

**City of Albany Town Planning Scheme No. 3  
Amendment 247 – Nullaki Peninsula**

---

**City of Albany**

**Statement of reasons for Scheme being  
incapable of being made environmentally acceptable  
(No appeal rights)**

---

**Environmental Protection Authority  
Perth, Western Australia  
Bulletin 1227  
August 2006**

Assessment No.1649

HON MINISTER FOR THE ENVIRONMENT; RACING AND GAMING

Our Ref File 938/05  
Enquiries Alice O'Connor (6467 5434)

**SCHEME/AMD TITLE:** City of Albany Town Planning Scheme No. 3 Amendment 247 Amending the Subdivision Guide Plan and Modifying various Provisions associated with Development Exclusion Areas, Caretakers Dwellings, Development Approval and road alignments within Conservation Zone No. 1

**AMENDMENT LOCATION:** Lots 11-14 of Locs 1947 & 2229, Locs 3102, 2065, 1990, 1991, 1992, 1609 and 1828 Eden Road

**LOCALITY:** Albany

**RESPONSIBLE AUTHORITY:** City of Albany

**LEVEL OF ASSESSMENT:** Incapable of being made environmentally acceptable (No appeal rights)

The above scheme amendment has been referred to the Environmental Protection Authority (EPA) to decide whether or not the scheme is to be assessed.

I advise that under Section 48A(1)(c) of the *Environmental Protection Act 1986* (EP Act) that the EPA considers that this proposed scheme amendment is by its nature, incapable of being made environmentally acceptable.

The main environmental concerns associated with this proposed amendment, and outlined below, relate to the Conservation Zone, vegetation and fauna, surface and groundwater quality, and visual amenity.

**Conservation Zone (limited development only)**

Amendment 130 to the City of Albany's Town Planning Scheme No 3 (TPS 3) to establish the Conservation Zone for Nullaki Peninsula was gazetted in 1997. At the same time, a number of Special Provisions for the area were introduced into TPS 3.

The current Amendment (No 247) proposes modifications to the existing Special Provision (3.1, second point) which allows six (6) caretakers' residences in the Conservation Zone. The purpose of the modification is to permit construction of such residences on the entire 61 lots. However, the existing provisions do not preclude the construction of caretakers' wings attached to the principal dwelling. Therefore there is no justification for the proposed intensification of development, which does not reflect the Scheme's objective for the Conservation Zone Area No. 1, namely to:

“protect, enhance and rehabilitate the flora, fauna and landscape qualities ...; ...and provide for **limited ... subdivision and development** in a manner that is compatible with the conservation values of the Peninsula”.

### **Vegetation and Fauna**

The Conservation Zone objective to:

“**protect, enhance and rehabilitate the flora, fauna and landscape qualities ...;** ...and provide for limited ... subdivision and development in a manner that is compatible with the conservation values of the Peninsula”

is not met with respect to vegetation or fauna habitat.

The modifications to the Scheme's Special Provision 3.1 for Area 1 (Nullaki) would allow the proposed 61 caretakers' residences to be located at a distance of up to 300 metres from the main residence, and even further distant in 'exceptional' circumstances, rather than attached to, or in close proximity of, the principal dwelling. The potential consequence of separating the residences would be an increase in land clearing for the construction of additional dwellings, access roads, fencing and provision of all utilities, as well as for substantial fire protection.

With respect to fire protection, development will need to comply with *Planning for Bush Fire Protection Policy* (Fire and Emergency Service Authority (FESA) and Western Australian Planning Commission (WAPC), December 2001) and *Fire Planning Policy DC3.7* (WAPC, October 2001). Development sites on the Nullaki Peninsula are likely to be categorised as “High Fire Hazard Area” at the very minimum, but most likely as “Extreme Fire Hazard Area”. In addition to the standard “Building Protection Zone”, or low fuel zone around each dwelling (20 metres on flat land to 40 metres on slopes) a “Hazard Separation Zone” will also be required. The minimum requirement for this latter zone is 100 metres (on flat land), increasing where lots are on sloping land – as is the case on the Nullaki Peninsula.

It should be noted that the general practice of repeated slashing in “Hazard Separation Zones” causes substantial permanent damage to the vegetation, destroying its ability to grow and retain its form, function and biodiversity values. It constitutes clearing under the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*.

In addition to further fragmenting the vegetation and fauna habitat, the extra development nodes could facilitate the spread of *Phytophthora* (Dieback), and increase invasion by weed species. The danger of the spread of *Phytophthora* has

increased substantially since the original subdivision approval. *Phytophthora* has major impacts on vegetation (particularly proteaceous species), and on fauna, as a result of the subsequent habitat changes.

The potential extent of clearing and fragmentation of locally significant vegetation and fauna habitat for all the purposes associated with increased development which would be permitted by this Amendment, together with the related risk for the spread of *Phytophthora* and weed species is not consistent with the Conservation Zone objective, and is considered unacceptable.

### **Surface and Groundwater Quality**

Any increase in residential development will potentially increase the quantity of pollutants, such as effluent, fertilisers and other chemical residues. Although it is likely that the environmental impacts can be adequately managed, without appropriate management there is potential that they would impact adversely upon the quality of both surface and groundwater, and in turn upon the adjacent Wilson Inlet.

### **Visual amenity**

The intent of the existing Development Exclusion Area (DEA) within the Conservation Zone is to protect visual amenity and view-sheds from significant public vantage points in the vicinity of Ocean Beach. The DEA was identified on the basis of a detailed landscape assessment of the Peninsula, carried out by the Department for Planning and Infrastructure, which states that no buildings, roads or other development on the peninsula should be visible from these vantage points.

The DEA provision partially supports the objective and intent of the Conservation Zone to:

**“protect, enhance and rehabilitate the flora, fauna and landscape qualities ...; ...and provide for limited ... subdivision and development in a manner that is compatible with the conservation values of the Peninsula”.**

The Amendment documentation states that one of the Amendment’s purposes is to implement clarification and direction provided by a determination of the former Town Planning Appeals Tribunal (Appeal No 171 of 2002 [2004] WATPAT 109) which allowed for development within the DEA. The Tribunal treated the DEA as “a matter of control rather than exclusion or absolute prohibition” (p.13). The implications of the determination are that the DEA terminology should be re-worded such that the intent of the DEA (that is, to exclude development from the area identified) is made explicit. Amendment 247 would however delete reference to the DEA altogether and replace it with ambiguous provisions requiring that development would “not dominate a land based view” from a range of specified public vantage points. This would be a negative step as it would delete reference to a DEA which is based on a scientific visibility analysis designed to protect important view-sheds, and add to rather than reduce the ambiguity of the Scheme provisions.

Any diminution of the provisions which protect view-sheds from the encroachment of development would be a retrograde step for the landscape, and therefore contrary to the Zone objective. The DEA, together with the coastal and inlet foreshore reserves, protect an unstable and fragile coastal foreshore, in addition to maintaining visual amenity.

The EPA recommends that if more detailed DEA provisions are introduced in the future (to adequately protect the area's landscape attributes) they should stipulate that development is "not visible from" the Bibbulmun Track, Anvil Beach and its associated lookout, public roads and any other public vantage areas.

The EP Act sets out in Section 48A(2) that where the EPA makes a decision in accordance with S48A(1)(C), you as the Minister may either:

- (a) direct the EPA to assess the relevant scheme amendment; or
- (b) advise the EPA and the City of Albany that a statement cannot be delivered and published under Section 48F(2).

Should you accept the EPA's decision that the Amendment is incapable of being made environmentally acceptable, attached is a recommended letter to the Minister for Planning and Infrastructure seeking agreement that a statement cannot be delivered and published under Section 48F(2).



**Walter Cox**  
CHAIRMAN

23 August 2006

TOWN PLANNING AND DEVELOPMENT ACT 1928 (AS AMENDED)

RESOLUTION DECIDING TO AMEND A  
TOWN PLANNING SCHEME

CITY OF ALBANY

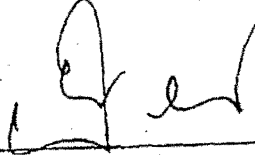
TOWN PLANNING SCHEME No. 3  
DISTRICT SCHEME AMENDMENT No 247

**Resolution:**

That Council, in pursuance of Section 7 of the Town Planning & Development Act 1928 (as amended) resolves to amend the above Town Planning Scheme by:

*Amending the Subdivision Guide Plan and various Provisions associated with Development Exclusion Areas, Caretakers Dwellings, Development Approval and road alignments.*

Dated this 19 day of JULY 2005

  
\_\_\_\_\_  
CHIEF EXECUTIVE OFFICER

CITY OF ALBANY

E No. 3

The Albany City Council under and by virtue of the powers conferred upon it in that behalf by the Town Planning and Development Act 1928, (as amended), hereby amends the above Town Planning Scheme by:

- i) Replacing Provision 3.1 point 2 with the following:  
Caretakers Accommodation (max. permissible floor area of 150m<sup>2</sup>):- Located subject to application for and the granting of Planning Scheme Consent. Caretakers accommodation shall:
  - a. be located no more than 300m from the principal dwelling; and
  - b. be located in a situation adjacent to the driveway between the principal dwelling and the public road access so as to provide strategic surveillance of access to/from the lot as well as visual surveillance of the principal dwelling;
  - c. Notwithstanding clauses a. & b. above, in the case where a lot is bisected by a public roadway, Council may approve caretakers accommodation not located within 300m of the primary dwelling and not located adjacent to the driveway serving the primary dwelling on the basis that it is demonstrated that the caretakers accommodation can provide and maintain visual surveillance over the principal residence. In the instance where caretakers accommodation is located between Nullaki Drive and the Wilson Inlet Foreshore Reserve, any such caretakers accommodation shall be located and designed such that it is not visible from a foreshore node or the Bibulmun Track.
  
- ii) Replacing Provision 3.3 with the following:  
3.3 No development within Conservation Zone Area No. 1, including the siting of Development Areas, may proceed without the Special Approval of Council.
  
- iii) Replacing Provision 4.1 with the following:  
4.1 The Development Area refers to the area within which all development on each lot (including sheds and water storage) must be confined and is not to exceed 1.0 hectare on lots where caretakers accommodation is not approved or 1.5 hectares where caretakers accommodation is approved subject to Provision 3.1.
  
- iv) Replacing provision 4.2 with the following:  
4.2 The Development Area may be split to allow the separate development primary and caretakers accommodation.
  
- v) Replacing provision 4.4 with the following:  
4.4 Prior to the issue of development approval, Council shall require landowners to submit a comprehensive professional assessment of the selected Development Area and proposed access way/driveway to determine the presence of rare, endangered and/or threatened flora or fauna species as well as an archaeological assessment for the presence of potential aboriginal sites. Should such species or sites be identified, Council shall require the selection of an alternative Development Area or the modification of the Development Area so as to protect said sites or rare, endangered and/or threatened species.



Replacing provision 4.5 with the following provisions:

- 4.5 The location of Development Areas shall be subject to application for and the granting of Planning Scheme Consent. Development area applications may be accompanied by building guidelines and/or building applications.

Applications for the approval of Development Areas shall be accompanied by a photographic assessment demonstrating that the proposed development area and the buildings proposed thereon, will not dominate a land based view noted below but rather will blend in with the visual landscape in terms of height and rooflines, colouring/toning and form and scale when viewed from Anvil Beach, the Anvil Beach Lookout, a public roadway, a foreshore node or the foreshore, the coastal walk trail and/or the Ocean Beach Lookout.

Council may request the photographic assessment include photographs covering the views to the proposed development area from surrounding roads and other public use nodes/areas within and adjoining the zone and include the identification, by the positioning of posts, markers and/or scaffolds on or above ground, the proposed height and extent of buildings, structures and site works proposed within the development area.

In the case of Lots 1, 3, 5, 11 & 16, as shown on the SGP, this assessment shall also be accompanied building floor plans and finished floor levels and by a plan or plans of the proposed Development Area showing contours to not less than 0.5m intervals, the extent of cut and fill proposed as well as the overall horizontal and vertical extents of the buildings proposed. Measures proposed for environmental shelter and/or visual screening may also be identified.

- 4.7 In the instance of Lots 2, 4, 6, 7, 8, 9 & 10, where Development Areas are proposed between the Foreshore Reserve and Nullaki Drive, development shall be designed and/or located such that it is not visible from a foreshore node or the Bibbulmun Track.

- 4.8 With the aim of ensuring buildings visible from the areas noted in 4.6 above, do not dominate the visual landscape, Council may apply conditions to the approval of a Development Area that limits or controls building height, colouring and materials and site works and/or requires landscaping for visual screening purposes. Notwithstanding the minimum setback specified in Clause 6.3, Council may request a greater setback where in its opinion, a dwelling would dominate the view from Anvil Beach, or other local vantage.

- 4.9 Development Areas shall avoid sand blowouts and other areas potentially subject to erosion unless satisfactory management measures are proposed.

vii) Replacing Provision 6.2 with the following:

- 6.2 The minimum boundary setback for all buildings and structures shall be 20m.

viii) Replacing Provision 7.4 with the following:

- 7.4 The use of reflective materials and finishes such as zincalume shall not be permitted. Council shall require the use of tonings that blend into the landscape, vegetation and/or the structure's backdrop. Council shall prefer the use of natural materials such as stone, rammed earth and/or timber (where such timber can meet the requirements of AS 3959) and advocate green to brown tonings/natural hues.

ix) Replacing Provision 11.3 with the following:

- 11.3 Building protection zones in accordance with the Planning for Bushfire protection report are to be provided around dwellings and shall be maintained in a low fuel condition by individual landowners.

x) Inserting a new Provision 11.4 as follows and renumbering existing provisions accordingly:

- 11.4 Where any Development Area is proposed in an area identified as Karri forest on the Subdivision Guide Plan, Council may require the preparation and implementation of a Bush Fire Management Plan as a condition of development approval.

Adding the following to Provision 11.7:

11.7 Applications for the approval of a development shall be accompanied by a sprinkler system plan, which provides details on water supply, sprinkler coverage, materials to be used and the type of generator to be used which shall be independent of the mains power supply.

xii) Inserting a new Provision 11.13 as follows:

11.13 Prior to Council approving a Development Area, or residential dwelling on a proposed lot, a fire audit is to be submitted detailing the following:

- Assessment of the site and whether proposed building envelope will cater for the recommended bushfire protection zone around the proposed dwelling.

- A determination of fire threat classification (either low, medium, high or extreme) in accordance with AS 3959 – Buildings in Bushfire Prone Areas.

xiii) Replacing Provision 17.1 with the following:

17.1 Within Conservation Zone Area No 1. the siting of Development Areas, the construction of buildings including associated site works and removal of vegetation, shall require Planning Scheme Consent.

xiv) Replacing the Subdivision Guide Plan with the Following Plan:

xi)

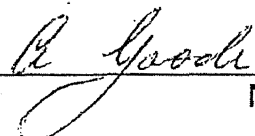
TOWN PLANNING AND DEVELOPMENT ACT 1928 (AS AMENDED)

CITY OF ALBANY

TOWN PLANNING SCHEME No. 3  
AMENDMENT No. 247

Adopted by resolution of the Council of the City of Albany at the meeting of the Council

held on the 19 day of JULY 2005

  
\_\_\_\_\_  
Mayor

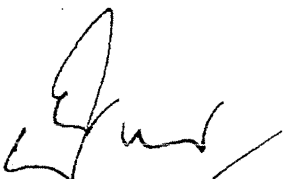
  
\_\_\_\_\_  
Chief Executive Officer



Figure 1

Site Location

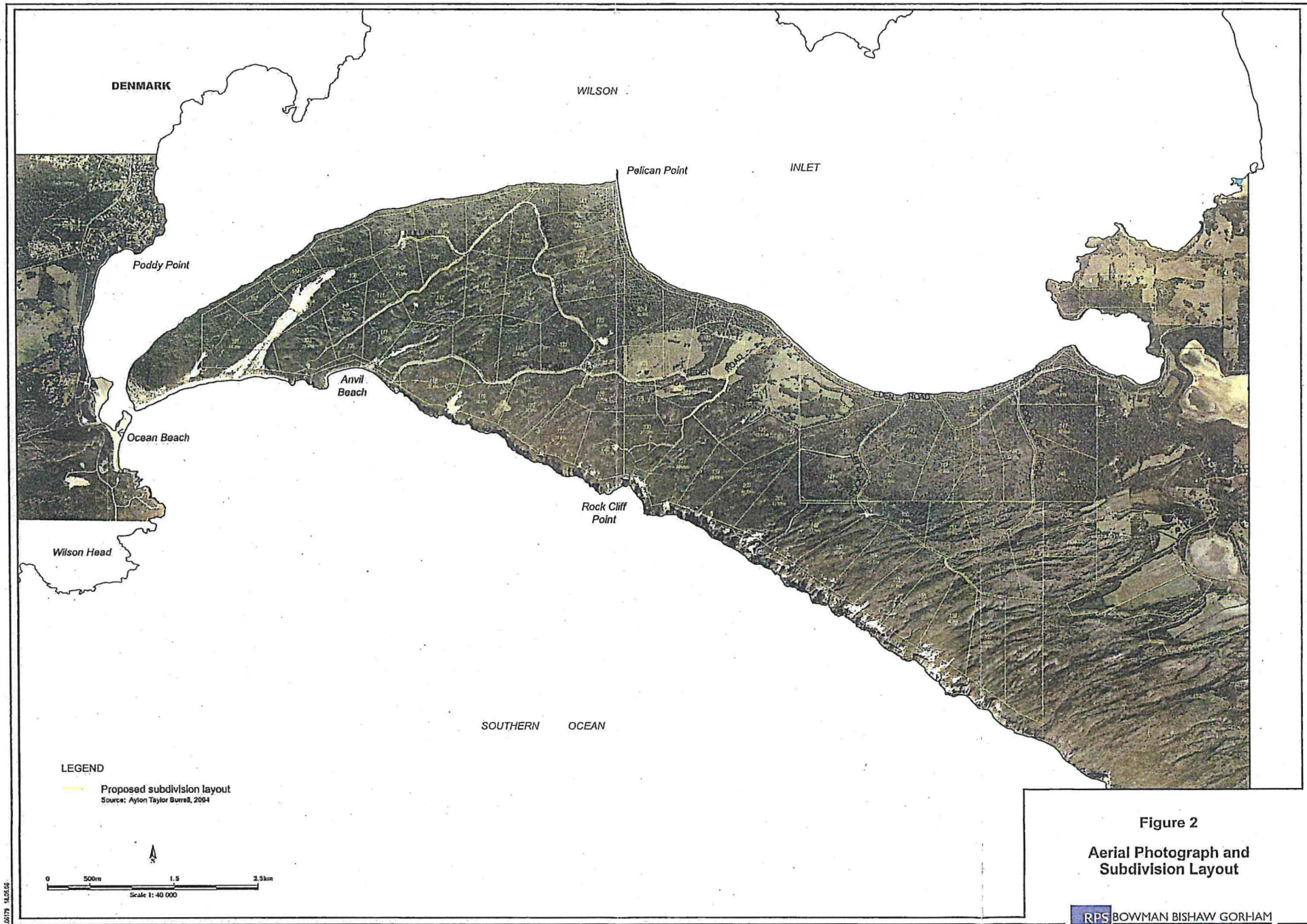


Figure 2  
Aerial Photograph and  
Subdivision Layout

HON MINISTER FOR PLANNING AND INFRASTRUCTURE

**SCHEME/AMD TITLE:** City of Albany Town Planning Scheme No. 3 Amendment 247 Amending the Subdivision Guide Plan and Modifying various Provisions associated with Development Exclusion Areas, Caretakers Dwellings, Development Approval and road alignments within Conservation Zone No. 1

**AMENDMENT LOCATION:** Lots 11-14 of Locs 1947 & 2229, Locs 3102, 2065, 1990, 1991, 1992, 1609 and 1828 Eden Road

**LOCALITY:** Albany

**RESPONSIBLE AUTHORITY:** City of Albany

**LEVEL OF ASSESSMENT:** Incapable of being made environmentally acceptable (No appeal rights)

I have recently been advised by the Environmental Protection Authority (EPA) that the above scheme amendment is, in the view of the EPA, incapable of being made environmentally acceptable (Section 48A(1)(c) of *Environmental Protection Act 1986* (EP Act)).

The main environmental factors associated with this proposed amendment are:

**Conservation Zone (limited development only)**

Amendment 130 to the City of Albany's Town Planning Scheme No 3 (TPS 3) to establish the Conservation Zone for Nullaki Peninsula was gazetted in 1997. At the same time, a number of Special Provisions for the area were introduced into TPS 3.

The current Amendment (No 247) proposes modifications to the existing Special Provision (3.1, second point) which allows six (6) caretakers' residences in the Conservation Zone. The purpose of the modification is to permit construction of

Any diminution of the provisions which protect view-sheds from the encroachment of development would be a retrograde step for the landscape, and therefore contrary to the Zone objective. The DEA, together with the coastal and inlet foreshore reserves, protect an unstable and fragile coastal foreshore, in addition to maintaining visual amenity.

The EPA recommends that if more detailed DEA provisions are introduced in the future (to adequately protect the area's landscape attributes) they should stipulate that development is "not visible from" the Bibbulmun Track, Anvil Beach and its associated lookout, public roads and any other public vantage areas.

I concur with the EPA's decision that the Amendment is incapable of being made environmentally acceptable and seek your acceptance that a statement cannot be delivered and published under Section 48F(2) of EP Act.

**HON. MARK MCGOWAN MLA  
MINISTER FOR THE ENVIRONMENT;  
RACING AND GAMING**