



Shire of
N A N N U P
The Garden Village

AGENDA

Council Meeting to be held
on Thursday 28 October 2010

Shire of Nannup

NOTICE OF AN ORDINARY COUNCIL MEETING

Dear Council Member,

The next Ordinary Meeting of the Shire of Nannup Council will be held on Thursday 28 October 2010 in the Council Chambers, Nannup commencing at 4.15 pm.

Schedule for 28 October 2010:

- 2.30 pm Lewis Winter (City of Bunbury) – Emergency Management
- 3.15 pm Information Session
- 4.15 pm Meeting commences
- 7.00 pm Dinner



SHANE COLLIE
CHIEF EXECUTIVE OFFICER

Agenda

1. DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

2. RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE (previously approved)

3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Ms M Longmore asked if Council would consider buying the house on the corner of Adam Street & Warren Road for the purpose of senior's interests.

The question was taken on notice and a reply has been forwarded to Ms Longmore, copy as follows (extract):

"Council has not considered purchasing the above mentioned house for the purpose of senior's interests. Council is in the process of developing a policy on contributions to aged persons' accommodation.

The purchase of these premises was raised some time ago. Council did not pursue the purchase at that time. The purchase of the premises is not contained in Council's Forward Plan nor has consideration been given to it from a financial perspective."

Mr M Loveland asked;

- 1 Your Chief Executive has been seen travelling to work from Busselton every morning. Why is this permitted when he has a house in Nannup?

Does the car belong to himself or Council?
Is the expenditure paid by himself or Council?
Is this permitted in his employment contract?

The Chief Executive Officer responded advising offence is taken at the comments as the statement underpinning the questions is not true.

- 2 Concerning Ewen Ross

I have asked for the job description given by Council initially the terms of his employment contract and: the man's leave entitlement as added or included in the termination payment of \$100,000.00.

This matter has been responded to previously.

- 3 Concerning Council and the Mowen Road upgrade, ratepayers are concerned about the source of water to be used which should not be from the drinking water supply.

This is not a question.

- 4 It is believed an examination of Council building regulations and bylaws will help resolve a number on long standing concerns of the community. I am therefore requesting a copy of all bylaws and regulations as they are written by Council.

Council local laws and relevant legislation are available on Council's website or at the Shire Office. If copies are required Council's prescribed fees will be required to be paid and they will be provided.

- 5 Concerning stormwater plans I myself being the initial complainant it is known Council has had the plans if they are no longer available, why not?

The question is unclear.

There will be needed by Council and Water Corp should be able to provide a copy. Can Cr Gilbert confirm water Corp paid for the installation?

Cr Gilbert responded.

A response on these questions has been forwarded to Mr Loveland.

4. PUBLIC QUESTION TIME

5. APPLICATIONS FOR LEAVE OF ABSENCE

6. PETITIONS/DEPUTATIONS/PRESENTATIONS

7. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

That the Minutes of the Ordinary Council Meeting of the Shire of Nannup held in Council Chambers on 23 September 2010 be confirmed as a true and correct record.

8. ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

9. REPORTS BY MEMBERS ATTENDING COMMITTEES

10. REPORTS OF OFFICERS

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11. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING

- (a) OFFICERS
- (b) ELECTED MEMBERS

12. ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

12.1 Standing Orders Amendment Local Law

DEAN/MELLEMA

"That Council formally make the Shire of Nannup Standing Orders Amendment Local Law 2010 by:

1. *Repealing subclause 7.12(3) from the Shire of Nannup Standing Orders Local Law 2010;*

2. *Deleting the words "that meeting" after the words "part in" and inserting the words "the debate of the item" in clause 8.4 of the Shire of Nannup Standing Orders Local Law 2010; an*
3. *Amending clause 15.7 of the Shire of Nannup Standing Orders Local Law 2010 to read "Any person guilty of any breach of the Standing Orders or any of the provisions thereof, shall be liable to a penalty not exceeding \$1,000.00."*

This item was left on the table from Council's September 2010 meeting pending resolution of who determines if a breach of the standing orders has occurred. An Absolute Majority Decision (5) is required to pass this motion.

COMMENT

Advice was obtained from the Department of Local Government as follows:

"The imposing of a penalty for breaching any local law, including Standing Orders, comes as a result of an action in the Courts. In the case of any local law Council can instigate action in the courts if there is evidence of a breach of its local laws. The Court will determine the extent of the penalty it imposes in line with the amounts prescribed in the relevant legislation."

Councillors can not impose penalties. The only decision they make is whether there is enough evidence to pursue a case in the court."

12.2 Tourism Association Ongoing Meetings

Cr Camarri has put forward the following Notice of Motion:

"That the Board of the Tourism Association meet with Council prior to Council meetings, quarterly."

COMMENT

Council resolved in November 2009 the following:

"That this council declines an offer of a seat on the Board of the Nannup Visitor Centre and seeks to conduct its business with the Nannup Tourism Association through normal Council procedure."

The motion from Cr Camarri is consistent with Council's present position and is supported in that an ongoing dialogue with the Visitor Centre is seen a positive step in promoting and supporting tourism in the district.

12.3 Recreation Centre Upgrade (Stand Alone Facility)

Cr Camarri has put forward the following Notice of Motion:

“That the CEO instructs the Architect of the Recreation Centre Upgrade, which are not limited to a stand alone facility.”

COMMENT

While the wording of the above motion would need some adjusting the intent appears to be that Council look wider than just the construction of a new stand alone facility.

In initial discussions with the Architect, and as contained in the relevant documentation and prior Council resolutions, the whole of the Recreation precinct is to be included in the upgrade plans. The Architect has acknowledged this and has advised that the first step will be to produce a draft Masterplan for the area for Council's consideration. This Masterplan can then be adjusted or amended to how Council would like, without consideration being given to the order of which things may occur.

As a quite separate process, and alluding to Cr Camarri's motion above, is the prioritisation that will then need to be applied to matters contained within the Masterplan, following its adoption by Council when it is satisfied with the contents.

Fundamental to this is the priority given to the construction of a new facility and/or works to improve the current facility. This is a very important debate that Council will need to have.

The Architect anticipates having a first draft Masterplan available prior to the end of October 2010. A meeting will then be scheduled for the Architect to go through the draft plan with Council members.

12.4 Recreation Centre Upgrade (Meetings with Architect)

Cr Camarri has put forward the following Notice of Motion:

“All Councillors be given notification and admission to future meetings with the Architect.”

COMMENT

This motion appears to refer to the opportunity taken to introduce the Architect to Crs Dean and Gilbert (in their role as representing the Nannup Sport and

Recreation Association) when the Architect was in Nannup on Friday 3 September 2010.

The first meeting with the Architect and Council members will occur following the receipt of the draft Masterplan referred to above.

12.5 Firebreak Inspections 2010/11

Cr Camarri has put forward the following Notice of Motion:

"That Fire Break inspections for 2010 be conducted by Chief FCO and 2 Fire Control officers and time sheets are implemented for payment of the volunteer FCO's."

BACKGROUND

- Council's prior firebreak inspector indicated some time ago that he does not want to continue to undertake the role.
- Advertising for a Firebreak Inspector occurred during July/August 2010.
- One application was received which was significantly above the budget amount allocated for the conduct of inspections (\$3,000). The person who submitted has since become unavailable due to work commitments.
- Contact was made with surrounding shires seeking to share inspection resources. This was however unsuccessful.
- The Fire Advisory Committee discussed possible options at its meeting held 13 October 2010.
- At the time of writing it appears a suitable person has been located who will undertake the inspections. There are further fall back positions if this does not eventuate including undertaking inspections from within Council's own resources.

COMMENT

This is an operational matter. Council can be assured the inspections will take place and will be competently carried out.

12.6 Water Points for Fire Suppression

Cr Camarri has put forward the following Notice of Motion:

"That the Chief FCO inspect and map all water points and their suitability and availability for fire suppression, of all plantations - private and DEC lands within the Shire of Nannup by close of the fire season (Dec ?, 2010)."

COMMENT

It is understood the DEC water points are mapped. Council's Community Emergency Service Manager is undertaking the mapping of other water points which will be prioritised in her normal workload.

13. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

14. CLOSURE OF MEETING

DEVELOPMENT

SERVICES

AGENDA NUMBER: 10.1
SUBJECT: Proposed Road Closure – Part of Railway Street, Nannup
LOCATION/ADDRESS: Unmade part of Railway Street west of Wilson Street
NAME OF APPLICANT: Shire of Nannup
FILE REFERENCE: HLT9 No.629
AUTHOR: Bob O'Sullivan - Planner
DISCLOSURE OF INTEREST: Nil
DATE OF REPORT: 20 October 2010

Attachments: 1. Plan of Sewer Works in Railway Street and Trapper Trail.
2. Water Corporation Plan showing Sewer Works and Road Works in the Intersection of Railway Street and Trapper Trail.

BACKGROUND:

The Department of Regional Development and Lands, in a letter dated 9 July 2010 (Attachment 1), reported the Water Corporation built a Sewer Pumping Station on the unmade portion of Railway Street west from Wilson Street to an unmade road that is named Trapper Trail on Attachment 2. The Department proposes to close this portion of road and then create a reserve over the land and a management order in favour of the Water Corporation. During an inspection by Council's Planner it became clear that:

1. Railway Street to the west of Wilson street is formed with bitumen to the pump station and bollard posts are on the bitumen to prevent access to the pump station,
2. the pump station is located part on Railway Street, part on an unmade road named Trapper Trail on Attachment 2 and part may be on adjoining land Lot 82 on Plan 130080.
3. The vehicle turnaround next to the pump station is on the unmade road identified as Trapper Trail on Attachment 2 and is not on Railway Street.

These observations were reported to the Department. An email from the Department on 16 September advised that an inspection by the Department's staff found the pump station is located on Trapper Trail but not on Lot 82. The Department through Ms. Cherylynne Forrest confirmed by phone that only the section of Railway Street between Wilson Street and trapper Trail is to be closed.

COMMENT:

Part of the pump station and the whole of the vehicle turnaround are on Trapper Trail and will remain on road.

The question whether part of the pump station is on adjoining Lot 82 can only be resolved by a licensed surveyor. Lot 82 is owned freehold by the Shire of Nannup.

Ms Forrest agreed to arrange for an identification survey by a licensed surveyor to fix the location of the pump station in relation to the boundaries of Railway Street, Trapper Trail and Lot 82.

The letter from the Department of Regional Development and Lands asks Council to initiate the closure under section 58 of the Land Administration Act. This section requires:

1. Council to resolve to publish in a newspaper circulating in the district a notice of motion that it will make a request to the Minister for the permanent closure of the road,
2. Council to consider any objections to the proposed closure made within 35 days of the publication of the notice of motion,
3. Council to then resolve to make a request to the Minister to close the road permanently,
4. Council must then, in accordance with regulation 9 of the Land Administration Regulations, prepare and deliver the request to the Minister to close the road permanently.

STATUTORY ENVIRONMENT: Section 58 of the Land Administration Act.

POLICY IMPLICATIONS: Nil.

FINANCIAL IMPLICATIONS:

Cost for time of staff to draft the application to the minister, cost of advertising. Water Corporation will pay reasonable costs.

STRATEGIC IMPLICATIONS: Nil.

RECOMMENDATION:

Council resolve to publish in the Nannup Telegraph a notice that it intends to apply to the Minister for the permanent closure of the unconstructed part of Railway Street between Wilson Street and Trapper Trail under section 58 of the Land Administration Act 1997.

VOTING REQUIREMENTS:



**BOB O'SULLIVAN
PLANNER**

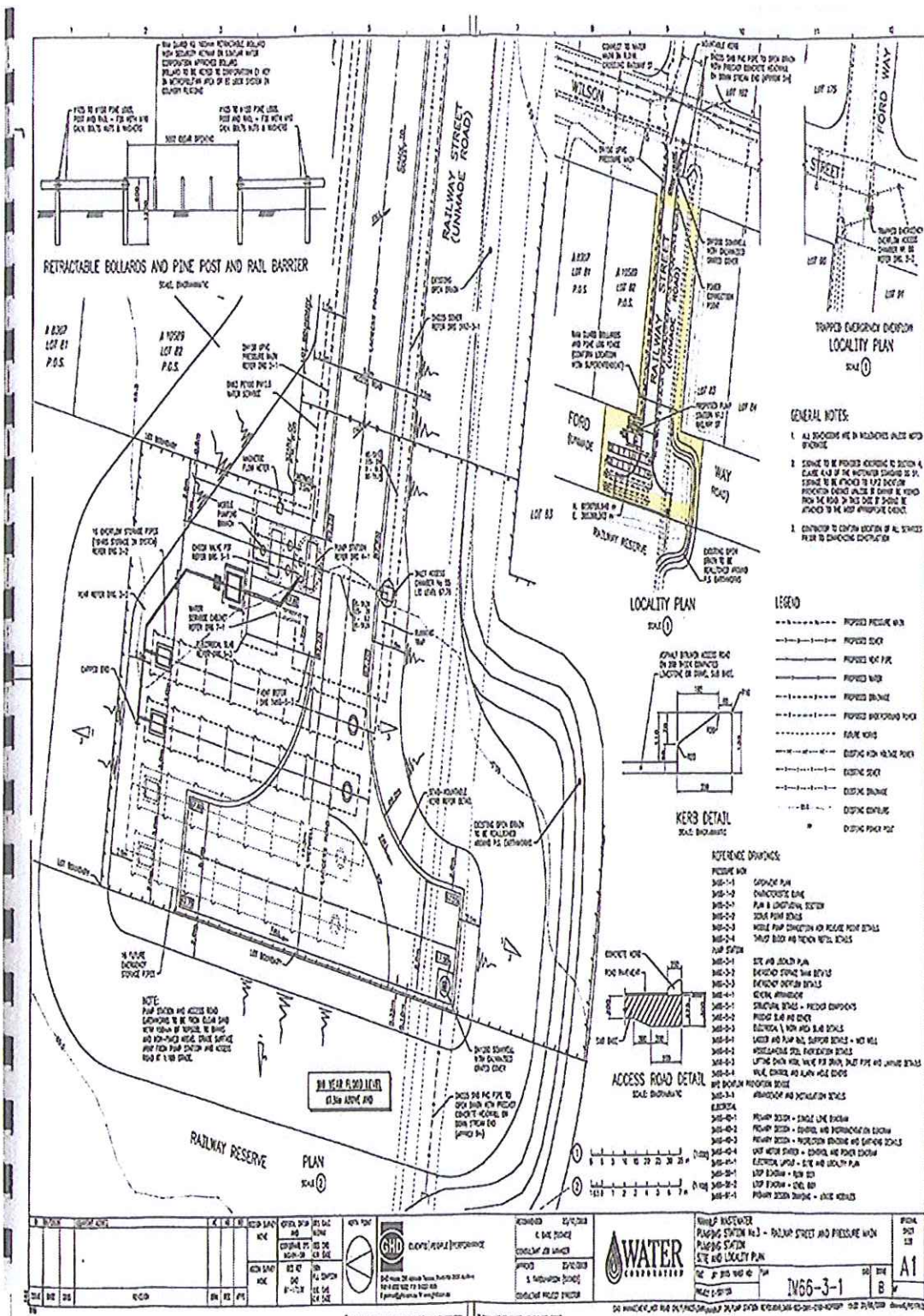


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**NANNUP
RAILWAY ST. PS 3**

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NO. 1	NO. 2	NO. 3	NO. 4	NO. 5	NO. 6	NO. 7	NO. 8	NO. 9	NO. 10	NO. 11	NO. 12	NO. 13	NO. 14	NO. 15	NO. 16	NO. 17	NO. 18	NO. 19	NO. 20	NO. 21	NO. 22	NO. 23	NO. 24	NO. 25	NO. 26	NO. 27	NO. 28	NO. 29	NO. 30	NO. 31	NO. 32	NO. 33	NO. 34	NO. 35	NO. 36	NO. 37	NO. 38	NO. 39	NO. 40	NO. 41	NO. 42	NO. 43	NO. 44	NO. 45	NO. 46	NO. 47	NO. 48	NO. 49	NO. 50	NO. 51	NO. 52	NO. 53	NO. 54	NO. 55	NO. 56	NO. 57	NO. 58	NO. 59	NO. 60	NO. 61	NO. 62	NO. 63	NO. 64	NO. 65	NO. 66	NO. 67	NO. 68	NO. 69	NO. 70	NO. 71	NO. 72	NO. 73	NO. 74	NO. 75	NO. 76	NO. 77	NO. 78	NO. 79	NO. 80	NO. 81	NO. 82	NO. 83	NO. 84	NO. 85	NO. 86	NO. 87	NO. 88	NO. 89	NO. 90	NO. 91	NO. 92	NO. 93	NO. 94	NO. 95	NO. 96	NO. 97	NO. 98	NO. 99	NO. 100
NO. 101	NO. 102	NO. 103	NO. 104	NO. 105	NO. 106	NO. 107	NO. 108	NO. 109	NO. 110	NO. 111	NO. 112	NO. 113	NO. 114	NO. 115	NO. 116	NO. 117	NO. 118	NO. 119	NO. 120	NO. 121	NO. 122	NO. 123	NO. 124	NO. 125	NO. 126	NO. 127	NO. 128	NO. 129	NO. 130	NO. 131	NO. 132	NO. 133	NO. 134	NO. 135	NO. 136	NO. 137	NO. 138	NO. 139	NO. 140	NO. 141	NO. 142	NO. 143	NO. 144	NO. 145	NO. 146	NO. 147	NO. 148	NO. 149	NO. 150	NO. 151	NO. 152	NO. 153	NO. 154	NO. 155	NO. 156	NO. 157	NO. 158	NO. 159	NO. 160	NO. 161	NO. 162	NO. 163	NO. 164	NO. 165	NO. 166	NO. 167	NO. 168	NO. 169	NO. 170	NO. 171	NO. 172	NO. 173	NO. 174	NO. 175	NO. 176	NO. 177	NO. 178	NO. 179	NO. 180	NO. 181	NO. 182	NO. 183	NO. 184	NO. 185	NO. 186	NO. 187	NO. 188	NO. 189	NO. 190	NO. 191	NO. 192	NO. 193	NO. 194	NO. 195	NO. 196	NO. 197	NO. 198	NO. 199	NO. 200

WATER CORPORATION
 PROJECT NO. 1066-3-1
 SHEET NO. A1
 DATE: 10/10/10

AGENDA NUMBER: 10.2
SUBJECT: Proposed Amendment 10 to LPS 3
LOCATION/ADDRESS: Lot 1423 DP113228 Barrabup Rd
NAME OF APPLICANT: David Lewis and Glen Orley
FILE REFERENCE: A089
AUTHOR: Bob O'Sullivan - Planner
DISCLOSURE OF INTEREST:
DATE OF REPORT: 20 October 2010

Attachments 1: Map of Property Boundaries.

- 2: Aerial photo (by Landgate 2007). Lot 1423 and Locality.
- 3: Photo to south along east boundary of Lot 1423.
- 4: Photo to west from entry near north east corner of Lot 1423.
- 5: Amendment 10 of LPS3 (text to rezone Lot 1423).
- 6: Structure Plan of proposed development.
- 7: Response from FESA dated 16/2/2010.
- 8: Response from DEC received 25/2/2010.
- 9: Assessment of Fire Management Plan.
- 10: Comments on FMP from the Community Emergency Services Manager.

This report has 4 sections: Background, Assessment Method, Assessment, Conclusions, and Recommendations.

BACKGROUND

This section describes the locality, outlines the proposal, history of applications and approvals, the referrals to state agencies, and site inspections.

Locality:

Lot 1423 is on the west side of Barrabup Road, 2.5km west of the intersection of Barrabup Road with Blackwood Drive and on the north side of the Blackwood River. The land is bordered by eucalypt forest on state land on the north and east and by a eucalypt plantation on private land, Lot 2895, on the west.

Outline of Proposal:

The proposal is to amend the local planning scheme by rezoning Lot 1423 from the Agriculture Zone to the Special Use Zone for a number of specified land uses. Variations of the proposed amendment were submitted to Council on 3 occasions, 14/10/2005, 28/4/2008 and 4/3/2009, and adopted each time by Council (under section 75 of the Planning & Development Act). Under section 81 of the Act Council is required to 'forthwith' send all particulars of the proposed amendment to the Environment Protection Agency. No documents are on file to show the proposal went to the EPA.

Mr. Lewis provided a letter on 20/9/2010 with updated copies of:

1. Fire Management Plan (December 2009) written by DJ Lewis.

2. Traffic Impact Statement (5 pages) prepared by DJ Lewis dated 20 March 2010.
3. Report from RPS Koltasz Smith received 4/3/2009 for the rezoning of Lot 1423 from Agriculture to Special Use for Amendment 6 of LPS 3. The report includes the proposed text to amend LPS 3 (see Attachment 5) which has the permitted uses and special provisions outlining specific development and subdivision requirements. The proposed permitted land uses are: *Art and craft centre, cafe, chalet development, cottage industry, camping area, private recreation, single residential dwelling (per landowner)*. There are ten Special Provisions which include: *8. Buildings – no closer than 20 metres from lot boundaries; 9. habitable buildings shall comply with AS3959 Construction of buildings in Bushfire Prone Areas*. The special provisions do not designate Lot 1423 to be a bushfire prone area, a precondition to implement AS3959, or contain requirements in relation to subdivisions as is proposed on page 2 of the report.

History of applications and approvals:

- | | |
|------------|--|
| 13/1/1993 | Council letter to D. Lewis - advertising his application for wildlife sanctuary. |
| 15/2/1993 | Council letter to D. Lewis gave approval for wildlife sanctuary, no chalets. |
| 25/1/1994 | Council letter to G. Orley with response to application for chalets. |
| 13/9/1994 | Council approved 3 chalets (plans show 3 chalets on west side near river). |
| 17/1/1995 | Council letter to G Orley stating a problem as owner builder for 2 chalets. |
| 18/4/1996 | A handwritten note on above letter "no response application lapsed". |
| 17/5/1995 | Council received an application from G. Orley for camping ground, 30 people. |
| 21/6/1995 | Council letter requests information for camping ground. |
| 9/10/1995 | Council gave planning approval to G. Orley for 6 campsites. |
| 16/12/1998 | note "Lot 1423 Extremely dangerous around dwelling GZ Ossy-Orley". |
| 23/12/1998 | Fire break notice to D Lewis. |
| 21/6/1999 | Council fax to Dept Local Government advising that predominant use is timber milling and processing and dwelling purposes. |
| 2/5/2002 | Council received a request from WAPC for comment on a proposed subdivision of 3 lots. |
| 31/7/2002 | Council received advice from WAPC that the application for subdivision was refused. |

- 14/10/2005 Council received a submission asking Council to initiate a rezoning from Rural to Special Use to facilitate future subdivision into 2 lots and development of non rural land uses.
- 28/4/2008 Council advised David Lewis that Council resolved to initiate an amendment of LPS 3 to rezone Lot 1423 from Agriculture to Special Use and asked him to prepare amendment documents.
- 6/5/2008 Email to David Lewis from MDS with required modifications to documents.
- 4/11//08 Letter from Glen Orley making application for 2 residential buildings, one for visitors, the other for workers..
- 4/3/2009 Council received documents for Amendment No6 from RPS Koltasz Smith.
- 30/3/2009 Letters from Council to FESA and DEC asking for a site visit and comment.
- 8/6/2009 Email response from FESA. BAL 40 in new AS3959.
- 24/6/2009 Council received comment from DEC objecting to proposed fire management and supporting the aims in Planning for Bushfire Protection and AS3959; extreme fire hazard, 100m hazard separation zone, need another emergency access route at south end of lot.**
- 2/7/2009 Letter from Council to D Lewis asking for response to DEC letter of 24/6/2009.
- 16/2/2010 Email response from FESA: high to extreme hazard; AS3959 level 2; huts do not comply with FMP. (see Attachment 7).
- 18/2/2010 Application from G Orley for planning approval for a sign.
- 25/2/2010 Council received letter from DEC district manager : Type 5 forest, extreme bushfire hazard, 100m hazard separation zone cannot be achieved, bushfire protection should be provided on the property, access, fuel mitigation, oppose the development. (see Attachment 8).**
- 11/3/2010 Letter from Council's MDS to Koltasz Smith re Fire Management Plan and traffic plan. Requirements for Fire Management Plan, access, extreme fire hazard, unapproved buildings, unlikely to support.
- 15/3/2010 Letter from Council's MDS to Lewis and Orley and attached history of applications and development.
- 30/3/2010 Council received a submission from D Lewis which considers points raised by FESA and DEC, generally disputing requirements.
- 27/5/2010 Report (15 pages + attachments) by Ewen Ross MDS to Council meeting, agenda item 10.5. Council resolved to continue the

amendment process and to ask the applicant to prepare amendment documents.

- 7/6/2010 Letter from Council's MDS to Lewis and Orley informing that Council at its meeting in May 2010 decided to continue to initiate the rezoning from Agriculture to Special Use and requested the proponent to prepare amendment documents.
- 18/9/2010 Letter from David Lewis with updated Scheme Amendment Report, Structural Plan (Appendix A) and Fire Management Plan (Appendix B) to address the Planning for Bush Fire Protection Guidelines 2010.

Referrals to state agencies:

Referrals cl 10.1 LPS 3	Advice/Response/Conditions
EPA. No referral or response was found.	
DEC	Response received 25/2/2010. Revised FMP does not address DEC concerns in its letter of 17/6/2009. Extreme bushfire hazard area; Planning for Bushfire Protection needs a 100m Hazard separation Zone; site must provide bushfire protection itself; two access routes may be unusable in a bushfire; southern access across river has authority to enter state or private lands; proponent has not shown how fuel will be reduced; proponent has not shown how risk to people can be mitigated. DEC opposes proposal. (see Attachment 8).
FESA	16/2/2010 email response from FESA: high to extreme hazard; AS3959 level 2; huts do not comply with FMP. (see Attachment 7).

Site Inspections:

The site was inspected on 27 July 2010 by Bob O'Sullivan and Terese Levick-Godwin in company with David Lewis. Notes of the visit (by BO'S) follow:

Barrabup Road has bitumen to Blackwood Drive, then Barrabup Road is gravel 6m wide with tall forest on both sides to the edge of the gravel. There is evidence of fires on most trees and on some tree tops. At the driveway into Lot 1423 there is an entry to 'Barrabup Sanctuary' (straight ahead) and an entry to 'Lewis' on the left hand side which is a rough track through forest.

Met David Lewis at his house and drove south to a levee above the river where David said the flood rose to in 1982. Then drove back north to entry and then west to west boundary of lot 1423, then south along west boundary to Glen Orley's house and met him. Drove south towards the river and through a camping area to a chalet on the river bank, then north past other buildings, north to the

entry to Lot 1423 and left the site, then drove north on Barrabup Road (narrow gravel) to a log barrier and drainage channel which prevented access to Mowen Road (bitumen).

The site was inspected again on the 4 October 2010 by Terese Levick-Godwin, Rehanna Arthur and Bob O'Sullivan with the proponents David Lewis and Glen Orley.

Photographs were taken of the buildings and nearby vegetation, comprising:

- 2 homes,
- camping area of 10 camp sites near a roofed open shelter and a building with 2 toilets and 2 showers,
- camping area of 10 camp sites near a roofed open shelter and a building with 2 toilets and 4 showers,
- building with a double bed described as a bird hide,
- building with a double bed and toilet/shower described as an eco hut,
- river and a river crossing, and the access ways at various points, and
- overhead electricity line crossing the property.

The site visit showed the whole property is a eucalypt forest with smaller trees generally about 15-20 metres high on the higher northern half of the property and larger diameter trees generally 15-30 metres high, but less dense, on the southern half. In the southern half of the land there are large old logs and stumps as evidence that there has not been a serious fire on this land for many years. No evidence was seen of burnt tree tops.

The water in the river was 10-20 metres wide and very shallow, easily crossed by foot, at the river crossing. While there is no legal access from Lot 1423 to the cleared property on the south side of the river, there appears to be no physical impediment to evacuation on foot through the river crossing to the cleared land on the south side of the river. Parts of the undergrowth on Lot 1423 are recently burnt, mainly in the north.

There was a discussion with David Lewis around two main questions:

- whether AS3959 can be applied to new buildings without designating the site a 'bush fire prone area'. This question was also put in emails to David Lewis.
- Whether a section 70A notice can require the owners of the 2 proposed lots to provide access for fire trucks from one lot to the other. A section 70A notice arises in the Fire Management Plan but not in the amendment (Attachment 5).

Assessment Method:

Section 77(1) of the Planning and Development Act requires every local government in preparing or amending a local planning scheme to have due regard to any State Planning Policy which affects its district. The relevant State policies are:

- Statement of Planning Policy -Natural Hazards and Disasters (SPP 3.4),
- Statement of Planning Policy - Agricultural and Rural Land Use Planning (SPP 2.5).

This report makes an assessment of the proposed amendment of the Scheme by looking for the amendment's compliance and consistency with:

- State planning policy for natural hazards (bushfire),
- State planning policy for agriculture, and
- Nannup Shire's Local Planning Scheme,

and by assessing the merits of the proposed amendment with information contained in:

- the planning report by RPS Group, and
- the Fire Management Plan.

No assessment is made of the proposal in the proponents' documents to subdivide the land into 2 lots. Council has not received a referral of an application for subdivision from the WA Planning Commission. The assessment considers Lot 1423 to be undivided.

Assessment - Statement of Planning Policy 3.4 Natural Hazards And Disasters:

The policy was prepared under Section 26 of the *Planning and Development Act 2005* and local governments must have regard to this policy in the preparation or amendment of town planning schemes, strategies and policies, and when providing comment and advice that deal with applications that may be affected by natural hazards (clause 2).

The Policy applies specifically to the WAPC (clause 3) and to planning schemes and their amendment (clause 4). It should be used by governments to determine those areas that are most vulnerable to bushfire and therefore where development should not be recommended (clause 5) and it authorises the Western Australian Planning Commission to prepare guidelines on hazards which should be taken into account in the determination of proposals (clause 6).

The WAPC and FESA jointly prepared guidelines in the publication '**Planning for Bushfire Protection guidelines** edition 2 of May 2010'. The 'guidelines' provide a method for government to assess the level of the hazard from a bushfire in a particular area and authorize (page 4) local government to be proactive in identifying hazards:

Bush fire prone areas may be designated by the local government. In designated bush fire prone areas, all new habitable buildings must comply with AS3959. For the purposes of the guidelines, all areas with a moderate or extreme bush fire hazard level are considered to be bush fire prone areas for planning new subdivisions and developments and for building controls. (p.4).

SPP 3.4 gives Council the authority to apply the WAPC/FESA guidelines in the assessment of the proposed rezoning of Lot 1423 below.

Planning for Bushfire Protection guidelines ed. 2. May 2010

The guidelines have these cut-off thresholds for new development:

- "Intensification of land uses in the extreme bushfire hazard level is unlikely to be supported" (p.3) and
- "all areas with a moderate or extreme bush fire hazard are considered to be bush fire prone areas"(p.4).
- Development in an area that has an extreme bush fire hazard classification and requires construction standards between BAL-40 and BAL-FZ will normally not be approved (p.7, 11).
-

In areas with an extreme bush fire hazard level where more intensive development is unavoidable, permanent hazard reduction measures need to be implemented (p.8).

If the land abuts vegetated land managed by DEC, refer the application to DEC (p.9).

Appendix 1 of the guidelines has the methodology to determine the 'bush fire hazard level' of an area (low, medium, extreme) and the Bushfire Attack Level (BAL).

The vegetation type (see Attachments 3 & 4) on the whole of Lot 1423 (see Attachment 2) corresponds to the description of '**A open forest**' in Table 1 and Figure 1 of Appendix 1 and a bush fire hazard level of **extreme** (see item 3 on page 18).

Lot 1423 falls in height, in a distance of 1500 metres, from RL 130m at the north-east corner to RL 60m on the bank of the Blackwood River next to existing and proposed buildings, an average gradient of 70/1500 or 3% approximately.

From Table 2 of the guidelines, the bushfire attack levels are:

- BAL-FZ for vegetation less than 20m downslope (0-5 degrees) from structures, BAL-40 for vegetation 20-27metres downslope (0-5 degrees) from structures,
- BAL-FZ for vegetation less than 16metres upslope from structures, BAL-40 for the vegetation that is 16-21metres upslope from structures.

BAL –FZ must be adopted because the inspection of the site showed the vegetation is less than 20 metres from the existing and proposed buildings.

Appendix 2 has the bush fire protection performance criteria and acceptable solutions. Table 2 states that where the bush fire hazard level is 'Extreme hazard', then **development is to be avoided** and no criterion or performance level is provided.

Consequently, the approach should be to avoid risk to human life for residents and fire fighters and no one should rely on a 'plan B' rescue by fire fighters.

The land is bordered by state eucalypt forest on the north and east and private eucalypt plantation on the west. The level of maintenance in state forests is uncertain. The publication 'Statutory Review of the Forest Products Act 2000 FINAL REPORT November 2006' by the Forest Products Commission (FPC) has concern, in paragraph 7.2 Standards of Fire Services, with the management of bushfires on state land:

"FPC has commented on the regular shortcomings on the part of the DEC in performing the annual works program."

To avoid personal risk from fire there has to be a safe route on which people leave the area to reach a safe place, for example a clearing at least 100metres in all directions.

The aerial photo in Attachment 2 indicates clear areas in adjoining Lot 2895 on the west and in 3 freehold lots on the south of the Blackwood River. The river is crown land and was shallow when inspected. A crossing on foot to a clearing is possible.

From the north east corner of Lot 1423, Barrabup Road leads in 2 directions,

- north through eucalypt state forest for 500 metres to a fork where one arm turns west to a farm with a clearing and the other arm goes north 1.1km to a log barrier and ditch at Mowen Road, and
- east through eucalypt state forest for 2.5 km to the intersection with Blackwood Drive where there is an improvement in road-side conditions and safety from fire.

A bushfire approaching Lot 1423 from the north will be in a large area of state forest and this may deter anyone on Lot 1423 from attempting to escape 1.6km to Mowen Road or 2.5 km to the cleared areas near the corner of Barrabup Road and Blackwood Drive.

COMMENT:

There is no evidence on the ground that Lot 1423 was subject to a bushfire, and the proponents said there has not been a bushfire on the land in the last 30 years, except a small area affected by a bushfire from Lot 2895 that started from an electricity line. However there is evidence in Barrabup Road of a fire in the top of mature trees.

The features surrounding Lot 1423, being *a eucalypt forest on the north and east, eucalypt plantation on the west, steep slopes on parts of the east and west, and eucalypt trees in the river banks and on parts of adjoining lands on the south*, do suggest a risk of bushfire on Lot 1423 that would be serious under adverse weather conditions and that a fire could come from almost any direction.

Assessment:

The finding is:

- the vegetation type on the whole of Lot 1423 corresponds to 'A open forest' in Table 1 and Figure 1 of Appendix 1 of the WAPC/FESA guidelines,
- the bush fire hazard level is **extreme**,
- the bushfire attack level is **BAL-FZ** , and
- development should be **avoided**.

If Council considers the bushfire hazard level on Lot 1423 and its surrounds is moderate or extreme there is authority in SPP 3.4 for Council to:

- Identify Lot 1423 and surrounding contiguous eucalypt forest and eucalypt plantation on a map,
- resolve that the area is a designated bush fire prone area, and
- require AS3959 be used to assess future building applications in that area.

Statement of Planning Policy 2.5 Agricultural And Rural Land Use Planning:

Local government must have due regard to this policy in the preparation or amendment of town planning schemes, strategies and policies, and when providing comment and advice on planning applications that deal with rural land.

Lot 1423 is not in or near an Agricultural Priority Management Area (Fig. 2). There are no considerations arising from this policy because Lot 1423 is not cleared for agricultural use and there are no known agricultural activities on

adjoining lands that may affect the use of Lot 1423 or be affected by one of the proposed uses of Lot 1423.

Amendment No. 10 in relation to the Local Planning Scheme 3:

The text in the Amendment 10 is in Attachment 5. The Amendment is to introduce a Special Use Zone with 7 permitted uses that apply to a future Lot 1 and 7 permitted uses that apply to a future Lot 2, all within the existing Lot 1423.

The amendment will become part of the local planning scheme if the amendment is approved by the WAPC. Consequently, the assessment is made to find whether the amendment is consistent with the Local Planning Strategy and the Local Planning Scheme, whether it is necessary, and whether the Special Provisions in the amendment are sufficient and can be implemented.

Local Planning Strategy:

The Local Planning Strategy has no provisions for the Special Use Zone (page 18). The policy for all rural areas, in clause 13.4.2, is that proposals for development must demonstrate that the development meets appropriate fire hazard and risk standards.

Lot 1423 is in the north east corner of Rural Planning Precinct NR5. In this precinct the Blackwood River is a key natural resource asset and has significant recreational, scenic and environmental values. Protection of riparian vegetation is particularly important – there are only relatively minor areas of agricultural land. The Precinct objective is to provide for the sustainable use of land within the agricultural zones for a range of rural pursuits. The development guideline for farming is to enable workers accommodation and tourist/holiday accommodation.

The strategy for Rural Agricultural Development is to have restrictions on the subdivision of agricultural land as a major component of the local planning scheme (p.35) and, where land abuts the Blackwood River but is not within the area of the Flood study, all development will be assessed in consultation with the Department of Water (page 37) and the Department of Environment and Conservation.

Assessment:

The proposed amendment is not consistent with the aim for Rural Planning Precinct NR5 which is to provide for rural pursuits, like growing animals and plants and sale of produce. There is no farming on Lot 1423 from which to establish tourist/holiday accommodation.

Local Planning Scheme No.3:

The Zoning Table in LPS 3 determines whether a proposed use is permitted (P) or permissible (D) with advertising (A) or prohibited (X) in each of the 12 zones. Lot 1423 is in the Agriculture Zone. For each land use in the proposed amendment the determinations from the Zoning Table are as follow:

- Art and Craft Centre – a 'D' use.
- Caretaker dwelling - a 'D' use.
- Chalet - an 'A' use.
- Cottage Industry - a 'D' use.
- Dwelling – single dwelling a 'P' use.
- Recreation & Leisure - a 'D' use.
- Restaurant - an 'A' use.
- Caravan & camping - an 'A' use.
- Residential Building - an 'A' use.

Assessment:

Each proposed use is now permitted or permissible on Lot 1423. A use may be subject to a planning policy or development requirements in the local planning scheme but is permitted or permissible with conditions in the Agriculture Zone in which Lot 1423 now lies. There is no need to rezone Lot 1423 to begin each use.

Clause 10.2 in LPS 3 has the matters to consider when dealing with applications:

- (n) whether the land to which the application relates is unsuitable for the proposal by reason of it being or likely to be subject to – bushfire or any other risk.
- (q) whether the proposed means of access to or egress from the site are adequate.

The proposal is on land with vegetation that is an extreme level of bushfire hazard. The road to enter and leave the site, Barrabup Road, is through a state eucalypt forest where trees stand next to the edge of the gravel road. The 2 unformed roads in Lot 1423 are through eucalypt forest where trees stand next to the roads. The roads that provide access to and within Lot 1423 are not suitable for the public to use.

Special Provisions in the proposed Amendment: (see Attachment 5).

The Special Provisions are in Column 3 of Schedule 4 in the Amendment.

Special Provision 1 requires development of the site in accordance with the Structure Plan (see attachment 6). The Structure Plan shows Lot 1423 divided into two proposed lots with one development cell in each lot. On the Structure Plan, the western development cell has a bunkhouse, 6 chalets, existing residence and outbuildings, and 2 groups of 10 camping sites. In the site inspection on 4/10/10 the structures/uses that were seen were two chalets, residence and outbuildings, and 2 camp areas each with 10 campsites and toilets and showers.

Assessment:

This Special Provision requires an approval from the WAPC to subdivide Lot 1423 into 2 lots at the same time as an approval for rezoning. The Permitted Uses in the amendment do not include a Bunkhouse. Three Permitted Uses are not

shown on the Structure Plan: Caretaker Dwelling, Recreation and Leisure, and Residential Building (max 8 persons). The Residential Building may be the Bunkhouse.

On the eastern half of Lot 1423, the Structure Plan shows 2 development cells, one in the north with a residence, cottage industry, arts and craft centre and cafe. The second cell, in the south, has 3 bush chalets. There are inconsistencies between the Structure Plan and the Permitted Uses in the amendment. Three chalets are shown on the Structure Plan but there 6 Chalets in the permitted uses; Caretaker Dwelling is a permitted use in the amendment but is not on the Structure Plan; Cafe is on the Structure Plan but not in the amendment text.

Special Provision 2:

Requires a development application prior to any development.

Assessment:

This requirement is inconsistent with clause 4.3.2 and 4.3.3 of Local Planning Scheme 3, a permitted development does not require development approval.

Special Provision 3:

Local government may approve development applications that are at variance with the Structure plan providing it does not affect the amenity of the site.

Assessment:

The provision must not restrict Council considerations to 'amenity of the site'. Council must be able to consider other matters in the local planning scheme particularly Part 10.

Special Provision 4:

Developer to upgrade Barrabup Road to the satisfaction of local government.

Assessment:

This is a vague provision that may be unenforceable for lack of certainty and lack of power if development for a permitted use complies with all other special provisions in the amendment.

Special Provision 5:

The Fire Management Plan to be adopted by local government and implemented at the development stage.

Assessment:

The Fire Management Plan has imperfections in the assessment of the fire hazard in the existing vegetation. Consequently imperfections arise in the proposed setbacks of buildings from fire hazard, the adequacy of personal protection in any buildings and the escape tracks and roads both internal and external to the site.

There is no undertaking from the proponent, or provision in the amendment, to require the proponent to implement the proposals in the Fire Management Plan.

Special Provision 6:

No trees or substantial vegetation shall be felled or removed except – for the establishment of legislated firebreaks etc.

Assessment:

This restriction on tree removal is commendable as a conservation measure. It maintains the whole of the site with the classification 'A open forest', the bush fire hazard level remains **extreme**, the bushfire attack level is **BAL-FZ** and development should be **avoided**.

Special Provision 7:

Lists matters that local government should consider in a proposal for development.

Assessment:

This provision has the problems that are in Special Provisions 2 and 3.

Special Provision 8:

Buildings and structures shall be within the development cells on the structure plan etc.

Assessment:

This provision is needed.

Special Provision 9:

All habitable buildings shall comply with AS3959 Construction of buildings in Bushfire Prone Areas.

Assessment:

Agree.

Special Provision 10:

No person shall occupy a building other than an approved residence or caretakers dwelling for more than 3 months in 12 months.

Assessment:

A chalet is an approved detached accommodation unit for single occupancy and consequently is an approved residence that is not bound by the 3 month rule. The special provision does not work to limit occupancy of chalets to 3 months.

Report by RPS Group:

The description in section 2, Site Environment, reflects what can be seen from the site and its surrounds except for some important facts:

In paragraph 2.6 Access, the statement is given that Barrabup Road:

- “provides an alternative 1.5km vehicular access for local traffic to Mowen Road” and
- “it now provides a suitable and safe alternative access to and from the site”.

Assessment:

This road is through state forest, with tress growing to the edge of a narrow unused track which is blocked before Mowen Road by a log and a ditch which prevents access to Mowen Road. This route is exposed to bush fire hazards and is neither suitable nor safe access to or from Mowen Road. A person attempting to find this route may become lost particularly if there is smoke.

Paragraph 2.7 Land Use does not discuss the two structures equipped for residential use with bed, toilet and shower near the Blackwood River which the proponents describe as “bird hide” and “eco-hut”.

In paragraph 2.9 Flooding, the proponent says floodwater in 1982 rose to 61metres AHD and the “bird watching huts” have floor levels close to 60m AHD.

Assessment:

No evidence is provided for these figures or the claim that the curvature of the river and the trees give additional protection from floodwater. The statements show the existing and the proposed structures near the river are not well located. There is no proposal for a foreshore along the river.

Paragraph 3.1 argues the rezoning is necessary because there is no discretion in the local planning scheme that will allow *Nature Based Park, Timber Processing or Arts and Crafts Centre*.

Assessment:

There are 2 anomalies: the proponent is not intending to develop *Nature Based Park* or *Timber Processing* (see the proponents Schedule 4 at the back of the report) and an *Art and Crafts Centre* is permissible under the Local Planning Scheme 3. Consequently the rezoning is not necessary.

Paragraph 3.2 assumes the Shire Local Planning Strategy is for tourist development of the site.

Assessment:

The Local Planning Strategy proposes that Lot 1423 be used for agriculture and rural pursuits (Precinct Objective for Precinct NR 5 on page 29). Rural pursuits are defined in Schedule 1 of the Local Planning Scheme and they relate to animals, horticulture and the sale of produce grown on the lot.

Paragraph 3.4 refers to SPP 2.5 Agricultural and Rural Land Use Planning and asserts: "It is undesirable for the site to be utilised for agriculture for two primary reasons – its natural attributes and – lack of resources for sustained agriculture".

Assessment:

No information is provided to support this assertion.

Paragraph 4.5 Fire Management, states the proposal was developed with due consideration of WAPC Fire Planning Policy DC3.7, SPP 3.4 Natural Hazards and Disasters, FESA/WAPC publication 'Planning for Bushfire Protection Guidelines edition 2' and AS3959 Construction of Buildings in Fire Prone Areas.

Assessment:

DC3.7 is replaced by the FESA/WAPC publication (page 1). The RPS Group report does not assess the bushfire hazard level of Lot 1423.

Fire Management Plan (FMP):

The Fire Management Plan was prepared by the proponent Mr. David Lewis who gives his qualification as Bachelor of Applied Science Mechanical Engineering.

The aim (page 3) is to demonstrate the development will permanently change the character of the land which will reduce the bushfire hazard level.

The plan's objectives (page 4) rely on restricting development to 2 designated development cells next to the river, fuel loads below 8 tonne /ha, daily fire weather warnings, personal protection in buildings built to AS3959, a safe haven in the main residence in each cell if evacuation is not possible, fire suppression, firebreak, adequate access and water.

The Fire Management Plan is assessed by the planner in Attachment 9 and the Community Emergency Services Manager in Attachment 10.

The assessments find: the Plan under-estimates the level of fire hazard because the procedure in the WAPC/FESA guidelines was not followed, the 2 existing residences have wooden exterior walls and cannot be fire shelters that comply with the bushfire standard in the Building Code, the proponents should not rely on volunteer brigades for help when it is needed, there is no safe route for residents to leave the site and no safe route for a volunteer fire-fighting vehicle to enter the site, the river is not an adequate fire break, the vegetation will remain classified 'A open forest' with a fire hazard level 'extreme' in the WAPC/FESA guidelines even if the undergrowth is removed, the working detail for a bushfire alarm system is not given, the river crossing cannot be included in the Fire management Plan, and responsibilities that belong with the owner of the property are improperly assigned to local government.

Conclusions:

The proposal has been considered since 2005 by 3 previous planners/MDS who asked for information to clarify features of the proposal that were not fully understood. There is sufficient information now and the proposal is understood. It is a proposal to rezone Lot 1423 to the Special Use Zone, to make a number of proposed land uses permitted uses, and to make Special Provisions which are requirements for the development on Lot 1423. The Special Provisions do not include requirements for a subdivision although the intent of the amendment (paragraph 2) is provide subdivision requirements. Consequently, the proposal is assessed on the proposed permitted land uses, the Special Provisions that accompany those land uses in the proposed amendment, and the explanatory material in the accompanying planning report and Fire Management Plan. The conclusions follow:

1. Application and referrals: the application is properly made to allow Council to consider whether to initiate the amendment. Council last resolved to initiate the amendment in April 2008 and referred the proposal to DEC and FESA but apparently not to the Environmental Protection Authority. The responses from DEC and FESA are objections to the proposal. The proposal has references to a subdivision but the subdivision of Lot 1423 is not considered in this report.
2. State planning policies: SPP 3.4 authorises and requires Council to assess the level of bushfire hazard with the methodology in the WAPC/FESA publication '*Planning for Bushfire Protection guidelines* edition 2, May 2010'.
The assessment is: the vegetation type on the whole of Lot 1423 corresponds to '**A open forest**', the bush fire hazard level is **extreme**, the bushfire attack level is **BAL-FZ**, and development should be **avoided**.
3. Local Planning Strategy: The proposed amendment is not consistent with the aim in the Local Planning Strategy for Rural Planning Precinct NR5 which is to provide for rural pursuits.
4. Local Planning Scheme: All the proposed uses are now either permitted or permissible on Lot 1423. Each may be subject to a planning policy or development requirements in the local planning scheme but all are permissible in the Agriculture Zone in which Lot 1423 now lies. There is no need to rezone Lot 1423.
5. Special Conditions in Amendment: There are imperfections in the Special Provisions to do with inconsistencies between the permitted uses and the structure plan, inconsistency with the local planning scheme 3, lack of certainty, reliance on the Fire Management Plan with its imperfections, and time limits on occupancy.
6. Report by RPS Group: The access to the site is through 2.5km of state eucalypt forest which the proponent assessed as an extreme fire hazard. Flooding from the Blackwood River has reached the two existing huts but no

estimate is given for likely flooding in the 2 development cells near the Blackwood River.

7. Fire Management Plan: the assessment of the level of fire hazard in the existing vegetation was not made with the method in the WAPC/FESA publication '*Planning for Bushfire Protection guidelines ed. 2. May 2010*'. The Fire Management Plan underestimates the fire hazard level throughout Lot 1423, it does not provide two roads to leave the site to a safe area and it does not provide a structure for personal protection in case people cannot leave the land.

There is no undertaking from the proponent, or provision in the amendment, to require the proponent to implement the proposals in the Fire Management Plan.

Overall, the proposed amendment to the Local Planning scheme has imperfections and uncertainties that may create a dangerous situation in a fire season for residents and rescuers.

STATUTORY ENVIRONMENT: Planning and Development Act 2005.

POLICY IMPLICATIONS: Nil.

FINANCIAL IMPLICATIONS: Nil.

STRATEGIC IMPLICATIONS: Nil.

RECOMMENDATION:

That Council resolve to not proceed with Amendment No. 10 of Local Planning Scheme No3, to rezone Lot 1423 on DP113228 from the Agriculture Zone to the Special Use Zone, for the following reasons:

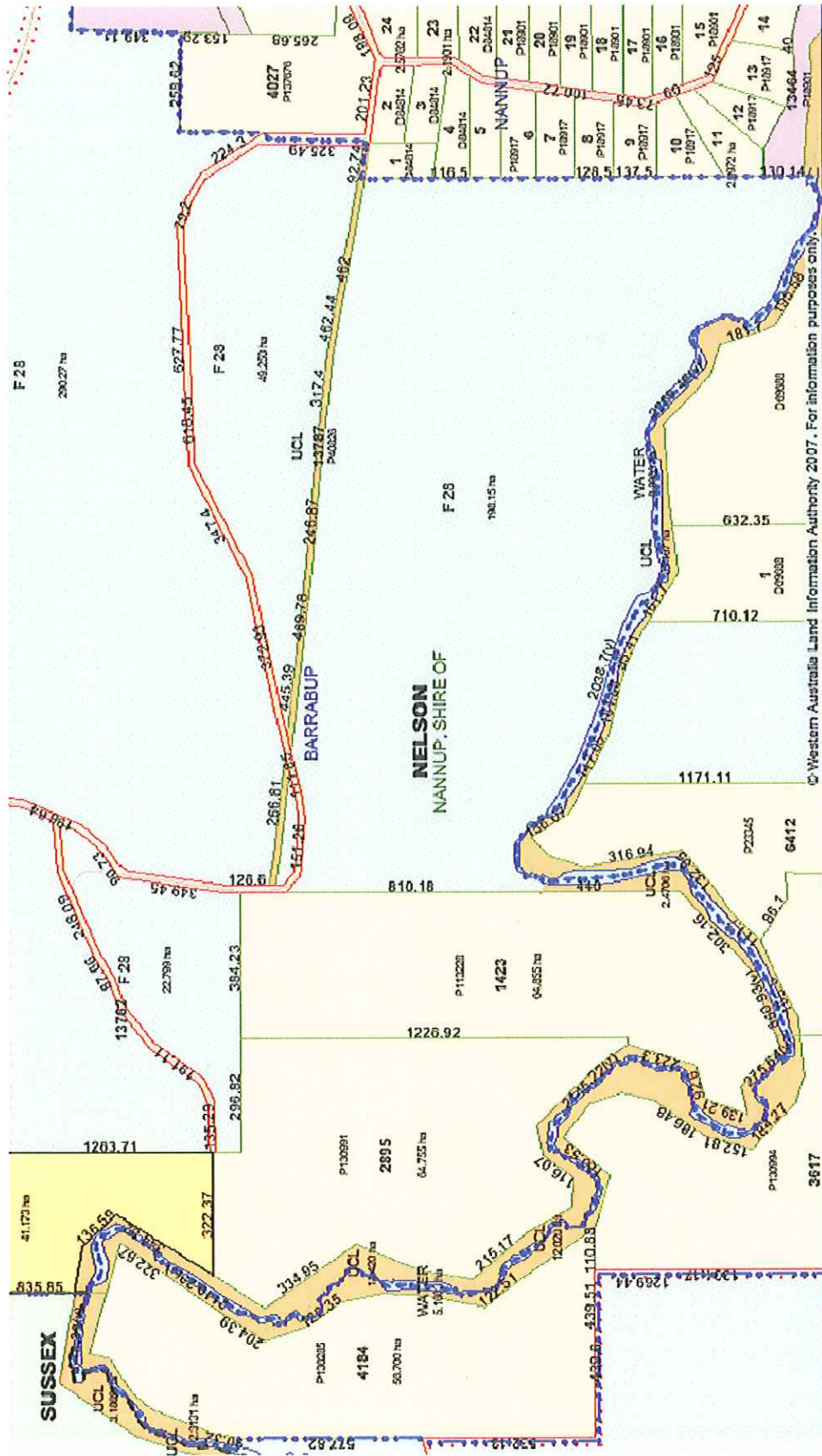
1. The proposed development is on land with vegetation of the type 'A open forest', the bush fire hazard level is extreme, the bushfire attack level is BAL-FZ and development should be avoided to comply with State Planning Policy 3.4 Natural Hazards And Disasters and the WAPC and FESA jointly prepared guidelines in the publication '*Planning for Bushfire Protection guidelines edition 2, May 2010*'.
2. The proposed amendment is not consistent with the aim in the Local Planning Strategy for land in Rural Planning Precinct NR5, which is to provide for rural pursuits.

3. All the proposed uses are now either permitted or permissible on Lot 1423. Each 'use' may be subject to a planning policy or development requirements in the local planning scheme but all are permissible in the Agriculture Zone in which Lot 1423 now lies. There is no need to rezone Lot 1423.
4. There are imperfections in the Special Provisions with inconsistencies between the permitted uses and the structure plan, inconsistency with the Local Planning Scheme No.3, lack of certainty in the Special Provisions, reliance on the imperfect Fire Management Plan, and inconsistency in time limits on occupancy.
5. The access to the site is through 2.5km of state eucalypt forest which the proponent assessed as an extreme fire hazard. Flooding from the Blackwood River has reached the two existing huts but no estimate is given for likely flooding in the 2 development cells near the Blackwood River.
6. The assessment of the level of fire hazard in the existing vegetation was not made with the method in the WAPC/FESA publication '*Planning for Bushfire Protection guidelines ed. 2. May 2010*'. The Fire Management Plan underestimates the fire hazard level throughout Lot 1423, it does not provide two roads to leave the site to a safe area and it does not provide a structure for personal protection in case people cannot leave the land.
7. There is no undertaking from the proponent, or provision in the amendment, to require the proponent to implement the proposals in the Fire Management Plan.
8. Overall, the proposed amendment to the Local Planning scheme has imperfections and uncertainties that may create a dangerous situation in a fire season for residents and rescuers.

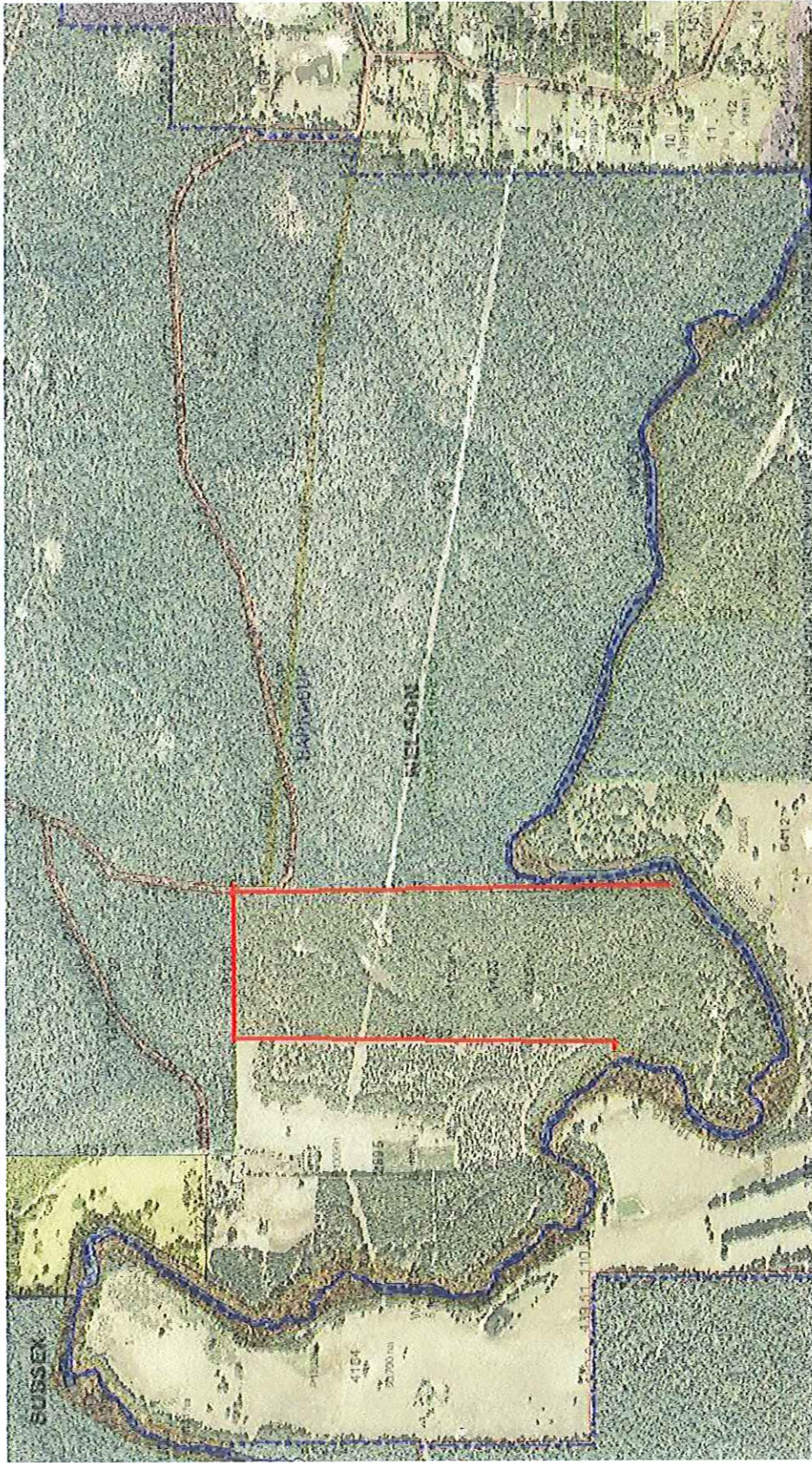
VOTING REQUIREMENTS:

**BOB O'SULLIVAN
PLANNER**

Bob O'Sullivan 22/10/2010



ATTACHMENT 1 – Map of property boundaries. Lot 1423 DP113228 bounded on north and east by state forest, on south by Blackwood River, on west by freehold. Barrabup Road in red at north-east corner of Lot 1423.



ATTACHMENT 2 – Aerial photo (by Landgate 2007). Lot 1423 and locality.

Lot 1423 bounded on north and east by state forest, on south by Blackwood River, on west by freehold.
Barrabup Road in red at north-east corner of Lot 1423. Power line in clearing east to west through Lot 1423.



ATTACHMENT 3 – South along east boundary of Lot 1423. On the left is state forest. Access is for home of D. Lewis.



ATTACHMENT 4 – West from entry near north east corner of Lot 1423. Access to home of G. Orley.

Attachment 5: Amendment 10 of LPS3 (text to rezone Lot 1423)

PLANNING AND DEVELOPMENT ACT 2005

RESOLUTION DECIDING TO AMEND A LOCAL PLANNING SCHEME

SHIRE OF NANNUP

LOCAL PLANNING SCHEME NO. 3

AMENDMENT NO. 10

RESOLVED that the Council, in pursuance of Section 75 of the Planning and Development Act 2005, amend the above local planning scheme by:

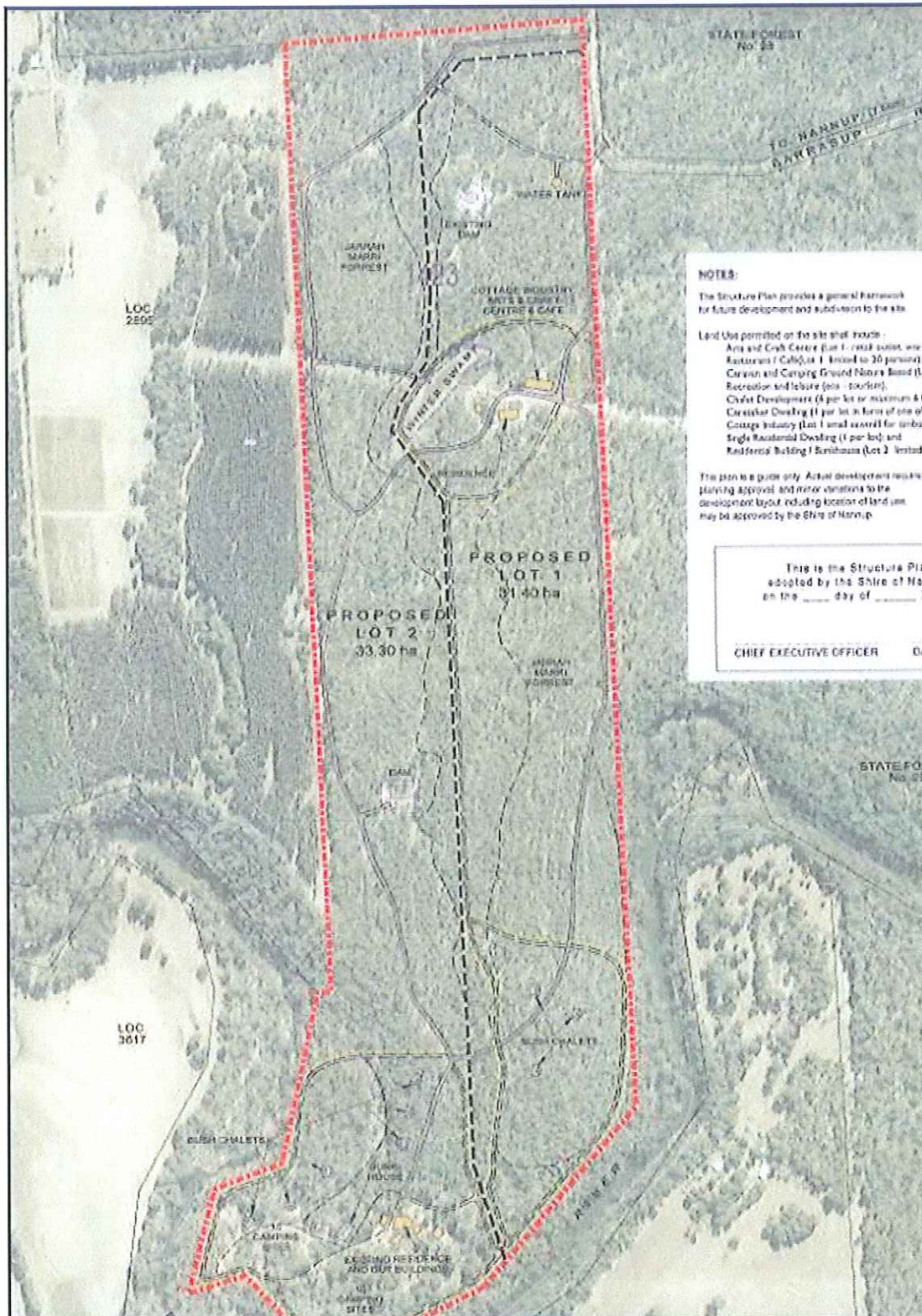
1. Rezoning Nelson Location 1423 Barrabup Road Nannup (as depicted on the Scheme Amendment Map) from the "Agriculture" to "Special Use".
2. Adding to Schedule 4 of the Scheme text, a description of the land, permitted land uses and special provisions outlining specific development and subdivision requirements
3. Amending the Scheme Map accordingly.

SCHEDULE 4: SPECIAL USE ZONES

Description of Land	Permitted Land Use	Special Provisions
Nelson Location 1423, Barrabup Road, Nannup	<p>LOT 1</p> <p>Art and Craft Centre Caretaker dwelling (in the form of a chalet) Chalet Development – includes caretakers dwelling (maximum 6 or 6 bedrooms) Cottage Industry (small scale sawmill) Dwelling – single Recreation and Leisure Restaurant (maximum 20 persons)</p> <p>LOT 2</p> <p>Caravan and Camping Ground (maximum 20 campsites or 50 persons) Caretaker dwelling in the form of a chalet</p>	<ol style="list-style-type: none"> 1. Development of the Site shall generally be in accordance with the Structure Plan (SP) attached to the Scheme Report and adopted by the Shire of Nannup and endorsed by the Western Australian Planning Commission. 2. A development application shall be lodged and approved by the local government prior to the commencement or development of any Permitted Use. 3. Local government may approve development applications that are at variance with the SP providing such variations in the opinion of local government do not affect the amenity of the Site. In respect of such applications local government shall advertise such variation for public

	<p>Chalet Development – includes caretakers dwelling (maximum 6 or 6 bedrooms) Dwelling – single Recreation and Leisure Residential Building (maximum 8 persons)</p>	<p>comment in accordance with clause 9.4 of the Scheme</p> <p>4. At the time of development the developer will be responsible for any upgrading of Barrabup Road that may be required to the satisfaction of the local government.</p>
		<p>5. A Fire Management Plan (FMP) shall be prepared at the scheme amendment stage to the satisfaction of local government and the Fire and Emergency Services Authority. The FMP to be adopted by local government and implemented at the development stage.</p> <p>6. No trees or substantial vegetation shall be felled or removed from the Site except where:</p> <ul style="list-style-type: none"> • Required for approved development works; • The establishment of legislated firebreaks; • Implementation of the FMP • Trees are dead, diseased or dangerous; • Through the use of practices that will lead to preservation or enhancement of the natural vegetation. <p>7. In considering any proposal for development , the following shall be addressed to the satisfaction of the local government:</p> <ul style="list-style-type: none"> • Proximity to the 1 in 100 year flood zone. • Conflicting uses which may impinge on the amenity of the area or neighbouring properties; • Effect on provision of essential services; • Installation of effluent and waste disposal systems; • Installation of potable and other water supply systems; • Upgrading requirements to internal vehicular access roads; • Fire protection measures.

		<ol style="list-style-type: none">8. Buildings and structures shall be contained within the Designated Development Cells as indicated by the SP and located no closer to lot boundaries than required by Fire Management Plan unless otherwise approved by the local government.9. All habitable buildings shall comply with AS 3959 Construction of Buildings in Bushfire Prone Areas.10. No person (except workers employed on site) shall occupy a building other than an approved residence or caretakers dwelling for more than a total of three months in any twelve month period.
--	--	--



NOTES:
 The Structure Plan provides a general framework for future development and subdivision to the site.

Land Use permitted on the site and include:
 Area and Craft Centre (Lot 1 - retail, tourist, work, Restaurant / Cafe, up to 30 persons)
 Caravan and Camping Ground (Nature Based / Recreation and leisure (non - touring)
 Craft Development (4 per lot or maximum 4)
 Cottage Dwelling (1 per lot in form of one of Cottage Industry (Lot 1 and several for timber)
 Single Residential Dwelling (1 per lot); and
 Residential Building / Barn/annex (Lot 2) limited

This plan is a guide only. Actual development requires Planning Approval and minor variations to the development layout including location of land use may be approved by the SH of Wannup.

This is the Structure Plan adopted by the Shire of Wannup on the ____ day of ____ 20__

CHIEF EXECUTIVE OFFICER DA

Attachment 6: Structure Plan

ATTACHMENT 7: Response from FESA 16/2/2010

TERESE LEVICK-GODWIN
COMMUNITY EMERGENCY SERVICES MANAGER
NANNUP SHIRE
PH 9756 1018
MB 0429 318 763
A/H 9756 0068
EMAIL terese.levickgodwin@nannup.wa.gov.au

From: McNAMARA Merv [mailto:Merv.McNamara@fesa.wa.gov.au]
Sent: Tuesday, 16 February 2010 12:46 PM
To: TERESE LEVICK-GODWIN
Subject: FW: Amendment 3 and Amendment 10

Terese in response to Amendment 10

I would like to see the following changes made to the fire management plan

- 4.2 do not agree with low on river I would put it as extreme blue gums to the west would be a high to extreme hazard not low as indicated
- 4.3 classification would be closer to High/ extreme
- 5 and 5.1 put in AS3959 level 2
- Details of were passing bays are to be located
- 5.2 should be a fire rating of Very High to Severe to instigate evacuation
- 5.7.3 20m to 40m and then there is no confusion
- 7.3 dot point three to clearly state AS3959 level 2
- Figure 5 - 3 huts don't comply with FMP no exemptions

FESA would support the FMP only if all works are carried out as per FMP prior to any sub division approval and all current habitable buildings including the bird hatches are to AS3959 level 2

Proposed chalets dependent on slop may require 30BPZ and 20HPZ

Give us a call to discuss

Regards

*Merv McNamara
Area Manager Central South
FESA South West Operations*

Attachment 8: Response from DEC received 25/2/2010



Government of Western Australia
Department of Environment and Conservation

Your ref: A 089
Our ref: 2008/003872
Enquiries: John Carter
Phone: 08 9752 5555
Fax: 08 9752 1432
Email: blackwood@dec.wa.gov.au

A089

SHIRE OF NANNUP			
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VIA	CO		RO
MOS	CR:		

Chief Executive Officer
Shire of Nannup
PO Box 11
NANNUP WA 6275
Attn: Ms Terese Levick-Godwin

Dear Terese

**LOCAL PLANNING SCHEME 3 AMENDMENT No. 10 NELSON LOCATION 1423
BARRABUP ROAD NANNUP**

Thank-you for your letter of 19 January 2010 allowing the Department of Environment and Conservation (DEC) the opportunity to comment on the revised Fire Management Plan (FMP) for Location 1423 Barrabup Road. DEC does not consider the revised FMP addresses the concerns raised in its letter of 17 June 2009.

In assessing the bushfire hazard rating of Loc. 1423 as being a High bushfire hazard rating (as shown in FMP Figure 2), the proponent has determined the vegetation to be a *Type 5 or 6 Woodland*. The Planning for Bushfire Protection document (PFBFP) Figure 1 shows that trees less than 30m high with a canopy of 30-70% is classed as a *Type 5 Forest*. *Type 5 Forest* is classified as being an Extreme bushfire hazard area. Observations of Loc.1423 during the site visit in 2009 support this rating.

Amongst other requirements, the PFBFP document seeks a 100-metre Hazard Separation Zone between areas of Extreme bushfire hazard and buildings. DEC supports this policy.

The 100 metre Hazard Separation Zone is designed to provide a degree of protection for people and property from wildfire occurring on lands supporting such dense bushland. The 100m HSZ supported by DEC cannot be achieved within Loc. 1423 and extends into the adjoining State forest.

Blackwood District - Busselton Office: 14 Queen Street, Busselton, Western Australia 6280
Phone: (08) 9752 5555 Fax: (08) 9752 1432
www.dec.wa.gov.au
wa.gov.au

3/3 Comment 48 sent 40 Even by email

The FMP outlines that the Fire Suppression Response for Loc. 1423 include the Nannup Bush Fire Brigade. The proponent should not rely on any external assistance in the event of a bushfire in this area and all bushfire protection requirements should be provided on the property itself.

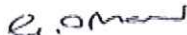
The FMP indicates that there are two emergency egress routes to the north of Loc. 1423, being Barrabup Road to the Nannup townsite and Mowen Road. These routes may become unusable in the event of a fire moving towards Loc. 1423 from the north/northeast directions. The alternative egress route is to the south across the Blackwood River. The proponent has indicated that the river levels are ankle deep from spring to autumn. There have been periods where summer floods such as in 1982 have made crossing the river impossible. This access crosses an area of Unallocated Crown Land before passing into private property. The proponent has not demonstrated he has obtained the right or legal authority to cross these lands. DEC does not consider the route the proponent has considered is a safe and reliable egress route.

The FMP states that the Hazard Separation Zone must not exceed 4.6 tonne/hectare (of flammable fuels) and the Bushland Zone will be maintained at 8 t/ha. It is stated that this will be achieved by burning or mechanical means. The proponent has not adequately demonstrated how this onerous task can be achieved as fuel reduction in the HSZ would have to be undertaken every three (to four) years and the Bushland Zone every five years.

The proponent has not demonstrated to DEC that the bushfire risk to people and property in this form of development can be adequately mitigated. Therefore DEC opposes this form of development on Loc. 1423.

If you require clarification on any point, please contact John Carter on 9752 5555.

Yours faithfully



Greg Mair
DISTRICT MANAGER

16 February 2010

ATTACHMENT 9: Assessment of Fire Management Plan

Summary of proponent's points in FM P	Planner's assessment
Vegetation at the river is less than 20m wide and a low level bush fire hazard (page 4).	The vegetation along the river is more than 20 metres wide because it continues unbroken from the river bank into and throughout Lot 1423. It is not clear how the low hazard level was achieved.
<p><u>Whole Site:</u> The bushfire hazard level is extreme in the north (p. 5). Fuel load will be reduced to below 8 t/ha. This will modify the vegetation type. The overall internal assessment is moderate which will permit development (page 5). A Bushfire Hazard Assessment map is on page 25. All properties surrounding Lot 1423 are shown 'extreme' but the whole of Lot 1423 has a hazard rating of 'moderate'.</p>	<p>Agree with assessment 'extreme'. The proponent has not followed the method on page 18 in the WAPC/FESA guidelines which is: "<i>classifying the bush fire hazard by assessing the predominant vegetation (table 1) is a key to the initial determination of the site suitability for development</i>". The level of bushfire hazard is fixed by the vegetation type found in Table 1 and its corresponding hazard level, low moderate or extreme from text on page 18 which in this case is 'extreme'. Neither the amending documents nor the Fire Management Plan propose to remove or thin the forest to change its vegetation type and so reduce the hazard rating from 'extreme'. The guidelines say "<i>It is highly recommended that buildings not be constructed in the extreme bush fire hazard rating zone</i>". (p.18)</p>
<p><u>Development Areas:</u> The Fire Hazard Reduction Notice supplied by local government requires a 2m firebreak abutting all homesteads and buildings and a Reduced Flammable Fuel Zone extending a further 20m and be cleared of all flammable material except for live standing trees. Vegetation within the proposed developments will be permanently</p>	<p>The assessment of the two development cells relies on a notice issued to require clearing around existing buildings. There is no explanation for taking this approach or for not using the method of assessment in Appendix 1 of the WAPC/FESA guidelines. The method to use is: Determine the bush fire hazard rating and, if it is not 'extreme', the Bush Fire Attack Level (BAL) and finally the appropriate</p>

<p>modified.(para 4.4, p.5) The bushfire hazard rating within the areas of development will then be low/moderate (page 5).</p>	<p>construction requirements that will satisfy the criteria in Appendix 2. The proponent has not followed this path.</p>
<p>No land has been declared 'bush fire prone' in the shire.</p>	<p>There are two areas in Schedule 12 of the Local Planning Scheme 3 where buildings are to comply with AS3959 'Construction in Bushfire Prone Areas'. The Building Code requires a local government to declare a "designated bush fire prone area" before it can require compliance with AS3959.</p>
<p>The proponent has lived on the site since 1980 and no wildfires have started from within the site. One wildfire started in Lot 2895 (on the west) from electricity lines and was controlled by DEC/Forestry.</p>	<p>During an inspection on 4/10/2009 no evidence was seen of fires in the tops of trees, large old logs were on the ground.</p>
<p>Residences will act as safe havens (page 6).</p>	<p>There is no information to establish that the existing residences, with exposed timber walls, can be safe havens.</p>
<p>The development cells and access ways provide interlinked fire safe areas.(6.1, p.6)</p>	<p>The 2 cells and the access ways are in areas that have a bushfire rating of 'extreme' where development should be avoided.</p>
<p>North Nannup bushfire brigade has a response time of 5-10 minutes and DEC/Forestry a response time of 10-20 minutes which meets the minimum 20 minute for rural development protection (p.6)</p>	<p>There is no information to establish these response times.</p>
<p>It is proposed to house a mobile fire-fighting unit permanently on the site (p.6).</p>	<p>There is no information for this vehicle or where it will be stationed.</p>
<p>Two internal driveways on the eastern and western boundaries are emergency egress routes to the public road network and will provide 2-way traffic.</p>	<p>The existing access way on the east is unformed, sandy, narrow, vegetation touches both sides of a vehicle in some places and not linked to the south west corner of the site as depicted on the</p>

	Structure Plan in the RPS Group report.
Evacuation Plan: Residences will be adequately protected at other times due to the greater setbacks for residences from any extreme hazards. (6.1.3, p.7)	The 2 existing residences and the 2 existing 'huts' are close to forest that has a bushfire rating 'extreme'. The proposed residences are also in forest rated 'extreme'.
A river crossing is an escape route on crown land that is available to FESA or DEC (6.2.1, page 7).	Inspection 4/10/2010: Water in the river was 10-20 metres wide and very shallow, easily crossed by foot, at the river crossing. Access from Lot 1423 across river & VCL to cleared Lot on the south side of the river, no physical impediment to evacuation on foot. The river crossing must be land in the proposed amendment to be an escape route.
6.2 Access: Internal driveways on the east and west sides of the site provide access to the public road network. (p.7) Requirements for access ways are: all weather surface, 6m wide and no dead ends for fire service, internal access roads 4m wide, 4m wide firebreak in HSZ, turnarounds every 500m for 3.4 fire trucks, two way traffic <u>or</u> have passing bays @ 200m and 6m wide inclusive of 6m trafficable surface. (page 8). Dead ends and cul-de-sacs are avoided. Battle-axe entry for Lot 2. Common key for gates available to fire personnel. Gates on Fire Management map (pages 8,16).	Agree. The two internal access ways meet at the entry to the property, see Attachments 3 & 4. The 2 existing access ways do not meet the requirements at left and they end as dead-ends, they do not meet as depicted on the Structure Plan in Attachment 6.
The proposed fire breaks system is: a permanent river pool 20-30m wide and 1km long on south east, driveways and development cells on the south and south west, 20m wide clearing in electricity easement (page 9). A minimum 100kl water supply in upstand or tank (page 9).	The river pool is parallel to the eastern half of the southern boundary. On the western side the tree tops merge across the river. The driveways are not effective firebreaks for a moving fire in the trees. The development cells are in eucalypt forest.
Fire service access secured by a Section	The proponent does not show how access

70A notification (page 10).	can be secured by a section 70A notice.
6.4.1 Siting of Development: All existing or new habitable buildings are to be upgraded to the Home Owners Survival Manual and AS3959 Level 2. (p.10).	The Home Owners Survival Manual is not meant for planning new development. The Building Code allows AS3959 to apply where a local government declares a 'designated bushfire prone area'
Residences will be safe havens because they will be 100m from boundaries or external extreme hazards, protected by hazard reduction strategies (page 11).	There is no proposal to clear predominant trees that now type the site's vegetation as 'A open forest' in the WAPC/FESA guidelines and a hazard level of extreme .
A non-flammable building protection zone (BPZ) 20m wide around every building as required in the guidelines' Acceptable Solution A4.3 (page 11,13).	Table 2 in Appendix 2 of the WAPC/FESA guidelines (p.27) is clear that Performance Criteria and Acceptable Solutions are not used in areas rated 'extreme'.
Minimum 20m Hazard Separation Zone and minimum 20m Building Protection Zone BPZ before development approval. to separate buildings from extreme bush fire hazards (page 12,13). The balance of the site, outside the BPZ and HSZ above, is an area called the bushland zone BZ where the bushfire fuel lying on the ground will not exceed 8 tonne/hectare (page 12,13). Residences will be protected because they fall under BAL 12.5 and radiation peaks at 15kw/m ² at a height of 10metres which is well above any building, and intervening trees provide radiation shielding and reduce wind velocity (page 12).	The amendment documents do not require development approval for the Permitted Land Uses if the development complies with the Special Provisions which do not refer to Building Protection Zone, Hazard Separation Zone or Bushland Zone. These zones and the ideas for fire mitigation in 6.4.4 BPZ cannot be enforced if the rezoning is approved. The requirement in the WAPC/FESA guidelines(A4.3, p.42) for tree crowns to be 10m apart and to have no dead material will <u>not</u> be satisfied in the balance of the site (page 12).
6.4.8 A diagram of the concept of the 3 zones, BPZ, HPZ and BZ is on page 13.	This is a conceptual diagram not a part of the structural plan.
6.5 <u>Development Design</u> : The upgrading of residences to AS3959, with an effective 100m setback exceeds requirement(p 14). It is unlikely that patrons will be in any building in a severe event (page 14).	The existing and proposed buildings do not have a 100m setback. There is nothing in the amendment documents or the Fire Management Plan that indicates the forest will be modified by clearing to remove the

<p>There will be adequate safety and manoeuvrability for fire fighters (page 14). The development meets PBFP-2010 Performance Criterion P5 for construction to AS3959 -2009 BAL-19 (page 14).</p>	<p>fire hazard rating of 'extreme'. It is not reasonable to expect fire fighters to enter an area of extreme hazard. The performance criteria are not applicable in extreme hazard areas.</p>
<p>Local government will be responsible for implementation of the FMP, requiring a fire hazard assessment as a condition of each building application, providing copies of the FMP to future property owners, providing copies of the Homeowners Bushfire Survival Manual (by FESA) to future property owners, providing advice from DEC "regarding the potential impact of their fire management practices on the amenity" to future owners. (page 15).</p>	<p>The rezoning stage is when a fire hazard assessment should be done. Providing these documents to land owners is an onerous and cost incurring responsibility for Council to accept.</p>

ATTACHMENT 10

October 11, 2010

Comments from the Community Emergency Services Manager
On the Fire Management Plan for Lot 1423 Barrabup Road

Although this version of the Fire Management Plan is in plain language and easier to read there are still some problems with it, those being;

- **Page 4 – Objectives Point 3. 5;**

The CESM has doubts as to whether the main residence at Lot 2 can be made into an adequately Safe Haven. At this stage the building is made from jarrah weather board and jarrah verandah posts. Additionally, there is no turnaround at the residence of Lot 2.

It is considered that a Safe Haven is one where there is 'a high degree of human survival', the first 20 metres cleared away from any Safe Haven with individual trees only every 10 metres with the crowns 10 metres apart, and then a further 80 metres at 8 tons per hectare, this does not currently appear to be the case at the proposed Lot 1 or Lot 2.

- **4.3 Internal Assessment of Whole Site**

Discussion with FESA Bunbury and the Department of the Environment has determined that the site is predominantly considered Extreme.

- **6.1.1. Fire Suppression Response**

This paragraph states that the Department of Environment (DEC) and Forest Products (FPC) has numbers of fire fighting appliances housed in the Nannup Townsite with a response time of 10-20 minutes.

These DEC and FPC vehicles may be in Nannup on some days but more often than not they are working elsewhere in the district. The CESM has checked this information with DEC and FPC and consequently, there are no guarantees that DEC or FPC will be available. Additionally, the North Nannup Brigade is a small Brigade with few volunteers and their response times can vary greatly according

to whether the volunteers are available or not, if they are not, it could take another Brigade much longer to reach the property.

- **6.1.2 Bushfire Alarm**

This section states that there will be a bushfire alarm system but gives not detail of where, when and how it would work.

- **6.2.1 Access and Egress**

Paragraph 2 *In addition to the required two egress.....*

The river crossing from Lot 1423 cannot be included in the Fire Management Plan. To our knowledge, no permission or agreement (and it has not been demonstrated by the proponent) has been granted by the adjacent landowners for access or permission granted to cross the Unallocated Crown Land This point has been discussed previously with the proponents and was refuted.

- **6.2.5 Firebreak System**

Paragraph 4

The river pool will not provide much in the way of protection during a wildfire as the river is not wide at that point. A wind would easily carry embers across.

- **6.6.3 Local Government Responsibilities**

Point 2; *Require a bushfire assessment.....*; suitability of site should be assessed at rezoning stage, not after.

Point 3; *Provide Copies of FMP to future owners*; not a Local Government responsibility.

Point 4; *Provide copies of Homeowners Bushfire Survival Manual to future owners*; Not a Local Government responsibility.

Point 5; *Provide advice from DEC*; Not a Local Government responsibility.

I strongly recommend that no clearance should be given until the Fire Management Plan is complied with.

TERESE LEVICK-GODWIN

COMMUNITY EMERGENCY SERVICES MANAGER

AGENDA NUMBER: 10.3
SUBJECT: Local Government Guidelines for Subdivisional Development Policy
LOCATION/ADDRESS:
NAME OF APPLICANT:
FILE REFERENCE:
AUTHOR: Bob O'Sullivan - Planner
DISCLOSURE OF INTEREST:
DATE OF REPORT: 20 October 2010

BACKGROUND:

Council has a Local Planning Policy 017 Subdivisional Development Guidelines. Council decided at the August 2010 meeting to replace this policy with a new policy after receiving a recommendation from the consultant engineering firm Ascent Engineering (Mr Mark Goodlet) dated 12 July 2010 *that the Shire formally adopt the "Local Government Guidelines for Subdivisional Development" Edition 2, 2009 as its standard for subdivision works.*

Council adopted the policy and advertised for submissions in September 2010.

The Department of Planning funded the preparation of the Subdivisional Development Guidelines and is now trialling the guidelines and waiting for a response from the Urban Development Institute Australia (verbal advice from Ms Marion Thompson at Department of Planning).

Mr. Goodlet states in his report supporting the Guidelines for Subdivisional Development 2009 - Edition 2 that,

- it is a document suitable for adoption by local authorities for their subdivision standards,
- it is an update of the early version of this document that is currently in use by the Shire of Nannup,
- the Institution is encouraging its uniform use across Western Australia,
- it aligns with current State government policy on many subdivision engineering requirements such as water management and "Liveable Neighbourhoods".

To replace a Local Planning Policy under Council's Local Planning Scheme 3, the process is that Council adopts and advertises the draft policy, considers submissions, reviews the draft policy, resolves to finally adopt the policy, and places a newspaper notice that it has adopted the policy.

Council adopted the policy for the purpose of advertising in August 2010. No submissions were received and nothing has occurred to cause a review of the policy. Council may now adopt the policy.

COMMENT:

The Guidelines for Subdivisional Development 2009 - Edition 2 is written in plain English and it claims to be suitable for developers, planners, engineers and contractors. The Guidelines for Subdivisional Development 2009 - Edition 2 deals with topics that are vital to this Shire including bond agreement, inspection of subdivision works, clearance by Council of a stage in a subdivision, liability for defects, detail in the construction of a subdivision, and the management of water/drainage.

The author of the Guidelines, the Institute of Public Works Engineering Australia (WA Division), says on its website the guidelines are intended to underlie and support subdivision conditions applied by the Western Australian Planning Commission and will be reviewed by mid-2010 and then biennially.

STATUTORY ENVIRONMENT:

Planning and Development Act 2005, Local Government Act 1995 and Local Government (Functions & General) Regulations 1996.

POLICY IMPLICATIONS:

To adopt the Guidelines for Subdivisional Development 2009 - Edition 2, Council must also revoke the existing Local Planning Policy 017 Subdivisional Development Guidelines.

FINANCIAL IMPLICATIONS: nil.

STRATEGIC IMPLICATIONS: Nil.

RECOMMENDATION:

That Council resolve to adopt the Local Planning Policy 017 Local Government Guidelines for Subdivisional Development which adopts the text in the publication *Local Government Guidelines for Subdivisional Development 2009 - Edition 2* by the Institution of Public Works Engineering Australia (WA Division Inc.) as amended from time to time.

VOTING REQUIREMENTS:

BOB O'SULLIVAN
PLANNER

BOB O'Sullivan
22/10/2010

AGENDA NUMBER: 10.4
SUBJECT: Illegal Dam Encroachment on Road Reserve
LOCATION/ADDRESS: Donnelly Lakes – Location 4497 Storry Road
NAME OF APPLICANT: Department of Local Government
FILE REFERENCE: A472, A467
AUTHOR: Bob O’Sullivan - Planner
DISCLOSURE OF INTEREST:
DATE OF REPORT: 20 October 2010

Attachments:

1. Locality Plan.
2. Aerial Photo Lot 4497, Lot 6982, Storry Road, Ethel Road.
3. Plan of Survey of Location 6982 in 1912.
4. Letter from Norths’ dated 3/1/1991.
5. Council Minutes 24/1/1991.
6. Letter from B. Baxter received 9/9/1994.
7. Letter from E. Chugg received 13/3/2001.
8. Plan of Resurvey of south boundary of Lot 4497.
9. Last page of building application for shed in 1985.
10. Submission by Mr John Gaunt 12 September 2010.
11. Photograph – Front of Building Location 6982.

BACKGROUND:

Mr John Gaunt and Ms Elisabeth Tilly are the owners of Location 4497 on Deposited Plan 136283 which was purchased in October 2007. The property is known as Donnelly Lakes. Mr. Gaunt, in a letter dated 12 September 2010 to Council, presented proposals to overcome a problem in which part of his dam is located on an unconstructed public road (Ethel Road) which is the only legal access to adjoining property Location 6982. His proposals are summarised here:

1. Survey a new public road through DEC land (State Forest F36) around the existing access to the adjoining Location 6982 starting from where the existing access leaves Ethel Road.
2. Close Ethel Road where there is water from a dam on his land Location 4497 in order for Mr Gaunt to acquire the closed road land and add to his title.
3. Fence the main lake to form a land buffer around the southern side of the lake for approximately 5-10 metres from high water mark.
4. Investigate the structures on adjoining Location 6982 for non-compliance with Council’s planning scheme.

Mr Gaunt also raises issues regarding the behaviour of neighbours and strangers which cannot be remedied by Council. The approach in this report is to comment on points raised by Mr Gaunt, search the files for both properties and identify the facts, issues and options for Council to consider appropriate action.

1. COMMENT ON POINTS RAISED BY MR GAUNT

Mr. Gaunt's point in paragraph 3 "*The road reserve, as shown on Landgate files for the southern border, is no longer valid*" is not correct because the road adjoining the southern boundary of Location 4497 remains an unmade public road and is named "Ethel Road" on mapping by Landgate. The layout of the lands and roads is on Attachments 1 - 3.

Mr. Gaunt's point "*The road that services the adjoining property on the south boundary has been diverted as shown to provide access to their property*" is not correct as the "diverted road", on aerial photography in 2007 is a DEC track which after leaving Ethel Road is in State Forest F36 and is not on a public road.

Landgate mapping shows the track provides access to a building in the north east corner of Location 6982 on Plan 81882 (Council ref A467) which adjoins Location 4497 owned by Mr Gaunt. Location 6982 is owned by B & M North, M Baxter and R & T Chugg.

The only legal access to Location 6982 is Ethel Road which has a significant encroachment of water from a dam established on Location 4497. On Attachment 2, Ethel Road extends to the east, then turns north crossing a broad drainage path to link, through State Forest F36, to Storry Road (40m wide) which then links in a north east direction to Vasse Highway.

Aerial photography in 2007 (Attachment 2) and a plan of survey (Attachment 8) shows the south side of the dam across Ethel Road. The dam is on a broad drainage path through the south east corner of Location 4497 that drains to the west to the Donnelly River.

2. FILE SEARCH A472

29 April 1987, Road No 17667 (Storry Road) was declared 40 metres wide between the east boundary of Location 6982 and Vasse Highway. It appears that a person with an interest in the land, Mr A Dunn proposed, in a letter Council received on 27 December 1990, a dam of 20-30 acres on a small side stream to the Donnelly River as part of a "tourist chalet development".

Mr & Mrs North, the owners of Location 6982 which adjoins Location 4497 on its south boundary, wrote to Council on 3 January 1991 opposing a proposal by a Mr Crow (understood to be the owner at the time of Location 4497) to build a dam on his property because the dam "*will be on our boundary and will interfere with access to our block*", and "*the water from the dam will come within 3 metres of our boundary*", "*We oppose this dam until such time the shire provides an all weather access to our block*". A copy of this letter is Attachment 4. A letter from Mr Dunn to Council on 14 January 1991 refers to his intention "build a dam".

The Council minutes for Item 9 Tourism Accommodation Storry Road on 24 January 1991 are per Attachment 4. Item 9 is an approval with conditions for Tourist Chalet Development, with no reference to a dam.

A letter to Council from Mr Dunn dated 29 April 1991, when the owners were W&E Crow, refers on page 2 to *"in the preparation of the four chalet sites was that in cutting into hillside overlooking the new lake"*, and on page 3 refers to *"Mr. Crow the current owner"*. This indicates that Mr Dunn was involved in development on Location 4497 before it was sold to him. The dam was therefore probably built after 14 January 1991 and before 29 April 1991.

A report to Council's meeting on 24 October 1991 discussed a concept plan for Location 4497 which it described as a major development that included *"the proposed creation of lakes and islands in the north of the site"*. An undated and unidentified sketch, not to scale, shows 4 lakes on the south side of Location 4497 with 'Lake 1' hard against the south boundary. In a letter to Council dated 25 September 1991 an application was made for the rezoning of Location 4497 from *Rural to Special Use* for development which included *"lakes, dams and spillways"* and made reference to a drawing A002. Drawing A002 had not been located.

Council advised Mr Dunn that at its meeting on 24 October 1991 approved in principle was given for a preliminary concept plan for the development of Location 4497 subject to suitable amendment documents being prepared. Council issued a building permit for 2 chalets on 28 October 1991.

The proposed Amendment 9 of TPS 1, with a report and a Concept Plan, was adopted by Council on 23 January 1992. The report refers to drainage on page 3, paragraph 1.2.3: *"Drainage of the site is essentially towards the Donnelly River although some water makes its way into the creek which runs close to the southern boundary of the site. A series of dams and spillways has been constructed along this creek"* and in paragraph 1.3 refers to *"the artificial lake near the southern boundary of the site"*.

There is no acknowledgement that the lake extends over the southern boundary.

The concept plan shows a 'Lake 1' abutting the south boundary of Location 4497 over a distance of about 150 metres with no indication of how far the lake extended south of Location 4497 onto the public road. Neither the public road now named Ethel Road nor Location 6982, both on the south side of Location 4497, are shown on the concept plan or mentioned in the text of the report.

In response to the proposed amendment 9 to the TPS No 1, the EPA said in a letter received by Council on 11 May 1992 that a management plan should be prepared for the lakes and wetlands on the site. There is no record of a management plan. The response from the Water Authority was that *"a licence must be obtained to divert or pump water from the Donnelly River"*. This did not

come into play as the lake in question is not "taking" from the river, it is on a creek line above it.

In the advertising of proposed Amendment 9, Council issued a notice on 28 July 1992 to the owners of adjoining Location 6982, B & M North, of the proposed rezoning and the land uses in the proposed development which did not refer to a dam or lake.

It also appears that the applicant for Location 4497, Mr Dunn had some compliant regarding what he wanted to develop on his property and the Council approval process. Mr Dunn made a complaint to the Ombudsman. On 14 October 1993 the Ombudsman issued a 29 page draft report of findings for a complaint by Mr Dunn.

- The Ombudsman's background statement, on page 2 in paragraph 3, includes *"He initially built four chalets; constructed a dam and spillway; created 3 lakes"*.
- Para 4 has *"Council granted planning approval for a tourist accommodation development"*.
- Paragraphs 11 & 12 refer to a letter faxed to Council advising intention to *"build a dam to create a waterfowl environment"*.
- Paragraph 13 states *"on 24 January 1991 Council resolved to conditionally approve the development."*
- Paragraph 16 says *"In February 1991 the complainant commenced development of the dam, lakes and other infrastructure works referred to earlier."*
- Paragraph 17 – *"On 16 March 1991 Council issued a building licence for five identical chalets to be built on 'Lake 1', four of which were constructed."*
- Paragraph 31 – Council's planner advised a scheme amendment was necessary.
- Paragraph 34 – *"Council approved in principle the concept plan" and "requested that rezoning documents be prepared"*.
- Paragraph 42 – *"The scheme amendment is still proceeding but has not as yet been effected"*.

The Ombudsman's completed findings were issued on 9 November 1993.

The Department of Planning and Urban Development notified by letter dated 17 March 1994 that it refused to approve the proposed Amendment 9 of TPS 1.

Council decided at the December 2003 meeting to initiate an amendment (31) to TPS 1 to rezone Location 4497 from Rural to Special Use. The minutes of this meeting do not include a reference to a lake or dam.

At Council's meeting held in August 2004 Council adopted the scheme amendment.

Again the minutes do not include a reference to a lake or dam (see Attachment 5). The report dated March 2006 for the amendment No. 31 of Town Planning Scheme 1 has a Development Guide Plan that shows the lake abutting the south boundary of Location 4497 over about 260 metres but does not show the lake extends south of this boundary. The report does not refer to the lake extending over the southern boundary of Location 4497. The WAPC advised on 2 November 2006 that final approval was given for amendment 31.

3. FILE SEARCH A467 and B467

The building file B467 has an application for a shed in 1985. The last page (copy in Attachment 9) explains the shed will be in the north east corner of Location 6982 because it is the only part of the land that is not affected by flooding.

Council received a letter on 9 September 1994 from Mr Peter Baxter complaining that the public road access to Location 6982 is under many feet of water. (Copy of letter in Attachment 6). Additionally a letter from E Chugg to Council, received on 13 March 2001 asked for work to be done on the track to their land (6982) to improve it enough to give ground clearance for a car. (Copy of letter in Attachment 7)

4. INSPECTIONS SEPTEMBER/OCTOBER 2010

Following receipt of Mr Gaunt's letter 12 September 2010 an initial inspection was undertaken by the Chief Executive Officer with Mr Gaunt on 17 September 2010. It was apparent from this inspection that there were a number of complex planning matters that needed to be addressed and that it would take some time to get to the bottom of the issues.

A further site inspection was undertaken on 12 October with Council's Planning Staff Ms Rehanna Arthur and the author of this report, again undertaken in conjunction with Mr Gaunt and Ms Tilly. Mr Gaunt and Ms Tilly walked us across the dam wall to the southern boundary of their property Location 4497 and the north east corner of Location 6982 which belongs to M North and others. At this corner there is a new survey peg and a round fence post from which there is:

- a fence to the east for about 10 metres to the edge of the dam water,
- another fence to the south for about 30 metres and
- a fence to the west for about 10 metres on level ground to where the ground falls steeply about 8 metres vertically to a drainage line and very wet ground which appeared to be level for about 100 metres west to a small clearing.

Photos were taken here. We walked south on a track that goes slightly uphill to a flat ridge and then east along the track which is on the highest ground, then walked north (downhill) towards the dam to a fence on the south boundary of Location 4497, then walked west along that fence to the edge of the dam.

On returning to the north-east corner of Location 4497 I looked closer at the dam wall and the topography of high ground across the dam to the north and the high ground with the track to the south, and the natural ground at the western base of the dam wall about 20 metres to the east and about 8 metres below the dam wall. Mr. Gaunt remarked there had been a structure on the low ground to the west. There appears to be a plausible explanation for the development of the dam wall and the house at the north-east corner of Location 4497 as follows:

1. Part of the land in Location 6982 was described on a plan of a survey in 1912 (Attachment 3) as *"First class potato & pasture land"* on the north side of a line on the plan that is roughly parallel to, and north of, the present vehicle track. The line on the plan possibly represents the southern edge of the low ground surrounding the drainage line that is now under the dam. The land at the north-east corner of Location 6982 would have been metres lower than it is now.
2. Mr Dunn proposed, in a letter Council received on 27 December 1990, a dam of 20-30 acres on a small side stream to the Donnelly River as part of a *"tourist chalet development"*.
3. A letter from Norths' dated 3 January 1991 (Attachment 4) notified Council that a Mr Crow, the then owner of Location 4497, *"would like to build a dam on our boundary"* and *"the water from the dam will come within 3 metres of our boundary"*.
4. Mr Gaunt, who bought Location 4497 in 2007, said the dam wall was built with ground material excavated from the 3 lakes in the north of Location 4497.
5. The dam wall was constructed after 3 January 1991 and possibly before 29 April 1991.
6. The dam wall was laid, in the shape of 2 straight lines at right angle, from the high ground on Location 4497 where the chalets are now and the next high ground which is the north-east corner of Location 6982 (Attachment 9). The L-shaped dam wall can be seen from the L-shaped downstream edge of the water on Attachment 2.
7. The southern half of the southern arm of the dam wall was laid in a south-east direction towards the north-east corner of Location 6982.
8. The Norths' building was built in the north-east corner of Location 6982 on a small area of high ground which adjoins, or is part of, the southern part of the dam wall.
9. The small area of ground in Location 6982 on which the Norths' building stands, is at the same height as the dam wall and about 8 metres higher

than the natural surface about 20 metres west at the base of the dam wall. At the base of the dam wall to the west of the house, there is a drainage line with water. Past that to the west, the ground is very wet and not amenable for walking.

10. Whether the small area of high ground in the north-east corner of Location 6982 existed as natural ground before the dam was built or was created as part of the dam wall is unknown.

5. FACTS

Access to Location 6982:

Vehicle access to Location 6982 is from Vasse Highway by public road on Storry Road (gravel formed), then on Ethel Road (public road, unformed sand track), an informal unformed sand track through State Forest F36 to the most western part of Ethel Road (public road, unformed sand track) which gives access to the eastern boundary of Location 6982 at the building.

Dam:

The dam wall is on Location 4497, owned by Mr Gaunt and Ms Tilly, and in part on:

- Location 6982 owned by B & M North, M Baxter and R & T Chugg, and
- Ethel Road which is a public unformed road.

The dam water is in three land parcels: Location 4497, Ethel Road and State Forest F36. Mr Towie, surveyor, gave verbal advice on 15 October 2010 that the top of the bank of the dam is 9 metres from the peg at the north-east corner of Location 6982 and that the edge of the water is about 1 metre further (to the east).

House:

The building is set back 1.67 to 2.1 metres from the boundary with Ethel Road as shown on the plan by Surveyor J Towie in Attachment 8 and per the photograph Attachment 11. This setback is to the vertical structure of the building with the verandah extension located on the Ethel Road reserve boundary. This is clearly evident from the photograph which includes the red survey peg. In the inspection on 12 October 2010, the edge of a water tank was about one metre from the fenced northern boundary of Location 6982. The building is to the south of the water tank, indicating the building is at least 2 metres from the northern boundary of Location 6982.

Records – Dam/Dam Wall:

No record was found on the files for Location 4497 or Location 6982, or in Council minutes, of an approval for, or official recognition of, the construction of the dam wall.

The rezoning of the land to Special Use in Amendment 31 of Town Planning Scheme No. 1 has a Development Guide Plan, adopted by Council on 26 August 2004, that shows the lake in Location 4497 but the plan does not show the dam wall, adjoining Location 6892, the part of the lake in Ethel Road, or Ethel Road itself.

The planning report, dated March 2006, accompanying the amendment has, in section 4.1, a description of past development on Location 4497 which does not refer to the dam. There is a silence in that amendment report and in Council records about the impact of the dam on Location 6982 and Ethel Road except for complaints by the owners of Location 6982.

Structure on Location 6982:

There is no record on file for a house/dwelling on Location 6982 but there is an approval (Attachment 9, 1985) for a shed at the north-east corner of the property. The present use of the structure appears to be greater than a shed.

6. TOWN PLANNING SCHEME # 1.

Town Planning Scheme (TPS) No.1 began on 16 September 1983, which is 7 years before the dam was likely built, and it operated until 14 December 2007 when LPS 3 was gazetted. In TPS 1, Location 4497 and Location 6982 were in the Rural Zone. Approval was required by clause 6.1 in TPS 1 for any development except a single house. 'Development' was defined in clause 1.5 to include 'the erection, construction, alteration or carrying out of any building, excavation or other works on any land'.

Building on Location 6982. In the Rural Zone a single house was permitted. The Development Table (cl.5.3) did not apply to residential development. The Development Table required a shed to be setback 20 metres from the road. Council had a discretion (cl.5.3.2) to vary the setback for a shed when it issued the building permit in 1985. It is unknown, but likely that Council at that time would have approved the building in the structure's present position because to increase the setback to 6 metres or 20 metres would place the building on the side of a steep slope or on the floodplain of the Donnelly River. During the recent

inspection the area was observed to be wet ground and the inspection was during a dry period.

To require a greater setback, Council would consider:

- Clause 5.8 (floodplain) of TPS 1,
- By law 3 of the Town Planning and Development By-laws which does not allow dwellings on unsuitable and unhygienic ground, and
- access to Ethel Road which is the only public road connected to Location 6982.

The conclusion here is that the structure, whether a house or shed, likely complied with Town Planning Scheme No 1 and is lawfully established for planning purposes. Its use may have changed if being used for temporary accommodation and such building/health issues would need to be investigated.

Dam on Location 4497. No record was found of an approval by Council or other authority for the construction of the dam on Location 4497 or its encroachment onto Ethel Road. The encroachment of the dam onto Ethel Road appears to have been avoided in planning applications to Council and Amendment 31 of TPS 1. Amendment 31 of TPS 1 has an accompanying report that does not refer to any part of the lake extending south onto Ethel Road. The Development Guide Plan shows the lake abutting the south boundary of Location 4497 for about 250 metres, with no part of the lake south of this boundary. The plan does not show Location 6982 or Ethel Road to the south of this boundary. The Development Guide Plan has the caption that it *“provides a framework for future development. Actual development that may vary from the development Guide plan requires approval from the Western Australian Planning Commission. Adopted by Council at its meeting on 26 August 2004.”* The WAPC advised on 2 November 2006 that final approval was given for Amendment 31.

Both Council and the WAPC adopted the Development Guide Plan which became a part of TPS 1 and is now part of the Local Planning Scheme 3 (LPS3) being listed as SU10 in Schedule 4. Clause 4.7 of LPS 3 says *“A person shall not use any land or any structure or buildings on land, in a Special Use Zone except for the purpose set out against that land in Schedule 4”*. A lake, dam or water body or anything similar is not set against Location 4497 in Schedule 4.

Consequently there is no explicit approval for a lake, dam or water body on Location 4497 and there are no conditions set out for such use. However, perhaps inconsistent with that conclusion there is, on the Development Guide Plan, the notation *“Vehicle access to Lake”* and the symbol for *“Water bodies”*.

The Local Planning Scheme in clause 11.4 and section 214 of the Local Government Act make it an offence to continue to use any land unless all approvals required by the scheme have been granted and issued. A contravention

of a local planning scheme is an offence (s.218 of the Planning and Development Act).

Once the contravention is recognized in Council there may be time limits in which to issue notices or other action to ensure the use of Location 4497 is complying with LPS 3. There is no implied approval for part of the dam to be on Ethel Road.

7. CONCLUSION

- While the building at the north east corner of Location 6982 appears to be lawfully established development (as a shed) for planning purposes, further investigation into its current use and setback issues is required.
- There is no record of an approval for the development of or extension of the dam water from Location 4497 to Ethel Road.

8. OPTIONS

Council is given remedies in the Local Planning Scheme, the Planning & Development Act and the Local Government Act and regulations where development is not approved or is the cause of damage on roads. There is a question whether the dam on Lot 4497 is approved development.

There are 3 options to respond to Mr Gaunt's submission being to agree to his request, to ask for alterations to the dam, and to enforce the provisions in the Local Government Act.

The options avoid an adverse effect on access to or use of Location 6982 (North and others). These owners complained (Attachments 4, 6 and 7) when the dam affected their access on Ethel Road and may claim compensation for a loss of existing rights attached to their land if their rights are further affected.

Option 1, Mr Gaunt's Request:

To accede to Mr. Gaunt's request, Council could consent to a legal agreement to:

- Close the part of Ethel Road (Part A) that is within the line marked "edge of lake" on the plan of the survey by JH Towie in Attachment 8. Part A is roughly a triangle with a base of 150 metres and height of 40 metres which has an area of 3,000 square metres. On Attachment 8, Storry Road became Ethel Road on 15 August 2006.
- Close the part of Ethel Road (Part B) that is between Part A and the eastern boundary of Location 6982. The plan Attachment 8 does not show the distance on the south boundary of Location 4497 from the north east corner of Location 6982 to the "edge of lake" but Mr. Towie said by

phone on 15 October 2010 that the distance is 9 metres to the top of the bank of the dam wall ("edge of lake") and a further 1 metre east to the edge of the water. Part B is a rectangle with depth 40 metres and unequal sides of 9 metres and 36 metres which has an area of 900 square metres.

- Amalgamate Part A with Location 4497 and amalgamate Part B with Location 6982, and
- Dedicate by survey a new public road 20 metres wide to include the part of the existing sand track access to Location 6982 that is not within Ethel Road. The new public road should join the south boundary of Part B on the highest ground on the south boundary of Part B as shown on Attachment 8, to avoid the lower steep slope near the east boundary of Location 6982.

Option 2, Require Alterations to the Dam:

The owners could remove the water from Ethel Road by reducing the level of the dam spillway or by constructing a new dam wall on Location 4497 parallel to the southern boundary of the property, subject to written approval from Council.

Council advise the owners Mr Gaunt and Ms Tilly that the Special Uses approved for Location 4497 do not include the extension of their dam to Ethel Road.

They are required to apply to Council for approval to construct a dam wall on Location 4497 parallel to the southern boundary of the property to prevent the encroachment of water from their dam on Ethel Road, and if approval is given construct the dam wall.

Alternatively they could reduce the level of the water in their dam so water cannot pass to Ethel Road.

Option 3, Enforce Regulations under the Local Government Act 1995:

The powers under the Local Government Act are:

- Regulation 5 of the Local Government (Uniform Local Provisions) Regulations prohibits interference with the soil on local government land. The owners of Location 4497 interfere with the soil on Ethel Road by flooding it with water from the dam on Location 4497.
- Regulation 19 of the Local Government (Uniform Local Provisions) Regulations makes an offence to, without lawful authority, alter, obstruct or interfere with the natural flow of surface water to damage any thoroughfare that is local government property. There is no record of a lawful authority

to alter the natural flow of surface water on Location 4497 to damage Ethel Road.

STATUTORY ENVIRONMENT:

Local Government Act 1995.
Local Government (Uniform Local Provisions) Regulations.
Shire of Nannup Town Planning Scheme # 1.
Local Planning Scheme # 3.
Planning and Development Act 2005.

POLICY IMPLICATIONS: Nil.

FINANCIAL IMPLICATIONS: Nil.

STRATEGIC IMPLICATIONS: Nil.

RECOMMENDATIONS:

1. That Council advise Mr J Gaunt and Ms E Tilly that it is prepared to consent to the alterations to the Ethel Road survey alignment by:
 - Closing the part of Ethel Road (Part A) that is within the line marked "edge of lake" on the plan of the survey by JH Towie submitted as Attachment 8, Council meeting agenda 28 October 2010.
 - Close the part of Ethel Road (Part B) that is between Part A and the eastern boundary of Location 6982.
 - Amalgamate Part A with Location 4497 and amalgamate Part B with Location 6982, and
 - Dedicate by survey a new public road 20 metres wide to include the part of the existing sand track access to Location 6982 that is not within Ethel Road. The new public road to join the south boundary of Part B on the highest ground on the south boundary of Part B as shown on Attachment 8, Council meeting agenda 28 October 2010, which is to avoid the lower steep slope near the east boundary of Location 6982.

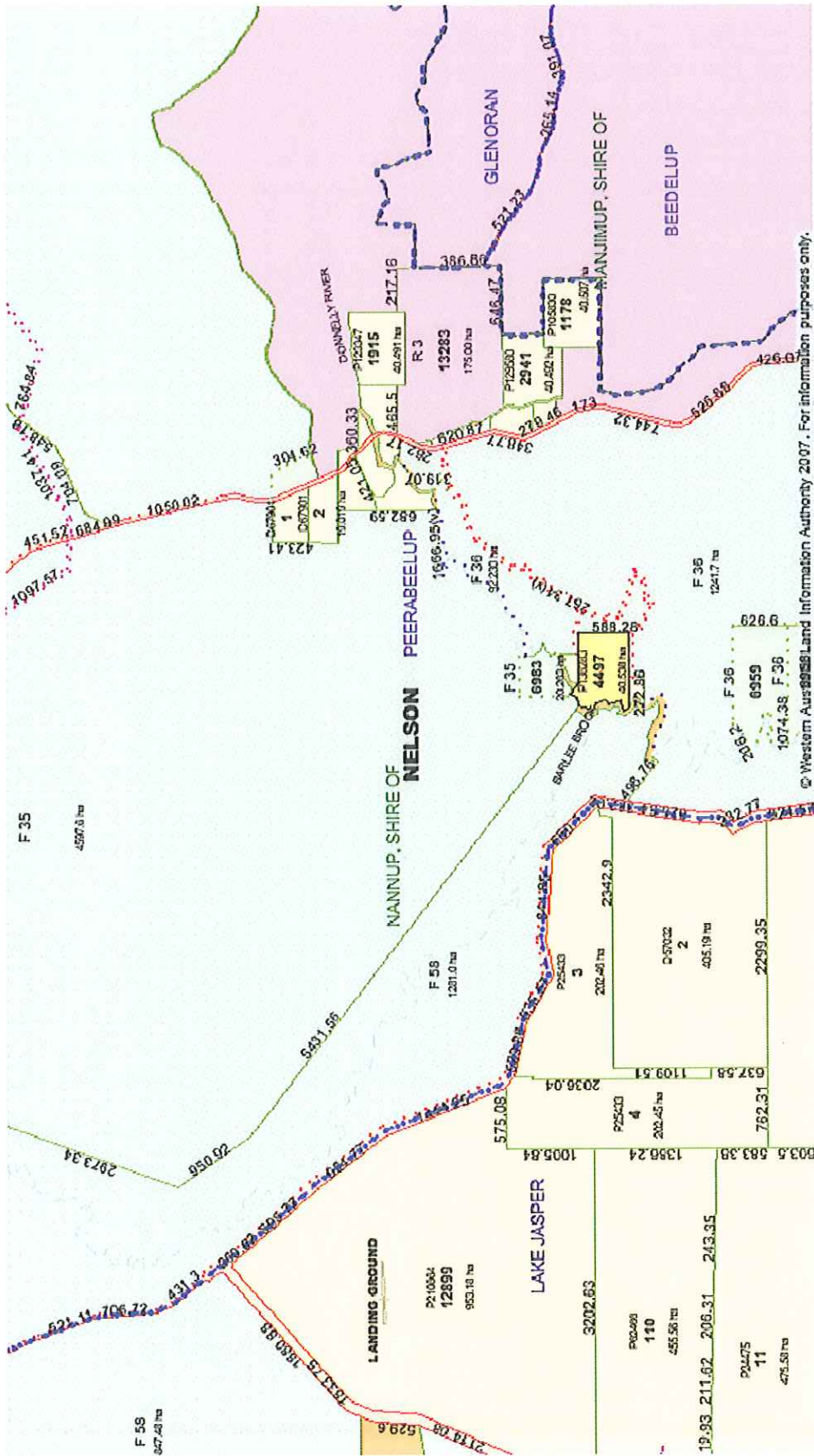
2. That Council advise Mr J Gaunt and Ms E Tilly that it will not bear any costs associated with the above alterations which have been specifically requested by Mr Gaunt and Ms Tilly to correct the fact that a major water body has been constructed without approval within the Ethel Road reserve.

3. If Mr J Gaunt and Ms E Tilly do not agree to Recommendations 1 and 2 within a month from the date of the Council decision then Council invite them to implement Option 2 and if they do not agree to implement Option 2 then Council commence action in Option 3.
4. That Council advise Mr J Gaunt and Ms E Tilly that Planning Approval will be required to formalise the lake which currently encroaches onto Ethel Road, whether or not recommendations 1 or 2 above are followed through with by Mr Gaunt and Ms Tilly.
5. That further investigation be undertaken in respect of the building located on Location 6982 with a view to ensuring compliance with the relevant health/building/planning legislation recognizing its current use and setback requirements.

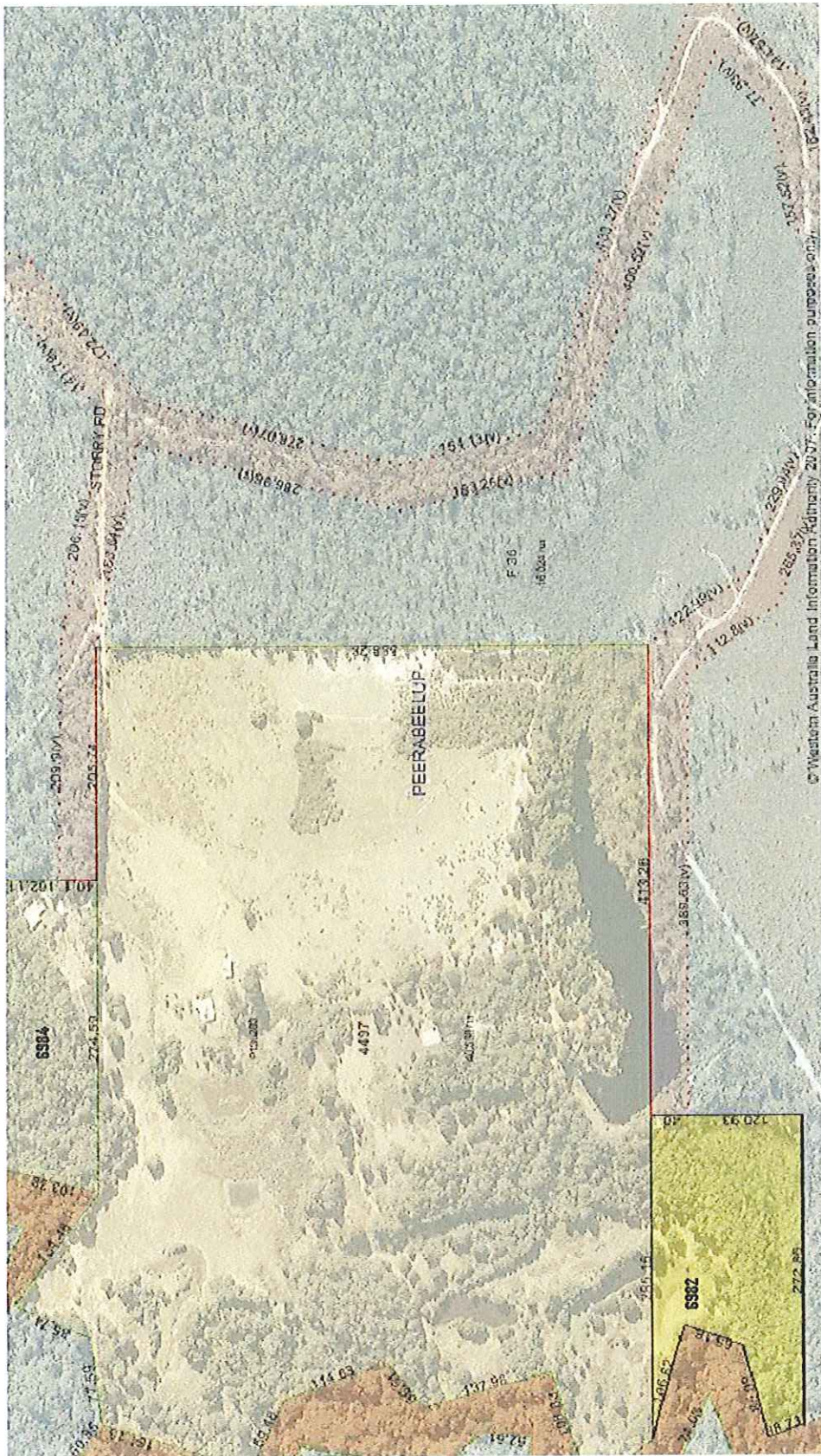
VOTING REQUIREMENTS:

Bob O'Sullivan 22/10/10

**BOB O'SULLIVAN
PLANNER**

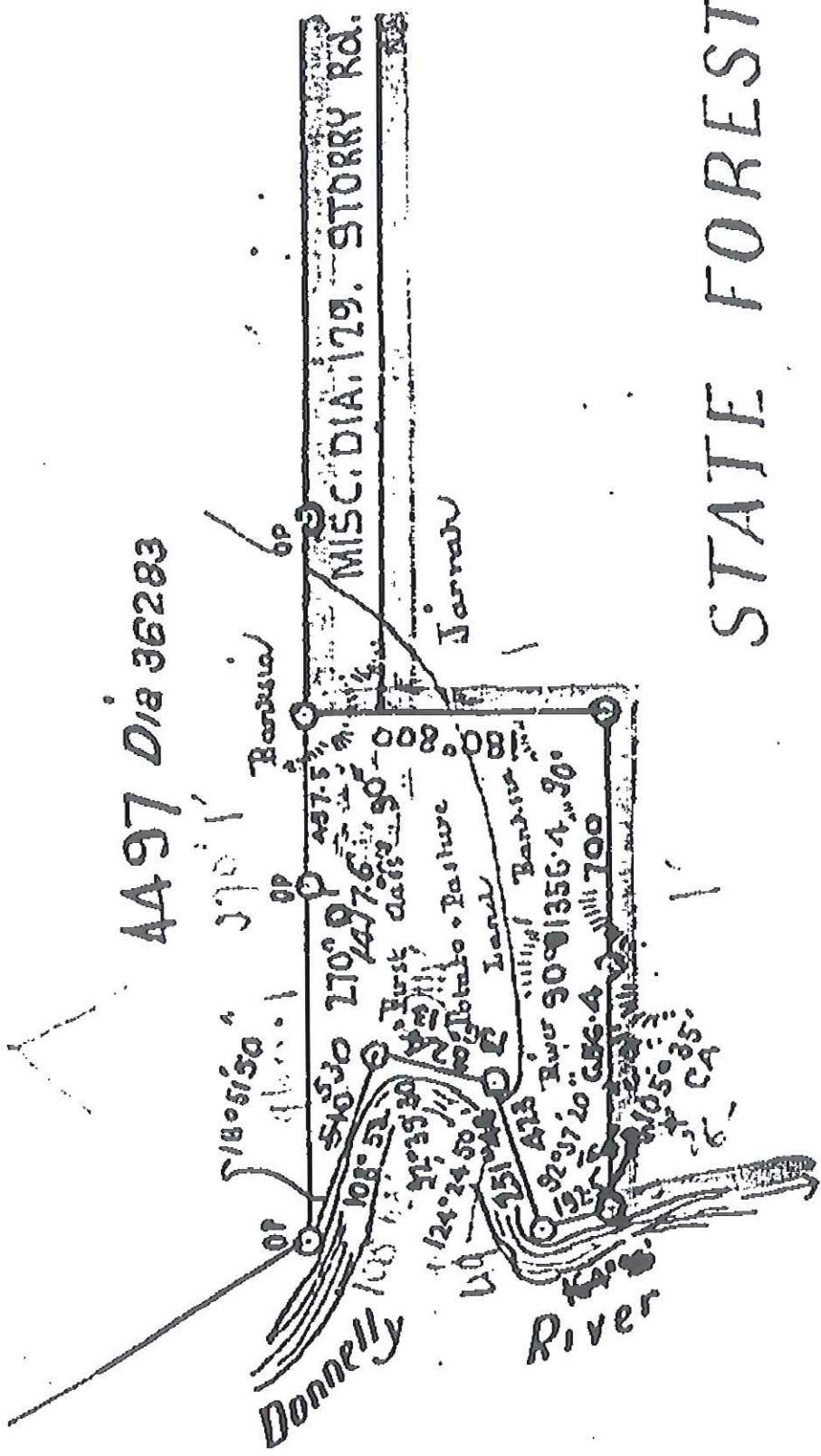


ATTACHMENT 1: Locality plan (Landgate)



ATTACHMENT 2: Aerial photo Lot 4497, Lot 6982, Storry Road, Ethel Road (Landgate)

AA 97 Dia 36283



STATE FOREST

ATTACHMENT 3: Plan of Survey of Location 6982 in 1912

MR & MRS R. NORTH

RSM 208

BOSSERTON 6280

30th Jan. 1991

Dear Sir,

We have been informed that Mr Wayne Coes would like to build a dam on his property. This dam will be on our boundary & will interfere with access to our block. At the moment the only access we have is a track put in by ourselves throughs C.A.M. land. The water from the dam will come within 3 metres of our boundary. We oppose this dam until such time the State provides an all weather access to our block, location NELSON 6982.

Yours faithfully,

Kees North, Mrs. North.

6.. BUNNINGS TREE FARMS

Invitation from Mr K.J.Sanders Manager Bunning Tree Farms to address Council on matters such as initial planning, mapping, establishment, fire control measures, on-going management, community integration and future haulage routes. In addition the structure of our company and the types of schemes we are offering to the landowners could be other items for briefing.

RESOLVED THAT THE SHIRE CLERK MAKE ARRANGEMENTS FOR MR J.ROBLEY EXECUTIVE DIRECTOR BUSH FIRES BOARD TO ADDRESS COUNCIL ON THE IMPLICATIONS OF EUCALYPT PLANTATIONS IN THE AREA.

7.. EUCALYPT PLANTATION - EAST NANNUP ROAD

Confirmation by Bunnings Tree Farms of a C.A.L.M. Mutual Assistance Agreement for Fire Protection.

RESOLVED THAT BUNNINGS TREE FARMS MANAGEMENT BE ADVISED THAT COUNCIL ARE NOW COMPLETELY SATISFIED WITH THE FIRE PROTECTION PLAN OUTLINED IN THEIR LETTER DATED 10.12.90 IN RESPECT OF LOCATION 10454.

8.. BUNNINGS TREE FARMS - BUSHFIRE RADIO NETWORK

The Department of Communications requires that the sets in our fire units are to be added to the license of each Shire in which we intend to operate. To comply with this regulation, it would be appreciated if your Council could add Bunnings Treefarms' sets to your block license for bushfire radios. To cover the 3 radios already installed and allow for future purchase of radios for additional fire units, it would be appropriate to list 10 radio sets initially, provided of course this request meets with your approval.

RESOLVED THAT APPROVAL BE GRANTED PROVIDED BUNNINGS MEET ANY ADMINISTRATION COSTS INVOLVED.

9.. TOURISH ACCOMODATION - STORRY ROAD

Confirmation from Dr. A.G.DURN that he would be willing to contribute towards the upgrading of the access road over a period of time of progressive upgrading and would appreciate guidelines from Council.

RESOLVED THAT DR.DURN BE ADVISED AS FOLLOWS:-

Council are prepared to approve proposed Tourist Chalet Development on location 4497 on the following conditions:-

- (1) *Upgrading the access road to 6 metre width by 150mm compacted gravel at their expense as contained in the Shire Clerk's letter dated 3.1.91. The whole of this work to be carried out as soon as possible and to the satisfaction of the Local Authority.*
- (2) *Council would accept payment for the work by installments of \$20,000.00 per annum.*
- (3) *A caveat to be lodged on the land to secure the payment mentioned in (2) above.*
- (4) *The developer to lodge the caveat in favour of the Shire of Nannup at his expense.*

J.L. Buckman

61 Norfolk St
DUNSBOROUGH WA
8 Sept 1994

TELEPHONE WK 553251
A/H 568187

Nannup Shire
Att; Jan Ashdown
NANNUP WA 6275

Dear Ian,

Re; Location 6982 Storry Rd, Donnelly River.

Thank you for your assistance with regards to the above property. The block is registered in the name of Ross and Marion North, however it is a family block, hence my involvement.

The enclosed plan shows the gazetted Storry Rd access to 6982. From the corner of 4497 to within 10 metres of 6982, this section of road is now under many feet of water. We can only assume that permission was granted to the owners of 4497 by the Nannup Shire Council for the damming of the creek that flows from the State Forrest through the road reserve and locations 4497 and 6982. Since the dams construction several major problems have occurred. The first is that our access to location 6982 is now blocked by approximately 15 acres of water. The only way to access the block is through State Forestry. Secondly, leaching from the dam has now made the south eastern portion of 6982 impassible for a vehicle, or foot traffic. Seepage has rendered this part of the block useless summer and winter. Our third concern is the diversion of the original creeks flow pattern where the overflow from the dam now runs. Our culvert over the original creek is continually washed out each time the level of the dam rises.

It seems that all the cards were stacked against us when the decision was made to allow the dam to proceed. What was originally an ideal family destination for us has now become a physical and to some degree a financial burden. We would be more than happy to meet with you or the council so as to explain the situation more clearly.

An inspection of the problem and the arrangements.

Your assistance in this matter would be greatly appreciated.

Yours sincerely,



SHIRE OF NANNUP			
RECEIVED			
9 SEP 1994			
FILE:	A 467		
OFFICE	INIT	DEP/SE	INIT
(CA)	(CA)	(TD)	(TD)

97 521574

CATHOLIC

E. CHUGG

9/33 DAVIES WAY

GUSSEBTON. 6280.

3/01

THE PRESIDENT,
NARADU SHIRE COUNCIL,
15 ADAM RD. NARADU.

SHIRE OF NARADU		
RECEIVED		
Ref: 1161	11/15/01	3/01
13 MAR 2001		
CLERK	ASST	TO
1000	6500	6500
		6500

20/10/01

ACKNWD 5001 19/3

Dear Sir,

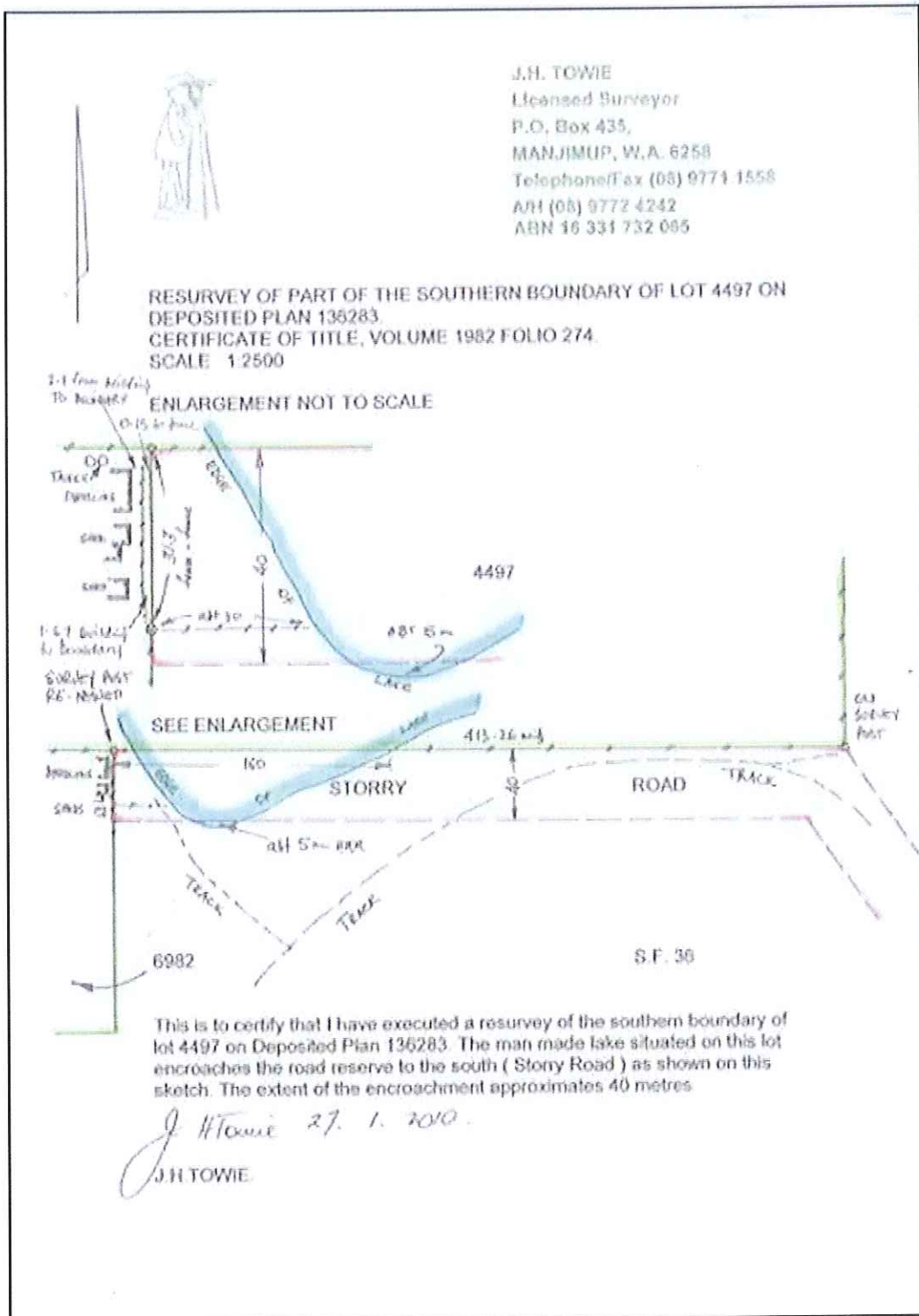
Please note that on 10th April 2000 I wrote asking if the shire would do some repairs on the track leading into our piece of land (6962) to improve it enough with a gravel or a couple of truck loads of gravel so that those of the family who don't have 4 wheel drive cars get access.

I explained that my car is a small one with not much clearance, therefore not game to attempt that track by which you get around past the Donnelly's place habitats.

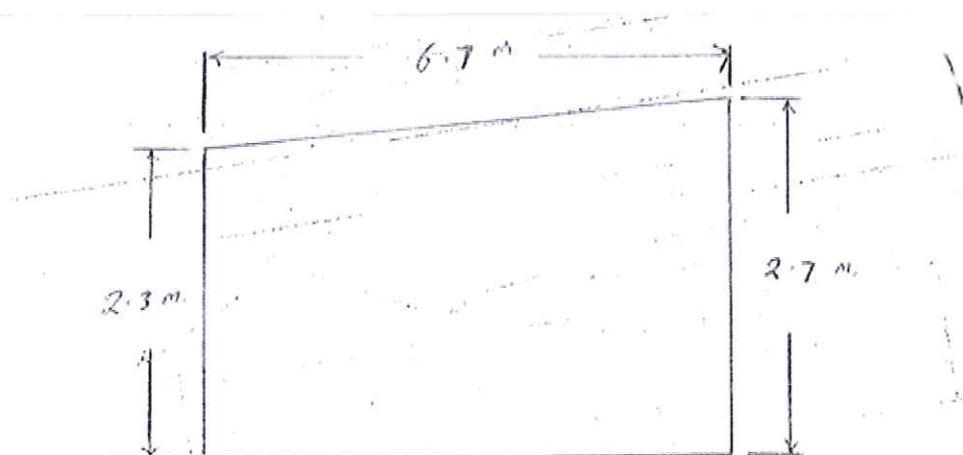
In my letter to you, I also asked if the job could be done before winter set in & would you please reply to my letter. Eleven months have passed & I have not received a reply. I thought it was courteous to do so.

When you keep putting the rates up, surely it is not too much to ask for this job to be done.

Yours faithfully,
E. Chugg



Attachment 8: Plan of Resurvey of south boundary of Lot 4497
 Note: Story Road was renamed Ethel Road



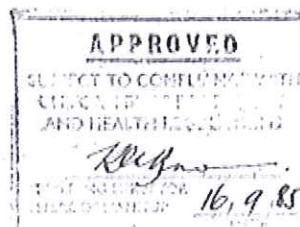
UPRIGHTS 150x80^{mm} TREATED PINE, PURLINS 100x50^{mm} SARKPH.
RAFTERS 150x80^{mm} TREATED PINE. BOLTED TO UPRIGHTS.

ROOF BATTENS 100x50^{mm} SARKPH.

ALL UPRIGHTS TO BE CHECKED OUT TO TAKE
PURLINS FOR OUTSIDE WALLS.

ALL MATERIALS USED WILL BE NEW.

Doing to the location of the block, there is only one site which is not subject to flooding in the winter. This is in the North-East corner, 10 metres square. This is where the shed is to be built.





Mr Shane Collie,
Chief Executive Officer,
Shire of Nannup
15 Adam St
Nannup WA 6275

12th September, 2010.

Dear Sir,

I write to you in reference to our property Donnelly Lakes which shares a border with DEC and the proposal to adjust our boundary lines for the purpose of securing the integrity of our lake system and primarily our main lake currently located at Donnelly Lakes.

I recently wrote to Mr J Gillard from DEC-Donnelly District for help regarding this matter however as the portion of land is currently shown on Landgate as a road reserve under the control of the Nannup Shire he has advised that I contact you for advice and to action this request.

The road reserve, as shown on the Landgate files for the southern border, is no longer valid and was obviously drawn before the lake was established approx 20 years ago as that portion of road is now under water. The road that services the adjoining property on the south boundary has been diverted as shown to provide access to their property.

We currently share a boundary with DEC on our southern border as per the attached documents and the road reserve in question and there is a small section of our main lake that overlaps across our boundary into the DEC/road reserve - state forest.

Under advice, we recently commissioned Mr J Towie- Surveyor, for a formal survey of our boundaries which now highlights another problem currently experienced in our service delivery as a tourism provider and involving our neighbour on the southern boundary of our property. This is explained in the accompanying documents which demonstrates disregard for the building codes and building location with regard to construction, offsets and the appropriation of land owned by the shire.

Unfortunately our main lake which is stocked with trout by us and pivotal to our business is currently accessed through DEC/road reserve land and regularly fished and recreated upon by strangers and primarily neighbours. They demonstrate no respect for the amenity of the area by their actions and a total disregard for legal seasons as applied by WA fisheries for the protection of marron species whilst also ignoring seasonal fire bans for open burning of fires.

As a premier tourist resort style facility, we have been developing our lake system as a fly fishing destination with numerous international anglers now visiting us. To further develop this niche market, we have under consideration a plan to establish an aquaculture business on the property for breeding various trout species, primarily Rainbow and Brown. However to proceed with confidence, we will need to guarantee the integrity of our waterways from strangers by fencing the main lake to form a land buffer around the southern side of the lake for approx 5 – 10 metres from the high water mark to make it secure.

Donnelly Lakes has four lakes, the main lake in question and three adjoining smaller lakes which are located within our boundaries and overflow into the Donnelly River which forms our western border.

With this thought in mind I wish to enquire as to the feasibility of

1. Re-alignment of the currently shown road reserve to reflect its current path and provide access to the neighbour's property to the meet the roadway currently evident within their property.
2. An adjustment of boundaries whereby some land from Donnelly Lakes is exchanged with DEC/Nannup Shire for the section of lake in question.
3. A forest lease from DEC/Nannup Shire which will give us management rights over that portion of land and lake in question.
4. Acquire from DEC/Nannup Shire the portion of land on our south boundary so that the entire section of lake will be enclosed within the Donnelly Lakes land title.

Further to the neighbor on our southern boundary, I would hope that this matter can be dealt with to ensure that the buildings on that site comply with documented planning approvals from Nannup Shire and are seen to comply with all the applicable construction codes and boundary offsets as determined by Nannup Shire. Likewise, those lands appropriated by them are returned to their natural state and intended purpose and all infrastructure be removed from that site to return it to natural bushland.

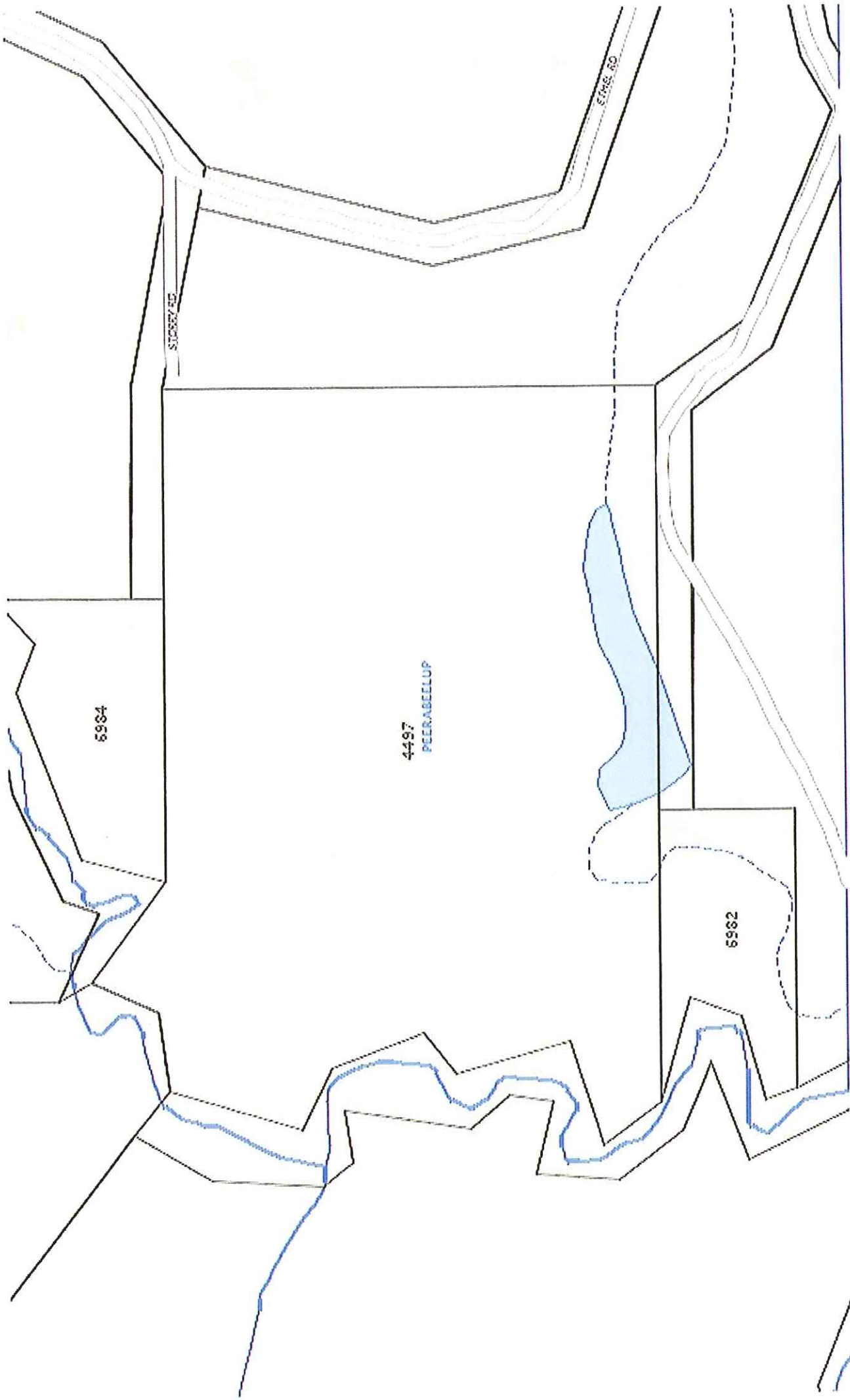
I have attached for your information a number of documents which will provide an overview of Donnelly Lakes, boundaries, problems encountered and Landgate extracts for the property locations including the WA Atlas overview.

I keenly await your response.

Yours Sincerely

John Gaunt

Donnelly Lakes Chalets
PO Box 283 Pemberton WA 6260
Tel/Fax 08 9776 2005
<http://www.donnellylakes.com.au>
Email: timestops@donnellylakes.com.au



6984

4497
PEERABELLUP

6982

STORBY RD

EMBEL RD

