



Western Australia

## **Planning and Development (Local Planning Schemes) Regulations 2015**

Compare between:

[30 Jun 2021, 00-k0-00] and [01 Jul 2021, 00-10-00]



## Planning and Development (Local Planning Schemes) Regulations 2015

### Part 1 — Preliminary

#### 1. Citation

These regulations are the *Planning and Development (Local Planning Schemes) Regulations 2015*.

#### 2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 19 October 2015.

#### 3. Terms used

In these regulations —

***authorised person*** means a person or body designated under regulation 4 as an authorised person for the purposes of the regulation in which the expression is used;

***Department*** means the department of the Public Service principally assisting the Minister in the administration of the Act;

***development contribution plan*** means a plan prepared under regulation 71;

***excluded holiday period day*** means a day that is in —

- (a) a period commencing on 25 December in a year and ending on the next 1 January; or

**r. 3A**

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- (b) a period of 7 days commencing on Good Friday in a year;

**local planning scheme documents** means the documents referred to in regulation 8 that comprise a local planning scheme;

**scheme area** means an area described in a local planning scheme as the area to which the scheme applies;

**scheme map** means the map or set of maps referred to in regulation 9(1) that are designated as the scheme map for a local planning scheme.

Note for this regulation:

Note the *Electronic Transactions Act 2011* section 9 in relation to information that is to be given in writing.

*[Regulation 3 amended: SL 2020/252 r. 4.]*

**3A. Excluded holiday period days not counted in time periods**

For the purposes of these regulations (other than Schedules 1 and 2), an excluded holiday period day is not to be counted in calculating a period of time that is expressed as a number of days.

*[Regulation 3A inserted: SL 2020/252 r. 5.]*

**4. Authorised persons**

- (1) Subject to subregulation (2), the Minister may, by notice in writing, designate any of the following persons or bodies to be an authorised person for the purposes of one or more of these regulations —
- (a) an officer employed in the office of the Minister;
  - (b) the chief executive officer;
  - (c) an officer of the Department nominated in writing for the purposes of this regulation by the chief executive officer;
  - (d) the Commission;

- (e) a person who is a member of the board;
  - (f) the Secretary to the Commission appointed under section 21 of the Act;
  - (g) a committee established under Schedule 2 of the Act.
- (2) The designation is subject to any conditions, qualifications, limitations or exceptions specified in the notice.
- (3) The Minister may, by notice in writing, amend or revoke a designation made under this regulation.

**5. Provision of documents to the Commission**

If documents must be provided to the Commission under these regulations the documents must be provided in a manner and form approved by the Commission.

**6. Scheme in respect of Crown land**

- (1) The Commission must, as soon as is practicable after resolving to prepare a scheme in respect of Crown land under section 97 of the Act, provide written notice of the resolution to each local government affected by the resolution.
- (2) These regulations, so far as consistent and applicable, apply to the preparation of a scheme in respect of Crown land under section 97 of the Act as if —
- (a) the Commission were a local government; and
  - (b) the scheme were a local planning scheme.

**7. Scheme by order of Minister**

These regulations, so far as consistent and applicable, apply to the preparation of a local planning scheme or an amendment to a local planning scheme ordered by the Minister under section 76 or 77A of the Act in the same way as they apply to the preparation of any other local planning scheme or amendment.

## **Part 2 — Elements of local planning schemes**

### **8. Contents of local planning scheme**

- (1) The documents that comprise a local planning scheme are the following —
  - (a) the scheme map for the local planning scheme;
  - (b) the local planning scheme text;
  - (c) if any of the provisions set out in Schedule 2 have not been incorporated into the local planning scheme text — those provisions;
  - (d) any supporting plans, maps, diagrams, illustrations and other material.
- (2) The Commission may specify any supporting plans, maps, diagrams, illustrations and other material that are to be included in a local planning scheme.

### **9. Defining area of local planning scheme**

- (1) The area to which a local planning scheme applies is to be set out in a map or set of maps designated as the scheme map.
- (2) Each map that comprises the scheme map must be prepared —
  - (a) in a manner and form approved by the Commission; and
  - (b) using legends —
    - (i) set out in Schedule 3; or
    - (ii) approved by the Minister.

### **10. Local planning scheme text**

- (1) The provisions in Schedules 1 and 2 are prescribed for the purposes of section 256 of the Act.

- (2) The provisions in Schedule 1 are model provisions, being provisions to which section 257A of the Act applies.

Note for this subregulation:

Under section 257A of the Act model provisions prescribed by regulations that are in force at the time a local planning scheme is prepared or adopted, and that apply to the scheme, are to be included in the scheme unless the Minister otherwise approves.

- (3) In Schedule 1 —  
*clause*, followed by a number, means the clause of that number in Schedule 1 as it is included in the local planning scheme;  
*deemed provisions* means the provisions set out in Schedule 2;  
*Part*, followed by a number, means the Part of that number in Schedule 1 as it is included in the local planning scheme;  
*this Scheme*, when used in a provision, is to be taken to be a reference to the local planning scheme in which the provision is included.

- (4) The provisions in Schedule 2 are deemed provisions, being provisions to which section 257B of the Act applies, and are applicable to all local planning schemes, whether or not they are incorporated into the local planning scheme text.

Notes for this subregulation:

1. Under section 257B of the Act deemed provisions, as amended from time to time, have effect and may be enforced as part of each local planning scheme to which they apply, whether they are prescribed before or after the scheme comes into force.
2. If a deemed provision is inconsistent with another provision of a local planning scheme to which the deemed provision applies, the deemed provision prevails and the other provision, to the extent of the inconsistency, is of no effect.

- (5) In Schedule 2 —  
*clause*, followed by a number, means the clause of that number in Schedule 2 as it applies to the local planning scheme;  
*Part*, followed by a number, means the Part of that number in Schedule 2 as it applies to the local planning scheme;

**r. 10A**

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*this Scheme*, when used in a provision, is to be taken to be a reference to the local planning scheme in respect of which the provision has effect and may be enforced as part of.

- (6) The provisions of a local planning scheme that supplement the provisions set out in Schedules 1 and 2, or vary a provision set out in Schedule 1, are to be set out in the manner and form required by the Minister or an authorised person.

Note for this regulation:

Section 73(2A) of the Act provides for a local planning scheme to supplement provisions set out in Schedules 1 and 2 and deal with special circumstances or contingencies for which adequate provision has not been made in those Schedules.

**10A. Review of Schedule 2 Part 10B**

- (1) The Minister must review the operation and effectiveness of Schedule 2 Part 10B, and prepare a report based on the review, as soon as practicable after the 3<sup>rd</sup> anniversary of the day on which the *Planning and Development (Local Planning Schemes) Amendment Regulations 2020* regulation 5 comes into operation.
- (2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 3<sup>rd</sup> anniversary.

*[Regulation 10A inserted: SL 2020/30 r. 4.]*



### Part 3 — Local planning strategies

#### 11. Requirement for local planning strategy for local planning scheme

- (1) A local government must prepare a local planning strategy in accordance with this Part for each local planning scheme that is approved for land within the district of the local government.
- (2) A local planning strategy must —
  - (aa) be prepared in a manner and form approved by the Commission; and
  - (a) set out the long-term planning directions for the local government; and
  - (b) apply any State or regional planning policy that is relevant to the strategy; and
  - (c) provide the rationale for any zoning or classification of land under the local planning scheme.
- (3) A local planning strategy may be prepared concurrently with the local planning scheme to which it relates.

*[Regulation 11 amended: SL 2020/252 r. 6.]*

#### 12. Certification of draft local planning strategy

- (1) Before advertising a draft local planning strategy under regulation 13 the local government must provide a copy of the strategy to the Commission.
- (2) On receipt of a copy of a draft local planning strategy the Commission must, as soon as reasonably practicable, assess the strategy for compliance with regulation 11(2).
- (3) If the Commission is not satisfied that a draft local planning strategy complies with regulation 11(2) the Commission may, by notice in writing, require the local government to —
  - (a) modify the draft strategy; and

- (b) provide a copy of the draft strategy as modified to the Commission for assessment under subregulation (2).
- (4) If the Commission is satisfied that a draft local planning strategy complies with regulation 11(2) it must certify the strategy accordingly and provide a copy of the certification to the local government for the purpose of proceeding to advertise the strategy.

**13. Advertising and notifying local planning strategy**

- (1) A local government must, as soon as reasonably practicable after being provided with certification that a local planning strategy complies with regulation 11(2), advertise the strategy as follows —
  - (a) publish in accordance with regulation 76A the strategy and a notice giving details of —
    - (i) how the strategy is made available to the public in accordance with regulation 76A; and
    - (ii) the manner and form in which submissions may be made; and
    - (iii) the period under subregulation (2) for making submissions and the last day of that period;
  - [(b) deleted]*
  - (c) give a copy of the notice to each public authority that the local government considers is likely to be affected by the strategy;
  - [(d) deleted]*
  - (e) advertise the strategy as directed by the Commission and in any other way the local government considers appropriate.

- (2) The period for making submissions on a local planning strategy is —
- (a) the period of 21 days after the day on which the notice of the strategy is first published under subregulation (1)(a); or
  - (b) a longer period approved by the Commission.

*[(3) deleted]*

- (4) Notice of a local planning strategy as required under subregulation (1) may be given in conjunction with the notice to be given under regulation 20(1) for the scheme to which it relates.

*[Regulation 13 amended: SL 2020/252 r. 7.]*

#### **14. Consideration of submissions**

- (1) After the expiry of the period within which submissions may be made in relation to a local planning strategy, the local government must review the strategy having regard to any submissions made.
- (2) The local government may —
- (a) support the local planning strategy without modification; or
  - (b) support the local planning strategy with proposed modifications to address issues raised in the submissions.
- (3) After the completion of the review of the local planning strategy the local government must submit to the Commission —
- (a) a copy of the advertised local planning strategy; and
  - (b) a schedule of the submissions received; and
  - (c) particulars of any modifications to the advertised local planning strategy proposed by the local government.

**15. Endorsement by Commission**

- (1) Within 60 days of the receipt of the documents referred to in regulation 14(3) the Commission may —
  - (a) endorse the strategy without modification; or
  - (b) endorse the strategy with some or all of the modifications proposed by the local government; or
  - (c) require the local government to modify the strategy in the manner specified by the Commission before the strategy is resubmitted to the Commission for endorsement; or
  - (d) refuse to endorse the strategy.
- (2) The Minister or an authorised person may extend the time referred to in subregulation (1).

**16. Publication of endorsed local planning strategy**

- (1) The Commission must ensure that an up-to-date copy of each endorsed local planning strategy that is in effect is published in a manner the Commission considers appropriate.
- (2) A local government must ensure that an up-to-date copy of each endorsed local planning strategy of the local government that is in effect is published in accordance with regulation 76A.
- (3) Subregulation (2) is an ongoing publication requirement for the purposes of regulation 76A(5)(a).

*[Regulation 16 inserted: SL 2020/252 r. 8.]*

**17. Amendment to local planning strategy**

- (1) A local planning strategy may be amended by an amendment to the strategy prepared by the relevant local government and endorsed by the Commission.
- (2) This Part, with any necessary changes, applies to the preparation and endorsement of an amendment to a local planning strategy

in the same way as it applies to the preparation and endorsement of a local planning strategy.

**18. Revocation of local planning strategy**

A local planning strategy may be revoked —

- (a) by a subsequent local planning strategy that —
  - (i) is prepared in accordance with this Part; and
  - (ii) expressly revokes the local planning strategy;

or

- (b) with the approval of the Commission, by a notice of revocation —
  - (i) prepared by the local government; and
  - (ii) published by the local government in accordance with regulation 76A.

*[Regulation 18 amended: SL 2020/252 r. 9.]*

## **Part 4 — Preparation or adoption of local planning scheme**

### **Division 1 — Proposal to prepare or adopt local planning scheme**

#### **19. Resolution to prepare or adopt scheme**

- (1) A resolution of a local government to prepare or adopt a local planning scheme must be in a form approved by the Commission.

Note for this subregulation:

Section 72(1) of the Act provides for a local government to prepare a local planning scheme or to adopt a local planning scheme proposed by the owners of land in respect of which the local government might have prepared a scheme.

- (2) The local government may resolve not to adopt a local planning scheme proposed by a landowner if the local government is not satisfied that there is in place an agreement for the local government to use any copyrighted material provided in support of the proposed scheme —
- (a) for the purpose of preparing and implementing the scheme; and
  - (b) for zero remuneration.

#### **20. Notification of resolution**

- (1) A local government must, as soon as is reasonably practicable after passing a resolution to prepare or adopt a local planning scheme, advertise the resolution as follows —
- (a) publish a notice in a form approved by the Commission in accordance with regulation 76A;
  - (b) provide a copy of the published notice to the following persons or bodies for recommendations —
    - (i) the local government of each district that adjoins the local government district;

- (ii) each licensee under the *Water Services Act 2012* likely to be affected by the scheme;
- (iii) the chief executive officer of the department of the Public Service principally assisting in the administration of the *Conservation and Land Management Act 1984*;
- (iv) each other public authority likely to be affected by the scheme.

Note for this subregulation:

Under section 81 of the Act written notice of the resolution and written information about the local planning scheme must be given to the EPA.

- (2) A local government must, on the provision of the published notice to a person or body referred to in subregulation (1)(b), request the person or body to provide to the local government within 21 days or such longer period as the local government allows, a memorandum in writing setting out any recommendations in respect of the resolution.
- (3) If a person or body does not provide a memorandum within the time allowed under subregulation (2), the local government may determine that the person or body is to be taken to have no recommendations to make in respect of the resolution.

*[Regulation 20 amended: SL 2020/252 r. 10.]*

## **Division 2 — Advertising local planning scheme**

### **21. Resolution to proceed to advertise draft local planning scheme**

- (1) On completion of the preparation of local planning scheme documents or the consideration of local planning scheme documents proposed by an owner of land in the scheme area, a local government must resolve —
  - (a) to proceed to advertise the draft local planning scheme without modification; or

- (b) to proceed to advertise the draft local planning scheme with modifications; or
  - (c) not to proceed to advertise the draft local planning scheme.
- (2) If the local government resolves to proceed to advertise a draft local planning scheme the local government must, before advertising the scheme, submit 2 copies of the draft local planning scheme documents to the Commission.
- (3) The documents referred to in subregulation (2) must be submitted within 21 days of the local government resolution or such longer period as the Commission allows.
- (4) The Commission must, within 90 days or such longer period as the Minister or an authorised person allows, of receiving the documents submitted under subregulation (2), examine the documents and advise the local government if the Commission considers that any modification to the documents is required before the draft local planning scheme is advertised.
- (5) If the local government resolves not to proceed to advertise a draft local planning scheme the local government must, within 21 days or such longer period as the Commission allows, provide a copy of the resolution to the Commission.

**22. Advertisement of local planning scheme**

- (1) Subject to sections 81 and 82 of the Act, if the Commission advises a local government that it is satisfied that a draft local planning scheme submitted by the local government is suitable to be advertised, the local government must, as soon as is reasonably practicable, prepare a notice in a form approved by the Commission giving details of —
  - (a) the purpose of the draft scheme; and
  - (b) how the draft scheme is to be made available to the public in accordance with regulation 76A; and



- (c) the manner and form in which submissions may be made; and
  - (d) the period under subregulation (3) for making submissions and the last day of that period.
- (2) On completion of the preparation of the notice, the local government must advertise the draft local planning scheme for public inspection as follows —
- (a) publish in accordance with regulation 76A —
    - (i) the notice; and
    - (ii) the draft local planning scheme;
  - (b) give a copy of the notice to each public authority that the local government considers is likely to be affected by the draft local planning scheme;
  - (c) advertise the draft local planning scheme as directed by the Commission and in any other way the local government considers appropriate.

*[(d), (e) deleted]*

- (3) The period for making submissions on a draft local planning scheme is —
- (a) the period of 90 days after the day on which the notice is first published under subregulation (2)(a)(i); or
  - (b) a longer period approved by the Commission.

*[(4) deleted]*

*[Regulation 22 amended: SL 2020/252 r. 11.]*

**23. Land owner may be required to pay costs of publication**

The local government may require a person to pay the cost of the publication of a notice under regulation 22(2) if —

- (a) the notice relates to a draft local planning scheme in respect of land owned by the person; and
- (b) the person proposed the draft scheme.

**24. Submissions on local planning scheme**

- (1) A submission on a draft local planning scheme must —
  - (a) be made to the local government in a form approved by the Commission; and
  - (b) state the name and address of the person making the submission; and
  - (c) include a statement about the capacity in which the person makes the submission.
- (2) A local government must acknowledge in writing the receipt of each submission received by it.

**25. Consideration of submissions**

- (1) In this regulation —

***consideration period***, in relation to a draft local planning scheme, means the period ending on the latest of the following days —

  - (a) the day that is 120 days after the end of the submission period for the draft scheme;
  - (b) the day that is 21 days after the receipt of a statement in respect of the draft scheme delivered under section 48F(2)(a) of the EP Act;
  - (c) the day that is 21 days after the receipt of a statement in respect of the draft scheme delivered under section 48G(3) of the EP Act if that statement is in response to a request by the local government made under section 48G(1) of the EP Act before the later of the days set out in paragraphs (a) and (b);
  - (d) a day approved by the Commission;

***submission period***, in relation to a draft local planning scheme, means the period for making submissions that applies under regulation 22(3).

- (2) The local government —
- (a) must consider all submissions on a draft local planning scheme lodged with the local government within the submission period; and
  - (b) may, at the discretion of the local government, consider submissions on a draft scheme lodged after the end of the submission period but before the end of the consideration period.
- (3) Before the end of the consideration period for a draft local planning scheme, or a later date approved by the Commission, the local government must pass a resolution —
- (a) to support the draft scheme without modification; or
  - (b) to support the draft scheme with proposed modifications to address issues raised in the submissions; or
  - (c) not to support the draft scheme.
- (4) If no submissions have been received within the submission period, the resolution referred to in subregulation (3) must be passed as soon as is reasonably practicable after the end of the submission period.

*[Regulation 25 amended: SL 2020/252 r. 12.]*

**26. Local government may advertise proposed modifications to draft local planning scheme**

- (1) The local government may decide to advertise a proposed modification to the draft local planning scheme if —
- (a) the local government proposes the modification to address issues raised in submissions made on the draft scheme; and
  - (b) the local government is of the opinion that the proposed modification is significant.

- (2) If a local government makes a decision under subregulation (1) the local government must take any steps the local government considers appropriate to advertise the proposed modification to the draft local planning scheme.
- (3) A proposed modification to a draft local planning scheme may not be advertised on more than one occasion without the approval of the Commission.
- (4) Any advertisement of a proposed modification to the draft local planning scheme must include a notice specifying —
  - (a) the proposed modification to be made to the advertised local planning scheme; and
  - (b) details of how the proposed modification is made available to the public; and
  - (c) the manner and form in which submissions may be made; and
  - (d) the period under subregulation (5) for making submissions and the last day of that period.
- (5) The period for making submissions on the proposed modification is —
  - (a) the period of 60 days after the day on which the notice under subregulation (4) is first advertised; or
  - (b) a longer period approved by the Commission.
- (6) A person may make a submission on a proposed modification to a draft local planning scheme that has been advertised in accordance with subregulation (2) —
  - (a) in the manner and form specified in the notice; and
  - (b) within the period specified in the notice.

- (7) If a proposed modification to a draft local planning scheme is advertised in accordance with this regulation, a local government —
- (a) must consider all submissions on the proposed modification made to the local government within the period specified in the notice; and
  - (b) may, at the discretion of the local government, consider submissions on the proposed modification made to the local government after the end of the period specified in the notice; and
  - (c) must make a recommendation in respect of each submission considered.

*[Regulation 26 amended: SL 2020/252 r. 13.]*

**27. Incorporation of environmental conditions**

If a local government receives a statement in respect of a draft local planning scheme delivered under section 48F(2) of the EP Act after passing a resolution to support the draft scheme but before complying with regulation 28, the local government must amend the local planning scheme documents —

- (a) to incorporate the conditions set out in the statement; or
- (b) if as the result of a request by the local government under section 48G(1) of the EP Act a statement is delivered to the local government under section 48G(3) of the EP Act, to incorporate the conditions set out in that later statement.

**28. Information on draft local planning scheme to be provided to the Commission**

- (1) After passing a resolution under regulation 25(3) the local government must provide the advertised local planning scheme documents to the Commission together with the following —
- (a) a schedule of submissions made on the draft scheme;

- (b) the response of the local government to each submission;
  - (c) particulars of each modification to the draft scheme proposed by the local government in response to the submissions;
  - (d) if any proposed modification to the scheme was advertised —
    - (i) an explanation of the reasons for advertising the modification; and
    - (ii) particulars of how the modification was advertised; and
    - (iii) a schedule of submissions made on the proposed modifications; and
    - (iv) the recommendation of the local government in accordance with regulation 26(7)(c) in respect of each submission;
  - (e) a copy of the resolution passed under regulation 25(3);
  - (f) if that resolution was a resolution under regulation 25(3)(c) — a summary of the reasons why the local government does not support the draft scheme;
  - (g) details of any provision in the draft scheme that varies or excludes a provision set out in Schedule 1;
  - (h) details of any provision in the draft scheme that supplements a provision set out in Schedule 2;
  - (i) any relevant maps, plans, specifications and particulars required by the Commission.
- (2) A schedule of submissions referred to in subregulation (1)(a) and (d)(iii) must include —
- (a) the name and address of the person making the submission; and
  - (b) where it is relevant, a description of the property that is the subject of the submission; and

- (c) the submission or a summary of the submission.
- (3) The documents referred to in subregulation (1) must be provided to the Commission —
  - (a) in the case of a resolution to support a draft local planning scheme without modification or not to support a draft local planning scheme — within 21 days of passing the resolution; or
  - (b) in the case of a resolution to support a draft local planning scheme with proposed modifications —
    - (i) if the local government decides not to advertise the proposed modification — within 21 days of passing the resolution; or
    - (ii) otherwise — within 21 days of complying with regulation 26(7);or
  - (c) if the Commission in any case approves a longer period — within that longer period.

**29. Commission to submit draft local planning scheme and recommendations to Minister**

The Commission must, within 120 days of receiving the documents provided to it under regulation 28(1), or within such longer period as the Minister or an authorised person allows —

- (a) consider the documents; and
- (b) make any recommendations to the Minister in respect of the draft local planning scheme that the Commission considers appropriate; and
- (c) submit the documents and the recommendations to the Minister in accordance with section 87(1) of the Act.

**30. Minister or authorised person may direct modifications to draft local planning scheme be advertised**

- (1) Before a decision is made under section 87 of the Act, the Minister or an authorised person may direct the local government to advertise modifications to a draft local planning scheme if —
  - (a) the local government proposes, or the Commission recommends, that the scheme that was advertised under regulation 22 be modified; and
  - (b) the Minister or authorised person is of the opinion that the modification is significant.
- (2) The direction must include details of the process to be followed in respect of the advertisement including timeframes for —
  - (a) the making and consideration of submissions on the modifications; and
  - (b) providing recommendations to the Minister or authorised person following the advertisement.
- (3) If a local government is given a direction under subregulation (1), the local government must advertise the modification to a local planning scheme as directed by the Minister or authorised person.

**Division 3 — Giving effect to decision on local planning scheme**

**31. Giving effect to Minister’s decision**

- (1) If a local government is notified that the Minister has, under section 87(2)(c) of the Act, refused to approve a local planning scheme, the local government must, as soon as is reasonably practicable, notify each person who made a submission in relation to the local planning scheme of that refusal.
- (2) Within 42 days of being notified that, under section 87(2)(b) of the Act, the Minister requires the local government to modify



the draft local planning scheme, or a longer period approved by the Minister or authorised person, the local government must —

- (a) modify the draft scheme as required; and
  - (b) execute the modified local planning scheme documents; and
  - (c) submit to the Minister a copy of the executed documents.
- (3) If the local government is notified that the Minister has, under section 87(2)(a) of the Act, approved the local planning scheme, the local government must provide to the Commission for endorsement such copies of the local planning scheme as the Commission requires, including not less than 2 copies of the local planning scheme documents that have been executed by the local government.
- (4) The documents referred to in subregulation (3) must be provided within 14 days of the local government being notified of the Minister's approval, or a longer period approved by the Commission.

### **32. Endorsement of local planning scheme**

- (1) The Commission must endorse each of the copies of the local planning scheme that has been executed by the local government and submit one of those copies to the Minister.
- (2) The Minister must endorse the copy of the local planning scheme with the Minister's approval and return it to the Commission.
- (3) A person authorised in writing by the Commission may certify that a copy of a local planning scheme is a true copy of a local planning scheme as approved by the Minister.

**33. Advertisement of approved local planning scheme**

- (1) The Commission must provide to the relevant local government a copy of the notice of a local planning scheme published in the *Gazette* under section 87(3) of the Act.
- (2) For the purposes of section 87(4B)(a) of the Act, the local government must advertise the local planning scheme as follows —
  - (a) publish a copy of the notice referred to in subregulation (1) in accordance with regulation 76A;
  - (b) publish the local planning scheme in accordance with regulation 76A;
  - (c) notify each person who made a submission in relation to the local planning scheme —
    - (i) that the local planning scheme has been approved; and
    - (ii) of the details of how the local planning scheme is made available to the public in accordance with regulation 76A.
- (3) Subregulation (2)(b) is an ongoing publication requirement for the purposes of regulation 76A(5)(a).

*[Regulation 33 amended: SL 2020/252 r. 14.]*

## **Part 5 — Amending local planning scheme**

### **Division 1 — Preliminary**

#### **34. Terms used**

In this Part —

***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 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;

***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;

***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 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.

Note for this regulation:

Under section 257B of the Act and regulation 10(4) the provisions in Schedule 2 are deemed provisions and have effect and may be enforced as part of each local planning scheme. Incorporation of the provisions set out in Schedule 2 into the text of a local planning scheme is not an amendment of the local planning scheme.

*[Regulation 34 amended: SL 2020/252 r. 15.]*

**35. Resolution to prepare or adopt amendment to local planning scheme**

- (1) A resolution of a local government to prepare or adopt an amendment to a local planning scheme must be in a form approved by the Commission.

Note for this subregulation:

Section 75 of the Act provides for a local government to amend a local planning scheme or adopt an amendment to a local planning scheme proposed by all or any of the owners of land in the scheme area.

- (2) A resolution must —
  - (a) specify whether, in the opinion of the local government, the amendment is a complex amendment, a standard amendment or a basic amendment; and
  - (b) include an explanation of the reason for the local government forming that opinion.

- (3) An amendment to a local planning scheme must be accompanied by all documents necessary to convey the intent and reasons for the amendment.
- (4) The local government may refuse to adopt an amendment to a local planning scheme proposed by a landowner if the local government is not satisfied that there is in place an agreement for the local government to use any copyrighted material provided in support of the proposed amendment —
  - (a) for the purpose of preparing and implementing the amendment; and
  - (b) for zero remuneration.

**35A. Amendment to local planning scheme affecting area to which structure plan relates**

If an amendment to a local planning scheme affects the area to which a structure plan approved under the scheme relates, the amendment must include a statement that, when the amendment takes effect —

- (a) the approval of the structure plan is to be revoked; or
- (b) the structure plan is to be amended in accordance with the statement; or
- (c) the approval of the structure plan is not affected.

Note for this regulation:

Under the deemed provision of local planning schemes set out in Schedule 2 clause 29A —

- (a) a structure plan that is the subject of a statement under paragraph (a) must be revoked as soon as is reasonably practicable after the amendment to the local planning scheme takes effect; and
- (b) a structure plan that is the subject of a statement under paragraph (b) must be amended in accordance with the statement as soon as is reasonably practicable after the amendment to the local planning scheme takes effect.

*[Regulation 35A inserted: SL 2020/252 r. 16.]*

**36. Landowner may request Commission's advice on type of amendment**

- (1) A landowner may request the Commission to advise whether, in the opinion of the Commission, the amendment is a complex amendment, a standard amendment or a basic amendment if —
  - (a) the landowner has requested the amendment; and
  - (b) the landowner considers that the resolution made by the local government in respect of the amendment does not appropriately specify the amendment as being of a particular type.
- (2) If the Commission advises the local government that, in its opinion, the amendment is of a different type to that specified by the local government in the resolution, the local government must amend the resolution accordingly.

**Division 2 — Process for complex amendments to local planning scheme**

**37. Resolution to proceed to advertise complex amendment**

- (1) On completion of the preparation of a complex amendment to a local planning scheme or the consideration of a complex amendment to a local planning scheme proposed by an owner of land in the scheme area, the local government must resolve —
  - (a) to proceed to advertise the amendment to the local planning scheme without modification; or
  - (b) to proceed to advertise the amendment to the local planning scheme with modifications; or
  - (c) not to proceed to advertise the amendment to the local planning scheme.
- (2) If the local government resolves to proceed to advertise a complex amendment to a local planning scheme the local government must, before advertising the amendment, submit 2 copies of the proposed amendment to the Commission.

- (3) The documents referred to in subregulation (2) must be submitted within 21 days of the local government resolution or such longer period as the Commission allows.
- (4) The Commission must, within 60 days or such longer period as the Minister or an authorised person allows, of receiving the documents submitted under subregulation (2), examine the documents and advise the local government if the Commission considers that any modification to the documents is required before the amendment to the local planning scheme is advertised.
- (5) If the local government resolves not to proceed to advertise a complex amendment to a local planning scheme the local government must within 21 days, or such longer period as the Commission allows, provide a copy of the resolution to the Commission.

**38. Advertisement of complex amendment**

- (1) Subject to sections 81 and 82 of the Act, if the Commission advises a local government that it is satisfied that a complex amendment to a local planning scheme submitted by the local government is suitable to be advertised, the local government must, as soon as is reasonably practicable, prepare a notice in a form approved by the Commission giving details of —
  - (a) the purpose of the amendment; and
  - (b) how the amendment is to be made available to the public in accordance with regulation 76A; and
  - (c) the manner and form in which submissions may be made; and
  - (d) the period under subregulation (3) for making submissions and the last day of that period.



- (2) On completion of the preparation of the notice, the local government must advertise the complex amendment to a local planning scheme as follows —
- (a) publish in accordance with regulation 76A —
    - (i) the notice; and
    - (ii) the amendment;
  - [(b) deleted]*
  - (c) give a copy of the notice to each public authority that the local government considers is likely to be affected by the amendment;
  - [(d) deleted]*
  - (e) advertise the amendment as directed by the Commission and in any other way the local government considers appropriate.
- (3) The period for making submissions on a complex amendment to a local planning scheme is —
- (a) the period of 60 days after the day on which the notice is first published under subregulation (2)(a)(i); or
  - (b) a longer period approved by the Commission.

*[(4) deleted]*

*[Regulation 38 amended: SL 2020/252 r. 17.]*

**39. Land owner may be required to pay costs of publication**

The local government may require a person to pay the cost of the publication of a notice under regulation 38(2) if —

- (a) the notice relates to an amendment to a local planning scheme in respect of land owned by the person; and
- (b) the person proposed the amendment to the local planning scheme.

**40. Submissions on complex amendment**

- (1) A submission on a complex amendment to a local planning scheme must —
  - (a) be made in writing to the relevant local government in a form approved by the Commission; and
  - (b) state the name and address of the person making the submission; and
  - (c) include a statement about the capacity in which the person makes the submission.
- (2) A local government must acknowledge in writing the receipt of each submission received by it.

**41. Consideration of submissions on complex amendments**

- (1) In this regulation —

*consideration period*, in relation to a complex amendment to a local planning scheme, means the period ending on the latest of the following days —

  - (a) the day that is 90 days after the end of the submission period for the amendment;
  - (b) the day that is 21 days after the receipt of a statement in respect of the amendment delivered under section 48F(2)(a) of the EP Act;
  - (c) the day that is 21 days after the receipt of a statement in respect of the amendment delivered under section 48G(3) of the EP Act if that statement is in response to a request by the local government made under section 48G(1) of the EP Act before the later of the days set out in paragraphs (a) and (b);
  - (d) a day approved by the Commission;

*submission period*, in relation to a complex amendment to a local planning scheme, means the period for making submissions that applies under regulation 38(3).

- (2) The local government —
- (a) must consider all submissions in relation to a complex amendment to a local planning scheme lodged with the local government within the submission period; and
  - (b) may, at the discretion of the local government, consider submissions in relation to the amendment lodged after the end of the submission period but before the end of the consideration period.
- (3) Before the end of the consideration period for a complex amendment to a local planning scheme, or a later date approved by the Commission, the local government must pass a resolution —
- (a) to support the amendment to the local planning scheme without modification; or
  - (b) to support the amendment to the local planning scheme with proposed modifications to address issues raised in the submissions; or
  - (c) not to support the amendment to the local planning scheme.
- (4) If no submissions have been received within the submission period, the resolution referred to in subregulation (3) must be passed as soon as is reasonably practicable after the end of the submission period.

*[Regulation 41 amended: SL 2020/252 r. 18.]*

**42. Local government may advertise proposed modifications to complex amendment**

- (1) The local government may decide to advertise a modification to a complex amendment to a local planning scheme if —
- (a) the local government proposes the modification to address issues raised in submissions made on the amendment; and

- (b) the local government is of the opinion that the proposed modification is significant.
- (2) If a local government makes a decision under subregulation (1), the local government must take any steps the local government considers appropriate to advertise the proposed modification to the complex amendment to the local planning scheme.
- (3) A proposed modification to a complex amendment to a local planning scheme may not be advertised on more than one occasion without the approval of the Commission.
- (4) Any advertisement of a proposed modification to a complex amendment to a local planning scheme must include a notice specifying —
  - (a) the proposed modification to be made to the advertised amendment to the local planning scheme; and
  - (b) details of how the proposed modification is made available to the public; and
  - (c) the manner and form in which submissions may be made; and
  - (d) the period under subregulation (5) for making submissions and the last day of that period.
- (5) The period for making submissions on the proposed modification is —
  - (a) the period of 42 days after the day on which the notice under subregulation (4) is first advertised; or
  - (b) a longer period approved by the Commission.
- (6) A person may make a submission on a proposed modification to a complex amendment to a local planning scheme that has been advertised in accordance with subregulation (2) —
  - (a) in the manner and form specified in the notice included in the advertisement; and

- (b) within the period specified in the notice.
- (7) If a proposed modification to an amendment to a local planning scheme is advertised in accordance with this regulation, a local government —
- (a) must consider all submissions on the proposed modification made to the local government within the period specified in the notice; and
  - (b) may, at the discretion of the local government, consider submissions on the proposed modification made to the local government after the period specified in the notice; and
  - (c) must make a recommendation in respect of each submission considered.

*[Regulation 42 amended: SL 2020/252 r. 19.]*

**43. Incorporation of environmental conditions**

If a local government receives a statement in respect of a complex amendment to a local planning scheme delivered under section 48F(2) of the EP Act after passing a resolution to support the amendment but before complying with regulation 44, the local government must amend the amendment documents —

- (a) to incorporate the conditions set out in the statement; or
- (b) if as the result of a request by the local government under section 48G(1) of the EP Act a statement is delivered to the local government under section 48G(3) of the EP Act, to incorporate the conditions set out in that later statement.

**44. Information on complex amendment to be provided to the Commission**

- (1) After passing a resolution under regulation 41(3) the local government must provide the advertised amendment to the local planning scheme to the Commission together with the following —
- (a) a schedule of submissions made on the amendment;
  - (b) the response of the local government in respect of the submissions;
  - (c) particulars of each modification to the amendment proposed by the local government in response to the submissions;
  - (d) if any proposed modification to the amendment was advertised —
    - (i) an explanation of the reasons for advertising the modification; and
    - (ii) particulars of how the modification was advertised; and
    - (iii) a schedule of submissions made on the proposed modifications; and
    - (iv) the recommendation of the local government in accordance with regulation 42(7)(c) in respect of each submission;
  - (e) a copy of the resolution passed under regulation 41(3);
  - (f) if that resolution was a resolution under regulation 41(3)(c) — a summary of the reasons why the local government does not support the amendment to the local planning scheme;
  - (g) details of any provision in the local planning scheme as it will be amended that varies or excludes a provision set out in Schedule 1;

- (h) details of any provision in the local planning scheme as it will be amended that supplements a provision set out in Schedule 2;
  - (i) any relevant maps, plans, specifications and particulars required by the Commission.
- (2) A schedule of submissions referred to in subregulation (1)(a) and (d)(iii) must include the following —
  - (a) the name and address of the person making the submission;
  - (b) where it is relevant, a description of the property that is the subject of the submission;
  - (c) the submission or a summary of the submission.
- (3) The documents referred to in subregulation (1) must be provided to the Commission —
  - (a) in the case of a resolution to support an amendment to a local planning scheme without modification or not to support an amendment to a local planning scheme — within 21 days of passing the resolution; or
  - (b) in the case of a resolution to support an amendment to a local planning scheme with proposed modifications —
    - (i) if the local government decides not to advertise the proposed modification — within 21 days of passing the resolution; or
    - (ii) otherwise — within 21 days of complying with regulation 42(7);or
  - (c) if the Commission in any case approves a longer period — within that longer period.

**45. Commission to submit complex amendment and recommendations to Minister**

The Commission must, within 90 days of receiving the documents provided to it under regulation 44(1), or within such longer period as the Minister or an authorised person allows —

- (a) consider the documents; and
- (b) make any recommendations to the Minister in respect of the amendment that the Commission considers appropriate; and
- (c) submit the documents and the recommendations to the Minister in accordance with section 87(1) of the Act.

**46. Minister or authorised person may direct modifications to complex amendment be advertised**

- (1) Before a decision is made under section 87 of the Act, the Minister or an authorised person may direct the local government to advertise modifications to a complex amendment to a local planning scheme if —
  - (a) the local government proposes, or the Commission recommends, that the amendment that was advertised under regulation 38(2) be modified; and
  - (b) the Minister or authorised person is of the opinion that the modification is significant.
- (2) The direction must include details of the process to be followed in respect of the advertisement including timeframes for —
  - (a) the making and consideration of submissions on the modifications; and
  - (b) providing recommendations to the Minister or authorised person following the advertisement.
- (3) If a local government is given a direction under subregulation (1) the local government must advertise the



modification to the amendment to the local planning scheme as directed by the Minister or authorised person.

### **Division 3 — Process for standard amendments to local planning scheme**

#### **47. Advertisement of standard amendment**

- (1) Subject to sections 81 and 82 of the Act, if a local government resolves under regulation 35(1) to prepare a standard amendment to a local planning scheme or to adopt a standard amendment to a local planning scheme proposed by the owner of land in the scheme area, the local government must, as soon as is reasonably practicable, prepare a notice in a form approved by the Commission giving details of —
  - (a) the purpose of the amendment; and
  - (b) how the amendment is to be made available to the public in accordance with regulation 76A; and
  - (c) the manner and form in which submissions may be made; and
  - (d) the period under subregulation (3) for making submissions and the last day of that period.
- (2) On completion of the preparation of the notice, the local government must advertise the standard amendment to a local planning scheme as follows —
  - (a) publish in accordance with regulation 76A —
    - (i) the notice; and
    - (ii) the amendment;
  - [(b) deleted]*
  - (c) give a copy of the notice to each public authority that the local government considers is likely to be affected by the amendment;
  - [(d) deleted]*

- (e) advertise the amendment as directed by the Commission and in any other way the local government considers appropriate.
- (3) The period for making submissions on a standard amendment to a local planning scheme is —
  - (a) the period of 42 days after the day on which the notice is first published under subregulation (2)(a)(i); or
  - (b) a longer period approved by the Commission.
- [(4) *deleted*]

*[Regulation 47 amended: SL 2020/252 r. 20.]*

**48. Land owner may be required to pay costs of publication**

The local government may require a person to pay the cost of the publication of a notice under regulation 47(2) if —

- (a) the notice relates to an amendment to a local planning scheme in respect of land owned by the person; and
- (b) the person proposed the amendment to the local planning scheme.

**49. Submissions on standard amendment**

- (1) A submission on a standard amendment to a local planning scheme must —
  - (a) be made in writing to the relevant local government in a form approved by the Commission; and
  - (b) state the name and address of the person making the submission; and
  - (c) include a statement about the capacity in which the person makes the submission.
- (2) A local government must acknowledge in writing the receipt of each submission received by it.

**50. Consideration of submissions on standard amendments**

- (1) In this regulation —
- consideration period***, in relation to a standard amendment to a local planning scheme, means the period ending on the latest of the following days —
- (a) the day that is 60 days after the end of the submission period for the amendment;
  - (b) the day that is 21 days after the receipt of a statement in respect of the amendment delivered under section 48F(2)(a) of the EP Act;
  - (c) the day that is 21 days after the receipt of a statement in respect of the amendment delivered under section 48G(3) of the EP Act if that statement is in response to a request by the local government made under section 48G(1) of the EP Act before the later of the days set out in paragraphs (a) and (b);
  - (d) a day approved by the Commission;
- submission period***, in relation to a standard amendment to a local planning scheme, means the period for making submissions that applies under regulation 47(3).
- (2) The local government —
- (a) must consider all submissions in relation to a standard amendment to a local planning scheme lodged with the local government within the submission period; and
  - (b) may, at the discretion of the local government, consider submissions in relation to the amendment lodged after the end of the submission period but before the end of the consideration period.
- (3) Before the end of the consideration period for a standard amendment to a local planning scheme, or a later date approved

by the Commission, the local government must pass a resolution —

- (a) to support the amendment without modification; or
  - (b) to support the amendment with proposed modifications to address issues raised in the submissions; or
  - (c) not to support the amendment.
- (4) If no submissions have been received within the submission period, the resolution referred to in subregulation (3) must be passed as soon as is reasonably practicable after the end of the submission period.

*[Regulation 50 amended: SL 2020/252 r. 21.]*

**51. Local government may advertise proposed modifications to standard amendment**

- (1) The local government may decide to advertise a modification to a standard amendment to a local planning scheme if —
- (a) the local government proposes the modification to address issues raised in submissions made on the amendment; and
  - (b) the local government is of the opinion that the proposed modification to the amendment is significant.
- (2) If a local government makes a decision under subregulation (1) the local government must take any steps the local government considers appropriate to advertise the proposed modification to the standard amendment.
- (3) A proposed modification to a standard amendment to a local planning scheme may not be advertised on more than one occasion without the approval of the Commission.
- (4) Any advertisement of a proposed modification to a standard amendment to a local planning scheme must include a notice specifying —

- (a) the proposed modification to be made to the advertised amendment to the local planning scheme; and
  - (b) details of how the proposed modification is made available to the public; and
  - (c) the manner and form in which submissions may be made; and
  - (d) the period under subregulation (5) for making submissions and the last day of that period.
- (5) The period for making submissions on the proposed modification is —
- (a) the period of 21 days after the day on which the notice under subregulation (4) is first advertised; or
  - (b) a longer period approved by the Commission.
- (6) A person may make a submission on a proposed modification to a standard amendment to a local planning scheme that has been advertised in accordance with subregulation (2) —
- (a) in the manner and form specified in the notice; and
  - (b) within the period specified in the notice.
- (7) If a proposed modification to an amendment to a local planning scheme is advertised in accordance with this regulation, a local government —
- (a) must consider all submissions on the proposed modification made to the local government within the period specified in the notice; and
  - (b) may, at the discretion of the local government, consider submissions on the proposed modification made to the local government after the period specified in the notice; and
  - (c) must make a recommendation in respect of each submission considered.

*[Regulation 51 amended: SL 2020/252 r. 22.]*

**52. Incorporation of environmental conditions**

If a local government receives a statement in respect of a standard amendment to a local planning scheme delivered under section 48F(2) of the EP Act after passing a resolution to prepare or adopt the amendment but before complying with regulation 53, the local government must amend the amendment documents —

- (a) to incorporate the conditions set out in the statement; or
- (b) if as the result of a request by the local government under section 48G(1) of the EP Act a statement is delivered to the local government under section 48G(3) of the EP Act, to incorporate the conditions set out in that later statement.

**53. Information on standard amendment to be provided to the Commission**

- (1) After passing a resolution under regulation 50(3) the local government must provide the advertised amendment to the local planning scheme to the Commission together with the following —
  - (a) a schedule of submissions made on the amendment;
  - (b) the response of the local government in respect of the submissions;
  - (c) particulars of each modification to the amendment proposed by the local government in response to the submissions;
  - (d) if any proposed modification to the amendment was advertised —
    - (i) an explanation of the reasons for advertising the modification; and
    - (ii) particulars of how the modification was advertised; and

- (iii) a schedule of submissions made on the proposed modifications; and
  - (iv) the recommendation of the local government in accordance with regulation 51(7)(c) in respect of each submission;
  - (e) a copy of the resolution passed under regulation 50(3);
  - (f) if that resolution was a resolution under regulation 50(3)(c) — a summary of the reasons why the local government does not support the amendment;
  - (g) details of any provision in the local planning scheme that varies or excludes a provision set out in Schedule 1;
  - (h) details of any provision in the local planning scheme as it will be amended that supplements a provision set out in Schedule 2;
  - (i) any relevant maps, plans, specifications and particulars required by the Commission.
- (2) The schedule of submissions referred to in subregulation (1)(a) and (d)(iii) must include the following —
- (a) the name and address of the person making the submission;
  - (b) where it is relevant, a description of the property that is the subject of the submission;
  - (c) the submission or a summary of the submission.
- (3) The documents referred to in subregulation (1) must be provided to the Commission —
- (a) in the case of a resolution to support an amendment to a local planning scheme without modification or not to support an amendment to a local planning scheme — within 21 days of passing the resolution; or

- (b) in the case of a resolution to support an amendment to a local planning scheme with proposed modifications —
  - (i) if the local government decides not to advertise the proposed modification — within 21 days of passing the resolution; or
  - (ii) otherwise — within 21 days of complying with regulation 51(7);

or

- (c) if the Commission in any case approves a longer period — within that longer period.

**54. Commission may direct amendment be treated as complex amendment**

If, on receipt of documents provided to it under regulation 53(1), the Commission considers that the amendment to the local planning scheme is a complex amendment, the Commission may direct the local government —

- (a) to readvertise the amendment as a complex amendment;

or

- (b) to take any other steps the Commission considers appropriate to advertise the amendment.

**55. Commission to submit standard amendment and recommendations to Minister**

Unless the Commission makes a direction under regulation 54, the Commission must, within 60 days of receiving the documents provided to it under regulation 53(1), or within such longer period as the Minister or an authorised person allows —

- (a) consider the documents; and
- (b) make any recommendations to the Minister in respect of the amendment that the Commission considers appropriate; and



- (c) submit the documents and the recommendations to the Minister in accordance with section 87(1) of the Act.

**56. Minister or authorised person may direct modifications to standard amendment be advertised**

- (1) Before a decision is made under section 87 of the Act, the Minister or an authorised person may direct the local government to advertise modifications to a standard amendment to a local planning scheme if —
  - (a) the local government proposes, or the Commission recommends, that the amendment that was advertised under regulation 47(2) be modified; and
  - (b) the Minister or authorised person is of the opinion that the modification is significant.
- (2) The direction must include details of the process to be followed in respect of the advertisement including timeframes for —
  - (a) the making and consideration of submissions on the modifications; and
  - (b) providing recommendations to the Minister or authorised person following the advertisement.
- (3) If a local government is given a direction under subregulation (1) the local government must advertise the modification to the amendment to the local planning scheme as directed by the Minister or authorised person.

**Division 4 — Process for basic amendments**

**57. Incorporation of environmental conditions**

If a local government receives a statement in respect of a basic amendment to a local planning scheme delivered under section 48F(2) of the EP Act after passing a resolution to prepare or adopt the amendment but before complying with

regulation 58, the local government must amend the amendment documents —

- (a) to incorporate the conditions set out in the statement; or
- (b) if as the result of a request by the local government under section 48G(1) of the EP Act a statement is delivered to the local government under section 48G(3) of the EP Act, to incorporate the conditions set out in that later statement.

**58. Basic amendment to be provided to the Commission**

Within 21 days of passing a resolution to prepare or adopt a basic amendment to a local planning scheme under regulation 35(1), or such longer period as the Commission approves, the local government must provide the amendment to the Commission together with any relevant maps, plans, specifications and particulars required by the Commission.

**59. Commission may direct amendment be treated as complex or standard amendment**

If, on receipt of documents provided to it under regulation 58, the Commission considers that the amendment to the local planning scheme is a complex amendment or a standard amendment, the Commission may direct the local government —

- (a) to advertise the amendment as a complex amendment or a standard amendment as the case requires; or
- (b) to take any other steps the Commission considers appropriate to advertise the amendment.

**60. Commission to submit basic amendment to Minister**

Unless the Commission makes a direction under regulation 59, the Commission must, within 42 days of receiving the

documents provided to it under regulation 58, or within such longer period as the Minister or an authorised person allows —

- (a) consider the documents; and
- (b) make any recommendations to the Minister in respect of the amendment that the Commission considers appropriate; and
- (c) submit the documents and the recommendations to the Minister in accordance with section 87(1) of the Act.

**61. Minister or authorised person may direct basic amendment be advertised**

- (1) Before a decision is made under section 87 of the Act, the Minister or an authorised person may direct the local government to advertise a basic amendment to a local planning scheme if the Minister or authorised person is of the opinion that the amendment is significant.
- (2) The direction must include details of the process to be followed in respect of the advertisement including timeframes for —
  - (a) the making and consideration of submissions on the amendment; and
  - (b) providing recommendations to the Minister or authorised person following the advertisement.
- (3) If a local government is given a direction under subregulation (1) the local government must advertise the amendment to a local planning scheme as directed by the Minister or authorised person.

**Division 5 — Giving effect to decision on amendment to local planning scheme**

**62. Giving effect to Minister’s decision**

- (1) If a local government is notified that the Minister has, under section 87(2)(c) of the Act, refused to approve an amendment to

a local planning scheme, the local government must, as soon as is reasonably practicable, notify each person who made a submission in relation to the amendment of that refusal.

- (2) Within 42 days, or such longer period as allowed by the Commission, of being notified that, under section 87(2)(b) of the Act, the Minister requires the local government to modify the amendment to the local planning scheme, the local government must —
  - (a) modify the amendment as required; and
  - (b) execute the modified amendment; and
  - (c) submit to the Minister a copy of the executed documents.
- (3) If a local government is notified that the Minister has, under section 87(2)(a) of the Act, approved the amendment to the local planning scheme, the local government must provide to the Commission for endorsement copies of the amendment as required by the Commission, including not less than 2 copies of the amendment documents that have been executed by the local government.
- (4) The documents referred to in subregulation (3) must be provided within 14 days of the local government being notified of the Minister's approval, or a longer period approved by the Commission.

**63. Endorsement of amendment to local planning scheme**

- (1) The Commission must endorse each of the copies of the amendment to the local planning scheme that has been executed by the local government and submit one of those copies to the Minister.
- (2) The Minister must endorse the copy of the amendment to the local planning scheme with the Minister's approval and return it to the Commission.

- (3) A person authorised in writing by the Commission may certify that a copy of a local planning scheme is a true copy of a local planning scheme as approved by the Minister.

**64. Advertisement of approved amendment to local planning scheme**

- (1) The Commission must provide to the relevant local government a copy of the notice of an amendment to a local planning scheme published in the *Gazette* under section 87(3) of the Act.
- (2) For the purposes of section 87(4B)(a) of the Act, the local government must advertise the approved amendment as follows —
- (a) publish a copy of the notice referred to in subregulation (1) in accordance with regulation 76A;
  - (b) publish the amendment in accordance with regulation 76A;
  - (c) notify each person who made a submission in relation to the amendment —
    - (i) that the amendment has been approved; and
    - (ii) of the details of how the amendment is made available to the public in accordance with regulation 76A.

*[Regulation 64 amended: SL 2020/252 r. 23.]*

## **Part 6 — Review and consolidation of local planning schemes**

### **Division 1 — Review of local planning scheme**

#### **65. Review of local planning scheme**

- (1) A local government must carry out a review of each local planning scheme prepared by the local government —
  - (a) in the 5<sup>th</sup> year after the scheme is published in the *Gazette* under section 87(3) of the Act; and
  - (b) in the 5<sup>th</sup> year after the completion of each review carried out under this Division.
- (2) Subregulation (1) applies to a local planning scheme that was published in the *Gazette* more than 5 years before the commencement of this regulation as if it were published in the *Gazette* on the day that is 3 years before the day on which this regulation comes into operation.
- (3) The review must consider whether the local planning scheme is up-to-date and complies with these regulations.
- (4) The review may be undertaken in conjunction with the preparation of a consolidation of a scheme under Part 5 Division 5 of the Act.

#### **66. Report of review**

- (1) The local government must, no later than 6 months after the requirement to carry out the review of a local planning scheme arises under regulation 65, or such longer period as the Commission allows —
  - (a) prepare a report of the review; and
  - (b) approve the report by resolution; and
  - (c) provide the approved report to the Commission.

- (2) The report must be prepared in the manner and form approved by the Commission and must include the following information —
- (a) the date on which the local planning scheme was published in the *Gazette* in accordance with section 87(3) of the Act;
  - (b) the date on which each amendment made to the scheme was published in the *Gazette* in accordance with section 87(3) of the Act;
  - (c) the date on which the scheme was last consolidated under Part 5 Division 5 of the Act;
  - (d) an overview of the subdivision and development activity, lot take-up and population changes in the scheme area since the later of —
    - (i) the date on which the scheme was published in the *Gazette* in accordance with section 87(3) of the Act; and
    - (ii) the date on which the scheme was last reviewed;
  - (e) an overview of the extent to which the scheme has been amended to comply with the requirements of any relevant legislation, region planning scheme or State planning policy.
- (3) The report must make recommendations as to —
- (a) whether the scheme —
    - (i) is satisfactory in its existing form; or
    - (ii) should be amended; or
    - (iii) should be repealed and a new scheme prepared in its place;and
  - (b) whether the local planning strategy for the scheme —
    - (i) is satisfactory in its existing form; or
    - (ii) should be amended; or

(iii) should be revoked and a new strategy prepared in its place;

and

- (c) whether any structure plan or local development plan approved under the scheme —
- (i) is satisfactory in its existing form; or
  - (ii) should be amended; or
  - (iii) should have its approval revoked.

*[Regulation 66 amended: SL 2020/252 r. 24.]*

## **67. Decision of Commission**

- (1) Within 90 days of receiving a report of a review of a local planning scheme, or such longer period as the Minister or an authorised person allows, the Commission must consider the report and —
- (a) decide whether the Commission agrees or disagrees with the recommendations in the report; and
  - (b) notify the local government which prepared the report of the Commission's decision.
- (2) After receiving notification of the Commission's decision on a report of a review of a local planning scheme the local government must publish in accordance with regulation 76A —
- (a) the report; and
  - (b) notice of the Commission's decision.

*[Regulation 67 amended: SL 2020/252 r. 25.]*

## **Division 2 — Consolidation of local planning schemes**

### **68. Consolidation of local planning schemes**

- (1) Part 4, to the extent applicable, applies in respect of the preparation of a consolidation of a local planning scheme under Part 5 Division 5 of the Act.



- (2) A local government may not, under regulation 21(1)(c) or regulation 25(3)(c), make a resolution not to proceed with the consolidation of a local planning scheme.

**69. Amendment of local planning scheme arising from consolidation**

- (1) If, under section 92 of the Act, the Minister advises the local government that the Minister concurs with a recommendation of the local government that the local planning scheme be amended, or recommends an amendment to the local planning scheme, the local government is to prepare the amendment as a basic amendment under Part 5.
- (2) A local government must not make a resolution not to proceed with an amendment referred to in subregulation (1).

## **Part 7 — Development contribution plans**

### **70. Development contribution area**

- (1) A local government may determine that an area of land within a scheme area is a development contribution area if development or subdivision of the land would require the provision of infrastructure or facilities in the area to support the development or subdivision.
- (2) A development contribution area must be shown as a special control area on the scheme map for the local planning scheme.

### **71. Development contribution plan**

- (1) A local government must prepare a development contribution plan for each area identified in a local planning scheme as a development contribution area.
- (2) A development contribution plan may be prepared concurrently with the identification of the development contribution area to which it relates.
- (3) A development contribution plan is prepared for the purpose of setting out who is to contribute to the cost of providing infrastructure or facilities in a development contribution area and how those contributions are to be determined.
- (4) A development contribution plan must set out the following —
  - (a) the development contribution area to which it applies;
  - (b) the infrastructure and administrative items to be funded through the plan;
  - (c) the method of determining the contribution of each owner of land in the development contribution area;
  - (d) the priority and timing for the provision of the infrastructure;
  - (e) whether costs of providing infrastructure and administrative items are to be reviewed annually and if

so, the method proposed for the annual review of the costs;

- (f) the term for which the plan is to have effect.

**72. Development contribution area and plans are complex amendments**

The identification of a development contribution area and the preparation of a development contribution plan, or the amendment of an area or plan, are to be prepared as part of the preparation or adoption of a local planning scheme or as a complex amendment to a local planning scheme.

**73. Effect of development contribution plan**

- (1) A local government must not levy a contribution for the provision of infrastructure or facilities for an area unless there is a development contribution plan in place for the area.
- (2) The Commission must not grant subdivision approval subject to a condition that a person may be required to make a contribution to the provision of infrastructure or facilities for the area covered by the subdivision if a development contribution plan is not in place for the area.
- (3) A local government must not refuse to grant development approval on the grounds that a development contribution plan is being prepared for the area in which the development is located unless that plan has already been advertised.
- (4) The Commission must not refuse to grant subdivision approval on the grounds that a development contribution plan is being prepared for the area covered by the subdivision unless that plan has already been advertised.

## Part 8 — Miscellaneous

### 74. Expenses of environmental review

- (1) In this regulation —
- affected land*, in relation to a local planning scheme or an amendment to a local planning scheme, means land to which the local planning scheme or amendment relates;
- method of calculation* means a method of calculation for the purposes of this regulation set out in subregulation (4);
- review expenses* means expenses incurred by a local government in undertaking an environmental review of a local planning scheme or amendment in accordance with instructions issued under section 48C(1)(a) of the EP Act;
- value*, in relation to land, means the rateable value of the land recorded in the rate records of the local government at the time the resolution to prepare or adopt the local planning scheme or amendment was passed.
- (2) A local government may, under section 82(6) of the Act, recover in a court of competent jurisdiction, as a debt due to the local government, any amount due and owing under this regulation in respect of review expenses incurred by the local government.
- (3) The owner of affected land is liable to pay an amount in respect of review expenses if —
- (a) the review is to be undertaken by the local government; and
  - (b) the local planning scheme or amendment documents —
    - (i) provide that the owner is liable for review expenses; and
    - (ii) set out a method of calculation for the amount that is to be payable by each owner.

(4) The methods of calculation for the purposes of subregulation (3)(b)(ii) are as follows —

(a) proportional land area, being the amount calculated using the formula —

$$\text{Amount due by person} = \frac{A}{T} \times \text{review expenses}$$

where —

A is the area of the affected land owned by the person;

T is the total area of affected land;

(b) proportional land value, being the amount calculated using the formula —

$$\text{Amount due by person} = \frac{V}{T} \times \text{review expenses}$$

where —

V is the value of the affected land owned by the person;

T is the total value of affected land;

(c) another method of calculation approved by the Minister or an authorised person.

(5) Unless the local government and the owner of affected land have agreed in writing that the review expenses may be recovered at an earlier time, review expenses must not be recovered from the owner until the local planning scheme or amendment has come into force and —

(a) the affected land owned by the person is sold or subdivided; or

(b) in the case of an amendment that changed the zoning of affected land, the local government grants approval for the development of affected land owned by the person

that could not have been granted under the local planning scheme prior to the amendment coming into force.

- (6) A local government must not seek to recover review expenses from a land owner unless the local government has kept separate records setting out details of —
- (a) the review expenses incurred and recovered; and
  - (b) the affected land; and
  - (c) any agreements of the type referred to in subregulation (5).

**75. Compensation**

An application for compensation under Part 11 of the Act arising from the making or amendment to a local planning scheme must be made to the local government in a form approved by the Commission.

**76. Transitional arrangements for replacement local planning schemes**

A local planning scheme that replaces one or more local planning schemes may provide that an application, instrument or policy that was made under, or applied in respect of, a local planning scheme that is being replaced is to be taken to be an application, instrument or policy for the purposes of the new scheme.

**76A. Requirements for making documents available to public**

- (1) This regulation applies if under a provision of these regulations (other than Schedule 1 or 2) a local government is required to publish in accordance with this regulation a notice, scheme, amendment or other document (the *document*).

- (2) The local government must make the document available in accordance with the applicable requirements of subregulations (3) to (5).

Note for this subregulation:

Under regulation 76B, the Commission may approve varied requirements that apply if it is not practicable for a local government to publish documents in accordance with subregulations (3) to (5).

- (3) For all documents, the local government must —
- (a) publish on the website of the local government —
    - (i) the document; or
    - (ii) a hyperlink to a webpage on which the document is published;
  - and
  - (b) if it is reasonably practicable to do so — make a copy of the document available for public inspection at a place in the district of the local government during normal business hours.
- (4) If the document is a notice and the local government considers that it is appropriate in the circumstances for the notice to be published in a newspaper, the local government must also ensure that the notice is published in a newspaper circulating in the relevant locality in the local government's district.
- (5) The local government must ensure that the document remains published under subregulation (3)(a) and (if applicable) available for public inspection under subregulation (3)(b) —
- (a) if the document is published in compliance with a requirement that is expressed to be an ongoing publication requirement — at all times that the document is in effect; or
  - (b) if the document is published in compliance with a requirement to advertise for submissions or recommendations under these regulations — during the

r. 76B

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whole of the period within which submissions or recommendations may be made; or

- (c) if paragraphs (a) and (b) do not apply — during a period that the local government considers is reasonable.

[Regulation 76A inserted: SL 2020/252 r. 26.]

**76B. Commission may approve varied requirements for publication of documents**

- (1) In this regulation —  
*document* has the meaning given in regulation 76A(1);  
*publication requirements* means the requirements of regulation 76A(3) to (5) in relation to making documents available to the public.
- (2) If the Commission considers that it is not practicable for a local government to comply with any of the publication requirements in relation to documents that it is or may become required to publish, the Commission may give the local government a written notice approving varied requirements that apply in relation to the local government making documents available to the public.
- (3) If a notice under subregulation (2) is in effect in relation to a local government, the local government is taken to comply with the applicable publication requirements in relation to a document if the local government complies with those requirements as varied by the notice.
- (4) A notice under subregulation (2) —
- (a) must state whether it has effect indefinitely or for a period specified in the notice; and
  - (b) takes effect when it is given to the local government; and



- (c) ceases to be in effect —
  - (i) if the Commission gives the local government a further written notice revoking it; or
  - (ii) at the end of the period (if any) specified under paragraph (a).

*[Regulation 76B inserted: SL 2020/252 r. 26.]*

## **Part 9 — Repeal and transitional provisions**

### **Division 1 — Transitional provisions for *Planning and Development (Local Planning Schemes) Regulations 2015***

*[Heading inserted: SL 2020/252 r. 27.]*

#### **77. Terms used**

In this Division —

***commencement day*** means the day on which regulation 78 comes into operation;

***planning instrument*** means any of the following instruments —

- (a) a consolidation of a local planning scheme;
- (b) an activity centre plan;
- (c) a development contribution plan;
- (d) a local development plan;
- (e) a local planning policy;
- (f) a local planning scheme;
- (g) a local planning strategy;
- (h) a structure plan;
- (i) an amendment to an instrument referred to in paragraph (b) to (h);

***repealed regulations*** means the *Town Planning Regulations 1967*.

*[Regulation 77 amended: SL 2020/252 r. 28.]*

#### **78. *Town Planning Regulations 1967* repealed**

The *Town Planning Regulations 1967* are repealed.

#### **79. Planning instruments continued**

- (1) A planning instrument made under the Act before commencement day and in accordance with the repealed

regulations or a State planning policy continues in force as if it were a planning instrument of the same type made under the Act in accordance with these regulations.

- (2) For the purposes of subregulation (1), an instrument of a type referred to in column 2 of the Table is to be taken to be a planning instrument of the type referred to in column 3 of the Table.

**Table**

Item	Type of instrument	Type of planning instrument
1.	Outline development plan Development plan Subdivision guide plan	Structure plan
2.	Activity centre structure plan	Activity centre plan
3.	Detailed area plan	Local development plan

- (3) On and after the day on which the *Planning Regulations Amendment Regulations 2020* Part 2 Division 2 comes into operation, this regulation applies subject to Schedule 2 clause 92 (as that clause applies as part of local planning schemes).

*[Regulation 79 amended: SL 2020/252 r. 29.]*

**80. Planning instruments in course of preparation**

Any step taken under the Act and in accordance with the repealed regulations or a State planning policy before commencement day in the preparation of a planning instrument is to be taken to be a step taken in the preparation of a planning instrument of that type under these regulations.

**81. Development applications**

A development application made but not determined under a local planning scheme before commencement day is to be taken to be a development application made under the local planning scheme as that scheme is continued under regulation 79 and is to be determined in accordance with the local planning scheme as so continued.

**Division 2 — Transitional provisions for *Planning Regulations Amendment Regulations 2020***

[Heading inserted: SL 2020/252 r. 30.]

**82. Advertising processes in progress on commencement day**

(1) In this regulation —

***amended regulations*** means these regulations as amended by the *Planning Regulations Amendment Regulations 2020* Part 2 Division 2;

***commencement day*** means the day on which the *Planning Regulations Amendment Regulations 2020* Part 2 Division 2 comes into operation;

***former regulations*** means these regulations as in force immediately before commencement day;

***relevant advertising process*** —

(a) means any of the following processes —

- (i) the advertising of a local planning strategy, or amendment to a local planning strategy, under regulation 13;
- (ii) the advertising of a resolution to prepare or adopt a local planning scheme under regulation 20;
- (iii) the advertising of a draft local planning scheme under regulation 22;
- (iv) the advertising of a proposed modification to a local planning scheme under regulation 26;

- (v) the advertising of an approved local planning scheme under regulation 33;
  - (vi) the advertising of an amendment to a local planning scheme under regulation 38 or 47;
  - (vii) the advertising of a proposed modification to an amendment to a local planning scheme under regulation 42 or 51;
  - (viii) the advertising of an approved amendment to a local planning scheme under regulation 64;
- and
- (b) includes the giving of notices to persons or public authorities as part of a process referred to in paragraph (a).
- (2) A relevant advertising process that commenced, but was not completed, before commencement day may be completed in accordance with the requirements of the former regulations rather than the amended regulations.
- (3) If the relevant advertising process for a strategy, resolution, scheme, amendment or modification (the **relevant planning instrument**) is completed in accordance with subregulation (2) —
- (a) the relevant planning instrument is taken to have been advertised in compliance with the relevant requirements of the amended regulations; and
  - (b) these regulations apply with any necessary changes to the relevant planning instrument.
- (4) If the process of advertising an amendment to a local planning scheme commenced before commencement day, regulation 35A does not apply to the amendment.

*[Regulation 82 inserted: SL 2020/252 r. 30.]*

## **Schedule 1 — Model provisions for local planning schemes**

[r. 10(2)]

### **Part 1 — Preliminary**

**1. Citation**

This local planning scheme is the City/Town/Shire of .....  
Scheme No ..... .

**2. Commencement**

Under section 87(4) of the Act, this local planning scheme comes into operation on the day on which it is published in the *Gazette*.

**3. Scheme revoked**

The following local planning scheme(s) is (are) revoked —

Name	Gazettal date
------	---------------

*(Insert (where applicable) existing local planning schemes revoked by the Scheme.)*

**4. Notes do not form part of Scheme**

Notes, and instructions printed in italics, do not form part of this Scheme.

Note:

The *Interpretation Act 1984* section 32 makes provision in relation to whether headings form part of the written law.

**5. Responsibility for Scheme**

The City/Town/Shire of ..... is the local government responsible for the enforcement and implementation of this Scheme and the execution of any works required to be executed under this Scheme.

*(Where necessary, provision may be made for more than one responsible authority.)*

**6. Scheme area**

This Scheme applies to the area shown on the Scheme Map.

Note:

The Scheme area (or part) is also subject to the ..... Region planning scheme (see clause 12) and other local planning schemes (see clause 11).

*(Insert the appropriate description. Reference may be made to the whole of a district, part of a district, land within a townsite boundary or land within an area outlined on the Scheme Map. The note only applies where a region planning scheme or another local planning scheme is in force in the Scheme area.)*

**7. Contents of Scheme**

(1) In addition to the provisions set out in this document (the ***scheme text***), this Scheme includes the following —

- (a) the deemed provisions (set out in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2);
- (b) the Scheme Map;
- (c) the following plans, maps, diagrams, illustrations or materials —

*(Insert after paragraph (c) a description of any supporting plans, maps, diagrams, illustrations or materials which form part of the Scheme.)*

(2) This Scheme is to be read in conjunction with any local planning strategy for the Scheme area.

**8. Purposes of Scheme**

The purposes of this Scheme are to —

- (a) set out the local government's planning aims and intentions for the Scheme area; and
- (b) set aside land as local reserves for public purposes; and
- (c) zone land within the Scheme area for the purposes defined in this Scheme; and

- (d) control and guide development including processes for the preparation of structure plans and local development plans; and
- (e) set out procedures for the assessment and determination of development applications; and
- (f) set out procedures for contributions to be made for the costs of providing infrastructure in connection with development through development contribution plans; and
- (g) make provision for the administration and enforcement of this Scheme; and
- (h) address other matters referred to in Schedule 7 of the Act.

*[Clause 8 amended: SL 2020/252 r. 31.]*

**9. Aims of Scheme**

The aims of this Scheme are —

*(Insert a statement setting out the general aims of the Scheme.)*

**10. Relationship with local laws**

Where a provision of this Scheme is inconsistent with a local law, the provision of this Scheme prevails to the extent of the inconsistency.

**11. Relationship with other local planning schemes**

The following local planning schemes of the City/Town/Shire of ..... also apply in the Scheme area —

Scheme No ..... Gazettal date .....

*(If applicable, list any other Schemes which are complementary to the Scheme. If no other Schemes apply to the Scheme area, insert the words “There are no other local planning schemes of the City/Town/Shire of ..... which apply to the Scheme area.”.)*



**12. Relationship with region planning scheme**

The ..... Region Scheme made (or continued) under Part 4 of the Act applies in respect of part or all of the Scheme area.

Note:

The authority responsible for implementing the ..... Region Scheme is the Western Australian Planning Commission.

*(This clause and note only apply where a region planning scheme applies to some or all of the Scheme area. If no region planning scheme applies to the Scheme area, insert the words “There are no region planning schemes which apply to the Scheme area.”.)*

**Part 2 — Reserves**

**13. Regional Reserves**

- (1) Regional reserves are marked on the Scheme Map according to the legend on the Scheme Map.
- (2) The lands marked as regional reserves are lands reserved for a public purpose under the ..... Region Scheme.

*(This clause only applies where a region planning scheme is in force. If there is no region planning scheme in force, insert the words “There are no regional reserves in the Scheme area.”.)*

Note:

The process of reserving land under a regional planning scheme is separate from the process of reserving land under the *Land Administration Act 1997* section 41.

**14. Local reserves**

- (1) In this clause —

***Department of Main Roads*** means the department principally assisting in the administration of the *Main Roads Act 1930*;

***Western Australian Road Hierarchy*** means the document of that name available on the website maintained by the Department of Main Roads.

(2) Local reserves are shown on the Scheme Map according to the legend on the Scheme Map.

(3) The objectives of each local reserve are as follows —

*(Select the reserves and the objectives for those reserves that are contained in the Scheme from the Table.)*

**Table — Reserve objectives**

<b>Reserve name</b>	<b>Objectives</b>
Public Open Space	<ul style="list-style-type: none"><li>• To set aside areas for public open space, particularly those established under the <i>Planning and Development Act 2005</i> s. 152.</li><li>• To provide for a range of active and passive recreation uses such as recreation buildings and courts and associated car parking and drainage.</li></ul>
Environmental conservation	<ul style="list-style-type: none"><li>• To identify areas with biodiversity and conservation value, and to protect those areas from development and subdivision.</li><li>• To identify and protect areas of biodiversity conservation significance within National Parks and State and other conservation reserves.</li></ul>
State Forest	<ul style="list-style-type: none"><li>• To identify areas of State Forest.</li></ul>
Civic and Community	<ul style="list-style-type: none"><li>• To provide for a range of community facilities which are compatible with surrounding development.</li><li>• To provide for public facilities such as halls, theatres, art galleries, educational, health and social care facilities, accommodation for the aged, and other services by organisations involved in activities for community benefit.</li></ul>
Social Care Facilities	<ul style="list-style-type: none"><li>• Civic and Community which specifically provide for a range of essential social care facilities.</li></ul>
Cultural Facilities	<ul style="list-style-type: none"><li>• Civic and Community which specifically provide for a range of essential cultural facilities.</li></ul>
Public Purposes	<ul style="list-style-type: none"><li>• To provide for a range of essential physical and community infrastructure.</li></ul>

<b>Reserve name</b>	<b>Objectives</b>
Medical Services	<ul style="list-style-type: none"><li>• Public Purposes which specifically provide for a range of essential medical services.</li></ul>
Infrastructure Services	<ul style="list-style-type: none"><li>• Public Purposes which specifically provide for a range of essential infrastructure services.</li></ul>
Education	<ul style="list-style-type: none"><li>• Public Purposes which specifically provide for a range of essential education facilities.</li></ul>
Emergency Services	<ul style="list-style-type: none"><li>• Public Purposes which specifically provide for a range of essential emergency services.</li></ul>
Heritage	<ul style="list-style-type: none"><li>• Public Purposes which specifically provide for a range of heritage purposes.</li></ul>
Government Services	<ul style="list-style-type: none"><li>• Public Purposes which specifically provide for a range of government services.</li></ul>
Recreational	<ul style="list-style-type: none"><li>• Public Purposes which specifically provide for a range of public recreational facilities.</li></ul>
Cemetery	<ul style="list-style-type: none"><li>• To set aside land required for a cemetery.</li></ul>
Car Park	<ul style="list-style-type: none"><li>• To set aside land required for a car park.</li></ul>
Drainage / Waterway	<ul style="list-style-type: none"><li>• To set aside land required for significant waterways and drainage.</li></ul>
Railways	<ul style="list-style-type: none"><li>• To set aside land required for passenger rail and rail freight services.</li></ul>
Primary Distributor Road	<ul style="list-style-type: none"><li>• To set aside land required for a primary distributor road being a road classified as a Regional Distributor or Primary Distributor under the Western Australian Road Hierarchy.</li></ul>
District Distributor Road	<ul style="list-style-type: none"><li>• To set aside land required for a district distributor road being a road classified as a Distributor A or Distributor B under the Western Australian Road Hierarchy.</li></ul>
Local Distributor Road	<ul style="list-style-type: none"><li>• To set aside land required for a local distributor road being a road classified as a Local Distributor under the Western Australian Road Hierarchy.</li></ul>

<b>Reserve name</b>	<b>Objectives</b>
Local Road	<ul style="list-style-type: none"><li>• To set aside land required for a local road being a road classified as an Access Road under the Western Australian Road Hierarchy.</li></ul>
Strategic infrastructure	<ul style="list-style-type: none"><li>• To set aside land required for port or airport facilities.</li></ul>
Special Purpose Reserve	<ul style="list-style-type: none"><li>• To set aside land for a special purpose.</li><li>• Purposes that do not comfortably fit in any other reserve classification.</li></ul>

**15. Additional uses for local reserves**

- (1) The Table sets out —
- (a) classes of use for specified land located in local reserves that are additional to classes of use determined in accordance with the objectives of the reserve; and
  - (b) the conditions that apply to that additional use.

**Table**

**Specified additional uses for land in local reserves in Scheme area**

<b>No.</b>	<b>Description of land</b>	<b>Additional use</b>	<b>Conditions</b>

- (2) Despite anything contained in clause 14, land that is specified in the Table to subclause (1) may be used for the additional class of use set out in respect of that land subject to the conditions that apply to that use.

*(The Table of additional uses for land in local reserves may be set out as a Schedule to the Scheme.)*

*If the Scheme does not include additional uses for land in local reserves, insert the words “There are no additional uses for land in local reserves that apply to this Scheme.”.)*

**Part 3 — Zones and use of land**

**16. Zones**

(1) Zones are shown on the Scheme Map according to the legend on the Scheme Map.

(2) The objectives of each zone are as follows —

*(Select the zones and the objectives for those zones that are contained in the Scheme from the Table.)*

**Table — Zone objectives**

<b>Zone name</b>	<b>Objectives</b>
Residential	<ul style="list-style-type: none"> <li>• To provide for a range of housing and a choice of residential densities to meet the needs of the community.</li> <li>• To facilitate and encourage high quality design, built form and streetscapes throughout residential areas.</li> <li>• To provide for a range of non-residential uses, which are compatible with and complementary to residential development.</li> </ul>
Urban Development	<ul style="list-style-type: none"> <li>• To provide an intention of future land use and a basis for more detailed structure planning in accordance with the provisions of this Scheme.</li> <li>• To provide for a range of residential densities to encourage a variety of residential accommodation.</li> <li>• To provide for the progressive and planned development of future urban areas for residential purposes and for commercial and other uses normally associated with residential development.</li> <li>• To provide an intermediate transitional zone following the lifting of an urban deferred zoning within the Metropolitan Region Scheme.</li> </ul>

<b>Zone name</b>	<b>Objectives</b>
Settlement	<ul style="list-style-type: none"><li>• To identify existing and proposed Aboriginal settlements and to collaboratively plan for the orderly and proper development of those places by —<ul style="list-style-type: none"><li>(a) requiring preparation and endorsement of a layout plan in accordance with State Planning Policy 3.2; and</li><li>(b) ensuring that development accords with a layout plan.</li></ul></li></ul>
Special Residential	<ul style="list-style-type: none"><li>• To provide for lot sizes in the range of 2 000 m<sup>2</sup> and 1 ha.</li><li>• To ensure development is sited and designed to achieve an integrated and harmonious character.</li><li>• To set aside areas where the retention of vegetation and landform or other features which distinguish the land, warrant a larger residential lot size than that expected in a standard residential zone.</li></ul>
Rural	<ul style="list-style-type: none"><li>• To provide for the maintenance or enhancement of specific local rural character.</li><li>• To protect broad acre agricultural activities such as cropping and grazing and intensive uses such as horticulture as primary uses, with other rural pursuits and rural industries as secondary uses in circumstances where they demonstrate compatibility with the primary use.</li><li>• To maintain and enhance the environmental qualities of the landscape, vegetation, soils and water bodies, to protect sensitive areas especially the natural valley and watercourse systems from damage.</li><li>• To provide for the operation and development of existing, future and potential rural land uses by limiting the introduction of sensitive land uses in the Rural zone.</li><li>• To provide for a range of non-rural land uses where they have demonstrated benefit and are compatible with surrounding rural uses.</li></ul>

<b>Zone name</b>	<b>Objectives</b>
Rural Residential	<ul style="list-style-type: none"><li>• To provide for lot sizes in the range of 1 ha to 4 ha.</li><li>• To provide opportunities for a range of limited rural and related ancillary pursuits on rural-residential lots where those activities will be consistent with the amenity of the locality and the conservation and landscape attributes of the land.</li><li>• To set aside areas for the retention of vegetation and landform or other features which distinguish the land.</li></ul>
Rural Smallholdings	<ul style="list-style-type: none"><li>• To provide for lot sizes in the range of 4 ha to 40 ha.</li><li>• To provide for a limited range of rural land uses where those activities will be consistent with the amenity of the locality and the conservation and landscape attributes of the land.</li><li>• To set aside areas for the retention of vegetation and landform or other features which distinguish the land.</li></ul>
Rural Townsite Zone	<ul style="list-style-type: none"><li>• To provide for a range of land uses that would typically be found in a small country town.</li></ul>
Environmental conservation	<ul style="list-style-type: none"><li>• To identify land set aside for environmental conservation purposes.</li><li>• To provide for the preservation, maintenance, restoration or sustainable use of the natural environment.</li></ul>
Light Industry	<ul style="list-style-type: none"><li>• To provide for a range of industrial uses and service industries generally compatible with urban areas, that cannot be located in commercial zones.</li><li>• To ensure that where any development adjoins zoned or developed residential properties, the development is suitably set back, screened or otherwise treated so as not to detract from the residential amenity.</li></ul>

<b>Zone name</b>	<b>Objectives</b>
General Industry	<ul style="list-style-type: none"><li>• To provide for a broad range of industrial, service and storage activities which, by the nature of their operations, should be isolated from residential and other sensitive land uses.</li><li>• To accommodate industry that would not otherwise comply with the performance standards of light industry.</li><li>• Seek to manage impacts such as noise, dust and odour within the zone.</li></ul>
Industrial Development	<ul style="list-style-type: none"><li>• To designate land for future industrial development.</li><li>• To provide a basis for future detailed planning in accordance with the structure planning provisions of this Scheme.</li></ul>
Strategic Industry	<ul style="list-style-type: none"><li>• To designate industrial sites of State or regional significance.</li></ul>
Commercial	<ul style="list-style-type: none"><li>• To provide for a range of shops, offices, restaurants and other commercial outlets in defined townsites or activity centres.</li><li>• To maintain the compatibility with the general streetscape, for all new buildings in terms of scale, height, style, materials, street alignment and design of facades.</li><li>• To ensure that development is not detrimental to the amenity of adjoining owners or residential properties in the locality.</li></ul>
Mixed Use	<ul style="list-style-type: none"><li>• To provide for a wide variety of active uses on street level which are compatible with residential and other non-active uses on upper levels.</li><li>• To allow for the development of a mix of varied but compatible land uses such as housing, offices, showrooms, amusement centres, eating establishments and appropriate industrial activities which do not generate nuisances detrimental to the amenity of the district or to the health, welfare and safety of its residents.</li></ul>



<b>Zone name</b>	<b>Objectives</b>
Service Commercial	<ul style="list-style-type: none"><li>• To accommodate commercial activities which, because of the nature of the business, require good vehicular access and/or large sites.</li><li>• To provide for a range of wholesale sales, showrooms, trade and services which, by reason of their scale, character, operational or land requirements, are not generally appropriate in, or cannot conveniently or economically be accommodated in, the central area, shops and offices or industrial zones.</li></ul>
Centre	<ul style="list-style-type: none"><li>• To designate land for future development as a town centre or activity centre.</li><li>• To provide a basis for future detailed planning in accordance with the structure planning provisions of this Scheme or the Activity Centres State Planning Policy.</li></ul>
Tourism	<ul style="list-style-type: none"><li>• To promote and provide for tourism opportunities.</li><li>• To provide for a variety of holiday accommodation styles and associated uses, including retail and service facilities where those facilities are provided in support of the tourist accommodation and are of an appropriate scale where they will not impact detrimentally on the surrounding or wider area.</li><li>• To allow limited residential uses where appropriate.</li><li>• To encourage the location of tourist facilities so that they may benefit from existing road services, physical service infrastructure, other tourist attractions, natural features and urban facilities.</li></ul>

<b>Zone name</b>	<b>Objectives</b>
Private clubs, institutions and places of worship	<ul style="list-style-type: none"><li>• To provide sites for privately owned and operated recreation, institutions and places of worship.</li><li>• To integrate private recreation areas with public recreation areas wherever possible.</li><li>• To separate potentially noisy engine sports from incompatible uses.</li><li>• To provide for a range of privately owned community facilities, and uses that are incidental and ancillary to the provision of those facilities, which are compatible with surrounding development.</li><li>• To ensure that the standard of development is in keeping with surrounding development and protects the amenity of the area.</li></ul>
Special Use Zone	<ul style="list-style-type: none"><li>• To facilitate special categories of land uses which do not sit comfortably within any other zone.</li><li>• To enable the Council to impose specific conditions associated with the special use.</li></ul>

**17. Zoning table**

The zoning table for this Scheme is as follows —

*(Insert zoning table.)*

**18. Interpreting zoning table**

- (1) The permissibility of uses of land in the various zones in the Scheme area is determined by cross-reference between the list of use classes on the left hand side of the zoning table and the list of zones at the top of the zoning table.
- (2) The symbols used in the zoning table have the following meanings —
  - P means that the use is permitted if it complies with any relevant development standards and requirements of this Scheme;
  - I means that the use is permitted if it is consequent on, or naturally attaching, appertaining or relating to the predominant use of the land and it complies with any relevant development standards and requirements of this Scheme;

- D means that the use is not permitted unless the local government has exercised its discretion by granting development approval;
- A means that the use is not permitted unless the local government has exercised its discretion by granting development approval after advertising the application in accordance with clause 64 of the deemed provisions;
- X means that the use is not permitted by this Scheme.

*(A symbol must appear in the cross-reference of a use class against all the zones in the zoning table.)*

Notes for this clause:

1. The development approval of the local government may be required to carry out works on land in addition to any approval granted for the use of land. In normal circumstances 1 application is made for both the carrying out of works on, and the use of, land.
  2. Under clause 61 of the deemed provisions, certain works and uses are exempt from the requirement for development approval.
  3. Clause 67 of the deemed provisions deals with the consideration of applications for development approval by the local government. Under that clause, development approval cannot be granted for development that is a class X use in relation to the zone in which the development is located, except in certain circumstances where land is being used for a non-conforming use.
- (3) A specific use class referred to in the zoning table is excluded from any other use class described in more general terms.
- (4) The local government may, in respect of a use that is not specifically referred to in the zoning table and that cannot reasonably be determined as falling within a use class referred to in the zoning table —
- (a) determine that the use is consistent with the objectives of a particular zone and is therefore a use that may be permitted in the zone subject to conditions imposed by the local government; or
  - (b) determine that the use may be consistent with the objectives of a particular zone and advertise under clause 64 of the deemed provisions before considering an application for development approval for the use of the land; or

- (c) determine that the use is not consistent with the objectives of a particular zone and is therefore not permitted in the zone.
  - (5) If a use of land is identified in a zone as being a class P or class I use, the local government may not refuse an application for development approval for that use in that zone but may require works that are to be undertaken in connection with that use to have development approval.
  - [(6) *deleted*]
  - (7) If the zoning table does not identify any permissible uses for land in a zone the local government may, in considering an application for development approval for land within the zone, have due regard to any of the following plans that apply to the land —
    - (a) a structure plan;
    - [(b) *deleted*]
    - (c) a local development plan.
- [Clause 18 amended: SL 2020/252 r. 32.]

**19. Additional uses**

- (1) The Table sets out —
  - (a) classes of use for specified land that are additional to the classes of use that are permissible in the zone in which the land is located; and
  - (b) the conditions that apply to that additional use.

**Table**

**Specified additional uses for zoned land in Scheme area**

No.	Description of land	Additional use	Conditions

- (2) Despite anything contained in the zoning table, land that is specified in the Table to subclause (1) may be used for the additional class of

use set out in respect of that land subject to the conditions that apply to that use.

*(The Table of additional uses for zoned land may be set out as a Schedule to the Scheme.*

*If the Scheme does not include additional uses for zoned land, insert the words “There are no additional uses for zoned land that apply to this Scheme.”.)*

**20. Restricted uses**

(1) The Table sets out —

- (a) restricted classes of use for specified land that apply instead of the classes of use that are permissible in the zone in which the land is located; and
- (b) the conditions that apply to that restricted use.

**Table**

**Restricted uses for land in Scheme area**

No.	Description of land	Restricted use	Conditions

(2) Despite anything contained in the zoning table, land that is specified in the Table to subclause (1) may be used only for the restricted class of use set out in respect of that land subject to the conditions that apply to that use.

*(The Table of restricted uses for land may be set out as a Schedule to the Scheme.*

*If the Scheme does not include restricted uses, insert the words “There are no restricted uses which apply to this Scheme.”.)*

**21. Special use zones**

- (1) The Table sets out —
- (a) special use zones for specified land that are in addition to the zones in the zoning table; and
  - (b) the classes of special use that are permissible in that zone; and
  - (c) the conditions that apply in respect of the special uses.

**Table**

**Special use zones in Scheme area**

No.	Description of land	Special use	Conditions

- (2) A person must not use any land, or any structure or buildings on land, in a special use zone except for a class of use that is permissible in that zone and subject to the conditions that apply to that use.

Note:

Special use zones apply to special categories of land use which do not comfortably sit within any other zone in the Scheme.

*(The Table of special use zones may be set out as a Schedule to the Scheme.*

*If the Scheme does not include special use zones, insert the words “There are no special use zones which apply to this Scheme.”.)*

**22. Non-conforming uses**

- (1) Unless specifically provided, this Scheme does not prevent —
- (a) the continued use of any land, or any structure or building on land, for the purpose for which it was being lawfully used immediately before the commencement of this Scheme; or

- (b) the carrying out of development on land if —
  - (i) before the commencement of this Scheme, the development was lawfully approved; and
  - (ii) the approval has not expired or been cancelled.
- (2) Subclause (1) does not apply if —
  - (a) the non-conforming use of the land is discontinued; and
  - (b) a period of 6 months, or a longer period approved by the local government, has elapsed since the discontinuance of the non-conforming use.
- (3) Subclause (1) does not apply in respect of a non-conforming use of land if, under Part 11 of the Act, the local government —
  - (a) purchases the land; or
  - (b) pays compensation to the owner of the land in relation to the non-conforming use.

**23. Changes to non-conforming use**

- (1) A person must not, without development approval —
  - (a) alter or extend a non-conforming use of land; or
  - (b) erect, alter or extend a building used for, or in conjunction with, a non-conforming use; or
  - (c) repair, rebuild, alter or extend a building used for a non-conforming use that is destroyed to the extent of 75% or more of its value; or
  - (d) change the use of land from a non-conforming use to another use that is not permitted by the Scheme.
- (2) An application for development approval for the purposes of this clause must be advertised in accordance with clause 64 of the deemed provisions.
- (3) A local government may only grant development approval for a change of use of land referred to in subclause (1)(d) if, in the opinion of the local government, the proposed use —
  - (a) is less detrimental to the amenity of the locality than the existing non-conforming use; and

- (b) is closer to the intended purpose of the zone in which the land is situated.

**24. Register of non-conforming uses**

- (1) The local government may prepare a register of land within the Scheme area that is being used for a non-conforming use.
  - (2) A register prepared by the local government must set out the following —
    - (a) a description of each area of land that is being used for a non-conforming use;
    - (b) a description of any building on the land;
    - (c) a description of the non-conforming use;
    - (d) the date on which any discontinuance of the non-conforming use is noted.
  - (3) If the local government prepares a register under subclause (1) the local government —
    - (a) must ensure that the register is kept up-to-date; and
    - (b) must ensure that an up-to-date copy of the register is published in accordance with clause 87 of the deemed provisions.
- [(c) deleted]*
- (3A) Subclause (3)(b) is an ongoing publication requirement for the purposes of clause 87(5)(a) of the deemed provisions.
  - (4) An entry in the register in relation to land that is being used for a non-conforming use is evidence of the matters set out in the entry, unless the contrary is proved.

*[Clause 24 amended: SL 2020/252 r. 33.]*



## **Part 4 — General development requirements**

*(This Part sets out the general requirements which apply to land use and development within the Scheme area and the specific requirements which apply to particular uses and forms of development, such as site requirements, access, parking, building design, setbacks and landscaping, for residential, industrial, rural and other uses.*

*Development requirements applying to particular zones may alternatively be incorporated with the zoning provisions in Part 3. Development requirements applying to special control areas should be included in Part 5.)*

### **25. R-Codes**

- (1) The R-Codes, modified as set out in clause 26, are to be read as part of this Scheme.
- (2) The local government must ensure that the R-Codes are published in accordance with clause 87 of the deemed provisions.
- (2A) Subclause (2) is an ongoing publication requirement for the purposes of clause 87(5)(a) of the deemed provisions.
- (3) The coding of land for the purposes of the R-Codes is shown by the coding number superimposed on a particular area contained within the boundaries of the area shown on the Scheme Map.
- (4) The R-Codes apply to an area if —
  - (a) the area has a coding number superimposed on it in accordance with subclause (3); or
  - (b) a provision of this Scheme provides that the R-Codes apply to the area.

*[Clause 25 amended: SL 2020/252 r. 34.]*

### **26. Modification of R-Codes**

*(To be inserted if exclusions and variations to the R-Codes are to apply. If no exclusions or variations are to apply, insert the words “There are no modifications to the R-Codes.”.)*

**27. State Planning Policy 3.6 to be read as part of Scheme**

- (1) State Planning Policy 3.6 — Development Contributions for Infrastructure, modified as set out in clause 28, is to be read as part of this Scheme.
- (2) The local government must ensure that State Planning Policy 3.6 is published in accordance with clause 87 of the deemed provisions.
- (3) Subclause (2) is an ongoing publication requirement for the purposes of clause 87(5)(a) of the deemed provisions.

*[Clause 27 amended: SL 2020/252 r. 35.]*

**28. Modification of State Planning Policy 3.6**

*(To be inserted if exclusions and variations to State Planning Policy 3.6 are to apply. If no exclusions or variations are to apply, insert the words “There are no modifications to State Planning Policy 3.6.”.)*

**29. Other State planning policies to be read as part of Scheme**

- (1) The State planning policies set out in the Table, modified as set out in clause 30, are to be read as part of this Scheme.

**Table**

<b>State planning policies to be read as part of Scheme</b>
<i>(Insert details of any other State planning policies that are to be read into the scheme)</i>

- (2) The local government must ensure that each State planning policy referred to in subclause (1) is published in accordance with clause 87 of the deemed provisions.
- (3) Subclause (2) is an ongoing publication requirement for the purposes of clause 87(5)(a) of the deemed provisions.

*(If no other State planning policies are to be read as part of the Scheme, insert the words “There are no other State planning policies that are to be read as part of the Scheme.”.)*

*[Clause 29 amended: SL 2020/252 r. 36.]*

**30. Modification of State planning policies**

*(To be inserted if exclusions and variations to any other State planning policy that is to be read as part of the Scheme are to apply. If no exclusions or variations are to apply, insert the words “There are no modifications to a State planning policy that, under clause 29 is to be read as part of the Scheme.”.)*

**31. Environmental conditions**

- (1) The conditions set out in the Table are environmental conditions that apply to this Scheme as a result of an assessment carried out under the *Environmental Protection Act 1986* Part IV Division 3.

**Table**

**Environmental conditions that apply to land in Scheme area**

<b>Scheme or amendment No.</b>	<b>Gazettal date</b>	<b>Environmental conditions</b>

- (2) The environmental conditions are indicated on the Scheme Map by the symbol EC to indicate that environmental conditions apply to the land.
- (3) The local government must ensure that all statements relating to this Scheme published under the *Environmental Protection Act 1986* Part IV Division 3 are published in accordance with clause 87 of the deemed provisions.
- (4) Subclause (3) is an ongoing publication requirement for the purposes of clause 87(5)(a) of the deemed provisions.

*(The Table of environmental conditions may be set out as a Schedule to the Scheme.*

*If no environmental conditions apply, insert the words “There are no environmental conditions imposed under the Environmental Protection Act 1986 that apply to this Scheme.”.)*

*[Clause 31 amended: SL 2020/252 r. 37.]*

**32. Additional site and development requirements**

- (1) The Table sets out requirements relating to development that are additional to those set out in the R-Codes, precinct structure plans, local development plans or State or local planning policies.

**Table**

**Additional requirements that apply to land in Scheme area**

No.	Description of land	Requirement

*(The Table of additional requirements that apply to land may be set out as a Schedule to the Scheme.*

*If no additional requirements are to apply, insert the words “There are no additional site and development requirements that apply to this Scheme.”.)*

- (2) To the extent that a requirement referred to in subclause (1) is inconsistent with a requirement in the R-Codes, a precinct structure plan, a local development plan or a State or local planning policy the requirement referred to in subclause (1) prevails.

*[Clause 32 amended: SL 2020/252 r. 38.]*

**33. Additional site and development requirements for areas covered by structure plan or local development plan**

The Table sets out requirements relating to development that are included in precinct structure plans, structure plans approved before

19 October 2015 and local development plans that apply in the Scheme area.

**Table**

**Additional requirements that apply to land covered by structure plan or local development plan**

No.	Description of land	Requirement

*(The Table of additional requirements that apply to land as a result of a precinct structure plan, a structure plan approved before 19 October 2015 or a local development plan may be set out as a Schedule to the Scheme.*

*If no additional requirements are to apply as a result of a structure plan of that kind or a local development plan that applies in the Scheme area, insert the words “There are no additional requirements that apply to this Scheme.”.)*

*[Clause 33 inserted: SL 2020/252 r. 39.]*

**34. Variations to site and development requirements**

- (1) In this clause —  
***additional site and development requirements*** means requirements set out in clauses 32 and 33.
- (2) The local government may approve an application for a development approval that does not comply with an additional site and development requirements.
- (3) An approval under subclause (2) may be unconditional or subject to any conditions the local government considers appropriate.
- (4) If the local government is of the opinion that the non-compliance with an additional site and development requirement will mean that the

development is likely to adversely affect any owners or occupiers in the general locality or in an area adjoining the site of the development the local government must —

- (a) consult the affected owners or occupiers by following one or more of the provisions for advertising applications for development approval under clause 64(4) of the deemed provisions; and
  - (b) have regard to any expressed views prior to making its determination to grant development approval under this clause.
- (5) The local government may only approve an application for development approval under this clause if the local government is satisfied that —
- (a) approval of the proposed development would be appropriate having regard to the matters that the local government is to have regard to in considering an application for development approval as set out in clause 67(2) of the deemed provisions; and
  - (b) the non-compliance with the additional site and development requirement will not have a significant adverse effect on the occupiers or users of the development, the inhabitants of the locality or the likely future development of the locality.

*[Clause 34 amended: SL 2020/252 r. 40.]*

**35. Restrictive covenants**

- (1) A restrictive covenant affecting land in the Scheme area that would have the effect of limiting the number of residential dwellings which may be constructed on the land is extinguished or varied to the extent that the number of residential dwellings that may be constructed is less than the number that could be constructed on the land under this Scheme.
- (2) If subclause (1) operates to extinguish or vary a restrictive covenant —
  - (a) development approval is required to construct a residential dwelling that would result in the number of residential

dwellings on the land exceeding the number that would have been allowed under the restrictive covenant; and

- (b) the local government must not grant development approval for the construction of the residential dwelling unless it advertises the application for development approval in accordance with clause 64 of the deemed provisions.

*[Clause 35 amended: SL 2020/252 r. 41.]*

### **Part 5 — Special control areas**

*(This Part is included in the Scheme to identify areas which are significant for a particular reason and where special provisions in the Scheme may need to apply. These provisions would typically target a single issue or related set of issues often overlapping zone and reserve boundaries. The special control areas should be shown on the Scheme Map as additional to the zones and reserves. If a special control area is shown on the Scheme Map, special provisions related to the particular issue would apply in addition to the provisions of the zones and reserves. These provisions would set out the purpose and objectives of the special control area, any specific development requirements, the process for referring applications to relevant agencies and matters to be taken into account in determining development proposals.)*

#### **36. Special control areas**

- (1) Special control areas are marked on the Scheme Map according to the legend on the Scheme Map.
- (2) The purpose, objectives and additional provisions that apply to each special control area is set out in the Table.

**Table**  
**Special control areas in Scheme area**

<b>Name of area</b>	<b>Purpose</b>	<b>Objectives</b>	<b>Additional provisions</b>

*(The Table relating to special control areas may be set out as a Schedule to the Scheme.*

*If the Scheme does not include a special control area, insert the words “There are no special control areas which apply to this Scheme.”.)*

## **Part 6 — Terms referred to in Scheme**

### **Division 1 — General definitions used in Scheme**

#### **37. Terms used**

- (1) If a word or expression used in this Scheme is listed in this clause, its meaning is as follows —

***building envelope*** means the area of land within which all buildings and effluent disposal facilities on a lot must be contained;

***cabin*** means a dwelling forming part of a tourist development or caravan park that is —

- (a) an individual unit other than a chalet; and
- (b) designed to provide short-term accommodation for guests;

***chalet*** means a dwelling forming part of a tourist development or caravan park that is —

- (a) a self-contained unit that includes cooking facilities, bathroom facilities and separate living and sleeping areas; and
- (b) designed to provide short-term accommodation for guests;



**commercial vehicle** means a vehicle, whether licenced or not, that has a gross vehicle mass of greater than 4.5 tonnes including —

- (a) a utility, van, truck, tractor, bus or earthmoving equipment; and
- (b) a vehicle that is, or is designed to be an attachment to a vehicle referred to in paragraph (a);

**floor area** has meaning given in the Building Code;

**minerals** has the meaning given in the *Mining Act 1978* section 8(1);

**plot ratio** means the ratio of the floor area of a building to an area of land within the boundaries of the lot or lots on which the building is located;

**precinct** means a definable area where particular planning policies, guidelines or standards apply;

**predominant use** means the primary use of premises to which all other uses carried out on the premises are incidental;

**retail** means the sale or hire of goods or services to the public;

**Scheme commencement day** means the day on which this Scheme comes into effect under section 87(4) of the Act;

**short-term accommodation** means temporary accommodation provided either continuously or from time to time with no guest accommodated for periods totalling more than 3 months in any 12 month period;

**wholesale** means the sale of goods or materials to be sold by others.

- (2) A word or expression that is not defined in this Scheme —
  - (a) has the meaning it has in the *Planning and Development Act 2005*; or
  - (b) if it is not defined in that Act — has the same meaning as it has in the R-Codes.

[Clause 37 amended: SL 2020/252 r. 42.]

**Division 2 — Land use terms used in Scheme**

**38. Land use terms used**

If this Scheme refers to a category of land use that is listed in this provision, the meaning of that land use is as follows —

**abattoir** means premises used commercially for the slaughtering of animals for the purposes of consumption as food products;

**agriculture — extensive** means premises used for the raising of stock or crops including outbuildings and earthworks, but does not include agriculture — intensive or animal husbandry — intensive;

**agriculture — intensive** means premises used for commercial production purposes, including outbuildings and earthworks, associated with any of the following —

- (a) the production of grapes, vegetables, flowers, exotic or native plants, or fruit or nuts;
- (b) the establishment and operation of plant or fruit nurseries;
- (c) the development of land for irrigated fodder production or irrigated pasture (including turf farms);
- (d) aquaculture;

**amusement parlour** means premises —

- (a) that are open to the public; and
- (b) that are used predominantly for amusement by means of amusement machines including computers; and
- (c) where there are 2 or more amusement machines;

**animal establishment** means premises used for the breeding, boarding, training or caring of animals for commercial purposes but does not include animal husbandry — intensive or veterinary centre;

**animal husbandry — intensive** means premises used for keeping, rearing or fattening of pigs, poultry (for either egg or meat production), rabbits (for either meat or fur production) or other livestock in feedlots, sheds or rotational pens;

**art gallery** means premises —

- (a) that are open to the public; and
- (b) where artworks are displayed for viewing or sale;

**bed and breakfast** means a dwelling —

- (a) used by a resident of the dwelling to provide short-term accommodation, including breakfast, on a commercial basis for not more than 4 adult persons or one family; and
- (b) containing not more than 2 guest bedrooms;

**betting agency** means an office or totalisator agency established under the *Racing and Wagering Western Australia Act 2003*;

**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*;

**bulky goods showroom** means premises —

- (a) used to sell by retail any of the goods and accessories of the following types that are principally used for domestic purposes —
  - (i) automotive parts and accessories;
  - (ii) camping, outdoor and recreation goods;
  - (iii) electric light fittings;
  - (iv) animal supplies including equestrian and pet goods;
  - (v) floor and window coverings;
  - (vi) furniture, bedding, furnishings, fabrics, manchester and homewares;
  - (vii) household appliances, electrical goods and home entertainment goods;
  - (viii) party supplies;
  - (ix) office equipment and supplies;
  - (x) babies' and children's goods, including play equipment and accessories;
  - (xi) sporting, cycling, leisure, fitness goods and accessories;
  - (xii) swimming pools;

or

- (b) used to sell by retail goods and accessories by retail if —
  - (i) a large area is required for the handling, display or storage of the goods; or
  - (ii) vehicular access is required to the premises for the purpose of collection of purchased goods;

**caravan park** means premises that are a caravan park as defined in the *Caravan Parks and Camping Grounds Act 1995* section 5(1);

**caretaker's dwelling** means a dwelling on the same site as a building, operation or plant used for industry, and occupied by a supervisor of that building, operation or plant;

**car park** means premises used primarily for parking vehicles whether open to the public or not but does not include —

- (a) any part of a public road used for parking or for a taxi rank;  
or
- (b) any premises in which cars are displayed for sale;

**child care premises** means premises where —

- (a) an education and care service as defined in the *Education and Care Services National Law (Western Australia)* section 5(1), other than a family day care service as defined in that section, is provided; or
- (b) a child care service as defined in the *Child Care Services Act 2007* section 4 is provided;

**cinema/theatre** means premises where the public may view a motion picture or theatrical production;

**civic use** means premises used by a government department, an instrumentality of the State or the local government for administrative, recreational or other purposes;

**club premises** means premises used by a legally constituted club or association or other body of persons united by a common interest;

**commercial vehicle parking** means premises used for parking of one or 2 commercial vehicles but does not include —

- (a) any part of a public road used for parking or for a taxi rank;  
or
- (b) parking of commercial vehicles incidental to the predominant use of the land;

**community purpose** means premises designed or adapted primarily for the provision of educational, social or recreational facilities or services by organisations involved in activities for community benefit;

**consulting rooms** means premises used by no more than 2 health practitioners at the same time for the investigation or treatment of human injuries or ailments and for general outpatient care;

**convenience store** means premises —

- (a) used for the retail sale of convenience goods commonly sold in supermarkets, delicatessens or newsagents; and
- (b) operated during hours which include, but may extend beyond, normal trading hours; and
- (c) the floor area of which does not exceed 300 m<sup>2</sup> net lettable area;

**corrective institution** means premises used to hold and reform persons committed to it by a court, such as a prison or other type of detention facility;

**educational establishment** means premises used for the purposes of providing education including premises used for a school, higher education institution, business college, academy or other educational institution;

**exhibition centre** means premises used for the display, or display and sale, of materials of an artistic, cultural or historical nature including a museum;

**family day care** means premises where a family day care service as defined in the *Education and Care Services National Law (Western Australia)* is provided;

**fast food outlet/lunch bar** means premises, including premises with a facility for drive-through service, used for the preparation, sale and serving of food to customers in a form ready to be eaten —

- (a) without further preparation; and
- (b) primarily off the premises;

**freeway service centre** means premises that has direct access to a freeway and which provides all the following services or facilities and may provide other associated facilities or services but does not provide bulk fuel services —

- (a) service station facilities;

- (b) emergency breakdown repair for vehicles;
- (c) charging points for electric vehicles;
- (d) facilities for cyclists;
- (e) restaurant, cafe or fast food services;
- (f) take-away food retailing;
- (g) public ablution facilities, including provision for disabled access and infant changing rooms;
- (h) parking for passenger and freight vehicles;
- (i) outdoor rest stop facilities such as picnic tables and shade areas;

***fuel depot*** means premises used for the storage and sale in bulk of solid or liquid or gaseous fuel but does not include premises used —

- (a) as a service station; or
- (b) for the sale of fuel by retail into a vehicle for use by the vehicle;

***funeral parlour*** means premises used —

- (a) to prepare and store bodies for burial or cremation;
- (b) to conduct funeral services;

***garden centre*** means premises used for the propagation, rearing and sale of plants, and the storage and sale of products associated with horticulture and gardens;

***holiday accommodation*** means 2 or more dwellings on one lot used to provide short term accommodation for persons other than the owner of the lot;

***holiday house*** means a single dwelling on one lot used to provide short-term accommodation but does not include a bed and breakfast;

***home business*** means a dwelling or land around a dwelling used by an occupier of the dwelling to carry out a business, service or profession if the carrying out of the business, service or profession —

- (a) does not involve employing more than 2 people who are not members of the occupier's household; and
- (b) will not cause injury to or adversely affect the amenity of the neighbourhood; and
- (c) does not occupy an area greater than 50 m<sup>2</sup>; and

- (d) does not involve the retail sale, display or hire of any goods unless the sale, display or hire is done only by means of the Internet; and
- (e) does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood; and
- (f) does not involve the presence, use or calling of a vehicle of more than 4.5 tonnes tare weight; and
- (g) does not involve the use of an essential service that is greater than the use normally required in the zone in which the dwelling is located;

**home occupation** means a dwelling or land around a dwelling used by an occupier of the dwelling to carry out an occupation if the carrying out of the occupation that —

- (a) does not involve employing a person who is not a member of the occupier's household; and
  - (b) will not cause injury to or adversely affect the amenity of the neighbourhood; and
  - (c) does not occupy an area greater than 20 m<sup>2</sup>; and
  - (d) does not involve the display on the premises of a sign with an area exceeding 0.2 m<sup>2</sup>; and
  - (e) does not involve the retail sale, display or hire of any goods unless the sale, display or hire is done only by means of the Internet; and
  - (f) does not —
    - (i) require a greater number of parking spaces than normally required for a single dwelling; or
    - (ii) result in an increase in traffic volume in the neighbourhood;
- and
- (g) does not involve the presence, use or calling of a vehicle of more than 4.5 tonnes tare weight; and
  - (h) does not include provision for the fuelling, repair or maintenance of motor vehicles; and

- (i) does not involve the use of an essential service that is greater than the use normally required in the zone in which the dwelling is located;

**home office** means a dwelling used by an occupier of the dwelling to carry out a home occupation if the carrying out of the occupation —

- (a) is solely within the dwelling; and
- (b) does not entail clients or customers travelling to and from the dwelling; and
- (c) does not involve the display of a sign on the premises; and
- (d) does not require any change to the external appearance of the dwelling;

**home store** means a shop attached to a dwelling that —

- (a) has a net lettable area not exceeding 100 m<sup>2</sup>; and
- (b) is operated by a person residing in the dwelling;

**hospital** means premises used as a hospital as defined in the *Health Services Act 2016* section 8(4);

**hotel** means premises the subject of a hotel licence other than a small bar or tavern licence granted under the *Liquor Control Act 1988* including any betting agency on the premises;

**industry** means premises used for the manufacture, dismantling, processing, assembly, treating, testing, servicing, maintenance or repairing of goods, products, articles, materials or substances and includes facilities on the premises for any of the following purposes —

- (a) the storage of goods;
- (b) the work of administration or accounting;
- (c) the selling of goods by wholesale or retail;
- (d) the provision of amenities for employees;
- (e) incidental purposes;

**industry — extractive** means premises, other than premises used for mining operations, that are used for the extraction of basic raw materials including by means of ripping, blasting or dredging and may include facilities for any of the following purposes —



- (a) the processing of raw materials including crushing, screening, washing, blending or grading;
- (b) activities associated with the extraction of basic raw materials including wastewater treatment, storage, rehabilitation, loading, transportation, maintenance and administration;

**industry** — *light* means premises used for an industry where impacts on the amenity of the area in which the premises is located can be mitigated, avoided or managed;

**industry** — *primary production* means premises used —

- (a) to carry out a primary production business as that term is defined in the *Income Tax Assessment Act 1997* (Commonwealth) section 995-1; or
- (b) for a workshop servicing plant or equipment used in primary production businesses;

**liquor store** — *large* means premises the subject of a liquor store licence granted under the *Liquor Control Act 1988* with a net lettable area of more than 300 m<sup>2</sup>;

**liquor store** — *small* means premises the subject of a liquor store licence granted under the *Liquor Control Act 1988* with a net lettable area of not more than 300 m<sup>2</sup>;

**marina** means —

- (a) premises used for providing mooring, fuelling, servicing, repairing, storage and other facilities for boats, including the associated sale of any boating gear or equipment; and
- (b) all jetties, piers, embankments, quays, moorings, offices and storerooms used in connection with the provision of those services;

**marine filling station** means premises used for the storage and supply of liquid fuels and lubricants for marine craft;

**market** means premises used for the display and sale of goods from stalls by independent vendors;

**medical centre** means premises other than a hospital used by 3 or more health practitioners at the same time for the investigation or treatment of human injuries or ailments and for general outpatient care;

**mining operations** means premises where mining operations, as that term is defined in the *Mining Act 1978* section 8(1) is carried out;

**motel** means premises, which may be licensed under the *Liquor Control Act 1988* —

- (a) used to accommodate guests in a manner similar to a hotel; and
- (b) with specific provision for the accommodation of guests with motor vehicles;

**motor vehicle, boat or caravan sales** means premises used to sell or hire motor vehicles, boats or caravans;

**motor vehicle repair** means premises used for or in connection with —

- (a) electrical and mechanical repairs, or overhauls, to vehicles other than panel beating, spray painting or chassis reshaping of vehicles; or
- (b) repairs to tyres other than recapping or re-treading of tyres;

**motor vehicle wash** means premises primarily used to wash motor vehicles;

**nightclub** means premises the subject of a nightclub licence granted under the *Liquor Control Act 1988*;

**office** means premises used for administration, clerical, technical, professional or similar business activities;

**park home park** means premises used as a park home park as defined in the *Caravan Parks and Camping Grounds Regulations 1997* Schedule 8;

**place of worship** means premises used for religious activities such as a chapel, church, mosque, synagogue or temple;

**reception centre** means premises used for hosted functions on formal or ceremonial occasions;

**recreation — private** means premises that are —

- (a) used for indoor or outdoor leisure, recreation or sport; and
- (b) not usually open to the public without charge;

**resource recovery centre** means premises other than a waste disposal facility used for the recovery of resources from waste;

**restaurant/cafe** means premises primarily used for the preparation, sale and serving of food and drinks for consumption on the premises by customers for whom seating is provided, including premises that are licenced under the *Liquor Control Act 1988*;

**restricted premises** means premises used for the sale by retail or wholesale, or the offer for hire, loan or exchange, or the exhibition, display or delivery of —

- (a) publications that are classified as restricted under the *Classification (Publications, Films and Computer Games) Act 1995* (Commonwealth); or
- (b) materials, compounds, preparations or articles which are used or intended to be used primarily in or in connection with any form of sexual behaviour or activity; or
- (c) smoking-related implements;

**road house** means premises that has direct access to a State road other than a freeway and which provides the services or facilities provided by a freeway service centre and may provide any of the following facilities or services —

- (a) a full range of automotive repair services;
- (b) wrecking, panel beating and spray painting services;
- (c) transport depot facilities;
- (d) short-term accommodation for guests;
- (e) facilities for being a muster point in response to accidents, natural disasters and other emergencies;

**rural home business** means a dwelling or land around a dwelling used by an occupier of the dwelling to carry out a business, service or occupation if the carrying out of the business, service or occupation —

- (a) does not involve employing more than 2 people who are not members of the occupier's household; and
- (b) will not cause injury to or adversely affect the amenity of the neighbourhood; and
- (c) does not occupy an area greater than 200 m<sup>2</sup>; and

- (d) does not involve the retail sale, display or hire of any goods unless the sale, display or hire is done only by means of the Internet; and
- (e) does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood; and
- (f) does not involve the presence, use or calling of more than 3 vehicles at any one time or of a vehicle of more than 30 tonnes gross weight;

**rural pursuit/hobby farm** means any premises, other than premises used for agriculture — extensive or agriculture — intensive, that are used by an occupier of the premises to carry out any of the following activities if carrying out of the activity does not involve permanently employing a person who is not a member of the occupier's household —

- (a) the rearing, agistment, stabling or training of animals;
- (b) the keeping of bees;
- (c) the sale of produce grown solely on the premises;

**serviced apartment** means a group of units or apartments providing —

- (a) self-contained short stay accommodation for guests; and
- (b) any associated reception or recreational facilities;

**service station** means premises other than premises used for a transport depot, panel beating, spray painting, major repairs or wrecking, that are used for —

- (a) the retail sale of petroleum products, motor vehicle accessories and goods of an incidental or convenience nature;  
or
- (b) the carrying out of greasing, tyre repairs and minor mechanical repairs to motor vehicles;

**shop** means premises other than a bulky goods showroom, a liquor store — large or a liquor store — small used to sell goods by retail, to hire goods, or to provide services of a personal nature, including hairdressing or beauty therapy services;

**small bar** means premises the subject of a small bar licence granted under the *Liquor Control Act 1988*;

**tavern** means premises the subject of a tavern licence granted under the *Liquor Control Act 1988*;

**telecommunications infrastructure** means premises used to accommodate the infrastructure used by or in connection with a telecommunications network including any line, equipment, apparatus, tower, antenna, tunnel, duct, hole, pit or other structure related to the network;

**tourist development** means a building, or a group of buildings forming a complex, other than a bed and breakfast, a caravan park or holiday accommodation, used to provide —

- (a) short-term accommodation for guests; and
- (b) onsite facilities for the use of guests; and
- (c) facilities for the management of the development;

**trade display** means premises used for the display of trade goods and equipment for the purpose of advertisement;

**trade supplies** means premises used to sell by wholesale or retail, or to hire, assemble or manufacture any materials, tools, equipment, machinery or other goods used for the following purposes including goods which may be assembled or manufactured off the premises —

- (a) automotive repairs and servicing;
- (b) building including repair and maintenance;
- (c) industry;
- (d) landscape gardening;
- (e) provision of medical services;
- (f) primary production;
- (g) use by government departments or agencies, including local government;

**transport depot** means premises used primarily for the parking or garaging of 3 or more commercial vehicles including —

- (a) any ancillary maintenance or refuelling of those vehicles; and
- (b) any ancillary storage of goods brought to the premises by those vehicles; and
- (c) the transfer of goods or persons from one vehicle to another;

**tree farm** means land used commercially for tree production where trees are planted in blocks of more than one hectare, including land in respect of which a carbon right is registered under the *Carbon Rights Act 2003* section 5;

**veterinary centre** means premises used to diagnose animal diseases or disorders, to surgically or medically treat animals, or for the prevention of animal diseases or disorders;

**warehouse/storage** means premises including indoor or outdoor facilities used for —

- (a) the storage of goods, equipment, plant or materials; or
- (b) the display or sale by wholesale of goods;

**waste disposal facility** means premises used —

- (a) for the disposal of waste by landfill; or
- (b) the incineration of hazardous, clinical or biomedical waste;

**waste storage facility** means premises used to collect, consolidate, temporarily store or sort waste before transfer to a waste disposal facility or a resource recovery facility on a commercial scale;

**wind farm** means premises used to generate electricity by wind force and any associated turbine, building or other structure but does not include anemometers or turbines used primarily to supply electricity for a domestic property or for private rural use;

**winery** means premises used for the production of viticultural produce and associated sale of the produce;

**workforce accommodation** means premises, which may include modular or relocatable buildings, used —

- (a) primarily for the accommodation of workers engaged in construction, resource, agricultural or other industries on a temporary basis; and
- (b) for any associated catering, sporting and recreation facilities for the occupants and authorised visitors.

*[Clause 38 amended: SL 2020/252 r. 43.]*

## **Schedule 2 — Deemed provisions for local planning schemes**

[r. 10(4)]

### **Part 1 — Preliminary**

#### **1. Terms used**

If a word or expression used in this Scheme is listed in this clause, its meaning is as follows —

*Act* means the *Planning and Development Act 2005*;

*activity centre* means —

- (a) an area of land identified in accordance with a State planning policy as an activity centre; or
- (b) an area of land identified by the Commission as an activity centre;

*advertisement* means any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, that is used wholly or partly for the purposes of advertising, announcing or directing, and includes —

- (a) any hoarding or similar structure used, or adapted for use, for the display of advertisements; and
- (b) any airborne device anchored to any land or building used for the display of advertising; and
- (c) any vehicle or trailer or other similar object placed or located so as to serve the purpose of displaying advertising;

*amenity* means all those factors which combine to form the character of an area and include the present and likely future amenity;

*ancillary dwelling* has the meaning given in the R-Codes;

*Building Code* means the Building Code of Australia which is volumes 1 and 2, as amended from time to time, of the National Construction Code series published by, or on behalf of, the Australian Building Codes Board;

**building height**, in relation to a building —

- (a) if the building is used for residential purposes — has the meaning given in the R-Codes; or
- (b) if the building is used for purposes other than residential purposes — means the maximum vertical distance between the natural ground level and the finished roof height directly above, excluding minor projections as that term is defined in the R-Codes;

**built heritage conservation** means conservation as defined in the *Heritage Act 2018* section 4;

**class A use**, in relation to a zone, means a use identified in the zoning table for this Scheme (regardless of the symbol used) as a use that is not permitted in the zone unless the local government has exercised its discretion by granting development approval after advertising the application in accordance with clause 64;

**class D use**, in relation to a zone —

- (a) means a use identified in the zoning table for this Scheme (regardless of the symbol used) as a use that is not permitted in the zone unless the local government has exercised its discretion by granting development approval; but
- (b) does not include a class A use;

**class P use**, in relation to a zone, means a use identified in the zoning table for this Scheme (regardless of the symbol used) as a use that is permitted in the zone if it complies with any relevant development standards and requirements of this Scheme;

**class X use**, in relation to a zone, means a use identified in the zoning table for this Scheme (regardless of the symbol used) as a use that is not permitted in the zone;

**commercial, centre or mixed use zone** means —

- (a) if this Scheme includes the model provision set out in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 1 clause 16 — a Commercial zone, Centre zone or Mixed Use zone; or



- (b) otherwise — a zone (however named) the objectives of which as set out in this Scheme indicate that it is an area suitable for —
- (i) a range of shops, offices, restaurants and other commercial outlets (whether or not in a town centre or activity centre); or
  - (ii) a wide variety of active uses on street level that are compatible with residential and other non-active uses on upper levels;

**complex application** means —

- (a) an application for approval of development that is a use of land if the use is not specifically referred to in the zoning table for this Scheme in respect of the zone in which the development is located; or
- (b) an application of a kind identified elsewhere in this Scheme, or in a local planning policy, as a complex application for development approval;

**container** has the meaning given in the WARR Act section 47C(1);

**container collection cage** means a cage or other structure in which members of the public may place empty containers for the purposes of the container deposit scheme, without receiving payment of the refund amount in exchange;

**container deposit recycling centre** means a refund point that has or can accommodate facilities for the consolidation or sorting of empty containers pending collection for the purposes of the container deposit scheme;

**container deposit scheme** means the scheme established by the WARR Act Part 5A;

**cultural heritage significance** has the meaning given in the *Heritage Act 2018* section 5(1);

**deemed-to-comply provision**, of the R-Codes, means a provision of the R-Codes described in the R-Codes as a deemed-to-comply provision or a deemed-to-comply requirement;

**development contribution plan** means a development contribution plan, prepared in accordance with the *Planning and Development*

(*Local Planning Schemes*) Regulations 2015 Part 7, that applies to land in the Scheme area;

**drop-off refund point** means a refund point that —

- (a) is located in a building; and
- (b) is not a container deposit recycling centre;

**excluded holiday period day** means a day that is in —

- (a) a period commencing on 25 December in a year and ending on the next 1 January; or
- (b) a period of 7 days commencing on Good Friday in a year;

**frontage**, in relation to a building —

- (a) if the building is used for residential purposes — has the meaning given in the R-Codes; or
- (b) if the building is used for purposes other than residential purposes — means the line where a road reserve and the front of a lot meet and, if a lot abuts 2 or more road reserves, the one to which the building or proposed building faces;

**grouped dwelling** has the meaning given in the R-Codes;

**heritage-protected place** has the meaning given in clause 1A;

**incidental use** means a use of premises which is consequent on, or naturally attaching, appertaining or relating to, the predominant use;

**light industry zone** means —

- (a) if this Scheme includes the model provision set out in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 1 clause 16 — a Light Industry zone; or
- (b) otherwise — a zone (however named) the objectives of which as set out in this Scheme indicate that it is an area suitable for a range of light industrial uses and service industries generally compatible with urban areas that cannot be located in commercial zones;

**local government** means the local government responsible for this Scheme;

**local government CEO** means the chief executive officer of the local government;

**local planning strategy** means the local planning strategy for this Scheme prepared under the *Planning and Development (Local Planning Schemes) Regulations 2015* Part 3, as amended from time to time;

**maintenance and repair works** means works that —

- (a) are carried out to maintain or repair any building, structure or land or otherwise to prevent any building, structure or land from deteriorating or falling into a state of disrepair; and
- (b) do not result in any material alteration to the building, structure or land, including any material alteration to the materials used in or on, or the design or specifications of, the building, structure or land;

**Minister for Heritage** means the Minister who administers the *Heritage Act 2018*;

**multiple dwelling** has the meaning given in the R-Codes;

**natural ground level**, in relation to land subject to development, means —

- (a) the ground level specified in either of the following that applies to the land (or, if both of the following apply to the land, the more recent of the following) —
  - (i) a condition on an approval of a plan of subdivision that specifies a ground level;
  - (ii) a previous development approval for site works on the land that specifies a ground level;

or

- (b) if paragraph (a) does not apply — the level of the land before any disturbance to the land relating to the development;

**net lettable area** or **nla** means the area of all floors within the internal finished surfaces of permanent walls but does not include the following areas —

- (a) stairs, toilets, cleaner's cupboards, lift shafts and motor rooms, escalators, tea rooms and plant rooms, and other service areas;
- (b) lobbies between lifts facing other lifts serving the same floor;

- (c) areas set aside as public space or thoroughfares and not for the exclusive use of occupiers of the floor or building;
- (d) areas set aside for the provision of facilities or services to the floor or building where those facilities are not for the exclusive use of occupiers of the floor or building;

**non-conforming use** has the meaning given in section 172 of the Act;

**owner**, in relation to land, means —

- (a) if the land is freehold land —
  - (i) a person whose name is registered as a proprietor of the land; and
  - (ii) the State, if registered as a proprietor of the land; and
  - (iii) a person who holds an interest as purchaser under a contract to purchase an estate in fee simple in the land; and
  - (iv) a person who is the holder of a freehold interest in land vested in an executor or administrator under the *Administration Act 1903* section 8;

and

- (b) if the land is Crown land —
  - (i) the State; and
  - (ii) a person who holds an interest as purchaser under a contract to purchase an estate in fee simple in the land;

**Peel Region Scheme area** means the area to which the Peel Region Scheme applies;

**premises** means land, buildings or part of land or a building;

**R-Codes** means the Residential Design Codes prepared by the Western Australian Planning Commission under section 26 of the Act, as amended from time to time;

**refund amount** has the meaning given in the WARR Act section 47C(1);

**refund point** has the meaning given in the WARR Act section 47C(1);

**region planning scheme** means a region planning scheme that applies in respect of part or all of the Scheme area;

**reserve** means land reserved under this Scheme for a public purpose;

**residential zone** —

- (a) if this Scheme includes the model provision set out in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 1 clause 16 — means a Residential zone, Special Residential zone or Rural Residential zone; or
- (b) otherwise —
  - (i) means a zone (however named) the objectives of which as set out in this Scheme indicate that it is an area suitable for residential use (regardless of residential lot sizes in the zone and whether or not a limited range of rural and related ancillary pursuits are permitted); but
  - (ii) does not include a zone (however named) the objectives of which as set out in this Scheme indicate that it is an area suitable for a wide variety of active uses on street level that are compatible with residential and other non-active uses on upper levels;

**reverse vending machine** means a permanently-located unattended device that accepts empty containers from members of the public in exchange for the payment of the refund amount;

**Scheme area** means the area to which this Scheme applies;

**single house** has the meaning given in the R-Codes;

**site works** means works that affect the ground level, whether by excavation or filling;

**special control area** means an area identified under this Scheme as an area subject to special controls set out in this Scheme;

**street setback area**, of a building, means the area between the building and the boundary of a road reserve that abuts the lot, and if the lot abuts 2 or more road reserves, means the area between the building and boundary of the road reserve to which the building faces;

**substantially commenced** means that some substantial part of work in respect of a development approved under a planning scheme or under an interim development order has been performed;

**wall height**, in relation to a wall of a building —

- (a) if the building is used for residential purposes — has the meaning given in the R-Codes; or
- (b) if the building is used for purposes other than residential purposes — means the vertical distance from the natural ground level of the boundary of the property that is closest to the wall to the point where the wall meets the roof or parapet;

**WARR Act** means the *Waste Avoidance and Resource Recovery Act 2007*;

**works**, in relation to land, means —

- (a) any demolition, erection, construction, alteration of or addition to any building or structure on the land; and
- (b) the carrying out on the land of any excavation or other works; and
- (c) in the case of a place to which a protection order made under the *Heritage Act 2018* Part 4 Division 1 applies, any act or thing that —
  - (i) is likely to damage the character of that place or the external appearance of any building; or
  - (ii) would constitute an irreversible alteration to the fabric of any building;

**zone** means a portion of the Scheme area identified on the Scheme Map as a zone for the purpose of indicating the controls imposed by this Scheme on the use of, or the carrying out of works on, land, but does not include a reserve or special control area.

[Clause 1 amended: SL 2020/252 r. 44.]

#### **1A. Heritage-protected places**

- (1) A **heritage-protected place** is a place —
  - (a) that is entered in the State Register of Heritage Places under the *Heritage Act 2018* section 42; or
  - (b) that is under consideration for entry into the State Register of Heritage Places as described in subclause (2); or
  - (c) that is the subject of an order under the *Heritage Act 2018* Part 4; or

- (d) that is the subject of a heritage agreement that has been certified under the *Heritage Act 2018* section 90; or
  - (e) that is included on a heritage list as defined in clause 7; or
  - (f) that is within a heritage area as defined in clause 7.
- (2) For the purposes of subclause (1)(b), a place is under consideration for entry into the State Register of Heritage Places if —
- (a) the Heritage Council has made a preliminary determination under the *Heritage Act 2018* section 39(2) that the place warrants review under section 40(1) but the review has not commenced; or
  - (b) the Heritage Council has commenced but has not completed a review of the place under the *Heritage Act 2018* section 40(1); or
  - (c) the Heritage Council has made a recommendation under the *Heritage Act 2018* section 40(2) that the place be entered in the State Register of Heritage Places but the Minister for Heritage has not yet given a direction under section 41(1) of that Act in relation to that recommendation.

[Clause 1A inserted: SL 2020/252 r. 45.]

**1B. Development taken to comply with deemed-to-comply provision of R-Codes**

For the purposes of this Scheme, development is taken to comply with a deemed-to-comply provision of the R-Codes if the development complies with —

- (a) a provision of a local development plan, precinct structure plan or local planning policy if —
  - (i) the provision amends or replaces the deemed-to-comply provision; and
  - (ii) for a provision of a local development plan or local planning policy where the plan or policy is required to be approved by the Commission under the R-Codes — the plan or policy is approved by the Commission;

or

- (b) a provision that —
  - (i) is in a structure plan that was approved before 19 October 2015; and
  - (ii) amends or replaces the deemed-to-comply provision.

*[Clause 1B inserted: SL 2020/252 r. 45.]*

**1C. Excluded holiday period days not counted in time periods**

For the purposes of this Scheme, an excluded holiday period day is not to be counted in calculating a period of time that is expressed as a number of days, business days or working days.

*[Clause 1C inserted: SL 2020/252 r. 45.]*

**Part 2 — Local planning framework**

**Division 1 — Local planning strategy**

**2. Local planning strategy**

Where a local planning strategy for the Scheme area has been prepared by the local government in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015* Part 3 the local planning strategy sets out the long-term planning directions for the Scheme area.

**Division 2 — Local planning policies**

**3. Local planning policies**

- (1) The local government may prepare a local planning policy in respect of any matter related to the planning and development of the Scheme area.
- (2) A local planning policy —
  - (a) may apply generally or in respect of a particular class or classes of matters specified in the policy; and
  - (b) may apply to the whole of the Scheme area or to part or parts of the Scheme area specified in the policy.



- (3) A local planning policy must be based on sound town planning principles and may address either strategic or operational considerations in relation to the matters to which the policy applies.
- (4) The local government may amend or repeal a local planning policy.
- (5) In making a determination under this Scheme the local government must have regard to each relevant local planning policy to the extent that the policy is consistent with this Scheme.

**4. Procedure for making local planning policy**

- (1) If the local government resolves to prepare a local planning policy the local government must, unless the Commission otherwise agrees, advertise the proposed policy as follows —
  - (a) publish in accordance with clause 87 the proposed policy and a notice giving details of —
    - (i) the subject and nature of the proposed policy; and
    - (ii) the objectives of the proposed policy; and
    - (iii) how the proposed policy is made available to the public in accordance with clause 87; and
    - (iv) the manner and form in which submissions may be made; and
    - (v) the period for making submissions and the last day of that period;
  - (b) if, in the opinion of the local government, the policy is inconsistent with any State planning policy, give notice of the proposed policy to the Commission;
  - (c) give notice of the proposed policy in any other way and carry out any other consultation the local government considers appropriate.
- (2) The period for making submissions specified in a notice under subclause (1)(a)(v) must not be less than the period of 21 days after the day on which the notice is first published under subclause (1)(a).

- (3) After the expiry of the period within which submissions may be made, the local government must —
  - (a) review the proposed policy in the light of any submissions made; and
  - (b) resolve to —
    - (i) proceed with the policy without modification; or
    - (ii) proceed with the policy with modification; or
    - (iii) not to proceed with the policy.
- (3A) The local government must not resolve under subclause (3) to proceed with the policy if —
  - (a) the proposed policy amends or replaces a deemed-to-comply provision of the R-Codes; and
  - (b) under the R-Codes, the Commission's approval is required for the policy; and
  - (c) the Commission has not approved the policy.
- (4) If the local government resolves to proceed with the policy, the local government must publish notice of the policy in accordance with clause 87.
- (5) A policy has effect on publication of a notice under subclause (4).
- (6) The local government must ensure that an up-to-date copy of each local planning policy made under this Scheme that is in effect is published in accordance with clause 87.
- (7) Subclause (6) is an ongoing publication requirement for the purposes of clause 87(5)(a).

*[Clause 4 amended: SL 2020/252 r. 46.]*

**5. Procedure for amending local planning policy**

- (1) Clause 4, with any necessary changes, applies to the amendment to a local planning policy.
- (2) Despite subclause (1), the local government may make an amendment to a local planning policy without advertising the amendment if, in the opinion of the local government, the amendment is a minor amendment.

**6. Revocation of local planning policy**

A local planning policy may be revoked —

- (a) by a subsequent local planning policy that —
  - (i) is prepared in accordance with this Part; and
  - (ii) expressly revokes the local planning policy;
- or
- (b) by a notice of revocation —
  - (i) prepared by the local government; and
  - (ii) published by the local government in accordance with clause 87.

[Clause 6 amended: SL 2020/252 r. 47.]

**Part 3 — Heritage protection**

**7. Terms used**

In this Part —

**heritage area** means an area designated as a heritage area under clause 9;

**heritage list** means a heritage list established under clause 8(1);

**place** has the meaning given in the *Heritage Act 2018* section 7(1).

Note:

The purpose of this Part is to provide for the identification of places and areas of heritage value so that development in the Scheme can, as far as possible, be consistent with the conservation of heritage values.

[Clause 7 amended: SL 2020/252 r. 48.]

**8. Heritage list**

- (1) The local government must establish and maintain a heritage list to identify places within the Scheme area that are of cultural heritage significance and worthy of built heritage conservation.
- (2) A heritage list established under subclause (1) must set out a description of each place and the reason for its entry on the heritage list.

- (2A) The local government must ensure that an up-to-date copy of the heritage list is published in accordance with clause 87.
- (2B) Subclause (2A) is an ongoing publication requirement for the purposes of clause 87(5)(a).
- (3) The local government must not enter a place in, or remove a place from, the heritage list or modify the entry of a place in the heritage list unless the local government —
- (a) notifies in writing each owner and occupier of the place and provides each of them with a description of the place and the reasons for the proposed entry; and
  - (b) invites each owner and occupier to make submissions on the proposal within a period specified in the notice; and
  - (c) carries out any other consultation the local government considers appropriate; and
  - (d) following any consultation and consideration of the submissions made on the proposal, resolves that the place be entered in the heritage list with or without modification, or that the place be removed from the heritage list.
- (3A) The period for making submissions specified in a notice under subclause (3)(b) must not be less than the period of 21 days after the day on which the notice is given under subclause (3)(a).
- (4) If the local government enters a place in the heritage list or modifies an entry of a place in the heritage list the local government must give notice of the entry or modification to —
- (a) the Heritage Council of Western Australia; and
  - (b) each owner and occupier of the place.

*[Clause 8 amended: SL 2020/252 r. 49.]*

## **9. Designation of heritage areas**

- (1) If, in the opinion of the local government, special planning control is needed to conserve and enhance the cultural heritage significance and character of an area to which this Scheme applies, the local government may, by resolution, designate that area as a heritage area.

- (2) If the local government designates an area as a heritage area the local government must adopt for the area a local planning policy that sets out the following —
- (a) a map showing the boundaries of the heritage area;
  - (b) a statement about the heritage significance of the area;
  - (c) a record of places of heritage significance in the heritage area.
- (3) Before designating an area as a heritage area the local government must —
- (a) give each owner of land affected by the proposed designation —
    - (i) notice of the proposed designation; and
    - (ii) a copy of the proposed local planning policy for the heritage area or details of how the proposed local planning policy is made available to the public under clause 4(1)(a);and
  - (b) advertise the proposed designation by —
    - (i) publishing in accordance with clause 87 a notice of the proposed designation; and
    - (ii) erecting a sign giving notice of the proposed designation in a prominent location in the area that would be affected by the designation;and
  - (c) carry out any other consultation the local government considers appropriate.
- (4) Notice of a proposed designation under subclause (3)(b) must specify —
- (a) the area that is the subject of the proposed designation; and
  - (b) details of how the proposed local planning policy for the heritage area is made available to the public under clause 4(1)(a); and
  - (c) the manner and form in which submissions may be made; and
  - (d) the period for making submissions and the last day of that period.

- (5) The period for making submissions specified in the notice under subclause (4)(d) must not be less than the period of 21 days after the day on which the notice is first published under subclause (3)(b)(i).
- (6) After the expiry of the period within which submissions may be made, the local government must —
  - (a) review the proposed designation in the light of any submissions made; and
  - (b) resolve —
    - (i) to adopt the designation without modification; or
    - (ii) to adopt the designation with modification; or
    - (iii) not to proceed with the designation.
- (7) If the local government designates an area as a heritage area the local government must give notice of the designation to —
  - (a) the Heritage Council of Western Australia; and
  - (b) each owner of land affected by the designation.
- (8) The local government may modify or revoke a designation of a heritage area.
- (9) Subclauses (3) to (7) apply, with any necessary changes, to the amendment to a designation of a heritage area or the revocation of a designation of a heritage area.

*[Clause 9 amended: SL 2020/252 r. 50.]*

#### **10. Heritage agreements**

- (1) The local government may, in accordance with the *Heritage Act 2018* Part 7, enter into a heritage agreement with an owner or occupier of land or a building for the purpose of binding the land or affecting the use of the land or building insofar as the interest of that owner or occupier permits.
- (2) The local government may not enter into an agreement with the owner or occupier of land or a building that relates to heritage matters other than in accordance with subclause (1).

*[Clause 10 amended: SL 2020/252 r. 51.]*

**11. Heritage assessment**

- (1) Despite any existing assessment on record, the local government may require a heritage assessment to be carried out prior to the approval of any development proposed in a heritage area or in respect of a place entered in the heritage list.
- (2) A heritage assessment must be in a form approved by the Heritage Council of Western Australia.

**12. Variations to local planning scheme provisions for heritage purposes**

- (1) The local government may vary any site or development requirement specified in this Scheme to —
  - (a) facilitate the built heritage conservation of a place entered in the State Register of Heritage Places under the *Heritage Act 2018* section 42 or included on the heritage list; or
  - (b) enhance or preserve heritage values in a heritage area.
- (2) A variation under subclause (1) may be unconditional or subject to any conditions the local government considers appropriate.
- (3) If the local government is of the opinion that the variation of site or development requirements is likely to affect any owners or occupiers in the general locality of the place or the heritage area the local government must —
  - (a) consult the affected parties by following one or more of the provisions for advertising under clause 64(4); and
  - (b) have regard to any views expressed prior to making its determination to vary the site or development requirements under this clause.

*[Clause 12 amended: SL 2020/252 r. 52.]*

**13. Heritage conservation notice**

- (1) In this clause —  
*heritage conservation notice* means a notice given under subclause (2);

**heritage place** means a place that is on the heritage list or located in a heritage area;

**properly maintained**, in relation to a heritage place, means maintained in a way that ensures that there is no actual or imminent loss or deterioration of —

- (a) the structural integrity of the heritage place; or
  - (b) an element of the heritage place that is integral to —
    - (i) the reason set out in the heritage list for the entry of the place in the heritage list; or
    - (ii) the heritage significance of the area in which it is located, as set out in a statement in the local planning policy for the area adopted in accordance with clause 9(2).
- (2) If the local government forms the view that a heritage place is not being properly maintained the local government may give to a person who is the owner or occupier of the heritage place a written notice requiring the person to carry out specified repairs to the heritage place by a specified time, being a time that is not less than 60 days after the day on which the notice is given.
- (3) If a person fails to comply with a heritage conservation notice, the local government may enter the heritage place and carry out the repairs specified in the notice.
- (4) The expenses incurred by the local government in carrying out repairs under subclause (3) may be recovered as a debt due from the person to whom the notice was given in a court of competent jurisdiction.
- (5) The local government may —
- (a) vary a heritage conservation notice to extend the time for carrying out the specified repairs; or
  - (b) revoke a heritage conservation notice.
- (6) A person who is given a heritage conservation notice may apply to the State Administrative Tribunal for a review, in accordance with Part 14 of the Act, of a decision —
- (a) to give the notice; or
  - (b) to require repairs specified in the notice to be carried out; or



- (c) to require repairs specified in the notice to be carried out by the time specified in the notice.

**13A. Heritage list and heritage areas under former Scheme**

- (1) This clause applies if —
  - (a) this Scheme comes into operation on or after the day on which the *Planning Regulations Amendment Regulations 2020* Part 2 Division 2 comes into operation; and
  - (b) immediately before this Scheme came into operation, another local planning scheme (the **former Scheme**) applied to the Scheme area.
- (2) On and after the day on which this Scheme comes into operation —
  - (a) the heritage list established under the former Scheme continues under this Scheme and is taken to be the heritage list established under clause 8; and
  - (b) any heritage area that was designated under the former Scheme immediately before this Scheme comes into operation continues under this Scheme and is taken to be a heritage area designated under clause 9; and
  - (c) any local planning policy of a kind referred to in clause 9(2) in effect under the former Scheme immediately before this Scheme comes into operation continues under this Scheme and is taken to be a local planning policy in effect under Part 2 Division 2.
- (3) This clause does not prevent the amendment, modification or revocation under this Scheme of the heritage list or any designation of a heritage area or local planning policy.

*[Clause 13A inserted: SL 2020/252 r. 53.]*

**Part 4 — Structure plans**

**14. Terms used**

In this Part —

***precinct structure plan*** means a plan for the coordination of future subdivision, zoning and development of an area of land;

*standard structure plan* means a plan for the coordination of future subdivision and zoning of an area of land;

*structure plan* means a standard structure plan or a precinct structure plan.

[Clause 14 inserted: SL 2020/252 r. 54.]

**15. When structure plan may be prepared**

A structure plan in respect of an area of land in the Scheme area may be prepared if —

- (a) the area is —
  - (i) all or part of a zone identified in this Scheme as an area suitable for urban or industrial development; and
  - (ii) identified in this Scheme as an area requiring a structure plan to be prepared before any future subdivision or development is undertaken;
- or
- (b) a State planning policy requires a structure plan to be prepared for the area; or
- (c) the Commission considers that a structure plan for the area is required for the purposes of orderly and proper planning.

**16. Preparation of structure plan**

- (1) A structure plan must —
  - (a) be prepared in a manner and form approved by the Commission; and
  - (b) include any maps, information or other material required by the Commission; and
  - (c) unless the Commission otherwise agrees, set out the information required under subclause (1A).
- (1A) For the purposes of subclause (1)(c) —
  - (a) a standard structure plan or precinct structure plan must include the following information —
    - (i) the key attributes and constraints of the area covered by the plan including the natural environment, landform and the topography of the area;

- (ii) the planning context for the area covered by the plan and the neighbourhood and region within which the area is located;
  - (iii) any major land uses, zoning or reserves proposed by the plan;
  - (iv) estimates of the future number of lots in the area covered by the plan and the extent to which the plan provides for dwellings, retail floor space or other land uses;
  - (v) the population impacts that are expected to result from the implementation of the plan;
  - (vi) the extent to which the plan provides for the coordination of key transport and other infrastructure;
  - (vii) the proposed staging of the subdivision covered by the plan;
- and
- (b) a precinct structure plan must also include the following information —
    - (i) the standards to be applied for the buildings, other structures and works that form part of the subdivision and development covered by the plan;
    - (ii) arrangements for the management of services for the subdivision and development covered by the plan;
    - (iii) arrangements to be made for vehicles to access the area covered by the plan;
    - (iv) the proposed staging of the development covered by the plan.
- (2) The local government may prepare a structure plan in the circumstances set out in clause 15.
- (3) A person may make an application to the local government for a structure plan prepared by the person in the circumstances set out in clause 15 to be assessed and advertised if the person is —
- (a) a person who is the owner of any or all of the land in the area to which the plan relates; or

- (b) an agent of a person referred to in paragraph (a).

[Clause 16 amended: SL 2020/252 r. 55.]

**17. Action by local government on receipt of application**

- (1) On receipt of an application for a structure plan to be assessed and advertised, the local government —
- (a) must consider the material provided by the applicant and advise the applicant in writing —
    - (i) if the structure plan complies with clause 16(1); or
    - (ii) if further information from the applicant is required before the structure plan can be accepted for assessment and advertising;
- and
- (b) must give the applicant an estimate of the fee for dealing with the application in accordance with the *Planning and Development Regulations 2009* regulation 48.
- (2) The structure plan is to be taken to have been accepted for assessment and advertising if the local government has not given written notice to the applicant of its decision by the latest of the following days —
- (a) 28 days after receipt of an application;
  - (b) 14 days after receipt of the further information requested under subclause (1)(a)(ii);
  - (c) if the local government has given the applicant an estimate of the fee for dealing with the application — the day the applicant pays the fee.

**18. Advertising structure plan**

- (1) The local government must, within 28 days of preparing a structure plan or accepting an application for a structure plan to be assessed and advertised —
- (a) advertise the proposed structure plan in accordance with subclause (2); and
  - (b) seek comments in relation to the proposed structure plan from any public authority or utility service provider that the local government considers appropriate; and

- (c) provide to the Commission —
  - (i) a copy of the proposed structure plan and all accompanying material; and
  - (ii) details of the advertising and consultation arrangements for the plan.
- (2) The local government —
  - (a) must advertise the proposed structure plan by publishing in accordance with clause 87 —
    - (i) the proposed structure plan; and
    - (ii) a notice of the proposed structure plan; and
    - (iii) any accompanying material in relation to the proposed structure plan that the local government considers should be published;and
  - (b) may also advertise the proposed structure plan by doing either or both of the following —
    - (i) giving notice of the proposed structure plan to owners and occupiers who, in the opinion of the local government, are likely to be affected by the approval of the proposed structure plan;
    - (ii) erecting a sign or signs in a conspicuous place on the land the subject of the proposed structure plan giving notice of the proposed structure plan.
- (3) A notice published or given, or on a sign erected, under subclause (2) in relation to a proposed structure plan must specify —
  - (a) the manner and form in which submissions may be made; and
  - (b) the period under subclause (3A) for making submissions and the last day of that period.
- (3A) The period for making submissions on a proposed structure plan is —
  - (a) the period of 42 days after the day on which the notice is first published under subclause (2)(a)(ii); or
  - (b) a longer period approved by the Commission.

- (4) If a local government fails to advertise a structure plan in accordance with this clause, the Commission may take reasonable steps to ensure that the plan is advertised.
- (5) All costs incurred by the Commission in the exercise of the power conferred by subclause (4) may, with the approval of the Minister, be recovered from the local government as a debt due to the Commission.

*[Clause 18 amended: SL 2020/252 r. 56.]*

**19. Consideration of submissions**

- (1) The local government —
  - (a) must consider all submissions made to the local government within the period specified in a notice advertising the structure plan; and
  - (b) may consider submissions made to the local government after that time; and
  - (c) may request further information from a person who prepared the structure plan; and
  - (d) may advertise any modifications proposed to the structure plan to address issues raised in submissions.
- (2) If a local government makes a decision under subclause (1)(d) the local government must take any steps the local government considers appropriate to advertise the proposed modification to the structure plan.
- (3) Modifications to a structure plan may not be advertised on more than one occasion without the approval of the Commission.

**20. Local government report to Commission**

- (1) The local government must prepare a report on the proposed structure plan and provide it to the Commission no later than 60 days after the day that is the latest of —
  - (a) the last day of the period for making submissions on the proposed structure plan that applies under clause 18(3A); or

- (b) the last day for making submissions after a proposed modification of the structure plan is advertised under clause 19(2); or
  - (c) a day agreed by the Commission.
- (2) The report on the proposed structure plan must include the following —
  - (a) a list of the submissions considered by the local government, including, if relevant, any submissions received on a proposed modification to the structure plan advertised under clause 19(2);
  - (b) any comments by the local government in respect of those submissions;
  - (c) a schedule of any proposed modifications to address issues raised in the submissions;
  - (d) the local government's assessment of the proposal based on appropriate planning principles;
  - (e) a recommendation by the local government on whether the proposed structure plan should be approved by the Commission, including a recommendation on any proposed modifications.

[Clause 20 amended: SL 2020/252 r. 57.]

**21. Cost and expenses incurred by local government**

The costs and expenses incurred by the local government in giving a report under clause 20(1), are, to the extent that they are not payable by a person who prepared a structure plan under the *Planning and Development Regulations 2009* regulation 49, to be borne by the local government.

**22. Decision of Commission**

- (1) On receipt of a report on a proposed structure plan, the Commission must consider the plan and the report and may —
  - (a) approve the structure plan; or

- (b) require the local government or the person who prepared the structure plan to —
    - (i) modify the plan in the manner specified by the Commission; and
    - (ii) resubmit the modified plan to the Commission for approval;
  - or
  - (c) refuse to approve the structure plan.
- (2) Before making a decision under subclause (1), the Commission may, if the Commission considers that major modifications have been made to the structure plan since it was advertised, direct the local government to readvertise the structure plan in the manner specified by the Commission.
- (3) The Commission may not direct the local government to readvertise the structure plan on more than one occasion.
- (4) If the Commission is not given a report on a proposed structure plan in accordance with clause 20(1), the Commission may make a decision on the proposed structure plan under subclause (1) in the absence of the report.
- (5) The Commission is to be taken to have refused to approve a structure plan if the Commission has not made a decision under subclause (1) within —
  - (a) 120 days of the day on which the local government provides the report to the Commission, excluding any period between the Commission requiring modifications to the structure plan and the resubmission of the modified plan; or
  - (b) a longer period agreed in writing between the Commission and the person who prepared the proposed structure plan.
- (6) Despite subclause (5), the Commission may decide whether or not to approve a structure plan after the period applicable under subclause (5) has expired, and the validity of the decision is not affected by the expiry.



- (7) The Commission must give the local government and any person who prepared the proposed structure plan written notice of its decision to approve or to refuse to approve a structure plan.

**23. Further services or information from local government**

- (1) The Commission may direct the local government to give to the Commission technical advice and assistance or further information in writing in connection with the application if —
- (a) the local government does not provide a report on a structure plan within the timeframe referred to in clause 20(1); or
  - (b) the local government provides a report on a structure plan that does not contain sufficient information for the Commission to make its decision on whether or not to approve the structure plan.
- (2) The direction must be in writing and must specify —
- (a) the services or information required; and
  - (b) the time within which the local government must comply with the direction.
- (3) If a local government fails to comply with a direction given to it under subclause (1), the Commission may take reasonable steps to obtain the services or information referred to in the direction on its own behalf.
- (4) All costs incurred by the Commission in the exercise of the power conferred by subclause (3) may, with the approval of the Minister, be recovered from the local government as a debt due to the Commission.

**24. Structure plan may provide for later approval of details of subdivision or development**

- (1) The Commission may approve a structure plan that provides for further details of a proposed subdivision included in the plan to be submitted to, and approved by, the Commission before the subdivision is approved under Part 10 of the Act.
- (1A) The Commission may approve a precinct structure plan that provides for further details of development included in the plan to be submitted to, and approved by, the local government for the purposes of the plan

before development approval is granted (or, if development approval is not required, before development commences).

- (2) The Commission may only approve a structure plan referred to in subclause (1) or (1A) if the Commission is satisfied that the further matters that are to be approved would not result in a substantial departure from the plan.

*[Clause 24 amended: SL 2020/252 r. 58.]*

**25. Review**

A person who prepared a structure plan may apply to the State Administrative Tribunal for a review, in accordance with the *Planning and Development Act 2005* Part 14, of a decision by the Commission not to approve the structure plan.

**26. Publication of structure plan approved by Commission**

- (1) If the Commission approves a structure plan the Commission must publish the structure plan in any manner the Commission considers appropriate.
- (2) The local government may publish a structure plan approved by the Commission on the website of the local government.

**27. Effect of structure plan**

- (1) A decision-maker for an application for development approval or subdivision approval in an area that is covered by a structure plan that has been approved by the Commission is to have due regard to, but is not bound by, the structure plan when deciding the application.
- (2) A decision-maker for an application for development approval or subdivision approval in an area referred to in clause 15 as being an area for which a structure plan may be prepared, but for which no structure plan has been approved by the Commission, may approve the application if the decision-maker is satisfied that —
- (a) the proposed development or subdivision does not conflict with the principles of orderly and proper planning; and
  - (b) the proposed development or subdivision would not prejudice the overall development potential of the area.

**28. Duration of approval**

- (1) Subject to this clause and clause 29A, the approval of a structure plan has effect for —
  - (a) the period of 10 years commencing on the day on which the Commission approves the plan; or
  - (b) another period determined by the Commission when approving the plan.
- (2) The Commission may extend the period for which the approval of a structure plan has effect under subclause (1) if there are no changes to the terms of the plan.
- (3) The Commission may revoke its approval of a structure plan if —
  - (a) a new structure plan is approved in relation to the area to which the structure plan to be revoked relates; or
  - (b) the Commission considers that the plan has been implemented or is otherwise no longer required; or
  - (c) the Commission considers that the structure plan cannot be effectively implemented because of a legislative change or a change in a State planning policy; or
  - (d) for a structure plan that was the subject of an application under clause 16(3), the revocation is agreed to by —
    - (i) the owner of the land to which the structure plan relates (or, if the land is owned by 2 or more owners, each of them); and
    - (ii) the local government.
- (4) For the purposes of subclause (1), a structure plan that was approved before 19 October 2015 is taken to have been approved on that day.

*[Clause 28 inserted: SL 2020/252 r. 59.]*

**29. Amendment of structure plan**

- (1) A structure plan may be amended by the Commission at the request of the local government or a person who owns land in the area covered by the plan.

- (2) The procedures for making a structure plan set out in this Part, with any necessary changes, are to be followed in relation to an amendment to a structure plan under this clause.
- (3) Despite subclause (2), the local government may decide not to advertise an amendment to a structure plan if, in the opinion of the local government and the Commission, the amendment is of a minor nature.
- (4) An amendment to a structure plan under this clause or clause 29A(2) does not extend the period of approval of the plan unless, at the time the amendment is approved, the Commission agrees to extend the period.

*[Clause 29 amended: SL 2020/252 r. 60.]*

**29A. Revocation or amendment of structure plan resulting from scheme amendment**

- (1) The Commission must, as soon as is reasonably practicable, revoke the approval of a structure plan if —
  - (a) an amendment to this Scheme that affects the area to which the structure plan relates takes effect; and
  - (b) the amendment includes a statement in relation to the structure plan under the *Planning and Development (Local Planning Schemes) Regulations 2015* regulation 35A(a).
- (2) If an amendment to this Scheme that affects the area to which a structure plan relates takes effect, and that amendment includes a statement in relation to the structure plan under the *Planning and Development (Local Planning Schemes) Regulations 2015* regulation 35A(b), the Commission must as soon as is reasonably practicable amend the structure plan in accordance with the statement.
- (3) The procedures referred to in clause 29(2) do not apply in relation to the amendment of a structure plan under subclause (2).

*[Clause 29A inserted: SL 2020/252 r. 61.]*

*[Part 5 (cl. 30-45) deleted: SL 2020/252 r. 62.]*

## **Part 6 — Local development plans**

### **46. Term used: local development plan**

In this Part —

**local development plan** means a plan setting out specific and detailed guidance for a future development including one or more of the following —

- (a) site and development standards that are to apply to the development;
- (b) specifying exemptions from the requirement to obtain development approval for development in the area to which the plan relates.

### **47. When local development plan may be prepared**

A local development plan in respect of an area of land in the Scheme area may be prepared if —

- (a) the Commission has identified the preparation of a local development plan as a condition of approval of a plan of subdivision of the area; or
- (b) a local planning policy or structure plan requires a local development plan to be prepared for the area; or
- (c) another provision of this Scheme requires a local development plan to be prepared for the area; or
- (d) the Commission and the local government considers that a local development plan is required for the purposes of orderly and proper planning.

*[Clause 47 amended: SL 2020/252 r. 63.]*

### **48. Preparation of local development plan**

- (1) A local development plan must —
  - (a) be prepared in a manner and form approved by the Commission; and
  - (b) include any maps or other material considered by the local government to be necessary; and

- (c) set out the following information —
  - (i) the standards to be applied for the buildings, other structures and works that form part of the development to which it applies;
  - (ii) details of the arrangements to be made for vehicles to access the area covered by the plan.
- (2) The local government may prepare a local development plan in the circumstances set out in clause 47.
- (3) A person may make an application to the local government for a local development plan prepared by the person in the circumstances set out in clause 47 to be assessed and advertised if the person is —
  - (a) a person who is the owner of any or all of the land in the area to which the plan relates; or
  - (b) an agent of a person referred to in paragraph (a).

**49. Action by local government on receipt of application**

- (1) On receipt of an application for a local development plan to be assessed and advertised, the local government —
  - (a) must consider the material provided by the applicant and advise the applicant in writing —
    - (i) if the local development plan complies with clause 48(1); or
    - (ii) if further information from the applicant is required before the local development plan can be accepted for assessment and advertising;
  - and
  - (b) must give the applicant an estimate of the fee for dealing with the application in accordance with the *Planning and Development Regulations 2009* regulation 48.
- (2) The local development plan is to be taken to have been accepted for assessment and advertising if the local government has not given written notice of its decision to the applicant by the latest of the following days —
  - (a) 14 days after receipt of an application;

- (b) 7 days after receipt of the further information requested under subclause (1)(a)(ii);
- (c) if the local government has given the applicant an estimate of the fee for dealing with the application — the day on which the applicant pays the fee.

**50. Advertising of local development plan**

- (1) The local government must, within 28 days of preparing a local development plan or accepting an application for a local development plan to be assessed and advertised —
  - (a) advertise the proposed local development plan in accordance with subclause (2); and
  - (b) seek comments in relation to the proposed local development plan from any public authority or utility service that the local government considers appropriate.
- (2) The local government —
  - (a) must advertise the proposed local development plan by publishing in accordance with clause 87 —
    - (i) the proposed local development plan; and
    - (ii) a notice of the proposed local development plan; and
    - (iii) any accompanying material in relation to the proposed local development plan that the local government considers should be published;and
  - (b) may also advertise the proposed local development plan by doing either or both of the following —
    - (i) giving notice of the proposed local development plan to owners and occupiers who, in the opinion of the local government, are likely to be affected by the approval of the plan;
    - (ii) erecting a sign or signs in a conspicuous place on the land the subject of the proposed local development plan giving notice of the proposed local development plan.

- (3) Despite subclause (1) the local government may decide not to advertise a local development plan if the local government is satisfied that the plan is not likely to adversely affect any owners or occupiers within the area covered by the plan or an adjoining area.
- (4) A notice published or given, or on a sign erected, under subclause (2) in relation to a proposed local development plan must specify —
  - (a) the manner and form in which submissions may be made; and
  - (b) the period for making submissions and the last day of that period.
- (5) The period for making submissions specified in a notice under subclause (4)(b) must not be less than the period of 14 days after the day on which the notice of the proposed local development plan is first published under subclause (2)(a)(ii).

*[Clause 50 amended: SL 2020/252 r. 64.]*

**51. Consideration of submissions**

The local government —

- (a) must consider all submissions in relation to a local development plan made to the local government within the period specified in a notice advertising a proposed local development plan; and
- (b) may consider submissions in relation to a local development plan made to the local government after that time; and
- (c) is to have due regard to the matters set out in clause 67(2) to the extent that, in the opinion of the local government those matters are relevant to the development to which the plan relates.

*[Clause 51 amended: SL 2020/252 r. 65.]*

**52. Decision of local government**

- (1) Following consideration of a proposed local development plan, including any amendments made to the plan to address matters raised in submissions, the local government must —
  - (a) approve the local development plan; or



- (b) require the person who prepared the local development plan to —
    - (i) modify the plan in the manner specified by the local government; and
    - (ii) resubmit the modified plan to the local government for approval;or
  - (c) refuse to approve the plan.
- (1A) The local government must not approve a local development plan under subclause (1) if —
- (a) the local development plan amends or replaces a deemed-to-comply provision of the R-Codes; and
  - (b) under the R-Codes, the Commission’s approval is required for the local development plan; and
  - (c) the Commission has not approved the local development plan.
- (2) The local government is to be taken to have refused to approve a local development plan if the local government has not made a decision under subclause (1) —
- (a) if the plan was advertised — within the period of 60 days after the last day for making submissions specified in accordance with clause 50(5) or a longer period agreed between the local government and a person other than the local government who prepared the plan; or
  - (b) if the plan was not advertised — within the period of 60 days after the resolution not to advertise the plan was made by the local government or a longer period agreed between the local government and a person other than the local government who prepared the plan.
- (3) For the purposes of calculating the periods referred to in subclause (2)(a) and (b), the period between the local government requiring modifications to the local development plan and the resubmission of the modified plan is to be excluded.
- (4) Despite subclause (2), the local government may decide whether or not to approve a local development plan after the period applicable

under subclause (2) has expired, and the validity of the decision is not affected by the expiry.

- (5) The local government must give any person who prepared the local development plan written notice of its decision to approve or to refuse to approve a local development plan.

*[Clause 52 amended: SL 2020/252 r. 66.]*

**53. Local development plan may provide for later approval of details of development**

- (1) The local government may approve a local development plan that provides for further details of any development included in the plan to be submitted to, and approved by, the local government before the development commences.
- (2) The local government may only approve a local development plan referred to in subclause (1) if the local government is satisfied that the further matters that are to be approved would not result in a substantial departure from the plan.

**54. Review**

A person who prepared a local development plan may apply to the State Administrative Tribunal for a review, in accordance with the *Planning and Development Act 2005* Part 14, of a decision by the local government not to approve the local development plan.

**55. Publication of local development plan approved by local government**

- (1) If the local government approves a local development plan the local government must publish the local development plan in accordance with clause 87.
- (2) Subclause (1) is an ongoing publication requirement for the purposes of clause 87(5)(a).

*[Clause 55 inserted: SL 2020/252 r. 67.]*

**56. Effect of local development plan**

- (1) A decision-maker for an application for development approval in an area that is covered by a local development plan that has been approved by the local government must have due regard to, but is not bound by, the local development plan when deciding the application.
- (2) A decision-maker for an application for development approval in an area referred to in clause 47 as being an area for which a local development plan may be prepared, but for which no local development plan has been approved by the local government, may approve the application if the decision-maker is satisfied that —
  - (a) the proposed development does not conflict with the principles of orderly and proper planning; and
  - (b) the proposed development would not prejudice the overall development potential of the area.

**57. Duration of approval**

- (1) The approval of a local development plan has effect for a period of 10 years commencing on the day on which the local government approves the plan, or another period determined by the local government, unless the local government earlier revokes its approval.
- (2) For the purposes of subclause (1), a local development plan that was approved before 19 October 2015 is taken to have been approved on that day.
- (3) A local government may extend the period of approval of a local development plan if there are no changes to the terms of the plan or the conditions attached to the approval.

*[Clause 57 amended: SL 2020/252 r. 68.]*

**58. Revocation of local development plan**

The local government must not revoke approval of a local development plan unless this Scheme is amended so that the development to which the plan relates is a non-conforming use.

**59. Amendment of local development plan**

- (1) A local development plan may be amended by the local government.

- (2) A person who owns land in the area covered by a local development plan may request the local government to amend the plan.
- (3) The procedures for making a local development plan set out in this Part, with any necessary changes, are to be followed in relation to an amendment to a local development plan.
- (4) Despite subclause (3), the local government may decide not to advertise an amendment to a local development plan if, in the opinion of the local government, the amendment is of a minor nature.
- (5) An amendment to a local development plan does not extend the period of approval of the plan unless, at the time the amendment is approved, the local government agrees to extend the period.

### **Part 7 — Requirement for development approval**

#### **60. Requirement for development approval**

A person must not commence or carry out any works on, or use, land in the Scheme area unless —

- (a) the person has obtained the development approval of the local government under Part 8; or
- (b) development approval is not required for the development under clause 61.

Note:

1. Development includes the erection, placement and display of advertisements.
2. Approval to commence development may also be required from the Commission if the land is subject to a region planning scheme.

*[Clause 60 amended: SL 2020/252 r. 69.]*

#### **61. Development for which development approval not required**

- (1) Development approval is not required for works if —
  - (a) the works are of a class specified in Column 1 of an item in the Table; and

- (b) if conditions are set out in Column 2 of the Table opposite that item — all of those conditions are satisfied in relation to the works.

**Table**

	<b>Column 1 Works</b>	<b>Column 2 Conditions</b>
1.	The demolition or removal of any of the following — (a) a single house; (b) an ancillary dwelling; (c) an outbuilding; (d) an external fixture; (e) a boundary wall or fence; (f) a patio; (g) a pergola; (h) a verandah; (i) a deck; (j) a garage; (k) a carport; (l) a swimming pool; (m) shade sails.	The works are not located in a heritage-protected place.
2.	The demolition of a building that is not a single house, ancillary dwelling, multiple dwelling or grouped dwelling.	(a) The building does not share a common wall with another building. (b) The works are not located in a heritage-protected place.
3.	The demolition or removal of a cubbyhouse.	The works are not located in a heritage-protected place.

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	<b>Column 1 Works</b>	<b>Column 2 Conditions</b>
4.	The demolition or removal of a flagpole.	The works are not located in a heritage-protected place of a kind referred to in clause 1A(1)(a) to (e).
5.	Internal building work that does not materially affect the external appearance of the building.	Either — (a) neither the building nor any part of it is located in a heritage-protected place of a kind referred to in clause 1A(1)(a) to (e); or (b) the building, or a part of it, is located in a heritage-protected place of a kind referred to in clause 1A(1)(a), (c), (d) or (e), but the interior of the building is specified as not being of cultural heritage significance in the relevant register, order, agreement or list referred to in that clause.
6.	The erection of, or alterations or additions to, a single house on a lot.	(a) The R-Codes apply to the works. (b) The works comply with the deemed-to-comply provisions of the R-Codes. (c) The works are not located in a heritage-protected place.

	<b>Column 1 Works</b>	<b>Column 2 Conditions</b>
7.	<p>The erection or installation of, or alterations or additions to, any of the following on the same lot as a single house or a grouped dwelling —</p> <ul style="list-style-type: none"><li>(a) an ancillary dwelling;</li><li>(b) an outbuilding;</li><li>(c) an external fixture;</li><li>(d) a boundary wall or fence;</li><li>(e) a patio;</li><li>(f) a pergola;</li><li>(g) a verandah;</li><li>(h) a deck;</li><li>(i) a garage;</li><li>(j) a carport.</li></ul>	<ul style="list-style-type: none"><li>(a) The R-Codes apply to the works.</li><li>(b) The works comply with the deemed-to-comply provisions of the R-Codes.</li><li>(c) The works are not located in a heritage-protected place.</li></ul>
8.	<p>The installation of, or alterations or additions to, any of the following on the same lot as a single house or a grouped dwelling —</p> <ul style="list-style-type: none"><li>(a) a swimming pool;</li><li>(b) shade sails.</li></ul>	<p>The works are not located in a heritage-protected place.</p>

	<b>Column 1 Works</b>	<b>Column 2 Conditions</b>
9.	The temporary erection or installation of an advertisement.	<p>(a) The advertisement is erected or installed in connection with an election, referendum or other poll conducted under the <i>Commonwealth Electoral Act 1918</i> (Commonwealth), the <i>Referendum (Machinery Provisions) Act 1984</i> (Commonwealth), the <i>Electoral Act 1907</i>, the <i>Local Government Act 1995</i> or the <i>Referendums Act 1983</i>.</p> <p>(b) The primary purpose of the advertisement is for political communication in relation to the election, referendum or poll.</p> <p>(c) The advertisement is not erected or installed until the writ or writs have been issued or, for an election, referendum or poll under the <i>Local Government Act 1995</i>, until the 36<sup>th</sup> day before the day on which the election, referendum or poll is to be held.</p> <p>(d) The advertisement is removed no later than 48 hours after the election, referendum or poll is conducted.</p>



	<b>Column 1 Works</b>	<b>Column 2 Conditions</b>
		(e) The advertisement is not erected or installed within 1.5 m of any part of a crossover or street truncation.
10.	The erection or installation of a sign of a class specified in a local planning policy or local development plan that applies to the works as not requiring development approval.	<p>(a) The sign complies with any requirements specified in the local planning policy or local development plan in relation to the exemption from the requirement for development approval.</p> <p>(b) The sign is not erected or installed within 1.5 m of any part of a crossover or street truncation.</p> <p>(c) The works are not located in a heritage-protected place.</p>
11.	Works to change an existing sign that has been erected or installed on land.	<p>(a) The erection or installation of the existing sign was the subject of development approval or was exempt from the requirement for development approval.</p> <p>(b) The changes do not alter the size or location of the existing sign or result in the sign containing any illumination, animation, movement or reflective, retro-reflective or fluorescent materials.</p>

	<b>Column 1 Works</b>	<b>Column 2 Conditions</b>
		(c) The sign is not used for advertising (other than the advertising of a business operated on the land).  (d) The works are not located in a heritage-protected place.
12.	The installation of a water tank.	(a) The water tank is not installed in the street setback area of a building.  (b) The volume of the water tank is no more than 5 000 L.  (c) The height of the water tank is no more than —  (i) for a tank fixed to a building — the height of the eaves of the building; or  (ii) for a tank that is not fixed to a building and is more than 1 m from each boundary of the lot — 2.4 m; or  (iii) for a tank that is not fixed to a building and is 1 m or less from a boundary of the lot — 1.8 m.  (d) The works are not located in a heritage-protected place.

	<b>Column 1 Works</b>	<b>Column 2 Conditions</b>
13.	The erection or installation of a cubbyhouse.	<ul style="list-style-type: none"> <li>(a) The cubbyhouse is not erected or installed in the street setback area of a building.</li> <li>(b) The floor of the cubbyhouse is no more than 1 m above the natural ground level.</li> <li>(c) The wall height of the cubbyhouse is no more than 2.4 m above the natural ground level.</li> <li>(d) The building height of the cubbyhouse is no more than 3 m above the natural ground level.</li> <li>(e) The area of the floor of the cubbyhouse is no more than 10 m<sup>2</sup>.</li> <li>(f) The cubbyhouse is not erected or installed within 1 m of more than 1 boundary of the lot.</li> </ul>
14.	The erection or installation of a flagpole.	<ul style="list-style-type: none"> <li>(a) The height of the flagpole is no more than 6 m above the natural ground level.</li> <li>(b) The flagpole is no more than 200 mm in diameter.</li> <li>(c) The flagpole is not used for advertising.</li> <li>(d) There is no more than 1 flagpole on the lot.</li> </ul>

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	<b>Column 1 Works</b>	<b>Column 2 Conditions</b>
		(e) The works are not located in a heritage-protected place.
15.	The installation of solar panels on the roof of a building.	(a) The solar panels are parallel to the angle of the roof. (b) The works are not located in a heritage-protected place.
16.	Maintenance and repair works.	Either — (a) the works are not located in a heritage-protected place; or (b) the maintenance and repair works are of a kind referred to in the <i>Heritage Regulations 2019</i> regulation 41(1)(b) to (i).
17.	Temporary works.	The works are in existence for less than 48 hours, or a longer period agreed by the local government, in any 12-month period.
18.	Works that are urgently necessary for any of the following — (a) public safety; (b) the safety or security of plant or equipment; (c) the maintenance of essential services; (d) the protection of the environment.	The works are not located in a heritage-protected place of a kind referred to in clause 1A(1)(a), (b) or (d).

	<b>Column 1 Works</b>	<b>Column 2 Conditions</b>
19.	Works that are wholly located on an area identified as a regional reserve under a region planning scheme.	
20.	Works specified in a local planning policy or local development plan that applies to the works as works that do not require development approval (other than works referred to in item 10).	The works comply with any requirements specified in the local planning policy or local development plan in relation to the exemption from the requirement for development approval.
21.	Works of a type identified elsewhere in this Scheme as works that do not require development approval.	The works comply with any requirements specified in this Scheme in relation to the exemption from the requirement for development approval.

Notes for this subclause:

1. Approval may be required from the Commission for development on a regional reserve under a region planning scheme.
  2. Section 157 of the Act applies in respect of the carrying out of works necessary to enable the subdivision of land if the Commission has approved a plan of the subdivision.
  3. Section 6 of the Act applies in respect of the carrying out of public works.
  4. Clause 1B sets out circumstances in which development is taken to comply with a deemed-to-comply provision of the R-Codes.
- (2) Development approval of the local government is not required for the following uses —
- (a) a use that is wholly located on an area identified as a regional reserve under a region planning scheme;

Note for this paragraph:

Approval may be required from the Commission for development on a regional reserve under a region planning scheme.

- (b) development that is a class P use in relation to the zone in which the development is located, if —
    - (i) the development has no works component; or
    - (ii) development approval is not required for the works component of the development;
  - (c) development that is an exempt class D use under subclause (3) in relation to the zone in which the development is located, if —
    - (i) the development has no works component; or
    - (ii) development approval is not required for the works component of the development;
  - (d) the use of premises as a home office;
  - (e) the use of premises as a drop-off refund point if —
    - (i) the premises are otherwise used as a shop (as defined in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 1 clause 38); or
    - (ii) the premises are not in a residential zone and the use of the premises as a drop-off refund point is an incidental use of the premises;
  - (f) temporary use that is in existence for less than 48 hours, or a longer period agreed by the local government, in any 12-month period;
  - (g) any other use specified in a local planning policy or local development plan that applies to the development as a use that does not require development approval;
  - (h) use of a type identified elsewhere in this Scheme as use that does not require development approval.
- (3) For the purposes of subclause (2)(c), a use of land is an exempt class D use in relation to the zone in which the land is located if —
- (a) the use is a class D use in relation to the zone; and
  - (b) the use is of a class set out in Column 1 of an item in the Table; and

- (c) the zone is of a class set out in Column 2 of the Table opposite that item; and
- (d) if conditions are set out in Column 3 of the Table opposite that item — all of those conditions are satisfied in relation to the use.

**Table**

	<b>Column 1 Use</b>	<b>Column 2 Zones</b>	<b>Column 3 Conditions</b>
1.	Shop	Commercial, centre or mixed use zone	Net lettable area is no more than 300 m <sup>2</sup> .
2.	Restaurant/cafe	Commercial, centre or mixed use zone	Net lettable area is no more than 300 m <sup>2</sup> .
3.	Convenience store	Commercial, centre or mixed use zone	Store is not used for the sale of petroleum products.
4.	Consulting rooms	Commercial, centre or mixed use zone	No more than 60% of the glass surface of any window on the ground floor of the consulting rooms is obscured glass.
5.	Office	Commercial, centre or mixed use zone	Office is not located on the ground floor of a building.
6.	Liquor store — small	Commercial, centre or mixed use zone	Store is in the metropolitan region or Peel Region Scheme area.

	<b>Column 1 Use</b>	<b>Column 2 Zones</b>	<b>Column 3 Conditions</b>
7.	Small bar	Commercial, centre or mixed use zone	(a) Small bar is in the metropolitan region or Peel Region Scheme area.  (b) The lot on which the small bar is located does not directly adjoin a residential zone.
8.	Recreation — private	Commercial, centre or mixed use zone  Light industry zone	(a) Premises are in the metropolitan region.  (b) Net lettable area of any indoor area of the premises is no more than 300 m <sup>2</sup> .  (c) No more than 60% of the glass surface of any window on the ground floor of a building on the premises is obscured glass.
9.	Home occupation	All zones	

(4) A reference in Column 1 of the Table to subclause (3) to a class of land use is a reference to that use as defined in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 1 clause 38, whether or not —

- (a) the relevant definition is included in this Scheme; or
- (b) this Scheme includes a different definition for that use; or



- (c) this Scheme refers to that class of land use by a different name.
- (5) Subclause (2) has effect despite the zoning table for this Scheme.
- (6) Despite subclauses (1) and (2), an exemption under those subclauses does not apply to development if —
  - (a) the development is undertaken in a special control area and the special provisions that apply to that area under this Scheme provide that development approval is required for the development; or
  - (b) the development is undertaken on land designated by an order made under the *Fire and Emergency Services Act 1998* section 18P as a bush fire prone area and development approval is required under clause 78D(3) for the development.
- (7) An exemption from the requirement for development approval that applies under this clause (other than an exemption under item 10 or 20 in the Table to subclause (1)) is not affected by any provision of a local planning policy or local development plan.
- (8) If development consists of both works and use of land —
  - (a) subject to subclause (2)(b)(ii) and (c)(ii), any exemption under subclause (1) that applies to the works does not affect whether development approval is required for the use; and
  - (b) any exemption under subclause (2) that applies to the use does not affect whether development approval is required for the works.

*[Clause 61 inserted: SL 2020/252 r. 70.]*

**61A. Advice by local government that development approval not required for erection of, or alterations or additions to, single house**

- (1) This clause applies only if —
  - (a) the Scheme area is wholly or partly in the metropolitan region or the Peel Region Scheme area; or

- (b) the local government has made an election under subclause (5)(a) and has not revoked that election under subclause (5)(b).
- (2) An owner of a lot in the Scheme area who proposes to carry out works consisting of the erection of, or alterations or additions to, a single house on the lot may apply to the local government for written advice that the local government is satisfied that development approval of the local government is not required for the works because of an exemption under item 6 in the Table to clause 61(1).
- (3) An application under subclause (2) must be —
  - (a) made in a manner and form approved by the Commission; and
  - (b) accompanied by any documents or other information required by the approved form; and
  - (c) accompanied by any fee for determining the application imposed by the local government under the *Planning and Development Regulations 2009*.
- (4) Within 14 days after an application under subclause (2) is made, the local government must —
  - (a) provide advice to the applicant, in the manner and form approved by the Commission, that the local government is satisfied that development approval of the local government is not required for the works because of an exemption under item 6 in the Table to clause 61(1); or
  - (b) notify the applicant, in the manner and form approved by the Commission, that the local government is not satisfied as referred to in paragraph (a).
- (5) The local government may, by written notice given to the Commission and published in accordance with clause 87 —
  - (a) elect to provide advice under this clause; or
  - (b) revoke an election under paragraph (a).

*[Clause 61A inserted: SL 2020/252 r. 70.]*

## **Part 8 — Applications for development approval**

### **62. Form of application**

- (1) An application for development approval must be —
  - (a) made in the form of the “Application for development approval” set out in clause 86(1); and
  - (b) signed by the owner of the land on which the proposed development is to be located; and
  - (c) accompanied by any fee for an application of that type set out in the *Planning and Development Regulations 2009* or prescribed under the *Local Government Act 1995*; and
  - (d) accompanied by the plans and information specified in clause 63.
  
- (2) For the purposes of subclause (1)(b), a person or body may sign an application for development approval as the owner of freehold land if the person or body is one of the following —
  - (a) a person who is referred to in the definition of **owner** in respect of freehold land in clause 1;
  - (b) a strata company that —
    - (i) is authorised to make an application for development approval in respect of the land under scheme by-laws registered under the *Strata Titles Act 1985*; and
    - (ii) if the land is held under a leasehold scheme, has the written consent of the owner of the leasehold scheme to make the application;
  - (ba) a community corporation for a community titles scheme that is authorised to make an application for development approval in respect of the land under scheme by-laws registered for the community titles scheme under the *Community Titles Act 2018*;
  - (c) a person who is authorised under another written law to make an application for development approval in respect of the land;

- (d) an agent of a person referred to in paragraph (a).

Note:

The *Planning and Development Act 2005* section 267A makes provision for the signing of documents by the owner of Crown land.

- (2A) A term has the same meaning in subclause (2)(b) as is given in the *Strata Titles Act 1985* section 3(1).
- (2B) A term has the same meaning in subclause (2)(ba) as is given in the *Community Titles Act 2018* section 3(1).
- (3) An application for development approval for the erection, placement or display of an advertisement must be accompanied by sufficient information to determine the application in the form of the “Additional information for development approval for advertisements” set out in clause 86(2).

Note:

The *Interpretation Act 1984* section 74 provides for circumstances in which deviations from a prescribed form do not invalidate the form used.

[Clause 62 amended: Gazette 31 Dec 2019 p. 4655-6; SL 2021/77 r. 4.]

**63. Accompanying material**

- (1) An application for development approval must be accompanied by —
- (a) a plan or plans in a form approved by the local government showing the following —
- (i) the location of the site including street names, lot numbers, north point and the dimensions of the site;
  - (ii) the existing and proposed ground levels over the whole of the land the subject of the application;
  - (iii) the location, height and type of all existing structures and environmental features, including watercourses, wetlands and native vegetation on the site;
  - (iv) the structures and environmental features that are proposed to be removed;

- (v) the existing and proposed use of the site, including proposed hours of operation, and buildings and structures to be erected on the site;
  - (vi) the existing and proposed means of access for pedestrians and vehicles to and from the site;
  - (vii) the location, number, dimensions and layout of all car parking spaces intended to be provided;
  - (viii) the location and dimensions of any area proposed to be provided for the loading and unloading of vehicles carrying goods or commodities to and from the site and the means of access to and from those areas;
  - (ix) the location, dimensions and design of any open storage or trade display area and particulars of the manner in which it is proposed to develop the open storage or trade display area;
  - (x) the nature and extent of any open space and landscaping proposed for the site;
- and
- (b) plans, elevations and sections of any building proposed to be erected or altered and of any building that is intended to be retained; and
  - (c) a report on any specialist studies in respect of the development that the local government requires the applicant to undertake such as site surveys or traffic, heritage, environmental, engineering or urban design studies; and
  - (d) any other plan or information that the local government reasonably requires.
- (2) The local government may waive or vary a requirement set out in subclause (1).
- (3) Where an application relates to a place entered on a heritage list prepared in accordance with this Scheme or within an area designated under this Scheme as a heritage area, the local government may require the application to be accompanied by one or more of the following —
- (a) street elevations drawn as one continuous elevation to a scale not smaller than 1:100 showing the proposed development

and the whole of the existing development on each lot immediately adjoining the land the subject of the application;

- (b) a detailed schedule of all finishes, including materials and colours of the proposed development;
- (c) a description of the finishes of the existing developments on the subject lot and on each lot immediately adjoining the subject lot.

**63A. Action by local government on receipt of application**

- (1) On receipt of an application for development approval, the local government must —
  - (a) consider whether the application and accompanying material comply with clauses 62 and 63; and
  - (b) within 7 days after the day on which the application is received, advise the applicant by written notice —
    - (i) if the local government is satisfied that the application and accompanying material comply with clauses 62 and 63 — that the application has been accepted for assessment; or
    - (ii) otherwise — that the applicant must amend the application, or provide further accompanying material, before the application can be accepted for assessment.
- (2) If the local government does not give advice under subclause (1)(b) within the 7-day period referred to in that subclause, the application is taken to be accepted for assessment on the day after the end of that period.
- (3) If the local government gives advice under subclause (1)(b)(ii) and the applicant amends the application or provides further accompanying material as required, this clause applies again in respect of the application as amended or as accompanied by the further material as if references to the receipt of the application were to the receipt of the amendment or the further material.

*[Clause 63A inserted: SL 2020/252 r. 71.]*

**64. Advertising applications**

- (1) The local government —
- (a) must advertise a complex application for development approval in accordance with subclause (3); and
  - (b) must advertise an application for development approval in accordance with subclause (4) if the application is not a complex application and —
    - (i) relates to development that is a class A use in relation to the zone in which the development is located; or
    - (ii) relates to the extension of a non-conforming use; or
    - (iii) relates to development that does not comply with the requirements of this Scheme; or
    - (iv) relates to development for which the local government requires a heritage assessment to be carried out under clause 11(1); or
    - (v) is of a kind identified elsewhere in this Scheme as an application that is required to be advertised;
- and
- (c) may advertise any other application for development approval in accordance with subclause (4).
- (2) Subclause (1)(b)(iii) does not apply if the local government is satisfied that the non-compliance with the requirements of this Scheme is of a minor nature.
- (3) For the purposes of subclause (1)(a), a complex application is advertised by doing all of the following —
- (a) publishing in accordance with clause 87 —
    - (i) a notice of the proposed development in the form set out in clause 86(3); and
    - (ii) the application for development approval; and
    - (iii) any accompanying material in relation to the application that the local government considers should be published;

- (b) giving notice of the proposed development —
  - (i) to the owners and occupiers of every property that is within 200 m of the proposed development; and
  - (ii) to any other owners and occupiers of properties in the vicinity of the proposed development who, in the opinion of the local government, are likely to be affected by the granting of development approval;
- (c) erecting, in the manner and form approved by the Commission, a sign or signs in a conspicuous place on the land the subject of the application giving notice of the proposed development in the form set out in clause 86(3).

Note for this subclause:

Under clause 88, the Commission may approve varied requirements that apply if it is not practicable for the local government to comply with subclause (3)(b) or (c).

- (4) For the purposes of subclause (1)(b) or (c), an application that is not a complex application is advertised by doing any or all of the following, as determined by the local government —
  - (a) publishing in accordance with clause 87 —
    - (i) a notice of the proposed development in the form set out in clause 86(3); and
    - (ii) the application for development approval; and
    - (iii) any accompanying material in relation to the application that the local government considers should be published;
  - (b) giving notice of the proposed development to owners and occupiers of properties in the vicinity of the development who, in the opinion of the local government, are likely to be affected by the granting of development approval;
  - (c) erecting, in the manner and form approved by the Commission, a sign or signs in a conspicuous place on the land the subject of the application giving notice of the proposed development in the form set out in clause 86(3).



- (5) A notice published or given, or on a sign erected, in accordance with subclause (3) or (4) in relation to an application for development approval must specify —
- (a) the manner and form in which submissions may be made; and
  - (b) the applicable period under subclause (6) or (7) for making submissions and the last day of that period.
- (6) The period to be specified in a notice published or given, or on a sign erected, in accordance with subclause (3) in relation to a complex application is —
- (a) the period of 28 days after the day on which the notice of the application is first published under subclause (3)(a); or
  - (b) a longer period agreed in writing between the applicant and the local government.
- (7) The period to be specified in a notice published or given, or on a sign erected, in accordance with subclause (4) in relation to an application that is not a complex application is —
- (a) the period of 14 days after the day on which the notice of the application is first published or given, or the sign is first erected, as the case requires; or
  - (b) a longer period agreed in writing between the applicant and the local government.

*[Clause 64 inserted: SL 2020/252 r. 71.]*

**64A. Applicant for development approval may be required to pay costs of advertising or erect signs**

- (1) The local government may require an applicant for development approval to pay the costs of the local government advertising the application for development approval under clause 64.
- (2) The local government may, instead of erecting signs under clause 64(3)(c) or (4)(c), require the applicant for development approval to erect those signs.

*[Clause 64A inserted: SL 2020/252 r. 71.]*

**65. Subsequent approval of development**

The procedures relating to applications for development approval set out in Part 7, Part 9 and this Part apply, with any modifications necessary, to an application for development approval for development already commenced or carried out.

Note:

The *Planning and Development Act 2005* section 164 sets out the effect of approval for development already commenced or carried out.

**Part 9 — Procedure for dealing with applications for development approval**

**65A. Local government may request additional information or material**

- (1) If an application for development approval has been accepted for assessment, the local government may, by written notice given to the applicant, request the applicant to provide any further information or material that the local government reasonably requires to determine the application.
- (2) A request under subclause (1) may be made whether or not the local government gave the applicant advice under clause 63A(1)(b)(ii) in relation to the application before it was accepted for assessment.
- (3) A request under subclause (1) must state the period within which the further information or material must be provided, which must be a period of at least 21 days after the day on which the request is made.
- (4) Only 1 request under subclause (1) can be made in relation to an application for development approval unless —
  - (a) the application is a complex application; or
  - (b) the application is required to be advertised under clause 64(1)(b); or
  - (c) a copy of the application is required to be provided to a statutory, public or planning authority under clause 66; or
  - (d) after the application was accepted for assessment, the applicant, on their own initiative, submitted further information or material relevant to the application to the local

government and the request relates to that further information or material.

*[Clause 65A inserted: SL 2020/252 r. 72.]*

**65B. Applicant may agree to or refuse request for additional information or material**

- (1) If a request under clause 65A(1) is made to an applicant for development approval, the applicant may, by written notice given to the local government within 7 days after the day on which the request is made, agree to or refuse the request.
- (2) If the applicant does not agree to or refuse the request within the 7-day period referred to in subclause (1), the applicant is taken to have refused the request.
- (3) If an applicant agrees to a request under clause 65A(1), the period set out in subclause (4) is not to be counted for the purposes of determining when the application for development approval must be determined under clause 75(1).
- (4) For the purposes of subclause (3), the period —
  - (a) begins on the day on which the applicant agrees to the request; and
  - (b) ends on the earlier of the following —
    - (i) the day on which the applicant gives the information or material specified in the request to the local government;
    - (ii) the last day of the period stated in the notice of request under clause 65A(3).
- (5) If an applicant refuses a request under clause 65A(1) —
  - (a) the local government must not refuse to determine the application for development approval merely because the applicant has refused the request; and
  - (b) the making of the request does not affect when the application for development approval must be determined under clause 75(1).

*[Clause 65B inserted: SL 2020/252 r. 72.]*

**66. Consultation with other authorities**

- (1) When, in the opinion of the local government, an application for development approval may affect any other statutory, public or planning authority, the local government is to provide a copy of the application to the authority for objections and recommendations.
- (2) If an application for development approval relates to proposed development on land that is reserved under this Scheme for a public purpose and vested in a public authority, the local government must provide a copy of the application to that authority for objections and recommendations before making a decision on the application.
- (3) A statutory, public or planning authority receiving a copy of an application may, within 42 days of receiving the application or within such longer period as the local government allows in accordance with subclause (3A), provide to the local government a memorandum in writing containing any objections to, or recommendations in respect of the whole or part of the proposed development.
- (3A) The local government may extend the 42-day period referred to in subclause (3) once only by a period of not more than 14 days.
- (4) If a statutory, public or planning authority does not provide a memorandum within the time allowed under subclause (3), the local government may determine that the authority is to be taken to have no objections or recommendations to make.

*[Clause 66 amended: SL 2020/252 r. 73.]*

**67. Consideration of application by local government**

- (1) Development approval cannot be granted on an application for approval of —
  - (a) development that is a class X use in relation to the zone in which the development is located, unless —
    - (i) the development relates to land that is being used for a non-conforming use; and
    - (ii) the local government considers that the proposed use of the land would be less detrimental than the non-conforming use;

or

- (b) development that otherwise does not comply with a requirement of this Scheme, unless —
  - (i) this Scheme gives the local government discretion to waive or vary the requirement or to grant development approval despite non-compliance with the requirement; or
  - (ii) the development is permitted under a provision of this Scheme in relation to non-conforming uses.
- (2) In considering an application for development approval (other than an application on which approval cannot be granted under subclause (1)), the local government is to have due regard to the following matters to the extent that, in the opinion of the local government, those matters are relevant to the development the subject of the application —
  - (a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;
  - (b) the requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the *Planning and Development (Local Planning Schemes) Regulations 2015* or any other proposed planning instrument that the local government is seriously considering adopting or approving;
  - (c) any approved State planning policy;
  - (d) any environmental protection policy approved under the *Environmental Protection Act 1986* section 31(d);
  - (e) any policy of the Commission;
  - (f) any policy of the State;
  - (fa) any local planning strategy for this Scheme endorsed by the Commission;
  - (g) any local planning policy for the Scheme area;
  - (h) any structure plan or local development plan that relates to the development;
  - (i) any report of the review of the local planning scheme that has been published under the *Planning and Development (Local Planning Schemes) Regulations 2015*;

- (j) in the case of land reserved under this Scheme, the objectives for the reserve and the additional and permitted uses identified in this Scheme for the reserve;
- (k) the built heritage conservation of any place that is of cultural significance;
- (l) the effect of the proposal on the cultural heritage significance of the area in which the development is located;
- (m) the compatibility of the development with its setting, including —
  - (i) the compatibility of the development with the desired future character of its setting; and
  - (ii) the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;
- (n) the amenity of the locality including the following —
  - (i) environmental impacts of the development;
  - (ii) the character of the locality;
  - (iii) social impacts of the development;
- (o) the likely effect of the development on the natural environment or water resources and any means that are proposed to protect or to mitigate impacts on the natural environment or the water resource;
- (p) whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved;
- (q) the suitability of the land for the development taking into account the possible risk of flooding, tidal inundation, subsidence, landslip, bush fire, soil erosion, land degradation or any other risk;
- (r) the suitability of the land for the development taking into account the possible risk to human health or safety;

- (s) the adequacy of —
  - (i) the proposed means of access to and egress from the site; and
  - (ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles;
- (t) the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;
- (u) the availability and adequacy for the development of the following —
  - (i) public transport services;
  - (ii) public utility services;
  - (iii) storage, management and collection of waste;
  - (iv) access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities);
  - (v) access by older people and people with disability;
- (v) the potential loss of any community service or benefit resulting from the development other than potential loss that may result from economic competition between new and existing businesses;
- (w) the history of the site where the development is to be located;
- (x) the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals;
- (y) any submissions received on the application;
- (za) the comments or submissions received from any authority consulted under clause 66;
- (zb) any other planning consideration the local government considers appropriate.

- (3) Subclause (1) has effect despite the zoning table for this Scheme.

*[Clause 67 amended: SL 2020/252 r. 74.]*

**68. Determination of applications**

- (1) If an application for approval of development is advertised under clause 64, the local government must not determine the application until after the end of —
  - (a) for a complex application advertised in accordance with clause 64(3) — the period for making submissions that applies under clause 64(6); or
  - (b) for an application advertised in accordance with clause 64(4) — each period for making submissions specified in a notice published or given, or on a sign erected, in accordance with that clause.
- (1A) If a copy of an application for approval of development has been provided to a statutory, public or planning authority under clause 66, the local government must not determine the application until after the end of each period for providing a memorandum to the local government that applies under clause 66(3).
- (2) The local government may determine an application for development approval by —
  - (a) granting development approval without conditions; or
  - (b) granting development approval with conditions; or
  - (c) refusing to grant development approval.

*[Clause 68 amended: SL 2020/252 r. 75.]*

**69. Application not to be refused if development contribution plan not in place**

- (1) The local government must not refuse an application for development approval only because there is not a development contribution plan in place in relation to the development.
- (2) The local government must not grant development approval subject to a condition that future contributions to the provision of infrastructure related to the development may be required under a development contribution plan that is not in place at the time the application is determined.



**70. Form and date of determination**

- (1) As soon as practicable after determining an application for development approval, the local government must give the applicant written notice of the determination in the form of the “Notice of determination on application for development approval” set out in clause 86(4).
- (2) The determination has effect on the day on which the notice of determination is given to the applicant.

**71. Commencement of development under development approval**

If development approval is granted under clause 68 —

- (a) the development must be substantially commenced —
  - (i) if no period is specified in the approval — within the period of 2 years commencing on the date on which the determination is made; or
  - (ii) if a period is specified in the approval — within that period; or
  - (iii) in either case — within a longer period approved by the local government on an application made under clause 77(1)(a);

and

- (b) the approval lapses if the development has not substantially commenced within the period determined under paragraph (a).

Note for this clause:

Under the *Planning and Development (Development Assessment Panels) Regulations 2011* regulation 16A(2), for an application determined by a Development Assessment Panel the period within which development must be substantially commenced is 4 years.

[Clause 71 amended: SL 2020/252 r. 76.]

**72. Temporary development approval**

The local government may impose conditions limiting the period of time for which development approval is granted.

Note:

A temporary development approval is where the local government grants approval for a limited period. It does not have any effect on the period within which the development must commence.

**73. Scope of development approval**

Development approval may be granted —

- (a) for the development for which the approval is sought; or
- (b) for the development for which the approval is sought, except for a part or aspect of that development specified in the approval; or
- (c) for a part or aspect of the development for which approval is sought that is specified in the approval.

**74. Approval subject to later approval of details**

- (1) The local government may grant development approval subject to a condition that further details of any works or use specified in the condition must be submitted to, and approved by, the local government before the developer commences the development.
- (2) The local government may only impose a condition referred to in subclause (1) if the local government is satisfied that the further matters that are to be approved would not substantially change the development approved.

**75. Time for deciding application for development approval**

- (1) The local government must determine an application for development approval —
  - (a) if the application is advertised in compliance with a requirement under clause 64(1)(a) or (b) or a copy of the application is provided to a statutory, public or planning authority under clause 66 — within 90 days after the day on which the application is accepted for assessment; or

- (b) otherwise — within 60 days after the day on which the application is accepted for assessment; or
  - (c) in either case — within a longer time agreed in writing between the applicant and the local government.
- (2) If the local government has not made a determination in the time referred to in subclause (1) the local government is to be taken to have refused to grant the development approval.
- (3) Despite subclause (2), the local government may determine whether or not to grant the development approval after the period applicable under subclause (1) has expired and the validity of the determination is not affected by the expiry.
- (4) The local government must give the applicant written notice of its decision to grant or refuse to grant development approval.

*[Clause 75 amended: SL 2020/252 r. 77.]*

**76. Review of decisions**

- (1) In this clause —
- affected person***, in relation to a reviewable determination, means —
- (a) the applicant for development approval; or
  - (b) the owner of land in respect of which an application for development approval is made;
- reviewable determination*** means a determination by the local government to —
- (a) refuse an application for development approval; or
  - (b) to grant development approval subject to conditions; or
  - (c) to refuse to amend or cancel a development approval on an application made under clause 77.
- (2) An affected person may apply to the State Administrative Tribunal for a review of a reviewable determination in accordance with the *Planning and Development Act 2005* Part 14.

**77. Amending or cancelling development approval**

- (1) An owner of land in respect of which development approval has been granted by the local government may make an application to the local government requesting the local government to do any or all of the following —
  - (a) to amend the approval so as to extend the period within which any development approved must be substantially commenced;
  - (b) to amend or delete any condition to which the approval is subject;
  - (c) to amend an aspect of the development approved which, if amended, would not substantially change the development approved;
  - (d) to cancel the approval.
- (2) An application under subclause (1) —
  - (a) is to be made in accordance with the requirements in Part 8 and dealt with under this Part as if it were an application for development approval; and
  - (b) may be made during or after the period within which the development approved must be substantially commenced.
- (3) Despite subclause (2), the local government may waive or vary a requirement in Part 8 or this Part in respect of an application if the local government is satisfied that the application relates to a minor amendment to the development approval.
- (4) The local government may determine an application made under subclause (1) by —
  - (a) approving the application without conditions; or
  - (b) approving the application with conditions; or
  - (c) refusing the application.

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**Part 9A — Provisions about car parking**

*[Heading inserted: SL 2020/252 r. 80.]*

**Division 1 — General**

*[Heading inserted: SL 2020/252 r. 80.]*

**77A. Terms used**

In this Part —

**applicable minimum on-site parking requirement**, in relation to development —

- (a) means a minimum on-site parking requirement that applies to the development (and, if the local government has varied a minimum on-site parking requirement in relation to the development under clause 77D(1)(a), means that requirement as so varied); but
- (b) does not include a minimum on-site parking requirement that has been waived in relation to the development under clause 77D(1)(b);

**minimum on-site parking requirement** means a provision of this Scheme, or a local planning policy, that provides for the minimum number of car parking spaces that must be provided as part of development of a specified kind;

**parking space shortfall**, in relation to development, has the meaning given in clause 77C;

**payment in lieu of parking condition** means a condition requiring a payment to be made in lieu of satisfying a minimum on-site parking requirement;

**payment in lieu of parking plan** has the meaning given in clause 77J(1);

**relevant payment in lieu of parking plan**, in relation to development, means the payment in lieu of parking plan in effect from time to time for the area in which the development is located;

*shared parking arrangement condition* means a condition requiring entry into an arrangement for shared parking in lieu of satisfying a minimum on-site parking requirement.

[Clause 77A inserted: SL 2020/252 r. 80.]

**77B. Development to which this Part applies**

(1) This Part applies to development in —

(a) the metropolitan region; or

(b) the Peel Region Scheme area.

(2) Despite subclause (1), this Part does not apply to development to which the R-Codes apply.

[Clause 77B inserted: SL 2020/252 r. 80.]

**77C. Parking space shortfall for development**

If development does not comply with an applicable minimum on-site parking requirement, the *parking space shortfall* for the development is the number of car parking spaces calculated as follows —

$M - A$

where —

M is the minimum number of car parking spaces required to be provided as part of the development under the applicable minimum on-site parking requirement;

A is the actual number of car parking spaces to be provided as part of the development.

[Clause 77C inserted: SL 2020/252 r. 80.]

**77D. Variation of minimum on-site parking requirement in relation to development**

(1) The local government may —

(a) vary a minimum on-site parking requirement that applies to development so that the minimum number of car parking spaces that must be provided as part of the development is a lower number; or

(b) waive a minimum on-site parking requirement that applies to development.

(2) The local government must not vary or waive a minimum on-site parking requirement under subclause (1) in relation to development unless the local government is satisfied —

(a) that reasonable efforts have been made to comply with the minimum on-site parking requirement without adversely affecting access arrangements, the safety of pedestrians or persons in vehicles, open space, street trees or service infrastructure; and

(b) that —

(i) in the case of a variation — the lower number of car parking spaces would be adequate for the demands of the development, having regard to the likely use of the car parking spaces, the availability of off-site parking facilities and the likely use of alternative means of transport; or

(ii) in the case of a waiver — it is not necessary for car parking spaces to be provided as part of the development, having regard to the availability of off-site parking facilities and the likely use of alternative means of transport.

[Clause 77D inserted: SL 2020/252 r. 80.]

**77E. Development that does not comply with applicable minimum on-site parking requirement**

(1) Development is not required to comply with an applicable minimum on-site parking requirement if —

(a) development approval is not required for the development under clause 61; or

(b) development approval has been granted for the development subject to either or both of the following —

(i) a payment in lieu of parking condition imposed in accordance with clause 77H;

(ii) a shared parking arrangement condition imposed in accordance with clause 77Q.

- (2) The local government must not grant development approval for development that does not comply with an applicable minimum on-site parking requirement unless the approval is granted subject to a condition or conditions referred to in subclause (1)(b).

[Clause 77E inserted: SL 2020/252 r. 80.]

**77F. Imposition of both payment in lieu of parking condition and shared parking arrangement condition**

- (1) The local government must not under clause 68(2)(b) impose on an approval of development both a payment in lieu of parking condition in accordance with clause 77H and a shared parking arrangement condition in accordance with clause 77Q, unless —

(a) the parking space shortfall for the development is at least 2; and

(b) the local government has given the applicant for development approval a notice of apportionment stating that —

(i) a specified number of the car parking spaces in the parking space shortfall are to be dealt with by the payment in lieu of parking condition; and

(ii) the remainder of the car parking spaces in the parking space shortfall are to be dealt with by the shared parking arrangement condition.

- (2) If the local government gives a notice of apportionment under subclause (1)(b), then —

(a) for the purpose of imposing the payment in lieu of parking condition in accordance with clause 77H, the parking space shortfall for the development is taken to be the number of car parking spaces specified in the notice under subclause (1)(b)(i); and

(b) for the purpose of imposing the shared parking arrangement condition in accordance with clause 77Q, the parking space shortfall for the development is taken to be the number of car parking spaces specified in the notice under subclause (1)(b)(ii).

[Clause 77F inserted: SL 2020/252 r. 80.]



**Division 2 — Payment in lieu of provision of car parking spaces**

*[Heading inserted: SL 2020/252 r. 80.]*

**77G. When payment in lieu of parking condition may be imposed**

(1) The local government must not impose a payment in lieu of parking condition on an approval of development under clause 68(2)(b) otherwise than in accordance with clause 77H.

(2) The local government must not impose a payment in lieu of parking condition on an approval of development under clause 68(2)(b) in accordance with clause 77H unless a payment in lieu of parking plan that applies to the area in which the development is to be located is in effect under this Division.

(3) Despite subclause (2), during the period of 2 years commencing on the day on which the *Planning Regulations Amendment Regulations 2020 Part 2 Division 3* comes into operation —

(a) the local government may under clause 68(2)(b) impose a payment in lieu of parking condition in accordance with clause 77H on an approval of development if there are interim parking provisions that apply to the area in which the development is to be located; and

(b) if the local government imposes a condition as referred to in paragraph (a) — the interim parking provisions are taken to be the relevant payment in lieu of parking plan for the development for the purposes of this Division.

(4) In subclause (3) —

*interim parking provisions* means provisions of this Scheme, or of a local planning policy or local development plan, if the provisions —

(a) are in effect immediately before the day on which the *Planning Regulations Amendment Regulations 2020 Part 2 Division 3* comes into operation; and

(b) deal with the imposition of payment in lieu of parking conditions; and

(c) set out —

(i) the area to which the provisions apply; and

- (ii) the purposes for which money paid in accordance with a payment in lieu of parking condition imposed on an approval of development located in that area will be applied.

[Clause 77G inserted: SL 2020/252 r. 80.]

**77H. Payment in lieu of parking condition**

- (1) Subject to clause 77G, if the local government grants approval for development that does not satisfy an applicable minimum on-site parking requirement, the local government may under clause 68(2)(b) impose a condition requiring the owner of the land on which the development is to be located to make a payment to the local government in lieu of satisfying the applicable minimum on-site parking requirement.

- (2) The maximum amount of the payment required under a condition referred to in subclause (1) is the amount calculated in accordance with the determination under subclause (4).

- (3) Subclause (2) does not prevent the local government from imposing a condition that requires a payment that is lower than the maximum amount referred to in that subclause.

- (4) The Commission must, by notice published in the *Gazette*, determine the method to be used to calculate a reasonable estimate of the costs to the local government of providing in the area to which the relevant payment in lieu of parking plan applies a number of car parking spaces equivalent to the parking space shortfall for the development.

- (5) A determination under subclause (4) may provide for different calculation methods that apply in different circumstances.

- (6) The Commission may revoke a determination under subclause (4) by a subsequent determination under that subclause.

- (7) A determination under subclause (4) may be combined in a single instrument with 1 or more other determinations of that kind issued under 1 or more other local planning schemes or all other local planning schemes.

[Clause 77H inserted: SL 2020/252 r. 80.]

**77I. Application of money paid under payment in lieu of parking condition**

- (1) All money received by the local government in accordance with a payment in lieu of parking condition imposed on an approval of development in accordance with clause 77H must be paid into a reserve account established under the *Local Government Act 1995* section 6.11 for the purposes set out in the relevant payment in lieu of parking plan for the development.
- (2) The money must be applied for the purposes set out in the relevant payment in lieu of parking plan.
- (3) If interest is earned from the investment of money held under subclause (1), that interest must be applied for the purposes set out in the relevant payment in lieu of parking plan.
- (4) Subclause (5) applies if —

  - (a) a person (the *relevant payer*) pays money to the local government in accordance with a payment in lieu of parking condition imposed in accordance with clause 77H; and
  - (b) at the end of the period of 10 years commencing on the day on which the local government receives the money, or a longer period approved by the Commission, either or both of the following applies —

    - (i) any of the money received has not been applied in accordance with subclause (2);
    - (ii) any interest earned from the investment of the money received has not been applied in accordance with subclause (3).
- (5) The local government must repay the money and interest referred to in subclause (4)(b)(i) and (ii) to the relevant payer.
- (6) The local government is not required to comply with subclause (5) if —

  - (a) after taking reasonable steps to find the relevant payer, the relevant payer cannot be found; or
  - (b) the relevant payer is a body corporate that has been dissolved.

(7) If subclause (6) applies, then despite subclauses (2) and (3), the money and interest referred to in subclause (4)(b)(i) and (ii) may be applied for any purpose that —

- (a) relates to the provision or maintenance of public parking infrastructure or other transport infrastructure (for example, public transport infrastructure or cycling or pedestrian paths) in the Scheme area; or
- (b) is ancillary or incidental to purposes referred to in paragraph (a).

[Clause 77I inserted: SL 2020/252 r. 80.]

**77J. Payment in lieu of parking plan**

(1) A payment in lieu of parking plan is a plan setting out the following —

- (a) the area to which the plan applies;
- (b) the purposes for which money paid in accordance with any payment in lieu of parking condition imposed by the local government on an approval of development located in the area will be applied, which must —
  - (i) relate to the provision or maintenance of public parking infrastructure or other transport infrastructure (for example, public transport infrastructure or cycling or pedestrian paths) in the area to which the plan applies; or
  - (ii) be ancillary or incidental to purposes referred to in subparagraph (i);
- (c) any other information required by the Commission.

(2) The local government may —

- (a) prepare a payment in lieu of parking plan for any part of the Scheme area; or
- (b) adopt a payment in lieu of parking plan prepared by an owner of land in the part of the Scheme area to which the plan would apply.

- (3) A payment in lieu of parking plan must be prepared in the form approved by the Commission.

[Clause 77J inserted: SL 2020/252 r. 80.]

**77K. Advertising payment in lieu of parking plan**

- (1) If the local government resolves to prepare or adopt a payment in lieu of parking plan the local government must, unless the Commission otherwise agrees, advertise the proposed plan as follows —

- (a) publish in accordance with clause 87 the proposed plan and a notice giving details of —

(i) how the proposed plan is made available to the public in accordance with clause 87; and

(ii) the manner and form in which submissions may be made; and

(iii) the period for making submissions and the last day of that period;

- (b) give notice of the proposed plan in any other way, and carry out any other consultation, that the local government considers appropriate.

- (2) The period for making submissions specified in a notice under subclause (1)(a)(iii) must not be less than the period of 21 days after the day on which the notice is first published under subclause (1)(a).

- (3) After the expiry of the period within which submissions may be made, the local government must —

- (a) review the proposed payment in lieu of parking plan in the light of any submissions made; and

- (b) resolve —

(i) to approve the plan without modification; or

(ii) to approve the plan with modifications; or

(iii) not to approve the plan.

- (4) If the local government approves the payment in lieu of parking plan under subclause (3)(b)(i) or (ii), the local government must publish notice of the approval in accordance with clause 87.

*[Clause 77K inserted: SL 2020/252 r. 80.]*

**77L. Publication of payment in lieu of parking plan**

- (1) The local government must ensure that an up-to-date copy of each payment in lieu of parking plan in effect under this Scheme is published in accordance with clause 87.
- (2) Subclause (1) is an ongoing publication requirement for the purposes of clause 87(5)(a).

*[Clause 77L inserted: SL 2020/252 r. 80.]*

**77M. Procedure for amending payment in lieu of parking plan**

- (1) The procedures for making a payment in lieu of parking plan set out in clauses 77J to 77L, with any necessary changes, are to be followed in relation to an amendment to a payment in lieu of parking plan.
- (2) Despite subclause (1), the local government may approve an amendment to a payment in lieu of parking plan without advertising the amendment if, in the opinion of the local government, the amendment is a minor amendment.
- (3) The amendment of a payment in lieu of parking plan does not extend the period for which the plan has effect under clause 77N.

*[Clause 77M inserted: SL 2020/252 r. 80.]*

**77N. Duration of payment in lieu of parking plan**

- (1) Unless sooner revoked, a payment in lieu of parking plan has effect for —
- (a) the period of 10 years commencing on the day after the day on which the local government first publishes notice of the approval of the plan under clause 77K(4); or
- (b) a longer period approved by the Commission.

(2) The Commission may approve a longer period under subclause (1)(b) in relation to a payment in lieu of parking plan either before or after the plan is approved by the local government.

(3) A payment in lieu of parking plan may be revoked —

(a) by a subsequent payment in lieu of parking plan that expressly revokes the payment in lieu of parking plan; or

(b) by a notice of revocation —

(i) prepared by the local government; and

(ii) published by the local government in accordance with clause 87.

[Clause 77N inserted: SL 2020/252 r. 80.]

**77O. Payment in lieu of parking plan ceasing to be in effect when money has not been applied**

(1) This clause applies if —

(a) a person (the *relevant payer*) pays money to the local government in accordance with a payment in lieu of parking condition imposed on an approval of development in accordance with clause 77H; and

(b) any of the money, or any interest earned from the investment of the money, has not been applied or repaid under clause 77I; and

(c) the relevant payment in lieu of parking plan (the *former plan*) that was in effect for the development ceases to have effect under clause 77N(1); and

(d) as a result of the cessation, there is no payment in lieu of parking plan in effect for the area in which the development is located.

(2) During the period that applies under subclause (3), clause 77I applies as if the former plan continued to be the relevant payment in lieu of parking plan for the development.

(3) The period that applies for the purposes of subclause (2) is the period that —

(a) commences on the day (*cessation day*) on which the former plan ceases to have effect; and

(b) ends —

(i) if a new payment in lieu of parking plan comes into effect for the area in which the development is located within the period of 2 years commencing on cessation day — when the new plan comes into effect; or

(ii) otherwise — at the end of the 2-year period commencing on cessation day.

(4) If at the end of the 2-year period commencing on cessation day there is still no payment in lieu of parking plan in effect for the area in which the development is located, the local government must repay to the relevant payer any of the following that has not been applied or repaid under clause 77I before the end of that period —

(a) money paid as referred to in subclause (1)(a);

(b) interest earned from the investment of that money.

(5) Clause 77I(6) and (7) apply with any necessary changes to a requirement to repay money under subclause (4) as if it were a requirement under clause 77I(5).

[Clause 77O inserted: SL 2020/252 r. 80.]

### **Division 3 — Shared parking arrangements**

[Heading inserted: SL 2020/252 r. 80.]

#### **77P. When shared parking arrangement condition may be imposed**

The local government must not impose a shared parking arrangement condition on an approval of development under clause 68(2)(b) otherwise than in accordance with clause 77Q.

[Clause 77P inserted: SL 2020/252 r. 80.]



**77Q. Shared parking arrangement condition**

(1) If the local government grants approval for development that does not comply with an applicable minimum on-site parking requirement, the local government may under clause 68(2)(b) impose a condition requiring the following —

(a) that the owner of the land on which the development is to be located must enter into an arrangement (the *shared parking arrangement*) with an owner of other land (the *shared site*) —

(i) that provides for a number of car parking spaces equivalent to the parking space shortfall for the development to be made available on the shared site for the purposes of the development; and

(ii) that meets any other requirements specified by the local government;

(b) that the owner must apply to the local government for approval of the shared parking arrangement under this clause;

(c) that the development must not commence unless the local government has approved the shared parking arrangement under this clause;

(d) that a shared parking arrangement approved by the local government must not be terminated or varied without the approval of the local government.

(2) The local government must not impose a condition under subclause (1) unless the local government is satisfied that the owner of the shared site is prepared to enter into a shared parking arrangement that meets the requirements of the condition.

(3) Without limiting subclause (1)(a)(ii), the requirements specified under that subclause may include requirements relating to the form and content of the arrangement.

(4) An application for approval of a shared parking arrangement referred to in subclause (1)(b) must include the following —

(a) a copy of the shared parking arrangement;

(b) information about the matters referred to in subclause (6);

(c) a draft plan for the management of parking in relation to the development;

(d) any other information required by a relevant local planning policy.

(5) If an application is made in accordance with subclause (4), the local government may approve or refuse to approve the shared parking arrangement.

(6) In determining whether to approve the shared parking arrangement under subclause (5), the local government —

(a) may have regard to any relevant matters, including —

(i) whether the peak operation hours of the development will overlap with those of the shared site; and

(ii) whether the use of the car parking spaces to be made available on the shared site will impede the use of delivery or service areas on the shared site; and

(iii) any relevant local planning policy;

and

(b) must not approve the shared parking arrangement unless the local government is satisfied that —

(i) adequate car parking is likely to be available at all times for both the proposed development and the shared site; and

(ii) the relationship between the proposed development and the shared site will be such that the shared car parking spaces are likely to be used by persons using the proposed development.

[Clause 77Q inserted: SL 2020/252 r. 80.]

## **Part 10A — Bushfire risk management**

*[Heading inserted: Gazette 7 Dec 2015 p. 4884.]*

### **78A. Terms used**

In this Part, unless the contrary intention appears —

**AS 3959** means Australian Standard AS 3959 — Construction of buildings in bushfire-prone areas, as adopted from time to time as a referenced document for the purposes of the Building Code;

**BAL contour map**, in relation to a development site, means a scale map of an area that includes the development site —

- (a) prepared in accordance with State planning policy 3.7: Planning in Bushfire Prone Areas as part of a plan of subdivision that has been approved under Part 10 of the Act for the area; and
- (b) that shows the indicative bushfire attack levels (BAL) for the area;

**bushfire attack level assessment** means an assessment prepared in a manner and form set out in AS 3959 to determine a bushfire attack level (BAL) as set out in AS 3959;

**construction** of a building includes the erection, assembly or placement of a building but does not include the renovation, alteration, extension, improvement or repair of a building;

**development approval** means development approval of the local government obtained under Part 8;

**development site** means that part of a lot on which a building that is the subject of development stands or is to be constructed;

**habitable building** means a permanent or temporary structure on land that —

- (a) is fully or partially enclosed; and
- (b) has at least one wall of solid material and a roof of solid material; and
- (c) is used for a purpose that involves the use of the interior of the structure by people for living, working, studying or being entertained;

**specified building** means a structure of a kind specified in this Scheme as a kind of structure to which this Part applies in addition to its application to habitable buildings.

*[Clause 78A inserted: Gazette 7 Dec 2015 p. 4884-5.]*

**78B. Application of Part to development**

- (1) This Part does not apply to development unless the development is —
  - (a) the construction or use, or construction and use, of a single house or ancillary dwelling on a lot or lots with a total area of 1 100 m<sup>2</sup> or more; or
  - (b) the construction or use, or construction and use, of —
    - (i) a habitable building other than a single house or ancillary dwelling; or
    - (ii) a specified building.
- (2) The requirements in this Part are in addition to any provisions relating to development in a bushfire prone area that apply in a special control area.

*[Clause 78B inserted: Gazette 7 Dec 2015 p. 4886.]*

**78C. Determining whether development site is in a bushfire prone area**

For the purposes of this Part, a development site is subject, or likely to be subject, to bushfires and is referred to as being ***in a bushfire prone area*** if the development site is on land designated by an order made under the *Fire and Emergency Services Act 1998* section 18P as a bush fire prone area.

*[Clause 78C inserted: Gazette 7 Dec 2015 p. 4886.]*

**78D. Proposed development in a bushfire prone area**

- (1) Unless subclause (2) applies, before commencing any development on a development site a person (the ***developer***) must cause to be prepared a bushfire attack level assessment for the development site if the development site —
  - (a) is in a bushfire prone area; and

- (b) has been in a bushfire prone area for a period of at least 4 months.
- (2) A developer is not required under subclause (1) to cause to be prepared a bushfire attack level assessment for a development site if —
  - (a) a BAL contour map has been prepared in relation to the development site; or
  - (b) because of the terrain of the development site it is not possible to calculate the bushfire attack level of the development site.
- (3) The developer must have development approval to commence any development on the development site if —
  - (a) the bushfire attack level assessment prepared under subclause (1) calculates the bushfire attack level of the development site as BAL - 40 or BAL - Flame Zone; or
  - (b) a bushfire attack level assessment has not been prepared under subclause (1) but a BAL contour map prepared in relation to the development site indicates that the bushfire attack level of the development site is BAL - 40 or BAL - Flame Zone; or
  - (c) because of the terrain of the development site it is not possible to calculate the bushfire attack level of the development site.
- (4) Subclause (3) applies —
  - (a) in addition to any requirement in this Scheme for development approval to be obtained; and
  - (b) despite any exemption in this Scheme from the requirement to obtain development approval.

*[Clause 78D inserted: Gazette 7 Dec 2015 p. 4886-7.]*

**78E. Matters to be considered for development approval**

- (1) In considering an application for development approval for development to which this Part applies, the local government is to have regard to the bushfire resistant construction requirements of the Building Code.

- (2) The matters referred to in subclause (1) are in addition to any other matters that the local government is to have regard to in considering the application in accordance with this Scheme.

*[Clause 78E inserted: Gazette 7 Dec 2015 p. 4887-8.]*

**78F. Transitional provisions for sites in new bushfire prone areas**

- (1) In this clause, each of these terms has the meaning given in the *Building Act 2011* section 3 —

***building permit***

***building work***

- (2) In this clause —

***application*** means an application under the *Building Act 2011* for a building permit;

***transitional permit*** means a building permit granted in respect of an application to do building work on a development site if —

- (a) the site was not in a bushfire prone area when the application was made; or  
(b) the site had been in a bushfire prone area for a period of less than 4 months when the application was made.

- (3) Clause 78D does not apply to the commencement of development to which a transitional permit applies.

*[Clause 78F inserted: Gazette 7 Dec 2015 p. 4888.]*

**78G. Transitional provisions relating to *Planning and Development (Local Planning Schemes) Amendment Regulations 2015***

- (1) In this clause —

***commencement day*** means the day on which the *Planning and Development (Local Planning Schemes) Amendment Regulations 2015* clause 5 comes into operation;

***previous bushfire provisions*** means any provisions in this Scheme that, immediately before commencement day, required a developer in

an area that was identified under this Scheme as being an area that is subject, or likely to be subject to bushfires to —

- (a) cause to be prepared a bushfire attack level assessment for a development site; or
- (b) to have development approval to commence development on a development site because —
  - (i) a bushfire attack level assessment prepared for the development site calculates the bushfire attack level of the development site as BAL - 40 or BAL - Flame Zone; or
  - (ii) it is not possible to calculate the bushfire attack level of the development site because of the terrain of the development site;

***transitional development site*** means a development site that is located in an area that —

- (a) is a bushfire prone area; and
- (b) immediately before commencement day was an area identified in any way under this Scheme as being an area that is subject, or likely to be subject, to bushfires;

***transition period*** means the period of 4 months beginning on commencement day.

- (2) Clause 78D(1) applies in respect of development on a transitional development site if —
  - (a) the development is commenced within the transition period; and
  - (b) a developer would have been required under the previous bushfire provisions to prepare a bushfire attack level assessment for the development site.
- (3) Clause 78D(3) applies in respect of development on a transitional development site if —
  - (a) the development is commenced within the transition period; and
  - (b) a developer would have been required under the previous bushfire provisions to have development approval to commence the development.

- (4) For the purposes of paragraph (b) of the definition of *transitional permit* in clause 78F(2), an area that immediately before commencement day was identified in any way under this Scheme as being an area that is subject, or likely to be subject, to bushfires is to be taken on and from commencement day to have been in a bushfire prone area for a period of at least 4 months.

*[Clause 78G inserted: Gazette 7 Dec 2015 p. 4888-90.]*

**Part 10B — Exemptions from planning requirements for state of emergency**

*[Heading inserted: SL 2020/30 r. 5.]*

**78H. Minister may issue notice of exemption from planning requirements in state of emergency**

- (1) If a state of emergency declaration is in force under the *Emergency Management Act 2005* Part 5 in relation to the whole or any area or areas of the State, the Minister may, by notice in writing, issue 1 or more exemptions from planning requirements under this Scheme.
- (2) A notice under subclause (1) can be issued only if the Minister considers that it is necessary to do so for the purpose of facilitating response to, or recovery from, the emergency to which the state of emergency declaration relates.
- (3) A reference in subclause (1) to a planning requirement —
- (a) includes, without limiting that subclause —
    - (i) a requirement to obtain development approval; and
    - (ii) a requirement under a condition of development approval; and
    - (iii) a requirement relating to the permissibility of uses of land; and
    - (iv) a requirement relating to works; and
    - (v) a provision having the effect that a non-conforming use of land is no longer permitted because of a discontinuance of that non-conforming use; and



- (vi) a requirement in relation to consultation, advertisement, applications, time limits or forms;
- but
- (b) does not include an environmental condition that applies to this Scheme as a result of an assessment carried out under the *Environmental Protection Act 1986*.
- (4) A notice under subclause (1) may be issued whether or not the state of emergency declaration applies in relation to any part of the Scheme area, but only if it is necessary for the purpose referred to in subclause (2).
- (5) An exemption in a notice under subclause (1) may —
  - (a) apply generally or to land, or classes of land, specified in the notice; and
  - (b) be unconditional or subject to any conditions specified in the notice.
- (6) The Minister —
  - (a) may, by notice in writing, amend a notice under subclause (1) for the purpose referred to in subclause (2); and
  - (b) may, by notice in writing, revoke a notice under subclause (1); and
  - (c) must under paragraph (b) revoke a notice under subclause (1) if the Minister considers that the notice is no longer necessary for the purpose referred to in subclause (2).

[Clause 78H inserted: SL 2020/30 r. 5.]

**78I. Process for issuing notice under cl. 78H**

- (1) A notice under clause 78H(1) or (6) must be signed by the Minister and published in the *Gazette*.
- (2) A notice under clause 78H(1) or (6) of this Scheme may be combined in a single instrument with 1 or more other notices of that kind issued under 1 or more other local planning schemes or all other local planning schemes.
- (3) Before issuing a notice under clause 78H(1) or (6), the Minister must, unless the Minister considers that it is impracticable to do so because

of the urgency of the circumstances, make reasonable endeavours to consult in relation to the notice —

- (a) the Commission; and
- (b) WALGA.

- (4) The Minister must ensure that a copy of the notice is sent to the local government or WALGA.
- (5) A failure to comply with subclause (3) or (4) in relation to a notice does not invalidate the notice.

*[Clause 78I inserted: SL 2020/30 r. 5.]*

**78J. Coming into effect and cessation of notices and exemptions under cl. 78H**

- (1) A notice under clause 78H(1) or (6) must state the date and time at which it is signed.
- (2) A notice under clause 78H(1) must also state, for each exemption under the notice, that the exemption is to expire —
  - (a) when the state of emergency declaration ceases to be in force; or
  - (b) at a date and time stated in the notice, which must not be later than the end of the period of 5 years beginning on the day on which the notice is signed.
- (3) A notice under clause 78H(1) or (6) takes effect when it is signed.
- (4) An exemption under a notice under clause 78H(1) remains in effect, subject to any amendment or revocation of the notice under clause 78H(6), until the time of expiry stated under subclause (2) for that exemption.
- (5) When an exemption under a notice under clause 78H(1) is amended or ceases to be in effect, the provisions of this Scheme in relation to non-conforming uses of land do not apply in relation to any use or development of land that was permitted only because of the effect of the exemption prior to the amendment or cessation.

*[Clause 78J inserted: SL 2020/30 r. 5.]*

## **Part 10 — Enforcement and administration**

### **Division 1 — Powers of local government**

#### **78. Powers of local government**

- (1) For the purposes of implementing this Scheme the local government may —
  - (a) enter into an agreement in respect of a matter relating to this Scheme with any owner, occupier or other person having an interest in land affected by this Scheme; and
  - (b) deal with or dispose of any land in the Scheme area which it has acquired in accordance with the *Planning and Development Act 2005* Part 11 Division 4.
- (2) The local government may only deal with or dispose of land acquired by the local government for the purpose of a local reserve for a use of the land that is compatible with the purpose for which it is reserved.

#### **79. Entry and inspection powers**

- (1) The local government CEO may, by instrument in writing, designate an officer of the local government as an authorised officer for the purposes of this clause.
- (2) An authorised officer may, for the purpose of monitoring whether the local planning scheme is being complied with, at any reasonable time and with any assistance reasonably required —
  - (a) enter any building or land in the Scheme area; and
  - (b) inspect the building or land and any thing in or on the building or land.

#### **80. Repair of existing advertisements**

- (1) The local government may require the owner of an advertisement located in the Scheme area to repair the advertisement if, in the opinion of the local government, the advertisement has deteriorated to a point where it is in conflict with the aims of this Scheme.
- (2) A requirement referred to in subclause (1) must —
  - (a) be in the form of a written notice given to the person; and

- (b) specify the advertisement the subject of the requirement; and
  - (c) set out clear reasons for the requirement; and
  - (d) set out full details of the action or alternative courses of action to be taken by the person; and
  - (e) specify the period, not being a period of less than 60 days from the day on which the notice is given to the person, within which the requirement must be complied with.
- (3) If the local government does not know who the owner of an advertisement is, the local government may give a notice referred to in subclause (1) to the owner of the land on which the advertisement is located and direct the owner of the land to give the notice to the owner of the advertisement within a period specified by the local government.
- (4) If an owner of land on which an advertisement is located does not give to the owner of the advertisement a notice as directed under subclause (3), the owner of the land is to be taken to be the owner of the advertisement.
- (5) A person to whom a notice under this clause is given may apply for a review of the requirement to the State Administrative Tribunal in accordance with the *Planning and Development Act 2005* Part 14.

### **Division 2 — Delegations**

#### **81. Terms used**

In this Division —

*absolute majority* has the meaning given in the *Local Government Act 1995* section 1.4;

*committee* means a committee established under the *Local Government Act 1995* section 5.8.

#### **82. Delegations by local government**

- (1) The local government may, by resolution, delegate to a committee or to the local government CEO the exercise of any of the local government's powers or the discharge of any of the local government's duties under this Scheme other than this power of delegation.

- (2) A resolution referred to in subclause (1) must be by absolute majority of the council of the local government.
- (3) The delegation must be in writing and may be general or as otherwise provided in the instrument of delegation.

**83. Local government CEO may delegate powers**

- (1) The local government CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO's functions under this Scheme other than this power of delegation.
- (2) A delegation under this clause must be in writing and may be general or as otherwise provided in the instrument of delegation.
- (3) Subject to any conditions imposed by the local government on its delegation to the local government CEO under clause 82, this clause extends to a power or duty the exercise or discharge of which has been delegated by the local government to the CEO under that clause.

**84. Other matters relevant to delegations under this Division**

The *Local Government Act 1995* sections 5.45 and 5.46 apply to a delegation made under this Division as if the delegation were a delegation under Part 5 Division 4 of that Act.

**Division 3 — Miscellaneous**

**85. Agreement to use of material provided for Scheme purposes**

The local government may refuse to accept an application made under this Scheme if the local government is not satisfied that there is in place an agreement for the local government to use any copyrighted material provided in support of the application —

- (a) for the purposes of advertising the application or implementing a decision on the application; and
- (b) for zero remuneration.

**Part 11 — Forms referred to in this Scheme**

**86. Forms referred to in this Scheme**

- (1) The form of an application for development approval referred to in clause 62(1)(a) is as follows —

**Application for development approval**

Owner details		
Name:		
ABN (if applicable):		
Address: .....		
.....		Postcode: .....
Phone:	Fax:	Email:
Work: .....	.....	.....
Home: .....		
Mobile: .....		
Contact person for correspondence:		
Signature:		Date:
Signature:		Date:
<p><i>The signature of the owner(s) is required on all applications. This application will not proceed without that signature. For the purposes of signing this application an owner includes the persons referred to in the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2 clause 62(2).</i></p>		

Applicant details (if different from owner)
Name:
Address: .....
..... Postcode: .....

Phone: Work: ..... Home: ..... Mobile: .....	Fax: .....	Email: .....
Contact person for correspondence:		
The information and plans provided with this application may be made available by the local government for public viewing in connection with the application. <input type="checkbox"/> Yes <input type="checkbox"/> No		
Signature:		Date:

<b>Property details</b>		
Lot No:	House/Street No:	Location No:
Diagram or Plan No:	Certificate of Title Vol. No:	Folio:
Title encumbrances (e.g. easements, restrictive covenants): .....		
Street name:		Suburb:
Nearest street intersection:		

<b>Proposed development</b>	
Nature of development:	<input type="checkbox"/> Works <input type="checkbox"/> Use <input type="checkbox"/> Works and use
Is an exemption from development claimed for part of the development?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, is the exemption for:	<input type="checkbox"/> Works <input type="checkbox"/> Use
Description of proposed works and/or land use: .....	

Description of exemption claimed (if relevant):
Nature of any existing buildings and/or land use:
Approximate cost of proposed development:
Estimated time of completion:

<i>OFFICE USE ONLY</i>	
Acceptance Officer's initials:	Date received:
Local government reference No:	

*(The content of the form of application must conform with this form but minor variations may be permitted to the format.)*

- (2) The form for providing additional information for development approval for advertisements referred to in clause 62(3) is as follows —

**Additional information for development approval for advertisements**

*Note: To be completed in addition to the Application for development approval form.*

1. Description of property on which advertisement is to be displayed including full details of its proposed position within that property: ..... .....
2. Details of proposed sign: (a) Type of structure on which advertisement is to be erected (i.e. freestanding, wall mounted, other): ..... (b) Height: ..... Width: ..... Depth: ..... (c) Colours to be used: ..... (d) Height above ground level —





**Notice of public advertisement of planning proposal**

The local government has received an application to use and/or develop land for the following purpose and public comments are invited.		
Lot No:	Street:	Suburb:
Proposal: .....		
.....		
.....		
Details of the proposal are available to the public at .....		
Submissions may be made on the proposal in the period ending on the .....		
day of ..... Comments on the proposal may be submitted to the local government in writing on or before that day.		
Signed:		Dated:
.....		.....
for and on behalf of the City/Town/Shire of: .....		

- (4) The form of a notice of determination on an application for development approval referred to in clause 70 is as follows —

*Planning and Development Act 2005*

City/Town/Shire of .....

**Notice of determination on application for development approval**

Location:	
Lot:	Plan/Diagram:
Vol. No:	Folio No:
Application date:	Received on:
Description of proposed development: .....	
.....	

The application for development approval is:

- Approved subject to the following conditions
- Refused for the following reason(s)

Conditions/reasons for refusal:

.....

.....

.....

Date of determination: .....

Note 1: If the development the subject of this approval is not substantially commenced within a period of 2 years, or another period specified in the approval after the date of the determination, the approval will lapse and be of no further effect.

Note 2: Where an approval has so lapsed, no development must be carried out without the further approval of the local government having first been sought and obtained.

Note 3: If an applicant or owner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with the *Planning and Development Act 2005* Part 14. An application must be made within 28 days of the determination.

Signed: \_\_\_\_\_ Dated: \_\_\_\_\_

.....

for and on behalf of the City/Town/Shire of: .....

*(The content of the determination notice must conform to this form but minor variations may be permitted to the format.)*

*[Clause 86 amended: SL 2020/252 r. 78.]*

**Part 12 — Miscellaneous**

*[Heading inserted: SL 2020/252 r. 79.]*

- 87. Requirements for making documents available to public**
- (1) This clause applies if under a provision of this Scheme the local government is required to publish in accordance with this clause a notice, plan, application or other document (the **document**).

- (2) The local government must make the document available in accordance with the applicable requirements of subclauses (3) to (5).

Note for this subclause:

Under clause 88, the Commission may approve varied requirements that apply if it is not practicable for the local government to publish documents in accordance with subclauses (3) to (5).

- (3) For all documents, the local government must —
- (a) publish on the website of the local government —
    - (i) the document; or
    - (ii) a hyperlink to a webpage on which the document is published;
  - and
  - (b) if it is reasonably practicable to do so — make a copy of the document available for public inspection at a place in the district of the local government during normal business hours.
- (4) If the document is a notice and the local government considers that it is appropriate in the circumstances for the notice to be published in a newspaper, the local government must also ensure that the notice is published in a newspaper circulating in the relevant locality in the local government district.
- (5) The local government must ensure that the document remains published under subclause (3)(a) and (if applicable) available for public inspection under subclause (3)(b) —
- (a) if the document is published in compliance with a requirement that is expressed to be an ongoing publication requirement — at all times that the document is in effect; or
  - (b) if the document is published in compliance with a requirement to advertise for submissions under this Scheme — during the whole of the period within which submissions may be made; or
  - (c) if paragraphs (a) and (b) do not apply — during a period that the local government considers is reasonable.

*[Clause 87 inserted: SL 2020/252 r. 79.]*

**88. Commission may approve varied requirements for publication of documents and advertising of complex applications**

- (1) In this clause —
- complex application notice and signage requirements* means the requirements of clause 64(3)(b) and (c) in relation to advertising complex applications;
- document* has the meaning given in clause 87(1);
- publication requirements* means the requirements of clause 87(3) to (5) in relation to making documents available to the public.
- (2) If the Commission considers that it is not practicable for the local government to comply with any of the publication requirements in relation to documents that it is or may become required to publish, the Commission may give the local government a written notice approving varied requirements that apply in relation to the local government making documents available to the public.
- (3) If a notice under subclause (2) is in effect, the local government is taken to comply with the applicable publication requirements in relation to a document if the local government complies with those requirements as varied by the notice.
- (4) If the Commission considers that it is not practicable for the local government to comply with any of the complex application notice and signage requirements in relation to complex applications it is or may become required to advertise, the Commission may give the local government a written notice approving varied requirements that apply in relation to the local government advertising complex applications.
- (5) If a notice under subclause (4) is in effect, a complex application made to the local government is taken to be advertised in compliance with the complex application notice and signage requirements if it is advertised in compliance with those requirements as varied by the notice.
- (6) A notice under subclause (2) or (4) —
- (a) must state whether it has effect indefinitely or for a period specified in the notice; and
  - (b) takes effect when it is given to the local government; and

- (c) ceases to be in effect —
  - (i) if the Commission gives the local government a further written notice revoking it; or
  - (ii) at the end of the period (if any) specified under paragraph (a).

[Clause 88 inserted: SL 2020/252 r. 79.]

**Part 13 — Transitional provisions for Planning Regulations  
Amendment Regulations 2020**

[Heading inserted: SL 2020/252 r. 79.]

**89. Terms used**

In this Part —

**amended deemed provisions** means the deemed provisions of this Scheme set out in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 as amended by the *Planning Regulations Amendment Regulations 2020* Part 2 Division 2;

**commencement day** means the day on which the *Planning Regulations Amendment Regulations 2020* Part 2 Division 2 comes into operation;

**former deemed provisions** means the deemed provisions of this Scheme set out in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 as in force immediately before commencement day.

[Clause 89 inserted: SL 2020/252 r. 79.]

**90. Application of amendments made by Planning Regulations  
Amendment Regulations 2020**

- (1) The amendments to Part 7 made by the *Planning Regulations Amendment Regulations 2020* do not apply in relation to development —
  - (a) that commenced before commencement day; or
  - (b) for which development approval was granted before commencement day.

(2) The amendments to Parts 8 and 9 made by the *Planning Regulations Amendment Regulations 2020* do not apply in relation to an application for development approval made before commencement day.

(3) [Part 9A does not apply in relation to development approval granted on an application made before the day on which the \*Planning Regulations Amendment Regulations 2020\* Part 2 Division 3 comes into operation.](#)

[Clause 90 inserted: SL 2020/252 r. ~~79~~79; amended: SL 2020/252 r. 81.]

## **91. Advertising processes in progress on commencement day**

(1) In this clause —

***relevant advertising process*** —

(a) means any of the following processes —

- (i) the advertising of a proposed local planning policy, or amendment to a local planning policy, under clause 4;
- (ii) the advertising of the proposed designation of a heritage area, or the proposed amendment or revocation of the designation of a heritage area, under clause 9;
- (iii) the advertising of a proposed structure plan, or amendment to a structure plan, under clause 18;
- (iv) the advertising of a proposed local development plan, or amendment to a local development plan, under clause 50;

and

(b) includes the giving of notices to persons or public authorities or the erection of signs as part of a process referred to in paragraph (a).

(2) A relevant advertising process that commenced, but was not completed, before commencement day may be completed in accordance with the relevant requirements of the former deemed provisions rather than the amended deemed provisions.

- (3) If the relevant advertising process for a policy, designation, plan or amendment (the *relevant planning instrument*) is completed in accordance with subclause (2) —
- (a) the relevant planning instrument is taken to have been advertised in compliance with the relevant requirements of the amended deemed provisions; and
  - (b) this Scheme applies with any necessary changes to the relevant planning instrument.

[Clause 91 inserted: SL 2020/252 r. 79.]

**92. Activity centre plans or structure plans in effect before commencement day**

- (1) In this clause —
- current activity centre plan** —
- (a) means an activity centre plan under this Scheme for which the approval is in effect immediately before commencement day; and
  - (b) includes a plan taken to be an activity centre plan under the *Planning and Development (Local Planning Schemes) Regulations 2015* regulation 79 that is in effect under this Scheme immediately before commencement day;
- current structure plan** —
- (a) means a structure plan under this Scheme for which the approval is in effect immediately before commencement day; and
  - (b) includes a plan taken to be a structure plan under the *Planning and Development (Local Planning Schemes) Regulations 2015* regulation 79 that is in effect under this Scheme immediately before commencement day.
- (2) On and after commencement day, a current activity centre plan —
- (a) continues in effect under this Scheme; and
  - (b) is taken to be a precinct structure plan approved under this Scheme for which the approval has effect; and
  - (c) may be amended or revoked accordingly.



- (3) On and after commencement day, a current structure plan —
  - (a) continues in effect under this Scheme; and
  - (b) is taken to be a standard structure plan approved under this Scheme for which the approval has effect; and
  - (c) may be amended or revoked accordingly.
- (4) Clause 28 of the amended deemed provisions applies to a structure plan, whether it is a plan referred to in subclause (2) or (3) or a plan approved under this Scheme on or after commencement day.

*[Clause 92 inserted: SL 2020/252 r. 79.]*

**93. Activity centre plans or amendments in course of preparation on commencement day**

- (1) In this clause —  
***preparation and approval process***, in relation to an activity centre plan or amendment to an activity centre plan, means the process for preparing or accepting, advertising, reporting on, modifying and approving the plan or amendment set out in Part 5 of the former deemed provisions.
- (2) This clause applies to an activity centre plan or amendment to an activity centre plan if —
  - (a) 1 or more steps in the preparation and approval process for the plan or amendment occurred before commencement day under Part 5 of the former deemed provisions; but
  - (b) the Commission did not approve or refuse to approve the proposed plan or amendment before commencement day.
- (3) If the process of advertising the proposed activity centre plan or amendment under clause 34 of the former deemed provisions commenced but was not completed before commencement day —
  - (a) that advertising process may be completed in accordance with the requirements of that clause; and
  - (b) after the advertising process referred to in paragraph (a) is completed —
    - (i) the proposed plan or amendment is taken to be a proposed precinct structure plan or amendment to a

precinct structure plan that has been advertised in compliance with the requirements of clause 18 of the amended deemed provisions; and

- (ii) the other steps taken before commencement day in the preparation and approval process for the plan or amendment are taken to have been taken under and in accordance with the equivalent provision of Part 4 of the amended deemed provisions.
- (4) If subclause (3) does not apply, on and after commencement day —
- (a) the proposed activity centre plan or amendment is taken to be a proposed precinct structure plan or amendment to a precinct structure plan; and
  - (b) the steps taken before commencement day in the preparation and approval process for the plan or amendment are taken to have been taken under and in accordance with the equivalent provision of Part 4 of the amended deemed provisions.

*[Clause 93 inserted: SL 2020/252 r. 79.]*




### Schedule 3 — Legends used in Scheme

[r. 9(2)(b)]




**1. Reserve legends used in local planning scheme maps**




Land reserved under a local planning scheme is to be identified on the scheme map using the legend set out in the Table.

**Table — Reserve legends used in Scheme**




Reserve name	Appearance
Public Open Space	 <p><b>Mid green hatched</b>  <b>RGB Colours</b>                      FILL:                      Red: 0                      Green: 176                      Blue: 80                      Style: Hatch                      Angle +45.00°                      Separation 1.27mm                      Width 0.035mm</p>
Environmental Conservation	 <p><b>Yellow green hatched</b>  <b>RGB Colours</b>                      FILL:                      Red: 155                      Green: 187                      Blue: 89                      Style: Hatch                      Angle +45.00°                      Separation 1.27mm                      Width 0.035mm</p>
State Forest	 <p><b>Mustard yellow hatched</b>  <b>RGB Colours</b>                      FILL:                      Red: 255                      Green: 204                      Blue: 01                      Style: Hatch                      Angle +45.00°                      Separation 1.27mm                      Width 0.035mm</p>




**cl. 1**

Reserve name	Appearance	
Civic and Community		<p><b>Orange hatched</b></p> <p><b>RGB Colours</b></p> <p>FILL:                      Red: 255                      Green: 153                      Blue: 0</p> <p>Style: Hatch                      Angle +45.00°                      Separation 1.27mm                      Width 0.035mm</p>
Social Care Facilities		<p><b>Orange hatched with black label text "SC"</b></p> <p><b>RGB Colours</b></p> <p>FILL:                      Red: 255                      Green: 153                      Blue: 0</p> <p>Style: Hatch                      Angle +45.00°                      Separation 1.27mm                      Width 0.035mm</p> <p>BLACK LABEL (Text "SC")</p>
Cultural Facilities		<p><b>Orange hatched with black label text "C"</b></p> <p><b>RGB Colours</b></p> <p>FILL:                      Red: 255                      Green: 153                      Blue: 0</p> <p>Style: Hatch                      Angle +45.00°                      Separation 1.27mm                      Width 0.035mm</p> <p>BLACK LABEL (Text "C")</p>



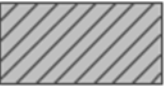
Reserve name	Appearance	
Public Purposes		<p><b>Yellow hatched</b></p> <p><b>RGB Colours</b></p> <p>FILL:                      Red: 255                      Green: 255                      Blue: 0</p> <p>Style: Hatch                      Angle +45.00°                      Separation 1.27mm                      Width 0.035mm</p>
Medical Services		<p><b>Yellow hatched with black label text "M"</b></p> <p><b>RGB Colours</b></p> <p>FILL:                      Red: 255                      Green: 255                      Blue: 0</p> <p>Style: Hatch                      Angle +45.00°                      Separation 1.27mm                      Width 0.035mm</p> <p>BLACK LABEL (Text "M")</p>
Infrastructure Services		<p><b>Yellow hatched with black label text "IS"</b></p> <p><b>RGB Colours</b></p> <p>FILL:                      Red: 255                      Green: 255                      Blue: 0</p> <p>Style: Hatch                      Angle +45.00°                      Separation 1.27mm                      Width 0.035mm</p> <p>BLACK LABEL (Text "IS")</p>

**cl. 1**


Reserve name	Appearance	
Education		<p><b>Yellow hatched with black label text “E”</b></p> <p><b>RGB Colours</b></p> <p>FILL:                      Red: 255                      Green: 255                      Blue: 0</p> <p>Style: Hatch                      Angle +45.00°                      Separation 1.27mm                      Width 0.035mm</p> <p>BLACK LABEL (Text “E”)</p>
Emergency Services		<p><b>Yellow hatched with black label text “ES”</b></p> <p><b>RGB Colours</b></p> <p>FILL:                      Red: 255                      Green: 255                      Blue: 0</p> <p>Style: Hatch                      Angle +45.00°                      Separation 1.27mm                      Width 0.035mm</p> <p>BLACK LABEL (Text “ES”)</p>
Heritage		<p><b>Yellow hatched with black label text “H”</b></p> <p><b>RGB Colours</b></p> <p>FILL:                      Red: 255                      Green: 255                      Blue: 0</p> <p>Style: Hatch                      Angle +45.00°                      Separation 1.27mm                      Width 0.035mm</p> <p>BLACK LABEL (Text “H”)</p>

Reserve name	Appearance	
Government Services		<p><b>Yellow hatched with black label text “GS”</b></p> <p><b>RGB Colours</b></p> <p>FILL:                      Red: 255                      Green: 255                      Blue: 0</p> <p>Style: Hatch                      Angle +45.00°                      Separation 1.27mm                      Width 0.035mm</p> <p>BLACK LABEL (Text “GS”)</p>
Recreational		<p><b>Yellow hatched with black label text “R”</b></p> <p><b>RGB Colours</b></p> <p>FILL:                      Red: 255                      Green: 255                      Blue: 0</p> <p>Style: Hatch                      Angle +45.00°                      Separation 1.27mm                      Width 0.035mm</p> <p>BLACK LABEL (Text “R”)</p>
Cemetery		<p><b>Yellow hatched with black label text “CE”</b></p> <p><b>RGB Colours</b></p> <p>FILL:                      Red: 255                      Green: 255                      Blue: 0</p> <p>Style: Hatch                      Angle +45.00°                      Separation 1.27mm                      Width 0.035mm</p> <p>BLACK LABEL (Text “CE”)</p>

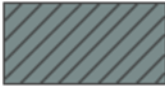

**cl. 1**

Reserve name	Appearance	
Car Park		<p><b>Yellow hatched with black label text “CP”</b>  <b>RGB Colours</b>                      FILL:                      Red: 255                      Green: 255                      Blue: 0                      Style: Hatch                      Angle +45.00°                      Separation 1.27mm                      Width 0.035mm                      BLACK LABEL (Text “CP”)</p>
Drainage / Waterway		<p><b>Pale blue hatched</b>  <b>RGB Colours</b>                      FILL:                      Red: 218                      Green: 238                      Blue: 243                      Style: Hatch                      Angle +45.00°                      Separation 1.27mm                      Width 0.035mm</p>
Railways		<p><b>Grey hatched</b>  <b>RGB Colours</b>                      FILL:                      Red: 191                      Green: 191                      Blue: 191                      Style: Hatch                      Angle +45.00°                      Separation 1.27mm                      Width 0.035mm</p>



Reserve name	Appearance
Primary Distributor Road	 <p><b>Red hatched</b>  <b>RGB Colours</b>                      FILL:                      Red: 255                      Green: 0                      Blue: 0                      Style: Hatch                      Angle +45.00°                      Separation 1.27mm                      Width 0.035mm</p>
District Distributor Road	 <p><b>Blue hatched</b>  <b>RGB Colours</b>                      FILL:                      Red: 0                      Green: 93                      Blue: 173                      Style: Hatch                      Angle +45.00°                      Separation 1.27mm                      Width 0.035mm</p>
Local Distributor Road	 <p><b>Light red hatched</b>  <b>RGB Colours</b>                      FILL:                      Red: 247                      Green: 164                      Blue: 155                      Style: Hatch                      Angle +45.00°                      Separation 1.27mm                      Width 0.035mm</p>
Local Road	 <p><b>White</b>  <b>RGB Colours</b>                      FILL:                      Red: 255                      Green: 255                      Blue: 255</p>


**cl. 2**


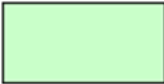


<b>Reserve name</b>	<b>Appearance</b>
Strategic Infrastructure	 <p><b>Dark grey hatched</b>  <b>RGB Colours</b>            FILL:            Red: 122            Green: 139            Blue: 139            Style: Hatch            Angle +45.00°            Separation 1.27mm            Width. 0.035mm</p>
Special Purpose Reserve	 <p><b>Blue and white checked</b>  <b>RGB Colours</b>            FILL:            Red: 38            Green: 101            Blue: 137            Style: Crosshatching            Angle 1 +45.00°            Angle 2 -45.00°            Separation 1.27mm            Width 0.035mm</p>

**2.      Zone legends used in local planning scheme maps**




Land zoned under a local planning scheme is to be identified on the scheme map using the legend set out in the Table.






**Table — Zone legends used in Scheme**

<b>Zone name</b>	<b>Appearance</b>
Residential	 <p><b>Light red brown</b>  <b>RGB Colours</b>            FILL:            Red: 255            Green: 222            Blue: 178</p>





<b>Zone name</b>	<b>Appearance</b>
Urban Development	 <p><b>Light cream with red brown border</b>  <b>RGB Colours</b>                      FILL:                      Red: 253                      Green: 253                      Blue: 217                      Border:                      Red: 247                      Green: 150                      Blue: 70                      Width: 1.5mm                      Offset: -0.75</p>
Settlement	 <p><b>Light orange</b>  <b>RGB Colours</b>                      FILL:                      Red: 255                      Green: 170                      Blue: 0</p>
Rural	 <p><b>Light green</b>  <b>RGB Colours</b>                      FILL:                      Red: 201                      Green: 255                      Blue: 201</p>
Rural Residential	 <p><b>Medium brown</b>  <b>RGB Colours</b>                      FILL:                      Red: 138                      Green: 101                      Blue: 69</p>
Rural Smallholdings	 <p><b>Jade green</b>  <b>RGB Colours</b>                      FILL:                      Red: 0                      Green: 168                      Blue: 132</p>

**cl. 2**

<b>Zone name</b>	<b>Appearance</b>
Rural Townsite Zone	 <p><b>Light green with light blue border</b>  <b>RGB Colours</b>            FILL:            Red: 201            Green: 255            Blue: 201            Border:            Red: 0            Green: 176            Blue: 240            Width: 1.5mm            Offset: -0.75</p>
Environmental Conservation	 <p><b>Olive green</b>  <b>RGB Colours</b>            FILL:            Red: 62            Green: 85            Blue: 9</p>
Light Industry	 <p><b>Light purple</b>  <b>RGB Colours</b>            FILL:            Red: 212            Green: 185            Blue: 218</p>
General Industry	 <p><b>Deep purple</b>  <b>RGB Colours</b>            FILL:            Red: 188            Green: 140            Blue: 191</p>

Zone name	Appearance
Industrial Development	 <p><b>Light cream with magenta border</b>  <b>RGB Colours</b>                      FILL:                      Red: 253                      Green: 253                      Blue: 217                      Border:                      Red: 158                      Green: 36                      Blue: 134                      Width: 1.5mm                      Offset: -0.75</p>
Strategic Industry	 <p><b>Magenta</b>  <b>RGB Colours</b>                      FILL:                      Red: 158                      Green: 36                      Blue: 134</p>
Commercial	 <p><b>Mid blue</b>  <b>RGB Colours</b>                      FILL:                      Red: 0                      Green: 176                      Blue: 240</p>
Mixed Use	 <p><b>Pink</b>  <b>RGB Colours</b>                      FILL:                      Red: 228                      Green: 128                      Blue: 171</p>
Service Commercial	 <p><b>Light blue</b>  <b>RGB Colours</b>                      FILL:                      Red: 198                      Green: 219                      Blue: 239</p>




**cl. 2**

<b>Zone name</b>	<b>Appearance</b>
Centre	 <p><b>Light cream with light blue border</b>  <b>RGB Colours</b>            FILL:            Red: 253            Green: 253            Blue: 217            Border:            Red: 77            Green: 172            Blue: 226            Width: 1.5mm            Offset: -0.75</p>
Tourism	 <p><b>Orange</b>  <b>RGB Colours</b>            FILL:            Red: 255            Green: 110            Blue: 0</p>
Private clubs, institutions and place of worship	 <p><b>Yellow green</b>  <b>RGB Colours</b>            FILL:            Red: 146            Green: 208            Blue: 80</p>
Special Use Zone	 <p><b>White with red border</b>  <b>RGB Colours</b>            FILL:            Red: 255            Green: 255            Blue: 255            Border:            Red: 255            Green: 0            Blue: 0            Width: 1.5mm            Offset: -0.75             BLACK TEXT LABEL FOR            SPECIFIC PURPOSE</p>



**3. Additional information used in local planning scheme maps**

Additional information about land or waters in the scheme area is to be identified on the scheme map using the legend set out in the Table.



**Table - Additional information used in local planning scheme maps**

Additional information	Appearance
Oceans/Waterways	 <p><b>Pale blue</b>  <b>RGB Colours</b>                      FILL:                      Red: 219                      Green: 255                      Blue: 255</p>
No Zone	 <p><b>White</b>  <b>RGB Colours</b>                      FILL:                      Red: 0                      Green: 0                      Blue: 0</p>
Additional Use	 <p><b>Transparent with red dashed border with text “A”</b>  <b>RGB Colours</b>                      FILL: NA                      Border Dash:                      Red: 255                      Green: 0                      Blue: 0                      Text:                      Red: 255                      Green: 0                      Blue: 0</p>



**cl. 3**



Additional information	Appearance
Restricted Use	 <p><b>Transparent with red dashed border with text “R”</b></p> <p><b>RGB Colours</b>            FILL: NA            Border Dash:            Red: 255            Green: 0            Blue: 0</p> <p>Text:            Red: 255            Green: 0            Blue: 0</p>
Special Control Area – General	 <p><b>Inwards triangled border with boxed SCA labelled</b>            (Label related to Scheme Text)</p> <p><b>RGB Colours</b>            FILL: NA            Border Triangle:            Red: 255            Green: 0            Blue: 0</p> <p>Text:            Red: 0            Green: 0            Blue: 0            (Boxed with white background)</p>



Additional information	Appearance
Special Control Area - Infrastructure	 <p><b>Inwards triangled border with boxed SCA labelled</b> (Label related to Scheme Text)</p> <p><b>RGB Colours</b> FILL: NA Border Triangle: Red: 0 Green: 0 Blue: 0 Text: Red: 0 Green: 0 Blue: 0 (Boxed with white background)</p>
Special Control Area – Basic Raw Material	 <p><b>Inwards triangled border with boxed SCA labelled</b> (Label related to Scheme Text)</p> <p><b>RGB Colours</b> FILL: NA Border Triangle: Red: 115 Green: 76 Blue: 0 Text: Red: 0 Green: 0 Blue: 0 (Boxed with white background)</p>

**cl. 3**

Additional information	Appearance
Special Control Area – Heritage	 <p><b>Inwards triangled border with boxed SCA labelled</b> (Label related to Scheme Text)</p> <p><b>RGB Colours</b>            FILL: NA            Border Triangle:            Red: 0            Green: 132            Blue: 168            Text:            Red: 0            Green: 0            Blue: 0            (Boxed with white background)</p>
Special Control Area – Development Control Area/Plan	 <p><b>Inwards triangled border with boxed SCA labelled</b> (Label related to Scheme Text)</p> <p><b>RGB Colours</b>            FILL: NA            Border Triangle:            Red: 115            Green: 0            Blue: 176            Text:            Red: 0            Green: 0            Blue: 0            (Boxed with white background)</p>

Additional information	Appearance
Special Control Area – Environment	 <p><b>Inwards triangled border with boxed SCA labelled</b> (Label related to Scheme Text)</p> <p><b>RGB Colours</b>                      FILL: NA                      Border Triangle:                      Red: 0                      Green: 168                      Blue: 132                      Text:                      Red: 0                      Green: 0                      Blue: 0                      (Boxed with white background)</p>
Residential Design Code	 <p><b>Inwards striped border with boxed R-Code labelled</b> (Label related to Scheme Text)</p> <p><b>RGB Colours</b>                      FILL: NA                      Border:                      Red: 0                      Green: 0                      Blue: 0                      Striped:                      Width: 2.5                      Offset: -1                      Text:                      Red: 0                      Green: 0                      Blue: 0                      (Boxed with white background)</p>



## Notes

This is a compilation of the *Planning and Development (Local Planning Schemes) Regulations 2015* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table. ~~For provisions that have not yet come into operation see the uncommenced provisions table.~~

### Compilation table

Citation	Published	Commencement
<i>Planning and Development (Local Planning Schemes) Regulations 2015</i>	25 Aug 2015 p. 3401-595	r. 1 and 2: 25 Aug 2015 (see r. 2(a)); Regulations other than r. 1 and 2: 19 Oct 2015 (see r. 2(b))
<i>Planning and Development (Local Planning Schemes) Amendment Regulations 2015</i>	7 Dec 2015 p. 4883-90	r. 1 and 2: 7 Dec 2015 (see r. 2(a)); r. 3 and 4: 8 Dec 2015 (see r. 2(b)); r. 5: 8 Dec 2015 (see r. 2(c) and <i>Gazette</i> 7 Dec 2015 p. 4881)
<i>Planning and Development (Local Planning Schemes) Amendment Regulations 2020</i>	SL 2020/30 3 Apr 2020	r. 1 and 2: 3 Apr 2020 (see r. 2(a)); Regulations other than r. 1 and 2: 4 Apr 2020 (see r. 2(b))
<i>Planning and Development (Local Planning Schemes) Amendment Regulations (No. 2) 2019</i>	31 Dec 2019 p. 4655-6	r. 1 and 2: 31 Dec 2019 (see r. 2(a)); Regulations other than r. 1 and 2: 1 May 2020 (see r. 2(b) and SL 2020/39 cl. 2)
<i>Planning Regulations Amendment Regulations 2020 Pt. <del>2 (other than Div. 3)</del> <a href="#">Pt. 2 (other than Div. 3)</a></i>	SL 2020/252 18 Dec 2020	<a href="#">Pt. 2 (other than Div. 3):</a> 15 Feb 2021 (see r. 2(c)); <a href="#">Pt. 2 Div. 3: 1 Jul 2021</a> (see r. 2(b))
<i>Planning and Development (Local Planning Schemes) Amendment Regulations 2021</i>	SL 2021/77 18 Jun 2021	r. 1 and 2: 18 Jun 2021 (see r. 2(a)); Regulations other than r. 1 and 2: 30 Jun 2021 (see r. 2(b) and SL 2021/69 cl. 2)

**Uncommenced provisions table**

To view the text of the uncommenced provisions see *Subsidiary legislation as made on the WA Legislation website*.

<b>Citation</b>	<b>Published</b>	<b>Commencement</b>
<i>Planning Regulations Amendment Regulations 2020 Pt. 2 Div. 3</i>	SL 2020/252 18 Dec 2020	1 Jul 2021 (see r. 2(b))

**Other notes**

- <sup>1</sup> The *Planning and Development (Local Planning Schemes) Amendment Regulations 2016* is of no effect as those amending regulations were made by the Governor. Regulations made under the *Planning and Development Act 2005* Part 15 Division 1 must be made by the Minister. The amendments in the *Planning and Development (Local Planning Schemes) Amendment Regulations 2016* are therefore not included in the compilation of the principal regulations.