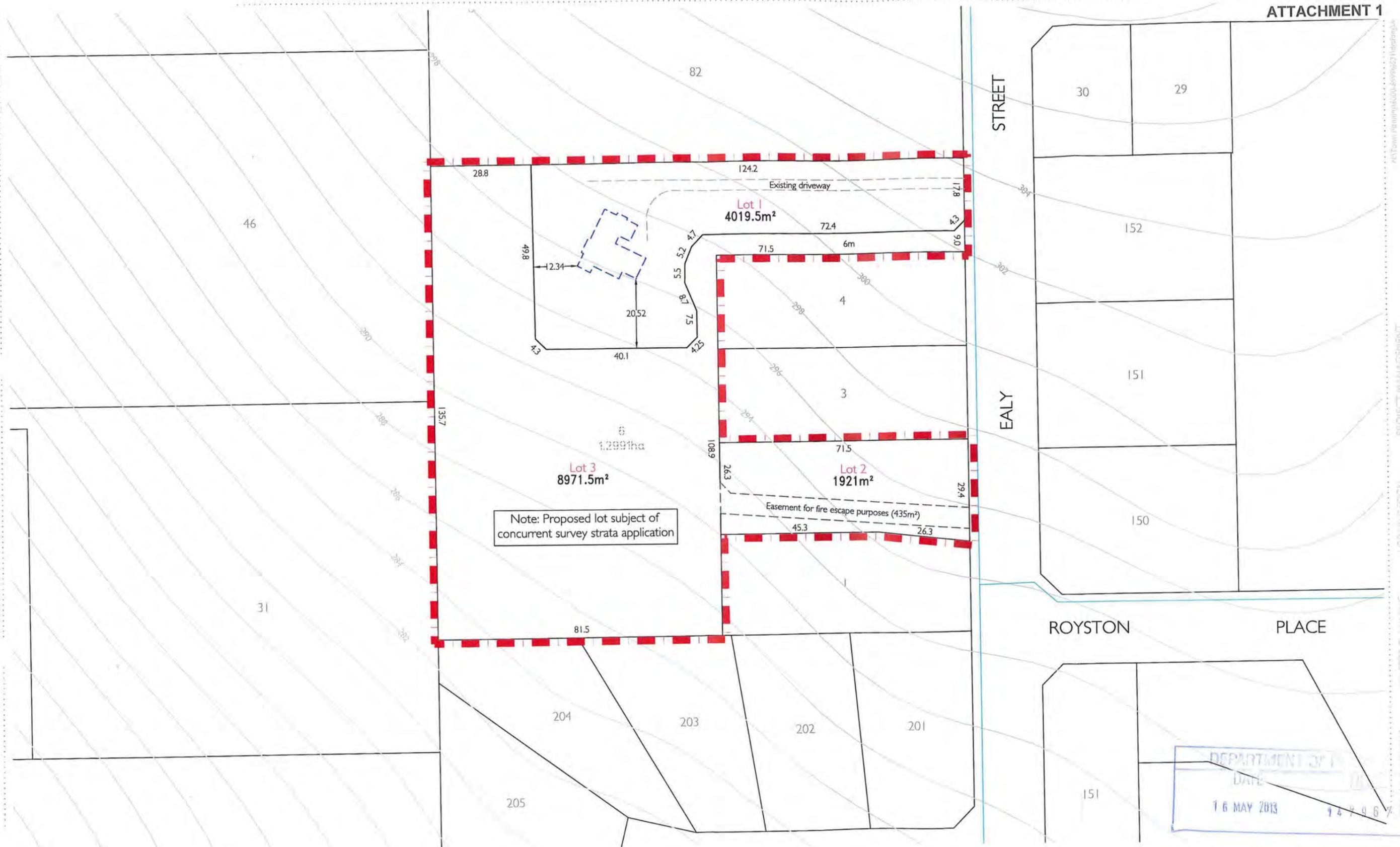
With this discussion in mind, the Shire's concern that a potential drainage basin on proposed Lot 4 will affect the usability of the lot and compliance with the lot size requirements of the R-Codes is not supported in this instance.

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## **CONCLUSION**

The proposed applications are generally considered to be consistent with the Shire's TPS No.3, the R-Codes, the WAPC's 'Planning for Bush Fire Protection Guidelines', DC Policies 2.2 and 2.3 and the WAPC's previous assessment of WAPC Ref: 865-10 relating to the subject land.

Conditional approval is recommended consistent with the WAPC's Model Subdivision Conditions Schedule and the SAT minute of consent orders deleting and modifying various conditions of WAPC Ref: 865-10 (varying from the Model Conditions Schedule) relating to the subject land.



Note: Proposed lot subject of concurrent survey strata application

DEPARTMENT OF LOCAL GOVERNMENT  
 DATE 16 MAY 2013

- LEGEND**
- SUBJECT SITE
  - WATER
  - CONTOURS
  - EASEMENT
  - EXISTING HOUSE (TO REMAIN)

Note:  
 Subdivision includes all necessary  
 subdivisional works including clearing.

date	13 May 2013	job no.	6531	scale	1: 1000 @ A3
designer	A Vanderplas	prepared by	S.Blanchard	ref	6531_SUB01D_20130513 MT HELENA (GREEN TITLE).dwg
client	Monarch Holdings Pty Ltd	projection	MGAS0 GDA94		

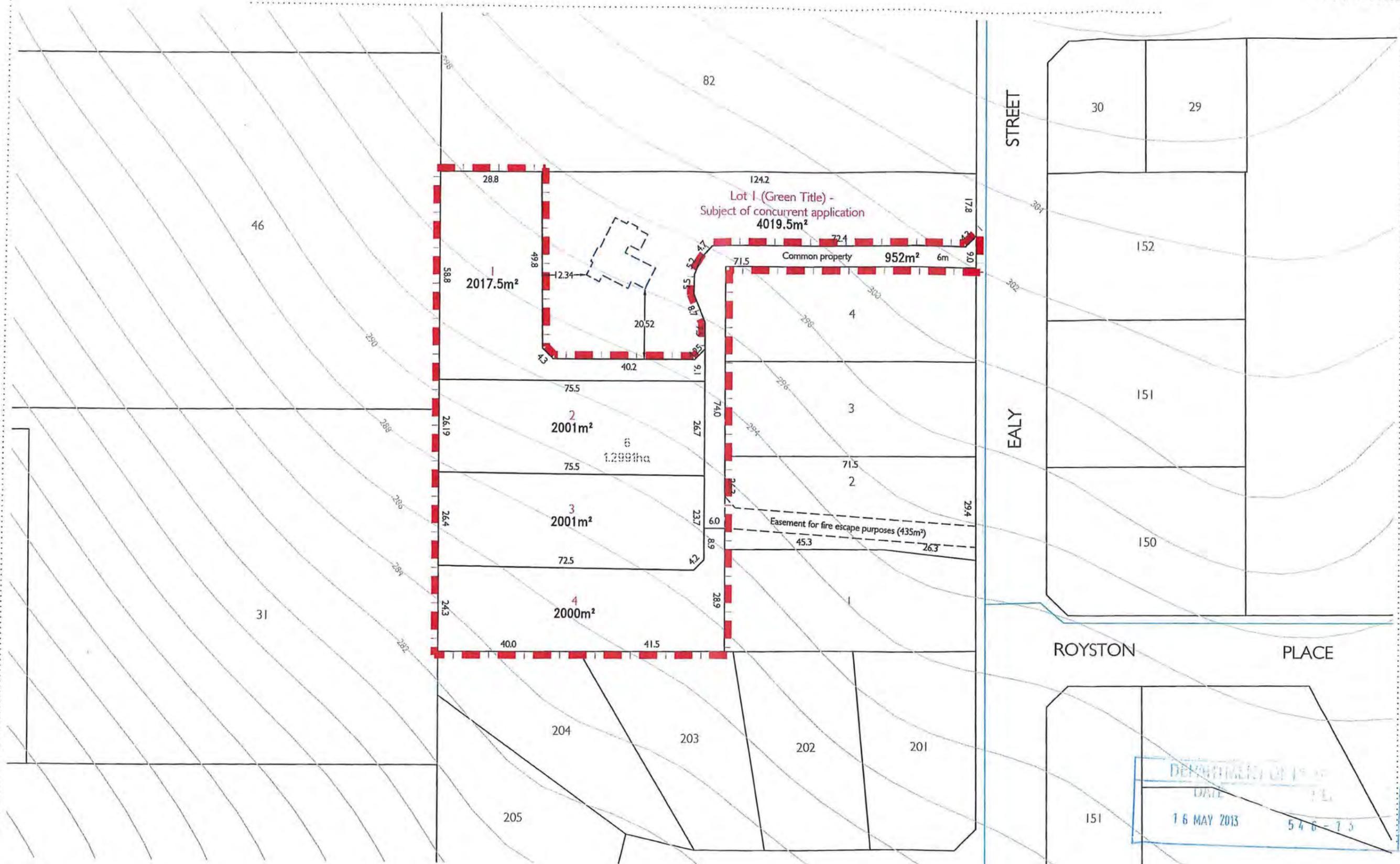
**title** Subdivision Plan  
**Green Title Plan**  
**address** Lot 6 and 2 Ealy Street  
**Mt. Helena**

**GREG ROWE & associates**  
 FOCUSED ON ACHIEVEMENT

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 All words and corrections are highlighted and subject to change.

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PERTH • PEEL / SOUTH WEST • MID WEST • PILBARA



- LEGEND**
- ■ ■ SUBJECT SITE
  - WATER
  - ~ CONTOURS
  - === EASEMENT
  - EXISTING HOUSE (TO REMAIN)

**Note:**  
Subdivision includes all necessary  
subdivisional works including clearing.

date	09 may 2013	job no.	6531	scale	1:1000 @ A3
designer	A Vanderplas	prepared by	S Blanchard	e-ref	6531_SUB02D_201300509 MT HELENA (SURVEY STRATA).dwg
client	Monarch Holdings Pty Ltd	projection	MGA50 GDA94		

**title** Subdivision Plan  
Survey Strata Plan  
**address** Lot 6 and 2 Ealy Street  
Mt Helena

**GREG ROWE & associates**  
FOCUSSED ON ACHIEVEMENT

16 MAY 2013 546-75

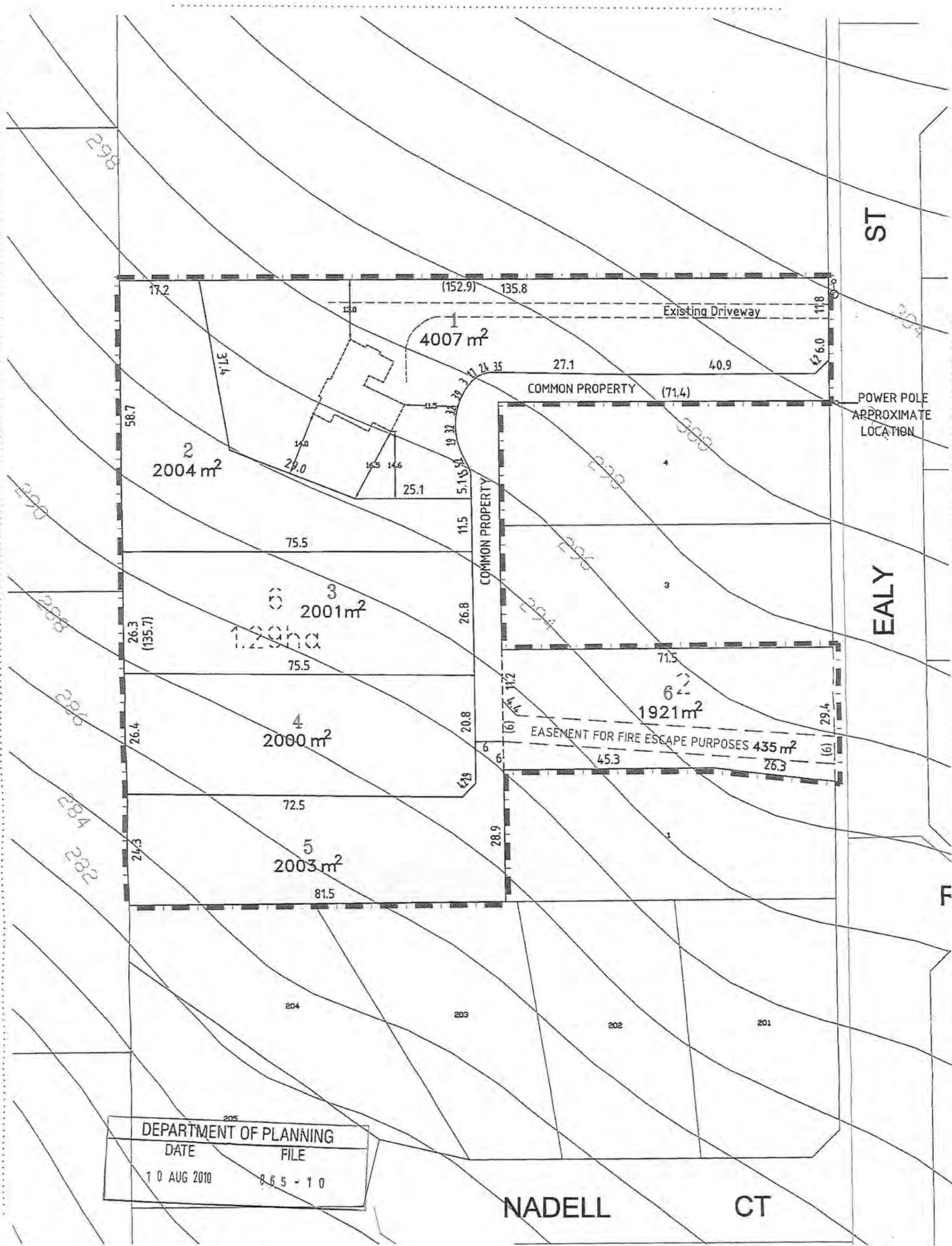
Level 3, 369 Newcastle Street, Northbridge, Western Australia, 6003  
email gregor@greg-rowe.com web greg-rowe.com tel +618 9221 1991 fax +618 9221 1919

PERTH • PEEL / SOUTH WEST • MID WEST • PILBARA

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PROJECT MANAGEMENT URBAN DESIGN MASTER PLANNING TOWN PLANNING





PROJECT MANAGEMENT

URBAN DESIGN

MASTER PLANNING

TOWN PLANNING

DEPARTMENT OF PLANNING	
DATE	FILE
10 AUG 2010	865-10

- Legend
- SUBJECT SITE
  - WATER
  - CONTOURS
  - EASEMENT
  - EXISTING HOUSE (TO REMAIN)

date 5 August 2010 job no. 6531  
 scale 1:1000 sheet 07/1001  
 designer A Lohman prepared by DM  
 client  
 Level 3, 369 Newcastle Street, Northbridge, Western Australia, 6003  
 email gr@greg-rowe.com web www.greg-rowe.com  
 tel +618 9221 1991 fax +618 9221 1919

title survey strata plan (aerial)  
 address lot 6 and 2 ealy street  
 mount helena  
 regional offices  
 pool / south west tel +618 9582 8288 email mandurah@greg-rowe.com  
 mid west tel +618 9956 0633 email gerulston@greg-rowe.com  
 pilbara tel +618 9173 4332 email portnedland@greg-rowe.com

**GREG ROWE & associates**  
 FOCUSED ON ACHIEVEMENT



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Your Ref :  
Enquiries : Robert Cull (Ph 9264 7676)

Greg Rowe & Associates  
Level 3, 369 Newcastle Street  
NORTHBRIDGE WA 6003

### Approval Subject To Condition(s) Survey-Strata Plan

Application No : 865-10

#### *Planning and Development Act 2005*

Applicant	: Greg Rowe & Associates Level 3, 369 Newcastle Street NORTHBRIDGE WA 6003
Owner	: Monarch Holdings Pty Ltd P O Box 6090 EAST PERTH WA 6004
Application Receipt	: 10 August 2010

Lot number	: 2, 6
Location	: -
Diagram/Plan	: Diagram 37405 DP 36793
C/T Volume/Folio	: 194/180a, 2558/217
Street Address	: Ealy Street, Mount Helena
Local Government	: Shire of Mundaring

The Western Australian Planning Commission has considered the application referred to and is prepared to endorse a survey-strata plan in accordance with the plan date-stamped 10 August 2010 once the condition(s) set out have been fulfilled.

This decision is valid for three years from the date of this advice, which includes the lodgement of the survey-strata plan within this period.

The survey-strata plan for this approval and all required written advice confirming that the requirement(s) outlined in the condition(s) have been fulfilled must be submitted by 9 December 2013 or this approval no longer will remain valid.

### **Reconsideration - 28 days**

Under section 151(1) of the *Planning and Development Act 2005*, the applicant/owner may, within 28 days from the date of this decision, make a written request to the WAPC to reconsider any condition(s) imposed in its decision. One of the matters to which the WAPC will have regard in reconsideration of its decision is whether there is compelling evidence by way of additional information or justification from the applicant/owner to warrant a reconsideration of the decision. A request for reconsideration is to be submitted to the WAPC on a Form 3A with appropriate fees. An application for reconsideration may be submitted to the WAPC prior to submission of an application for review. Form 3A and a schedule of fees are available on the WAPC website: <http://www.wapc.wa.gov.au>

### **Right to apply for a review - 28 days**

Should the applicant/owner be aggrieved by this decision, there is a right to apply for a review under Part 14 of the *Planning and Development Act 2005*. The application for review must be submitted in accordance with part 2 of the *State Administrative Tribunal Rules 2004* and should be lodged within 28 days of the date of this decision to: the State Administrative Tribunal, 12 St Georges Terrace, Perth, WA 6000. It is recommended that you contact the tribunal for further details: telephone 9219 3111 or go to its website: <http://www.sat.justice.wa.gov.au>

### **Survey-strata plan**

The survey-strata plan is to be submitted to the Western Australian Land Information Authority (Landgate) for certification. Once certified, Landgate will forward it to the WAPC. In addition, the applicant/owner is responsible for submission of a Form 1C with appropriate fees to the WAPC requesting endorsement of the survey-strata plan. A copy of the survey-strata plan with confirmation of submission to Landgate is to be submitted with all required written advice confirming compliance with any condition(s) from the nominated agency/authority or local government. Form 1C and a schedule of fees are available on the WAPC website: <http://www.wapc.wa.gov.au>

### **Condition(s)**

The WAPC is prepared to endorse a survey-strata plan in accordance with the plan submitted once the condition(s) set out have been fulfilled.

The condition(s) of this approval are to be fulfilled to the satisfaction of the WAPC.

The condition(s) must be fulfilled before submission of a copy of the survey-strata plan for endorsement.

The agency/authority or local government noted in brackets at the end of the condition(s) identify the body responsible for providing written advice confirming that the WAPC's requirement(s) outlined in the condition(s) have been fulfilled. The written advice of the agency/authority or local government is to be obtained by the applicant/owner. When the written advice of each identified agency/authority or local government has been obtained, it should be submitted to the WAPC with a Form 1C and appropriate fees and a copy of the survey-strata plan.

If there is no agency/authority or local government noted in brackets at the end of the condition(s), a written request for confirmation that the requirement(s) outlined in the condition(s) have been fulfilled should be submitted to the WAPC, prior to lodgement of the survey-strata plan for endorsement.

Prior to the commencement of any site works or the implementation of any condition(s) in any other way, the applicant/owner is to liaise with the nominated agency/authority or local government on the requirement(s) it considers necessary to fulfil the condition(s).

The applicant/owner is to make reasonable enquiry to the nominated agency/authority or local government to obtain confirmation that the requirement(s) of the condition(s) have been fulfilled. This may include the provision of supplementary information. In the event that the nominated agency/authority or local government will not provide its written confirmation following reasonable enquiry, the applicant/owner then may approach the WAPC for confirmation that the condition(s) have been fulfilled.

In approaching the WAPC, the applicant/owner is to provide all necessary information, including proof of reasonable enquiry to the nominated agency/authority or local government.

The condition(s) of this approval, with accompanying advice, are:

#### CONDITION(S)

1. The land being filled and/or drained at the subdivider's cost to the satisfaction of the Western Australian Planning Commission and any easements and/or reserves necessary for the implementation thereof, being granted free of cost. (Local Government)
2. The land being graded and stabilised. (Local Government)
3. Stormwater being contained on-site, or connected to the local drainage system, after passing through an appropriate water quality improvement treatment device. (Local Government)
4. All buildings and effluent disposal systems having the necessary clearance from the new boundaries as required under the relevant legislation. (Local Government)
5. All buildings, outbuildings and/or structures being demolished and materials removed from the proposed lots 2, 3, 4, 5 and 6 and the proposed common property lot. (Local Government)
6. Uniform fencing along the boundaries of proposed lots 1 and 2 where these lots abut public open space is to be constructed. (Local Government)
7. The common property accessway being constructed and drained at the applicant/owner's cost to the specifications of the local government. (Local Government)

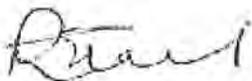
8. Arrangements being made with the local government for the upgrading of Ealy Street.  
(Local Government) *deleted SAT 18.3.11 replaced with new condition at Quesada 1*
9. The common boundary between proposed Lot 1 and proposed Lot 2 is to be realigned to achieve a more regular lot configuration to the specifications of the Shire of Mundaring and the specifications of the Western Australian Planning Commission.  
(Local Government)
10. The subdivider is to construct a bin pad within the Ealy Street Road verge to accommodate 12 rubbish bins to the specifications of the Shire of Mundaring and the satisfaction of the Western Australian Planning Commission. (Local Government)
11. The common property access adjacent to the junction with the emergency accessway being modified to enable construction and drainage of a turning area suitable for a type 3.4 fire appliance to the specifications of the Shire of Mundaring and the satisfaction of the Western Australian Planning Commission. (Local Government) *deleted SAT 18/3/11*
12. The provision of an emergency access easement for the benefit of the proposed lots in the location highlighted in blue on the attached plan to the specifications of the Shire of Mundaring and to the satisfaction of the Western Australian Planning Commission.  
(Local Government)
13. The subdivider providing a 6m wide trafficable surface along the emergency access-easement required under Condition 12, to a standard suitable for use by 2 wheel drive vehicles, to the specifications of the Shire of Mundaring and to the satisfaction of the Western Australian Planning Commission. (Local Government) *deleted SAT 18.3.11*
14. An area(s) of land at least 1491.1m<sup>2</sup> in area, in a position to be agreed with the WAPC, being shown on the Deposited Plan as a "Reserve for Recreation" and vested in the Crown under Section 152 of the *Planning and Development Act 2005*, such land to be ceded free of cost and without any payment of compensation by the Crown.  
(Local Government) *deleted SAT 18.3.11*
15. A Restrictive Covenant, pursuant to section 129BA of the Transfer of Land Act 1893 (as amended) is to be placed on the Certificates of Title of the proposed lots advising of the existence of a restriction on the use of the land. Notice of this restriction to be included on the Deposited Plan. The restrictive covenant is to state as follows:  
  
"Due to the topography and soil conditions of the lot it is necessary to achieve on site effluent disposal by means of a semi inverted conventional leach drain septic system."  
(Local Government)
16. Prior to commencement of site works, a detailed plan identifying building envelope(s) on proposed lots 3,4 and 5 on the approved plan of subdivision is to be prepared in consultation with the local government. (Local Government)
17. A Restrictive Covenant, pursuant to section 129BA of the Transfer of Land Act 1893 (as amended) is to be placed on the Certificates of Title of the proposed lots advising of the existence of a restriction on the use of the land. Notice of this restriction to be included on the Deposited Plan. The restrictive covenant is to state as follows:

- "No development is to take place outside the defined building envelope(s), unless otherwise approved by the local government." (Local Government)
18. The subdivider to prepare a landscaping plan identifying trees and vegetation to be retained and areas to be revegetated to the specifications of the local government and the satisfaction of the Western Australian Planning Commission. (Local Government)
  19. The subdivider to prepare and implement a dieback management plan to the specifications of the local government and the satisfaction of the Western Australian Planning Commission. (Local Government)
  20. A Fire Management Plan being prepared and implemented to the specifications of the local government and the Fire and Emergency Services Authority. (Local Government)
  21. Notification in the form of a section 70A notification, pursuant to the Transfer of Lands Act 1893 (as amended) is to be placed on the Certificates of Title of the proposed lot(s) advising that a Fire Management Plan has been prepared for the lot and is required to be implemented. A copy of the approved Fire Management Plan is available from the Shire of Mundaring offices. (Local Government)
  22. A detailed plan demonstrating the location and capacity of fire emergency infrastructure, including hydrants, is to be prepared and implemented to the specifications of the Water Corporation and the Fire and Emergency Services Authority. (FESA) *replaced with new condition at Annexure 1, at back of this letter.* *deleted SAT 18.2.2011*
  23. Suitable arrangements being made with the Water Corporation so that provision of a suitable water supply service will be available to lot(s) shown on the approved plan of subdivision. (Water Corporation)
  24. Arrangements being made to the satisfaction of the Western Australian Planning Commission and to the specification of Western Power, for the provision of an underground electricity supply service to the survey strata lot(s) shown on the approved plan of subdivision, which may include the provision of necessary service access rights either as an easement under Section 136C (Schedule 9A) of the Transfer of Land Act 1893 for the transmission of electricity by underground cable, or (in the case of approvals that include common property) via a portion of the common property suitable for consumer mains. (Western Power)
  25. The transfer of land as a Crown Reserve, free of cost to Western Power for the provision of electricity supply infrastructure. (Western Power)

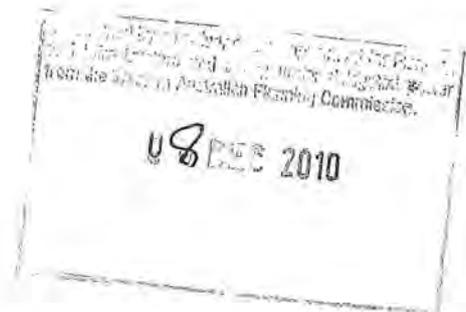
#### ADVICE TO APPLICANT

1. The approval to subdivide issued by the WAPC should not be construed as an approval to commence development on any of the lots proposed. Approval to Commence Development may be required to be issued by the local government.

2. With regard to Conditions 1-21, the subdivider is to obtain all necessary approvals from the Shire of Mundaring prior to the commencement of any subdivisional works.
3. With regard to Condition 7, the Shire of Mundaring advises that the common property access is to be constructed in red asphalt to the specifications of the Shire of Mundaring.
4. Clearing of Native Vegetation in Western Australia is prohibited, unless the clearing is authorised by a clearing permit obtained from DEC, or is of a kind that is exempt in accordance with Schedule 6 of the *Environmental Protection Act 1986* or *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*. Exemptions in the Regulations do not apply in areas that are considered to be environmentally sensitive. Further information regarding this legislation can be obtained at [www.dec.wa.gov.au](http://www.dec.wa.gov.au) or by contacting the DEC's 'Native Vegetation Protection Branch' in Kensington.
5. With regard to Condition 14, the WAPC hereby approves of a cash-in-lieu contribution in accordance with Section 153 of the *Planning and Development Act, 2005*.
6. With regard to Condition 23, Water Corporation policy and practice for the locality may involve the provision of land (for plant and works), easements and/or the payment of financial contributions towards infrastructure. You are advised to contact the Water Corporation.
7. With regard to Condition 24, Western Power provides only one point of electricity supply per freehold (green title) lot and requires that any existing overhead consumer service is required to be converted to underground.
8. If an existing aerial electricity cable servicing the land the subject of this approval crosses over a proposed lot boundary as denoted on the approved plan of subdivision, satisfactory arrangements will need to be made for the removal and relocation of that cable.
9. With regard to Condition 25 the specific location and area of land required is to be to the satisfaction of the WAPC on the advice of the local government and Western Power.



Tony Evans  
Secretary  
Western Australian Planning Commission  
09 December 2010





SAT

 State  
 Administrative  
 Tribunal

Western Australia

*Planning and Development Act 2005*

IN THE MATTER OF:

Monarch Holdings Pty Ltd  
 -and-  
 Western Australian Planning Commission

Applicant

Respondent

Matter Number: DR 424 2010  
 Application Lodged: 22 December 2010

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**ORDER**


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On the application heard before Senior Sessional Member Ross Easton on 18 March 2011, it is ordered that:

The parties hereby consent to the following orders:

1. The application for review is upheld in part.
2. Condition '11' of the respondent's approval dated 9 December 2010 is deleted.
3. Conditions '8', '13', '14' and '22' of the respondent's approval dated 9 December 2010 are deleted and replaced with the conditions as shown in Annexure '1'.
4. There be no order as to costs.

Senior Sessional Member Ross Easton



*M. Greet*  
 EXECUTIVE OFFICER

I certify the foregoing to be a true  
 and correct copy of the original

*F. Davis*

State Administrative Tribunal

Date: **AGENDA PAGE 81**

22 March 2011

#### ANNEXURE 1 - CONDITIONS

- 8) A cash contribution for the purposes of kerbing and edge widening of Ealy Street shall be payable to the Shire of Mundaring. The amount payable as at 17 March 2011 is \$8,736.00. This amount is reviewable every six months from 17 March 2011 to permit the revision of cost estimates in accordance with the Shire of Mundaring's Road Upgrade Program (Local Government).
- 13) The subdivider shall provide a 6.0 metre wide access way along the emergency access easement referred to in condition '12'. This access way shall:
  - Be a minimum of 4.0 metre sealed bitumen carriageway with trafficable shoulders and shall be drained at the Applicant's cost to the satisfaction of the Shire of Mundaring;
  - Be clearly signposted at the access and egress points for 'emergency access only'; and
  - Not be gated or obstructed to prevent vehicular access (Local Government).
- 14) An area(s) of land at least 1,299.1m<sup>2</sup> in area, in a position agreed with the WAPC, being shown on the Deposited Plan as a 'Reserve for Recreation' and vested in the Crown under Section 152 of the Planning and Development Act 2005, such land to be ceded free of cost and without payment of compensation by the Crown (Local Government).
- 22) A fire hydrant is to be provided within the Ealy Street Road reserve adjacent to, or adjoining Lot 6 to the specifications and satisfaction of the Water Corporation and Fire and Emergency Services (FESA).

## ITEM NO: 9.3

### SUBDIVISION TO CREATE TWO LOTS FOR FARMING AND CONSERVATION PURPOSE - LOT 4194 GARDENER ROAD KENTDALE

WAPC OR COMMITTEE: **Statutory Planning Committee**

REPORTING AGENCY: Department of Planning  
REPORTING OFFICER: Planning Officer, Great Southern Team  
AUTHORISING OFFICER: Executive Director, Regional Planning and Strategy  
AGENDA PART: H  
FILE NO: 147958  
DATE: 2 September 2013  
ATTACHMENT(S): Previous report  
1 - subdivision plan  
2 - SPC agenda item 27 August 2013  
3 - native vegetation extent  
REGION SCHEME ZONING: N/A  
LOCAL GOVERNMENT: Denmark  
LOCAL SCHEME ZONING: Rural  
LGA RECOMMENDATION(S): Refuse  
REGION DESCRIPTOR: Albany  
RECEIPT DATE: 16 May 2013  
PROCESS DAYS: 83  
APPLICATION TYPE: Subdivision  
CADASTRAL REFERENCE: Lot 4194 Gardener Road Kentdale

#### RECOMMENDATION:

***That the Western Australian Planning Commission resolves to refuse the subdivision of Lot 4194 Gardener Road Kentdale for the following reasons;***

- 1. The proposed subdivision is contrary to Development Control Policy 3.4 Subdivision of Rural Land as it does not meet the exceptional circumstances where rural subdivision can be considered as the vegetation has not been identified in a strategic planning document or by the relevant environmental agencies for further protection.***
- 2. The proposed subdivision is contrary to Development Control Policy 3.4 Subdivision of Rural Land as the Commissioner for Soil and Land Conservation is not an appropriate agency to administer the necessary environmental conservation covenant.***

- 
3. *The proposed subdivision is contrary to Development Control Policy 3.4 Subdivision of Rural Land as the balance lot is not suitable for the continuation of an agricultural rural land use.*
  4. *The proposed subdivision is contrary to the objectives of State Planning Policy 2.5 as it would result in the ad hoc fragmentation of rural land, and increase potential for land use conflict.*
  5. *The proposed subdivision is contrary to State Planning Policy 2.5 as it creates rural living lots on land that has not been identified for closer settlement in an endorsed local planning strategy or zoned in the local planning scheme.*
  6. *Approval to the subdivision would create an undesirable precedent for the further subdivision of other lots of a similar size in the Rural Zone in this locality causing unplanned breakdown of landholdings.*

**SUMMARY:**

The application proposes the subdivision of rural zoned Lot 4194 Gardener Road Kentdale into two lots; a conservation lot of 27.7 ha, and a balance agricultural lot of 27.9 ha.

This application was previously considered by the SPC on 27 August 2013 where it was resolved to defer the decision pending clarification from the Department of Planning of conservation merit.

Regardless of any perceived conservation merit, the proposal is inconsistent with WAPC policy in that the proposal; is not supported by any strategic plans; is not supported by an appropriate environmental agencies covenanting program; and the balance lot is not suitable or practical for rural agricultural purposes and is more akin to a rural lifestyle lot.

It is recommended the application be refused.

**LEGISLATION / STRATEGIC PLAN / POLICY:**

**Legislation**

Section:

*Planning and Development Act 2005*

Part 10 - Subdivision and development control

**Strategic Plan**

Strategic Goal:

Regulation

Outcomes:

Effective, consistent and enforceable regulation

Strategies:

Improve, streamline and simplify regulatory processes within a risk based framework.

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## Policy

Number and / or Name: SPP 2.5 Agricultural and Rural Land Use Planning (2002)  
SPP 2.5 Land Use Planning in Rural Areas (2012)  
DC 3.4 Subdivision of Rural Land (2008)  
DC 3.4 Subdivision of Rural Land (2012)  
Shire of Denmark Town Planning Scheme No 3  
Shire of Denmark Local Planning Strategy

## BACKGROUND:

This application proposes the subdivision of Lot 4194 Gardener Road Kentdale in the Shire of Denmark into two lots; a conservation lot of 27.7 ha (Lot A) and a balance agricultural lot of 27.9 ha (Lot B) (**Attachment 1 - subdivision plan**).

The Department of Planning has received a number of applications (WAPC ref 148031, 148075, 147938, 148389) in recent months for the subdivision of rural land in the Great Southern region to create a conservation lot and balance agricultural lot subject to the conservation lot provisions of DC3.4. The proposals are of concern as they propose conservation lots of a size ranging from 3.8 ha to 30 ha and balance agricultural lots ranging in size from 7.6 ha to 28 ha, and are therefore more akin to rural living proposals.

Two of these applications; the subdivision of Lot 605 South Coast Highway Kentdale (WAPC 148031) and Lot 656 Harewood Road Scotsdale (WAPC 148075) were refused by the SPC on 27 August 2013, for the same reasons as recommended for this application.

This application was also presented to SPC on 27 August 2013. SPC resolved to defer its decision pending clarification of conservation merit. (**Attachment 2 - SPC agenda item 27 August 2013**)

## CONSULTATION:

No agencies have provided information on the conservation merit or endorsed the suitability of the lot for the intended purpose of retaining environmental values. The Department of Parks and Wildlife (DPaW) have advised they support the vegetation being covenanted but are not willing to be the agency to administer the covenant.

## OFFICERS COMMENTS:

It must be emphasised that there is no strategic plan that identifies vegetation worthy of protection or addresses retention of native vegetation in the Shire of Denmark. There are a number of lots in the vicinity of Lot 4194 and in the Shire of Denmark generally, which contain vast pockets of remnant vegetation. The extent of remnant vegetation is demonstrated in the map attached. It should be noted there are no Declared Rare or Priority Flora or Threatened and Priority Ecological Communities identified. (**Attachment 3 - native vegetation extent**). Similar applications over other lots in the locality, would be materially indistinguishable from this application, and therefore approving this application would set a significant precedent for the subdivision of surrounding lots, which would be inconsistent with the objectives of WAPC policy in that there would be increased fragmentation of rural land, increased

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potential for land use conflict and closer settlement with no regard to settlement strategy.

Given the SPC's recent decisions to confirm that the Commissioner for Soil and Land Conservation is not suitable as a covenanting agency for conservation lots under DC3.4 and no appropriate covenanting agency (DPaW or National Trust WA) has advised it is willing to administer a conservation covenant, the vegetation is not considered to have sufficient conservation merit to warrant consideration for subdivision under DC3.4. Regardless, the conservation merit of the proposal is a secondary consideration and any perceived benefit from protecting the vegetation via covenant even if conservation merit was demonstrated, is outweighed by the WAPC's core policy position for appropriately planned and appropriately located settlement.

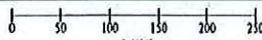
This application is not materially different to the applications refused by the SPC on 27 August 2013, and is therefore, again, recommended for refusal, consistent with SPC's previous decision. The application proposes two lots of a size akin to lots used for rural living and regardless of the quality and value of the vegetation; the willingness or otherwise of an agency to administer the covenant; and the balance lot being able to maintain activities such as cattle grazing; continued application of the conservation lot provisions of DC3.4 in the Great Southern, where rural land is historically fragmented, has the potential to create a 'scattergun' approach to rural settlement with no regard to settlement strategy.

#### **CONCLUSION:**

This application is not materially different to the two applications refused by SPC on 27 August 2013. The primary issue is the creation of two lots of a size similar to rural living lots without being identified in a local planning strategy or scheme and the potential to create a 'scattergun' approach to rural settlement with no regard to settlement strategy in the Great Southern Region. Refusal is recommended.



**CONSERVATION LOT SUBDIVISION**  
**LOT 4194 GARDENER ROAD**  
**KENTDALE, DENMARK WA 6333**



REVISION	DESCRIPTION	DATE	BY
1			
2			
3			
4			
5			
6			
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8			
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10			

THIS PLAN IS A PRELIMINARY PLAN AND IS NOT TO BE USED FOR CONSTRUCTION OR AS EVIDENCE OF TITLE. IT IS THE RESPONSIBILITY OF THE CLIENT TO OBTAIN ALL NECESSARY APPROVALS AND TO VERIFY THE ACCURACY OF THE INFORMATION PROVIDED. THE SURVEYOR'S LIABILITY IS LIMITED TO THE PROFESSIONAL SERVICES PROVIDED.

PROJECT NUMBER:	1811-01A
PROJECT NAME:	CONSERVATION LOT SUBDIVISION
DATE:	11/15/2018
SCALE:	AS SHOWN
PROJECT DATA:	SEE PLAN
CLIENT DATA:	SEE PLAN

Ref: 1811-01A



Denmark Survey & Mapping  
 PO Box 333  
 1/55 Strickland St. Denmark 6333  
 (08) 9848 2262

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## ITEM NO: 9.13

### SUBDIVISION TO CREATE TWO LOTS FOR FARMING AND CONSERVATION PURPOSE - LOT 4194 GARDENER ROAD KENTDALE – SHIRE OF DENMARK

<b>WAPC OR COMMITTEE:</b>	<b>Statutory Planning Committee</b>
REPORTING AGENCY:	Department of Planning
REPORTING OFFICER:	Planning Officer, Great Southern Team
AUTHORISING OFFICER:	A/Executive Director, Regional Planning and Strategy
AGENDA PART:	H
FILE NO:	147958
DATE:	6 August 2013
ATTACHMENT(S):	1 - subdivision plan 2 - zoning map 3 - correspondence from Commissioner for Soil and Land Conservation 4 - advice from DAFWA
REGION SCHEME ZONING:	N/A
LOCAL GOVERNMENT:	Denmark
LOCAL SCHEME ZONING:	Rural
LGA RECOMMENDATION(S):	Refuse
REGION DESCRIPTOR:	Albany
RECEIPT DATE:	16 May 2013
PROCESS DAYS:	83
APPLICATION TYPE:	Subdivision
CADASTRAL REFERENCE:	Lot 4194 Gardener Road Kentdale

#### RECOMMENDATION:

***That the Western Australian Planning Commission resolves to refuse the subdivision of Lot 4194 Gardener Road Kentdale for the following reasons;***

- 1. The proposed subdivision is contrary to Development Control Policy 3.4 Subdivision of Rural Land as it does not meet the exceptional circumstances where rural subdivision can be considered as the vegetation has not been identified in a strategic planning document or by the relevant environmental agencies for further protection.***
- 2. The proposed subdivision is contrary to Development Control Policy 3.4 Subdivision of Rural Land as the Commissioner for Soil and Land Conservation is not an appropriate agency to administer the necessary environmental conservation covenant.***

3. *The proposed subdivision is contrary to Development Control Policy 3.4 Subdivision of Rural Land as the balance lot is not suitable for the continuation of an agricultural rural land use.*
4. *The proposed subdivision is contrary to the objectives of State Planning Policy 2.5 as it would result in the ad hoc fragmentation of rural land, and increase potential for land use conflict.*
5. *The proposed subdivision is contrary to State Planning Policy 2.5 as it creates rural living lots on land that has not been identified for closer settlement in an endorsed local planning strategy or zoned in the local planning scheme.*
6. *Approval to the subdivision would create an undesirable precedent for the further subdivision of other lots of a similar size in the Rural Zone in this locality causing unplanned breakdown of landholdings.*

**SUMMARY:**

The application proposes the subdivision of rural zoned Lot 4194 Gardener Road Kentdale into two lots; a conservation lot of 27.7 ha, and a balance agricultural lot of 27.9 ha. The proposal is inconsistent with WAPC policy in that the proposal; is not supported by any strategic plans; is not supported by an appropriate environmental agencies covenanting program; and the balance lot is not suitable or practical for rural agricultural purposes and is more akin to a rural lifestyle lot.

This application is brought to SPC concurrently with other applications for the subdivision of rural land for conservation lot purposes in the Great Southern Region.

It is recommended the application be refused.

**LEGISLATION / STRATEGIC PLAN / POLICY:**

**Legislation** *Planning and Development Act 2005*  
 Section: Part 10 - Subdivision and development control

**Strategic Plan**  
 Strategic Goal: Regulation  
 Outcomes: Effective, consistent and enforceable regulation  
 Strategies: Improve, streamline and simplify regulatory processes within a risk based framework.

**Policy**  
 Number and / or Name: SPP 2.5 Agricultural and Rural Land Use Planning (2002)  
 SPP 2.5 Land Use Planning in Rural Areas (2012)  
 DC 3.4 Subdivision of Rural Land (2008)  
 DC 3.4 Subdivision of Rural Land (2012)  
 Shire of Denmark Town Planning Scheme No 3  
 Shire of Denmark Local Planning Strategy

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#### Shire of Denmark Town Planning Scheme No 3 (TPS3)

The land is zoned 'Rural' under TPS3, with the purpose and intent of the zone being for the range of normal activities conducted in the Shire and to protect such land from inappropriate uses. The scheme is silent on subdivision of rural land. TPS3 allows, at clause 5.3.2, two single houses to be built on any lot in the Rural zone.

#### Shire of Denmark Local Planning Strategy 2011 (LPS)

The land is designated as 'General Agriculture' in the LPS. The LPS states Council will only support subdivision of rural land in accordance with the provisions of the LPS and will generally not support subdivision which further fragments any land within the General Agricultural areas, in accordance with DC3.4.

#### SPP 2.5 Agricultural and Rural Land Use Planning (SPP 2.5 2002) and SPP 2.5 Land Use Planning in Rural Areas (SPP2.5 2012)

These policies *inter alia*, protect agricultural land resources by minimising ad hoc fragmentation of rural land; plan and provide for rural settlement; minimise the potential for land use conflict and require local government to identify areas for closer settlement in an endorsed Local Planning Strategy.

The revised policy is awaiting approval by the Minister for Planning and granting of consent by the Governor before being available to the public. The State Administrative Tribunal has accepted the revised SPP 2.5 as a seriously entertained planning instrument.

#### DC 3.4 Subdivision of Rural Land

This policy contains a general policy requirement that the subdivision of rural and agricultural land for closer settlement (rural-residential and rural smallholding) and more intensive agriculture uses should be properly planned through the preparation of regional and local planning strategies and provided for in local planning schemes prior to subdivision.

DC3.4 allows subdivision to create conservation lots to preserve significant environmental features provided that; the vegetation is identified as worthy of protection in a strategic document; the lot is an appropriate configuration; the lot has an appropriate conservation covenant; and the balance of the lot can be used for agricultural purposes.

DC3.4 has also been revised with the revised version (DC3.4 2012) endorsed by the WAPC on the 28th February 2012. It is yet to be publicly released. The State Administrative Tribunal has accepted revised DC 3.4 as a seriously entertained planning instrument.

#### **BACKGROUND:**

The Great Southern Office has received a number of applications in recent months for the subdivision of rural land in the Shires of Denmark and Plantagenet and the City of Albany to create a conservation lot and balance agricultural lot subject to the conservation lot provisions of DC3.4 (cl 4.8 2008, cl 6.5 2012). The applications are all accompanied by a letter from the Commissioner of Soil and Land Conservation giving in principle support to be the covenanting agency.

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The applications have highlighted a number of issues with the interpretation and application of WAPC policy with regard to conservation lots. These applications are brought to SPC concurrently to confirm;

1. The proposals represent rural settlement/rural living proposals and are therefore not supported.
2. The Commissioner of Soil and Land Conservation is not an appropriate covenanting agency in this instance as no assessment of environmental significance has occurred.

This application proposes the subdivision of Lot 4194 Gardener Road Kentdale in the Shire of Denmark into two lots; a conservation lot of 27.7 ha (Lot A) and a balance agricultural lot of 27.9 ha (Lot B) (**Attachment 1**). Lot 4194 is currently used for cattle grazing and seasonal silage. There is a dwelling and several outbuildings on Lot B. The proposed lots are irregularly shaped to respond to site conditions and the remaining vegetation and creekline. The application proposes covenanting the vegetation on both lots.

The land is zoned 'Rural' in the Shire of Denmark Town Planning Scheme No 3. (**Attachment 2**).

#### **CONSULTATION:**

The Shire of Denmark does not support the application and recommends it be refused as; it conflicts with the provisions of the Shire's Local Planning Strategy (2011) and Town Planning Scheme Policy No 29 Rural Settlement Strategy as it will result in the further breakdown of farming lots; it conflicts with DC 3.4 as the proposal will result in the creation of two lots that are not consistent with the prevailing lot sizes in the locality; it appears to be creating two conservation lots; the proposal will result in irregular shaped lots; and there is no additional demonstrated community benefit with this subdivision proposal.

The Department of Agriculture and Food provide in principle support for creation of the conservation lot, acknowledging that the proposal will maintain suitable riparian buffering to minor tributaries that flow into the Owingup Swamp Nature Reserve. DAFWA recommends a condition requiring notification on the title of Lot A advising adjacent land is used for agricultural purposes.

The Department of Mines and Petroleum object to the proposal as they have serious concerns about the potential impact that conservation covenants may have with respect to access to carry out exploration and extraction of minerals and could act as a severe disincentive to exploration due to real or perceived constraints.

The Department of Parks and Wildlife (DPaW) (former Department of Environment and Conservation) support the creation of the proposed covenants on the lots and the location of the building envelope of proposed Lot A.

There were no other objections from referral agencies.

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## OFFICERS COMMENTS:

### Assessment of vegetation

It is current practice that if an agency agrees to covenant the vegetation on the proposed conservation lot, the application is considered to meet the requirements of DC3.4 in determining the vegetation has been identified as worthy as protection. Advice from DPaW or other covenanting agencies is relied upon to determine the value of the vegetation. This application is accompanied by a letter from the Commissioner of Soil and Land Conservation giving in principle support to be the covenanting agency.

As a result of the number of recent applications, the Commissioner for Soil and Land Conservation has recently informed the Department of Planning that a new policy is being developed to guide the Commissioner's decision making in whether to administer conservation covenants arising from conservation lot subdivision in accordance with DC3.4 (**Attachment 3**). The Commissioner advises that until the new policy is operational, his Office is reluctant to negotiate new conservation covenants created solely for the purposes of an applicant securing conservation lot subdivision.

DAFWA advise in considering their initial advice the WAPC should be aware that Soil and Land Conservation Covenants do not include stewardship provisions or a management plan, are not regularly monitored and differ significantly from covenants administered by DEC and the National Trust (**Attachment 4**).

DC3.4 requires, 'a conservation covenant in perpetuity with the DEC, the National Trust of Australian (WA) or an alternative authority acceptable to the WAPC.' It is recommended that the WAPC determines, in this instance, the Commissioner of Soil and Land Conservation is not appropriate as the covenanting agency for the following reasons; soil and land covenants are primarily for the purpose of preventing soil erosion rather than preserving significant environmental features; there is limited assessment carried out on the suitability of the vegetation or suitability of the lot for retaining environmental values; there is no requirement for a management plan and there is no stewardship program.

### Lot size

The spate of recent applications received propose conservation lots of a size ranging from 3.8 ha to 30 ha and balance agricultural lots ranging in size from 7.6 ha to 28 ha. This application proposes a conservation lot of 27.7 ha and an balance agricultural lot of 27.9 ha. With regard to lot size, DC3.4 (cl 4.8 of 2008, cl 6.5 of 2012) requires the size of the conservation lot to be endorsed as suitable by the covenanting agency and the remaining agricultural lot to be of sufficient areas to be capable and suitable for agricultural/rural use.

Regardless of the quality and value of the vegetation and willingness of an agency to administer the covenant and the balance lot being able to maintain activities such as cattle grazing; continued application of the conservation lot provisions of DC3.4 in the Great Southern has the potential to create a 'scattergun' approach to rural settlement with no regard to settlement strategy.

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It is considered this application is creating two lots of a size more akin to a rural living lot. SPP 2.5 requires that prior to subdivision for closer settlement, land should be identified in an endorsed LPS and zoned in the TPS for that purpose. Lot 4194 has not been identified in the LPS or TPS for closer settlement and this proposal is considered to be ad hoc fragmentation of rural land.

This subdivision proposal is contrary to SPP2.5 as it will result in additional dwelling entitlements, with the potential for increased land use conflict. The risk of increased land use conflict is exacerbated in the Shire of Denmark as the local planning scheme allows for two single dwellings to be built on a rural zoned lot.

## **CONCLUSION**

The proposal will create two lots, of a size akin to lots used for rural living, in the rural zone. The land has not been identified for rural living or closer settlement in the Shire of Denmark Local Planning Strategy or appropriately zoned in the Shire of Denmark Town Planning Scheme No 3 and is therefore contrary to the objectives of SPP2.5 (2002) and SPP2.5 (2012) and DC3.4 (2008) and DC3.4 (2012). The application does not meet the special circumstances of DC3.4 (2008) and DC3.4 (2012) for subdivision of rural land in that the Commissioner for Soil and Land Conservation is not an appropriate covenanting agency and the balance lot is not suitable for agricultural use. Refusal is recommended.

