

14.3.3 PROPOSED AMENDMENT NO.238 TO LOCAL PLANNING SCHEME NO.17 - TO RECLASSIFY 18 LOTS IN VIVEASH FROM 'GENERAL INDUSTRIAL' AND 'LOCAL ROAD' TO 'RESIDENTIAL DEVELOPMENT' (LPS17-238)

Ward	Midland/Guildford Ward
Disclosure of Interest	Nil
Business Unit	Statutory Planning
Authorised Officer	Executive Director Planning and Development
Voting Requirements	Simple Majority

KEY ISSUES

- Element Advisory Pty Ltd, on behalf of Hesperia have submitted a request to amend the City's Local Planning Scheme No.17 to reclassify 18 lots (approx. 12.6233ha of land) in Viveash from 'General Industrial' and 'Local Road' to 'Residential Development'. These lands are part of the Midland Brick site.
- Clause 24 of the *Planning and Development Act 2005* requires that a local planning scheme conforms with a Region scheme. The current "General Industrial" zoning of the lands under the City of Swan Local Planning Scheme No.17 does not conform with the lands' zoning as "Urban" under the Metropolitan Region Scheme. This needs to be amended.
- However, the applicant's proposed amendment goes beyond this and seeks to rezone portions of Lot 72 and 9002 Eveline Road that are 'Rural' under the Metropolitan Region Scheme to an "Residential Development" zone under Local Planning Scheme No.17. Whilst these portions of land are subject of an MRS amendment to go to 'Urban' this has not yet been approved and advancing a local planning scheme zoning amendment that does not comply with the Metropolitan Region Scheme currently is considered to be contrary to orderly and proper planning. Accordingly, the proposed amendment should not encompass these portions of land.
- The proposed amendment also includes control provisions that limits the capacity of the land to be developed for residential purposes until mitigation measures from noise from the Midland Brick operations have been affected and the land has been rehabilitated of any contamination.
- Proposed Amendment No.238 is considered to constitute a 'complex amendment' as defined by Regulation 34 of the Planning and Development (Local Planning Schemes) Regulations 2015, on the grounds that the proposal is considered of a scale, or will have an impact that is significant, relative to development in the locality.
- Should Council choose to initiate Amendment No.238 to Local Planning Scheme No.17, the proposal will be referred to the relevant authorities for consent to advertise. Once the necessary consents are in place, it will follow the procedures of a 'complex amendment' as set out in the Planning and Development (Local Planning Schemes) Regulations 2015, which includes a minimum 60-day public consultation period.

AUTHORITY/DISCRETION

Section 75 of the *Planning and Development Act 2005* allows a local government authority to amend its local planning scheme with the approval of the Minister for Planning.

Regulation 35 of the Planning and Development (Local Planning Schemes) Regulations 2015 requires a resolution of a local government to adopt an Amendment to a local planning scheme. The resolution to adopt an Amendment to a local planning scheme must identify if the Amendment is a 'basic amendment,' 'standard amendment' or 'complex amendment.' The local government has to say which

kind of change it is making when it adopts the change under r.34. Proposed Amendment No.238 is recommended to be a 'complex amendment' for reasons explained within the body of the report.

PROPERTY DETAILS

Applicant:	Element Advisory Pty Ltd (part of SLR Consulting Australia Pty Ltd)
Owner:	Various
Zoning:	LPS17 - Predominately 'General Industrial' with two (2) lots (Lot 167 Surrey Way and Lot 166 Harford Avenue) reserved 'Local Road'
	MRS - Predominately 'Urban' with portions of two (2) lots (Lot 72 and Lot 9002 Eveline Road) zoned 'Rural'. Note that the 'Rural' portions of these sites are under consideration to be rezoned to 'Urban' via MRS Amendment No.1395/57 (which has been advertised but not yet finalised)
Strategy/Policy:	State Planning Policy 4.1 - Industrial Interface; State Planning Policy 3.7 - Bushfire; State Planning Policy 5.1 - Land Use Planning in the Vicinity of Perth Airport.
Development Scheme:	City of Swan Local Planning Scheme No.17
Subject Land Description:	The Applicant's proposal involves eighteen (18) properties in Viveash, consisting of: Lot 167 – Lot 169 Surrey Way, Lot 160 and Lot 161 Somerset Street, Lot 162 – Lot 166 and Lot 195 – Lot 198 Harford Avenue, Lot 9008 and Lot 9010 Eveline Road, and portions of Lot 72 and Lot 9002 Eveline Road, Viveash.
Subject Land Area:	The Applicant's initial request is approx. 12.6233 ha (combined). The staff recommendation is approx. 11.5758ha (combined).
Existing Land Use:	Surplus industrial buildings, structures and hardstands previously used for the storage of bricks, brickmaking and other incidental industrial or office activities. Note the subject site is no longer located in Midland Brick's licensed area and is located approx. 308m from its boundary.
Surrounding Area:	South and west of the subject site is Eveline Road. Further south of Eveline Road is recently subdivided residential lots or land approved for residential subdivision with the density code of 'R20'. Further west of Eveline Road are existing 'R20' or 'R25' residential dwellings. North of the subject site is the Swan River and foreshore. Land east of the subject site is zoned 'General Industrial' and includes a clay shed, drainage ponds, outdoor storage yards and other incidental industrial activities.

OVERVIEW OF THE PROPOSAL

Purpose and intent

Proposed Amendment No.238 is an Applicant-driven request submitted by Element Advisory Pty Ltd on behalf of the landowner (Hesperia) of all the lots. It seeks to reclassify 18 lots in Viveash from 'General Industrial' and 'Local Road' to 'Residential Development'. Their intent is to zone the subject site so it can subsequently be structure planned and subdivided for predominantly residential development, with associated local roads, public open space and the option for a local centre.

The Applicant also seeks to insert additional site and development requirements to guide future planning decisions suggesting textual controls to require; noise mitigation measures to mitigate industrial emissions.

MATTERS FOR CONSIDERATION

Requirement under *Planning and Development Act 2005* for City's Local Planning Scheme to conform with Metropolitan Region Scheme.

Clause 24 of the *Planning and Development Act 2005* requires that a local planning scheme conforms with a Region scheme. The current "General Industrial" zoning of the lands under the City of Swan Local Planning Scheme No.17 does not conform with the lands zoning as "Urban" under the Metropolitan Region Scheme. This needs to be amended.

Form of proposed amendment - what should be the zoning under LPS 17 and need for control provisions to be incorporated into LPS17?

The applicant's amendment proposed that the Local Planning Scheme zoning should be 'Urban Development' which is the standard zoning type recommended in the Western Australian Planning Commissions Model Scheme Text. Such zone however does not exist in Local Planning Scheme No.17 - rather the corresponding zoning is "Residential Development". This proposed amendment should rezone the land to "Residential Development".

Address of Noise from Midland Brick Operations

As with the Local Planning Scheme amendment that rezoned other portions of the Midland Brick site for residential development (see LPS17 Amendment No.209) control provisions are necessary to ensure that noise from industrial activity from Midland Brick operations are mitigated.

When Hesperia sought to rezone land around Cranwood Crescent to a Residential Development zone under LPS 17, Amendment No.209 contained noise mitigation measures expressed as conditions that restricted the use of the land. These were incorporated as part of a Restricted Use designation listed in Schedule 3 of Local Planning Scheme No.17. Similar provisions are proposed here being:

Prior to subdivision, the applicant shall demonstrate it has scoped, designed, implemented and validated noise mitigation measures from:

a. Industrial operations located on Lt 72 Eveline Road, Viveash (which includes the Clay Sheds, and may include other Brickworks and Masonry Facilities activities) until decommissioned

b. Brickworks and Masonry Facility activities located north of Bassett Road, Middle Swan.

The applicant shall demonstrate that noise emissions comply with the Environmental Protection (Noise) Regulations 1997 to the satisfaction of the Western Australian Planning Commission in consultation with the Department of Water and Environmental Regulation to ensure that residential development is not adversely impacted by existing industrial operations in adjoining areas. Subdivision shall not be permitted within 300 metres of the Clay Shed while it remains operational.

Address of potential contamination of Lot 72

At present, Lot 72 Eveline Road, Viveash is classified as 'Possibly Contaminated – Investigation Required' in the Department of Water and Environmental Regulations (DWER) database due to elevated petroleum hydrocarbons in the soil and groundwater.

The land should be determined as being free from contamination before it is developed for residential purposes and accordingly the following provision is recommended as a condition that restricts the use of the land:

Subdivision and residential uses are prohibited unless the land is appropriately classified under the Contaminated Sites Act 1986 for the intended purposes.

It is recommended that the above two control provisions be inserted as conditions of a Restricted Use for the land to be inserted into Schedule 3 (Restricted Uses) of Local Planning Scheme No.17.

Classification of Scheme Amendment No.238

Regulation 35 of the Planning and Development (Local Planning Schemes) Regulations 2015 requires Council to specify if it considers the proposal to be a 'basic amendment', 'standard amendment' or 'complex amendment'.

The Applicant requests that their proposal be classified as a 'standard amendment' contending "*it is not considered a basic amendment, since the changes proposed require significant modifications to the local planning scheme and require the consideration of land use changes*". The 'standard amendment' process entails a 42-day public consultation period following the receipt of comments and consents from the WAPC and the EPA.

Staff disagree, finding that it better complies with the 'complex amendment' definition for reasons set out in the staff recommendation. The 'complex amendment' process entails a 60-day public consultation period following the receipt of comments and consents from the WAPC and the EPA.

ATTACHMENTS

1. Proposed Amendment No.238 Map [**14.3.3.1** - 1 page]
2. Location Map [**14.3.3.2** - 1 page]
3. Current MRS Zoning Map (with the applicant's initial rezoning area and the recommended boundaries depicted) [**14.3.3.3** - 1 page]
4. Applicant's submitted wording on how the scheme is to be amended [**14.3.3.4** - 2 pages]

STRATEGIC IMPLICATIONS

Built Environment

B1 Accessible infrastructure that meets present and future community need

B1.2 Create and enhance public spaces and parks

Built Environment

B2 Accessible and sustainable movement

B2.1 Provide and maintain a safe and accessible network of roads, cycle paths and footpaths, connecting people and places.

Built Environment

B3 Sustainable growth

B3.1 Facilitate urban growth, while minimising the impact on the natural environment

STATUTORY IMPLICATIONS

Planning and Development (Local Planning Schemes) Regulations 2015

Local Planning Scheme No.17

FINANCIAL IMPLICATIONS

Nil.

RECOMMENDATION

That Council resolve to:

1. Initiate Amendment No.238 to the City of Swan Local Planning Scheme No.17 to:
 - a. Amend the Scheme map to:

- i. Reclassify 18 lots in Viveash (Lot 167- Lot 169 Surrey Way; Lot 160 and Lot 161 Somerset Street; Lot 162 – Lot 166 and Lot 195 – Lot 198 Harford Avenue; portion of Lot 72 Eveline Road; portion of Lot 9002 Eveline Road; and Lot 9008 and Lot 9010 Eveline Road, Viveash) from ‘General Industrial’ and ‘Local Road’ to ‘Residential Development’.
 - ii. Insert a Restricted Use ‘R [tbc]’ over the same land that will be reclassified to the ‘Residential Development’ zone.
- b. Insert into Schedule No.3 – Restricted Uses the following:

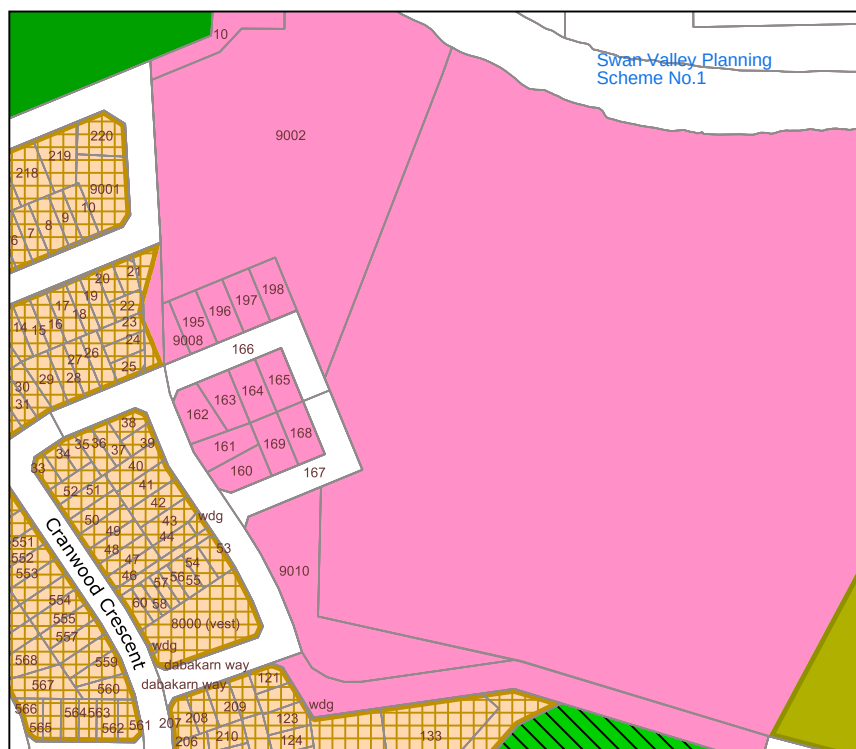
No.	Description of Land	Restricted Use	Conditions
[tbc]	- Lot 167 – Lot 169 on Plan 9113 Surrey Way, Viveash; - Lot 160 – Lot 161 on Plan 9113 Somerset Street, Viveash; - Lot 162 – Lot 166 and Lot 195 – Lot 198 on Plan 9113 Harford Avenue, Viveash; - Portion of Lot 72 on Deposited Plan 408605 Eveline Road, Viveash; - Portion of Lot 9002 on Deposited Plan 421407 Eveline Road, Viveash; - Lot 9008 on Deposited Plan 400991 Eveline Road, Viveash; and - Lot 9010 on Deposited Plan 428303 Eveline Road, Viveash;	All conditions of this clause shall be satisfied in order for residential development to be capable of approval on this land.	- Prior to subdivision, the Applicant shall demonstrate it has scoped, designed, implemented and validated noise mitigation measures from: - Industrial operations located on Lot 72 Eveline Road, Viveash (which includes the Clay Sheds, and may include other Brickworks and Masonry Facility activities) until decommissioned; and - Brickworks and Masonry Facility activities located north of Bassett Road, Middle Swan. The Applicant shall demonstrate that noise emissions comply with the Environmental Protection (Noise) Regulations 1997 to the satisfaction of the Western Australian Planning Commission in consultation with the Department of Water and Environmental Regulation to ensure that residential development is not adversely impacted by existing industrial operations in adjoining areas. Subdivision shall not be permitted within 300m of the Clay Shed while it remains operational. - Subdivision and residential uses are prohibited unless the land is appropriately classified under the <i>Contaminated Sites Act 2003</i> for the intended purposes.

	As depicted on the Scheme Map.		
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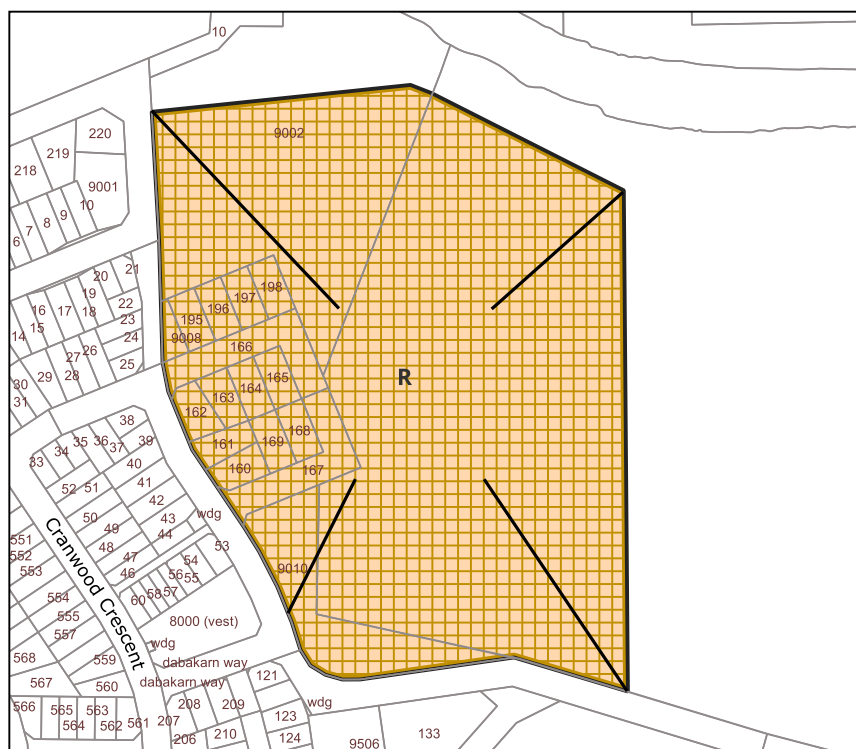
2. Inform the Western Australian Planning Commission and the Minister for Planning that the Council considers the proposed Amendment a 'complex amendment' because:
 - a. The need to manage the industrial interface along a significant length of the Amendment's boundaries means that it is considered to be of a scale, or will have an impact that is significant, relative to development in the locality;
 - b. It is not considered to be a 'standard amendment' because it is considered to have more than a minimal impact on surrounding land and the land's 'potentially contaminated' status in the Department of Water and Environmental Regulation's contaminated site database raises environmental and governance issues; and
 - c. It is not considered to be a 'basic amendment' because it is not an administrative exercise.
3. Refer the proposed Amendment to the Western Australian Planning Commission and Environmental Protection Authority for consent to advertise and once consent is given, commence advertising in accordance with the procedures set out in the *Planning and Development Act 2005* and the Planning and Development (Local Planning Schemes) Regulations 2015.

CARRIED EN BLOC

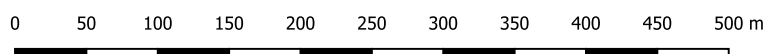
LOCAL PLANNING SCHEME No.17 - AMENDMENT No. 238



EXISTING ZONING



PROPOSED ZONING



Scale 1:5000

LEGEND

REGIONAL SCHEME RESERVES

 PARKS & RECREATION

LOCAL SCHEME RESERVES

☐ LOCAL ROAD RECREATION

PRIVATE CLUBS & INSTITUTIONS

LOCAL SCHEME ZONES

 GENERAL INDUSTRIAL

 RESIDENTIAL
DEVELOPMENT

OTHER CATEGORIES

 RESTRICTED USE



February 2026



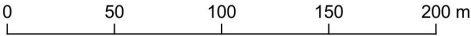
Data Credits: Landgate, MRWA, City of Swan, DPLH, ...

LEGEND:

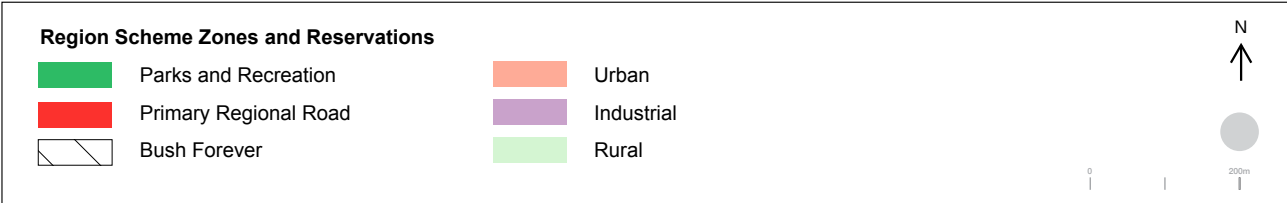
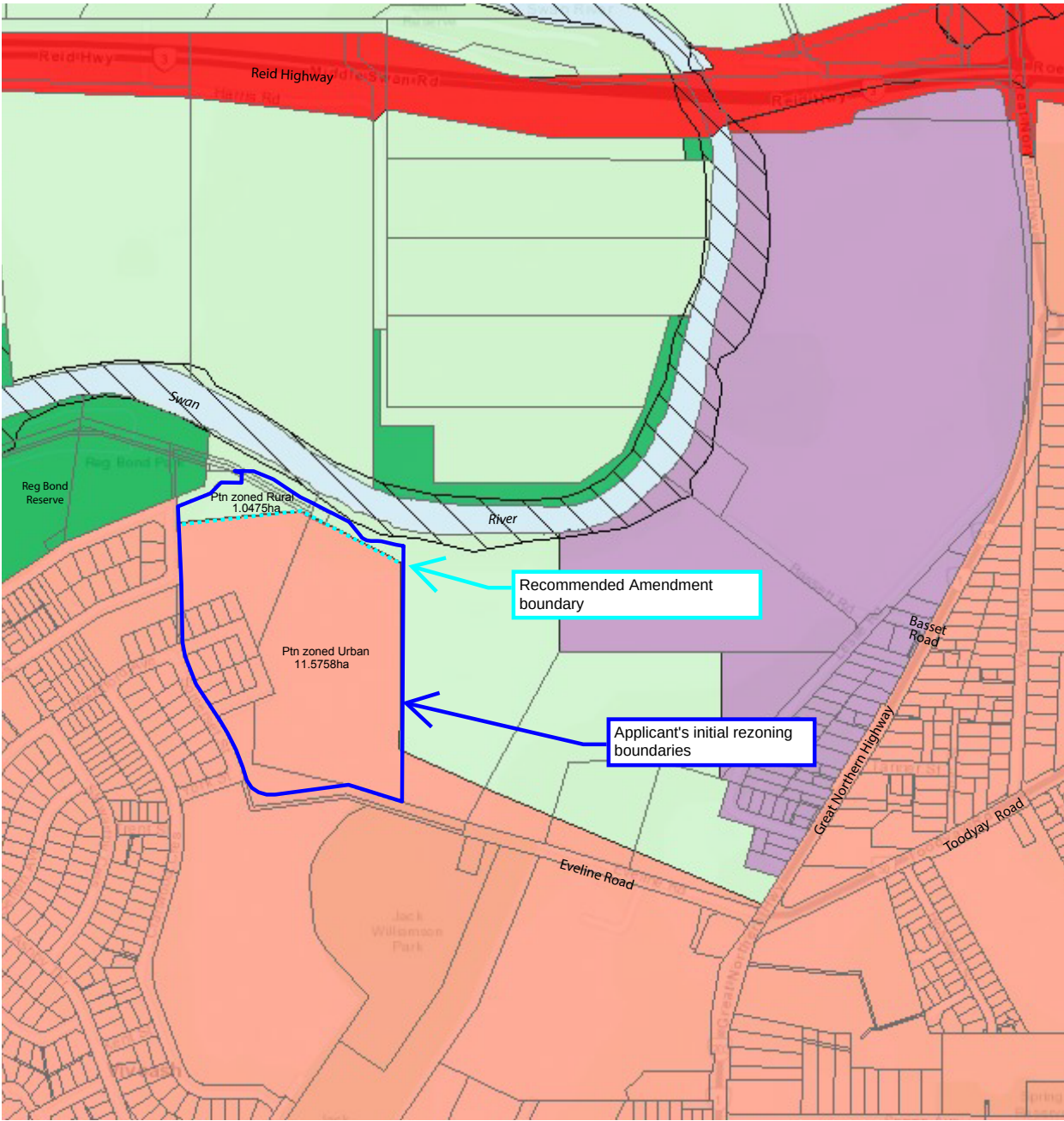
Subject site

Cadastre

SCHEME AMENDMENT 238
Location Plan (LPS17-238)



Project File: \\gisproddata01\GIS_Projects\Scheme Amendment 238.qgz



Current MRS Zoning Map

element.

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Draft Planning Scheme Provisions

AMENDMENT TO LOCAL PLANNING SCHEME CITY OF SWAN LOCAL PLANNING SCHEME NO. 17 AMENDMENT NO. TBC

Resolved that pursuant to section 75 of the Planning and Development Act 2005, amend the,above Local Planning Scheme to:

- a. Amend the scheme map to rezone Lots 72, 160–169, 195–198, 9002, 9010 Eveline Road, Viveash from 'General Industrial' to 'Urban Development'.
- b. Modify the Scheme Map to designate an Additional Site and Development Requirement that will be zoned 'Urban Development'.
- c. Insert new clause and associated table as follows:

5.11.2 The following Table sets out requirements relating to development in Stage 1 of Area 4 of the Rivermark Estate at Lots 72, 160–169, 195–198, 9002, 9010 Eveline Road, Viveash:

No.	Description of Land	Requirement
SR1.	Lots 72, 160–169, 195–198, 9002, 9010 Eveline Road, Viveash as depicted on the Scheme Map.	1. Noise Management Area Prior to the subdivision of the Rivermark Area 4 Stage 1 Structure Plan, the applicant shall demonstrate it has scoped, designed, implemented and validated noise mitigation measures from the operations in the adjoining Stage 2 area, which includes the Clay Shed on Lot 72 (until its decommissioning) and the Brickworks and Masonry Facility activities located to the north of Bassett Road, Middle Swan. The applicant shall demonstrate that noise emissions comply with the Environmental Protection (Noise) Regulations 1997 to the satisfaction of the Western Australian Planning Commission in consultation with the Department of Water and Environmental Regulation. Subdivision will not progress in the Stage 2 of the subsequent Area 4 Structure Plan while the Clay Shed remains operational.
		2. Foreshore Management Plan A Foreshore Management Plan and Construction Environment Management Plan shall be prepared for the Structure Plan area. The management plan shall be endorsed by the local government on advice from the Department of Water and Environmental Regulation, and the Department of Biodiversity, Conservation and Attractions prior to the subdivision of the land.
		3. Development Approval Notwithstanding any other provision of the Scheme, development approval is not required for any Single Dwelling/ addition to an existing Single or Grouped Dwelling where the Single or Grouped Dwelling will be the only development on the lot.

Amendment No. (TBC) To City of Swan Local Planning Scheme No.17
To Rezone Lots 72, 160-169, 195-198, 9002, 9010 Eveline Road, Viveash To 'Urban Development' Zone
Stage 1 of Area 4 Rivermark Residential Estate

This Amendment is a standard amendment under the provisions of the Planning and Development (Local Planning Schemes) Regulations 2015 for the following reason:

- it is not considered a basic amendment, since the changes proposed require significant modifications to the local planning scheme, and require the consideration of land use changes.

Dated this day of

CHEF EXECUTIVE OFFICER