

State Administrative Tribunal

PLANNING AND DEVELOPMENT ACT 2005

Matter No. DR 189 of 2020

BETWEEN:

SATTERLEY PROPERTY GROUP PTY LTD

Applicant

AND

WESTERN AUSTRALIAN PLANNING COMMISSION

Respondent

AND

SAVE PERTH HILLS INC

Intervenor

CLOSING SUBMISSIONS BY SHIRE OF MUNDARING

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Filed on behalf of: The Respondent

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In these submissions:

Site - means the land the subject of the Structure Plan

Structure Plan – means the amended structure plan the subject of these proceedings filed on 14 June 2024 (Ex.1)

FILED

SPP3.7 - means State Planning Policy 3.7 – Bushfire (November 2024)

Guidelines – means Planning for Bushfire Guidelines (November 2024)

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**STATE ADMINISTRATIVE
TRIBUNAL**

Introduction

1. Bushfire is ever-present hazard in Western Australia. The Perth Hills are particularly vulnerable. In the last 20 years there have been major fires in Pickering Brook (2005), Parkerville/Stoneville (2008), Perth Hills (various locations including Red Hill - 2011), Parkerville/Stoneville/Mount Helena (2014), Sawyers Valley (2018), Wooroloo (2021) and Parkerville (2023).
2. SPP3.7 observes that in many parts of Western Australia bushfire threat is increasing due to hotter, drier weather conditions associated with long-term climatic changes and development expansion where urban, rural and natural areas interface.¹ This perfectly describes the context in which the Site will sit if the Structure Plan proceeds.
3. The policy response to the lived experience in Western Australia of the increasing threat of bushfire has been to amend SPP3.7 and the Guidelines. A major aspect of those amendments is the change to Element 1 – Location and the concept of a Broader Landscape Type. Clearly the introduction of the policy presumption that Broader Landscape Type B presents an unacceptable risk of a landscape scale bushfire is intended to reinforce the intent of SPP3.7 to avoid bushfire risk in the first instance, and to place paramount importance on the preservation of life and the management of bushfire impact.
4. It is notable that, like the policy framework, the science and understanding of bushfire is evolving. It is apparent from the evidence of Mr Power and Mr Parker that the models used to predict bushfire behaviour are in a state of flux, and that they struggle to accurately represent important real-life aspects of bushfire behaviour.
5. There is a tension between on the one hand the evolving understanding of bushfire, the provisions of SPP3.7 and the Guidelines and, on the other, the strategic planning for the Site which has been earmarked for some form of urban development since the 1990s. The Shire accepts that it is not the SATs role in this case to determine whether the historic planning decisions with respect to the Site were appropriate, although it is possible to speculate that the various decisions that culminated in the current zoning would not have been made today.²

¹ SPP3.7 section 3, first paragraph.

² A strategic review of Urban zoned land in the Perth Hills is currently underway as a consequence of separate requests from the Shire and the Intervenor to rezone the Site from Urban/Rural to Rural under the MRS - Respondent's SIFC paragraphs 68-69.

6. Notwithstanding the zoning, the location of the Site in an area vulnerable to landscape scale bushfire is critical to the issues raised by the application for review.
7. The Shire says that the correct and preferable decision is to refuse the Structure Plan pursuant to clause 22(1)(c) of the deemed provisions, because the Applicant has not demonstrated that the bushfire risk will be acceptable if the Structure Plan is implemented.
8. The bushfire risk is not acceptable because the mitigation measures proposed by the Applicant do not materially reduce the elevated risk to human life and property associated with adding approximately 2,800 people into an area surrounded on all sides by land subject to extreme bushfire hazard levels, and which is vulnerable to landscape-scale bushfires.

The Intervenor's evidence

9. The evidence of [redacted] of their personal experiences with bushfire speaks eloquently to the unexpected difficulties which arise in a bushfire, the chaotic and confusing nature of the ordeal and, ultimately, the trauma associated with living through a bushfire event. This is important evidence.
10. Dr Strahan's evidence with respect to human behaviour in bushfires is, unlike almost any other aspect of the expert evidence, uncontested. Indeed, Dr Strahan's evidence about the unpredictable nature of human behaviour during a bushfire and the difficulties that can cause for evacuation was strongly reinforced by the evidence of Mr McMahon, Mr Parker and Mr Kuchel.
11. The evidence given by the Intervenor's witnesses provides the lens through which the evidence of the expert witnesses should be assessed. At its core, this review is about protecting human lives and property. The evidence of the Intervenor's lay witnesses and Dr Strahan speak to why it is appropriate for the Tribunal to adopt a precautionary approach when assessing the merits of the Structure Plan. In a matter in which the protection of human life is paramount, the *correct and preferable* decision is to be reached by adopting a precautionary approach.

The evidence of Mr Broadhurst

12. The effect of Mr Broadhurst's evidence is that the construction of Eastlink will not commence until 2036, or 2041.
13. The consequence is that only Stage 1 of the Structure Plan can be provided in the interim period.³
14. This begs the question whether it is appropriate to approve a structure plan to facilitate a development the majority of which cannot be commenced for at least 10 to 15 years. Much can happen in the interim period.

Response to Applicant's submissions regarding the Shire

15. One theme of the Applicant's case is that the position of the Shire has been inconsistent and reactive to community pressure, and that ultimately the Respondent's decision to refuse the Structure Plan was infected by political considerations. A number of things may be said about that.
16. Firstly, even if that were true (which is denied), it is irrelevant. The hearing of the review is conducted *de novo* and the Tribunal's determination is made at the time of the hearing upon the review. For all intents and purposes, it does not matter how we got here.
17. Secondly, the Shire's statutory role has been to report to the Respondent on the proposed Structure Plan pursuant to clause 20(2) of the deemed provisions which states:
 - ‘(2) The report on the proposed structure plan must include the following —
 - (a) a list of the submissions considered by the local government, including, if relevant, any submissions received on a proposed modification to the structure plan advertised under clause 19(2);
 - (b) any comments by the local government in respect of those submissions;
 - (c) a schedule of any proposed modifications to address issues raised in the submissions;
 - (d) the local government's assessment of the proposal based on appropriate planning principles;

³ Indeed, subject to the Tribunal's assessment of the traffic modelling evidence and the Applicant's proposed modifications to the Structure Plan, only a modest portion of Stage 1 could be implemented.

(e) a recommendation by the local government on whether the proposed structure plan should be approved by the Commission, including a recommendation on any proposed modifications.'

18. The Shire's original recommendation was to refuse the Structure Plan for a variety of reasons, including bushfire risk, concerns about the traffic impact of the proposal on the capacity of the road network and safety, and the extent of native vegetation (among other things).⁴ In other words, the issues the subject of the Shire's original report and recommendation broadly remain in play.

19. That report and recommendation was prepared with the benefit of community submissions, as required by the deemed provisions. The Council's decision did not precisely reflect the officer's recommendation, but there is nothing to be made of that. The officer is not the local government.

20. Two things are, however, notable about the officer's report and recommendation. The first is that it also was a recommendation for refusal, based on traffic issues.⁵

21. The second thing of note is that the report to the Council was not supported by any independent analysis of the Applicant's bushfire management plan.⁶ The Council's recommendation concerning bushfire risk was evidently added as a consequence of that being a common theme in the 957 submissions made to the Shire with respect to the proposal.⁷ This is an example of the system acting as intended, not of any inconsistency in the position of the Shire.

22. The Shire's second recommendation to the Respondent was also to refuse the Structure Plan.⁸ The Council decision was consistent with the officer's recommendation.⁹

23. The officer's report to the Council in May 2023 was informed by independent peer reviews of the Applicant's Traffic Impact Assessment (**TIA**), evacuation modelling and Bushfire Management Plan (**BMP**).¹⁰ Those peer reviews by independent experts

⁴ Ex. 3.1 Respondent's Bundle Volume 1 document 52. The report to the Council begins at page 1637 and the Council resolution begins at page 1745.

⁵ Ex. 3.1. The officer recommendation begins at page 1741.

⁶ See the list of annexures to the report to Council at Ex.3.1. page 1637.

⁷ The schedule of submissions begins at page 1752 of Ex.3.1.

⁸ Ex. 3.1 Respondent's Bundle Volume 1 document 20, page 1084.

⁹ See Ex. 60 Minutes of Shire of Mundaring Special Council Meeting of 2 May 2023.

¹⁰ See Ex. 60. The Attachments are listed on the first page (page number 12) of the report to Council.

identified a range of problems with the Applicant’s reports, to which reference is made in the Minutes. The Shire’s recommendation correlates closely with the decision upon reconsideration ultimately made by the Respondent.

24. In opening submissions Counsel for the Applicant made remarks which reflected on the influence of the current Shire President on the Council’s decision-making with respect to the Structure Plan. The Shire President was a Councillor when the item came to the Council for consideration on 2 May 2023, but she declared an interest in the matter and did not vote.¹¹
25. Contrary to the Applicant’s submission, the Shire has not been inconsistent in its approach to the Structure Plan. The opposite is the case.

BUSHFIRE

Preliminary Issue 2 – Does the Structure Plan need to be assessed against Element 1 (Location) New Guidelines having regard to the planning history of the site and clause 1.3.1 of the New Guidelines?

26. Clause 1.3.1 is a curious provision, pregnant with ambiguity. The Shire makes four alternative submissions with respect to the application of Element 1 of the Guidelines to the assessment of the Structure Plan.
27. Firstly, the Shire submits that the Respondent’s decision to uplift the Urban Deferred zoning is not a strategic planning proposal that was assessed against the 2015 version of SPP3.7 and the 2015 Guidelines, for the reasons explained in paragraphs 132 to 141 of the witness statement of Mr Stewart.¹²
28. Secondly, if the MRS rezoning is a strategic planning proposal for the purpose of the Guidelines, clause 1.3.1 only excuses the Structure Plan from demonstrating compliance with the new *methodology* for Element 1. Compliance with the Outcomes for Element 1 and the other aspects of SPP3.7 and the Guidelines is still required.

¹¹ The votes are recorded in Ex. 60, page number 54. The declaration of interest is not within the extract from the Minutes which forms Ex. 60.

¹² Ex. 62.

29. As the Applicant has provided evidence applicable to the methodology for Element 1, the assessment of the Structure Plan against the Outcomes for Element 1 should be undertaken by reference to that methodology.
30. Thirdly, the MRS rezoning to Urban was not assessed in any meaningful way against the 2015 version of SPP3.7 and the Guidelines. The Shire repeats paragraphs 36 to 47 of its opening submissions in that regard. It is therefore necessary for the Structure Plan to demonstrate compliance with Element 1.
31. Fourthly, if all of the three alternative submissions above are wrong and clause 1.3.1 of the Guidelines has the effect that the Structure Plan does not need to be assessed against Element 1 Location, clause 1.3.1 should not be applied in the circumstances of this case.
32. The material associated with the MRS rezoning strongly suggests that limited consideration, if any, was given at that time to the broader landscape in the context of bushfire risk. While the precise meaning of the DFES letter of 28 September 2016¹³ remains elusive, it is tolerably clear that DFES expected the various applicable bushfire protection criteria to be addressed at the subsequent stages of the planning process. That time has come.
33. More fundamentally, the Structure Plan is not a typical structure plan that happens to be affected by a bushfire prone area. Rather, the scale of the Structure Plan is equivalent to creating a new town¹⁴ in an area known to be subject to bushfires. As Mr McMahon says, a bushfire in the Perth Hills is a matter of when, not if.¹⁵
34. The scale of the residential development facilitated by the Structure Plan is so significant that it would be inappropriate to set the question of Location and the broader landscape to one side. Indeed, it would, with respect, be extraordinary to do so. To not assess the bushfire risk to the Structure Plan arising from its location in the broader landscape would be to ignore the primary planning issue which the proposal generates.
35. More importantly, it would put the lives of 2,800 people at risk.

¹³ Ex. 3.4 Respondent's Bundle Volume 4, page 82.

¹⁴ Ts.21 October, p.49 per Mr Cole.

¹⁵ Ts. 8 October, p.17.

36. In the circumstances of this case, if clause 1.3.1 properly interpreted has the effect that the Structure Plan does not need to be assessed against Element 1, there is a cogent reason to depart from that provision and the Tribunal should do so.

Bushfire evidence

37. All of Messrs Rowe, Panickar and McMahon have equivalent postgraduate qualifications as bushfire practitioners. However, they have very different backgrounds. Mr Rowe is a planner turned bushfire consultant.¹⁶ Mr Panickar commenced his career as a botanist/ecologist before turning to bushfire planning in 2014.¹⁷

38. Mr McMahon too has a varied background and other qualifications but, importantly, he has been a firefighter working ‘on the ground’ for 27 years.¹⁸ Mr McMahon has actively participated in fighting many fires including in the Perth Hills and large-scale bushfires in New South Wales during “Black Summer”. It is clear from his evidence that Mr McMahon has considered the bushfire issues in a pragmatic way informed by his real world lived experience.

39. Mr Parker has been the Director of Bushfire Technical Services at DFES for 10 years. He is in charge of delivering bushfire intelligence, risk analysis and technical advice to support bushfire mitigation, land use planning and emergency response.¹⁹

40. Mr Panickar emphasised that there is a high degree of subjectivity involved in assessing bushfire risk and the amelioration of that risk.²⁰ Mr Rowe made the same point with respect to risk assessment²¹ and McMahon was of the same view with respect to risk matrices.²² That being so, the Shire submits the Tribunal should prefer the evidence of Mr McMahon in particular, which is informed by nearly three decades of practical experience, and of Mr Parker, whose relevant experience is unrivalled.

41. There are other reasons for giving less weight to the evidence of Mr Rowe.

42. Mr Rowe was the only witness to classify the landscape as Broader Landscape A. He did so because he determined that a broader landscape scale fire could only be achieved

¹⁶ Ts. 26 September, p. 90.

¹⁷ Ts. 26 September, p. 92.

¹⁸ Ts. 26 September, p. 94.

¹⁹ Ts. 26 September, p. 96.

²⁰ Ts. 26 September, p. 93; Ts. 7 October pp. 10, 18, 100.

²¹ Ts. 6 October pp. 93, 100.

²² Ts. 6 October p.71.

from within 2km from two directions. He did not consider a fire from the north-west, reliant on what he says he was told by an unnamed person from DPLH. His explanation for doing so is incoherent.²³ His approach to the issue is clearly inappropriate.

43. Further, although Mr Rowe's involvement with the Bushfire Management Plan began as a peer reviewer, over several iterations he became a contributor to it. Mr Rowe accepted that has a sense of ownership with respect to the recommendations that have been followed in the BMP.²⁴
44. Mr Rowe's view is that it is not necessary to worry about Element 1 Location because it has already been addressed via the lifting of Urban Deferral zoning.²⁵ This infects his approach to the issue of alternative solutions needed to reduce the inherent risk of the location. His view is that the Structure Plan is only in an area with a moderate bushfire hazard level.²⁶
45. Mr Rowe's opinions are not those of a dispassionate expert attempting to assist the Tribunal to deal with a matter of great significance. It might reasonably be inferred that Mr Rowe, perhaps unconsciously, sought to achieve an outcome most advantageous for his client and the BMP to which he contributed.
46. By contrast, Mr McMahon's view is that SPP3.7 is just a policy, and the Guidelines are just guidelines, and that other known risks should also be considered²⁷. This is consistent with his view that compliance doesn't automatically mean safe.²⁸ Mr McMahon's conservative but reasonable approach to the overarching issue of bushfire risk should be preferred.
47. Mr McMahon's evidence also serves to reinforce the appropriateness of adopting a precautionary approach to the issue of bushfire risk.

Preliminary issue 3: If the Structure Plan needs to be assessed against Element 1 (Location) in the new Guidelines, then is the site Broader Landscape Type A or Broader Landscape Type B for the purposes of the new Guidelines?

²³ Ts. 6 October pp. 93-97.

²⁴ Ts. 8 October p. 14.

²⁵ Ts. 7 October pp.14, 45.

²⁶ Ts. 6 October p.73.

²⁷ Ts. 7 October p .67.

²⁸ Ts. 7 October p. 73.

48. The Tribunal should accept the joint view of Messrs Panickar, McMahon and Parker that the Site is within Broader Landscape Type B for the purposes of the Guidelines. Mr Rowe's opinion should be rejected, for the reasons above.
49. There is no such concept in SPP3.7 or the Guidelines as a post development Broader Landscape Type. The matters which the Applicant's experts say go to the post development classification of the Broader Landscape are, in truth, mitigation measures relevant to whether an outcomes-based approach can justify a departure from the policy presumption that Broader Landscape Type B presents an unacceptable risk.

Issue B1 - Evacuation

Bushfire simulation report

50. It is apparent from the evidence of Messrs Power and Parker that bushfire modelling is complicated and that it is an emerging area of expertise in an ongoing state of development and refinement.
51. Like all modelling exercises, the outputs are only as good as the inputs. But bushfire modelling has an additional constraint, in that the behaviour of bushfire is inherently unpredictable. Further, the current technology cannot model an important real-life incident of bushfire, namely long-distance spotting downwind of the fire front.²⁹ Mr Power described this as the 'holy grail' of fire modelling.³⁰ This is important, because the purpose of the Applicant's bushfire modelling is to inform the evacuation modelling, and long-distance fire spotting will likely affect evacuation, for the reasons explained by Mr Parker.³¹
52. While the Shire broadly accepts that Mr Power's simulation was a fair attempt to model what might be described as a reasonable worst-case bushfire scenario, the exercise has limitations over and above the inability to model long-distance spotting.
53. For example, Mr Power accepted that the model is sensitive to relatively small changes in the FFDI and an increase in the Index of 2 or 3 could have a significant impact on

²⁹ Ts. 9 October p. 365.

³⁰ Ts. 9 October p. 365.

³¹ Ts. 9 October p. 365.

the simulation (all other things being equal).³² Certainly a change in the FFDI from 74 to 82 had a very significant impact on the spread of fire.³³

54. While the reasons Mr Power chose an FFDI of 73.9 are understandable there are also good reasons why a higher FFDI could be adopted.³⁴ A higher FFDI may have made a material difference to the modelling result.
55. Ideally, the simulation would have been carried out on an ensemble basis, which would allow a better assessment of the sensitivity of the exercise to the alteration of the input variables, albeit that could not be achieved when the modelling was carried out 3 years ago.³⁵
56. The limitations of the bushfire simulation model mean that it is not suitable for use as a deterministic product in the manner promoted by the Applicant – that is, as the measure of fire spread for the traffic micro-simulation modelling.

Traffic micro-simulation modelling

57. The traffic micro-simulation modelling carried out by Dr Rasoulli seeks to demonstrate that the Structure Plan will meet the assumed ‘parameters for safe evacuation’, namely that all vehicles in the model area can evacuate ahead of each of the four modelled fires, and within a three-hour block.³⁶ For the purpose of the model Dr Rasoulli necessarily made a series of assumptions and manual interventions which, by and large are *probably* conservative and are *perhaps* justifiable. But the oral evidence clearly demonstrated that a series of uncertainties remain which limit the weight that can be placed on the conclusions the Applicant seeks to derive from the model.
58. For example, Dr Rasoulli’s many manual refinements are not documented or explained; the model is ‘sensitive’ to atypical conditions³⁷; the foreshadowed Roland Road roundabout is critical for the model but the proposed design is unusual; and the model does not attempt a broader assessment of road safety along the roads that are assumed

³² Ts. 8 October p. 122.

³³ Ts. 8 October p. 122.

³⁴ See, for example, Mr Parker’s statement (Ex.43), the joint statement of Mr Power and Mr Parker (ex. 56) and the oral evidence on the issue on 8 and 9 October.

³⁵ Ts. 9 October pp. 368-369.

³⁶ Ts. 25 September p. 20.

³⁷ Ts. 26 September p.10.

to be used for evacuation. The Shire commends Mr Levey's criticisms of the model to the Tribunal.³⁸

59. A fundamental problem with model – or at least with using the model for its stated purpose of demonstrating that safe evacuation can be achieved – is that it assumes order in a disorderly situation. People will simply not react to the risk and evacuate in the manner the model assumes. Erratic human behaviour and unusual traffic conditions in a bushfire significant enough to require evacuation are to be expected. A model which incorporates assumptions that are so far distant from the real world should be approached with caution.
60. It can readily be accepted that the road treatments the Applicant proposes will improve the existing situation if the improvements are built *in the absence of the Structure Plan*. But it is, with respect, not possible to conclude from the model either that the existing situation is unsafe or – critically – that safety will be improved by permitting hundreds of additional cars and residents via the Structure Plan. Even if all of the assumptions in the model are accepted to be conservative, it requires a great leap of faith to conclude that those assumptions adequately adjust for the erratic behaviour of the many additional post-Structure Plan car drivers in a major bushfire event, and for the atypical road conditions that may occur.
61. As Mr Levey says, 'in this type of situation, the modelling has to be seen as a tool for guidance, for comparison. It can't be used to determine a pass or a fail to determine safe or unsafe.'³⁹
62. In addition, the model relies upon the correctness of the bushfire simulation as the measure of fire spread. That reliance is unjustified.
63. The Shire submits that the combination of the bushfire modelling and the traffic microsimulation modelling do not, and cannot, demonstrate that the current situation for evacuation is unsafe; that the current situation will be improved by the development contemplated by the Structure Plan; or that in the event of a bushfire people in the Structure Plan area will be able to safely evacuate to a suitable destination.

³⁸ These are conveniently summarized at pp. 2-4 of the 25 September 2025 transcript.

³⁹ Ts. 25 September p.3.

The fundamental issue

- 64. The Shire does not make separate submissions with respect to issues B2 to B6 but instead will address the fundamental bushfire issue, namely whether development pursuant to the Structure Plan can be carried out with an acceptable level of risk. For this the Applicant relies upon the BMP.
- 65. The starting point under the Guidelines is that a site located within Broader Landscape Type B presents an unacceptable bushfire risk. This is consistent with the inherent risk for the Site detailed in the bushfire risk assessment carried out for the BMP.⁴⁰
- 66. According to the Applicant's bushfire risk assessment, the inherent risk for all design bushfire scenarios is Extreme or High.⁴¹ The Extreme rating means that the event is likely, the vulnerability to the event is extreme, and the consequence of the event is catastrophic. The High rating means that the event is likely, the vulnerability to the event is extreme, and the consequence of the event is major.
- 67. In the context of human life, the consequence rating of 'major' recognises that there is likely to be isolated cases of fatalities, multiple cases of serious injuries or disabilities, some hospitalisations, a large number of persons displaced for a moderate duration, and significant resources required for personal support.⁴²
- 68. For all of the bushfire scenarios, the inherent risk to Life is rated as High.
- 69. The BMP's bushfire risk assessment of the inherent risk is inconsistent with Mr Rowe's evidence to the effect that the Site is within an area facing only a moderate bushfire hazard level which should be classified as Broader Landscape Type A.
- 70. The Guidelines allow for the possibility of a practitioner presenting an outcomes based approach to demonstrate to the decision-maker that the bushfire risks can be adequately managed within Broader Landscape Type B. The Applicant's attempt is via the risk treatments described at section 7 of the Element 1 Compliance Assessment.⁴³

⁴⁰ Ex.2 – Appendix H, Table 5.5.

⁴¹ The inherent risk includes amelioration by existing emergency management risk controls, as described in Table 5.

⁴² Ex.2 – Appendix H, Table 5.3.

⁴³ Ex.2 – Appendix H.

71. The first risk treatment (described at section 7.1) relied upon by the Applicant is that parts of the Structure Plan should be classified as a suitable destination to enable last resort on-site shelter-in-place as a contingency option to evacuation, including the construction of an onsite bushfire refuge.⁴⁴ This risk treatment is fundamentally flawed.

72. One reason the treatment is flawed is that a suitable destination is intended to be a location *away* from the area that is subject to the bushfire risk. There is an obvious illogicality in promoting the very site that is subject to the bushfire risk as a suitable location for evacuation. It is not suitable as a destination for the evacuation of community members for a fire impacting the subject site.⁴⁵

73. In practice, people will not be directed to the Structure Plan area by incident controllers.⁴⁶ The relocation and care of community members within the subject site will add to the complexity of the incident.⁴⁷

74. As the Structure Plan cannot be used as a suitable destination when a landscape scale bushfire threatens the Structure Plan, logic demands that the section 7.1 treatment cannot contribute in any material way to reducing the risk profile for a landscape scale fire.

75. Another reason that the section 7.1 treatment is flawed is that the proposed onsite refuge appears to be little more than a thought bubble. In any event, under SPP3.7 and the Guidelines on-site shelters are only contemplated for use as a contingency measure for vulnerable land uses. They are not considered acceptable for residential uses.

76. No weight should be given to the risk treatment described in section 7.1.

77. Proposed risk treatment 7.2 concerns vegetation modification and management. The area which will be subject to modification and management to a low threat state is substantial, and includes the central spine POS.⁴⁸

78. The potential problems with this are both numerous and obvious.

⁴⁴ Ex.2 – Appendix H, section 7.1.

⁴⁵ Ex. 19 Witness statement of Mr Kuchel, para 90.

⁴⁶ Ex. 46 Joint statement – Bushfire Planning, Item 18, per Mr Kuchel, Mr Parker.

⁴⁷ Ex. 19, para 62.

⁴⁸ Ex.2 Figure 3.7.

- 79. To the extent that the treatment relies upon active ongoing maintenance of public land (e.g. road verges, POS) in a low-threat state by the Shire, that reliance is misplaced. Mr Rowe acknowledges that local governments have ‘very limited resources’.⁴⁹
- 80. To the extent it is proposed that the Shire will enforce the requirement for low-threat areas across the entirety of all of the private lots, there is a difficulty not only with the capacity of the Shire to do so, but also the enforcement mechanism. It is entirely possible that single houses within the Structure Plan will not require development approval, with the consequence that no condition requiring the creation and maintenance of a low threat state can be imposed.
- 81. The Applicant’s proposed solution(s) appear to be the lodgement of a notification on title over the residential lots and/or a restrictive covenant.
- 82. A notification on title lodged pursuant to section 70A of the *Transfer of Land Act* may advise of a hazard or other factor that affects the enjoyment of land, but it cannot provide an enforcement mechanism to mitigate the hazard or other factor.
- 83. An ‘estate covenant’ with respect to low threat vegetation could *potentially* be created pursuant to Part IVA of the *Transfer of Land Act* via a subdivision plan,⁵⁰ but it is far from clear whether the imposition of an obligation to maintain a property in a low threat state can properly be described as negative in nature. If it is not, the covenant is unenforceable.
- 84. In any event, the reliance on self-enforcement for a critical matter such as this is highly undesirable, and its effectiveness cannot be guaranteed. Mr McMahon’s scepticism that maintaining such a large area in a low threat state in such a vulnerable landscape is justified.⁵¹
- 85. Proposed risk treatments 7.3 and 7.4 concern improvements to vehicular access (both within and external to the Structure Plan).
- 86. With respect to the internal roads, the ‘risk treatment’ rises no higher than an access network that will comply with the requirements of the Guidelines. The provision of a road network that does no more than achieve compliance with Element 3: Vehicular

⁴⁹ Ts. 6 October p.20.

⁵⁰ See section 136D.

⁵¹ Ts. 6 October p. 29.

Access should not be regarded as a risk treatment which forms part of an outcomes-based approach that justifies a reduction in the risk profile for the location of the Site within Broader Landscape Type B. There is no risk reduction beyond that required by the Guidelines in any event.

87. With respect to the external roads, the claim is that the roads ‘will be upgraded to ensure that the road network can support the planned population growth in both normal and emergency conditions’.⁵² Several things may be said about this.
88. Firstly, to upgrade the external roads to support the planned population growth is a necessary requirement, but it should not be regarded as an ‘over and above’ risk treatment.
89. Secondly, in the Shire’s view the Applicant has not committed to all of the external road upgrades necessary to support the additional population generated by the Structure Plan⁵³ or to make the road network safe in an emergency.⁵⁴
90. Thirdly, the Outcomes for Element 3 of the Guidelines require that the design and capacity of vehicular access and egress provide for efficient and effective evacuation to a suitable destination. As with the internal roads, the provision of an external road network that does no more than achieve compliance with Element 3 should not be regarded as a risk treatment which forms part of an outcomes-based approach that justifies a reduction in the risk profile for the location of the Site within Broader Landscape Type B. There is no risk reduction beyond that required by the Guidelines.
91. Fourthly, the bushfire simulation and traffic microsimulation should not be regarded as demonstrating that evacuation will be efficient and effective. The submissions with respect to Issue B1 are repeated.
92. The remaining proposed risk treatments 7.5 (water supply), 7.6 (bushfire construction requirements) and 7.7 (community preparedness and response) provide nothing more than the Guidelines require, other than that all dwellings will be constructed to BAL-12.5 standards even if they are in an area classified as BAL-Low. It is difficult to see

⁵² Ex. 2 Appendix H, section 7.3.

⁵³ See paragraphs 99 to 109 of the Shire’s opening submissions.

⁵⁴ Ts. 26 September p.107 per Mr McMahon 26/9 and p. 114 per Mr Parker 114 per the state of the local roads.

how constructing the dwellings which are at the lowest risk to a higher standard can justify any, or any material, reduction in the risk profile for the Structure Plan.

93. With all due respect to the Applicant and the authors of the BMP, the risk treatments set out in section 7 do not amount to a ‘hill of beans’. They are, more or less, the same treatments that are expected of a site within Broader Landscape Type A⁵⁵. There is no explanation in the BMP or the Applicant’s evidence which demonstrates how the inherent risk of ‘Extreme’ or ‘High’ is reduced in all cases to ‘Low’.
94. Moreover, only Mr Rowe agrees with that description. Mr Panickar’s view is that the residual risk should be ‘Medium’.⁵⁶ His view is that the risk is ‘tolerable’ rather than ‘acceptable’ with the treatments in the BMP.⁵⁷
95. Mr Rowe accepts that the risk treatments do not provide ‘much that’s additional to what is required for the acceptable solutions’ for Elements 2 to 4.⁵⁸ His evidence about the outcomes-based approach to Element 1 is highly problematic, because he says that ‘Element 1 is just that fundamental question about is this site actually suitable for development? But without going into the other areas, the suitability of the site – I would advocate – has already been determined. And what we’re actually looking at is how do we actually meet elements 2, 3 and 4? And the solutions that are in appendix H actually demonstrate those solutions.’⁵⁹
96. Mr Rowe’s evidence does not provide any support for the exercise that is required by Element 1 of the Guidelines when a site is located within Broader Landscape Type B. That exercise is highly subjective.⁶⁰ As the issue at hand is a matter of critical importance for the safety for human life and property, any subjective approach should err on the side of conservatism. The evidence of Mr McMahon and Mr Parker fits that description and should be preferred on the fundamental question of whether development pursuant to the Structure Plan can be carried out with an acceptable level of risk. The Shire submits that it cannot.

⁵⁵ Refer Mr Parker’s comments at Ts. 6 October p.72.

⁵⁶ Ts. 6 October p.37, Ex. 37 para 43.

⁵⁷ Ts. 7 October pp. 9-10.

⁵⁸ Ts. 7 October p.14.

⁵⁹ Ts. 7 October p.14.

⁶⁰ Evidence of Mr Panickar, Ts. 26 September p.93.

97. Finally on this point, the Shire submits that any argument with respect to whether SPP3.7 or the Guidelines requires regard to be had to the *precautionary principle* in the circumstances of this case is an exercise in ploughing arid ground. Irrespective of the precise terms of the policy regime it is, with respect, clearly appropriate for the Tribunal to adopt a *precautionary approach*.⁶¹

TRAFFIC

Issue A1 - The Transport Impact Assessment

98. The evidence of Mr Levey and Mr Bordbar leaves no room to doubt that the TIA is unreliable. The assumptions made by Transcore for the traffic distribution are not properly documented and, in many cases, are inappropriate.⁶² The number and type of modifications to the TIA proposed by the Applicant are an implicit acceptance that the TIA falls well short of a document that can support the approval of the Structure Plan.

99. Nevertheless, it is plain that the intersection of Seaborne Street with Great Eastern Highway will not be able to cope with the additional traffic load generated by even Stage 1 of the Structure Plan. Mr Levey's evidence, which should be accepted, is that with the treatment proposed by MRWA (which is similar to the primary proposal put forward by Mr Bordbar) the intersection will not work with Stage 1 traffic by 2031.⁶³ It must follow that the Structure Plan should be refused for that reason alone, unless there is a high degree of confidence that an acceptable solution can be achieved.

100. The acceleration lane concept floated by Mr Bordbar could *potentially* alleviate the issue, but on the available evidence there can be no confidence that it will be an acceptable solution. Among the potential problems associated with the acceleration lane concept are:

- (a) At present, the proposed acceleration land is no more than (an expensive) high level concept.
- (b) The acceleration lane will itself generate additional safety issues. Traffic using the acceleration lane wishing to turn left into Robinson Road will have to

⁶¹ See paragraphs 71 to 74 of the Shire's Opening Submissions and the cases cited therein.

⁶² See, as just one example Mr Levey's criticisms at Ts. 23 September pp. 69-74 and Mr Bordbar's (inadequate) responses at pp. 75-81;

⁶³ See Ex.28, Item 7.

merge across two lanes of traffic before it is appropriate to do so to make the turn. Traffic turning left out of Robinson Road will be in the same location as traffic turning right out of Seaborne Street and merging. There is a U-turn facility west of Robinson Road that coincides with the end of the acceleration lane concept, which can cause conflict between the merging traffic and that proposing to use the U-turn facility.⁶⁴

- (c) The first two of the additional safety issues could *perhaps* be addressed by closing Robinson Road at Great Eastern Highway to create a cul-de-sac. However, there is no evidence that will be an acceptable outcome for the users of that road, the Shire, or to MRWA. There is no evidence about what the flow-on consequences of the closure might be. One might reasonably speculate that the residents of Robinson Road and beyond who use the existing left-in, left out facility constructed by MRWA are likely to have strong views on the subject.⁶⁵ Mr Bordbar's implicit assumption that, notwithstanding the absence of any documented analysis, any inconvenience or safety issues related to the closure of Robinson Road should give way to a short term solution required for Stage 1 of the Structure Plan, is a cavalier approach.
- (d) The acceleration lane is too short. Mr Bordbar's reading of Table 5.5 in Exhibit 29⁶⁶ is plainly wrong (as to which see below).
- (e) Even if it is possible to assume that the Applicant will commit to paying for the acceleration lane (which is doubtful, given that the only certainty about the cost is that it will be significant), it is not appropriate to assume that the disruption caused by major roadworks is an acceptable price to pay for a short-term solution pending the construction of Eastlink.
- (f) Critically, there is no evidence whatsoever that the acceleration lane concept will be endorsed by MRWA.⁶⁷

⁶⁴ See Mr Levey's summary at Ts. 24 September pp. 139-140.

⁶⁵ As Mr Levey observes, 'there's obviously some traffic demand that needs to be satisfied' by the works at and near Robinson Road Ts. 24 September p.151-152.

⁶⁶ Ex. 29 is an extract from the MRWA Supplement to the Austroads Guide to Road Design, Part 4A.

⁶⁷ Mr Broadhurst's evidence to the effect that the acceleration lane concept does not compromise the function of Great Eastern Highway is not evidence that the concept is likely to be acceptable. Mr Broadhurst is in the road planning team, not the traffic engineering team.

101. The shortcomings of the TIA and the absence of any reasonable certainty about the Seaborne Road/Great Eastern Highway intersection are fundamental flaws in the Structure Plan. Those flaws cannot be resolved by directing the Applicant to make specified changes to the Structure Plan supported by an amended TIA.

Issue A2 – other upgrades

102. Mr Bordbar accepted that it should be a condition of subdivision approval that the Applicant pay for the upgrades to Roland Road and Seaborne Street⁶⁸ which are needed because of the additional traffic generated by the Structure Plan.⁶⁹

103. It appears that the intersection of Stoneville Road and Woodlands Road is an upgrade proposed by the TIA.⁷⁰

104. In the event that the Tribunal requires the Structure Plan to be modified and resubmitted to the Respondent, the Shire submits that the Structure Plan should make it clear that the Applicant will be responsible for the cost of those upgrades.

105. The Shire submits further that any modified Structure Plan with a revised TIA should address the others matters referred to in paragraphs 99 to 109 of the Shire's opening submissions.

Mr Bordbar's evidence

106. Mr Levey's evidence should be preferred over that of Mr Bordbar. The reasons for that include (but are not limited to):

- (a) Mr Bordbar argues that a level of service F can be acceptable.⁷¹ That is not borne out by TIA Guidelines⁷²;
- (b) Mr Bordbar failed to disclose numerous assumptions which underpin the flawed TIA;
- (c) Mr Bordbar failed to disclose the numerous manual adjustments which were made to the modelling for both Stage 1 and Stage 2; and

⁶⁸ That is, with respect to road widening, not to the intersection with Great Eastern Highway.

⁶⁹ Ts. 24 September p.177.

⁷⁰ See TIA page 51 and Mr Bordbar's evidence at Ts. 24 September pp. 175-176.

⁷¹ Ex. 25 Joint Statement of Mr Bordbar and Mr Levey para. 18.

⁷² Ex.24 Annexure BB7B (incorrectly labelled BB67) Transport Impact Assessment Guidelines, page 31, Table 3.

(d) Mr Bordbar misunderstands Table 5.5 in Exhibit 29.

107. As to the latter point, Mr Bordbar's evidence was to the effect that the last column of Table 5.5 is the minimum desirable length for an acceleration lane irrespective of the design speed of the entry curve. The result is that, on Mr Bordbar's view, the length of the acceleration lane can be reduced to 250m for all lanes with an entry curve design speed of 0 to 60 kph.

108. This approach fails to recognise that Note 4 to Table 5.5 applies to the final column of the Table – that is, to the column which lists the minimum desirable length.

109. Note 4 explains the intended operation of the minimum desirable length figure by stating 'For values in the green-shaded areas adopt the minimum desirable length (4 sec + Tm)'. In other words, the purpose of the minimum desirable length is to require the lengths shown in the column which are less than that minimum (shaded green) to be *increased* to the absolute minimum. It is not intended to allow the calculated lengths that are not shaded green to be *reduced* to the absolute minimum. The absolute minimum is suitable only for entry curve design speeds of 70kph or above.

110. The TIA lacks rigour and Mr Bordbar's evidence is highly unconvincing. Neither should be given weight.

ENVIRONMENT AND OPEN SPACE

Issues C1 to C3

111. The evidence of Mr Newsome confirms that at present there is no detail with respect to the nature of the proposed revegetation, nor what environmental values it will provide. Mr Newsome accepts that it is a challenge to provide vegetation which has some conservation value and also achieves a low threat state.

112. Evidently, from the perspective of the Applicant the critical issue for the POS areas is managing them to a low threat state, not the enhancement of their environmental values.

113. The EPBC Act approval is concerned with matters of national and environmental significance, namely Black Cockatoos and Chuditch. It is not an assessment of the overall loss of environmental value of the site which arises from the substantial clearing of native vegetation proposed.

114. The Shire maintains that the clearing of substantial areas of native vegetation, and the limited – and currently unspecified – environmental values provided by the central spine POS area, do not demonstrate that a satisfactory balance between the retention of native vegetation and bushfire safety has been achieved.

115. The Shire repeats paragraphs 112 to 139 of its opening submissions.

Planning evidence

116. The relevance of the planning evidence is not limited to Issues 3 and 4, but it is convenient to deal with it at this point.

117. The Tribunal should be cautious about giving weight to the evidence of Mr Cole for the following reasons:

- (a) He has been involved in the Structure Plan project since 2017 as a key member of the team. Mr Cole accepted that he is an author of the Structure Plan, and that he is presenting the planning case for it to be approved.⁷³ He will have an ongoing role in the delivery of the Structure Plan in the event that it proceeds⁷⁴;
- (b) Mr Cole says that Element 1 of the Guidelines is not a relevant planning consideration because the decision about the appropriateness of the location was made in 2016 when the Urban deferred zoning was lifted⁷⁵; and
- (c) Mr Cole does not believe that it is necessary to take into consideration the possibility that compliance by individual landowners with the bushfire protection requirements will not be achieved⁷⁶.

118. As Mr Shaw said, the evidence indicates that evacuation, emergency response, bushfire and broader landscape issues are key concerns, and they cannot be disregarded.⁷⁷ Mr Cole's refusal to concede the point is telling.⁷⁸

⁷³ Ts 21 October p. 32 – 33.

⁷⁴ Ts 21 October p32.

⁷⁵ Ts 21 October pp. 54 – 56.

⁷⁶ Ts 21 October p. 79.

⁷⁷ Ts 21 October p. 63.

⁷⁸ Ts 21 October p. 63.

119. All of these examples point to Mr Cole being a partisan supportive of the Applicant's case, and not a disinterested expert willing and able to provide an objective view. His evidence should as a consequence be approached with caution.

120. Mr Cole expresses the view that 'the imperative is to deliver housing for our expanding community and for the sustainability reasons I have outlined this morning'.⁷⁹ The Shire submits that the true planning imperative is to deliver appropriately located residential development with bushfire risk reduced to an acceptable level. It is hardly sustainable to deliver a substantial amount of housing that will be, or will potentially be, exposed to an unacceptable level of bushfire risk.⁸⁰

121. While the planners focussed on the meaning of clause 1.3.1 of the Guidelines and its application to the present case, the Shire submits that the meaning of the provision is not in fact critical. If the strict application of clause 1.3.1 means that Element 1 does not need to be considered, the Tribunal should depart from the Guidelines' provision.

MODIFICATIONS

The Applicant's approach

122. The Applicant accepts that many amendments must be made to the Structure Plan. It says that the Structure Plan should be modified in a specified manner and resubmitted to the Respondent for approval, pursuant to clause 22(1)(b) of the deemed provisions. This course of action is promoted on the basis that the site is zoned for urban development. The underlying theme is that an outright refusal is not appropriate given the planning history for the site.

123. The Applicant's approach should be rejected. Nothing in the statutory provisions for the preparation and approval of structure plans indicates that there should be a preference for modification and resubmission over refusal. Nor is there any authority

⁷⁹ Ts 21 October p. 66.

⁸⁰ Nor is it consistent with sustainability principles to carry out major roadworks on Great Eastern Highway to produce an acceleration lane for the short-term benefit of Stage 1 of the Structure Plan.

which suggests that a structure plan consistent with the underlying zoning should be approved except in extraordinary circumstances.

124. The best the Applicant can do is point to the *Two Rocks* case as an example of the resubmission of a structure plan. However, *Two Rocks* is not authority for any principle which prioritises resubmission over refusal.
125. The Shire submits that resubmission will generally only be appropriate when three related matters are satisfied.
126. Firstly, the modification required should be capable of an adequately precise formulation. To *specify* means ‘to mention or name specifically or definitely; state in detail’.⁸¹
127. Secondly, the power to specify modifications for resubmission should be reserved for cases in which the specified changes to the plan are minor or incidental, and not where the modification is to a matter fundamental to the acceptability of the plan.
128. Thirdly, the likely outcome of the specified modification must be adequately certain, in that there should be a high degree of confidence that the specified change will be acceptable. This is an implication which flows from the fact that the power to specify modifications arises after the merits of the plan have been considered by the decision-maker.
129. The WA Planning Manual Guidance for Structure Plans says with respect to the possibility of the Respondent granting approval to a Structure Plan which requires additional details or reports to be prepared that:⁸²

‘The additional detail is intended to be a refinement of the measures and controls already contained in the structure plan and should not comprise information that is essential to the formulation or the assessment of the plan. The WAPC will not support a structure plan that relies on important matters being resolved later or where the additional detail may result in a substantial variation to aspects of the plan.’

⁸¹ *Macquarie Dictionary Online*.

⁸² Ex. 3.6 page 210, section 4.6.

- 130. While that clause does not refer to the situation at hand, the Shire submits that a similar approach is appropriate.⁸³
- 131. Likewise, the Tribunal has consistently applied the principle that a condition of development approval cannot lawfully defer, for later consideration, a non- incidental aspect of a development and cannot leave open the *possibility* that development carried out in accordance with the consent and condition will be significantly different from the development for which the application was made.⁸⁴ A similar approach is appropriate under clause 22(1)(b) of the deemed provisions.
- 132. The Shire submits that the evidence clearly demonstrates that the BMP and the TIA have fundamental deficiencies and cannot be relied upon. The traffic microsimulation and bushfire modelling also require material revisions. These supporting documents are fundamental to the Structure Plan; they are not incidental or minor matters.
- 133. The Shire submits that the TIA and the BMP are fatally flawed and irredeemable. But at the very least, the Tribunal cannot have a high degree of confidence that revisions to the critical supporting documents will produce a Structure Plan that is capable of approval.
- 134. In the circumstances an order for resubmission is not the correct and preferable decision.

What is the plan and what may be specified?

- 135. Clause 22(1)(b) of the deemed provisions permits specified modifications to ‘the plan’. This begs the question: what comprises the plan to which modifications can be specified?
- 136. A standard structure plan is defined to mean ‘a plan for the future subdivision and zoning of an area of land’.⁸⁵

⁸³ It is possible, pursuant to clause 24 of the deemed provisions, to approve a structure plan that provides for further details of a proposed subdivision or development included in the plan to be submitted to and approved by the WAPC at a later time.

⁸⁴ See, for example, *Phil Lukin Pty Ltd and Lowe Pty Ltd and Shire of Busselton* [2006] WASAT 124 [85].

⁸⁵ Deemed provisions clause 14.

137. The information required to be submitted with a standard structure plan is set out in deemed provisions clause 16(1A).⁸⁶ Expert reports that support the structure plan such as a TIA or BMP are not among the things that a structure plan must include.
138. The Shire submits that the TIA, BMP and other supporting materials such as the traffic and bushfire modelling do not form part of the Structure Plan. That is consistent with the fact that they are presented as annexures. The plan for the future subdivision and zoning of the Structure Plan is comprised only by Part One: Implementation. The other parts (Part Two: Explanatory and Part Three: Appendices) explain how the plan in Part One is derived, but they are not the ‘plan’ for the purposes of clause 22(1)(b).
139. While there is no doubt that the TIA, BMP and the modelling relied upon by the BMP require modifications, the deemed provisions do not empower the decision-maker to direct the proponent to make specified modifications to reports which support, but are not part of, a proposed structure plan. If that is correct, it is not open to the Tribunal to specify that the supporting reports be modified in a particular way and resubmitted to the WAPC for approval. That is another reason why the correct and preferable decision is to refuse.

CONCLUSION

Is it orderly and proper to approve the Structure Plan?

140. Pursuant to clause 28(1) of the deemed provisions the approval of a structure plan has effect for 10 years, or another period determined by the WAPC when approving the plan. The life of a structure plan may be extended if there are no changes to the terms of the plan.⁸⁷
141. Clause 6.3 of the WA Planning Manual Guidance for Structure Plans states ‘Structure plans are valid for 10 years - or a longer period approved by the WAPC - after which they will expire. A new structure plan should then be prepared and approved by the WAPC if required to guide implementation of any remaining stages of the structure plan.’⁸⁸

⁸⁶ The WAPC may require other material pursuant to clause 16(1)(b).

⁸⁷ Deemed provisions clause 28(2).

⁸⁸ Ex. 3.6 page 210.

142. The planning witnesses broadly agreed that the ‘default’ 10-year period is a reasonable timeframe within which to deliver a structure plan, and within which it is to be expected that there would be some change to the planning policy framework.⁸⁹ The Shire notes that local planning schemes must be reviewed every 5 years, and that the review must consider whether the scheme is up to date⁹⁰ – although it is probably fair to say that obligation is more honoured in the breach than the observance.

143. The Structure Plan says that it ‘is expected to be staged over a period of approximately 15 years’⁹¹, and while certain road upgrades are required to provide adequate capacity for the first 400 lots (i.e. Stage 1) development beyond the first 400 lots shall not be permitted until completion of Eastlink.⁹²

144. The Applicant’s ‘without prejudice’ schedule of modifications dated 14 November 2025 in Item 3 provides for the inclusion of a staging plan which further breaks down the number of lots which may be developed in the first stage, subject to timing and type of works completed at the intersection of Seaborne Street and Great Eastern Highway. The first stage may be a yield as low as 135 lots.

145. Mr Broadhurst’s evidence makes it clear that there is no certainty that Eastlink will be built and operating by 2036, or by 2041.

146. It follows that it is possible that as few as 135 lots will be capable of development by 2041, or beyond. On that scenario, which is entirely realistic and consistent with the evidence, the majority of the proposed lots would be rolled out over a period approaching 15 years *after* 2041.

147. The Shire submits that it would not be consistent with orderly and proper planning to approve a structure plan which has major implications for the Shire or Mundaring in circumstances where only a (potentially very small) minority of the lots the subject of the plan can be developed within the usual 10-year life of a structure plan. Much can and will occur during that period. The change in bushfire planning that has occurred

⁸⁹ Ts. 24 October p. 367.

⁹⁰ Reg. 65, *Planning and Development (Local Planning Schemes) Regulations*.

⁹¹ Ex. 1 Executive Summary page 7.

⁹² Ex. 1 page 13, section 5.3.

recently is but one such example. The strategic review of Urban zoned land in the Perth Hills may be another.⁹³

148. Critical aspects of the planning framework may look very different in 2036 or 2041. The combination of the manifold uncertainties associated with the Structure Plan, the timing for its delivery, and the potential for relevant change in the planning framework, all suggest that it would be inappropriate for approval to be granted.

Reasons for refusal

149. The correct and preferable decision is to refuse the Structure Plan because:

- (a) it has not been demonstrated that the bushfire risk to the Structure Plan will be acceptable;
- (b) it has not been demonstrated that the road network can safely and conveniently support the additional traffic generated by the Structure Plan;
- (c) the Structure Plan does not achieve an appropriate balance between managing bushfire risk and the protection of the environment, and it has not been demonstrated that the environmental impacts of the Structure Plan can be mitigated; and
- (d) approval of the Structure Plan would be inconsistent with orderly and proper planning.



Solicitors for the Shire of Mundaring

⁹³ A strategic review of Urban zoned land in the Perth Hills is currently underway as a consequence of separate requests from the Shire and the Intervenor to rezone the Site from Urban/Rural to Rural under the MRS - Respondent's SIFC paragraphs 68-69.