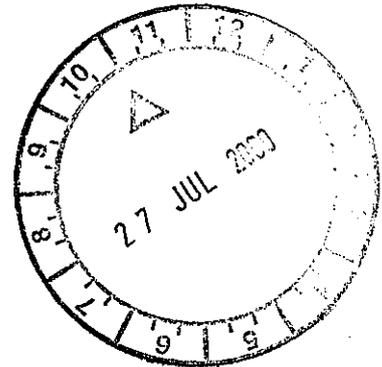




**Minister for Planning; Culture & the Arts  
Government of Western Australia**

Our ref: 33-03387



Hon Brian Ellis MLC  
Chair  
Standing Committee on Environment and Public Affairs  
Parliament House  
PERTH WA 6000

Dear Mr Ellis

**LEGISLATIVE COUNCIL PETITION NO.30 – SHIRE OF COLLIE LOCAL PLANNING SCHEME NO.5 (LPS 5) AND ASSOCIATED LOCAL PLANNING STRATEGY**

Thank you for your letter of 24 June 2009 regarding the above matter. I provide the following response to the issues raised in the petition and the associated submission by the principal petitioner.

On 21 May 2009, I granted final approval to the Shire's LPS 5 and associated Local Planning Strategy (Strategy) subject to modifications being undertaken. This decision was made following a comprehensive briefing on these planning instruments and a comprehensive consideration of LPS 5 and the Strategy by the Shire of Collie and the Western Australian Planning Commission (WAPC). The Shire is currently in the process of undertaking the required modifications, which I have attached for your information and have referred to throughout the following comments.

The preparation and consideration of the LPS 5 and Strategy has followed the planning process prescribed in the *'Planning and Development Act 2005'* and the *'Town Planning Regulations 1967'*. This process has included extensive public consultation and detailed consideration of the planning documents and the submissions received during the advertising period by the Shire, WAPC and myself.

The issues raised in the petition and associated submission are reflected in the Rural Action Group's (RAG) formal submission on LPS 5 and Strategy, which was given detailed and comprehensive consideration through the assessment process. I am satisfied that RAG's submission and the issues they have raised have been comprehensively considered and appropriately responded to by both the Shire and WAPC and modifications recommended to both LPS 5 and Strategy, where appropriate.

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As has been noted in the principal petitioner's submission, the required LPS 5 and Strategy modifications include:

- Renaming the previously identified 'Rural/Mining' zone to the 'Rural 2' zone;
- Applying the 'Rural 2' zone consistently and appropriately across the Collie Coal Basin, as some land within the Coal Basin was previously omitted; and
- Significant modification to the Zoning Table to ensure consistency of 'rural' uses that can be considered between the 'Rural 1' zone (i.e. rural land outside of the Coal Basin) and 'Rural 2' zone. (See Modifications 2,3 to 6 (pages 1 to 4)

Further, Modification No. 8 requires the referral of development applications within the 'Rural 2' zone to the Department of Minerals and Petroleum (DMP), for their consideration and comment and the possible inclusion of a notification on title advising of potential future mining activities on adjacent land. This modification is appropriate given:

- the consideration of the coal resource and any likely impacts associated with its future extraction on proposed development is a legitimate planning consideration under the *'Planning and Development Act 2005'* and should be given due regard in any development application assessment;
- due regard is already required to be given to the coal resource and its protection via the *'Collie Basin Structure Plan 1992'*, which forms part of the *'State Planning Policy No. 1 - State Planning Framework Policy'*; and
- the Shire has the ability, under broad referral and approval clauses in its current scheme, to consult with DMP and require notifications if considered appropriate. The LPS 5 simply establishes a clear and consistent process for the consideration of the coal resource.

The Strategy and LPS 5 will be further modified by the introduction of specific provisions that clearly indicate that the Shire's proposed planning instruments do not override the Mines Act, applicable State Agreements or have any control over mining activities (See Modification No. 8 (Clause 5.9.6 e) and 9). Also, the 'Industry-Mining' use has been removed from the LPS 5, as 'Mining' does not require the approval of the Shire (See Modification No. 7). Given the above, suggestions that the LPS 5 and Strategy include provisions which constrain or provide for 'mining operations' can not be supported.

The previously mentioned modifications (in particular, consistency of land uses in the 'Rural 1' and 'Rural 2' zones) and the fact that planning decision makers already need to give due regard to the coal resource, confirms that landowners within the 'Rural 2' will not be prejudiced against when it comes to future land use and development opportunities. Given the above, claims that LPS 5 adversely impacts property values or diminishes development opportunities are not supported.

The 'Planning and Development Act 2005' under Section 174 (copy attached) already establishes an appropriate and well established compensation mechanism where land is considered to be 'injuriously affected' by a new scheme. The Act clearly indicates that land is only 'injuriously affected' where a scheme reserves land, where development is restricted for no purpose other than a public purpose or a scheme prohibits continuance of a non-conforming use. These circumstances do not apply to the 'Rural 2' zone and therefore there is no need to consider compensation as landowners have continuing development opportunities. Also, there is no justifiable need to establish an alternative compensation mechanism given the above comments in regard to impacts on property values.

LPS 5 appropriately zones land 'Rural Residential' which is used for 'rural lifestyle' purposes as characterised by its current land use and lot size. In order to address concerns raised during the public consultation period, the Zoning Table is to be modified to facilitate, in the 'Rural Residential' zone, the consideration of a wide variety of rural/'hobby farming' pursuits and low key tourist accommodation uses (See Modification 2). Notwithstanding the changes to the Zoning Table, non-conforming use rights will protect any existing uses not adequately covered by the modifications to the Zoning Table. Introduction of a 'Rural Smallholdings' zone was therefore considered unnecessary and overly prescriptive. The retention of a 'Rural' zoning was also considered inappropriate given that this would allow the consideration of inappropriate land uses, such as, 'Rural Industry,' Extractive Industry' and 'Saw Mill', which could result in significant impacts on the amenity of residents in these 'rural lifestyle' areas.

The 'Shotts Industrial Estate' and associated 'Perdaman's Urea Plant' have not been specifically zoned in LPS 5. This is appropriate given the proposals will need to be considered through a site specific local planning scheme amendment, which would introduce an appropriate zone, structure plan and associated land use and development controls. The amendment will be subject to the State's comprehensive planning and environmental assessment processes and the associated extensive public consultation requirements. In fact, it would have been inappropriate to rezone the site in LPS 5 as this would have significantly diminished the environmental assessment of the proposal and limited further public comment.

I trust the above demonstrates that detailed consideration has been given to both the LPS 5 and Strategy and the issues raised in the petition. I would be pleased to provide any further comment on this matter, if required.

Yours sincerely



**JOHN DAY  
MINISTER FOR PLANNING;  
CULTURE AND THE ARTS**

Atts

22 JUL 2009

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**Planning and Development Act 2005**

**Part 11** Compensation and acquisition

**Division 2** Compensation where land injuriously affected by planning scheme

**s. 173**

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**173. Entitlement to compensation where land injuriously affected by planning scheme**

- (1) Subject to this Part any person whose land is injuriously affected by the making or amendment of a planning scheme is entitled to obtain compensation in respect of the injurious affection from the responsible authority.
- (2) Despite subsection (1) a person is not entitled to obtain compensation under this section on account of any building erected, or any contract made, or other thing done with respect to land included in a planning scheme after the date of the approval of a planning scheme or amendment, or after such other date as the Minister may fix for the purpose, being not earlier than the date of the approval of the scheme or amendment.
- (3) A responsible authority may make agreements with owners for the development of their land during the time that the planning scheme or amendment is being prepared.

**174. When land is injuriously affected**

- (1) Subject to subsection (2), land is injuriously affected by reason of the making or amendment of a planning scheme if, and only if—
  - (a) that land is reserved (whether before or after the coming into operation of this section) under the planning scheme for a public purpose;
  - (b) the scheme permits development on that land for no purpose other than a public purpose; or
  - (c) the scheme prohibits wholly or partially—
    - (i) the continuance of any non-conforming use of that land; or
    - (ii) the erection, alteration or extension on the land of any building in connection with or in furtherance of, any non-conforming use of the land, which, but for that prohibition, would not

have been an unlawful erection, alteration or extension under the laws of the State or the local laws of the local government within whose district the land is situated.

- (2) Despite subsection (1)(c)(ii), a planning scheme which prescribes any requirement to be complied with in respect of a class or kind of building is not to be taken to have the effect of so prohibiting the erection, alteration or extension of a building of that class or kind in connection with, or in furtherance of that class or kind in connection with, or in furtherance of, non-conforming use.
- (3) Where a planning scheme wholly or partially prohibits the continuance of any non-conforming use of any land or the erection, alteration or extension of any building in connection with or in furtherance of a non-conforming use of any land, no compensation for injurious affection is payable in respect of any part of the land which immediately prior to the coming into operation of the scheme or amendment does not comprise —
  - (a) the lot or lots on which the non-conforming use is in fact being carried on;
  - (b) if the prohibition relates to a building or buildings standing on one lot, the lot on which the building stands or the buildings stand; or
  - (c) if the prohibition relates to a building or buildings standing on more than one lot, the land on which the building stands or the buildings stand and such land, which is adjacent to the building or buildings, and not being used for any other purpose authorised by the scheme, as is reasonably required for the purpose for which the building or buildings is or are being used.
- (4) If any question arises under subsection (3) as to whether at any particular date, any land —
  - (a) does or does not comprise the lot or lots on which a non-conforming use is being carried on;

**Planning and Development Act 2005**

**Part 11** Compensation and acquisition

**Division 2** Compensation where land injuriously affected by planning scheme

**s. 175**

- (b) is or is not being used for any purpose authorised by a scheme; or
- (c) is or is not reasonably required for the purpose for which any building is being used,

the claimant or responsible authority may apply to the State Administrative Tribunal for determination of that question.

**175. No entitlement to compensation where provisions are, or could have been, in certain other laws**

When land is alleged to be injuriously affected by reason of the making or amendment of a planning scheme, no compensation is payable in respect of the injurious affection if or so far as the relevant provisions of the planning scheme are —

- (a) also contained in any Act, or in any order having the force of an Act of Parliament, in operation in the area; or
- (b) such as would have been enforceable without compensation if they had been contained in local laws.

**176. How questions determined**

- (1) A claimant or responsible authority may apply to the State Administrative Tribunal for determination of any question as to whether land is injuriously affected.
- (2) Any question as to the amount and manner of payment (whether by instalments or otherwise) of the sum which is to be paid as compensation under this Division is to be determined by arbitration under and in accordance with the *Commercial Arbitration Act 1985*, unless the parties agree on some other method of determination.

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