



Shire of Denmark
Town Planning Scheme No. 3

Amendment No. 153

Basic Amendment introducing the definition of 'Brewery' and amending the definition of 'Microbrewery' to improve alignment with the model definition provided in the Planning and Development (Local Planning Schemes) Regulations 2015.

21 June 2022 - Attachment 9.1.4

Planning and Development Act 2005

RESOLUTION TO ADOPT AMENDMENT TO LOCAL PLANNING SCHEME

*Town Planning Scheme No. 3
Amendment Number 153*

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

- Introducing a definition for 'Brewery' in Appendix 1 – Interpretations of the Scheme text reading: *"means premises the subject of a producer's licence authorising the production of beer, cider or spirits granted under the Liquor Control Act 1988"*.
- Amending the definition of 'Microbrewery' in Appendix 1 – Interpretations of the Scheme text to read: *"means a small scale premises (as determined by Council) the subject of a producer's licence authorising the production of beer, cider or spirits granted under the Liquor Control Act 1988"*.

This amendment is assessed as a basic amendment under the provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* for the following reason(s):

- The amendment provides for consistency with the model definition provided in the *Planning and Development (Local Planning Schemes) Regulations 2015* and the classification of licences in the *Liquor Control Act 1988*, in accordance with Part 5, Division 1, Clause 35(b) and (d) of the Regulations:

In this Part –

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

(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;

(d) 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;

Dated this _____ day of _____ 20_____

(Chief Executive Officer)

Shire of Denmark – Town Planning Scheme No. 3

Amendment No. 153

1.0 INTRODUCTION

The Shire of Denmark Town Planning Scheme No. 3 (the Scheme) currently includes a definition of ‘Microbrewery’ to support provision for this land use on selected tourism sites.

This definition is limited in scope and provides for the development of a brewery producing beer but not for a distillery or cidery, despite these being equivalent land uses.

This Amendment proposes to introduce a definition for ‘Brewery’ consistent with the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations) and to amend the definition of ‘Microbrewery’ to accommodate a brewery, distillery or cidery consistent with the model definition of ‘Brewery’.

2.0 BACKGROUND

On 14 April 2022 the Shire received a development application requesting consent for the development and operation of a distillery, barrel store, and cellar door sales outlet on Lot 83 (No. 427) Mount Shadforth Road, Shadforth. This application proposes to enable the production, storage and sale of alcoholic spirits by a local company.

Lot 83 forms part of the ‘Karri Mia’ tourism site. Karri Mia is included in the Tourist Zone and guided by the land use and development provisions set out in Appendix XIII – Schedule of Tourist Zones (refer tourism site T1). This provides for the following as the ‘...*only permissible land uses*’ on Lot 83:

Function Centre (maximum 200 persons)	P	[permitted]
Manager’s Accommodation	IP	[incidental permitted]
Microbrewery	P	
Office	IP	
Restaurant	P	

The definition of a ‘Microbrewery’ in Appendix I – Interpretations of the Scheme is as follows:

“means premises used for the purposes of brewing and sale of boutique hand crafted beers with a limited capacity (as determined by Council) in conjunction with an existing tourist operation”

The Shire is unable to consider a proposal for a distillery under this definition.

The land use outcomes for a brewery are considered equivalent with a distillery, as demonstrated by the model definition of a ‘Brewery’ provided within the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations):

“means premises the subject of a producer’s licence authorising the production of beer, cider or spirits granted under the Liquor Control Act 1988”

In other cases the Shire has assessed proposals for the development of a distillery as a ‘use not listed’. This can occur where a proposed land use does not fit within any of the land use classes defined in TPS3. However, this approach cannot be applied in this case as Appendix XIII specifies five land uses as the ‘...*only permissible land uses*’ on Lot 83.

In order to respond to the development application received by the Shire for Lot 83, and provide more contemporary planning controls for similar Tourist zone sites, Amendment 153 has been prepared to:

- i) Insert the model definition of ‘Brewery’ as per the *Planning and Development (Local Planning Schemes) Regulations 2015* into TPS3; and
- ii) Amend the definition of ‘Microbrewery’ to read:

“means a small scale premises (with limited capacity as determined by Council) the subject of a producer’s license authorising the production of beer, cider or spirits granted under the Liquor Control Act 1988 in conjunction with an approved tourist operation”

Wholesale, retail sale and service of liquor may occur as defined by the conditions of a producer’s licence granted under the *Liquor Control Act 1988*.

This proposed change improves consistency with the Regulations while retaining the intent to limit the scale of development that is achieved by the current definition. The size of an establishment, particularly where industrial processes are occurring, is an important determinant in assessing the suitability of a proposal within the Tourist Zone where land uses should be predominantly for tourism purposes.

Maintaining a limit to the scale of development also ensures consistency with the intent of a ‘basic’ amendment as an administrative change with little or no effective change to the land use outcome. That is, the change that is proposed allows a brewery or distillery to be developed under effectively the same conditions – whereas removing a limitation to capacity as it relates to sites within the Tourist Zone would potentially provide for the development of a much larger operation.

Relevant definitions and use classes can be further reviewed as part of the upcoming preparation of a new local planning scheme where new use classes, definitions and the relationship to existing development standards will be assessed holistically.

3.0 LOCAL PLANNING CONTEXT

Planning and Development (Local Planning Schemes) Regulations 2015

The Regulations include the following model definition of a ‘Brewery’:

“means premises the subject of a producer’s licence authorising the production of beer, cider or spirits granted under the Liquor Control Act 1988”

This reflects a view of the production of beer, cider or spirits as effectively equivalent land uses.

Draft Position Statement: Planning for Tourism (2021)

Proposed Amendment 153 relates to a land use that the Scheme allows for on selected sites within the Tourist Zone.

This proposal is consistent with the objectives of the Draft Position Statement in that it seeks to maintain the primacy of tourism outcomes within the Tourist Zone.

Local Planning Strategy

The Shire's most recent Local Planning Strategy was adopted in 2011 and identifies an intent to support "...flexibility for new [tourism] development or extensions of existing developments to proceed".

This Strategy is currently under review and will consider a range of potential changes relating to tourism land uses and food production.

Town Planning Scheme No. 3

The Scheme includes a definition of 'Microbrewery' in Appendix I – Interpretations as follows:

"means premises used for the purposes of brewing and sale of boutique hand crafted beers with a limited capacity (as determined by Council) in conjunction with an existing tourist operation"

This definition was added to the Scheme as part of Amendment 108, taking effect in 2010.

The Scheme includes provision for the approval of a 'Microbrewery' on selected sites within the Tourist Zone, as identified in Appendix XIII – Schedule of Tourist Zones. This includes the following landholdings:

- Lot 83 Mount Shadforth Road, Denmark (Tourist Zone site T1)
- Pt Lot 14 & Lot 73 Inlet Drive, Denmark (T8)
- Lot 1 (#1597) Valley of the Giants Road, Bow Bridge (T12)

Local Planning Policies

The Shire currently has no planning policies that relate to the development or use of a 'Microbrewery'.

4.0 PROPOSAL

This amendment proposes to amend Appendix I – Interpretations of the Scheme text to:

- i) Insert a definition of 'Brewery' as per the model provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*:

"means premises the subject of a producer's license authorising the production of beer, cider or spirits granted under the Liquor Control Act 1988"

- ii) Amend the definition of 'Microbrewery' to read:

“means a small scale premises (with limited capacity as determined by Council) the subject of a producer’s license authorising the production of beer, cider or spirits granted under the Liquor Control Act 1988 in conjunction with an approved tourist operation”

Planning Justification

This amendment:

- Improves consistency with the Regulations and the *Liquor Control Act 1988*.
- Will not result in a significant land use change, with the broader definition encompassing land uses that are considered equivalents.
- Facilitates improvement to the planning approval process, in line with the intention to streamline approvals being pursued through State planning reforms.

5.0 CONCLUSION

Proposed Amendment 153 has been adopted by the Council to improve the alignment of the Scheme with the Regulations and facilitate appropriate development outcomes.

COUNCIL ADOPTION

This Basic Amendment was adopted and is recommended for approval by resolution of the Council of the Shire of Denmark at the Ordinary Meeting of the Council held on the 00th day of Month, 2022 and the Common Seal of the Shire of Denmark was hereunto affixed by the authority of a resolution of the Council in the presence of:

.....
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.....