GOVERNMENT OF WESTERN AUSTRALIA

Western Australian Planning Commission

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March 2020

Metropolitan Region Scheme Amendment 1365/57 (Minor Amendment)

Pt Lot 4 Fern Road & Pt Lot 102 Castledare Place, Wilson

Amendment Report

City of Canning

Metropolitan Region Scheme
Amendment 1365/57
(Minor Amendment)

Pt Lot 4 Fern Road &
Pt Lot 102 Castledare Place, Wilson

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GOVERNMENT OF WESTERN AUSTRALIA

Western Australian Planning Commission

March 2020

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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MRS Amendment 1365/57 Amendment Report
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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.

- Consent by the Minister for Planning to call for submissions.

- 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*.

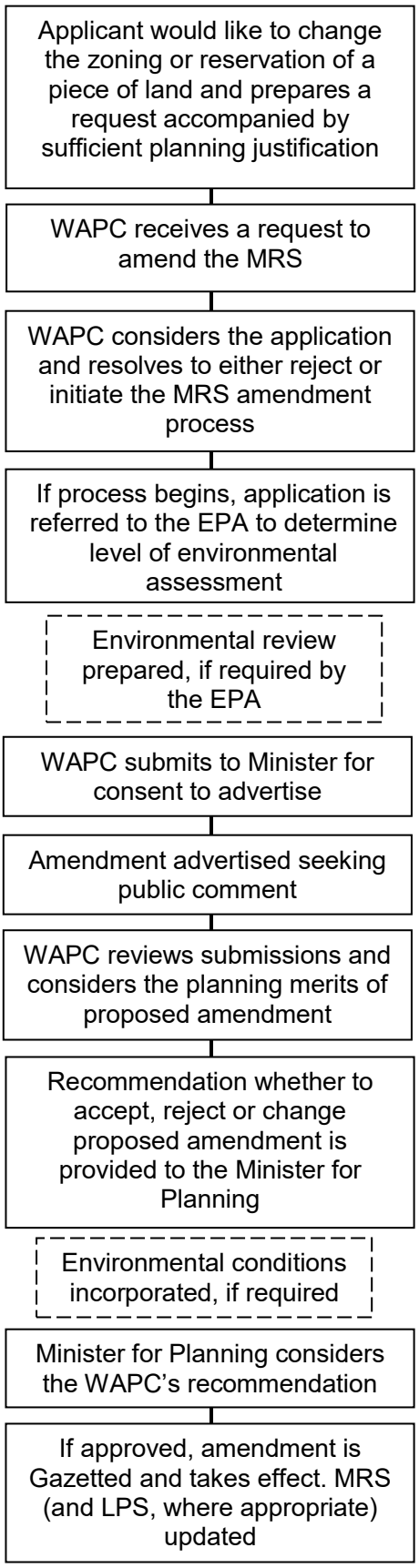
Report on submissions

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
D/LWMS	District/Local Water Management Strategy
DBCA	Department of Biodiversity, Conservation and Attractions
DWER	Department of Water and Environment Regulation
EPA	Environmental Protection Authority
LPS	Local Planning Scheme
MRS	Metropolitan Region Scheme
PSP	Principal Shared Path
SPP	State Planning Policy
SWALSC	South West Aboriginal Land and Sea Council
WAPC	Western Australian Planning Commission

Amendment Report

Metropolitan Region Scheme Amendment 1365/57

Pt Lot 4 Fern Road & Pt Lot 102 Castledare Place, Wilson

1 Purpose

The purpose of this amendment is to reclassify portions of Lot 4 Fern Road and Lot 102 Castledare Place, Wilson from the Urban zone to Parks and Recreation (0.50 hectare) and reclassify land from Parks and Recreation to the Urban zone (1.02 hectares), as shown on the Amending Figure - Proposal 1. 1.11 hectares of Bush Forever site 224 is also proposed for removal.

A minor boundary adjustment is also proposed for the Parks and Recreation reserve to incorporate an additional area of land that accommodates part of the Castledare Miniature Railway that has historically been left outside of the reserve boundary.

The Metropolitan Region Scheme (MRS) amendment will allow for the residential development of the subject land, following a local scheme amendment, structure planning and subdivision approval.

2 Background

The subject land is located in the City of Canning and is approximately 9.5 kilometres south-east of the Perth Central Business District. The site abuts existing Urban zoned land to the north and west, and Parks and Recreation reserved land and the Swan Canning Development Control Area to the south and east which contains the Castledare Miniature Railway and the Canning River.

As part of the negotiations for the rezoning of the 1.02 hectares to the Urban zone, the landowner has agreed to cede all the Parks and Recreation reservation (and Bush Forever area) within their ownership within Lot 102 Castledare Place and Lot 4 Fern Road to the State free of cost, equating to approximately 12.5 hectares.

The majority of the site is cleared of native vegetation or composed of managed parkland associated with the Castledare Miniature Railway, located in the eastern portion of the site. The subject land in not located within a Conservation Category Wetland.

The amendment will rezone the land to enable the structure planning and subsequent development of the amendment area for residential and related land uses.

3 Scope and content of the amendment

The purpose of the amendment is to reclassify land in Wilson from the Urban zone to Parks and Recreation (0.50 hectares) and reclassify land from Parks and Recreation to the Urban zone (1.02 hectares). 1.11 hectares of Bush Forever site 224 is proposed for removal.

4 Discussion

Strategic Planning Context

Perth and Peel@3.5million / Central Sub-regional Planning Framework

The *Perth and Peel@3.5million* 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. Future areas for urban development have been determined in conjunction with the State Government's draft *Strategic Assessment of the Perth and Peel Regions*, in order to avoid and protect areas that have significant regional environmental value.

The *Central Sub-regional Planning Framework* (Framework) forms part of the *Perth and Peel@3.5million* strategic suite of planning documents. The 1.02 hectares of proposed Urban land is identified within the *Green Network* in the Framework, and the small portion of land proposed for Parks and Recreation is depicted within the existing urban footprint of the Framework.

However, the intent of the amendment is to reflect existing land uses on-site and better align the existing foreshore reserve boundary, whilst also providing for the ceding of land to the Crown free of cost.

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 is consistent with policy measures and other planning and environmental considerations.

The amendment proposes to remove the Bush Forever designation over the portion of Lot 102 to be zoned Urban. Despite this land being identified within a Bush Forever area, it is largely cleared and contains few ecological values that warrant its inclusion. Section 3.1 of SPP 2.8 stipulates that *'existing cleared or developed areas within Bush Forever areas are not intended for protection through this policy or excluded from future development'.*

The landowner has also agreed to cede all the Parks and Recreation reservation (and Bush Forever area) within Lots 102 and 4 to the State free of cost, equating to approximately 12.5 hectares. Therefore, the removal of the Bush Forever designation over the proposed Urban portion of the land (and associated modifications) is considered to be consistent with the policy framework.

State Planning Policy 3.0: Urban Growth and Settlement

State Planning Policy 3.0: Urban Growth and Settlement (SPP 3.0) sets out the principles and considerations that guide the development of new urban growth and settlements. It focuses on consolidation in areas with good access to employment, services and transportation, minimised environmental impact and efficient use of suitable land and infrastructure.

The amendment is consistent with SPP 3.0 as it will realise residential consolidation and intensification within an area of under-utilised land that has access to transport, services and employment. All essential services can be readily and efficiently connected from immediate surrounding areas.

State Planning Policy 3.7: Planning for Bushfire Risk Management

State Planning Policy 3.7: Planning for Bushfire Risk Management forms the foundation for land-use planning to address bushfire risk management in Western Australia. It is used to inform and guide decision-makers, referral authorities and proponents to achieve acceptable fire protection outcomes on planning proposals in bushfire-prone areas.

The Department of Fire and Emergency Services has advised that the submitted Bushfire Management Plan has adequately identified issues arising from bushfire hazard level assessment and considered how compliance with the bushfire protection criteria can be achieved at subsequent planning stages.

Statutory Planning Context

Environment

The Department of Water and Environmental Regulation (DWER) raises no objections to the amendment and the removal of the Bush Forever designation for the area proposed to be zoned Urban. This area, approximately one hectare, was cleared prior to 1953 and has remained cleared since then.

The proposed amendment area is located adjacent to the Canning River and is within 50 metres of a Conservation Category Wetland. The Environmental Protection Authority's (EPA) Guidance Statement 33 states that wetlands that are to be protected require a minimum 50 metre buffer distance.

Negotiations between the Department of Biodiversity, Conservation and Attractions (DBCA) and the proponent have resulted in a modified alignment of the Urban zone and a Principal Shared Path (PSP) corridor, which defines the boundary between the Parks and Recreation reserve and the Urban zone. A site-responsive reduced wetland buffer has been supported by DBCA.

Two additional areas of Bush Forever removal within the Parks and Recreation reservation have been proposed which accord with the alignment of the PSP. The proponent has identified the retention of significant trees on-site in an initial concept plan, and will consider the protection of these trees as part of future structure planning.

Urban Water Management

A combined District/Local Water Management Strategy (D/LWMS) has been prepared and submitted to the DWER approval.

The Western Australian Planning Commission (WAPC) notes that the D/LWMS will need to be approved by the DWER, prior to a final determination being made on the amendment.

Infrastructure

Regional Roads

Main Roads WA raises no objections to the proposed amendment.

Water and Wastewater

The Water Corporation advises the following:

Water: Reticulated water is currently available to the subject area. All water main extensions, if required for the development site, must be laid within the existing and proposed road reserves, on the correct alignment and in accordance with the Utility Providers Code of Practice.

The proposed water reticulation extensions/strategy outlined in the report will need to be further refined by the developer's consultant engineers at the subdivision stage in consultation with the Water Corporation's Land Servicing Section.

Wastewater: Reticulated sewerage is currently available to the subject area. All sewer main extensions, if required for the development site, should be laid within the existing and proposed road reserves, on the correct alignment and in accordance with the Utility Providers Code of Practice.

The proposed water reticulation extensions/strategy outlined in the report will need to be further refined by the developer's consultant engineers at the subdivision stage in consultation with the Water Corporation.

Drainage: The subject area falls within the Wilson Drainage Catchment. The Water Corporation's drainage system can only take predevelopment flows, so the developer will need to compensate any additional flows on their land.

Major drainage infrastructure including the Wilson Main Drain and Castledare Compensation Basin is located within the subject area. The drain should be referred to within the report and indicated on a plan along with the easement on Lot 102.

Land Matters: The Corporation owns Lot 56 in Freehold. This is an old drainage corridor that is no longer required as the actual drain veers off the south west into Lots 4 and 104 owned by the Christian Brothers. It is understood the Christian Brothers have agreed to surrender the Parks and Recreation reserved land to the WAPC at subdivision stage.

The Corporation notes that it has in-principle agreement that once the above transaction has occurred, the Corporation’s redundant Lot 56 will be surrendered and a Crown Reserve will be created over the actual Wilson Main Drain drain alignment and the Castledare Compensation Basin. The WAPC will then transfer this new reserve to the Corporation.

The Corporation's operational drainage corridor and Castledare Compensation Basin should not be located within a Parks and Recreation reserve (or Bush Forever). The Corporation recommends that the land is reserved Public Purpose - WSD. This would differentiate the operational drain and Castledare Compensation Basin from the recreational land.

General Comments: The Corporation will need to provide approval prior to any development taking place. The developer is expected to provide all water and sewerage reticulation if required. A contribution for water, sewerage and drainage headworks may also be required. In addition, the developer may be required to fund new works or the upgrading of existing works and protection of all works. Any temporary works needed are required to be fully funded by the developer. The Corporation may also require land being ceded free of cost for works.

The WAPC notes that a final decision on the appropriateness of reserving the Water Corporation’s drainage infrastructure as Public Purposes - WSD will be further considered prior to a final determination being made on the 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 not referred to SWALSC as it was not expected to impact on Aboriginal heritage values. However, the amendment will be referred to SWALSC during the public advertising period.

6 Co-ordination of local and region scheme amendments

Under section 126(3) of the *Planning and Development Act 2005,* the City of Canning has the option of requesting the WAPC to concurrently rezone land being zoned Urban under the MRS to a "Development" zone or similar in the Local Planning Scheme (LPS).

As the City's draft LPS No. 42 remains under consideration and subject to the timeframe in which LPS 42 is approved, the WAPC will make a final determination on the concurrent amendment of the LPS following the advertising process.

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* sets out the criteria for deciding whether the major or minor process should be followed. The amendment is proposed to be processed as a "minor" amendment as follows:

- The land proposed for the Parks and Recreation reservation will incorporate and consolidate the Castledare Miniature Railway that has historically been left outside of the reserve boundary. In addition, the ceding of Parks and Recreation land free of cost to the Crown is also proposed.

- The proposed amendment is considered to represent a logical extension of the existing Urban zoned land to the west and completes the urbanisation of the site.

- The proposed amendment is not considered complex or a regional modification to the MRS and is consistent with SPP's 2.8, 3.0 and 3.7.

- The City of Canning and key State Government agencies agree to the initiation of the proposed amendment (subject to resolution of various minor issues at later stages of the planning and development process).

8 Sustainability appraisal

The proposed amendment will allow further planning and development to occur to facilitate residential development and the protection of remnant vegetation and the associated ceding of land to the Crown free of cost.

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*. 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 proposed amendment to the MRS.

The amendment will be advertised for public submissions for a period of 60 days from Friday 27 March 2020 to Friday 5 June 2020.

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

i) Western Australian Planning Commission, 140 William Street, Perth

ii) City of Canning

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 Friday 5 June 2020.

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 *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.

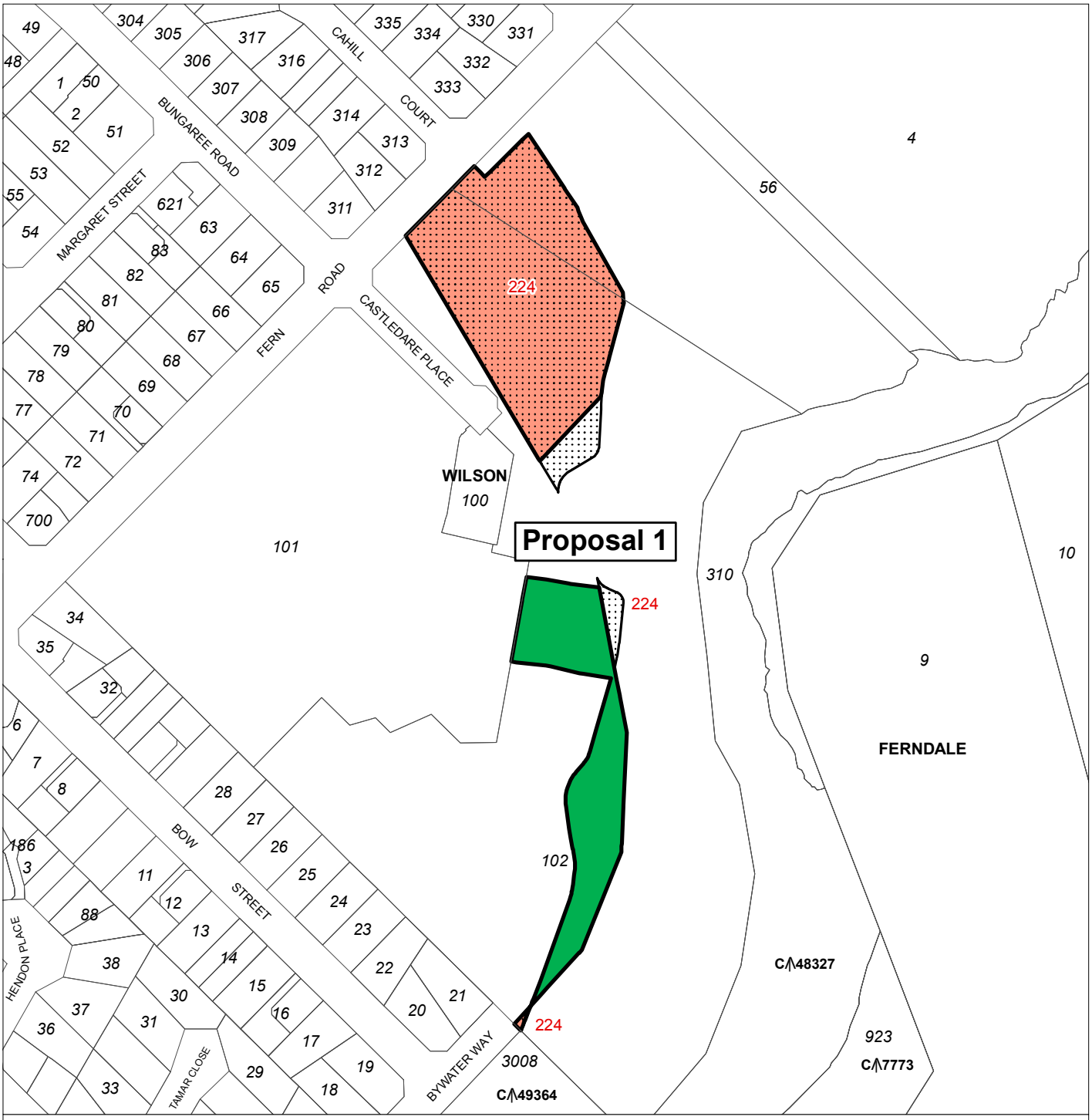
13 Final outcome

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 1365/57

Pt Lot 4 Fern Road &
Pt Lot 102 Castledare Place, Wilson

Amending Figure
Proposal 1



Pt Lot 4 Fern Road & Pt Lot 102 Castledare Place, Wilson
proposed minor amendment
as advertised

11 December 2019

Proposal 1

Proposed Amendment:

Parks and recreation reservation

Urban zone

Notice of Delegation

(Site No) Bush Forever area for removal

Oracle reference no: 2970
File number: 833/02/16/0042P
Version number: 3

Western Australian Planning Commission

Date: 13/12/2019
Produced by Data Analytics, Department of Planning, Lands and Heritage, Perth WA
Base information supplied by Western Australian Land Information Authority SLIP 1096-2018-1

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0 25 50 75 100
metres

Appendix A

Notice of environmental assessment

GOVERNMENT OF WESTERN AUSTRALIA

Environmental Protection Authority

Department of Planning, Lands and Heritage
Received
Scanned 17 JAN 2020
Attachments
Scan QA
Doc No.
File No. RLS/0770
A. MUSCARA

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

Our Ref: *CMS17469*
Enquiries: *Steve Pavey, 6364 7600*
Email: *Steve.Pavey@dwer.wa.gov.au*

Dear Ms Fagan

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

SCHEME:	**Metropolitan Region Scheme Amendment 1365/57**
LOCATION:	**Lot 4 Fern Road and Lot 102 Castledare Place, Wilson**
RESPONSIBLE AUTHORITY:	**Western Australian Planning Commission**
DECISION:	**Referral Examined, Preliminary Investigations and Inquiries Conducted. Scheme Amendment Not to be Assessed Under Part IV of EP Act. No 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) and that it is not necessary to provide any advice or recommendations. I have attached a copy of the Chairman'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.

Prime House, 8 Davidson Terrace, Joondalup, Western Australia 6027
Telephone 08 6364 7600 I Email info.epa@dwer.wa.gov.au

Locked Bag 10, Joondalup DC WA 6919

www.epa.wa.gov.au

- There is no appeal right in respect of the EPA's decision to not assess the scheme.

A copy of the Chairman's determination (attached) will be made available to the public via the EPA website.

Yours sincerely

Hans Jacob
Delegate of the Environmental Protection Authority
A/Executive Director
EPA Services

January 2020

Encl: Chairman's Determination

GOVERNMENT OF WESTERN AUSTRALIA

Environmental Protection Authority

S48A Referrals

Title: Metropolitan Region Scheme Amendment 1365/57

Location: Lot 4 Fern Road and Lot 102 Castledare Place, Wilson

Description: The Western Australian Planning Commission proposes to remove 1.11 hectares of Bush Forever site 224 and reclassify portions of Lot 4 Fern Road and Lot 102 Castledare Place, Wilson from the Urban zone to Parks and Recreation and from Parks and Recreation to the Urban zone. The Metropolitan Region Scheme Amendment will allow for residential development.

Ref ID: CMS17469

Date Received: 17/12/2019 **Date Sufficient Information Received:** 28/11/2019

Responsible Authority: Western Australian Planning Commission

Contact: Anthony Muscara

Preliminary Environmental Factors: Inland Waters

Potential Significant Effects: Impacts to the Canning River from intensification of development close to the foreshore

Management: Potential impacts can be managed through future structure planning and the implementation of local planning scheme provisions.

Determination: **Referral Examined, Preliminary Investigations and Inquiries Conducted. Scheme Amendment Not to be Assessed Under Part IV of EP Act. No 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.

Chairman's Initials: [signature]

Date: 7 Jan 2020

Appendix B

List of plans supporting the amendment

Proposed Minor Amendment 1365/57
Pt Lot 4 Fern Road & Pt Lot 102 Castledare Place, Wilson

as advertised

Amending Plan 3.2751

Detail Plans
1.6402 & 1.6418

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

Please remember to complete the submission form (form 57 – appendix E). Include your name and full postal address. It is preferred that any attachments be loose rather than bound.

The closing date for submissions and where they should be lodged 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 will become a public document.

Appendix E

Submission form for this amendment (form 57)

Planning and Development Act 2005

Section 57 Amendment (Minor)
Form 57

Submission

Metropolitan Region Scheme Amendment 1365/57

Pt Lot 4 Fern Road & Pt Lot 102 Castledare Place, Wilson

OFFICE USE ONLY

SUBMISSION NUMBER
RLS/0888

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 will be published as part of the consultation process. Do you wish to have your contact details 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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turn over to complete your submission

(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 5 JUNE 2020. Late submissions will NOT be considered.