

Department of Water and Environmental Regulation  
Prime House,  
Locked Bag 10  
Joondalup DC WA 6919

By email: [planningschemeconsultation@dwer.wa.gov.au](mailto:planningschemeconsultation@dwer.wa.gov.au)

Dear DWER Officers,

**Re: Environmental Protection Amendment Regulations 2022**

The Urban Bushland Council of WA Inc (UBC) would like to provide feedback to the Department of Water and Environmental Regulation on the planning schemes that are not required to be assessed by the EPA proposed under new regulations.

This submission is in response to the Environmental Protection Amendment Discussion paper exposure draft 2022.

Our organisation is a community association of 87 member groups (each with their own local membership from 10-165 individuals) and 100+ individual members – all of whom have a common interest in the conservation of our natural biodiversity including urban bushlands and wetlands. UBC is an incorporated, not for profit organisation registered as a charity.  
<https://www.bushlandperth.org.au/>.

UBC provides a public voice for what remains of our urban bushland and wetlands. We advocate to all levels of Government for natural areas protection. We do this with limited resources through the amazing efforts of our volunteer 'Friends Groups' from all walks of life 'working' with the land managers to maintain and improve the health of remnant patches of neighbourhood nature– many working in close collaboration with your department and their local council.

Thank you for the opportunity to raise some of these matters in a briefing (13/04/2023).

UBC supports the goal of improving the efficiency of the environmental assessment process and notes statements made about the Government's intention to 'free up' environmental impact and assessment resources to focus on more effective environmental protection. These draft regulations may be a step forward toward that goal.

However, there are other more pressing matters in our estimation, including:

- increasing resources dedicated to environmental assessment,
- enforcement of existing protections, and
- applying enforceable targets to achieve demonstratable gains in net biodiversity.

We continue to advocate that Government departments and agencies achieve these goals.

#### 4.1 Regulation 43A – Terms used

Proposed regulation 43A sets out the terms used in the proposed regulations.

UBC supports limiting the definition of minor amendment explicitly to apply only “to correct administrative or minor errors, errors in or relating to a map, plan or diagram.” This definition of “minor” explicitly rules out any 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.

UBC was advised these "minor changes" relate to Scheme Amendments that have already gone through EPA Assessment and are gazetted. However, these assessments may have been made a long time ago.

- Is consideration given to the contemporary environment?
- Is there potential this "minor change" may negatively or cumulatively impact that natural environment?
- Have any aspects of the environment increased in protection status since the original assessment?

This regulation needs further qualification to ensure that amendments that may have a significant effect on the environment are not classified as minor.

UBC remains concerned about the transparency of the process of deciding whether an amendment fits this definition. There is no detail in the regulations about how an amendment is classified “minor” and how such a decision may be reviewed or reversed. We are concerned about the accountability of the decision-maker who classifies an amendment “minor”.

Therefore, we request that this process is clearly set out in regulation or published procedures.

We also call for a transparent review of the operations of the regulation within a reasonable timeframe to determine whether the classification of “minor” is being appropriately applied.

**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.

*We support this providing that the change of land use has undergone and passed environmental assessment and that the changes must be in consideration of the Most Contemporary Environmental conditions.* However, the example provided (see below) does not indicate that environmental assessment was necessary. It is also notable that this seems to bypass the existing planning regime which requires a proposal of change of land use to be open to public scrutiny and subject to planning approval.

During our briefing when this example was questioned, we were advised the following was an erroneous example:

*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.

Whilst in general UBC supports this, there is clarity required about the meaning on the term ‘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.

Redevelopment schemes are subject to environmental assessment, so UBC would support this regulation.

**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.

UBC would appreciate more information (including examples) to further investigate this proposed amendment. UBC is concerned that historic assessment under Part V and Part IV of the *EPA Act* will not have included ‘today’s contemporary environmental conditions’ nor ‘cumulative impacts’ and as such may warrant further assessment and public scrutiny. In such circumstances UBC does not support this regulation.

Road reserves often contain mature trees, native vegetation, remnant bushland and provide critical habitat for native species. Without a system of nature reserves protecting these assets, unfortunately in some cases these road reserves contain the only remaining pockets of undeveloped land now abundant with vulnerable or threatened wildlife and native vegetation.

**Definition amendments – s.43B(f)** This prescribed class will include amendments to alter or repeal a definition in the planning scheme.

UBC supports this.

#### 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.

Note: ‘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).

UBC was advised these "minor changes" relate to Scheme Amendments that have already gone through EPA Assessment and are gazetted. However, these assessments may have been made a long time ago.

- Is consideration given to the contemporary environment?
- Is there potential this "minor change" may negatively or cumulatively impact that natural environment?
- Have any aspects of the environment increased in protection status since the original assessment?

This regulation needs further qualification to ensure that amendments that may have a significant effect on the environment are not classified as minor.

UBC remains concerned about the transparency of the process of deciding whether an amendment fits this definition. There is no detail in the regulations about how an amendment is classified “minor” and how such a decision may be reviewed or reversed. We are concerned about the accountability of the decision-maker who classifies an amendment “minor”.

Therefore, we request that this process is clearly set out in regulation or published procedures.

We also call for a transparent review of the operations of the regulation within a reasonable timeframe to determine whether the classification of “minor” is being appropriately applied.

**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.

UBC supports this.

**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.

UBC supports this.

**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.

UBC supports this.

**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.

UBC supports this.

**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.

UBC questions the assumption that there is no environmental impact when changes are made to the local planning scheme for the purpose of development design. An amendment that *does not change the footprint* of a development and is only concerned with redevelopment or design may well have a significant environmental impact. In addition, it may impact urban bushland and native vegetation.

Consideration must be given to impact including due to:

- the shadowing affect (in the case of high rise development),
- noise
- light spillage
- reflection of heat and light
- reduction of tree canopy, understorey or green infrastructure
- impact on hydrology.

UBC would seek that this regulation be amended.

**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.

UBC questions whether the WAPC is the appropriate decision maker on environmental impact. Why wouldn't the EPA be involved in determining whether development controls will reduce the development's environmental impact?  
Are any checks and balances in place to scrutinise this power of the WAPC?

**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.***

UBC questions the assumption that any change of use within a building footprint would have no significant environmental impact. For instance, should high density residential housing be developed on the existing industrial land of the South Fremantle Power Station it may have a significant impact on nearby native vegetation and coastal dunes in the area by increased urbanisation. Residential use may bring threats to wildlife due to increased traffic and predation by companion animals (cats and dogs). Fertiliser runoff from gardens and lawns may have an impact on the environment.

Should the change of use within the building footprint from industry or housing to horticulture or intensive agriculture, this, too, would have a significant environmental impact.

If "already fully developed" land was to be rehabilitated to forest, woodlands, wetlands or bushland within the building's footprint would this proposed zoning change be exempt from environmental assessment?

Would the rezoning of "already fully developed" land in a local planning scheme to aquaculture, agriculture or an intensive piggery for example, be exempt from environmental assessment?

Please address whether these types of use changes would trigger environmental assessment and how.

**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*.

environmental value means —

- (a) a beneficial use; or
- (b) an ecosystem health condition;

UBC questions the assumption that there is no environmental impact when subject land does not abut an area of environmental value. Imagine a wetland surrounded by high rises with a one lot buffer.

Consideration must be given to impact including due to:

- the shadowing affect (in the case of high rise development),
- noise
- light spillage

- reflection of heat and light
- reduction of tree canopy, understorey or green infrastructure
- impact on hydrology.

UBC would seek that this regulation be amended.

**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.

UBC supports this in matters that do not pertain to environmental conditions which may need to be assessed or enforced by the EPA.

**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.

Redevelopment schemes are subject to environmental assessment, so UBC would support this regulation.

**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.

UBC supports this.

**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.

UBC supports this.

## Review

UBC would seek a transparent review of the regulations which exempt classes of planning amendments from Environmental Assessment within a reasonable timeframe.

This review should engage environmental organisations, local government decision makers and planners, the WAPC, DWER, DBCA the EPA and other government agencies.

### **Future consultations**

Thank you for the opportunity to comment on the proposed regulations. We note that few environmental organisations were able to comment and none attended the consultation briefing. We sincerely appreciate the special briefing provided to us on request. As you are aware, in UBC's experience it is important to canvass the views and expert knowledge of environmental organisations when any changes to the planning system which impact environmental assessment are proposed. Please register our concerns with the consultation process on behalf of our members and advocates.

Kind regards,

**Urban Bushland Council WA Inc**

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**Extract: UBC's URBAN TREASURES**  
**Ashfield Flats, Bassendean – following rains**  
[Photo: John Baas]

*UBC acknowledges the Traditional Owners as the spiritual and cultural custodians of this land.  
Together we continue to care for Country.*