



March 2022

Metropolitan Region Scheme Amendment **1387/57** (Minor Amendment)



Breakwater Drive
Other Regional Roads
(Lisford Avenue to
Mitchell Freeway Reservation)

Amendment Report

City of Wanneroo

**Metropolitan Region Scheme
Amendment 1387/57
(minor amendment)**

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The Western Australian Planning Commission acknowledges the traditional owners and custodians of this land. We pay our respect to Elders past and present, their descendants who are with us today, and those who will follow in their footsteps.

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The Metropolitan Region Scheme

What it is and how it is amended - minor

Planning Perth's future

Perth is currently home to more than 2 million people and this is anticipated to grow to 3.5 million by 2050.

To meet this growth, land must be identified for future housing, employment opportunities, transport, conservation and recreation.

The Metropolitan Region Scheme (MRS) provides for this by defining what land can be used for. It is also the means by which landowners can be compensated for land acquired for public purposes.

The role of the WAPC?

The Western Australian Planning Commission (WAPC) has statewide responsibility for planning how land in metropolitan and regional areas can be used and developed. The WAPC comprises a Chair and 16 members, representing industry, government and the community.

The WAPC is a statutory authority and operates in accordance with the *Planning and Development Act 2005*. It is supported by the Department of Planning, Lands and Heritage, which provides professional and technical expertise, administrative services and corporate resources.

What is the Metropolitan Region Scheme?

The MRS is a large town planning scheme which defines how land can be used in the Perth metropolitan area, dividing it into broad zones and reservations. The metropolitan area stretches from south of Rockingham to north of Yanchep and east of Mundaring.

The MRS uses a set of maps and a scheme text to set the planning rules and identify the various zones and reservations.

This plan has been in operation since 1963 and provides the legal basis for planning in the Perth metropolitan area.

The MRS is amended frequently as the region grows and changes.

What is an amendment?

An amendment to the MRS changes the zoning or reservation of land to allow for a different land use.

When a rezoning or a new reservation is considered, it is classified as either a major or a minor amendment and is advertised to seek comment from landowners, the broader community and all levels of government. Under the Act, the process for proposed major and minor amendments is different.

This process allows for extensive community consultation and discussion in Parliament, prior to a final decision being made.

How is the Metropolitan Region Scheme amended?

The WAPC is responsible for maintaining the MRS, including reviewing and initiating changes where necessary.

The amendment process is regulated by the *Planning and Development Act 2005*. The Act requires an amendment to be consistent with both the *Swan River Trust Act 1988* and the *Heritage of Western Australia Act 1990* and does not allow for an amendment to occur within the defined area of which a redevelopment scheme applies.

The amendment proposed in this report is being made under the provisions of section 57 (often referred to as a minor amendment).

The minor amendment process includes (also see the diagram on page viii):

- Request submitted and considered by the WAPC.
- WAPC determines to either progress or reject application, classifying it as either a major or minor amendment.

- If progressed, the application is referred to the Environmental Protection Authority (EPA) to set the level of environmental assessment. If the EPA requires an environmental review, this is carried out before the amendment is advertised.
- Proposed amendment is advertised for public comment. Advertisements are placed in local and statewide newspapers and the information is made available on www.dplh.wa.gov.au/mrs-amendments. Landowners directly affected by a proposed amendment are contacted in writing. Where there is an environmental review, this is also made available for comment.
- WAPC receives public submissions over a period of 60 days.
- WAPC reviews the proposed amendment in light of both the submissions and planning advice provided by the Department of Planning, Lands and Heritage.
- WAPC provides recommendation to the Minister for Planning whether to accept, reject or modify the proposed amendment.
- Minister considers proposed amendment.
- If approved, with or without modification, the amendment becomes legally effective in the MRS with the publishing of a notice in the Government Gazette. If declined, the amendment is discarded.
- Within three months of an MRS amendment being finalised, all affected local governments must initiate an amendment to its local planning scheme to match the new zonings.

Zones and reservations

Zones and reservations in the MRS are broad categories to define how land can be used and developed. The following descriptions are a guide only.

Zones

Urban: areas in which a range of activities are undertaken including residential, commercial, recreational and light industry.

Urban deferred: land identified for future urban uses following the extension of urban services, the progressive development of adjacent urban areas, and resolution of any environmental and planning requirements relating to development.

The WAPC must be satisfied that these issues have been addressed before rezoning to urban.

Central city area: strategic regional centres for major retail, commercial and office facilities as well as employment, civic, business and residential uses.

Industrial and special industrial: land on which manufacturing, processing, warehousing and related activities are undertaken.

Rural: land on which a range of agricultural, extractive and conservation uses is undertaken.

Private recreation: areas of significance to the region's recreation resource, which are (or are proposed to be) managed by the private sector.

Rural - water protection: rural land over public groundwater areas where land use is controlled to avoid contamination.

Reservations

Land reserved for community purposes. It may be reserved to protect a resource or to provide areas for infrastructure.

Parks and recreation: land of regional significance for ecological, recreation or landscape purposes.

Railways: provides for public transit routes, freight rail lines and associated facilities such as marshalling yards, maintenance depots and park n' ride stations.

Port installations: regional maritime shipping facilities.

State forests: areas of woodland located on Crown land and managed under the *Conservation and Land Management Act 1984*.

Water catchments: water sources protected for high quality public water supply. These areas have strict controls on land use to avoid pollution of the water resource.

Civic and cultural: significant civic precincts and buildings.

Waterways: permanent inland and coastal waters including many rivers and reservoirs.

Public purposes: land for public facilities such as hospitals, high schools, universities, prisons, utilities for electricity, water and treatment of wastewater, commonwealth government and other special uses.

Primary regional roads: important regionally significant roads as part of the planned road network that are currently, or proposed to be declared, under the *Main Roads Act 1930*.

Other regional roads: roads of regional significance in the planned road network for which the planning responsibilities are shared by the WAPC and local governments.

What if my land is rezoned?

Landowners may find that an amendment seeks to rezone their property, for example from rural to urban or urban deferred.

If the zoning is changed, landowners do not have to change their lifestyle or the way they use the land. However, depending on the new zone, there may be opportunities to change the land use, such as seek approval to subdivide or apply to develop it in some way that suits the new zoning.

The WAPC realises that many people choose their properties because they like them as they are and may not want to change from, for example, a rural-residential lifestyle to an urban area. Others are keen to change the land use.

For these reasons, amendments to the MRS are advertised so that all affected landowners and the broader community have time to examine the proposal and provide their comment.

What if my land is reserved?

Land is reserved because it will eventually be needed for a public purpose such as parks and recreation or other regional roads.

If your land is proposed to be reserved in an advertised amendment, you can continue to use and enjoy your property. Generally, reserved land can remain in private ownership until it is needed for the purpose for which it is reserved.

To protect landowners, there are procedures for acquisition or compensation by the WAPC. These are outlined in *Your Property and the planning system – region schemes*, a leaflet reproduced at the back of this report and online at <https://www.dplh.wa.gov.au/your-property-and-region-schemes>.

How can my views be heard?

You can lodge a submission during the advertised period:

- online at www.dplh.wa.gov.au/mrs-amendments.
- in writing to Western Australian Planning Commission, Level 2, 140 William Street, Perth 6000 (a submission form is included at the back of this report).

Publications

Amendments made to the MRS using the provisions of section 57 will in most cases have information published under the following titles:

Amendment report

This document is available from the start of the public submission period of the proposed amendment. It sets out the purpose and scope of the amendment, explains why the proposal is considered necessary, and informs people how they can comment.

Environmental review report

The EPA considers the environmental impact of an amendment to the MRS before it is advertised. Should the EPA require formal assessment, an environmental review is undertaken, and that information is made available for comment at the same time as the *Amendment Report*.

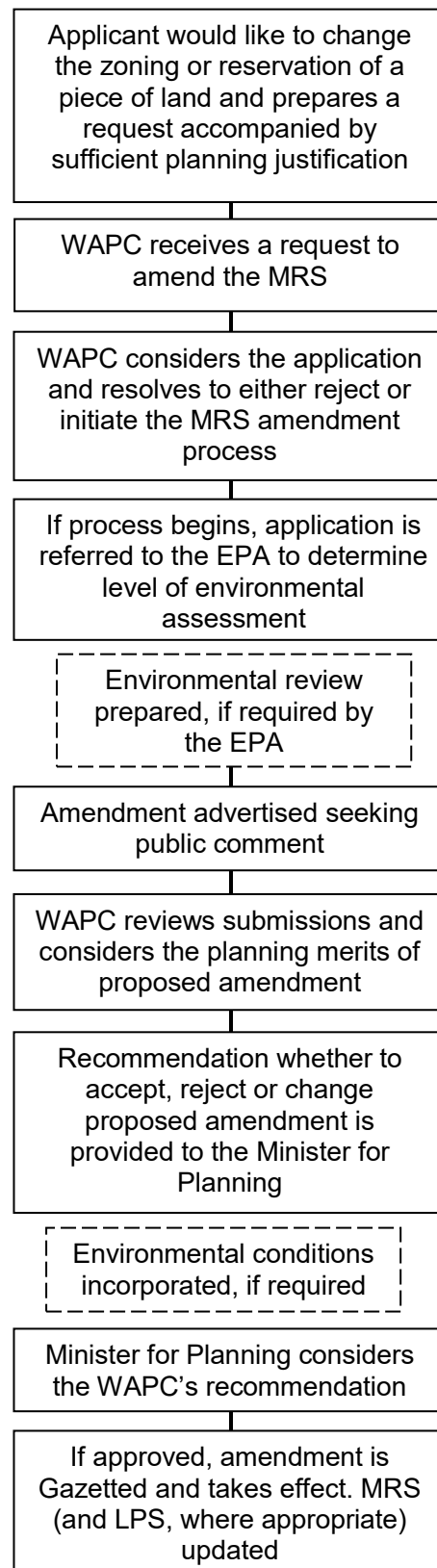
Report on submissions

This publication documents the planning rationale, determination of submissions received, and the recommendations for final approval of the amendment made by the WAPC.

Submissions

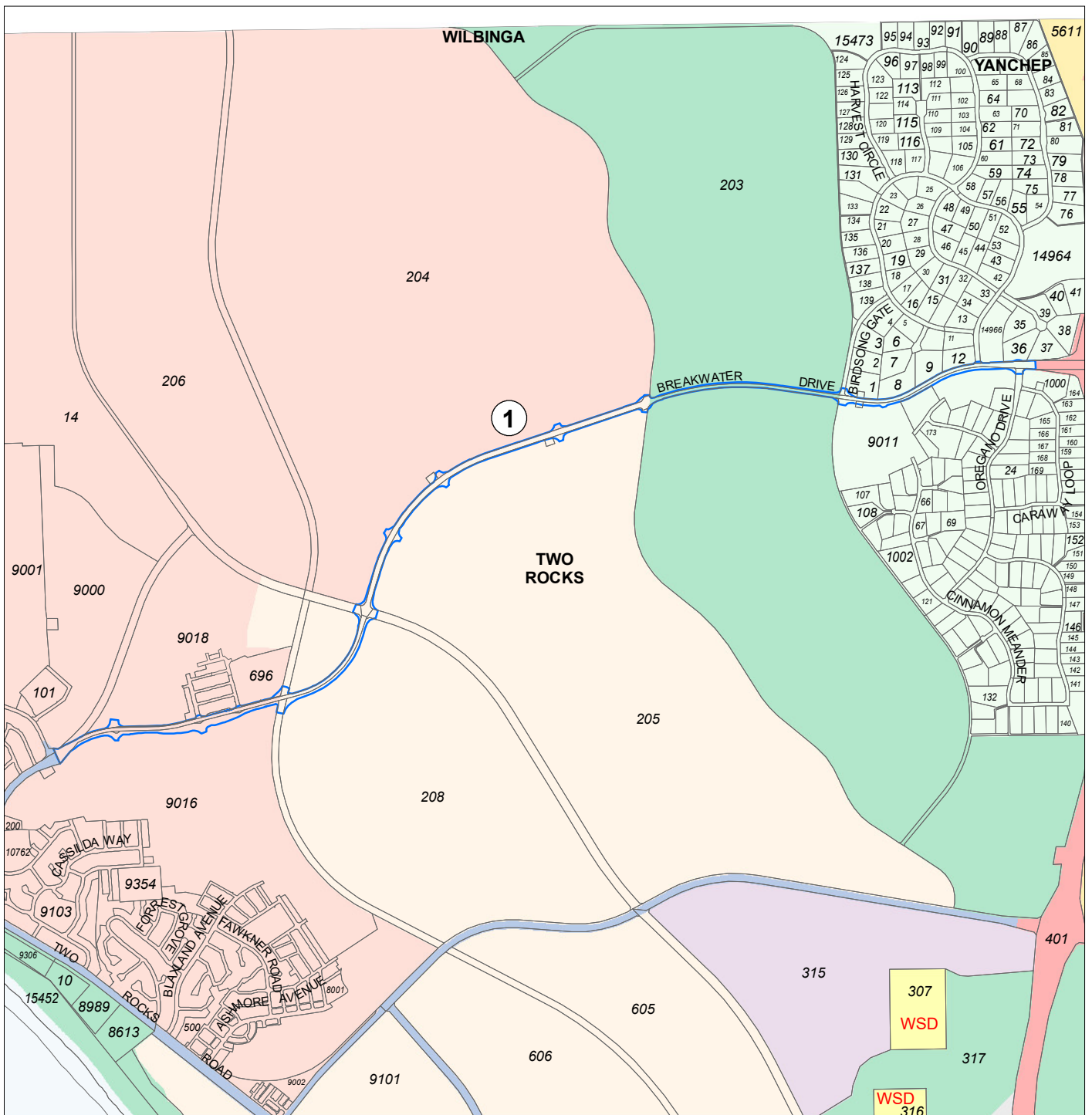
All written submissions received on the proposed amendment are reproduced as a public record.

A simple diagram of the amendment process.



Abbreviations

AHA	Aboriginal Heritage Act
DAA	District Distributor A
DBCA	Department of Biodiversity Conservation and Attractions
DDB	District Distributor B
DMIRS	Department of Mines, Industry Regulation and Safety
DoT	Department of Transport
DPLH	Department of Planning, Lands and Heritage
DWER	Department of Water and Environmental Regulation
EPA	Environmental Protection Authority
EPBC Act	Environment Protection and Biodiversity Conservation Act
EAR	Environmental Assessment Report
HA	Hectares
LPS	Local Planning Scheme
LSP	Local Structure Plan
MRS	Metropolitan Region Scheme
MRWA	Main Roads Western Australia
ORR	Other Regional Roads
PCA	Planning Control Area
PRR	Primary Regional Roads
PTA	Public Transport Authority
SWALSC	South West Aboriginal Land and Sea Council
VPD	Vehicles Per Day
WAPC	Western Australian Planning Commission



Location of Breakwater Drive Other Regional Roads Amendment

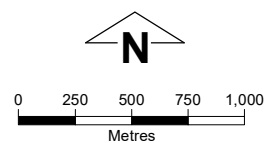
Amendment No. 1387/57

MRS Zones and Reserves

- Industrial
- Parks and recreation
- Primary regional roads
- Public purposes - Water Authority of WA WSD
- State forests
- Other regional roads
- Rural
- Urban
- Urban deferred
- Proposed Other Regional Roads Reservation

Proposed amendments

- 1 amendment 1387/57



Amendment Report

Metropolitan Region Scheme Amendment 1387/57
Breakwater Drive Other Regional Roads
(Lisford Avenue to Mitchell Freeway Reservation)

Amendment Report

1 Purpose

The purpose of this MRS amendment is to create an Other Regional Roads (ORR) reservation along a section of Breakwater Drive between Lisford Avenue and the Mitchell Freeway reservation (herein referred as Breakwater Drive), as shown on the *Amendment Figure – Proposal 1*.

2 Background

Breakwater Drive provides an important east-west link between Mitchell Freeway reserve and Lisford Avenue, both of which are already reserved as regional roads under the MRS. The draft (2015) and published *Perth and Peel@3.5M North-West Sub-Regional Planning Framework, 2018* (Framework) identify Breakwater Drive as a proposed Integrator Arterial (ORR). According to the Framework, a population of approximately 740,330 is anticipated in the north-west metropolitan area by 2050. Based on this population growth, Breakwater Drive is forecast to require additional traffic capacity. It will need to be widened to a four-lane dual carriageway road with a capacity to carry up to 40,000 vehicles per day (vpd). Breakwater Drive is expected to function as an ORR in the future, connecting existing ORR Lisford Avenue/Two Rocks Road and Primary Regional Roads (PRR) Mitchell Freeway.

In 2017, the Department of Planning, Lands and Heritage (DPLH), in close collaboration with the City of Wanneroo, engaged a consultant to develop concept road design drawings and land protection plans for a suitable ORR alignment for the section of Breakwater Drive west of the Mitchell Freeway reserve to Lisford Avenue. This study included:

- Desktop constraints analysis, including environmental and heritage considerations
- Traffic modelling studies
- An Access Strategy
- Concept designs
- Acoustic modelling
- Road safety audit
- Consultation with stakeholders occurred via the project reference group.

The road concept incorporates:

- 4 lanes divided road (2 x 3.5 metres lanes in each direction)
- 2 metres on road cycle lanes in each direction
- 8 metres median which is reduced to three metres within Bush Forever site 284
- 5.1 metres verges
- Design speed of 80 km/h

- Design vehicle being 27.5 metres long (consistent with the Restricted Access Vehicle category 4 requirements)
- All major intersections are controlled by roundabouts.

The planning study was completed in 2019. It was used to inform the boundary for Planning Control Area (PCA) 140. The PCA was introduced to protect an interim boundary for Breakwater Drive as a four-lane divided road pending environmental surveys and consultations.

An Environmental Assessment Report (EAR) was prepared in 2020 to assess the potential environmental impacts within the proposed Breakwater Drive ORR corridor. The EAR did not identify any fatal flaws with the proposed amendment. Three potential breeding habitat trees for Black Cockatoos were identified within the proposed road reservation.

DPLH then reviewed (2020) the proposed Breakwater Drive ORR design and land protection plans based on received feedback in order to:

- Avoid impacting existing and proposed commercial developments along the northern boundary of Breakwater Drive between Mercury Drive and Constellation Entrance.
- Consolidate the number of intersections along the proposed road corridor and investigate alternative intersection treatments at Constellation Entrance intersection instead of the proposed signalised intersection.
- Minimise impact upon a potential breeding habitat tree for Carnaby's Black Cockatoos at the proposed Birdsong Gate roundabout.

The key changes to the revised concept design include:

- The proposed roundabout at Mercury Avenue has been relocated to the west to avoid impacting on a proposed commercial development at Lot 9018.
- Constellation Entrance intersection revised from a signalised intersection to a roundabout and moved south to avoid impacting buildings on the northern side of Breakwater Drive.
- Road alignment shifted to the south between Mercury Avenue and Shearwater Avenue as a result of the above modifications.
- Five proposed left-in left-out intersections south of Breakwater Drive between Mercury Avenue and Shearwater Avenue were removed as they are not in the approved structure plans.
- Birdsong Gate roundabout relocated east to avoid impacting a potential breeding tree for Black Cockatoos and a fourth leg was introduced.
- Intersection east of Birdsong Gate reconfigured to left-in left-out only, with no right-in, due to proximity of Birdsong Gate.

The updated plans now form the basis for the proposed amendment to establish an ORR reservation for Breakwater Drive.

3 Scope and content of the amendment

The proposed Breakwater Drive ORR amendment is for the widening of approximately 6.8 kilometres of an existing local road. Its existing road reserve ranges from 20 - 32 metres. The amendment proposes to transfer approximately 28.6 hectares (ha) of land from Urban, Urban Deferred, Rural zones and Parks and Recreation reservation to ORR reservation in the MRS as follows:

- 8.1 ha from Urban zone
- 12.5 ha from Urban Deferred zone
- 5.0 ha from Rural zone
- 3.0 ha from Parks and Recreation reservation.

(note: the above figures include approximately 18.4 ha of existing local road reserve)

The proposed Breakwater Drive ORR reservation will have a width generally ranging between 36 - 40 metres to accommodate a four-lane dual carriageway. The reservation has been narrowed to 26 metres where it traverses through Bush Forever site 284. This reduces the road's footprint and its clearing requirement on native vegetations. The proposed reservation width at the Constellation Entrance intersection is approximately 65 metres. It results from changing the form of intersection from traffic lights to roundabout and its relocation to the south to avoid impacting the commercial developments north of Breakwater Drive.

Overall, the proposed ORR reservation will impact on eight commercial organisation owned properties, two privately owned properties, three properties owned by the City of Wanneroo and five properties owned by the State government. Table 1 provides further details about the impacted properties.

Table 1: List of impacted properties

Lot No.	Address	Area to be impacted (ha)
9016	Breakwater Drive, Two Rocks	3.126
902	497 Reef Break Drive, Two Rocks	0.32
208	499 Reef Break Drive, Two Rocks	1.286
205	513 Breakwater Drive, Two Rocks	1.246
321	371 Breakwater Drive, Two Rocks	0.019
203	450 Breakwater Drive, Two Rocks	0.058
9011	200 Cinnamon Meander, Two Rocks	1.687
213	559 Breakwater Drive, Two Rocks	0.067
1000	1 Caraway Loop, Two Rocks	0.007
9018	100 Constellation Entrance, Two Rocks	0.283
696	Breakwater Drive, Two Rocks	0.103
902	497 Reef Break Drive, Two Rocks	0.201
208	499 Reef Break Drive, Two Rocks	0.121
204	342 Breakwater Drive, Two Rocks	0.888
320	300 Breakwater Drive, Two Rocks	0.035
203	450 Breakwater Drive, Two Rocks	0.656
1	14 Birdsong Gate, Two Rocks	0.109
36	26 Orchard rest, Two Rocks	0.026

As part of the amendment pre-referral process, the following government agencies were consulted. No objections were raised to the proposed amendment.

- City of Wanneroo
- Main Roads Western Australia (MRWA)
- Department of Biodiversity, Conservation and Attractions (DBCA)

- Department of Water and Environmental Regulation (DWER)
- Public Transport Authority (PTA)
- Department of Transport (DoT)
- Department of Mines, Industry Regulation and Safety (DMIRS)
- Water Corporation.

4 Discussion

Strategic Planning Context

Perth and Peel@3.5 Million, North-West Sub-Regional Planning Framework (2018)

The *Perth and Peel@3.5 Million* suite of planning documents provide an envisaged development outcome for the Perth and Peel regions for a population of 3.5 million people by 2050. It makes the case for change from a “business-as-usual” perspective to a more considered, connected, consolidated urban form.

The *North-West Sub-Regional Planning Framework* (the Framework) forms part of the *Perth and Peel@3.5 Million* suite of planning documents. Plan 1 of the Framework identifies Breakwater Drive as a proposed regional road, and Plan 6 of the Framework shows this road as a proposed integrator arterial, based on district and local structure planning undertaken in the area to date and future population forecasts.

There are four major east-west roads between Two Rocks Road and the future Freeway in the Yanchep-Two Rocks area. Breakwater Drive is the most northern one and is expected to carry up to 40,000 vpd according to the traffic forecast for the 3.5M population scenario. The existing road reserve will need to be widened to accommodate its future demand and function as an ORR as identified in the Framework.

Yanchep – Two Rocks District Structure Plan (2010)

Figure 23 of the DSP depicts the section of Breakwater Drive between Shearwater Avenue and west of Bush Forever site 284 as District Distributor A (DDA) and the rest is shown as District Distributor B (DDB). Both perform the same function, however, a DDB has a reduced traffic capacity as it has only one traffic lane in each direction.

The 30 metres reservation of the DDB (Illustration 12) needs to be widened to 36 – 40 metres, similar to the DDA (Illustration 11) to accommodate the more recent planning for Breakwater Drive. The Yanchep – Two Rocks District Structure Plan is available electronically at: https://www.wanneroo.wa.gov.au/downloads/file/557/yanchep-two_rocks_district_structure_plan_-_parts_1_and_2.

Local Structure Plans

There are several approved Local Structure Plans (LSP) in the vicinity of Breakwater Drive, including:

- Two Rocks Local Structure Plan No. 69 – 2009.
- North Two Rocks LSP No. 91 – 2012.
- East Two Rocks LPS No. 83 – 2012.
- Lot 201 Breakwater Drive No. 35 – 2002.

- Lot 202 Breakwater Drive LSP No. 53 – 2012. It is located east of Bush Forever site 284 and south of Breakwater Drive. This LSP created 169 lots and three public open spaces. There is no provision for future widening of Breakwater Drive.

All the LSPs pre-date the Framework. Planning for the area was then based on an average residential density of 10 dwellings per gross hectare. The Framework is based on a residential density of 15 dwellings per gross hectare, implying higher density, and hence greater volumes of traffic than previously planned.

State Planning Policy 5.4 - Road and Rail Noise (SPP 5.4)

A noise assessment was undertaken in March 2019. It summarised that residential development adjacent to Breakwater Drive will need to consider noise mitigation to achieve compliance with SPP 5.4. The noise report indicates that the mitigation measures can consist of a combination of quieter road surface, noise barriers and building façade protection, with the extent of mitigation being dependent upon the finished residential lot levels and distance from the road.

Statutory Planning Context

Environment

Breakwater Drive traverses Bush Forever site 284. The Environmental Assessment Report (DPLH 2020) identifies 92% of the vegetation within the proposed ORR reservation as 'good to degraded' to 'completely degraded', with the remaining 8% mapped as 'good' to 'excellent'. The proposed road cross section along the Bush Forever site is 26 metres compared to approximately 40 metres along other sections of the corridor. This is achieved by reducing the median to 3 metres, taking the on-road cycling off-road and locating it within a shared path on the northern side of the road using the bush fire break area. A widening of 6 metres is therefore proposed on the northern side of the Bush Forever site to accommodate part of the carriageway and 1.5 metres verges. This reduces the impact on the Bush Forever site. Any potential offset will be considered as part of Part V of the Environmental Protection Act which will consider the impacts associated with clearing of vegetation within the Bush Forever site.

No threatened flora species were identified within the proposed reservation. However, four Priority 3 flora species were identified, most of which are located within the future carriageway and will likely be cleared for road construction. Some of these species are located within the verges and will be considered for retention where they are not impacted by earthworks or shared paths.

The survey did not find any State listed threatened ecological communities, but three Priority 3 State listed priority ecological communities were surveyed. There was one federally listed threatened ecological community within the proposed reservation, being the Tuart woodlands of the Swan Coastal Plain. These are located within the uncleared areas of the proposed reservation and some will be cleared for the duplication of Breakwater Drive. Once detailed design is progressed and the exact impact determined, an assessment against *Matters of National Environmental Significance - Significant Impact Guidelines* (Department of Environment, Water, Heritage and the Arts 2013) will be undertaken to determine whether a referral is required pursuant to the (Environment Protection and Biodiversity Conservation Act) EPBC Act.

Forty-three potential breeding habitat trees for Carnaby's Black Cockatoos are located within the proposed reservation; 39 without hollows, one with potentially unsuitable hollow and three containing hollows considered suitable for Cockatoo breeding. One of the trees with a potentially suitable hollow is located within the verge and can be avoided. The other two are

located at intersections. During the July 2020 design update, the Birdsong Gate intersection was revised to avoid impacting a tree with a suitable hollow. Therefore, only one tree with a potentially suitable hollow will be impacted. A detailed assessment of the hollows will be undertaken to determine their actual suitability for breeding by Cockatoos.

Department of Water and Environmental Regulation (DWER)

DWER made no comments on the proposed amendment with reference to the regulatory responsibilities under Part IV of the *Environmental Protection Act 1986*.

Department of Biodiversity, Conservation and Attractions (DBCA)

DBCA has no objection to the proposal and states that an assessment against the *Matters of National Environmental Significance - Significant Impact Guidelines* (Department of Environment, Water, Heritage and the Arts, 2013) and identified potential Carnaby's Black Cockatoo habitat trees to be undertaken prior to construction phase as part of detailed design.

Regional Roads

Proposed Breakwater Drive concept is designed to tie into the PRR reservation for Mitchell Freeway and the ORR reservation for Lisford Avenue.

Main Roads Western Australia

The preliminary concept design was reviewed in July 2020 to incorporate MRWA's comments by reducing five intersections and modifying intersections treatments and alignments. MRWA has no objection to the proposal and states that the number and form of intersections should be revised further.

Urban Water Management

A District Water Management Strategy is not required for the corridor, as the amendment is only identifying and protecting the extent of land that is required for the planned upgrade of Breakwater Drive.

It is anticipated that treatment of all runoff generated from within the corridor will be contained within the reserve or incorporated into adjacent developer's drainage strategy subject to agreement between the City of Wanneroo and adjacent developers.

Infrastructure

Water and Wastewater

The Water Corporation did not object to the proposed amendment and states that existing infrastructure (water distribution and sewerage gravity pipes) is to be protected and future demand for additional infrastructure is to be accommodated within the ORR reserve.

Electricity

Existing underground power services and overhead power lines are located within the verges of the existing Breakwater Drive reservation between Lisford Avenue and the transit corridor. Some overhead powerlines and poles between Damepattie Drive and Mercury Avenue will require relocation prior to construction of the additional carriageway.

Gas

There is an existing 700 kilopascal high-pressure gas main that runs east along the southern verge of Breakwater Drive, terminating at the Shearwater Avenue intersection. The high-pressure gas pipeline will generally be located in the median as a result of the proposed widening of Breakwater Drive.

Telecommunications

Telstra infrastructure exists along Breakwater Drive and includes trenched pipe and pits commencing on the south side of Breakwater Drive, west of the Damepattie Drive intersection before swapping to the north side of Breakwater Drive, terminating west of the Shearwater Avenue intersection. The Telstra infrastructure is generally located within the verges and may not require relocation.

Public Transport

There is an existing bus route (490 F&T) that runs from Butler Station to Two Rocks Shopping Centre, west of Breakwater Drive. There is currently no public transport service along Breakwater Drive.

The Department of Transport has no comments on the proposed amendment. The Public Transport Authority has advised that the duplication of Breakwater Drive is unlikely to impact its future rail network.

City of Wanneroo

The City has no objection to the proposal and advised that the roundabouts are to be designed to include pre-deflections.

There are 11 roundabouts proposed along the alignment. Proposed intersection at Two Rocks Road / Birdsong Gate does not have pre-deflection. Proposed intersection at Two Rocks Road / future Shearwater Drive has a pre-deflection only for the eastbound traffic. There are opportunities to include pre-deflection at all intersections at detailed design stages.

Department of Mines, Industry Regulation and Safety

No objection as the proposal raises no significant concern with respect to mineral and petroleum resources, geothermal energy, and basic raw materials.

5. Aboriginal Heritage

The *Aboriginal Heritage Act 1972* (AHA) is administered by the Department of Planning, Lands and Heritage and provides for the protection and preservation of Aboriginal heritage and culture throughout Western Australia, including places and objects that are of significance to Aboriginal people. Aboriginal sites and materials are protected whether or not they have been previously recorded or reported.

The process of rezoning or reservation of land in a region scheme is not in itself directly affected by the AHA. Proposed changes to land-use at MRS amendment stage are broad by nature and do not physically interfere with the land. Consideration of any protection that may be required is addressed more specifically at later stages of the planning process, typically being a local planning scheme amendment and when preparing a local structure plan.

Proponents of proposals are advised to familiarise themselves with the *Aboriginal Heritage Due Diligence Guidelines* (the Guidelines). These have been developed to assist proponents to identify any risks to Aboriginal heritage and to mitigate risk where heritage sites may be present. The Guidelines are available electronically at: https://www.wa.gov.au/system/files/2021-05/AH-Due-diligence-guidelines_0.pdf.

Nevertheless, in recognising the importance of having reliable Aboriginal information on land and the values attached to it, the WAPC and the Department of Planning, Lands and Heritage have entered into a Memorandum of Understanding with the South West Aboriginal Land and Sea Council (SWALSC) for the provision of Aboriginal consultative services. All MRS amendment proposals likely to be of interest to Aboriginal persons are referred to SWALSC for comment before being released for public submission. SWALSC is the recognised Native Title Representative Body for Western Australia's southwest region and as such is well placed to provide advice on Aboriginal heritage.

The amendment was not referred to SWALSC as part of preliminary investigations as it was not expected to impact on Aboriginal heritage values. However, the amendment will be referred to SWALSC during the formal advertising period.

6 Coordination of local and region scheme amendments

Under section 126(1) of the *Planning and Development Act 2005* if a region planning scheme delineates land comprised in a local planning scheme for any public purpose, then the local planning scheme, in so far as it operated in relation to that land is, by force of this section, and without any further action under this Act, amended to such extent (if any) as is necessary to give effect to the reservation under the region planning scheme.

7 Substantiality

The *Planning and Development Act 2005* allows for amendments to the MRS to be processed as either "minor" or "major" amendments depending on whether they are considered to constitute a substantial alteration to the MRS or not. *Development Control Policy 1.9 – Amendment to Region Schemes* (WAPC, 2017) sets out the criteria for deciding whether the major or minor process should be followed. In this regard, the amendment is proposed to be processed as a "minor" amendment as follows:

- The amendment area is identified as a proposed regional road in the *North-West Sub-Regional Planning Framework*.
- The amendment would facilitate the construction of an efficient and effective regional movement network consistent with the intent of the *North-West Sub-Regional Planning Framework*.
- The amendment constitutes a logical rationalisation of the zoning and reservation of land in the MRS for the locality.
- Key State Government agencies did not object to the initiation of the amendment during the pre-referral phase.

8 Sustainability appraisal

The proposed amendment will facilitate the permanent protection of Breakwater Drive in a regional road capacity, provide clarity and certainty for future road planning and adjacent developments and allow orderly land use planning to occur along this corridor.

9 Environmental Protection Authority advice

The proposed amendment was referred to the Environmental Protection Authority (EPA) for advice on whether environmental assessment would be required.

The EPA has advised that the proposed amendment does not require formal assessment under Part IV of the *Environmental Protection Act 1986*. However, it has provided advice on the key environmental factors for the amendment. A copy of the notice from the EPA is included in Appendix A.

10 The amendment process

The procedures for amending the MRS are prescribed by the *Planning and Development Act 2005*. The amendment proposed in this report is being made under the provisions of section 57 of that Act.

In essence, the procedures for an amendment not constituting a substantial alteration to the MRS (often referred to as a minor amendment) involves:

- formulation of the amendment by the WAPC
- referral to the EPA for environmental assessment
- completion of an Environmental Review (if required) to EPA instructions
- public submissions being sought on the proposed amendment (including environmental review if required)
- consideration of submissions
- approval, with or without any modifications in response to submissions, or refusal to approve, by the Minister
- the amendment takes legal effect with Gazettal of the Minister's approval.

An explanation of this process entitled *The Metropolitan Region Scheme, what it is and how it is amended*, can be found in the front of this report.

11 Submissions on the amendment

The WAPC invites people to comment on this proposed amendment to the MRS.

The amendment will be advertised for public submissions for a period of 60 days from Friday 18 March 2022 to Friday 20 May 2022.

Copies of the amendments are available for public inspection at the:

- i) Western Australian Planning Commission, 140 William Street, Perth
- ii) City of Wanneroo
- iii) State Reference Library, Northbridge.

Online submissions are encouraged via: <https://consultation.dplh.wa.gov.au>.

Written submissions commenting on the amendment should be sent to:-

The Secretary
Western Australian Planning Commission
Locked Bag 2506
PERTH WA 6010

or by email to:

RegionPlanningSchemes@dplh.wa.gov.au

and must be received by 5 pm Friday 20 May 2022.

All submissions received by the WAPC will be acknowledged.

For your convenience a submission form (Form 57) is contained in this report (Appendix E). Additional copies of the form are available from the display locations and the Department of Planning, Lands and Heritage website via <https://www.dplh.wa.gov.au/mrs-amendments>.

You should be aware that calling for public submissions is a public process and all submissions lodged will become public. All submissions are published and made available when the Minister has made a determination on the amendment. Advice of disclosure and access requirements are shown on side two of the submission form.

Before making your submission, it is recommended that you read the information in Appendix D of this report regarding preparing a submission.

12 Modifications to the amendment

After considering any submissions received from Government agencies and the public, the WAPC may recommend that the Minister modify the amendment. The Minister may approve the amendment, with or without any modifications in response to submissions, or decline to approve.

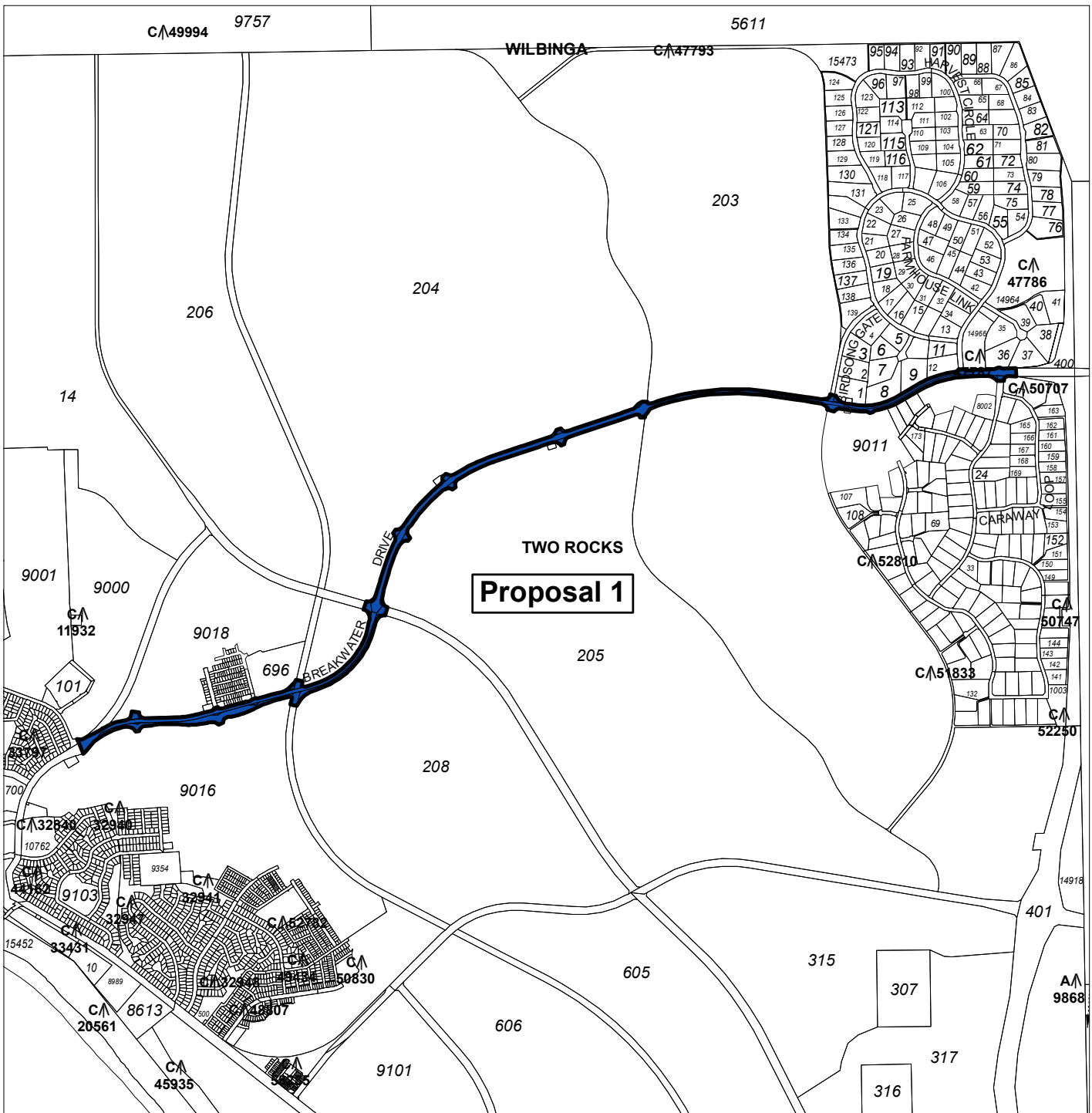
13 Final outcome

The recommendations of the WAPC, including any modifications, along with the determination of the Minister, are published in a report on submissions. Anyone who has made a submission, along with affected landowners, will be notified of the outcome when the amendment is gazetted to give it legal effect.

MRS Amendment 1387/57

**Breakwater Drive Other Regional Roads
(Lisford Avenue to Mitchell Freeway Reservation)**

**Amendment Figure
Proposal 1**



**Breakwater Drive Other Regional Roads
(Lisford Avenue to Mitchell Freeway Reservation)
Proposed minor amendment
as advertised**

22 September 2021

Proposal 1

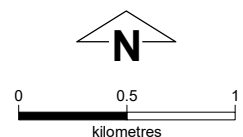
Proposed Amendment:

 Other regional roads reservation

Oracle reference no: 3105
File number: 833/02/30/0134
Version number: 1



Date: 18/02/2022
Produced by Data Analytics, Department of Planning, Lands and Heritage, Perth WA
Base information supplied by Western Australian Land Information Authority SLIP 1180-2020-1



Appendix A

Notice of environmental assessment



Ms Sam Fagan
The Secretary
Western Australian Planning Commission
Locked Bag 2506
PERTH WA 6001

Our Ref: CMS 18088
Enquiries: Renee Blandin, 6364 6499
Email: Renee.Blandin@dwer.wa.gov.au

Dear Ms Fagan

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

SCHEME	Metropolitan Region Scheme Amendment 1387/57
LOCATION	Breakwater Drive between Lisford Avenue and the Mitchell Freeway
RESPONSIBLE AUTHORITY	Western Australian Planning Commission
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 black ink, reading "Dehlia Goundrey". The signature is written in a cursive, flowing style.

Dehlia Goundrey

Director
EPA Services

7 December 2021

Encl. Chair's Determination
Scheme Advice and Recommendations

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

Metropolitan Region Scheme Amendment 1387/57

Location: Breakwater Drive (Lisford Avenue to Mitchell Freeway Reservation)

Determination: Scheme Not Assessed – Advice Given (Not Appealable)

Determination Published: 6 December 2021

Summary

The Western Australian Planning Commission (WAPC) proposes to amend the Metropolitan Region Scheme (MRS) to transfer land along a section of Breakwater Drive between Lisford Avenue and the Mitchell Freeway reservation (herein referred as Breakwater Drive) from Urban, Urban Deferred, Rural zones and Parks and Recreation reservation to the Other Regional Roads (ORR) reservation.

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 as set out 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 WAPC. Having considered this matter, the following advice is provided.

The local zoning and reservations within the amendment area (City of Wanneroo District Planning Scheme 2) were assessed by the EPA, and the amendment area is within an area subject to Ministerial Statement 538 (MS 538). Any development within the amendment area should be consistent with MS 538.

Environmental Factors

Having regard to the EPA's *Statement of Environmental Principles, Factors and Objectives*, the EPA has identified the following preliminary environmental factors relevant to this scheme amendment:

- Flora and Vegetation
- Terrestrial Fauna
- Landforms

Advice and Recommendations regarding Environmental Factors

Flora and Vegetation; Terrestrial Fauna

The amendment area contains native vegetation including three Priority 3 State-listed Priority Ecological Communities (PECs): 'Tuart (*Eucalyptus gomphocephala*) woodlands of the Swan Coastal Plain' PEC, the 'Northern Spearwood shrublands and woodlands' PEC and the 'Acacia shrublands on taller dunes' PEC.

Existing vegetation within the site is predominantly mapped as 'good to degraded' to 'completely degraded', in accordance with the Keighery (1994) vegetation condition scale. The amendment area intersects 2.74 hectares (ha) of Bush Forever site 284, including 1.69 ha of vegetation. The condition of vegetation within the Bush Forever site ranges from 'completely degraded', with a small extent of vegetation in 'excellent' condition (0.02 ha).

The amendment area contains 2.18 ha of potential foraging habitat for threatened species of black cockatoo, and 44 potential breeding trees (DBH > 500 mm), including 3 trees containing potentially suitable hollows and one tree containing an unsuitable hollow.

It is recommended that further assessment of the trees that contain hollows potentially suitable for black cockatoo be undertaken to determine their actual suitability and that the final detailed road design considers prioritising retention of potential breeding habitat trees. Construction and operational management measures should be implemented to avoid and minimise impacts to fauna.

A native vegetation clearing permit will be required under Part V of the EP Act, which will consider impact to values associated with Flora and Vegetation and Terrestrial Fauna.

Recommendation

The EPA concludes that implementation of the amendment can be managed to meet the EPA's environmental objectives for the above factors through standard planning requirements and other statutory processes including the clearing of native vegetation in accordance with a permit under Part V Division 2 (Clearing) of the EP Act. The EPA recommends its advice is implemented to mitigate potential impacts to Flora and Vegetation and Terrestrial Fauna.



GOVERNMENT OF
WESTERN AUSTRALIA

S48A Referrals

Environmental Protection Authority

Title: Metropolitan Region Scheme Amendment 1387/57

Location: Breakwater Drive between Lisford Avenue and the Mitchell Freeway.

Description: The Western Australian Planning Commission proposes to amend the Metropolitan Region Scheme to transfer land along a section of Breakwater Drive between Lisford Avenue and the Mitchell Freeway reservation (herein referred as Breakwater Drive) from Urban, Urban Deferred, Rural zones and Parks and Recreation reservation to the Other Regional Roads reservation.

Ref ID: CMS18088

Date Received: 14/10/2021 **Date Sufficient Information Received:** 10/11/2021

Responsible Authority: Western Australian Planning Commission Locked Bag 2506 Perth WA 6001

Contact: Mr Saikat Mitra

Preliminary Environmental Factors: Flora and Vegetation, Terrestrial Fauna and Landforms.

Potential Significant Effects: Implementation of the scheme may result in clearing of native vegetation and terrestrial fauna habitat (including habitat for threatened species of black cockatoo) and potential impact to karst landforms.

Management: Potential impacts can be managed through existing planning controls. Other statutory processes, including the clearing of native vegetation in accordance with a permit under Part V Division 2 (Clearing) of the *Environmental Protection Act 1986*, will be required and is considered appropriate to mitigate impacts to Flora and Vegetation and Terrestrial Fauna. EPA advice is also provided regarding management of environmental impacts.

Determination: **Referral Examined, Preliminary Investigations and Inquiries Conducted. Scheme Amendment Not to be Assessed Under Part IV of EP Act. Advice Given. (Not Appealable)**

The EPA has carried out some investigations and inquiries before deciding not to assess this scheme. In deciding not to formally assess schemes, the EPA has determined that no further assessment is required by the EPA.

This Determination is not appealable.

Chair's Initials:

30 November 2021

Appendix B

List of detail plans supporting the amendment

**Metropolitan Region Scheme
Amendment 1387/57**

**Breakwater Drive Other Regional Roads
(Lisford Avenue to Mitchell Freeway Reservation)**

as advertised

Amending Plan 3.2782

Detail Plans

1.5715, 1.5716, 1.5720, 1.5721, 1.5729

**Detail plans available on request*

Appendix C

Your property and the planning system - region schemes

Your property and the planning system – region schemes

Rights to compensation in relation to reserved land

The Western Australian Planning Commission (WAPC) has statewide responsibility for planning how land in metropolitan and regional areas can be used and developed. It does this by reserving and zoning land for immediate and future development through region schemes and/or planning control areas.

Region schemes

The WAPC administers three region schemes which classify land into zones and reservations:

- Metropolitan Region Scheme
- Peel Region Scheme
- Greater Bunbury Region Scheme.

Zones are large areas identified for purposes such as industry (industrial zone) and residential (urban zone).

Reservations are required for public purposes such as schools, railways, major roads, and parks and recreation.

How do you amend a region scheme?

Schemes can be amended as regions grow and change. This process begins with the local government, landowner, State Government or WAPC making a request to amend a scheme. The WAPC considers the request and can either refuse or approve the initiation of an amendment.

The amendment process is lengthy and in general, takes between 12 to 24 months to complete and includes extensive consultation with landowners and the broader community. In some cases amendments are subject to assessment by the Environmental Protection Authority. Amendments can be classified as Major or Minor, in accordance with *Development Control Policy 1.9 – Amendment to Region Schemes*.

Planning Control Area

In some instances, the WAPC will use a planning control area (PCA) to protect land required for a particular purpose from development until it may be reserved in one of the region schemes. A PCA acts in a similar manner as a region scheme but can be applied as a temporary measure to enable an amendment to be progressed. This also provides affected landowners with rights to claim compensation while a decision is made to reserve land or not. A PCA is valid for up to five years.

This means the WAPC is the decision-making authority for any development applications on land within a PCA. A person must not commence and carry out development within the PCA area without the prior approval of the WAPC. There are penalties for failure to comply with this requirement.

The same compensation and alternative purchase rules apply as with a region scheme. However, if compensation is paid and the PCA or reservation is reduced or removed in the future, the compensation is repayable in whole or part upon the subsequent sale or subdivision of the property.

What if your land is proposed to be reserved?

The WAPC approaches landowners on land proposed to be reserved and invites them to comment through the amendment process.

The Government will ultimately acquire reserved land, but as the reservations are strategic and long-term requirements, the land can generally remain in private ownership until it is needed for the public purpose. Several options are available to the owners of reserved land:

- **Retain ownership of your property** and continue quiet enjoyment until it is needed for the public purpose. You may complete any development or subdivision approved prior to the reservation taking effect. Under non-conforming use rights, you may continue to use the property for the purpose for which it was legally being used immediately before the reservation came into effect.
- **Sell the property on the open market** to another person(s). The WAPC recognises that the reservation may make this difficult. Subject to acquisition priorities and the availability of funds, the WAPC would be willing to consider purchasing a reserved property if an owner is unable to achieve a private sale on the open market. This does affect your right to otherwise claim statutory compensation (outlined in the compensation section below).
- **Offer the property for sale** to the WAPC. Subject to acquisition priorities and the availability of funds, the WAPC would be willing to consider purchasing a reserved property. The WAPC purchases a property at its current market value, ignoring the impact of the reservation and proposed public purpose. The WAPC obtains two independent valuations to provide it with advice on the value of the property.

Am I entitled to claim compensation?

If your land is reserved in a region scheme or subject to a PCA and **you are the owner of the land when it was first reserved or the PCA was declared**, you may be able to make a claim for compensation for injurious affection if:

1. **Private Sale** – you sell the property on the open market at a reduced price (due to the effect of the reservation or PCA);
or
2. **Refused development** – the WAPC has either refused a development application over the property or approved it subject to conditions that are unacceptable to you.

What is injurious affection?

Injurious affection occurs when the value of a piece of land is affected by the application of a reservation or restriction for a public purpose.

How do I claim compensation?

1. Private sale

If you wish to sell your property on the open market at a reduced price (affected value), you will need to complete a *Notice of Intention to Sell* form, which is available online at www.dplh.wa.gov.au. The Department of Planning, Lands and Heritage will establish the extent of the reservation and forward the notice to the Board of Valuers.

The Board of Valuers will determine the value of the property as if there was no reservation or PCA (unaffected value). You may wish to attend the board's meeting to present any matters you believe are relevant to the value of your property.

Following the board's decision:

- The board will advise you of the unaffected value of the property.
- You pay the board's valuation fee to the department and you will be advised of the affected value of the property (as determined by the WAPC) – the minimum price for which you can sell the property and receive the full amount of compensation (the difference between the affected and unaffected values). The valuation fee is refundable upon the sale of the property and the payment of compensation.
- You then arrange the sale of the property (either privately or through an agent) – the sale price must not be less than the affected value.

You (and your agent) must inform prospective purchasers that you are selling the property at a reduced price and that you will be claiming compensation for injurious affection from the WAPC. You must also include a special condition in the offer and acceptance.

- After you sell the property, you can make a claim for compensation for injurious affection through the WAPC **within six months** of the property being sold (registered at Landgate).
- After the WAPC pays compensation, the WAPC will lodge a notification on the Certificate of Title to identify that it has paid compensation, which is only payable once.
- If the property does not sell within one year of the board's valuation, you may ask the board to revalue the property. The sale process is then repeated.
- Alternatively, you may wish to ask the WAPC to purchase the property, as you have been unable to sell it privately. The WAPC will purchase the property at its then fair market value (unaffected value).

2. Refused development

If the WAPC refused your development application or approved it subject to unacceptable conditions, you may make a claim for compensation for injurious affection **within six months** of the WAPC's decision.

The WAPC will either pay compensation or may elect to purchase the property instead of paying compensation. If the WAPC elects to purchase the property, it obtains valuations for the fair market value (unaffected value) as at the date of the election to purchase.

What is compulsory acquisition?

If land is required for a reservation and has not been previously acquired or compensation has been claimed, the Government may compulsorily acquire the property. The WAPC will obtain independent valuations and make an offer of compensation, in accordance with the *Land Administration Act 1997*.

How can I view a region scheme?

- online at www.dplh.wa.gov.au/your-property-and-region-schemes
- office of the WAPC and the Department of Planning, Lands and Heritage Level 2, 140 William Street, Perth
- any local government office.

The WAPC operates in accordance with the *Planning and Development Act 2005* and receives administrative support from the Department of Planning, Lands and Heritage.

This information is correct as at January 2019.

Appendix D

Preparing a submission

Preparing a submission

The WAPC welcomes comment on proposed amendments to the MRS from interested individuals, groups and organisations.

What is a submission?

A submission is a way to express your opinion and provide information. It is an opportunity to explain why the amendment should be supported, withdrawn or modified. Suggestions of alternative courses of action are also welcomed.

Making a submission is not the same as voting in an election. The number of submissions received for or against a proposal will not in itself determine the result. Rather, it is the reasoned argument of why a particular thing should or should not be done. Your submission will assist the WAPC in reviewing its planning proposal before proceeding. Advertised proposals are often modified in response to the public submission process.

What should I say?

Your comments should focus on the particular issues that arise from the proposed amendment. If there are a number of components in the amendment, please indicate exactly which ones you are addressing.

It is important that you state your point of view clearly and give reasons for your conclusions and recommendations. These may include an alternative approach or other ways for the WAPC to improve the amendment or make it more acceptable. Indicate the source of your information or argument where applicable.

If you prefer not to write your own comments, you may consider joining a group interested in making a submission on similar issues. Joint submissions can increase the pool of ideas and information.

Before lodging your submission

The WAPC prefers to receive submissions online at www.dplh.wa.gov.au/mrs-amendments, however, hardcopy submissions can also be accepted (form 57 – appendix E).

Please remember to complete all fields in the submission form including your name, contact details and whether you would like to attend a hearing. Please limit the number of attachments, where possible, ensuring they are directly relevant to the proposed amendment you are commenting on.

The closing date for submissions and how to lodge them is shown on form 57 and in the submissions on the amendment section of the amendment report.

Some amendments may be subject to an environmental review. Under these circumstances, the WAPC will forward a copy of any submission raising environmental issues to the EPA.

You should be aware that all submissions lodged with the WAPC are subject to regulations on disclosure and access, and your submission will become a public document.

Appendix E

**Submission form for this amendment
(form 57)**

