



Environmental Protection Authority

Chief Executive Officer
Shire of Gingin
7 Brockman Street
GINGIN WA 6503

Your Ref:
Our Ref: CMS16290
Enquiries: Gerard O'Brien, 6364 7600
Email: Gerard.Obrien@dwer.wa.gov.au

Dear Sir/Madam

DECISION UNDER SECTION 48A(1)(c) *Environmental Protection Act 1986*

SCHEME: Shire of Gingin - Local Planning Scheme 9 -
Amendment 18
LOCATION: Various lots, Brand Highway, Gingin
RESPONSIBLE AUTHORITY: Shire of Gingin
DECISION: Scheme Amendment Incapable of Being Made
Environmentally Acceptable Under Part IV of
EP Act. (Not Appealable)

Thank you for your letter of 29 September 2016 referring the above scheme amendment to the Environmental Protection Authority (EPA) and providing a response to my Notice dated 16 August 2017.

Taking your correspondence into consideration as well as advice provided to the EPA by the Department of Planning, Lands and Heritage, the EPA has determined under Part IV Division 3 of the *Environmental Protection Act 1986* (EP Act) that the scheme in its current form is incapable of being made environmentally acceptable. The EPA's full reasons for its determination are set out in the enclosed Statement of Reasons.

Please note that there is no right of appeal against the EPA's determination that the scheme amendment is incapable of being made environmentally acceptable.

Yours sincerely

Tom Hatton
CHAIRMAN

11 December 2017

Encl: Statement of Reasons

**Shire of Gingin
Local Planning Scheme 9
Scheme Amendment 18**

STATEMENT OF REASONS AND ADVICE

Scheme Amendment 18

On 29 September 2016 the Shire of Gingin referred Local Planning Scheme (LPS) 9 Amendment 18 to the Environmental Protection Authority (EPA), which proposed to rezone 210 hectares (ha) from 'General Rural 30' to 'Future Development' zone, to facilitate the future development of urban, rural residential and mixed business precincts north west of the Gingin townsite.

Amendment 18 also proposes to insert 'Future Development Zone No. 2' and associated conditions into Schedule 9 – Future Development Zones of LPS 9 including:

- structure planning requirements for water and environment management strategies; and
- subdivision requirements for water and environment management plans.

Considerations

The amendment area contains the following environmental values:

- remnant native vegetation mapped as three Hedde vegetation complexes; Gingin, Yanga and Coonambidgee. Each of these complexes have 11.6%, 16.5% and 45.5% of their original extent remaining respectively;
- Vegetation units which are also potentially representative of *Banksia woodlands of the Swan Coastal Plain*, a threatened ecological community (TEC) listed as Endangered under the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act), and Priority 3 by the Department of Biodiversity Conservation and Attractions (DBCA);
- confirmed foraging habitat and potential breeding habitat for Carnaby's Black Cockatoos, which are listed as Endangered under the EPBC Act and the *Wildlife Conservation Act 1950*;
- two Conservation Category Wetland (CCW) areas;
- One threatened flora species *Ptychosema pusillum* located in the centre of the site and listed as Vulnerable under the EPBC Act and the *Wildlife Conservation Act 1950*, and also associated with the Priority 3 ecological community Swan Coastal Plain *Banksia attenuata* – *Banksia menziesii* woodlands.

The EPA wrote to the Shire of Gingin on two occasions outlining the above environmental values, and the need for Amendment 18 to avoid, mitigate and manage impacts to these values, specifically remnant Gingin and

Yanga vegetation complexes and Black Cockatoo habitat. In response the Shire of Gingin and associated consultants provided a progression of additional protection measures which included:

- reducing the amendment area to 204 ha;
- introducing additional scheme text to:
 - initially retain 48 ha of vegetation, then changed to limit clearing of Gingin or Yanga vegetation complex in 'Good' or better condition to 3 ha;
 - subdivision/development applications shall be accompanied by an Environmental Management Plan for the vegetation conservation areas detailing vegetation areas for retention and their management arrangements;
 - preparation of a Black Cockatoo Management, Mitigation and Offset Plan prior to adoption of a structure plan; and
 - additional structure planning requirements.

Agency Advice

The Department of Planning, Lands and Heritage (DPLH) advised the EPA that Amendment 18 is not consistent with the areas identified as potential future urban and mixed business in the Shire of Gingin's 2014 *Local Planning Strategy*. DPLH advised that it is unclear why there is a need to develop land in a location with known significant environmental values. On this basis DPLH does not support the broad-scale rezoning proposed by the amendment.

DPLH also advised that majority of the proposed scheme text provided by the Shire to manage impacts to environmental values are difficult to enforce. DPHL recommended that a modest amendment which is consistent with the Local Planning Strategy, which takes into account environmental values and includes clear and enforceable scheme provisions would be more appropriate.

EPA Determination

The EPA considers that any potential impacts to remnant native vegetation mapped as Gingin or Yanga complex, and/or the Banksia woodlands TEC, is significant given the low extent remaining of these complexes and conservation significance of the TEC.

In addition the EPA also considers that given the inability to enforce the proposed scheme text to protect the remnant native vegetation and Carnaby's Black Cockatoo habitat, the scheme amendment does not demonstrate the ability to be managed to meet the EPA's objectives for Flora and Vegetation and Terrestrial Fauna.

On this basis the EPA has concluded that the scheme amendment, if implemented and developed as an urban, rural residential and mixed business precinct, is likely to have significant impact on the environment.

Accordingly, the EPA has determined that Scheme Amendment 18 in its current form is incapable of being made environmentally acceptable.

Prior to making this determination and in the interests of providing an opportunity for natural justice, the EPA wrote to the Shire of Gingin on 16 August 2017 setting out its concerns and inviting the Shire of Gingin to respond to those concerns. The Shire of Gingin provided a written response on 2 October 2017 which the EPA considered in making its determination.

Other Advice

The EPA advises that it concurs with DPLH regarding the need for any future scheme amendment for this area to consider impacts to environmental values and to include clear and enforceable scheme provisions regarding the management of impacts to these values.

The EPA also advises that any future amendment for this area and in the wider Shire of Gingin should avoid clearing any remnant native vegetation mapped as Gingin or Yanga vegetation complex given the poor representation of these complexes.