

Advice on aspects of *Bush Forever*

**Advice to the Minister for the Environment from the
Environmental Protection Authority under Section 16(e) of the
Environmental Protection Act 1986.**

**This is not an assessment of the Environmental Protection
Authority under Part IV of the Environmental Protection Act 1986.**

**Environmental Protection Authority
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1. Introduction

The Minister for the Environment has requested the EPA to provide advice on:

- 1) The value of *Bush Forever*,
- 2) The process for involvement of the Department of Environmental Protection in reaching agreement on the Sites identified in Table 3 of *Bush Forever* for implementation through Urban/Urban Deferred/Industrial Negotiated Planning Solutions; and
- 3) The EPA's role pursuant to the Environmental Protection Act 1986 in relation to possible referrals of Sites.

2. Advice issued under Section 16(e)

This advice is provided under Section 16(e) of the Environmental Protection Act 1986 (the Act). Section 16(e) of the Act states that one of the functions of the EPA is "to advise the Minister on environmental matters generally and on any matter which he may refer to it for advice, including the environmental protection aspects of any proposal or scheme, and on the evaluation of information relating thereto;"

This report does not constitute a report under Part IV of the Environmental Protection Act 1986.

3. Advice on the value of *Bush Forever*

The EPA strongly endorses *Bush Forever* as a sound approach for providing formal recognition of the value of Perth's biodiversity and a commitment to a comprehensive plan for its conservation. There is an opportunity in Perth, unlike many other capital cities in the world, to conserve and maintain examples of much of the city's rich natural biological heritage. *Bush Forever* is a key government initiative of long-term significance in achieving this objective. *Bush Forever* provides a framework for environmental planning for Perth that goes beyond biodiversity conservation, linking the landscape, cultural, community and educational values that help define the character and identity of this city.

The EPA recognised that negotiated planning solutions would be required in relation to some of the Bushplan Sites identified in draft Perth's Bushplan, particularly areas that are subject to existing zoning or development approvals. These environments were generally recognised in the draft Perth's Bushplan report as constrained sites to be protected through Urban/Urban Deferred/Industrial Negotiated Planning Solutions that involve a compromise between conservation and development. While these generally included the most contentious of Bushplan Sites they represented only a very small proportion of the overall area identified for conservation in draft Perth's Bushplan. In *Bush Forever* there are 17 Sites in this category.

4. Involvement of the Department of Environmental Protection in the process

Officers of the Department of Environmental Protection contributed professional advice on the characteristics and conservation values of *Bush Forever* Sites and were involved in discussions and negotiations which contributed to the Urban/Urban Deferred/Industrial Negotiated Planning Solutions through a process administered and coordinated by the Ministry for Planning. The EPA looked to the officers of the Department to ensure a satisfactory outcome in relation to the achievement of a reasonable outcome through the Negotiated Planning Solution process. Where Sites are

identified as agreed outcomes in *Bush Forever*, it means that they have been agreed at government agency level. Most of these Negotiated Planning Solution outcomes have not been considered individually by the EPA.

5. The EPA's role in relation to possible referrals of Sites

The EPA has set out a position, stated in the Minutes of its meeting of 26 August 1999, (Attachment 1), that its preferred position is that *Bush Forever* be implemented in accordance with the published draft Perth's Bushplan. It recognised that there would be some negotiated outcomes resulting from discussions at government agency level. The EPA did not want to be involved in the negotiations, but it expected the officers responsible for the implementation of *Bush Forever* to use their best endeavours to ensure a satisfactory outcome in relation to the protection of *Bush Forever* Sites.

Sites in the Urban/Urban Deferred/Industrial Negotiated Planning Solution category

With respect to *Bush Forever*, for Urban/Urban Deferred/Industrial Negotiated Planning Solutions that result in loss of bushland the EPA would expect a reasonable outcome through the negotiated planning solution process administered by Ministry for Planning. In this context the EPA considers that "reasonable outcome" is where the core (highest conservation value) area/s and threatened ecological communities are protected. Recognising the constraints applying to these Sites, the objective should be to protect as much bushland as possible. However, Negotiated Planning Solutions agreed at the government agency level do not preclude the possibility of referrals pursuant to the Act.

Referrals to the EPA could be under either section 38 or section 48A of the Act.

If a proposal is referred to the EPA pursuant to section 38, the Chairman would have to make a decision whether or not to assess it. This decision has to be made within 28 days and before doing so the Chairman would seek advice from government officers as well as others if necessary. A decision by the Chairman not to assess a proposal is appealable to the Minister for the Environment.

If a referral is made in relation to a planning scheme amendment, pursuant to section 48A, the same process for considerations as set out for section 38 referrals would be followed. There are no appeal rights in section 48A in relation to the decision whether or not to assess a Planning Scheme amendment.

Most proposals for developments on *Bush Forever* Sites identified for protection through an Urban /Urban Deferred /Industrial Negotiated Planning Solution will require approval through a public planning process.

The EPA in discharging its responsibilities under the Act is required to consider proposals on their merits. The EPA would, however, expect that the officers would have made sound judgements and this would be an important factor in the EPA's consideration of a referral. The EPA would also take into account the regional context for individual Sites in arriving at its decision on a referral. (It is also possible that there may be other environmental issues unrelated to *Bush Forever* that warrant referral and consideration by the EPA.)

The EPA is unlikely to assess either a proposal or a scheme amendment referred to it if the Negotiated Planning Solution achieves a reasonable outcome expected through *Bush Forever*.

***Bush Forever* Sites subject to future negotiation**

The EPA expects that the measures used to implement each *Bush Forever* Site, whether it be through reservation, conservation on private land, or a Negotiated Planning Solution would achieve reasonable outcomes.

The EPA intends to release a Guidance Statement for the consideration of proposals affecting bushland in the System 6 and southern Swan Coastal Plain region. This Guidance Statement will be consistent with the principles adopted in this advice and will extend these principles to apply to *Bush Forever* Sites proposed to be protected through future Negotiated Planning Solutions and complementary mechanisms, as well as addressing reasonable outcomes for these categories.

For *Bush Forever* Sites that may come forward which would either benefit from or require EPA consideration, the attached flow chart (Attachment 2) demonstrates the preferred way to proceed from the EPA's viewpoint.

6. Summary of advice

- a) The EPA strongly endorses *Bush Forever* as a sound approach to conserving and maintaining examples of much of the city's rich natural biological heritage.
- b) The EPA recognises that Negotiated Planning Solutions would be required in relation to some Sites, particularly areas subject to existing zoning and or development approvals.
- c) Referral of proposals or scheme amendments to the EPA may come through a number of avenues. The EPA is unlikely to assess these if a Negotiated Planning Solution achieves a reasonable conservation outcome.

Attachment 1

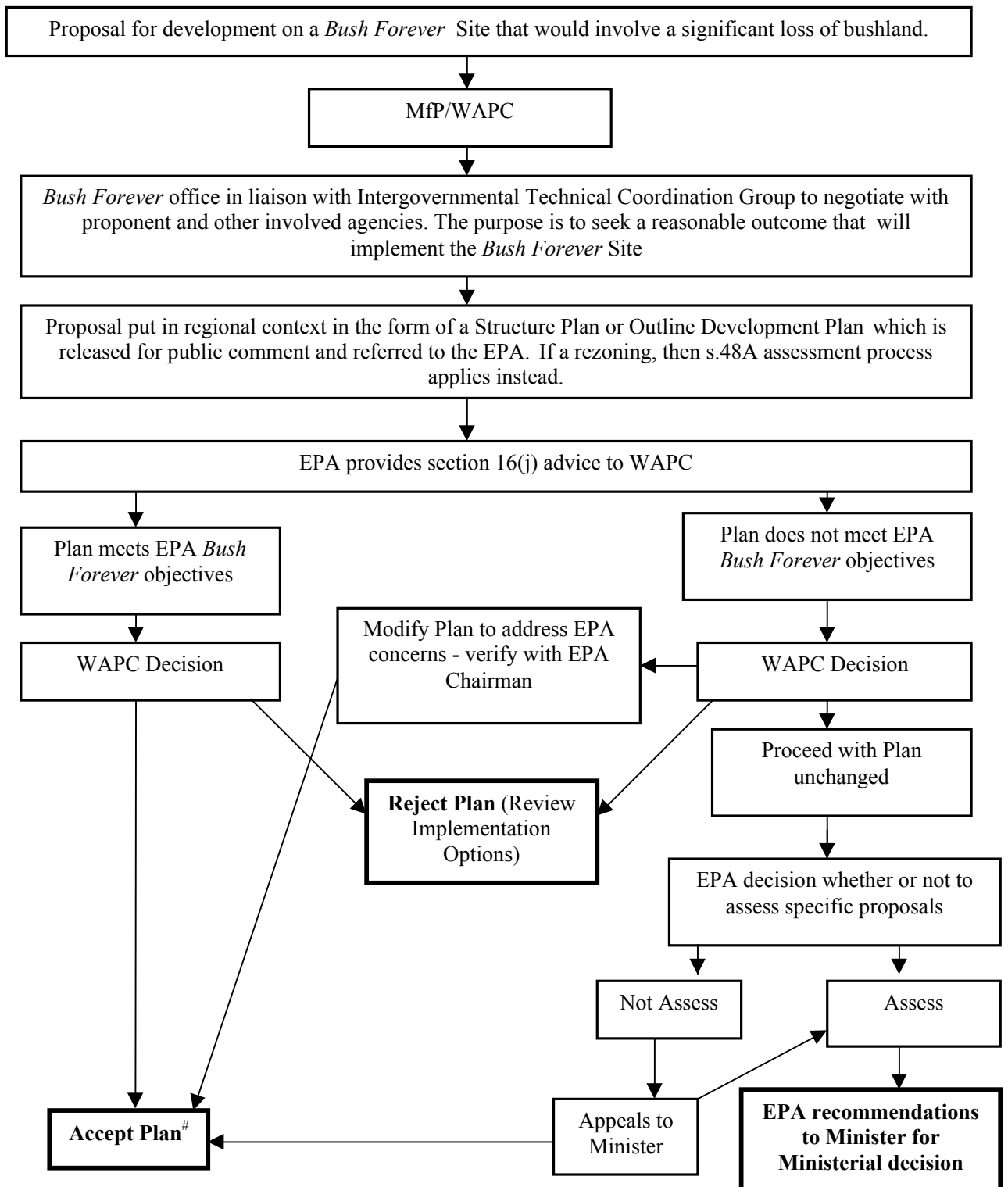
EPA's Position (26 August 1999) on the implementation of Bush Forever

After discussion on the EPA's involvement in Bushplan (now Bush Forever) implementation, the EPA resolved to adopt the recommendations as set out below:

1. The *Environmental Protection Act 1986* provides for a referral to the EPA of any environmentally significant proposal.
2. The EPA has signed off on the draft Bushplan as a way forward for the Government to preserve regionally significant native vegetation within the Swan Coastal Plain area of the Perth Metropolitan Region. Accordingly, the EPA's preferred position is that Bushplan (now Bush Forever) be implemented in accordance with the published draft Bushplan.
3. The Government officers responsible for the implementation of Bushplan (now Bush Forever) will presumably have a preferred position of maximising the protection of regionally significant native vegetation. However, the EPA recognises that to achieve this there will be negotiated outcomes resulting from discussions between the Government officers responsible for the implementation of Bushplan (now Bush Forever) and the owners of Bushplan (now Bush Forever) Sites. The basis upon which that negotiation takes place is outside the role of the EPA, and the EPA would not want to be involved in the negotiations. The EPA would expect the Government officers responsible for the implementation of Bushplan (now Bush Forever) and the WAPC to use their best endeavours to ensure a satisfactory outcome in relation to the preservation of the Bushplan (now Bush Forever) Sites.
4. Referrals to the EPA may come through a number of avenues. For some referrals, a Bushplan (now Bush Forever) Site may be the only relevant factor but for others it may be one of a number of relevant factors. In considering the relevant factor of Bushplan (now Bush Forever) Site, the EPA would want to take advantage of the expertise of Government officers responsible for implementation of Bushplan (now Bush Forever). Accordingly, it would seek advice from these Government officers as well as from other experts.
5. If there is a referral of a Bushplan (now Bush Forever) Site to the EPA from the MfP, it would need to be accompanied by a full array of documentation of the matters considered and positions reached in attempting to arrive at a satisfactory outcome in relation to the preservation of the Bushplan (now Bush Forever) Site being considered. Referrals would indicate that a satisfactory outcome had not been achieved; and the EPA would be likely to recommend to the Minister for the Environment that the *Environmental Protection Act 1986* be used to achieve the outcome set out in Bushplan (now Bush Forever).

Attachment 2

Process for the EPA's Consideration of Development Proposals involving significant impacts on bushland on *Bush Forever* Sites



EPA would not normally assess subsequent proposals (even if referred by a third party) assuming consistency with Structure Plan/Outline Development Plan