

Mr Rick Miller  
Chief Executive Officer  
Shire of Kent  
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**NYABING WA 6341**

Our Ref: CMS 17766  
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Dear Mr Miller

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

<b>SCHEME</b>	<b>Shire of Kent Local Planning Scheme 3</b>
<b>LOCATION</b>	<b>Whole of Shire of Kent</b>
<b>RESPONSIBLE AUTHORITY</b>	<b>Shire of Kent</b>
<b>DECISION</b>	<b>Referral Examined, Preliminary Investigations and Inquiries Conducted. Scheme Amendment Not to be Assessed Under Part IV of EP Act. Advice Given. (Not Appealable)</b>

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 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

A handwritten signature in black ink, appearing to read 'A. Sutton', with a horizontal line extending to the right.

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

27 July 2020

Encl. Chairman's Determination  
Scheme Advice and Recommendations

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

**Shire of Kent Local Planning Scheme 3**

**Location:** Whole of Shire of Kent local government area.

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

**Determination Published:** 27 July 2020

**Summary**

The Shire of Kent (the Shire) propose to implement Local Planning Scheme (LPS) 3 to replace the existing Town Planning Scheme (TPS) 2, to ensure consistency with the Planning and Development (Local Planning Schemes) Regulations 2015. Changes in zoning and reserves, and updates and changes to scheme provisions, are proposed. Whilst TPS 2 applied only to the Nyabing and Pingrup town sites, LPS 3 applies to the entire local government area. The scheme text and maps are proposed to be updated accordingly.

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 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. The EPA has based its decision on the scheme amendment documentation provided by the Shire.

**1. Environmental Factors**

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

- Terrestrial Environmental Quality
- Flora and Vegetation
- Terrestrial Fauna
- Inland Waters
- Social Surroundings

**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. The EPA has not undertaken an assessment of the potential environmental impacts of the future development proposals permissible within these zones, as this detailed information is not available to the EPA at the new scheme initiation stage. 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. Clearing permits may also be required for future development pursuant to Part V of the EP Act. This approach should also apply to proposals within the existing zones included within LPS 3, which have been transferred from the previous scheme.

**Terrestrial Environmental Quality**

Consideration of the impacts of clearing on catchment hydrology should be considered when making land use planning decisions, to manage and protect environmental values within the Shire from the impacts of salinity on groundwater and soil quality.

### **Flora and Vegetation; Terrestrial Fauna**

The EPA notes that some areas of land within LPS 3 contain conservation significant flora, vegetation and terrestrial fauna environmental values. This includes, but is not limited to, the following:

- Mapped occurrences of Eucalypt Woodlands of the Western Australian Wheatbelt - listed as Critically Endangered Threatened Ecological Community (TEC) under the *Environmental Protection and Biodiversity Conservation Act 1999* and as a Priority 3 Priority Ecological Community by Department of Biodiversity, Conservation and Attractions.
- Low representation remnant native vegetation types including Chidnup, Dumbleyung and Hyden.
- Threatened and priority flora including occurrences of *Drosera salina* and *Drakea isolate*.
- Threatened and priority fauna and fauna habitat, including species of black cockatoo, woylie, numbat and chuditch.

The following recommendations should be considered to protect and mitigate potential impacts to the above environmental values:

- Flora and vegetation and fauna surveys should be undertaken where required, consistent with EPA Guidance, to inform future planning for areas to be retained, protected and managed.
- 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.
- Planning should consider the potential of cumulative impacts of additional clearing in rural areas, to threatened species and ecological fauna movement corridors.

### **Inland Waters**

The EPA supports the additional environmental management provisions proposed within Special Control Area 1 – Wastewater Ponds, as it provides additional impact mitigation measures.

The LPS 3 area contains a number of Department of Biodiversity, Conservation and Attractions mapped wetlands. Where sites are located adjacent to rivers, streams, wetlands or other water bodies, retention of catchment vegetation should be considered, and proposed management measures should be undertaken in consultation with Department of Water and Environmental Regulation and Department of Biodiversity Conservation and Attractions where appropriate.

### **Social Surroundings**

Future development within industrial zones should be located appropriately so that potential environmental impacts can be isolated from sensitive land uses. The EPA considers that potential impacts associated with industrial activities such as noise, dust and odour can be managed through consideration of current land zonings and separation distances from sensitive land uses, to minimise impacts on social surroundings.

EPA Guidance Statement 3 *Separation Distances between Industrial and Sensitive Land Uses* should be considered in this regard.

## **Recommendations**

The EPA recommends the following modifications are made to LPS3 prior to advertising:

- The following provision is inserted into the Scheme for Additional Requirements for Public Purpose Reserves:

*In considering the development of land identified as a public purpose reserve which involves the clearing of native vegetation or modification to waterway(s), the local government shall have due regard to the suitability of the land for the development taking into account potential impacts to environmental values (including the clearing of native vegetation, threatened ecological communities, threatened fauna habitat, and modification to waterway(s)).*

*In considering the suitability of land, the local government shall consult with the appropriate state government water, environment and conservation agency(s).*

- Land parcels 76 and 101, as identified in the scheme amendment documentation, should be reserved for 'Environmental Conservation' to further protect the environmental values on the site related to Eucalypt Woodlands of the Western Australian Wheatbelt TEC, fauna habitat, low representation remnant native vegetation types and mapped wetlands.

## **Conclusion**

The EPA concludes that implementation of the scheme can be managed to meet the EPA's environmental objectives for the above factors through existing development controls within the scheme. Future detailed planning and proposals should also further identify, manage and protect the above environmental factors. In instances where the Shire believes there may be significant environmental issues raised by a proposal, the Shire should refer the proposal to the EPA pursuant to Part IV of the EP Act.

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