



Department of **Planning,
Lands and Heritage**



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Western Australia.*

Coastal hazard risk management and adaptation planning guidelines

July 2019

Appendix 4 Planned or managed retreat - existing planning framework and instruments

CONTENTS

1	Introduction	3
1.1	Principles	3
2	How to formulate a position of planned or managed retreat	5
2.1	Coastal hazard risk management and adaptation planning	5
3	Implementing planned or managed retreat	5
3.1	Structure planning (First mechanism)	5
3.2	Local planning scheme amendment (Second mechanism)	5
	State Planning Policy 2.6 State Coastal Planning Policy	5
	Special Control Area	6
3.3	Taking of land (Third mechanism)	6
	How to determine when land needs to be transferred to the public realm	7
	Cost of taking land	8
4	Special circumstances	8
	Region scheme	8
	Planning Control Area declarations	8
	Improvement plans and schemes	8
5	Alternative mechanisms	9
	Reservation of land	9
	Appendix 1: Local Planning Scheme Amendment Process	10
	Appendix 2: Special Control Area Text	11
Figures		
	Figure 1: Process Flowchart	4
	Figure 2: Trigger 1 – Distance	7

1 Introduction

There are existing private assets along the Western Australian coastline that are currently vulnerable to coastal hazards.

These hazards, and the associated risks to private assets, are likely to intensify over time. It is important to recognise this problem and that the adaptation option of 'planned or managed retreat' is often the most efficient, effective and equitable response to such hazards.

Examples or model integrated government programs for coordinated planned or managed retreat of private property do not currently exist locally or nationally for coastal decision-makers to follow or implement. Notwithstanding this, coastal decision-makers will need to be proactive in coastal planning with regard to planned or managed retreat and its planning and funding pathways.

This document outlines the existing planning framework and instruments within which planned or managed retreat could be implemented. It applies where existing or proposed development is within an existing subdivision or developed area, as it is these locations that are currently, and increasingly vulnerable to coastal hazards, with limited opportunities to introduce less vulnerable forms of use or development through planning control.

The approach of planned or managed retreat is based on principles of social, environmental and economic sustainability and adheres to objectives set out in *State Planning Policy 2.6 State Coastal Planning Policy* (SPP 2.6). The approach adheres to the principles for sustainable land use and development on the coast and adaptive risk management as required by the *Planning and Development Act 2005* (PD Act) and SPP 2.6, respectively.

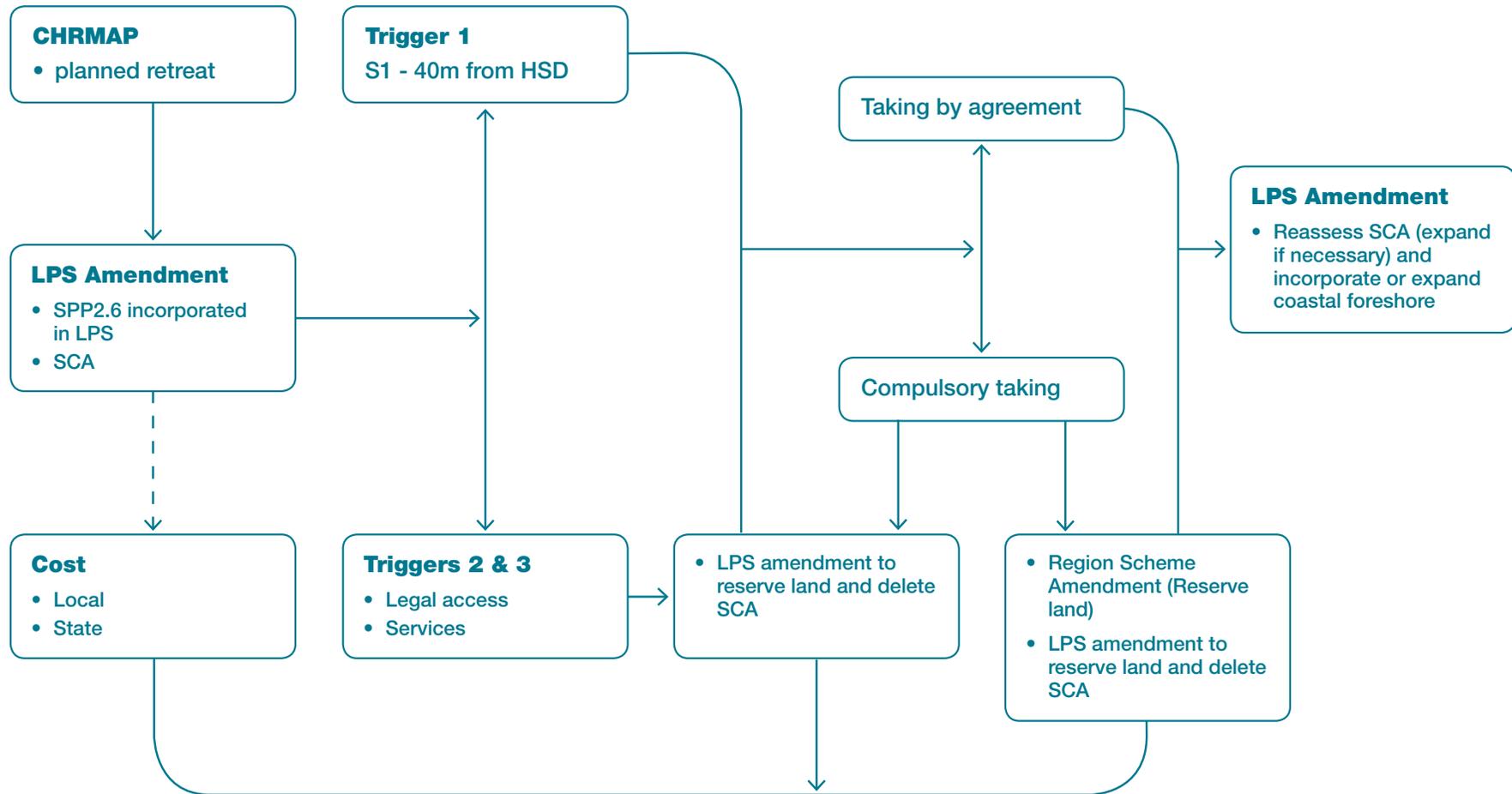
The approach ensures the ongoing responsible and sustainable management of the coastline for the benefit of the whole community. It ensures ongoing provision of a coastal foreshore reserve and beach amenity and continuing and undiminished public access to beaches.

It is a planning approach which contemplates existing development or land uses being able to continue until the coastal hazard risk becomes unacceptable. Removal of 'at risk' development is recommended under certain circumstances which should be identified and articulated through a comprehensive Coastal hazard risk management and adaptation planning (CHRMAP) process (Figure 1).

1.1 Principles

- a) To ensure land in the coastal zone is continuously available for coastal foreshore management, public access, recreation and conservation.
- b) To ensure public safety and reduce risk associated with coastal erosion and inundation.
- c) To avoid inappropriate land use and development of land at risk from coastal erosion and inundation.
- d) To ensure land use and development does not accelerate coastal erosion or inundation risks; or have a detrimental impact on the functions of public reserves.

Figure 1: Process flowchart



2. How to formulate a position of planned or managed retreat

2.1 Coastal hazard risk management and adaptation planning

A comprehensive CHRMAP process should be undertaken as per the policy requirements of cl. 5.5 of SPP 2.6.

The CHRMAP process ensures an appropriate risk assessment is undertaken and the establishment of a management planning framework is formulated to deal with coastal hazards.

The results of this process will inform and enable the adoption of a planned or managed retreat policy to guide implementation.

3. Implementing planned or managed retreat

Planned or managed retreat involving reducing or ceasing private land uses can be implemented through several mechanisms.

Generally, the first step involves changing the local planning scheme to reflect this policy. The second step, which occurs at a later stage once it has been determined under the scheme that private use should cease, contemplates the transfer of affected land from private to public ownership.

3.1 Structure planning (First mechanism)

In areas where some degree of comprehensive redevelopment of land remains an option, structure planning will consider risks identified in the CHRMAP process to feed into subdivision conditions which may, for example, address land requirements to accommodate coastal risks.

3.2 Local planning scheme amendment (Second mechanism)

A local planning scheme (**LPS**) amendment will be required, informed by SPP 2.6 and which would classify vulnerable areas as a Special Control Area (**SCA**).

The LPS allows local government to incorporate and govern planned or managed retreat as the strategy for dealing with the adverse impacts of coastal hazards and maintain a coastal foreshore reserve and public access over the long term.

The process for undertaking a LPS amendment is outlined in Appendix 1. It is likely the LPS will need to be amended in two key ways to give effect to the policy:

1. SPP 2.6 incorporated by reference into LPS
2. include a SCA in the LPS.

State Planning Policy 2.6 State Coastal Planning Policy

Under the PD Act, due regard is to be given to State planning policies that apply to the area of a local planning scheme, and in this context, SPP 2.6 is of particular relevance, and should inform the LPS amendment process.

A State planning policy can also be incorporated by reference into a scheme and read as part of it (s77 PD Act).

The LPS of those local governments whose LPS districts include portions of the coast should be amended to include the following wording in Part 4 of the LPS relating to general development requirements, which include reference to those State planning policies which are to be read as part of a LPS:

1. The provisions of State Planning Policy 2.6 State Coastal Planning Policy shall apply as if they were part of this scheme; and
2. All coastal development is to comply with the provisions of State Planning Policy 2.6 State Coastal Planning Policy

Special Control Area

The purpose of establishing a SCA is to enable at-risk land use and development to be identified within the SPP 2.6 100- year planning timeframe; establish the intention to retreat from this area; and provide the special planning instrument to implement the approach.

A SCA classification can be included in a scheme to facilitate land use changes and development control within that area. For instance, under a LPS, SCA classification can mandate that all development requires approval where ordinarily, development (for example, single residential development) may otherwise be exempt from development control. The goal is to ensure any further development can only occur if the local government considers it acceptable in light of the policy of planned or managed retreat.

Further, approval can be granted on a temporary basis (for example, for 10 years) to permit the use for a limited time. This does not preclude a person from seeking further approval at the end of that timeframe. This allows land to continue to be used in the immediate future while taking into account foreshadowed risks associated with rapid environmental changes in the medium to long-term.

Part 5, Schedule 1 of the Planning and Development (Local Planning Schemes) Regulations 2015 provides the template for local government to follow when amending its LPS to include a SCA.

The format and content of the SCA is outlined in Appendix 2.

3.3 Taking of land (Third mechanism)

If land has not been transferred or committed to the public realm through structure planning and development control, and coastal changes have advanced to the point where there is no further economic or social utility in privately-held land, consideration should be given to other methods to move vulnerable land from the private to the public realm for appropriate use or management.

Where land is reserved under the relevant planning scheme, options include:

1. purchase of the land by the responsible authority if the owner is willing to sell it by ordinary sale pursuant to s 190 of the PD Act
2. compulsory taking by the responsible authority without agreement pursuant to s 191 of the PD Act coupled with the LA Act.

Compulsory taking pursuant to s 191 of the PD Act is to be carried out in accordance with the acquisition process set out in Part 9 the *Land Administration Act 1997 (LA Act)*, with some streamlining modifications. For example, the process for inviting objections to the proposed taking (referred to as the 'Notice of Intention to Take' process) does not apply because the scheme amendment giving effect to the land reservation would have already been subject to public comment. This streamlined process allows the compulsory taking of land to occur more rapidly, than if the land is compulsorily acquired under the LA Act for the purpose of a 'public work.'

If the land remains zoned (with a SCA) then the above options are not available to the responsible authority. In this case, to move this land from the private to the public realm, the approach is that the land is required for a 'public work' (that is, for the protection of foreshores)¹. The options available for this include:

1. taking by agreement under the LA Act
2. compulsory taking with the assistance of the Minister for Lands for a 'public work' under the LA Act.

Where land is compulsorily acquired for a 'public work' under the LA Act, or where interests in Crown land to which the *Native Title Act 1993* applies are proposed to be taken compulsorily, all of the procedural requirements outlined in Part 9 of the LA Act must be followed, including the process for inviting objections.

The preferred approach is for the land to be purchased by the responsible authority under s 190 of the PD Act or if land has not been reserved under the relevant planning scheme, taken by agreement under the LA Act.

¹ See s2(r) *Public Works Act 1902*

How to determine when land needs to be transferred to the public realm

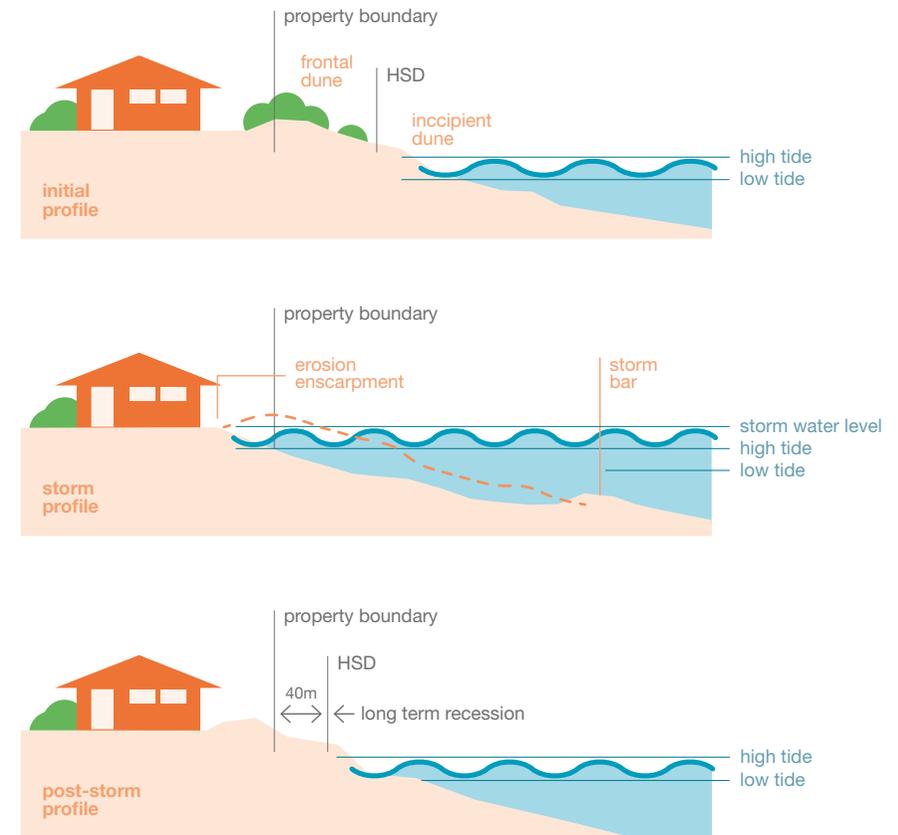
Planned or managed retreat allows development or structures to remain and be safely used until the coastal hazard risk becomes unacceptable. Initiation of the process to remove at risk development or structures will occur by triggers such as:

- Trigger 1. Where the most landward part of the Horizontal Shoreline Datum (HSD) is within 40 metres of the most seaward part of a development and/or structure(s) lot boundary.
- Trigger 2. Where a public road is no longer available or able to provide legal access to the property.
- Trigger 3. When water, sewerage or electricity to the lot is no longer available as they have been removed/decommissioned by the relevant authority due to coastal hazards.

The trigger distance determines when planned or managed retreat is activated for a specific development or structure.

Trigger 1 distance of 40 metres is based on consideration of the allowance for the current risk of storm erosion. This trigger distance is measured from the most landward part of an HSD to the most seaward part of a development or structure(s) lot boundary, as shown in Figure 2.

Figure 2: Trigger 1 – Distance



The 40-metre value for trigger 1 is the minimum value to be used to allow for cross-shore erosion coastal erosion. This value may only be varied in the event modelling is undertaken in accordance with SPP2.6 Schedule One 4.4.1 (S1 Erosion) Allowance for the current risk of storm erosion.

The triggers should be included in any planning instruments arising from the CHRMAP process (as outlined in section 2.1), to support the implementation of planned or managed retreat.

Cost of taking land

Land acquired by taking by agreement is to be in accordance with the requirements under s168 of the LA Act. Here the purchase price may be specified as part of the s168 taking or alternatively be determined in accordance with Part 10 (s169 (1)) of that Act. Where the value is not specified in a s168 agreement, the value is to be determined in accordance with s241 of that Act, as for a compulsory taking.

Land compulsorily acquired for a scheme under s191 of the PD Act is valued in accordance with the process set out in s192 of that Act which involves a slight modification of the assumptions to be made in assessing compensation in s241 of the LA Act. Once the value of the land or any improvements on the land is established, the monetary amount is to be paid as compensation to the affected land owner for the loss of the proprietary right in land.

4. Special circumstances

In special circumstances it may be appropriate for the State Government to assume control over the implementation of planned or managed retreat. This is only likely in situations that have State significance, where the State Government needs to protect land that has or is proposed to be required for a specific purpose of a public character (such as those contained in Schedule 6 of the PD Act). The State Government can assume control through mechanisms set out in the PD Act in certain circumstances.

Region scheme

A region scheme is primarily a statutory mechanism to assist strategic planning. The content of the scheme may vary for each region, but they generally set out broad land use zones or policy areas and identify land required for regional public purposes. By operation of s126 of the PD Act, local planning schemes are automatically amended to reflect or give effect to the public purpose set out under a region scheme reservation. It is the presence of a region scheme reservation for a public purpose which enlivens the power to compulsorily acquire in s191 of the PD Act. Currently there are three region schemes in Western Australia: Metropolitan Region Scheme, Peel Regions Scheme, and the Greater Bunbury Region Scheme.

Planning Control Area declarations

A Planning Control Area (**PCA**), under s112 of the PD Act, is used to identify potentially strategically significant (but otherwise zoned) land and protect it from inappropriate development where there is either insufficient time to amend a region scheme, or where the scope of the area for a public purpose region scheme amendment is not yet known. Once a PCA is in place, additional power to compulsorily take or acquire land is conferred on the Western Australian Planning Commission (**WAPC**) by s186 PD Act. The use of these powers however, is confined to areas the subject of region schemes.

Improvement plans and schemes

Improvement plans and schemes allow the State Government to become the planning authority for a particular area of land to advance its planning and development. These planning instruments are explained under Part 8 of the PD Act and confer additional powers to compulsorily acquire land for the plan/scheme purposes. Significantly, these instruments can be adopted for use throughout the State for strategic purposes.

Where land is to be acquired through these mechanisms, the process and valuation is outlined above in section 3.3, in particular the compulsory acquisition of land under the PD Act / LA Act.

5. Alternative mechanisms

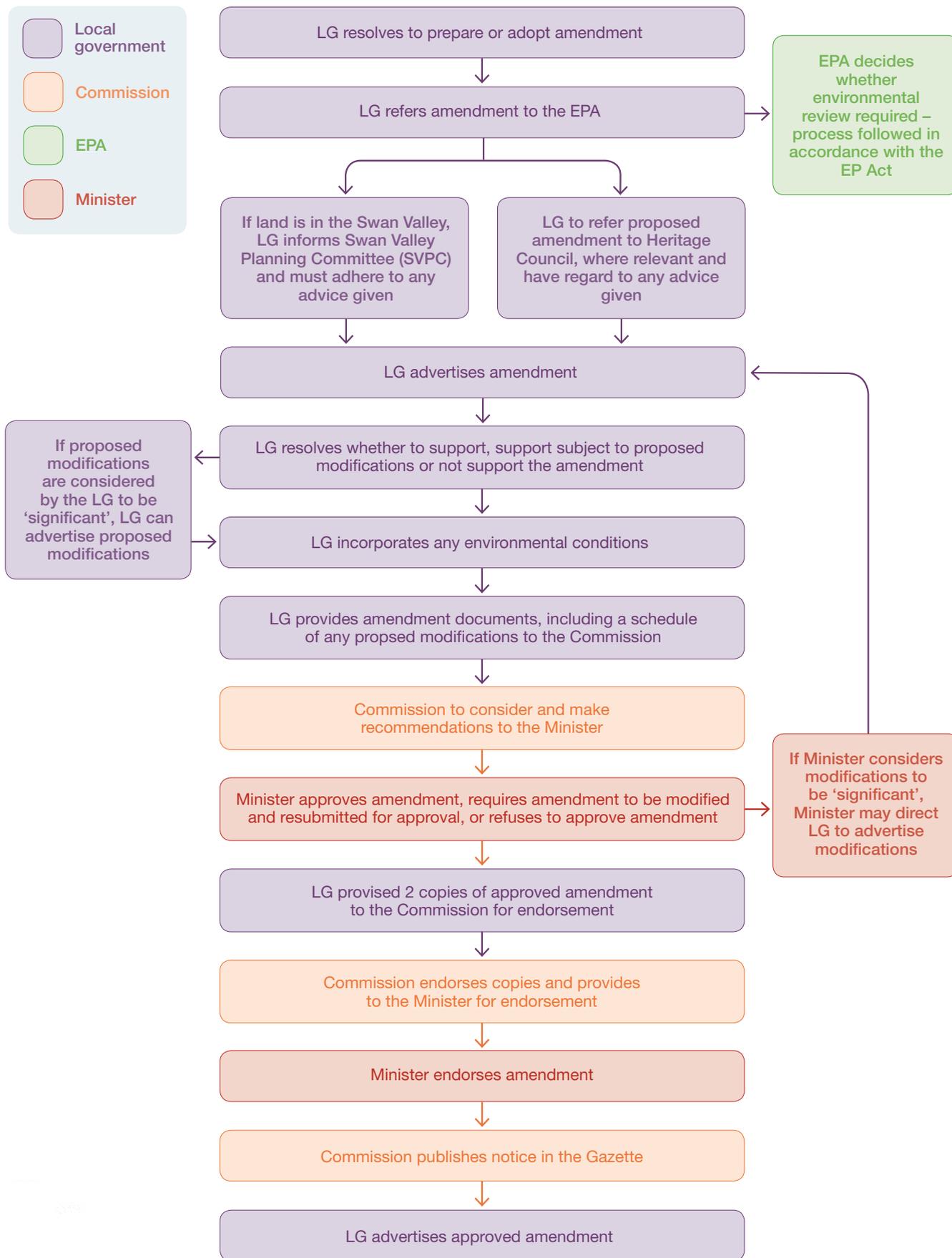
Coastal decision-makers will need to be proactive in coastal planning with regard to planned or managed retreat and its planning and funding pathways. Coastal decision-makers should investigate how such programs could be implemented through the CHRMAP process (as outlined above in section 2.1). Further to the method outlined in this document, the following is a possible mechanism for implementing planned or managed retreat.

Reservation of land

In the event of existing land use and development becoming a non-conforming use upon the reservation of land under a planning scheme for a public purpose, such usage can continue lawfully until the degree of coastal change affecting the land results in the need for the planning authority to more actively pursue acquisition. Reservation under the planning scheme would ultimately give rise to compensation. Under this method injurious affection compensation may be claimed by eligible owners pending the point at which acquisition becomes unavoidable where one of the triggers applies.

Appendix 1: Local Planning Scheme Amendment Process

Simplified process for standard amendments to local planning schemes flowchart



Appendix 2: Special Control Area Text

Draft amendment text

1. Insert the following into proposed Part (insert number), clause (insert clause):
(insert clause number) (insert number) Special Control Area No.
(insert number) – Coastal hazard risk area

2. Insert the following into proposed Part (insert number), after clause (insert clause number):
(Insert clause number) **Special Control Area (insert number) – Planned Retreat Area**
(Insert clause number) Purpose
The purpose of SCA (insert number) is to provide guidance as to the appropriate scope of land use and development to be permitted within a coastal erosion and inundation hazard risk area.

(Insert clause number) Objectives
 - a) To ensure land in the coastal zone is continuously available for coastal foreshore management, public access, recreation and conservation.
 - b) To ensure public safety and reduce risk associated with coastal erosion and inundation.
 - c) To avoid inappropriate land use and development of land at risk from coastal erosion and inundation.
 - d) To ensure land use and development does not accelerate coastal erosion or inundation risks; or have a detrimental impact on the functions of public reserves.
 - e) To ensure that development addresses the (insert CHRMAP) prepared in accordance with SPP 2.6 and (insert policy) prepared in accordance with (insert CHRMAP).
(Insert clause number) Additional provisions
 - a) All proposed development within the SCA requires approval.
 - b) Approval to be issued on a temporary or time limited basis.
(Insert clause number) Referral of applications
(Note: Any planning application should be referred to the Department of Transport, the Western Australian Planning Commission and any other relevant authority for advice and comment on the coastal risk.)

3. Amend the Scheme Map by inserting Special Control Area (insert number) as depicted on the Amendment Map.