



LOCATION PLAN
TPS Amendment No. 114



SCALE 1 : 7500

DATE 14 July 2020 - REVISION 001
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2.1 - PROPOSED AMENDMENT NO.114 TO TPS NO.4 - NORMALISATION OF LOT 2, 4853 AND 9500 FORRESTDALE BUSINESS PARK EAST FROM DEVELOPMENTWA TO CITY OF ARMADALE

Cr Butterfield declared a non-financial interest in this item as she is a member on the Metropolitan Redevelopment Authority Armadale Land Redevelopment Committee. As a consequence, there may be a perception that her impartiality on the following matter may be affected, but declared that she would disregard this association, consider the matter on its merits and vote accordingly.

WARD : Ranford
FILE No. : - M/402/20
DATE : 29 JULY 2020
REF : JC
RESPONSIBLE MANAGER : EDDS
APPLICANT : City of Armadale
LANDOWNER : Multiple Landowners
SUBJECT LAND : Lot 2 Keane Road, Lot 4853 Allen Road and Lot 9500 Armadale Road, Forrestdale
ZONING
MRS / : No Zone (within
TPS No.4 : Redevelopment Area)
No Zone (within
Redevelopment Area)

In Brief:

- Three lots in Forrestdale Business Park East were excluded from Amendment 107 (intended to be normalised using s.57 of the *MRA Act*) that are required to be appropriately zoned, prior to normalization from DevelopmentWA to the City.
- DevelopmentWA has advised that s.57 of the *MRA Act* cannot be used to normalise its planning framework in Armadale.
- The proposal designates appropriate zones and reservations over the subject lots to enable the environmental assets on site to be protected.
- Recommend Council initiate Amendment No.114 for public review and submission.

Tabled Items

Nil.

Decision Type

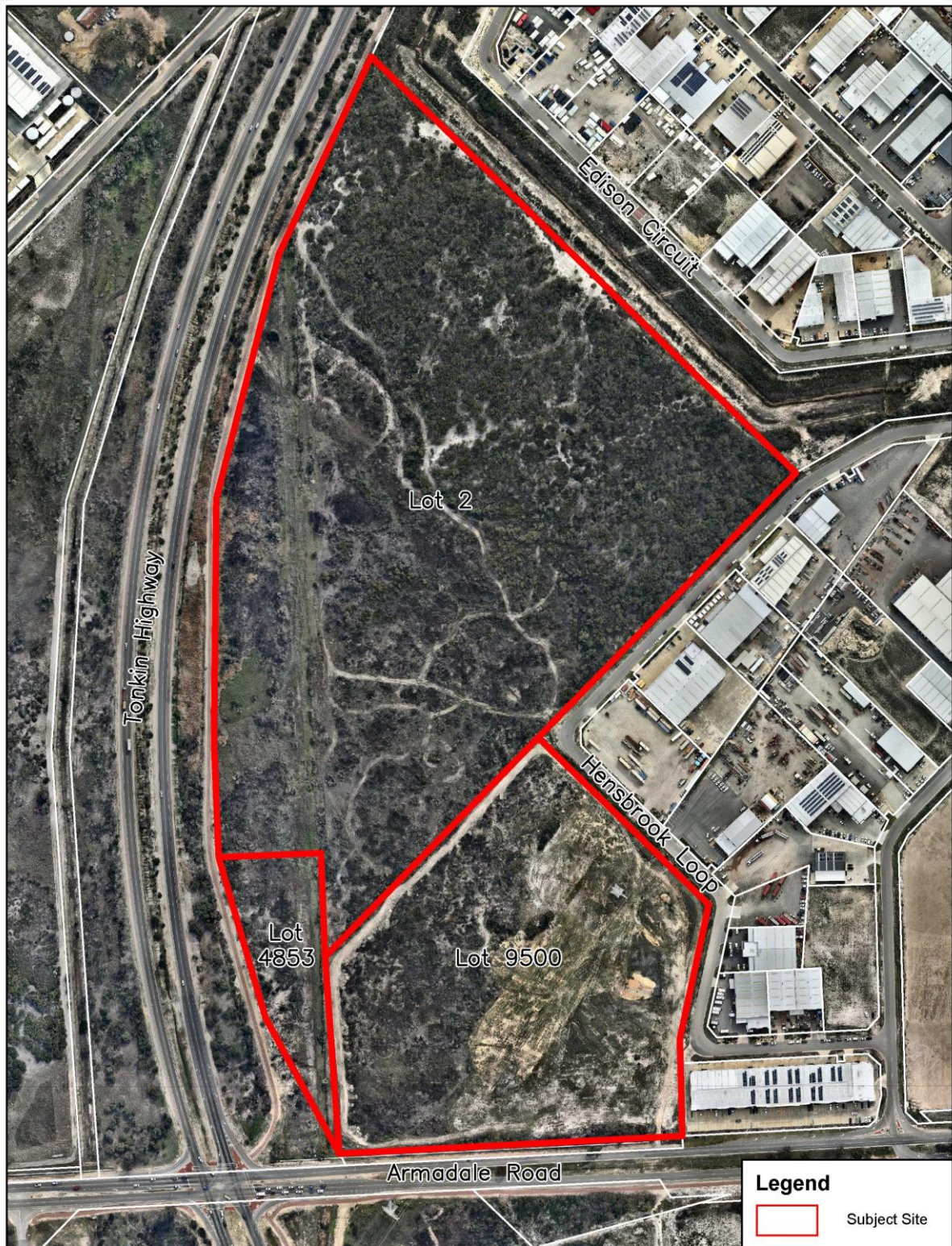
- Legislative** The decision relates to general local government legislative functions such as adopting/changing local laws, town planning schemes, rates exemptions, City policies and delegations etc.
- Executive** The decision relates to the direction setting and oversight role of Council.
- Quasi-judicial** The decision directly affects a person's rights or interests and requires Councillors at the time of making the decision to adhere to the principles of natural justice.

Officer Interest Declaration

Nil.

Strategic Implications

- 2.1 Long term planning and development that is guided by a balance between economic, social and environmental objectives.
- 2.1.1 Review, update and implement the City's Town Planning Scheme, taking into account the Local Biodiversity Strategy and other environmental considerations.



AERIAL PLAN
TPS Amendment No. 114



SCALE 1 : 5000

DATE 14 July 2020 - REVISION 2001
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- 2.5.1 Implement and administer the City's Town Planning Scheme and Local Planning Strategy to deliver quality development outcomes.
- 3.2.2 Broadly promote Armadale as a place of business and investment.
- 3.1.1.8 Facilitate a strong working relationship with the MRA/LandCorp to progress the planning of key areas and timely delivery of infrastructure.

Legal Implications

Metropolitan Redevelopment Authority Act 2011

Metropolitan Redevelopment Authority Regulations 2011

DevelopmentWA Armadale Redevelopment Scheme 2

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

Metropolitan Region Scheme

City of Armadale Town Planning Scheme No.4

Council Policy/Local Law Implications

Nil.

Budget/Financial Implications

Normalisation of MRA areas creates a requirement for additional resources, a portion of which have already been funded and put in place.

Consultation

DevelopmentWA.

Department of Planning Lands and Heritage.

BACKGROUND

The Forrestdale Business Park East Project Area (FBPE), a DevelopmentWA (DWA) Redevelopment Area bound by Tonkin Highway, Ranford Road and Armadale Road, is one of a number of Redevelopment Areas, DevelopmentWA are currently proposing to normalise to the City of Armadale's planning control. DevelopmentWA's original target date for normalisation of FBPE was 30 June 2020, however this has since been delayed. MRS Amendment 1360/57 and Amendment 107 were approved in June 2020 to facilitate the normalisation of FBPE into the Metropolitan Region Scheme (MRS) and Town Planning Scheme No.4 (TPS No.4)

Site Description

Amendment No.114 relates to three lots which were excluded from Amendment 107. Please refer to Attachment – Location Plan. The subject sites are located in the south-western portion of FBPE being:

- Lot 2 Keane Road, Forrestdale;
- Lot 4853 Allen Road, Forrestdale; and
- Lot 9500 Armadale Road, Forrestdale.

A fairly extensive Conservation Category Wetland (CCW) is located on a large portion of all three subject lots. Please refer to Attachment – Conservation Category Wetland. There are four Threatened Ecological Communities mapped as potentially occurring on the subject sites, and a priority fauna species (Quenda) has been observed on the subject sites. The site is mapped as an Environmentally Sensitive Area and the majority of existing vegetation is mapped as a potential vegetated natural area in the City’s Local Biodiversity Strategy.

Land Tenure

The majority of this wetland is located within Lot 2 Keane Road, which is held as a freehold lot by the Department of Lands. The wetland also affects all of Lot 4853 Allen Road which is Crown land held by the Department of Lands. A portion of the wetland also traverses the privately owned Lot 9500 Armadale Road, affecting approximately half of the lot area. Environmental studies are yet to be completed to determine the extent of developable land within Lot 9500.

Normalisation

At its meeting on 24 June 2019, Council resolved to support the normalisation of FBPE subject to several conditions. Council then initiated Amendment 107 to normalise FBPE at its meeting on 23 September 2019, prior to the corresponding MRS Amendment being advertised. The three subject lots were excluded from Amendment 107, because of the complications with the DevelopmentWA planning framework and their environmental values. The expectation at the time was that two lots would be reserved for Parks and Recreation in the MRS and Lot 9500 would be introduced into TPS No.4 using s.57 of the *Metropolitan Redevelopment Act 2011 (MRA Act)*, however it is now known that cannot be done. That is primarily an issue for Lot 9500, as the other two lots are State Government owned and will be reserved for Parks and Recreation under the MRS. This is discussed in further detail in subsequent sections of this report.

DevelopmentWA’s original target date for normalisation of FBPE was 30 June 2020. This target has been delayed and no revised target has been provided to date. Discussions between DWA and the City are ongoing to determine a revised normalisation schedule for the subject lots and a number of other Redevelopment Areas.

DETAILS OF PROPOSAL

Amendment No.114 is part of the process to facilitate the transfer of planning control over the subject lots to the City, which is currently under the control of DWA. The Amendment proposes to:

- Introduce Lot 9500 into the TPS No.4 boundary to enable TPS No.4 zoning and development requirements to apply to the lot;
- Zone Lot 9500 ‘Industrial Development’ under TPS No.4 and include relevant structure planning provisions into Schedule 8 – Development (Structure Planning) Areas, enabling the preparation of a Local Structure Plan to further investigate the environmental constraints of the land;

- Amend Special Control Area Map 3 to identify Lot 9500 as Development Area No.69; and
- Update the TPS No.4 mapping to reflect the recently approved 'Parks and Recreation' reservations under the MRS for Lots 2 and 4853.

Refer to the Attachment – Scheme Amendment Plan.

DevelopmentWA Scheme Amendment Proposal

DWA wrote to the City on 16 July 2020 providing a draft Amendment report for the subject site. This correspondence indicated DWA consider the Amendment be classified as a basic amendment. Basic amendments are generally prepared for very minor administrative changes to a Local Planning Scheme and are not required to be advertised.

State Solicitors Office Advice

In early June 2020 DevelopmentWA advised the City about advice it had received from the State Solicitors Office (SSO) that s.57 of the *MRA Act* cannot be used to normalise its planning framework in Armadale, due to the *Armadale Redevelopment Act 2001* having repealed rather than 'suppressed' the local planning scheme. Because s.57 was the planned method of normalising the subject lots, the City is now required to determine an alternative approach.

One option remains, to normalise the subject lots utilising s.58 of the *MRA Act*, which enables the City to prepare an Amendment to TPS No.4 whilst the land is still included within a Redevelopment Area. S.58 of the *MRA Act* provides that the Amendment does not take effect until the land is removed from Schedule 1 of the *Metropolitan Redevelopment Authority Regulations 2011 (MRA Regs)*. This is the method used for the recently finalised Amendments 105, 107 and 108.

MRS Amendment

A MRS Amendment for a number of Redevelopment Areas including FBPE was formally advertised from 6 December 2019 to 28 February 2020, with Council resolving at its meeting on 28 January 2020 to recommend to the WAPC that it supported the Amendment subject to the entirety of Lot 2 Keane Road and Lot 4853 Allen Road and the portion of Lot 9500 Armadale Road affected by the Conservation Category Wetland (CCW) and its buffer be reserved for 'Parks and Recreation' under the MRS. The WAPC resolved to partially support the City's recommendation, to reserve Lots 2 and 4853 under the MRS, however did not reserve Lot 9500, instead zoning the entire lot 'Industrial' in the MRS.

Lot 9500 Armadale Road

As part of the MRS Amendment process, the MRS Amendment application was formally referred to the Environmental Protection Authority (EPA) for consideration and DWA held discussions with the Department of Water and Environmental Regulation (DWER) relating to the CCW located partially within Lot 9500. DWA acknowledged that Lot 9500 contains a mapped CCW, however advised that the required environmental studies have not yet been completed. DWA and DWER considered it inappropriate to reserve the entire lot 'Parks & Recreation' under the MRS given Lot 9500 has some development potential.

Existing DWA Planning Framework

The existing DWA planning framework for Lot 9500 comprises:

- Expired FBPE Structure Plan
The Structure Plan does not provide a consistent approach to this lot. The Structure Plan text states that the Conservation Category Wetland and a 50 metre buffer should be identified as POS on the Structure Plan, however *“the Structure Plan map identifies the lot being subject to further assessment and will be determined upon further advice from the Department of Environment.”*
- Forrestdale Design Guidelines
DWA’s Design Guidelines for FBPE establish the requirement for a Local Development Plan to be prepared for Lot 9500 prior to development, noting, *“Lot 9500 Armadale Road, Forrestdale requires further environmental assessment and endorsement from Department of Biodiversity Conservation and Attractions prior to the commencement of development.”*

DWA Proposal for Lot 9500 Armadale Road

DWA and DWER agreed a recommended pathway to progress the normalisation of Lot 9500, which was subsequently supported by the WAPC in June 2020. Specifically, the following approach was proposed:

- Applying an ‘Industrial’ zoning under the MRS;
- Applying an ‘Industrial Development’ zone under TPS No.4 to Lot 9500. The Industrial Development zone would require a structure plan/local development plan to be prepared and approved, in consultation with DWER and the Department of Biodiversity, Conservation and Attractions (DCBA) and other stakeholders prior to development taking place;
- Identification of the symbol ‘EC’ on the TPS No.4 map to indicate that environmental conditions apply to the land; and
- Environmental Conditions be embedded into TPS No.4 requiring the preparation of environmental studies and a Structure Plan/Local Development Plan prior to any development taking place.

WAPC and DWER considered the above approach appropriate being consistent with the requirements identified by the expired FBPE Structure Plan and Design Guidelines.

Two options exist to insert environmental provisions into TPS No.4. Conditions can either be inserted into Schedule 6 – Environmental Conditions or where provisions relate to a structure plan, Schedule 8 – Development (Structure Planning) Areas. Provisions can only be inserted to Schedule 6 where they have been drafted by the EPA following a referral under s.38 of the *Environmental Protection Act 1986*. Alternatively, Schedule 8 provisions can be drafted by the City, without a s.38 EPA referral being required.

CoA Legal Advice – Environmental Conditions

The above approach agreed to be DWA, DWER and WAPC indicates that Environmental Conditions and the associated 'EC' symbol can be embedded into TPS No.4 in relation to environmental studies required for Lot 9500. The City obtained legal advice on this subject, as this matter affects both Lot 9500 and the Wungong Urban Water precinct. As expected, the advice stated that any Environmental Conditions inserted into Schedule 6 – Environmental Conditions of TPS No.4 need to have been drafted by the EPA following a referral under s.38 of the *Environmental Protection Act 1986*. This is in place in Wungong, but not in Forrestdale Business Park.

Local Planning Scheme and Metropolitan Region Scheme Consistency

Whilst the WAPC determined to zone Lot 9500 as 'Industrial' under the MRS, choosing to only partially support Council's resolution of 24 June 2019, which recommended applying appropriate protections for the wetland under the MRS, the *Planning and Development Act 2005 (PD Act)* restricts the City's options to amend its Scheme in this instance. The City's TPS No.4 is required to be consistent with the MRS 'Industrial' zoning of the land. The reservation of the Conservation Category Wetland on Lot 9500 as a local 'Parks and Recreation' reserve under TPS No.4 may not be in consistent with the MRS Industrial zone, however, this is not desirable as it is anticipated that subsequent structure planning will need to determine the extent of the wetland. More importantly, any reservation of the land under TPS No.4 will make the City liable to pay the landowner compensation.

ANALYSIS

Scheme Map

The 'Industrial Development' zone of TPS No.4 is the closest aligned TPS No.4 zone to the current classification for Lot 9500 under the current DWA planning framework. The 'Industrial Development' zone provides for future industrial development, subject to the preparation of a structure plan to guide development and determine site features and constraints, effectively replicating DWA's requirement for further environmental assessment as a structure planning requirement in Schedule 8 of TPS No.4. The zoning of Lot 9500 as 'Industrial Development' is consistent with advice received from the Department of Planning, Lands and Heritage (DPLH) and DWA.

- Amend Special Control Area Map 3 to identify Lot 9500 as Development Area No.69.

Refer to Attachment – Special Control Area Map. The inclusion of Lot 9500 into a Development Area enables the City to introduce provisions guiding the preparation of a structure plan for the lot into Schedule 8 - Development (Structure Planning) Areas of the Scheme.

- Update TPS No.4 mapping to reflect the recently approved 'Parks and Recreation' reservations under the MRS for Lots 2 and 4853.

These lots were reserved under the MRS Amendment 1360/57, approved by the Minister for Transport and Planning in June 2020. The City has received legal advice indicating that s.126 of the *Planning and Development Act 2005*, which enables MRS reservations to automatically be applied to the affected LPS does not occur in this instance as TPS No.4 does not currently apply with the Redevelopment Area. As a result, the City proposes to maintain consistency by reflecting the 'Parks and Recreation' reservations of the MRS on the TPS No.4 mapping for Lots 2 and 4853.

Scheme Text

The following changes are proposed to the TPS No.4 text:

- Including provisions into Schedule 8 of TPS No.4 requiring the preparation of a structure plan for Lot 9500 prior to any subdivision or development.

Following discussions with DWA, the City recommended the required environmental/structure planning provisions be included in Schedule 8 - Development (Structure Planning) Areas, rather than Schedule 6 – Environmental Conditions, to enable the City to progress the Amendment without requiring formal assessment of the Amendment by the EPA. This approach reduces the potential for a Local Planning Scheme Amendment being subject to environmental assessment, instead requiring environmental studies to be undertaken by an applicant as part of structure planning.

The preparation of a structure plan for the site will enable the environmental constraints and the extent of the site not affected by these constraints to be determined. The provisions proposed to be included within Schedule 8 of TPS No.4 aim to provide more specific requirements than DWA's current requirements for the site. The Amendment proposes the use of a structure plan to undertake further planning for this site, rather than an LDP, as is indicated under the current DWA framework. LDPs are designed to be used for more detailed stages of planning, addressing built form and usually where a structure plan and subdivision have already been approved for a site. The City does not consider an LDP is appropriate in this situation.

Since the Armadale Redevelopment Authority (ARA) took over planning control of FBPE in the early 2000's, environmental studies for Lot 9500 have not been completed, restricting the ability to develop the lot. There are four Threatened Ecological Communities mapped as potentially occurring in the vegetated portion of the lot, and a priority fauna species (Quenda) has been observed in the vegetated portion of the lot. The proposed structure planning provisions of Amendment No.114 include the requirement for detailed environmental studies to be undertaken which will include investigations into the Conservation Category Wetland located on the site and associated flora and fauna.

Development Contribution Plan

This Amendment does not propose the inclusion of Development Contribution Plan (DCP) provisions for the subject lots. This is consistent with Amendment 107, which excluded DCP provisions for the remainder of FBPE. The *Update on Normalisation of DevelopmentWA Redevelopment Areas* report on this agenda provides further information on the FBPE DCP.

Standard Amendment

Amendment No.114 is proposed as a standard amendment as it meets the following standard amendment criteria (r.34) identified in the *Planning and Development (Local Planning Schemes) Regulations 2015 (PD Regs)*:

- (b) an amendment that is consistent with a local planning strategy for the scheme that has been endorsed by the Commission;
- (c) an amendment to the scheme so that it is consistent with a region planning scheme that applies to the scheme area, other than an amendment that is a basic amendment; and
- (e) an amendment that would have minimal impact on land in the scheme area that is not the subject of the amendment.

The Amendment will facilitate the normalisation of the subject lots and is consistent with the normalisation strategy of the City's Local Planning Strategy. The Amendment is consistent with the approved MRS Amendment 1360/57 over the subject lots. The City's officers consider the Amendment will have a minimal impact on the surrounding land.

The City's officers do not consider the proposal meets the basic amendment criteria. This criteria indicates that amendments consistent with another Act which applies to the Scheme area can be considered basic amendments. In this instance, the Amendment is not wholly consistent with the DevelopmentWA planning framework (prepared under the *MRA Act* which applies to the Scheme area) therefore City officers do not consider the Amendment can be classified as basic. The City considers engagement to affected parties is necessary as part of the proposed amendment. This is a best practise approach and will ensure future planning stages (structure planning, subdivision and development) are managed more efficiently as the landowner will be engaged at the scheme amendment stage.

Scheme Amendment Process

If Amendment No.114 is progressed as a standard amendment, following initiation the Amendment will be required to be forwarded to the EPA for a decision as to whether an environmental assessment is required. Following a decision by the EPA that no assessment is required, the Amendment is to be advertised for 42 days in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015*.

DWA has discussed the proposed amendment with DWER and have advised the City that DWER support the application of structure planning provisions requiring environmental studies to be undertaken as part of a future structure plan. Given discussions have already been held with DWER, the City's officers anticipate the amendment is unlikely to require formal assessment by the EPA.

OPTIONS

1. Council may initiate the Scheme Amendment as proposed.
2. Council may decline the initiation of the Scheme Amendment if it considers the proposed rezoning to be contrary to the orderly and proper planning of the area or for any other reason.

CONCLUSION

Advice from the State Solicitor's Office advises that the subject lots are no longer able to be normalised via s. 57 of *MRA Act*. Amendment No.114 will facilitate the normalisation of the three subject lots within FBPE into TPS No.4, appropriately zoning the subject lots and enabling a process for the protection of the Conservation Category Wetland. It is recommended Council adopt Option 1.

Once initiated, following the closure of the advertising period, the proposed amendment and any submissions received during the advertising period will be forwarded to Council for its consideration for final adoption.

ATTACHMENTS

1. Existing and Proposed Zoning Plan - TPS No.4 - Amendment No.114
2. Existing and Proposed Zoning Plan - SCA 3 - Amendment No.114

RECOMMEND

D52/8/20

That Council:

1. Pursuant to Part 5 of the *Planning and Development Act 2005*, initiate Amendment No.114 to Town Planning Scheme No.4 as a standard amendment in accordance with Part 5 Clause 34 – standard amendment subsections (b), (c) and (e) of the *Planning and Development (Local Planning Schemes) Regulations 2015* to:
 - a. Include Lot 9500 Armadale Road, Forrestdale as designated on the Scheme Amendment Map into the Scheme boundary;
 - b. Rezone Lot 9500 Armadale Road, Forrestdale as depicted on the Scheme Amendment Map from unzoned to 'Industrial Development' zone;
 - c. Rezone Lot 2 Keane Road, Forrestdale and Lot 4853 Allen Road, Forrestdale from unzoned to 'Parks and Recreation (Regional)' reserve;
 - d. Amend Special Control Area Map 3 to designate Development Area No.69 over Lot 9500 Armadale Road, Forrestdale as depicted on the Special Control Area Map 3;
 - e. Amend Schedule 8 – Development (Structure Planning) Areas to include the following new Development Area:

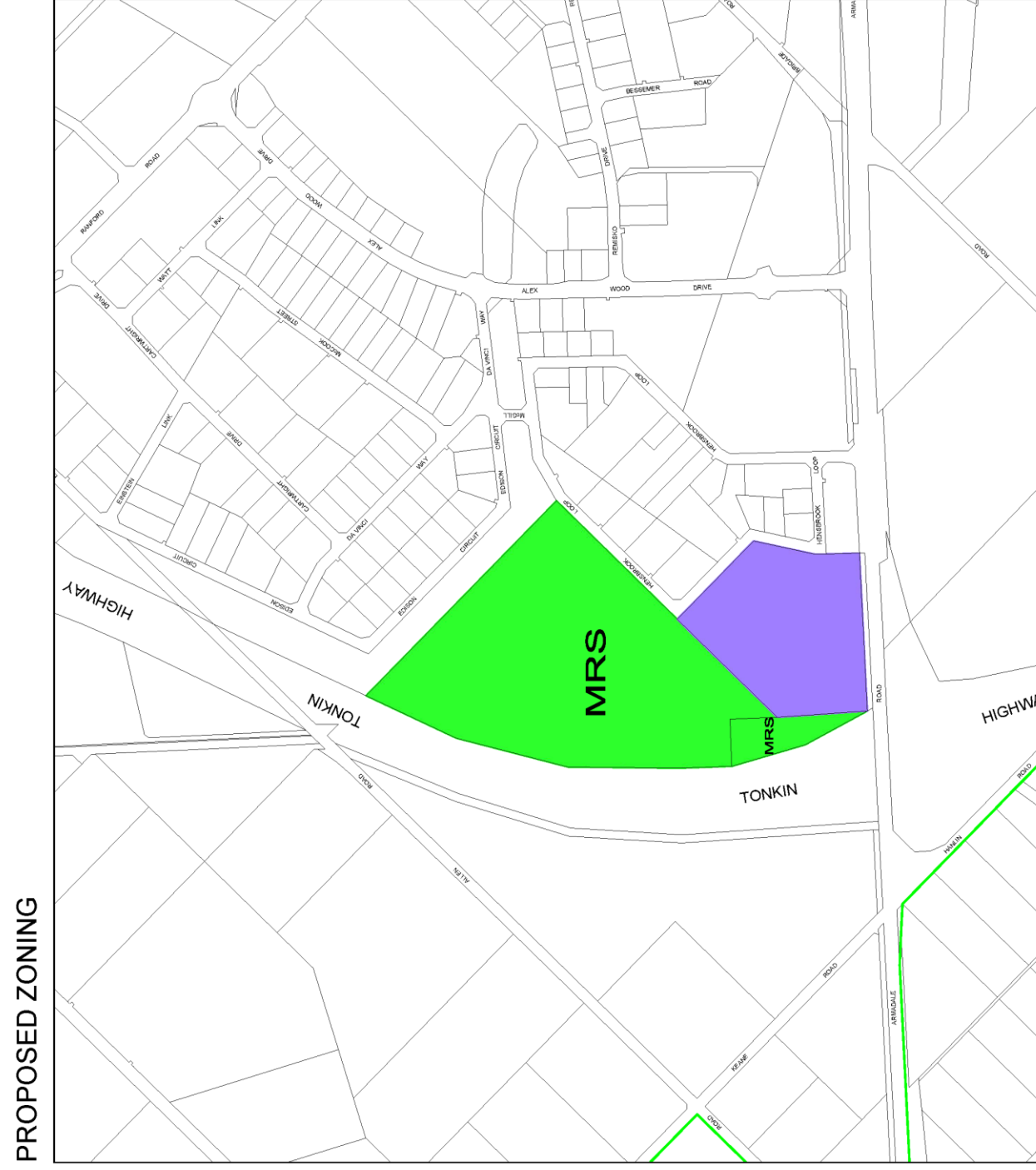
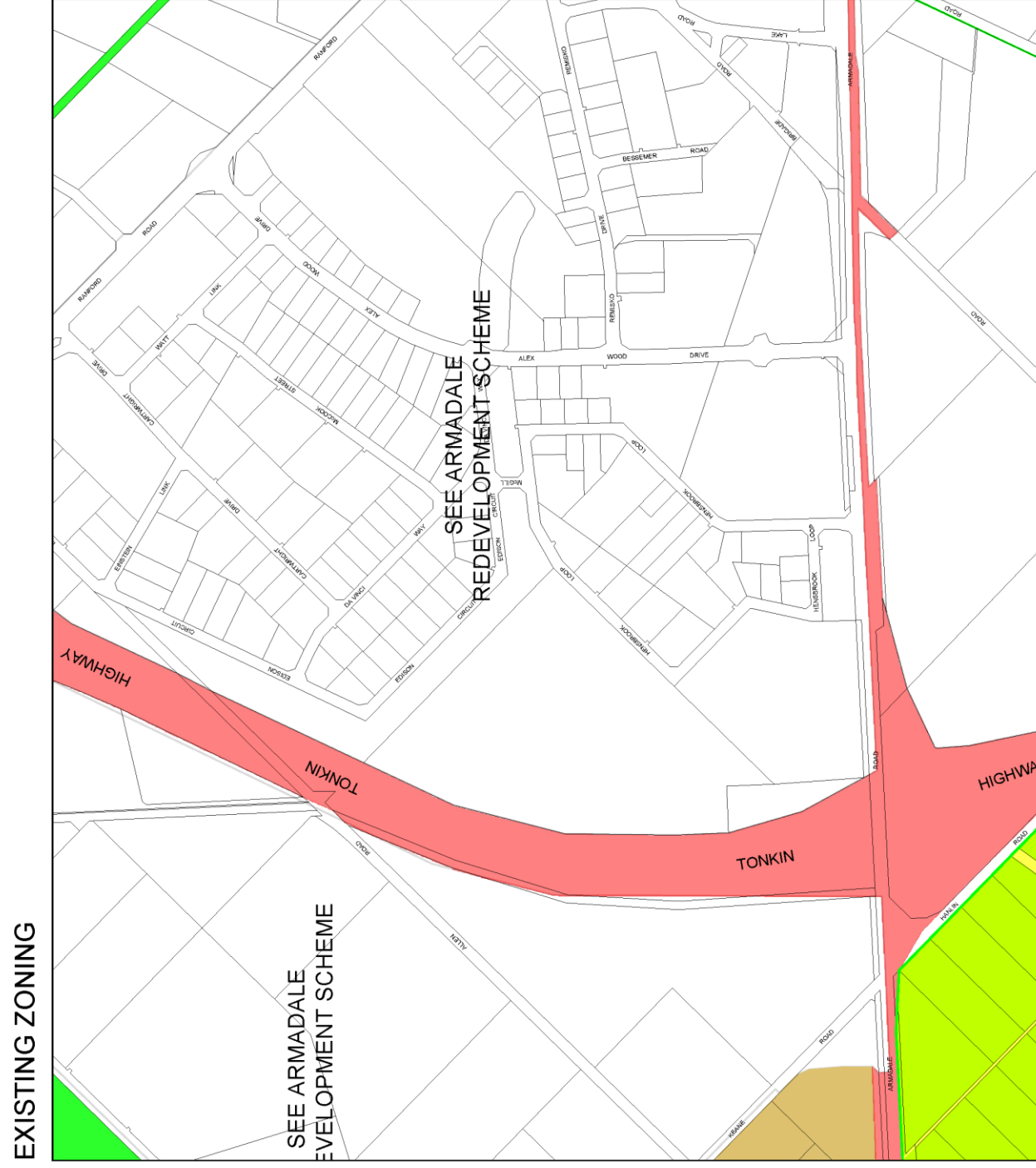
No.	Description of Land	Additional provisions applicable to subdivision and development
69	Lot 9500 Armadale Road,	69.1 Prior to any subdivision or development, comprehensive planning shall be undertaken by the

	Forrestdale.	<p>preparation of a Structure Plan to guide subdivision and development.</p> <p>69.2 Any Structure Plan shall be accompanied by detailed environmental studies of the Conservation Category Wetland and its buffers on the subject site including, but not limited to:</p> <ol style="list-style-type: none">1. flora assessment;2. fauna assessment; and3. wetland management plan. <p>The recommendations of any environmental studies shall be implemented and any environmental assets protected in the Structure Plan and at the subdivision and/or development stages to the satisfaction of the City of Armadale on advice from the Department of Water and Environmental Regulation and the Department of Biodiversity, Conservation and Attractions.</p>
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- f. Amend the Scheme Map accordingly.**
- 2. Refers the above Amendment to Town Planning Scheme No.4 to the Environmental Protection Authority (EPA) pursuant to section 81 of the *Planning and Development Act 2005*. Should the EPA advise that the amendment does not require assessment, advertise the amendment for a period of 42 days.**
 - 3. Authorise the Mayor and the Chief Executive Officer to execute the Amendment documents.**
 - 4. Forward a copy of the amendment to the Western Australian Planning Commission and DevelopmentWA for information.**

**Moved Cr C Frost
MOTION CARRIED**

(7/0)



ZONES

- RESIDENTIAL including Residential Planning Density Codes
- URBAN DEVELOPMENT ZONE
- RURAL LIVING - 1,2,4,10,20,X
- GENERAL RURAL
- SPECIAL RURAL
- SPECIAL RESIDENTIAL
- MIXED BUSINESS / RESIDENTIAL
- LOCAL CENTRE
- DISTRICT CENTRE
- STRATEGIC REGIONAL CENTRE
- GENERAL INDUSTRY
- INDUSTRIAL BUSINESS
- INDUSTRIAL DEVELOPMENT
- SPECIAL USE
- ADDITIONAL USE No.1
- RESTRICTED USE No.7
- RU No.4
- DENSITY CODE BOUNDARY
- SCHEME BOUNDARY

RESERVATIONS

- PARKS & RECREATION (Region)
- PARKS & RECREATION (Local)
- RAILWAYS
- STATE FOREST
- WATERWAYS
- WATER CATCHMENTS
- PRIMARY REGIONAL ROADS
- OTHER REGIONAL ROADS
- PUBLIC PURPOSE (Local)
- PUBLIC PURPOSE (Region)
- PUBLIC PURPOSE Miscellaneous Sub Categories
- CG Commonwealth Government
- TS Technical School
- HS High School
- PS Primary School
- H Hospital
- WSD Water Authority of WA
- SU Special Use
- SEC State Energy Commission
- T Telstra

NOTE: The reservations are shown diagrammatically and do not purport to represent the road reservations shown in the Metropolitan Region Scheme and information in respect to road widening requirements for these roads should be obtained from the Department of Planning



SCALE 1 : 10000

AMENDMENT No. 114
City of Armadale Town Planning Scheme No. 4

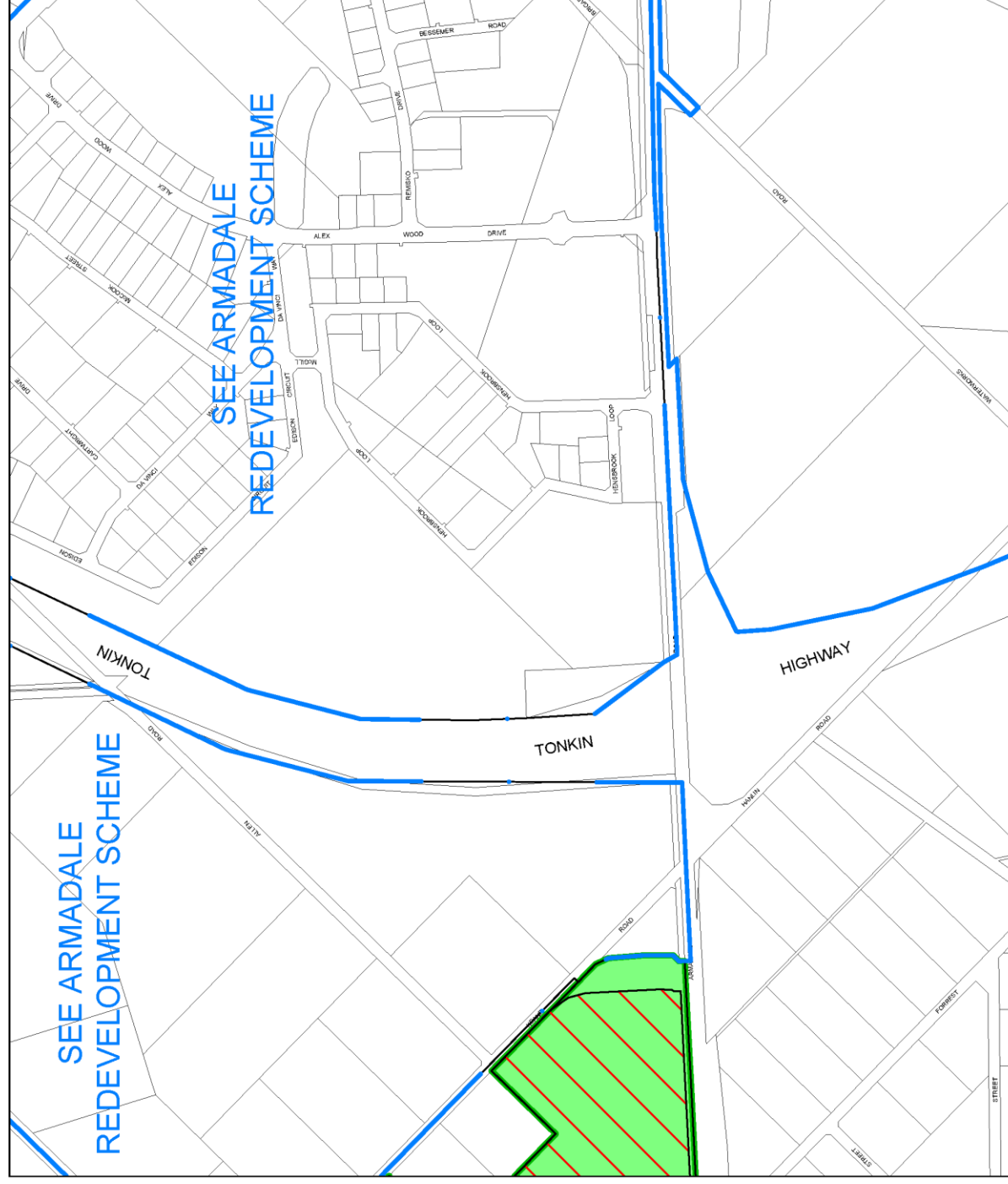
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CITY OF Armadale

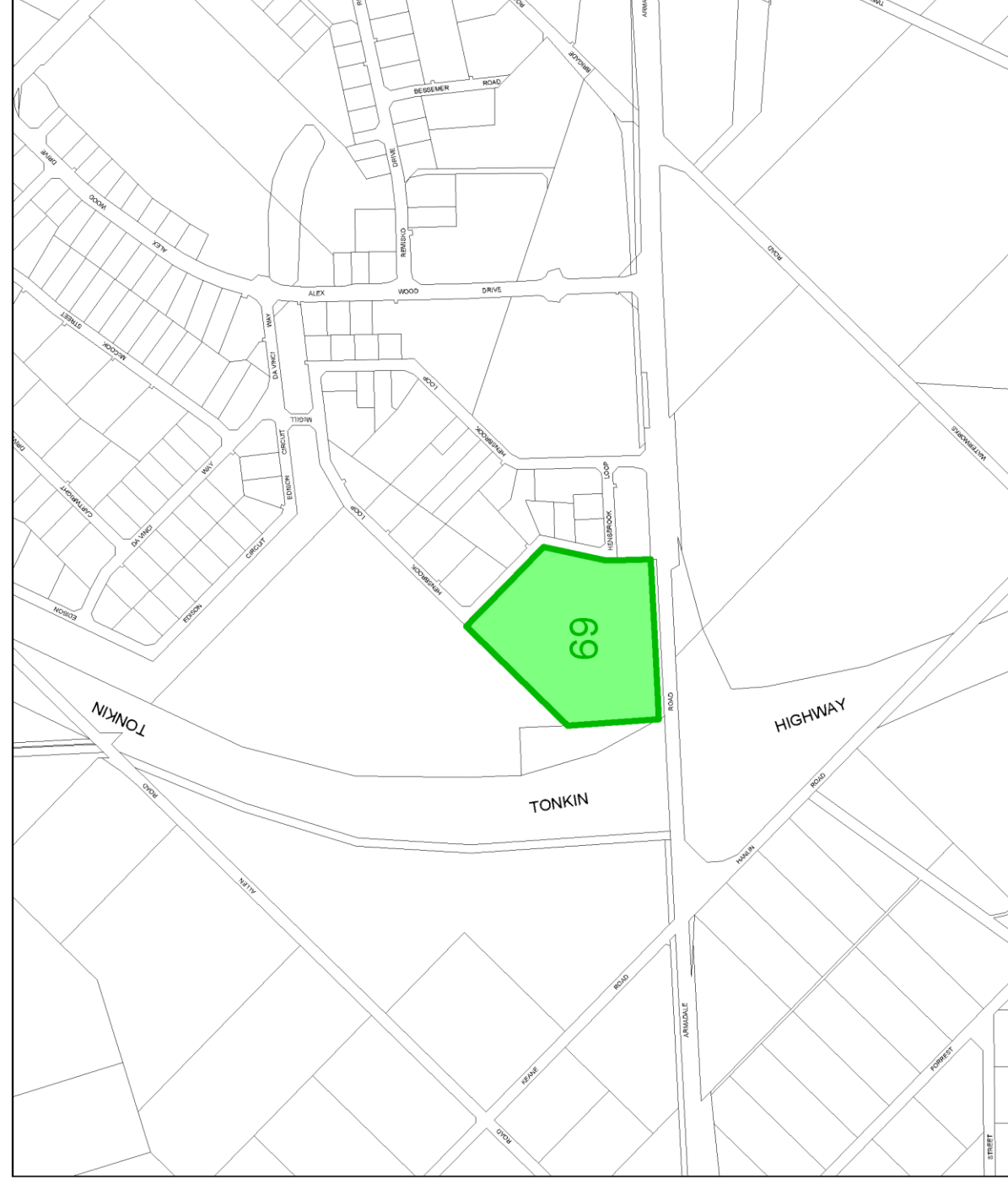
EXISTING ZONING - SPECIAL CONTROL AREA MAP 3



LEGEND

-  Development Area (Structure Plan) (Schedule 8)
-  Development Contribution Area (Schedule 9A & 9B)
-  Environmental Conditions (Schedule 8)
-  Armadale Redevelopment Area Boundary

PROPOSED ZONING - SPECIAL CONTROL AREA MAP 3



NOTE: The reservations are shown diagrammatically and do not purport to represent the road reservations shown in the Metropolitan Region Scheme and information in respect to road widening requirements for these roads should be obtained from the Department of Planning



SCALE 1 : 10000

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AMENDMENT No. 114
City of Armadale Town Planning Scheme No. 4
Special Control Area Map 3

DATE 5 April 2018 - REVISION 1801
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