

COVER PAGE



Shire of Waroona

Local Planning Scheme No.7

Amendment No.43

Revision to the scheme text (addition/deletion and changes to text) relating to indigenous vegetation and clearing restrictions.

**Planning and Development Act 2005
RESOLUTION TO PREPARE AMENDMENT
TO LOCAL PLANNING SCHEME**

***Shire of Waroona Local Planning Scheme No.7 –
Amendment Number 43 – Revision of Scheme Text***

Resolved that the Local Government pursuant to section 75 of the *Planning and Development Act 2005*, amend the above Local Planning Scheme by:

**Revision to the scheme text (addition/deletion and changes to text) relating to
indigenous vegetation and clearing restrictions.**

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

This amendment will introduce changes to the scheme text to protect all vegetation within the Shire not just indigenous vegetation. The amendment simply proposes to amend/delete certain parts of the scheme text and to add a qualifying clause to a number of Rural and Urban zones.

Dated this 20th day of December 2022



(Chief Executive Officer)

Introduction

The Shire of Waroona is seeking Amendment No.43 to Local Planning Scheme No.7 (LPS7) to delete, amend and add wording in various clauses of the scheme text.

The Shire's intent of the amendment is to ensure the protection of all significant trees and other significant vegetation (at present the Scheme only applies to indigenous vegetation).

According to the Planning and Development Act Regulations criteria this amendment is a standard amendment, and the simple procedure applies to its initiation and advertisement for public comment.

Background – Why does the Shire need to amend the Scheme text?

This amendment reflects the Shire's intention to provide clarity and to better focus on environmental objectives which intend to protect trees where they provide an environmental and ecological benefit to the Shire and its community. Trees provide shade, remove carbon and other greenhouse gases from the atmosphere and maintain healthy soil biomes. They also support pollinators and other important fauna.

This information is an important explanation and justification for the amendment which can assist the public to appreciate its merit.

The current Scheme text wording specifically nominates indigenous vegetation, and this restricts the capability of the Shire to control removal and associated clearing of trees on rural and non-rural properties where some or all the removed species may not be classified as indigenous but nevertheless hold ecological and community services benefits.

The Scheme text clauses currently focus on indigenous vegetation within the zone. These will therefore be edited to remove and replace text to expand the application to all vegetation which is considered significant in the opinion of the Shire.

The Shire's current LPS7 is being reviewed by a planning consultant (Land Insights) and this is likely to consider provisions which protect vegetation where there is a benefit for society, the economy, and the environment. The review of and preparation of a new Scheme has only just commenced and will take over 12 months to be adopted and so this amendment is necessary to update present controls for a more immediate effect.

Once completed the amendment would require there be a formal planning application submitted for the assessment of proposals which involved the clearing of significant trees. This will aid in the protection of all significant vegetation within the Shire.

Planning Context – What other changes are happening?

The Shire's current LPS7 is currently under review with Land Insights and a new Local Planning Strategy is also being developed for the Shire whereby there will be a renewed environmental focus, one which may protect and enhance the current natural and rural landscape qualities of the Shire and its districts.

Whilst the new scheme will progress greater scope for protecting the natural environment, its preparation and adoption will take some time and therefore it is necessary in the interim for this amendment to aid in the protection of all significant trees and vegetation not just indigenous vegetation within the Shire with a more immediate effect.

The following outlines the proposed changes to the Scheme Text:

Part 1 of proposed Amendment – Amend and Remove Scheme Text

It is proposed to change/delete or amend the wording in the following clauses so that all vegetation not just indigenous vegetation will be protected within the zone.

The proposed changes are as follows:

Current	Proposed
3.8.3 Clearing of Trees or vegetation Development approval is required for the clearing of indigenous trees or other substantial vegetation except where exempt by clause 61(m) of Schedule A.	3.8.3 Clearing of Trees or vegetation Development approval is required for the clearing of trees or other vegetation except where exempt by clause 61(m) of Schedule A.
3.15.4 Clearing Restrictions Subject to any provision of Schedule 2 the approval of Council is required for the clearing of indigenous trees or other substantial vegetation except for the clearing of vegetation which is: • dead, diseased or dangerous; • necessary for any firebreak required by law; Shire of Waroona LPS 7 Page No. 31 • for the purpose of access to an approved dwelling or outbuildings; • within a defined building envelope and limited to that; • necessary for the construction of a dwelling, outbuildings and an area of 20 metre width surrounding the dwelling for the purpose of bush fire protection.	3.15.4 Clearing Restrictions Subject to any provision of Schedule 2 the approval of Council is required for the clearing of trees or other vegetation except for the clearing of vegetation where exempt by clause 61(m) of Schedule A.
3.16.7 Clearing Restrictions Subject to any provision of Schedule 7 the approval of Council is required for the clearing of indigenous trees or other substantial vegetation except for the clearing of vegetation which is: a) dead, diseased or dangerous; b) necessary for any firebreak required by law; c) for the purpose of access to an approved dwelling or outbuildings; d) within a defined building envelope and limited to that; e) necessary for the construction of a dwelling, outbuildings and an area of 20 metre width surrounding the	3.16.7 Clearing Restrictions Subject to any provision of Schedule 7 the approval of Council is required for the clearing of trees or other vegetation except for the clearing of vegetation where exempt by clause 61(m) of Schedule A.

dwelling for the purpose of bush fire protection.	
3.17.9 Clearing Restrictions The approval of Council is required for the clearing of indigenous trees or other substantial vegetation except for the clearing of vegetation which is – • Dead, diseased or dangerous; • Necessary for any firebreaks or any clearing required by an adopted Bush Fire Management Plan or Subdivision Guide Plan; • For the purpose of access to an approved dwelling or outbuilding; • Within a defined building envelope and limited to that.	3.17.9 Clearing Restrictions The approval of Council is to be obtained prior to the clearing of trees or other vegetation except for the clearing of vegetation which is exempt by clause 61(m) of Schedule A.

Part 2 of proposed Amendment – Addition of Scheme Text in relation to Clearing Restrictions

The following changes relates to the addition of a clause relating to clearing in the following zones

- 3.9 Urban 6 – Rural Living Zone
- 3.10 Urban 7 – Industrial Zone
- 3.13 Rural Zones – All
- 3.14 Rural 3A & 3B – Coastal & Coastal Highway Zones

The addition of the clauses below into the scheme text of LPS7, in the above identified zones will allow for the protection of trees and remanent vegetation with the Shire.

The additional clauses are as follows;

3.9.4 Clearing Restrictions

The approval of Council is required to be obtained prior to the clearing of trees or other vegetation, except for the clearing of vegetation which is exempt by clause 61(m) of Schedule A.

3.10.7 Clearing Restrictions

The approval of Council is required to be obtained prior to the clearing of trees or other vegetation, except for the clearing of vegetation which is exempt by clause 61(m) of Schedule A.

3.13.9 Clearing Restrictions

The approval of Council is required to be obtained prior to the clearing of trees or other vegetation, except for the clearing of vegetation which is exempt by clause 61(m) of Schedule A.

3.14.5 Clearing Restrictions

The approval of Council is required to be obtained prior to the clearing of trees or other vegetation, except for the clearing of vegetation which is exempt by clause 61(m) of Schedule A.

Part 3 of proposed Amendment – Amendment to Schedule A of LPS7

The following describes the proposed changes that will take place to Schedule A of LPS7;

Current

Clause 61(1):

- (k) the carrying out of earthworks that do not, at any point, cause the resultant ground level to deviate by greater than 0.5 metres in height above or below natural ground level, including the construction of a retaining wall;
- (l) aquaculture proposals involving the use of existing dams where no structural works are proposed;
- (m) the clearing of vegetation subject that is:
 - (i) *dead, diseased, or dangerous;*
 - (ii) necessary for any firebreak required by law;
 - (iii) for the purpose of access to an approved dwelling or outbuilding;
 - (iv) within a defined building envelope and limited to that; or
 - (v) necessary for the construction of a dwelling, outbuildings, and an area of 20 metres width surrounding the dwelling for the purpose of bushfire protection;

Proposed

Clause 61(1):

- (k) the carrying out of earthworks that do not, at any point, cause the resultant ground level to deviate by greater than 0.5 metres in height above or below natural ground level, including the construction of a retaining wall;
- (l) aquaculture proposals involving the use of existing dams where no structural works are proposed;
- (m) the clearing of vegetation subject that it is:
 - (i) exempt by the written opinion of the Local Government, in accordance with the Department of Water and Environmental Regulations guidelines, policy and regulations pertaining to clearing vegetation.
 - (ii) necessary for an adequate firebreak required by law;
 - (iii) for the purpose of access to an approved dwelling or outbuilding;
 - (iv) within a defined building envelope and limited to that; or
 - (v) necessary for the construction of an approved dwelling or outbuilding, and an area of 20 metres width surrounding the dwelling for the purpose of bushfire protection;

Conclusion

These proposed amendments to the scheme text of LPS7 provide for improved control of the removal and achieve a greater protection of trees and vegetation within the Shire.

The scope of the proposed amendment meets the standard amendment procedure criteria and so the corresponding process for initiation and adoption shall apply. This measure to update the Scheme under review will introduce controls and apply for the interim period until the Shire's new Local Planning Scheme (LPS8) and Local Planning Strategy are developed and approved. It is likely equivalent clauses to these would be included as part of draft Scheme (LPS8).

Council is requested to receive and note the proposed Amendment No.43 to Local Planning Scheme 7 and accept the proposed amendment for initiation, and to forward the amendment to the Western Australian Planning Commission (WAPC) for their review and final assessment and endorsement to have the proposed changes included in the current scheme text.

The Western Australian Planning Commission (Commission) considered the advertised amendment and submitted its recommendation to the Minister for Planning for the approval of the amendment by the Minister in accordance with section 87(1) of the *Planning and Development Act 2005* (the Act). In a letter dated 5 June 2024 the Commission advised that the Minister, pursuant to Section 87(2)(b) of the Act, has required that the amendment be modified prior to being readvertised for public comment. The modifications, as set out in a Schedule of Modifications, required the amendment resolution text to be replaced with text that:

- Deletes clauses 3.83, 3.15.4, 3.16.7 and 3.17.9, rather than amending these clauses; and
- Replaces Clause 61(1) in “Schedule A – Supplemental provisions to the deemed provisions” so that the formatting of that clause corresponds with the new Table format that is contained in clause 61(1) of the Deemed Provisions in Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015.

The following “RESOLUTION TO AMEND LOCAL PLANNING SCHEME” has been modified as required by the Minister.

Local Planning Policy 17 – Vegetation, stipulates when development approval is required for clearing and disturbance to vegetation.

SCHEDULE OF MODIFICATIONS
SHIRE OF WAROONA
LOCAL PLANNING SCHEME NO. 7, AMENDMENT NO. 43

1. Replace the Scheme Amendment Resolution Page with the following:

Planning and Development Act 2005
RESOLUTION TO AMEND LOCAL PLANNING SCHEME

Shire of Waroona Local Planning Scheme No.7
Amendment Number 43

Resolved that the Local Government pursuant to section 75 of the *Planning and Development Act 2005*, amend the above Local Planning Scheme by:

1. Deleting the following clauses in their entirety:
- (i) Clause 3.8.3
 - (ii) Clause 3.15.4
 - (iii) Clause 3.16.7
 - (iv) Clause 3.17.9
2. Replacing Clause 61(1) in Schedule A – Supplemental provisions to the deemed provisions with the following:

Clause 61(1) Table

	Column 1 Works	Column 2 Conditions
22	The carrying out of earthworks.	The earthworks do not, at any point, cause the resultant ground level to deviate by greater than 0.5 metres in height above or below natural ground level, including the construction of a retaining wall.
23	Aquaculture proposals	The aquaculture proposal involves the use of existing dams where no structural works are proposed.
24	Effluent disposal systems for domestic purposes	The effluent disposal system complies with Scheme requirements and relevant legislation.
25	Satellite dishes and other domestic telecommunication installation	Unless the work does not comply with any relevant adopted standards outlined in a Local Planning Policy or is located within a Heritage Area.
26	Horticulture	The work utilises less than 1,500kl of water per annum.

ATTACHMENT 6

27	Rural Pursuit and works associated therewith	The Rural Pursuit is shown as “P” use in the Zoning Table.
28	The signage and advertisements contained in Schedule 5 of this Scheme.	
29	The erection or extension of a single house on a lot	Where shown as a ‘P’ use in the Zoning Table and all other requirements of the Scheme are met.
30	The erection or extension of an ancillary dwelling, outbuilding, external fixture, boundary wall or fence, patio, pergola, veranda, garage, carport or swimming pool on the same lot as a single house	Where shown as a ‘P’ use in the Zoning Table and all other requirements of the Scheme are met.

3. Replacing references within the Scheme to ‘Clause 61(1)(R) in Schedule A’ to ‘Clause 61(1) Table (No.28)’

COUNCIL ADOPTION

This Standard Amendment was adopted by resolution of the Council of the Shire of Waroona at the Ordinary Meeting of the Council held on the 20th day of December, 2022.



.....
MAYOR/SHIRE PRESIDENT

.....
CHIEF EXECUTIVE OFFICER

COUNCIL RESOLUTION TO ADVERTISE

by resolution of the Council of the Shire of Waroona at the Ordinary Meeting of the Council held on the 20th day of December, 2022, proceed to advertise this Amendment.

.....
MAYOR/SHIRE PRESIDENT

.....
CHIEF EXECUTIVE OFFICER

COUNCIL RECOMMENDATION

This Amendment is recommended for support by resolution of the Shire of Waroona at the Ordinary Meeting of the Council held on the 27th day of June, 2023 and the Common Seal of the Shire of Waroona was hereunto affixed by the authority of a resolution of the Council in the presence of:

.....
MAYOR/SHIRE PRESIDENT

.....
CHIEF EXECUTIVE OFFICER

WAPC ENDORSEMENT (r.63)

.....
**DELEGATED UNDER S.16 OF
THE P&D ACT 2005**

DATE.....

APPROVAL GRANTED

.....
MINISTER FOR PLANNING

DATE.....