



NOTICE OF MEETING

PLANNING COMMITTEE

Members of the Planning Committee are advised that a meeting of the Committee will be held in Council Chambers, Civic Building, 83 Mandurah Terrace, Mandurah on:

**Tuesday 17 January 2017
at 5.30pm**

MARK R NEWMAN
Chief Executive Officer
11 January 2017

Committee Members:

Councillor Peter Rogers (Chairman)
Councillor Jackson
Councillor Tahlia Jones
Councillor Knight
Hon Councillor Riebeling
Councillor Lynn Rodgers
Councillor Wortley

Deputies:

Councillor Field (1st Deputy Member)
Councillor Lee (2nd Deputy Member)

NOTE: Should an Elected Member wish to view any location listed on this Agenda, officers will be available in the Councillor's Lounge at 9.00 am on Tuesday 17 January 2017.

AGENDA

- 1 OPENING OF MEETING AND ANNOUNCEMENT OF VISITORS**
- 2 ATTENDANCE AND APOLOGIES**
- 3 IMPORTANT NOTE:**

Members of the public are advised that the decisions of this Committee are referred to Council Meetings for consideration and cannot be implemented until approval by Council. Therefore, members of the public should not rely on any decisions of this Committee until Council has formally considered the resolutions agreed at this meeting.

4 ANSWERS TO QUESTIONS TAKEN ON NOTICE

Nil

5 PUBLIC QUESTION TIME

Public Question Time provides an opportunity for members of the public to ask a question of Council. For more information regarding Public Question Time, please telephone 9550 3706 or visit the City's website www.mandurah.wa.gov.au.

6 PRESENTATIONS AND ANNOUNCEMENTS BY CHAIRMAN**7 DEPUTATIONS**

Any person or group wishing to make a 5-minute Deputation to the Committee meeting regarding a matter listed on this agenda for consideration must first complete an application form. For more information about making a deputation, or to obtain an application form, please telephone 9550 3706 or visit the City's website www.mandurah.wa.gov.au.

NB: Persons making a deputation to this Committee meeting will not be permitted to make a further deputation on the same matter at the successive Council meeting, unless it is demonstrated there is new, relevant material which may impact upon the Council's understanding of the facts of the matter.

8 CONFIRMATION OF MINUTES: 6 DECEMBER 2016

(NB: It is the Elected Members' responsibility to bring copies of the previous Minutes to the meeting if required).

9 DECLARATIONS OF FINANCIAL, PROXIMITY AND IMPARTIALITY INTERESTS**10 QUESTIONS FROM ELECTED MEMBERS WITHOUT DISCUSSION**

10.1 Questions of which due notice has been given

10.2 Questions of which notice has not been given

11 BUSINESS LEFT OVER FROM PREVIOUS MEETING

12 REPORTS:

1	Local Planning Scheme (Scheme 12) Adopt for Advertising	1 - 21
2	Section 31 Reconsideration for Tavern	22 - 26

13 LATE AND URGENT BUSINESS ITEMS**14 CONFIDENTIAL ITEMS****15 CLOSE OF MEETING**

1. SUBJECT:	New Local Planning Scheme ('Scheme 12') and Local Planning Strategy - Revised to Adopt for Advertising
CONTACT OFFICER/S:	Ben Dreckow
AUTHOR:	Ben Dreckow
FILE NO:	F6019

Summary

In July 2013, Council resolved to prepare a new local planning scheme (July 2013) and in March 2014 Council adopted a draft Scheme (under the heading 'Mandurah Planning Scheme').

Since this time, the *Planning and Development (Local Planning Scheme) Regulations 2015* ('LPS Regulations') have been prepared, advertised and gazetted and have been operative since October 2015. The LPS Regulations have resulted in significant changes to the format and operation of local planning schemes requiring the draft Scheme to be rewritten and reformatted.

The new Scheme to be entitled *City of Mandurah Local Planning Scheme No 12* ('Scheme 12') has been prepared for Council's consideration and adoption. Scheme 12, upon gazettal, will replace the current Town Planning Scheme No 3 (Scheme 3) which has been in place in July 1999.

Whilst the Scheme 12 will replace Scheme 3, it is considered that the Scheme is a consolidation of Scheme 3 primarily by a removal of the administrative procedures and inclusion of zones and reserves from local structure plans for land that has been subdivided. This is distinct from a complete Scheme review process whereby major changes to the zoning and development outcomes for land is proposed.

With respect to the Local Planning Strategy, Council has adopted a summary strategy in October 2013 together with topic specific strategies for the Western Australian Planning Commission's endorsement over a number of years. The Local Planning Strategy requires reformatting so that one Strategy is endorsed by the WAPC.

It is recommended that Council adopt the draft Local Planning Scheme No 12 and acknowledges a revised Local Planning Strategy is being forwarded onto the Western Australian Planning Commission and Minister for Planning for consent to advertise.

Disclosure of Interest

Nil

Previous Relevant Documentation

- G.25/3/14 25 March 2014 Council adopted the draft Mandurah Planning Scheme (Scheme Text and Scheme Maps dated March 2014) for forwarding to the Western Australian Planning Commission and the Environmental Protection Authority for consent to advertise the Scheme.
- G.21/10/13 15 October 2013 Council adopted the Mandurah Planning Strategy for forwarding to the WAPC for certification and consent to advertise.
- G.26/7/13 23 July 2013 Council resolved to prepare a new local planning scheme.
- G.25/12/12 18 December 2012 Council acknowledged the preparation of key strategic studies which will inform and maintain the City's Town planning Scheme and progress the Local Planning Strategy.

Background

Town Planning Scheme No 3

The City of Mandurah's Town Planning Scheme No 3 (Scheme 3) was published in the Government Gazette on 21 July 1999, and has therefore been in operation for seventeen and a half years; however Council resolved to *prepare* Scheme 3 in November 1991.

Subsequent to this decision, the following actions took place in regard to the progression of Scheme 3:

- October 1992 Minister for Planning accepted a Scheme Review Report examining the operation of Schemes 1A, 10 and 11;
- November 1992 Consultants appointed to undertake a Scheme Review;
- August 1993 Scheme Report completed and draft Scheme prepared;
- October 1993 Scheme 3 adopted for advertising;
- December 1994 Consent to advertise Scheme 3 granted by Minister for Planning;
- March 1995 Public Advertising completed;
- March 1996 Council resolved to re-draft Scheme 3, incorporating recommendations of a Council Special Working Group and imposed a moratorium on Amendments to Scheme 1A, where proposed Amendments not in accordance with draft Scheme 3;
- March 1997 Council adopt Scheme 3 (incorporating modifications arising out of submissions and Special Working Group);
- November 1997 Minister for Planning determined that adopted Scheme modifications were substantial to the advertised version and directed that the Scheme be readvertised;
- August 1998 Scheme 3 readvertised.
- October 1998 Council adopted modified Scheme 3.
- March 1999 Council adopted modified Scheme 3 in accordance with modifications required by Minister for Planning.
- July 1999 Scheme 3 approved by Minister for Planning and published in Government Gazette on 21 July 1999.

Scheme 3 was adopted for advertising in October 1993 prior to Planning Legislation Amendment Act 1996 which resulted in significant changes to planning and environmental legislation in Western Australia requiring all Schemes (or Amendments to Schemes) to be subject to "assessment" by the Environmental Protection Authority. Scheme 3 therefore is not considered to be an "assessed scheme" for the purposes of the Environmental Protection Act 1986.

Scheme 3 was finalised at the time of the Peel Region Scheme being prepared, which was gazetted in March 2003, however Scheme 3 was required to reflect the draft Region Scheme with respect to regional road reservations and to be consistent with regional level zones.

A key positive outcome from the preparation of Scheme 3 and its approval was the introduction of Outline Development Plans (ODPs) which have served Mandurah very well for an extended period. As a result of

the requirement for landowners to prepare ODPs, in the main, covering large areas of urban land which was in a single ownership the result has been in ODPs covering many large urban cells.

With the introduction of the Scheme, Council had sought to have a greater influence over the development of Mandurah by introducing the requirement for Precinct Plans. The precinct plans have been used in the district town centres and central Mandurah redevelopment areas.

The ODP provisions of the Scheme and the introduction of precinct plans have resulted in Scheme 3 in the main, remaining up to date on the key elements influencing the development of Mandurah. Notably both of these initiatives are now embedded into contemporary planning practices in Western Australia, with ODP provisions (now called local structure plans) prevalent in most planning schemes, and precinct plans (now called Activity Centre Plans) forming part of State Planning Policy 4.2 – Activity Centres for Perth and Peel as a requirement for all centres of district level size and above.

In July 2013, Council resolved to prepare a new planning scheme which included the following:

- A resolution of the Council certified by the Chief Executive Officer setting out Council's intent;
- A map marked 'Scheme Area Map', signed by the Chief Executive Officer, on which is delineated the area of land proposed to be included in Scheme; and
- A statement setting out:
 - The objectives and intentions of the Scheme; and
 - The anticipated format of the Scheme.

The WAPC acknowledged receipt of Council's resolution in September 2013 and noted and accepted the above with a number of advice notes.

Local Planning Strategy

A draft Strategy was prepared for Council's consideration in 2011 but deferred for consideration in order for Council to consider its implications. This has been undertaken since this time through a number of workshops and briefings, but importantly through a number of subject related components of the planning strategy as follows:

- | | |
|--------------------------------|---|
| • Activity Centres | Adopted in December 2013 |
| • Biodiversity (Environmental) | Adopted in November 2013 |
| • Southern Rural | Adopted for advertising in April 2013 (as a statutory Structure Plan) |
| • Urban Form and Housing | Adopted for advertising in May 2013 |
| • Tourism | Council Final Approval June 2009; WAPC Dec 2009 |

In addition to the above, Council has also adopted the Strategic Community Plan 2013 – 2033 under the Key Focus Area headings of:

- | | |
|------------------|--|
| • Environment | <i>Protecting our Environment</i> |
| • Social | <i>Creating a Better Community</i> |
| • Economic | <i>Growing our Economy</i> |
| • Infrastructure | <i>Meeting our infrastructure needs</i> |
| • Identity | <i>Defining who we are and who we want to be</i> |

The following is a summary of the strategy recommendations under each of the Key Focus Areas:

- Environmental*
- Recommended setbacks and connections to sewer for development and subdivision adjacent to the Peel-Harvey Estuary;
 - Requirement for a Climate Change Assessment for all structure plans and rezoning adjacent to all waterways;
 - No development within any identified floodway's and restricted development in any identified flood fringe;
 - Reflect the retention and protection targets of Local Natural Areas from the Biodiversity Strategy;
 - Consider the impact of high mosquito activity areas in provisions of residential density, land use and design of development.
- Social*
- Ensure an equitable distribution of social infrastructure across Mandurah as recommended in the Social Infrastructure Plan;
 - Ensure a mixture of land uses are allowed for to ensure services, employment and activity is provided throughout Mandurah with a focus on mixed use activity centres;
 - Ensure high quality designed places to provide for a safe and secure City;
 - Continue with negotiated outcomes and partnerships to deliver social infrastructure rather than a regulated contribution scheme.
- Economy*
- Focus sub-regional activity, employment, recreation and transport within the Mandurah Central area with a key focus on the City Centre;
 - Facilitate additional activity centres at Lakelands and Dawesville to service new growth areas;
 - Seek to provide opportunities within Mandurah for key bulky goods and showrooms arising from the development of industrial land at Nambeelup;
 - Recognise the importance of tourism development in the local economy.
- Infrastructure*
- Recognise the overlap of regional and district road and movement functions on the major roads due to the geographic nature of Mandurah;
 - Plan and lobby for the delivery of priority bus networks on key roads and streets linking activities and destinations to compliment the rail network;
 - Seek to ensure a priority on the delivery of streets in central Mandurah for a mix of transport users with enhanced attention given to pedestrians, cyclists and transit;
 - Ensure that emerging mobile technology is facilitated for the broader community and business needs.
- Identity*
- Provide for a variety of development outcomes and scale to avoid being a continuation of suburban sprawl;
 - Maximise the potential of the Mandurah Central area a key redevelopment area for housing, education, retail, employment and social infrastructure;
 - Ensure appropriate densities and scale in and around activity centres to provide for sufficient intensity and land use mix to support centres and high frequency public transport;
 - Acknowledge that a variety of housing choices and built form outcomes are provided that are affordable for a range of demographic profiles;
 - Consider the implications of appropriate design outcomes for those areas of Falcon and Dawesville that have a distinct character, reflective of the water based lifestyle of these established areas.

As an overarching summary of the Local Planning Strategy, a Mandurah Structure Plan was prepared.

In discussions with the Department of Planning, a request has been made for the WAPC's endorsement be limited to a singular Local Planning Strategy. As a result, a reformatted Planning Strategy is required to embed the recommendations from the topic related strategies into one consolidated document.

The key outcome from the Local Planning Strategy, the District Structure Plan, has been updated from the 2013 Strategy and is provided as **Attachment 1**.

Planning and Development (Local Planning Scheme) Regulations 2015 ('LPS Regulations')

The LPS Regulations, which become operative in October 2015, have resulted in significant modifications to the format and operation of Local Planning Schemes in addition to some processing modifications to the preparation and adoption of a Local Planning Scheme.

The key changes are that:

- (a) The Scheme Text is guided by the Model Provisions (which are provided in Schedule 1 of the LPS Regulations) and Scheme are required to follow the Model Provisions unless the Minister for Planning otherwise approves.

The Model Provisions set out standard sets of zones and reserves, general development requirements and land use definitions. The local government's role is to "fill in the gaps" of the model provisions and applying zones, reserves and R-Code densities to their local government area, and to provide for any Special Controls that apply over multiple zones.

- (b) Many of the administrative requirements of the scheme are provided in the Deemed Provisions (within Schedule 2 of the LPS Regulations) which apply without modification by default to all local planning schemes in Western Australia.

Provisions such as those for Structure Plans, Local Planning Policies, Heritage Protection, Requirement for and the Approval Procedures for Development Applications, Bush Fire Risk Management and Administration provisions are covered in the Deemed Provisions.

The Regulations also provide for local governments to provide for Supplementary Provisions to the Deemed Provisions which essentially are an avenue for uses and works that may be exempt from approval that are in addition to those in the Deemed Provisions.

- (c) The Scheme Maps are guided by the form and manner approved by the WAPC with legends, titles and colour schemes provided in Schedule 3 of the LPS Regulations unless the Minister for Planning otherwise approves.

Comment

Arising from the above, the Scheme Text has been revised from the March 2014 version to fit into the Model Provisions and remove those provisions now covered in the Deemed Provisions and under the heading of Local Planning Scheme 12 has been prepared for adoption.

Local Planning Scheme 12

In the preparation of Scheme 12, the first question asked is why the jump from Scheme 3 to Scheme 12. Scheme 12 has been allocated as it appears to be the next Scheme number in the Department for Planning's system.

Officer research has revealed the following with respect to existing and previous planning schemes in operation in Mandurah:

No	Gazettal Date	Description	Revocation Date
1	26 June 1970	Scheme applicable to Central Mandurah	30 December 1983
1A	30 December 1983	First District Planning Scheme	21 July 1999
2	16 January 1981	East Mandurah Guided Development Scheme	TBC
3	21 July 1999	Current Operative Local Planning Scheme	
4	1 December 1995	Port Bouvard Waterway Management	4 September 2009
6	15 August 1995	Mandurah Marina Waterway Management	23 February 2007
10	26 June 1981	Goegrup Special Rural Development Scheme	21 July 1999
11	5 October 1994	Yalgorup Special Rural Development Scheme	21 July 1999

Research in ongoing with respect to Schemes 5, 7, 8 and 9 and the revocation of Scheme 2.

The March 2014 draft Scheme did not include a number to avoid the confusion from jumping from Scheme 3 to 12 however the Department for Planning and the LPS Regulations require a number to be allocated to a local planning scheme.

The key component of a new planning scheme is the application of zones and reserves on the Scheme Maps and applying land use permissibility's within each zone. A summary plan for the draft Scheme 12 zones and reserves is provided as **Attachment 2**.

Urban Development Areas

Scheme 12 will continue to rely on Structure Plans to guide and control development outcomes in new urban development areas with the Structure Plan requirements now provided in the Deemed Provisions.

However this focus is decreased from the provisions of Scheme 3 and as shown in **Attachment 3** as demonstrated below:

	Scheme 3	draft Scheme 12	Difference
Areas Requiring an ODP/LSP	2347ha	724ha	1623ha
Areas with approved ODP/LSP	2172ha	658ha	1514ha
Areas with no approved ODP/LSP	74ha	66ha	8ha

The key result is the transfer of developed land into the zones from the ODPs into the Scheme. Since the March 2014 version of Scheme Maps, approximately 174ha of land has been removed from the Development zone into the Residential (or equivalent) based on the level of development and lots created since this time.

Activity Centre Areas

As required by State Planning Policy 4.2 (Activity Centres in Perth and Peel), all Strategic Centre and District Centres require an Activity Centre Plan to be prepared and approved. As a result, it is proposed to give each of these centres the same zoning and provide for all development requirements within the Activity Centre Plan.

Within SPP4.2, 'Mandurah' is defined as a Strategic Centre, but no particular area is defined

Scheme 3 has multiple 'development zones' over the central Mandurah area covering the existing Precinct Plans and the Mandurah Ocean Marina for an area of approximately 300ha. Scheme 12 seeks to consolidate these zones into one under the heading of 'Strategic Centre' further and broaden the area covered by this zone to approximately 600ha by extending the area north to the existing Industrial Area, between the Transit Station and the Mandurah Forum, along Pinjarra Road and the area of Dudley Park between the City Centre and the Leigh/Dadger Street boundary.

This area will be subject to the preparation and approval of an Activity Centre Plan building on the work undertaken as part of the Precinct Plans. Whilst this may lead to improved development outcomes, it will seek to provide for a simplification of the various sub-precincts contained within the Precinct Plans and provide for a form-based development outcome as opposed to a standard scheme outcome of designating zones and land uses.

Work has commenced on a new Central Mandurah Activity Centre Plan which will consolidate the existing Mandurah Ocean Marina ODP and Precinct Plans for City Centre, Inner Mandurah and Mandurah Terrace and review the areas expanded within this zoning area.

This is important to note as the remaining provisions of the Scheme in regard to zones and land uses deal with the existing suburban areas of Mandurah.

The District Centres of Lakelands, Halls Head and Falcon will continue to be determined by the existing approved Precinct Plans in these areas however will require some review to ensure consistency with the Scheme, SPP4.2 and Structure Plan Framework requirements.

Land Use Zones

Remaining areas of Mandurah, being those primarily developed or subdivided will continue under a 'business as usual approach' through conventional land use zones. The following land use zones are proposed:

- Neighbourhood Centre
- Local Centre
- Service Commercial
- Light Industry
- Residential
- Large Lot Residential
- Rural Residential
- Rural Small Holdings and
- Rural Conservation

The land use and development requirements within these zones are set out in the Scheme text

Scheme 12 provides for these zones in a consistent form to existing zones or development in Mandurah and does not propose wholesale changes to the zoning or residential densities of existing developed areas. Changes in this regard require detailed investigation and where warranted, these will need to be dealt with as subsequent amendments to this Scheme.

Special Use Zones

Special Use Zones will apply to areas that do not fit into the land use zones, however rather than being based on a specific parcel of land as is generally used for Special Use zones, the Scheme will provide for the following zones:

- Private Education (for the existing private schools);

- Golf Course (for the existing private golf courses);
- Marina (for the Mandurah Quay and Eastport Marinas);
- Caravan Park;
- Tourist Development;
- Private Recreation (for the Mandurah Greyhounds); and
- Heritage Sites.

The Scheme provides for permitted uses and development requirements within these zones. Where large scale new development is proposed, the Scheme requires a Local Development Plan to be prepared and adopted by Council, however minor development or small extensions to existing uses and operations will not require approval.

Reserves

Reserves are categorised based on recommended standards in the Model Provisions as follows:

- Public Open Space;
- Environmental Conservation (as identified in the Biodiversity Strategy) and
- Public Purposes.

These reserves are in addition to those lands reserved under the Peel Region Scheme as follows:

- Regional Open Space
- Primary Regional Roads
- Other Regional Roads
- Railways
- Waterways
- Public Purposes

Importantly the use and management of reserves is primarily covered by the Management Order issued under the Land Administration Act 1997.

A local planning schemes role in reserving land was primarily to identify land required in the future for public purposes that was otherwise still privately owned for aspects such as regional roads, conservation areas and foreshores. All of the reserves identified in Scheme 12 are managed by public authorities or the City, therefore their designation in the Scheme is of little consequence.

However, for reserves identified as 'Environmental Conservation' as identified in the Biodiversity Strategy, a process to modify the Management Orders will be required and be subject to the approval of the Department of Lands. This project is scheduled for actioning during this calendar year.

Land Uses

Once the Zones are established, the significant input from a local government perspective with their local planning schemes is setting the land use permissibility's for each zone by land use, with land use definitions set out in the Model Provisions.

Scheme 12 seeks to provide for a land use system around grouping uses into ten different categories, with each category being assigned as permitted (P), incidental (I), discretionary (D), discretionary that must be advertised (A) or not permitted (X) for each of the land use zones.

The land use categories are as follows:

1. Residential Uses
2. Commercial Uses
3. Retail Uses

4. Service Uses
5. Industrial Uses
6. Tourism Uses
7. Dining and Entertainment Uses
8. Licensed Premises
9. Community Uses and
10. Rural Activities

In addition, there are a number of uses that do not suitably fit into these categories, and are therefore listed separately in a conventional scheme format.

The Zoning Table is provided as **Attachment 4** for reference.

Within the Urban Development, Strategic Centre and District Centre zones, the appropriate Structure Plan or Activity Centre Plan will need to determine the permissibility's for each zone by land use.

Arising from this approach the following is noted:

- 'Licensed Premises' which includes the uses of Hotel, Nightclub, Tavern, Liquor Store (Large – having a floor area greater than 300 square metres), Restricted Premises and Tavern are listed as 'X' uses (not permitted) in each of the zones listed in the Scheme Text.

This means that their consideration is limited to the areas to be covered by an Activity Centre Plan being the Strategic Centre (Central Mandurah) or District Centre (Lakelands, Halls Head and Falcon). Outside these areas they will not be permitted. Uses currently operating would continue under 'Non-Conforming Uses' and should they cease to operate for a period of 6 months could no longer continue.

'Small Bars' have been included within the 'Dining and Entertainment Uses' and are permitted within Neighbourhood and Local Centre zones (in addition to areas covered by Activity Centre Plans).

A Liquor Store (Small) which is less than 300 square metres is within the Retail Uses category which is permitted in the Neighbourhood and Local Centre zones.

- Fast Food Outlets have been specifically listed as being permitted within Neighbourhood Centre zones (Meadow Springs, Erskine and Florida/Dawesville (in addition to areas covered by Activity Centre Plans). This means they are not permitted in any other zone which includes the Local Centre zone.

In the Model Provisions, a 'Fast Food Outlet' is defined as:

means premises including premises with a facility for drive-through service, sale and serving of food to customers in a form ready to be eaten:

- (a) without further preparation; and*
- (b) primarily off the premises;*

Draft Scheme 12 seeks to specify that a Fast Food Outlet is a premises that **has** drive-through service. In turn, the definition of Restaurant includes provisions for food to be consumed on or off the premises to provide for traditional take away outlets in Local Centre zones that do not have a drive through service. As this is a variation to the Model Provisions, it will be subject to the Minister for Planning's approval.

- The other key difference between the Neighbourhood Centre and Local Centre zones is that a Local Centre zone does not permit Service Stations.

The primarily reason for the above provisions is to ensure that small scale local shops within residential areas are primarily walkable and deliver small scale services to their communities as opposed to larger scale shopping centres adjacent to major roads, that are generally segregated to adjoining residential development, as car-based destinations.

Major Changes from Scheme 3

Scheme 12 does not proposes to make significant changes to the zoning or the residential density code to general areas as is generally provided for in new planning schemes. However due to the stage of development in Mandurah, a number of modifications from the current provisions of Scheme 3 not already identified above include the following:

- **Canal Zone**

The existing Canal Zone is proposed to be removed from the Scheme 12 and replaced with the residential zone (or local reserve). With the exception of the early stage of Port Mandurah and Waterside, these canals developments are covered by an ODP together with scheme provisions for land uses and setbacks. This proposal seeks to streamline the provision of the Scheme 12 by reducing the number of zones but retain the development requirements to deal with setbacks to the canal walls. A local planning policy that provides for illustrations and interpretation may also be necessary to compliment these provisions (as is current practice).

- **Rural / Rural Residential zone**

A majority of Rural and Rural Residential zoned land within the southern portion of the Scheme boundary was proposed to be included in the Southern Rural Structure Plan zone however due to the LPS Regulations not providing for a Structure Plan to be prepared over Rural areas, this approach was refused by the WAPC and Minister for Planning through Amendment 121 to Scheme 3.

Amendment 136 to Scheme 3 was adopted by Council in September 2016 and seeks to include the provisions from the Southern Mandurah Rural Structure Plan into Scheme 3 by creating the following zones and lot size requirements:

- Rural Residential (Minimum 5 hectares)
- Rural Smallholdings (Minimum 10 hectares)
- Rural Conservation (Minimum 40 hectares)

The provisions of Amendment 136 have been inserted into Scheme 12 Text and Maps unchanged. Modifications may arise once consideration of Amendment 136 has progressed to advertising which it is to be undertaken in the first few months of 2017.

- **Tree Preservation & Significant Tree Register**

Modifications were made to Scheme 3 to revise the tree preservation requirements in 2007.

Whilst the provisions were sound, the generic nature of the requirements has resulted in more approvals being required. Scheme 12 proposes that the tree preservation requirements (and therefore need to seek approval to remove trees) will apply to the following:

- Land greater than 4000 square metres in the residential zone;
- All lots within the Large Lot Residential and Rural zones;
- Land within 100m of an EPP Wetland or the Peel Harvey Estuary
- Where identified on a Structure Plan; or
- Where a tree is registered on the Significant Tree Register

New Provisions

Scheme 12 seeks to introduce additional provisions not currently included in Scheme 3 such as the following:

- The March 2014 version of the Scheme sought to include a definition of 'Affordable Housing' and a provision stating that the "*demonstrated ability of a development to make a contribution to Affordable Housing*" is a matter to be considered in a planning approval. These provisions were however not included in the Deemed Provisions and additional matters cannot be included in the Scheme, however 'social impact' is included a matter to be considered.

Key recommendations arising from the Affordable Housing Strategy will need to be included in the Mandurah Strategic Centre Activity Centre Plan review work that is combined with the existing Precinct Plans and expanding the areas covered;

- Provisions linking the identification of Flood Hazard Areas by the Department of Water to ensure the provisions of the relevant Australian Standard and Building Code of Australia can apply to the construction of new dwellings. At the present time, the Department of Water makes recommendations and the trigger for the Building Code provisions requires a formal identification of these areas.
- The Significant Tree Register being formalised as a register under the Scheme. At the present time, this register is covered by a local planning policy.
- Expanding on the forms of development that do not require development approval to include the following:
 - The small scale development on private schools, golf courses and marinas subject to the development being consistent with boundary setbacks as set out in the R-Codes;
 - Small scale additions to commercial and industrial buildings where they are not visible from a public street;
 - Telecommunications Structures that are consistent with the relevant State Planning Policy within District and Neighbourhood Centres, Service Commercial and Light Industry zones as per Amendment 125 to Scheme 3.

Additional exemptions from the need for development approval can also be facilitated through local planning policies which will cover matters such as signage and waterways structures which add to productivity outcomes and further seek to reduce red tape. This policy work will continue through 2017 as with the Activity Centre Plans to coincide with the final approval of Scheme 12.

Consultation

A thorough community consultation, engagement and advertising period will be required arising from the consent to advertise the Scheme. The Regulations specify a submission period to be no less than 90 days. Ideally, the Scheme and Planning Strategy will be advertised concurrently.

The consultation and advertising will need to involve all relevant state government agencies, key landowners, relevant representative bodies and the broader Mandurah community. The scope of the communication strategy necessary will need to be determined dependant on once the Scheme is nearing adoption by the WAPC and Minister for Planning, granting consent to advertise the Scheme however, consistent with Council's adoption of the March 2014 draft Scheme will consist of the following:

- Industry bodies be advised;
- Resident associations be notified;
- Use of social media;

- Notification in local newspapers and press releases;
- Community information sessions be held;
- Officers be available to meet with community/ industry groups, and
- Officers be available to meet with interested parties on a one on one basis.

Statutory Environment

Regulation 21 of the LPS Regulations set out the actions required of a local government in progressing with a draft local planning scheme, after which the WAPC has 90 days to determine if any modifications are required prior to the Scheme being advertised.

However, Section 257A of the Planning and Development Act set out that the Model Provision in Schedule 1 of the LPS Regulations are to apply unless the Minister for Planning otherwise approves.

Within draft Scheme 12, a number of minor, yet important variations to the Model Provisions are proposed as follows:

- (a) The inclusion of Strategic Centre, District Centre and Local Centre zones as Department for Planning's June 2015 Working Paper titled "Post Implementation Review of the P&D (LPS) Regulations 2015". The Model Provisions only include the 'Centre' zone and 'Commercial' zone. As a result the 'Commercial' zone has been renamed Neighbourhood Centre which reflects State Planning Policy 4.2;
- (b) Other minor wording modifications to provisions also covered in the June 2015 Working Paper where relevant to Scheme 12;
- (c) Modified definitions of fast food outlet and restaurant as outlined above;
- (d) Definitions in Reserves section are not included as no further reserves identified requiring definition to be utilised;
- (e) Land uses have been grouped together (however the Model Scheme Text does not require land uses to be listed individually);
- (f) Clause 4.4.1(b) deals with development requirements in the Scheme applying should there be an inconsistent provision to an Activity Centre Plan, Local Development or Local Planning Policy. This clause differs to Clause 32(2) and Clause 33 of the Model Provisions as these clauses are not easily understood.
- (g) Table 7 Environmental Conditions (Table 9 in the Model Provision) by having different headings to show a symbol and description of land as opposed to a Scheme Amendment No and Gazettal Date.
- (h) A number of deviations to the colours in the Scheme Maps to the Model Provisions and Schedule 3 of the LPS Regulations to provide greater clarity in the colour scheme used and clash of borders suggested in the LPS Regulations Legend. In addition, R-Code densities apply by default by zone as follows except where shown on the Scheme Maps. The LPS Regulations require all street blocks areas that can have residential development to have an R-Code density shown, resulting in a confusing Scheme Map.

Neighbourhood Centre Zone	R40
Local Centre	R40
Residential	R20
Large Lot Residential	R5

This may require an additional time above the 90 days provided to the WAPC to advise if modification to the Scheme are required prior to advertising.

The EPA is also required to give their consent for the Scheme to progress to the next stages under the Environmental Protection Act however the EPA has determined the March 2014 to be an 'Assessed Scheme' for the purpose of their act.

Following advertising and determination of submission, Scheme 12 will provide the statutory framework under which planning decisions will be made. This timing could be at least two years from the initial adoption date.

Policy Implications

Arising from the preparation of the planning scheme and strategy, there will be a need to review and refine existing structure plans and local planning policies, which may result in some additional policies and plans, but others will become no longer relevant.

Economic Implications

The Scheme aims to streamline the planning and approvals process which is often quoted as a limiting factor in the delivery of land supply and business productivity.

Strategic Implications

The following strategy from the *City of Mandurah Strategic Community Plan 2013 – 2033* is relevant to this report:

Organisational Excellence

- Deliver excellent governance and financial management.

Conclusion

The *Planning and Development Act 2005* outlines procedures required of local governments in regard to their existing local planning scheme, with actions required in the fifth year of the operation of the scheme. These procedures are either via a consolidation of the existing scheme or the resolution of Council to prepare a new Scheme.

Pursuant to the statutory requirements of the *Planning and Development Act 2005* and the *Planning and Development (Local Planning Scheme) Regulations 2015*, the draft *City of Mandurah Local Planning Scheme 12* has been prepared and is presented to Council to adopt for advertising.

Consistent with the statutory process requirements of the Act and Regulations it is recommended that Council adopt the draft Scheme 12 and the forwarding to the Western Australian Planning Commission and Minister for Planning for consent to advertise.

NOTE:

- Refer **Attachment 1** **District Structure Plan**
Attachment 2 **Local Planning Scheme 12 – Summary Zones and Reserves**
Attachment 3 **Structure Plan Areas (Scheme 3 and Scheme 12 Comparison)**
Attachment 4 **Local Planning Scheme 12 – Zoning Table**
- *Copies of the draft Local Planning Scheme 12 (Scheme Text and Scheme Maps dated January 2017) have been made available to Elected Members in electronic and hard copy format.*
- *Subject to Committee's consent, officers will make a short presentation on this item at the meeting.*

RECOMMENDATION

That:

1. In accordance with Section 72 of the *Planning and Development Act 2005* and Regulation 21(1) of the *Planning and Development (Local Planning Scheme) Regulations 2015*, Council adopts the draft *City of Mandurah Local Planning Scheme No 12 Scheme* (Scheme Text and Scheme Maps dated January 2017) and forward to the Western Australian Planning Commission seeking consent to the advertise the Scheme.
2. In accordance with Section 81 of the *Planning and Development Act 2005*, the *City of Mandurah Local Planning Scheme No 12* be forwarded to the Environmental Protection Authority for its assessment under the provisions of the *Environmental Protection Act 1986*.
3. Council notes and acknowledges that modifications and updates to the Mandurah Planning Strategy dated October 2013 are required to ensure consistency with the provisions and recommendations of *Local Planning Scheme No 12* and updated to remove the need for and reference to the individual planning strategy as adopted by Council for forwarding of a Local Planning Strategy to the Western Australian Planning Commission under Regulation 12(1) of the *Planning and Development (Local Planning Scheme) Regulations 2015*:
 - Activity Centres Planning Strategy (December 2013)
 - Urban Form and Housing Strategy (June 2014)
 - Biodiversity Strategy (Land Use Planning Components only) (November 2013)
 - Tourism Planning Strategy (December 2009)
 - Southern Mandurah Rural Structure Plan (March 2015)

District Structure Plan (Urban)

Urban Form

- | | |
|---|--|
| City Centre | Suburban (Existing) |
| Mixed Use Precinct | Suburban (Large Lot) |
| Urban Neighbourhood | Rural Living |
| Infill Residential | Mixed Business |
| Suburban (Future) | |

Transport Network

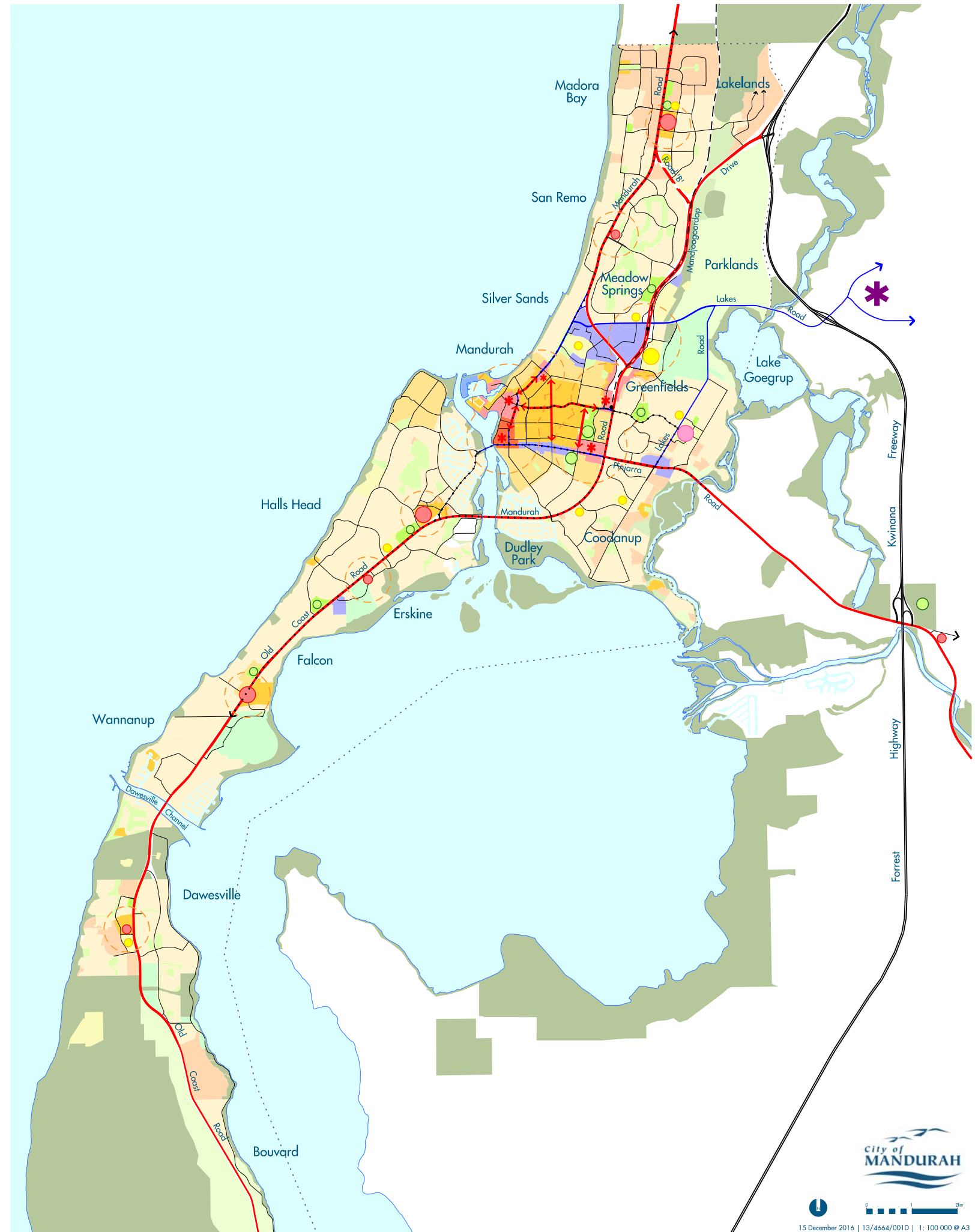
- | |
|--|
| Freeway |
| Major Road |
| District Integrator Road |
| Connector Roads |
| Perth to Mandurah Rail |
| Priority Bus Networks |

Activity Centres

- | |
|---|
| * Strategic Centre Precinct |
| ↔ Mixed Use Corridor |
| ● District Centre |
| ● Neighbourhood Centre |
| ✱ Peel Business Park |

Social Infrastructure

- | |
|---|
| ● Tertiary Education |
| ● Regional Hospital |
| ● Regional Recreation |
| ● High Schools |
| ● District Recreation |
| ○ Walkable Catchments to Centres and Transit |
| City of Mandurah Boundary |



Scheme Map (Summary - North)

Peel Region Scheme Reserved Land

- Regional Open Space
- Primary Regional Roads
- Other Regional Roads
- Waterways
- Railways
- Public Purposes

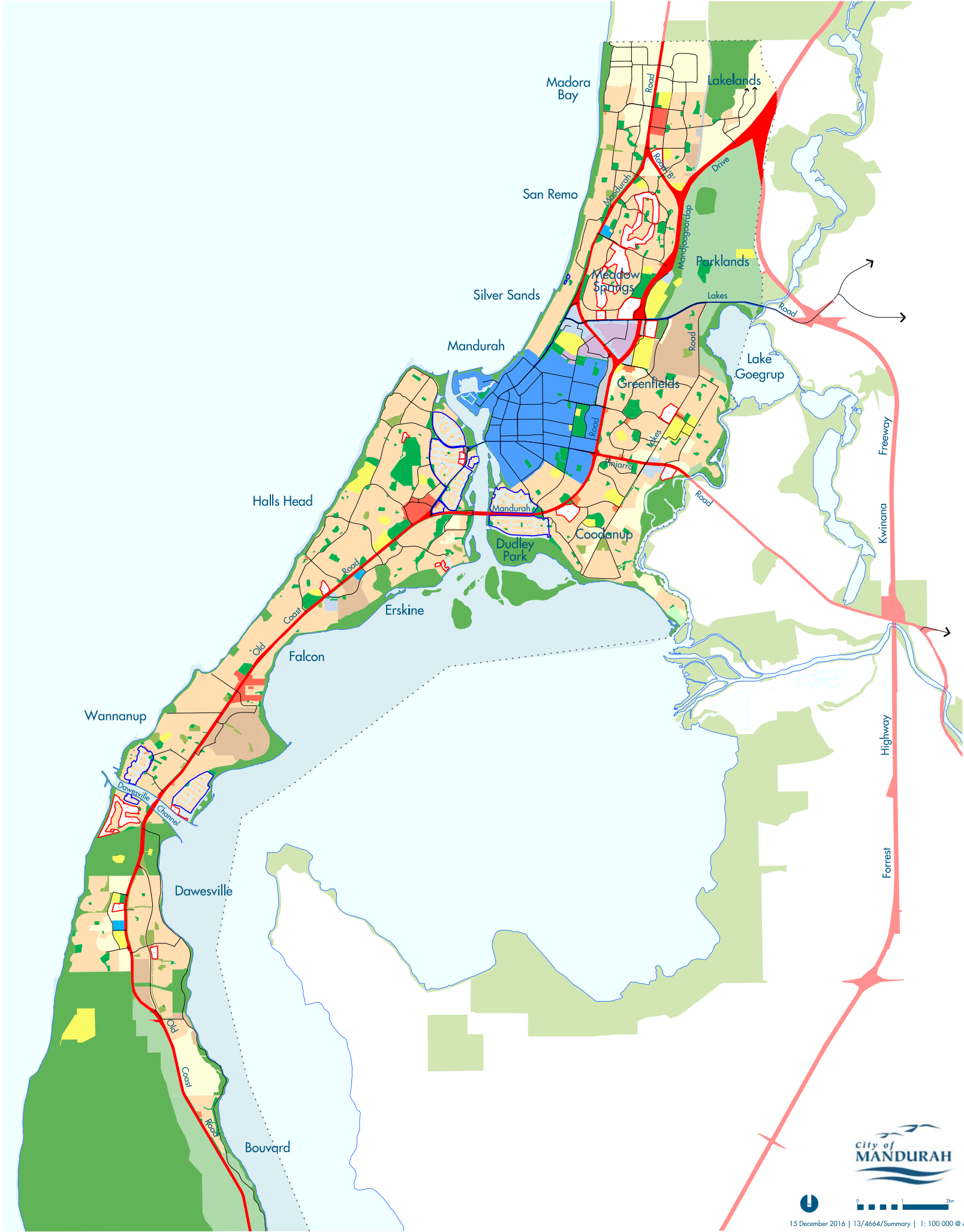
Local Reserved Land

- Public Open Space
- Environmental Conservation
- Public Purposes

Zones

- Strategic Centre
- District Centre
- Neighbourhood Centre
- Local Centre
- Service Commercial
- Light Industry
- Residential
- Large Lot Residential
- Urban Development
- Rural Residential
- Rural Smallholdings
- Rural Conservation
- Special Use
- Additional Site and Development Requirements

City of Mandurah Boundary



Scheme Map (Summary - South)

Peel Region Scheme Reserved Land

- Regional Open Space
- Primary Regional Roads
- Other Regional Roads
- Waterways
- Railways
- Public Purposes

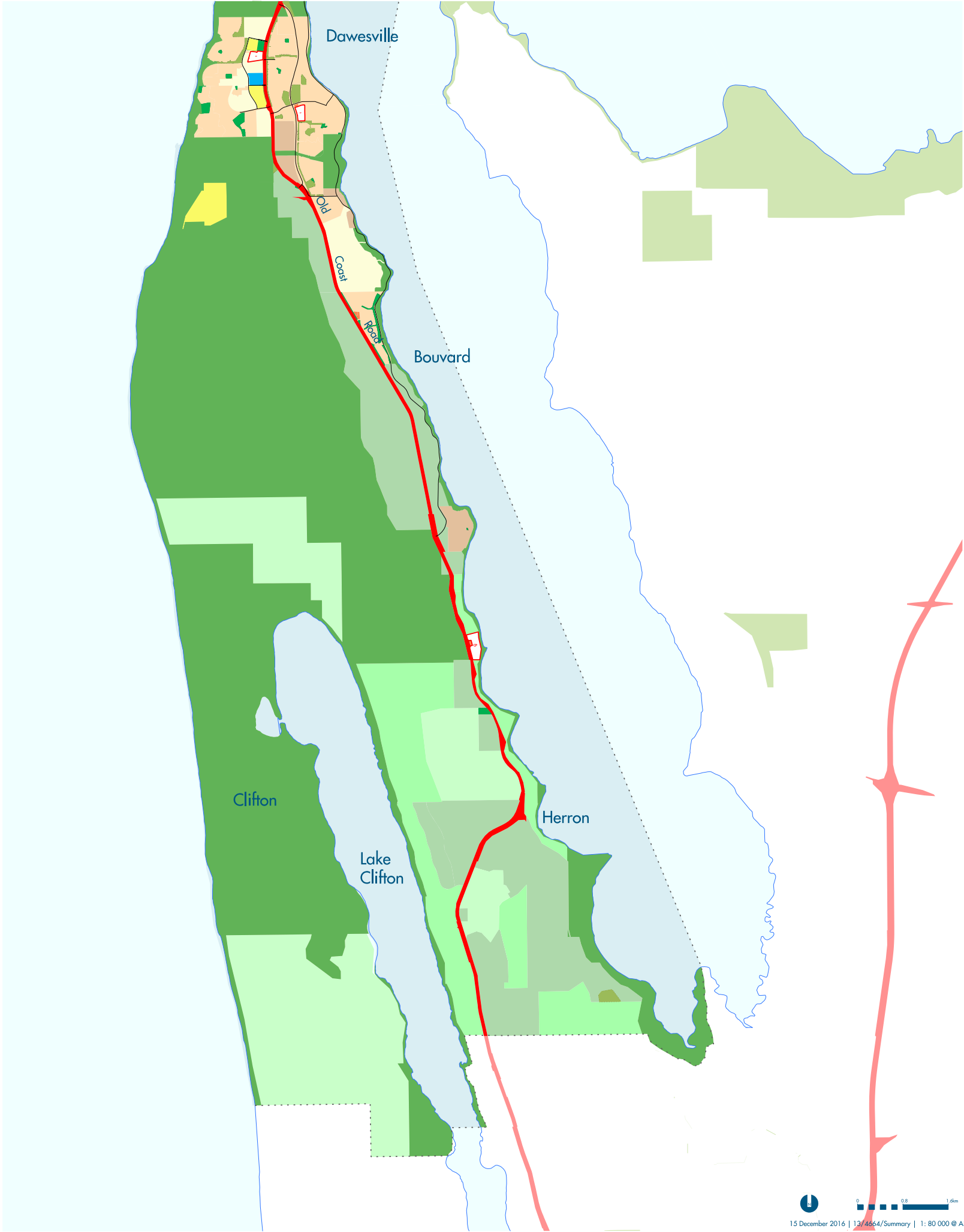
Local Reserved Land

- Public Open Space
- Environmental Conservation
- Public Purposes

Zones

- Strategic Centre
- District Centre
- Neighbourhood Centre
- Local Centre
- Service Commercial
- Light Industry
- Residential
- Large Lot Residential
- Urban Development
- Rural Residential
- Rural Smallholdings
- Rural Conservation
- Special Use
- Additional Site and Development Requirements

City of Mandurah Boundary



Structure Plan Areas

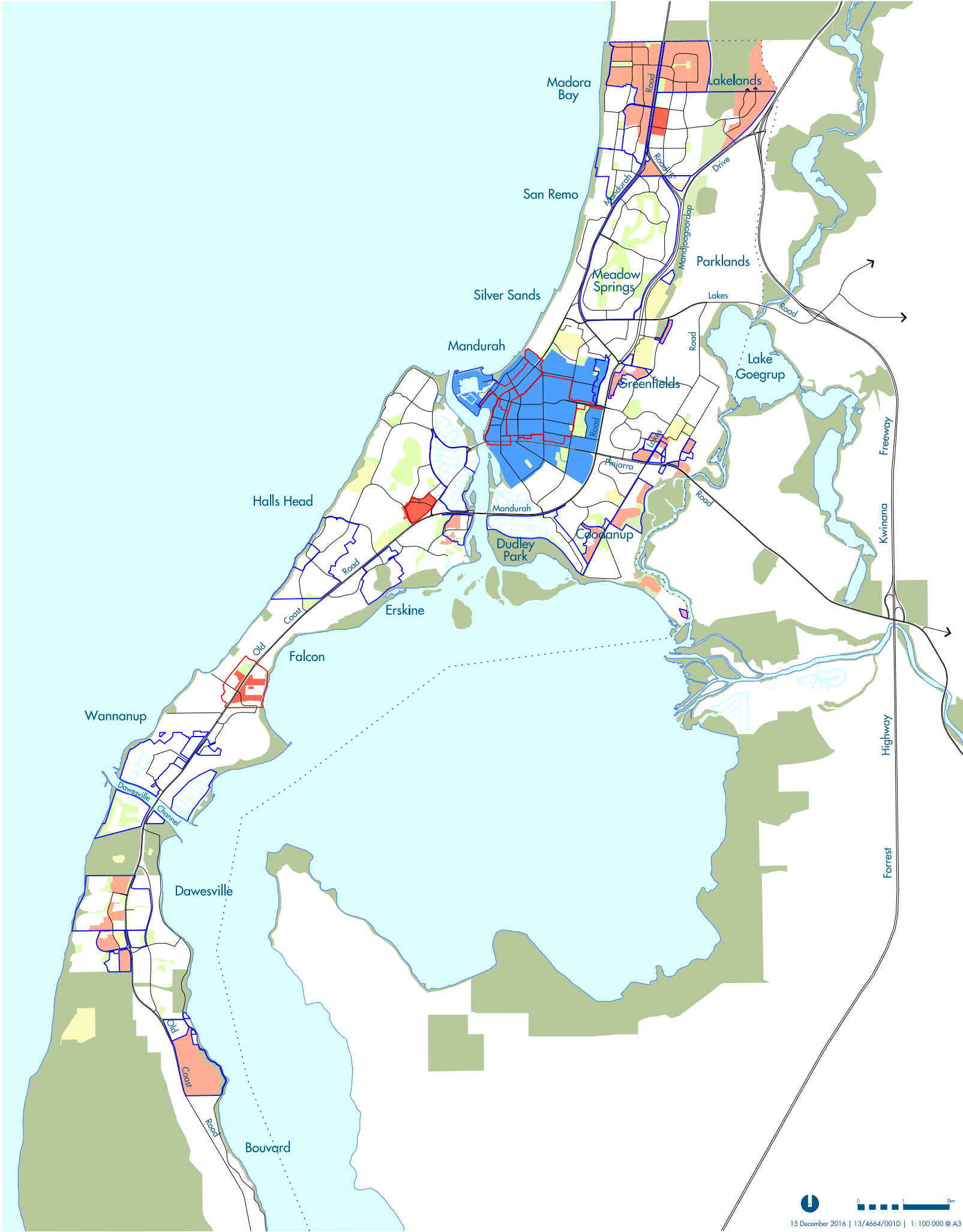
Existing Approved Structure Plan

- Local Structure Plan / Outline Development Plan
- Precinct Plan

Local Planning Scheme 12 Structure Plan Areas

- Development Zone Requires a Local Structure Plan
- Strategic Centre Zone Requires an Activity Centre Plan
- District Centre Zone Requires an Activity Centre Plan

City of Mandurah Boundary



3.2 Zoning Table

3.2.1 The zoning table for this Scheme is as follows:

Table 3 Zoning Table

Zones	Neighbourhood Centre	Local Centre	Service Commercial	Light Industry	Residential	Large Lot Residential	Rural Residential	Rural Smallholdings	Rural Conservation
Grouped Land Uses									
Residential Uses Aged Care Aged Persons Dwelling ¹ Ancillary Dwelling ¹ Bed and Breakfast Dwelling ¹ (Single, Group, Multiple)	D ²	D	X	X	P	P	P	P	P
Commercial Uses Betting Agency Car Park Consulting Rooms	P	P	D	D	A	X	X	X	X

Note: ¹ Defined in Appendix 1 of the R-Codes; All other land use definitions provided in Clause 6.2.

² P – Permitted; I – Incidental; D – Discretionary; A – Discretionary Requiring Advertising; X – Not Permitted

Zones		Neighbourhood Centre	Local Centre	Service Commercial	Light Industry	Residential	Large Lot Residential	Rural Residential	Rural Smallholdings	Rural Conservation
Retail Uses		P	P	I	I	X	X	X	X	X
Convenience Store	Market Shop									
Liquor Store (Small)										
Service Uses		X	X	P	P	X	X	X	X	X
Bulky Goods Showroom	Motor Vehicle Sales									
Funeral Parlour	Motor Vehicle Wash									
Lunch Bar	Warehouse									
Industrial Uses		X	X	D	P	X	X	X	X	X
Caretakers Dwelling	Trade Display									
Industry – General	Trade Supplies									
Industry – Light	Transport Depot									
Motor Vehicle Repair										
Tourism Uses		P	D	X	X	A	X	X	X	X
Caravan Park/Park Home Park	Serviced Apartment									
Holiday Accommodation	Tourism Development									
Motel										
Dining & Entertainment		P	P	D	D	X	X	X	X	X
Amusement Parlour	Restaurant									
Club Premises	Recreation Private									
Reception Centre	Small Bar									

Zones		Neighbourhood Centre	Local Centre	Service Commercial	Light Industry	Residential	Large Lot Residential	Rural Residential	Rural Smallholdings	Rural Conservation
Licensed Premises		X	X	X	X	X	X	X	X	X
Hotel	Nightclub									
Liquor Store (Large)	Restricted Premises									
	Tavern									
Community Uses		P	P	D	D	D	X	D	D	D
Child Care Premises	Education Establishment									
Community Purpose	Place of Worship									
Rural Activities		X	X	X	X	X	X	A	A	A
Animal Establishment	Agriculture - Intensive									
Eco-Tourist Facility	Rural Pursuit									
Hobby Farm	Winery									
Rural Home Business										
Specific Land Uses										
Fast Food Outlet		P	X	X	X	X	X	X	X	X
Garden Centre		X	X	P	P	X	X	D	D	X
Hospital		P	D	D	D	X	X	X	X	X
Commercial Vehicle Parking		D	D	P	P	D	D	D	D	D
Service Station		P	X	D	D	X	X	X	X	X
Telecommunications Infrastructure		P	D	P	P	D	D	D	D	X
Veterinary Centre		D	X	P	P	X	X	D	D	D

2. SUBJECT:	Proposed Tavern at Strata Lot 5 (No 4) Port Quays, Wannanup – Section 31 Reconsideration of Condition of Approval
CONTACT OFFICER/S:	Ben Dreckow
AUTHOR:	Thomas Foulds
FILE NO:	DA8432 / DR 243 of 2016

Summary

In August 2016, Council resolved to grant development approval for a tavern at Strata Lot 5 (No 4) Port Quays, Wannanup subject to conditions. Subsequent to Council's determination, the applicant pursued their right to appeal the decision with the State Administrative Tribunal (SAT) (DR 243/2016).

The applicant sought a review of conditions relating to:

- (a) The prohibition of beer fermentation on site; and
- (b) The prohibition of takeaway alcohol sales

SAT Mediation was held on 29 September 2016, however a mediated outcome could not be reached. The matter was progressed to a Hearing on 6 December 2016, which resulted in an adjournment until 30 January 2017 to allow the applicant to gather further information.

Following the Hearing, the applicant decided to withdraw their appeal of condition 1.2 which related to the prohibiting of the fermentation of beer on site.

The matter to be determined by the SAT now relates solely to condition 1.4.19, which states:

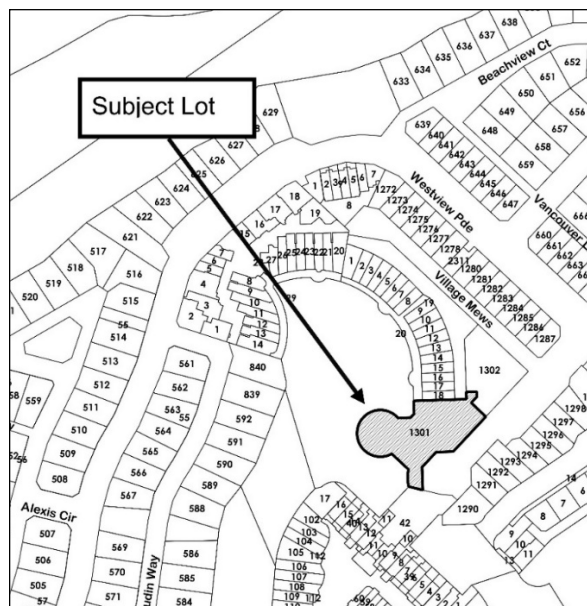
"No packaged beer or wine sales are permitted."

Under Section 31 of the State Administration Tribunal Act 2005, the SAT has invited Council to reconsider this condition.

Disclosure of Interest

Nil

Location



Property Details:

Applicant:	Hospitality Total Services
Owner:	Dawesville Development (Strata Lot 5, Lot 1301) Wannanup Development Nominees (Lot 1302)
Scheme No 3 Zoning:	Canal
Peel Region Scheme Zoning:	Urban
Lot Size:	2644 square metres
Topography:	Flat
Land Use:	Restaurant

Previous Relevant Documentation

- G.22/8/16 9 August 2016 Council granted development approval for a tavern subject to conditions.

Background

Following Council's determination in August 2016, the applicant lodged an application for review with the State Administrative Tribunal (SAT).

On 29 September 2016 a Mediation session was held, however a mediated outcome could not be reached resulting in SAT Orders being made to progress the matter to a Hearing.

On 6 December 2016, a Hearing was held at the SAT and involved the presentation of evidence and witness statements. The SAT Orders made at the end of the day required the applicant to provide further details on the venting system for the fermentation process and location of condenser; and that the Hearing was adjourned until 30 January 2017.

Following the Hearing, the applicant withdrew the appeal against the condition relating to on site fermentation of beer, which was formally confirmed by the SAT on 13 December 2016.

The matter to be determined by the SAT now relates solely to condition 1.4.19 imposed on the development approval issued on 12 August 2016. Specifically the condition states:

"No packaged beer or wine sales are permitted."

The SAT has invited Council under section 31(1) of the State Administrative Tribunal Act to reconsider condition 1.4.19 rather than progress the application for review to a further Hearing.

Comment

Council's decision to grant development approval for a Tavern use accommodates the applicant's desire to submit a separate application for a Tavern Liquor Licence through the Department of Racing, Gaming and Liquor.

The Scheme defines a Tavern as:

"Means any land or buildings the subject of a Tavern Licence granted under the provisions of the Liquor Licensing Act 1988."

A Tavern Licence authorises the sale and supply of packaged liquor to patrons for consumption off the licenced premises.

The applicant wishes to offer the sale of takeaway alcohol in the following forms:

- Beer sales in Growlers, 10am to 9.00pm seven days a week; and
- Wine sales during operating hours limited to three bottles per customer being:
 - (a) Bottled wine from the Lo Zuccherio Restaurant menu
 - (b) Wine provided by suppliers at Wine Appreciation Dinners.

Liquor Store Comparison

An existing liquor store (operating as Cellabrations Port Bouvard) operates from Strata Lot 3 (No 4) Port Quays under a Liquor Store Licence. The table below provides a comparison of the two tenancies:

	Cellabrations Port Bouvard	Lo Zuccherio
Location	Strata Lot 3, No 4 Port Quays	Strata Lot 5, No 4 Port Quays
Licence Type	Liquor Store Licence	Tavern Licence (subject to RGL approval)
Opening Hours	Sunday to Thursday: 8.00am – 8.00pm Friday and Saturday: 8:00am – 10.00pm (source: Cellarbrations website)	Growler sales: 10:00am – 9:00pm Wine sales: 8:00am – 10:00pm Sunday to Thursday, and 8:00am - midnight Friday and Saturday.
Products Available	Full range of products, including: Bottled wine and spirits; Ready-to-drink beverages; and Cartons and 'blocks' of beer.	Wine from the menu; Wine provided by suppliers at Wine Appreciation Dinners; and, Growlers of beer stored on site.
Sale Conditions	Available to members of the public.	Wine available to those dining on site, and limited to 3 bottles; and Growlers of beer available to the public.

Officers consider that with the recommended restrictions in place, the proprietor cannot operate a full scale Liquor Store and as a result is unlikely to contribute significantly to anti-social behaviour and/or littering in the locality.

Given the limited range of products to be made available in comparison to the nearby Cellarbrations liquor store, the premises is not considered to result in a significant increase in takeaway alcohol sales within the locality.

Due to the initial cost of the Growler unit, and selection of craft beer or wine from the menu, it is unlikely that the concept will appeal to every patron. Conversely, should every patron purchase takeaway alcohol, it is not considered to be significant issue for the locality given the availability of products at the Cellarbrations liquor store and existing lack of restrictions on their purchase.

Consultation

Officers have communicated with submitter's via email, identifying a summary of SAT proceedings and notifying of the withdrawn appeal with respect to the fermentation of beer on site.

Statutory Environment

A SAT Directions Hearing is scheduled for 27 January 2017, subject to Council's determination the applicant may withdraw their appeal.

Policy Implications

Nil

Economic Implications

Nil

Strategic Implications

The following strategies from the *City of Mandurah Strategic Community Plan 2013 – 2033* are relevant to this report:

Social:

- Provide a range of social, retail, recreational and entertainment experiences for the City's residents and visitors.

Identity:

- Encourage active community participation and engagement.

Conclusion

Following the applicant's decision to withdraw their appeal of condition 1.2 (i.e. prohibiting the fermentation of beer on site) under Section 31(1) of the State Administration Tribunal Act 2005, the SAT has invited Council to reconsider condition 1.4.19, which states:

"No packaged beer or wine sales are permitted."

Given the limited range of products to be made available and recommended restrictions placed on their sale in comparison to the nearby Cellarbrations liquor store, the premises is not considered to result in a significant increase in takeaway alcohol sales within the locality.

Council's decision to grant development approval for a Tavern use accommodates the applicant's desire to submit a separate application for a Tavern Liquor Licence through the Department of Racing, Gaming and Liquor. A Tavern Licence authorises the sale and supply of packaged liquor to patrons for consumption off the licenced premises.

It is recommended that Council support the rewording of condition 1.4.19 to permit the sale of takeaway alcohol as per the Officer recommendation.

RECOMMENDATION

That in relation to the development approval dated 12 August 2016 (ref: DA8432) for a Tavern at Strata Lot 5 on Strata Plan 48123 (located at No 4, Lot 1301 Port Quays, Wannanup), Council determines that under Section 31(1) of the State Administration Tribunal Act 2005, that that Condition 1.4.19 be reworded as follows:

"1.4.19 Packaged alcohol may be purchased for consumption off the premises in the following forms only:

- *Beer sales in Growlers between the hours of 10.00am and 9.00pm, seven days a week;*
- *Wine sales during operating hours and limited to a maximum of three bottles per customer, subject to the customer consuming a substantial meal. Wine available for sale must be listed on the menu or shall be provided by suppliers during Wine Appreciation Dinners.*

Advice Note:

A Growler is a reusable container sold to sell takeaway craft beer, generally with a capacity of 1 to 2 litres.”