



Statutory Planning Committee

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

**Tuesday 9 December 2014
10.45 am**

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



**Tim Hillyard
WAPC Secretary**

Please convey apologies to Luke Downes on 6551 9549 or email
luke.downes@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)	04/11/2016
Ms Gail McGOWAN	Director General, Department of Planning Schedule 2 clause 4(2)(b)	Ex officio
Mr Martin CLIFFORD	Nominee of the Regional Minister Schedule 2 clause 4(3)	14/10/2015
Ms Elizabeth TAYLOR	Community representative Schedule 2 clause 4(2)(d)	31/12/2015
Mr Ian HOLLOWAY	Professions representative Schedule 2 clause 4(2)(e)	31/12/2015
Mayor Russell AUBREY	Local government representative Schedule 2 clause 4(2)(f)	23/09/2016
Ms Megan BARTLE	WAPC appointee Schedule 2 clause 4(2)(g)	04/12/2016
Ms Sue BURROWS	WAPC appointee Schedule 2 clause 4(2)(g)	31/12/2015
Mr Ray GLICKMAN	WAPC appointee Schedule 2 clause 4(2)(g)	23/09/2016
Mr Stephen HILLER	WAPC appointee Schedule 2 clause 4(2)(g)	23/09/2016

Quorum: 5

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 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
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
- Tuesday, 11 November 2014
9. Statutory items for decision
10. Policy items for discussion/decision
11. Confidential items (Statutory & Policy)
12. Stakeholder engagement & site visits
13. Urgent business
14. Items for consideration at a future meeting

Item No	Report	Request	Report Required
7509.14.3	Small lot products 50-80m ²	An update is required to be submitted to the Committee	TBA
7510.7	Legal Services' Review of delegations	Report to be presented	14 October 2014

15. Closure

Statutory Planning Committee

Notes
of ordinary meeting 7513
held on Tuesday, 11 November 2014

Attendance

Members

Mr Eric Lumsden	WAPC Chairman (Presiding Member)
Mayor Russell Aubrey	Local government representative
Mr Stephen Hiller	WAPC appointee
Mr Ray Glickman	WAPC appointee

Officers

Ms Natalie Cox	Planning Manager; Perth and Peel Planning
Mr Emille van Heyningen	Planning Manager; Perth and Peel Planning
Ms Kym Petani	Director Metro North West / Acting Director Metro North East; Perth and Peel Planning
Ms Lisa Powell	Senior Planning Officer; Perth and Peel Planning
Mr Craig Shepherd	Planning Manager; Perth and Peel Planning

Observers

Ms Sue Burrows	WAPC appointee
Mr Ian Holloway	Professions representative
Ms Elizabeth Taylor	Community representative

Presenters

Mr Joe Gangemi	G&G Corporation (item 6.1 for 9.1)
Mr George Hajigabriel	Rowe Group (item 6.1 for 9.1)
Mr David Woo	G&G Corporation (item 6.1 for 9.1)
Ms Claire Richards	Rowe Group (item 6.2 for 9.2)
Mr Manny Braude	Braude Architects (item 6.3 for 9.3)
Mr David Maiorana	Harley Dykstra (item 6.3 for 9.3)
Mr Ben Doyle	Planning Solutions (item 6.4 for 9.1)
Mr Scott Ferguson	Overview Management (item 6.4 for 9.1)
Mr Brad Gleeson	Shire of Serpentine Jarrahdale (item 6.4 for 9.1)
Mr Richard Gorbunow	Shire of Serpentine Jarrahdale (item 6.4 for 9.1)
Mr Colin Lofts	Overview Management (item 6.4 for 9.1)
Mr Paul McQueen	Lavan Legal (item 6.4 for 9.1)
Mr Ross Underwood	Planning Solutions (item 6.4 for 9.1)
Mr Stephen Burns	City of Bayswater (item 6.5 for 11.2)
Ms Helen Smith	City of Bayswater (item 6.5 for 11.2)
Ms Lucy Shea	Corrs Chambers Westgarth (item 6.6 for 11.2)
Mr Nick Ayton	Ayton Baesjou Planning (item 6.7 for 11.5)

Statutory Planning Committee

Notes
of ordinary meeting 7513
held on Tuesday, 11 November 2014

Mr Graeme Robertson Bennett Range Pty Ltd (item 6.7 for 11.5)
Mr Peter Robertson Bennetter Range Pty Ltd (item 6.7 for 11.5)
Mr Aaron Lohman Rowe Group (item 6.8 for 11.6)
Ms Liz Bushby Gary & Lewis Landuse Planners (item 6.9 for 11.9)

Committee Support

Mr Luke Downes Committee Support Officer - Department of Planning

7513.1 Declaration of Opening

In accordance with the Standing Orders 2009, the meeting was adjourned at 9.00am due to a lack of a quorum.

Members present: Mr Lumsden, Mayor Aubrey, Mr Hiller, Mr Glickman.

Items will be circulated for out of session approval.

7513.2 Apologies

Mr Martin Clifford Regional Minister's nominee (Deputy)
Ms Gail McGowan Director General, Department of Planning

7513.3 Members on Leave of Absence and Applications for Leave of Absence

Nil.

7513.4 Disclosure of Interests

Member/Officer	Minute No.	Page No.	Nature of Interest
Mr Ray Glickman	7513.9.3	7	Impartiality

Resolved

Moved by Mr Aubrey, seconded by Mr Hiller

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

The motion was put and carried.

Statutory Planning Committee

Notes
of ordinary meeting 7513
held on Tuesday, 11 November 2014

7513.5 Declaration of Due Consideration

No declarations were made.

7513.6 Deputations and Presentations

7513.6.1 Modification of Redgum Brook North Local Structure Plan

Presenter Mr George Hajigabriel, Rowe Group

Mr Hajigabriel made a presentation to the Committee and answered questions from members.

7513.6.2 East Wanneroo Cell 9 Local Structure Plan No. 57 Amendment 1 - Additional Use 'Plant Nursery'

Presenter Ms Claire Richards, Rowe Group

Ms Richards made a PowerPoint presentation to the Committee and answered questions from members. A copy has been placed on file.

7513.6.3 Proposed Community Use Facility (Crisis Accommodation) - Lot 578 Jecks Street, Rockingham

Presenter Mr David Maiorana, Harley Dykstra

Mr Maiorana made a presentation to the Committee and answered questions from members.

7513.6.4 Modification of Redgum Brook North Local Structure Plan

Presenter Mr Ben Doyle, Planning Solutions;
Mr Colin Lofts, Overview Management;
Mr Paul McQueen, Lavan Legal

Messrs Doyle, Lofts and McQueen made a presentation to the Committee and answered questions from members.

7513.6.5 City of Bayswater Town Planning Scheme 24 Amendment No 55 - for Final Approval

Presenter Ms Helen Smith, City of Bayswater

Ms Smith made a presentation to the Committee and answered questions from members.

Statutory Planning Committee

Notes
of ordinary meeting 7513
held on Tuesday, 11 November 2014

**7513.6.6 City of Bayswater Town Planning Scheme 24
Amendment No 55 - for Final Approval**
Presenter Ms Lucy Shea, Corrs Chambers Westgarth

Ms Corrs made a presentation to the Committee and answered questions from members.

**7513.6.7 Shire of Denmark Local Planning Scheme No. 3
Amendment 131 – for Final Approval**

Presenter Mr Graeme Robertson, Bennett Range;
Mr Peter Robertson, Bennett Range;
Mr Nick Ayton, Ayton Baesjou

Messer's G. Robertson, P. Robertson and Ayton made a presentation to the Committee and answered questions from members.

**7513.6.8 Consideration of Approval To Advertise -
Forrestfield/High Wycombe Industrial Area Stage 2
Local Structure Plan**

Presenter Mr Aaron Lohman, Rowe Group

Mr Lohman made a presentation to the Committee and answered questions from members.

**7513.6.9 Shire of Cranbrook Town Planning Scheme No. 4
Amendment No. 5 - for Final Approval**

Presenter Ms Liz Bushby, Gary & Lewis Landuse
Planners

Ms Bushby made a PowerPoint presentation to the Committee and answered questions from members. A copy has been placed on file.

**7513.7 Announcements by the Chairperson of the Board and communication
from the WAPC**

The Chairman advised that the minutes of the meeting would be recorded as notes due to a lack of quorum.

Statutory Planning Committee

Notes
of ordinary meeting 7513
held on Tuesday, 11 November 2014

7513.8 Confirmation of Minutes

7513.8.1 Minutes of the Statutory Planning Committee meeting held on Tuesday, 28 October 2014

To be circulated for out of session approval.

7513.9 Statutory Items for Decision

7513.9.1 Modification of Redgum Brook North Local Structure Plan

File SPN/0224
Report Number SPC/731
Agenda Part C
Reporting Officer Senior Planning Officer, Metropolitan South-East

Officer's Recommendation

That the Western Australian Planning Commission resolves to:

1. refuse to approve the modifications to the Redgum Brook North Local Structure Plan in accordance with Clause 5.18.3.10 (b) of the Shire of Serpentine Jarrahdale Town Planning Scheme No. 2 for the following reasons:

- The proposal constitutes a major modification which is inconsistent with the material intent and design of the Byford District Structure Plan.
- The proposed development is contrary to and would undermine the effective implementation of the Western Australian Planning Commission's State Planning Policy No. 4.2 - Activity Centres for Perth and Peel, specifically:
 - does not encourage the establishment of a functional hierarchy for activity centres as part of a long-term and integrated approach to the development of economic and social infrastructure,

Statutory Planning Committee

Notes
of ordinary meeting 7513
held on Tuesday, 11 November 2014

- does not increase the density and diversity of housing in and around the centre above the planned location of the Neighbourhood Centre, and
 - is likely to undermine the established and planned activity centre hierarchy.
- The proposal does not comply with State Planning Policy 5.4 - Road and Rail Transport Noise and Freight Considerations in Land Use Planning as it will affect the function and efficiency of Thomas Road as a primary freight route.
 - The proposal has not adequately addressed the potential impacts of the proposed development to the local road network including Kardan Boulevard.
 - The proposed development would prejudice the orderly and proper planning of the area.
 - The proposal does not comply with the Shire of Serpentine Jarrahdale Activity Centres Strategy.
2. advise the Shire of Serpentine Jarrahdale of its decision accordingly.

Proposed Amended Recommendation

That the Western Australian Planning Commission resolves to:

1. *defer the item to allow a site inspection to be carried out by Committee members with Departmental staff;*
2. *seek further advice from the Department of Planning upon any submission on the item which will be lodged in the foreseeable future by the applicants consultant;*

Statutory Planning Committee

Notes
of ordinary meeting 7513
held on Tuesday, 11 November 2014

3. *request that Departmental staff provide a historical timeline of the item at the next Committee meeting.*

7513.9.2

East Wanneroo Cell 9 Local Structure Plan No. 57 Amendment 1 - Additional Use 'Plant Nursery'

File SPN/0124M
Report Number SPC/732
Agenda Part C
Reporting Officer Senior Planning Officer, Metro Planning North West

That the Western Australian Planning Commission resolves to:

1. *adopt Amendment 1 to the East Wanneroo Cell 9 Local Structure Plan No. 57 subject to the modifications outlined in the Schedule of Modifications appended as Attachment 6;*
2. *advise the City of Wanneroo of its decision accordingly.*

7513.9.3

Proposed Community Use Facility (Crisis Accommodation) - Lot 578 Jecks Street, Rockingham

File 28-50171-1
Report Number SPC/733
Agenda Part G
Reporting Officer Planning Manager, Metropolitan South West

Officer's Recommendation

That the Western Australian Planning Commission resolves to approve the development application for a community use facility (crisis accommodation) at Lot 578 Jecks Street Rockingham subject to the following conditions:

1. This approval relates to the proposed community use facility (crisis accommodation) as shown on plan numbers SK01, 02 and 03 of 3 Rev C date stamped 6 June 2014 by the Department of Planning;
2. All stormwater being contained on site;

Statutory Planning Committee

Notes
of ordinary meeting 7513
held on Tuesday, 11 November 2014

3. The vehicle parking areas, driveway and point of ingress and egress are to be designed, constructed, drained and marked in accordance with AS2890.1.

Proposed Amended Recommendation

That the Western Australian Planning Commission resolves to approve the development application for a community use facility (crisis accommodation) at Lot 578 Jecks Street Rockingham subject to the following conditions:

1. *This approval relates to the proposed community use facility (crisis accommodation) as shown on plan numbers SK01, 02 and 03 of 3 Rev C date stamped 6 June 2014 by the Department of Planning;*
2. *All stormwater being contained on site;*
3. *The vehicle parking areas, driveway and point of ingress and egress are to be designed, constructed, drained and marked in accordance with AS2890.1;*
4. *The provision of a management plan to the satisfaction of the local authority.*

7513.10 Policy Items for Discussion/Decision

Nil.

Statutory Planning Committee

Notes
of ordinary meeting 7513
held on Tuesday, 11 November 2014

7513.11 Confidential Reports

7513.11.1 City of Cockburn Town Planning Scheme No. 3 - Consolidation

File 853/02/23/0020P007
Report Number SPC/734
Agenda Part B
Reporting Officer Planning Manager - Schemes and Amendments

THIS ITEM IS CONFIDENTIAL

7513.11.2 City of Bayswater Town Planning Scheme 24 Amendment No 55 - for Final Approval

File TPS/0815
Report Number SPC/735
Agenda Part B
Reporting Officer Planning Manager- Schemes and Amendments

THIS ITEM IS CONFIDENTIAL

7513.11.3 City of Vincent - Town Planning Scheme No. 1 Amendment No. 36 - for Final Approval

File TPS/1282
Report Number SPC/736
Agenda Part B
Reporting Officer Planning Manager

THIS ITEM IS CONFIDENTIAL

7513.11.4 Shire of Serpentine Jarrahdale Town Planning Scheme No. 2 - Local Planning Scheme Amendment 186 - for Final Approval

File TPS/1268
Report Number SPC/737
Agenda Part B
Reporting Officer Senior Project Planner, Metropolitan South-East

THIS ITEM IS CONFIDENTIAL

7513.11.5 Shire of Denmark Local Planning Scheme No. 3 Amendment 131 – for Final Approval

File TPS/1204
Report Number SPC/738
Agenda Part B
Reporting Officer Planning Officer, Great Southern Team

THIS ITEM IS CONFIDENTIAL

Statutory Planning Committee

Notes
of ordinary meeting 7513
held on Tuesday, 11 November 2014

**7513.11.6 Consideration of Approval to Advertise -
Forrestfield/High Wycombe Industrial Area Stage 2
Local Structure Plan**

File SPN/0463
Report Number SPC/739
Agenda Part C
Reporting Officer Planning Manager North East
Metropolitan

THIS ITEM IS CONFIDENTIAL

**7513.11.7 City of Greater Geraldton Local Planning Strategy and
Local Planning Scheme No.1 - Revised Scheme Map
Area**

File TPS/1287/1
Report Number SPC/740
Agenda Part E
Reporting Officer Planning Manager - Central Regions

THIS ITEM IS CONFIDENTIAL

**7513.11.8 Shire of Ravensthorpe - Local Planning Strategy - for
Final Endorsement**

File 801/5/20/4PV
Report Number SPC/741
Agenda Part E
Reporting Officer Statutory Planning Manager

THIS ITEM IS CONFIDENTIAL

**7513.11.9 Shire of Cranbrook Town Planning Scheme No. 4
Amendment No. 5 - for Final Approval**

File TPS/1289/1
Report Number SPC/742
Agenda Part E
Reporting Officer Planning Officer

THIS ITEM IS CONFIDENTIAL

**7513.11.10 Shire of Wongan Ballidu - Consent to Advertise Local
Planning Scheme No. 5 and Endorsement of the Local
Planning Strategy**

File TPS/0056/1
Report Number SPC/743
Agenda Part E
Reporting Officer Planning Manager– Wheatbelt Region

THIS ITEM IS CONFIDENTIAL

Statutory Planning Committee

Notes
of ordinary meeting 7513
held on Tuesday, 11 November 2014

7513.11.11 State Administrative Tribunal: Invitation to Reconsider WAPC Decision to Refuse Development

File 30-50293-1
Report Number SPC/744
Agenda Part G
Reporting Officer Planning Manager, Metro Planning North West

THIS ITEM IS CONFIDENTIAL

7513.12 Stakeholder Engagement and Site Visits

A site visit is to be organised for members in regards to item 7513.9.1 - Modification of Redgum Brook North Local Structure Plan.

7513.13 General Business

Nil.

7513.14 Items for Consideration at a Future Meeting

Item No	Report	Request	Report Required
7509.14.3	Small lot products 50-80m ²	An update is required to be submitted to the Committee.	9/12/2014
7510.7	Legal Services' review of delegations	Report to be presented to the Committee.	TBA

7513.15 Closure

The next ordinary meeting is scheduled for 9:00 am on 9 December 2014.

There being no further business before the Committee, the Presiding Member thanked members for their attendance and declared the meeting closed at 12.14 pm.

PRESIDING MEMBER _____

DATE _____

INDEX OF REPORTS

Item	Description
9	STATUTORY ITEMS FOR DECISION
C	SUBDIVISIONAL / AMALGAMATIONS
9.1	Subdivision Lot 147 The Esplanade Peppermint Grove
9.2	Modification of Redgum Brook North Local Structure Plan
D	GENERAL ITEMS / OTHER MATTERS
9.3	City of Kalgoorlie-Boulder Public Open Space Strategy - Consent for Advertising
G	DEVELOPMENTS / SUBDIVISIONAL / SURVEY STRATA
9.4	Development: Single Dwelling and Commercial Vehicle Parking - Lot 62 Railway Parade, Baskerville
9.5	Development Application for Martial Arts Classes (Club Premises): Lot 443 William Street, Herne Hill
9.6	Proposed Place of Worship - Lot 101 Suffolk Street, Caversham
9.7	Retrospective Application for Twelve Grouped Dwellings - Lot 85 (No. 66-68) Murray Road, Bicton
10	POLICY ITEMS FOR DISCUSSION/DECISION
A	POLICY
10.1	Shire of Murray Residential Design Local Planning Policy to Vary State Planning Policy 3.1 Residential Design Codes
10.2	Government Sewerage Policy- Endorsement of Revised Approach
11	CONFIDENTIAL REPORTS
A	POLICY
11.1	Small Lot and Housing Product

- 11.2 Variation to Average Lot Size Requirements for Subdivision of Land Within Metropolitan Planning Central Area

B LOCAL OR REGIONAL PLANNING SCHEMES / AMENDMENTS

- 11.3 City of Cockburn - Local Planning Scheme Amendment 92 – Insertion of Bushfire Protection Provisions into Scheme - Final Approval
- 11.4 City of Stirling Local Planning Scheme No.3 Amendment No.38 – Final Approval
- 11.5 City of Belmont Local Planning Scheme No.15 Amendment No.4 - for Final Approval
- 11.6 City of Greater Geraldton Local Planning Strategy and Local Planning Scheme No.1 - Consent to Advertise
- 11.7 City of Rockingham – Town Planning Scheme No. 2 - Amendment 124 – for Final Approval
- 11.8 Amendment No. 34 to the City of South Perth Town Planning Scheme No. 6 - for Final Approval
- 11.9 City of Nedlands - Local Planning Scheme Amendment No. 201- for Final Approval
- 11.10 City of Cockburn - Local Planning Scheme Amendment 94 - for Final Approval - Cockburn Coast: Robb Jetty and Emplacement precincts Development Contribution Plan
- 11.11 Town of Claremont Town Planning Scheme No. 3 - Amendment 125 - For Final Approval
- 11.12 City of Bayswater - Town Planning Scheme 24 Amendment No. 55 - for Final Approval
- ~~11.13 City of Armadale Town Planning Scheme No. 4 – Amendment 48 – For Final Approval~~ ITEM WITHDRAWN
- 11.14 City of Nedlands Draft Local Planning Scheme No. 3 - for Consent to Advertise
- 11.15 City of Vincent - Local Planning Scheme Amendment No. 37 - for Final Approval

E MINOR LOCAL OR REGIONAL PLANNING SCHEMES / LOCAL PLANNING SCHEME AMENDMENTS

- 11.16 Shire of Ravensthorpe - Local Planning Scheme No. 6 - Resolution to Prepare a Scheme

11.17 Shire of York Town Planning Scheme No. 2 Amendment
No.53 for Final Approval

11.18 Town of Bassendean Local Planning Strategy - for Final
Endorsement

ITEM NO: 9.1

Subdivision Lot 147 The Esplanade Peppermint Grove

WAPC OR COMMITTEE:	Statutory Planning Committee
REPORTING AGENCY:	Department of Planning
REPORTING OFFICER:	Senior Planning Officer Metro Planning Central
AUTHORISING OFFICER:	Planning Director Metro Planning Central
AGENDA PART:	C
FILE NO:	150108
DATE:	19 November 2014
REPORT CATEGORY:	Statutory
RECOMMENDATION OUTCOME:	1. Approve
ATTACHMENT(S):	1. Context Plan 2. Application Plan 3. Aerial Street Setback Plan 4. Streetscape View Photos
REGION SCHEME ZONING:	Urban
LOCAL GOVERNMENT:	Peppermint Grove
LOCAL SCHEME ZONING:	Residential RR10
LGA RECOMMENDATION(S):	Refusal
REGION DESCRIPTOR:	Metro Central
RECEIPT DATE:	29 May 2014
PROCESS DAYS:	88
APPLICATION TYPE:	Subdivision
CADASTRAL REFERENCE:	Lot 147 The Esplanade, Peppermint Grove

RECOMMENDATION:

That the Western Australian Planning Commission resolves to approve the application for subdivision of Lot 147 The Esplanade, Peppermint Grove as shown on the plan date-stamped 29 May 2014. This decision is valid for three years subject to the following condition(s) and advice:

- 1. This approval is subject to section 148 of the Planning and Development Act 2005 and requires development to be integrated with the subdivision of the lot and development approval for building development to be granted before the diagram or plan of survey of the subdivision is endorsed by the Western Australian Planning Commission. (Local Government)***
- 2. This approval is subject to section 157(2) and the approval is not to be taken to be approval by the local government under the planning scheme of the carrying out of works necessary to enable the subdivision of the***

land and namely the demolition of the existing dwelling. (Local Government)

- 3. A minimum 0.69 metre wide right-of-way is to be provided, constructed and drained at the landowner/applicants cost along the rear/western boundary of the subject land. The right-of-way is to be accurately illustrated and denoted on the Deposited Plan 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)**
- 4. 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)**
- 5. 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)**
- 6. 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)**

ADVICE NOTES:

- 1. In regard to Condition No. 1 and 2, the integration of the subdivision with the development and the requirement to obtain development approval prior to the endorsement of the diagram of survey may result in the repositioning of the lot boundary, which is supported under this approval, subject to the lot size requirements of the R-Codes being maintained.**
- 2. In regard to Condition/s 4 and 5, the landowner/applicant shall make arrangements with the Water Corporation for the provision of the new necessary services. On receipt of a request from the landowner/applicant, a Land Development Agreement under Section 83 of the Water Services Act 2012 will be prepared by the Water Corporation to document the specific requirements for the proposed subdivision.**
- 3. In regard to Condition 6, Western Power provides only one underground point of electricity supply per freehold lot.**

SUMMARY:

- This report relates to an application for the subdivision of Lot 147 The Esplanade, Peppermint Grove into two smaller residential lots with areas commensurate with the R10 density coding.**
- The lot contains a substantial heritage dwelling, which straddles a proposed lot boundary and is intended to be demolished as part of the application.**

- *The State Administrative Tribunal (the Tribunal) is currently hearing an Application for Review (DR 78 of 2014) relating to an Application for Planning Approval over Lot 147 that was refused by the Council of the Shire of Peppermint Grove in December 2013 and March 2014 for demolition of the heritage dwelling and construction of a replacement dwelling.*
- *There are two issues that form the basis of the Application for Review being; the demolition of the heritage dwelling; the location of a replacement dwelling (in terms of its setback to The Esplanade) and consistency with the prevailing streetscape which has a clearly defined setback/building line and is a significant element of The Esplanade streetscape.*
- *Subdivision of the property is considered premature until the Application for Review has been determined or an Application for Planning Approval (for demolition and construction of a replacement dwelling) has been approved by the Shire.*
- *The Department of Planning (the Department) has liaised with the applicant to express concerns about determining the subject subdivision because it includes the demolition of a dwelling which is the subject of an Application for Review.*
- *The Department has discussed its concerns with the applicant and has suggested an opportunity to issue a restricted approval (which does not include demolition approval) that would require the subdivision and development to be integrated. The applicant is seeking an approval that enables implementation on the basis of the deemed approval of the required works, including the demolition of the heritage dwelling.*
- *The application is recommended for approval, however this is conditional upon the subdivision being integrated with the development under section 148 of the Planning and Development Act and subject to the approval not being interpreted under section 157(1) to be an approval by the Local Government, under the Town Planning Scheme, for the demolition of the dwelling. This is not a standard approach to approving subdivision but is considered to be proactive without interfering with the roles of the Tribunal and the Shire.*

LEGISLATION / STRATEGIC PLAN / POLICY:

Legislation	<i>Planning and Development Act 2005</i>
Section:	<i>Subdivision / Development Approval / Reconsiderations - Part 10 of the P&D Act 2005</i>
Strategic Plan	
Strategic Goal:	<i>Strategic Goal 2: Planning</i>
Outcomes:	<i>Effective Delivery of Integrated Plans</i>
Strategies:	<i>Implement State and Regional Planning priorities</i>

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

INTRODUCTION:

Lot 147 The Esplanade, Peppermint Grove a large residential property with an area of 2278m². The property enjoys a 21.8 metre frontage to The Esplanade and a 20.1 metre frontage to a rear sealed laneway, which has a width of 3.62 metres. The property is on the western side of The Esplanade and situated between Keane Street and Irvine Street (the street block). The street block comprises eleven lots; two lots fronting Irvine Street; four lots fronting Keane Street and the remaining five lots that front The Esplanade (**Attachment 1 Context Plan**). There are two lots at the intersection of Keane Street and The Esplanade being Lots 803 and 804 Keane Street. These lots were created as a result of subdivision approval being granted by the Western Australian Planning Commission (WAPC). Only Lot 803 contains a substantial heritage dwelling and Lot 804 (which is in the same ownership as Lot 803) is currently being developed with a large undercroft garage and servicing area which is ancillary to the heritage dwelling on Lot 803. Above the undercroft is a lawn area that serves as the front setback for Lot 803 and has a depth up to 32 metres (**Attachment 4 Streetscape Views**).

The application proposes to subdivide the subject property into two residential lots with a third lot to accommodate a widening of the adjacent Right of Way (ROW). Lot 1 will have an area of 1046m² and is proposed to have frontage and access to the ROW whilst Lot 2, with an area of 1146m², is proposed to have frontage and access to The Esplanade.

The site contains a substantial heritage dwelling which straddles the proposed lot boundary. The demolition of this dwelling and the granting of approval for a new replacement dwelling, are the fundamental matters to be determined as part of this application. This is because the subdivision cannot be implemented if the dwelling is retained, as it would straddle a lot boundary. This is not permitted under the Town Planning Scheme and/or the Building Act of Western Australia (**Attachment 2 Application Plan**).

In determining this application consideration should be given to whether it is appropriate to approve an application which ultimately provides for the demolition of a heritage dwelling and establishes the location of a new lot boundary. This pre-empted the decision making powers of the Council and the Tribunal, with respect to the outstanding Application for Review. This report will therefore address the following matters:

- Zoning, Residential Design Code requirements and proposed lot configuration;
- Shire of Peppermint Grove Town Planning Scheme No. 3;
- Application for Review being considered by the State Administrative Tribunal relating to the Demolition and Planning Application refusal;
- The appropriate process to determine the demolition of the dwelling;
- Whether access to the Right of Way is acceptable; and

- If it is appropriate to approve the subdivision and further limit the approval to satisfy the requirements of sect 148 of the Planning and Development Act 2005;

CONSULTATION:

The application was referred to the Shire of Peppermint Grove, Water Corporation and Western Power. The servicing agencies support the application subject to standard servicing conditions, which have been included in the recommendation.

The Shire of Peppermint Grove has recommended that the application be refused on the following grounds:

1. *Lot 147 is the subject of a review with the State Administrative Tribunal in respect of a replacement single dwelling over the site, which would conflict with the proposed subdivision.*
2. *The proposed subdivision proposes the demolition of a dwelling which would require planning approval under Clause 4.1.1 of Town Planning Scheme No. 3.*
3. *The proposed subdivision is predicated on the Shire's Right of Way Policy which is now considered redundant in wake of State Planning Policy.*

The Department has been advised that Council considered the application in light of its potential effect on the existing heritage dwelling (listed as a Category 2 in the Heritage List/Municipal Heritage Inventory) that is developed on the lot. Council also considered that the proposed subdivision, the resultant demolition and the creation of smaller residential lots could have a detrimental impact on the adjoining lots 803 and 804 (to the south) and lots 148 and 149 (to the north) which contain Category 1 heritage dwellings, in excellent condition and, which are intended to be retained by the current owners.

The Shire requested that in the event the Commission resolves to approve the application, the approval is not to be taken under section 157 (1) of the Act, to be an approval by the local government under its planning scheme for the demolition of the building. The basis of the Shire's recommendation is that TPS 3 requires any replacement dwelling on a Category 2 heritage site to recognise the position of the adjoining residences and precinct in general.

The Department supports the position of the Shire in terms of ensuring that any replacement dwelling is appropriately sited to ensure the preservation of the streetscape amenities.

COMMENTS:

Shire of Peppermint Grove Town Planning Scheme No. 3 and Residential Design Codes

The site is zoned 'Urban' under the Metropolitan Region Scheme and 'Residential R10' under the Shire of Peppermint Grove Town Planning Scheme No. 3 (TPS No. 3). The R10 coding allows for the creation of lots with a minimum site area of 875m²,

an average site area of 1000m² and a minimum lot frontage width of 20 metres. The subject application satisfies the base requirements of the R10 coding of State Planning Policy 3.1 the Residential Design Codes (R-Codes).

The R-Codes also require a minimum primary street setback of 7.5 metres. However, clause 4.4 of TPS 3 sets out variations and exclusions to the R-Codes. Clause 4.4(c) states that for R10 and R12.5 coded areas the setback from the front street boundary to any building (including carport or garage) shall be a minimum of 9 metres from the primary street and 4.5 metres from the secondary street. Council may permit a lesser setback where:

- a lot has a depth of less than 25 metres from a street boundary to a rear boundary; or
- where there are a significant number of existing houses having a lesser setback to the same street block; and
- where it is considered that the lesser setback will not detrimentally affect the quality of the streetscape.

Clause 4.9.3 of TPS 3 states that notwithstanding the specific provisions of the Scheme, in considering a proposed development the Council may have regard to, and may impose conditions relating to the following:

- (a) the need for limitation of building height and location of buildings to preserve or enhance views;
- (b) the need for preservation of existing trees or areas or buildings of architectural or historical interest;
- (c) the choice of building materials and finishes where these relate to the preservation of local character and the amenity of the area generally;
- (d) the dispersal of building bulk into two or more separate buildings on a lot to minimise the effect of building bulk;
- (e) an increase in building setbacks where the adjoining land is controlled under a different zoning or residential code in order to ensure adequate protection for adjoining residents; and**
- (f) location and orientation of a building or buildings on a lot in order to achieve higher standards of day lighting, sunshine or privacy or to avoid visual monotony in the street scene as a whole.

Demolition and Heritage Considerations

The heritage dwelling on Lot 147 is included on Council's Heritage List as a Category 2 building. A Category 2 building is defined as:

"Buildings which also contribute to the character and atmosphere of Peppermint Grove. These buildings may be altered or extended in a manner which recognises and retains some original features or which may be demolished, but the replacement building should recognise by its position the adjoining residence and precinct. The owner to provide an archival record for any building demolished under this category and the Shire to provide a plaque for inclusion in the adjoining footpath to recognise the cultural significance of the property."

Clause 5.1.4 and 5.1.5 of TPS 3 requires that planning approval be obtained for the demolition of any building included on the Heritage List and requires that an Application for Planning Approval identify the location and design of the replacement dwelling prior to demolition approval being granted.

An application to demolish the heritage residence and replace it with a new two storey dwelling has been the subject of an application lodged with the Council, and which was refused on the 25 March 2014 for the following reasons:

1. *The position of the new dwelling is contrary to clause 4.9.3 (a) of TPS 3 as the location of the replacement dwelling would detract from views to the two adjacent heritage listed dwellings from the Esplanade and erode the heritage streetscape.*
2. *The choice of materials and finishes for the proposed replacement dwelling are contrary to clause 4.9.3 (c) of TPS 3 by virtue of not preserving the local character and high visual amenity of the area.*
3. *The proposed location of the replacement dwelling is contrary to the adopted Municipal Heritage Inventory which requires a new dwelling to '...recognise by its position...' the heritage value of the adjoining residence and precinct.*

Officers of the Department have met with the Shire's Town Planner and understand that demolition of the heritage dwelling is contentious because, in determining the demolition, approval must concurrently be granted for a replacement dwelling. The Shire advises that the issue relates to the replacement dwelling and the lack of regard it has to the context of the site and the street block. In particular it proposes a dwelling that is not setback in line with the two adjoining heritage dwellings and the setback line that dominates the section of The Esplanade between Keane Street and Irvine Street. Approval of the subdivision could therefore prejudice the State Administrative Tribunal's determination on the demolition and replacement dwelling and is not a favoured approach.

Streetscape

The Shire advises that the portion of The Esplanade between Keane Street and Irvine Street is a rare and significant streetscape from both a heritage and aesthetic perspective and the preservation of this streetscape is highly desirable. In the case of the application area a view corridor to all the heritage dwellings is achievable from The Esplanade and the foreshore adjacent to the River. This is because of the historically well-considered and consistent street setback of the dwellings that front The Esplanade (albeit setback distances vary, but a distinctive setback line exists as a result of the angle of the street) (**Attachment 3 Aerial Street Setback Plan** and **Attachment 4 Streetscape View**).

A site visit has confirmed that there is a clear setback line from The Esplanade, which allows the frontages of all dwellings to be viewed. Any approval that would allow a dwelling to be built forward of the other dwellings could severely interrupt the rhythm of the streetscape and result in views to facades of the heritage dwellings being interrupted. This matter is being assessed as part of the Application for Review and it is understood that the setback to The Esplanade is the main outstanding issue.

Currently the primary street setback distance that prevails in the street is in the order of 38 metres and the application the subject of the Review, which is for a single dwelling only, proposes a setback of some 36 metres, which would project the dwelling forward of the adjoining dwellings, thereby interrupting the prevailing setback of the street.

The concern of the Department is that subdivision approval, if granted, would result in Lot 2, fronting The Esplanade, having a depth of between 52 and 61 metres. By applying the prevailing street setback line of 38 metres, this would leave limited space for a dwelling to be constructed and possibly leave only enough area for a building envelope with dimensions in the order of 20 metres width and a depth of between 14 and 23 metres. The Department questions whether this is appropriate for an area such as Peppermint Grove, where there are high land values and expectations of larger houses. Based on this, the granting of subdivision approval is a concern because it could result in the creation of a lot that cannot be developed in accordance with the R-Codes, TPS 3 and associated policies. In particular it may not facilitate a development that is in keeping by its position and the heritage value of the adjoining residence and precinct.

The Department agrees with the Shire that streetscape is a significant consideration and has high amenity value partly because of the large setbacks, the retention of heritage dwellings and the consistent setback line which provides for views from The Esplanade and river foreshore to each of the dwellings, particularly views to the heritage dwellings. The Department further considers it would be undesirable to create a lot that may lead to development that interferes with the heritage streetscape and which impacts adversely on the streetscape amenity.

State Planning Policy 3.5 Historic Heritage Conservation

This policy sets out the principles of sound and responsible planning for the conservation and protection of Western Australia's historic heritage. The objectives of this policy are:

- *To conserve places and areas of historic heritage significance.*
- *To ensure that development does not adversely affect the significance of heritage places and areas.*
- *To ensure that heritage significance at both the State and local levels is given due weight in planning decision-making.*
- *To provide improved certainty to landowners and the community about the planning processes for heritage identification, conservation and protection.*

Section 6.6 of this State Planning Policy deals with development control principles for development and includes the following policy considerations:

- *Development within a heritage area should respect and complement the heritage significance of the area as identified in the local planning policy. A respectful design approach gives special consideration to the siting, scale, architectural style and form, materials and finishes of the proposed development in relation to its neighbours, without copying historic detailing or decoration.*

- *Alterations and additions to existing buildings should be designed and sited in a manner that respects and complements the heritage significance of the area.*
- *A general presumption should apply in favour of retaining buildings that make a positive contribution to the significance of the area.*
- *Approval for demolition, if granted, may be accompanied by a requirement for an acceptable redevelopment proposal to avoid gap sites. If redevelopment is likely to be delayed, consideration should be given to the interim use of the land including a requirement for sympathetic treatment such as facade retention, landscaping or boundary treatment.*
- *Any new buildings erected in heritage areas should be designed and sited in a way that respects and complements the heritage significance of the area. New construction that is imaginative, well designed and harmonious should not be discouraged.*

In considering the application against SPP 3.6 the Department has given regard to the siting of the replacement dwelling to ensure that it has regard to the heritage characteristics and significance of the area.

The Application for Review and the appropriate process to determine the demolition of the dwelling

The proposal that is before the Statutory Planning Committee has not had regard to the appropriate location of a replacement dwelling and since this is considered integral to determining the most appropriate location for the new lot boundary, it is determined that this should be a separate process, controlled by a condition of subdivision, and under the guidance of the Local Government or the Tribunal.

Council refused an Application for Planning Approval that proposed the demolition of the character dwelling at Lot 147 The Esplanade and proposed to redevelop the site with a new two storey contemporary dwelling. The application was refused by the Council on two occasions primarily on the following grounds (that are relevant to this application):

- The position of the new dwelling is contrary to clause 4.9.3(a) of TPS 3 (referred to above) as the location of the replacement dwelling would detract from views to the two adjacent heritage listed dwellings from the Esplanade and erode the heritage streetscape; and
- The proposed location of the replacement dwelling is contrary to the adopted Municipal Heritage Inventory which requires a new dwelling to 'recognise its position.' the heritage value of the adjoining residence and precinct.

The Application for Review was partly heard in mid November 2014 and the Tribunal member conducted a site visit and has received final formal heritage assessments from independent heritage consultants. It is understood that the Tribunal has heard matters relating to heritage and the review has been adjourned till 2015 in order to hear town planning evidence. A decision from the Tribunal may be several months from being issued.

The applicant seeks a decision on the subdivision application prior to the decision of the Tribunal. In discussing the application further it is evident that the landowners do not have a definitive proposal for the site and the property may be redeveloped in one of the following ways:

- Obtain subdivision approval including demolition approval and on-sell vacant lots; or
- Await the decision of the Tribunal and if the Review is upheld, demolish the heritage dwelling and construct the new contemporary dwelling that formed the basis of the Council refusal and Application for Review (and would not require the subject subdivision approval).

Based on the information above it is evident that the subdivision application is being pursued to obtain demolition approval and to possibly usurp the outcome of the review at the Tribunal and its final ruling. The Department is not supportive of this approach and does not support making a recommendation a review at the Tribunal.

Right of Way Frontage and Access

The application proposes that Lot 1 have frontage and access to a Right of Way with a width of 3.62 metres. The Shire advises that the application is predicated on the Shire's Right-of-Way Policy based on the 1967 Town Planning Board Policy for Battle-Axe subdivision. The Shire emphasizes that Council is meant to prepare plans for the development of Rights-of-Way within superblocks before they consider them suitable for vehicle access.

State Planning Bulletin 33 (July 1999), provides guidance for the use of rights-of-ways for vehicle access in areas undergoing redevelopment. Although this Planning Bulletin encourages their use for vehicle access it is intended to be contingent upon there being a co-ordinated approach for the entire street block. Whilst the Shire does not favour the use of the Right of Way for access to proposed Lot 1, other subdivision approvals within the street block have been approved with access to the Right of Ways, with subsequent widening required. In the case of this ROW this has not occurred.

It is the view of the Department that utilisation of the Right of Way, subject to its widening, is acceptable in accordance with Planning Bulletin 33, Development Control Policy 2.2 and other approvals that have been issued within the street block. The proposed lot configuration and access to the Right of Way for Lot 1 is supported. With regard to requiring a Pedestrian Access Leg, this is not considered justified because the length of Right of Way between proposed Lot 1 and Keane Street is minor and only some 35 metres and provides easy access to Keane Street to for service delivery etc.

Approval Options and Limiting the Approval to Exclude Demolition Approval and to Require the Subdivision and Development to be Integrated

The Planning and Development Act 2005 introduces the powers and process to subdivide land as referenced and summarised below:

- Section 135 or 136 enables the WAPC to grant conditional subdivision approval in a manner that ensures that an approval under section 135 or 136 complies with the provisions of a local planning scheme, generally;
- Section 148 (as quoted below) enables the WAPC to approve an application conditionally upon development being integrated with the subdivision and

development approval being granted prior to the endorsement of a Deposited Plan for the new titles.

148. Development, conditions as to

Without limiting section 143, the Commission may impose a condition under that section that requires —

- (a) development to be integrated with the subdivision of the lot as specified by the Commission where, in the opinion of the Commission, such integration is necessary because of the size of the lots and potential impact on the amenity of the locality; and*
- (b) development approval for building on the lot to be granted before the diagram or plan of survey of the subdivision will be endorsed with the approval of the Commission.*

- Section 157 (as quoted below) enables the WAPC to limit an approval to exclude other approvals that would normally form part of a subdivision approval including demolition;

157. When approval of subdivision is deemed to be approval under planning scheme

- (1) Subject to subsection(2), when the Commission has approved a plan of subdivision of any land to which a planning scheme relates, that approval is to be taken to be approval by the responsible authority under the planning scheme of the carrying out of works necessary to enable the subdivision of the land that are —*
 - (a) shown on the plan of subdivision; or*
 - (b) required by the Commission to be carried out as a condition of approval of the plan of subdivision.*
- (2) When approving a plan of subdivision the Commission may determine that the approval is not to be taken under subsection (1) to be approval by the responsible authority under the planning scheme of the carrying out of works specified in the determination, and the determination has effect accordingly.*

The application proposes to subdivide Lot 147 into two lots and contemplates the demolition of a heritage dwelling as part of this proposal. Issues concerning the replacement dwelling, the subject of an Application for Review with the Tribunal, have not been resolved. The proposed subdivision is problematic as it contemplates the removal of a category two dwelling (Council's Heritage List) without planning consent.

In considering the application against TPS 3 and SPP 3.6, the demolition and replacement dwelling are issues that should be addressed prior to the subdivision being determined. Having said that, Section 157(2) of the Planning and Development Act (the Act) does empower the WAPC to explicitly specify what types of work cannot be deemed to be approved under the planning scheme. Thus, it would seem open to the WAPC to approve the subdivision but explicitly say that this does not include/allow approval under the relevant planning scheme for the demolition of the character dwelling.

The other potential solution is for section 148 of the Act to be applied to the subdivision approval, but conditionally under section 135, being subject to the owner

obtaining development approval from the Shire under TPS 3 for the demolition and replacement dwelling.

The above approach has been discussed with the Department's Legislative and Legal Services and is considered to be an appropriate way forward and will form the recommendation of the Department on this application.

Applicant Comment

The applicant has no objection to the application being approved subject to a condition requiring some form of development guide plan to demonstrate how each of the proposed lots could be developed and has recommended that the WAPC approve the application subject to the preparation of Local Development Plan or Detailed Area Plan. TPS 3, however, does not contain provisions relating to Local Development Plans or Detailed area Plans and there is no nexus with the scheme to impose such a condition.

The applicant has suggested that the WAPC approve the application subject to a condition requiring the preparation of a Local Planning Policy pursuant to Clause 4.11 of TPS 3. The applicant's submits that such a condition would be much less problematic, legally and practically, when compared to the proposal to require that formal planning approval be obtained for the proposed lots pursuant to Section 148(b) of the Act.

In relation to Section 148(b) the applicant's submit that such a requirement would be ambulatory and potentially ultra vires. The Department argues that this would also apply to a condition requiring a local planning policy as suggested by the applicant. The Department is, however, comfortable with issuing an approval subject to sections 148 and 157 of the Planning and Development Act 2005, because the Act specifically provides for such an approval via the imposition of conditions.

The applicant has advised that in relation to issuing an approval subject to Section 157(2) of the Act, this is not desired and it is preferred that the subdivision approval be issued in a manner that enables implementation on the basis of the deemed approval of the required works, in accordance with usual practice. Notwithstanding, the issue of an approval to which Section 157(2) applies in isolation and not combined with a Section 148 requirement is not seen as being onerous in that would effectively isolate the issue of demolition of the existing dwelling and result in a clear path for that matter to be dealt with.

As discussed earlier in this report, the subdivision is considered premature until the Application for Review has been determined by the Tribunal or a development application has been approved for the demolition of the heritage dwelling and replacement with an a new dwelling.

CONCLUSION:

The land the subject of this application contains a heritage dwelling, which forms part of an intact streetscape. As outlined in the R-Codes and Council's Town Planning Scheme, street setback areas are an integral part of the streetscape and are fundamental to the amenity and particular character of residential localities.

TPS 3, which includes the dwelling on its heritage list, requires that planning approval is required for the demolition of a heritage dwelling. This has not been obtained and is the subject of an Application for Review with the Tribunal. The Department does not agree to approve the application in a way that it could undermine the future decision of the Tribunal and considers that the only way to approve the application is conditional to sections 148 and 157 of the Planning and Development Act, where the approval explicitly restricts demolition and requires the applicant to deal with this separately and also requires the subdivision and the development to be integrated. In a locality and street such as the Esplanade, these issues are significant and issuing such an approval ensures the matters are addressed and does not undermine the role of the Tribunal in determining the Application for Review, which will have an impact on the subdivision.

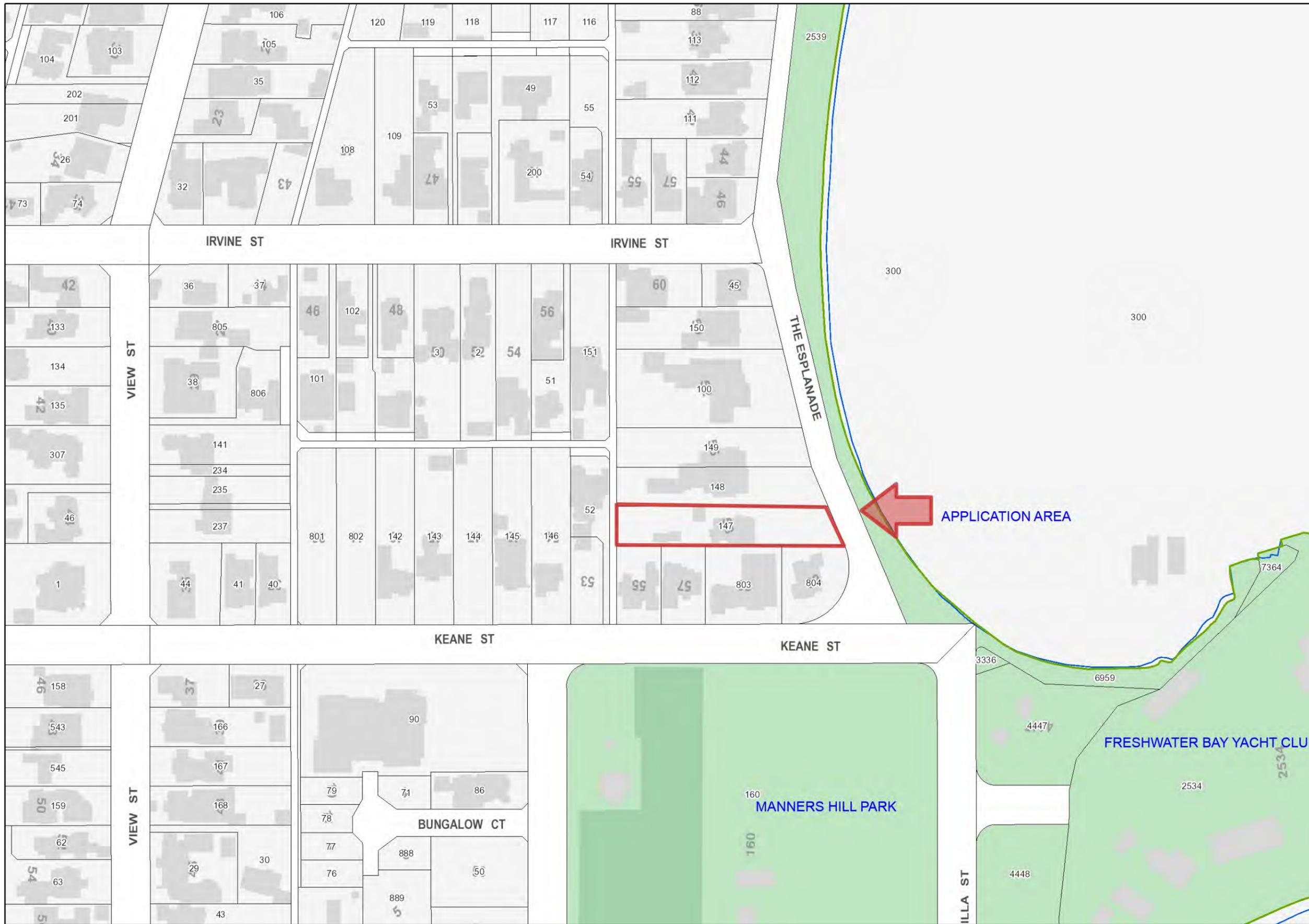
It is therefore recommended that the application be approved subject to two non-standard conditions as follows and with a related Advice Note:

1. *This approval is subject to section 148 of the Planning and Development Act 2005 and requires development to be integrated with the subdivision of the lot and development approval for building development to be granted before the diagram or plan of survey of the subdivision is endorsed by the Western Australian Planning Commission. (Local Government)*
2. *This approval is subject to section 157(2) and the approval is not to be taken to be approval by the local government under the planning scheme of the carrying out of works necessary to enable the subdivision of the land and namely the demolition of the existing dwelling. (Local Government)*

Advice Note: In regard to Condition No. 1 and 2, the integration of the subdivision with the development and the requirement to obtain development approval prior to the endorsement of the diagram of survey may result in the repositioning of the lot boundary, which is supported under this approval, subject to the lot size requirements of the R-Codes being maintained.

The Shire is supportive of this approach and the Department seeks the Statutory Planning Committee's approval to this application subject to the conditions discussed above and included in the recommendation.

- Legend**
- Local Government Area
 - Cadastre (view 1)
 - Cadastre (view 4)
 - W.A. Coastline



Notes:

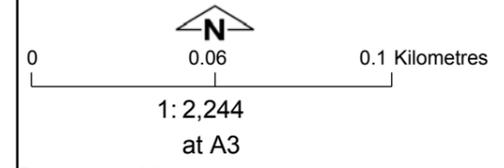
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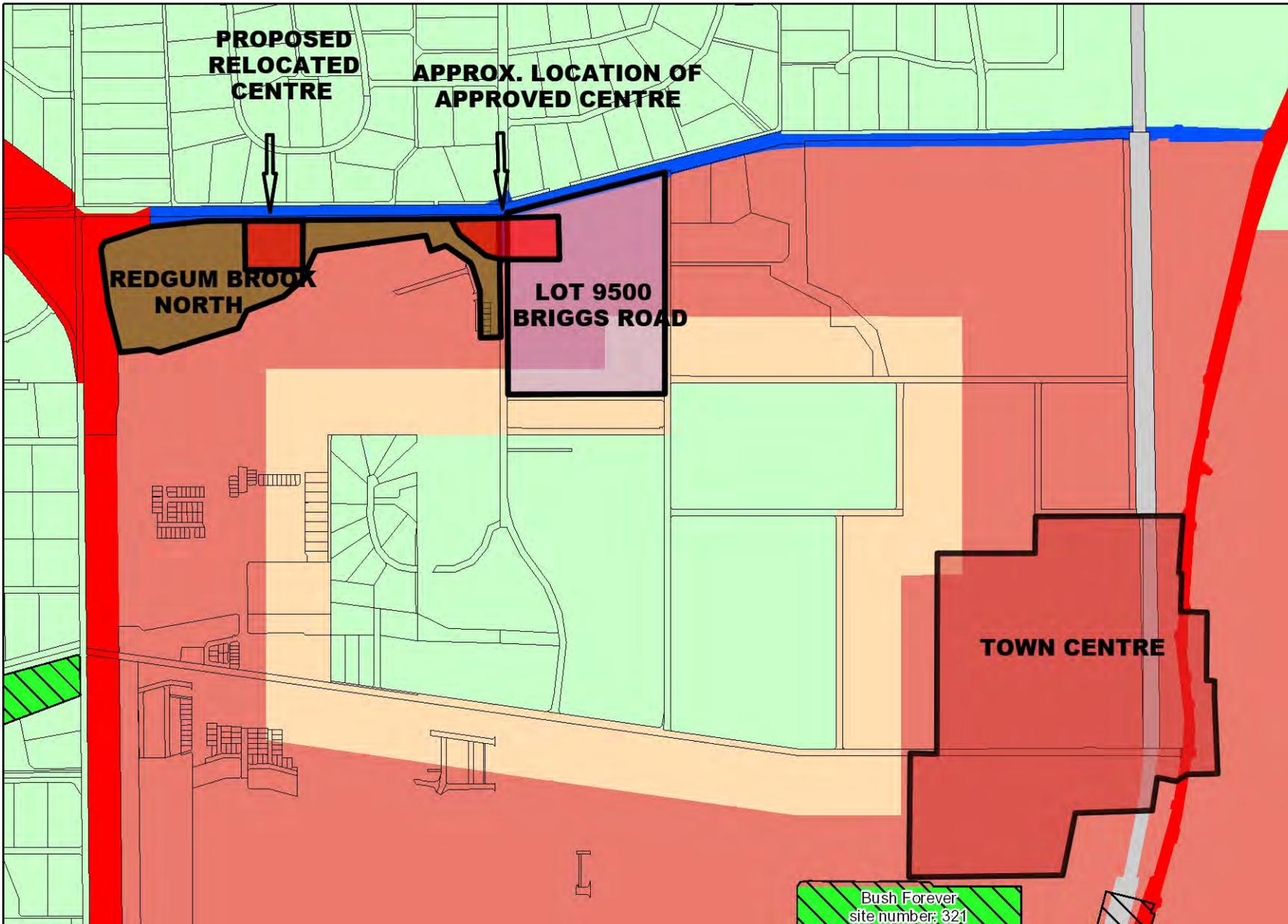
Map was produced using DoP's PlanViewWA.

Context Plan

INTERNAL USE ONLY

Internal Spatial Viewer
[Link to website](#)





Legend

- Local Government Area
- Cadastre (view 2)
- Cadastre (view 3)
- Cadastre (view 4)
- MRS - Boundary
- MRS - Bush Forever

MRS - Zones and Reserves

- other regional roads
- parks and recreation
- primary regional roads
- railways
- rural
- urban
- urban deferred

Notes:

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Map was produced using DoP's PlanViewWA.

INDICATIVE LOCATION PLAN (NTS)

INTERNAL USE ONLY

PlanViewWA
[Link to viewer](#)

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at A4

Projection: WGS 1984 Web Mercator Auxiliary Sphere

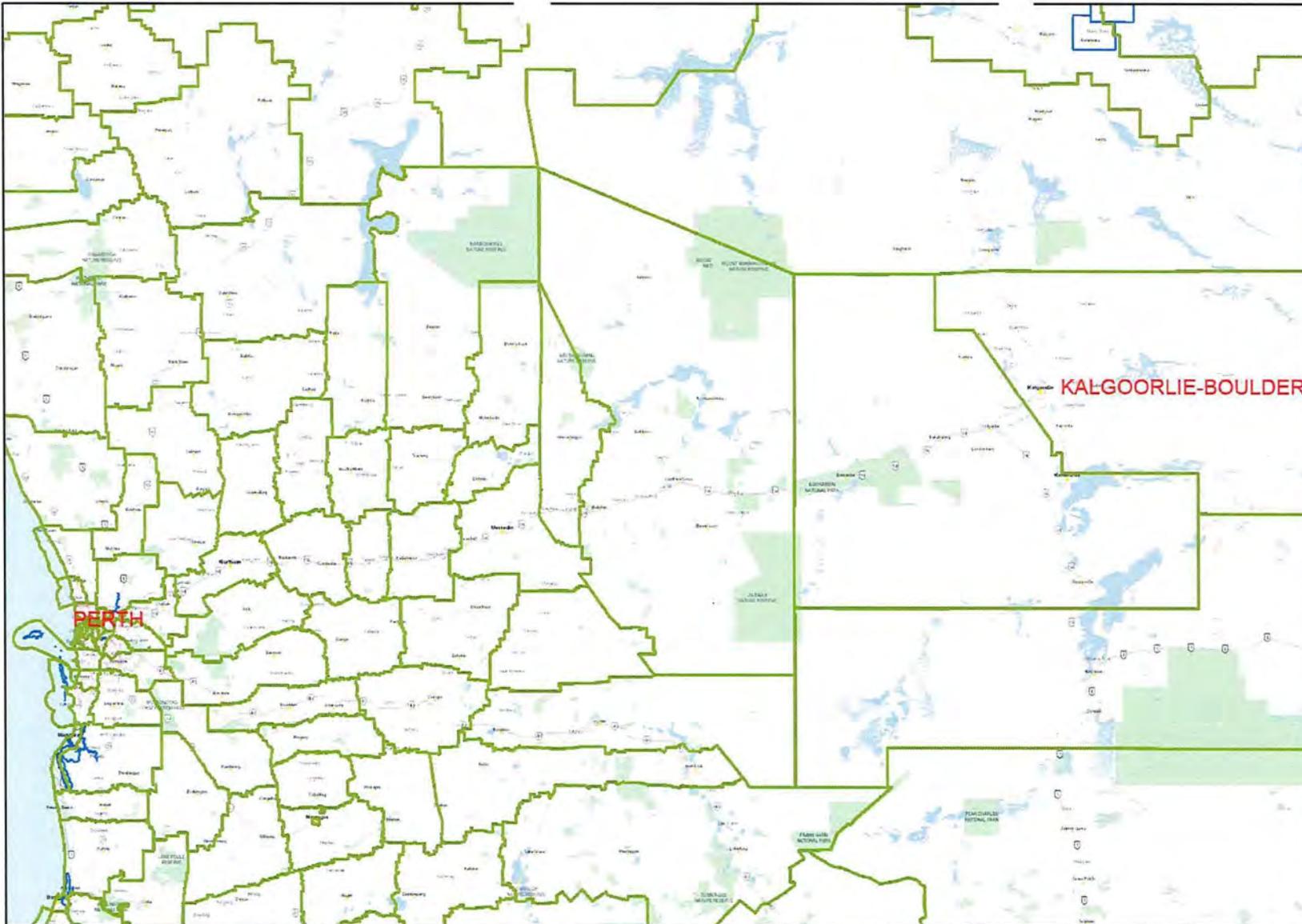
Produced by: FUNCTIONALITY TO COME
Date produced: 27-Nov-2014



Government of Western Australia
Department of Planning

Legend

-  Local Government Area
-  W.A. Coastline



Notes:

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Map was produced using DoP's PlanViewWA.

Produced by: FUNCTIONALITY TO COM

Date produced: 05-Nov-2011

PlanViewWA Map

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PlanViewWA
[Link to viewer](#)



0 95.25 190.5 Kilometres

1: 3,750,039

at A4

Projection: WGS 1984 Web Mercator Auxiliary Sphere

ITEM NO: 9.2

Modification of Redgum Brook North Local Structure Plan

WAPC OR COMMITTEE: Statutory Planning Committee

REPORTING AGENCY: Department of Planning
REPORTING OFFICER: A/Director Strategic Infrastructure and Planning
AUTHORISING OFFICER: Planning Director, Metropolitan South
AGENDA PART: C
FILE NO: SPN/0224
DATE: 27 November 2014
REPORT CATEGORY: Statutory
RECOMMENDATION OUTCOME: 1. Refuse
ATTACHMENT(S): 1. Location Plan
2. Byford (District) Structure Plan
3. Timeline of Events
4. Existing/Approved Local Structure Plan
5. Proposed Modified Local Structure Plan
REGION SCHEME ZONING: Urban
LOCAL GOVERNMENT: Shire of Serpentine Jarrahdale
LOCAL SCHEME ZONING: Urban Development
LGA RECOMMENDATION(S): Approval subject to modifications
REGION DESCRIPTOR: Metropolitan South-East
RECEIPT DATE: 15 July 2014
PROCESS DAYS: 163 days
APPLICATION TYPE: Final Determination of Modified Local Structure Plan
CADASTRAL REFERENCE: Multiple Lots generally bounded by Tonkin Highway,
Thomas Road, Malarkey Road and a multiple use
corridor

RECOMMENDATION:

That the Western Australian Planning Commission resolves to:

- 1. refuse the modifications to the Redgum Brook North Local Structure Plan in accordance with Clause 5.18.3.10 (b) of the Shire of Serpentine Jarrahdale Town Planning Scheme No. 2 for the following reasons:***
 - a) The proposal constitutes a major modification which is inconsistent with the material intent of the Byford District Structure Plan;***
 - b) A modification to the DSP has not made in accordance with Clause 5.18.4.1 of the Shire of Serpentine Jarrahdale Town Planning Scheme No. 2 which generally requires that a change or a departure from a***

structure plan shall be subject to modification request. The appropriate statutory steps to consider the modification in accordance with Clause 5.18.4.3 have not been followed as the modification is considered 'major' in nature;

- c) The proposed relocation is contrary to, and would undermine, the effective implementation of the Western Australian Planning Commission's State Planning Policy No. 4.2 - Activity Centres for Perth and Peel, as it does not meet the density and diversity targets and the high frequency public transport supply requirements of the policy;*
- d) The proposal does not provide sufficient supporting information in relation to the proposal's compliance with State Planning Policy 5.4 - Road and Rail Transport Noise and Freight Considerations in Land Use Planning and the impact on the function and efficiency of Thomas Road as a primary freight route; and*
- e) The proposed development would prejudice the orderly and proper planning of the area.*

2. advise the Shire of Serpentine Jarrahdale of its decision accordingly.

SUMMARY:

The key points relating to the report are as follows:

- The Shire of Serpentine Jarrahdale (the Shire) approved the modification to the Redgum Brook North Local Structure Plan (LSP) on 23 June 2014 subject to further modifications.
- On the 15 July 2014, the LSP was referred to the Western Australian Planning Commission (WAPC) for final determination in accordance with Clause 5.18.3.9 of the Shire of Serpentine Jarrahdale Town Planning Scheme No. 2, at the applicant's request and without the Shire's approved modifications being undertaken.
- The major modification proposed by the LSP involves the 1.14 hectare portion of the Neighbourhood Centre at the western corner of Thomas Road and Malarkey Road (San Simeon Boulevard) being relocated to the eastern corner of Thomas Road and Kardan Boulevard (700 metres west), and increased to 2.4 hectares in area (**Attachment 1 - Location Plan**).
- The proponent has provided various technical studies to justify the proposal including a Traffic Assessment, a Retail Sustainability Assessment, Local Water Management Plan and planning justification/report. Due regard has been given to these technical studies when undertaking the assessment of this proposal.
- This item was referred to the WAPC (Statutory Planning Committee) at its 11 November 2014 meeting. At the meeting, members of the Committee raised various questions and the Applicant was provided an opportunity to submit

additional information regarding the proposal. On this basis, the item was deferred. This report and recommendation addresses the items raised by the members and the additional information submitted accordingly.

- It is recommended that the modification to the LSP be refused by the WAPC.

BACKGROUND:

The Byford District Structure Plan (Byford DSP) covers an urban cell expected to accommodate 30-40,000 people when fully developed (**Attachment 2 - Byford District Structure Plan**). The Byford DSP identifies a Neighbourhood Centre in the north-west of the urban cell which straddles Malarkey Road, with a portion of the centre within the Redgum Brook North LSP area, and a portion on the adjacent site to the east of Malarkey, being Lot 9500 Briggs Road. Although the DSP does not define the exact allocations of land uses, it has been generally acknowledged that the Neighbourhood Centre at its current approved location is shared at a 2/3's to 1/3 split across the two land holdings.

A brief timeline of events over the course of development of the Byford urban cell relevant to this proposal is provided as (**Attachment 3 – Timeline of Events**)

The Byford urban cell is predominately zoned 'Urban Development' under the Shire's TPS No. 2, which requires local structure planning to be undertaken for sites prior to further subdivision and development. A LSP to guide the subdivision and development of Lots 9020 and 9029 Thomas Road, Byford, known as Redgum Brook North, was approved in January 2012 (**Attachment 4 - LSP (January 2012)**).

The approved LSP proposes residential development with densities ranging from R20 to R30, 3.35 hectares of public open space/multiple use corridor, a portion of a local centre site of approximately 1.14 hectares on the western side of Malarkey Road, and two mixed sites of approximately 5,000sqm (restricted to 300sqm retail) each side of Kardan Boulevard where it intersects with Thomas Road.

A modification to the LSP was lodged with the Shire on 27 September 2013 and generally proposes the following:

- The removal of the approved 1.14 hectare portion of the Neighbourhood Centre located in the eastern corner of the LSP area (corner of Thomas Road and Malarkey Road) and conversion of this site to Public Open Space.
- Removal of the 5000sqm mixed use site, located at the corner of Thomas Road and Kardan Boulevard (east of Kardan Boulevard) and creation of a 2.4 hectare Neighbourhood Centre site on the corner of Thomas Road and Kardan Boulevard (east of Kardan Boulevard).
- The Shire required through modification to the LSP that the mixed use centre on the western side of Thomas Road/Kardan Boulevard be removed. The LSP lodged with the WAPC proposes to retain this portion and cap the commercial floor space to 4,700sqm within the relocated Neighbourhood Centre to ensure a total 5000sqm across both parts of the Neighbourhood Centre.

- Redesign of the medium density residential lots and road network surrounding the proposed Neighbourhood Centre site (**Attachment 5 - Modified LSP**).

A separate LSP for the land to the eastern side of Malarkey Road known as Lot 9500 Briggs Road, Byford was received by the Shire on 5 June 2013 which included provision of a 1.5 hectare portion of the Thomas Road Neighbourhood Centre on the eastern side of Thomas Road/Malarkey Road (refer **Attachment 1**). This LSP reflects the general intent of the DSP and previous planning undertaken in the locality.

In view of the subject application, which propose a modification to the approved LSP and the Lot 9500 Briggs Road LSP showing conflicting locations for the Neighbourhood Centre, both LSP's were advertised and determined concurrently by the Shire on 23 June 2014.

Redgum Brook North LSP

The Shire approved the modification to Redgum Brook North LSP subject to a number of further modifications (as outlined above), however, the determination endorsed, amongst other things, a 2.4 hectare Neighbourhood Centre site of 5,000m² commercial floor space comprising 4,900m² on the eastern side of Thomas Road/Kardan Boulevard and the removal of the mixed use site on the western side of Thomas Road/Kardan Boulevard.

Lot 9500 Briggs Road LSP

The Lot 9500 Briggs Road LSP was approved by the Shire subject to the removal of the Neighbourhood Centre site from the LSP map/area and replacement with 'Mixed Use'.

Both the Redgum Brook North LSP modification and the Lot 9500 Briggs Road LSP have been referred to the WAPC for final approval pursuant to Clause 5.18.3.9 of the TPS No. 2.

LEGISLATION / STRATEGIC PLAN / POLICY:

Legislation Shire of Serpentine Jarrahdale Town Planning Scheme No. 2

Section: Clause 5.18.3.10

Strategic Plan

Strategic Goal: By improving the planning system and delivering plans that more efficiently meet changing community demands, we will be supporting the development of effective local communities.

Outcomes: Planned local communities developing a sense of place.

Strategies: Develop connected and accessible communities.

Improve local planning service capability.

Policy

Number and / or Name: Directions 2031 and Beyond
SPP 3.0 - 'Urban Growth and Settlement'
SPP 4.2 - 'Activity Centres for Perth and Peel'
Liveable Neighbourhoods

GOVERNMENT AND CORPORATE IMPLICATIONS:

Nil.

CONSULTATION:

The modified Redgum Brook North LSP was advertised for a period of 51 days from 11 December 2013 to 31 January 2014. A total of 36 submissions were received, comprising 15 non-objections/support, 10 submissions raising concerns or providing comment and 26 objections.

The issues raised primarily relate to:

- the proposal to relocate the Neighbourhood Centre wholly within the Redgum Brook North LSP area;
- regional and local traffic concerns pertaining to the proposed location of the Neighbourhood Centre site; and
- potential impacts of the modified LSP on the surrounding equine and residential areas including interface and amenity concerns associated with the relocation of the Neighbourhood Centre.

An assessment of the LSP and the comments received on the proposal has been undertaken by the Department of Planning.

OFFICER'S COMMENTS:

It is acknowledged that a number of elements are proposed to be modified from the approved Redgum Brook North LSP, however, the relocation of the Neighbourhood Centre to the corner of Thomas Road/Kardan Boulevard remains the main component of the modified LSP and is, therefore, the aspect of primary importance throughout this assessment.

Planning Framework

Byford District Structure Plan

The Byford DSP depicts a Neighbourhood Centre within the Thomas Road locality approximately 200 metres south of Thomas Road. The Byford DSP identifies a larger portion of the Neighbourhood Centre on the Redgum Brook site, and a smaller portion falling within the neighbouring Lot 9500 Briggs Road (Lot 9500). The Byford DSP states that the location of the Neighbourhood Centre on the extension of the (then) unconstructed Malarkey Road and the deviation of the Thomas Road *"is highly accessible from all areas within the northern section of the Structure Plan between Thomas Road and Abernethy Road*. The centre was also proposed to be 5,000m² Net Leasable Area (NLA).

Acknowledging that the DSP is to provide guidance to the next stage of planning, being the local structure planning stage, further investigation on the ideal location of the Neighbourhood Centre was undertaken as part of the preparation of the LSP. The Redgum Brook North LSP was prepared with a repositioning of the Neighbourhood Centre from the location 200 metres south of Thomas Road, to the

intersection of Malarkey Road with Thomas Road via the LSP approved in 2012. This Neighbourhood Centre was proposed a shared centre located across the Redgum Brook North site and Lot 9500 Briggs Road site to the east of Malarkey Road.

The Commission supported relocation of the Neighbourhood Centre from the DSP location for the following reasons:

- It met the material intent of the objectives of the Byford DSP;
- The shift was minor in distance;
- The centre remained on the same road alignment as predicated under the Byford DSP; and
- It did not alter anticipated traffic volumes in the Byford DSP area in a substantial way.

Under the current modification proposal for the Redgum Brook North LSP, the Neighbourhood Centre is proposed to be relocated a distance of 700 metres west of the intersection of Thomas Road and Kardan Boulevard. This is considered to be a major variation to the DSP. It is noted that an amendment to the DSP should have been sought prior to amending the Redgum North LSP in order to provide adequate opportunity for the district issues to be addressed.

The current design of the Neighbourhood Centre straddles two land parcels across Malarkey Road. It is not disputed that this arrangement has challenges with the progression of local structure planning for both Redgum Brook North and Lot 9500 Briggs Road. Specifically, this relates to planning for the activity centre/s, as each landowner has sought to include and maximise commercial land within their respective LSP's.

In view of the planning framework, it is considered reasonable that expectations have been set that some portion of the Neighbourhood Centre would be located on the eastern side of Malarkey Road at Lot 9500 Briggs Road. The proposal to accommodate the entire Neighbourhood Centre at Thomas Road/Kardan Boulevard is not consistent with the historic, current and planned framework.

Notwithstanding the above, the Department of Planning has assessed the LSP modification from a broad perspective, having regard to the regional and district-based merit of the proposal, and assessed the legitimacy of reasonableness of assumptions made in the context of the existing and approved Byford DSP.

Redgum Brook North LSP (approved January 2012)

The original Redgum Brook North LSP was approved in January 2012 and depicts a portion of the Neighbourhood Centre at the western corner of Thomas Road/Malarkey Road. Whilst the LSP map did not quantify the size/split of the Neighbourhood Centre site, clause 5.2 of the Part 1 Statutory Provisions requires the preparation of a Detailed Area Plan (DAP) to implement the Neighbourhood Centre across both sides of Malarkey Road in accordance with *State Planning Policy 4.2 - Activity Centres for Perth and Peel* and *Liveable Neighbourhoods*. The DAP is also required to allocate the NLA distribution of the 5,000sqm allowed for a Neighbourhood Centre under the DSP.

A subdivision application for the creation of the Redgum portion of the Neighbourhood Centre site was approved by the WAPC on 30 March 2012 (WAPC Ref: 143077). The size of the Neighbourhood Centre under the approved subdivision was 1.14 hectares.

Based on the Byford DSP, a Neighbourhood Centre is to have a commercial floor space of 5,000m². Utilising the standard industry assumption of a 1:5 ratio for total land area to commercial floor space, the total area of land expected to be allocated across the entire Neighbourhood Centre is approximately 2.5 hectares. The commercial floor space over both parts of the Neighbourhood Centre has not been allocated as the DAP process has not been completed by either landowner. Notwithstanding this, given the Neighbourhood Centre is split, there is a reasonable expectation that some commercial floor space would be allocated to the Lot 9500 Briggs Road site.

Shire of Serpentine Jarrahdale - Activity Centres Strategy

The Shire adopted its Activity Centres Strategy (the Strategy) in December 2012. The WAPC has not endorsed or supported the Strategy in lieu of the regional planning that is being undertaken at this time (sub-regional planning frameworks).

The Strategy builds on the principles and objectives outlined in SPP 4.2 to provide a framework for a hierarchical network of centres in the Shire where commercial, retail and employment activities are to be distributed. The Strategy also provides specific role, function and design requirements for each centre. The Strategy identifies two Neighbourhood Centres to be located in Byford, being one in the Thomas Road locality and the other within the 'Glades' estate south of Abernethy Road.

The main body of the Strategy states that the Neighbourhood Centre can accommodate approximately 5,000m² of commercial floor space and incorporate a full line supermarket. This text conflicts with Appendix 3 of the Strategy which outlines that the specific role and function of the Thomas Road Neighbourhood Centre is to be anchored by a small format supermarket of up to 3,000m², with a total floor space allocation of approximately 4,500m², and could include medical rooms, commercial space and provision of local shops and conveniences. Notwithstanding the conflict within the Strategy, it is acknowledged that the DSP and SPP 4.2 allow for supermarkets within Neighbourhood Centres.

The Strategy also promotes strong bike and walking links between the Neighbourhood Centre and State Primary School and active open spaces. It is acknowledged that both proposed locations for the Neighbourhood Centre meet these criteria, however, the existing Neighbourhood Centre location at Malarkey Road is closer to the planned primary school by several hundred metres than the Kardan Boulevard site to the West Byford Primary School.

It is considered that the proposed relocation of the Neighbourhood Centre does not represent the preferred option with regard to meeting the principles and objectives outlined within the Shire's Activity Centres Strategy in relation to positioning within the Thomas Road neighbourhood.

Retail

State Planning Policy No. 4.2 - Activity Centres in Perth and Peel (SPP 4.2)

The purpose of SPP 4.2 is to provide an even distribution of jobs, services and amenities throughout Perth and Peel. Clause 5.1 of SPP 4.2 outlines that:

"The responsible authority should not support activity centre structure plans or development proposals that are likely to undermine the established and planned activity centre hierarchy".

SPP 4.2 stipulates that the Byford District Activity Centre (Town Centre) is intended as a District Centre and will represent the highest order centre in the Byford locality. The Town Centre has been planned through a local structure plan, however, has not yet commenced construction. The Byford Town Centre Structure Plan was adopted in February 2014 and is intended to guide the expansion and growth of the Town Centre into a vibrant and sustainable District Centre which offers the level of service, goods and employment expected under SPP 4.2 for the entire Byford Urban Cell.

Two Neighbourhood Centres are contemplated within the DSP, one at Thomas Road/Malarkey Road and the other within the 'Glades' Estate south of Abernethy Road. These centres have been depicted in the DSP for since 2012 and 2011 respectively.

In order to support the relocation of the Neighbourhood Centre to Thomas Road/Kardan Boulevard, the applicant has submitted a Retail Sustainability Assessment (RSA). It is acknowledged that the applicant's LSP submitted to the WAPC retains the total maximum floor space allocation of 5000sqm split across the proposed Neighbourhood Centre (4,700sqm) and the existing Mixed Use site (300sqm) on the western side of Kardan Boulevard.

In view of the existing planning framework and expectations pertaining to the aforementioned activity centre sites, the applicant was requested to provide an updated RSA based on assumptions outlined by the Department of Planning in the context of knowledge surrounding anticipated developments over the coming five to ten years. These assumptions are generic and were used to forecast the retail needs for the foreseeable future.

The applicant's Retail Technical Report advises that there is currently sufficient capacity for two full-line supermarkets (~3,800sqm NLA) within the Byford cell. The DSP and SPP 4.2 acknowledge that supermarkets are contemplated within Neighbourhood Centres, however, the existing location of the centre at Thomas Road/Malarkey Road has meant that the practical development of a supermarket at that location is likely to be unfeasible. A smaller scale supermarket (not full-line) could be developed and still meet the needs of the community. Irrespective of this, it is acknowledged that the development of a full-line supermarket in this Neighbourhood Centre is contemplated within the planning framework.

The applicant's RSA states that the estimated impact of the relocated Neighbourhood Centre on the Byford Town Centre will equate to approximately 23% of sales. As mentioned, the applicant's retail expert asserts that there is currently sufficient

demand to accommodate two full-line supermarkets in the Byford urban cell. The risk of this is that if there is not the demand, or if the RSA detail is incorrect, the likely result will be that the establishment and early activation of the Byford Town Centre is compromised and thus the urban core construction that anchors off various retail uses (roads, public spaces, and civic uses) will likely be delayed for some time.

Density and Walkable Catchments

Clause 5.2.2 (2) of SPP 4.2 states 'higher density housing should be incorporated within and adjacent to activity centres', with the SPP promoting increased residential densities within a 200 metre walkable catchment around Neighbourhood Centres. *Liveable Neighbourhoods* (LN) advocates for a walkable catchment of 400 metres around Neighbourhood Centres.

SPP 4.2 defines 'walkable catchment' by deferring to LN (Appendix 3) where the walkable catchment radius is measured from the 'mid-point' of an activity centre. However, this method is considered to be flawed as often the size and/or configuration of an activity centre is such that the 'radius' doesn't extend beyond the actual boundaries of the activity centre. In view of this problem, the practical assessment of the density/diversity yields and walkable catchments is to measure the catchment from the boundaries of the activity centre itself.

Notwithstanding, both methods have been provided in assessing the two centres' performance as follows (estimated):

	Malarkey Road Neighbourhood	Kardan Boulevard Neighbourhood Centre
Liveable Neighbourhoods		
Estimated dwellings 200m	136	108
Estimated dwellings 400m	450	305
Activity Centre Boundary		
Estimated dwellings 200m	60	61
Estimated dwellings 400m	484	328

Through both methods of calculating the density and walkable catchment requirements, the existing Neighbourhood Centre at the corner of Thomas Road/Malarkey Road provides for the greater residential dwelling yields within the 200 and 400 metre walkable catchments compared with the proposed centre at Thomas Road/Kardan Boulevard.

Movement

Roads Intersection – Thomas Road/Kardan Boulevard

Both the existing and planned Neighbourhood Centre locations are positioned adjacent to Thomas Road, an 'Other Regional Road' (ORR) under the Metropolitan Region Scheme. Main Roads Western Australia (MRWA) and the Department of Planning (ILUC - traffic branch) have advised that Thomas Road is expected to be reclassified as a 'Primary Regional Road' (PRR) in the medium-term, which will increase the status and importance of the road.

Thomas Road is also a Primary Freight Route in accordance with *State Planning Policy 5.4 - Road and Rail Transport Noise and Freight Considerations in Land Use Planning* (SPP 5.4). Main Roads Western Australia (MRWA) provides advice regarding freight routes on behalf of the State. The proposed new location of the Neighbourhood Centre places the centre within 300 metres from the Tonkin Highway (Primary Regional Road) and Thomas Road interchange under the control of MRWA.

MRWA and the ILUC have raised concerns relating to the Traffic Assessment provided with the modified LSP. Advice has been provided that the assessment does not appear robust for reasons relating to the lack of consistent utilisation of 2031 forecast volumes, failure to stipulate timeframes associated with anticipated traffic volumes, and lack of consideration for intersection treatments and distribution patterns of the ultimate road network within the greater Byford DSP area.

Notwithstanding deficiencies with the Traffic Assessment, it is anticipated that intersection upgrades would be required at the intersection of Thomas Road/Kardan Boulevard Road to manage the increase in traffic if the Neighbourhood Centre is relocated. The intersection upgrades would likely be in the form of signalisation or a roundabout.

The approved Byford Development Contribution Plan (DCP) only provides for signalisation at the intersection of Thomas Road and Malarkey Road. It is noted that should relocation of the Neighbourhood Centre to Kardan Boulevard be supported, traffic signals will still be required at the intersection of Malarkey Road and Thomas Road. The additional set of the traffic signals at Kardan Boulevard is not a solution supported by MRWA or ILUC, nor will they be funded by the DCP.

Despite the ability to require the proponent to be responsible for the full costs associated with signalisation of this intersection at later planning stages (subdivision), MRWA have advised that it does not support any additional traffic signals along Thomas Road beyond what is already proposed and planned for. The construction of an additional set of traffic lights on Thomas Roads will compromise the primary function of the freight route which is non-compliant with the objective to "*facilitate the development and operation of an efficient freight network*" in accordance with SPP 5.4.

MRWA has indicated that if the relocation of the Neighbourhood Centre to Kardan Boulevard was supported, a round-a-bout is a potential solution that could be given consideration. The placement of a dual-lane roundabout at this intersection, which meets *Austrroads Guide to Road Design 2011* standards and positioned so as not to impact the rural landholdings on the northern side of Thomas Road, would encroach into the proposed Neighbourhood Centre site and mixed use site on the western side of Kardan Boulevard. The additional land requirement could render the site unviable or alternatively, encroach into the proposed residential development within the LSP area, however, it is acknowledged that this is an outcome that the proponent may be willing to accept.

Neither of the necessary upgrade options on Thomas Road have been contemplated by the LSP documentation submitted to the WAPC for assessment. The existing location of Thomas Road/Malarkey Road takes capitalises on the approved traffic

signals in order to accommodate the Neighbourhood Centre traffic consistent with the DCP and the planning framework.

Road Capacity – Kardan Boulevard

The Traffic Assessment states that traffic volumes on Kardan Boulevard will increase from 6,700 vehicles per day currently, to over 11,100 vehicles per day upon completion of development within the LSP area. This figure is slightly in excess of the 11,000 vehicle per day maximum that Kardan Boulevard was expected to carry by 2031. By comparison, Malarkey Road/San Simeon Boulevard is expected to carry approximately 9,300 vehicles per day by 2031 and is acknowledged within the Byford DSP as being the main thoroughfare intended to carry traffic from Thomas Road to the Byford Town Centre (once known as the 'Thomas Road deviation route').

Depending on the final posted speed of Kardan Boulevard, the extra traffic movements could possibly be catered for within the current 25 metre reservation. However, if designed appropriately, the desirable reservation in accordance with Liveable Neighbourhoods would be 30 metres. The rigour and detail on final anticipated movements have not been made available for assessment by MRWA or ILUC. It is noted that the Shire supports the traffic modelling and agrees with the applicant's traffic experts that Kardan Boulevard, and the regional road network, can accommodate the relocation of the Neighbourhood Centre.

The retention of the Neighbourhood Centre at Thomas Road/Malarkey Road would take advantage of the planned traffic signals as per the planning framework including the DCP and enable the existing intersection at Thomas Road/Kardan Boulevard to remain a channelised intersection, which is the most effective treatment to ensure the protection and efficiency of the freight route function on Thomas Road.

Public Transport

The Public Transport Authority (PTA) has advised that it prefers the Neighbourhood Centre to remain at the intersection of Thomas and Malarkey Roads given its proximity to the current and planned alignment of bus routes in the area. The current Neighbourhood Centre offers passengers a short walk of approximately 75 metres from planned stops to the centre, as opposed to the new proposed location where the closest stops would be up to 500 metres away depending on the ultimate location of bus stops.

Although it is often considered that the PTA can re-route bus routes to service developments where necessary, the PTA has advised that in this circumstance the planned routes are extremely unlikely to be altered despite any change to the location of the Neighbourhood Centre. The reasoning is based on public transport not being routed along Thomas Road due to the difficulty in placing stops along a regional road and freight route and the rural-residential population to the north offering a reduced catchment. As such, any route travelling along Kardan Boulevard will turn right along Ballawarra Avenue, with the placement of safe stops being in the vicinity of up to 500 metres from the relocated Neighbourhood Centre.

CONCLUSION:

It is considered that the modifications to the Redgum Brook North LSP are not consistent with the Strategic Planning Framework including elements of State Planning Policy No. 4.2, State Planning Policy 5.4, the Shire's Activity Centre Framework and the Byford District Structure Plan.

The locational merit of the Neighbourhood Centre at the intersection of Thomas Road/Malarkey Road is preferred to that of the intersection of Thomas Road/Kardan Boulevard Road for reasons including the implementation of the existing planning framework, traffic management, and traffic dispersion, proximity to schools and public transport nodes, and walkable catchments.

The Byford Town Centre is likely to be impacted by the proposal to relocate the Neighbourhood Centre and alter the intended configuration of the centre which may diminish the role of the District Centre for an uncertain period of time, which will be to the detriment of the locality.

For these reasons, it is recommended that the modifications to the Redgum Brook North Local Structure Plan be refused in accordance with Clause 5.18.3.10 of the Shire of Serpentine Jarrahdale Town Planning Scheme No. 2, thereby reinstating the January 2012 version of the LSP.

ITEM NO: 9.3

City of Kalgoorlie-Boulder Public Open Space Strategy - Consent for Advertising

WAPC OR COMMITTEE:	Statutory Planning Committee
REPORTING AGENCY:	Department of Planning
REPORTING OFFICER:	Manager - Statutory Planning Central Regions
AUTHORISING OFFICER:	Director - Central Regions
AGENDA PART:	E
FILE NO:	DP/14/00390
DATE:	30 October 2014
REPORT CATEGORY:	Statutory
RECOMMENDATION OUTCOME:	1. Refuse 2. Advise
ATTACHMENT(S):	1. Locality Map 2. Draft POS Strategy Maps 3. Schedule of Proposed Modifications

RECOMMENDATION:

That the Western Australian Planning Commission resolves to:

1. ***not certify and endorse the draft City of Kalgoorlie-Boulder Public Open Space Strategy & Survey (February 2014) in its current form for advertising as a Local Planning Strategy pursuant to Regulation 12B of the Town Planning Regulations 1967 as the document has deficiencies in terms of addressing Regulation 12A (3) of the Town Planning Regulations 1967;***
2. ***advise the local government that:***
 - 2.1 ***the key findings from its POS assessment are not accepted due to discrepancies between the methodology upon which its POS calculations are based and that of WAPC policy and practice.***
 - 2.2 ***with regard to 2.1, current WAPC operational policy including Liveable Neighbourhoods and DC Policy 2.3 Public Open Space in Residential Areas, applies an area based approach to calculating POS contribution requirements for greenfield subdivision. The 10% contribution to POS embedded in this longstanding statutory framework is generally accepted as a benchmark for assessing the***

amount of POS required to sufficiently meet the recreational needs of the community.

2.3 *the City is invited to review and to resubmit the draft POS Strategy once it has addressed the matter identified in this recommendation and those identified in Attachment 3 - Schedule of Proposed Modifications.*

SUMMARY:

The draft Strategy, in its current form should not be granted consent to advertise. The document requires significant review to clarify the intended outcomes for POS in the Kalgoorlie-Boulder town site. The assessment of the adequacy of POS across the town is insufficient and is based on a methodology considered to be unsuitable for this purpose. The draft Strategy also requires clear objectives and identification of key issues to provide a rationale for its recommendations. A schedule of proposed modifications for provision to the local government is recommended to assist it in addressing these deficiencies and in producing a much improved draft.

BACKGROUND:

The City of Kalgoorlie-Boulder Local Planning Strategy was endorsed by the WAPC in July 2013. On completion, the draft Public Open Space Strategy (draft Strategy) will supplement this local and strategic planning instrument.

The statutory weight of the draft Strategy is intended to be equivalent to that of a Local Planning Strategy. The statutory process provided by the *Town Planning Regulations 1967* has therefore been applied in the assessment of the draft Strategy.

The approach taken to the assessment of the subject draft Strategy is similar to that undertaken in response the City of Greater Geraldton Public Open Space Strategy that was recently considered by the WAPC. Initially the WAPC did not grant consent to advertise and required significant revisions to the document in accordance with a "Schedule of Proposed Modifications." The schedule was included to provide clear guidance to the local government whilst also enabling a degree of flexibility as it was impractical to provide highly detailed modifications given the extent of the revisions required. The approach is considered to have worked well, with the City, in consultation with DoP, being able to undertake the required revisions relatively quickly. Consent to advertise was consequently granted.

LEGISLATION / STRATEGIC PLAN / POLICY:

Legislation *Planning and Development Act 2005*
Section: Part 5 - Local Planning Schemes

Legislation *Town Planning Regulations 1967 (as amended)*
Section: 12A and 12B

Strategic Plan
Strategic Goal: Planning
Outcomes: Planned local communities developing a sense of place.

Strategies: Improve local planning service capability

Policy

Number and / or Name: SPP 1 State Planning Framework Policy
Liveable Neighbourhoods
DC Policy 2.3 Public Open Space in Residential Areas
City of Kalgoorlie-Boulder Local Planning Strategy (2013)

DETAILS:

The City is seeking the WAPC's consent to advertise its draft "Public Open Space Strategy and Survey" as per a Local Planning Strategy prepared under the *Town Planning Regulations 1967*. The draft Strategy relates to the town site of Kalgoorlie-Boulder located approximately 550km east of Perth (**Attachment 1 - Locality Map**).

The draft Strategy contains a survey of current public open space (POS) provision in each of the "planning areas" included in the Local Planning Strategy, and makes conclusions and recommendations regarding the adequacy of POS in each planning area. The assessment methodology on which these findings are based is described and the results for each planning area are provided. "Selection Criteria" are also identified to guide:

- which POS is suitable for development;
- the order in which the POS would be developed;
- which POS is suitable for disposal; and
- the order in which it would be disposed of.

The draft Strategy also seeks to introduce a POS hierarchy that varies the hierarchy described by WAPC Policy, particularly *Liveable Neighbourhoods*. "Key challenges to implementing the Strategy" are also described. In addition to the consultation requirements required by the *Town Planning Regulations 1967* for the draft Strategy, community consultation is proposed to occur via a "Communication and Implementation Plan" to be developed on adoption of the Strategy by Council.

Attachment 2 represents the draft POS Strategy Maps namely existing hierarchy, undeveloped POS and POS catchment areas.

GOVERNMENT AND CORPORATE IMPLICATIONS:

The proposed methodology used to assess the adequacy of the quantity (land area) of POS available to the community represents a significant departure from long standing WAPC policy. Consenting to advertising of the draft Strategy in its current form may be interpreted as the WAPC's endorsement of this approach and challenges the way POS requirements, relating to POS provision, have traditionally been assessed. This in turn may lead to confusion and also affect the general standard of development outcomes for communities across the State.

CONSULTATION:

Consultation regarding the draft Strategy to date has been limited. The City has informally advised that the "Communication" and "Implementation Plan" referred to in the draft Strategy is a reference to the consultation requirements that form part of the

POS acquisition and disposal process undertaken in accordance with the *Land Administration Act 1997* and *Land Administration Regulations 1998*.

OFFICER'S COMMENTS:

Regulation 12A(3) of the *Town Planning Regulations (1967)* states,

3. *A Local Planning Strategy shall -*
 - a. *set out the long-term planning directions for the local government;*
 - b. *apply State and regional planning policies; and*
 - c. *provide the rationale for the zones and other provisions of the scheme.*

It is considered that the draft Strategy, in its current form, does not meet the above requirements. This is further discussed below.

Long term planning directions

It is recommended that the draft Strategy be revised to clearly articulate what it is intending to deliver with regards to POS. This may involve the inclusion of city wide and/or area specific POS objectives. In the absence of such direction, it is currently difficult to discern the suitability of the assessment and the resulting recommendations. The guiding principles for the design and development of POS provided at section 8 of the draft Strategy are generic in nature therefore providing little added guidance beyond that already included in WAPC policy.

Some cross reference to section "4.2.3.3 Open Space" of the Local Planning Strategy and Appendix B City of Kalgoorlie-Boulder Structure Plan may also be beneficial. It should be noted however that the Local Planning Strategy is relatively quiet on specifically intended outcomes for POS and what is mentioned does not currently align with the draft Strategy. For example, section 4.2.3.3 states that the City will investigate developing strategic documents for open space particularly in relation to the use of public streets for recreation by way of walking and cycling. This is not mentioned or addressed by the draft Strategy.

Applying State and regional planning policies - POS Calculations

The methodology used to determine the quantity of public open space required across the City's planning areas is considered to be inconsistent with WAPC policy and practice and not suitable as a basis for assessing the adequacy of POS provision. The draft Strategy uses 2011 population statistics for each "planning area" and then applies a standard calculation of 3.36ha of POS per 1000 population. It is noted that the area to population ratio is based on figures used in the 1956 Stephenson-Hepburn report. The use of this approach to assess POS provision across the City is problematic because it does not consider possible increases in population density for particular areas. Other factors such as use by POS from outside the area in which its located and the intended future use of the land as indicated by its land use zoning are also not accounted for. Additionally, the description of POS, included at section 3 of the draft Strategy is very general and it is not clear if the POS as defined by *Liveable Neighbourhoods* which for example excludes Regional POS from calculations, has been factored in to the assessment.

Current WAPC operational policy including *Liveable Neighbourhoods* and *DC Policy 2.3 Public Open Space in Residential Areas* uses an area based approach. In relation to "greenfield" subdivision, 10% of gross subdivisible area is generally required to be provided for POS. The figure of 10% is therefore used as a benchmark for considering if the quantity of POS provided in an area is sufficient.

The difference in approaches becomes apparent when considering the first two planning areas in the Strategy i.e. Boulder and South Boulder. It should be noted that in Boulder, the Local Planning Strategy advocates infill development in the form of grouped dwellings and multiple dwellings which will potentially lead to significant population increases in this area. For Boulder, the draft POS Strategy (using the "per capita" method) identifies a need for 19.1ha of POS. Assessment by DoP using 10% of the "gross subdivisible area" (ie. includes area deductions for commercial and industrial uses etc.), identifies that provision in Boulder should be closer to 28ha.

South Boulder provides an interesting circumstance where the area does not include any Residential zoned land and is therefore assessed by DoP as requiring no POS. The approach used by the City suggests that 3.36ha should be provided as the 2011 census identified a resident population in this area of 1038 people. It should also be noted that from the documentation provided it is not clear if the "statistical areas" used by the Australian Bureau of Statistics from which the population figures are provided, align with the "planning areas" in the draft Strategy. It is recommended that the draft Strategy be revised to more closely align with WAPC methods for calculating POS provision in terms of quantity.

Further and as a matter of consistency, in 2006 the WAPC considered a joint POS study by the former City of Geraldton and Shire of Greenough. The resolution of the Statutory Planning Committee at the time, was to not endorse the study. The reasons provided not to support the POS study included the use of existing population rather than gross subdivisible area as a basis for assessment of the adequacy of POS.

Applying State and regional planning policies - POS Hierarchy

Section 4.3 of the draft Strategy refers to the Classification Framework for Public Open Space prepared by the Department of Sport and Recreation (November 2012). The POS Standards outlined in the Survey on page 20 of the document describe the service and use of each type of POS included in the hierarchy. With regards to size, distribution, and function, the draft Strategy is inconsistent with the POS hierarchy described in LN. This is illustrated in the table below.

POS Position	Hierarchy	Draft Strategy	Liveable Neighbourhoods
Local		4000m ² to 1ha. Within 400m or 5min walk Recreational pursuits and small areas of landscaping and/or nature space.	Up to 3000m ² , R14 (can be responsive to site specific requirements). Within 150 – 300m Children’s play, resting, relaxation.

Neighbourhood	1ha to 5ha Within 800m or 10min walk Variety of features, facilities and socialisation opportunities	3000m ² – 5000m ² Maximum 400m Informal recreation and passive use.
District	5ha to 15 <ha Within 2km or 5min drive organised sport, equipped with regional/national/international sporting infrastructure and facilities.	2.5 – 7ha Between 600m and 1km Passive (including informal play areas), active (formal playing fields).
Regional	20+ha Important recreation and organised sport spaces as well as significant conservation and/or environmental features.	Major playing fields, conservation and environmental features.

The significance of this inconsistency is predominantly in relation to future greenfield subdivision, and appears to represent a move towards potentially fewer but larger areas of POS. It is noted that this approach to POS provision is also being considered by other local governments (e.g. City of Greater Geraldton and City of Albany). The use of the Department of Sport and Recreation's classification framework is a matter being considered as part of the broader review of *Liveable Neighbourhoods*. Pending the outcome of this review, and the likelihood that some POS areas <4000m² may be enduring and/or newly created, it is recommended that the draft Strategy be modified to include a description of a "standard" for the development of parks <0.4ha.

Providing a rationale

As previously mentioned, the draft Strategy would be significantly improved through the inclusion of planning objectives that provide some long term planning direction. The identification of key issues that the draft Strategy is seeking to address would also be beneficial. The inclusion of these additional elements, followed by review of recommendations for each planning area, should assist in linking the outcomes of the assessment of POS to the recommendations. The rationale for many of the recommendations in the Strategy is currently unclear, for example, in relation to Boulder it is concluded that, *"It appears the LOS [Local Open Space] within this precinct is inadequate; however this shortfall could be met if Gribble Creek is developed into a Linear Parkway accessible for the use for passive and active recreation."* The associated action is *"Consider relinquishing and disposing of small undeveloped pockets of POS."* The Gribble Creek Linear Park (as well as most of the other POS in the City) is identified as "Regional POS" in the City of Kalgoorlie-Boulder Structure Plan at Appendix D of the Planning Strategy and the draft Strategy

has not established its current or potential "dual function" as a local park. Subsequently the relevance of the recommendation to dispose of local POS is at odds with the assessment.

Some inclusion of discussion regarding the significance to the community of the Gribble Creek Linear Park and how it's current and/or potential recreational function would be relevant by way of providing context. This may also be relevant to the development of objectives specifically relevant to POS provision. The City may also consider identifying which areas of POS may be further considered (as part of its implementation plan) for disposal and/or what POS is "*developed*" or "*undeveloped*" as this terminology is currently used in the Strategy's recommendations.

Attachment 3 includes a schedule of proposed modifications to assist the local government with its draft Strategy. It should be noted that the City of Gosnells and City of South Perth Public Open Space Strategies (local government documents) and the City of Greater Geraldton Public Open Space Strategy (recently granted WAPC consent to advertise) have been used to guide recommended modifications to the draft Strategy.

ITEM NO: 9.4

Development: Single Dwelling and Commercial Vehicle Parking - Lot 62 Railway Parade, Baskerville

WAPC OR COMMITTEE: Statutory Planning Committee

REPORTING AGENCY: Department of Planning
REPORTING OFFICER: Planning Manager, Metropolitan Planning North East,
Perth and Peel Planning
AUTHORISING OFFICER: Director, North East , Perth and Peel Planning
AGENDA PART: G
FILE NO: 21-50440-1
DATE: 24 November 2014
ATTACHMENT(S): 1. Location Plan/Zoning Map
2. Development Plans
REGION SCHEME ZONING: Rural
LOCAL GOVERNMENT: City of Swan
LOCAL SCHEME ZONING: Swan Valley Rural
LGA RECOMMENDATION(S): Approval
REGION DESCRIPTOR: West Swan
RECEIPT DATE: 16 October 2014
PROCESS DAYS: 39
APPLICATION TYPE: Development
CADASTRAL REFERENCE: Lot 62 Railway Parade Baskerville.

RECOMMENDATION:

That the Western Australian Planning Commission resolves to approve the application for the proposed development on Lot 62 Railway Parade, Baskerville subject to the following conditions and advice:

CONDITIONS:

- 1. The occupant of Lot 62 (No. 550) Railway Parade, Baskerville must be the owner, driver or proprietor of a business which owns or operates any approved commercial vehicle to be parked or garaged on the property.***
- 2. This approval is for the parking of "commercial vehicles" as defined in the City of Swan Local Planning Scheme No.17 and the subject land may not be used for any other use without prior approval from the City.***
- 3. Commercial vehicle parking under this approval may only commence after the construction and occupation of a dwelling on the property.***

4. ***Commercial vehicles parked on-site as part of this approval are to be restricted to 'General Access Vehicles' only, as defined by Main Roads Western Australia.***
5. ***Parking of the approved commercial vehicles and trailers is to be restricted to the area as shown on the approved plan dated 16 October 2014 by the Department of Planning (attached).***
6. ***The external vehicle and trailer parking areas are to be screened from view of adjoining properties and surrounding streets by existing or newly planted vegetation and maintained in accordance with a Landscape Plan to the specifications of the City of Swan, and to the satisfaction of the Western Australian Planning Commission.***
7. ***The screening of the parking areas is to be undertaken prior to the commencement of the parking of any commercial vehicles or trailers.***
8. ***Storm water shall be contained on-site, or appropriately treated and connected to the local drainage system to the specifications of the City of Swan and to the satisfaction of the Western Australian Planning Commission.***
9. ***An acid sulphate soils self-assessment form to be completed and, if required as a result of the self-assessment, an acid sulphate soils report and an acid sulphate soils management plan shall be submitted to and approved by the Department of Environment Regulation before any development is commenced. Where an acid sulphate soils management plan is required to be submitted, all development works shall be carried out in accordance with the approved management plan to the specification of the Department of Environment Regulation and to the satisfaction of the Western Australian Planning Commission.***

ADVICE TO APPLICANT

1. ***Any additional development, which is not in accordance with the application (the subject of this approval) or any condition of approval, will require further approval.***
2. ***All development must comply with the provisions of the City of Swan Local Planning Scheme No. 17, Environmental Protection (Noise) Regulations, Health Regulations, Building Code of Australia, Public Building Regulations and all other relevant Acts, Regulations and Local Laws.***
3. ***The subject land is partially affected by the Susannah Brook floodplain. To ensure adequate flood protection, any development should achieve a minimum habitable floor level of 16.1 metres AHD.***
4. ***The applicant is advised that due to the proximity of a railway crossing to the west of the Haddrill Road and Railway Parade intersection, any vehicles greater than 15 metres in length approaching Railway Parade eastbound along Haddrill Road will overhang the railway line if unable to immediately turn into Railway Parade.***

SUMMARY:

The application seeks approval for the construction of a single dwelling and the parking of two commercial vehicles and three trailers on Lot 62 Railway Parade, Baskerville. The land is within 'Area B' of the *Swan Valley Planning Act 1995*. The application is considered consistent with the objectives of the Swan Valley Planning Act 1995 for Area 'B' and the objectives of the City of Swan Local Planning Scheme No.17 for the 'Swan Valley Rural' zone.

The application is referred to the Statutory Planning Committee for determination as it is recommended the application be approved contrary to the Swan Valley Planning Committee's recommendation to limit the approval to a single commercial vehicle and a single trailer.

LEGISLATION / STRATEGIC PLAN / POLICY:

Legislation

Swan Valley Planning Act 1995
Metropolitan Region Scheme

Section:

Swan Valley Planning Act 1995 - Section 8
Metropolitan Region Scheme Text - Part III subclause 26(3) & Part IV subclause 30B(5)

Strategic Plan

Strategic Goal:

Planning

Outcomes:

Planned Local Communities Developing a Sense of Place

Strategies:

Encourage innovation in the design of our communities

Policy

Number and / or Name:

Swan Valley Interim Planning Policy 2014

INTRODUCTION:

The application seeks approval for the construction of a single dwelling and the parking of two commercial vehicles (trucks) and three trailers on Lot 62 Railway Parade, Baskerville. (**Attachment 2** - Proposed Development Plan). There is an existing shed on the land and some vegetation at the southern end of the property. The landowner of the property intends to reside at the property and will be the owner/driver of the vehicles proposed to be parked on the land.

The subject land is zoned 'Rural' under the Metropolitan Region Scheme (MRS) and 'Swan Valley Rural' zone under the City of Swan Local Planning Scheme No.17 (LPS 17) (**Attachment 1** - Local Zoning Plan). The land is located within 'Area B' of the *Swan Valley Planning Act 1995 (SVP Act)*.

The application has been referred to the Western Australian Planning Commission (WAPC) pursuant to Clauses 26(3) and 30B(5) of the MRS due to the City of Swan's Council resolution being inconsistent with the advice of the Swan Valley Planning Committee (SVPC).

CONSULTATION:

The City of Swan supports the proposal subject to conditions. The conditions, where generally relevant and reasonable, have been imposed.

The SVPC recommends that any approval be limited to the single dwelling and the parking of one commercial vehicle and one trailer.

The Department of Environment Regulation recommend a condition requiring the applicant to complete an acid sulfate soils assessment and, if required, prepare a management plan prior to development works commencing. The southern portion of the subject land is identified as having a 'High to Moderate' risk of acid sulfate soils risk, which is in the vicinity of the proposed single dwelling. There is no reticulated sewer within the locality, therefore, the dwelling will require some form of on-site effluent disposal which may involve some soil disturbance. Accordingly, the condition is justified.

The Public Transport Authority, on behalf of Brookfield Rail as the operators of the adjacent railway line, advises that commercial vehicles entering Railway Parade from a westerly direction on Haddrill Road may overhang into the rail reserve if greater than 15 metres in length. If this were to occur, Brookfield Rail advises that they would not support the application. The application is for the parking of 'General Access Vehicles' (GAV), which include semi-trailers with a total length of up to 19 metres. GAV's are not subject to the need for special permits or approvals and are afforded access to any part of the Western Australian road network. Accordingly, such vehicles can already access Railway Parade in the described manner. Furthermore, the matter of vehicles overhanging a railway crossing is already addressed by the *Road Traffic Code 2000*, particularly Regulation 104 which states "*a driver approaching a level crossing shall not enter the level crossing where, by reason of traffic congestion, he or she is not immediately able to lawfully drive the vehicle over and clear of the level crossing, and shall not proceed until he or she can so drive the vehicle over and clear of the level crossing*". The concerns raised by Brookfield Rail are unlikely to be exacerbated given the minor nature of the application. Given these concerns are already addressed by existing legislation, they should not prejudice this application.

The Department of Water (DoW) has no objection to the proposal, however, advises that a portion of the subject land is affected by the flooding of nearby Susannah Brook during a 100 year ARI flood event. DoW advises that any development should have a minimum habitable floor level of 16.1 metres AHD to ensure adequate flood protection. The advice should be included as part of any development approval.

PLANNING ASSESSMENT:

Single House

The City of Swan LPS 17 lists 'single house' as a permitted use within the 'Swan Valley Rural' zone. 'Single Dwelling' is also listed as exempted development under Schedule 5 of LPS 17. Accordingly, this component of the application complies with the provisions of LPS 17. The construction of the dwelling is integral to the assessment of the proposed commercial vehicle parking as the occupant must be the

owner, driver or proprietor of a business which owns or operates any commercial vehicles to be parked on the land, as required by the provisions of LPS 17. A condition is recommended which requires the construction and occupation of the dwelling prior to the parking of commercial vehicles on the land.

City of Swan Local Planning Scheme No.17 (LPS No.17)

The City of Swan LPS 17 allows the parking of commercial vehicles only where the vehicles are parked on a lot where the owner or driver of the vehicles resides. Under these circumstances, the parking of the vehicles is an incidental component to the primary use of the land for residential purposes. The parking of the commercial vehicles can therefore be considered under the relevant use class applicable to a single dwelling, being a 'P' use under the 'Swan Valley Rural' zone.

The above point aside, the parking of any commercial vehicle on any land within the Scheme area requires prior approval subject to Section 5.10 of LPS 17. Schedule 14 of the Scheme sets out the maximum number of commercial vehicles which may be parked on any lot within a particular zone. For the 'Swan Valley Rural' zone, lots between 750m² and 3 hectares are allowed a maximum of one commercial vehicle and one trailer. The subject land is 7024m² in area.

Further to the above, section 5.10.6 of LPS 17 allows the maximum number of commercial vehicles allowable under Schedule 14 to be varied by a maximum of one vehicle, and the number of trailers allowable under Schedule 14 to be varied if it is Council's opinion that the vehicles and/or trailers are sufficiently screened from view of surrounding streets and properties and that they do not detrimentally impact on the character of the surrounding locality. The property is located at the end of a cul-de-sac and is bounded by rail reserves along the western and eastern boundaries which are lined with existing mature trees. The landowner has planted sheoak trees along the northern and eastern boundaries. The property is screened on all sides from surrounding streets and properties by tree lines and railway lines.

Two properties within the locality (Lot 50 Haddrill Road and Lot 56 Railway Parade) have existing approvals to park one and two commercial vehicles respectively. In conjunction with the presence of two freight railway lines running immediately adjacent to the application area, the amenity of the locality is already characterised by land uses which align with the application. The applicant advises that the proposal is expected to generate only four commercial vehicle movements per day. The proposal would have no significant impact on the character or amenity of the locality. Accordingly, the application meets the Scheme requirements to vary the permissible number of commercial vehicles to be parked on the land. The variation is supported by the City of Swan.

Swan Valley Planning Act 1995 (SVP Act)

The proposal is assessed against the objectives of Area 'B' of the SVP Act.

<i>Planning Objective (Area B)</i>	<i>Does approval of this proposal contribute to the planning objective?</i>	<i>Comment</i>
<i>1. The protection of viticulture.</i>	No	The subject lot does not contain vines and is not used for any other horticultural activities. The lot is relatively small in area and has irregular dimensions which do not provide a significant area of land for the potential growing of vines. The proposed development will not impact upon the existing viticultural and horticultural activities within the Swan Valley.
<i>2. The provision of water for viticulture and horticulture and the discouragement of other activities that have high water demands.</i>	Yes	The parking of commercial vehicles does not create a significant demand for water use and would not compete with agricultural activities within the locality for water resources.
<i>3. The encouragement of tourist facilities provided that they do not detract from the rural character of the area.</i>	No	This proposal is not tourism related and will not enhance the amenity of the area for tourism purposes.
<i>4. The encouragement of traditional activities of the Swan Valley and industries associated with viticulture, horticulture and cottage industry provided that they are compatible with the rural character of the area.</i>	No	The parking of commercial vehicles does not encourage traditional activities or industries.
<i>5. The encouragement of the consolidation of retail and community facilities at Herne Hill, Caversham and West Swan.</i> <i>5A. The limited expansion</i>	No	The proposed use and location is not relevant to planning objectives 5 and 5A.

<i>of existing retail and community facilities at Herne Hill, Caversham and West Swan where such facilities are required to service the local community and will not detract from the rural character of the area.</i>		
<i>6. The compatibility of design, siting and landscaping with the character of the area.</i>	Yes – within the immediate area	The proposal relates to a location with significant existing transport infrastructure, and the applicant's commitments concerning screening are considered to align with planning objective 6.
<i>7. The discouragement of uses that are incompatible with the rural character and traditional agricultural activities of the area.</i>	No	The parking of commercial vehicles is incompatible with the overall character of the Swan Valley as a rural landscape and area focused on agricultural activities.
<i>8. The extraction of basic raw materials so far as it is compatible with the character and amenity of the area and subject to the rehabilitation of the affected land.</i>	Neutral	Not applicable to this proposal.
<i>9. The subdivision into lots of less than 4 hectares only where this is consistent with the objectives set out in this section [of the Act]</i>	Yes	No subdivision is proposed.
<i>10. The avoidance of overstocking, of activities causing pollution or degradation of the environment and of any other land management practices detrimental to the amenity of the area.</i>	Unknown	The parking of commercial vehicles may increase the risk of fuel spills or contamination by materials transported in the vehicles. This is not considered a significant risk.

The general planning objectives of the SVP Act are stated as *"the encouragement of the traditional agricultural and other productive uses of the area that complement its rural character, the protection of the environment and the character of the area, the reduction of nutrient levels in the Swan River and the promotion of tourism that complements the rural character of the Swan Valley"*. In this regard, the *Swan Valley Interim Planning Policy* (interim policy) should be considered.

The interim policy was endorsed by the Swan Valley Planning Committee and the Western Australian Planning Committee in July 2014 for the purpose of assisting authorities in interpreting the objectives of the *SVP Act* when considering or determining applications within the *SVP Act* area. The interim policy, for the purpose of defining the general planning objectives of the *SVP Act*, provides a definition for 'rural character' as:

'Rural character means the distinctive combination of qualities which make an area 'rural' rather than 'urban'. These include the dominance in the landscape of primary production and natural landscape regimes and the absence or subservience of manmade structures other than those related to the primary use of the area for which the land is zoned or reserved.'

Under the general definitions provided by the interim policy, the parking of commercial vehicles is *'not consistent with the objectives of the SVP Act, unless it can be demonstrated that the vehicles are required for the carrying out of the predominant use on a lot, and are to be used only for the purpose'*. While commercial vehicle parking is not considered a land use which is consistent with 'rural character' in the context of the general objectives of the *SVP Act*, the proposal will not impact upon the 'rural character' or amenity of the locality, or broader *SVP Act* area, by virtue of the site characteristics which shield the land from surrounding roads and properties.

CONCLUSION:

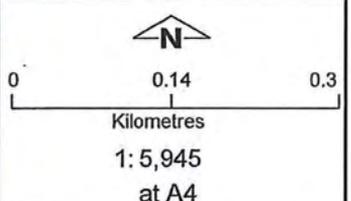
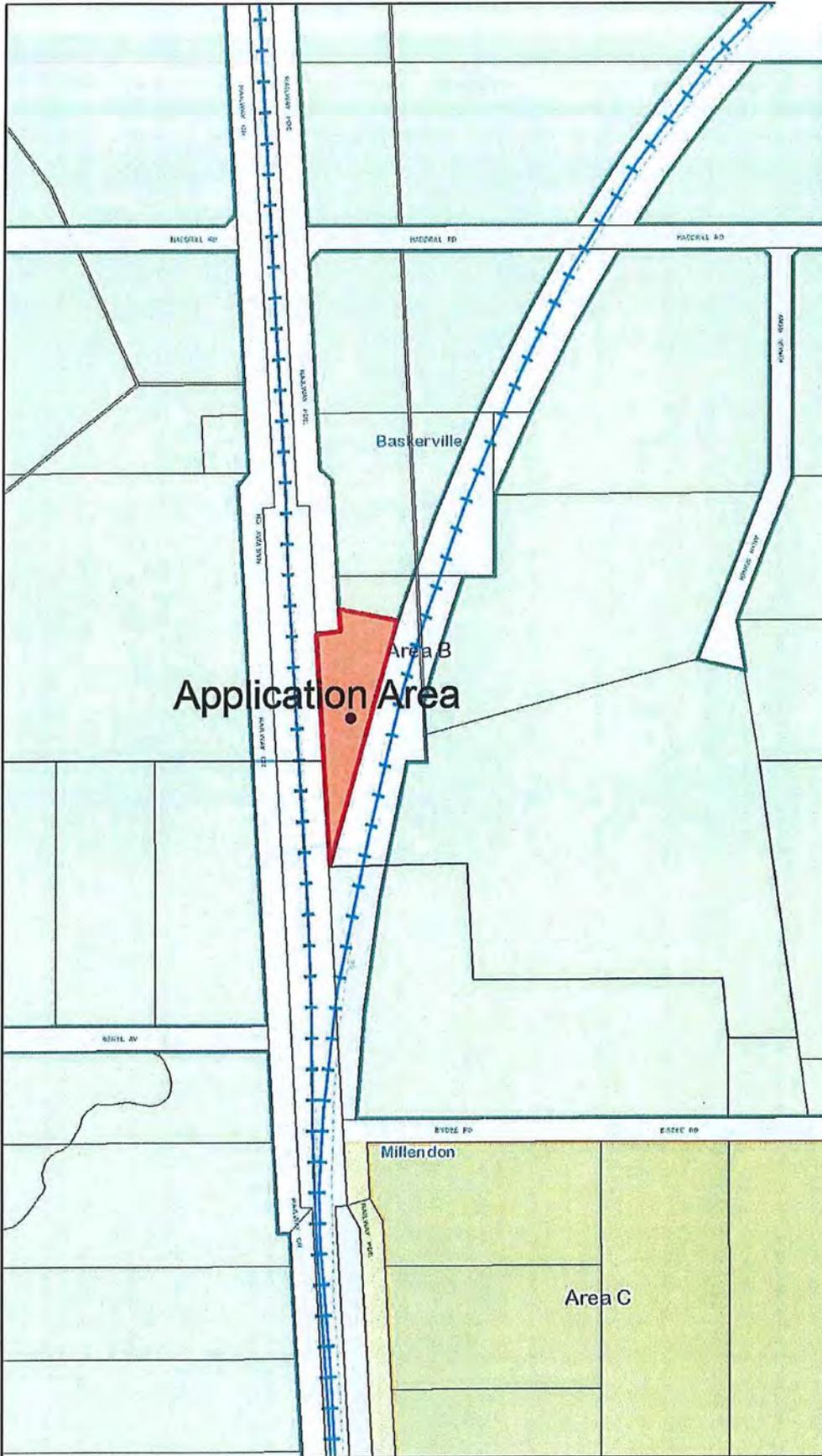
Although the proposal does not strictly accord with the Commission's *Swan Valley Interim Planning Policy*, it complies with the general planning objectives and the area specific planning objectives of the *Swan Valley Planning Act 1995* and the City of Swan Local Planning Scheme No.17. It is recommended that the application be approved subject to conditions.



Government of Western Australia
Department of Planning

Legend

- Local Government Area
- Locality
- Swan Valley Planning Act (2006)
- Area B - agricultural uses (min lot size)
- Cadastre (view 1)
- Cadastre (view 2)
- Cadastre (view 3)
- Railway Lines
- Freight
- Both passenger and freight
- Local Planning Scheme Zones a
- Swan Valley rural



Projection:
WGS 1984 Web Mercator Auxiliary Sphe

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Produced by:FUNCTIONALITY TO COME
Date produced: 24-Nov-2014

PlanViewWA Map

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[Link to viewer](#)

ITEM NO: 9.5

Development Application for Martial Arts Classes (Club Premises): Lot 443 William Street, Herne Hill

COMMITTEE: Statutory Planning Committee

REPORTING AGENCY: Department of Planning
REPORTING OFFICER: Senior Planning Officer, Metro North East
AUTHORISING OFFICER: Director, Metro North East
AGENDA PART: G
FILE NO: 21-50439-1
DATE: 25 November 2014
REPORT CATEGORY: Statutory
RECOMMENDATION: 1. Approve
ATTACHMENT(S): 1. Floor Plan
2. Site Plan
REGION SCHEME ZONING: Rural
LOCAL GOVERNMENT: City of Swan
LOCAL SCHEME ZONING: Swan Valley Rural
LGA RECOMMENDATION(S): Approval with conditions
REGION DESCRIPTOR:
RECEIPT DATE: 10 October 2014
PROCESS DAYS: 47
CADASTRAL REFERENCE: Lot 443 William Street, Herne Hill.

RECOMMENDATION:

That the Western Australian Planning Commission resolves to approve the development application for Martial Arts Classes (Club Premises) at Lot 443 William Street, Herne Hill 10 October 2014 subject to the following conditions and advice:

- 1. This approval relates to the Site Plan and Floor Plan date stamped 10 October 2014 by the Department of Planning.***
- 2. Martial Arts Classes can only be conducted during the following days and times:***
 - Sunday 3pm-5pm***
 - Wednesday 5.30pm-8.30pm and***
 - Friday 5.30pm-8.30pm***
 - and not conducted during school holidays.***
- 3. There shall be a maximum of 20 students per class.***

4. ***All vehicular access and parking areas being designed, constructed and thereafter maintained to the specifications of the City of Swan and the satisfaction of the Western Australian Planning Commission. A minimum of twenty (20) parking bays are to be provided.***
5. ***Prior to the commencement of the development, a landscape plan must be submitted to the specifications of the City of Swan and satisfaction of the Western Australian Planning Commission.***
6. ***All landscaping must be completed in accordance with the approved detailed landscape plan, within 3 months of the commencement of the development, or such longer period as agreed to in writing by the City, and all landscaping is to be maintained onsite to the specifications of the City of Swan and satisfaction of the Western Australian Planning Commission.***
7. ***All stormwater produced on the site shall be disposed of on site to the specifications of the City of Swan and satisfaction of the Western Australian Planning Commission.***

ADVICE TO APPLICANT

1. ***With regard to Condition 8, the landscaping is intended for the front of the car park. A detailed landscape plan shall be drawn to a scale of 1:100. Guidelines are available from the City of Swan or from the City's website www.swan.wa.gov.au***
2. ***Use of the site for the purpose approved shall not commence until an Occupancy Permit is issued.***
3. ***Provision must be made for access and facilities for use by people with disabilities in accordance with provisions of the Building Code of Australia and AS 1428.1.***
4. ***The applicant is advised to liaise with the City of Swan regarding the removal of the existing caveat and associated legal agreement relating to the previous approval dated 12 January 2012 for 'New Two-Storey House, use of existing house as temporary accommodation during construction then conversion to storage shed'.***

SUMMARY:

The application proposes the running of a limited number of martial arts classes in an existing building. The subject lot is located within Area B of the Swan Valley Planning Act. Minor amenity impacts can be addressed via appropriate development conditions. Approval subject to conditions is recommended.

The owners run the classes as a hobby (they have full-time employment off-site) but were required to establish the operation as a legally constituted club so as to open a dedicated bank account. Accordingly the City has determined the application as being for Club Premises. The club currently has 28 members, many of them children. Classes are intended to run for 2-3 hours, three days per week.

CONSULTATION:

The Department of Water raises no objection to the proposal and did not recommend conditions.

The City advertised the proposal to nine adjacent landowners. One response of 'no objection' was received and three of 'objection'. One of the objections was from a non-adjacent landowner. The issues of objection and the applicants' response (in italics) are summarised as follows:

Increased traffic

Less than an additional 30 cars per week are expected. No heavy vehicle usage will result from this proposal. Although caution is required at the intersection of William Street and Campersic Road, the application does not change this. The proponents will advise students and their drivers of this issue.

Increased Noise

The classes will be held at limited times and in a location over 200 metres from the nearest homestead. Thick plastic 'cafe' blinds are installed and can totally enclose the training area. If necessary, shouting during training can be discontinued. In any event, nearby houses are subject to higher noise levels from traffic on Campersic Road or agricultural activities nearby.

Increased Dust

The applicant is prepared to resurface the relevant section of the gravel driveway so as to eliminate dust from vehicles entering and leaving.

Safety and Security

The applicants have a small child and consequently are very careful regarding the type of people accessing the property. The classes help people, especially children, learn self-control and gain physical fitness and self-respect. The applicants have invited the neighbours to observe the classes and the type of students attending. After three weeks none accepted the offer.

The City has supported the applicants' response and recommended approval subject to conditions including:

- limiting class times to 3-5pm on Sundays and 5.30-8.30pm on Wednesdays and Fridays;
- a maximum of 20 students per class;
- provision of 20 parking bays;
- upgrading of the driveway; and
- provision of landscaping to screen the car parks.

The conditions are considered appropriate and their imposition is supported.

COMMENTS:

Section 8 of the SVP Act lists a number of planning objectives for Area B. The Swan Valley Interim Planning Policy (the Policy) provides further detail regarding these objectives. The proposal's compliance with the objectives is discussed below.

<i>Planning Objective (Area B)</i>	<i>Does approval of this proposal contribute to the planning objective?</i>	<i>Comment</i>
<i>1. The protection of viticulture.</i>	No	The City states the soils of the subject lot are not of a quality suitable for viticulture or horticulture, but this has not been confirmed by the Department of Agriculture and Food. The area intended to be used for car parking is rocky and no alteration to this specific site is required apart from demarcation of bays. The Policy requires appropriate separation distances between proposed development and agricultural uses.
<i>2. The provision of water for viticulture and horticulture and the discouragement of other activities that have high water demands.</i>	No	The number of people on site during classes would indicate that the overall water use will be marginally greater than would be expected from a private residence.
<i>3. The encouragement of tourist facilities provided that they do not detract from the rural character of the area.</i>	No	This proposal is not tourism related and will not enhance the amenity of the area for tourism purposes.
<i>4. The encouragement of traditional activities of the Swan Valley and industries associated with viticulture, horticulture and cottage industry provided that they are compatible with the rural character of the area.</i>	No	The proposed activity is not related to traditional activities or industries in the Swan Valley.
<i>5. The encouragement of the consolidation of retail and community facilities at Herne</i>	Yes	The martial arts classes may be considered a recreational opportunity for the local

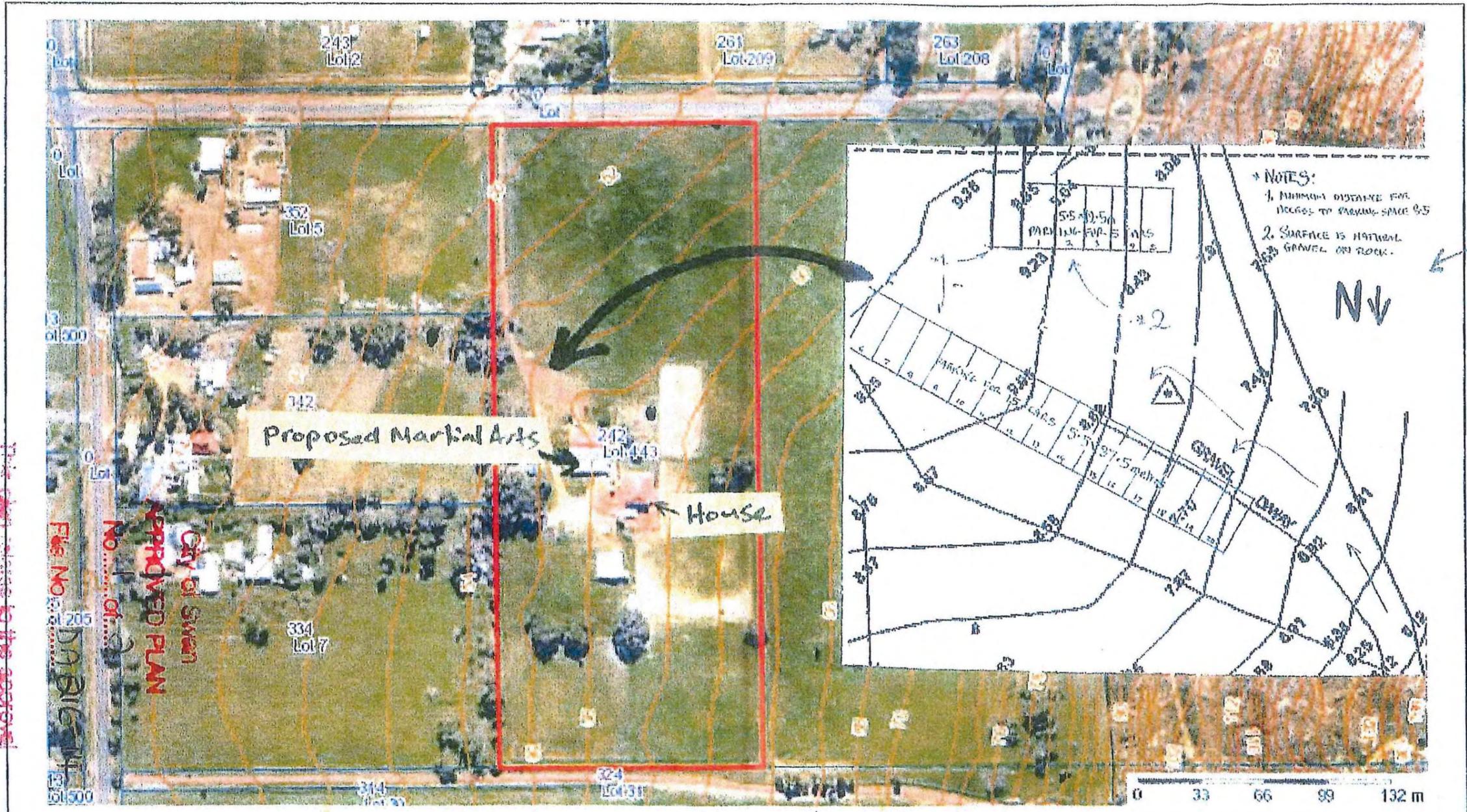
<p>Hill, Caversham and West Swan.</p> <p>5A. The limited expansion of existing retail and community facilities at Herne Hill, Caversham and West Swan where such facilities are required to service the local community and will not detract from the rural character of the area.</p>		<p>community consistent with other recreational facilities in the valley, albeit this is occurring in a private residence rather than a community or purpose-built facility. The proposal is compatible with the rural character of the area as no alteration to any buildings is proposed.</p>
<p>6. The compatibility of design, siting and landscaping with the character of the area.</p>	<p>Yes</p>	<p>No new structures are proposed. The only visual impact will be the car parking area which is setback 130 metres from William Street and will be used for a few hours per week. The applicant is amenable to installing landscaping to reduce visual impact.</p>
<p>7. The discouragement of uses that are incompatible with the rural character and traditional agricultural activities of the area.</p>	<p>Neutral</p>	<p>The surrounding area is characterised by 4 hectare properties containing one or two houses, sheds and a minor amount of horses and livestock. Residents enjoy a rural residential lifestyle where animals are kept for hobby purposes rather than agriculture. The proposed training area is 40 metres away from the closest boundary to a paddock where animals may graze.</p>
<p>8. The extraction of basic raw materials so far as it is compatible with the character and amenity of the area and subject to the rehabilitation of the affected land.</p>	<p>Neutral</p>	<p>Not applicable to this proposal.</p>
<p>9. The subdivision into lots of less than 4 hectares only where this is consistent with the objectives set out in this section [of the Act]</p>	<p>Yes</p>	<p>No subdivision is proposed.</p>
<p>10. The avoidance of overstocking, of activities causing pollution or degradation of the</p>	<p>Yes</p>	<p>Not generally applicable to this proposal. The applicant has indicated preparedness to address noise nuisance</p>

<i>environment and of any other land management practices detrimental to the amenity of the area.</i>		associated with the classes.
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The proposal is compatible with the objectives of the SVP Act and the Policy.

CONCLUSION:

The proposal is for an activity which is compatible with the surrounding uses. Minor visual and amenity impacts can be addressed through appropriate conditions of approval. It is recommended approval be granted subject to conditions as recommended by the City of Swan.



This plan relates to the approval
 of the development pursuant to
 the Council at the Ordinary Meeting
 held on 11/10/14

City of Swan
 APPROVED PLAN
 No. 1 of 1
 File No. 205
 DAB/GH



DISCLAIMER: Information shown here on is a composite of information from various different data sources. Users are warned that the information is provided by the City of Swan in this format as a general resource on the understanding that it is not suitable as a basis for decision making without verification with the original source.

Site Plan - 242 William St,
 Herne Hill

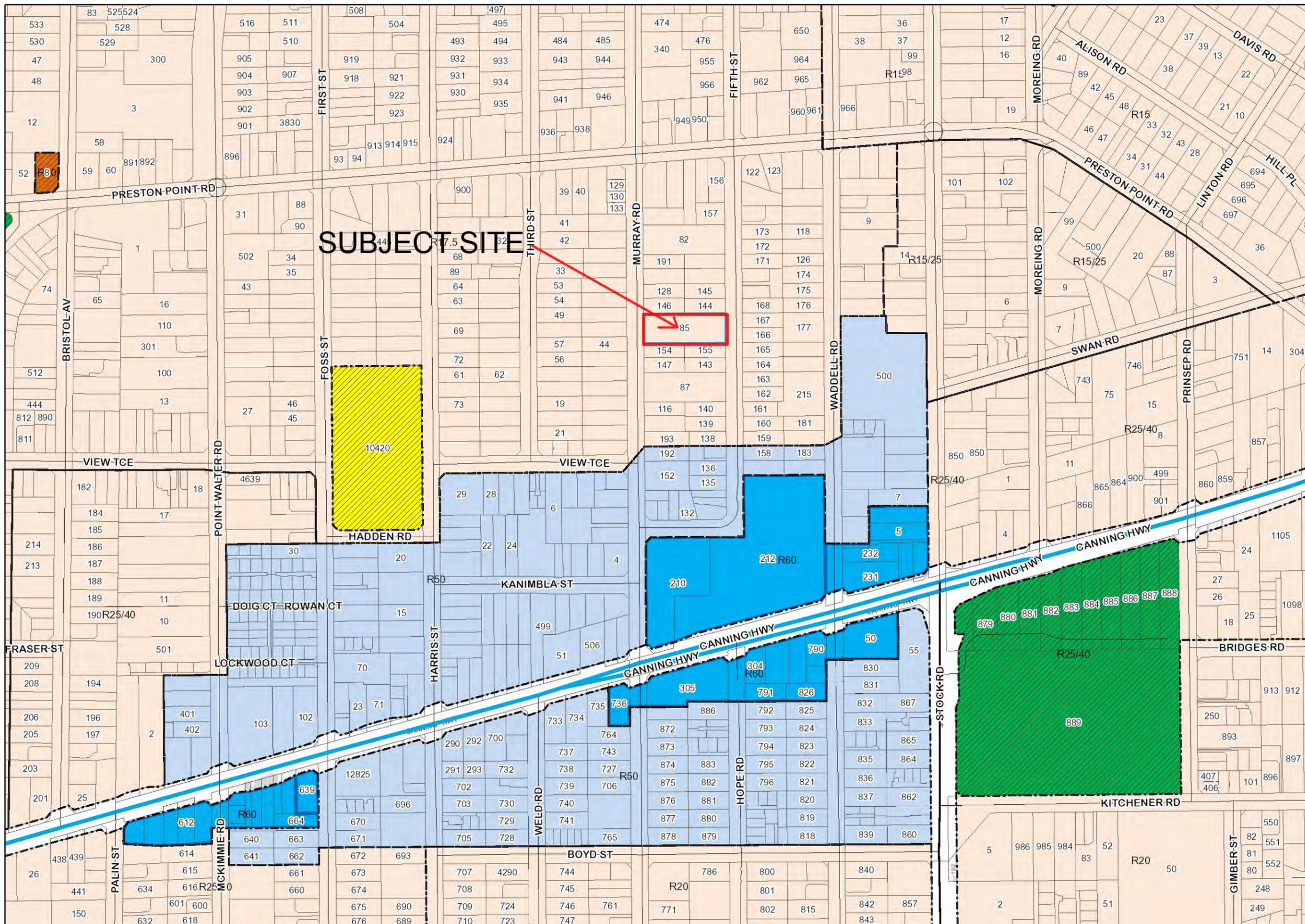
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DEPARTMENT OF PLANNING
 10 OCT 2014
 21-50439-1
 CIPF

- Legend**
- Local Government Area
 - Cadastre (view 1)
 - Cadastre (view 2)
 - Road Names**
 - Road Centrelines**
 - State Highway
 - Main
 - Minor
 - Not Applicable
 - R-Code Boundary
 - Local Planning Scheme Zones a**
 - Commercial centre frames
 - Community centre
 - District centres
 - Living areas
 - Local open space
 - Public purposes



Notes:

The data that appears on the map may be out of date, not intended to be used at the scale displayed, or subject to license agreements. This information is stored in the relevant layers metadata. For these reasons the map should not be distributed outside of the Department.

Map was produced using DoP's PlanViewWA.

CONTEXT PLAN

INTERNAL USE ONLY

Internal Spatial Viewer
[Link to website](#)



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24-Nov-2014

ITEM NO: 9.6

Proposed Place of Worship - Lot 101 Suffolk Street, Caversham

WAPC OR COMMITTEE: Statutory Planning Committee

REPORTING AGENCY: Department of Planning
REPORTING OFFICER: Senior Planning Officer Metro Planning North East
AUTHORISING OFFICER: A/Director Metro Planning North East
AGENDA PART: G
FILE NO: 21-50445-1
DATE: 25 November 2014
REPORT CATEGORY: Statutory
RECOMMENDATION OUTCOME: 1. Refuse
ATTACHMENT(S): 1. Location / Zoning Plan
2. Development Plans
3. Aerial Photograph
4. Caversham Structure Plan
5. Streetscape View from West Swan Road
6. Land Capability Maps
REGION SCHEME ZONING: Rural
LOCAL GOVERNMENT: City of Swan
LOCAL SCHEME ZONING: Swan Valley Rural
LGA RECOMMENDATION(S): Conditional Approval
REGION DESCRIPTOR: Metro North East
RECEIPT DATE: 20 November 2014
PROCESS DAYS: 5
APPLICATION TYPE: Development Application
CADASTRAL REFERENCE: Lot 101 Suffolk Street Caversham

RECOMMENDATION:

That the Western Australian Planning Commission resolves to refuse the development application for a Place of Worship at Lot 101 Suffolk Street Caversham for the following reasons:

- 1. The proposed development is inconsistent with the statutory planning objectives of Area B as stated in the Swan Valley Planning Act 1995.***
- 2. The land is zoned 'Rural' in the Metropolitan Region Scheme and 'Swan Valley Rural' within the City of Swan Local Planning Scheme No.17. The proposed development is contrary to the intent of the rural zoning which is to preserve the rural character and landscape of the area.***

3. ***The proposal is inconsistent with the Swan Valley Interim Planning Policy whereby the use of land within Area B of the Swan Valley Planning Act 1995 as a 'Place of Worship' is not permitted unless it is incidental to the predominant use of the subject land.***
4. ***Approval of the proposal may create an undesirable precedent for the introduction of other, similar development contrary to the planning objectives set out in the Swan Valley Planning Act 1995 and inconsistent with the rural character of the area.***

SUMMARY:

The application proposes to construct a Place of Worship on Lot 101 Suffolk Street Caversham, within Area 'B' of the *Swan Valley Planning Act 1995* (SVP Act). It is recommended that the application be refused, consistent with the SVP Act, endorsed Swan Valley Interim Planning Policy (Interim Policy) and advice from the Swan Valley Planning Committee (SVPC). The application is referred to the Statutory Planning Committee for determination as it is contrary to policy and the recommendation for refusal conflicts with the recommendation of the City of Swan.

LEGISLATION / STRATEGIC PLAN / POLICY:

Legislation	Planning and Development Act 2005 Swan Valley Planning Act 1995 Metropolitan Region Scheme
Section:	Part 10 Swan Valley Planning Act 1995 - Section 8 Metropolitan Region Scheme Text - Part IV subclause 30B(5)

Strategic Plan

Strategic Goal:	Planning
Outcomes:	Planned Local Communities Developing a Sense of Place
Strategies:	Encourage innovation in the design of our communities

Policy

Number and / or Name:	Swan Valley Interim Planning Policy
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INTRODUCTION:

The application is seeking approval to construct a Place of Worship at Lot 101 Suffolk Street Caversham for the Chin Christian Church. The proposal is single storey, has a total area of 1199m², 130 car parking bays and designed to accommodate a maximum of 400 persons for Sunday services (morning and afternoon) with other programmed activities comprising:

- Youth choir (Sunday evenings: 50 - 70 people);
- Youth fellowship meetings (2 weekday and Saturday evenings: 50-70 people);
- Music Practice (Friday and Saturday evenings: 7 - 12 people);

- Women's fellowship meeting (1 weekday and Saturday morning: 30 - 50 people);
- Chin language and literature learning (Saturday morning); and
- Other special events (such as weddings, christenings, funerals, seminars/training events and special church events).

The application is classified as a 'Place of Worship', which under the City of Swan Local Planning Scheme No. 17 (LPS 17) is defined as '*premises used for religious activities such as a church, chapel, mosque, synagogue or temple*'. (**Attachment 2 - Development Plans**).

Lot 101 has an irregular shape and has frontages to both Suffolk Street and West Swan Road and is located within 'Area B' of the *Swan Valley Planning Act 1995* (SVP Act). The subject land is zoned 'Swan Valley Rural' under LPS 17 and 'Rural' under the Metropolitan Region Scheme (MRS) (**Attachment 1 - Location / Zoning Plan**). The land has an area of 2.88 hectares and is currently vacant. The Dampier Bunbury Natural Gas Pipeline and Parmelia Gas Pipeline traverse the eastern portion of the site. Commercial vineyards are located on the land to the south and on the opposite side of West Swan Road to the east.

Clause 26 (3) and 30b (5) of the MRS requires that the City of Swan (the City) refer the decision to the WAPC for determination when advice of the Swan Valley Planning Committee (SVPC) is not accepted by the local government. The purpose of this report is to facilitate the SPC's determination of the application under the MRS, not LPS 17 under which a determination has already been made by the City.

CONSULTATION:

The proposal was advertised for public comment from 18 August to 9 September 2014. Landowners within a 200 metre radius of the subject land and various interest groups were consulted during this time. A sign was also erected on site and an advertisement placed in the local newspaper advising of the proposal. A total of sixteen submissions were received, comprising 11 objections and 5 non-objections. The following is a summary of the objections:

- Not compatible/consistent with the SVP Act and Interim Policy and does not complement or add to the encouragement of viticulture/tourism;
- Rural land being used for urban community purposes;
- Compromise viticulture operations and sets an undesirable precedent;
- Already enough churches in the locality;
- Building is out of character for the area;
- Gas pipeline affects the opportunity to mitigate the visual impact on West Swan Road;
- Impact on rural landscape and amenity;
- Scale of the proposal including number of people and traffic;
- SVP Act is under review and non-rural land uses should not be considered until the review is complete.

The City also undertook consultation with a number of government agencies. Main Roads Western Australia and Department of Lands have no objections to the proposal. The APA Group has no objection subject to conditions being imposed

requiring an AS 2885 Safety Management Study and a Pipeline Protection Plan being undertaken and the outcomes relating to risk mitigation measures being implemented. The Dampier Bunbury Pipeline has no objection subject to conditions being imposed requiring the protection of the pipeline during construction.

The application was referred to the SVPC, which at a meeting on 1 September 2014, resolved to recommend that the proposed not be approved. No reasons were given to explain the recommendation.

The City at its Ordinary Council meeting of 22 October 2014 resolved to approve the proposal on the basis that the proposal is consistent with the objectives of the SVP Act, and the objectives of the 'Swan Valley Rural' zone within LPS 17.

COMMENTS:

City of Swan's Local Planning Scheme No.17 (LPS 17)

A 'Place of Worship' is a discretionary use within the Swan Valley Rural zone under LPS 17.

The objectives of the 'Swan Valley Rural' zone under LPS 17 include to:

- (a) promote the core area of the Swan Valley primarily as a horticultural, recreational, tourism and landscape resource;
- (b) provide for limited rural living within the Swan Valley, subject to locational, design and landscaping requirements to enhance the character and amenity of the valley and to ensure compatibility with productive rural activities;
- (c) recognise the occurrence of high quality horticultural soils and scarce plastic clays and to protect these resources from development which would jeopardise their current and future use; and
- (d) ensure that the development and use of land accords with the planning objectives for Area B as specified in the Swan Valley Planning Act (1995).

The proposal does not comply with these objectives and does not provide for horticultural practices, recreation or tourism activities within the site or for rural living. The proposed Place of Worship is not consistent with the objectives for 'Area B' as specified within the SVP Act, as discussed later in this report.

Swan Valley Planning Act 1995 (SVP Act)

The subject land is located within 'Area B' of the SVP Act and the proposal is assessed against the relevant objectives of Area 'B' of the SVP Act.

<i>Planning Objective (Area B)</i>	<i>Does approval of this proposal contribute to the planning objective?</i>	<i>Comment</i>
<i>1. The protection of viticulture.</i>	No	The development is proposed on land which currently contains no viticulture activities. The

		<p>application intends to plant table grape vines along the southern and western boundaries. These vines will be maintained by the church and are intended to form part of the social activities offered to its congregation. The applicant suggests this will educate its congregation on the traditional viticulture land uses of the Swan Valley. However the grape vines will have no direct association with the Place of Worship and is likely to function solely as landscaping.</p> <p>There are existing commercial vineyards on the adjoining property to the south (14 metres from the proposed Place of Worship) and on the opposite side of West Swan Road. The Place of Worship may increase the risk of land use conflicts with adjacent viticulture activities to the detriment of those activities. Should the commercial vineyard on the adjoining property cease to operate in future, it is possible that the place of worship might act as a transitional use between the remaining vineyards on the opposite side of West Swan Road from the intensive residential development to the west. However, it would not serve such a purpose in the short term.</p>
2. The provision of water for viticulture and horticulture and the discouragement of other activities that have high water demands.	Yes	The proposed use is not considered to have a high water demand (although greater than the current use) and would not compete for water resources with agricultural activities in the area.
3. The encouragement of tourist facilities provided that they do not detract from the rural character of the area.	No	The proposal is not a tourist facility, but may attract a small number of people who would then patronise the existing tourism businesses.
4. The encouragement of	No	Places of Worship have been

<p><i>traditional activities of the Swan Valley and industries associated with viticulture, horticulture and cottage industry provided that they are compatible with the rural character of the area.</i></p>		<p>long established in the Swan Valley and there are examples of churches currently operating within the Swan Valley. However, traditionally these have been built primarily to serve the spiritual needs of the local community whereas the scale of this proposal makes it more of a regional religious facility, a purpose confirmed by information in the applicant's proposal.</p> <p>The proposal is not an activity associated with viticulture, horticulture or cottage industry. The place of worship is also likely to limit the opportunity to introduce viticulture, horticulture and cottage industry on the site in the future.</p> <p>The proposed Place of Worship is situated within an open landscape in a highly visible location and is not considered compatible with the rural character of the area and this is discussed further under objective 6.</p>
<p><i>5. The encouragement of the consolidation of retail and community facilities at Herne Hill, Caversham and West Swan.</i> <i>5A. The limited expansion of existing retail and community facilities at Herne Hill, Caversham and West Swan where such facilities are required to service the local community and will not detract from the rural character of the area.</i></p>	<p>Minimal</p>	<p>This proposal is a form of community facility but it is not required to service the local community. Its congregation will be drawn from a wide area outside the Swan Valley. The scale is inconsistent with the rural character of the area.</p>
<p><i>6. The compatibility of design, siting and landscaping with the character of the area.</i></p>	<p>No</p>	<p>The site is highly visible from West Swan Road, which is a major tourist route. The proposed Place of Worship is of a scale and design inconsistent with the other built form in the area, and is likely to detract from the rural character of the</p>

		area, particularly when viewed from West Swan Road. See more detailed discussion below.
7. The discouragement of uses that are incompatible with the rural character and traditional agricultural activities of the area.	No	<p>There are existing vineyards on the adjoining property to the south, approximately 14 metres from the proposed Place of Worship (Attachment 3 - Aerial Photograph).</p> <p>The placement of a 'Place of Worship' on the site increases the risk of conflicts between the users of the proposed facility and the operations of the adjacent commercial viticultural uses, which may involve noise, dust and odour. Safety regulations may require the adjacent vineyard operators (especially the property to the immediate south) to significantly change spray practices to avoid spray drift affecting the Place of Worship, and this may place severe constraints on the operation of the vineyard, potentially affecting its commercial viability.</p> <p>The proposal does not provide for viticulture or horticultural practices to occur on site, and the proposed Place of Worship is not consistent or compatible with the rural character and traditional agricultural activities of the area.</p> <p>The table grapes proposed by the applicant does not have a direct association with the church and it appears that this may be replaced by the screening vegetation required by the City.</p>
8. The extraction of basic raw materials so far as it is compatible with the character and amenity of the area and subject to the rehabilitation of the affected land.	Neutral	Not applicable to this proposal.
9. The subdivision into lots	Yes	No subdivision is proposed.

<i>of less than 4 hectares only where this is consistent with the objectives set out in this section [of the Act]</i>		
10. The avoidance of overstocking, of activities causing pollution or degradation of the environment and of any other land management practices detrimental to the amenity of the area.	Yes	Environmental degradation is unlikely to be significant.

The Place of Worship is located within the south-western corner of the site, approximately 144 metres from Suffolk Street and 105 metres from West Swan Road. The single storey Place of Worship has an area of 1199m², 130 car parking bays, a water tank, two drainage swales and landscaping. The applicant indicates the building has been designed to complement and harmonise with the rural character of the Swan Valley, including materials used. Refer to Attachment 2 for building perspectives.

Lot 101 is located on the western edge of the SVP Act, directly abutting land which is zoned for urban purposes (**Attachment 1**). The urban zoned land to the west is within the Caversham Structure Plan (CSP) and includes 2000m² transitional lots abutting the subject site to provide a suitable interface with the Swan Valley (**Attachment 4 - Caversham Structure Plan**). Although the site is located on the western edge of the Swan Valley, the transition lots within the CSP provide a land use transition within the urban zone to minimise the impact on the Swan Valley. The transition lots require dwellings to be setback a minimum of 55 metres from the SVP Act and include the construction of a 2.8 metre high amenity bund/screen. The reduced lot yield and management measures within the CSP are required to protect the rural activities and amenity of the Swan Valley as well as minimise agricultural impacts (i.e. spray drift and noise) on future residents. This ensures land within the SVP Act is not compromised by the adjoining urban land.

Although only 24.4 metres of the eastern lot boundary fronts West Swan Road, the site is highly visible from West Swan Road which is a major tourist route through the Swan Valley (**Attachment 5 - Streetscape View from West Swan Road**). The site is also located close to a number of well-established wineries and tourist attractions, including Sandalford Winery. The proposed Place of Worship is considered to detract from the rural character of the area, particularly when viewed from West Swan Road.

The City of Swan in its approval of the application under LPS 17 imposed a condition requiring a 2 metre tall (when fully grown) hedge along the southern boundary to visually screen the proposal and provide protection from spray drift. Landscaping along the western boundary is also required by the City. Although this will provide screening to the adjoining landowners, it will not sufficiently screen the proposal from West Swan Road. The gas pipelines along the eastern boundary may affect the opportunity for additional landscaping as species with non-invasive and shallow root systems will be required over the easement.

Strategic Implications and the Swan Valley Interim Planning Policy

In recent years, numerous decisions have cumulatively resulted in detriment to the character of the Swan Valley. The Government has now clearly stated its policy position that the Swan Valley is an area of strategic significance to the State, and that the cultural heritage and rural character of the Swan Valley are to be protected and enhanced.

In February 2014, Cabinet endorsed the findings of *The Way Forward, Swan Valley Land Use and Management Report on Submissions and Recommendations*, and committed to establishing a new governance and regulatory framework for the Swan Valley. To achieve the State's objectives for the Swan Valley, the Interim Planning Policy was prepared to assist decision making authorities to provide consistent advice on land use and planning matters within the Swan Valley, until the new legislation and associated planning instruments take effect.

The Interim Planning Policy has been endorsed by the SVPC at its meeting on 7 July 2014 and the SPC on behalf of the WAPC on 22 July 2014. The Interim Policy is to be used by the WAPC when determining subdivision and development applications within the area covered by the SVP Act.

The SVP Act will be replaced in 2015 by stronger legislation to protect the character of the Valley, and a development plan is being prepared to provide clear guidance for the longer term land uses in the area. LPS 17 will also be amended to support and reflect these instruments. In the transition period, it is important that inappropriate development does not cause further deterioration in the rural character of the Swan Valley.

Under the Interim Policy, a 'Place of Worship' is not supported unless it is incidental or ancillary to the predominant viticulture use within 'Area B' of the SVP Act. The proposed 'Place of Worship' would become the primary use of the site and is not considered incidental to a viticulture use on the site and is therefore inconsistent with the Interim Policy.

Advice on the legislative requirements has indicated that where LPS 17 and the Interim Policy or SVP Act directly and explicitly conflict, the local planning scheme should prevail for decisions made under the LPS. However, where discretion exists under the local planning scheme (as is the case here where 'Place of Worship' is a 'discretionary use' under the Scheme but unacceptable under the Policy), then by virtue of clause 10.2(e) of the LPS, the City must have due regard to the WAPC-endorsed Interim Planning Policy to guide the use of that discretion.

However, the matter of whether the City of Swan gave sufficient weight to the SVP Act, the Interim Planning Policy or the SVPC's advice in exercising its discretion is irrelevant to the decision to be made by the SPC.

The WAPC, acting through the SPC as its delegate, makes its decision under the MRS, and neither the LPS nor the decision of the City of Swan may fetter that decision. The Swan Valley has been identified as an area of strategic significance to the State. The SPC, as the delegate of the WAPC, must make its decision on the

advice of the SVPC applying the objectives of the SVP Act, with significant weight given to the WAPC-endorsed Interim Planning Policy which interprets those objectives.

Previous Decisions

On 14 October 2014 the SPC supported an application for a change of use from cafe/gallery to Place of Worship (mediation and multifunctional hall) at Lot 627 Hyem Road, Herne Hill. This proposal is minor (maximum of 30 people and uses existing buildings) and has limited public impact and was supported on the basis that it is not contrary to the public interest despite being not in accordance with the statutory planning objectives of the SVP Act, the Interim Policy and LPS 17. The SPC also considered that the approval is for the current proposal only and justified on the basis of the low-key nature of the proposal, and that this should not be seen as a precedent for the approval of other 'Places of Worship' in the area that are not in accordance with the statutory planning objectives set out in the SVP Act.

Land Capability

Recent data sets (May 2012) obtained from the Department of Agriculture and Food (DAFWA) (**Attachment 6 - Land Capability Maps**) provide information relating to the land capability for viticultural, horticultural and agricultural uses within precincts A, B and C of the SVP Act. The data indicates the subject land is classified as having the following characteristics:

- Viticultural - approximately half has high/very high capability and half has low/very low capability;
- Horticultural - very high/fair land capability; and
- Agricultural - very high/fair land capability.

In light of the high viticulture, agricultural and horticultural capability of the soils within the subject land, the use of the site as a 'Place of Worship' is not considered to be consistent with the statutory planning objectives within the SVP Act, the Interim Policy or LPS 17.

Aircraft Noise

The subject site is located between the 20-25 Australian Noise Exposure Forecast (ANEF). Under State Planning Policy 5.1 - *Land Use Planning in the Vicinity of Perth Airport* (SPP 5.1), a Public Building, such as a Place of Worship, is conditionally acceptable. A notification on title advising of aircraft noise will be required and noise insulation may be required if the proposal is supported.

Gas Pipeline Setbacks

The Parmelia Gas Pipeline and Dampier Bunbury Gas Pipeline traverse the eastern portion of the site. The Place of Worship is setback 52 metres from the pipeline easement whereas Planning Bulletin 87 - *High Pressure Gas Transmission Pipelines in the Perth Metropolitan Region* (PB 87) stipulates a setback of 110 metres to sensitive development and 75 metres to residential development. PB 87 allows a lesser setback where suitable risk assessments are undertaken and measures are

implemented to the satisfaction of the pipeline operators. Both pipeline operators, APA Group and Dampier Bunbury Pipeline have no objection, subject to an AS 2885 Safety Management Study and a Pipeline Protection Plan being undertaken and appropriate risk measures being implemented via appropriate conditions.

Any landscaping and screening vegetation over the gas pipelines will require specific approval from the Department of Lands (for DBNGP) and APA Group (for Parmelia Gas Pipeline) and is likely to be restricted to vegetation with shallow, non-invasive roots. Adequate sight lines between the warning signs will also need to be maintained.

CONCLUSION:

It is considered that the proposal is not compliant with the objectives of LPS 17, the planning objectives for Area B under the SVP Act and the Interim Policy, as it encourages the introduction of uses that are not consistent and incompatible with the traditional agricultural activities of the area, thereby detracting from the rural character of the area and increasing the risk of land use conflicts with adjacent agricultural activities to the detriment of those activities.

ITEM NO: 9.7

Retrospective Application for Twelve Grouped Dwellings - Lot 85 (No. 66-68) Murray Road, Bicton

WAPC OR COMMITTEE: Statutory Planning Committee

REPORTING AGENCY: Department of Planning
REPORTING OFFICER: Manager - Metropolitan Planning Central
AUTHORISING OFFICER: Director - Metropolitan Planning Central
AGENDA PART: G
FILE NO: 17-50089-3
DATE: 17 November 2014
REPORT CATEGORY: Statutory
RECOMMENDATION OUTCOME: 1. Approve
ATTACHMENT(S): Attachment 1 - Context Plan
Attachment 2 - SAT Approved Plans
Attachment 3 - As Constructed Plans
Attachment 4 - SAT Orders
Attachment 5 - Photographs of Existing Development
Attachment 6 - Building Setback Plan
REGION SCHEME ZONING: Urban
LOCAL GOVERNMENT: City of Melville
LOCAL SCHEME ZONING: Residential R17.5
LGA RECOMMENDATION(S): Approval
REGION DESCRIPTOR: Perth Metro Central
RECEIPT DATE: 14 March 2014
PROCESS DAYS: 255 days
APPLICATION TYPE: Development
CADASTRAL REFERENCE: Lot 85 (No. 66-68) Murray Road, Bicton

RECOMMENDATION:

That the Western Australian Planning Commission resolves to approve the retrospective application for twelve grouped dwellings at Lot 85 (No. 66-68) Murray Road, Bicton subject to the following conditions:

- 1. Landscaping to be undertaken in accordance with the Landscape Concept Plan prepared by Forever-Lasting Garden Designs, date stamped 1 March 2014 by the Department of Planning on behalf of the Western Australian Planning Commission, to the satisfaction of the Western Australian Planning Commission. All such landscape works shall be undertaken within 6 months of the date of this approval and thereafter maintained by the owner(s)/occupier(s).***

ADVICE TO APPLICANT:

- 1. The applicant is advised that any security lighting that has been installed as part of the development shall be orientated in such a way that does not cause light spill onto any adjoining property.***

SUMMARY:

- The Department of Housing has lodged a retrospective application for twelve grouped dwellings at Lot 85 (No. 66-68) Murray Road, Bicton.
- A previous application for twelve grouped dwellings was approved (by review) by the State Administrative Tribunal (SAT) in 2010, however the development was not built strictly in accordance with the approved plans or the conditions of approval.
- The retrospective application has been referred to the Western Australian Planning Commission (WAPC) for determination pursuant to the requirements of the Instrument of Delegation, gazetted on 24 July 2009. The Instrument delegates approval for Department of Housing proposals to the WAPC where they are not in strict compliance with the relevant local planning scheme.
- The application is recommended for conditional approval.

LEGISLATION / STRATEGIC PLAN / POLICY:

Legislation *Planning and Development Act 2005*
Section: Subdivision / Development Approval / Reconsiderations
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 1.2 *Development Control - General Principles*

INTRODUCTION:

Retrospective approval is being sought for twelve grouped dwellings at Lot 85 (No. 66-68) Murray Road Bicton (the subject site). The subject site is zoned 'Urban' under the Metropolitan Region Scheme (MRS) and 'Living Areas' with a density coding of R17.5 under the City of Melville Community Planning Scheme No.5 (CPS 5) (**Attachment 1 - Context Plan**).

On 13 May 2010, the SAT upheld an application for review (an appeal) and conditionally approved an application for twelve grouped dwellings on the subject site (**Attachment 2 - SAT Approved Plans**). However, the development was not

constructed strictly in accordance with the approved plans or the conditions of approval. Accordingly, a retrospective application has been submitted seeking approval for the variations which have been constructed and depicted on the 'as constructed' plans (**Attachment 3 - As Constructed Plans**).

CONSULTATION:

The retrospective application has not been advertised for public comment. However, a number of complaints have been received from adjoining neighbours since September 2011 highlighting their concerns with the development. These issues are discussed in more detail later within this report.

The City of Melville advise that they have no objections to the application or to the variations to the development that have been constructed.

COMMENTS:

Background

The development on this site has a long history, which can be summarised into the following key dates:

- August 2009:* Application lodged by Department of Housing for twelve grouped dwellings on the subject site. Application referred to the WAPC for determination as per the notice of delegation.
- 24 November 2009:* Application considered and refused by the WAPC for reasons relating to its non-compliance with the residential coding and impacts on the amenity of the area.
- 21 December 2009:* Application for review (appeal) lodged by the Department of Housing against the WAPC's refusal.
- 16 March 2010:* Application reconsidered by the WAPC under section 31 of the *State Administrative Tribunal Act 2004* who resolve to reiterate its previous refusal.
- 4 May 2010:* Full hearing held at SAT.
- 13 May 2010:* SAT issue orders to approve the development, subject to conditions (**Attachment 4 - SAT Orders**).
- 2010-2012:* The twelve grouped dwellings are constructed.
- September 2011:* Complaints from adjoining landowners are received, specifically in relation to the development not being in compliance with the SAT orders.
- July 2013:* Meeting held between the Department of Housing and Department of Planning regarding concerns raised by adjoining neighbours.

1 November 2013: Compliance review prepared by Department of Housing and lodged with WAPC to address the perceived issues of non-compliance, including the submission of 'as constructed' drawings.

February 2014: Department of Housing advised by the Department of Planning that due to the nature of the variations that a retrospective application is required.

14 March 2014: Formal retrospective application lodged with WAPC.

The retrospective application is now presented to the Statutory Planning Committee for determination.

Retrospective Application

The retrospective application seeks approval for variations to the approved plans that were established during the construction of the dwellings. The key issues relevant to this application are discussed in more detail below (**Attachment 5 - Photographs of Existing Development**).

Key Issues

There are a number of issues that have been raised by surrounding landowners with respect to this development. The concerns can be grouped into three main areas as follows:

- Fill and levels on the subject property;
- Landscaping; and
- Setbacks to Murray Road and Fifth Street.

Filling & Levels

As part of the SAT order, condition 2 states:

"Any fill to support the development on the subject land shall be compatible with the existing levels on adjoining sites".

Within the compliance review submitted by the Department of Housing, it is advised that the development complies with this condition. To help demonstrate this compliance, a section and view diagram has been prepared which details that the greatest difference between the finished ground level (FGL) of the development and the natural ground level (NGL) of the neighbouring property, along both the northern and southern boundary, is approximately 0.5 metres.

During the construction of the development, the adjoining landowner lodged a number of complaints with the Department of Housing and the City of Melville expressing concern that the development was not in compliance with the SAT orders as the NGL was up to 0.5 metres higher than adjoining properties. Whilst the levels of the subject site aren't the same as the neighbouring properties, the condition

requires the levels to be compatible with, and not exactly the same, as the adjoining sites. A difference in the levels was required for the development to be tiered and appropriately retained to enable the units and the car parking areas to be constructed on a level surface. Further, the levels on the site, as depicted on the 'as constructed' drawings, are in accordance with the levels shown on the conditionally approved plans.

Although adjoining neighbours have also raised concerns with the height of the dividing colorbond fence, a maximum height of 1.8 metres is maintained along the entire length of the northern and southern site boundaries, behind the front setback line, in accordance with the requirements of the *Residential Design Codes* (R-Codes). The existing levels on the property and the height of the dividing fences IS therefore supported.

Landscaping

Condition 4 of the SAT order states:

"The development shall be appropriately landscaped with mature plantings".

Although the condition does not require a landscape plan to be submitted, a Landscape Concept Plan was prepared in 2011, based on the SAT approved plans, depicting the extent and type of landscaping that would be established on site. As part of the compliance review, the Department of Housing has provided advice that all landscaping works have been undertaken in accordance with the approved plans.

A recent site inspection of the development revealed that the proposed landscaping works have not been undertaken in all areas as depicted on the approved plans. Specifically, the units off Murray Road have limited plantings around the internal car park area and within the front setback. As this area of non-compliance is one that can easily be rectified, and will in turn enhance the streetscape appearance of the development, it is recommended that the retrospective application be approved subject to a condition requiring all remaining landscaping works to be undertaken.

Setbacks

As part of the SAT order, condition 5 states:

"All buildings are to be set back a minimum of 6 metres from Murray Road and Fifth Street".

The plans as conditionally approved by the SAT showed that the development achieved a 6 metre average setback to both Murray Road and Fifth Street, with a minimum setback of 5.45 metres to Murray Road and 5.19 metres to Fifth Street.

It is understood that the intent of condition 5 may have been to achieve a minimum, not average, setback of 6 metres to both streets. However, the reasoning for this requirement is not known as the issue was not discussed within the SAT findings or order. The Department of Housing has submitted a 'Building Setback Plan' depicting the setbacks that have been achieved on the ground (**Attachment 6 - Building Setback Plan**). With respect to Murray Road, the front setbacks vary between 4.71

metres and 5.64 metres, with a setback between 5.32 metres and 6.01 metres along Fifth Street. In both instances, a 6 metre average setback is still achieved.

To justify the front setbacks, the Department of Housing has provided the following information:

"It appears the SAT condition regarding setbacks was not intended as a requirement to modify the drawings to achieve a literal or actual 6 metre setback for all buildings, because SAT already stated the designed setbacks achieve the requirements, but rather to reinforce the 6 metre average setback provided by the existing design".

Whilst a minimum setback of 6 metres may not have been met, a 6 metre average setback has been achieved in accordance with the requirements of the R-Codes. Further, the setbacks as constructed provides for variations in built form, architectural details and breaks up the building facade. The setbacks as constructed are therefore supported.

Other Issues

Complaints have also been received from surrounding landowners regarding a number of other issues, including:

- Security lighting affecting adjoining properties and causing a nuisance;
- An inadequate streetscape being presented to Murray Road and Fifth Street; and
- Visitor parking occurring on the street verge and in-front of neighbouring properties.

Whilst these concerns have been raised, in addition to the three key issues discussed above, due consideration needs to be given as to what issues are covered under the current SAT orders and what issues can be rectified as part of this retrospective application. The orders issued by the SAT included 6 conditions that had to be addressed. Any issues outside of these 6 conditions are unable to be addressed via this retrospective process and need to be addressed via other mechanisms, including through compliance investigations undertaken by the City of Melville.

As the dwellings have been constructed and are now occupied by tenants, site levels are fixed and the development cannot be modified to increase the front setback. Although these aspects of the development cannot be modified, the existing levels of the site and setbacks to Murray Road and Fifth Street are supported for the reasons highlighted previously.

Therefore, the only issue that could be addressed as part of this retrospective approval relates to the landscaping of the site, as a means of satisfying condition 4 of the SAT orders. Accordingly, a condition is recommended to address this issue.

CONCLUSION:

Since the construction of these twelve grouped dwellings first started in 2010, adjoining landowners have raised numerous concerns regarding various aspects of

the development. However, as the dwellings have been constructed and occupied by tenants for a significant period of time, many of the issues raised are no longer relevant or cannot be addressed. It is considered that two of the key issues, relating to site levels and front setbacks, may be a result of a misinterpretation of the condition imposed by the SAT or a lack of clarity in respect to what the condition required. The remaining key issue is able to be addressed via a condition of approval.

The development as constructed is supported and therefore the retrospective application is recommended for conditional approval.

ITEM NO: 10.1

Shire of Murray Residential Design Local Planning Policy to Vary State Planning Policy 3.1 Residential Design Codes

WAPC OR COMMITTEE:	Statutory Planning Committee
REPORTING AGENCY:	Department of Planning
REPORTING OFFICER:	Senior Planning Officer
AUTHORISING OFFICER:	Planning Officer
AGENDA PART:	A
FILE NO:	DP/13/00226
DATE:	6 November 2014
REPORT CATEGORY:	Policy
RECOMMENDATION OUTCOME:	1. Refuse
ATTACHMENT(S):	1. Shire of Murray 'Residential Design' Local Planning Policy 2. Policy justification

RECOMMENDATION:

That the Western Australian Planning Commission resolves to:

1. *refuse to endorse the Shire of Murray's draft Residential Design Local Planning Policy as:*
 - i. *the proposed variations to the R-codes that require approval from the WAPC relate to urban design issues that are not sufficiently unique to the Shire of Murray and allowing such variations would, therefore, be contrary to the parameters set out in clause 7.3.2 of the R-Codes;*
 - ii. *allowing variations to the R-codes that are not sufficiently based on unique local needs may compromise the integrity of the R-Codes;*
2. *advise the Shire of Murray that in August 2014, the WAPC endorsed the preparation of amendments to the R-Codes to address variations being made to 'deemed-to-comply' development standards. This process has now commenced, with the objective of establishing more contemporary and responsive development standards, to reduce future need for R-Code variations via other planning instruments.*

SUMMARY:

In accordance with clause 7.3.2 of State Planning Policy 3.1 Residential Design Codes (R-Codes), the Shire of Murray seeks WAPC approval of a 'Residential Design' Local Planning Policy (LPP), which seeks to vary a number of deemed-to-comply provisions.

It is recommended the Shire's request for endorsement of the LPP be refused, as the requested modifications to the R-Codes are not the result of sufficiently unique circumstances in the Shire of Murray.

BACKGROUND:

The rationale for the Shire's proposed LPP is largely based on the trend towards smaller lot sizes and increasing use of Detailed Area Plans (DAPs) by the development industry as a mechanism to vary acceptable development provisions of the R-Codes.

The widespread use of DAPs has raised issues of consistency of provisions across the Shire's residential areas, and contributes to the complexity, delays and increasing costs of the planning system.

In August 2014, the WAPC endorsed the preparation of amendments to the R-Codes to address variations being made to 'deemed-to-comply' standards on a systematic basis. A multidisciplinary working group has been formed with the objective of establishing more contemporary and responsive development standards for medium density housing, thereby potentially reducing future need for R-Codes variations to be set out in other planning instruments.

LEGISLATION / STRATEGIC PLAN / POLICY:

Legislation

Section:

Planning and Development Act 2005

Part 5

Strategic Plan

Strategic Goal:

1. Regulation

2. Planning

Outcomes:

1. Effective, consistent and enforceable regulation

Strategies:

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

2. Develop agreed standards aligned to national standards and legislation.

3. Encourage innovation in the design of our communities

Policy

Number and / or Name:

State Planning Policy 3.1 Residential Design Codes (SPP3.1)

Liveable Neighbourhoods

DETAILS:

Part 7, Section 7.3 of the R-Codes provides for local planning policies, local development plans, local structure plans and activity centre plans to amend or replace deemed-to-comply provisions set out in Parts 5 or 6. With the exception of provisions listed at Clause 7.3.1, WAPC approval is required for any amendment to deemed-to-comply provisions.

The Shire's LPP proposes a number of amendments to the R-Codes and the following components of the LPP require WAPC approval:

- i) reduction of the private open space requirement (R-Codes clause 5.1.4);
- ii) relaxation of overshadowing requirements (R-Codes clause 5.4.2); and
- iii) development of ancillary dwellings on lots smaller than 450m² (R-Codes clause 5.5.1).

The variations to acceptable development provisions proposed by the policy are intended to apply on a shire-wide basis, reducing the need for preparation of DAP's and the overall volume of applications for planning approval, as the variations would be 'as of right', subject to compliance with policy provisions.

A copy of the LPP adopted by Council is provided at **Attachment 1**. Elements of the policy that are consistent with variations permitted under clause 7.3.1 of the R-Codes are not discussed in this report, as WAPC approval is not required.

GOVERNMENT AND CORPORATE IMPLICATIONS:

There is a risk that the integrity of SPP3.1 would be compromised if the WAPC were to approve variations that do not meet all of the criteria set out in clause 7.3.2 of the R-Codes.

CONSULTATION:

In accordance with clause 2.5 of TPS 4, the draft LPP was publicly advertised during July 2014. Submissions were received from the Urban Development Institute of Australia, the Department of Planning (DoP) and a private land developer.

There were some minor modifications to the policy arising from the submissions, however these were of an administrative nature and not relevant to the elements requiring WAPC approval under clause 7.3.2 of the R-Codes.

OFFICER'S COMMENTS:

Clause 7.3.2 of the R-Codes requires the WAPC to be satisfied that the proposed amendment:

- is warranted due to a specific need related to that particular locality or region;
- is consistent with the objectives and design principles of the R-Codes; and
- can be properly implemented and audited by the decision-maker as part of the ongoing building approval process.

The variations sought by the policy and the justification provided by the Shire are summarised at **Attachment 2**, along with an assessment by the DoP in accordance with the above criteria.

Reduced Private Open Space

Reductions in the amount of required private open space could potentially enable residential land to be used more efficiently and may lead to better urban design outcomes, particularly for narrow frontage lots. However, such reductions may also have some negative impacts upon amenity, as a result of increased building bulk and reduced space being available for private outdoor leisure activities.

The Shire has partly justified the suggested reductions in private open space on the basis that reduced lawn and garden areas would require less fertiliser and water usage, contributing to reducing nutrient input from urban land use in the Peel Harvey Catchment. Although there may be some instances where this argument is valid, it is considered that the fundamental problem being addressed in this aspect of the LPP is related to urban design rather than environmental pollution.

The variations sought by the Shire of Murray in respect of private open space requirements are a significant reduction from the requirements of the R-codes. Also, the issues arising from the R-Codes requirements relating to private open space are not unique to the Shire of Murray. This aspect of the LPP is not supported and is expected to be considered by the multidisciplinary working group in its broader review of the R-Codes.

Solar Access for Adjoining Sites

The issues arising from the R-Codes requirements relating to solar access for medium density housing are not unique to the Shire of Murray. This aspect of the LPP is not supported and is expected to be considered by the multidisciplinary working group in its broader review of the R-Codes.

Ancillary Dwellings

The proposed variation seeks to enable Ancillary Dwellings on all lots, even those less than 450m². This represents a significant departure from the R-Codes. It is noted that the provisions in the R-Codes relating to Ancillary Dwellings were subject to recent review and were relaxed in mid-2013. It is considered that the Shire's demographic profile is not sufficiently unique to warrant further relaxation.

CONCLUSION:

It is recommended the Shire's request for the WAPC to endorse the Shire's LPP be refused.

ITEM NO: 10.2

Government Sewerage Policy- Endorsement of Revised Approach

WAPC OR COMMITTEE:	Statutory Planning Committee
REPORTING AGENCY:	Department of Planning
REPORTING OFFICER:	Planning Manager - Policy Development
AUTHORISING OFFICER:	Executive Director - Infrastructure, Policy and Planning
AGENDA PART:	A
FILE NO:	N/A
DATE:	9 December 2014
REPORT CATEGORY:	Policy
RECOMMENDATION OUTCOME:	1. Endorse 2. Note
ATTACHMENT(S):	Nil.

RECOMMENDATION:

That the Statutory Planning Committee resolves to:

1. ***Endorse the proposal for the revised Government Sewerage Policy to:***
 - a. ***Take a risk-based approach to the provision of sewerage services that:***
 - i. ***requires the mandatory provision of reticulated sewerage to proposals where sewerage disposal represents a high risk to health, environment and amenity, which will include most broadacre subdivision***
 - ii. ***recognises that reticulated sewerage services may be provided by suitably licensed public or private providers;***
 - iii. ***provides for onsite sewage disposal for lower risk proposals where connection to reticulated sewer is not practicable;***
 - iv. ***ensures that site assessment requirements are proportionate to the level of risk associated with the proposal***
 - b. ***Provide guidance on how sewerage servicing should be considered at different stages of the planning process***

- c. ***Provide for innovation in reticulated and onsite sewerage technology and guidance on how to manage the associated risks in planning decisions***
 - d. ***Provides guidance on the demonstration of serviceability where private service providers are proposed.***
2. ***Note the Department of Planning will work with the Department of Health to redraft the policy document and undertake targeted stakeholder consultation in early 2015. WAPC endorsement will be sought in April 2015 prior to submission to Government.***

SUMMARY:

The Department of Planning is working with the Department of Health to redraft the *Government Sewerage Policy*. It seeks guidance from the Statutory Planning Committee on key elements of its proposed approach.

BACKGROUND:

The existing *Government Sewerage Policy Perth Metropolitan Region* and *Draft Country Sewerage Policy* have been reviewed and consolidated given the age of the policies, the draft status of the Country Sewerage Policy, changes in wastewater technologies and concerns related to their reliance on relatively arbitrary lot sizes and numbers. The review process has been led by the Department of Health, with input from the Government Sewerage Policy Steering Committee, which included representatives from the Department of Planning (DoP), Department of Water, Department of Environmental Regulation and Water Corporation.

In December 2011, the Department of Health (DoH) released a draft consolidated policy for public comment. In response to significant issues raised during the submission period and the release of the revised *Australian/New Zealand Standard – Onsite domestic wastewater management (AS/NZS 1547)*, DoH produced a revised draft *Government Sewerage Policy - Second Consultation Draft* (“revised sewerage policy”) for endorsement of the steering committee in August 2013. The Department of Planning has been working with the Department of Health to redraft the policy and seeks guidance from the Statutory Planning Committee on recommended elements outlined below.

LEGISLATION / STRATEGIC PLAN / POLICY:

Legislation	<i>Planning and Development Act 2005</i>
Section:	Proposed policy to guide decision making in accordance with Part 4, 5, and 10
Strategic Plan	
Strategic Goal:	Strategic Goal 2: Planning Strategic Goal 3: Regulation
Outcomes:	Effective, consistent and enforceable regulation
Strategies:	R1 - Improve, streamline and simplify regulatory process within a risk based framework

R2 – Develop agreed standards aligned to national standards and legislation

Policy

Number and / or Name: Government Sewerage Policy (to replace *Government Sewerage Policy Perth Metropolitan Region* and *Draft Country Sewerage Policy*)

DETAILS:

Objectives

It is proposed that the redrafted Government Sewerage Policy adopt the following objectives:

- To protect public health;
- To protect the environment and the State's water resources;
- To promote the efficient use of infrastructure and urban land;
- To minimise future costs to the community associated with installing reticulated sewerage to already developed areas.

Overall approach

Current situation/context:

The existing metropolitan and country sewerage policies require the mandatory provision of reticulated sewerage in broadacre subdivision, other than specified instances where discretionary provisions apply. The discretionary provisions are based upon relatively arbitrary lot numbers and their application has resulted in undesirable planning outcomes, such as limiting the potential for infill subdivision and encouraging low density (R5) residential subdivision.

The proposed revised policy seeks to permit greater flexibility without compromising the health and environmental objectives or imposing unnecessary costs on landowners.

Risk management is a key component of AS/NZS 1547, which provides some guidance on how this is to be addressed through land use planning and recommends flexibility with site assessment requirements.

Proposed policy response:

Provide a risk-based approach to the provision of sewerage services in accordance with AS/NZS 1547 that:

- Requires the mandatory provision of reticulated sewerage where sewage disposal represents the highest risk to public health, the environment and amenity, including most broadacre subdivision;
- Provides for the consideration of onsite sewage disposal in instances where connection to reticulated sewerage is not practicable and onsite sewage disposal presents a lower risk to health, environment and amenity; and
- Ensures that site assessment requirements are proportionate to the level of risk associated with the proposal.

Incorporation of sewerage servicing into all stages of the planning process

Current situation/context:

Sewerage is a fundamental utility service and a critical component of total water cycle management. Sewerage servicing should be considered at all stages of the planning process in conjunction with *Better Urban Water Management*. This position is supported in AS/NZS 1547.

The existing metropolitan and draft country sewerage policies only provide guidance for the consideration of sewerage at subdivision and development stage. This has resulted in lost opportunities with regard to total water cycle management and land being rezoned for unsewered development that is not capable of accommodating onsite disposal at densities proposed.

Proposed policy response:

Provide guidance on how sewerage servicing should be considered at different stages of the planning process, with an expectation that decisions made early in the planning process will reduce the risks associated with decisions at later stages.

Contemporary wastewater servicing and technology

Current situation/context:

The potential for the private sector to provide and operate sewerage infrastructure has expanded in response to the State's commitment to competitive neutrality in utility service provision. Planning decisions rely on a licenced service provider for advice on serviceability.

However, it is generally not feasible for a provider to obtain a wastewater service licence from the Economic Regulation Authority until subdivision stage because of the level of detail required in the application about the proposed infrastructure and services to be provided. In order to ensure that infrastructure is provided in a timely and sustainable way, further guidance is required to ensure that serviceability can be demonstrated in the earlier stages of planning.

Innovations in reticulated sewerage provide a valuable opportunity for wastewater recycling and manage risk to the environment and public health in a cost effective manner. Innovative, local area land reticulated systems are often less expensive and achieve better water recycling and environmental outcomes than conventional centralised reticulated systems such as those usually provided by the Water Corporation. However, they are rarely considered in planning proposals, resulting in lost opportunities to achieve best practice in service provision and good planning outcomes.

Innovation in onsite sewage treatment, particularly the use of aerated treatment units (ATUs), emerged in recent years. ATUs systems can result in better outcomes than conventional septic, although there are major limitations and risks associated with their use. They are prone to failure when the stringent installation, operation and maintenance requirements are not adhered to. AS/NZS 1547 emphasises the need for robust institutional arrangements to be in place to enable the sustainable management of onsite systems.

Proposed policy response:

- Provide guidance on the demonstration of serviceability at different stages of the planning process where private service providers are proposed.

- Recognise and provide for innovation in reticulated sewerage schemes and onsite sewerage technology
- Provide guidance on the identification and management of risks associated with the use of ATUs, in accordance with AS/NZS 1547.

Stakeholder consultation

Current situation/context:

The Government Sewerage Policy has significant implications for the local government, State agencies, the wastewater service industry and developers. The extent of issues raised through previous submission period prevented finalisation of the policy and demonstrated the need to engage with stakeholders more closely before release for public consultation.

Response:

Undertake targeted stakeholder consultation, especially with LG and ATU providers prior to the final draft being released for public consultation.

GOVERNMENT AND CORPORATE IMPLICATIONS:

The widespread use of onsite sewerage systems in Western Australia has resulted in significant health, environment and amenity issues. These have largely been addressed through the Infill Sewerage Program at a cost to the State of \$930 million.

In 2009, the *Standing Committee on Environment and Public Affairs – inquiry into deep sewerage in the Cockburn Area* was presented with evidence of major issues associated with sewerage servicing throughout the state and released the following findings:

- The lack of deep sewerage adversely affects the quality of life of residents not provided with basic infrastructure needs provided to most Western Australians
- Serious health and environmental risks still exist with existing septic systems
- The problems arising out of not having deep sewerage are more serious and widespread than initially thought and there is a need for the Government to review the Infill Sewerage Program

Co-ordinated government sewerage policy will ensure that future development does not cause similar issues and financial burden to future communities.

Inclusion of more flexible provisions for infill will assist WAPC to meet infill targets contained within Directions 2031 and beyond.

CONSULTATION:

The proposed approaches outlined above were developed in response to a review of the submissions raised by key stakeholders in response to the first draft of the Government Sewerage Policy, which was released in December 2011.

Officers from the Department of Planning have met with the Department of Health, who are generally supportive of the proposed approach.

The Department of Planning intends to continue to collaborate with the Department of Health and consult with representatives from relevant agencies, WALGA, the wastewater service industry and development industry prior to finalisation of the policy.