

January 2017

**Greater Bunbury
Region Scheme
Amendment 0047/57
(Minor Amendment)**



Lot 6238 Mitchell Road,
Benger

Amendment Report

Shire of Harvey



GOVERNMENT OF
WESTERN AUSTRALIA

**Greater Bunbury Region Scheme
Amendment 0047/57
(minor amendment)**

Lot 6238 Mitchell Road, Benger

Amendment Report

Shire of Harvey



January 2017

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The Greater Bunbury Region Scheme

What it is and how it is amended

Planning Greater Bunbury's future

The most populous area of the South-West Region of Western Australia is the area encompassed by the Greater Bunbury Region Scheme (GBRS). The GBRS covers the City of Bunbury and the Shires of Capel, Dardanup and Harvey.

The Greater Bunbury locality is one of the fastest growing areas in Australia, with a population projected to exceed 100,000 by 2031. As it grows, change must be well planned and well managed.

Provision must be made for future housing, employment opportunities and transport needs to meet this growth. It is also necessary to set aside land for conservation and recreation.

The GBRS provides for this change, and the means by which affected landowners can be compensated for land acquired for regional public purposes.

What is the Greater Bunbury Region Scheme?

The GBRS is a region planning scheme for land use in the Greater Bunbury area. This area stretches from Lake Preston in the north, Peppermint Grove Beach in the south and east to the Darling Scarp.

The GBRS defines the future use of land, dividing it into broad zones and reservations. It requires local government local planning schemes to provide detailed plans for their part of the region. These schemes must be consistent with the GBRS.

The GBRS uses a set of maps and a scheme text. The scheme text provides planning rules for zones and reservations, which are shown on the maps in different colours and patterns.

This plan has been in operation since November 2007 and provides the legal basis for planning in the Greater Bunbury area.

To plan for changing needs, the GBRS is amended from time to time.

What is an amendment?

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

When a rezoning or a new reservation is considered, an amendment to the GBRS is advertised to seek comment from the wider community and all levels of government.

The process allows for extensive community consultation and discussion in Parliament before a final decision is made.

How is the Greater Bunbury Region Scheme amended?

The Western Australian Planning Commission (WAPC) is responsible for keeping the GBRS under review and initiating changes where they are seen to be necessary.

The amendment process is regulated by the *Planning and Development Act 2005*. The amendment proposed in this report is being made under the provisions of section 57 (often referred to as a minor amendment).

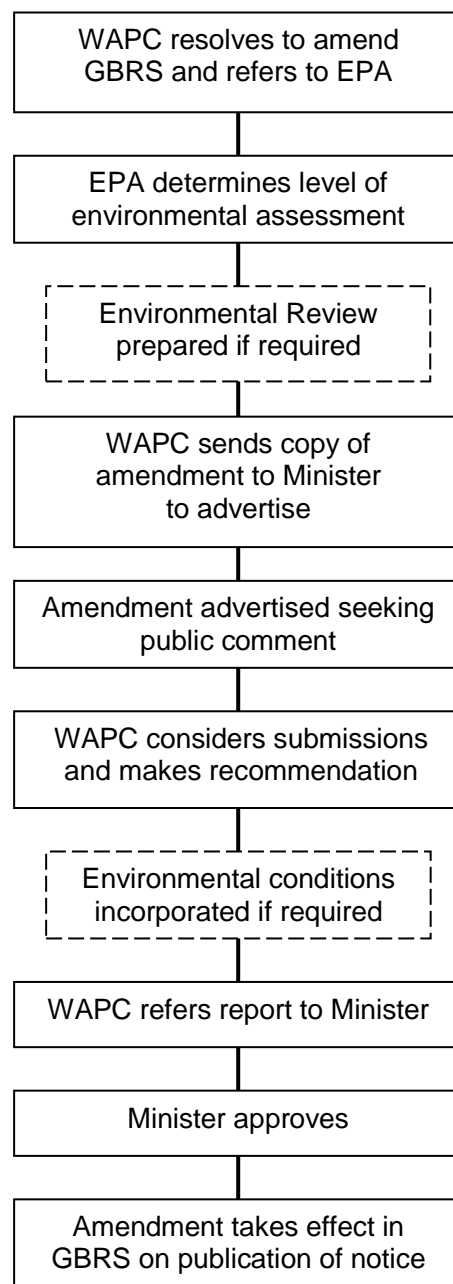
The process of a minor amendment to the GBRS includes the following steps:

- Formulation of the amendment by the WAPC.
- Referral of the proposed amendment to the Environmental Protection Authority (EPA) to set the level of environmental assessment. Where the EPA requires an environmental review, this is carried out before the amendment is advertised.
- Advertising the amendment for public inspection and inviting submissions. Advertisements are placed in local and statewide newspapers, and information is made available on the WAPC's website. Landowners whose property is directly

affected by a proposed change are contacted in writing. Where there is an environmental review, this is also made available for comment.

- WAPC receiving public submissions over a period of 60 days.
- WAPC considering written submissions. WAPC recommends whether to modify the amendment or proceed with the original proposal.
- WAPC presenting a report and recommendation to the Minister for Planning.
- Minister approving amendment, with or without modification, which becomes legally effective in the GBRS with the publishing of a notice advising of the Minister's approval. Minister may also decline to approve. The approved amendment is placed on public display.

The following diagram shows the main steps.



When the GBRS is amended, local planning schemes must also be amended to match the broad zonings and reservations of the GBRS. Affected local governments provide more detailed planning for each area.

Within three months of a GBRS amendment being finalised, an affected local government must initiate an amendment to its local planning scheme.

Zones and reservations

Zones and reservations in the GBRS are broad categories. They are not precisely defined or limited, but the following descriptions are a guide.

Zones

Urban: to provide for residential development and associated local employment, recreation and open space, shopping, schools and other community facilities.

Urban Deferred: land suitable for future urban development but where there are various planning servicing and environmental requirements which need to be addressed before urban development can take place.

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

Regional Centre: the Bunbury central business district within which commercial, civic, cultural, residential, service and administration activities serving the region are located.

Industrial: to provide for manufacturing industry, the storage and distribution of goods and associated uses.

Rural: to provide for the sustainable use of land for agriculture, assist in the conservation and wise use of natural resources including water, flora, fauna and minerals, provide a distinctive rural landscape setting for the urban area and accommodate carefully planned rural living developments.

Private Recreation: to accommodate regionally significant open space and recreation activities in private use.

Industrial Deferred: land suitable for future industrial development but where there are various planning, servicing and environmental requirements which need to be addressed before industrial development can take place

Reservations

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

Regional Open Space: to protect the natural environment, provide recreational opportunities, safeguard important landscapes and provide for public access.

Primary Regional Roads: to provide a regional road network to accommodate current and future transport needs on roads declared under the *Main Roads Act 1930*.

Other Regional Roads: to provide a regional road network to accommodate current and future transport needs on roads for which the planning responsibilities are shared between the Commission and local government.

Railways: to provide for the passage of trains, the marshalling, maintenance and storage of rolling stock, and the conveying of public and freight by rail.

Port Installations: to provide for the current and future expansion needs of the Port of Bunbury.

Waterways: to recognise permanently inundated inland and coastal lands below the high water mark, and existing and proposed water canals.

State Forests: to recognise State forests.

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

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 use of the land or lifestyle. They can stay as they are or they may set about changing their land use. For

instance, some may seek approval to subdivide their land 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 GBRs are advertised so that all affected landowners and anyone else have time to examine the proposals and lodge a submission.

What if my land is reserved?

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

If your land is marked for a reservation 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. The WAPC has reservations over many areas of land, which are privately owned.

To protect landowners, there are procedures for acquisition or compensation by the WAPC. These are outlined in *Your Property* and the Greater Bunbury Region Scheme, a leaflet reproduced at the back of this report and available separately from the Department of Planning.

How can my views be heard?

You can lodge a written submission on the proposed amendment during the advertised period. A submission form is available at the back of this report, from the display locations for this amendment and from the WAPC's website.

Publications

In the course of each substantial amendment to the GBRs, information is 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 GBRs 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

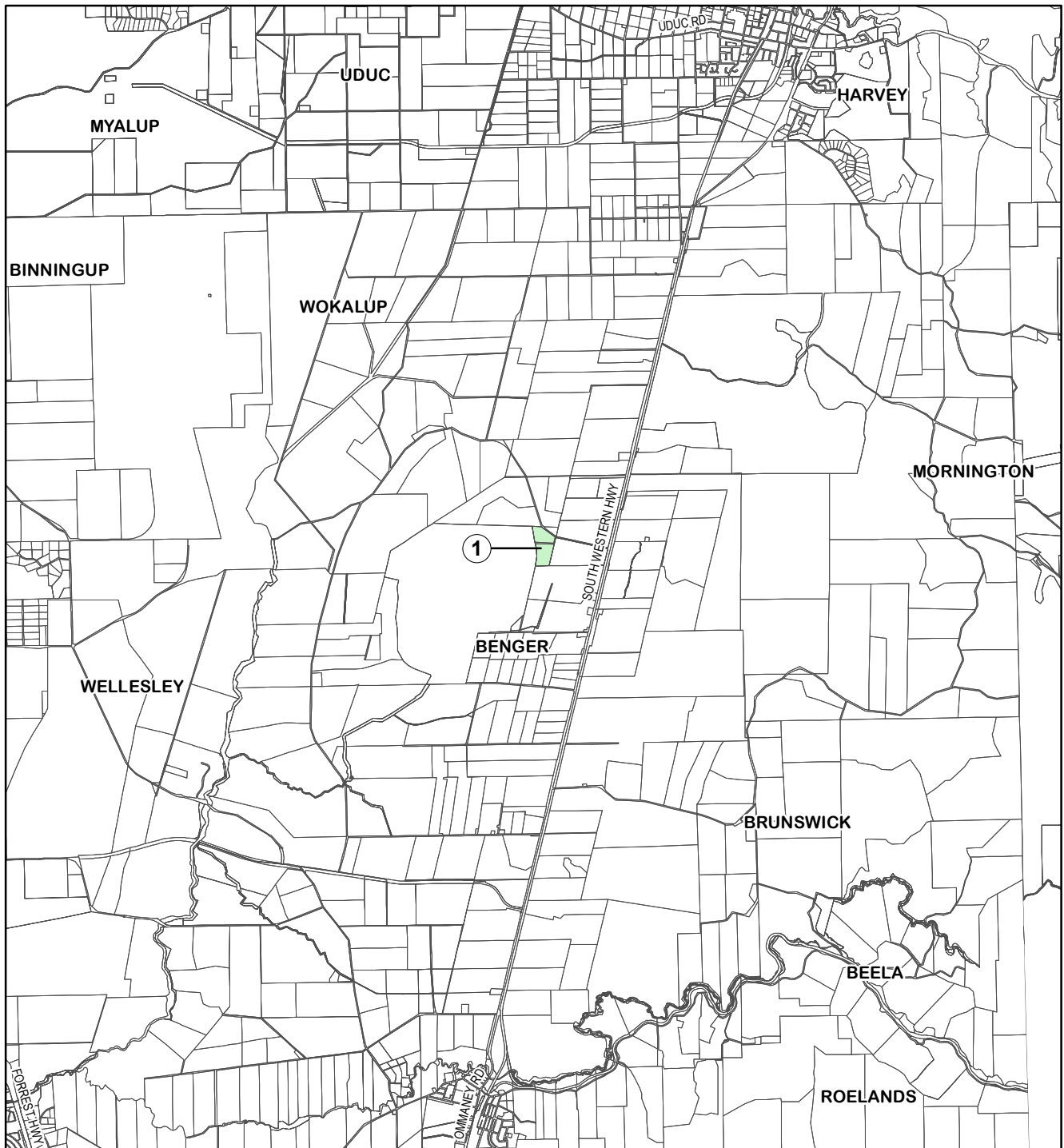
This publication documents the planning rationale, determination of submissions received and the recommendations for final approval of the amendment made by the WAPC.

Submissions

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

Lot 6238 Mitchell Road, Bengier

Location Plan



Proposed amendments to the Greater Bunbury Region Scheme Locality Plan

6 September 2016

Legend



Greater Bunbury Region Scheme Amendment 0047/57

Lot 6238 Mitchell Road, Benger

1 Planning objective

The purpose of this amendment proposal is to rezone Lot 6238 Mitchell Road, Benger from regional open space reservation to rural zone. The reservation appears to be a historical 'carry over' and is an error. The proposed rural zone would be consistent with the land use on the lot as well as the zoning of surrounding land.

2 Background

Lot 6238 Mitchell Road, Benger is located adjacent to Benger Swamp, between Harvey and Brunswick townsites. The lot is reserved for Regional Open Space under the Greater Bunbury Region Scheme (GBRS). The lot is also reserved as such under the Shire of Harvey District Planning Scheme No. 1 (DPS No. 1).

Lot 6238 is 20.38 hectares in area. The lot is cleared except for a few stands of remnant vegetation. The land has been used for agricultural purposes (grazing) for over 20 years. The reservation appears to be a historical 'carry over' and is an error. The proposed Rural zone would be consistent with the zoning of surrounding land.

The lot is traversed by a public road that runs from Mitchell Road to Benger Swamp. This is an unconstructed road reserve which is maintained by the landowner. The Shire has advised that this road could be closed and amalgamated with Lot 6238. The landowner can request the closure to the Shire and this process is undertaken in conjunction with the Department of Lands. The road is being included in this amendment and will also be rezoned to Rural.

3 Scope and content of the amendment

In 2009 the current owner purchased Lot 6238 and the owner has recently become aware of the Regional Open Space reservation on their land.

The land was transferred to the State in error in either the 1970s or 1980s when land was being purchased to consolidate Benger Nature Reserve (Benger Swamp). The error was later discovered and Lot 6238 was subsequently returned to the previous owner. It appears that the reservation in place during that time has never been removed.

Approximately one third of the western portion of the lot is identified as being part of a Conservation Category Wetland (CCW), however mapping has erroneously been included over the site. Given that a change of land use is not proposed, the Department of Parks and Wildlife (DPaW) has advised that it is not necessary for the wetland mapping to be reviewed. DPaW does not object to the proposed amendment. As part of the advertising process, the amendment will be referred to the Environmental Protection Authority (EPA) and DPaW for their comments relating to the CCW.

4 Formal Environmental Protection Authority advice

The proposed amendments were referred to the EPA for advice on whether environmental assessment would be required.

The EPA has advised that the proposed amendments do not require formal assessment under part IV Division 3 of the Environmental Protection Act 1986. A copy of the notice from the EPA is included at Appendix A.

5 Sustainability appraisal

The proposed amendment to rezone the land from Regional Open Space reservation to Rural zone would ensure that the land is zoned correctly to reflect the land use. Land use on the lot will not change. As such the proposal is considered to be consistent with the sustainability principals.

6 Co-ordination of Region and Local Scheme Amendments

Once the GBRS amendment has been finalised, an amendment to the Shire of Harvey DPS 1 would be required to rezone the land from Regional Open Space to Intensive Farming to ensure consistency with the GBRS.

7 The Amendment process

The procedure for amending the GBRS is 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 GBRS (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; and
- the amendment takes legal effect with gazettal of the Minister's approval.

An explanation of this process can also be found in the front of this report.

8 Submissions on the amendment

The WAPC invites people to comment on the proposed amendment to the GBRS.

The amendment is being advertised for public submissions for a period of 60 days from Tuesday 17 January 2017 to Friday 17 March 2017.

Copies of the amendment will be available for public inspection at:

- i) the Department of Planning, 140 William Street, Perth;
- ii) the Department of Planning, 61 Victoria Street, Bunbury;
- iii) the municipal office of the Shire of Harvey; and
- iv) the State Reference Library, Northbridge.

Written submissions on the amendments should be sent to:

The Secretary
Western Australian Planning Commission
Level 6, 61 Victoria Street
Bunbury WA 6230

and must be received by 5 pm Friday 17 March 2017.

All submissions received by the WAPC will be acknowledged.

For your convenience a submission form (Form 57) is contained in this report at Appendix E. Additional copies of the form are available from the display locations and the WAPC's website www.planning.wa.gov.au.

You should be aware that calling for submissions is a public process and all submissions lodged will become a public document. 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.

9 Modifications to the amendment

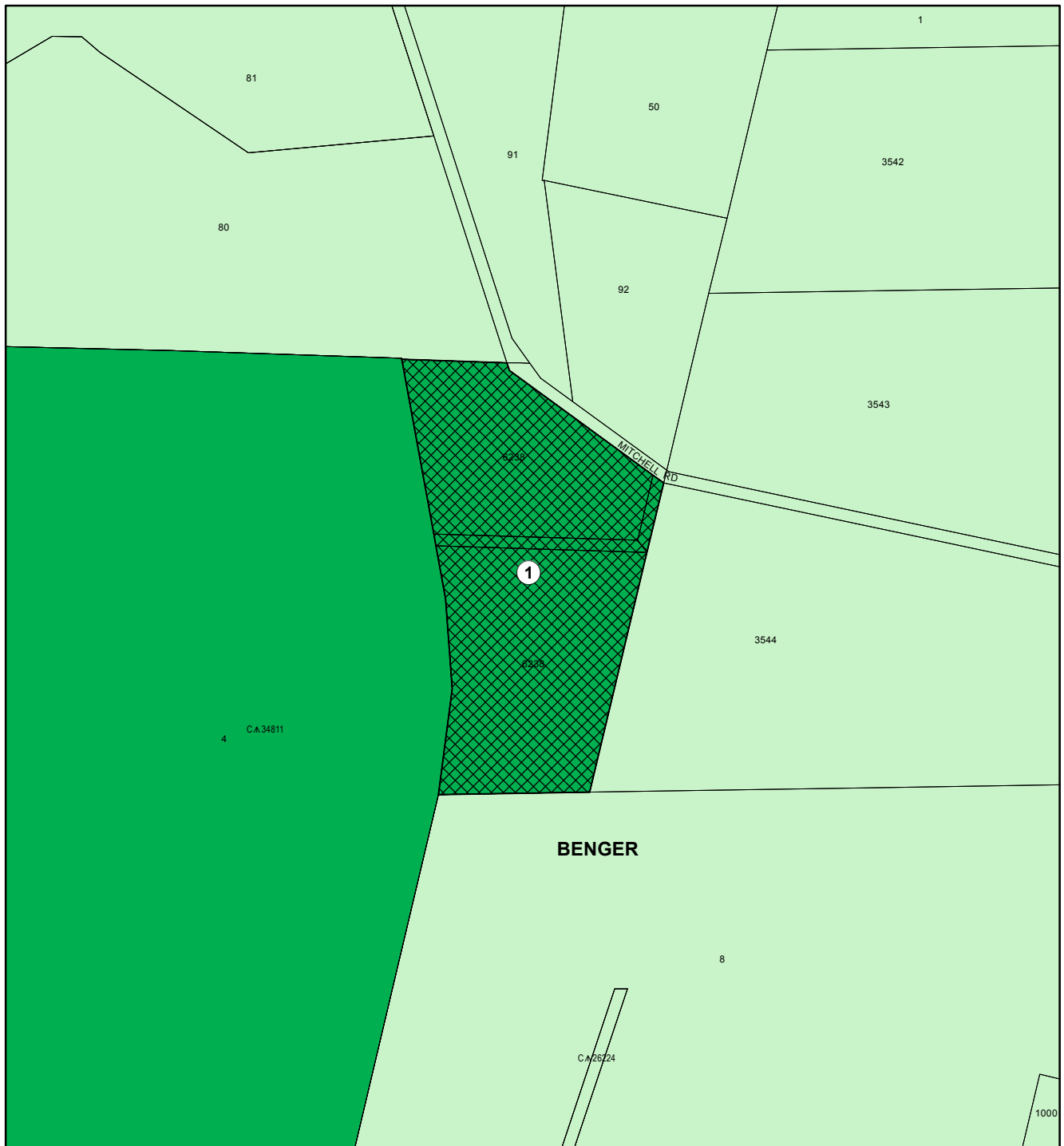
After considering any comments received from the public and government agencies, the WAPC may recommend that the Minister modify the amendment. The Minister may approve the amendment, with or without any modifications in response to submissions, or decline to approve.

10 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 receive a copy of this document when the amendments are gazetted to give it legal effect.

Lot 6238 Mitchell Road, Bengier

Figure 1



Proposed amendment to the Greater Bunbury Region Scheme Lot 6238 MITCHELL ROAD & PUBLIC ROAD, BENGER

6 September 2016

Figure 1

Legend

Proposed:



Rural

Existing:



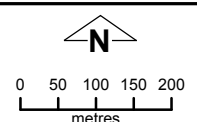
Rural



Regional open space



GBRS_XXXX_v1_Fig1.mxd
 6 September 2016
 Produced by GeoSpatial Planning Support, Department of Planning, Bunbury WA
 On behalf of the Western Australian Planning Commission
 Base information supplied by Western Australian Land Information Authority LI 646-2014-3



Appendix A

Notice of environmental assessment

DEPARTMENT OF PLANNING BUNBURY OFFICE	
3 JAN 2017	
FILE	RLS/0662

Chief Executive Officer
Western Australian Planning Commission
Sixth Floor Bunbury Tower 61 Victoria Street
BUNBURY WA 6230

Your Ref:
Our Ref: CMS16334
Enquiries: Stephen Pavey, 6145 0800
Email: Stephen.Pavey@epa.wa.gov.au

Dear Sir/Madam

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

SCHEME: Greater Bunbury Region Scheme Amendment
0047-57
LOCATION: Lot 6238 Michell Road Benger
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.

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.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Liesl Rohl'. The signature is written in a cursive, flowing style.

Liesl Rohl
A/Director
Strategic Policy and Planning Division

Delegate of the Chairman of the Environmental Protection Authority
Under Notice of Delegation No. 33 published 17 December 2013

23 December 2016

Appendix B

List of plans supporting the amendment

Lot 6238 Mitchell Road, Bengier

Proposed minor amendment

Amendment 0047/57

as advertised

Legal plans

3.2696

Appendix C

Your Property and the Greater Bunbury Region Scheme



Your Property and Regional Planning Schemes

Your land is reserved in a Regional Planning Scheme

The Western Australian Planning Commission (WAPC) administers three Regional Planning Schemes (RPS's). The Metropolitan Region Scheme, the Peel Region Scheme and the Greater Bunbury Region Scheme.

RPS's are town planning schemes that cover the Perth metropolitan area, the Peel region and the Greater Bunbury region. They classify land into broad zones and reservations. As these regions develop, so the WAPC must amend the RPS's. The RPS's are available for inspection at a local authority office, the Department of Planning and the WAPC.

Zones are large areas identified as being suitable for purposes such as industry (Industrial zone) and residential (Urban zone). Reservations are areas required for public purposes such as school sites, railways, major roads and parks and recreation areas.

Before rezoning or reserving land, the WAPC approaches affected landowners and invites them to make submissions on the changes proposed through the amendment process.

The government will ultimately acquire reserved land, but the land can generally remain in private ownership until the government needs it for the public purpose.

There are several options available to the owners of reserved land.

- Retain ownership of your property and continue quiet enjoyment of the property until the government needs it for the public purpose. You may complete any development or subdivision of the property approved before the reservation came into effect.

Under non-conforming use rights, you may continue to use the property for purpose 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 due to the reservation this may be 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.
- 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 effect of the reservation. The WAPC obtains two independent valuations to provide it with advice on the value of the property.
- If the WAPC refuses a development application on reserved land, or approves a development application subject to conditions that are unacceptable to the applicant, the applicant can make a Claim for Compensation for Injurious Affection. However, you must be the owner of the property when it was first reserved to be eligible to make a claim

In such cases, the WAPC may elect to purchase the property instead of paying compensation. The purchase price can be determined by negotiation, by reference to the State Administrative Tribunal or by arbitration.

Am I entitled to compensation?

If your land is reserved in a RPS and you are the owner of the land when it was first reserved, you may be able to make a Claim for Compensation for Injurious Affection if:

- You wish to sell the property on the open market at a reduced price; **or**
- The WAPC either has refused a development application over the property or has approved a development application over the property subject to conditions that are unacceptable to the applicant.

How do I claim compensation?

1. Private Sale

If you wish to sell the property on the open market at a reduced price, complete a Notice of Intention to Sell form which is available from the Department. The Department 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 unaffected by the reservation. 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. The Department will advise you of the affected value of the property. This is the minimum price for which you can sell the property and receive the full amount of compensation. The valuation fee is refundable upon the sale of the property.
- 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 make a Claim for Compensation for Injurious Affection for the difference between the sale price and the unaffected value as determined by the Board.
- 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.
- After the WAPC pays compensation, the WAPC will lodge a Notification on the Certificate of Title to identify that it has paid

compensation. Compensation is only payable once.

- Alternatively, you may ask the WAPC to purchase the property, as you have been unable to sell the property privately.

2. Refused Development

If the WAPC refused your development application or approved it subject to unacceptable conditions **and** the property is reserved in a RPS, you may make a Claim for Compensation for Injurious Affection within six months of the WAPC's decision on the application.

In such a case, the WAPC either will 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 market value of the property as at the date of the election to purchase. The date of valuation is fixed at the date of election to purchase.

What is compulsory acquisition?

A situation may arise where the government urgently requires a property for a public purpose and the owner is unwilling to sell the property to the WAPC. In such a case, the government may compulsorily acquire ("resume" or "take") the property for that public purpose.

When the WAPC takes a property, you have the right to make a Claim for Compensation for the land taken. The WAPC will obtain valuations of the taken land and, after checking of the compensation claim, will make you an offer of compensation.

Should you have any queries about the information in this brochure, please contact the Department's WAPC Property Management Services branch.

Appendix D

Preparing a submission

Preparing a submission

The WAPC welcomes comment on proposed amendments to the Greater Bunbury Region Scheme (GBRS) 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 on side one. 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)

Lot 6238 Mitchell Road, Bengier

SUBMISSION NUMBER

SUBMISSION NUMBER

(PLEASE PRINT CLEARLY)

Contact phone number Email address

.....

[illegible]

turn over to complete your submission

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.
- Should the Minister approve the proposed amendment the WAPC recommendations are published in a report on submissions.

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 17 March 2017. Late submissions will NOT be considered.

Contacts: Telephone - (08) 9791 0577; Fax - (08) 9791 0576; Email - corporate@planning.wa.gov.au; Website - <http://www.planning.wa.gov.au>