



Western
Australian
Planning
Commission

CITY OF COCKBURN	
10 DEC 2018	
SUBJECT	109/128
RETENTION	124.2.3 AS
PROPERTY	
APP	
ACTION	CAROL CATHERWOOD

Your ref: 109/128
Our ref: TPS/2264
Enquiries: Schemes Team

Chief Executive Officer
City of Cockburn
PO Box 1215
Bibra lake WA 6965

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

Dear Sir

TOWN PLANNING SCHEME NO. 3 - AMENDMENT NO. 128

I refer to your letter dated 9 October 2018 regarding Amendment No. 128.

The WAPC 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 WAPC will cause the approved amendment to be published in the Government Gazette.

The WAPC has forwarded notice to the State Law Publisher (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 State Law Publisher on (08) 6552 6012 or fax (08) 9321 7536. One signed set of the amending documents is returned for your records.

Please direct any queries about this matter to Schemes Team on 6551 9436 or schemes@planning.wa.gov.au.

Yours sincerely

Ms Sam Fagan
Secretary
Western Australian Planning Commission
5/12/2018

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ABN 35 482 341 493

PLANNING AND DEVELOPMENT ACT 2005

APPROVED LOCAL PLANNING SCHEME AMENDMENT

City of Cockburn

LOCAL PLANNING SCHEME No. 3 - AMENDMENT No. 128

Ref: TPS/2264

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 Local Planning Scheme amendment on 23 November 2018 for the purpose of:

1. Rearrangement and addition the existing clause 5.3.13.3 to read-

Notwithstanding clause 5.3.13.2, an owner's liability to pay the owner's cost contribution does not arise if the owner:

- a) Commences development of the first single house or outbuildings associated with that first single house on an existing lot which has not been subdivided or strata subdivided since the coming into effect of the development contribution plan;
- b) Commences a temporary or time limited approval;
- c) Commences any site preparation works such as retaining walls, demolition, clearing or vegetation, bulk earthworks, temporary fencing, remediation, advertising and signage that does not result in development that will place demand on infrastructure included in a development contribution plan;
- d) Commences any other minor or incidental development or subdivision which does not have a connection (nexus) to the infrastructure included in the development contribution plan;
- e) Lodges Deposited Plans for the consolidation of land parcels (amalgamation) or for the sole purpose of ceding land required for a development contribution plan item.

L HOWLETT
MAYOR

S CAIN
CHIEF EXECUTIVE OFFICER



TOWN PLANNING SCHEME NO. 3

AMENDMENT NO. 128 ***Development Contribution exemptions***

August 2018

**PLANNING AND DEVELOPMENT ACT, 2005
RESOLUTION TO PREPARE AMENDMENT TO LOCAL PLANNING SCHEME**

**CITY OF COCKBURN
TOWN PLANNING SCHEME NO 3
AMENDMENT NO. 128**

Resolved that the local government, in pursuance of Section 75 of the Planning and Development Act 2005, amend the above local planning scheme for the following purposes:

1. To provide for additional exclusions to the development contribution liability clause, it is proposed to rearrange and include additional wording to the current clause 5.3.13.3 as follows (additional wording shown in **bold text**):

Notwithstanding clause 5.3.13.2, an owner's liability to pay the owner's cost contribution does not arise if the owner:

- a) *Commences development of the first single house or outbuildings associated with that first single house on an existing lot which has not been subdivided or strata subdivided since the coming into effect of the development contribution plan;*
- b) **Commences demolition;**
- c) **Commences an extension to an existing non-conforming use;**
- d) **Commences a temporary or time limited approval;**
- e) **Commences or obtains a development approval for a change of use where there is no physical alterations to the outside of the existing buildings;**
- f) **Commences or obtains a development approval for a change of use where there is no connection (nexus) to the infrastructure items contained within the development contribution plan;**
- g) **Commences or obtains approval for construction of subdivisional works, including retaining walls;**
- h) **Commences development of a land sales office and associated signage and parking;**
- i) **Commences stockpiling or storage of earthwork materials;**
- j) **Lodges Deposited Plans for the consolidation of land parcels (amalgamation);**
- k) **Lodges Deposited Plans to cede road widening requirements where that road is a DCP contribution item; or**
- l) **Commences any other minor or incidental development or subdivision which does not have a connection**

***(nexus) to the infrastructure included in the
development contribution plan.***

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

an amendment that does not result in any significant environmental, social, economic or governance impacts on land in the scheme area;

any other amendment that is not a complex or basic amendment.

Dated this 12th day of April 2018



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. 128

4. PROPOSAL: Development contribution exemptions

AMENDMENT REPORT

1.0 Introduction

The purpose of this amendment is to insert additional wording to ensure greater alignment between the intent of the State Planning Policy 3.6 Development contributions for infrastructure ("SPP3.6") and existing City of Cockburn Town Planning Scheme No. 3("TPS3") wording, in particular which types of development will trigger the need for contributions to be made.

2.0 Background:

Development contribution provisions have been contained in TPS3 for a number of years. The current provisions primarily reflect the wording from SPP3.6 with some additions which clarify and deal with the specific issues related to the City of Cockburn.

It has become apparent Cockburn landowners undertake types of development which inadvertently trigger the development contribution liabilities before they were intended. There are a number of principles set out in SPP3.6 which underpin the imposition of development contributions and the SPP was clearly written with primarily greenfield development in mind.

The City of Cockburn is a large municipality with areas of greenfield development, but also the complexities of infill developments and brownfield redevelopments. With 14 development contribution plans covering a range of areas including infill and greenfield development areas and industrial areas, the standard scheme provisions have been found to be lacking.

The current liability clause in TPS3 (based on SPP3.6) reads:

"5.3.13.2

An owner's liability to pay the owner's cost contribution to the local government arises on the earlier of -

- a) the Western Australian Planning Commission endorsing its approval on the deposited plan or survey strata plan of the subdivision of the owner's land within the development contribution area;*
- b) the commencement of any development on the owner's land within the development contribution area;*
- c) the approval of any strata plan by the local government or Western Australian Planning Commission on the owner's land within the development contribution area; or*
- d) the approval of a change or extension of use by the local government on the owner's land within the development contribution area.*

The liability arises only once upon the earliest of the above listed events".

This is followed by a clause which provides an exemption as follows:

“5.3.13.3

Notwithstanding clause 5.3.13.2, an owner’s liability to pay the owner’s cost contribution does not arise if the owner commences development of the first single house or outbuildings associated with that first single house on an existing lot which has not been subdivided or strata subdivided since the coming into effect of the development contribution plan”.

There is potential for this clause to include additional exemptions, similar to the manner applied in the City of Swan’s local planning scheme. There are ‘draft model provisions’ in the current SPP3.6 and none of the advertised revisions to SPP3.6 (or the associated scheme provisions) have sought to alter the liability clause wording. This is perhaps indicative these suit the majority of local government areas and developer expectations reasonably well. Likewise, it could be most local governments do not apply DCPs in areas where there is already a level of development or an area may be transitioning from other uses in the same manner as Cockburn. In any case, to introduce additional exemptions would be less punitive on developers and not be considered as a concern. Providing for additional exemptions to suit the circumstances which would arise in the context of the City of Cockburn’s DCPs would be more closely aligned to the principles set out in SPP3.6.

3.0 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 standard amendment, which Regulation 34 describes as:

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

- a) *an amendment relating to a zone or reserve that is consistent with the objectives identified in the scheme for that zone or reserve;*
- b) *an amendment that is consistent with a local planning strategy for the scheme that has been endorsed by the Commission;*
- c) *an amendment to the scheme so that it is consistent with a region planning scheme that applies to the scheme area, other than an amendment that is a basic amendment;*
- d) *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 does not currently include zones of all the types that are outlined in the plan;

- e) an amendment that would have minimal impact on land in the scheme area that is not the subject of the amendment;*
- f) an amendment that does not result in any significant environmental, social, economic or governance impacts on land in the scheme area;*
- g) any other amendment that is not a complex or basic amendment.*

This proposed amendment satisfies two of the above criteria. In particular, it is:

an amendment that does not result in any significant environmental, social, economic or governance impacts on land in the scheme area;

any other amendment that is not a complex or basic amendment.

Complex amendments include those which “identify or amend a development contribution area or to prepare or amend a development contribution plan”. In this case there is no proposal to amend a DCA boundary or any of the DCP specific provisions contained in Table 10 – Development Contribution Areas. This is simply an addition to the operative provisions which will have a positive impact on DCP participants to ensure development contribution requirements are not inadvertently triggered too early in the development cycle. It is a less punitive requirement than the scheme provides for, is consistent with the types of exemptions another local government (City of Swan) has introduced.

As a sensible and logical addition to the provisions set out in SPP3.6 it is entirely prudent to consider this as a standard amendment which will mean a lesser advertising period as well as not requiring the matter to be put through the Statutory Planning Committee (“SPC”) of the WA Planning Commission.

4.0 Proposal

To provide for additional exclusions to the development contribution liability clause, it is proposed to rearrange and include additional wording to the current clause 5.3.13.3 to read as follows:

Notwithstanding clause 5.3.13.2, an owner’s liability to pay the owner’s cost contribution does not arise if the owner:

- a) Commences development of the first single house or outbuildings associated with that first single house on an existing lot which has not been subdivided or strata subdivided since the coming into effect of the development contribution plan;*

- b) *Commences a temporary or time limited approval;*
- c) *Commences any site preparation works such as retaining walls, demolition, clearing of vegetation, bulk earthworks, temporary fencing, remediation, advertising and signage that does not result in development that will place demand on infrastructure included in a development contribution plan;*
- d) *Commences any other minor or incidental development or subdivision which does not have a connection (nexus) to the infrastructure included in the development contribution plan;*
- e) *Lodges Deposited Plans for the consolidation of land parcels (amalgamation) or for the sole purpose of ceding land required for a development contribution plan item.*

5.0 Conclusion

On reflection, and with consideration of the submission received, scope was found to streamline the proposed provision from the more detailed version advertised. Some aspects could be captured in a broader wording of the provision which would provide flexibility. This would be important, for example if there were a circumstance the more detailed wording had not covered. A broader provision wording is consistent with the approach other Councils have taken. City officers are comfortable this would still achieve the same intent of the amendment.

The proposed addition and rearrangement of this operative provision of TPS3 should be introduced to ensure development contribution requirements are not inadvertently triggered too early in the development cycle. As a less punitive requirement to the current scheme provision, with only positive impacts on DCP participants, this amendment should be supported.

**PLANNING AND DEVELOPMENT ACT, 2005
RESOLUTION TO ADOPT AMENDMENT TO LOCAL PLANNING SCHEME**

**CITY OF COCKBURN
TOWN PLANNING SCHEME NO 3
AMENDMENT NO. 128**

Resolved that the local government pursuant to section 75 of the *Planning and Development Act 2005*, amend the above local planning scheme for the following purposes:

1. Rearrangement and addition the existing clause 5.3.13.3 to read-
“Notwithstanding clause 5.3.13.2, an owner’s liability to pay the owner’s cost contribution does not arise if the owner:
 - a) Commences development of the first single house or outbuildings associated with that first single house on an existing lot which has not been subdivided or strata subdivided since the coming into effect of the development contribution plan;
 - b) Commences a temporary or time limited approval;
 - c) Commences any site preparation works such as retaining walls, demolition, clearing of vegetation, bulk earthworks, temporary fencing, remediation, advertising and signage that does not result in development that will place demand on infrastructure included in a development contribution plan;
 - d) Commences any other minor or incidental development or subdivision which does not have a connection (nexus) to the infrastructure included in the development contribution plan;
 - e) Lodges Deposited Plans for the consolidation of land parcels (amalgamation) or for the sole purpose of ceding land required for a development contribution plan item.”

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

an amendment that does not result in any significant environmental, social, economic or governance impacts on land in the scheme area;

any other amendment that is not a complex or basic amendment.

Dated this 9th day of August 2018



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 9th day of August 2018, 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 Howlett

MAYOR

[Signature]

CHIEF EXECUTIVE OFFICER

Recommended/Submitted for Final Approval

S. Chong

DELEGATED UNDER S.16 PLANNING AND DEVELOPMENT ACT 2005

DATE *12/11/18*

Final Approval Granted

MINISTER FOR PLANNING

DATE

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 *23/11/18*.

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.