

AGENDA NUMBER & SUBJECT:	11.1 - Amendment No.1 to the Shire of Nannup Local Planning Scheme No. 4: Submitted for Adoption
LOCATION/ADDRESS:	Lots 125, 301 and 566 Cundinup-Dudinyillup Rd, Nannup
NAME OF APPLICANT:	Harley Dykstra and Graeme & Anne Brockman
FILE REFERENCE:	TPL2-01
AUTHOR:	Jane Buckland – Development Services Coordinator
REPORTING OFFICER:	David Taylor – Chief Executive Officer
DISCLOSURE OF INTEREST:	Nil
DATE OF REPORT:	4 June 2024
PREVIOUS MEETING REFERENCE:	Nil
ATTACHMENTS:	11.1.1 – Location map 11.1.2 – Documentation from applicant

BACKGROUND:

The applicants seek Council's adoption of a scheme amendment to remove Additional Site Requirement No.4 (ASR4) from Lots 125, 301 and 566 Cundinup-Dudinyillup Rd, Nannup to facilitate the ongoing use of the subject lots for tree farm production. The Amendment, if approved by the Minister for Planning, would enable the Shire to grant development approval for a new tree farm development application(s).

The site location is shown in Attachment 11.1.1. The total area of the three lots is 250.98 hectares, and they are currently planted in blue gums. There are no structures on any of the lots contained within the site. The site is largely steeply sloping.

The lots do not currently have approval under any previous or current Local Planning Scheme for use as a tree farm however it is known that they have been planted in blue gums since 1996.

While LPS4 does provide non-conforming use rights in some cases, ASR4 specifically provides that tree farms will not be supported by the Shire meaning that an application for development approval cannot be accepted by the Shire for the continued use of the lots as a tree farm. This position is based on legal advice. The legal advice is provided under separate cover to Councillors.

The applicants' documentation is set out in Attachment 11.1.2. The documentation provides the necessary information and justification required by the Shire of Nannup Local Planning Scheme No. 4 (LPS4) including details of the current and surrounding land uses, physical characteristics, infrastructure, and access, and supporting rationale. The documentation provides background information which is generally not repeated in this report.

The lots are zoned 'Priority Agriculture' in LPS4 and are also subject to ASR4 which states that tree farms will not be supported by the Local Government. The lots are also partially within Special Control Area SCA7 General (Landscape Values Area).

COMMENT:

On balance, the requested Amendment has merit for various reasons including those set out in Attachment 11.1.2. The site's physical features (steep slope, water availability, soils) and location are suitable for tree farms as evidenced that the subject lots have historically been used for tree farming and the intention is for the use to continue. The site is also on the edge of the ASR4 boundary. Importantly, the land will continue to be zoned Priority Agriculture.

It is recommended that Council adopt (initiate) the proposed scheme amendment subject to modifications to Scheme Amendment No. 1 being made to clarify the areas to which ASR4 should apply in future. This is further considered below.

Should Council adopt Amendment 1, it will facilitate Environmental Protection (EPA) and Western Australian Planning Commission (WAPC) assessment. Subject to EPA and WAPC assessment, Amendment 1 will be subject to community/stakeholder consultation.

While noting the above, considerations with Amendment 1 include clarifying Council's position relating to preventing new tree farms within ASR4 and creating a precedent should Council adopt Amendment 1.

The Council adopted ASR4, in part, given that it was concerned about the loss of population in and around Nannup and impacts on on-going economic activity if large areas of tree farms were planted on priority agricultural land nearer the Nannup townsite. In comparison, the Council was supportive of tree farms on the priority agricultural land on the Scott Coastal Plain subject to addressing relevant planning considerations.

In relation to precedent, there is a requirement that a proponent suitably demonstrate the site is best suited to a tree farm compared to other forms of rural activity. Additionally, the Shire administration suggests that a request to remove ASR4 from anywhere but the edges of the ASR4 boundary is unlikely to be recommended for support.

Should Council adopt Scheme Amendment No. 1, and subject to decisions from the EPA, WAPC and Minister for Planning, further planting of the lots as a tree farm could occur on the site subject to the landowner/proponent gaining Development Approval from the Shire.

As mentioned above, it is suggested appropriate to clarify the areas to which ASR4 should apply in future.

The proposal to remove ASR4 from Lots 125, 301 and 566 Cundinup-Dudinyillup Rd relates to the use of the term 'locality' in the description of land used in Table 2 of LPS4 as shown below:

Table 2 Additional Site Requirements

No.	Description of Land	Requirement
ASR 4	As shown on the Scheme maps land zoned Priority Agriculture – Biddelia, Carlotta and Cundinup localities.	Tree farms will not be supported by the Local Government.

While ASR4 specifically states the localities of Biddelia, Carlotta and Cundinup in the description, the Scheme maps more broadly include all land zoned Priority Agriculture in the areas surrounding Cundinup and Carlotta, which includes portion of the localities of Nannup and East Nannup.

The applicants are requesting that ASR4 be removed from Lots 125, 301 and 566 Cundinup-Dudinyillup Rd as they are located within the locality of Nannup which is inconsistent with the description of the land in Table 2.

It is suggested that Council should retain the areas as shown on the Scheme maps but amend the Scheme text to include the localities of Nannup and East Nannup in the description of land in Table 2 as follows:

No.	Description of Land	Requirement
ASR 4	As shown on the Scheme maps land zoned Priority Agriculture – Biddelia, Carlotta, Cundinup, East Nannup, and Nannup localities.	Tree farms will not be supported by the Local Government.

The amendment is a standard amendment under the provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* for the following reasons:

- The amendment relates to a zone that is consistent with the objectives identified in the scheme for that zone;
- The amendment is consistent with a local planning strategy for the scheme that has been endorsed by the Commission;
- The amendment would have minimal impact on land in the scheme area that is not the subject of the amendment;
- The amendment does not result in any significant environmental, social, economic or governance impacts on land in the scheme area; and
- The amendment is not a complex or basic amendment.

Subject to the Council's decision, the documentation will be forwarded to the EPA seeking environmental clearance. Following this, the amendment will be submitted to the Western Australian Planning Commission (WAPC) to assess its suitability for advertising and approval to advertise. Should approval to advertise be granted then the Shire will publicly advertise the amendment for 6 weeks by writing to stakeholders, placing notices in local papers, placing details on the Shire's website and having information available at the Shire office.

Following the close of the consultation period, the matter will again be considered by the Council to determine whether or not to support final adoption of the scheme amendment. After this, the WAPC will assess the scheme amendment request with the final decision made by the Minister for Planning.

STATUTORY ENVIRONMENT:

Planning and Development Act 2005, Planning and Development (Local Planning Scheme) Regulations 2015 and LPS4.

The Council has a number of options available to it as summarised below:

- Adopt (initiate) the scheme amendment without modification - to facilitate advertising of the amendment;
- Adopt the scheme amendment with modification(s) - to facilitate advertising of the amendment;
- Not adopt the scheme amendment - this would mean the scheme amendment could not proceed; or
- Defer the scheme amendment - request and seek additional information from the applicant.

There is no right of appeal for the applicant if Council resolves to not adopt the amendment request. If this amendment request is not adopted by Council, it is open to the applicant to request that the Minister for Planning order the Shire to initiate a scheme amendment. Clause 77A(1) of the *Planning and Development Act 2005* sets out that the Minister may, on the recommendation of the WAPC, order a local government to prepare and submit for the approval of the Minister, an amendment to a local planning scheme for the purpose of rendering the local planning scheme consistent with a State planning policy.

POLICY IMPLICATIONS:

Nil at this stage.

FINANCIAL IMPLICATIONS:

The applicant has paid the required scheme amendment fee in accordance with adopted 2023/24 Schedule of Fees and Charges.

STRATEGIC IMPLICATIONS:

4.2 Our Location

4.2.1 Balance community, environment and economic development in our Shire through appropriate planning frameworks and strategies

VOTING REQUIREMENTS:

Simple Majority

OFFICER RECOMMENDATION:

That Council,

1. In accordance with Section 75 of the *Planning and Development Act 2005* resolve to adopt Amendment 1 to the *Shire of Nannup Local Planning Scheme No.4*, including the modification in part 'b' as follows:

- a) Amend the Scheme map to remove Lots 125, 301 and 566 Cundinup-Dudinyillup Road, Nannup from Additional Site Requirement No.4.
- b) Amend Table 2 Additional Site Requirements to include the localities of East Nannup and Nannup in the description of land for ASR 4 as follows:

No.	Description of Land	Requirement
ASR 4	As shown on the Scheme maps land zoned Priority Agriculture – Biddelia, Carlotta, Cundinup, East Nannup, and Nannup localities.	Tree farms will not be supported by the Local Government.

2. In accordance with Regulation 35 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, determines that Amendment No. 1 of the Shire of Nannup Local Planning Scheme No. 4 is a standard amendment for the following reasons:

- a) The amendment relates to a zone that is consistent with the objectives identified in the scheme for that zone;

- b) The amendment is consistent with a local planning strategy for the scheme that has been endorsed by the Commission;
 - c) The amendment would have minimal impact on land in the scheme area that is not the subject of the amendment;
 - d) The amendment does not result in any significant environmental, social, economic or governance impacts on land in the scheme area; and
 - e) The amendment is not a complex or basic amendment.
3. Following the amendment documentation being suitable updated to reflect point 1, refer Scheme Amendment 1 to the Environmental Protection Authority in accordance with Section 81 of the *Planning and Development Act 2005*.
 4. Submit Scheme Amendment 1 to the Western Australian Planning Commission for approval to advertise in accordance with Section 83A of the *Planning and Development Act 2005*.
 5. Advertise Scheme Amendment 1 in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015*, Section 47(2) for a period of 42 days.

COUNCIL RESOLUTION 24073

MOVED: CR HANSEN

SECONDED: CR GIBB

That Council,

1. *In accordance with Section 75 of the Planning and Development Act 2005 resolve to adopt Amendment 1 to the Shire of Nannup Local Planning Scheme No.4, including the modification in part 'b' as follows:*

a) Amend the Scheme map to remove Lots 125, 301 and 566 Cundinup-Dudinyillup Road, Nannup from Additional Site Requirement No.4.

b) Amend Table 2 Additional Site Requirements to include the localities of East Nannup and Nannup in the description of land for ASR 4 as follows:

No.	Description of Land	Requirement
ASR 4	As shown on the Scheme maps land zoned Priority Agriculture – Biddelia, Carlotta, Cundinup, East Nannup, and Nannup localities.	Tree farms will not be supported by the Local Government.

2. *In accordance with Regulation 35 of the Planning and Development (Local Planning Schemes) Regulations 2015, determines that Amendment No. 1 of the Shire of Nannup Local Planning Scheme No. 4 is a standard amendment for the following reasons:*
 - a) *The amendment relates to a zone that is consistent with the objectives identified in the scheme for that zone;*
 - b) *The amendment is consistent with a local planning strategy for the scheme that has been endorsed by the Commission;*
 - c) *The amendment would have minimal impact on land in the scheme area that is not the subject of the amendment;*
 - d) *The amendment does not result in any significant environmental, social, economic or governance impacts on land in the scheme area; and*
 - e) *The amendment is not a complex or basic amendment.*
3. *Following the amendment documentation being suitable updated to reflect point 1, refer Scheme Amendment 1 to the Environmental Protection Authority in accordance with Section 81 of the Planning and Development Act 2005.*
4. *Submit Scheme Amendment 1 to the Western Australian Planning Commission for approval to advertise in accordance with Section 83A of the Planning and Development Act 2005.*
5. *Advertise Scheme Amendment 1 in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015, Section 47(2) for a period of 42 days.*

CARRIED

TOTAL VOTES FOR: 5

Cr Brown, Cr Dean, Cr Fraser, Cr Gibb, Cr Hansen.

TOTAL VOTES AGAINST: 0