

**ADVICE UNDER SECTION 48A(1)(a)
ENVIRONMENTAL PROTECTION ACT 1986**

Metropolitan Region Scheme Amendment 1435

Location: Part Lot 5892 Maralla Road Bullsbrook

Determination: Scheme Not Assessed – Advice Given (not appealable)

Determination Published: 18 December 2024

Summary

Metropolitan Region Scheme (MRS) Amendment 1435 proposes to rezone approximately 125 hectares (ha) of Lot 5892 Maralla Road Bullsbrook from the 'Rural' zone to the 'Urban Deferred' zone. The amendment will primarily facilitate future residential development.

The Environmental Protection Authority (EPA) has considered the scheme amendment in accordance with the requirements of the *Environmental Protection Act 1986* (EP Act). The EPA considers that the scheme amendment is unlikely to have a significant effect on the environment and does not warrant formal assessment under Part IV of the EP Act, subject to implementation of this public advice. The EPA has based its decision on the original referral documentation and additional information provided by the Western Australian Planning Commission (WAPC) and the North Ellenbrook (West) District Structure Plan Amendment 1 (DSP). Having considered this matter, the following advice is provided.

Environmental Factors

Having regard to the EPA's (2021) *Statement of Environmental Principles, Factors, Objectives and Aims of Environmental Impact Assessment*, the EPA has identified the following preliminary environmental factors relevant to this scheme amendment:

- Flora and vegetation
- Terrestrial fauna
- Inland waters
- Social surroundings.

Advice and Recommendations regarding the Environmental Factors

Context: Ministerial Statement 956 and ML70/326

The EPA notes that Ministerial Statement (MS) 956 applies to the amendment area and authorises the extraction of sand from mining tenement ML70/326 by Urban Resources Pty Ltd.

The current extent of the proposal MS 956 which is able to be implemented under ML70/326, and the conditions associated with ML70/326, has been considered by the EPA in reaching the determination to not assess this amendment, including:

- The implementation of the proposal associated with MS 956/ and ML70/326 will result in impacts to flora and vegetation values (and associated terrestrial fauna values) within much of the amendment area, therefore reducing the extent of environmental values within the amendment area which are able to be managed and protected as part of future urban development.

- MS 956/ ML70/326 (and exemptions under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)) only permits clearing at the site associated with the 92 hectare (ha) mining proposal within a 121 ha mining envelope as currently approved by the Department of Energy, Mines, Industry Regulation and Safety under the *Mining Act 1978*. This means 33 ha of the amendment area is not subject to current authorisation to be cleared, and any clearing of this 33 ha is likely to be significant for both State and Commonwealth environmental laws.
- ML 70/236 conditions require “rehabilitation on private land being an end land use agreed with the land owner, provided that the lessee shall ensure that disturbed areas are left in a condition acceptable to the Environmental Protection Authority”.
- The amendment area is identified under SPP 2.4 as ‘Sites with Prior State Environment Minister Approval’ with ‘the land being identified as having a ‘Significant Geological Supply – Sand’

After considering this context, the EPA considers:

- that environmental protection consistent with its factor objectives is likely to be able to be achieved through planning processes without EPA assessment, provided the 33 ha of the amendment area (which is not able to be cleared under ML70/326) is subject to substantial avoidance and environmental management;
- that it is likely to be satisfied that the end use of land under MS 70/236 be residential and does not need to be significantly rehabilitated with native vegetation, if the balance of the amendment area (i.e. 33 ha) is subject to substantial avoidance and environmental management.

The existence of MS 956 and /ML70/326 which permits clearing of up to 92 ha does not mean that additional clearing will not a relevant consideration for the purpose of any other proposal. Should any other proposal (that is not the current proposal for MS 956) propose clearing of the environmental values within the amendment area, a Decision Making Authority should consider its obligation to potentially refer any significant proposal to the EPA under Part IV of the EP Act and the EPBC Act.

Further advice regarding specific environmental factors and the environmental protection which the EPA expects be implemented through planning processes, is provided below.

Flora and vegetation and Terrestrial fauna

The amendment area contains of remnant vegetation representative of the Banksia woodlands of the Swan Coastal Plain Priority/Threatened Ecological Community (PEC/TEC) (state-listed priority 3, endangered under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)), with a patch of Xanthorrhoea shrubland also present.

The amendment area also contains black cockatoo foraging habitat for Carnaby’s Cockatoo (*Zanda latirostris*) (endangered under the *Biodiversity Conservation Act 2016* and EPBC Act) and may contain potential breeding trees. The foraging habitat is of particular importance given the proximity of the amendment area to known local black cockatoo roosting and breeding sites.

It is the expectation of the EPA that future planning processes (including DSP amendments, local planning strategy, local planning scheme, local structure plans and subdivision) will significantly avoid (all or most) and provide substantial protection to environmental values (flora and vegetation and terrestrial fauna (habitat)) within the 33 ha balance of the amendment area outside of the 92 ha mining footprint.

This has informed the EPA's consideration of both significance of impacts and cumulative impacts through implementation of the amendment. The EPA considers that protection of environmental values within the balance of the amendment area through future planning processes can manage the residual and cumulative impacts of the amendment to meet the EPA's environmental factor objectives.

Where the amendment area is cleared in accordance with MS956 prior to implementation of urban development, rehabilitation of future proposed open space areas with native species to provide additional habitat for black cockatoos is recommended.

The amendment area is also adjacent to Bush Forever sites containing the Banksia Woodland PEC/TEC and habitat for species of black cockatoo.

Future development within the area should consider:

- Appropriate interfaces, linkages and connections to, corridors with and buffers to surrounding environmental values.
- Restoration opportunities within the 33 ha balance, and public open space areas.
- Retaining and avoiding the most valuable vegetation, and concentrating development on already cleared areas.
- Seeking agreement with the proponent of ML 70/236 to retain and avoid the most valuable vegetation, and concentrating mining on already cleared areas – noting this is more likely to satisfy the EPA that condition 8 of ML70/326 does not require substantial re-vegetation;
- Ongoing environmental management of the 33 ha balance of the amendment area, to ensure protection and delivery of environmental outcomes
- The opportunity which retention and management of the 33 ha presents to reduce cumulative impacts in the area, and therefore to facilitate environmental planning and certainty of land use for other areas;
- Have regard to the EPA's submission on the Urban Greening Strategy (July 2024); and
- Have regard to the EPA's (2021) *Guidance for planning and development: Protection of naturally vegetated areas in urban and peri-urban areas*.

Inland waters

One Conservation Category Wetland (CCW) (UFI: 8907) is mapped within the amendment area. The EPA understands that future development within the amendment area is proposed to be consistent with the DSP Amendment 1 which proposes a public open space designation over the mapped occurrence of CCW and associated buffer.

The CCW is within the MS 956 area, however it is outside the footprint approved under the Mining Proposal associated with ML70/326, and so it consistent with the public open space designation.

The EPA expects the CCW will be protected by appropriate zoning and management under future planning processes. It also recommends that a site specific wetland buffer study and a wetland management plan are undertaken to inform future stages of planning and ensure that the specific environmental values associated with the CCW are protected.

The EPA notes that Department of Water and Environmental Regulation (DWER) has endorsed a District Water Management Strategy (DWMS) over the amendment area and that future stages of planning will require further water management plans that will provide additional management of potential impacts to Inland waters values.

Social Surroundings

Proposed future land uses that will be facilitated by the 'Urban Deferred' zoning (such as residential development and school sites) are likely to constitute sensitive land use types. There are potential noise and dust impacts from the ongoing extractive industry within and nearby the amendment area on the proposed sensitive land uses. Accordingly, in the context of the existing emitting land uses within and around the amendment area, implementation of the amendment may cause the introduction of new land use conflicts.

The EPA expects that the introduction of potential land use conflicts within the amendment area will be considered by the WAPC as part of subsequent determinations to lift the 'Urban Deferred' zoning. Noting that State Planning Policy 2.4 provides for sequential urban development following the extraction of basic raw materials further detail will be required to demonstrate how sequential land use will be achieved within the amendment area as part of the subsequent planning phases. These future planning instruments should:

- identify separation distances and establish transitional land uses and interface areas to protect the Basic Raw Materials from encroachment by urban land uses and avoid health risks and amenity implications for urban land uses, and
- address sequential land use and demonstrate staging.

The EPA's (2005) Guidance Statement No. 3 Separation Distances between Industrial and Sensitive Land Uses should be considered to advise decision making on the potential impacts to sensitive land uses and separation distances.

Conclusion

The implementation of the proposal associated with MS 956 will result in flora and vegetation values (and associated terrestrial fauna values) on 92 ha within the amendment area being cleared. This would reduce the extent of environmental values within the amendment area, meaning implementation of future urban development within the amendment area should be prioritised to occur on already cleared land.

The EPA expects that future planning processes will significantly avoid and provide substantial protection to environmental values within the balance of the amendment area outside of the 92 ha mining footprint. In such a scenario, implementation of the scheme amendment would not be inconsistent with the EPA's environmental objectives. Future planning requirements including amendments to the local planning scheme, development of a structure plan, and other statutory processes could manage residual impacts.

The EPA recommends its advice is implemented to further mitigate potential impacts to the above factors.