

March 2018

Metropolitan Region Scheme Amendment 1313/41



Midland Freight Rail Realignment

Amendment Report

City of Swan

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MRS Amendment 1313/41 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

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Contents

The Metropolitan Region Scheme	v
Abbreviations	xi
1 Purpose.....	1
2 Background.....	1
3 Scope and content of the amendment.....	2
4 Discussion.....	2
5 Aboriginal heritage	5
6 Coordination of local and region scheme amendments	5
7 Substantiality.....	5
8 Sustainability.....	6
9 Environmental Protection Authority advice	6
10 The amendment process.....	6
11 Submissions on the amendment	7
12 Hearings.....	8
13 Modifications to the amendment.....	8
14 Final outcome.....	9
Amending Figure - Proposal 1	13
Appendix A Notice of environmental assessment	
Appendix B List of detail plans supporting the amendment	
Appendix C Your property and the planning system - region schemes	
Appendix D Preparing a submission and hearings committees	
Appendix E Submission form for this amendment (form 41)	

The Metropolitan Region Scheme

What it is and how it is amended - major

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 growth 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 to the MRS 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 41 (often referred to as a major amendment).

The major amendment process includes (also see the diagram on page ix):

- 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.planning.wa.gov.au/public-comment. 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 three months.
- WAPC considers submissions. Everyone who made a submission may also choose to present to a hearings committee appointed by the WAPC to consider and report on these submissions.
- 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 a recommendation to the Minister whether to accept, reject or modify the proposed amendment.
- Proposed amendment may be required by the Minister for Planning to be readvertised if the amendment is substantially modified as a result of submissions and planning advice.
- Minister presents the proposed amendment with the WAPC's recommendations to the Governor for approval.
- The proposed amendment, as approved by the Governor, is tabled before each House of State Parliament, where it must remain for 12 sitting days. During this time, the amendment is again on public display.
- In Parliament, a member may introduce a motion to disallow the amendment. If this motion succeeds, the MRS will not be amended. Otherwise, the amendment becomes legally effective in the MRS after 12 sitting days.
- 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 www.planning.wa.gov.au/regionschemes.

How can my views be heard?

You can lodge a submission during the advertised period:

- online at www.planning.wa.gov.au/public-comment
- 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).

The WAPC will try and make contact with everyone who nominated to attend a hearings committee following the advertised period.

Publications

In the course of each amendment to the MRS, 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 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

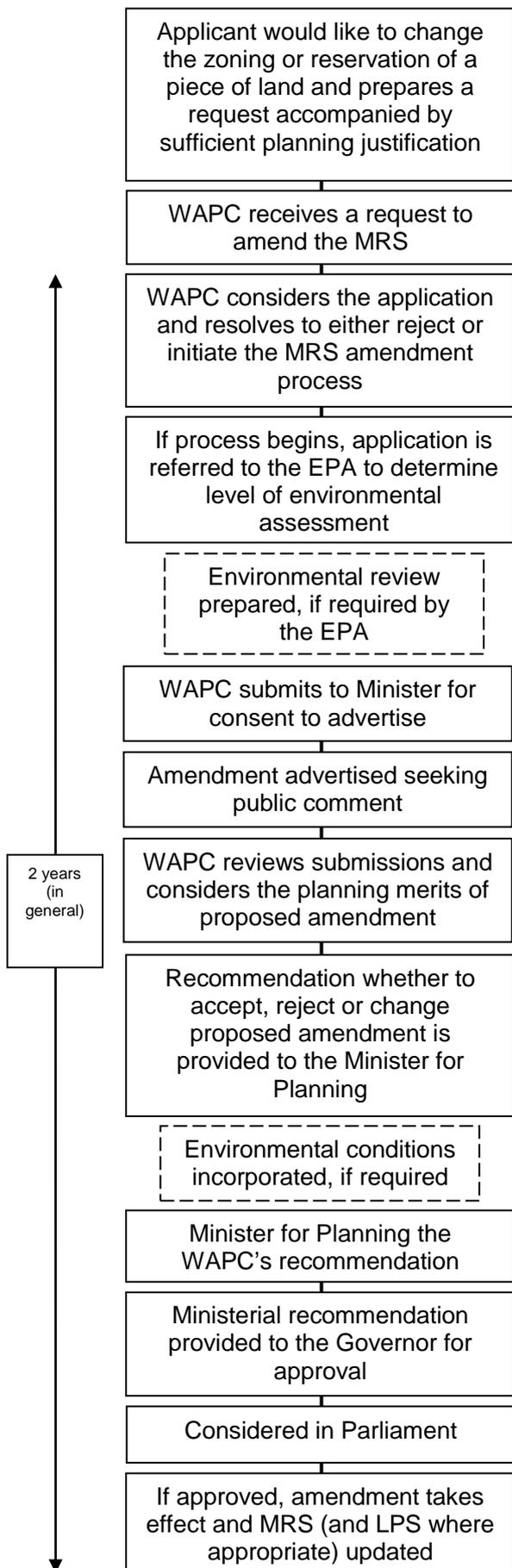
This publication documents the submissions received, the minutes of the hearings and the Hearings committee summary of the proceedings

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

The final scheme or amendment

This publication documents the planning rationale for the amendment or scheme and the WAPC's recommendation to the Minister for Planning.

A simple diagram of the amendment process.



Abbreviations

AHA	Aboriginal Heritage Act
DPaW	Department of Parks and Wildlife
DoW	Department of Water
EPA	Environmental Protection Authority
MRA	Metropolitan Redevelopment Authority
MRS	Metropolitan Region Scheme
MRWA	Main Roads Western Australia
OEPA	Office of the Environmental Protection Authority
PAPL	Perth Airport Pty Ltd
PRR	Primary Regional Road
SPP	State Planning Policy
SRT	Swan River Trust
TEC	Threatened Ecological Communities
WAPC	Western Australian Planning Commission

Amendment Report

Metropolitan Region Scheme Amendment 1313/41

Midland Freight Rail Realignment

1 Purpose

The purpose of the amendment is to transfer approximately 18 hectares of land in City of Swan, from Public Purpose, Rural and Industrial zones and Parks and Recreation reservation to Railways and Primary Regional Road (PRR) reservations in the Metropolitan Region Scheme (MRS), as shown on the amending figure for Proposal 1.

The proposed Railways reservation will allow for the existing freight rail to be realigned out of the Midland strategic metropolitan centre, facilitating successful redevelopment of the centre in accordance with broader strategic planning objectives.

2 Background

The subject section of railway is located in the City of Swan approximately 14 km north east of the Perth CBD. The current railway alignment through the Midland strategic metropolitan centre carries both passengers and freight and is a dual-gauge track passing through four level crossings. The existing rail line carries some 90 freight movements per week (55 million tonnes annually). The volume of freight being transported by rail through Midland is expected to increase significantly over the next 25 to 30 years to approximately 200 to 300 freight trains per week, potentially affecting amenity and accessibility in the area.

It has been a long standing ambition of the Western Australian Planning Commission (WAPC), the Metropolitan Redevelopment Authority (MRA) and the City of Swan, to see the existing freight rail realigned out of the Midland strategic metropolitan centre in the long term. The proposed freight rail realignment is a key strategic outcome for the successful redevelopment of the centre in accordance with the broader strategic planning framework, specifically:

- Directions 2031 and Beyond - Perth and Peel@3.5million;
- State Planning Policy 4.2 Activity Centres for Perth and Peel;
- State Planning Policy 5.4 Road and Rail Transport Noise and Freight Considerations in Land Use Planning;
- MRA's Midland Master Plan;
- City of Swan's Activity Centre Structure Plan; and
- Hazelmere Enterprise Area Structure Plan.

In recent years, various studies have been undertaken to address this strategic planning framework by identifying a feasible realignment option for a long-term relocation of the Midland freight rail line within the Hazelmere/Midland area. Most recently:

- GHD Midland Rail Freight Realignment Study, 2014; and
- Laurie Piggott Consulting Pty Ltd Option 1A Report, 2015.

Laurie Piggott Consulting Pty Ltd.'s 2015 report identified the preferred realignment option (subject of this amendment) due to its reduced impact on adjoining land compared to previously investigated options.

3 Scope and content of the amendment

The amendment proposes to rezone portions of various lots generally following the northern boundary of the PRR reservation for Great Eastern Highway Bypass and the western boundary of Roe Highway PRR reservation. The total area subject of this amendment is approximately 18 hectares.

4 Discussion

Strategic Context

Draft Perth and Peel@3.5 Million and Draft North-East Sub-regional Planning Framework

The draft *North-East Sub-regional Planning Framework* (draft framework) forms part of the draft *Perth and Peel@3.5 Million* strategic suite of planning documents. The draft framework builds upon the principles of *Directions 2031 and Beyond: Metropolitan Planning Beyond the Horizon* as a key instrument for achieving, amongst other things, a more consolidated urban form that strengthens key activity centres and facilitates necessary infrastructure provision.

The draft framework identifies the extent of city centre expansion anticipated for Midland as a strategic metropolitan centre. The draft framework also highlights large areas of industrial expansion and industrial investigation within Hazelmere and Bullsbrook. The proposed amendment seeks to maximise the potential for successful redevelopment of the centre and provide for an improved freight service to emergent industrial development anticipated into the future.

State Planning Policy 4.2 - Activity Centres for Perth and Peel

The main purpose of State Planning Policy 4.2 - *Activity Centres for Perth and Peel* (SPP 4.2) is to specify broad planning requirements for the planning and development of new activity centres and the redevelopment and renewal of existing centres. Midland is identified as a strategic metropolitan centre within SPP 4.2. The continued operation and expansion of freight rail services through Midland is not explicitly compatible with its designation as a strategic metropolitan centre. The existing freight rail alignment weakens the ability to prioritise active and public transport modes into the future and may be perceived to unreasonably affect amenity.

State Planning Policy 5.4 - Road and Rail Transport Noise and Freight Considerations in Land Use Planning

Long term exposure to high levels of noise can cause serious health, learning and development problems. State Planning Policy 5.4 - *Road and Rail Transport Noise and Freight Considerations in Land Use Planning* (SPP 5.4) seeks to minimise the adverse impact of transport noise without placing unreasonable restrictions on noise sensitive development. SPP 5.4 states that noise sensitive land uses should ideally be separated from major sources of noise where practical or desirable.

The proposed amendment meets the intent of SPP 5.4 by separating freight movements from noise sensitive land uses in Midland, Woodbridge, South Guildford and Hazelmere. Whilst there is the potential for noise attenuation to be required to mitigate noise impacts associated with the future operation of the realigned railway, the exact nature of these measures is required to be determined in subsequent detailed planning stages.

State Planning Policy 3.5 - Historic Heritage Conservation

State Planning Policy 3.5 - *Historic Heritage Conservation* (SPP 3.5) sets out the principles of sound and responsible planning for the conservation and protection of Western Australia's historic heritage. The proposed amendment has been assessed against the policy objectives of SPP 3.5, noting the impact of the proposed railway alignment on the former Midland Livestock Saleyards site (the Saleyards).

The Saleyards are protected under the Midland Redevelopment Area Scheme 2 and Midland Redevelopment Area Design Guidelines under the control of the MRA. In this regard, this amendment was pre-referred to the MRA, who supports the proposed amendment.

Midland Master Plan

The MRA's *Midland Master Plan* is a strategic document to guide the preparation of a statutory planning framework for Midland. The plan states that it has been a long standing ambition of the MRA to see the existing freight rail realigned out of Midland. The plan has therefore made provision for this long term vision and the subsequent opportunities that a realigned freight rail line creates. The plan identifies that establishment of a reservation is required now to protect the opportunity for realignment and allow for future intensification of development in Midland.

Draft Midland Activity Centre Structure Plan

The City of Swan's draft *Midland Activity Centre Structure Plan* establishes a long term strategic vision for the centre's complete redevelopment. The structure plan recognises that existing freight rail causes noise and vibration and limits opportunities for safe and convenient pedestrian and vehicle crossings. This limits new development and presents a significant challenge for integration of the centre north and south of rail line unless the freight rail component is relocated. The structure plan anticipates that this situation will be exacerbated further as the frequency and length of freight trains increase into the future.

Hazelmere Enterprise Area Structure Plan

The *Hazelmere Enterprise Area Structure Plan* was endorsed by the WAPC in 2011. The structure plan recognises that the existing freight rail alignment severs the Midland strategic metropolitan centre and significantly inhibits the full potential of Midland as the regional hub for the eastern suburbs. The structure plan envisages freight rail realignment generally in accordance with the proposed amendment.

Statutory Context

Environment

The former Office of the Environmental Protection Authority (OEPA) has provided pre-referral comment on the proposed amendment. The former OEPA has indicated that direct impacts on Threatened Ecological Communities (TEC) are unlikely and it is not expected that the proposal will require formal assessment under section 38 of the *Environmental Protection Act 1986*.

In order to minimise any future environmental impacts, the proposed railway design crosses over the Helena River via a bridge structure. It is expected that future detailed planning,

design and construction stages will continue to address environmental considerations to minimise impacts.

Urban Water Management

The former Department of Water (DoW) understands that this is a long term strategic project that will consider all environmental concerns. As such, the former DoW supports the MRS amendment.

Infrastructure

Water and Wastewater

The Water Corporation raises no objections to the proposed amendment. The Water Corporation advises that the proposed amendment affects existing assets that are located within and nearby the site. This infrastructure will be protected or realigned where necessary during future detailed planning, design and construction stages.

Gas Pipelines

The Dampier-Bunbury pipeline operator (DPB) and Parmelia pipeline operator (APA Group) raise no objections to the proposed amendment. The railway is proposed to cross over the Parmelia pipeline and must therefore comply with Australian Standard AS2885. A pipeline risk management strategy is expected to be prepared and implemented during subsequent detailed design and construction stages.

Regional Roads

Main Roads Western Australia (MRWA) supports the proposed amendment in principle. The proposed railway reservation has taken into consideration the planned grade separation of the realigned freight railway with the regional road network. MRWA will continue to provide advice on matters which are to be addressed during future detailed planning, design and construction stages.

A PRR reservation is included in the proposed amendment for a future road bridge crossing of Stirling Crescent over Great Eastern Highway Bypass and future freight rail realignment.

Local Roads

The proposed freight railway realignment will result in some modifications to the local road network. The City of Swan and Department of Planning, Lands and Heritage will ensure that individual properties maintain good accessibility to the broader regional road network by undertaking a local road network review to inform future detailed planning, design and construction stages.

Commonwealth Land

Commonwealth Department of Infrastructure and Regional Development

The Commonwealth Department of Infrastructure and Regional Development provided pre-referral comments advising that the proposed freight rail realignment is expected to significantly impact the Perth Airport land where the rail line traverses the Airport's North Precinct. This area is subject to long term land lease arrangements (until 2097) and is solely protected by the Commonwealth Government legislation (*Airports Act 1996*) and Commonwealth planning process. Where there is any inconsistency between the

Commonwealth and State legislation in relation to the land use plan for the relevant land, the Commonwealth legislation takes precedence to the extent of any inconsistency.

For this reason, the Commonwealth Department of Infrastructure and Regional Development states that it would be appropriate for the WAPC to fully engage with both the Department and Perth Airport Pty Ltd (PAPL) in discussion about the proposed realignment.

Perth Airport Pty Ltd

Concurrently, PAPL strongly objects to the proposal on the basis that it is inconsistent with the intent of Perth Airport and the current Perth Airport Master Plan 2014, which was approved by the [then] Commonwealth Minister for Infrastructure and Regional Development. PAPL states that WA Government does not have the jurisdiction power to place a reservation or regulatory constraint over Commonwealth managed land, which is under the jurisdiction of the *Airports Act 1996* (C'th).

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. It is administered by the Department of Planning, Lands and Heritage. 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 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.

In this regard, this amendment has been pre-referred to the former Department of Aboriginal Affairs to consider any potential future impacts on Aboriginal heritage values. Two registered Aboriginal sites (DAA 3758, Helena River and DAA16110, Great Eastern Highway Bypass/Stirling Crescent Scatter) have been identified in the vicinity of the proposed amendment, to be considered during future detailed planning, design and construction stages.

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. As no land is being zoned Urban in the MRS, section 126(3) of the *Planning and Development Act 2005* is not applicable.

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 *DC 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 "major" amendment given it seeks to rezone land from Public Purpose, Rural and

Industrial zones and Parks and Recreation reservation to Railways and Primary Regional Road reservations, which is considered a substantial/regional change in the MRS, and in the general Midland locality.

8 Sustainability

The proposed amendment will facilitate further planning and development to occur in close proximity to existing rail, road and urban infrastructure. This is consistent with the intent of the draft *Perth and Peel@3.5 Million* strategic suite of planning documents which seek to achieve a more consolidated and sustainable urban form.

9 Environmental Protection Authority advice

The former OEPA provides pre-referral comments that the proposed Railway reserve is adjacent to the Great Eastern Highway Bypass road reserve in the vicinity of Great Eastern Highway Bypass and Roe Highway. This section of the Great Eastern Highway Bypass road reserve is known to contain TEC on both sides of Great Eastern Highway Bypass and also has the potential to contain the threatened flora species *Caladenia huegelii*.

The former OEPA is aware of other proposed infrastructure works in the immediate vicinity including a new elevated flyover style road junction, a water pipe and a possible realignment of the existing high voltage transmission line. The former OEPA is concerned about direct and indirect impacts on TEC and flora species by the proposed multiple infrastructure projects, and strongly recommends consultation between the involved government agencies. The former OEPA recommends the development of a combined infrastructure plan that minimises impacts to the TEC in this area.

The proposal will cross Helena River and requires the construction of a major rail bridge near the existing Military Road bridge. This alignment is within the former Swan River Trust (SRT) Development Control Area and a Parks and Recreation reserve managed by the former Department of Parks and Wildlife (DPaW). Under the *Rights in Water and Irrigation Act 1914* permits to disturb the bed and banks of the Helena River will be required from the Department of Water and Environmental Regulation.

The former OEPA strongly recommends consultation with the (now) Department of Water and Environmental Regulation and Department of Biodiversity, Conservation and Attractions.

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 41 of that Act.

In essence, the procedure for a substantial alteration to the Scheme (often referred to as a major 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 on the proposed amendment (including environmental review if required);
- consideration of submissions (including hearings where requested);
- referral of WAPC recommendations, with or without any modifications in response to submissions, to the Minister for Planning;
- approval by the Governor;
- consideration by both Houses of Parliament, who can disallow the amendment;
- amendment takes legal effect when no longer subject to disallowance after 12 sitting days; and
- where the WAPC has agreed to the parallel amendment of a local planning scheme under section 126(3) of the *Planning and Development Act 2005*, the local planning scheme amendment becomes effective upon gazettal of the MRS amendment.

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 is being advertised for public submissions for a period of three months from Tuesday 20 March 2018 to Friday 22 June 2018.

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

- i) Western Australian Planning Commission, 140 William Street, Perth
- ii) City of Perth
- iii) City of Fremantle
- iv) City of Swan
- v) City of Kalamunda
- vi) State Reference Library, Northbridge.

Online submissions are encouraged via: www.planning.wa.gov.au/public-comment.

Written submissions on the amendment should be sent to:

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

and must be received by 5 pm Friday 22 June 2018.

All submissions received by the WAPC will be acknowledged.

For your convenience a submission form (form 41) is contained in this report appendix E. Additional copies of the form are available from the display locations and the PlanningWA website www.planning.wa.gov.au/public-comment.

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 amendment is presented to both Houses of Parliament. 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 Hearings

Any person making a written submission has the opportunity to personally present the basis of their submission to a sub-committee of the WAPC. Details required for attending the hearings are on side two of the submission form.

Presentations made to the hearings committee are an extension of the submission process and the Minutes of all hearings will become a public document. The Minutes are published and made available when the amendment is presented to both Houses of Parliament.

Before completing your submission form, please refer to the information regarding hearings in appendix D of this report.

13 Modifications to the amendment

After considering any comments received from the public and government agencies, the WAPC may make modifications to the amendment.

The recommendations of the WAPC, including any modifications, are published in a report on submissions. Anyone who has made a submission will receive a copy of this document when the amendment is tabled in Parliament. The report will also be available on the PlanningWA website www.planning.wa.gov.au.

14 Final outcome

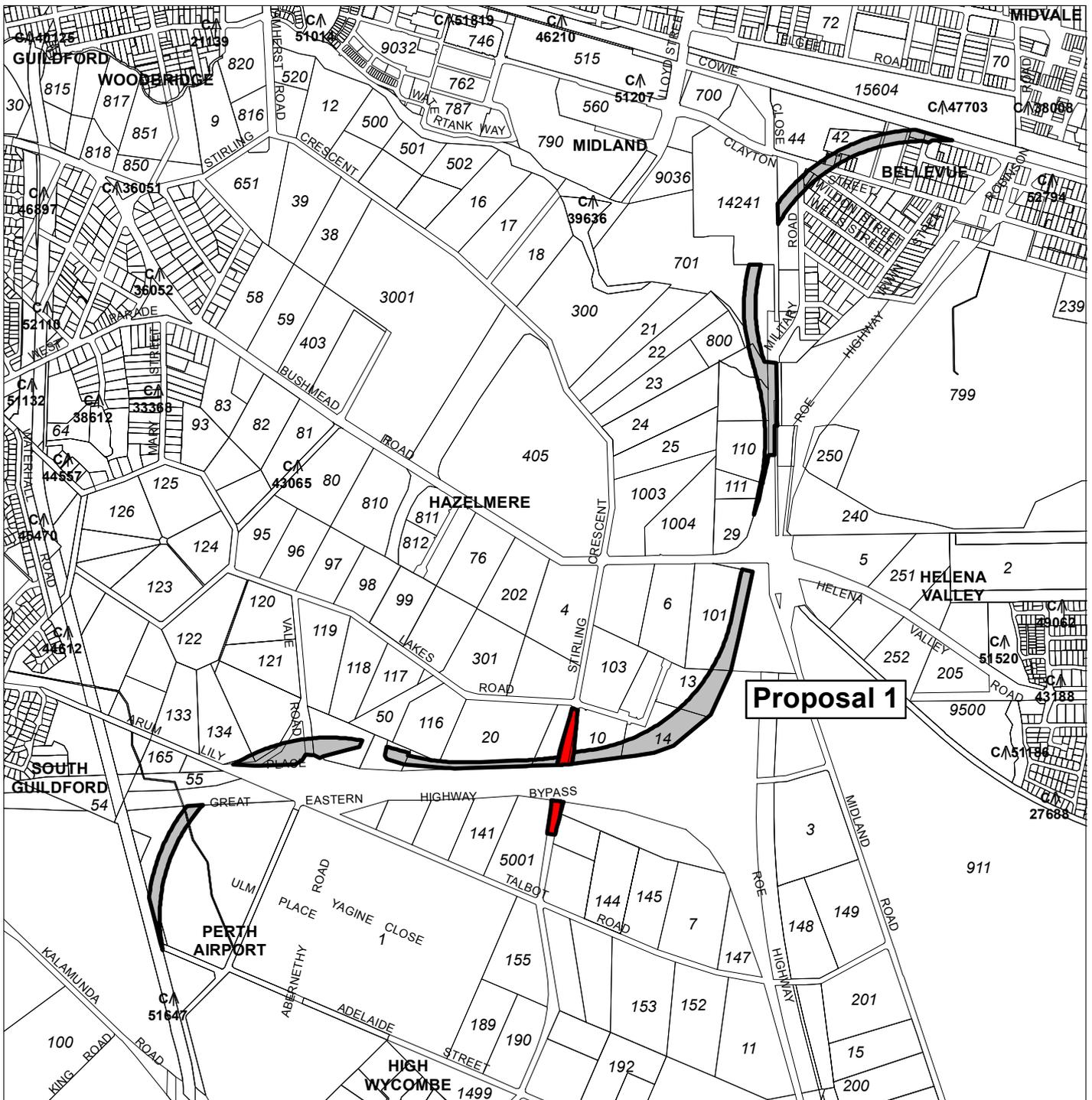
After considering the submissions, the WAPC may make modifications to the amendment. The WAPC will then submit the amendment plans, together with a *Report on Submissions* and a copy of all written submissions, to the Minister for Planning for presentation to the Governor.

If the Governor approves, a copy of the plans of the amendment together with the *Report on Submissions* will be laid before each House of Parliament for twelve sitting days. Either House may, by resolution, disallow an amendment within that time. As soon as the amendment is no longer subject to disallowance it becomes legally effective in the MRS.

People who have made submissions will be kept advised on the progress of the amendment, and along with all affected landowners, will be notified of the final outcome.

**MRS Amendment 1313/41
Midland Freight Rail Realignment**

**Amending Figure
Proposal 1**



**Midland Freight Rail Realignment
Proposed Major Amendment
as advertised**

25 October 2016

Proposal 1

Proposed Amendment:

-  Primary regional roads reservation
-  Railways reservation

Oracle reference no: 2883

File number: 809/02/21/0036P V

Version number: 2

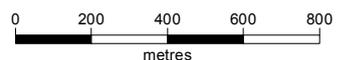


Department of
Planning



Western
Australian
Planning
Commission

Date: 16/11/2016
Produced by GeoSpatial Research and Modelling, Department of Planning, Perth WA
Base information supplied by Western Australian Land Information Authority L1 782-2015-3



Appendix A

Notice of environmental assessment



Chief Executive Officer
Western Australian Planning Commission
Locked Bag 2506
PERTH WA 6000

Your Ref:
Our Ref: CMS16099
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: Metropolitan Region Scheme Amendment 1313-41
LOCATION: Midland Freight Rail Realignment
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).

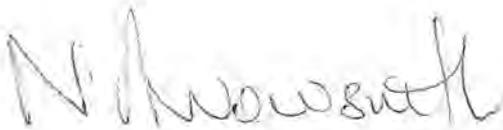
After consideration of the information provided by you, the EPA considers that the proposed scheme should not be assessed under Part IV Division 3 of the *Environmental Protection Act 1986* (EP Act) and that it is not necessary to provide any advice.

The Environmental Protection Authority (EPA) however, recommends the WAPC consult with the Swan River Trust with regards to the Metropolitan Region Scheme amendment and section 36 of the Planning and Development Act 2005. The EPA also advises a management plan be developed and implemented to ensure construction of the railway line does not impact on threatened ecological communities in the Great Eastern Highway Bypass road reserve near to the junction with Roe Highway.

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 'Naomi Arrowsmith', written in a cursive style.

Naomi Arrowsmith
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

21 November 2016

Appendix B

**List of detail plans supporting
the amendment**

Midland Freight Rail Realignment

Proposed Major Amendment

Amendment 1313/41

as advertised

1.7442

Detail Plan

1.6189	-	Hazelmere	-	Proposal 1	-	Railways
1.6223	-	Hazelmere	-	Proposal 1	-	Railways
1.6239	-	Hazelmere	-	Proposal 1	-	Railways
1.6240	-	Hazelmere	-	Proposal 1	-	Railways

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.planning.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.planning.wa.gov.au/regionscheme
- 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 February 2018.

Appendix D

Preparing a submission and hearings committees

Preparing a submission and hearings committees

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

What is a submission?

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

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

What should I say?

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

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

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

Before lodging your submission

The WAPC prefers to receive submissions online at www.planning.wa.gov.au/public-comment, however, hardcopy submissions can also be accepted (form 41 – appendix C).

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 41 and in the submissions on the amendment section of the amendment report. To be eligible to make a presentation to the hearing committee, your written submission must be received by the closing date.

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. Presentations made to the hearings committee are an extension of the submission process.

Do you want a hearing?

The *Planning and Development Act 2005* provides the opportunity for people who have made a submission to personally present the basis of their submission to a sub-committee of the WAPC. You do not have to attend a hearing. The comments presented by you in your submission will be considered in determining the recommendation for the proposed amendment.

Hearings are arranged so a person can explain or expand on their written submission to the WAPC in person. A hearing is for listening to points of view and planning rationale and is not a forum for general public debate. In the case of a group, a spokesperson must be appointed to represent the group. The time allocated for each presentation is five minutes.

The hearings committee is appointed by the WAPC and is usually comprised of two WAPC committee members and one other person with planning knowledge and expertise related to issues raised in submissions.

You may choose to have your presentation conducted in public or private. A public hearing allows other persons, including the media, to attend. In a private hearing only those persons nominated by you and by the hearings committee may attend.

Appendix E

Submission form for this amendment
(form 41)

Hearing of submissions

Anyone who has made a written submission on the amendment has the opportunity to personally present the basis of their submission to a sub-committee of the WAPC. **You do not have to attend a hearing.** The comments presented by you in this written submission will be considered in determining the recommendation for the proposed amendment.

For information about the submission and hearings process, please refer to the amendment report and in particular appendix D.

Please choose one of the following:

No, I do not wish to speak at the hearings. (Please go to the bottom of the form and sign)

OR

Yes, I wish to speak at the hearings. (Please complete the following details)

I will be represented by:

Myself – My telephone number (business hours):

or

A spokesperson

Name of spokesperson:

Contact telephone number (business hours):

Postal address:

I would prefer my hearing to be conducted in:

Public (members from the general public may attend your presentation)

OR

Private (only the people nominated by you or the hearings committee will be permitted to attend)

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.
- Hearings may be recorded and transcribed. The minutes of all hearings, along with all written submissions, are tabled in Parliament and published as public records should the Governor approve the proposed amendment. The WAPC recommendations are similarly published in a report on submissions and tabled in Parliament.

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 22 JUNE 2018. Late submissions will NOT be considered.