

## Section 83A of the Planning and Development Act 2005

### Abbreviations/Acronyms Used:

- Act – *Planning and Development Act 2005*
- Amendment Act – *Planning and Development Amendment Act 2020*
- Department – Department of Planning, Lands and Heritage
- EPA – Environmental Protection Authority
- EP Act – *Environmental Protection Act 1986*
- Minister – Minister for Planning
- Regulations – *Planning and Development (Local Planning Schemes) Regulations 2015*
- Scheme – Local Planning Scheme
- S83A – Section 83A of the *Planning and Development Act 2005*
- S76 – Section 76 of the of the *Planning and Development Act 2005*
- S211 of the of the *Planning and Development Act 2005*
- WAPC – Western Australian Planning Commission

### 1. Background

The *Planning and Development Amendment Act 2020 (Amendment Act)* received Royal assent in July 2020. Part 6 of the Amendment Act contains changes to the existing process for local planning schemes (**Scheme**) and amendments, amongst other changes. Part 6 includes the new section 83A of the *Planning and Development Act 2005 (Act)* which will commence on 1 August 2023.

The intent of section 83A is to clarify the power of the Minister for Planning and avoid unnecessary advertising of amendments to local planning schemes which may not otherwise receive the Minister's approval. Assessments and decisions made under S83A provide the opportunity to have proposals modified to better align them with the State Planning Framework and Model Provisions early in the process, prior to advertising.

For example, this will provide the ability for schemes and amendments that are inconsistent with the State Planning Framework and Model Provisions in the *Planning and Development (Local Planning Schemes) Regulations 2015 (Regulations)* which would not be able to be approved regardless of the outcomes of consultation, to be modified or stopped at an early point in the process.

This will help improve the understanding of a proposal in this context and minimise the need for re-advertising of proposals following modification. This has benefits in terms of timeframes for finalisation of schemes and amendments and would also reduce workload for State and local governments, and proponents.

## 2. Proposed Changes

Section 83A (**S83A**) states:

**83A. Proposed scheme or amendment to be submitted to Minister for approval to advertise**

- (1) *After preparing, or resolving to adopt, a proposed local planning scheme or a proposed amendment to a local planning scheme, and complying with sections 81 and 82 (if applicable) in relation to the proposed scheme or amendment, a local government must submit the proposed scheme or amendment to the Minister.*
- (2) *The Minister may —*
  - (a) *approve the proposed scheme or amendment for advertising under section 84; or*
  - (b) *require the local government to modify the proposed scheme or amendment in such manner as the Minister specifies and to resubmit the proposed scheme or amendment to the Minister under subsection (1); or*
  - (c) *refuse approval for the proposed scheme or amendment to be advertised under section 8*
- (3) *A requirement under subsection (2)(b) may include a requirement that sections 81 and 82 (if applicable) be complied with again in relation to the modified scheme or amendment.*
- (4) *If approval is refused under subsection (2)(c), the local government cannot proceed with the proposed scheme or amendment.*

S83A will require the Minister for Planning (**Minister**) to decide whether or not a scheme or amendment should be advertised and if so, in what form.

## 3. Process

The Minister's function under S83A follows a Local Government resolution to prepare or adopt a scheme or amendment. The Minister's decision under S38A will typically follow the consideration of a scheme or amendment by the Environmental Protection Authority (**EPA**) and, in the case of new schemes or 'complex' amendments, the Western Australian Planning Commission (**WAPC**) who have the following roles:

- The EPA will decide whether the scheme or amendment requires assessment under the *Environmental Protection Act 1986 (EP Act)*.
- The WAPC is required under the Regulations, to decide whether a scheme or 'complex' amendments should be advertised, and if so, in what form.

This approach will allow for the Minister to consider those decisions in making their decision under S83A.

S83A does not require the Department or the WAPC to provide a recommendation to the Minister in relation to decisions under S83A. However, following adoption and prior to advertising, a scheme and/or amendments requiring a decision under S83A should be sent to

the Department (via [localplanningschemes@dplh.wa.gov.au](mailto:localplanningschemes@dplh.wa.gov.au)) for a recommendation to the Minister. This practice is consistent with the established practices for other decisions made by the Minister, such as those made under S76 and S211 of the Act.

This fact sheet and flowcharts on the DPLH website summarises the process.

## 4. Frequently Asked Questions

### Why is S83A being inserted into the Act?

Assessments and decisions made under S83A provide the opportunity to have proposals modified to better align them with the State Planning Framework and Model Provisions early in the process, prior to advertising.

It will also avoid unnecessary advertising of amendments to local planning schemes that the Minister may not otherwise approve.

For example, this may ensure that a proposal that is inconsistent with the State Planning Framework and Model Provisions, can be stopped at an early point in the process or modified to align, and avoid the need for readvertising.

### How does a local government submit a scheme or amendment for a decision under S83A?

Scheme or amendment documents are to be emailed to [localplanningschemes@dplh.wa.gov.au](mailto:localplanningschemes@dplh.wa.gov.au). Local Government are encouraged to have preliminary discussions with the department prior to initiating or submitting a Scheme or Amendment.

### At what time should a local government submit a scheme or amendment for a decision under S38A?

Following adoption and prior to advertising of the Scheme or amendment.

### How does the timing for the submission of a scheme or amendment under S83A relate to decisions required by the EPA and WAPC prior to the advertising of a scheme or amendment?

The scheme or amendment should be referred to the Department under S83A at the same time as it is referred to EPA and WAPC. The Department will coordinate the referral, assessment and decision made by the Minister under S83A and this will typically follow EPA and WAPC consideration of the scheme or amendment. This approach will allow for the Minister to consider the decisions of the EPA and the WAPC in making their decision under S83A.

### What decisions may be made by the Minister for Planning under S83A?

The Minister may:

- Approve advertising; or
- Require modifications prior to advertising; or
- Refuse advertising.

### What are the considerations for making decisions under S83A?

Assessment of schemes and amendments under S83A is on a case by case basis. However, considerations may include the proposal's consistency with the State Planning Framework and the Model Provisions.

### What are the timeframes for decision making under S83A?

The Act does not prescribe a timeframe for decisions under S83A. However, the Department has put in place procedures to ensure decisions are made in a timely manner. Indicatively,

for Standard amendments, Local Governments should allow 28 business days for this part of the process. In relation to Schemes and Complex amendments decisions in relation to 83A will be made as close as possible to the timeframes provided in the Regulations for WAPC review. In many cases this time is likely to be made up later in the process.

Which Local Planning Schemes and Local Planning Scheme Amendments require a decision under S83A?

S83A applies to all Local Planning Schemes and Local Planning Scheme Amendments.

What if a scheme or amendment has been adopted by Council but not yet advertised on 1 August 2023?

Schemes or amendments prepared or resolved to be prepared from 1 August 2023 are to be submitted to the Department under S83A.

## 5. More Information & Questions

If you require further information, please contact the Schemes team on 6551 8002 or email [localplanningschemes@dplh.wa.gov.au](mailto:localplanningschemes@dplh.wa.gov.au).