



Government of **Western Australia**
Department of **Water and Environmental Regulation**

Environmental Protection Amendment Regulations 2022

Discussion paper – Exposure draft

February 2023



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February 2023

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How to make a submission

Submissions must be received by 5pm (WST) on 13 April 2023.

Submissions can be lodged by email to planningschemeconsultation@dwer.wa.gov.au

We look forward to receiving your submission.

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1 Introduction

Changes to the *Environmental Protection Act 1986* (EP Act) being made by the *Planning and Development Amendment Act 2020* (PD Amendment Act) will enable the making of regulations to streamline scheme assessments.

Currently, all local and regional planning schemes must be referred to the Environmental Protection Authority (EPA) for a determination on whether the scheme should be assessed under Part IV of the EP Act. In many cases new or amended planning schemes will not have any significant impact on the environment. This referral process is time consuming and diverts resources from higher-priority work without benefiting the environment.

Section 56 of the PD Amendment Act will introduce section 48AAA into the EP Act. Once proclaimed, section 48AAA of the EP Act will enable the making of regulations prescribing that certain types of planning schemes that are not required to be assessed by the EPA.

The Department of Water and Environmental Regulation (the department) has prepared the draft regulations to give effect to new section 48AAA of the EP Act and has consulted with the EPA to identify the classes of planning schemes to be included in the regulations.

The department is seeking feedback on the planning schemes that are proposed to be prescribed under regulations.

2 Background

Section 48AAA of the EP Act provides that the Governor may, on the recommendation of the EPA, make regulations prescribing classes of relevant schemes that are not required to be assessed by the EPA. The EPA must not make this recommendation unless it is satisfied that the classes of schemes proposed to be prescribed will not have a significant effect on the environment.

In early 2022 the department collaborated with officers from the Department of Planning, Lands and Heritage; Planning Institute of Australia; Urban Development Instituted of Australia; Western Australian Local Government Association; and Local Government Planners' Association to identify the scope and nature of classes of planning schemes that may be included in the regulations.

The department has worked with the EPA to develop the draft regulations. Following consultation, the department will seek the EPA's recommendation that the regulations can be made on the basis that the classes of schemes to be prescribed will not have a significant effect on the environment.

3 Purpose of amendment regulations

The regulations are designed to streamline the EPA's assessment of new and amendment planning schemes to focus on matters that will have the greatest impacts on the environment. This will facilitate a more efficient decision-making process for proponents.

EXPOSURE draft

4 Explanation of amendment regulations

4.1 Regulation 43A - Terms used

Proposed regulation 43A sets out the terms used in the proposed regulations. The term 'minor amendment' means amendments to correct administrative or minor errors, errors in or relating to a map, plan or diagram, but does not include corrections that would change the classification or zoning of land (region planning scheme) or change the land use category (local planning scheme).

4.2 Regulation 43B - Region planning schemes

Minor amendment - s.43B(a)

This provision prescribes, as a class, a minor amendment to the region planning scheme.

Amendments to reflect approved land use or development approval - s.43B(b)

This prescribed class includes amendments in the region planning scheme where a change of zoning is required to reflect the historic and existing land use. For example, a site in West Swan was owned by the Australian Government and was developed for training purposes within a rural area. As it was Commonwealth land, it was classified as a scheme Reserve for public purposes. The Australian Government closed the facility and sold the land to the adjacent landowner who will use the facilities for agricultural purposes. Consequently, the land needed to have its classification changed from a scheme Reserve to Rural zone.

Amendments to reserve an area of land for a parks and recreation purpose - s.43B(c)

This prescribed class includes an amendment in the planning scheme to reserve an area of land for a parks and recreation purpose, for example:

- to transfer land to the Parks and Recreation Reserve
- to transfer land to a Public Purpose Reservation to reflect the authorised public purpose development.

Amendments to classify and reclassify an area of land as a type of reserve, or to zone or rezone an area of land in prescribed circumstances - s.43B(d)

This prescribed class includes an amendment to the region planning scheme that seeks to make an area consistent with an operative redevelopment scheme. For example, where an approved redevelopment scheme ceases to apply, or an amendment is required to reflect a zone or reserve created under an approved redevelopment scheme.

Amendments to create, alter or remove a regional road reserve - s.43B(e)

This prescribed class will include amendments to the region planning scheme that create, alter, or remove a regional road reserve, in circumstances where a clearing permit is granted under Part V Division 2 of the EP Act or where the proposed construction of the road has been approved under Part IV of the EP Act. In these circumstances, the scheme amendment would have already been assessed under either Part IV or Part V of the EP Act and as such a further assessment is not required.

Definition amendments - s.43B(f)

This prescribed class will include amendments to alter or repeal a definition in the planning scheme.

4.3 Regulation 43C - Local planning schemes

Minor amendment - s.43C(a)

This provision prescribes, as a class, minor amendments to the local planning scheme.

Amendments consistent with the model provisions - s.43C(b)

This prescribed class includes an amendment to the local planning scheme to make it consistent with the model provisions in Schedule 1 of the Planning and Development (Local Planning Scheme) Regulations 2015.

Amendments resulting from a consolidation of the scheme - s.43C(c)

This prescribed class includes an amendment to the local planning scheme that results from a consolidation of the scheme in accordance with section 92(1) of the *Planning and Development Act 2005*. Consolidating a scheme is the process of updating the entire local planning scheme to incorporate all amendments to that scheme that have been approved since the local planning scheme was first approved. Such amendments do not introduce new matters but bring the scheme up to date.

Amendments to introduce additional land use definitions - s.43C(d)

This prescribed class includes amendments to the local planning scheme to include new land use definitions where there are no corresponding changes to the zoning of land set by the scheme map.

Amendments concerning the preservation of cultural heritage - s.43C(e)

This prescribed class includes amendments to the local planning scheme concerning the conservation of places and objects of cultural heritage significance or heritage

listing. The amendment must be such that it would not be required but for the heritage conservation purpose and must not permit a change of land use.

Amendments concerning development control or design matters - s.43C(f)

This prescribed class includes amendments to the local planning scheme in any zone except for the Environmental Conservation and Special Control Area – Environmental zones, which is for a development design purpose. For example, relating to car parking requirements, signage, and plot ratio standards. These matters do not change the footprint of a development but are concerned with redevelopment or design.

Amendments to introduce new controls - s.43C(g)

This prescribed class includes amendments to the local planning scheme that will introduce or modify development controls where the Western Australian Planning Commission considers the change will reduce the development's environmental impact.

Amendments to rezone urban land that is already fully developed - s.43C(h)

This prescribed class includes amendments to the local planning scheme to rezone a lot(s) (not zoned 'environmental conservation') to allow for a different use, where the proposed use is the replacement or redevelopment of existing buildings within the existing building footprint and is not for an industrial purpose (not an industrial zone). These amendments change land use on lots that are already developed.

Amendments to increase residential density coding - s.43C(i)

This prescribed class includes an amendment to the local planning scheme to increase residential density coding from R12.5 or greater where the subject land does not abut an area of environmental value within the meaning of the EP Act.

Amendments to change or introduce a provision for the administration and enforcement of the scheme - s.43C(j)

This prescribed class includes an amendment to the local planning scheme to include a new provision or amend an existing provision regarding the enforcement of the planning scheme, provided that the new provision or amendment does not permit a change in land use.

Amendments that seek to classify an area with an existing redevelopment scheme - s.43C(k)

This prescribed class includes amendments to the local planning scheme that seeks to classify an area consistent with an existing redevelopment scheme where the land has been developed in accordance with the redevelopment scheme.

Amendments to identify development contribution areas - s.43C(l)

This prescribed class includes amendments to the local planning scheme to require development contributions in relation to land within development contribution areas.

Definition amendments which do not permit a change in land use category - s.43C(m)

This prescribed class includes amendments to the definitions of a local planning scheme provided that the amendment does not permit a change in land use category.

5 Next steps

Following this consultation process, submissions will be analysed, and a consultation summary report will be prepared and published.

The Minister for Environment will consider whether amendments to regulations are required. The EPA's recommendations on any changes will be sought before the regulations are finalised and made.

The department intends to review the scope of the prescribed classes after 18 months of operation of the new regulatory framework.

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