



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

# Environmental Protection Amendment Regulations (No.2) 2024

Consultation information paper

Department of Water and Environmental Regulation

November 2024

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## How to make a submission

Submissions must be received by 5pm (WST) on Friday 15 November 2024.

Submissions can be lodged by email to [planningschemeconsultation@dwer.wa.gov.au](mailto:planningschemeconsultation@dwer.wa.gov.au).

We look forward to receiving your submission.

# 1 Introduction

Section 48AAA of the *Environmental Protection Act 1986* (EP Act) enables the making of regulations to prescribe classes of relevant schemes that are not required to be referred to the Environmental Protection Authority (EPA) for a decision on whether an EPA assessment is required.

Part 9A of the Environmental Protection Regulations 1987 (EP Regulations), prescribe the classes of relevant schemes that fall into this exemption.

On 12 December 2023, the State Government published the *Independent Review of WA Environmental Approval Processes and Procedures* (Vogel-McFerran Review), prepared by former EPA Chair Dr Paul Vogel and planning expert David McFerran, and the State Government's responses to their recommendations. The Vogel-McFerran Review made 39 recommendations to improve the environmental approvals framework in Western Australia (WA) and streamline project applications.

Recommendation 16 of the Vogel-McFerran Review requires the Department of Water and Environmental Regulation (the department) and the Department of Planning, Lands and Heritage (DPLH) to take urgent steps including regulatory changes as required, to reduce the referral of schemes and scheme amendments under section 48A of the EP Act.

In January 2024, the Environmental Protection Amendment Regulations 2024 delivered an initial set of regulations to reduce the number of schemes and scheme amendments that are required to be referred to the EPA.

The department, in consultation with the EPA and DPLH has identified an additional number of proposed prescribed classes of relevant planning schemes which could be exempt from referral to the EPA on the basis that they do not have any significant impact on the environment.

The draft Environmental Protection Amendment Regulations (No. 2) 2024 (draft regulations) have been prepared to give effect to this under section 48AAA of the EP Act.

The department is seeking feedback on the planning schemes that are proposed to be prescribed under the draft 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 referred to the EPA. However, the EPA must not make this recommendation unless the EPA is satisfied that the classes of schemes proposed to be prescribed will not have a significant effect on the environment.

In early 2024, the department collaborated with officers from DPLH to identify the scope and nature of additional classes of planning schemes that may not need to be referred to the EPA.

The department has worked with the EPA to develop the draft regulations. Following consultation, the department will seek the EPA's recommendation that the draft 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 the draft regulations

The regulations are designed to streamline the number of new planning schemes or amendments being referred to the EPA so that it can focus on matters that may have significant impact on the environment. This will facilitate a more efficient decision-making process for State Government planning agencies, local government authorities and proponents.

## 4 Explanation of amendment regulations

### 4.1 Amendments to regulation 33B - region planning schemes

#### Exemption for scheme amendments that add to Bush Forever sites

This prescribed class includes amendments in region planning schemes where areas are proposed to be added to an existing Bush Forever area. It is considered that any *removal* of land from Bush Forever areas must be referred to the EPA, even if it also includes additions.

To give effect to this, regulation 33B(1) is proposed to be amended to insert the term 'Bush Forever area' to mean areas identified within the Metropolitan Region Scheme as Bush Forever, and to define the term 'Metropolitan Region Scheme'. In addition, new subregulation 33B(2)(ca) is proposed to be created to prescribe that additions to existing Bush Forever areas are exempt from referral.

View more information on the [State Government's Bush Forever policy and program](#).

#### Exemption for scheme amendments that correct an error

This existing prescribed class includes amendments in region planning schemes that correct an error relating to a map, plan or diagram if the correction does not alter the zoning or classification of the land. This exemption will be broadened so those amendments that require a small zoning change to correct an error would no longer need to be referred to the EPA. Most basic amendments to correct errors have minimal or no environmental impact but usually do involve a zoning change, such as incorrect boundary alignments.

To give effect to this, regulation 33B(2)(b)(ii) has been deleted to remove the additional requirement that such errors must not relate to altering the zoning or classification of land.

### 4.2 Amendments to regulation 33C - local planning schemes

#### Exemption for scheme amendments that are 'basic amendments'

This proposed prescribed class includes any amendment that meets the definition under regulation 34 of the Planning and Development (Local Planning Scheme) Regulations 2015 (Local Planning Scheme Regulations) as a 'basic amendment', except for those described in paragraphs (a)(v), (a)(vii) and (a)(ix) of that definition. It was determined by the EPA that these certain basic amendments still retain some risk that they could involve aspects that require environmental assessment, and that they should still be referred to the EPA. Most other basic amendments, such as administrative errors and provisions superseded by deemed provisions, have no environmental risk and do not need to be referred to the EPA.



The definition of 'basic amendment' in regulation 34 of the Local Planning Scheme Regulations states:

*“In this Part —*

**basic amendment** means an amendment to a local planning scheme in a case where —

(a) *the amendment is any of the following —*

- (i) *an amendment to correct an administrative error;*
- (ii) *an amendment to the scheme so that it is consistent with the model provisions in Schedule 1 or with another provision of the local planning scheme;*
- (iii) *an amendment to the scheme text to delete provisions that have been superseded by the deemed provisions in Schedule 2;*
- (iv) *an amendment to the scheme so that it is consistent with any other Act that applies to the scheme or the scheme area;*
- (v) *an amendment to the scheme so that it is consistent with a State planning policy;*
- (vi) *an amendment to the scheme map to include a boundary to show the land covered by an improvement scheme or a planning control area;*
- (vii) *an amendment to the scheme map that is consistent with a structure plan or local development plan that has been approved under the scheme for the land to which the amendment relates if the scheme currently includes zones of all the types that are outlined in the plan;*
- (viii) *an amendment that results from a consolidation of the scheme in accordance with section 92 of the Act;*
- (ix) *an amendment to the scheme so that it is consistent with a region planning scheme that applies to the scheme area if the amendment will have minimal effect on the scheme or landowners in the scheme area;*

*and*

(b) *either —*

- (i) *the amendment is not referred to the EPA under section 81 of the Act because of section 81(2) of the Act; or*
- (ii) *the EPA has informed the local government under section 48A(1)(a) of the EP Act that the proposed amendment should not be assessed by the EPA;”*

To give effect to this in the draft regulations, it is proposed to amend subregulation 33C(2)(a) to prescribe the exemption for most basic amendments.

## Exemption for scheme amendments which reserve land to retain vegetation or for conservation

This prescribed class includes an amendment to the local planning scheme that reserves or classifies land to retain vegetation or for conservation, should not need to be referred to the EPA. A similar exemption already exists for region planning schemes under regulation 33B(2)(c). This proposed exemption replicates this intent but refers to those relevant purposes prescribed under the Local Planning Scheme Regulations, being public open spaces, environmental conservation or State Forest.

To give effect to this, regulation 33C(2)(c) has been replaced to prescribe this new exemption. The existing exemption under 33C(2)(c) is now duplicated under the meaning of 'basic amendment' in amended regulation 33C(2)(a) and no longer required.

## Exemption for scheme amendments that involve development within a building envelope

The existing prescribed class under regulation 33C(2)(g) includes amendments to local planning schemes where a change of zoning is required for a purpose that involves replacing or redeveloping an existing building within the building envelope, if it is not for an industrial purpose. It is proposed to clarify and expand this so as to exempt scheme amendments for *any* development within the existing building envelope, but with the caveat for industrial purposes remaining.

To give effect to this, it is proposed to amend paragraph in 33C(2)(g)(i) to reframe the scope of this exemption to rezoning for a purpose that involves carrying out development within a building envelope, and to also define 'development' in 33C(1) to have the same meaning as that term in regulation 4 of the *Planning and Development Act 2005*, being as follows –

***“development means the development or use of any land, including —***

- (a) any demolition, erection, construction, alteration of or addition to any building or structure on the land;*
- (b) the carrying out on the land of any excavation or other works;*
- (c) in the case of a place to which a protection order made under the Heritage Act 2018 Part 4 Division 1 applies, any act or thing that —*
  - (i) is likely to change the character of that place or the external appearance of any building; or*
  - (ii) would constitute an irreversible alteration of the fabric of any building;”*

## Exemption for scheme amendments for any matter that relates to a Developer Contribution Plan

This proposes to expand the existing prescribed class for amendments to a local planning scheme under regulation 33C(2)(l), which was only concerned with amendments regarding the term for which a development contribution plan (DCP) is to have effect, to now include *any* matter set out in a DCP.

A local government is required to prepare a DCP under regulation 71 of the Local Planning Scheme Regulations. A DCP sets out who is to contribute to the cost of providing infrastructure or facilities in a development contribution area and how those contributions are to be determined.

Under regulation 71(4) of the Local Planning Scheme Regulations, a DCP must address certain matters including:

- the area to which it applies
- what is to be funded through the plan
- the method of determining the contribution of each relevant owner
- the priority and timing for the infrastructure

- timings and methods for the review of costs
- the term the plan is to have effect.

The EPA has determined that such matters do not propose any land use changes. Therefore, scheme amendments which relate solely to making adjustments required under a DCP should be exempt from being referred again to the EPA.

To give effect to this, regulation 33C(2)(l) has been amended to expand the scope of the exemption to any amendment related to a DCP.

## Exemption for scheme amendments that ‘normalise’ structure plans

This prescribed class includes those amendments to local planning scheme maps that are a result of what is known as ‘normalisation’ of structure plans or local development plans prepared under Part 4 of Schedule 2 of the Local Planning Scheme Regulations.

‘Normalisation’ in this context refers to the process of amending the scheme map to match the ‘on ground’ implemented structure plans or local development plans. The purpose of such amendments is to simply give effect to the implemented plans, and therefore do not need to be referred to the EPA for assessment.

It is important to note that this exemption only applies to scheme amendments that ‘normalise’ a structure plan or local development plan once it has been *fully* implemented to the extent permitted in the plan, and it has been deemed to have achieved its purpose (i.e. when the land has been fully subdivided, developed, and lot boundaries are established). It is therefore seen as a slightly different exemption to what is described in paragraph (a)(vii) of the meaning of ‘basic amendment’ in regulation 34 of the Local Planning Scheme Regulations, which has not been included within scope of the amended exemption at regulation 33C(2)(a). If scheme amendments are for normalisation where the plan has not yet been fully implemented, it is not exempt from referral to the EPA.

To give effect to this intent, it is proposed to insert new subregulation 33C(2)(n) to prescribe this exemption for local planning schemes.

## 5 Next steps

Following this consultation process, all submissions on the draft regulations will be analysed and a consultation summary report will be prepared.

After the consultation summary report is prepared, the department will identify whether amendments to the draft regulations are required. Once the regulations are finalised, the department will seek the EPA's recommendation and the Minister for Environment's approval that the Governor in Executive Council make the regulations on the basis that the classes of schemes to be prescribed will not have a significant effect on the environment.