

Planning and Development (Local Planning Schemes) Regulations 2015**Schedule 2** Deemed provisions for local planning schemes**Part 6** Local development plans**cl. 46**

- (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.