

Mr Stan Scott  
Chief Executive Officer  
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**CUBALLING WA 6311**

Our Ref: CMS 18196  
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Dear Mr Scott

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

<b>SCHEME</b>	<b>Shire of Cuballing Local Planning Scheme 2 Amendment 6</b>
<b>LOCATION</b>	<b>Shire of Cuballing</b>
<b>RESPONSIBLE AUTHORITY</b>	<b>Shire of Cuballing</b>
<b>DECISION</b>	<b>Referral Examined, Preliminary Investigations and Inquiries Conducted. Scheme Amendment Not to be Assessed Under Part IV of the 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 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



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

20 May 2022

Encl. Chair's Determination  
Scheme Advice and Recommendations

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

**Shire of Cuballing Local Planning Scheme 2 Amendment 6**

**Location: Shire of Cuballing**

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

**Determination Published: 23 May 2022**

**Summary**

The Shire of Cuballing (the Shire) proposes to amend Local Planning Scheme 2 (LPS 2) to be consistent with the *Planning and Development (Local Planning Schemes) Regulations 2015* (P&D Regulations) and to provide for efficiencies in local planning processes. The proposed amendment includes:

- Introduction of model scheme text consistent with the P&D Regulations
- Modifications to the Zoning Table and permissible land use types
- Replacement of the 'General Agriculture' zone with a 'Rural' zone
- Modifications to zoning provisions and supplementary provisions.

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 that 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 original referral documentation for this amendment. Having considered this matter, the following advice is provided.

**Environmental Factors**

Having regard to the EPA (2021) *Statement of Environmental Principles, Factors, Objectives and Aims of EIA* the EPA has identified the following preliminary environmental factors relevant to this scheme amendment:

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

**Advice and Recommendations regarding the Environmental Factors**

The proposed amendment will allow for a range of land uses within the 'Rural Townsite', 'Rural Residential' and 'Rural' zones which may have the potential for environmental impacts.

Detailed information relating to the range of environmental impacts associated with proposals that may be allowable in these zones is not available to the EPA in considering the scheme text amendment. Accordingly, the EPA has not been able to undertake an assessment of relevant 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 2, that will continue under the proposed amendment.

### Flora and Vegetation; Terrestrial Fauna; Terrestrial Environmental Quality

The EPA notes that some of the lands within LPS 2 potentially contain or are adjacent to areas potentially containing conservation significant flora, vegetation, and terrestrial fauna environmental values. Noting that the amendment proposes to remove clause 4.12.9 referring the historic *EPA Position Statement No. 2 – Environmental Protection of Native Vegetation in Western Australia*, the EPA recommends that the proposed scheme text is modified, or an additional clause is provided to facilitate maximum retention of potential fauna habitat and native vegetation within the Shire.

The EPA also notes that the proposed objectives of the 'Rural' zone (replacing the 'General Agriculture' zone under this amendment) include:

- *'To protect broad acre agricultural activities such as cropping and grazing and intensive uses such as horticulture as primary uses, with other rural pursuits and rural industries as secondary uses in circumstances where they demonstrate compatibility with the primary use.'*
- *'To maintain and enhance the environmental qualities of the landscape, vegetation, soils and waterbodies, to protect sensitive areas especially the natural valley and watercourse systems from damage.'*

In reference to the second objective, and in respect to the proposed clause 51(5)(e), the EPA recommends that it may be appropriate for the Shire to also have regard for 'significant environmental values' in considering dwelling applications within the Rural zone.

The amendment also proposes to remove clause 4.11.2, which provides provisions for agriculture intensive land uses within the 'General Agriculture' zone (proposed 'Rural' zone). Given that 'Agriculture – Intensive' remains a 'D' use in the Rural zone as per the modified Zoning Table, the EPA considers that parts of provision 4.11.2, relating to applications for agriculture intensive land uses, remain relevant for inclusion in the scheme. Namely, the current sub-sections (c) and (d) which refer to land care management for vegetation retention, land degradation and salinity issues. It is recommended that the Shire considers retaining some existing scheme text, or modifying proposed scheme text, to facilitate land care management within the Rural zone.

### Inland Waters

The EPA notes that in removing clause 4.12.10, the introduction of clause 45 to LPS 2 has been proposed to address 'waterway resource management and protection' within the Shire. The EPA supports the proposed inclusion of clause 45 in the scheme, and recommends the following to further mitigate potential impacts to Inland Water values:

- In reference to the proposed insertion of row 31 in the table at *Schedule A – Supplemental provisions to the deemed provisions*, conditions for the development of a dam in the 'Rural' zone may refer to the *Water Quality Protection Note No. 53 – Dam construction and operation in rural areas* (DWER, 2019).

### Social Surroundings

The amendment proposes to change the permissibility of 'mining operations' land use type from a non-permitted ('X') use in the 'Rural' Townsite and 'Rural Residential' zones, and a discretionary ('A') use in the 'General Agriculture' zone (proposed 'Rural' zone), to a discretionary ('D') use in all three zones. The EPA notes that the proposed amendment will therefore potentially facilitate 'mining operations' at zones within which it has previously not been permitted, and potentially in areas that may contain or are adjacent to sensitive land uses. The EPA understands that this zoning modification reflects section 7.1 of the Western Australian Planning Commission's Rural Planning Guidelines (State Planning Policy 2.5).

Potential environmental impacts of future mining operations permitted in the 'Rural Residential' and 'Rural Townsite' zones may include noise, dust and odour emissions. Future applications and development of potential mining operations should demonstrate separation distances from sensitive land uses. Future development should consider the EPA (2005) Guidance Statement No. 3 *Separation Distances between Industrial and Sensitive Land Uses* and the EPA's Social Surroundings environmental factor guideline.

The EPA also notes that future applications to undertake mining operations within the Shire may require referral to the EPA for consideration under s. 38 of the EP Act.

### **Conclusion**

The EPA concludes the scheme amendment is likely to be consistent with the EPA's environmental objectives through the proposed scheme provisions and future planning processes. The EPA recommends its advice is implemented to mitigate potential impacts to the above environmental factors during future development.