



August 2021

# Metropolitan Region Scheme Amendment 1382/57 (Minor Amendment)



## Kenwick Rail Freight Facility - Railways Reservation

Amendment Report

City of Gosnells



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**Metropolitan Region Scheme  
Amendment 1382/57  
(minor amendment)**

**Kenwick Rail Freight Facility -  
Railways Reservation**

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**Amendment Report**

**City of Gosnells**



August 2021

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

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This document is available in alternative formats on application to the Department of Planning, Lands and Heritage Communications Branch.

# Contents

The Metropolitan Region Scheme .....	v
Abbreviations .....	ix

## Amendment Report

1 Purpose.....	1
2 Background.....	1
3 Scope and content of the amendment.....	2
4 Discussion.....	2
5 Aboriginal heritage .....	5
6 Co-ordination of local and region scheme amendments .....	6
7 Substantiality.....	6
8 Sustainability appraisal.....	7
9 Environmental Protection Authority advice .....	7
10 The amendment process.....	7
11 Submissions on the amendment .....	7
12 Modifications to the amendment.....	8
13 Final outcome.....	8
Amendment Figure – Proposal 1 .....	11

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
Appendix E	Submission form for this amendment (form 57)



# **The Metropolitan Region Scheme**

## **What it is and how it is amended - minor**

### **Planning Perth's future**

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

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

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

### **The role of the WAPC?**

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

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

### **What is the Metropolitan Region Scheme?**

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

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

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

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

### **What is an amendment?**

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

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

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

### **How is the Metropolitan Region Scheme amended?**

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

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

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

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

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

- If progressed, the application is referred to the Environmental Protection Authority (EPA) to set the level of environmental assessment. If the EPA requires an environmental review, this is carried out before the amendment is advertised.
- Proposed amendment is advertised for public comment. Advertisements are placed in local and statewide newspapers and the information is made available on [www.dplh.wa.gov.au/mrs-amendments](http://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](http://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*.

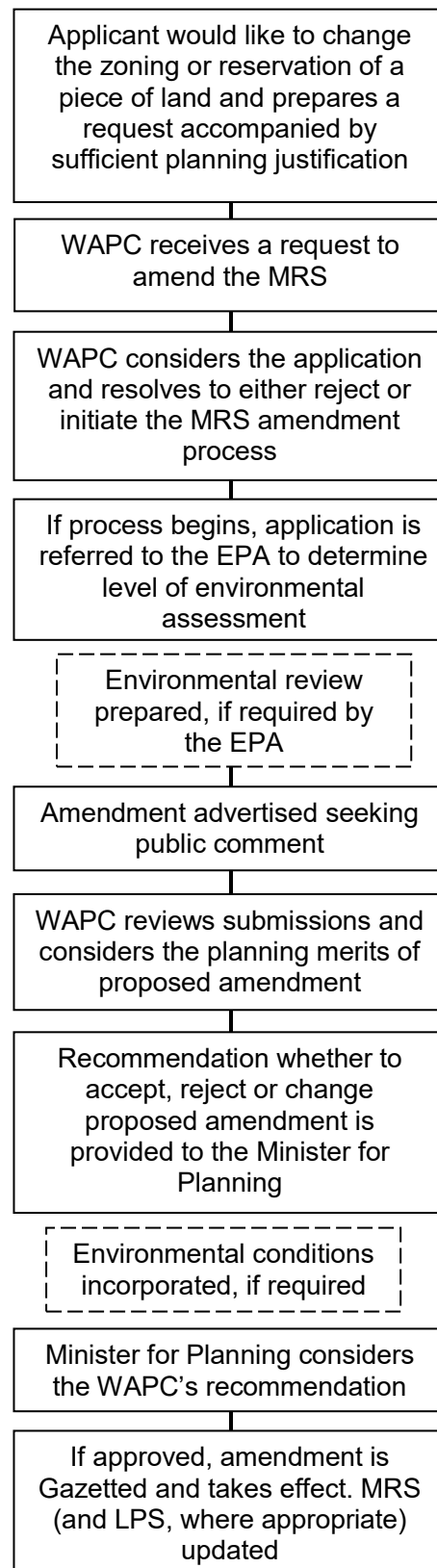
### Report on submissions

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

<b>AHA</b>	Aboriginal Heritage Act
<b>ARI</b>	Average Recurrence Interval
<b>ATU</b>	Aerobic Treatment Unit
<b>DPLH</b>	Department of Planning, Lands and Heritage
<b>EPA</b>	Environmental Protection Authority
<b>MKSEA</b>	Maddington Kenwick Strategic Employment Area
<b>MRS</b>	Metropolitan Region Scheme
<b>PCA</b>	Planning Control Area
<b>SPP</b>	State Planning Policy
<b>SWALSC</b>	South West Aboriginal Land and Sea Council
<b>PTA</b>	Public Transport Authority
<b>WAPC</b>	Western Australian Planning Commission



## **Amendment Report**



# **Metropolitan Region Scheme Amendment 1382/57**

## **Kenwick Rail Freight Facility - Railways Reservation**

### **Amendment Report**

#### **1 Purpose**

The purpose of the amendment is to transfer approximately 17.8 hectares of land in the Maddington Kenwick Strategic Employment Area (MKSEA) from the Industrial zone to the Railways reservation, as shown on the Amendment Figure - Proposal 1.

The amendment area is in the City of Gosnells, about 12 kilometres south-east of the Perth Central Business District in the locality of Kenwick.

The proposed Railways reservation is currently protected by Planning Control Area 162, (PCA 162), gazetted 22 December 2020 and valid for five years. The proposed Railways reservation is intended to replace the interim control measure provided by PCA 162.

#### **2 Background**

##### **Maddington-Kenwick Strategic Employment Area (MKSEA)**

The MKSEA is an emerging industrial area bound by Bickley Road, Victoria Road, Tonkin Highway and Roe Highway. This area is an expansion of the existing industrial area in proximity to the Kewdale intermodal transfer facilities and freight routes linking with Fremantle, Kwinana and Perth Airport.

The Kenwick rail freight facility is being developed in the north-western portion of the MKSEA and will help ensure the continued efficient operation of Perth's freight and passenger rail networks. The Kenwick facility will enable the rail freight operator (currently Arc Infrastructure) to relocate from an existing facility at Bellevue. This will free up the Bellevue site for development of a future Public Transport Authority (PTA) railcar depot.

The new facility will be built and owned by the PTA and included as part of the existing rail freight lease. Operation of the facility will be the responsibility of the rail freight operator, with PTA acting as the landowner on behalf of the State Government.

Key elements of the Kenwick rail freight facility include:

- A rail welding area.
- Ballast loading tracks and stockpiles.
- Rail stowage for grinding and track machines.
- A rail handling area.
- Administration buildings.
- Material storage facilities.
- Connections to the existing rail freight network.

##### **Planning Control Area 124 (PCA 124)**

PCA 124 was gazetted in October 2016 and its purpose was to protect land identified for the Kenwick rail freight facility, which was then zoned Rural under the Metropolitan Region

Scheme (MRS). At the time, the PCA 124 affected 11 properties under private ownership and one property owned by the State of Western Australia.

PCA 124 is no longer in effect and has recently been replaced by PCA 162.

#### Metropolitan Region Scheme Amendment 1302/57

In October 2016, MRS Amendment 1302/57 was gazetted, which rezoned approximately 156 hectares of land in the MKSEA, including the subject land, from Rural to Industrial. At that time, other nearby land was also rezoned for industrial purposes through separate MRS amendments.

#### Planning Control Area 162 (PCA 162)

In December 2020, the Minister for Planning approved the declaration of a new PCA for the Kenwick Rail Freight Facility, with a slightly smaller footprint than PCA 124. The reduction in area was due to the PTA having acquired all the land it requires for the rail freight facility, with some of the land protected under PCA 124 being surplus to PTA's requirements. Gazettal of PCA 162 and revocation of PCA 124 occurred later in December 2020.

### **3 Scope and content of the amendment**

The amendment proposes to transfer approximately 17.8 hectares of land from the Industrial zone to the Railways reservation. This amendment will effectively remove the need for PCA 162, which can be revoked upon the gazettal of the proposed MRS amendment.

Eleven lots are impacted by the amendment, nine of which are owned by the Public Transport Authority of Western Australia and two are owned by the State of Western Australia.

### **4 Discussion**

#### Strategic Planning Context

##### **Perth and Peel@3.5 Million and North-West Sub-regional Planning Framework**

The Perth and Peel@3.5 Million suite of planning documents provides an envisaged development outcome for 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.

The *Metro South and Peel Sub-regional Planning Framework* (the Framework) forms part of the Perth and Peel@3.5 Million suite of planning documents and identifies the subject land as "Industrial". The Framework report briefly describes a number of 'non-strategic' industrial areas, including the MKSEA. There is no specific mention of the MKSEA containing a rail freight facility.

Although a rail freight facility at the subject site is not specifically mentioned in the Framework document, the intended land uses are industrial in nature as they include the grinding and welding of rail, rail stowage and other facilities needed to replace sections of railway track across the freight network. Accordingly, there is not considered to be any significant conflict between the Framework and the proposed MRS amendment.



## **State Planning Policy 3.7 - Planning in Bushfire Prone Areas**

*State Planning Policy 3.7 - Planning in Bushfire Prone Areas* (SPP 3.7) guides the implementation of effective risk-based land use planning and development to preserve life and reduce the impact of bushfire on property and infrastructure. It applies to all strategic planning proposals, subdivision and development applications in designated bushfire prone areas, unless exemptions apply.

Much of the amendment area is classified as a bushfire prone area. SPP 3.7 and related Planning Bulletin 111/2016 outline a series of exemptions for the policy's application including where a proposal does not increase the intensity of development of the land, or where the proposal is deemed unavoidable. The proposed MRS amendment does not increase the intensity at which the subject land can be developed, as it is already zoned for industrial purposes and contains existing infrastructure and development. The rail freight facility is also unavoidable given its requirement to locate adjacent to a railway line.

### **Local Structure Plan**

The Maddington Kenwick Strategic Employment Area (MKSEA) Precinct 3A Structure Plan relates to approximately 89.3 ha of land generally bound by Coldwell Road, Grove Road, Brook Road, Bickley Road, Roe Highway and the Shire of Kalamunda district boundary. This structure plan was approved by Western Australian Planning Commission (WAPC) in August 2017 and identifies land for general industrial purposes.

Most of the land proposed to be transferred to the railways reservation falls within precinct 3A of the MKSEA structure plan. A local structure plan is not normally required where land is reserved for railway purposes. If the proposed MRS amendment is ultimately approved, an update to the local structure plan could be progressed by the local government to reduce the spatial extent of the structure plan to exclude the area affected by the enlarged railways reservation.

In 2016, PTA notified landowners within the structure plan area that portion of their land has been identified for public acquisition to accommodate the relocation of rail freight infrastructure currently located at Belleview. Since that time, PTA has acquired all of the land it requires for the rail freight facility.

### **Statutory Planning Context**

#### **Environment**

A number of flora and fauna investigations were undertaken for the MKSEA, as summarised in an Environmental Assessment and Management Strategy for MKSEA Precinct 3A (2016). This environmental strategy is included in the Precinct 3A structure plan report and summarises that the majority of precinct 3A has been historically cleared to support agricultural land uses with existing vegetation primarily comprised of planted, non-endemic species in addition to small areas of remnant vegetation and scattered trees.

Given that the flora and vegetation values of the site are highly degraded and are not considered to be of local or regional significance as a result of historical and existing disturbances, the strategy indicates that the clearing of vegetation to support industrial development will not result in any significant impacts on flora and/or vegetation values.

In July 2016, the Environmental Protection Authority (EPA) determined that local planning scheme amendment 165 (which proposed rezoning Precinct 3A from General Rural to General Industry and an established requirement for a structure plan over the Precinct 3A)

did not require formal assessment under the Environmental Protection Act. Amendment 165 was approved by the Minister for Planning in December 2016.

A small portion of the amendment area overlaps land that is subject to City of Gosnells Amendment 166 to Local Planning Scheme 6. Amendment 166 is currently being formally assessed by the EPA, however as the EPA has advised that MRS 1382/57 is not subject of formal assessment, the local planning scheme amendment process has no implications for this MRS Amendment proposal.

The site of the rail freight facility has been completely cleared of vegetation pursuant to earthworks and drainage works commenced in late 2019. Given that the suitability of the land for industrial purposes has already been established through MRS amendment 1302/57 and local scheme amendment 165, it is considered unlikely that environmental considerations would present an obstacle for transferring the subject land from the Industrial zone to the Railways reservation.

### **Regional Roads**

The subject land does not directly abut a Primary Regional Roads reservation. If the amendment is approved, it will have the effect of enlarging an existing Railways reservation abutting Roe Highway.

### **Urban Water Management**

A district water management strategy was prepared in 2014 to support the rezoning of MKSEA precincts 2 and 3 to Industrial.

A local water management strategy for Precinct 3A was prepared in January 2017.

The recommended approach to water management for MKSEA Precinct 3A includes:

- Retain the existing flow regime to key wetlands adjacent to Yule Brook.
- Lots detain runoff from up to the 100 year Average Recurrence Interval (ARI) and provide treatment specific to land use.
- Conveyance of road reserve runoff by surface flow in open swales.
- Treatment of road reserve runoff via extended detention in conveyance swales.
- Peak flow rates to Yule Brook (located south of Precinct 3A) managed by catchment routing and flood detention up to the 100 year ARI event. This occurs within all land within Precinct 3A, including the PTA land.
- Groundwater controlled to existing mean groundwater level/underlying clay layer/existing groundwater controls via network of open swales.

Drainage works for the rail freight facility have commenced and are expected to be complete in early 2021.

### **Infrastructure**

#### **Water and Wastewater**

A 150 mm water main exists in the north-western portion of Intermodal place.

No sewerage infrastructure currently exists in the vicinity of the subject land. Section 4.2.4 of the structure plan for Precinct 3A mentions that subdivision of lots within the structure plan

area will require the applicant to demonstrate adequate provision of wastewater disposal infrastructure to service the proposed lots. This may involve:

- The installation of local sewerage reticulation infrastructure.
- Aerobic Treatment Units (ATU) being installed for any development with dormant sewer reticulation infrastructure or other suitable provisions to be made within road reserves sufficient to allow connection to the Water Corporation's ultimate sewerage infrastructure.
- Any other design solution as may be approved by the relevant Government agencies.

### Electricity

There are existing 22kV overhead and underground distribution lines within Lot 350. There are also existing 415V underground distribution cables in Intermodal Place.

### Gas

The Dongara to Pinjarra gas pipeline (Parmelia Mainline) is situated within the western portion of the site, within a pipeline easement. The 300 metre pipeline referral area extends across all of the subject land.

An ATCO gas main is situated within the Bickley Road reserve, which abuts the subject land to the south.

### Telecommunications

The current design practice for road reserves, pavement and verge provisions will make adequate allowance for services including broadband in accordance with the agreed Utilities Service Providers handbook.

### Public Transport

Public transportation does not directly service the subject land. East-west bus services are available about 200 metres north of the site along Welshpool Road between Elizabeth Quay station and Kalamunda Station (Routes 283T, 283F, 282TG, 282TG, 282FA and 282F).

Further to the south, bus services exist between Maddington Station and Carousel shopping centre (routes 229T, 229TA, 229FA and 229F). This route partly travels along Brixton Street which is located about 750 south of the subject land.

## **5 Aboriginal heritage**

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

The process of rezoning or reservation of land in a region scheme is not in itself directly affected by the AHA. Proposed changes to land-use at MRS amendment stage are broad by nature and do not physically interfere with the land. Consideration of any protection that

may be required is addressed more specifically at later stages of the planning process, typically being a local planning scheme amendment and when preparing a local structure plan.

Proponents of proposals are advised to familiarise themselves with the State's *Cultural Heritage Due Diligence Guidelines* (the Guidelines). These have been developed to assist proponents to identify any risks to Aboriginal heritage and to mitigate risk where heritage sites may be present. The Guidelines are available electronically at: <http://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 DPLH have entered into a Memorandum of Understanding with the South West Aboriginal Land and Sea Council (SWALSC) for the provision of Aboriginal consultative services. All MRS amendment proposals likely to be of interest to Aboriginal persons are referred to SWALSC for comment before being released for public submission. SWALSC is the recognised Native Title Representative Body for Western Australia's southwest region and as such is well placed to provide advice on Aboriginal heritage.

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

## **6 Co-ordination of local and region scheme amendments**

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

## **7 Substantiality**

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

- (a) PCA 162 already provides a degree of protection for rail freight facility and the proposed Railways reservation represents a logical evolution of PCA 162.
- (b) The subject land is owned by the State government (substantially PTA) and does not impact upon privately owned land.
- (c) No further land acquisition by the PTA for the rail freight facility is anticipated.
- (d) The proposed amendment is not overly complex in nature.

## **8 Sustainability appraisal**

The proposed amendment will facilitate development of the Kenwick Rail Freight Facility. The provision of appropriately located railway maintenance infrastructure helps ensure the safe and efficient operation of the rail system.

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

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

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

## **11 Submissions on the amendment**

The WAPC invites people to comment on this proposed amendment to the MRS. The amendment will be advertised for public submissions for a period of 60 days from Friday 13 August 2021 to Friday 15 October 2021.

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

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

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

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

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

or by email to:

[mrs@dplh.wa.gov.au](mailto:mrs@dplh.wa.gov.au)

**and must be received by 5 pm Friday 15 October 2021.**

All submissions received by the WAPC will be acknowledged.

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

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

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

## **12 Modifications to the amendment**

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

## **13 Final outcome**

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

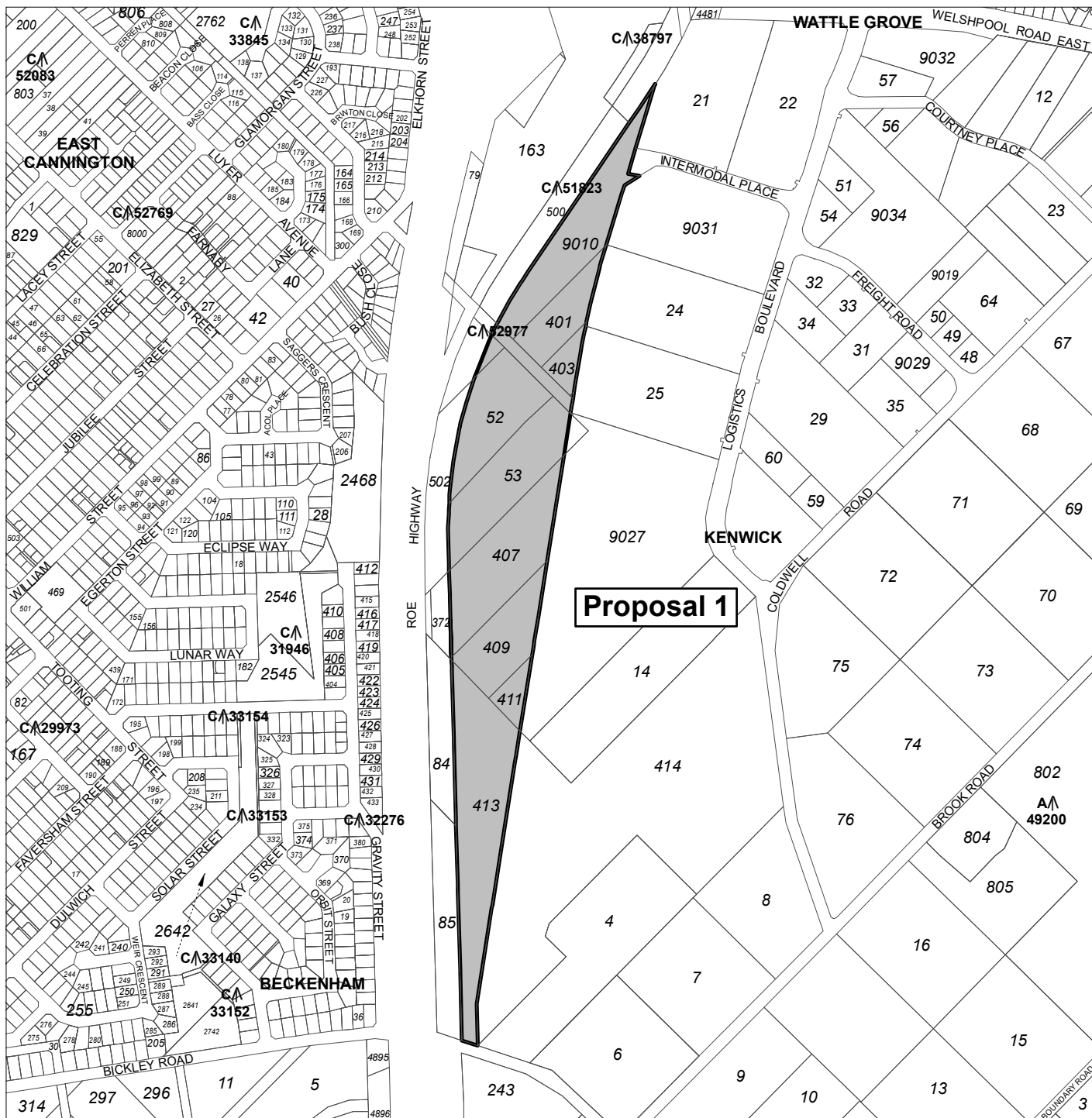
**MRS Amendment 1382/57**

**Kenwick Rail Freight Facility - Railways Reservation**

**Amending Figure  
Proposal 1**








## Kenwick Rail Freight Facility - Railways Reservation Proposed minor amendment as advertised

31 March 2021

Proposal 1

Proposed Amendment:

 Railways reservation

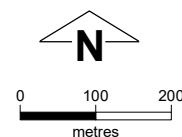
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## **Appendix A**

### **Notice of environmental assessment**



Ms Sam Fagan  
Chief Executive Officer  
Western Australian Planning Commission  
Locked Bag 2506  
**PERTH WA 6001**

Our Ref: CMS17990  
Enquiries: Gerard O'Brien, 6364 6430  
Email: [Gerard.O'Brien@dwer.wa.gov.au](mailto:Gerard.O'Brien@dwer.wa.gov.au)

Dear Ms Fagan

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

<b>SCHEME</b>	<b>Metropolitan Region Scheme Amendment 1382/57</b>
<b>LOCATION</b>	<b>Maddington Kenwick Strategic Employment Area bound by Bickley Road, Victoria Road, Tonkin Highway and Roe Highway</b>
<b>RESPONSIBLE AUTHORITY</b>	<b>Western Australian Planning Commission</b>
<b>DECISION</b>	<b>Referral Examined, Preliminary Investigations and Inquiries Conducted. Scheme Amendment Not to be Assessed Under Part IV of the EP Act. No Advice Given. (Not Appealable)</b>

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 Chair's determination of the scheme.

Please note the following:

- For the purposes of Part IV of the EP Act, the scheme is defined as an assessed scheme. In relation to the implementation of the scheme, please note the requirements of Part IV Division 4 of the EP Act.
- There is no appeal right in respect of the EPA's decision to not assess the scheme.

A copy of the Chair's determination will be made available to the public via the EPA website.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'R Hughes', with a stylized, flowing script.

**Dr Robert Hughes**  
**Delegate of the Environmental Protection Authority**  
A/Executive Director  
EPA Services

9 July 2021

Encl. Chair's Determination



## Environmental Protection Authority

### S48A Referrals

**Title:** Metropolitan Region Scheme Amendment 1382/57

**Location:** Maddington Kenwick Strategic Employment Area bound by Bickley Road, Victoria Road, Tonkin Highway and Roe Highway

**Description:** Transfer approximately 17.8 hectares of land from the Industrial zone to the Railways reservation to facilitate the Kenwick freight rail facility

**Ref ID:** CMS17990

**Date Received:** 23/04/2021 **Date Sufficient Information Received:** 12/05/2021

**Responsible Authority:** Western Australian Planning Commission

**Contact:** Scott Haine

**Preliminary Environmental Factors:** None.

**Potential Significant Effects:** None.

**Management:** None.

**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.

A small portion of the amendment area overlaps with land which is subject to City of Gosnells Amendment 166 to Local Planning Scheme 6; Amendment 166 is currently being formally assessed by the EPA. The EPA notes that this discrepancy will be rectified through the planning process, and recommends that the WAPC liaise with the City of Gosnells in this regard.

This Determination is not appealable.

Chair's Initials:

Date: 8 July 2021





## **Appendix B**

### **List of detail plans supporting the amendment**



**Metropolitan Region Scheme  
Amendment 1382/57**

**Kenwick Rail Freight Facility - Railways Reservation**

**as advertised**

**Amending Plan 3.2781**

**Detail Plans**

1.6387, 1.6405



## **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](http://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](http://www.dplh.wa.gov.au/your-property-and-region-schemes)
- office of the WAPC and the Department of Planning, Lands and Heritage Level 2, 140 William Street, Perth
- any local government office.

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

*This information is correct as at January 2019.*



## **Appendix D**

### **Preparing a submission**



## **Preparing a submission**

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

### **What is a submission?**

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

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

### **What should I say?**

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

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

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

### **Before lodging your submission**

The WAPC prefers to receive submissions online at <https://consultation.dplh.wa.gov.au>, however, hardcopy submissions can also be accepted (form 57 – appendix E).

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

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

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

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



## **Appendix E**

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





This image shows a full page of white paper with horizontal dotted lines. The lines are evenly spaced and run across the width of the page, providing a guide for handwriting practice. There are no margins, text, or other markings on the page.

- 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.

Signature ..... Date .....

Contacts: Tel - (08) 6551 8002 Fax - (08) 6551 9001 Email - [mrs@dplh.wa.gov.au](mailto:mrs@dplh.wa.gov.au) Website - <http://www.dplh.wa.gov.au/mrs-amendments>