



**DEVELOPMENT SERVICES ATTACHMENTS
ORDINARY MEETING OF COUNCIL
WEDNESDAY 20 JULY 2022**

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SHIRE OF CHITTERING

Local Planning Scheme No. 6

Amendment No. 73

Exempting Development in the Water
Prone Area – Special Control Area



Prepared by:
Shire of Chittering
6177 Great Northern Highway
Bindoon WA 6502

August 2021

PLANNING AND DEVELOPMENT ACT 2005

**RESOLUTION TO PREPARE AN AMENDMENT TO
LOCAL PLANNING SCHEME NO. 6**

AMENDMENT NO. 73

RESOLVED that the local government, in pursuance of Section 72 of the *Planning and Development Act 2005* amend the above Local Planning Scheme No. 6 by:

Deleting the second sentence of clause 5.3.1 and in its place, insert the following provision:

‘Development approval is required for any development within the Special Control Area, excluding development of a class specified in Column 1 of an item in the following Table and if all of the conditions set out in Column 2 of the Table opposite that item are satisfied in relation to the development.

Table

	<u>Column 1 Development</u>	<u>Column 2 Conditions</u>
1.	<p>a) Demolition of buildings and structures.</p> <p>b) Internal building work.</p> <p>c) Erection, installation, alterations, additions of or to pergolas, patios, garages, carports, decks, verandahs, shade sails, swimming pools that forming part of, connected to or are detached from (but associated with) an existing dwelling on the lot.</p> <p>d) Outbuildings that are characterised as sheds, barns, workshops, lean - to's and similar buildings or structures that could be reasonably characterised as an outbuilding.</p> <p>e) Erection, installation, alterations, additions of or to boundary or retaining walls or fences and other means of boundary enclosures.</p> <p>f) Cubby houses.</p> <p>g) Solar panels.</p>	<ul style="list-style-type: none"> • The development works are not located in a heritage-protected place. • The development works are not located within 30 metres of any natural water body. • The development works do not alter the natural flow of surface water. • The relevant requirements of the R-Codes are satisfied. • The relevant requirements of Local Planning Policy No.18 - Setbacks are satisfied. • The outbuildings the subject of d) that are not subject to the requirements of the R-Codes are to be used for warehouse/storage purposes associated with an existing approved land use on the lot, and the requirements of Local Planning Policy No.7 – Outbuildings are satisfied. • The development requirements of this Scheme for the underlying zone are satisfied. • The local government confirms that the Objectives of the underlying zone and

	<p>h) Flagpoles.</p> <p>i) The signage and advertisements contained in Schedule 6 of this Scheme.</p> <p>j) Maintenance and repair works.</p> <p>k) Works for public safety, the safety or security of plant or equipment, installation and maintenance of essential services or the protection of the environment.</p>	<p>the Purpose of any other Special Control Area applicable to the land are satisfied.</p>
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The provisions of this clause prevail where a conflict arises with any other provision of this Scheme that requires development approval for development of a class specified in Column 1 of the Table.'

The amendment is considered to be a 'standard amendment' under the provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* for the following reason(s):

- i. An amendment that would have minimal impact on land in the scheme area that is not the subject of the amendment;
- ii. An amendment that does not result in any significant environmental, social, economic or governance impacts on land in the scheme area;
- iii. An amendment that is not a complex or basic amendment.

Dated thisday of.....2021

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CHIEF EXECUTIVE OFFICER

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1. **Proposed Amendment**

The proposed Scheme Amendment seeks to reduce the requirement for development approval for certain minor development in the Shire's Water Prone – Special Control Area (SCA)

2. **Background**

Clause 5.3 of the Shire of Chittering Local Planning Scheme No. 6 (LPS6) identifies the area of the Swan Coastal Plain within the Shire's jurisdiction as an area that requires special planning attention due to its seasonally high water table. It is labelled and spatially represented under LPS6 as the Water Prone Area – Special Control Area (SCA) (see location plan above).

Development within this area often needs consideration towards the effects of potential flooding, and conversely, the environment needs protection against development that may compromise the environmental values of the area.

Clause 5.3 of LPS6 is provided below:

5.1 WATER PRONE AREA – ELLEN BROOK PALUSPLAIN

5.1.1 *Land subject to Inundation or flooding are delineated on the Scheme Map. Development approval is required for any development within the Special Control Area.*

5.1.2 Purpose

- a) *To manage development in areas where there is high risk of inundation so as to protect people and property from undue damage and where there is a potential risk to human health.*
- b) *To preclude development and the use of land which may increase the amount of nutrients from entering the surface and/or sub-surface water systems.*
- c) *To ensure that wetland environmental values and ecological integrity are preserved and mentioned.*

5.1.3 Planning Requirements

The local government will impose conditions on any Development approval relating to-

- a) *the construction and occupation of any dwelling or outbuilding;*
- b) *the type of effluent disposal system used in this area shall be high performance with bacterial and nutrient stripping capabilities to the*

specifications of local government and the Health Department and shall be located in a position determined by local government.;

- c) minimum floor levels for any building above the highest known water levels;*
- d) any land use that may contribute to the degradation of the surface or sub- surface water quality.*
- e) no development other than for conservation purposes will be permitted within 30 metres of any natural water body;*
- f) damming, draining or other developments which may alter the natural flow of surface water will not be permitted unless such works are part of an approved Catchment Management Plan.*

5.1.4 Relevant Considerations

In considering applications for Development approval, the local government shall have regard to-

- a) the likely impact on the health and welfare of future occupants;*
- b) the proposed activities for the land and their potential increase in the risk of causing an increase in nutrients entering the water regimes;*
- c) any provision or recommendation from any Catchment Management Plan.*
- d) the likely impact on any wetland;*
- e) buffer distances from any wetland.*

5.1.5 Referral of Applications for Development approval

The local government may refer any Application for Development approval or any amendment to vary a Special Control Area boundary to any relevant authority or community organisation.

Pursuant to the requirements of Clause 5.3.1 above, development approval is required to be obtained for any development that is proposed within the Water Prone SCA. The term 'development' captures everything from construction of a building or structure, to demolition and earthworks. As such, landowners within this SCA are required to seek development approval from the Shire's Planning Department for any building or works proposed, prior to applying for a building permit.

There are instances that development within this SCA needs special planning consideration as the high water table may have impact on the development (i.e. dwellings or other habitable buildings). There are further instances where development may impact the environmental values of the area with particular

impact on the ground water quality (i.e. intensive agriculture, nurseries, effluent disposal systems associated with dwellings). In these cases, the requirement for development approval is warranted as it gives the Shire opportunity to assess the proposal against the SCA requirements, and make appropriate determinations.

There are many instances however, where the requirement for development approval is merely a processed based exercise as the development proposed is not one that will impact the quality of ground water or environment, and will conversely not be affected by the risk of flooding. Such developments include outbuildings, pergolas, patios, garages, carports, decks, verandas, swimming pools, retaining walls, cubby houses, solar panels and demolition of buildings.

Planning staff have witnessed over the past few years a number of these 'minor' developments that do not require assessment against the Water Prone SCA provisions, and if compliant with other components of the local planning framework (i.e. R-codes, Local Planning Policies etc.), are simply granted development approval. In order to remove the unnecessary burden of landowners seeking development approval for such minor development, Scheme Amendment 73 proposes to modify Clause 5.3.1 of LPS6, to exempt certain development.

3. Proposal Context

Amendment 73 seeks to exempt a series of minor development from the requirement for development approval within the Water Prone – Special Control Area. The development proposed to be exempt will be such that do not have the capacity to adversely affect the environment and conversely will not be affected by a seasonally high water table and flooding.

3.1 Proposed Exempt Development

Development or works that are proposed to be exempt from the requirement for development approval are as follows:

- Demolition of buildings and structures;
- Internal building work;
- Erection, installation, alterations, additions of or to pergolas, patios, garages, carports, decks, verandahs, shade sails, swimming pools that forming part of, connected to or are detached from (but associated with) an existing dwelling on the lot;
- Outbuildings that are characterised as sheds, barns, workshops, lean -to's and similar buildings or structures that could be reasonably characterised as an outbuilding;
- Erection, installation, alterations, additions of or to boundary or retaining walls or fences and other means of boundary enclosures.
- Cubby houses;
- Solar panels;
- Flagpoles;
- The signage and advertisements contained in Schedule 6 of this Scheme;
- Maintenance and repair works; and

- Works for public safety, the safety or security of plant or equipment, installation and maintenance of essential services or the protection of the environment.

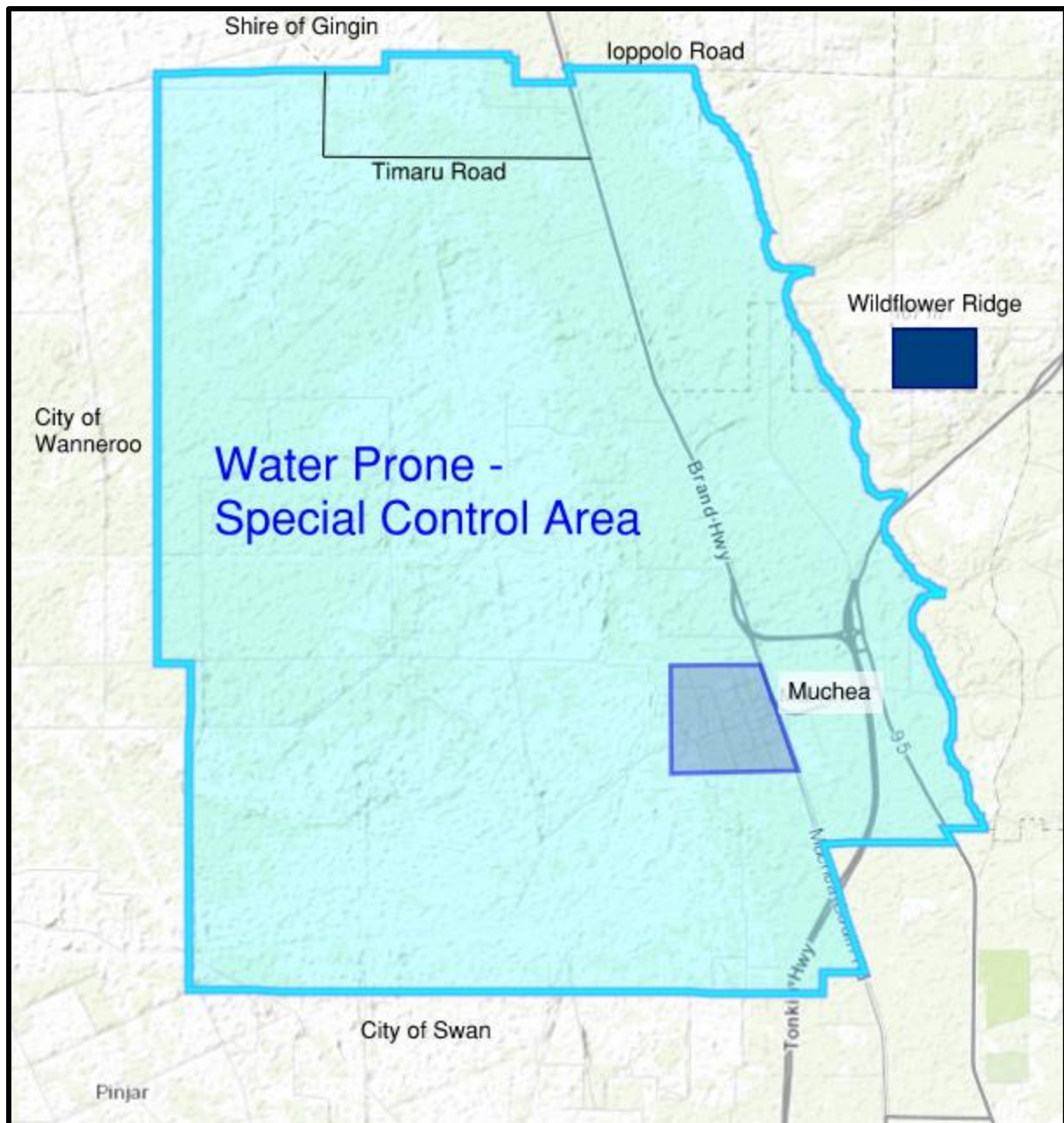
3.2 Proposed Conditions for Exempting Development

In conjunction with the above exemptions, conditions have been drafted to detail the circumstances and parameters that need to apply in order for the exemption to be valid. These conditions are to ensure the objectives of the Water Prone - Special Control Area are upheld and the proposed development complies with other relevant elements of the local planning framework. The conditions that will be subject to the above exemptions are provided below:

- The development works are not located in a heritage-protected place;
- The development works are not located within 30 metres of any natural water body;
- The development works do not alter the natural flow of surface water;
- The relevant requirements of the R-Codes are satisfied;
- The relevant requirements of Local Planning Policy No.18 - Setbacks are satisfied;
- The outbuildings the subject of d) that are not subject to the requirements of the R-Codes are to be used for warehouse/storage purposes associated with an existing approved land use on the lot, and the requirements of Local Planning Policy No.7 – Outbuildings are satisfied;
- The development requirements of this Scheme for the underlying zone are satisfied; and
- The local government confirms that the Objectives of the underlying zone and the Purpose of any other Special Control Area applicable to the land are satisfied.

In order for development to be exempt from development approval, it must be of a type or nature listed in Section 3.1 above, and comply with the relevant conditions of Section 3.2 above. Sections 3.1 and 3.2 form the basis of Amendment 73.

3.3 Water Prone – Special Control Area Location



4. Planning Framework

4.1 *Planning and Development Act 2005*

Section 75 of the *Planning and Development Act 2005* gives a Local Government the power to amend a Local Planning Scheme. Section 81 requires an amendment to a Local Planning Scheme to be referred to the EPA for consideration and Section 83 requires the amendment to be advertised.

4.2 Planning and Development (Local Planning Scheme) Regulations 2015

The changes proposed as part of Amendment 73 are deemed to be a 'Standard Amendment' in accordance with Pt. 5 Div. 1 R. 34 of the *Planning and Development (Local Planning Scheme) Regulations 2015* for the following reasons:

- i. An amendment that would have minimal impact on land in the scheme area that is not the subject of the amendment;
- ii. An amendment that does not result in any significant environmental, social, economic or governance impacts on land in the scheme area;
- iii. An amendment that is not a complex or basic amendment.

5.0 Conclusion

Amendment 73 will reduce the need for unnecessary development approvals in the Shire's Water Prone – Special Control Area.

While reducing the need for development approvals, the objectives of the Special Control Area will be maintained with approvals required for proposal that may have an impact on the natural environment, and also for those proposals that may be impacted by the seasonally high water table in the affected area.

After considering the proposed amendment and the provided justification, the Shire respectfully requests that the Minister for Planning approve Amendment 73 to LPS6.

PLANNING AND DEVELOPMENT ACT 2005

SHIRE OF CHITTERING

LOCAL PLANNING SCHEME NO. 6

AMENDMENT NO. 73

FINAL ADOPTION

The Shire of Chittering under and by virtue of the powers conferred upon it in that behalf by the Planning and Development Act, 2005 (as amended) hereby amends the above Town Planning Scheme No. 3 by:

Deleting the second sentence of clause 5.3.1 and in its place, insert the following provision:

‘Development approval is required for any development within the Special Control Area, excluding development of a class specified in Column 1 of an item in the following Table and if all of the conditions set out in Column 2 of the Table opposite that item are satisfied in relation to the development.

Table

	<u>Column 1</u> <u>Development</u>	<u>Column 2</u> <u>Conditions</u>
1.	l) Demolition of buildings and structures. m) Internal building work. n) Erection, installation, alterations, additions of or to pergolas, patios, garages, carports, decks, verandahs, shade sails, swimming pools that forming part of, connected to or are detached from (but associated with) an existing dwelling on the lot. o) Outbuildings that are characterised as sheds, barns, workshops, lean -to's and similar buildings or structures that could be	<ul style="list-style-type: none"> • The development works are not located in a heritage-protected place. • The development works are not located within 30 metres of any natural water body. • The development works do not alter the natural flow of surface water. • The relevant requirements of the R-Codes are satisfied. • The relevant requirements of Local Planning Policy No.18 - Setbacks are satisfied. • The outbuildings the subject of d) that are not subject to the requirements of the R-Codes are to be used for warehouse/storage purposes

	<p><i>reasonably characterised as an outbuilding.</i></p> <p><i>p) Erection, installation, alterations, additions of or to boundary or retaining walls or fences and other means of boundary enclosures.</i></p> <p><i>q) Cubby houses.</i></p> <p><i>r) Solar panels.</i></p> <p><i>s) Flagpoles.</i></p> <p><i>t) The signage and advertisements contained in Schedule 6 of this Scheme.</i></p> <p><i>u) Maintenance and repair works.</i></p> <p><i>v) Works for public safety, the safety or security of plant or equipment, installation and maintenance of essential services or the protection of the environment.</i></p>	<p><i>associated with an existing approved land use on the lot, and the requirements of Local Planning Policy No.7 – Outbuildings are satisfied.</i></p> <ul style="list-style-type: none"> <i>• The development requirements of this Scheme for the underlying zone are satisfied.</i> <i>• The local government confirms that the Objectives of the underlying zone and the Purpose of any other Special Control Area applicable to the land are satisfied.</i>
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The provisions of this clause prevail where a conflict arises with any other provision of this Scheme that requires development approval for development of a class specified in Column 1 of the Table.'

Adopted for final approval by the Shire of Chittering at the Ordinary Meeting of the Council held on the____ day of _____ 2021, and the Common Seal of the Shire of Chittering was hereunto affixed by the authority of a resolution of the Council in the presence of:

CHIEF EXECUTIVE OFFICER

PRESIDENT

Recommended/Submitted for Final Approval delegated under Section 16 of the Planning and Development Act 2005.

DELEGATED UNDER S.16 OF THE PLANNING AND DEVELOPMENT ACT 2005

Date_____

Final Approval Granted

MINISTER FOR PLANNING

Date_____

Environmental Protection Authority

Mr Matthew Gilfellon
Chief Executive Officer
Shire of Chittering
PO Box 70
BINDOON WA 6502

Our Ref: CMS 18089
Enquiries: Angela Coletti, 6364 6430
Email: Angela.Coletti@dwer.wa.gov.au

Dear Mr Gilfellon

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

SCHEME	Shire of Chittering Local Planning Scheme 6 Amendment 73
LOCATION	Water Prone Special Control Area
RESPONSIBLE AUTHORITY	Shire of Chittering
DECISION	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)

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 'Shaun Meredith', with a long horizontal flourish extending to the right.

Shaun Meredith
Delegate of the Environmental Protection Authority
Executive Director
EPA Services

5 November 2021

Encl. Chair's Determination



GOVERNMENT OF
WESTERN AUSTRALIA

S48A Referrals

Environmental Protection Authority

Title: Shire of Chittering Local Planning Scheme 6 Amendment 73

Location: Water prone Special Control Area

Description: Amendment 73 proposes to remove the requirement for development approval for incidental development in the Water Prone Control Area, which will not impact the quality of ground water, and not be affected by flooding. This would include outbuildings, pergolas, patios, garages, carports, decks, verandas, swimming pools, retaining walls, cubby houses, solar panels and demolition of buildings.

Ref ID: CMS18089

Date Received: 14/10/2021 **Date Sufficient Information Received:** 14/10/2021

Responsible Authority: Shire of Chittering

Contact: Jake Whistler Shire of Chittering PO Box 70 Bindoon WA 6502

Preliminary Environmental Factors: None

Potential Significant Effects: None

Management: Not required

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

The EPA has carried out some investigations and inquiries before deciding not to assess this scheme. In deciding not to formally assess schemes, the EPA has determined that no further assessment is required by the EPA.

This Determination is not appealable.

Chair's Initials:

Date: 3 November 2021

SCHEDULE OF SUBMISSIONS – SCHEME AMENDMENT 73

AGENCY SUBMISSIONS		
Submitter	Comment	Shire Officer Response
Department of Defence	Defence have no comment to make with regard to Scheme Amendment No. 73	Noted.
Civil Aviation Safety Authority	<p>CASA has reviewed the information provided and did not find any aviation related references.</p> <p>CASA is not aware of any regulated or certified civil aerodromes for which there would be an obstacle limitation surface that would require protection in the vicinity of the proposed Shire's Water Prone SCA. CASA is also not aware of any unregulated aerodrome such as an aeroplane landing area (ALA) within 2.5km of the SCA. Enquiries regarding whether an ALA is in close proximity to the development site should be directed to the local council. Should there be an unregulated aerodrome within 2.5km of the SCA, Civil Aviation Advisory Publication (https://www.casa.gov.au/download/guidelines-aeroplane-landing-area) provides recommendations for enabling the safe take-off and landing of aircraft.</p> <p>CASA identified Gingin Airfield immediately north of the SCA. As a military aerodrome, CASA recommends that you consider the RAAF Base Pearce - Air Base Command Post a stakeholder in this development</p>	Noted.
Department of Water & Environmental Regulation	The Department of Water and Environmental Regulation has considered the proposal and has no objections and no comments to provide.	Noted.
Department of Health (initial submission)	<p>For the above proposal, the DOH's Water Unit have serious concerns about future development proposals that appear to be located on a Public Drinking Water Source Area (PDWSA) - primarily the Gnangara Underground Water Pollution Control Area. In addition, there are onsite wastewater management issues that need to be included that relate to the PDWSA and this area is also classified as a sewerage sensitive area (SSA) as per Government Sewerage Policy.</p> <p>Therefore, with the above in mind the DOH does not support this Scheme Amendment proposal.</p>	Shire officer provided clarification to the Department of Health on the statutory effect of Scheme amendment 73 and that it does not exempt approval of dwellings or other habitable buildings that require a waste water disposal system. Furthermore, the Shire has a Policy that ensures a secondary treatment system only will be approved in areas defined as Sewerage Sensitive under the Government Sewerage Policy.
Department of Health (revised submission)	The DoH would like to withdraw its objection to the proposal based on further information and advice and therefore supports the proposal providing, where applicable, such as for sheds and swimming pools, all onsite wastewater treatment systems and disposal areas within Scheme Amendment No. 73 comply with the Government Sewage Policy requirements.	All waste water disposal applications are assessed by the Shire's Environmental Health Department (independent of the Development Application process) and must conform to the provisions of Council Policy on Sewerage Sensitive Areas and the Government Sewerage Policy.
Department of Primary Industries & Regional Development	DPIRD does not object to the proposed amendment 73 which will exempt a series of minor developments from the requirement for development approval within the Water Prone – Special Control Area.	Noted.
Department of Biodiversity, Conservation And Attractions	The Department of Biodiversity Conservation and Attractions - Swan Region Office has no comments on the scheme amendment	Noted.

*Note: Comments are as per original submission received by the Shire.