

Ms Annie Riordan
Chief Executive Officer
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Our Ref: CMS 17011
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Dear Ms Riordan

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

SCHEME	Shire of Harvey Local Planning Scheme 2
LOCATION	Whole of scheme area
RESPONSIBLE AUTHORITY	Shire of Harvey
DECISION	Referral Examined, Preliminary Investigations and Inquiries Conducted. Scheme Amendment Not to be Assessed Under Part IV of the EP Act. Advice Given. (Not Appealable)

Thank you for referring the above scheme to the Environmental Protection Authority (EPA).

After consideration of the information provided by you, the EPA considers that the proposed scheme should not be assessed under Part IV Division 3 of the *Environmental Protection Act 1986* (EP Act) but nevertheless provides the attached advice and recommendations. I have also attached a copy of the Chair's determination of the scheme.

Please note the following:

- For the purposes of Part IV of the EP Act, the scheme is defined as an assessed scheme. In relation to the implementation of the scheme, please note the requirements of Part IV Division 4 of the EP Act.
- There is no appeal right in respect of the EPA's decision to not assess the scheme.

A copy of the Chair's determination, this letter and the attached advice and recommendations will be made available to the public via the EPA website.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Shaun Meredith', with a stylized flourish at the end.

Shaun Meredith
Delegate of the Environmental Protection Authority
Executive Director
EPA Services

12 November 2021

Encl. Chair's Determination
Scheme Advice and Recommendations

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

Shire of Harvey Local Planning Scheme 2

Location: Whole of scheme area

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

Determination Published: 15 November 2021

Summary

The Shire of Harvey has initiated Local Planning Scheme 2 (LPS 2) to replace the existing District Planning Scheme 1 (DPS). The new scheme predominantly proposes to align the scheme with the *Planning and Development (Local Planning Schemes) Regulations 2015* and the Greater Bunbury Region Scheme, and to reflect existing land use.

The Environmental Protection Authority (EPA) has considered the scheme in accordance with the requirements of the *Environmental Protection Act 1986* (EP Act). The EPA considers LPS 2 is unlikely to have a significant effect on the environment and does not warrant formal assessment under Part IV of the EP Act. The EPA has based its decision on the documentation provided by the Shire of Harvey. Having considered this matter the following advice is provided.

1. Environmental Factors

The EPA has identified the following preliminary environmental factors relevant to this scheme:

- Flora and Vegetation
- Terrestrial Fauna
- Inland Waters
- Social Surroundings
- Coastal Processes
- Marine Environmental Quality
- Landforms

2. Advice and Recommendations regarding Environmental Factors

The scheme will allow for a range of potential uses within several zones which have the potential for environmental impacts. This is particularly the case for the General Industry, Rural Residential, Rural, Residential and Urban Development zones. As sufficient information in relation to the range of environmental impacts associated with proposals which may be allowable in these zones is not available to the EPA in considering LPS 2, the EPA has not been able to undertake an assessment of the relevant environmental issues. Subsequently, the EPA expects future proposals that appear likely, if implemented, to have a significant effect on the environment may need to be referred to the EPA under s.38 of the EP Act. This approach should also apply to proposals within the existing zones included within the LPS 2, which have been transferred from the previous scheme.

LPS 2 requires structure planning to be undertaken within the proposed urban development zone to guide subdivision and development. The EPA acknowledges that structure planning

can take into consideration potential impacts to environmental values, and seek to protect, retain and mitigate impact to these values.

The EPA supports and recommends the following modifications to the Scheme, as suggested by the Shire, to provide further mitigation and management of potential impacts to significant environmental values:

- Lot 1 Myalup Beach Road – move Reserve for Recreation to Foreshore Reserve.
- Lot 76 Binningup Rd, Binningup - included in Special Control Area (SCA) 5E.
- Lots 50, 51 Old Coast Rd, Australind – existing portions zoned Tourism to be retained as this zone.
- Lots 21, 27 Leisure Dr, Australind – existing Rural zone retained.
- Lot 522 Ditchingham Pl, Australind – existing Reservation reserve for Public Purposes – Infrastructure Services.
- Lot 26 Riverdale Rd Cookernup – change in reservation from Recreation to Environmental Conservation.
- Lot 72 Salisbury Rd, Cookernup – change in reservation from Recreation to Public Open Space
- Lot 500 Clifton Rd, Brunswick – change in reservation over vegetated portion of lot from Reserve for Public Utilities to Reserve for 'Foreshore'.
- Lot 94 Bernbrooke Place, Wellesley (Kemerton Ancillary) - scheme map has been adjusted to correctly identify the adjacent regional open space boundary.
- Lot 9005 Lakes Parade (Binningup Beach South) - Ministerial Statement (MS) 836 was gazetted in 2010 and applies conditions to the development of Lot 9005 Lakes Parade. The conditions should have been inserted into the existing scheme and carry over to any replacement scheme. It is proposed to modify LPS 2 to carry over the conditions and provisions in DPS 1 to LPS 2 and insert them in Schedule 6, SCA 5 Environmental Protection Areas, SCA 5E Binningup South.

The EPA expects future proposals within the above areas likely to have a significant effect on the environment are referred to the EPA pursuant to Part IV of the EP Act.

Flora and Vegetation; Terrestrial Fauna

The EPA notes that some areas of land within LPS 2 contain or are adjacent to areas potentially containing conservation significant flora, vegetation and terrestrial fauna environmental values. This includes, but is not limited to, the following:

- Remnant native vegetation including Jarrah, Marri, Wandoo.
- Threatened Ecological Communities including Banksia Woodlands of the Swan Coastal Plain (listed under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)) and Tuart Woodlands listed under the EPBC Act and *Biodiversity Conservation Act 2016* (BC Act).
- Threatened and priority conservation significant fauna species including Western ringtail possum, Black cockatoos, Western brush wallaby, Quenda/southwestern brown bandicoot, Carters freshwater mussel, Coastal Plains skink, Black-stripe minnow and black- striped dwarf galaxias.

The EPA also notes that the Shire proposes to introduce Special Control Areas including SCA 5 – Environmental Protection Areas which will include all the land use controls previously implemented in DPS 1, as well as additional controls which may protect and manage potential impact to significant environmental values.

The following recommendations should be considered (including future structure planning and subdivision processes) to protect and mitigate potential impacts to the above environmental values:

- Flora and vegetation and fauna surveys should be undertaken where required to determine potential environmental impacts and inform future planning for areas to be protected and mitigated. EPA Technical Guidance – *Terrestrial fauna surveys* and *Flora and Vegetation Surveys for Environmental Impact Assessment* should be considered in this regard.
- Development should be located within existing cleared land, or within areas of existing degraded vegetation, where that vegetation is not significant habitat for Threatened fauna.
- Increasing development density can impact Threatened fauna. Planning should consider the potential of cumulative impacts to Threatened species, including specifically the potential impact of development on ecological fauna movement corridors.

The EPA expects that any future development considers the recovery plans for the Commonwealth/State listed Critically Endangered Western ringtail possum. The EPA also expects that any proposal with the potential to impact on Threatened fauna would be referred under Section 38 of the EP Act.

Inland Waters

Shire of Harvey is within the Peel-Harvey Coastal Plain Catchment area. Any development should have regard for the *Environmental Protection (Peel Inlet -Harvey Estuary) Policy 1992*, draft *State Planning Policy 2.9 Planning for Water (SPP 2.9)* and *Water Quality Improvement Plan for the Rivers and Estuary of the Peel-Harvey System – Phosphorous Management* (EPA 2008). The EPA supports the inclusion in Schedule 6 of the Scheme of SCA 5A – Peel-Harvey Coastal Plain Catchment Area. SCA 5A includes provisions for the consideration of *SPP 2.1 Peel Harvey Coastal Plain Catchment* – it should be noted this will be superseded by SPP 2.9 once in effect.

Some future development areas within the LPS 2 area will require on site effluent disposal. Future development proposals and land use planning must give regard to all relevant government policies including Department of Water and Environmental Regulation (DWER) *Quality Protection Note 25* and the *Government Sewage Policy 2019* (Department of Health (DoH)), Department of Planning, Lands and Heritage, and DWER). Consultation should also occur with relevant agencies including DWER and DoH.

The LPS 2 area contains a number of conservation category and resource enhancement wetlands and RAMSAR wetlands. Where sites are located adjacent to rivers, streams, wetlands or other water bodies, an appropriate buffer should be established to any development. Requirements for buffer distance, riparian vegetation retention and establishment, fencing, floodway setbacks, and stormwater management should be referred to DWER and Department of Biodiversity, Conservation and Attractions where appropriate, as part of the future planning process.

Social Surroundings

Potential impacts associated with future activities permitted in the General Industry and Rural zones such as noise, dust and odour should be managed through consideration of surrounding zonings and separation distances from sensitive land uses, to minimise impacts on social surroundings. Future development should consider EPA's Guidance Statement No. 3 *Separation Distances between Industrial and Sensitive Land Uses*.

The Western Australian Aboriginal Heritage Inquiry System shows the LPS 2 area contains Aboriginal heritage sites. The EPA recommends appropriate consultation and investigation be undertaken prior to any development to ensure potential impacts to Aboriginal heritage values can be avoided or, if that is not possible, mitigated. Development must comply with obligations under the *Aboriginal Heritage Act 1972*.

Coastal Processes; Marine Environmental Quality

LPS 2 includes areas of coastline and marine environment. In addition to the proposed scheme controls, any proposed development impacting values associated with Coastal Processes or Marine Environmental Quality should be informed by the SPP 2.6 *State Coastal Planning Policy* and EPA's Marine Factor Guidelines.

Terrestrial Environmental Quality; Inland Waters; Social Surroundings

There are areas within LPS 2 listed on DWER's Contaminated Sites Database. Regard should be given to land uses which are restricted on these sites. Prior to development of these sites, further contamination assessment and/or remediation should be undertaken as required by the *Contaminated Sites Act 2003*, in consultation with relevant agencies.

Conclusion

The EPA concludes that LPS 2 can be managed to meet the EPA's environmental objectives through the scheme text and mapping mechanisms. In addition, the EPA notes and supports the Shire's proposed modifications to the scheme text, zones and reserves, to be added to the scheme prior to finalisation. Future structure planning and proposals should also further identify, manage and protect the above environmental values. The requirements of Part IV and V of the EP Act for environmental impact and clearing permit assessments should also be considered for future proposals.