



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

Environmental Protection Amendment Regulations 2024

Consultation summary report

Department of Water and Environmental Regulation

April 2024

Department of Water and Environmental Regulation
Prime House, 8 Davidson Terrace
Joondalup Western Australia 6027
Locked Bag 10 Joondalup DC WA 6919

Phone: 08 6364 7000

Fax: 08 6364 7001

National Relay Service 13 36 77

wa.gov.au/dwer

© Government of Western Australia

April 2024

This work is copyright. You may download, display, print and reproduce this material in unaltered form only (retaining this notice) for your personal, non-commercial use or use within your organisation. Apart from any use as permitted under the *Copyright Act 1968*, all other rights are reserved. Requests and inquiries concerning reproduction and rights should be addressed to the Department of Water and Environmental Regulation.

For more information about this report, contact
Emma Law, Principal Policy Officer, Legislation Branch.

Disclaimer

This document has been published by the Department of Water and Environmental Regulation. Any representation, statement, opinion or advice expressed or implied in this publication is made in good faith and on the basis that the Department of Water and Environmental Regulation and its employees are not liable for any damage or loss whatsoever which may occur as a result of action taken or not taken, as the case may be in respect of any representation, statement, opinion or advice referred to herein. Professional advice should be obtained before applying the information contained in this document to particular circumstances.

This publication is available at our website wa.gov.au/dwer or for those with special needs it can be made available in alternative formats such as audio, large print, or Braille.

Contents

1	Introduction.....	1
2	Background	2
3	Consultation	3
4	Submissions	4
4.1	Draft regulation 43A – Terms Used.....	4
4.1.1	Response to submissions and recommendation	4
4.2	Draft regulation 43B – Prescribed classes of amendments to region planning schemes ..5	
4.2.1	4.2.1 Response to submissions and recommendation	5
4.3	Minor amendment – s.43B(a).....	5
4.3.1	Response to submissions and recommendation	5
4.4	Amendments to reflect approved land use or development approval – s.43B(b).....5	
4.4.1	Response to submissions and recommendation	6
4.5	Amendments to reserve an area of land for a parks and recreation purpose – s.43B(c)..6	
4.5.1	Response to submissions and recommendation	6
4.6	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).....6	
4.6.1	Response to submissions and recommendation	6
4.7	Amendments to create, alter or remove a regional road reserve – s.43B(e).....7	
4.7.1	Response to submissions and recommendation	7
4.8	Definition amendments – s.43B(f).....	7
4.8.1	Response to submissions and recommendation	7
4.9	Draft regulation 43C – Prescribed classes of amendments to local planning schemes....7	
4.10	Minor amendment – s.43C(a).....	8
4.10.1	Response to submissions and recommendation	8
4.11	Amendments consistent with the model provisions – s.43C(b)	8
4.11.1	Response to submissions and recommendation	8
4.12	Amendments resulting from a consolidation of the scheme – s.43C(c)	8
4.12.1	Response to submissions and recommendation	9
4.13	Amendments to introduce additional land use definitions – s.43C(d).....	9
4.13.1	Response to submissions and recommendation	9
4.14	Amendments concerning the preservation of cultural heritage – s.43C(e).....	9
4.14.1	Response to submissions and recommendation	9
4.15	Amendments concerning development control or design matters – s.43C(f).....	9
4.15.1	Response to submissions and recommendation	10
4.16	Amendments to introduce new controls – s.43C(g)	10
4.16.1	Response to submissions and recommendation	10
4.17	Amendments to rezone urban land that already fully developed – s.43C(h).....	10
4.17.1	Response to submissions and recommendation	11
4.18	Amendments to increase residential density coding – s.43C(i)	11
4.18.1	Response to submissions and recommendation	11
4.19	Amendments to change or introduce a provision for the administration and enforcement of the scheme – s.43C(j)	11
4.19.1	Response to submissions and recommendation	12
4.20	Amendments that seek to classify an area with an existing Redevelopment Scheme – s.43C(k) 12	
4.20.1	Response to submissions and recommendation	12
4.21	Amendments to identify development contribution areas – s.43C(l)	12
4.21.1	Response to submissions and recommendation	12

4.22 Definition amendments which do not permit a change in land use category – s.43C(m)13
4.22.1 Response to submissions and recommendation 13

5 How was this feedback used? 14

6 What happens next? 15

Appendices..... 16

1 Introduction

The Environmental Protection Amendment Regulations 2024 (Regulations) were developed to streamline new and amending scheme assessments submitted to the Environmental Protection Authority (EPA) for determination. The Regulations came into effect on 24 January 2024.

This report provides an overview of submissions received on the exposure draft of the Regulations and discussion paper, *Environmental Protection Amendment Regulations 2022 – Discussion paper: Exposure draft*. The exposure draft of the Regulations and discussion paper were open for submissions from 23 February 2023 to 14 April 2023.

2 Background

Currently, all local and regional planning schemes must be referred to the EPA for a determination on whether the planning scheme should be assessed under Part IV of the *Environmental Protection Act 1986* (EP Act). In most cases, new or amended planning schemes referred to the EPA do not require formal assessment as the environmental impacts are not considered significant.

Section 48AAA was inserted into the EP Act by proclamation of section 56 of the *Planning and Development Amendment Act 2023*. The new section 48AAA enabled the making of regulations to prescribe classes of schemes that are not required to be assessed by the EPA. The Regulations were designed to streamline EPA assessment of planning schemes to focus on matters that will have greater impacts on the environment.

Section 48AAA of the EP Act provides the following:

- The Governor, may, on the recommendation of the EPA, make regulations prescribing classes of relevant schemes that are not required to be assessed to the EPA for assessment under Part IV of the EP Act.
- The EPA must not make such a recommendation unless satisfied that the classes of relevant planning schemes to be prescribed will not have significant effect on the environment.

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

3 Consultation

In early 2022 the department collaborated with officers from the Department of Planning, Lands and Heritage (DPLH); Planning Institute of Australia; Urban Development Institute of Australia; Western Australian Local Government Association (WALGA); and Local Government Planner's Association to identify the scope and nature of classes of planning schemes that may be included in the Regulations. The department also worked with the EPA to develop the Regulations.

On 23 February 2023, the department released the exposure draft amendment regulations and Discussion Paper, *Environmental Protection Amendment Regulations 2022 – Discussion paper: Exposure draft* for public consultation. The consultation ran for eight weeks, closing on 14 April 2023, and was published on the department's consultation hub website for feedback. The discussion paper sought feedback on the planning schemes that are proposed to be prescribed under the Regulations.

On 28 March 2023, a consultation workshop was provided to key stakeholders. This focused on the Regulations and potential implications for their agencies and operations. Officers from the following agencies attended the workshop:

- DPLH
- WALGA
- Urban Development Institute of Australia
- Planning Institute of Australia.

The consultation workshop gave stakeholders the opportunity to raise any queries they had with subject matter officers in relation to the planning and drafting of the Regulations.

4 Submissions

Overall, 16 submissions were received from various stakeholders, including State Government agencies, local governments, industry groups, and the community. Respondents are listed in the table at Appendix A.

Feedback from stakeholders during consultation generally supported the Regulations and identified that it was appropriate, and consistent with the objects of the EP Act, for the EPA to focus on scheme amendments that may have significant environmental impacts.

The following matters were raised by stakeholders as key issues requiring further consideration by the department in finalising the Regulations.

4.1 Draft regulation 43A – Terms Used

Draft regulation 43A set out the terms used in the Regulations.

The term ‘minor amendment’ means amendments to correct administrative or minor errors, or errors in or relating to a map, plan, or diagram. It 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).

Stakeholders noted some terms used in the Regulations would be more helpful if aligned with definitions provided in the Planning Development (Local Planning Schemes) Regulations 2015, particularly when using current categories for amendments rather than introducing new terminology and categories.

Most stakeholders recommended an amendment to the Regulations to replace the term ‘minor amendment’ with ‘basic amendment’ to align with the terminology used in the Planning Development (Local Planning Schemes) Regulations 2015.

4.1.1 *Response to submissions and recommendation*

The department recommended an amendment to the Regulations to remove the term ‘minor amendment’ from draft regulation 43A. The proposal to amend the term ‘minor amendment’ to ‘basic amendment’ to align with the Planning Development (Local Planning Schemes) Regulations 2015, was not considered appropriate as some ‘basic’ amendments can potentially impact environmental values.

To assist with the interpretation of the prescribed classes and what amendments the prescribed class includes, the department recommended amending the Regulations to include the terms ‘building envelope’ and ‘native vegetation’.

4.2 Draft regulation 43B – Prescribed classes of amendments to region planning schemes

Overall, stakeholders were generally supportive of draft regulation 43B, which provided the prescribed classes of region planning schemes. Stakeholders noted the intent of some prescribed classes could be made clearer, particularly the class of amendments that reflect ‘approved land use or development approval’.

4.2.1 *4.2.1 Response to submissions and recommendation*

The department noted feedback from stakeholders to include additional prescribed classes in relation to regional planning schemes and will consider this issue as part of the review of the Regulations in 18 months.

4.3 Minor amendment – s.43B(a)

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

Stakeholders raised concerns regarding the transparency of the process in deciding whether an amendment fits this prescribed class. Various stakeholders recommended the term ‘minor amendment’ be amended to ‘basic amendment’ to align with terminology used in existing planning regulations.

4.3.1 *Response to submissions and recommendation*

Noting concerns from stakeholders regarding the term ‘minor amendment’, the department recommended deleting the term ‘minor amendment’ from section 43A and amending section 43B(a):

- to include:
 - amendments to correct an administrative or minor error
 - an amendment to the scheme to correct an error that is in, or that otherwise relates to, a map, plan or diagram included in the scheme
- but not include:
 - an amendment to the scheme to correct an error that would change the classification or zoning of land.

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

This prescribed class included an amendment in the region planning scheme where a change of zoning is required to reflect the historic and existing land use.

Stakeholders raised concerns the inclusion of these amendments within a region planning scheme may prevent an environmental assessment being undertaken prior

to any rezoning. Stakeholders stated this provision was not clear and needed to provide greater clarity to ensure that it would not permit clearing of native vegetation without assessment under Part IV or Part V of the EP Act.

4.4.1 Response to submissions and recommendation

Feedback from various stakeholders raised concerns that this class of amendments was too broad, and that in many circumstances it would still be appropriate for this type of amendment to be referred to the EPA for assessment. Therefore, the department recommended the Regulations be amended to remove this class of amendments.

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

This prescribed class included an amendment in the planning scheme to reserve an area of land for a parks and recreation purpose.

Stakeholders were supportive for this class of amendments.

4.5.1 Response to submissions and recommendation

No further amendments recommended.

4.6 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 included an amendment to the region planning scheme that seeks to make an area consistent with an operative redevelopment scheme.

Stakeholders raised concerns that this class of amendments may create unnecessary issues. For example, it is likely that not all parts of an area subject to an approved redevelopment scheme will have been developed in accordance with the redevelopment scheme.

4.6.1 Response to submissions and recommendation

The department recommended the provision be amended to clarify that the amendment relates to land that has been developed consistent with the redevelopment scheme zone.

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

This prescribed class included an amendment to the region planning scheme to 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.

Stakeholders raised concerns that there was a lack of clarity on the intent of the provision, particularly in relation to environmental assessments under Part IV of the EP Act or clearing permits granted under Part V Division 2 of the EP Act.

4.7.1 *Response to submissions and recommendation*

The department recommended the provision be amended to clarify that this class of amendments means to create, alter, or remove a regional road reservation only if a clearing permit has been granted under Part IV of the EP Act or clearing permits granted under Part V Division 2 of the EP Act for that portion of land.

4.8 Definition amendments – s.43B(f)

This prescribed class included an amendment to alter or repeal a definition in the planning scheme.

Stakeholders recommended consideration be given to amending this provision to include any updates to a region scheme text to reflect changes to the names of relevant legislation, State Government agencies, etc., where the proposed amendment would not have a material impact on the operation of the region scheme.

4.8.1 *Response to submissions and recommendation*

The department recommended the provision be amended to clarify this class of amendments includes an update to text to reflect changes in names of relevant legislation, and where the proposed amendment would not have a material impact on the operation of the region scheme.

4.9 Draft regulation 43C – Prescribed classes of amendments to local planning schemes

Overall, stakeholders were generally supportive of regulation 43C, which provides prescribed classes of local planning schemes. Stakeholders noted that the wording 'new land use category' was unclear as the terminology was not consistent with local planning schemes.

4.10 Minor amendment – s.43C(a)

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

Stakeholders raised concerns with the term ‘minor amendment’ and recommended it be replaced with ‘basic amendment’ to align with terminology used in existing regulations.

4.10.1 Response to submissions and recommendation

Noting concerns from stakeholders regarding the term ‘minor amendment’, the department recommended removing the term ‘minor amendment’ from section 43A and amending section 43C(a):

- to include:
 - amendments to correct an administrative or minor error
 - an amendment to the scheme to correct an error that is in, or that otherwise relates to, a map, plan or diagram included in the scheme
- but not include:
 - an amendment to the scheme to correct an error that would change the classification or zoning of land.

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

This prescribed class included 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.

4.11.1 Response to submissions and recommendation

No submission provided by stakeholders.

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

This prescribed class included 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.

4.12.1 Response to submissions and recommendation

No submission provided by stakeholders.

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

This prescribed class included an amendment 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.

Stakeholders raised concerns that introducing new land use definitions would typically include insertion of these land uses within the land use table, with permissibility for each zone designated (without necessarily changing the scheme map). Stakeholders noted that it was not clear that there were no changes to the zoning table as the extent of the possible implications may not be known early in the process.

4.13.1 Response to submissions and recommendation

The department recommended amending the provision so that it would include an amendment on a new land use term that does not include a change on zone of land.

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

This prescribed class included an amendment 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.

Stakeholders raised concerns that the provision was not clear in what circumstances a rezoning would be required for the purposes of conserving cultural heritage where land use permissibility would not change.

4.14.1 Response to submissions and recommendation

The department recommended amending the provision so that it would include an amendment to classify or reclassify an area of land as a type of reserve or to zone or rezone an area of land for the purpose of conserving a cultural place.

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

This prescribed class included an amendment 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.

Stakeholders raised concerns that the design requirements were too broad and could possibly ignore the potential impacts of a development design that does not account for an increase in footprint impacts.

4.15.1 Response to submissions and recommendation

The department recommended the provision include a scheme amendment that will amend or repeal a design requirement only if it relates to the appearance of a built form, signage, façade treatments, and architectural style except on land that is reserved or rezoned under the planning schemes for environmental conservation.

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

This prescribed class included an amendment to the local planning scheme that will introduce or modify development controls where the Western Australian Planning Commission (WAPC) considers the change will reduce the development's environmental impact.

Stakeholders raised concerns that the requirement to obtain feedback from the WAPC to determine whether it considers there to be an environmental impact may cause an unnecessary delay in the amendment process.

Stakeholders also raised concerns that the WAPC may not have the expertise to determine the extent of environmental impact that is normally set by an environmental framework and not a planning framework. Stakeholders noted it was not clear what criteria would be used by the WAPC to determine whether a change would reduce the developments environmental impact.

4.16.1 Response to submissions and recommendation

Given stakeholder concern that this class of amendments would have considerable impact on the scheme assessment process, and given amendments of this type are infrequent, the department recommended that this prescribed class be removed from the Regulations.

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

This prescribed class included an amendment 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.

Stakeholders raised concerns that the potential wide ranging rezoning proposals this class related to may have further implications down the track, including environmental impacts that would require EPA assessment. Stakeholders noted that it may be problematic to assume land to be 'fully developed' as it could be subject to redevelopment.

4.17.1 Response to submissions and recommendation

The department recommended amending the provision so that it would include amendments relating to the introduction and/or removal of additional or restricted uses for specific sites.

4.18 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.

Stakeholders raised concerns that this amendment was too broad and that land subject to higher coding may have inherent environmental issues that local government officers would not have the expertise to assess appropriately.

WALGA was opposed to this amendment because of the potential for variance in interpretation at the local government level that may increase the risk of environmental impacts.

4.18.1 Response to submissions and recommendation

Because of the potential variance for interpretation by local government which may lead to inadequate consideration of environmental impacts, the department recommended amending the provision so that it would include an amendment to increase the residential density code of an area from R12.5 or higher if the land is developed consistent with the current density coding and does not abut an area of native vegetation, as defined in the EP Act.

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

This prescribed class included 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.

Stakeholders raised concern that the intent of the provision was not clear and that provisions of this nature were generally covered by deeming provisions which could not be varied but could be supplemented. Stakeholders noted that changes to land

use were dealt with through the model provisions and were not administrative in nature.

4.19.1 Response to submissions and recommendation

The department recommended amending the provision so that it would include an amendment to include a new provision or amend an existing provision regarding the administration and enforcement of the planning scheme.

4.20 Amendments that seek to classify an area with an existing Redevelopment Scheme – s.43C(k)

This prescribed class included an amendment 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.

Stakeholders raised concerns that this approach could be complicated by redevelopment schemes (under the Metropolitan Redevelopment Act 2011 and Hope Valley Wattleup Redevelopment Act 2000) having distinctly different zonings and land use permissibility.

4.20.1 Response to submissions and recommendation

The department noted the concerns raised by stakeholders but did not recommend any amendments to provision.

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

This prescribed class included an amendment to the local planning scheme to require development contributions in relation to land within development contribution areas.

Stakeholders recommended consideration be given to classify certain amendments as minor; these included: scheme amendments to create development contribution areas and scheme amendments to insert development contribution plans (DCPs).

Stakeholders recommend consideration be given to expanding this amendment to also allow for spatial, scope and timing changes to existing and extended DCPs, as well as including their rescinding once they have come to their end of life.

4.21.1 Response to submissions and recommendation

The department recommended amending the provision so that it would include an amendment to the planning scheme to identify or modify an area of land as a development contribution area, or extend the term, because of a determination made under the Planning and Development (Local Planning Schemes) Regulations 2015.

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

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

Stakeholders raised concerns the intent of the provision was not clear.

4.22.1 *Response to submissions and recommendation*

The department recommended the provision be amended to include an amendment to the text in Part 1 of the planning scheme.

5 How was this feedback used?

The submissions provided during consultation were used to finalise the Regulations, which came into force on 24 January 2024.

6 What happens next?

To assist with applying the Regulations, the department invited key stakeholders, including local government planning officers, to participate in an information workshop. The purpose of an information workshop was to reduce the number of queries and build a deeper, more accurate understanding of the effect of the Regulations. The department provided an information workshop to stakeholders in February 2024.

The Regulations will be reviewed within 18 months of publication. This will be factored into the department's long-term work plan. The department will continue to work with DPLH to discuss the tracking of the planning schemes that do not come to the EPA and will establish a working group for the review. The EPA noted that the collection of data for the review will need to be adequately resourced by DPLH and the department. This will be addressed through the future working group.

Appendices

Appendix A – Stakeholders who provided submissions

	Agency Name
1.	Birdlife WA
2.	City of Cockburn
3.	City of Joondalup
4.	City of Stirling
5.	Department of Planning, Lands and Heritage (2 x submissions: 1. Region planning schemes; 2. Local planning schemes)
6.	EIANZ WA
7.	Environmental Defenders Office
8.	Member of the public
9.	Member of the public
10.	Office of Hon Dr Brad Pettitt MLC
11.	Planning Institute of Australia
12.	Property Council of Australia
13.	Urban Development Institute of Australia WA
14.	Urban Bushland Council
15.	Western Australian Local Government Association
16.	Wildflower Society of Western Australia