



June 2021

Metropolitan Region Scheme Amendment 1381/57 (Minor Amendment)



**Part Lots 9001, 9020 and 9035
Lyon Road, Wandi**

Amendment Report

City of Kwinana

**Metropolitan Region Scheme
Amendment 1381/57
(minor amendment)**

**Part Lots 9001, 9020 and 9035
Lyon Road, Wandi**

Amendment Report

City of Kwinana



June 2021

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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Gordon Stephenson House
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MRS Amendment 1381/57 Amendment Report
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Internet: www.dplh.wa.gov.au
Email: info@dplh.wa.gov.au
Phone: (08) 6551 8002
Fax: (08) 6551 9001
National Relay Service: 13 36 77

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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*.

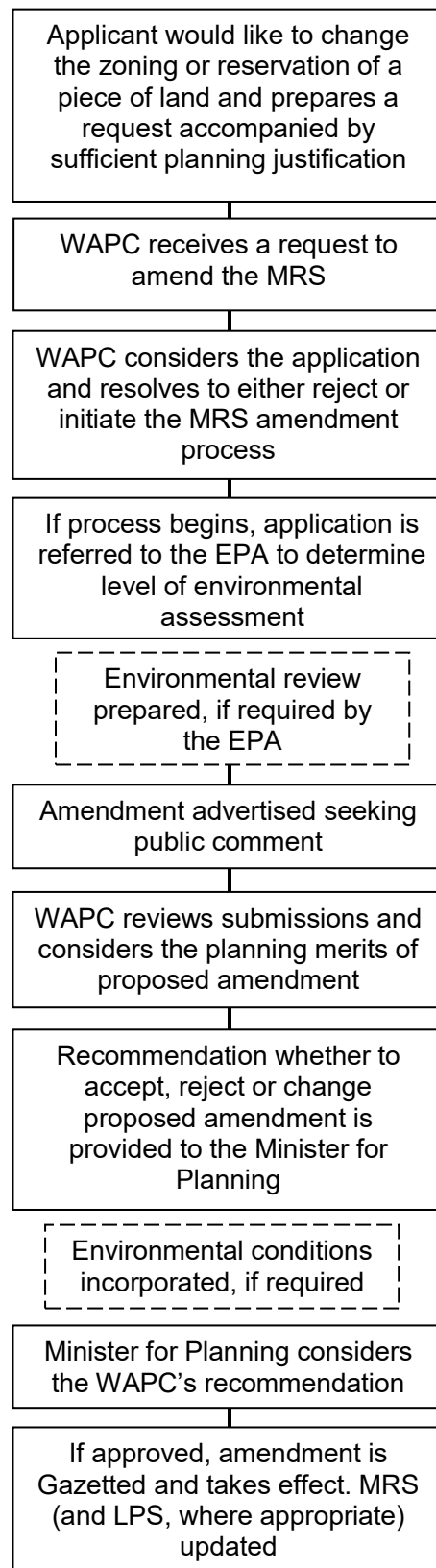
Report on submissions

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
CBD	Central Business District
DAWE	Department of Agriculture, Water and the Environment
DPLH	Department of Planning, Lands and Heritage
DWER	Department of Water and Environmental Regulation
EPBC Act	Environment Protection Biodiversity Conservation Act 1999
EPA	Environmental Protection Authority
LPS	Local Planning Scheme
MRS	Metropolitan Region Scheme
SPP	State Planning Policy
SWALSC	South West Aboriginal Land and Sea Council
TEC	Threatened Ecological Community
WAPC	Western Australian Planning Commission

Amendment Report

Metropolitan Region Scheme Amendment 1381/57
Part Lots 9001, 9020 and 9035 Lyon Road, Wandí

Amendment Report

1 Purpose

The purpose of the amendment is to transfer approximately 5.07 ha from the Rural-Water Protection zone to the Urban zone in the Metropolitan Region Scheme (MRS), as shown on the Amendment Figure – Proposal 1.

The proposed amendment is to facilitate future residential development, following a local scheme amendment, local structure planning and subdivision approval.

2 Background

The amendment area is situated approximately 29 km south of the Perth CBD and is in close proximity to the Kwinana Freeway to the west. The amendment area is situated adjacent to the developing Honeywood and Whistling Grove residential estates. The Honeywood Primary School and playing fields are in close proximity to the south. The Aubin Grove rail station is approximately 3.9 km to the north and the Kwinana rail station is approximately 4.6 km to the south.

The majority of the amendment area is utilised for intensive market gardening operations under non-conforming use rights. The proponent advises that the existing market garden presents a significant risk to groundwater, primarily from the use and storage of chemicals such as pesticides and fertilisers and groundwater extraction. There are no existing Water Corporation extraction bores within or abutting the subject land.

The site is primarily cleared of vegetation apart from an area of Banksia Woodland Threatened Ecological Community (TEC) in the northern portion of the site. The Department of Agriculture, Water and the Environment (DAWE) has granted approval to develop the site (subject to conditions) under the *Environment Protection Biodiversity Conservation Act 1999* (EPBC Act). The site does not contain or abut any Bushforever or wetland areas.

The amendment area is zoned “Rural Water Resource” and “Special Rural” under the City of Kwinana Local Planning Scheme No. 2 (LPS 2).

Indicative Concept Plan

The amendment is supported by an indicative concept plan which indicates residential subdivision with densities likely ranging between R30 and R60 providing for a yield of approximately 112 dwellings, comprising single residential lots and grouped dwellings. The proponent advises that the lot sizes are commensurate of the existing adjoining development and specific lot typologies consistent with the abutting *Wandi North Local Structure Plan*.

3 Scope and content of the amendment

The amendment proposes to rezone three properties and road reserves bounded by Lyon Road, Windjana Rise, Morwell Entrance and existing Urban zoned land to the west. The total area subject of this amendment is approximately 5.07 ha.

4 Discussion

STRATEGIC CONTEXT

Perth and Peel@3.5 Million / South Metropolitan Peel Sub-regional Planning Framework

The *Perth and Peel@3.5 Million* document provides a snapshot of the Perth and Peel regions in the future. It makes the case for change from a “business-as-usual” perspective to a more considered, connected, consolidated urban form. It links four draft Frameworks and encourages the consideration of new urban growth opportunities.

Future areas for urban development have been determined in conjunction with the State Government’s draft *Perth and Peel Green Growth Plan for 3.5 Million*, in order to avoid and protect areas which have significant regional environmental value.

The Sub-regional Frameworks are the first step in the ongoing process of refining and detailing planning proposals for an area. The Sub-regional Framework’s state that this refinement will continue through the MRS/PRS, local planning schemes, structure planning, subdivision and/or development.

Notwithstanding the site’s designation as “*Rural-Residential*” in the *South Metropolitan Peel Sub-regional Planning Framework*, the Western Australian Planning Commission (WAPC) supports the urbanisation of the site as it is a relatively unique urban infill site which completes the urbanisation of the locality, removes an existing non-conforming market garden use (including the storage and use of pesticides and fertilisers) and water extraction licence, would not set a precedent for other similar proposals in the Wandi locality and positively contributes to the provision of employment, investment and in supporting the State Government’s COVID-19 recovery.

State Planning Policy No. 2.3 - Jandakot Groundwater Protection

State Planning Policy No. 2.3 - Jandakot Groundwater Protection (SPP 2.3) aims to protect the Jandakot Groundwater Protection area from development and land uses that may have a detrimental impact on the water resource. Groundwater is a highly valued resource of Western Australia. The Jandakot Groundwater Protection area provides a significant volume of high quality drinking water. Other sources of water, such as desalination and recycled water, are required to supplement (but not replace) this source of drinking water.

In order to protect the quality of the public drinking water source, there is a presumption against new urban or industrial land uses in the Water Catchment reservation and the Rural-Water Protection zone of the MRS. SPP 2.3 states that:

“Amendments to the MRS will only be supported where the land has been identified for development in the manner proposed through a strategic planning document approved or prepared by the WAPC, such as a sub-regional planning framework or sub-regional structure plan.”

SPP 2.3 (section 6.3(c)) states that planning for more intense land uses through strategic planning instruments (such as a subregional planning framework or sub-regional structure plan) and subsequent MRS amendments should have regard to a range of considerations. The WAPC has considered the proposed amendment against section 6.3(c) and notes that there are situations where development may be appropriate following a government led strategic planning process, which determines an Urban rezoning is the preferred outcome for the land.

The site is designated as “*Rural-Residential*” in the *South Metropolitan Peel Sub-regional Planning Framework*, and as the decision-maker in initiating MRS amendments the WAPC does have discretion when considering the merits of a particular case.

The DWER has considered the draft *Wandi, Lyon Road Precinct District Water Management Strategy* for advertising purposes and in accordance with the requirements of *Better Urban Water Management*, will require approval prior to a final determination being made on the amendment. Should the amendment be finalised, the DWER will take action to amend the priority water status over the subject land from Priority 2 (P2) to Priority 3* (P3*).

All future development will need to be connected to reticulated water and sewerage services and the minor expansion of the Urban zone is not expected to have a significant detrimental impact on the Jandakot Groundwater Protection Area, particularly compared to the existing non-conforming market garden use on Pt Lot 9001. This includes the use and storage of pesticides and fertilisers and the extraction of water for irrigation purposes. Also, the subject site does not contain or abut existing Water Corporation extraction bores.

On balance, the WAPC supports the amendment as it is considered a relatively unique urban infill site which completes the urbanisation of the site, removes the existing non-conforming market garden use, would not set a precedent for other similar proposals in the Wandi locality and given it’s positive contribution the State Government’s COVID-19 economic recovery justifies the proposed amendment proceeding.

This recommendation responds to the individual and particular circumstances of this proposal, and is not necessarily a recommendation that may be applicable in other areas or circumstances.

State Planning Policy 2.8 - Bushland Policy for the Perth Metropolitan Region

State Planning Policy 2.8 - Bushland Policy for the Perth Metropolitan Region (SPP 2.8) aims to provide a policy and implementation framework that will ensure bushland protection and management issues are addressed and integrated with broader land use planning and decision-making. In general, the policy does not prevent development where it consistent with policy measures and other planning and environmental considerations.

The site is primarily cleared of vegetation, however an area of Banksia Woodland TEC remains in the northern portion of the site. The DAWE has granted approval to develop the site (subject to conditions) under the EPBC Act. However, the WAPC has advised the proponent and the City of Kwinana that wherever possible consideration should be given to retaining portion of the existing remnant vegetation within the northern portion of Lot 9020 Lyon Road, Wandi.

State Planning Policy 3.7 - Planning in Bushfire Prone Areas

State Planning Policy 3.7 - Planning in Bushfire Prone Areas (SPP 3.7) seeks to guide the implementation of effective risk-based land use planning and development to preserve life and reduce the impact of bushfire on property and infrastructure.

The accompanying *Guidelines for Planning in Bushfire Prone Areas* provide supporting information to assist in the interpretation of the objectives and policy measures outlined in SPP 3.7. A Bushfire Management Plan has been approved for the site by the Department of Fire and Emergency Services, subject to modifications being undertaken in future planning stages.

STATUTORY CONTEXT

Environment

The DWER has verbally advised that the existing Banksia Woodlands TEC exists in the northern portion of the site and abutting area and should be retained – if possible. Noting that approval (subject to conditions) has been received from the DAWE under the EPBC Act.

Urban Water Management

The DWER has considered the draft *Wandi, Lyon Road Precinct District Water Management Strategy* for advertising purposes and will require approval, in accordance with the requirements of *Better Urban Water Management*, prior to a final determination being made on the amendment. Should the amendment be finalised the DWER will take action to amend the priority status over the subject land from P2 to P3*.

Infrastructure

Water & Wastewater

The Water Corporation has adopted water, wastewater and drainage infrastructure planning for the adjoining Urban zoned areas to the west. The Corporation advises that the addition of the proposed amendment to the Urban zone will require reviews of the Corporation's planning to determine how this land can be serviced. Any system upgrades to the existing water and wastewater networks will need to be funded by the proponents.

Transportation

Main Roads WA, Department of Transport and the Public Transport Authority raise no objections to the proposed amendment.

5 Aboriginal heritage

The *Aboriginal Heritage Act 1972* (AHA) 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 State's *Cultural Heritage Due Diligence Guidelines* (the Guidelines). These have been developed to assist proponents identify any risks to Aboriginal heritage and to mitigate risk where heritage sites may be present. The Guidelines are available electronically at: <https://www.dplh.wa.gov.au/information-and-services/aboriginal-heritage/land-use-under-the-aha/aboriginal-heritage-surveys>.

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.

This amendment was pre-referred to the SWALSC but no response was received. However, the amendment has been referred to SWALSC during the public advertising period.

6 Coordination of local and region scheme amendments

Under section 126(3) of the *Planning and Development Act 2005* the WAPC has the option to concurrently rezone land being zoned Urban under the MRS to a "Development" zone (or similar) in the LPS. In accordance with standard practice, the WAPC will make a decision on the concurrent LPS amendment of the subject land at the final determination stage.

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. WAPC Policy *Development Control 1.9 – Amendment to Region Schemes* 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 "minor" amendment as follows:

- The proposed amendment is not considered complex and is a unique area which completes or "rounds-off" the urban development of the Wandí locality, removes a non-conforming market garden use (including the storage and use of pesticides and fertilisers) and existing water extraction licence.
- The proposal would not set a precedent for other similar proposals in the Wandí locality given its unique size, location (west of Lyon Road), primarily cleared nature and finalisation of the existing Whistling Grove and Wandí urban estates.
- The proposed amendment would positively contribute to the provision of employment, investment and in supporting the State Government's COVID-19 recovery.
- Relevant State Government agencies have not raised matters which prevent the initiation and/or advertising of the amendment or which can't be resolved in subsequent planning stages.

8 Sustainability

The proposed amendment will complete and "round-off" the existing the urban development of the abutting Honeywood and Whistling Grove urban estates on land that is substantially cleared of vegetation and consistent with the Government's urban consolidation policy which seeks to maximise the use of the existing services and infrastructure.

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 at 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 procedure 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 sought on the proposed amendment (including environmental review if required)
- consideration of submissions
- approval, with or without any modifications in response to submissions, or decline 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 also be found in the front of this report.

11 Submissions on the amendment

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

The amendment will be advertised for public submissions for a period of 60 days from 15 June 2021 to 20 August 2021.

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

- i) Western Australian Planning Commission, 140 William Street, Perth
- ii) City of Kwinana
- 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 6001

or by email to:-

mrs@dplh.wa.gov.au

and must be received by 5 pm 20 August 2021.

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: <https://www.dplh.wa.gov.au/mrs-amendments>.

You should be aware that calling for 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 comments received from the public and government agencies, 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.

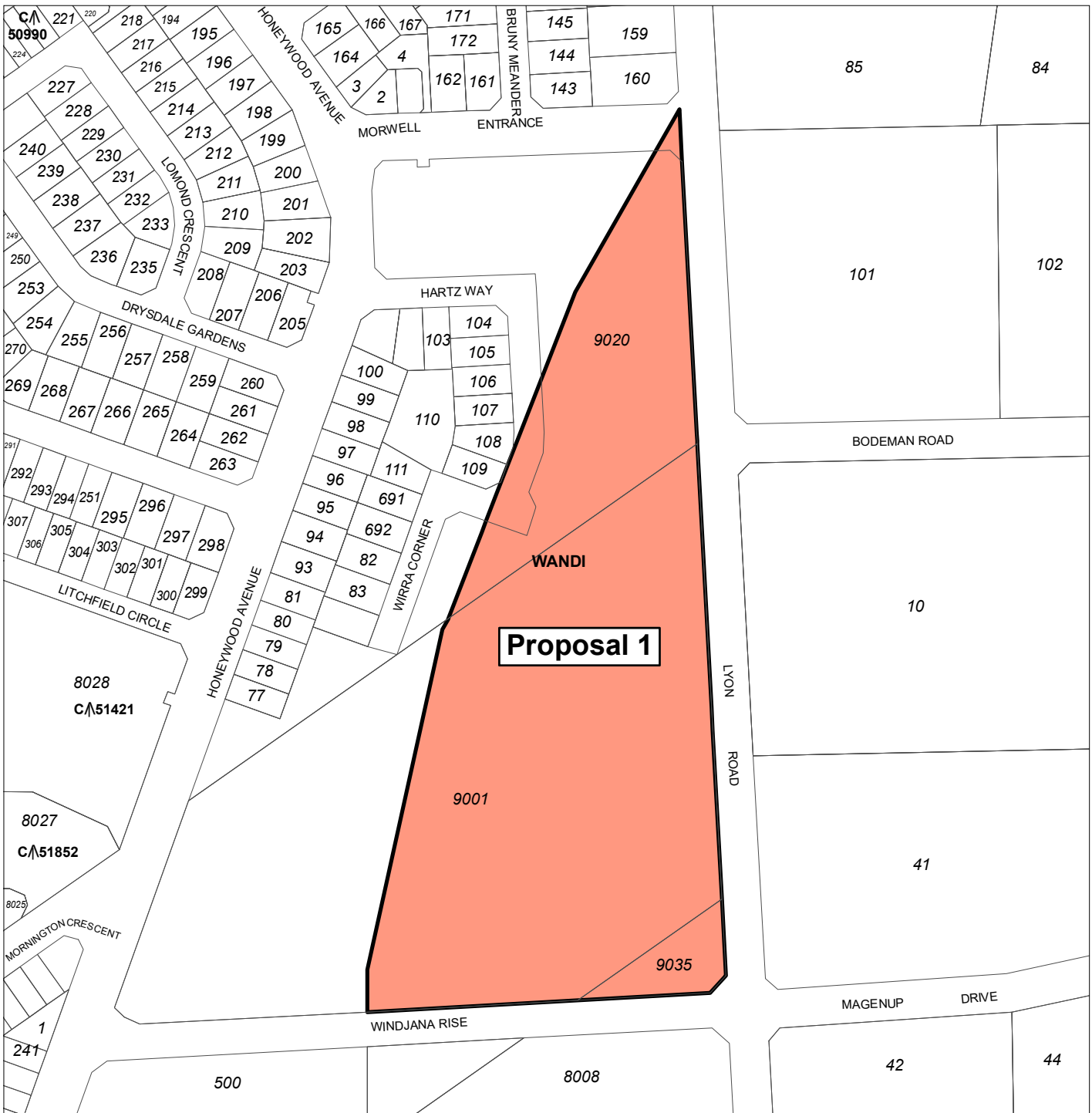
13 Final outcome

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 1381/57

Part Lots 9001, 9020 and 9035 Lyon Road, Wandri

**Amending Figure
Proposal 1**



**Pt Lots 9001, 9020 & 9035 Lyon Road, Wandai
Proposed minor amendment
as advertised**

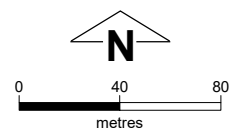
31 March 2021

Proposal 1

Proposed Amendment:

 Urban zone

Oracle reference no: 3085
File number: RLS/0946
Version number: 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 17481
Enquiries: Renee Blandin, 6364 7259
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 1381/57
LOCATION	Lots 9001, 9020 and 9035 Lyon Rd Wandi
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



Anthony Sutton
Delegate of the Environmental Protection Authority
Executive Director
EPA Services

21 May 2021

Encl. Chair's Determination
Scheme Advice and Recommendations

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

Metropolitan Region Scheme Amendment 1381/57

Location: Lots 9001, 9020 and 9035 Lyon Rd Wandi

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

Determination Published: 21 May 2021

Summary

The amendment proposes to transfer approximately 5.07 ha from the Rural-Water Protection zone to the Urban zone.

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 Western Australian Planning Commission (WAPC). Having considered this matter, the following advice is provided.

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:

- Inland Waters;
- Flora and Vegetation; and
- Terrestrial Fauna.

Advice and Recommendations regarding Environmental Factors

Inland Waters

The amendment area is located within *Jandakot Underground Pollution Control Area* and is classified as a Priority 2 Public Drinking Water Source Area (PDWSA), which is incompatible with urban development. Upon finalisation of the rezoning the Department of Water and Environmental Regulation (DWER) would amend the corresponding footprint of the Priority 2 PDWSA to Priority 3, which would allow for urban land uses with restrictions applied, to provide a greater level of protection to the drinking water source than a conventional urban development scenario.

Future development should be consistent with *State Planning Policy 2.3: Jandakot Groundwater Protection*, and *Water Quality Protection Note 25 - Land use compatibility tables for public drinking water source areas* (DWER, 2016). Further consultation with DWER, and water quality risk mitigation measures, will be required at the later stages of the planning process.

The amendment area is also within the area covered by *Environmental Protection (Peel Inlet - Harvey Estuary) Policy 1992* (Policy). Water management planning for the site should maintain or improve groundwater and surface quality, and pre-development hydrology to ensure water quality objectives for the Policy area are achieved.

Water management planning for the site should also consider management of potential impact of future development on the nearby downstream conservation category wetlands (CCWs), and should maintain or improve groundwater and surface quality, and pre-development hydrology.

Flora and Vegetation; Terrestrial Fauna

The amendment area contains approximately 0.7 hectares (ha) of vegetation in very good to excellent condition mapped as *Banksia* low woodland to open forest and potential foraging habitat for threatened species of black cockatoo.

The vegetation is considered to be representative of *Banksia Woodlands of the Swan Coastal Plain* listed as a Priority Ecological Community by the Minister for Environment and a Threatened Ecological Community under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The EPA notes the amendment area is part of a broader area with EPBC approval subject to conditions (reference number 2010/5476) for urban development.

The EPA supports the WAPC's resolution to advise the City of Kwinana and the proponent that in the subsequent local structure planning stage, consideration should be given to retaining the existing remnant vegetation.

Recommendation

The EPA concludes that the implementation of the amendment can be managed to meet the EPA's environmental objectives for the above factors through existing planning controls. The EPA recommends its advice is implemented to mitigate potential impacts to Inland Waters, Flora and Vegetation, and Terrestrial Fauna.

Appendix B

List of detail plans supporting the amendment

**Metropolitan Region Scheme
Amendment 1381/57**

Part Lots 9001, 9020 and 9035 Lyon Road, Wandi

as advertised

Amending Plan 3.2780

Detail Plans

1.6670, 1.6693

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 <https://consultation.dplh.wa.gov.au>, 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)**

Section 57 Amendment (Minor)
Form 57

Submission

Metropolitan Region Scheme Amendment 1381/57

Part Lots 9001, 9020 and 9035 Lyon Road, Wandl

OFFICE USE ONLY

SUBMISSION NUMBER

RLS/0970

To: Secretary
Western Australian Planning Commission
Locked Bag 2506
PERTH WA 6001

Title (*Mr, Mrs, Miss, Ms*) First Name

Surname (PLEASE PRINT CLEARLY)

Address Postcode

Contact phone number Email address

Submissions may be published as part of the consultation process. Do you wish to have your name removed from your submission? Yes No

Submission (Please attach additional pages if required. It is preferred that any additional information be loose rather than bound)

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(Submission continued. Please attach additional pages if required)

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You should be aware that:

- The WAPC is subject to the *Freedom of Information Act 1992* and as such, submissions made to the WAPC may be subject to applications for access under the act.

- In the course of the WAPC assessing submissions, or making its report on these submissions, copies of your submission or the substance of that submission, may be disclosed to third parties.

To be signed by person(s) making the submission

Signature Date

Note: Submissions MUST be received by the advertised closing date, being close of business (5pm) on 20 AUGUST 2021. Late submissions will NOT be considered.