

Mr Shane Burge
Chief Executive Officer
Shire of Esperance
PO Box 507
ESPERANCE WA 6450

Our Ref: APP-0000203
Enquiries: Maddison Howard, 6364 6424
Email: Maddison.Howard@dwer.wa.gov.au

Dear Mr Burge

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

SCHEME	Shire of Esperance Local Planning Scheme 24 Amendment 9
LOCATION	Various Lots, Shire of Esperance
RESPONSIBLE AUTHORITY	Shire of Esperance
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.

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 EPA's determination is attached and, together with the 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 'Lee McIntosh', with a stylized flourish at the end.

Lee McIntosh
Deputy Chair of the Environmental Protection Authority

12 January 2023

Encl. Deputy Chair's Determination
Scheme Advice and Recommendations

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

Shire of Esperance Local Planning Scheme 24 Amendment 9

Location: Various lots in Shire of Esperance

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

Determination Published: 16 January 2023

Summary

Amendment 9 is an omnibus amendment, proposing multiple changes to the Shire of Esperance (the Shire) Local Planning Scheme 24 (LPS 24), including modifications to the land permissibility table, rezonings to consolidate existing land uses, insertion of a new additional use and insertion of new Scheme text.

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 provided by the Shire to this amendment. Having considered this matter, the following advice is provided.

Environmental Factors

Having regard to the EPA's *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
- Inland Waters
- Marine Environmental Quality
- Coastal Processes

Advice and Recommendations regarding the Environmental Factors

Detailed information relating to the range of environmental impacts associated with future proposals is not available to the EPA in considering Amendment 9, in particular information regarding cumulative and holistic impacts. Accordingly, the EPA expects that future development proposals (such as breweries, cideries and distilleries) 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, and appropriately consider cumulative and holistic impacts. Further advice regarding specific environmental factors is provided below.

Flora and Vegetation

The EPA notes that remnant vegetation within the Shire may contain occurrences of Proteaceae Dominated Kwongan Shrubland ecological community (TEC) (Endangered Threatened Ecological Community (TEC) under *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), state-listed Priority 3 Priority Ecological community (PEC). Mapped occurrences of the TEC extend over the Pink Lake cemetery reserve and several 'Tourism' zoned areas. As such, it is possible that future development within the amendment

area may impact vegetation that may be representative of the Commonwealth TEC and state-listed PEC. Future development as a result of implementation of the amendment should avoid impact to any TEC occurrences.

The EPA notes that the existing provisions at Clause 29 of the Scheme, which specifically prohibit the removal of the TEC vegetation, can assist in protecting and mitigating potential impacts to native vegetation and occurrences of TEC within the Shire area. Additionally, noting that Proteaceae Dominated Kwongan Shrubland is a Commonwealth TEC, the EPA advises that proposed actions likely to have a significant impact on Matters of National Environmental Significance must be referred to the Commonwealth for consideration under the EPBC Act.

Inland Waters and Marine Environmental Quality and Coastal Processes

The EPA notes that amendments 'III' and 'IV' from the omnibus referral propose modifications to the permissibility of the 'Brewery' land use within the 'Tourism', 'Local Centre' and 'Mixed Use' zones. Spatial data indicates that several of the existing 'Tourism', 'Local Centre' and 'Mixed Use' zoned areas within the Shire may occur near significant waterways, coastline or within Public Drinking Water Source Areas (PDWSAs).

The EPA considers that implementation of the amendment may result in reduced water quality discharging to the marine environment and waterways, and potential hydrological changes from the development and operation of future breweries. Future water management planning should consider the potential for cumulative impacts.

The EPA notes that it has previously provided advice to the Shire of Esperance LPS 24 Amendment 8 regarding provisions to manage wastewater and protect PDWSAs, and considers that advice relevant to the current amendment. In particular, the EPA highlights its previous recommendations that:

- The proposed revision of Clause 17 from the Scheme should ensure provisions relating to effluent disposal are consistent with draft State Protection Policy 2.9 and the *Government Sewerage Policy (2019)*.
- Proposed land uses over PDWSAs must be assessed for compatibility with Water Quality Protection Note 25 (WQPN 25), with approved land uses demonstrating consistency with WQPN 25.
- Future development applications for breweries should be referred to the Department of Water and Environmental Regulation for technical input and advice on potential conditions to address possible contamination risks.

The EPA also advises that future development proposals for breweries may qualify as prescribed premises under the EP Act *Environmental Protection Regulations 1987*. In such instances, an application for a works approval and licence under Part V of the EP Act may be required.

Additionally, the EPA recommends that any development within the coastal area will need to be consistent with State Planning Policy 2.6 and consider impacts on coastal processes

Conclusion

The EPA concludes that, based on the available information, the scheme amendment can be managed to meet the EPA's environmental objectives for the above factors through the existing and proposed (Amendment 8) scheme text, and other statutory processes. Adherence to the requirements of WQPN 25 will also support management of potential impacts. The EPA recommends its advice is implemented to further mitigate potential impacts to the above factors.