

Ms Amanda Dexter
Chief Executive Officer
Shire of Derby / West Kimberley
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Our Ref: CMS 18188
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Dear Ms Dexter

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

SCHEME	Shire of Derby / West Kimberley Local Planning Scheme 9
LOCATION	Whole of scheme area
RESPONSIBLE AUTHORITY	Shire of Derby / West Kimberley
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).

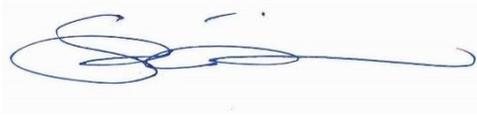
After consideration of the information provided by you, the EPA considers that the proposed scheme should not be assessed under Part IV Division 3 of the *Environmental Protection Act 1986* (EP Act) but nevertheless provides the attached advice and recommendations. I have also attached a copy of the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

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

17 June 2022

Encl. Chair's Determination
Scheme Advice and Recommendations

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

Shire of Derby West Kimberley Local Planning Scheme 9

Location: Shire of Derby West Kimberley

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

Determination Published: 20 June 2022

Summary

The Shire of Derby West Kimberley (the Shire) has initiated Local Planning Scheme (LPS) 9 to replace the existing LPS 5, LPS 7 and Interim Development Order 9. The new scheme predominantly proposes to align with the *Planning and Development (Local Planning Schemes) Regulations 2015*, the *Shire of Derby West Kimberley Local Planning Strategy* and to reflect existing land uses.

The EPA has considered the scheme in accordance with the requirements of the *Environmental Protection Act 1986* (EP Act). The EPA considers LPS 9 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 Derby West Kimberley. 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:

- Social Surroundings
- Inland Waters
- Benthic Communities and Habitats
- Marine Environmental Quality
- Terrestrial Environmental Quality
- Flora and Vegetation
- Terrestrial Fauna

2. Advice and Recommendations regarding Environmental Factors

The proposed scheme will allow for a range of future land uses on currently undeveloped lands which may have the potential for environmental impacts. This includes lands under existing zonings from LPS 5 and LPS 7, that have been transferred without amendment to LPS 9.

Detailed information relating to the range of environmental impacts associated with future proposals that may be allowable in these zones is not available to the EPA in considering the LPS 9. Accordingly, the EPA has not been able to undertake an assessment of potential environmental issues. The EPA expects that future proposals that appear likely, if implemented, to have a significant effect on the environment are referred to the EPA under Part IV of the EP Act. This approach should also apply to proposals within the existing zones included in LPS 5 and LPS 7, that will continue under the new scheme.

Specifically, the EPA notes that the below potential future land uses may be provided for under the LPS 9 scheme text and may require referral to the EPA as a significant proposal:

- Utilisation of the 'Agriculture – extensive' and 'Agriculture – intensive' permitted land use classes within the new 'Cultural and Natural Resource' zone. The Shire is also reminded of its obligations under the *Aboriginal Cultural Heritage Act 2021* in considering future proposals that may impact Aboriginal heritage sites.
- Utilisation of the 'Waste disposal facility' use class within the 'Rural' zone, and 'Waste storage facility' use class within the 'Rural', 'Light Industry' and 'General Industry' zones. The EPA supports the proposed classification of these land uses as 'A' uses, allowing for the local government to exercise its discretion in granting development approval and complying with the standards and requirements of the Scheme to permit the uses.
- Changes for reserves proposed along the coast/inlet that may allow for future development that could impact marine environmental quality, benthic habitat and loss of vegetation (e.g. Parks and Recreation to Infrastructure Services reserves).

The EPA also notes that the draft LPS 9 originally included the following provision at *Schedule 3 – General development standards and requirements*:

“Prior to the subdivision or development of any lot where there is remnant native vegetation, the local government may seek advice from the Department of Biodiversity, Conservation and Attractions as to whether any declared rare flora will be affected by the proposal, and shall take appropriate action if the lot contains such flora.”

It is understood that the Shire elected to exclude the above provision from LPS 9. The Shire considered the provision as being unreasonably onerous, potentially requiring investigation into whether any parcel of land within its 118,560 square kilometre area contained 'Declared Rare Flora'; now broadly referred to as 'Threatened Flora'. Whilst the Shire's justification for this proposal is noted, the EPA supports the inclusion of the above provision in Schedule 3 of LPS 9, given it remains at the Shire's discretion to seek advice from the Department of Biodiversity, Conservation and Attractions (DBCA) to this provision. The EPA also supports Clause 24 from Schedule 3, relating to the retention of Boab trees and other vegetation of landscape or environmental significance within the Scheme area.

It is recommended the Shire consult with the Department of Planning, Lands and Heritage regarding retention of the provisions in LPS 9.

Conclusion

The EPA concludes that the proposed scheme can be managed to meet the EPA's objectives through the scheme text. 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 assessment, clearing permits and works approvals and licences should also be considered for future proposals.