



Your ref: 109/148
Our ref: TPS/2488
Enquiries: Schemes Team

CITY OF COCKBURN	
OC Set	
15 JUN 2020	
SUBJECT	109/148
RETENTION	124.2.3 AS
PROPERTY	
APP	
ACTION	CAROL (C. ADAMS WOOD)

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. 148

I refer to your letter dated 7 May 2020 regarding Amendment No. 148.

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@dplh.wa.gov.au.

Yours sincerely

Ms Sam Fagan
Secretary
Western Australian Planning Commission

10/06/2020



PLANNING AND DEVELOPMENT ACT 2005

APPROVED TOWN PLANNING SCHEME AMENDMENT

City of Cockburn

TOWN PLANNING SCHEME No. 3 - AMENDMENT No. 148

Ref: TPS/2488

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 4 June 2020 for the purpose of:

1. Adding a new clause 5.3.11.5 to read:

Notwithstanding clauses 5.3.11.1, 5.3.11.2(ii), 5.3.11.3 and 5.3.11.4, where the development contribution plan relates to community infrastructure, the local government may adopt a lesser rate than the independent certification recommends and make up the shortfall in accordance with clause 5.3.17.1.

2. Renumbering existing clauses 5.3.11.5 – 5.3.11.7 accordingly.

L HOWLETT
MAYOR

S DOWNING
A/CHIEF EXECUTIVE OFFICER



TOWN PLANNING SCHEME NO. 3

AMENDMENT NO. 148 *Development Contribution annual review clauses*

Updated to reflect Minister modifications
May 2020

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

**CITY OF COCKBURN
TOWN PLANNING SCHEME NO 3
AMENDMENT NO. 148**

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. Adding a new clause 5.3.11.5 to read:

Notwithstanding clauses 5.3.11.1, 5.3.11.2(ii), 5.3.11.3 and 5.3.11.4, where the local government is a participant in a development contribution plan, the local government may adopt a lesser rate than the independent certification recommends and make up the shortfall in accordance with clause 5.3.17.1

2. Renumbering existing clauses 5.3.11.5 – 5.3.11.7 accordingly

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

an amendment relating to development that is of a scale, or will have an impact, that is significant relative to development in the locality

an amendment to identify or amend a development contribution area or to prepare or amend a development contribution plan

Dated this 13th day of June 2019


4/ 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. 148

4. PROPOSAL: Development contribution annual review clauses

AMENDMENT REPORT

1.0 Introduction

The purpose of this amendment is to insert an additional clause 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 those clauses relating the requirement for annual reviews to be undertaken.

2.0 Background:

Development contribution provisions ("DCP") 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.

Some of the provisions are 'non-discretionary' in that they provide no flexibility to the administrator of the scheme. In some cases, this is prudent. However in relation to the use of the 'best and latest' costs the local government has available it presents an issue.

It is very prudent for an annual review to be undertaken and for that information to inform the annual revision to the DCP rate. It is prudent for an independent expert to be utilised to undertake that review. Probity in procurement is equally important in local government and may lead to the use of different independent experts from year to year (or contract to contract). As with most experts, it is possible to end up with differing recommendations (or in this case, different costings).

Where the lack of discretion becomes a concern is when the expert provides costs which are significantly higher than the previous year. Currently the scheme would require these to simply be applied. No regard is given to whether they might be considered too high by the City who has recently built a similar item at a much lower cost. No regard is given that the City may seek to find alternative funding sources and not simply pass the estimated higher construction costs onto its ratepayers and/or developers doing business in Cockburn.

To not publish and collect the DCP rates as informed by independent review would be a compliance issue.

The above quandary was not the intent of the State Planning Policy which set out these scheme provisions. Discussions with the Department of Planning, Lands and Heritage indicate they did not intend for local governments to be locked into having to accept and charge whatever the experts advise. Flexibility to adopt a lesser rate, with the local government providing other sources of funding was never meant to be prevented.

3.0 Amendment Type

As per Part 5 of the Planning and Development (Local Planning Schemes) 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 complex amendment which Regulation 34 describes as:

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

- a) *an amendment that is not consistent with a local planning strategy for the scheme that has been endorsed by the Commission;*
- b) *an amendment that is not addressed by any local planning strategy;*
- c) *an amendment relating to development that is of a scale, or will have an impact, that is significant relative to development in the locality;*
- d) *an amendment made to comply with an order made by the Minister under section 76 or 77A of the Act;*
- e) *an amendment to identify or amend a development contribution area or to prepare or amend a development contribution plan.*

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

an amendment relating to development that is of a scale, or will have an impact, that is significant relative to development in the locality; and

an amendment to identify or amend a development contribution area or to prepare or amend a development contribution plan.

4.0 Proposal

There are several clauses relevant to the annual review of development contribution plans which create an issue:

“5.3.11 Cost contributions based on estimates

5.3.11.1

The determination of Infrastructure costs and administrative costs is to be based on amounts expended, but when expenditure has not occurred, it is to be based on the best and latest estimated costs available to the local government and adjusted accordingly, if necessary.

5.3.11.2

Where a cost apportionment schedule contains estimated costs, such estimated costs are to be reviewed at least annually by the local government –

- i. in the case of land to be acquired, in accordance with clause 5.3.12; and*
- ii. in all other cases, in accordance with the best and latest information available to the local government, until the expenditure on the relevant item of infrastructure or administrative costs has occurred.”*

5.3.11.3

The local government is to have such estimated costs independently certified by appropriate qualified persons and must provide such independent certification to an owner when requested.

5.3.11.4

Where any cost contribution has been calculated on the basis of an estimated cost, the local government –

- i. is to adjust the cost contribution of any owner in accordance with the revised estimated costs; and*
- ii. may accept a cost contribution, based upon estimated costs, as a final cost contribution and enter into an agreement with the owner accordingly.*

Advice has been sought on the above wording and has confirmed it is non-discretionary.

There is potential to supplement these clauses with an additional clause that gives the local government some flexibility. 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 above clauses.

It is proposed to add a new clause 5.3.11.5 (subsequent clauses to be renumbered) to enable the local government flexibility reading:

5.3.11.5

Notwithstanding clauses 5.3.11.1, 5.3.11.2(ii), 5.3.11.3 and 5.3.11.4, where the local government is a participant in a development contribution plan, the local government may adopt a lesser rate than the independent certification recommends and make up the shortfall in accordance with clause 5.3.17.1

It should be noted the additional clause relates to estimated construction costs, not land. It is also specific the local government should be a participant in the development contribution plan, meaning this clause could only be used in a DCP where there was a municipal share already (currently DCP13 Community

Infrastructure and proposed DCP15 Treeby/Jandakot). It would not be intended to apply to other DCP such as:

- DCP11 Muriel Court
- DCP12 Packham North
- DCP14 Cockburn Coast (Robb Jetty/Emplacement)

These DCP are entirely developer funded, they do not have a municipal component and therefore the local government is not a participant, purely an administrator.

5.0 Conclusion

The risk to Council in not progressing this scheme amendment is that should an independent expert provide the City with substantially increased cost estimates, then there would be no option but for the administration to apply these in the form of an increased DCP rate. This would be despite any belief the administration may have that the costs might be too high. It is important to note this risk sits with the City of Cockburn but it is a matter which can be addressed quite simply with some additions to the model provisions.

From a reputation perspective, to apply extraordinary increases to a DCP rate would be a poor outcome and likely see substantial decreases in the developers who are able to do business in Cockburn.

With other sources of income available to local government, there should be a choice available to choose to a less punitive approach than an annual review estimate would currently require.

Postscript notes:

Release of draft State Planning Policy 3.6 – Infrastructure Contributions (SPP3.6)

Since the initiation and request to advertise this amendment, the State has now released a draft SPP 3.6 for comment. The City of Cockburn will need to align to this proposal with the intent of SPP3.6.

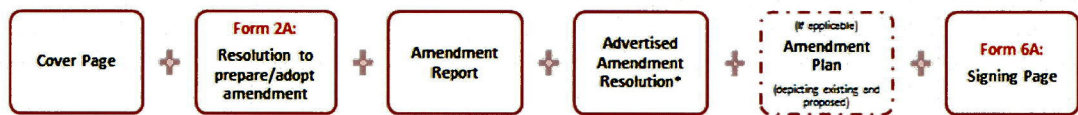
It should be therefore noted there may be minor modifications to this proposal as advertised to reflect the draft SPP3.6. Specifically this is likely to involve a slight rewording of the proposed 5.3.11.5 to this effect:

“Notwithstanding clauses 5.3.11.1, 5.3.11.2(ii), 5.3.11.3 and 5.3.11.4, where the development contribution plan relates to community infrastructure, the local government may adopt a lesser rate than the independent certification recommends and make up the shortfall in accordance with clause 5.3.17.1”

POSTSCRIPT: Inclusion of Minister's modifications

Modifications required by the Minister for Planning were outlined in correspondence dated 28 April 2020 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 some cases there are changes to the proposed scheme text from what was set out originally in those Council decisions. In this case, the Council adoption resolution of 12 December 2019 remains the same. The submitted documents reflected the *advertised* resolution in accordance with a draft 'scheme amendment document template' produced by the Department. The template extract is shown below:



* → should be submitted depicting advertised amendment only. If Council resolves to support amendment with modifications, these should be outlined separately in a Schedule of Modifications containing information in accordance with Regulations 44 and 53. An electronic copy of Schedule of Modifications containing track changes from advertised version is requested when lodging amendment with the WAPC. ¶

According to the template, the City provided the Schedule of Modifications. This seems to have created an additional step of Minister modifications to the previous manner in which these documents were undertaken (when the adoption resolution would simply be included in the first place) and the amendment would only require the Minister's consideration once.

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 are the Minister modifications:

Modified wording of proposed clause 5.3.11.5 to read:

5.3.11.5 Notwithstanding clauses 5.2.11.1, 5.3.11.2(ii), 5.3.11.3 and 5.3.11.4, where the development contribution plan relates to community infrastructure, the local government may adopt a lesser rate than the independent certification recommends and make up the shortfall in accordance with clause 5.3.17.1.

FINAL APPROVAL

Adopted for final approval by resolution of the City of Cockburn at the Meeting of the Council held on the 12th day of December 2019, 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 Hewitt

MAYOR

[Signature]
A/ CHIEF EXECUTIVE OFFICER

Recommended/Submitted for Final Approval

Ohnell,

DELEGATED UNDER S.16 PLANNING AND DEVELOPMENT ACT 2005

DATE 18/5/2020

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 4/6/2020

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.