



Mr Ian McCabe
Chief Executive Officer
Shire of Capel
PO Box 368
CAPEL WA 6271

Your Ref:
Our Ref: CMS 17712
Enquiries: Renee Blandin, 6364 7000
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Dear Mr McCabe

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

SCHEME	Shire of Capel Local Planning Scheme 8 (LPS 8)
LOCATION	Whole of Shire of Capel
RESPONSIBLE AUTHORITY	Shire of Capel
DECISION	Referred Examined, Preliminary Investigations and Inquires Conducted. Scheme Amendment Not to be Assessed Under Part IV of 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) and that it is not necessary to provide any advice or recommendations. I have attached a copy of the Chairman'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 Chairman's determination, this letter and the attached advice and recommendations will be made available to the public via the EPA website.

Yours sincerely



Anthony Sutton
Delegate of the Environmental Protection Authority
Executive Director
EPA Services

17 April 2020

Encl. Chairman's Determination
Scheme Advice and Recommendations

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

Shire of Capel Local Planning Scheme 8

Location: Shire of Capel

Determination: Scheme Not Assessed – Advice Given (no appeals)

Determination Published: 20 April 2020

Summary

The Shire of Capel has initiated Local Planning Scheme 8 (LPS 8) to replace the existing Local Planning Scheme 7. The new scheme proposes to bring the zone and reserve designations into alignment with the Model Provisions in Schedules 1 and 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, and the Greater Bunbury Region Scheme.

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 8 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 Capel. 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
- Terrestrial Environmental Quality
- Coastal Processes
- Marine Environmental Quality

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 Rural Residential, Rural, Priority Agriculture, 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 8, the EPA has not been able to undertake an assessment of the relevant environmental issues. Subsequently, the EPA expects future proposals likely to lead to significant environmental impacts are referred to the EPA pursuant to Part IV of the EP Act. This approach should also apply to proposals within the existing zones included within the LPS, which have been transferred from the previous scheme.

LPS 8 requires structure planning to be undertaken within the proposed urban development zone to guide subdivision and development, pursuant to the proposed Special Control Area (SCA) 1. The EPA supports that structure planning will take into consideration potential impacts to environmental values, and seek to protect, retain and mitigate impact to these values.

Flora and Vegetation; Terrestrial Fauna

The EPA notes that some areas of land within LPS 8 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 and threatened ecological communities (TEC) including Jarrah, Marri, Tuart Woodlands and Forests, and potential Banksia Woodlands of the Swan Coastal Plain (a TEC) under the *Environmental Protection and Biodiversity Conservation (EPBC) Act 1999*.
- Threatened flora including *Drakaea elastica*.
- Threatened fauna and fauna habitat, including Western Ringtail Possum and species of black cockatoo

The following recommendations should be considered (including through 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.

To protect and mitigate potential impacts to the above environmental values, particularly as related to Lot 167 Jilley Road Gelorup, and Lots 9002 and 9003 Hawley Parkway and Lots 94-93 inclusive (#2-10 evens) Kwenda Loop, Capel and the occurrences of the threatened flora *Drakaea elastica*, listed as Critically Endangered under the *Biodiversity Conservation Act 2016*, and Endangered under the EPBC Act, it is recommended that the proposed LPS 8 text is amended prior to advertising as follows:

- Provisions for SCA8 in Schedule 5 to include the following under 'Additional Provisions (1)':
 - May require the mapping and identification of any wetland boundary within or adjoining the plan area as appropriate, on the advice of the Department of Biodiversity, Conservation and Attractions.
 - May require the provision of an adequate wetland buffer.
- Additional Requirement 4, in Schedule 4, amended to replace requirements 2, 3 and 4 with the requirement:

- Future structure planning and subdivision shall seek to retain habitat and protect threatened flora and fauna.
- Scheme Map amended to include Lots 9002 and 9003 Hawley Parkway, Capel within SCA8.

Inland Waters

The EPA supports the additional provisions and environmental management measures proposed within Special Control Areas (SCAs) 7.1 and 7.2 for Public Drinking Water Source Protection Area, Public Drinking Water Supply Zones, and Wellhead Protection Zones. 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.

It is noted that the Foreshore Protection Zone (FPZ) has not been retained in LPS 8 and has been replaced by SCA 3 Flood Prone Land and SCA 8 Ecosystems Management Area. Some areas previously part of the FPZ have been replaced by the Residential Zone, consistent with the Greater Bunbury Region Scheme. DWER should be consulted as part of the future planning process for any proposed development adjacent to these SCAs.

The LPS 8 area contains a number of conservation category and resource enhancement wetlands. Where sites are located adjacent to rivers, streams, wetlands or other water bodies, an appropriate buffer should be established to development. Requirements for buffer distance, riparian vegetation retention and establishment, fencing, floodway setbacks, and stormwater management should be referred to DWER and DBCA where appropriate, as part of the future planning process.

Social Surroundings

Potential impacts associated with future activities permitted in the 'General Industry' zone 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*.

Coastal Processes; Marine Environmental Quality

LPS 8 includes areas of coastline and marine environment. The initiation of a future Scheme Amendment for a Coastal Protection SCA is supported and should be informed by the EPA's Marine Factor Guidelines.

Terrestrial Environmental Quality; Inland Waters; Social Surroundings

There are areas within LPS 8 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 Site Act 2003*, in consultation with relevant agencies.

Conclusion

The EPA concludes that the amendment can be managed to meet the EPA's environmental objectives through existing controls within the proposed scheme. The EPA recommends that the scheme text should also be further modified, and future surveys should be undertaken, to further identify, manage, and protect the above environmental values. Future structure planning and proposals should also identify, manage and protect the above environmental values.