



Your ref: 109/155
Our ref: TPS/2818
Enquiries: Schemes Team

CITY OF COCKBURN
DOC No
13 MAY 2022
SUBJECT 109/155
RETENTION 124.2-3 45
PROPERTY
APP
ACTION DONNA D-REG-20.

Chief Executive Officer
City of Cockburn
PO Box 1215
BIBRA LAKE WA 6965

Transmission via electronic mail to: customer@cockburn.wa.gov.au

Dear Sir/Madam

TOWN PLANNING SCHEME NO. 3 - AMENDMENT NO. 155

I refer to your letter dated 22 December 2021 regarding Amendment No. 155.

The Western Australian Planning Commission (Commission) has considered the amendment and submitted its recommendation to the Minister in accordance with section 87(1) of the *Planning and Development Act 2005* (the Act).

The Minister has approved the amendment in accordance with section 87(2)(a) of the Act. In accordance with section 87(3) of the Act, the Commission will cause the approved amendment to be published in the Government Gazette.

The Commission has forwarded notice to the Department of Premier and Cabinet (attached) and it is the local governments' responsibility to make arrangements for the payment of any publication costs. The local government is required under section 87(4B) of the Act, and regulation 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, to publish the approved amendment, ensure that it is available to the public, and notify each person who made a submission.

For all payment and purchase order queries, please contact the Department of Premier and Cabinet on (08) 6552 6012. One signed set of the amending documents is returned for your records.

Please direct any queries about this matter to localplanningschemes@dplh.wa.gov.au.

Yours sincerely

Ms Sam Fagan
Secretary
Western Australian Planning Commission

5/05/2022

PLANNING AND DEVELOPMENT ACT 2005

APPROVED TOWN PLANNING SCHEME AMENDMENT City of Cockburn

TOWN PLANNING SCHEME No. 3 - AMENDMENT No. 155

Ref: TPS/2818

It is hereby notified for public information, in accordance with section 87 of the *Planning and Development Act 2005* that the Minister for Planning approved the City of Cockburn Town Planning Scheme amendment on 27 April 2022 for the purpose of:

1. Modifying Note 1 of Table 1 by deleting (i)-(v) and replacing it with: "Development and use of land is to be in accordance with clause 14.10.11".
2. Deleting clause 3.4.2(b).
3. Modifying all references in clause 14.10.11 from 'Statement of Planning Policy' to 'State Planning Policy'.
4. Modifying clause 14.10.11(d) to state — "Despite the provisions of the Policies referred to in clause 4.10.11(a)(i) and clause 4.10.11 a)(ii) the Use Classes of Cattery, Dog Kennels and Poultry Farm (housed) are uses not permitted 'X' in the Resource Zone, except that a Cattery and Dog Kennels may be permitted in part of the Resource Zone in accordance with Table 6 - Additional Uses - No. AU7".
5. Modifying clause 14.10.11(e) to state — "Uses that are identified as 'incompatible' or which are not listed in Water Quality Protection Note 25 are 'X' uses in the Resource zone."
6. Deleting Clause 14.10.11(f), and insertion of replacement clause 14.10.11(f) which states: "All uses which are not prohibited (X) uses shall be treated as 'D' uses, unless otherwise specified in this Scheme."

L HOWLETT, JP
MAYOR

T BRUN
CHIEF EXECUTIVE OFFICER



CITY OF COCKBURN
TOWN PLANNING SCHEME NO. 3

AMENDMENT NO. 155
(BASIC)

9 December 2021

**PLANNING AND DEVELOPMENT ACT, 2005
RESOLUTION TO AMEND A TOWN PLANNING SCHEME**

**CITY OF COCKBURN
TOWN PLANNING SCHEME NO 3
AMENDMENT NO. 155**


RESOLVED that the Council, in pursuance of Section 75 of the Planning and Development Act 2005, amend the City of Cockburn Town Planning Scheme No. 3 for the following purposes:

1. Modifying Note 1 of Table 1 by deleting (i)-(v), and replacing it with: "Development and use of land is to be in accordance with clause 14.10.11."
2. Deleting clause 3.4.2(b).
3. Modifying all references in clause 14.10.11 from 'Statement of Planning Policy' to 'State Planning Policy'.
4. Modifying clause 14.10.11(d) to state – "Despite the provisions of the Policies referred to in clause 4.10.11(a)(i) and clause 4.10.11 a)(ii) the Use Classes of Cattery, Dog Kennels and Poultry Farm (housed) are uses not permitted 'X' in the Resource Zone, except that a Cattery and Dog Kennels may be permitted in part of the Resource Zone in accordance with Table 6 - Additional Uses - No. AU7."
5. Modifying clause 14.10.11(e) to state – "Uses that are identified as 'incompatible' or which are not listed in Water Quality Protection Note 25 are 'X' uses in the Resource zone."
6. Deleting Clause 14.10.11(f), and insertion of replacement clause 14.10.11(f) which states: "All uses which are not prohibited (X) uses shall be treated as 'D' uses, unless otherwise specified in this Scheme."

The Amendment is basic under the provisions of the Planning and Development (Local Planning Schemes) Regulations 2015 for the following reason(s):

an amendment to the scheme so that it is consistent with a State planning policy;

Dated this 9 day of December 2021



CHIEF EXECUTIVE OFFICER

REPORT

1. LOCAL AUTHORITY City of Cockburn

2. DESCRIPTION OF TOWN
PLANNING SCHEME: Town Planning Scheme No. 3

3. SERIAL NO. OF AMENDMENT: Amendment No. 155

4. PROPOSAL: Update 'Resource' zone provisions to
reflect State Planning Policy 2.3 -
Jandakot Groundwater Protection

AMENDMENT REPORT

1.0 Introduction

State Planning Policy 2.3 - Jandakot Groundwater Protection (SPP 2.3) aims to protect the Jandakot Groundwater Protection area from development and land uses that may have a detrimental impact on the water resource.

SPP 2.3 provides guidance regarding planning requirements that need to be considered in the Jandakot Groundwater Protection Area, and is read in conjunction with the Department of Water's 'Water Quality Protection Note 25: Land use compatibility tables in public drinking water source areas' (WQPN 25). The WQPN 25 sets out priority areas which are used to guide land use planning.

2.0 Amendment Type

As per Part 5 of the Regulations, there several amendment types: basic, standard and complex. These are defined in Part 5, Division 1, Regulation 34.

Regulation 35(2) requires the local government to specify in their resolutions to prepare or adopt an amendment what type of amendment it is, as well as the explanation for forming that opinion.

This proposed amendment is considered to be a basic amendment, which Regulation 34 describes as:

basic amendment means any of the following amendments to a local planning scheme —

- a) an amendment to correct an administrative error;*
- b) 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;*
- c) an amendment to the scheme text to delete provisions that have been superseded by the deemed provisions in Schedule 2;*
- d) an amendment to the scheme so that it is consistent with any other Act that applies to the scheme or the scheme area;*
- e) an amendment to the scheme so that it is consistent with a State planning policy;*
- f) an amendment to the scheme map to include a boundary to show the land covered by an improvement scheme or a planning control area;*
- g) an amendment to the scheme map that is consistent with a structure plan, activity centre 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;*
- h) an amendment that results from a consolidation of the scheme in accordance with section 92(1) of the Act;*

- i) *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.*

This proposed amendment satisfies (e) of the above criteria. In particular, it is:

- e.) *an amendment to the scheme so that it is consistent with a State planning policy;*

3.0 Town Planning Context:

4.1 City of Cockburn Town Planning Scheme No. 3

Pursuant to the City of Cockburn Town Planning Scheme No. 3 (TPS3) the Water Protection Priority 2 (P2) area is zoned 'Resource'.

The land use table and clause 4.10.11 sets out the provisions for the 'Resource' zone, cross-referencing SPP 2.3 for land use permissibility, rather than this being set out in Table 1.

4.2 Metropolitan Region Scheme

The City's 'Resource' zone where the proposed Scheme text changes will apply is zoned 'Rural - Water Protection' under the Metropolitan Region Scheme.

4.3 State Planning Policy 2.3 Jandakot Groundwater Protection

State Planning Policy 2.3 - Jandakot Groundwater Protection (SPP 2.3) was gazetted 11 January 2017.

It aims to protect the Jandakot Groundwater Protection area from development and land uses that may have a detrimental impact on the water resource.

SPP 2.3 provides guidance regarding planning requirements that need to be considered in the Jandakot Groundwater Protection Area, and is read in conjunction with the Department of Water's 'Water Quality Protection Note 25:

'Water Protection Note 25: Land use compatibility tables for public drinking water source areas' provides guidance on land uses and activities within public drinking water source areas (PDWSAs) to protect drinking water quality and public health. It implements the department's *Strategic policy: Protecting PDWSAs in Western Australia* and *Policy: Land use compatibility in PDWSAs*. It should be used to prepare and assess planning proposals in accordance with the Western Australian Planning Commission's State planning policy (SPP) 2.7: *Public drinking water source policy* for PDWSAs, SPP 2.2: *Gnangara groundwater protection* and SPP 2.3: *Jandakot groundwater protection*

Land use compatibility tables in public drinking water source areas' (WQPN 25). The WQPN 25 sets out priority areas which are used to guide land use planning. The City's 'Resource' zone is within the Priority 2 (P2) area, and the objective of P2 areas is to minimise water quality contamination risk.

The Department of Water and Environmental Regulation recommends that the following be used for preparing local or region planning schemes:

- *Incompatible* land uses and activities should not be permitted (represented as 'X'1)

The WQPN specifies that the Department of Water and Environmental Regulation will not support land uses and activities that are shown as *incompatible* because they pose an unacceptable contamination risk to water quality within the applicable priority area (unless the *Special circumstances* described on page 9 apply). Applications for these land uses should be refused by decision-making authorities or referred to this department for advice, if it is likely that they will be approved.

5.0 Proposal

This proposed basic amendment seeks to update the 'Resource' zone provisions to correct anomalies and ensure alignment with SPP 2.3 and the current policy intent of TPS3.

TPS3 refers to the 'Statement of Planning Policy No. 2.3 Jandakot Groundwater Protection Area' (1995), which is now superseded. A revised SPP 2.3 was gazetted on 11 January 2017, and included significant modifications. One of the key changes is that the current SPP 2.3 does not contain Table 1 setting out land use suitability for the rural-water protection zone. Rather SPP 2.3 now refers to the WQPN 25; and this contains the table (Table 2) 'Compatibility of land uses and activities for the protection of water quality within public drinking water source areas'.

This means that references in TPS3 to Table 1 in SPP 2.3 are no longer valid, meaning the intended control over land uses in the 'Resource' zone has been undermined, creating ambiguity.

It is therefore proposed that the Scheme be amended to refer to the WQPN 25. The following table sets out each of the proposed changes in detail, and the reason for these changes:

Amendment No. 155 Proposed Changes	Reason for proposed change
<p>Modifying Note 1 of Table 1 Modifying Note 1 of Table 1 by deleting (i)-(v), and replacing it with: "Development and use of land is to be in accordance with clause 14.10.11."</p>	<ul style="list-style-type: none"> Note 1 duplicates provisions from clause 4.10.11, and notes to a written law are generally not part of the law – s.32 Interpretation Act. Clause 1.7.3 of TPS3 says that 'Notes and instructions printed in italics, are not part of the Scheme.'
<p>Deletion of clause 3.4.2 (b)</p>	<ul style="list-style-type: none"> To remove outdated reference to the SPP2.3 Land Use Suitability Table.
<p>Update of clause 14.10.11 Resource Zone Updating all references from 'Statement of Planning Policy' to 'State Planning Policy'.</p>	<ul style="list-style-type: none"> Update outdated references to refer to current name 'State Planning Policy'.
<p>Modifying clause 14.10.11(d) as follows: d.) Although the Use Classes of Plant Nursery uses (wholesale and retail) and Equestrian Activity in Table 1 of Statement of Planning Policy No. 2.3 – Jandakot Groundwater Planning Policy are an 'AA' use they will not be permitted on lots within the Resource Zone which have an area less than 4 hectares.</p>	<ul style="list-style-type: none"> To remove outdated references; including removing reference to 'Equestrian Activity' as this is now identified as an 'Incompatible' use in WQPN 25.
<p>Modifying clause 14.10.11(e) as follows: Any use which is not provided for in Statement of Planning Policy No. 2.1 – Peel-Harvey Coastal Plain Catchment Policy or included in Table 1 of Statement of Planning Policy No. 2.3 – Jandakot Groundwater Protection Policy is not permitted 'X' in the Resource Zone.</p> <p><u>d.) Uses that are identified as 'incompatible' or which are not listed in Water Quality Protection Note 25 are 'X' uses in the Resource zone.</u></p>	<ul style="list-style-type: none"> Given there is no longer Table 1 in SPP2.3 it is proposed to be replaced with a new clause to ensure alignment with SPP2.3 and WQPN 25 specifying that uses identified as 'incompatible' or not listed in Water Quality Protection Note 25 are 'X' uses in the Resource zone. Consistent with clause 6.4(a)(iii) of SPP2.3 which specifies that 'incompatible' uses should not be permitted, and should be represented as 'X' uses in local planning schemes. Will bring TPS3 into line with current policy position, reflecting the intent of existing clauses 14.10.11(e) and 3.4.2(b) which specify uses not provided for in SPP2.3 are 'X' uses.
<p>Deletion of clause 14.10.11(f), and insertion of replacement clause 14.10.11(f) as follows: <u>All uses which are not prohibited (X) uses shall be treated as 'D' uses, unless otherwise specified in this Scheme.</u></p>	<ul style="list-style-type: none"> Clause 14.10.11(f) includes numerous outdated references that render it defunct. Proposed replacement clause provides clarity around permissibility of other land uses under TPS3 where they are identified as 'compatible, with conditions' (majority of other uses) or 'acceptable' under WQPN 25. This reflects current approach, and will allow for existing exemptions under the Scheme to continue to apply (eg. for single houses).

Proposed State Planning Policy amendments

In August 2021 the Department of Planning, Lands and Heritage (DPLH) released Draft State Planning Policy 2.9 - Planning for Water (draft SPP 2.9) and Draft Planning for Water Guidelines for consultation. It intended that SPP 2.9 will supersede a number of other water-related policies, including SPP 2.3, to streamline and simplify the current water-related policy framework.

It is noted that the Draft SPP 2.9 and Guidelines still refer to the WQPN 25, and therefore these proposed references in TPS3 will remain valid should this new SPP be gazetted, replacing SPP 2.3.

6.0 Conclusion

The proposed amendment will provide clarity around the permissibility of land uses in the 'Resource' zone and will ensure consistency with SPP 2.3 and the current policy intent of TPS3.

POSTSCRIPT: Inclusion of Minister's modifications

Modifications required by the Minister for Planning were outlined in correspondence dated 16 March 2022 sent to the City of Cockburn and are set out further below. In carrying out these modifications, the Council resolution dates are not modified, although in this case there are changes to the proposed scheme text from what was set out originally in those Council decisions.

In the interests of posterity and to provide some clarity to persons who may compare the original recommendation and/or Council minutes to these documents and/or the amended version of Town Planning Scheme No. 3, below reflects the Minister modifications:

1. Modifying Note 1 of Table 1 by deleting (i)-(v) and replacing it with: "Development and use of land is to be in accordance with clause 4.10.11".
2. Deleting clause 3.4.2(b).
3. Modify Clause 4.10.11 Resource Zone to read as follows:
 - a) The use and development of land within the Resource Zone shall be in accordance with the provisions of -
 - (i) The relevant State planning policy for water
 - (ii) The relevant State planning policy for basic raw materials.
 - b) Despite the provisions of clause 4.10.11(a)(i) the Use Classes of Cattery, Dog Kennels and Poultry Farm (housed) are uses not permitted 'X' in the Resource Zone, except that a Cattery and Dog Kennels may be permitted in part of the Resource Zone in accordance with Table 6 - Additional Uses - No. AU7.
 - c) Use Classes of Plant Nursery (wholesale and retail) are to comply with Water Quality Protection Note No. 25: *Land use compatibility tables for public drinking water source areas* and are not be permitted on lots within the Resource Zone which have an area less than 4 hectares.
 - d) Uses that are identified as 'incompatible' or which are not listed in Water Quality Protection Note No. 25: *Land use compatibility tables for public drinking water source areas* are 'X' uses in the Resource Zone.
 - e) All uses which are not listed as prohibited ('X') uses in Water Quality Protection Note No. 25: *Land use compatibility tables for public drinking water source areas* shall be treated as 'D' uses, unless otherwise specified in this Scheme, and shall be referred to the Department of Water and Environmental Regulation for advice and any other authority considered relevant to the application by the local government prior to the local government making its determination.

PLANNING AND DEVELOPMENT ACT, 2005

CITY OF COCKBURN TOWN PLANNING SCHEME NO 3 AMENDMENT NO. 155

The City of Cockburn under and by virtue of the powers conferred upon it by the Planning and Development Act 2005, hereby amend the above Town Planning Scheme for the following purposes:

1. Modifying Note 1 of Table 1 by deleting (i)-(v), and replacing it with: "Development and use of land is to be in accordance with clause 14.10.11."
2. Deleting clause 3.4.2(b).
3. Modifying all references in clause 14.10.11 from 'Statement of Planning Policy' to 'State Planning Policy'.
4. Modifying clause 14.10.11(d) to state – "Despite the provisions of the Policies referred to in clause 4.10.11(a)(i) and clause 4.10.11 a)(ii) the Use Classes of Cattery, Dog Kennels and Poultry Farm (housed) are uses not permitted 'X' in the Resource Zone, except that a Cattery and Dog Kennels may be permitted in part of the Resource Zone in accordance with Table 6 - Additional Uses - No. AU7."
5. Modifying clause 14.10.11(e) to state – "Uses that are identified as 'incompatible' or which are not listed in Water Quality Protection Note 25 are 'X' uses in the Resource zone."
6. Deleting Clause 14.10.11(f), and insertion of replacement clause 14.10.11(f) which states: "All uses which are not prohibited (X) uses shall be treated as 'D' uses, unless otherwise specified in this Scheme."

The Amendment is basic under the provisions of the Planning and Development (Local Planning Schemes) Regulations 2015 for the following reason(s):

an amendment to the scheme so that it is consistent with a State planning policy;

ADOPTION

Adopted by resolution of the Council of the City of Cockburn at the ordinary meeting of the Council held on 9 day of December 2021.

Logan Hewlett

MAYOR

[Signature]

CHIEF EXECUTIVE OFFICER

FINAL APPROVAL

Adopted for final approval by resolution of the City of Cockburn at the Meeting of the Council held on the 9 day of December 2021, and the Common Seal of the City of Cockburn was hereunto affixed by the authority of a resolution of the Council in the presence of:



(Seal)

Logan Hewlett

MAYOR

[Signature]

CHIEF EXECUTIVE OFFICER

Recommended/Submitted for Final Approval

[Signature]

DELEGATED UNDER S.16 PLANNING AND DEVELOPMENT ACT 2005

DATE 24/3/2022

Final Approval Granted

It is hereby certified that this is a true copy of the Scheme/Amendment, final approval to which was endorsed by the Minister for Planning on 24/4/22 MINISTER FOR PLANNING

DATE

Certified by *[Signature]*

Officer of the Commission Duty authorised pursuant to Section 24 of the Planning and Development Act 2005 and Regulation 32(3) Scheme and Regulation 63(3) (Amendment) of the Planning and Development (Local Planning Scheme) Regulations 2015.