



Chief Executive Officer  
Shire of Donnybrook-Balingup  
PO Box 94  
Donnybrook WA 6239

**Attention: Planning**  
**By email only: [shire@donnybrook.wa.gov.au](mailto:shire@donnybrook.wa.gov.au)**

To Whom It May Concern

**PROPOSED HOLIDAY HOUSE (CHANGE OF NON-CONFORMING USE) – LOT 70 ON DEPOSITED PLAN 82487, 66 CAPEL STREET, KIRUP 6251 (CERTIFICATE OF TITLE 1170/527)**

**INTRODUCTION AND SITE DETAILS**

This office represents the registered proprietor in applying to change the existing non-conforming use of the existing dwelling on the above lot from a Single House to Holiday House.

The subject property is described as Lot 70 on Deposited Plan 82487, as contained in Certificate of Title 1170/527. It is located at the street address of 66 Capel Street, in the hamlet of Kirup, approximately 700 m northwest of the town centre and 290 m from the nearest intersecting road, Castle Street. The subject lot contains a legal area of 2.9110 ha, with improvements comprising existing–

- dwelling (Single House use class);
- ancillary dwelling (Ancillary Accommodation use class);
- domestic tennis court (ancillary to dwelling under supplemental provisions);
- orchard and vineyard (Agriculture – Intensive use class); and
- various ancillary / incidental agricultural outbuildings / structures, soak dam, pump and irrigation systems, driveways and fences.

The original dwelling was built in the nineteen-fifties, with the property owned by the Cambrea family until 1990, then the Overgaard family until it was purchased by the current owner in 2005. In 2006, the dwelling underwent significant additions / alterations under building licence number 200506260 granted by the Shire of Donnybrook-Balingup on 7 April 2006.

The subject lot is zoned Light Industry pursuant to *Shire of Donnybrook-Balingup Local Planning Scheme No. 7 (LPS 7)*, which was gazetted on 19 September 2014. Prior to this, the subject lot was understood to be zoned Residential with a low-density R-Code applied.

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The western and northern boundaries are common to the unnamed and unconstructed road reserves which have no zone applied, while the southern boundary is Capel Street, a sealed and drained local / rural distributor road.

The eastern boundary is common to Lot 50 on Deposited Plan 46326, 1 South Western Highway, Kirup (Certificate of Title 2729/428), while the southeastern boundary is common with Lot 302 on Deposited Plan 44002, Reserve 19711 South Western Highway (Certificate of Title LR3137/532). The latter being the Department of Biodiversity, Conservation and Attractions (DBCA) work centre. Both these adjoining lots are also zoned Light Industry, the same as the subject lot

## **PROPOSAL**

The proposal is to change the use of the existing dwelling building from Single House to Holiday House.

Because both Single House and Holiday House are listed as Class X (i.e. prohibited) uses in the Light Industry zone under Table 1 (zoning table) of LPS 7, this application becomes an application to change one lawful non-conforming use.

To enable assessment of the application, please find enclosed in order:

1. Completed and signed *Application for Development Approval* form and *Application Checklist*.
2. Record of Certificate of Title 1170/527.
3. Superseded certificate of title (sketch).
4. Working drawings sheet, containing site plan, floor plan and east and south elevations of existing dwelling building.
5. Bushfire management plan.
6. Bushfire emergency evacuation plan.
7. Bushfire evacuation poster.

The Shire of Donnybrook-Balingup will have other plans relating to the subject property in its building licence archives.

## **PLANNING REQUIREMENTS**

### Zoning

As already mentioned, the subject lot is zoned Light Industry on LPS 7 map.

### Use Classes

The existing use of the dwelling best falls under the use class definition of Single House, which is taken from Appendix A1 from the Residential Design Codes (R-Codes) Volume 1, quoted as follows:

***“SINGLE HOUSE - a dwelling standing wholly on its own green title or survey-strata lot, together with any easement over adjoining land for support of a wall or for access or services and excludes dwellings on titles with areas held in common property.”***

The proposed use best falls under the interpretation of Holiday House found under Schedule 1, clause 2 (land use definitions) of LPS 7, quoted as follows:

***“holiday house” means a dwelling together with its associated outbuildings –***

- (a) designed primarily as a dwelling for permanent residential purposes whether or not occupied periodically as such; and***
- (b) used, whether or not for commercial gain or reward, from time to time for unsupervised, short-stay tourist accommodation purposes excluding people that are members of the owner’s family but including all people where the owner is a company; but does not include a “bed and breakfast” facility;”***

As mentioned already, the zoning table of LPS 7 lists Single House (incorrectly referenced as ‘dwelling’ in the table) and Holiday House as prohibited uses in the Light Industry zone.

Because the Single House use has continued unabated for the purpose for which it was approved and lawfully being used immediately prior to the gazettal of LPS 7, it qualifies as a ‘non-conforming use under clause 3.19 of the same.

#### Extensions and Changes to a Non-conforming Use

Clause 3.20 provides the head of power for extensions and changes to a non-conforming use, as is quoted as follows:

***“3.20.1 A person must not –***

- (i) alter or extend a non-conforming use;***
- (ii) erect, alter or extend a building used in conjunction with or in furtherance of a non-conforming use; or***
- (iii) change the use of land from a non-conforming use to another nonconforming use, without first having applied for and obtained development approval under the Scheme.***

***3.20.2 An application for development approval under this clause is to be advertised in accordance with clause 64 of the deemed provisions.***

***3.20.3 Where an application is for a change of use from an existing non-conforming use to another non-conforming use, or to extend a non-conforming use, the local government is not to grant it development approval unless the proposed use is less detrimental to the amenity of the locality than the existing non-conforming use and is, in the opinion of the local government, closer to the intended purpose of the zone.”***

Due to sub-clause 3.20.3, there is onus on the applicant to prove the proposed use is less detrimental to the amenity of the locality than the existing non-conforming use and closer to the intended purpose of the zone.

## Policies

Sub-clause 4.57.1 of LPS 7 contains the policies of the Light Industry zone, quoted as follows:

### ***“4.57.1 Policies***

***The local government’s policies in controlling development and influencing subdivision within the Light Industry zone are to –***

- (i) promote the establishment of uses which can be shown to achieve the objectives of contributing to the economy of the district and provide conveniently located services to the district;***
- (ii) control retail uses to generally be incidental to the predominant industrial or approved use and support the sale of goods manufactured from the site;***
- (iii) require that standards of development and maintenance of industrial uses are consistent with the overall amenity of the district, including to contain any possible adverse impacts from a proposed development within the Light Industrial zone;***
- (iv) encourage pleasant and efficient industrial facilities;***
- (v) encourage consolidation and improvement of appropriately located industrial areas;***
- (vi) enable industrial areas to expand where the need for such expansion can be appropriately justified; and***
- (vii) promote safe movement of vehicular, pedestrian and cyclist traffic.”***

The Light Industry zone is deliberately and strategically applied to greenfield land for the specific purposes of accommodating use classes that have some amenity impact, and in this respect short-stay accommodation is regarded as slightly more impactful than typical residential occupation, and therefore closer to the intended target of the zone.

In addition, short-stay accommodation is considered a suitable bridging use that fits comfortably within policies (i) and (vi) above, being to–

- establish uses that contribute to the economy of the district and help to underpin the provision and viability of conveniently located services; and
- enable industrial areas to expand if and where the need for such expansion can be appropriately justified.

Being at the outer edge of town, the subject lot is light industrial ‘in waiting’; deferred land that will only be consumed in the longer term if / when demand for commercial / industrial purposes eventuates. For the foreseeable future, it should not be sterilised from other, more appropriate land use opportunities that are compatible with the zone as it is currently used (or not used) and not conflict surrounding land uses. For this reason, the short-stay accommodation proposal is considered a suitable change of non-conforming use.

It is understood the Shire of Donnybrook-Balingup reached the same conclusion when granting development approval recently for a change of non-conforming use from Single House to Holiday House at nearby Lot 145 on Deposited Plan 218628, 46 Capel Street (Certificate of Title 2083/95), noting this other property–

- has the same Light Industry zoning;
- abuts the actively used DBCA work centre and closer to town (and is therefore more likely to be consumed for industrial purposes in the future, if demand arises); and
- is a smaller 1,149 m2 town lot that adjoins and sits opposite residentially occupied dwellings on similar town lots.

Refer to: [https://www.airbnb.com.au/rooms/49998179?check\\_in=2024-11-14&check\\_out=2024-11-16&guests=1&adults=1&s=67&unique\\_share\\_id=54feea64-9015-47de-b474-13a001f6be65](https://www.airbnb.com.au/rooms/49998179?check_in=2024-11-14&check_out=2024-11-16&guests=1&adults=1&s=67&unique_share_id=54feea64-9015-47de-b474-13a001f6be65)

## CONCLUSION

In addition to the above, approval of the proposed development is considered to be–

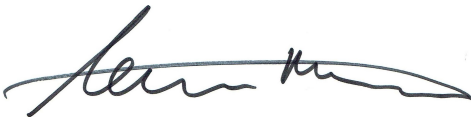
- appropriate having regard to the matters to be considered set out in clause 67 of the Deemed Provisions; and
- consistent with the orderly and proper planning of the locality and the preservation of the amenities of the locality.

It is trusted the Shire of Donnybrook-Balingup agrees with the above assessments and ultimately grants a conditional development approval.

May the Shire please forward an invoice in the name of the landowner, **DA Oldmeadow**, for payment of the requisite fees.

Should you require any further information or have any questions in the interim, please do not hesitate to contact the undersigned.

Yours faithfully



**AARON BELL**  
**DIRECTOR**  
**ABLE PLANNING & PROJECT MANAGEMENT**

30 September 2024

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